

Proceeds of Crime Act 2003

REPUBLIC OF KIRIBATI
(No. 8 of 2003)

I assent

(Signed): Anote Tong
Beretitenti
19/12/2003

AN ACT TO PROVIDE FOR THE CONFISCATION OF PROCEEDS OF SERIOUS OFFENCES,
TO CREATE THE CRIME OF MONEY-LAUNDERING AND FOR RELATED PURPOSES

Commencement:
2003

MADE by the Maneaba ni Maungatabu and assented to by the Beretitenti.

PART I PRELIMINARY

Short title

1. This Act may be cited as the Proceeds of Crime Act 2003.

Principal objects

2. The principal objects of this Act are:

(a) to deprive persons of the proceeds of, and benefits derived from, the commission of serious offences; and

(b) to provide for the forfeiture of property used in, in connection with, or for facilitating, the commission of serious offences; and

(c) to enable law enforcement authorities to trace such proceeds, benefits and property.

Interpretation

3. (1) In this Act:

"account" means a facility or arrangement by which a financial institution or cash dealer does any one or more of the following:

(a) accepts deposits of currency;

(b) allows withdrawals or transfers of currency;

(c) pays cheques or payment orders drawn on a financial institution or cash dealer by, or collects cheques or payment orders for, a person;

(d) supplies a facility or arrangement for a safety deposit box.

"Administrator" means the Attorney-General or the person appointed by the Attorney-General under section 120.

"appeal" includes proceedings by way of discharging or setting aside a judgement, and an application for a new trial or for a stay of execution.

"authorised officer", for a provision of this Act, means a person, or a person in a class of persons, designated in writing by the Attorney-General as an authorised officer for the provision.

"benefit" has the meaning given by section 4.

"cash dealer" means:

- (a) a person who carries on the business of an insurer, insurance intermediary, securities dealer or futures broker; or
- (b) a person who carries on the business of dealing in bullion, issuing, selling or redeeming travellers' cheques, money orders or similar instruments, or collecting, holding and delivering cash as part of a business of providing payroll services; or
- (c) an operator of a gambling house, casino or lottery; or
- (d) a trustee or manager of a unit trust.

"charge", for an offence, includes any procedure by which criminal proceedings are begun against a person, and, for an offence prosecuted summarily, includes the issue of the relevant summons.

"conviction" has the meaning given by section 5(1).

"Court" means the High Court.

"currency" means coin and paper money that is legal tender in its country of issue.

"dealing with property" includes:

- (a) for property that is a debt — making a payment to the creditor in reduction or discharge of the debt; and
- (b) giving or receiving property as a gift; and
- (c) removing property from Kiribati.

"defendant" means a person charged with a serious offence, whether or not he or she has been convicted of the offence, and for proceedings for a restraining order, includes a person who is likely to be charged with a serious offence.

"document" means a record of information in any form, including any of the following:

- (a) a written or printed thing, including a map, plan, graph or drawing;
- (b) a computer file, including a record that is kept in electronic form and can be accessed in Kiribati;
- (c) a photograph;
- (d) a disk, tape, film sound-track or other thing in which sound or other data is embodied;
- (e) a film, negative, tape or other thing in which a visual image is embodied.

"financial institution" means a person that carries on a business of doing any of the following:

- (a) accepting deposits and other repayable funds from the public;
- (b) lending, including consumer credit, mortgage credit, factoring (with or without recourse) and financing of commercial transactions;
- (c) financial leasing;
- (d) providing money transmission services;
- (e) issuing and administering means of payment (for example, credit cards, travellers' cheques and bankers' drafts);
- (f) entering into guarantees and commitments;
- (g) trading for the institution's own account, or for the account of customers, in money market instruments (for example, cheques, bills and certificates of deposit), foreign exchange, financial futures and options, exchange and interest rate instruments, and transferable securities;
- (h) underwriting, and participating in, share issues;
- (i) giving advice to undertakings on capital structure, industrial strategy and related questions, and advice and services relating to mergers and the purchase of undertakings;
- (j) money-broking;
- (k) providing portfolio management and advice;
- (l) safekeeping and administration of securities;
- (m) providing credit reference services;
- (n) providing safe custody services.
- (o) insurance, an insurance intermediary (which includes an agency or brokering business), a securities dealer or a futures broker;

- (p) trustee administrator or investment manager of a superannuation scheme but excluding closed-ended schemes;
- (q) dealing in bullion;
- (r) operating a gambling house, casino or lottery, including an operator who carries on operations through the internet;
- (s) acting as a trustee company;
- (t) the holder of an offshore insurance license;
- (u) acting as a lawyer or an independent legal professional, but only to the extent that the lawyer or the independent legal professional gives investment advice or receives funds in the course of his or her business for the purpose of deposit or investment, or settling real estate transactions (whether or not the funds are deposited into a separate trust account);
- (v) acting as an accountant, but only to the extent that the accountant gives investment advice or receives funds in the course of his or her business for the purposes of deposit or investment (whether or not the funds are deposited into a separate trust account);
- (w) dealing in real estate or high-value items including antiques;
- (x) acting as a friendly society;
- (y) otherwise investing, administering or managing funds or money on behalf of another person;
- (z) underwriting and placement of life insurance and other investment related insurance;
- (aa) money and currency changing;
- (bb) acting as a dealer in precious metals and stones, including pearls;
- (cc) acting as investment advisers;
- (dd) incorporating domestic companies, partnerships or trusts;
- (ee) any other business that may be prescribed by the Minister;

"foreign forfeiture order" has the same meaning as in the Mutual Assistance Act.

"foreign pecuniary penalty order" has the same meaning as in the Mutual Assistance Act.

"foreign restraining order" has the same meaning as in the Mutual Assistance Act.

"foreign serious offence" means a serious offence against the law of a foreign country.

"forfeiture order" means an order under section 26(1).

"gift" has the meaning given by section 9.

"gift caught by this Act" has the meaning given by section 11.

"interest" in property means:

- (a) a legal or equitable estate or interest in the property; or
- (b) a right, power or privilege in relation to the property.

"Judge" means a Judge of the High Court.

"monitoring order" means an order under section 95.

"Mutual Assistance Act" means the Mutual Assistance in Criminal Matters Act 2003.

"pecuniary penalty order" means an order under section 34(1).

"proceedings" includes any procedure (including an inquiry, investigation or preliminary or final determination of facts) conducted by, or under the supervision of, a judge or judicial officer:

- (a) for an alleged or proven offence; or
- (b) in relation to property derived from an alleged or proven offence.

"proceeds of crime" has the meaning given by section 6.

"production order" means an order under section 88.

"property" includes money and all other property, real or personal, including an enforceable right of action and other intangible or incorporeal property, whether inside the Republic of outside.

"property-tracking document", for an offence, means a document relevant to:

- (a) identifying, locating or quantifying property of a person who committed the offence;
or
- (b) identifying or locating any document necessary for the transfer of property of a person who committed the offence; or
- (c) identifying, locating or quantifying tainted property in relation to the offence; or
- (d) identifying or locating any document necessary for the transfer of tainted property in relation to the offence.

"quash" has the meaning given by section 5(2) and (3).

"realisable property" has the meaning given by section 7.

"relevant application period", for a person's conviction for a serious offence, means the period of 6 years after:

- (a) if the person was actually convicted of the offence — the day when the person was convicted of the offence; or

- (b) if the person is taken to have been convicted of the offence because of section 5(1)(b) — the day when the person was discharged without conviction; or
- (c) if the person is taken to have been convicted of the offence because of section 5(1)(c) — the day when the court took the offence into account in passing sentence for the other offence mentioned in that paragraph.

"relevant offence", for tainted property, means an offence that causes the property to become tainted property.

"Republic" means the Republic of Kiribati.

"restraining order" means an order made under section 54 or registered under section 40 of the Mutual Assistance Act.

"serious offence" means:

- (a) an offence against a law of Kiribati for which the maximum penalty is imprisonment for 12 months or longer or a fine of over \$500; or
- (b) an offence against the law of another country for which the maximum penalty is imprisonment for 12 months or longer or the equivalent of a fine of over \$500 Australian dollars in the currency of that country.

tainted property means:

- (a) property that is used in, or in relation with, the commission of an offence whether situated in the Republic or elsewhere; or
- (b) property that is intended to be used in, or in relation with the commission of an offence whether situated in the Republic or elsewhere; or
- (c) proceeds of crime;

"Unit" means the Financial Tracking Unit established by section 16.

"unit trust" means an arrangement in which a person:

- (a) invests funds in a trust; and
- (b) is a beneficiary under the trust; and
- (c) receives profit or income from the acquisition, holding, management or disposal of property under the trust.

"unlawful activity" means an act or omission that constitutes an offence against a law of Kiribati or the foreign country where the activity occurs.

(2) A reference in this Act to the law of a country includes a law in force in a part of the country (for example, the law of a State of a country that has a federal system of government).

Meaning of benefit

4. (1) For this Act, a person benefits from an offence if the person receives, at any time, any payment or other reward in relation to, or derives any pecuniary advantage from, the commission of the offence.

(2) In this Act, a reference to a benefit derived or obtained by, or otherwise accruing to, a person includes a benefit derived or obtained by, or otherwise accruing to, another person at the first person's request or direction.

Meaning of conviction and quash

5. (1) For this Act, a person is taken to have been convicted of an offence if:

- (a) the person was convicted of the offence; or
- (b) the person was charged with, and found guilty of, the offence but is discharged without conviction; or
- (c) the person was not found guilty of the offence, but the Court, with the consent of the person, takes the offence into account in passing sentence on the person for another offence.

(2) If a person is taken, under subsection (1)(b), to have been convicted of an offence, for this Act the conviction is taken to be quashed if the finding of guilt is quashed or set aside.

(3) If a person is taken, under subsection (1)(c), to have been convicted of an offence, for this Act, the conviction is taken to be quashed if the Court's decision to take the offence into account is quashed or set aside.

Meaning of proceeds of crime and instrument

6. (1) In this Act:

- (a) Property is proceeds of a crime if:
 - (i) it is wholly derived or realised, whether directly or indirectly, from the commission of the offence; or
 - (ii) it is partly derived or realised, whether directly or indirectly, from the commission of the offence;

whether the property is situated within or outside the Republic.

(b) Property is an instrument of an offence if:

- (i) the property is used in, or in connection with, the commission of an offence; or
- (ii) the property is intended to be used in, or in connection with, the commission of an offence;

whether the property is situated within or outside the Republic.

(c) Property can be proceeds of an offence or an instrument of an offence even if no person has been convicted of the offence.

(d) Property becomes proceeds of an offence if it is:

- (i) wholly or partly derived or realised from a disposal or other dealing with proceeds of the offence; or
- (ii) wholly or partly acquired using proceeds of the offence, including because of a previous application of this section.
- (iii) property into which any property wholly or partly derived or realised directly from the offence is later successively converted or transformed; and
- (iv) income, capital or other economic gains derived or realised from that property since the offence.

(e) Property becomes an instrument of an offence if it is:

- (i) wholly or partly derived or realised from the disposal or other dealing with an instrument of the offence; or
- (ii) wholly or partly acquired using an instrument of the offence;
including because of a previous application of this section.

(f) Property remains proceeds of an offence or an instrument of an offence even if:

- (i) it is credited to an account; or
- (ii) it is disposed of or otherwise dealt with.

(2) If property that is proceeds of crime (the *original proceeds*) is intermingled with other property from which it cannot readily be separated, that proportion of the whole represented by the original proceeds is taken to be proceeds of crime.

Meaning of realisable property

7. (1) In this Act *realisable property* means any property held by a person:

- (a) who has been convicted of, or charged with, a serious offence; or
- (b) to whom a person so convicted or charged has directly or indirectly made a gift caught by this Act.

(2) However, property is not realisable property if:

- (a) there is in force against the property a forfeiture order under this or another Act; or
- (b) a forfeiture order is proposed to be made against the property under this or another Act.

How value of property is worked out

8. (1) For this Act, the value of property (other than currency) to a person holding the property is:

(a) if another person holds an interest in the property — the market value of the person's beneficial interest in the property, less the amount required to discharge any encumbrance on that interest; and

(b) in any other case — its market value.

(2) For this Act, the value at a particular time of a transfer of property is the greater of:

(a) the value of the property to the recipient when he or she receives it, adjusted to take account of subsequent changes in the value of money; and

(b) the value to the recipient at that time of property that, in whole or in part, directly or indirectly represents in the recipient's hands the property that he or she received.

Meaning of gift

9. (1) In this Act *gift* includes a transfer (directly or indirectly) of property by 1 person to another for a consideration that is significantly less than the value of the property.

(2) In the circumstances mentioned in subsection (1), sections 10 and 11 apply as if the person had made a gift of as much of the transferred property as bears to the whole property the same proportion as the difference between the value of the property and the value of the consideration.

What is the value of a gift

10. For this Act, the value at a particular time of a gift is the greatest of:

(a) the value of the gift to the recipient when he or she received it, adjusted to take account of changes in the value of money; or

(b) the value to the person at the time of property (other than currency) that the person received as a gift; or

(c) the value of property that, in whole or in part, directly or indirectly represents in the person's hands property that the person received as a gift.

When a gift is caught by this Act

11. (1) A gift made by a person convicted of, or charged with, a serious offence, including a gift made before the commencement of this Act, is caught by this Act if:

(a) it was made after the commission of the offence (or, if the person is convicted of, or charged with, more than 1 offence, the earliest of them) and the Court considers it appropriate in all the circumstances to take the gift into account; or

(b) it was made by the person convicted or charged at any time and was a gift of property:

(i) received by the person; or

(ii) that in whole or in part, directly or indirectly, represented in the person's hands property received by the person;

in relation to the commission of a serious offence committed by the person or another person.

(2) For subsection (1), if proceedings for the offence have resulted in the conviction of the person, a reference to the offence is taken to include any offence that the Court takes into consideration when determining sentence.

(3) The fact that a person has been acquitted of an offence with which a person has been charged does not affect the court's power to make a forfeiture order under Part 4 of this Act in relation to the offence.

PART II MONEY-LAUNDERING AND RELATED OFFENCES

Division 1 - Offences

Money-laundering

12. (1) In this section *transaction* includes –

- (a) opening of an account;
- (b) any deposit, withdrawal, exchange or transfer of funds in any currency whether in cash or by cheque, payment order or other instrument or by electronic or other non physical means;
- (c) the use of a safety deposit box or any other form of safe deposit;
- (d) entering into any fiduciary relationship;
- (e) any payment made in satisfaction, in whole or in part, of any contractual or other legal obligation;
- (f) such other transactions as may be prescribed by the Minister of Finance and Economic Development.

(2) A person who engages in money-laundering commits an offence punishable by:

- (a) if the offender is a natural person — a fine of \$120 000 or imprisonment for 20 years, or both; or
- (b) if the offender is a body corporate — a fine of \$600 000.

(3) A person commits the offence of money-laundering if the person:

- (a) engages directly or indirectly in a transaction that involves money, or other property, that is proceeds of crime and the person knows, or ought reasonably to know, to be derived from some form of unlawful activity;
- (b) acquires, possesses or uses, receives or brings into the Republic money or other property

that is proceeds of crime and the person knows or ought reasonably to know that it is derived directly or indirectly from some form of unlawful activity;

(c) converts or transfers property that is proceeds of crime, with the aim of concealing or disguising the illicit origin of that property, or of aiding any person involved in the commission of the offence to evade the legal consequences thereof;

(d) conceals or disguises the true nature, origin, location, disposition, movement or ownership of the property that is proceeds of crime;

(e) renders assistance to another person for any of the above.

(4) Knowledge, intent or purpose required as an element of the above-mentioned activities may be inferred from objective factual circumstances.

(5) Any person may be convicted of a money laundering offence under this section notwithstanding the absence of a conviction in respect of a crime which generated the proceeds alleged to have been laundered.

Possession of property suspected of being proceeds of crime

13. (1) A person who converts, receives, possesses, conceals, disposes of or brings into Kiribati money, or other property, that may reasonably be suspected of being proceeds of crime commits an offence punishable by:

(a) if the offender is a natural person — a fine of \$12 000 or imprisonment for 2 years, or both;
or

(b) if the offender is a body corporate — a fine of \$60 000.

(2) It is a defence to a prosecution under subsection (1) that the defendant had no reasonable grounds for suspecting that the property mentioned in the charge was derived or realised, directly or indirectly, from some form of unlawful activity.

(3) A person is not liable to be convicted of an offence against both section 12 and this section because of one act or omission.

Opening account in false name

14. A person who opens or operates an account with a financial institution or cash dealer in a false name commits an offence punishable by:

(a) for a natural person — a fine of \$30 000 or imprisonment for 5 years, or both; or

(b) for a body corporate — a fine of \$150 000.

Disclosure of suspicious transaction reports and other information

15. (1) A financial institution or a cash dealer, its officers, employees or agents or any other person must not disclose to any person:

- (a) that a report under section 96 has been or may be made, or further information has been given under section 96(3); or
- (b) that the financial institution or the cash dealer has formed a suspicion in relation to a transaction for purposes of section 96(1); or
- (c) any other information from which the person to whom the information is disclosed could reasonably be expected to infer that a suspicion has been formed or that a report has been, or may be, made.

(2) Subsection (1) does not apply to disclosures made to -

- (a) the Unit; or
- (b) an officer or employee or agent of the financial institution or the cash dealer for any purpose connected with the performance of that person's duties; or
- (c) a barrister or solicitor for the purpose of obtaining legal advice or representation in relation to the matter; or
- (d) a supervisory authority of the financial institution or the cash dealer for the purposes of carrying out the supervisory authority's functions.

(3) No person referred to in subsection (2)(b) to whom disclosure of any information to which that subsection applies has been made must disclose that information except to another person of the kind referred to in that subsection, for the purpose of -

- (a) the performance of the first-mentioned person's duties; or
- (b) obtaining legal advice or representation in relation to the matter.

(4) No person referred to in subsection 2(c) to whom disclosure of any information to which that subsection applies has been made must disclose that information except to a person of the kind referred to in that subsection for the purpose of giving legal advice or making representations in relation to the matter.

(5) Subject to this Act, nothing in any of subsections (1) to (3) prevents the disclosure of any information in connection with, or in the course of, proceedings before a court.

(6) If a person contravenes subsection (1), the person commits an offence punishable by -

- (a) in the case of an individual, a fine of up to \$30,000 or a term of imprisonment of up to 5 years, or both;
- (b) in the case of a body corporate, a fine of up to \$150,000.

(7) If a person contravenes subsection (1) with intent to prejudice an investigation of a serious offence or a money laundering offence or for the purpose of obtaining directly or indirectly an advantage or a pecuniary gain for himself or herself or for any other person, the person commits an offence punishable by -

- (a) in the case of an individual, a fine of up to \$30,000 or a term of imprisonment of up to 5 years;
- (b) in the case of a body corporate, a fine of up to \$150,000.

Division 2 - Administration

Financial Intelligence Unit - Establishment

16. There is established, within the Kiribati Police, the Financial Intelligence Unit.

Unit - Functions and powers

17. (1) The functions of the Unit are as follows:

- (a) to receive reports of suspicious transactions issued by financial institutions and cash dealers;
- (b) to send each report to the Attorney-General if, having considered it, the Unit decides that there are reasonable grounds for suspecting that the transaction is suspicious;
- (c) to compile statistics and records, disseminate information within Kiribati or elsewhere, make recommendations arising out of any information received, issue guidelines to financial institutions and advise the Attorney-General;
- (d) to create training requirements and provide training for financial institutions about transaction record-keeping and reporting obligations;
- (e) to consult with any relevant person, institution or organisation in exercising its powers or duties.

(2) The Commissioner of Police is responsible to the Attorney-General for the proper performance of the functions mentioned in subsection (1).

(3) A member of the Unit:

- (a) may enter the premises of any financial institution or cash dealer during ordinary business hours to inspect any record kept for section 104, ask questions about the record, make notes and take copies of the whole or any part of the record; and
- (b) must send to the Attorney-General any information derived from an inspection carried out for paragraph (a) if it gives the Unit reasonable grounds for suspecting that a transaction involves proceeds of crime; and
- (c) may direct any financial institution or cash dealer to take appropriate steps to facilitate any investigation foreseen by the Unit; and
- (d) may not conduct any investigation into money-laundering, other than to ensure compliance with this Part by a financial institution.

Unit's power to obtain search warrant

18. (1) A member of the Unit may apply to a Judge or a justice of the peace for a warrant to enter premises belonging to, or in the possession or control of, a financial institution or cash dealer, or any employee or agent of a financial institution or cash dealer, and to search the premises and remove any document, material or other thing on the premises.

(2) The Judge or justice of the peace must grant the application if he or she is satisfied that there are reasonable grounds for believing that:

(a) the financial institution or cash dealer has failed to keep a transaction record, or report a suspicious transaction, as required by this Act; or

(b) an employee or agent of a financial institution or cash dealer is committing, has committed or is about to commit an offence of money-laundering.

(3) A warrant issued under this section may be executed as if it were a warrant issued under section 101 of the Criminal Procedure Code.

Unit may apply for production and monitoring orders

19. (1) To determine whether any property belongs to, or is in the possession or under the control of, a person, a member of the Unit may apply for a production order or a monitoring order.

(2) Division 6 of Part 4 applies to a production order in favour of the Unit.

(3) Division 7 of Part 4 applies to a monitoring order in favour of the Unit.

Orders to enforce compliance with obligations under this Act

20. (1) If a financial institution or cash dealer appears to have failed to comply with an obligation under Part 5, a member of the Unit may apply to the Court for an order against the institution or dealer, or all or any employees or agents, or specified employees or agents, of the institution or dealer, in terms that the Court thinks necessary to enforce compliance with the obligation.

(2) In granting the order, the Court may order that, if the financial institution or cash dealer fails, without reasonable excuse, to comply with the order, the institution, dealer, employee or agent must pay a financial penalty of the amount, and in the manner, directed by the Court.

PART III

FORFEITURE ORDERS, PECUNIARY PENALTY ORDERS AND RELATERS MATTERS

Division 1 - General

Application for forfeiture order or pecuniary penalty order on conviction

21. (1) If a person is convicted of a serious offence committed after this Act commences, the Attorney-General may apply to the Court for either or both of the following orders:

(a) a forfeiture order against tainted property in relation to the offence;

(b) a pecuniary penalty order against the person for benefits derived by the person from the

commission of the offence.

- (2) However, the Attorney-General may not make an application under subsection (1) after the end of the relevant application period for the conviction.
- (3) A single application under this section may be made about 2 or more serious offences.
- (4) After an application under this section is finally determined, no further application for a forfeiture order or a pecuniary penalty order may be made in relation to the offence for which the person was convicted without leave of the Court.
- (5) The Court may give leave for a new application only if:
 - (a) the property or benefit to which the new application relates was identified after the previous application was determined; or
 - (b) necessary evidence became available only after the previous application was determined; or
 - (c) it is in the interests of justice that the new application be made.

Notice of application

22. (1) If the Attorney-General applies for a forfeiture order against tainted property in relation to a serious offence for which a person is convicted:
- (a) the Attorney-General must give reasonable written notice of the application to the person and to any other person who the Attorney-General has reason for believing may have an interest in the property; and
 - (b) the person, and any other person who claims an interest in the property, may appear and adduce evidence at the hearing of the application; and
 - (c) the Court may, at any time before the final determination of the application, direct the Attorney-General:
 - (i) to give reasonable written notice of the application to any person who, in the opinion of the Court, appears to have an interest in the property; or
 - (ii) to publish notice of the application, containing the details that the Court directs, in the Gazette and, as often as the Court directs, in a newspaper published and circulating in Kiribati.

- (2) If the Attorney-General applies for a pecuniary penalty order against a person:

- (a) the Attorney-General must give the person reasonable written notice of the application; and
- (b) the person may appear and adduce evidence at the hearing of the application.

Amendment of application

23. (1) The Court may, before finally determining an application for a forfeiture order or pecuniary penalty order, and on the application of the Attorney-General, allow the amendment of the application to include any other property or benefit if:

- (a) the other property or benefit was not reasonably capable of identification when the application for the order was originally made; or
- (b) necessary evidence became available only after that application was originally made.

(2) If:

- (a) the Attorney-General applies to amend an application for a forfeiture order; and
- (b) the effect of the amendment would be to include additional property in the application for the forfeiture order;

the Attorney-General must give reasonable written notice of the application to amend to any person who the Attorney-General has reason for believing may have an interest in the additional property.

(3) Any person who claims an interest in the additional property may appear and adduce evidence at the hearing of the application to amend.

(4) If:

- (a) the Attorney-General applies to amend an application for a pecuniary penalty order against a person; and
- (b) the effect of the amendment would be to include an additional benefit in the application for the pecuniary penalty order;

the Attorney-General must give the person reasonable written notice of the application to amend.

Procedure on application

24. On an application to the Court under section 21, the Court may:

- (a) in determining the application, take into account the transcript of any proceedings against the person for the offence; or
- (b) defer passing sentence until the Court has determined the application if the Court:
 - (i) has not, when the application is made, passed sentence on the person for an offence because of which the property became tainted; and
 - (ii) is satisfied that it is reasonable to do so.

Application for forfeiture order if person has absconded

25. (1) If, in relation to a serious offence committed after this Act commences:

- (a) an information has been laid alleging that a person committed the offence; and
- (b) a warrant for the person's arrest is issued as a result of that information; and
- (c) the person absconds;

the Attorney-General may, within 6 months after the person absconds, apply to the Court for a forfeiture order against any tainted property.

(2) For this section:

- (a) a person is taken to have absconded in relation to an offence if reasonable attempts to arrest the person under a warrant have been unsuccessful during the 6 months starting on the day the warrant was issued or the person dies after the warrant is issued or an investigation into the offence has commenced; and
- (b) the person is taken to have absconded on the last day of that 6 months or on the day the person dies.

(3) If the Attorney-General applies under subsection (1) for a forfeiture order against property, the Court must, before hearing the application, require:

- (a) reasonable written notice of the application to be given to any person who, in the opinion of the Court, appears to have an interest in the property; or
- (b) notice of the application, containing the details that the Court directs, to be published in the Gazette and, as often as the Court directs, in a newspaper published and circulating in Kiribati.

Division 2 - Forfeiture orders

Forfeiture order on conviction

26. (1) If:

- (a) the Attorney-General applies to the Court for a forfeiture order against property in relation to a person's conviction for a serious offence; and
- (b) the Court is satisfied that the property is tainted property in relation to the offence;

the Court may order that the property, or as much of the property as is specified by the Court in the order, be forfeited to the Republic.

(2) In deciding whether property is tainted property, the Court may infer:

- (a) if the evidence establishes that the property was in the person's possession when, or immediately after, the offence was committed — that the property was used in, or in relation to, committing the offence; and

(b) if the evidence establishes that the property (in particular, money) was found, during investigations before or after the person was arrested for and charged with the offence:

(i) in the person's possession; or

(ii) under the person's control in a building, vehicle, receptacle or place;

that the property was derived, obtained or realised as a result of the person's committing the offence; and

(c) if:

(i) the evidence establishes that the value, after the person committed the offence, of all the person's ascertainable property is more than the value of all the person's ascertainable property before the person committed the offence; and

(ii) the Court is satisfied that the person's income from sources unrelated to criminal activity cannot reasonably account for the increase in value;

that the value of all or part of the increase represents property that the person derived, obtained or realised directly or indirectly from committing the offence.

(3) If the Court orders that property (other than money) be forfeited to the Republic, the Court must specify in the order the amount that it considers to be the value of the property when the order is made.

(4) In considering whether to make a forfeiture order against property, the Court may take into account:

(a) any right or interest of a third party in the property; and

(b) the gravity of the offence concerned; and

(c) any hardship that may reasonably be expected to be caused to any person by the operation of the order; and

(d) the use that is ordinarily made of the property, or the use to which the property was intended to be put.

(5) A court may, before making a forfeiture order or a pecuniary penalty order, set aside any conveyance or transfer of money or property or interest therein that occurred in circumstances that give rise to a reasonable inference that the money, property or interest was transferred for the purpose of avoiding forfeiture or pecuniary penalty order unless the transfer was for valuable consideration to a third party acting in good faith and without notice.

(6) If the Court makes a forfeiture order, the Court may give any directions that are necessary or convenient to give effect to the order.

Effect of forfeiture order

27. (1) In this section *registrable property* means property the title to which is passed by registration on a register kept under a law in force in Kiribati.

(2) If the Court makes a forfeiture order against property (other than registrable property), the order vests the property absolutely in the Republic.

(3) If the Court makes a forfeiture order against registrable property:

- (a) the order vests the property in the Republic in equity, but does not vest it in the Republic at law until the applicable registration requirements have been complied with; and
- (b) the Republic is entitled to be registered as owner of the property; and
- (c) the Administrator may do, or authorise the doing of, anything necessary or convenient to obtain the registration of the Republic as owner, including the execution of any necessary instrument.

(4) If the Court makes a forfeiture order against registrable property:

- (a) the Attorney-General may do anything necessary or convenient to give notice of, or otherwise protect, the Republic's equitable interest in the property; and
- (b) anything done by the Attorney-General under paragraph (a) is not a dealing for subsection (5) (a).

(5) If the Court makes a forfeiture order against property (including registrable property):

- (a) the property must not, except with the leave of the Court and in accordance with any directions of the Court, be disposed of, or otherwise dealt with, by or for the Republic, before:
 - (i) any appeal against the conviction or the making of the order is finally determined or lapses; or
 - (ii) the last day for lodging an appeal against the conviction or order passes without an appeal having been lodged; and
- (b) the property may be disposed of, and the proceeds applied or otherwise dealt with as the Administrator directs, after:
 - (i) any appeal against the conviction or the making of the order is finally determined or lapses; or
 - (ii) the last day for lodging an appeal passes without an appeal having been lodged.

Protection of third parties

28. (1) If an application is made for a forfeiture order against property, a person who claims an interest in the property may apply to the Court, before the forfeiture order is made, for an order under subsection (2).

(2) If a person applies to the Court for an order about the person's interest in property, the Court must make an order declaring the nature, extent and value (as at the time the order is made) of the person's interest if the Court is satisfied:

(a) that the applicant was not involved in committing an offence in relation to which:

(i) forfeiture of the property is sought; or

(ii) a forfeiture order against the property has been made; and

(b) if the applicant acquired the interest when, or after, the offence was committed — that the applicant acquired the interest:

(i) for sufficient consideration; and

(ii) without knowing, and in circumstances that do not give rise to a reasonable suspicion, that the property was, at the time of the acquisition, tainted property.

(3) If a forfeiture order has already been made against property, a person who claims an interest in the property may, within 6 months starting on the day when the order is made, apply to the Court for an order under subsection (2).

(4) A person may not make an application under subsection (3), except with the leave of the Court, if the person:

(a) knew about the application for the forfeiture order before the order was made; or

(b) appeared at the hearing of that application.

(5) A person who applies to the Court under subsection (1) or (3) must give reasonable written notice of the application to the Attorney-General.

(6) The Attorney-General:

(a) is a party to the proceedings in an application under subsection (1) or (3); and

(b) may make an application under subsection (1) on behalf of a person.

(7) An appeal lies to the Court of Appeal from an order under subsection (2).

(8) The Administrator must, on application by a person who has obtained an order under subsection (2), if the period allowed for appeals has expired and any appeal from that order has been determined or has lapsed:

(a) return the property, or the part of it to which the interest of the applicant relates, to the applicant; or

(b) pay an amount equal to the value of the interest of the applicant, as declared in the order, to the applicant.

Forfeiture order where person has absconded or died

29. (1) If an application is made to the Court for a forfeiture order against tainted property, and the Court is satisfied that:

- (a) proceedings for a serious offence committed for that property were commenced; and
- (b) any property is tainted property in relation to the offence; and
- (c) the accused charged with the offence mentioned in paragraph (a) has absconded;

the Court may order that the property, or as much of it as the Court specifies in the order, be forfeited to the Republic.

(2) Section 26 (except subsection (1)), and sections 27 and 28, apply (with any necessary modifications) to an order under this section.

Discharge of forfeiture order on appeal or quashing of conviction

30. (1) If the Court makes a forfeiture order against property in reliance on a person's conviction for an offence and the conviction is subsequently quashed, the quashing of the conviction discharges the order.

(2) If a forfeiture order against property is discharged:

- (a) under subsection (1); or
- (b) by the Court hearing an appeal against the making of the order;

a person who claims to have had an interest in the property immediately before the forfeiture order was made may apply to the Administrator, in writing, for the transfer of the interest to the person.

(3) On receipt of an application under subsection (2), the Administrator must, if satisfied that the applicant had the interest claimed:

- (a) if the interest is vested in the Republic — transfer the property or interest in the property, or the part of it to which the interest relates, to the applicant; or
- (b) if the Republic has disposed of the interest — pay to the applicant an amount equal to the value of the interest at the time the order is made.

(4) The Administrator may ask the Court to determine whether the person had the interest claimed under subsection (2).

(5) The Administrator has power to do, or authorise the doing of, anything necessary or convenient to transfer or return property under section 28 or this section, including executing any instrument and applying to register an interest in the property on a register.

Payment instead of forfeiture order

31. If the Court is satisfied that a forfeiture order should be made against property of a person, but that the property, or any part of it or interest in it, cannot be made subject to a forfeiture order, and, in particular:

- (a) cannot, with the exercise of due diligence, be found; or

(b) has been transferred to a third party in circumstances that do not give rise to a reasonable inference that the title or interest was transferred to avoid the forfeiture of the property;
or

(c) is located outside Kiribati; or

(d) has been mingled with other property that cannot be divided without difficulty;

(e) has transferred to a bona fide third party purchaser for value and without notice;

(f) is subject to customary land rights and cannot be forfeited,

the Court may, instead of ordering the property, part or interest to be forfeited, order the person to pay to the Republic an amount equal to the value of the property, part or interest.

Enforcement of order for payment instead of forfeiture

32. (1) An amount payable by a person to the Republic under an order under section 31 is a civil debt due by the person to the Republic.

(2) In order against a person under section 31 may be enforced as if it were an order made in civil proceedings instituted by the Attorney-General against the person to recover a debt due by the person to the Republic, and the debt arising from the order is taken to be a judgment debt.

(3) If an order is made against a person under section 31 and the person is, or becomes, a bankrupt, the order may be enforced against the person or against any property of the person that is not vested in the person's trustee in bankruptcy.

Registered foreign forfeiture orders

33. If a foreign forfeiture order is registered in the Court under the Mutual Assistance Act, this Division applies to the order as if:

(a) the order were an order made by the Court under this Division; and

(b) references to an appeal against the making of an order were omitted; and

(c) the period mentioned in section 28(3) were 6 weeks rather than 6 months.

Division 3 - Pecuniary penalty orders

Pecuniary penalty order on conviction

34. (1) If the Attorney-General applies to the Court for a pecuniary penalty order against a person for the person's conviction for a serious offence, the Court may, if it is satisfied that the person has benefited from the offence, order the person to pay to the Republic:

(a) an amount equal to the value of the person's benefit from the offence; or

(b) a lesser amount that the Court certifies to be the amount that might be realised at the time the pecuniary penalty order is made.

(2) The Court must assess the value of the benefit derived by a person from committing an offence in accordance with sections 35 to 39.

(3) The Court must not make a pecuniary penalty order under this section until:

(a) any appeal against the conviction is finally determined or lapses; or

(b) the last day for lodging an appeal against the conviction passes without an appeal having been lodged.

Rules for determining benefit and assessing value

35. (1) If a person obtains property as the result of, or in connection with committing, a serious offence, the person's benefit is the value of the property so obtained.

(2) If a person derives an advantage as the result of, or in connection with committing, a serious offence, the person's benefit is taken to be a sum of money equal to the value of the advantage so derived.

(3) Unless the contrary is proved:

(a) property is taken to have been obtained as the result of, or in connection with committing, a serious offence if it is held by a person on the day when the application is made or at any time:

(i) if the offence or earliest offence was committed more than 5 years before the application is made — within 5 years before the application is made; or

(ii) in any other case — after the offence or the earliest offence was committed and before the application is made; and

(b) any expenditure by the person in the time mentioned in subparagraph (a) (i) or (ii) is taken to be expenditure met out of property obtained as the result of, or in connection with committing, a serious offence; and

(c) any property received or taken to have been received by the person at any time as a result of, or in connection with committing, the offence or offences is taken to have been received free of any other interests; and

(d) if evidence is given at the hearing of the application that the value of the person's property increased after committing an offence, the increase is taken to be part of the person's benefit from the offence.

(4) If a pecuniary penalty order has previously been made against a person for an offence, any of the person's benefits that are shown to the Court to have been taken into account in determining the amount to be recovered under the earlier order must be disregarded.

Statements about benefits from committing serious offences

36. (1) If a person has been convicted of a serious offence, the Attorney-General may tender to the Court a statement about any matter relevant to:

- (a) deciding whether the person has benefited from the offence, or from any other serious offence of which the person is convicted in the same proceedings or that is taken into account in passing sentence on the person; or
- (b) assessing the value of the person's benefit from the offence or any other serious offence of which the person is convicted in the same proceedings or that is taken into account.

(2) If the Court is satisfied that a copy of the statement has been served on the person, the Court may require the person to indicate:

- (a) to what extent the person accepts each allegation in the statement; and
- (b) for each allegation that the person does not accept wholly or in part — any matters the person proposes to rely on.

(3) If the person accepts to any extent an allegation in the statement, the Court may, in deciding or assessing the matters mentioned in subsection (1), treat the person's acceptance as conclusive of the matters to which it relates.

(4) If a person fails, wholly or in part, to comply with a requirement under subsection (2), the Court may treat the person, for this section, as having accepted every allegation in the statement, other than:

- (a) an allegation for which the person has complied with the requirement; or
- (b) an allegation that the person has benefited from the offence concerned, or that the person obtained any property or advantage as a result of, or in connection with committing, the offence.

(5) An allegation may be accepted, or a matter indicated, for this section either:

- (a) orally before the Court; or
- (b) in writing.

(6) An acceptance by a person under this section that the person received any benefits from committing a serious offence is admissible in any proceedings against the person for any offence.

Amount to be recovered under pecuniary penalty order

37. (1) The amount to be recovered from a person under a pecuniary penalty order is the amount that the Court assesses to be the value of the person's benefit from the offence, or all the offences, concerned.

(2) If the Court is satisfied (whether by an acceptance under section 36 or otherwise) about a matter relevant to determining the amount that might be realised at the time a pecuniary penalty order is made, the Court may issue a certificate giving the Court's opinion about the matter.

(3) The Court must issue the certificate if it is satisfied that the amount that might be realised at the time the pecuniary penalty order is made is less than the amount that the Court assesses to be the

value of the person's benefit from the offence, or all the offences, for which the pecuniary penalty order may be made.

Working out how much is realisable

38. (1) For sections 36 and 37, the amount that might be realised at the time a pecuniary penalty order is made against a person is the total of:

- (a) the values at that time of all the realisable property held by the person, less the total amounts payable under any obligation having priority at that time; and
- (b) the total of the values at that time of all gifts caught by this Act.

(2) For subsection (1), an obligation of a person has priority at a time if it is an obligation:

- (a) to pay a fine, or an amount due under an order of the Court imposed or made on conviction for an offence, if the fine was imposed or the order made before the pecuniary penalty order; or
- (b) to pay an amount due as a tax, rate, duty, excise or other impost under an enactment; or
- (c) to pay any other civil obligation determined by the Court.

Variation of pecuniary penalty orders

39. (1) If:

- (a) the Court makes a pecuniary penalty order; and
- (b) in calculating the amount of the pecuniary penalty order, the Court took into account a forfeiture of property or a proposed forfeiture of property or a proposed forfeiture order against property; and
- (c) an appeal against the forfeiture or forfeiture order is allowed, or the proceedings for the proposed forfeiture order terminate without the proposed order being made;

the Attorney-General may apply to the Court to vary the pecuniary penalty order to increase the amount of the order by the value of the property and the Court may, if it considers it appropriate to do so, vary the order accordingly.

(2) If:

- (a) in calculating the amount of the pecuniary penalty order, the Court took into account an amount of tax paid by the person; and
- (b) an amount is repaid or refunded to the person for that tax;

the Attorney-General may apply to the Court to vary the pecuniary penalty order to increase the amount of the order by the amount repaid or refunded and the Court may, if it considers it appropriate to do so, vary the order accordingly.

Court may lift corporate veil

40. (1) In assessing the value of benefits derived by a person from committing an offence, the Court may treat as the person's property any property that, in the opinion of the Court, is under the person's effective control, whether or not the person has:

- (a) any legal or equitable interest in the property; or
- (b) any right, power or privilege in relation to the property.

(2) Without limiting subsection (1), the Court may take into account:

- (a) shareholdings in, debentures over, or directorships of a company that has an interest (whether direct or indirect) in the property; and
- (b) a trust that has a relationship to the property; and
- (c) any relationship between persons having an interest in the property, or in companies of the kind mentioned in paragraph (a) or trusts of the kind mentioned in paragraph (b), and other persons.

(3) To decide, for subsection (2) (a), whether a particular company has a direct or indirect interest in property, the Court may order the investigation and inspection of the books of the company.

(4) If the Court, in making a pecuniary penalty order against a person, treats particular property as the person's property under subsection (1), the Court may, on application by the Attorney-General, make an order declaring that the property is available to satisfy the order.

(5) If the Court declares that property is available to satisfy a pecuniary penalty order:

- (a) the order may be enforced against the property as if the property were property of the person against whom the order is made; and
- (b) a restraining order may be made against the property as if the property were property of the person against whom the pecuniary penalty order is made.

(6) If the Attorney-General applies for an order that property is available to satisfy a pecuniary penalty order against a person:

- (a) the Attorney-General must give reasonable written notice of the application to the person and to any other person who the Attorney-General has reason for believing may have an interest in the property; and
- (b) the person and any other person who claims an interest in the property may appear and adduce evidence at the hearing of the application.

Enforcement of pecuniary penalty orders

41. (1) An amount payable by a person to the Republic under a pecuniary penalty order is a civil debt

due by the person to the Republic.

(2) A pecuniary penalty order against a person may be enforced as if it were an order made in civil proceedings instituted by the Attorney-General against the person to recover a debt due by the person to the Republic, and the debt arising from the order is taken to be a judgment debt.

(3) If a pecuniary penalty order is made against a person and the person is, or becomes, a bankrupt, the order may be enforced against the person or against any property of the person that is not vested in the person's trustee in bankruptcy.

Amounts paid for registered foreign pecuniary penalty orders

42. If a foreign pecuniary penalty order is registered in the Court under the Mutual Assistance Act, any amount paid, whether in Kiribati or elsewhere, in satisfaction of the foreign pecuniary penalty order is taken to have been paid in satisfaction of the debt that arises because of the registration of that order.

PART IV

FACILITATING INVESTIGATIONS AND PRESERVING PROPERTY

Division 1 Search and seizure

Warrant to search land etc. for tainted property

43. (1) A police officer may apply for the issue of a warrant to search land or premises for tainted property in the same way as he or she might apply for a search warrant under section 101 of the Criminal Procedure Code.

(2) If an application is made under subsection (1) for a warrant, a Judge or justice of the peace may issue the warrant in the same way, and subject to the same conditions, as he or she could issue a search warrant under section 101 of the Criminal Procedure Code, and, subject to this Division, the warrant may be executed in the same way as if it had been issued under that section.

Police may seize tainted property

44. If, in the course of a search under a warrant issued under section 43 for a thing of a kind specified in the warrant, a police officer finds another thing, the warrant is taken to authorise the police officer to seize the other thing if there are reasonable grounds:

(a) for believing the other thing to be tainted property in relation to a serious offence, or to afford evidence about the commission of a criminal offence in Kiribati; or

(b) for believing that it is necessary to seize the other thing to prevent it being concealed, lost or destroyed, or used to commit, continue or repeat the offence or another offence.

Return of seized property — general rule

45. (1) If property has been seized under:

(a) a warrant issued under section 43; or

(b) section 44;

a person who claims an interest in the property may apply to the Court for an order that the property be returned to the person.

(2) The Court must order the Commissioner of Police to return the property to the person if the Court is satisfied that:

- (a) the person is entitled to possession of the property; and
- (b) the property is not tainted property; and
- (c) the person in relation to whose conviction, charging or proposed charging the property was seized has no interest in the property.

Return of seized property if no information laid

46. (1) Subsection (2) applies if:

- (a) property has been seized under:
 - (i) a warrant issued under section 43; or
 - (ii) section 44; and
- (b) charges had not been filed in the Court within a reasonable time after the seizure of the property; and

(2) The Commissioner of Police must, subject to section 48, arrange for the property to be returned to the person from whose possession it was seized as soon as practicable after the Attorney- General has confirmed in writing that the charges will not be filed for a relevant offence.

Return of seized property if no forfeiture order made

47. (1) Subsection (2) applies if:

- (a) property has been seized under:
 - (i) a warrant issued under section 43; or
 - (ii) section 44; and
- (b) any proceedings for an offence because of which the property is tainted have been completed; and
- (c) the Attorney-General:
 - (i) has not applied for a forfeiture order; and
 - (ii) does not apply for a forfeiture order within 14 days after the proceedings are completed; and
- (d) the property is in the Commissioner of Police's possession at the end of that period.

(2) The Commissioner of Police must, subject to section 48, arrange for the property to be returned to the person from whose possession it was seized as soon as practicable after the end of that period.

Retention of seized property if restraining order made

48. (1) Subsections (2), (3) and (4) apply if:

(a) property has been seized under:

(i) a warrant issued under section 43; or

(ii) section 44; and

(b) a restraining order is made against the property before the Commissioner of Police is required by this Act to return it; and

(c) the restraining order directs the Administrator to take custody and control of the property.

(2) Despite sections 46(2) and 47(2), the Commissioner of Police must arrange for the property to be given to the Administrator in accordance with the restraining order.

(3) If, when the restraining order is made, the property is in the Commissioner of Police's possession, the Commissioner of Police may apply to the Court for an order that the Commissioner of Police keep possession of the property.

(4) If the Court is satisfied that there are reasonable grounds for believing that the property may afford evidence about the commission of an offence, the Court may order that the Commissioner of Police may retain the property for as long as the property is required as evidence.

(5) If the Court makes an order under subsection (4) about the property, the Commissioner of Police must arrange for the property to be kept until it is dealt with in accordance with another provision of this Act.

(6) In proceedings for an order under subsection (4), the Court may order that a witness need not:

(a) answer a specified question; or

(b) produce a specified document;

if the Court is satisfied that answering the question or producing the document may prejudice the investigation of an offence or the prosecution of a person.

How Commissioner of Police must deal with property subject to forfeiture order

49. (1) Subsection (2) applies if:

(a) property has been seized under this Division; and

(b) while the property is in the Commissioner of Police's possession, a forfeiture order is made against the property.

(2) The Commissioner of Police must deal with the property as required by the order.

Division 2 Search and seizure — foreign serious offences

Application of this Division

50. (1) If, under the Mutual Assistance Act, a police officer is directed to apply for a search warrant under this Act for tainted property in relation to a foreign serious offence, this Division applies to:

- (a) the application; and
- (b) any warrant issued as a result of the application.

(2) In this Division:

- (a) references to tainted property are taken to be references to tainted property in relation to a foreign serious offence; and
- (b) references to a relevant offence are taken to be references to a relevant foreign serious offence.

Police may seize tainted property

51. (1) Subsection (2) applies if, in the course of searching under a warrant mentioned in section 50 for tainted property, a police officer finds:

- (a) property that there are reasonable grounds to believe is tainted property for which another search warrant under that section is in force; or
- (b) anything that there are reasonable grounds to believe:
 - (i) is relevant to a criminal proceeding in the foreign country for the foreign serious offence; or
 - (ii) will afford evidence about the commission of a relevant offence.

(2) If there are reasonable grounds for believing that it is necessary to seize the property or thing in order to prevent its concealment, loss or destruction, or its use in committing, continuing or repeating the offence, the warrant is taken to authorise the police officer to seize the property or thing.

Return of seized property — general rule

52. (1) If property has been seized under:

- (a) a warrant issued under section 50; or
- (b) section 51 (2);

a person who claims an interest in the property may apply to the Court for an order that the

property be returned to the person.

(2) The Court must order the Commissioner of Police to return the property to the person if the Court is satisfied that:

- (a) the person is entitled to possession of the property; and
- (b) the property is not tainted property; and
- (c) the person who is believed or alleged to have committed the relevant offence has no interest in the property.

Return of seized property if no forfeiture order made

53. (1) Subsection (2) applies if:

- (a) property has been seized under:
 - (i) a warrant issued under section 50; or
 - (ii) subsection 51(2); and
- (b) no forfeiture order is made against the property within 30 days after it was seized; and
- (c) the property is in the Commissioner of Police's possession at the end of that period.

(2) The Commissioner of Police must arrange for the property to be returned to the person from whose possession it was seized as soon as practicable after the end of that period.

Retention of seized property if restraining order made

54. (1) Subsections (2), (3) and (4) apply if:

- (a) property has been seized under:
 - (i) a warrant issued under section 50; or
 - (ii) subsection 51(2); and
- (b) but for this section, the Commissioner of Police would be required to arrange for the property to be returned to a person; and
- (c) before the time at which the Commissioner is required to arrange for the return of the property:
 - (i) a foreign restraining order against the property is registered in the Court; or
 - (ii) the Court makes a restraining order against the property.

(2) The Commissioner of Police must:

- (a) if the restraining order directs the Administrator to take custody and control of the property — arrange for the property to be given to the Administrator in accordance with the restraining order; or
- (b) if the Court has made an order under subsection (4) about the property — arrange for the property to be kept until it is dealt with in accordance with another provision of this Act.

(3) If, when the restraining order is made or registered, the property is in the Commissioner of Police's possession, the Commissioner of Police may apply to the Court for an order that the Commissioner of Police keep possession of the property.

(4) If the Court is satisfied that there are reasonable grounds for believing that the property may afford evidence about the commission of an offence, the Court may order that the Commissioner of Police may retain the property for as long as the property is required as evidence.

(5) In proceedings for an order under subsection (4), the Court may order that a witness need not:

- (a) answer a specified question; or
- (b) produce a specified document;

if the Court is satisfied that answering the question or producing the document may prejudice the investigation of an offence or the prosecution of a person.

How Commissioner of Police must deal with property subject to forfeiture order

55. (1) Subsection (2) applies if:

- (a) property has been seized under this Division; and
- (b) while the property is in the Commissioner of Police's possession, a foreign forfeiture order against the property is registered in the Court.

(2) The Commissioner of Police must deal with the property as required by the order.

Division 3 - Restraining orders

Application for restraining order

56. (1) The Attorney General may apply to the Court for a restraining order against realisable property held by a defendant or any other person.

(2) An application for a restraining order may be made *ex parte*.

(3) An application for a restraining order must be in writing, and must be accompanied by an affidavit stating:

- (a) a description of the property against which the restraining order is sought; and
- (b) the name and address of the person who is believed to be in possession of the property; and

(c) the matters set out in subsection (4) or (5).

(4) If the property is held by a defendant, the affidavit must state:

(a) if the defendant has been convicted of a serious offence:

(i) the offence of which the defendant was convicted, the date of the conviction and the court before which the conviction was obtained; and

(ii) whether an appeal has been lodged against the conviction, the result of any appeal and, if an appeal has not been finalised, what stage it has reached; and

(b) if the defendant has not been convicted of a serious offence — the offence with which the defendant is, or is about to be, charged and the grounds for believing that the defendant committed the offence; and

(c) if the defendant is about to be charged with a serious offence — the grounds for believing that the defendant will be charged with a serious offence within 48 hours; and

(d) the grounds for believing that the property is tainted property in relation to an offence, or that the defendant derived a benefit directly or indirectly from committing the offence.

(5) If the property is held by a person other than a defendant, the affidavit must state the grounds for believing that the property is tainted property in relation to an offence, or is subject to the effective control of a defendant.

Notice of application for restraining order

57. (1) Before making a restraining order, the Court must require reasonable notice to be given to, and may hear, any person who, in the opinion of the Court, may have an interest in the property.

(2) However, if the Attorney-General asks it to do so, the Court may consider the application without requiring notice to be given in accordance with subsection (1), but a restraining order made in reliance on this subsection ceases to be in force after 14 days or a shorter period that the Court specifies in the order.

(3) The Court:

(a) may, on application by the Attorney-General, extend the period of operation of a restraining order made in reliance on subsection (2); but

(b) must not consider the application without requiring reasonable written notice to be given to any person who may have an interest in the property.

Restraining orders

58. (1) The Court may make a restraining order against property if it is satisfied that:

(a) a person (the *defendant*) has been convicted of, or charged with, a serious offence or will be charged with a serious offence within 48 hours; and

- (b) if the defendant has not been convicted of the offence — there are reasonable grounds for believing that the defendant committed the offence; and
- (c) if the property is held by the defendant — there are reasonable grounds for believing that the property is tainted property, or that the defendant derived a benefit directly or indirectly from the commission of the offence; and
- (d) if the property is held by a person other than the defendant — there are reasonable grounds for believing that the property is tainted property in relation to the offence, or that the property is subject to the effective control of the defendant.

(2) The order may:

- (a) prohibit the defendant or any other person from disposing of, or otherwise dealing with, the property, or a part of it or interest in it specified in the order, either absolutely or except in a way specified in the order; and
- (b) at the request of the Attorney-General, if the Court is satisfied that the circumstances so require, direct the Administrator:
 - (i) to take custody of the property or a part of it specified in the order; and
 - (ii) to manage or otherwise deal with all, or any part of, the property in accordance with the directions of the Court.

(3) In deciding whether there are reasonable grounds for believing that property is subject to the effective control of the defendant, the Court may take into account the matters mentioned in section 40(2).

(4) The order may be subject to any conditions that the Court thinks fit and, without limiting this subsection, may provide for meeting, out of the property or a specified part of it, all or any of the following:

- (a) the reasonable living expenses (including the reasonable living expenses of the person's dependants, if any), and reasonable business expenses, of the person who holds the property;
- (b) the person's reasonable expenses in defending a criminal charge and any proceedings under this Act;
- (c) another specified debt incurred by the person in good faith.

(5) However, the order must not make such provision unless the Court is satisfied that the person cannot meet the expenses or debt out of property that is not subject to a restraining order.

(6) If the Court gives the Administrator a direction under subsection (2) (b) in relation to property, the Administrator may do anything that is reasonably necessary to preserve the property, and, for that purpose:

- (a) may do anything in relation to the property that its owner could do; and

(b) may do so to the exclusion of the owner.

(7) In proceedings for a restraining order, the Court may order that a witness need not:

(a) answer a specified question; or

(b) produce a specified document;

if the Court is satisfied that answering the question or producing the document may prejudice the investigation of an offence or the prosecution of a person.

Undertakings by Attorney-General

59. Before making a restraining order, the Court may require the Attorney-General to give an undertaking about the payment of damages or costs, or both, for the making and execution of the order.

Service of restraining order

60. (1) A copy of a restraining order must be served on a person affected by it in the way the Court directs.

(2) If the Court is satisfied that it is in the public interest to do so, it may order that service under subsection (1) be delayed for a specified period.

Ancillary orders and further orders

61. (1) If the Court makes a restraining order, any of the following may apply to the Court for an ancillary order:

(a) the Attorney-General;

(b) a person whose property is the subject of the restraining order (the *owner*);

(c) if the restraining order directs the Administrator to take custody and control of property — the Administrator;

(d) with the leave of the Court — any other person.

(2) An ancillary order may do any 1 or more of the following:

(a) vary the property to which a restraining order relates;

(b) vary any condition to which a restraining order is subject;

(c) order a person to be examined on oath before the Court about the affairs of the owner or the defendant;

(d) provide for carrying out any undertaking about the payment of damages or costs given by the Attorney-General in relation to the making of the restraining order;

(e) direct the owner or the defendant to give to a specified person a statement on oath setting

out any details of the property, or dealings with the property, that the Court directs;

(f) if the restraining order directs the Administrator to take custody and control of property:

- (i) regulate the performance or exercise of the Administrator's functions, duties or powers under the restraining order; or
- (ii) decide a question about the property; or
- (iii) order a person to do anything to enable the Administrator to take custody and control of the property; or
- (iv) if the restraining order provides that a person's reasonable expenses in defending a criminal charge are to be met out of the property — direct that those expenses be taxed as provided in the ancillary order before being met; or
- (v) provide for the payment to the Administrator out of the property of the costs, charges and expenses incurred in relation to the performance or exercise by the Administrator of functions, duties or powers under the restraining order;

(g) anything else that the Court considers necessary in the circumstances.

(3) If a person who has an interest in property against which a restraining order is made applies to the Court for a variation of the order to exclude the person's interest from the order, the Court must grant the application if the Court is satisfied that:

- (a) the interest is not tainted property and that it cannot be required to satisfy a pecuniary penalty order; or
- (b) the applicant was not involved in the commission of the offence in relation to which the restraining order was made and, if the applicant acquired the interest at the time of or after the commission (or alleged commission) of the offence, the applicant acquired the interest:
 - (i) for sufficient consideration; and
 - (ii) without knowing, and in circumstances that did not give rise to a reasonable suspicion, that the property was tainted property; or
- (c) it is in the public interest to do so having regard to all the circumstances, including any financial hardship or other consequence of the interest remaining subject to the order.

(4) The Court must not hear an application under subsection (1) unless the applicant has given reasonable written notice of the application to each other person who is entitled to make an application under that subsection for the restraining order.

(5) The Court may require notice of the application to be given to, and may hear, any person who, in the opinion of the Court, appears to have an interest in the property.

(6) If a person is required, in accordance with an order under subsection (2) (c) or (e), to make a statement on oath:

- (a) the person is not excused from making the statement on the ground that the statement, or part of it, might tend to incriminate the person or make the person liable to forfeiture or a penalty; and
- (b) the statement, and any information, document or thing obtained as a direct or indirect consequence of it, is not admissible against the person in any criminal proceedings except a proceeding for perjury in making the statement.

Administrator to satisfy pecuniary penalty order

62. (1) This section applies if:

- (a) a pecuniary penalty order is made against a defendant in reliance on the defendant's conviction for an offence; and
- (b) a restraining order is made, in reliance on the defendant's conviction for, or alleged commission of, the offence, against property of:
 - (i) the defendant; or
 - (ii) a person in relation to whom an order under subsection 40(4) is in force.

(2) The Court may:

- (a) on the making of the later of the orders; or
- (b) on application by the Attorney-General, at any time while the restraining order remains in force;

direct the Administrator to satisfy the pecuniary penalty order by a payment to the Republic out of the property.

(3) To enable the Administrator to comply with a direction under subsection (2), the Court may:

- (a) direct the Administrator to sell or otherwise dispose of a specified part of the property; and
- (b) order that the Administrator may execute, and do anything necessary to give validity and effect to, any deed or instrument in the name of a person who owns or has an interest in the property.

(4) If the Court makes an order of the kind mentioned in subsection (3) (b), the execution of a deed or instrument by the Administrator in accordance with the order has the same force and validity as if the deed or instrument had been executed by the person in whose name the Administrator executed it.

(5) The Administrator must not take action to sell property under a direction under subsection (2):

- (a) until:
 - (i) any appeal lodged against a relevant conviction, or the making of the relevant

pecuniary penalty order or restraining order lapses or is finally determined; or

(ii) the last day for lodging an appeal against the relevant conviction or the making of the relevant pecuniary penalty order or restraining order passes without an appeal having been lodged; or

(b) if proceedings in bankruptcy against the owner of the property are in progress or the owner is a bankrupt.

Registration of restraining order

63. (1) An authority that administers a law of Kiribati that provides for the registration of title to, or charges over, property of a particular kind, may, on application by the Attorney-General, record on a register kept under that law the details of a restraining order that applies to property of that kind.

(2) If those details are so recorded, a person who subsequently deals with the property is taken, for section 64, to have notice of the restraining order at the time of the dealing.

Contravention of restraining orders

64. (1) A person who knowingly contravenes a restraining order by disposing of, or otherwise dealing with, property that is subject to the restraining order commits an offence punishable by:

(a) for a natural person — a fine of \$30 000 or imprisonment for 5 years, or both; or

(b) for a body corporate — a fine of \$150 000.

(2) If a restraining order is made against property and the property is disposed of, or otherwise dealt with, in contravention of the restraining order, the Attorney-General may apply to the Court for an order setting aside the disposition or dealing.

(3) If the Court is satisfied that the disposition or dealing was either not for sufficient consideration, or not in favour of a person who acted in good faith, the Court may:

(a) set aside the disposition or dealing with effect from the day when it took place; or

(b) set aside the disposition or dealing with effect from the day of the Court's order, and declare the right of any person who acquired an interest in the property on or after the day when the disposition or dealing took place and before the day of the order.

Court may revoke restraining orders

65. (1) If the Court has made a restraining order against a person's property, the Court may, on application by the person, revoke the order if:

(a) for an applicant who is a defendant — the applicant gives security satisfactory to the Court for the satisfaction of any pecuniary penalty order that may be made against the person under this Act; or

(b) the applicant gives undertakings satisfactory to the Court about the property.

- (2) An applicant under subsection (1) must give reasonable written notice of the application to:
- (a) the Attorney-General; and
 - (b) if the restraining order directed the Administrator to take control of property — the Administrator.

When restraining order ceases to be in force

66. (1) A restraining order ceases to be in force at the end of 6 months after the day when it was made, unless it ceases sooner under subsection (5).

(2) Within that period, on application by the Attorney-General, the Court may order that the order continues in force until a specified time or event, if the Court is satisfied that:

- (a) a forfeiture order may still be made against the property; or
- (b) the property may be required to satisfy a pecuniary penalty order that has not yet been made.

(3) An order under subsection (2) does not have the effect of continuing a restraining order in force after the time when it would cease to be in force under subsection (5).

(4) The Attorney-General must give a person reasonable written notice of an application under subsection (2) about a restraining order against the person's property.

(5) A restraining order made in reliance on a person's conviction for, or alleged commission of, a serious offence ceases to be in force, in whole or in part:

- (a) if the order is made in reliance on the proposed charging of the person with the offence and the person is not charged within the period of 48 hours after the making of the order — at the end of that period; or
- (b) if the order is made in reliance on the charging of the person with the offence — when:
 - (i) the charge against the person is withdrawn; or
 - (ii) the person is acquitted of the charge and the time for an appeal by the Attorney-General has lapsed; or
- (c) when property subject to the order is used to satisfy a pecuniary penalty order that was made in reliance on the person's conviction for the offence; or
- (d) when the Court refuses an application for a pecuniary penalty order in reliance on the person's conviction for the offence; or
- (e) when property subject to the order is forfeited under Division 2 of Part 3.

Division 4 - Interim restraining orders for foreign serious offences

Application of this Division

67. This Division applies to an application by the Attorney General for a restraining order under this Act against any property of a person in relation to a foreign serious offence, and to any restraining order made as a result of the application.

Definition — *defendant*

68. A person is a *defendant* for this Division if:

- (a) he or she has been convicted of a foreign serious offence; or
- (b) there are reasonable grounds for believing that a criminal proceeding has commenced, or is about to commence, against him or her in a foreign country.

Application for interim restraining order

69. (1) If, under the Mutual Assistance Act, the Attorney General applies for a restraining order under this Act against any property of a defendant, the Attorney-General may apply to the Court for an interim restraining order against:

- (a) any realisable property held by the defendant; or
- (b) specified realisable property held by another person.

(2) The application may be made *ex parte*.

(3) The application must be in writing, and must be accompanied by an affidavit stating:

- (a) a description of the property against which the interim restraining order is sought; and
- (b) the name and address of the person who is believed to be in possession of the property; and
- (c) the matters set out in subsection (4) or (5).

(4) If the property is held by a defendant, the affidavit must state:

- (a) if the defendant has been convicted of a foreign serious offence — the offence of which the defendant was convicted, the date of the conviction, the court before which the conviction was obtained and whether an appeal has been lodged against the conviction; and
- (b) if the defendant has not been convicted of a foreign serious offence — the offence for which criminal proceedings are believed to have been commenced, and the grounds for believing that the defendant committed the offence; and
- (c) if it is believed that criminal proceedings are about to be commenced against the defendant — the grounds for believing that the proceedings will be commenced within 48 hours; and
- (d) the grounds for believing that the property is tainted property in relation to a foreign serious offence, or that the defendant derived a benefit directly or indirectly from committing a

foreign serious offence.

(5) If the property is held by a person other than a defendant, the affidavit must state the grounds for the belief that the property is tainted property in relation to a foreign serious offence, or is subject to the effective control of the defendant.

Notice of application for interim restraining order

70. (1) Before making an interim restraining order, the Court must require reasonable notice to be given to, and may hear, any person who, in the opinion of the Court, may have an interest in the property.

(2) However, if the Attorney-General asks it to do so, the Court must consider the application without requiring notice to be given in accordance with subsection (1), but an interim restraining order made in reliance on this subsection ceases to be in force after 14 days or a shorter period that the Court specifies in the order.

(3) The Court:

- (a) may, on application by the Attorney-General, extend the period of operation of an interim restraining order made in reliance on subsection (2); but
- (b) must not consider the application without requiring reasonable written notice to be given to any person who may have an interest in the property.

Interim restraining orders

71. (1) The Court may make an interim restraining order against property if it is satisfied that:

- (a) a person (the *defendant*) has been convicted of a foreign serious offence, or a criminal proceeding for a foreign serious offence has commenced, or is reasonably believed to be about to commence, against the person in a foreign country; and
- (b) if the defendant has not been convicted of a foreign serious offence — there are reasonable grounds for believing that the defendant committed the offence; and
- (c) if the property is held by the defendant — there are reasonable grounds for believing that:
 - (i) the property is tainted property in relation to a foreign serious offence; or
 - (ii) the person derived a benefit directly or indirectly from the commission of the offence; and
- (d) if the property is property of another person — there are reasonable grounds for believing that the property is:
 - (i) tainted property in relation to a foreign serious offence; or
 - (ii) subject to the effective control of the first person.

(2) The order may prohibit the defendant or any other person from disposing of, or otherwise dealing

with, the property, or a part of it or interest in it specified in the order, either absolutely or except in a way specified in the order.

(3) In deciding whether there are reasonable grounds for believing that property is subject to the effective control of the defendant, the Court may take into account the matters mentioned in section 40(2).

(4) The order may be subject to any conditions that the Court thinks fit and, without limiting this subsection, may provide for meeting, out of the property or a specified part of it, all or any of the following:

- (a) the person's reasonable living expenses (including the reasonable living expenses of the person's dependants, if any) and reasonable business expenses;
- (b) the person's reasonable expenses in defending a criminal charge and any proceedings under this Act or in being represented in a criminal proceeding in a foreign country;
- (c) another specified debt incurred by the person in good faith.

(5) However, the order must not make such provision unless the Court is satisfied that the person cannot meet the expenses or debt out of property that is not subject to a restraining order.

(6) In proceedings for an interim restraining order, the Court may:

- (a) take into account evidence that would otherwise be inadmissible; and
- (b) order that a witness need not:
 - (i) answer a specified question; or
 - (ii) produce a specified document;

if the Court is satisfied that answering the question or producing the document may prejudice the investigation of an offence or the prosecution of a person.

Undertakings by Attorney-General

72. Before making an interim restraining order, the Court may require the Attorney-General to give an undertaking about the payment of damages or costs, or both, for the making and execution of the order.

Service of interim restraining order

73. (1) A copy of an interim restraining order must be served on a person affected by it in the way the Court directs.

(2) If the Court is satisfied that it is in the public interest to do so, it may order that service under subsection (1) be delayed for a specified period.

Ancillary orders and further orders

74. (1) If the Court makes an interim restraining order, any of the following may apply to the Court

for an ancillary order:

- (a) the Attorney-General;
- (b) a person whose property is the subject of the interim restraining order (the *owner*);
- (c) with the leave of the Court — any other person.

(2) An ancillary order may do any 1 or more of the following:

- (a) vary the property to which an interim restraining order relates;
- (b) vary any condition to which an interim restraining order is subject;
- (c) order a person to be examined on oath before the Court about the affairs of the owner or the defendant;
- (d) provide for carrying out any undertaking about the payment of damages or costs given by the Attorney-General in relation to the making of the interim restraining order;
- (e) order the owner or the defendant to give to a specified person a statement on oath setting out any details of the property, or dealings with the property, that the Court directs;
- (f) anything else that the Court considers necessary in the circumstances.

(3) If a person who has an interest in property against which an interim restraining order is made applies to the Court for a variation of the order to exclude the person's interest from the order, the Court must grant the application if the Court is satisfied that:

- (a) the interest is not tainted property and that it cannot be required to satisfy a pecuniary penalty order; or
- (b) the applicant was not involved in the commission of the offence in relation to which the order was made and, if the applicant acquired the interest at the time of or after the commission (or alleged commission) of the offence, the applicant acquired the interest:
 - (i) for sufficient consideration; and
 - (ii) without knowing, and in circumstances that do not give rise to a reasonable suspicion, that the property was tainted property; or
- (c) it is in the public interest to do so having regard to all the circumstances, including any financial hardship or other consequence of the interest remaining subject to the order.

(4) The Court must not hear an application under subsection (1) unless the applicant has given reasonable written notice of the application to each other person who is entitled to make an application under that subsection for the interim restraining order.

(5) The Court may require notice of the application to be given to, and may hear, any person who, in the opinion of the Court, appears to have an interest in the property.

(6) If a person is required, in accordance with an order under paragraph (2) (c) or (e), to make a statement on oath:

- (a) the person is not excused from making the statement on the ground that the statement, or part of it, might tend to incriminate the person or make the person liable to forfeiture or a penalty; and
- (b) the statement, and any information, document or thing obtained as a direct or indirect consequence of it, is not admissible against the person in any criminal proceedings except a proceeding for perjury in making the statement.

Registration of interim restraining order

75. (1) An authority that administers a law of Kiribati that provides for the registration of title to, or charges over, property of a particular kind, may, on application by the Attorney-General, record on a register kept under that law the details of the interim restraining order that applies to property of that kind.

(2) If those details are so recorded, a person who subsequently deals with the property is taken, for section 76, to have notice of the order at the time of the dealing.

Contravention of interim restraining orders

76. (1) A person who knowingly contravenes an interim restraining order by disposing of, or otherwise dealing with, property that is subject to the order commits an offence punishable by:

- (a) for a natural person — a fine of \$30 000 or imprisonment for 5 years, or both; or
- (b) for a body corporate — a fine of \$150 000.

(2) If an interim restraining order is made against property and the property is disposed of, or otherwise dealt with, in contravention of the restraining order, the Attorney-General may apply to the Court for an order setting aside the disposition or dealing.

(3) If the Court is satisfied that the disposition or dealing was either not for sufficient consideration, or not in favour of a person who acted in good faith, the Court may:

- (a) set aside the relevant disposition or dealing with effect from the day when it took place; or
- (b) set aside the disposition or dealing with effect from the day of the Court's order, and declare the right of any person who acquired an interest in the property on or after the day when the disposition or dealing took place and before the day of the order.

When interim restraining order ceases to be in force

77. (1) An interim restraining order ceases to be in force at the end of 30 days starting on the day when the order is made.

(2) However:

- (a) if the Court makes an interim restraining order, it may, on application by the Attorney-

General made before the end of the period mentioned in subsection (1), extend the period of operation of the order; and

(b) if:

(i) an interim restraining order is made against property; and

(ii) before the end of the period mentioned in subsection (1) (including any extension of that period under subsection (2)(a)), a foreign restraining order against the property is registered in the Court under the Mutual Assistance Act;

the interim restraining order ceases to be in force when the foreign restraining order is registered.

Division 5 - Foreign restraining orders

Application of this Division

78. This Division applies to a foreign restraining order registered in the Court under the Mutual Assistance Act.

Registered foreign restraining orders — Court may direct Administrator to take custody and control of property

79. (1) On application by the Attorney-General the Court may, if satisfied that the circumstances so require, order the Administrator:

(a) to take custody and control of the property subject to the order; and

(b) to manage or otherwise deal with the property in accordance with the directions of the Court.

(2) Before making an order under subsection (1), the Court must require reasonable notice to be given to, and may hear, any person who, in the opinion of the Court, may have an interest in the property.

(3) If the Court makes an order under subsection (1) in relation to property, the Administrator:

(a) may do anything that is reasonably necessary for preserving the property; and

(b) for that purpose may exercise any power that the owner of the property could exercise; and

(c) may do so to the exclusion of the owner.

(4) If the Court makes an order under subsection (1) against property of a person, the Court may, when it makes the order or afterwards, make any of the following orders:

(a) an order directing the person to give to the Administrator a statement on oath setting out any details of the property, or dealings with the property, that the Court directs;

(b) an order regulating the performance or exercise of the Administrator's functions, duties or

powers under the foreign restraining order;

(c) an order deciding any question about the property;

(d) if the relevant registered foreign restraining order provides that a person's reasonable expenses in defending a criminal charge are to be met out of the property — an order directing that those expenses be taxed, as provided in the order, before being met;

(e) an order providing for the payment to the Administrator out of the property of the costs, charges and expenses incurred in relation to the performance or exercise by the Administrator of functions, duties or powers under the foreign restraining order.

Registered foreign restraining orders – undertakings

80. (1) Subsection (2) applies if:

(a) a foreign restraining order against property is registered in the Court under the Mutual Assistance Act; or

(b) the Court makes an order under section 79 about property.

(2) The Court may, on application by a person claiming an interest in the property, make an order about giving, or carrying out, an undertaking by the Attorney-General, on behalf of the Republic, about the payment of damages or costs for the registration, making or operation of the order.

Service of restraining order

81. (1) A copy of a restraining order or an order under section 73 must be served on a person affected by it in the way the Court directs.

(2) If the Court is satisfied that it is in the public interest to do so, it may order that service under subsection (1) be delayed for a specified period.

Administrator to satisfy pecuniary penalty order

82. (1) In this section, a reference to a restraining order includes an order under section 79.

(2) This section applies if:

(a) a foreign pecuniary penalty order is registered in the Court against a defendant; and

(b) a foreign restraining order is registered against property of:

(i) the defendant; or

(ii) another person against whom an order under section 40(4) is in force.

(3) The Court may direct the Administrator to satisfy the pecuniary penalty order by a payment to the Republic out of the property:

(a) on the registration of the later of the orders; or

(b) on application by the Attorney-General, at any time while the restraining order remains in force.

(4) To enable the Administrator to comply with a direction under subsection (3), the Court may:

(a) direct the Administrator to sell or otherwise dispose of a specified part of the property; and

(b) order that the Administrator may execute, and do anything necessary to give validity and effect to, any deed or instrument in the name of a person who owns, or has an interest in, the property.

(5) If the Court makes an order of the kind mentioned in subsection (4)(b), the execution of a deed or instrument by the Administrator in accordance with the order has the same force and validity as if the deed or instrument had been executed by the person in whose name the Administrator executed it.

Registration of registered foreign restraining order

83. (1) In this section, a reference to a restraining order includes an order under section 79.

(2) An authority that administers a law of Kiribati that provides for the registration of title to, or charges over, property of a particular kind, may, on application by the Attorney-General, record on a register kept under that law the details of a restraining order that applies to property of that kind.

(3) If those details are so recorded, a person who subsequently deals with the property is taken, for section 84, to have notice of the restraining order at the time of the dealing.

Contravention of registered foreign restraining orders

84. (1) In this section, a reference to a registered foreign restraining order includes an order under section 79.

(2) A person who knowingly contravenes a registered foreign restraining order by disposing of, or otherwise dealing with, property that is subject to the restraining order commits an offence punishable by:

(a) for a natural person — a fine of \$30 000 or imprisonment for 5 years, or both; or

(b) for a body corporate — a fine of \$150 000.

(3) If a foreign restraining order is registered against property and the property is disposed of, or otherwise dealt with, in contravention of the restraining order the Attorney-General may apply to the Court for an order setting aside the disposition or dealing.

(4) If the Court is satisfied that the disposition or dealing was either not for sufficient consideration, or not in favour of a person who acted in good faith, the Court may:

(a) set aside the disposition or dealing with effect from the day when it took place; or

(b) set aside the disposition or dealing with effect from the day of the Court's order, and declare the right of any person who acquired an interest in the property on or after the day when the disposition or dealing took place and before the day of the order.

Registered foreign restraining orders — when order ceases to be in force

85. A foreign restraining order registered in the Court under the Mutual Assistance Act ceases to be in force in Kiribati when the registration is cancelled in accordance with that Act.

Division 6 - Production orders, and other information gathering powers

Definition of *production order*

86. In this Division, "***production order***" includes an order that requires a person to make a document available for inspection.

Application for production orders

87. (1) Subsection (2) applies if:

- (a) a person has been convicted of a serious offence and there are reasonable grounds for suspecting that another person (the ***second person***) has possession or control of a property-tracking document or property-tracking documents in relation to the offence; or
- (b) there are reasonable grounds for suspecting that a person has committed a serious offence and that another person (the ***second person***) has possession or control of a property-tracking document or property-tracking documents in relation to the offence.

(2) A police officer may apply to a Judge for a production order against the person.

(3) The application:

- (a) may be made *ex parte*; and
- (b) must be in writing and must be accompanied by an affidavit.

(4) For this section, if a police officer applies for a production order for an offence, and includes in the accompanying affidavit a statement to the effect that there are reasonable grounds for believing that:

- (a) the person who was convicted of the offence, or who is believed to have committed the offence, derived a benefit, directly or indirectly, from committing the offence; and
- (b) property specified in the affidavit is under the effective control of the person mentioned in paragraph (a);

the Judge may treat any document relevant to identifying, locating or quantifying that property as a property-tracking document for the offence.

(5) In deciding whether to treat a document as a property-tracking document for an offence, the Judge may take into account the matters mentioned in section 40(2).

Production orders

88. (1) The Judge may, if satisfied that there are reasonable grounds for doing so, make a production order requiring a person to:

- (a) produce to a police officer, at a specified time and place, any documents of the kind mentioned in subsection 87(1) that are in the person's possession or control; or
- (b) make available to a police officer for inspection, at a specified time or times and place or places, any documents of that kind that are in the person's possession or control.

(2) The order has effect despite any law that prohibits disclosure of information.

(3) If a production order requires a person to produce or make available a document that is a computer file, the order is taken to require the person:

- (a) to allow the police officer named in the order, or a person acting under the direction of that officer, to use a computer on which the document is held; and
- (b) to give the officer any password necessary to allow the officer to have access to the document; and
- (c) to allow the officer to use any computer software necessary to allow the officer to have access to the document.

Scope of police powers under production order

89. (1) If a document is produced to a police officer, or made available to a police officer for inspection, under a production order, the police officer may do any 1 or more of the following:

- (a) inspect the document;
- (b) take extracts from it;
- (c) print it;
- (d) make copies of it;
- (e) for an order under section 88(1) (a) — keep the document if, and for as long as, reasonably necessary for this Act.

(2) If a police officer keeps a document, the police officer must:

- (a) make a copy of the document, certify the copy in writing to be a true copy and give the copy to the person to whom the order was addressed; or
- (b) allow the person:
 - (i) to inspect the document; or
 - (ii) to take extracts from it; or

(iii) to make copies of it.

What use can be made of information

90. (1) If a person produces, or makes available, a document under a production order, neither:

- (a) the production or making available of the document; nor
- (b) any information, document or thing obtained as a direct or indirect consequence of the production or making available of the document;

is admissible against the person in any criminal proceedings except a proceeding for an offence against section 92.

(2) A person required by a production order to produce or make available a document is not excused from doing so on the ground that producing the document or making it available:

- (a) might tend to incriminate the person or make the person liable to a penalty; or
- (b) would be in breach of an obligation (whether imposed by an Act or otherwise) not to disclose the existence or contents of the document.

Variation of production order

91. (1) If a production order requires a person to produce a document to a police officer, the person may apply to a Judge to vary the order.

(2) If the Judge is satisfied that the document is essential to the person's business activities, the Judge may vary the production order so that it requires the person to make the document available to a police officer for inspection.

Failure to comply with production order

92. (1) If a production order requires a person to produce a document to a police officer, or make a document available to a police officer for inspection, the person commits an offence if the person:

- (a) contravenes the order without reasonable excuse; or
- (b) in purported compliance with the order, produces or makes available a document that the person knows to be false or misleading in a material detail without:
 - (i) telling the police officer that the document is false or misleading, and the way in which it is false or misleading; and
 - (ii) giving correct information to the police officer if the person has, or can reasonably obtain, the correct information.

(2) An offence against subsection (1) is punishable by:

- (a) if the offender is a natural person — a fine of \$30 000 or imprisonment for 5 years, or both;

or

(b) if the offender is a body corporate — a fine of \$150 000.

Search warrant to facilitate investigation

93. (1) A police officer may apply to a Judge for a warrant under subsection (4) to search premises for a document if:

- (a) a person is convicted of a serious offence, and there are reasonable grounds for suspecting that there is on premises a property-tracking document for the offence: or
- (b) there are reasonable grounds for suspecting that a person has committed a serious offence; and there is on the premises a property-tracking document for the offence.

(2) If a police officer applies for a warrant under subsection (4) for an offence and includes in an accompanying affidavit a statement to the effect that there are reasonable grounds for believing that:

- (a) the person who was convicted of the offence, or who is believed to have committed the offence, derived a benefit, directly or indirectly, from committing the offence; and
- (b) property specified in the affidavit is subject to the effective control of the person;

the Judge may treat any document relevant to identifying, locating or quantifying the property as a property-tracking document for the offence for this section.

(3) In deciding whether to treat a document, under subsection (2), as a property-tracking document for an offence, a Judge may take into account the matters mentioned in section 40(2).

(4) Despite any enactment that prohibits disclosure of information, if an application is made under subsection (1) for a warrant to search premises for a property-tracking document:

- (a) the Judge may, if satisfied that there are reasonable grounds for doing so, issue a warrant of that kind in the same way, and subject to the same conditions, as the Judge could issue a search warrant under section 101 of the Criminal Procedure Code; and
- (b) subject to this Division, the warrant may be executed in the same way as if it had been issued under that section.

(5) However, a Judge may not issue a search warrant under subsection (4) unless the Judge is satisfied that:

- (a) it would not be appropriate to make a production order for the document; or
- (b) the investigation for which the search warrant is being sought might be seriously prejudiced if the police officer does not gain immediate access to the document without warning to any person.

(6) If a police officer enters premises in execution of a warrant issued under this section, the police

officer may seize:

- (a) any document that is likely to be of substantial value (whether by itself or together with other documents) to the investigation for which the warrant was issued; and
- (b) anything that the police officer believes, on reasonable grounds, will afford evidence as to the commission of a criminal offence.

(7) In this section *premises* includes any place and any building, receptacle or vehicle.

Production orders and search warrants for foreign serious offences

94. (1) If a police officer is directed under the Mutual Assistance Act to apply to the Court for:

- (a) a production order under this Act for a foreign serious offence; or
- (b) a search warrant under this Act for a property-tracking document for a foreign serious offence;

this Division applies to the application and to any order or warrant issued as a result of the application as if a reference in this Division to a serious offence were a reference to the foreign serious offence.

(2) If a police officer takes possession of a document under a production order made, or a warrant issued, for a foreign serious offence, the police officer may keep the document until the Attorney-General gives a written direction about how the document is to be dealt with, but not for longer than 1 month.

(3) A direction by the Attorney-General under subsection (2) about a document may include a direction that the document is to be sent to an authority of the foreign country that requested the issue of the relevant order or warrant.

Division 7 - Monitoring orders

Monitoring orders

95. (1) A police officer of or above the rank of sergeant may apply to a Judge in accordance with subsection (2) for an order directing a financial institution to give information to a police officer about transactions conducted through an account held by a specified person with the institution during the period specified in the order.

(2) The application:

- (a) may be made *ex parte*; and
- (b) must be in writing and accompanied by an affidavit.

(3) A Judge may not make a monitoring order unless he or she is satisfied that there are reasonable grounds for suspecting that the person about whose account the information is sought:

- (a) has committed, or is about to commit, a serious offence; or
- (b) was involved in committing, or is about to be involved in committing, a serious offence; or
- (c) has benefited directly or indirectly, or is about to benefit directly or indirectly, from committing a serious offence.

(4) The period specified in the order:

- (a) must not begin before the day when notice of the order is given to the financial institution;
and
- (b) must end no later than 3 months after the day the order is made.

(5) A monitoring order must specify:

- (a) the name or names in which the account is believed to be held; and
- (b) the kind of information that the institution is required to give; and
- (c) the name of the police officer to whom, and the way in which, the information is to be given.

(6) If a financial institution is, or has been, subject to a monitoring order, the fact that the monitoring order has been made must be disregarded for the application of sections 12 and 13 to the institution.

(7) If a financial institution that has been given notice of a monitoring order knowingly:

- (a) contravenes the order; or
 - (b) provides false or misleading information in purported compliance with the order;
- the institution is guilty of an offence punishable by a fine of \$300 000.

(8) A reference in this section to a transaction conducted through an account includes:

- (a) the making of a fixed term deposit; and
- (b) for a fixed term deposit — the transfer of the amount deposited, or any part of it, at the end of the term; and
- (c) the opening, existence or use of a deposit box held by the institution.

Protection of identity of persons and information in suspicious transaction reports

96. (1) A person shall not disclose any information that will identify or is likely to identify:

- (a) any person who has handled a transaction in respect of which a report under has been made

to the Unit,

(b) any person who has prepared such a report;

(c) any person who has made such a report; or

(d) any information contained in a suspicious transaction report or information provided pursuant to section 12(3),

except for the following purposes:

(e) the investigation or prosecution of a person or persons for a serious offence, a money laundering offence or an offence of the financing of terrorism;

(f) the enforcement of this Act;

(2) No person shall be required to disclose any information to which this section applies in any judicial proceedings unless the judge or other presiding officer is satisfied that the disclosure of the information is necessary in the interests of justice.

(3) Nothing in this section prohibits the disclosure of any information for the purposes of the prosecution of any offence against any of the provisions of section 15 of this Act.

Privileged Communications

97. (1) Nothing in section 95 requires any lawyer to disclose any privileged communication.

(2) For the purposes of this section, a communication is a privileged communication only if:

(a) it is a confidential communication, whether oral or in writing, passing between:

(i) a barrister, solicitor, lawyer, attorney or legal advisor in his or her professional capacity and another barrister, solicitor, lawyer, attorney or legal advisor in such capacity; or

(ii) a barrister, solicitor, lawyer, attorney or legal advisor in his or her professional capacity and his or her client, whether made directly or indirectly through an agent of either; and

(b) it is made or brought into existence for the purpose of obtaining or giving legal advice or assistance; and

(c) it is not made or brought into existence for the purpose of committing or furthering the commission of some illegal or wrongful act.

(3) Where the information consists wholly or partly of, or relates wholly or partly to receipts, payments, income, expenditure, or financial transactions of a specified person (whether a lawyer, his or her client, or any other person) it shall not be a privileged communication if it is contained in, or comprises the whole part of, any book, account, statement or other record prepared or kept by the lawyer in connection with a trust account of the lawyer.

(4) For the purposes of this section, references to a lawyer include a firm in which the person is a partner or is held out to be a partner.

Monitoring orders not to be disclosed

98. (1) A financial institution that is, or has been, subject to a monitoring order must not disclose the existence or the operation of the order except:

- (a) to the Commissioner of Police, or to a police officer authorised in writing by the Commissioner of Police to receive the information; or
- (b) to an employee or agent of the institution, to ensure that the order is complied with; or
- (c) to a legal practitioner, to obtain legal advice or representation for the order.

(2) A person of a kind mentioned in subsection (1) (a), (b) or (c) to whom the existence or operation of a monitoring order has been disclosed must not:

- (a) disclose the existence or operation of the order except to another person of a kind mentioned in subsection (1) (a), (b) or (c):
 - (i) if the disclosure is made by the Commissioner of Police or a police officer — for the person's duties; or
 - (ii) if the disclosure is made by an employee or agent of a financial institution — to ensure that the order is complied with, or to obtain legal advice or representation for the order; or
 - (iii) if the disclosure is made by a legal practitioner — to give legal advice or make representations for the order; or
- (b) after the person has ceased to be a person of a kind referred to in subsection (1) (a), (b) or (c) — make a record of, or disclose, the existence or the operation of the order in any circumstances.

(3) A person who contravenes subsections (1) or (2) is guilty of an offence punishable by:

- (a) if the person is a natural person — a fine of \$60 000 or imprisonment for 10 years, or both; or
- (b) if the person is a body corporate — a fine of \$300 000.

(4) Notwithstanding subsection (3), the Commissioner of Police or a police officer who discloses the existence or operation of a monitoring order:

- (a) for, or in connection with, legal proceedings; or
- (b) in the course of proceedings before a court;

is not guilty of an offence.

(5) Notwithstanding any other law, the Commissioner of Police or a police officer may not be required to disclose to a court the existence or operation of a monitoring order.

(6) A reference in this section to disclosing the existence or operation of a monitoring order to a person includes disclosing information to the person from which the person could reasonably be expected to infer the existence or operation of the monitoring order.

Making false statements in applications

99. (1) A person is guilty of an offence if:

(a) the person makes a statement (whether orally, in a document or any other way); and

(b) the statement:

(i) is false or misleading; or

(ii) omits any matter or thing without which the statement is misleading; and

(b) the statement is made in, or in connection with, an application for a monitoring order.

(2) An offence against subsection (1) is punishable by imprisonment for 2 years, or a fine of [], or both.

Failing to comply with monitoring order

100. A person who is given a monitoring order and fails to comply with the order, is guilty of an offence and punishable by imprisonment of [], or a fine of [], or both.

PART V REPORTING OBLIGATIONS OF FINANCIAL INSTITUTIONS AND CASH DEALERS

Definitions for Part

101. In this Part:

"customer", includes:

(a) a person engaged in a business relationship; or

(b) the person in whose name a transaction or account is arranged, opened, or undertaken; or

(c) a signatory to a transaction or account; or

(d) any person to whom a transaction has been assigned or transferred; or

(e) any person who is authorised to conduct a transaction; or

- (f) any person on whose behalf the account or transaction is being conducted; or
- (g) any other person that may be prescribed.

"minimum retention period" for a document means:

- (a) if the document relates to the opening of an account with a financial institution — 7 years after the day when the account is closed; or
- (b) if the document relates to the opening by a person of a deposit box held by a financial institution — 7 years after the day when person ceases to use the deposit box; or
- (c) in any other case — 7 years after the day when the relevant transaction takes place or the identity is verified, whichever is later.

Financial institutions and cash dealers to verify customers' identity

102. (1) A financial institution or cash dealer shall identify the identity of a customer on the basis of any official or other identifying document and verify the identity of the customer on the basis of reliable and independent source documents, data or information or other evidence as is reasonably capable of verifying the identity of the customer when –

- (a) a financial institution or cash dealer -
 - (i) enters into a continuing business relationship;
 - (ii) in the absence of such a relationship, conducts any transaction;
- (b) there is a suspicion of a money laundering offence or the financing of terrorism; or
- (c) the financial institution or cash dealer has doubts about the veracity or adequacy of the customer identification and verification documentation or information it had previously obtained.

(2) Without limiting the generality of subsection (1),

- (a) if the customer is a legal entity, a financial institution or cash dealer shall adequately verify its legal existence and structure, including verification of:
 - (i) the customer's name, legal form, address, principal owners and directors;
 - (ii) provisions regulating the power to bind the entity, and to verify that any person purporting to act on behalf of the customer is so authorised, and identify those persons;
- (b) the official or identifying document required for the identification and verification of any particular customer or class of customers may be prescribed.

(3) A financial institution or cash dealer shall take reasonable measures to -

- (a) obtain information on the purpose and intended nature of the business relationship;

- (b) conduct ongoing due diligence on the business relationship with its customer;
- (c) conduct ongoing scrutiny of any transaction undertaken throughout the course of the business relationship with a customer to ensure that the transaction being conducted is consistent with the financial institution's knowledge of the customer, the customer's business and risk profile, including, where necessary, the source of funds.

(4) If a person conducts a transaction through a financial institution or cash dealer, other than an occasional transaction below [] the financial institution shall identify and record the:

- (a) name, address and occupation (or where appropriate business or principal activity) of each person:
 - (i) conducting the transaction; and
 - (ii) for whom, or for whose ultimate benefit, the transaction is being conducted, where the financial institution has reasonable grounds to believe that the person is undertaking the transaction on behalf of any other person or persons,
- (b) nature and date of the transaction;
- (c) type and amount of currency involved;
- (d) the type and identifying number of any account with the financial institution or cash dealer involved in the transaction;
- (e) if the transaction involves a negotiable instrument other than currency, the name of the drawer of the instrument, the name of the institution on which it was drawn, the name of the payee (if any), the amount and date of the instrument, the number (if any) of the instrument and details of any endorsements appearing on the instrument;
- (f) the name and address of the financial institution or cash dealer, and of the officer, employee or agent of the financial institution or cash dealer who prepared the record.

(5) If a person conducts a transaction through a financial institution or cash dealer and the financial institution or cash dealer has reasonable grounds to believe that the person is undertaking the transaction on behalf of any other person or persons, then, in addition to complying with subsections (1), (2), (3) and (4) the financial institution or cash dealer must verify the identity of the other person or persons for whom, or for whose ultimate benefit, the transaction is being conducted.

(6) If a financial institution or cash dealer contravenes subsections (1), (2), (3), (4) or (5) the financial institution is guilty of an offence punishable on conviction:

- (a) in the case of an individual – by a fine of \$50,000 or imprisonment of up to 5 years, or both; or
- (b) in the case of a body corporate – by a fine of \$150,000.

(7) Subsections (1), (2), (3), (4) and (5) do not apply:

- (a) if the transaction is an occasional transaction not exceeding [] unless the financial

institution has reason to suspect that the transaction is suspicious or unusual;

(b) in such other circumstances as may be prescribed by the Minister of [].

(8) For purposes of subsection (7), "*occasional transaction*" means any transaction involving cash that is conducted by any person otherwise than through an account in respect of which the person is the customer.

Necessity of identification to conduct business

103. If satisfactory evidence of the identity is not produced to or obtained by a financial institution or cash dealer under section 102, the financial institution or cash dealer shall not proceed any further with the transaction unless directed to do so by the Financial Intelligence Unit established under Part 4 and report the attempted transaction to the Financial Intelligence Unit as a suspicious transaction under section 107.

Financial institutions or cash dealer to monitor transactions

104. (1) A financial institution or a cash dealer shall scrutinize to –

(a) any complex, unusual or large transactions;

(b) any unusual patterns of transactions,

that have no apparent or visible economic or lawful purpose.

(2) A financial institution or a cash dealer shall scrutinize to -

(a) business relations and transactions with persons in jurisdictions that do not have adequate systems in place to prevent or deter money laundering or the financing of terrorism;

(b) wire transfers that do not contain complete originator information.

(3) In relation to subsections (1) and (2), a financial institution or a cash dealer shall:

(a) examine as far as possible the background and purpose of the transactions or business relations and record its findings in writing; and

(b) report the transactions and its findings to the Financial Intelligence Unit as a suspicious transaction under section 107.

Banks and money transmission service providers to include originator information

105. A financial institution or a cash dealer shall include accurate originator information and other related messages on electronic funds transfers and other forms of funds transfers and such information shall remain with the transfer.

Financial institutions and cash dealers to establish and maintain customer records

106. (1) A financial institution or cash dealer must establish and maintain:

- (a) records of all transactions in foreign currency carried out by it, in accordance with subsection (3); and
- (b) if evidence of a person's identity is obtained in accordance with section 102 — a record that indicates the kind of evidence obtained, and comprises either a copy of the evidence or information that enables a copy of it to be obtained.

(2) A financial institution or cash dealer shall maintain accounts in the true name of the account holder.

(3) A financial institution or a cash dealer shall not open, operate or maintain any anonymous account, or any account which is in a fictitious, false or incorrect name.

(4) The record of a transaction under subsection (1) (a) must show:

- (a) the name, address and occupation (or, where appropriate, the business or principal activity) of each person:
 - (i) conducting the transaction; or
 - (ii) if known — on whose behalf the transaction is being conducted; and
- (b) how the financial institution or cash dealer verified the identity of each person mentioned in paragraph (a); and
- (c) the nature and date of the transaction; and
- (d) the type and amount of currency involved; and
- (e) the type and identifying number of any account with the financial institution or cash dealer involved in the transaction; and
- (f) if the transaction involves a negotiable instrument other than currency:
 - (i) the name of the drawer of the instrument; and
 - (ii) the name of the institution on which it was drawn; and
 - (iii) the name of the payee (if any); and
 - (iv) the amount and date of the instrument; and
 - (v) the number (if any) of the instrument; and
 - (vi) details of any endorsements appearing on the instrument; and
- (g) the name and address of the financial institution or cash dealer, and of the employee or agent of the financial institution or cash dealer who prepared the report.

(5) A financial institution or cash dealer that fails, without reasonable excuse, to comply with subsection (1), (2) or (3) commits an offence punishable by:

(a) if the offender is a natural person — a fine of \$30 000 or imprisonment for 5 years, or both;
or

(b) if the offender is a body corporate — a fine of \$150 000.

Financial institutions and cash dealers to report suspicious transactions

107. (1) If a financial institution or cash dealer:

(a) is a party to a transaction; and

(b) has reasonable grounds for suspecting that information that it has concerning the transaction may be relevant to the investigation or prosecution of a person for a serious offence;

it must do the things required by subsection (2) as soon as possible but no later than 3 working days after forming that suspicion, and if possible before the transaction is carried out.

(2) A financial institution or cash dealer must

(a) take reasonable measures to find out the purpose of the transaction, the origin and ultimate destination of the funds involved, and the identity and address of the ultimate beneficiary; and

(b) make a report of the transaction in accordance with subsection (3) to the Unit in writing or in any other way that the Attorney-General from time from time approves.

(3) A report required by subsection (2) (b) shall:

(a) contain the details about the transaction mentioned in subsection (2) (a) and section 104(3);
and

(b) contain a statement of the grounds on which the financial institution or cash dealer holds the suspicion; and

(c) be signed or otherwise authenticated by the financial institution or cash dealer.

(4) A financial institution or cash dealer that has reported a suspicious transaction in accordance with this Part shall, if asked to do so by the Unit, give the Unit any further information that it has about the transaction.

(5) A financial institution or cash dealer that fails, without reasonable excuse, to comply with subsections (1), (2), (3) or (4) commits an offence punishable by:

(a) if the offender is a natural person — a fine of \$30 000 or imprisonment for 5 years, or both;
or

(c) if the offender is a body corporate — a fine of \$150 000.

(6) If a financial institution or cash dealer gives information to the Unit about its suspicion about a transaction to which it is a party, the institution or dealer, or an employee or agent of the institution or dealer, must not, unless required to do so under this or another Act, disclose to anyone else:

(a) that the institution or dealer has formed the suspicion;

(b) that information has been given; or

(c) any other information from which the person to whom the information is disclosed could reasonably be expected to infer that the suspicion had been formed or that the first-mentioned information had been given.

(7) A financial institution or cash dealer, or an employee or agent of a financial institution or cash dealer, who contravenes subsection (6) is guilty of an offence punishable by:

(a) if the offender is a natural person — a fine of \$12 000 or imprisonment for 2 years, or both;
or

(c) if the offender is a body corporate — a fine of \$60 000.

Financial institutions and cash dealers to establish and maintain internal reporting procedures

108. (1) A financial institution or cash dealer shall establish and maintain internal procedures:

(a) to identify persons to whom an employee is to report any information that comes to the employee's attention in the course of employment, and that gives rise to knowledge or suspicion by the employee that another person is engaged in money-laundering; and

(b) to enable any person identified under paragraph (a) to have reasonable access to information that may be relevant to deciding whether sufficient basis exists to report the matter to the Unit; and

(c) to require the identified person to report the matter to the Unit, if he or she decides that sufficient basis exists to do so.

(2) A financial institution or cash dealer that fails, without reasonable excuse, to comply with subsection (1) commits an offence punishable by:

(a) if the offender is a natural person — a fine of \$30 000 or imprisonment for 5 years, or both;
or

(b) if the offender is a body corporate — a fine of \$150 000.

Further preventive measures by financial institutions and cash dealers

109. (1) A financial institution or cash dealer shall establish and maintain internal procedures:

- (a) to make its employees aware of domestic laws about money-laundering, and the procedures and policies established and maintained by it under this Act; and
- (b) to train its employees to recognise and handle money-laundering transactions.

(2) A financial institution or cash dealer that fails, without reasonable excuse, to comply with subsection (1) commits an offence punishable by:

- (a) if the offender is a natural person — a fine of \$30 000 or imprisonment for 5 years, or both;
or
- (b) if the offender is a body corporate — a fine of \$150 000.

Financial institutions to retain records

110. (1) A financial institution or cash dealer shall keep, for the minimum retention period applicable to the document, a document that relates to a financial transaction carried out by the institution or dealer in its capacity as a financial institution or cash dealer, including (without limiting the generality of this obligation) a document that relates to a transaction of a kind mentioned in the definition of *customer* in section 101.

(2) However, subsection (1) does not apply to:

- (a) a document that relates to a single deposit, credit, withdrawal, debit or transfer of an amount of up to \$200 (or a higher amount prescribed for this paragraph); or
- (b) a document that:
 - (i) is not a document given to the institution by or for a customer; and
 - (ii) need not be retained to preserve a record of the financial transaction concerned.

(3) A financial institution or cash dealer required to keep documents under this section shall keep them on microfilm or in another way that makes retrieving them, or the information in them, reasonably practicable.

(4) A financial institution or cash dealer that fails, without reasonable excuse, to comply with subsection (1) or (3) commits an offence punishable by:

- (a) if the offender is a natural person — a fine of \$30 000 or imprisonment for 5 years, or both;
or
- (b) if the offender is a body corporate — a fine of \$150 000.

(5) This section does not limit any other obligation of a financial institution or cash dealer to retain documents.

Register of original documents

111. (1) If, despite section 101 (1), a financial institution or cash dealer is required by law to release

an original document before the end of the minimum retention period applicable to the document, the institution or dealer shall keep a complete copy of the document until the period has ended or the original document is returned, whichever occurs first.

(2) The financial institution or cash dealer shall maintain a register of documents released under subsection (1).

(3) A financial institution or cash dealer that fails, without reasonable excuse, to comply with subsection (1) or (2) commits an offence punishable by:

(a) if the offender is a natural person — a fine of \$30 000 or imprisonment for 5 years, or both;
or

(b) if the offender is a body corporate — a fine of \$150 000.

Protection for financial institutions etc

112. If a financial institution or cash dealer, or an employee or agent of a financial institution or cash dealer, gives information to a police officer or the Attorney-General under section 107(1) as soon as practicable after the grounds for suspicion mentioned in that section become known, the institution or dealer is taken, for sections 12 and 13, not to have been in possession of that information at any time.

PART VI

DISCLOSURE OF INFORMATION HELD BY GOVERNMENT DEPARTMENTS

Direction to disclose information

113. Despite any other law, the Attorney-General may direct the person in charge of a Government department or statutory body to give or disclose, to the Attorney-General or a police officer nominated by the Attorney-General, a document or information that is in the possession or under the control of that person or to which that person has access, if the Attorney-General is satisfied that the document or information is relevant to:

(a) establishing whether a serious offence has been, or is being, committed; or

(b) the making, or proposed or possible making, of an order under Part 2 or 3.

Further disclosure of information and documents

114. (1) A person to whom a document or information has been disclosed under section 107 must not further disclose the document or information except for:

(a) the investigation of, or the prosecution, or proposed or possible prosecution, of a person for a serious offence; or

(b) an investigation relating to:

(i) the making, or proposed or possible making, of; or

(ii) proceedings, or proposed or possible proceedings, for the making of;
an order under the Act.

(2) A person to whom a document or information has been disclosed in accordance with subsection (1) or this subsection shall not disclose the document or information to another person except for a purpose mentioned in subsection (1) (a) or (b).

(3) If a document or information is disclosed to a person under section 88 or subsections (1) or (2), the person:

(a) must not voluntarily give the document or information in evidence in a proceeding before the Court other than a proceeding of a kind mentioned in subsection (1) (a) or (b); and

(b) may not be required to give the document or information to the Court.

(4) A person who discloses a document or information in contravention of this section is guilty of an offence punishable by a fine of \$12 000 or imprisonment for 2 years, or both.

Evidential value of copies

115. (1) If a document is examined by or given to the Attorney-General or a police officer under a direction under section 107, the person who examines it, or to whom it is given, or a person authorised for the purpose by the person in charge of the Government department or statutory body to which the direction was given, may make or cause to be made 1 or more copies of the document.

(2) A copy purporting to be certified by the person in charge of the Government department or statutory body to be a copy made under subsection (1):

(a) is evidence of the nature and content of the original document; and

(b) has the same probative force as the original document would have had if it had been proved in the ordinary way.

PART VII

SUSPICIOUS CURRENCY MOVEMENTS

Seizure and detention of suspicious imports or exports of currency

116. An authorised officer may seize and detain any currency that is brought into or taken out of Kiribati if:

(a) the amount is not less than the equivalent of \$1000 (or a higher amount prescribed by regulation for this paragraph); and

(b) there are reasonable grounds for suspecting that it is:

(i) derived from a serious offence; or

(ii) intended by any person for use in the commission of a serious offence.

Detention of seized currency

117. (1) Currency detained under section 116 may not be detained for more than 24 hours after it is seized.

(2) However, the Court may order its continued detention for a period not exceeding 3 months from the day it is seized, upon being satisfied that:

(a) there are reasonable grounds for the suspicion mentioned in section 107 (1) (b); and

(b) its continued detention is justified while:

(i) its origin or derivation is further investigated; or

(ii) consideration is given to the institution (in Kiribati or elsewhere) of criminal proceedings against a person for an offence with which the currency is connected.

(3) The Court may subsequently order the continued detention of the currency if satisfied of the matters mentioned in subsections (2) (a) and (b), but the total period of detention may not exceed 2 years from the date of the first order made under subsection (2).

Release of detained currency

118. (1) Currency detained under section 117 may be released in whole or in part to the person for whom it was brought into, or taken out of, Kiribati:

(a) by order of a court that its continued detention is no longer justified, upon application by or for that person and after considering any views of the Attorney-General to the contrary; or

(b) by an authorised officer, if the officer is satisfied that its continued detention is no longer justified.

(2) However, currency detained under section 117 shall not be released if:

(a) an application is made for:

(i) a confiscation order against the whole or any part of the currency; or

(ii) a restraining order against it pending determination of its liability to confiscation; or

(iii) the registration of a foreign confiscation order or foreign restraining order against it; or

(b) proceedings are under way in Kiribati or elsewhere against a person for an offence with which the currency is connected;

until the proceedings relating to the relevant application, or the proceedings for the offence, have been concluded.

PART VIII

MISCELLANEOUS

Conduct by directors, employees or agents

119. (1) For this Act, the state of mind of a person may be established in accordance with this section.

(2) For conduct engaged in, or taken under subsection (3) to have been engaged in, by a body corporate, it is sufficient to show that a director, employee or agent of the body corporate who engaged in the conduct within the scope of his or her actual or apparent authority had that state of mind.

(3) Conduct engaged in for a body corporate is taken, for this Act, to have been engaged in by the body corporate if it is engaged in:

(a) by a director, employee or agent of the body corporate within the scope of his or her actual or apparent authority; or

(b) both:

(i) by another person at the direction or with the consent or agreement (whether express or implied) of a director, employee or agent of the body corporate; and

(ii) if giving the direction, consent or agreement is within the scope of the actual or apparent authority of the director, employee or agent.

(4) For conduct taken, under subsection (5), to have been engaged in by a person (other than a body corporate), it is sufficient to show that an employee or agent of the person who engaged in the conduct within the scope of his or her actual or apparent authority had that state of mind.

(5) Conduct engaged in for a person (other than a body corporate) is taken, for this Act, to have been engaged in by the person if it is engaged in by:

(a) an employee or agent of the person within the scope of the employee or agent's actual or apparent authority; or

(b) by another person at the direction or with the consent or agreement (whether express or implied) of an employee or agent of the first-mentioned person, if the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the employee or agent.

(6) A reference in this section to the state of mind of a person includes the person's knowledge, intention, opinion, belief or purpose, and the person's reasons for that intention, opinion, belief or purpose.

Appointment of Administrator

120. The Attorney-General may by instrument appoint a person to administer property forfeited, or subject to a restraining order, under this Act.

Standard of proof

121. Except as otherwise provided in this Act, a question of fact to be decided by the Court in proceedings under this Act (other than proceedings for an offence) is to be decided on the balance of probabilities.

Costs

122. The Court may order the Republic to pay all costs reasonably incurred by a person in connection with proceedings, or a part, specified in the order, of those costs if:

- (a) the person brings, or appears at, the proceedings under this Act before a court:
 - (i) to prevent a forfeiture, confiscation or restraining order from being made against property of the person; or
 - (ii) to have property of the person excluded from a forfeiture, confiscation or restraining order; and
- (b) the person is successful in those proceedings; and
- (c) the Court is satisfied that the person was not involved in the commission of the offence for which the forfeiture, confiscation or restraining order was sought or made.

Non-liability of Administrator

123. The Administrator is not personally liable for any act done, or omitted to be done, by him or her in performing the Administrator's functions under this Act.

Operation of certain other laws not affected

124. Nothing in this Act prejudices, limits or restricts:

- (a) the operation of any other law that provides for the forfeiture of property or the imposition of penalties or fines; or
- (b) the remedies available to the Republic, apart from this Act, for the enforcement of its rights and the protection of its interests; or
- (c) any power of search or any power to seize or detain property that is exercisable by a police officer apart from this Act.

Regulations

125. The Attorney-General, acting in accordance with the advice of the Cabinet, may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

PROCEEDS OF CRIME ACT 2003

EXPLANATORY MEMORANDUM

Brief outline of the Act

The Proceeds of Crime Act 2003 implements, for Kiribati, part of an agreement made between the law officers of the Pacific Islands nations at Honiara in 1992. Its objects, as set out in clause 2, include:

- making provision to deprive criminals of the proceeds of crime;
 - making various ancillary provisions to provide for tracing the proceeds of crime; and
 - creating the offence of money-laundering.

2. It sets up the necessary systems to give the High Court power to make and enforce the necessary orders; to require financial institutions and cash dealers to keep appropriate records and report suspicious transactions; and to prevent concealment of the proceeds of crime by, for example, operating a bank account in a false name.

3. Part 1 contains preliminary matters, such as the objects of the Act and definitions.

4. Part 2 makes provision for money-laundering and other related offences.

5. Clause 12 creates the offence of money-laundering. A person commits the offence of money-laundering if the person deals with money or property that the person knows, or ought reasonably to know, to be proceeds of crime.

6. Clause 13 makes it an offence to be in possession of property reasonably suspected of being proceeds of crime.

7. Clause 14 makes it an offence to operate an account with a financial institution or cash dealer in a false name.

8. Clause 15 makes it an offence to disclose information that might prejudice an investigation.

9. Division 2 of Part 2 establishes the Financial Intelligence Unit within the Kiribati Police, and sets out its functions and powers.

10. Part 3 sets out the basic scheme of forfeiture orders and pecuniary penalty orders. These orders may be made by the High Court on application by the Attorney-General. The person against whom an order is made must have been convicted of a serious offence, and the relevant application period (generally 12 months after the conviction) must not have expired.

11. Division 2 of Part 3 makes specific provision about forfeiture orders.

12. A forfeiture order is an order declaring that specified property that the Court is satisfied is tainted property is forfeited to the Republic. The Court is authorised to infer that particular property is tainted property in specified circumstances.

13. Division 3 of Part 3 makes specific provision about pecuniary penalty orders. A pecuniary penalty order might be appropriate if, for example, an offender has derived a benefit from a serious offence, but no longer retains any tainted property. However, there is nothing preventing both a forfeiture order and a pecuniary penalty order being made against a person in respect of the same

offence.

14. A pecuniary penalty order is an order that a person who has been convicted of a serious offence must pay a specified sum to the Republic (in addition to any fine for the offence itself). The specified sum is to be the amount that the Court assesses as the value of the benefit that the person derived from the offence, in accordance with the rules set out in Division 3 of Part 3.

15. Part 4 contains provisions relating to investigation, and for preserving property that may be liable to forfeiture. Divisions 1 and 2 of that Part provide for the issue of search warrants and the seizure of property suspected of being proceeds of crime. Division 1 operates in relation to offences committed in Kiribati. Division 2 operates in relation to foreign serious offences.

16. Division 3, 4 and 5 of Part 4 provide for restraining orders. The basic purpose of such an order is to preserve property that may be subject to forfeiture. Under Division 3, the High Court may issue a restraining order against property of a person in relation to an offence committed in Kiribati. Under Division 4, the High Court may issue an interim restraining order in relation to a foreign serious offence. Division 5 provides for the registration in Kiribati of a foreign restraining order.

17. Before making a restraining order the Court must be satisfied that the person against whose property the order is to be made has been convicted of a serious offence, or that the person will be charged with the offence within 48 hours; that there are reasonable grounds for believing that the person actually committed the offence; and that the property is tainted property in relation to the offence. The order can prohibit dealings with the property, and can also direct that the property be placed under control of the Administrator.

18. Property that has been placed under the control of the Administrator may be used to satisfy any pecuniary penalty order made against the owner of the property.

19. A restraining order generally ceases to be in force at the end of 6 months after it is made, but its effect can be extended by the Court on application by the Attorney-General. However, it ceases earlier if the person to whom it belongs is charged with the relevant offence and acquitted, or the charge is withdrawn, or (if the person is not charged) 48 hours after it is made. It also ceases when the property is used to satisfy a pecuniary penalty order, or is forfeited to the Republic.

20. A precondition for the making of an interim restraining order under Division 4 is an application by a foreign country under the Mutual Assistance Act, and the authorisation of the Attorney-General under that Act. Property cannot be placed under the Administrator's control on the basis of an interim restraining order. Also, an interim restraining order ceases to be in force after 30 days unless extended by the Court. It is expected that this period will provide sufficient time to allow a foreign restraining order against the property to be registered under the Mutual Assistance Act.

21. Division 5 of Part 4 makes provision for the enforcement of registered foreign restraining orders. Under a registered foreign restraining order the Court can direct the Administrator to take control of the subject property and use it to satisfy a registered foreign pecuniary penalty order. A registered foreign restraining order ceases to be in force when the registration is cancelled under the Mutual Assistance Act.

22. Division 6 of Part 4 makes various supplementary provisions in connection with tracing property. This Division allows a police officer to apply for an order that a property-tracking document be produced to a police officer, or that a police officer be allowed to inspect such a document. A property-tracking document is a document that is relevant to identifying, locating or quantifying tainted property or property of a person who committed an offence, or to identifying or locating another document that is necessary to transfer property of that kind. A police officer can also apply for a warrant to search for a property-tracking document.

23. Division 7 of Part 4 makes provision for a class of orders called monitoring orders, directed to a financial institution. A monitoring order requires the institution to inform a specified police officer about transactions (including the use of safe deposit boxes) conducted through an account held with the institution. A monitoring order has a maximum life of 3 months.

24. It will be an offence to disclose the fact that a monitoring order has been made or any other information from which the making of the order can be inferred. The exceptions are disclosure for the purposes of carrying out a person's duties, or ensuring that the order is carried out, or to a legal practitioner for the purpose of obtaining legal advice.

25. Part 5 sets out the obligations of financial institutions and cash dealers. Failure to comply with an obligation under the Part will be an offence.

26. These obligations include taking reasonable measures to verify customers' identities, and to make sure that a person is really acting for another person, establishing and maintaining customer records containing specified details, reporting suspicious transactions to the Financial Intelligence Unit and setting up internal procedures to ensure that its obligations under Part 5 are complied with.

27. Part 6 permits the Attorney-General to require government bodies to give information to the Attorney-General or a police officer.

28. Part 7 permits an authorised officer to seize any large sum of currency that is being imported or exported. However, the currency seized may not be detained for longer than 24 hours except on the order of a court. The total period of detention must not exceed 2 years unless a forfeiture order or restraining order is made against it, or a foreign forfeiture order or restraining order is registered against it.

29. Part 8 sets out some miscellaneous matters, such as the appointment of an Administrator to manage property seized under the Act, the fact that questions of fact are to be decided on the civil standard of the balance of probabilities, rather than beyond reasonable doubt, and that costs orders may be made against the Republic.

Titabu Tabane
Attorney General
15 August 2003