

No. S 47

CONSTITUTION OF BRUNEI DARUSSALAM
(Order made under Article 83(3))

CRIMINAL ASSET RECOVERY ORDER, 2012

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CONSTITUTION OF BRUNEI DARUSSALAM
(Order made under Article 83(3))

CRIMINAL ASSET RECOVERY ORDER, 2012

In exercise of the power conferred by Article 83(3) of the Constitution of Brunei Darussalam, His Majesty the Sultan and Yang Di-Pertuan hereby makes the following Order —

PART I

PRELIMINARY

Citation.

1. This Order may be cited as the Criminal Asset Recovery Order, 2012.

Interpretation.

2. (1) In this Order, unless the context otherwise requires —

“account” means any facility or arrangement by which a financial institution or a designated non-financial business and profession does any of the following —

(a) accepts deposits of funds or other assets;

(b) allows withdrawals or transfers of funds or other assets; or

(c) pays negotiable or transferable instruments or orders drawn on, or collects negotiable or transferable instruments or payment orders on behalf of, any other person,

and includes any facility or arrangement for a safety deposit box or for any other form of safe deposit;

“appeal” includes proceedings by way of discharging or setting aside a judgment, and an application for a new trial or for a stay of execution;

“assets-sharing agreement” means an agreement entered into —

(a) between Brunei Darussalam and a foreign country or territory; or

(b) between the Attorney General and the appropriate authority of a foreign country, whereby arrangements are made for the sharing of the proceeds of crime that, as a result of mutual assistance, have been confiscated in Brunei Darussalam or elsewhere;

“associate”, in relation to a person, includes —

(a) any person who had been or is residing in the residential premises (including appurtenances) of such person;

(b) any person who had been or is an agent or nominee of such person;

(c) any person who had been or is managing the affairs or keeping the accounts of such person;

(d) any partnership firm of which such person, or any agent or nominee of his, is or had been a partner or a person in charge or control of its business or affairs;

(e) any company formed and registered under the Companies Act [Chapter 39], of which such person, or any agent or nominee of his, had been or is a director or had been or is in charge of or control of its business or affairs, or in which such person, together with any agent or nominee of his, has or have, or had, shares to the total value of not less than ten per centum of the total issued capital of the corporation;

(f) any person who had been or is a partner, or a person in charge or control of the business or affairs, of a partnership firm referred to in paragraph (d) at any time when such person, or any agent or nominee of his, had been or is a partner in the partnership firm;

(g) any person who had been or is a director, or a person in charge or control of the business or affairs, of a company referred to in paragraph (e) at any time when such person, or any agent or nominee of his, had been or is a director, or had been or is in charge or control of the business or affairs, of the corporation, or at any time when such person, together with any agent or nominee of his, has or have, or had, shares to the total value of not less than ten per centum of the total issued capital of the corporation;

(h) any person who had been or is an agent of any partnership firm or company referred to in paragraph (d) or (e) respectively;

(i) any person who had been or is keeping the accounts of any partnership firm or company referred to in paragraph (d) or (e) respectively;

(j) the trustee of any trust, where —

(i) the trust has been created by such person; or

(ii) the total value of the assets contributed by such person to the trust at any time, whether before or after the creation of the

trust, amounts, or had amounted, at any time, to not less than 20 *per centum* of the total value of the assets of the trust;

(k) any person who has in his possession any property belonging to such person; and

(l) any person who is indebted to such person;

“authorised officer” means —

(a) an officer of the Royal Brunei Police Force;

(b) an officer of the Narcotics Control Bureau;

(c) an officer of the Anti-Corruption Bureau;

(d) an officer of the Royal Customs and Excise Department; or

(e) a person or class of persons designated by notification in the *Gazette* by the Attorney General;

“Authority” means the Autoriti Monetari Brunei Darussalam established by section 3(1) of the Autoriti Monetari Brunei Darussalam Order, 2010 (S 103/2010);

“a benefit” includes any property, service or advantage, whether direct or indirect;

“beneficial owner” means —

(a) a natural person who ultimately owns or controls the rights to and/or benefits from property, including the person on whose behalf a transaction is conducted;

(b) a person who exercises ultimate effective control over a legal person or legal arrangement;

(c) a natural person is deemed to ultimately own or control rights to or benefit from property within the meaning of subsection (a) when that person —

(i) owns or controls, directly or indirectly, including through trusts or bearer share holdings for any legal entity, 25 per cent or more of the shares or voting rights of the entity; or

(ii) otherwise exercises control over the management of the entity;

“business” means any activity carried on for the purpose of gain or profit and includes all property derived from or used in or for the purpose of carrying on such activity, and all rights and liabilities arising from such activity;

“business relations” means any contact between the financial institution or designated non-financial business and profession and any person in the course of provision of services by the financial institution or designated non-financial business and profession and includes but is not limited to —

(a) opening or maintenance of an account;

(b) undertaking transactions by the financial institution or designated non-financial business and profession for that person;

(c) the issuance of an insurance policy or takaful policy by an insurance or takaful operator to that person;

“cash transaction report” means a report required to be made under section 16;

“correspondent banking” means the provision of banking, payment and other services by one bank (the “correspondent bank”) to another bank (the “respondent bank”) to enable the latter to provide services and products to its own customers;

“Criminal Assets Confiscation Fund” means the Fund established by section 123;

“customer” means any of the following —

(a) the person for whom a transaction or account is arranged, opened or undertaken;

(b) a signatory to a transaction or account;

(c) any person to whom an account or rights or obligations under a transaction have been assigned or transferred;

(d) any person who is authorised to conduct a transaction or control an account;

(e) any person who attempts to take any of the actions referred to above;

(f) such other person as may be prescribed by regulations by the Authority;

“data” means representations, in any form, of information;

“dealing” includes —

(a) a purchase, sale, loan, charge, mortgage, lien, pledge, caveat, transfer, delivery, assignment, subrogation, transmission, gift, donation, trust, settlement, deposit, withdrawal, transfer between accounts, extension of credit;

(b) any purchase or sale of any securities, monetary instrument, or other instrument whatsoever by whatever means effected;

(c) any agency or grant of power of attorney; and

(d) any other disposition or dealing in whatever form, or of whatever description or nature, howsoever styled, which results in any right, interest, title or privilege, whether present or future or whether vested or contingent, in the whole or part of any property being conferred on any person;

“defendant” means a person that is under investigation for a serious offence or has been charged with a serious offence, whether or not he has been convicted of the offence, and includes in the case of proceedings for a restraining order under section 49, a person who is being investigated for a serious offence or is about to be charged with a serious offence;

“designated non-financial businesses and professions” means any of the following —

(a) any person licensed under the Registered Agents and Trustees Licensing Order, 2000 (S 54/2000);

(b) real estate agents;

(c) casinos, including internet casinos;

(d) dealers in precious metals, precious stones and jewelry;

(e) advocates and solicitors, notaries, other independent legal professionals and accountants when they prepare for, engage in, or carry out transactions for a client concerning any of the following activities —

(i) purchase and sale of real estate;

(ii) management of client money, securities or other assets;

(iii) management of bank, savings or securities accounts;

- (iv) organisation of contributions for the creation, operation or management of entities;
- (v) creation, operation or management of entities or arrangements, and purchase and sale of business entities;

(f) trust and company service providers not otherwise covered by this Order which, as business, prepare for or carry out transactions on behalf of clients in relation to any of the following services to third parties —

- (i) acting as a formation, registration or management agent of entities;
- (ii) acting as, or arranging for another person to act as, a director or secretary of a company or partner of a partnership, or to hold a similar position in relation to other entities;
- (iii) providing a registered office, business address or accommodation, correspondence or administrative address for a company, a partnership or any other entity or arrangement;
- (iv) acting as, or arranging for another person to act as, a trustee of an express trust or other similar arrangement;
- (v) acting as, or arranging for another person to act as, a nominee shareholder for another person;

(g) such other businesses and professions as may be specified by the Authority;

“diminished in value”, in relation to any property, means the whole or part of the property being expended, utilised, destroyed, or being subjected to any dealing, process or other act, so that it ceases to exist, or is reduced in value or size, or is altered in character;

“document” means any matter expressed, described or howsoever represented upon any substance, material, thing or article, including any matter embodied in a disc, tape, film, soundtrack or other device whatsoever by means of —

(a) letters, figures, marks, symbols, signals or other forms of expression, description or representation whatsoever;

(b) any visual recording (whether of still or moving images);

(c) any sound recording or any electronic, magnetic, mechanical or other recording, whatsoever and howsoever made, or any sound, electrical impulse or other data whatsoever;

(d) a recording or transmission of the means mentioned in paragraph (a), (b) or (c) or by more than one of the means mentioned in paragraph (a), (b), (c) or (d), intended to be used or which may be used for the purpose of expressing, describing or howsoever representing that matter;

Illustrations

A writing is a document.

Words printed, lithographed or photographed are documents.

A map, plan, graph or sketch is a document.

An inscription on wood, metal, stone or any other substance, material or thing is a document.

A photograph or a negative is a document.

A tape recording of a telephonic communication, including a recording of such communication transmitted over distance is a document.

A photographic or other visual recording, including a recording of photographic or other visual transmission over a distance is a document.

A matter recorded, stored, processed, retrieved or produced by a computer is a document.

“FATF” means the Financial Action Task Force;

“financial institution” means —

(a) in relation to Brunei Darussalam —

- (i) a bank licensed under section 4 or 23 of the Banking Order, 2006 (S 45/2006), an international bank licensed under section 7 of the International Banking Order, 2000 (S 53/2000) and an Islamic bank licensed under section 4 or 23 of the Islamic Banking Order, 2008 (S 96/2008);
- (ii) the Perbadanan Tabung Amanah Islam Brunei established by section 3(1) of the Perbadanan Tabung Amanah Islam Brunei Act (Chapter 163);

- (iii) any insurer registered under the Insurance Order, 2006 (S 48/2006) or the Takaful Order, 2008 (S 100/2008) or any person licensed under the International Insurance and Takaful Order, 2002 (S 43/2002);
- (iv) any finance company licensed under the Finance Companies Act (Chapter 89);
- (v) any person licensed under the Mutual Funds Order, 2001 (S 18/2001), the Securities Order, 2001 (S 31/2001) or the International Insurance and Takaful Order, 2002 (S 43/2002);
- (vi) any person licensed to carry on any money-changing business or remittance business under the Money-Changing and Remittance Businesses Act (Chapter 174); or
- (vii) such other person licensed, approved or regulated by the Authority under any written law; and

(b) in relation to any country outside Brunei Darussalam, a person lawfully carrying on therein business corresponding in whole or in part to banking business as defined in section 2(1) of the Banking Order, 2006 (S 45/2006) or in section 2(1) of the International Banking Order, 2000 (S 53/2000); and includes Islamic banking business as defined in section 2(1) of the Islamic Banking Order, 2008 (S 96/2008);

“Financial Intelligence Unit” means the agency responsible for receiving, requesting, analysing and disseminating information concerning money-laundering, suspected proceeds of crime and terrorist financing;

“foreign country” means any country or territory outside Brunei Darussalam;

“foreign serious offence”, has the same meaning as “serious offence”;

“Fund” has the same meaning as Criminal Confiscation of Assets Fund established by section 123;

“funds transfer” means any transaction carried out on behalf of an originator person through a financial institution by electronic means with a view to making an amount of money available to a beneficiary person at another financial institution. The originator and beneficiary may be the same person;

“gift” includes any transfer or property by a person to another person directly or indirectly –

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

(b) for a consideration the value of which is significantly less than the value of the property provided by the first person; and

(c) to the extent of the difference between the market value of the property transferred and the consideration provided by the transferee;

“Government” means the Government of Brunei Darussalam;

“High Court” includes the Intermediate Court;

“legal arrangement” refers to express trusts or other similar legal arrangements;

“interest”, in relation to property, means —

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

(b) a right, power or privilege in connection with the property whether present or future and whether vested or contingent;

“Minister” means the Minister of Finance;

“originator” means the account holder, or where there is no account, the person that places the order with a financial institution to perform a wire transfer;

“payable through account” means a correspondent account used directly by a third party customer of the respondent financial institution to transact business on such party's own behalf or on behalf of another person;

“person” means any natural or legal person;

“politically-exposed person” means —

(i) any person who is or has been entrusted with a prominent public function including, but not limited to a head of state or of government, a senior politician, a senior government, judicial or military official;

(ii) any person who is or has been an executive of a state-owned company;

(iii) any person who is or has been a senior political party official, and

- (iv) any person who is or has been entrusted with a prominent function by an international organisation,

and shall include any immediate family member or close associate of such persons;

“premises” includes any place within Brunei Darussalam and in particular includes —

(a) any vehicle, vessel, craft, aircraft or any structure in the coastal waters of Brunei Darussalam; or

(b) any tent, caravan or other moveable structure;

“prescribed amount” means \$15,000 (or its equivalent in a foreign currency) or such other amount as the Authority may, by notification in the *Gazette* specify;

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

“proceeds of crime” means —

(a) any property or benefit derived or realised directly or indirectly from a serious offence;

(b) any property or benefit derived or realised from a disposal or other dealing with proceeds of a serious offence,

and includes, on a proportional basis, property into which any property derived or realised directly from the offence was later successively converted, transformed or intermingled, as well as income, capital or other economic gains derived or realised from such property at any time since the offence; and any property used or intended to be used in the commission of any serious offence;

“property” means —

(a) assets of every kind, whether tangible or intangible, movable or immovable, however acquired;

(b) any right, interest, title, claim, chose in action, power, privilege, whether present or future and whether vested or contingent, in relation to any property, or which is otherwise of value;

(c) any conveyance executed for conveying, assigning, appointing, surrendering, or otherwise transferring or disposing of immovable property whereof the person executing the conveyance is proprietor or possessed or wherein he is entitled to a contingent right, either for his whole interest or for any less interest;

(d) legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including, but not limited to, bank credits, travelers cheques, bank cheques, money orders, shares, securities, bonds, drafts and letters of credit;

(e) any business;

“property of or in the possession or control of a person” includes any gift made by that person;

“public body” includes —

(a) the Government;

(b) any local authority and any other statutory authority established by, and exercising powers vested in it by, any written law;

(c) any department, service or undertaking of the Government, a local authority, other statutory authority, or of any authority, organisation, body or individual specified under paragraph (d); or

(d) any authority, organisation or body, or any individual referred to by name or office, specified by the Minister by notification in the *Gazette* to be a public body for the purposes of this Order;

“public officer” includes any person in the permanent or temporary employment of a public body;

“realisable property” means —

(a) any property held by a person;

(b) any property effectively controlled by that person;

(c) any property held by another person to whom that person has directly or indirectly made a gift caught by this Order;

“relative”, in relation to a person, means —

(a) spouse of the person;

- (b) brother or sister of the person;
- (c) brother or sister of the spouse of the person;
- (d) any lineal ascendant or descendant of the person;
- (e) any lineal ascendant or descendant of the spouse of the person;
- (f) spouse of a person referred to in paragraph (b), (c), (d) or (e);
- (g) any lineal descendant of a person referred to in paragraph (b) or (c);
- (h) brother or sister or spouse of the brother or sister of any lineal ascendant of the person or his spouse; or
- (i) any lineal descendant or spouse of any lineal descendant of a person referred to in paragraph (h);

“serious offence” means an offence against a provision of —

(a) any written law of Brunei Darussalam for which the maximum penalty is death, imprisonment for a term of not less than 6 months, fine of not less than \$1,000 or more severe penalty;

(b) a written law of a foreign country, in relation to acts or omissions which, had they occurred in Brunei Darussalam, would have constituted an offence for which the maximum penalty is imprisonment for a term of not less than 6 months or more severe penalty including an offence of a purely fiscal character;

“shell bank” means a bank that has no physical presence in the country in which it is incorporated and licensed, unless such bank is wholly owned by one or more financial institutions forming part of a regulated financial services group that is subject to effective consolidated supervision;

“suspicious transaction report” means a report required to be made under section 15;

“tainted property” in relation to a serious offence, means —

(a) property used in or in connection with or intended for use or in connection with the commission of the offence, if it was in the person’s possession at the time of, or immediately after, the commission of the offence;

(b) property derived, obtained or realised as a result of or in connection with the commission of an offence if it was acquired by the person before, during or within a reasonable time after the period of the commission of the offence of which the person is about to be charged, charged or convicted;

(c) proceeds of crimes;

(d) that the income of that person from sources unrelated to criminal activity of that person cannot reasonably account for the acquisition of that property; and

(e) tainted property includes property of a corresponding value to property defined in paragraphs (a), (b), (c) and (d); or

(f) property which, due to any circumstance such as, but not limited to, its nature, value, location or place of discovery, or the time, manner or place of its acquisition, or the person from whom it was acquired, or its proximity to other property referred to in the foregoing paragraphs, can be reasonably believed to be property falling within the scope of paragraph (a), (b), (c) or (d);

“transaction” means a purchase, sale, loan, pledge, gift, transfer, delivery or other disposition, or the arrangement thereof, and includes but is not limited to —

(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 or received in satisfaction, in whole or in part, of any contractual or other legal obligation;

(f) any payment made in respect of a lottery, bet or other game of chance;

(g) establishing or creating a legal person or legal arrangement; and

(h) such other transaction as may be prescribed by the Minister or Authority, as the case may be, by regulations;

“terrorism financing offence” means —

(a) any offence under section 4, 5, 6, 7 or 8 of the Anti-Terrorism Order, 2011 (S 45/2011);

(b) conspiracy to commit any of those offences;

(c) inciting another to commit any of those offences;

(d) attempting to commit any of those offences; or

(e) aiding, abetting, counselling or procuring the commission of any of those offences;

“trust” includes any legal obligation in favour of any beneficiary subject to which any person holds any property;

“unlawful activity” means —

(a) an act or omission that constitutes an offence against a law in force in Brunei Darussalam or a foreign country;

(b) an attempt to commit an offence against a law in force in Brunei Darussalam or a foreign country;

“wire transfer” means any transaction carried out on behalf of an originator through a financial institution (including an institution that originates the wire transfer and an intermediary institution that participates in completion of the transfer) by electronic means with a view to making an amount of money available to a beneficiary person at another financial institution.

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

(a) Brunei Darussalam;

(b) any foreign country,

includes a written or unwritten law of, or in force in, any part of Brunei Darussalam or the foreign country.

Meaning of charge in relation to serious offence.

(3) Any reference in this Order to a person being charged or about to be charged with a serious offence includes any procedure, however described, in Brunei Darussalam or elsewhere, by which criminal proceedings may be commenced.

Meaning of conviction in relation to serious offence.

(4) For the purposes of this Order, a person shall be taken to be convicted of a serious offence if —

(a) the person is convicted of the offence;

(b) the Court, with the consent of the convicted person, takes the offence of which the person has not been found guilty into consideration in passing sentence on the person for another serious offence.

Meaning of quashing of convictions.

(5) For the purposes of this Order, a person's conviction of a serious offence shall be taken to be quashed where —

(a) subsection (4)(b) applies, if either —

- (i) the person's conviction of the other offence referred to in that section, is quashed or set aside;
- (ii) the decision of the Court to take the offence into consideration in passing sentence for that other offence is quashed or set aside;

(b) His Majesty the Sultan and Yang Di-Pertuan grants the person a pardon in respect of the person's conviction of the offence.

Meaning of value of property.

(6) (a) In this Order, subject to paragraphs (a) and (b), “value of property (other than cash) in relation to any person holding the property” means —

(i) its market value; or

(ii) where any other person holds an interest in the property —

(A) the market value of the first-mentioned person's beneficial interest in the property; less

(B) the amount required to discharge any incumbrance on the first person's beneficial interest.

(b) Subject to subsection (8)(b), references in this Order to the value of a gift or of any payment or reward, are references to —

- (i) the value of the gift, payment or reward to the recipient when the recipient received it, adjusted to take account of any subsequent changes in the value of money; or
 - (ii) where subsection (3) applies, the value there mentioned, whichever is the greater.
- (c) Subject to subsection (8)(b), if at the material time the recipient holds —
- (i) the property which he received.(not being cash); or
 - (ii) property which, in whole or in part, directly or indirectly represents, in the recipient's hands, the property which he received, the value referred to in subsection (2)(b) is the value to him at the material time of the property mentioned in subsection (2)(a) or, as the case may be, subsection (2)(b) so far as it represents the property which he received.

Meaning of dealing with property.

(7) For the purposes of this Order, dealing with property held by any person includes —

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

Meaning of gift.

- (8) (a) A gift is caught by this Order if —
 - (i) it was made by the defendant at any time after the commission of the serious offence, or if more than one, the earliest of the offences, to which the proceedings for the time being relate; and
 - (ii) the High Court considers it appropriate in all the circumstances to take the gift into account.
- (b) For the purposes of this Order —

- (i) the circumstances in which the defendant is to be treated as making a gift include those where he transfers property to another person directly or indirectly, for a consideration the value of which is significantly less than the value of the property or consideration provided by the defendant; and
- (ii) in those circumstances, the provisions of subsection (6)(2) and (3) shall apply, as if the defendant had made a gift of such proportionate share in the property as the difference between the values referred to in subsection (2)(a) and the value of the property or consideration provided by the defendant.

Meaning of “deriving a benefit”.

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

Meaning of benefiting from proceeds of serious offence.

(10) For the purposes of this Order —

(a) a person has benefited from a serious offence if the person has, received any proceeds of that offence;

(b) a person's proceeds of a serious offence are —

- (i) any payments or other rewards received by the person at any time in connection with the commission of the offence by that person or another person; and
- (ii) any pecuniary advantage derived by the person at any time from the commission of the offence by that person or another person,

whether received or derived before or after the commission of the offence.

Meaning of relative.

(11) For the purpose of the definition of “relative” —

(a) the adoption of any person by another under any written law of Brunei Darussalam or any country, territory or place outside Brunei Darussalam, or under any custom recognised by any class of persons in Brunei Darussalam or in any country, territory or place outside Brunei Darussalam, shall be treated as creating between the adopter and the

adopted person the same natural relationship as the adoptive relationship, and other relationships in relation thereto shall be determined accordingly; and

(b) references therein to a relationship include, where relevant, a relationship by the half-blood.

PART II

MONEY LAUNDERING

Money laundering offences.

3. (1) A person commits the offence of money laundering if the person —

(a) engages, directly, or indirectly in a transaction that involves money, or property, that is the proceeds of crime;

(b) acquires, receives, converts, exchanges, carries, possesses, conceals, uses, disposes of, remove from or brings into Brunei Darussalam any money, or property that are proceeds of crime;

(c) converts or transfers money or property derived directly or indirectly from a serious offence, with the aim of concealing or disguising the illicit origin of that money or 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, title of, rights with respect to or ownership of the property derived directly or indirectly by the commission of a serious offence; or

(e) renders assistance to a person falling within paragraph (a), (b), (c) or (d),

and the person knows or has reasonable grounds to believe or suspect that it is derived or realised directly or indirectly from the commission of an unlawful activity or fails to take reasonable steps to ascertain whether or not the property is proceeds of crime, is liable on conviction to a fine not exceeding \$500,000, imprisonment for a term not exceeding 10 years or both, and in the case of a body corporate to a fine not exceeding \$1,000,000.

(2) For the avoidance of doubt, the offence of money laundering is not predicated on proof of the commission of a serious offence.

Chapter I

Measures to Prevent Money Laundering and Terrorist Financing

Opening account in false, etc name.

4. (1) No person shall open, operate or authorise the opening of the operation of an account with a person carrying on any relevant business in a false, fictitious, anonymous or incorrect name.

(2) Where a person is commonly known by 2 or more different names, he shall not use one of those names in opening an account with a person carrying on any relevant business unless he has previously disclosed the other name or names to that person.

(3) Where a person using a particular name in his dealings with a person carrying on any business discloses to him a different name or names by which he is commonly known, the person carrying on any relevant business shall make a record of the disclosure and shall, upon request in writing from a supervisory authority, give the supervisory authority a copy of that record.

(4) For the purposes of this section —

(a) a person opens an account in a false, fictitious, anonymous or incorrect name if he, in opening the account, or becoming a signatory to the account, uses a name other than a name by which he is commonly known;

(b) a person operates an account in a false, fictitious, anonymous or incorrect name if he does any act or thing in relation to the account (whether by way of making a deposit or withdrawal or by way of communication with a person carrying on any relevant business or otherwise) and, in doing so, uses a name other than a name by which he is commonly known; and

(c) an account is in a false, fictitious, anonymous or incorrect name if it was opened in a false, fictitious, anonymous or incorrect name, whether before or after the commencement of this Order.

(5) Any person who contravenes this section is guilty of an offence and liable on conviction to a fine not exceeding \$1,000,000, imprisonment for a term not exceeding one year or both.

Identification requirements.

5. (1) Financial institutions or designated non-financial businesses and professions shall undertake identification requirements when —

(a) establishing business relations with a customer;

(b) carrying out transactions above the prescribed amount, includes where transactions which are carried out in a single operation or in several operations that appear to be linked;

(c) carrying out wire transfers of \$1,500 (or its equivalent in a foreign currency) or above;

(d) there is a suspicion of money laundering or terrorist financing; or

(e) there are doubts about the veracity and adequacy of previously obtained identification data.

(2) Financial institutions or designated non-financial businesses and professions shall, as part of their obligation under this section, identify the beneficial owner provided that the Authority may specify circumstances, such as the ownership of publicly-held corporations, in which such identification is not necessary.

(3) Financial institutions or designated non-financial businesses and professions may rely on intermediaries or other third parties to perform identification procedures if —

(a) there is no suspicion of money laundering or financing of terrorism;

(b) information on the identity of each customer and beneficial owner is provided immediately on opening of the account or commencement of the business relationship; and

(c) the financial institution or designated non-financial business and profession are satisfied that the third party —

(i) is able to provide without delay copies of identification information and other documents relating to the obligation of due diligence upon request; and

(ii) is established in or is subject to the jurisdiction of a country where such person is subject to requirements consistent with standards set by the FATF, and has adequate measures in place to comply with those requirements.

(4) A third party referred in subsection (3)/c/ may not claim professional privilege or a similar principle or rule with respect to the customer identification and beneficial ownership information and documentation involved.

(5) The Authority may specify the jurisdiction of a country which fulfills the requirements of subsection (3)(c)(ii).

(6) Notwithstanding any other provision in this subsection, financial institutions or designated non-financial businesses and professions relying on the third party has the ultimate responsibility of compliance with this Order, including all of the due diligence and reporting requirements thereof.

(7) Financial institutions or designated non-financial business and professions shall take adequate measures to address the specific risk of money laundering and financing of terrorism in the event they conduct business relationships or execute transactions with a customer that is not physically present for purposes of identification.

(8) For the purposes of subsection (7), such measures shall ensure that the due diligence is no less effective than where the customer appears in person, and may require additional documentary evidence, or supplementary measures to verify or certify the documents supplied, or confirmatory certification from financial institutions or other documentary evidence or measures, as specified and directed by the Authority.

Information to be obtained on customers.

6. (1) Financial institutions or designated non-financial businesses and professions shall, with respect to each customer, obtain and verify, as part of their obligation under section 5 —

(a) in the case of an individual, his full name and address, identity card number or details of any official document of identity, date and place of birth;

(b) in the case of a legal person, the corporate name, head office address, identities of directors, proof of incorporation or similar evidence of legal status and legal form, provisions governing authority to bind the legal person, and such information as is necessary to understand the ownership and control of the legal person;

(c) in the case of for legal arrangements, the name of trustees, the settler, and the beneficiary of express trusts, and any other parties with authority to manage, vary or otherwise control the arrangement;

(d) in addition to the identity of the customer, the identity of any person acting on behalf of a customer, including evidence that such person is properly authorised to act in that capacity;

(e) information on the intended purpose and nature of each business relationship —

- (i) sufficient information about the nature and business of the customer to permit the financial institution or designated business and profession to fulfill its obligations under this Order.

(2) For the purposes of section 5(1)(c) with regards the carrying out of wire transfers, the following information relating to the persons carrying out the transaction are required in the message accompanying the transfer —

(a) the name of the originator;

(b) the originator's account number, or in the absence of an account number, a unique reference number;

(c) the originator's address, or in the absence of an address, the national identity number, or the customer identification number, or the date and place of birth;

(d) the name of the beneficiary; and

(e) the beneficiary's account number, or in the absence of an account number, a unique reference number.

(3) Notwithstanding the requirements of subsection (2), a financial institution is not required to verify the identity of a customer with which it has an existing business relationship:

Provided that it is satisfied that it already knows and has verified the true identity of the customer.

(4) When a financial institution acts as an intermediary in a chain of payments, it shall retransmit all of the information it received with the wire transfer.

• (5) The Authority may issue such directions to modify the requirements set forth in subsection (2) —

(a) with respect to domestic wire transfers, as long as the regulations provide for full originator information to be made available to the beneficiary financial institution and appropriate authorities by other means; and

(b) with respect to cross-border transfers where individual transfers from a single originator are bundled in a batch file, as long as the regulations provide for the originator's account number or unique reference number to be included, and that the batch file contains full originator information that is fully traceable in the recipient country.

(6) Subsections (2) and (3) shall not apply to transfers executed as a result of credit card or debit card transactions:

Provided that the credit card or debit card number accompanies the transfer resulting from the transaction nor shall they apply to transfers between financial institutions acting for their own account.

(7) If the institutions referred to in subsection (1) receive wire transfers that do not contain the complete originator information, they shall take measures to obtain and verify the missing information from the ordering institution or the beneficiary and shall refuse acceptance of the transfer and report it to the Financial Intelligence Unit if the missing information is not so obtained and verified.

(8) Where the transaction in section 5(1)(c) is an international wire transfer, the financial institution or designated non-financial business and professions is required to include the information in subsection (2) with the message or payment form.

Verification procedures.

7. (1) A financial institution or designated non-financial businesses and professions shall take reasonable measures to satisfy itself of the true identity of any applicant seeking to enter into a business relationship with it or to carry out a transaction or series of transactions with it and the identity of the beneficial owner by —

(a) producing an official record reasonably capable of establishing the true identity of the applicant; and

(b) if the applicant is a body corporate, it shall be required to produce, a certificate of incorporation together with the latest annual return to the Registrar of Companies.

(2) Where an applicant requests a financial institution or designated non-financial business and profession to enter into a continuing business relationship or any other transaction, the financial institution or designated non-financial business and profession shall take reasonable measures to establish whether the person is acting on behalf of another person.

(3) If it appears to a financial institution or designated non-financial business and profession that an applicant requesting it to enter into any transaction, is acting on behalf of another person, the financial institution or designated non-financial business and profession shall take reasonable measures to establish the true identity of any person on whose behalf or for whose ultimate benefit the applicant may be acting in the proposed transaction, whether as trustee, nominee, agent or otherwise.

(4) In determining what constitute reasonable measures for the purposes of subsection (1) or (3), regard shall be had to all the circumstances of the case, and in particular —

(a) to whether the applicant is a person based or incorporated in a country in which there are in force provisions applicable to it to prevent the use of the financial system for the purpose of money laundering; and

(b) to custom and practice as may from time to time be current in the relevant field of business.

(5) Nothing in this section shall require the production of any evidence of identity where —

(a) the applicant is itself a financial institution or designated non-financial business and profession to which this Order applies; or

(b) there is a transaction or a series of transactions taking place in the course of a business relationship, in respect of which the applicant has already produced satisfactory evidence of identity.

Timing of customer identification and verification.

8. The identification and verification of the identity of each customer, and obtaining of other information required by this section, shall take place before the establishment of an account, or of a business relationship (or before the carrying on of further business, if money laundering or financing of terrorism is suspected or if there are doubts about the veracity or adequacy of previously obtained customer identification information):

Provided that the authority may prescribe the circumstances in which the verification of identity may be completed as soon as reasonably practicable after the commencement of the business if —

(a) the risk of money laundering or financing of terrorism is effectively managed; and

(b) a delay in verification is essential not to interrupt the normal conduct of business.

High risk customers and politically-exposed persons.

9. Financial institutions or designated non-financial business and professions shall —

(a) identify customers whose activities may pose a high risk of money laundering and financing of terrorism and shall exercise enhanced identification,

verification and ongoing due diligence procedures with respect to such customers; and

(b) to determine if a customer or a beneficial owner is a politically-exposed person and if so, shall —

- (i) obtain approval from senior management before establishing a business relationship with a customer, or later, as soon as an existing customer is identified as a politically-exposed person;
- (ii) take all reasonable measures to identify the source of wealth and funds and other assets of the customer; and
- (iii) provide increased and ongoing monitoring of the customer and the business relationship to prevent money laundering, financing of terrorism or the commission of other offences and to permit the financial institution or designated businesses and professions to fulfill their obligations under this Order, including all of the due diligence and reporting requirements thereof.

Identification and account-opening for cross-border correspondent banking relationships.

10. When entering into cross-border correspondent banking relationships, financial institutions shall —

(a) identify and verify the identification of respondent institutions with which they conduct correspondent banking relationships;

(b) collect information on the nature of the respondent institution's activities;

(c) based on publicly-available information, evaluate the respondent institution's reputation and the nature of supervision to which it is subject;

(d) obtain approval from senior management before establishing a correspondent banking relationship;

(e) evaluate the controls implemented by the respondent institution with respect to anti-money laundering and combating the financing of terrorism;

(f) establish an agreement on the respective responsibilities of each party under the relationship;

(g) in the case of a payable-through account, ensure that the respondent institution has verified its customer's identity, has implemented mechanisms for ongoing monitoring with respect to its customers, and is capable of providing relevant identifying information on request;

(h) not enter into or continue business relations with a shell bank; and

(i) not enter into or continue business relations with a respondent financial institution in a foreign country if the respondent institution permits its accounts to be used by a shell bank.

Inability to fulfil customer identification obligations.

11. A financial institution or designated non-financial business and profession that is unable to fulfill the requirements of sections 5 to 10 with respect to any customer shall not establish an account for or maintain the business relationship with that customer and where appropriate, shall forthwith make a report to Financial Intelligence Unit in accordance with this Order.

Special monitoring of certain transactions.

12. Financial institutions or designated non-financial business and professions shall —

(a) pay special attention to all complex, unusual large transactions and all unusual patterns of transactions which have no apparent economic or visible lawful purpose;

(b) pay special attention to business relations and transactions with persons, including legal persons and arrangements, from or in countries that do not or insufficiently apply the relevant international standards to combat money laundering and the financing of terrorism;

(c) examine as far as possible the background and purpose of the transactions under paragraphs (a) and (b) and set forth in writing their findings. The findings shall be maintained as specified in section 16 and shall be made available promptly if requested by the Financial Intelligence Unit, a supervisory authority or any authorised enforcement agency;

(d) take such specific measures as may be prescribed from time to time by the Minister or Authority, as the case may be, by regulations to counter the risks with respect to business relations and transactions specified under paragraph (b).

Additional procedures for ongoing due diligence.

13. (1) Financial institutions or designated non-financial business and professions shall exercise ongoing due diligence with respect to the business relationship which shall include —

(a) maintaining current information and records relating to the customer and beneficial owner;

(b) closely examining the transactions carried out in order to ensure that such transactions are consistent with their knowledge of their customer, the customer's commercial or personal activities and risk profile; and

(c) ensuring the obligations pursuant to sections 9 and 10 relating to high risk customers, politically-exposed persons, and correspondent banking relationships are fulfilled.

[2] A financial institution or designated non-financial business and professions shall apply the identification and verification requirements of this Part, to customers and beneficial owners with which it had a business relationship at the time of the coming into force of this Order on a risk-sensitive basis depending on the type and nature of the customer, business relationship, product or transactions, or as may otherwise be prescribed by the Minister or Authority, as the case may be, by regulations.

Record keeping procedures.

14. (1) A financial institution or designated non-financial business and profession shall establish and maintain —

(a) records of all transactions carried out by it, in accordance with the requirements of subsection (3) or more or the equivalent in foreign cash carried out by it, in accordance with the requirements of subsection (3);

(b) where evidence of a person's identity is obtained in accordance with section 6 a record that indicates the nature of the evidence obtained, and which comprises either a copy of the evidence or such information as would enable a copy of it to be obtained.

[2] Customer accounts of a financial institution or designated non-financial business and professions shall be kept in the true name of the account holder.

[3] Records required under subsection (1)(a) shall contain particulars sufficient to identify —

(a) the name, address and occupation (or, where appropriate, business or principal activity) of each person —

(i) conducting the transaction or series of transactions; or

(ii) if known, on whose behalf the transaction or series of transactions are being conducted;

(b) the method used by the financial institution or designated non-financial business and professions to verify the identity of each person identified under the preceding paragraph (a);

(c) the nature and date of the transaction;

(d) the type and amount of currency involved;

(e) the type and identifying number of any account with the financial institution or designated non-financial business and profession involved in the transaction;

(f) if the transaction involves a negotiable instrument other than cash, 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;

(g) the name and address of the financial institution or designated non-financial business and profession and of the officer, employee or agent who prepared the record.

(4) Records required under subsection (1) shall be kept by the financial institution or designated non-financial business and profession for a period of at least 7 years from the date the relevant transaction was completed or upon which action was last taken.

(5) For transactions or transfers that occurred prior to the commencement of this Order, a financial institution or designated non-financial business and profession is required to disclose records in its possession, custody or control that pertain to transactions or transfers for a particular account or person, and for a particular time period.

Chapter II

Reporting of Suspicious Transactions and Compliance

Obligation to report suspicious transactions.

15. (1) Subject to subsection (2), financial institutions, designated non-financial businesses and professions, and their respective directors, principals, officers, partners, professionals and employees, that suspect or have reasonable grounds to suspect that a transaction or attempted transaction involving property is related or linked to a serious offence or a money laundering offence shall submit promptly after forming a suspicion a report setting forth the suspicions to the Financial Intelligence Unit.

(2) Notwithstanding subsection (1), advocates and solicitors, notaries, other independent legal professions and accountants are required to submit reports only when —

(a) they engage, on behalf of or for a client, in a financial transaction in relation to the following activities —

- (i) buying and selling of real estate;
- (ii) managing of client money, securities or other assets;
- (iii) managing of bank, savings or securities accounts;
- (iv) organisation of contributions for the creation, operation or management of companies; and
- (v) creation, operation or management of legal persons or arrangements, and buying and selling of business entities; and

(b) the relevant information upon which the suspicion is based was not received from or obtained on a client —

- (i) in the course of ascertaining the legal position of their client; or
- (ii) in performing their task of defending or representing that client in, or concerning judicial, administrative, arbitration or mediation proceedings, including advice on instituting or avoiding proceedings, whether such information is received or obtained before, during or after proceedings.

(3) The Financial Intelligence Unit on reasonable grounds to suspect that a transaction or attempted transaction may involve a money laundering offence, serious offence or a terrorist financing offence direct in writing that the reporting institution concerned either proceed or refrain from proceeding with the transaction or attempted transaction for a period to be determined by the Financial Intelligence Unit:

Provided that —

(a) any direction must not exceed 5 business days if the direction is in writing;

(b) any direction given orally must not exceed 24 hours and must be confirmed in writing within 24 hours of the oral direction;

(c) before the expiration of 5 days direction the Financial Intelligence Unit may apply to the Court for an extension of the period of the direction.

(4) Notwithstanding subsection (1), trust and company service providers are required to submit reports when they prepare for or carry out a transaction on behalf of a client, in relation to the following activities —

(a) acting as a formation agent of legal persons;

(b) acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons;

(c) providing a registered office; business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement;

(d) acting as (or arranging for another person to act as) a trustee of an express trust;

(e) acting as (or arranging for another person to act as) a nominee shareholder for another person.

(5) The relevant supervisory authorities of designated non-financial businesses and professions shall inform the Financial Intelligence Unit if, in the course of their duties, they discover facts that could be related to a money laundering offence or serious offence.

(6) The Authority shall issue directions or guidelines on the procedures for and from which the reports shall be submitted and shall publish guidelines in order to assist financial institutions or designated non-financial businesses and professions to fulfill their obligations under this section.

Obligation to report cash transactions.

16. (1) Financial institutions or designated non-financial businesses and professions and dealers in high value goods are required to submit promptly but no later than 5 working days a report to the Financial Intelligence Unit any currency transaction in an amount equal to or above the prescribed amount, whether conducted as a single transaction or several transactions that appear to be linked and shall also apply to any attempted transaction.

(2) For the purpose of this section, “dealer in high value goods” includes a person who deals in motor vehicles or person as the Authority may, by notification in the *Gazette* publish is a person who deals in high value goods.

Protection of identity of persons and information relating to suspicious transaction reports and cash transaction reports.

17. (1) Except for purposes of the due administration of this Order, no person shall disclose any information that will identify or is likely to identify the person who prepared or made a suspicious transaction report or cash transaction report, or handled the underlying transaction.

(2) No person shall be required to disclose a suspicious transaction report or a cash transaction report or any information contained in the report or provided in connection with it, or the identity of the person preparing or making such report or handling the underlying transaction in any judicial proceeding unless the High Court is satisfied that the disclosure of the information is necessary in the interests of justice.

Exemption from liability for good faith reporting of suspicious transactions.

18. No criminal, civil, disciplinary or administrative proceedings for breach of banking or professional secrecy or contract shall lie against financial institutions or designated non-financial businesses and professions or their respective directors, principals, officers, partners, professionals or employees who in good faith submit reports or provide information in accordance with this Order.

Failure in reporting suspicious transactions or cash transactions.

19. Any person who fails to submit a report to the Financial Intelligence Unit as required by sections 15 and 16 is guilty of an offence and liable on conviction to a fine not exceeding \$50,000, imprisonment for a term not exceeding 5 years or both.

Prohibition against tipping-off.

20. (1) No financial institution or designated non-financial business and profession, nor any director, partner, officer, principal or employee thereof shall disclose to their customer or a third party that a report or any other information concerning suspected money laundering or financing of terrorism will be, is being or has been submitted to the Financial Intelligence Unit, or that a investigation into a serious offence, a money laundering offence or an offence substantially similar to those two, is being or has been carried out except in the circumstances set in subsection (2) or when otherwise required by any written law to do so.

(2) A disclosure may be made to carry out a function that a person has relating to the enforcement of any provision of this Order or of any other enactment, or, in the case of an advocate, notary, other independent legal professional or accountant acting as an independent legal professional when seeking to dissuade a client from engaging in illegal activity.

(3) Any person who contravenes subsection (1) is guilty of an offence and liable on a conviction to a fine not exceeding \$500,000, imprisonment for a term of 5 years or both.

Internal reporting procedures.

21. A financial institution or designated non-financial business and profession shall establish and maintain internal reporting procedures to —

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

(b) enable any person identified in accordance with paragraph (a) to have reasonable access to information that may be relevant to determining whether sufficient basis exists to report the matter pursuant to section 15(1); and

(c) require the identified person to report the matter pursuant to section 15(1) where he determines that sufficient basis exists.

Further internal reporting procedures.

22. (1) Financial institutions or designated non-financial business and professions shall develop and implement programmes for the prevention of money laundering and financing of terrorism. Such programmes shall include the following —

(a) internal policies, procedures and controls to fulfill obligations pursuant to this Order;

(b) adequate screening procedures to ensure high standards when hiring employees;

(c) ongoing training for officers and employees to make them aware of the laws and regulations relating to money laundering and the financing of terrorism, to assist them in recognising transactions and actions that may be linked to money laundering or financing of terrorism and instruct them in the procedures to be followed in such cases;

(d) policies and procedures to prevent the misuse of technological developments including those related to electronic means of storing and transferring funds or value; and

(e) independent audit arrangements to review and verify compliance with and effectiveness of the measures taken in accordance with this Order.

(2) Financial institutions or designated non-financial business and professions shall designate a compliance officer at management level to be responsible for the implementation of, and ongoing compliance with, this Order by the institution. Such compliance officer shall have ready access to all books, records and employees of the financial institution or designated non-financial business and profession necessary to fulfill his responsibilities.

Failure to maintain or provide access to records.

23. Any person who intentionally or negligently —

(a) fails to maintain books and records as required by section 14;

(b) destroys or removes such records; or

(c) fails to make such information available in a timely manner in response to a lawful request for such books or records,

is guilty of an offence and liable on conviction to a fine not exceeding \$1,000,000, imprisonment for a term not exceeding one year or both, and, in the case of a continuing offence, to a further fine of \$100,000 for every day during which the offence continues after conviction.

Failure to fulfill due diligence obligations or maintain internal controls.

24. Any person who intentionally or negligently —

(a) fails to conduct due diligence with respect to customers, accounts, and transactions as required by sections 5, 6, 7 and 13;

(b) fails to comply with the obligations for special monitoring as required by sections 9 and 12; or

(c) fails to maintain internal control programmes as required by sections 21 and 22,

is guilty of an offence and liable on conviction to a fine not exceeding \$1,000,000, imprisonment for a term not exceeding one year or both, and, in the case of a continuing offence, to a further fine of \$100,000 for every day during which the offence continues after conviction.

False or misleading statement.

25. Any person who intentionally —

(a) makes a false or misleading statement;

(b) provides false or misleading information; or

(c) otherwise fails to state a material fact in connection with such person's obligations under this Part, including the obligation to make a suspicious transaction or currency transaction report,

is guilty of an offence and liable on conviction to a fine of \$20,000 and imprisonment for a term not exceeding one year or both.

Measures and sanctions.

26. Any supervisory or regulatory authority or competent disciplinary authority that discovers a breach of the obligations established under this Order by a financial institution or designated non-financial business and profession or other regulated business it supervises may impose one or more of the following measures and sanctions —

(a) written warnings;

(b) order to comply with specific instructions;

(c) order reports on a regular basis from the financial institution or designated non-financial business and profession or other regulated business on the measures it is taking;

(d) barring individuals from employment within the sector;

(e) replacing or restricting the powers of managers, directors, principals, partners or controlling owners, including the appointing of *ad hoc* administrator;

(f) a temporary administration of the financial institution or designated non-financial business and profession; or

(g) suspending, restricting or withdrawing the licence of the financial institution or designated non-financial business and profession.

Prohibition against shell banks.

27. (1) No person shall establish or operate a shell bank in Brunei Darussalam.

(2) Any person who establishes —

(a) a shell bank in Brunei Darussalam; or

(b) enters into or continues business relations with a shell bank or a respondent financial institution in a foreign country that permits its account(s) to be used by a shell bank,

is guilty of an offence and liable on conviction to a fine not exceeding \$1,000,000, imprisonment for a term not exceeding one year or both, and, in the case of a continuing offence, to a further fine of \$100,000 for every day during which the offence continues after conviction.

Compliance with obligations by foreign subsidiaries and branches.

28. Financial institutions shall require their foreign branches and majority-owned subsidiaries to implement the requirements under this Part to the extent that domestic applicable laws and regulations of the host country so permit. If the law of the country where the branch or majority-owned subsidiary is situated prevent compliance with these obligations, for any reason, the financial institution shall so advise its competent supervisory authority, which may take such steps as it believes to be appropriate to comply with this Order.

Secrecy and confidentiality obligations overridden.

29. No secrecy or confidentiality provision in any other written law shall prevent a financial institution or designated non-financial business and profession from fulfilling its obligations under this Order.

Chapter III

Financial Intelligence Unit

Functions and powers of Financial Intelligence Unit.

30. The Financial Intelligence Unit shall have the following functions and powers —

- (a) receive reports and information —
 - (i) provided to it by any law enforcement agency in Brunei Darussalam or any Government agency or institution in the Brunei Darussalam; and
 - (ii) voluntarily provided to it about a money laundering offence, a serious offence, a terrorism financing offence or any offence committed against this Order;
 - (iii) provided to it by any agency of another country; or
 - (iv) provided to it by an international organisation;
- (b) analyse, assess and disseminate all reports and information;

(c) may issue guidelines in relation to customer identification, record keeping and reporting obligations, and the identification of suspicious transactions;

(d) may provide training programmes for financial institutions or designated non-financial businesses and professions in relation to customer identification, record keeping and reporting obligations, and the identification of suspicious transactions;

(e) may conduct research into trends and developments in the area of money laundering and the financing of terrorism and improved ways of detecting, preventing and deterring money laundering and the financing of terrorist activities;

(f) may educate the public and create awareness on matters relating to money laundering and the financing of terrorism;

(g) liaise with, and enter into any agreement or arrangement with, any foreign government institution or agency, or any international organisation, regarding the exchange of information pursuant to this Order.

Access to information.

31. (1) In relation to any information it has received in accordance with its functions, the Financial Intelligence Unit is authorised to obtain from any entity or person, subject to the reporting obligations required by sections 15 and 16, any additional information that the Financial Intelligence Unit deems necessary to carry out its functions and such information requested shall be provided within the time limits set and in a form specified by the Financial Intelligence Unit.

(2) The Financial Intelligence Unit is authorised to access and review information on-site that belongs to or is in the custody of financial institutions or designated non-financial businesses and professions which is necessary to the fulfillment of the functions of the Financial Intelligence Unit, including but not limited to —

(a) enter the premises of any financial institution or designated non-financial businesses and professions during ordinary business hours to inspect any records, ask any questions of any employee of the financial institution or designated non-financial businesses and professions relating to such records, and make notes and take copies of the records;

(b) collect any information that the Financial Intelligence Unit considers relevant to money laundering activities, serious offences, the financing of terrorism or any contravention of this Order whether or not publicly available, including commercially available databases, or

information that is collected or maintained, including information that is stored in databases maintained by Government agencies and institutions;

(c) obtain from any government department any records of a person under investigation for committing, or attempting to commit, a money laundering offence, a serious offence, a terrorism financing offence or an offence under this Order;

(d) seek information from any foreign government agency, foreign law enforcement agency, foreign supervisory authority and foreign auditing authority for purposes of this Order;

(e) destroy a suspicious transaction report received or collected on the expiry of 7 years after the date of receipt of the report if there has been no further activity or information relating to the report or the person named in the report, or 7 years from the date of the last activity relating to the person or report;

(f) instruct any financial institution or designated non-financial businesses and professions to take such steps as may be appropriate in relation to any information or report received by the Financial Intelligence Unit, to enforce compliance with this Order or to facilitate any investigation anticipated by the Financial Intelligence Unit or a law enforcement agency;

(g) compile statistics and records, and may disseminate information within Brunei Darussalam or elsewhere and make recommendations arising out of any information received;

(h) where appropriate, periodically provide feedback to financial institutions, designated non-financial businesses and professions and relevant government departments, offices, agencies and institutions regarding outcomes relating to the reports or information provided pursuant to this Order;

(i) obtain further information on persons or transactions referred to in a report made to it pursuant to this Order; and

(j) disclose any report, or information derived from such report, to any government department, office or agency subject to the confidentiality requirements of this Order.

(3) Subsection (2) shall apply subject to the restrictions in the interpretation of “designated non-financial businesses and professions” in section 2 and, subject to section 15(2).

Obligations regarding confidentiality and use of information.

32. (1) Every person who has duties for or within the Financial Intelligence Unit is required to keep confidential any information obtained within the scope of his duties, even after the cessation of those duties, except as otherwise provided in this Order or as ordered by a court.

(2) Any current or past employee of the Financial Intelligence Unit or other person who has duties for or within the Financial Intelligence Unit who intentionally reveals information the confidentiality of which is required to be protected by subsection (1) is guilty of an offence and liable on conviction to a fine not exceeding \$50,000, imprisonment for a term not exceeding 5 years or both.

Action regarding reports or other information received.

33. (1) The Financial Intelligence Unit may refer any report, and information pertaining to that report, to the appropriate law enforcement agency in Brunei Darussalam if, on the basis of its analysis and assessment, it has reasonable grounds to suspect that a transaction, attempted transaction or any other activity would be relevant to the investigation or prosecution of a money laundering offence, serious offence or terrorist financing offence, and in connection therewith, the Financial Intelligence Unit may send a copy of such referral or information to the relevant supervisory authority.

(2) Where the Financial Intelligence Unit has reasonable grounds to suspect that a transaction or attempted transaction may involve a serious offence, money laundering offence, or terrorist financing offence, it may direct in writing that the reporting institution concerned either proceed or refrain from proceeding with the transaction or attempted transaction, for a period to be determined by the Financial Intelligence Unit:

Provided that —

(a) any direction must not exceed 5 business days if the direction is in writing;

(b) any direction given orally must not exceed 24 hours and must be confirmed in writing within 24 hours of the oral direction; or

(c) before the direction expires in 5 days, the Financial Intelligence Unit may apply to the Court for an extension of the period of the direction.

Sharing of information with foreign counterpart agencies.

34. (1) The Financial Intelligence Unit may share information with any foreign counterpart agency that performs similar functions based upon

reciprocity or mutual agreement on the basis of cooperation arrangements entered into between the Financial Intelligence Unit and such foreign counterpart agency.

(2) The Financial Intelligence Unit may liaise with or enter into any agreement or arrangement with any international organisation regarding the exchange of information pursuant to this Order and disclose any report or information derived from such report to any international organisation in accordance with this Order.

(3) The Financial Intelligence Unit may make inquiries on behalf of a foreign counterpart agency where the inquiry may be relevant to the foreign counterpart agency's analysis of a matter involving the investigation or prosecution of a money laundering offence or serious offence.

(4) Notwithstanding subsection (3), the Financial Intelligence Unit may —

(a) search its own databases, including information related to reports of suspicious transactions, and other databases to which the Financial Intelligence Unit had direct or indirect access, including law enforcement databases, public databases, administrative databases and commercially available databases;

(b) obtain from financial institutions or designated non-financial businesses and professions information that is relevant in connection with such request;

(c) obtain from persons information that is relevant in connection with such request to the extent the Financial Intelligence Unit could obtain such information in a domestic matter; and

(d) take any other action in support of the request of the foreign counterpart agency that is consistent with the authority of the Financial Intelligence Unit in a domestic matter.

PART III

CROSS BORDER MOVEMENTS OF PHYSICAL CURRENCY AND BEARER NEGOTIABLE INSTRUMENTS

Cross Border Movements of Physical Currency and Bearer Negotiable Instruments.

35. The object of this Part is to impose measures for the disclosure of information regarding movements of physical currency and bearer negotiable instruments into and out of Brunei Darussalam for the purpose of detecting, investigating and prosecuting any offence involving under money-laundering and related offences made under any written law.

Interpretation.

36. (1) In this Part —

“authorised officer” means an immigration officer, officer of the Royal Customs and Excise Department, police officer, officer of the Anti-Corruption Bureau, officer of the Narcotics Control Bureau or such other person as the Authority may authorise;

“bearer negotiable instruments” means —

(a) a traveller’s cheque; or

(b) any negotiable instrument that is in bearer form, endorsed without any restriction, made out to a fictitious payee or otherwise in such form that title thereto passes upon delivery, and includes a negotiable instrument that has been signed but with the payee’s name omitted;

“business day” means a day other than a Saturday, Sunday or public holiday;

“cash” means physical currency or bearer negotiable instrument;

“commercial goods carrier” means a person who, in the normal course of a business, carries goods or mail for reward, and includes his employee;

“commercial passenger carrier” means a person who, in the normal course of business, carries passengers for reward, and includes his employee;

“eligible place” means any islet, landing place, wharf, dock or quay or premises of a provider of port services or facilities licensed or exempted under the Merchant Shipping Order, 2002 (S 27/2002), Ports Act (Chapter 144) or the Civil Aviation Order, 2006 (S 63/2006);

“embarkation location” means an immigration control post, place of embarkation, authorised airport, authorised point of departure or authorised departing place prescribed under section 5(2) of the Immigration Act (Chapter 17);

“physical currency” means the coin and printed money (whether of Brunei Darussalam or of a foreign country) that —

(a) is designated as legal tender; and

(b) circulates as, and is customarily used and accepted as, a medium of exchange in the country or territory of issue;

“printed money” means money comprising a note printed, written or otherwise made on polymer, paper or any other material;

“send” includes send through the post or by means of another person.

(2) In determining whether an amount of foreign currency (including an amount in which a document is denominated) is equivalent to a Brunei Darussalam dollar amount under sections 35 to 47, the amount of foreign currency is to be translated to Brunei Darussalam currency at the exchange rate applicable at the relevant time.

(3) For the purposes of sections 35 to 47 —

(a) a person moves cash out of Brunei Darussalam if the person takes or sends the cash (whether in a receptacle or otherwise) out of Brunei Darussalam; and

(b) a person moves cash into Brunei Darussalam if the person brings or sends the cash (whether in a receptacle or otherwise) into Brunei Darussalam.

Reports about cross border movements of cash.

37. (1) A person shall not move or attempt to move into or out of Brunei Darussalam cash the total value of which exceeds the prescribed amount, without giving a report in respect of the movement accordance with this section.

(2) A person who contravenes subsection (1) is guilty of an offence and liable on conviction to a fine not exceeding \$50,000, imprisonment for a term not exceeding 3 years or both.

(3) It shall be a defence for a person charged with an offence under subsection (2) to prove that he did not know or had no reasonable grounds to believe that the receptacle within which the case was moved or attempted to be moved contained cash.

(4) A report under this section shall —

(a) be in a form approved by the Authority;

(b) contain full and accurate information relating to the matter being reported as is specified in the form;

(c) be given —

- (i) to an officer of customs or an immigration officer, if the movement of cash is to be effected by a person bringing or taking the cash into or out of Brunei Darussalam with the person; or
- (ii) in any other case, to the Authority or, if regulations permit, to an authorised officer; and

(d) be given at the prescribed time.

(5) The Authority may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations for the matters referred to in subsections (5)(a), (c) and (d); and may, for the purposes of subsections (5)(a) and (d), prescribe different forms and different times —

(a) for different manners of moving cash into and out of Brunei Darussalam; and

(b) for different classes of persons.

(6) Subsection (1) shall not apply if —

(a) the person is a commercial passenger carrier; and

(b) the cash is in the possession of any of the carrier's passengers.

(7) Subsection (1) shall not apply if —

(a) the person is a commercial goods carrier;

(b) the cash is carried on behalf of another person;

(c) the other person has not disclosed to the carrier that the goods carried on behalf of the other person include cash; and

(d) the carrier does not know and has no reasonable grounds to believe that the goods carried on behalf of the other person include cash.

(8) The burden of proving the matters referred to in subsection (6) or (7) lies with the person who wishes to rely on that subsection.

Obligation of immigration officers or officers of customs.

38. If a report under section 37 is given to an immigration officer or officer of customs, he shall, forward it to the Authority.

Reports about transportation of cash into or out of Brunei Darussalam by cargo, courier, postal service or any other means.

39. (1) A person who receives cash the total value of which exceeds the prescribed amount, which is moved to the person from outside Brunei Darussalam by cargo, courier, postal service or any other means, shall make a report in accordance with this section before the end of the period 5 business days beginning on the day of the receipt.

(2) A person who transmits cash the total value of which exceeds the prescribed amount which is moved from the person to outside Brunei Darussalam by cargo, courier, postal service or any other means, shall make a report in accordance with this section before the end of the period 5 business days beginning on the day of transmission.

(3) A person who contravenes subsection (1) or (2) is guilty of an offence and liable on conviction to a fine not exceeding \$50,000, imprisonment for a term not exceeding 3 years or both.

(4) It shall be a defence for a person charged with an offence against subsection (1) to prove that he did not know and had no reasonable ground to believe that the cash was moved from outside Brunei Darussalam.

(5) A report under this section shall —

- (a) be in a form approved by the Authority;
- (b) contain full and accurate information relating to the receipt being reported as is specified in the form; and
- (c) be given to the Authority.

Questioning.

40. (1) A person who —

- (a) is about to leave Brunei Darussalam;
- (b) is in an embarkation location for the purpose of leaving Brunei Darussalam; or
- (c) arrives in Brunei Darussalam,

shall, if required to do so by an authorised officer —

- (i) declare whether or not he has with him any cash;

- (ii) declare the total value of any cash that he has with him;
- (iii) declare whether or not, to the best of his knowledge and belief, a report under section 37 has been given in respect of any cash that he has with him;
- (iv) produce to the officer any cash that he has with him; and
- (v) answer any question the officer may have with respect to the cash including but not limited to the source, ownership, acquisition, use or intended destination of any cash in that person's possession.

Search.

41. (1) An authorised officer may, with such assistance as is reasonable and necessary, examine any article or baggage which a person has with him if he —

- (a) is about to leave Brunei Darussalam;
- (b) is in an embarkation location for the purpose of leaving Brunei Darussalam; or
- (c) arrives in Brunei Darussalam,

for the purpose of finding out whether he has with him any cash in respect of which a report under section 37 is required or to determine the accuracy of the information contained in the report.

(2) An authorised officer, may, with such assistance as is reasonable and necessary, search a person for the purpose of finding out whether he has with him any cash in respect of which a report under section 37 is required so long as —

- (a) he —
 - (i) is about to leave Brunei Darussalam;
 - (ii) is in an embarkation location for the purpose of leaving Brunei Darussalam;
 - (iii) has arrived in Brunei Darussalam; and
- (b) the officer has reasonable grounds to suspect that there is on him or in clothing being worn by him, cash in respect of which a report under section 37 is required;

(c) the officer has reasonable grounds to suspect that there is on him cash which is intended by any person for use in unlawful activity and the amount of which is not less than the prescribed amount.

(d) the officer has reasonable grounds to suspect that the person is carrying cash and has failed to declare the cash, the amount of which is not less than the prescribed amount in the prescribed form.

(3) A person must not be searched under subsection (2) except by a person of the same gender with strict regard to decency.

(4) An authorised officer and any person assisting the officer may board the motor vehicle, vessel or aircraft or enter any premises for the purpose of exercising the powers conferred by sections 40 and 41.

(5) An authorised officer may, with such assistance as is reasonable and necessary —

(a) board a motor vehicle, vessel or aircraft; and

(b) examine or search that motor vehicle, vessel or aircraft, and any thing found on that motor vehicle, vessel or aircraft,

for the purpose of ascertaining whether there is on board that motor vehicle, vessel or aircraft any cash in respect of which a report under section 37 is required or the officer has reasonable grounds to suspect that there is on him cash which is intended by any person for use in unlawful activity and the amount of which is not less than the prescribed amount or the officer has reasonable grounds to suspect that the person is carrying cash and has failed to declare the cash, the amount of which is not less than the prescribed amount in the prescribed form.

(6) Where an authorised officer has reasonable grounds to suspect that an offence against section 37 may have been committed or has reasonable grounds to suspect that there is on him cash which is intended by any person for use in unlawful activity and the amount of which is not less than the prescribed amount, he may, with such assistance as is reasonable and necessary —

(a) enter any eligible place; and

(b) search that place and any thing found at or in it,

for the purpose of ascertaining whether there is at or in the place, or in the thing, any cash in respect of which report under section 37 is required or the officer has reasonable grounds to suspect that there is on him cash which is intended by any person for use in unlawful activity and the amount of which is not less than the prescribed amount or the officer has reasonable grounds to suspect that the

person is carrying cash and has failed to declare the cash, the amount of which is not less than the prescribed amount in the prescribed form.

Seizure of cash.

42. An authorised officer may seize any cash, if he has reasonable grounds for suspecting that —

(a) the cash may afford evidence to the commission of an offence under section 37;

(b) the cash is tainted property; or

(c) the cash is intended by any person for the use in unlawful activity.

Detention of seized cash.

43. (1) While the authorised officer continues to have reasonable grounds for his suspicion or for the purposes of investigation, cash seized under section 42 may be detained for a period of 72 hours.

(2) The period for which the cash or any part of it may be detained may be extended by an order made by the High Court, but the order may not authorise the detention of any of the cash —

(a) beyond the end of the period of 3 months beginning with the date of the order; or

(b) in the case of any further order under this section, beyond the end of the period of 2 years beginning with the date of the first order.

(3) An application for an order under subsection (2) may be made by the authorised officer, and the High Court may make the order if satisfied, in relation to any cash that is further detained, that either of the following conditions is met —

(a) there are reasonable grounds for suspecting that the cash is tainted property and that either —

(i) its continued detention is justified while its source, ownership, use or destination is further investigated or consideration is given to bringing proceedings against any person for an offence with which the cash is connected; or

(ii) proceedings against any person for an offence with which the cash is connected have been started and have not been concluded;

(b) there are reasonable grounds for suspecting that the cash is intended to be used in unlawful activity and that either —

- (i) its continued detention is justified while its intended use is further investigated or consideration is given to bringing proceedings against any person for an offence with which the cash is connected; or
- (ii) proceedings against any person for an offence with which cash is connected have been started and have not been concluded.

(4) An application for an order under subsection (2) may also be made in respect of any cash seized under section 42, and the High Court may make the order if satisfied that —

(a) the condition under subsection (3) is met in respect of part of the cash; and

(b) it is not reasonably practicable to detain only that part.

(5) An order under subsection (2) shall provide for notice to be given to any persons affected by it.

Release of seized cash.

44. The High Court may direct the release of the whole or any part of the cash if the following condition is met —

(a) the High Court is satisfied, on an application by the person from whom the cash was seized, that the conditions in section 43 for the detention of the cash are no longer met in relation to the cash to be released;

(b) after notifying the High Court under whose order cash is being seized, an authorised officer may, release the whole or any part of it if satisfied that the seizure of the cash to be released is no longer justified.

Forfeiture.

45. (1) While cash is detained under section 43, an application for the forfeiture of the whole or any part of it may be made to the High Court by the Public Prosecutor.

(2) The High Court may order the forfeiture of the cash or any part of it if satisfied that on the balance of probabilities the cash or part is —

(a) tainted property; or

(b) intended by any person for use in an unlawful activity.

(3) Where an application for the forfeiture of any cash is made under this section, the cash is to be seized and may not be released under any power conferred by this Order until any proceedings in pursuance of the application including any proceedings on appeal are concluded.

(4) Where cash has been seized or detained under sections 42 and 43 and no application under section 48 has been made within the period of 30 days from the time of seizure, then the cash shall be forfeited to the Government.

Application of forfeited cash.

46. (1) Cash forfeited under this Part shall be paid into the Criminal Assets Confiscation Fund.

(2) Any forfeited cash under subsection (1) shall not be paid into the Fund —

(a) before the end of the period within which an appeal is made; or

(b) before the appeal is determined or otherwise disposed of.

Victims and other owners.

47. (1) A person who claims that any cash or any part of it, seized under this Part belongs to him may apply to the High Court for the cash or part to be released to him.

(2) Where the application is made by a person under subsection (1) and if it appears to the High Court that —

(a) the applicant was deprived of the cash to which the application relates, or of cash which it represents, by unlawful activity;

(b) the cash he was deprived of was not, immediately before he was deprived of it, tainted property; and

(c) the cash belongs to him,

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

(3) The High Court may order the cash to which the application relates to be released to the applicant or to the person from whom it was seized, if —

(a) the applicant is not the person from whom the cash to which the application relates was seized;

(b) it appears to the Court that that cash belongs to the applicant;

(c) the High Court is satisfied that the conditions in section 42 for the seizure of that cash are no longer met or, if an application has been made under section 45, the Court decides not to make an order under that section in relation to that cash; and

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

PART IV

RESTRAINING ORDERS, CONFISCATION ORDERS, BENEFIT RECOVERY ORDERS, NON-CONVICTION BASED FORFEITURE ORDERS AND UNEXPLAINED WEALTH DECLARATIONS

Application.

48. (1) This Part shall apply —

(a) in respect to any money laundering offence or serious offence; and

(b) in respect of an offence under the law of a foreign country in relation to acts and omissions which, had they occurred in Brunei Darussalam would have constituted a money laundering offence or serious offence or in Brunei Darussalam:

Provided that —

- (i) in the case of a request relating to a restraining or to the recovery of proceeds, instrumentalities or benefits, there is property located in Brunei Darussalam that can be restrained or recovered for the purpose of a confiscation order or benefit recovery order; or
- (ii) in the case of a request relating to tracing, identifying, locating or quantifying proceeds, benefits or instrumentalities, there is or may be relevant information or evidence within Brunei Darussalam; and
- (iii) a request of assistance has been made by the foreign country for the restraining or confiscation of property in relation to the offence, or for information or evidence that may be relevant to the proceeds, benefits or instrumentalities of the offence.

(2) With respect to the application of this Part, in relation to the offences set in subsection (1)/b/, the authorities within Brunei Darussalam shall have discretion whether or not to seek orders and to otherwise apply the provisions of this Part.

(3) This Part shall apply even if the conduct which forms the basis for the offence occurred before the Part came into effect, and shall apply to any benefit whether it was obtained before or after this Part came into force.

Chapter I

Restraining Orders

Application for restraining order.

49. (1) Where there are reasonable grounds to suspect that any property is tainted property in respect of which a confiscation order under section 60 may be made, the Public Prosecutor may apply to the High Court for a restraining order under subsection (3) against that property.

(2) Where there are reasonable grounds to suspect that a benefit recovery order may be issued under section 75, the Public Prosecutor may apply to the High Court for a restraining order under subsection (5) against any realisable property held by the person.

(3) An application for a restraining order may be made *ex parte* and shall be in writing.

(4) An application under subsection (1) shall be accompanied by an *affidavit* stating —

(a) a description of the property in respect of which the restraining order is sought;

(b) the location of the property, if known;

(c) the grounds for belief that the property is tainted property for which a confiscation order under section 60 is made.

(5) An application under subsection (2) shall be accompanied by an *affidavit* stating —

(a) a description of the property in respect of which the restraining order is sought;

(b) the location of the property, if known;

(c) the grounds for the belief that the person who is suspected of having committed a serious offence has derived a benefit directly or indirectly from the commission of the offence; and

(d) where the application seeks a restraining order against the property of a person other than a person who is suspected of having committed a serious offence, the grounds for the belief that the property is of or in the possession or effective control of that person.

Restraining orders.

50. (1) Subject to this section, where the Public Prosecutor applies to the High Court for a restraining order against property under section 49(1) and the High Court is satisfied that there are reasonable grounds for suspecting that the property is tainted property, the High Court may make an order under subsection (3).

(2) Where the Public Prosecutor applies to the High Court for a restraining order against property under section 49(2) and the High Court is satisfied on the balance of probabilities that —

(a) there are reasonable grounds for suspecting that the person is suspected of having committed a serious offence has derived a benefit directly or indirectly from the commission of the offence; and

(b) the property is the realisable property of that person,

the High Court may make an order under subsection (3).

(3) Where satisfied under subsection (1) or (2), the High Court may make an order —

(a) prohibiting the defendant or any person from disposing of, or dealing with, the property or such part thereof or interest except in the manner specified in the order; and

(b) at the request of the Public Prosecutor, where the High Court is satisfied that the circumstances so require that an authorised officer or any other person appointed by the High Court take custody of the property or such part thereof and manage or otherwise deal with all or any part of the property in accordance with the directions of the High Court.

(4) For the avoidance of doubt, the High Court may make an order under subsection (3) in respect of money or other property located in Brunei Darussalam or elsewhere.

(5) An order under subsection (1) may be made subject to the conditions as the High Court thinks fit and, without limiting the generality of this section, may make provision for meeting, out of the property or a specified part of the property —

(a) the person's reasonable living expenses (including the reasonable living expenses of the person's dependents (if any)) and reasonable business expenses;

(b) the person's reasonable legal expenses in defending a criminal charge and any proceedings under this Order; or

(c) other specified debt incurred by the person in good faith,

but the High Court shall not make such provision unless it is satisfied that the person cannot meet the expenses or debt concerned out of property that is not subject to a restraining order.

(6) In determining whether there are reasonable grounds for believing that property is property of or in the possession or effective control of the person, the High Court may have regard to matters referred to in section 80(2).

(7) Where an authorised officer or any other person appointed by the High Court is given a direction under section 53(2)(e), the authorised officer or any other person appointed by the High Court may do anything that is reasonably necessary for preserving the property and for this purpose may exercise any power that the owner of the property could exercise and do to the exclusion of the owner.

(8) Where the Public Prosecutor applies to the High Court for an order under subsection (1), a witness shall not be required to answer a question or to produce a document if the High Court is satisfied that answering the question or producing the document may prejudice the investigation of, or prosecution of a person for, an offence.

(9) The High Court may make a restraining order whether or not there are reasonable grounds for believing that there is an immediate risk of the property being disposed of or otherwise dealt with.

(10) The High Court hearing an application for an order under subsection (1) may, before final determination of the application and on the application of the Public Prosecutor, amend the application to include any other property upon being satisfied that the property was acquired after the application was originally made.

(11) An order under subsection (1) may apply —

(a) to all realisable property held by a specified person, whether the property is described in the order or not; and

(b) to all realisable property held by a specified person, being property transferred to him after the making of the order.

Notice of application for restraining order.

51. (1) Subject to subsection (2), before making a restraining order, the High Court shall require 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) If the Public Prosecutor so requests, the High Court shall consider the application without requiring notice to be given under subsection (1) but a restraining order in accordance with this subsection shall cease to have effect after 30 days or such lesser period as the Court specifies in the order.

(3) The High Court may, on application by the Public Prosecutor, extend the period of operation of a restraining order made under subsection (2) but shall not consider the application without requiring notice to be given under subsection (1).

Service of restraining order.

52. (1) Subject to subsection (2), a copy of a restraining order shall be served on a person affected by the order in a manner as required by section 126 or as prescribed by Rules of Court.

(2) Where the High 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 with regard to restraining orders.

53. (1) Where the High Court makes, or has made, a restraining order, the Court may, on application by the Public Prosecutor, a person whose property is subject of the restraining order (in this section called “the owner”), an authorised officer or any other person appointed by the Court (if the restraining order directs an authorised officer or any other person appointed by the Court, to take custody and control of the property), or with the leave of the Court, any other person, make any ancillary orders it considers appropriate.

(2) Notwithstanding subsection (1), an ancillary order may —

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

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

(c) order the examination on oath before the Court of any person about the affairs of the owner or the defendant;

(d) direct the owner or the defendant to give a specified person a statement on oath setting out a particulars of the property, or dealings with the property, as the Court thinks fit; or

(e) where the restraining order directs the authorised officer or any other person appointed by the Court to take custody and control of property —

- (i) regulate the performance or exercise of functions, duties or powers under the restraining order by the authorised officer or any other person appointed by the Court;
- (ii) determine any question relating to the property;
- (iii) direct a person to do any act or thing to enable an authorised officer or any other person appointed by the Court to take custody and control of the property;
- (iv) make provision for the payment to an authorised officer or any other person appointed by the Court out of the property of the costs, charges and expenses incurred in connection with the performance or exercise by an authorised officer or any other person appointed by the Court of functions, duties or powers under the restraining order.

(3) Where a person who has an interest in property in respect of which a restraining order was made applies to the Court for a variation of the order to exclude the person's interest from the order, the Court may grant the application if the Court is satisfied —

(a) that the interest is not tainted property and that it cannot be required to satisfy a benefit recovery order; or

(b) that the applicant was not in any way involved in the commission of the offence in respect of which the restraining order was made and, where the applicant acquired the interest at the time of or after the commission (or alleged commission) of the offence, that the applicant acquired the interest —

- (i) for sufficient consideration; and
- (ii) without knowing, and in circumstances such as not to arouse a reasonable suspicion, that the property was tainted property

or that the property was a benefit obtained from or in connection with the commission of a serious offence; or

(c) in any case it is fit 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) An application under subsection (1) shall not be heard by the High Court unless the applicant has given to each other person who is entitled to make an application under subsection (1) in relation to the restraining order notice in writing of the application.

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

(6) Where a person is required, in accordance with an order under subsection (2)(c) or (d), to make or give a statement on oath, the person is not excused from making or giving the statement on the ground that the statement, or part of the statement might tend to incriminate the person or make the person liable to confiscation or a penalty but the statement, and any information, document or thing obtained as a direct or indirect consequence of the statement, is not admissible against the person in any criminal proceedings except a proceeding in respect of the false statement.

Authorised officer or any other person appointed by High Court to satisfy benefit recovery order.

54. (1) Where —

(a) a benefit recovery order is made against a defendant's conviction of an offence; and

(b) a restraining order is made against the property of the defendant, or property of another person in relation to which an order under section 80(3) is in force, in reliance on the defendant's conviction, or alleged commission, of the offence,

the High Court may, upon the making of the later of the orders or, on application by the Public Prosecutor while the restraining order remains in force, direct the authorised officer or any other person appointed by the Court to satisfy the benefit recovery order by a payment to the Criminal Assets Confiscation Fund out of the property.

(2) For the purposes of enabling an authorised officer or any other person appointed by the High Court to comply with a direction under subsection (1), the Court may —

(a) direct the authorised officer or any other person appointed by the High Court to sell or otherwise dispose of such of the property as the Court specifies; and

(b) order that the authorised officer or any other person appointed by the High Court may execute, and do anything necessary to give validity and operation to, any deed or instrument in the name of a person who owns or has an interest in the property,

and where the High Court makes an order, the execution of the deed or instrument by the authorised officer or any other person appointed by the High Court has the same force and validity as if the deed or instrument had been executed by the person.

(3) An authorised officer or any other person appointed by the High Court shall refrain from taking action to sell property pursuant to a direction under subsection (1) —

(a) until the relevant appeal date; or

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

(4) In this section, “relevant appeal date” used in relation to a benefit recovery order made in consequence of a person’s conviction of a serious offence means —

(a) the date on which the period allowed by the Criminal Procedure Code (Chapter 7) for the lodging of an appeal against a person’s conviction, or for the lodging of an appeal against the making of a benefit recovery order, expires without an appeal having been lodged, whichever is the later; or

(b) where an appeal against a person’s conviction or against the making of the benefit recovery order is lodged, the date on which the appeal or the later appeal, lapses in accordance with the Criminal Procedure Code (Chapter 7) or is finally determined.

Restraining order made in respect of land.

55. In the case of a restraining order made in respect of land —

(a) the restraining order shall inhibit for a specified period of time or until the occurrence of a specified event, or generally until further order, the registration of any dealing with any land, lease or charge;

(b) a copy of the restraining order under the seal of the High Court, with the particulars of the land, lease or charge thereby affected shall be sent to the Commissioner of Land who shall register it in the Register kept by him under section 7 of the Land Code (Chapter 40) in respect of that land and no restraining order shall bind or affect the land, lease or charge until it has been registered; and

(c) so long as the restraining order remains registered no instrument which is inconsistent with it shall be registered.

Seizure of property subject to restraining order.

56. (1) In order to prevent any property from being disposed of or removed contrary to a restraining order, any authorised officer may seize any such property if such authorised officer has reasonable grounds to believe that such property will be so disposed of or removed.

(2) Property seized under subsection (1) shall be dealt with in accordance with the directions of the High Court.

Contravention of restraining order.

57. (1) Any person who knowingly contravenes a restraining order by disposing of or otherwise dealing with property that is subject to a restraining order is guilty of an offence and liable on conviction to a fine not exceeding of \$20,000, imprisonment for a term not exceeding one year or both and, if the person is a body corporate, a fine not exceeding \$1,000,000 and in the case of a continuing offence, to a further fine of \$2,000 in the case of an individual and \$100,000 if the person is a body corporate for every day during which the offence continues after conviction.

(2) Where —

(a) a restraining order is made against property;

(b) the property is disposed of or otherwise dealt with in contravention of the restraining order;

(c) the disposition was either not for sufficient consideration or not in favour of a person who acted in good faith,

the Public Prosecutor may apply to the Court that made the restraining order for an order that the disposition or dealing be set aside.

(3) Where the Public Prosecutor makes an application under subsection (2) in relation to a disposition or dealing, the High Court may —

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

(b) set the disposition or dealing aside from the day of the order under this subsection and declaring the respective rights of any persons who acquired interests in the property on or after the day on which the disposition or dealing took place and before the order is made under this subsection.

High Court may revoke restraining orders.

58. (1) Where the High Court has made a restraining order against a person's property, the Court may, on application by the person, revoke the order of the applicant —

(a) where the applicant who is a defendant gives security satisfactory to the High Court for the satisfaction of any benefit recovery order that may be made against the person under this Order; or

(b) gives undertakings satisfactory to the High Court concerning the person's property.

(2) An applicant under subsection (1) shall give written notice of the application to the Public Prosecutor and, if the restraining order directed an authorised officer or any person appointed by the High Court to take control of the property, an authorised officer or any person appointed by the Court.

When restraining order ceases to be in force.

59. (1) Subject to subsection (2), a restraining order made in reliance on a person's conviction or alleged commission of a serious offence ceases to be in force, in whole or in part —

(a) when the charge against the person is withdrawn or the person is acquitted of the charge and no application under section 83 or 85 has been made against the property subject to the order;

(b) when the property subject to the order is used to satisfy a benefit recovery order which was made in reliance on the person's conviction of the offence or an order under section 89;

(c) when the High Court refuses an application for a benefit recovery order in reliance on the person's conviction of the offence; or

(d) when property subject to the order is confiscated under section 68, 83 or 89.

(2) Notwithstanding subsection (1), a restraining order ceases to be in force at the end of 12 months after the day when the restraining order was made but the High Court may within that period, on application by the Public Prosecutor, order that the restraining order shall continue in force until a specified time or event, if the Court is satisfied that a confiscation order may still be made in respect of the property or the property may be required to satisfy a benefit recovery order which has not yet been made.

(3) The Public Prosecutor shall give a person written notice of an application under subsection (2) in relation to a restraining order in respect of property of the person.

Chapter II

Confiscation Orders and Benefit Recovery Orders

Application for confiscation order or benefit recovery order.

60. (1) Where a person is convicted of a money laundering offence or serious offence, the Public Prosecutor may, not later than 2 years after the conviction, apply to the High Court by way of notice of motion and *affidavit* for one or both of the following orders —

(a) a confiscation order against property that is tainted property in respect of the offence;

(b) a benefit recovery order against the person in respect of benefits derived by the person from the commission of the offence.

(2) An application under subsection (1) may be made in respect of one or more than one offence.

(3) Where an application under this section is finally determined, no further application for a confiscation order or benefit recovery order may be made in respect of the offence for which the person was convicted without the leave of the High Court unless it is satisfied that —

(a) the property or benefit to which the new application relates was identified after the previous application was determined;

(b) necessary evidence became available after the previous application was determined; and

(c) it is in the interest of justice leave be granted.

Notice of application.

61. (1) Where the Public Prosecutor applies for a confiscation order against property in respect of a conviction of a money laundering offence or serious offence —

(a) the Public Prosecutor shall give no less than 14 days written notice of the application to the person convicted and to any other person who the Public Prosecutor has reason to believe may have an interest in the property or who may be affected by the order;

(b) the person convicted and any other person who claims an interest in the property or who may be affected by the order may appear and adduce evidence at the hearing of the application; and

(c) the High Court may, at any time before the final determination of the application, direct the Public Prosecutor to give notice of the application to any person who, in the opinion of the Court, appears to have an interest in the property;

(d) the Court may at any time before the final determination of the application cause to be published in a manner as the High Court may determine a notice of the application.

(2) Where the Public Prosecutor applies for a benefit recovery order against a person convicted of a serious offence —

(a) the Public Prosecutor shall give no less than 14 days written notice of the application to the person convicted; and

(b) the person convicted may appear and adduce evidence at the hearing of the application.

Amendment of application.

62. (1) The High Court hearing an application under section 60 may, before the final determination of the application, and on the application of the Public Prosecutor, amend the application to include any other property or benefit upon being satisfied that —

(a) the property or benefit was not reasonably capable of identification when the application was made; or

(b) necessary evidence became available only after the application was originally made.

(2) Where the Public Prosecutor applies to amend an application for a confiscation order and the amendment would have the effect of including additional property in the application for confiscation, he shall give no less than 14 days written notice of the application to amend to any person who he has a reason to believe may have an interest in the property the subject of the application for a confiscation order.

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

(4) Where the Public Prosecutor applies to amend an application for a benefit recovery order against a person convicted of a serious offence and the effect of the amendment would be to include an additional benefit in the application he shall give the person no less than 14 days written notice of the application to amend.

Procedure on application.

63. (1) Where an application is made to the High Court for a confiscation order or benefit recovery order the High Court may have regard to the transcript of any proceedings against the person convicted of the serious offence and hear such further oral evidence as the Court may deem fit.

(2) Where an application is made for a confiscation order or benefit recovery order to the High Court and where the Court has not, when the application is made, passed sentence on the person for the offence, the Court may, defer passing sentence until it has determined the application for the order.

Absconded person.

64. (1) For the purposes of this Order, a person shall be taken to be convicted of a money laundering offence or serious offence, or other offences under this Order, as the case may be, if the person absconds in connection with a money laundering offence, serious offence or other offences committed under this Order.

(2) For the purposes of subsection (1), a person shall be taken to abscond in connection with offences under this Order or serious offence if —

(a) investigations for a money laundering offence or serious offence have commenced against the person; and

(b) the person —

(i) left Brunei Darussalam to avoid any institution of proceedings;

- (ii) cannot be found, apprehended or extradited at the end of the period of 6 months from the date on which investigations referred to in paragraph (a) was commenced; or
- (iii) dies before proceedings were instituted, or if such proceedings were instituted, before he is convicted of the offence.

Confiscation order where person has absconded.

65. Where a person is, by reason of section 64, to be taken to have been convicted of a money laundering offence, serious offence or other offences under this Order, as the case may be, the Court may make a confiscation order if the High Court is satisfied —

(a) on the evidence adduced before it that, on the balance of probabilities, the person has absconded; and

(b) having regard to all the evidence before the Court, that such property is tainted property.

Effect of death on proceedings.

66. (1) Proceedings under this Order shall be instituted or continued against the personal representatives of a deceased defendant or, if there are no personal representatives, such beneficiary or beneficiaries of the estate of the deceased defendant as may be specified by the Court upon the application of the Public Prosecutor.

(2) Where the power conferred by this Order to make a confiscation order is to be exercised in relation to a deceased defendant, the order shall be made against the estate of the deceased defendant.

(3) In this section, “deceased defendant” means a person who dies —

(a) after an investigation into a money laundering offence or serious offence has been commenced against him; and

(b) before proceedings in respect of the offence have been instituted or if such proceedings have been instituted, before he is convicted of the offence.

(4) In this section, a reference to property or interest in property shall include a reference to income accruing from such property or interest.

Service of documents on absconders.

67. Where any document is required under this Order to be served on a person who cannot be found or who is outside Brunei Darussalam and cannot be compelled to attend before a court in respect of proceedings under this Order, the High Court may dispense with service of the document upon him and the proceedings may be continued to their final conclusion in his absence.

Confiscation order on conviction.

68. (1) Where, upon application by the Public Prosecutor, the High Court is satisfied that property is tainted property in respect of a money laundering or serious offence of which a person has been convicted, the High Court may order that property be confiscated.

(2) In determining whether property is tainted property, the High Court may presume —

(a) where the evidence establishes that the property was in the person's possession at the time of, or immediately after, the commission of the offence of which the person was convicted that the property was used in, or in connection with, the commission of the offence;

(b) where the evidence establishes that the property was under the control of the person at the time of, or immediately after, the commission of the offence of which the person was convicted — that the property was derived, obtained or realised as a result of the commission by the person of the offence of which the person was convicted;

(c) where the evidence establishes that the property, and in particular money, was found in the person's possession or under the person's control in a building, vehicle, receptacle or place during the course of investigations conducted by the police before or after the arrest an charge of the person for the offence of which the person was convicted, that the property was derived, obtained or realised as a result of the commission by the person of the offence of which the person was convicted;

(d) where the evidence establishes that the value, after the commission of the offence, of all ascertainable property of a person convicted of the offence exceeds the value of all ascertainable property of that person prior to the commission of that offence, and the High Court is satisfied that the income of that person from sources unrelated to criminal activity of that person cannot reasonably account for the increase in value — that the value of the increase represents property which was derived, obtained or realised by the person directly or indirectly from the commission of the offence of which the person was convicted.

(3) Where the High Court orders that property, other than money, be confiscated, the Court shall specify in the order the amount that it considers to be the value of the property at the time when the order is made.

(4) In considering whether a confiscation order should be made under subsection (1) the Court shall have regard to —

- (a) the rights and interests, of any person in the property;
- (b) the gravity of the offence concerned;
- (c) any undue hardship that may reasonably be expected to be caused to any person by the making 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) Where the High Court makes a confiscation order, the Court may give such directions as are necessary or convenient for giving effect to the order.

(6) In determining whether the property is the subject-matter of a money laundering offence or a serious offence, the High Court shall apply the standard of proof required in civil proceedings.

Effect of confiscation order.

69. (1) Subject to subsection (2), where the High Court makes a confiscation order against any property, the property shall vest absolutely in the Government.

(2) Where the High Court makes a confiscation order against property —

(a) the property shall 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 on behalf of the Government before the relevant appeal date; and

(b) if, after the relevant appeal date, the order has not been discharged, the property may be disposed of and the proceeds applied or otherwise dealt with in accordance with the direction of the Public Prosecutor.

(3) In this section —

“relevant appeal date” used in relation to a confiscation order made in consequence of a person’s conviction of a serious offence means —

(a) the date on which the period allowed by the Criminal Procedure Code (Chapter 7) for the lodging of an appeal against a person's conviction or for the lodging of an appeal against the making of a confiscation order expires without an appeal having been lodged, whichever is the later; or

(b) where an appeal against a person's conviction or against the making of a confiscation order is lodged, the date on which the appeal is finally determined.

Voidable transfers.

70. The High Court may —

(a) before making a confiscation order or benefit recovery order; and

(b) in the case of property in respect of which a restraining order was made, under section 50,

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

Protection of third parties.

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

(2) If a person applies to the High Court for an order under this subsection in respect of the person's interest in property and the Court is satisfied that —

(a) the applicant has an interest in the property;

(b) the applicant was not in any way involved in the commission of the offence in respect of which the confiscation of the property is sought or the confiscation order against the property was made;

(c) the applicant —

(i) had the interest before the serious offence occurred; or

(ii) acquired the interest during or after the commission of the offence, *bona fide* and for fair value and did not know or could not reasonably have known at the time of the acquisition that the property was tainted property;

(d) the applicant did not acquire any right in the property from a person proceeded against under circumstances that give rise to a reasonable inference that any right was transferred for the purpose of avoiding the eventual subsequent confiscation of the property; and

(e) the applicant did all that could be reasonably expected to prevent the illegal use of the property,

the Court may make an order declaring the nature, extent and value (as at the time when the order is made) of the applicant's interest.

(3) Subject to subsection (4), where a confiscation order has already been made directing the confiscation of property, a person who claims an interest in the property may, before the end of the period of 6 months commencing on the day on which the confiscation order is made, apply under this subsection to the High Court for an order under subsection (2).

(4) A person who —

(a) had knowledge of the application for the confiscation order before the order was made; or

(b) appeared at the hearing of that application,

shall not be permitted to make an application under subsection (3), except with the leave of the High Court.

(5) A person who makes an application under subsection (1) or (3) shall give notice of the application to the Public Prosecutor, who shall be a party to any proceedings in the application.

(6) An applicant or the Public Prosecutor may, in accordance with the Rules of Court, appeal to the Court of Appeal from an order made under subsection (2).

(7) The High Court shall, on application by any person who has obtained an order under subsection (2), and where the period allowed by the Rules of Court for appeal has expired or any appeal from that order has been determined —

(a) direct that the property, or the part thereof to which the interest of the applicant relates, be returned to the applicant; or

(b) direct that an amount equal to the value of the interest of the applicant, as declared in the order, be paid to the applicant.

Discharge of confiscation order and quashing of conviction.

72. (1) Where the High Court makes a confiscation order against property in reliance on a person's conviction of a serious offence and the conviction is subsequently quashed, the person may apply to the High Court for the discharge of the order.

(2) Where a confiscation order is discharged under subsection (1), any person claiming to have had an interest in the property immediately before the making of the confiscation order may apply to the High Court for the transfer of the interest to himself.

(3) A person who makes an application under subsection (2) shall give no less than 14 days notice to the Public Prosecutor and to the person who applied for the discharge of the order and both shall be parties to the proceedings.

(4) On consideration of any application under subsection (2) the High Court shall make an order declaring the nature, extent and value of the person's interest in the property the subject of the order and may take any necessary action to effect the transfer or return of the property including any registration of the interest in the property.

Payment instead of confiscation order.

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

- (a) it cannot, with due diligence be located or identified;
- (b) it has been transferred to a third party in circumstances which do not give rise to a reasonable inference that the title or interest was transferred for the purpose of avoiding the confiscation of the property;
- (c) it is located outside Brunei Darussalam;
- (d) has been substantially diminished in value or rendered worthless;
- (e) it cannot be separated from other property with which it has been mingled; or
- (f) has been transferred to a *bona fide* third party purchaser for fair value without notice,

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

Application of procedure for enforcing fines.

74. Where the High Court orders a person to pay an amount under section 73, that amount shall be treated as if it were a fine imposed upon him in respect of a conviction for a serious offence, and the High Court shall —

(a) notwithstanding anything contained in any other written law, impose in default of the payment of that amount, a term of imprisonment not exceeding —

- (i) one year, where the amount does not exceed \$5,000;
- (ii) 3 years, where the amount exceeds \$5,000 but does not exceed \$15,000;
- (iii) 5 years, where the amount exceeds \$15,000 but does not exceed \$30,000;
- (iv) 10 years, where the amount exceeds \$30,000; and

(b) direct that the term of imprisonment imposed pursuant to subsection (a) be served consecutively to any other form of imprisonment imposed on that person, or that the person is then serving.

Benefit recovery order on conviction.

75. (1) Subject to this section, where the Public Prosecutor applies to the High Court for a benefit recovery order against a person in respect of that person's conviction for a serious offence under section 60 the High Court shall, if it is satisfied that the person has benefited from that offence, order him to pay to the Government an amount equal to the value of his benefit from the offence or such lesser amount as the High Court determines in accordance with section 78(2).

(2) The High Court shall assess the value of the benefits derived by a person from the commission of an offence in accordance with sections 76, 77, 78, and 79.

(3) The High Court shall not make a benefit recovery order under this section until the period allowed by the Criminal Procedure Code (Chapter 7) for the lodging of an appeal against conviction has expired or an appeal against conviction has been finally determined, whichever is the later date.

Rules of determining benefit and assessing value.

76. (1) Where a person obtains property as the result of, or in connection with the commission of a money laundering offence or a serious offence, his benefit is the value of the property so obtained.

(2) Where a person derives an advantage as a result of or in connection with the commission of a money laundering offence or a serious offence, his advantage shall be presumed to be a sum of money equal to the value of the advantage so derived.

(3) In determining whether a person has benefited from the commission of a money laundering offence or a serious offence or from that offence and other serious offences or money laundering offences, the High Court shall, unless the contrary is proved, presume —

(a) all property appearing to the High Court to be —

(i) held by the person on the day on which the application is made; and

(ii) held by the person at any time —

(A) within the period between the day the serious offence, or the earliest serious offence, was committed and the day on which the application is made; or

(B) within the period of 6 years immediately before the day on which the application is made,

whichever is the longer,

to be property that came into the possession or under the control of the person by reason of the commission of that serious offence or those serious offences of which the person was convicted;

(b) any expenditure by the person since the beginning of the longer period in paragraph (a)(ii) to be expenditure met out of payments received by him as a result of, or in connection with, the commission of that serious offence or those serious offences; and

(c) any property received or deemed to have been received by the person at any time as a result of, or in connection with the commission by him of that serious offence or those serious offences to be property received by him free of any interest of any other person therein.

(4) Where a benefit recovery order has been previously made against a person, in assessing the value of any benefit derived by him from the commission of the serious offence, the High Court shall leave out of account any benefits that are shown to have been taken into account in determining the amount to be recovered under the previous order.

(5) If evidence is given at the hearing of the application that the value of the person's property at any time after the commission of the serious offence exceeded the value of the person's property before the commission of the offence, then the High Court shall treat the value of the benefit as being not less than the amount of that excess, unless the person satisfies the High Court that the whole or part of the excess was due to causes unrelated to the commission of the serious offence.

(6) In determining whether or not any benefit is derived from a money laundering offence or a serious offence, the Court shall apply the standard of proof required in civil proceedings.

Statements relating to proceeds of offences and benefits from commission of money laundering offences or serious offences.

77. (1) (a) Where a person has been convicted of a money laundering offence or a serious offence, the Public Prosecutor may, or if so directed by the High Court, shall tender to the High Court a statement in writing by him or any other person in connection with any matters relevant to —

- (i) determining whether the person has benefited from the offence, money laundering offence or from any other serious offence of which he is convicted in the same proceedings or which is taken into account in determining his sentence; or
- (ii) an assessment of value of the person's benefit from the offence, money laundering offence or from any other serious offence of which he is convicted in the same proceedings or which is taken into account;

(b) a copy of such statement shall be served on the defendant at least 14 days before the date on which the statement is to be tendered into Court.

(2) Where —

(a) a statement has been tendered under subsection (1)(a); and

(b) the Court is satisfied that a copy of that statement has been served on the defendant,

the Court may require the defendant to indicate to what extent he accepts each allegation in the statement and, so far as he does not accept or dispute the correctness of any such allegation to state the grounds and to indicate any matters he proposes to rely on to challenge the allegation;

(c) in so far as the defendant does not dispute the correctness of any allegation contained in the statement, that allegation shall be deemed to be conclusive proof of the matter to which it relates.

(3) (a) A defendant may, or if so directed by the Court, shall tender to the Court a statement in writing in connection with any matters which relates to the determination of the amount which might be realised.

(b) A copy of such statement shall be served on the Public Prosecutor at least 14 days before the date on which the statement is tendered into court.

(4) (a) The Public Prosecutor may accept or dispute the correctness of any allegation contained in a statement referred to in subsection (3)(a).

(b) In so far as the Public Prosecutor accept the correctness of any allegation contained in such statement, that allegation shall be deemed to be conclusive proof of the matter to which it relates.

(5) An acceptance by a person under this section that he received benefits from the commission of a money laundering offence or serious offence shall be admissible in proceedings for any offence.

Amounts recovered under benefit recovery order.

78. (1) Subject to subsection (2), the amount to be recovered from a person under a benefit recovery order shall be the amount which the High Court assesses to be the value of the person's benefit from the serious offence, or if more than one, all the offences in respect of which the order may be made.

(2) Where the High Court is satisfied about any matter relevant for determining the amount which might be realised at the time the benefit recovery order is made (whether by acceptance under section 77 or otherwise), the High Court shall issue a ruling giving the High Court's opinion as to the matters concerned if satisfied that the amount that might be realised at the time the benefit recovery order is made is less than the amount that the High Court assesses to be the value of the person's benefit from the offence, or if more than one, all the offences in respect of which the benefit recovery order may be made.

Variation of benefit recovery order.

79. Where the High Court makes a benefit recovery order against a person in relation to a serious offence and —

(a) in calculating the amount of the benefit recovery order, the High Court took into account a confiscation order of the property or a proposed confiscation order in respect of the property; and

(b) an appeal against confiscation or the confiscation order is allowed, or the proceedings from the proposed confiscation order terminate without the proposed confiscation order being made,

the Public Prosecutor may apply to the High Court for a variation of the benefit recovery order to include the value of the property not so confiscated and the Court may, if it considers it appropriate to do so, vary the order accordingly.

Court may lift corporate veil.

80. (1) In assessing the value of benefits derived by a person from the commission of a serious offence, the High Court may treat as part of the benefits derived by the person any property that, in its opinion is subject to the effective control of the person, whether or not he has —

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

(b) any right, power or privilege in connection with the property.

(2) Notwithstanding subsection (1), the High Court may have regard to —

(a) shares in, debentures over or directorships in any company that has an interest, whether direct or indirect, in the property, and for this purpose the High Court may order the investigation and inspection of the books of a named company;

(b) any trust that has any relationship to the property;

(c) any relationship whatsoever between the persons having an interest in the property or in companies of the kind referred to in paragraph (a) or trust of the kind referred to in paragraph (b) and any other persons.

(3) Where the High Court, for the purposes of making a benefit recovery order against a person, treats a particular property as the person's property pursuant to subsection (1), the Court may, on application by the Public Prosecutor, make an order declaring that the property is available to satisfy the order.

(4) Where the High Court declares that property is available to satisfy a benefit recovery order —

(a) the order may be enforced against the property as if the property were the property of the person against whom the order is made; and

(b) a restraining order may be made in respect of the property as if the property were property of the person against whom the order is made.

(5) Where the Public Prosecutor makes an application for an order under subsection (3) that property is available to satisfy a benefit recovery order against a person —

(a) the Public Prosecutor shall give written notice of the application to the person and to any person who the Public Prosecutor has reason to believe may have an interest in the property; and

(b) the person and any person who claims an interest in the property may appear and adduce evidence at the hearing.

Enforcement of benefit recovery orders.

81. Where the High Court orders a person to pay an amount under a benefit recovery order, the provisions of section 74 shall apply with such modifications as the Court may determine.

Discharge of benefit recovery orders.

82. A benefit recovery order shall be discharged if —

(a) the conviction of the serious offence or offences in reliance on which the order was made is or is taken to be quashed and no conviction for the offence or offences is substituted;

(b) the order is quashed; or

(c) the order is satisfied by payment of the amount due under the order.

Chapter III

Non-Conviction Based Forfeiture Order & Forfeiture of Property Where There is No Prosecution

Non-conviction based forfeiture order for tainted property.

83. (1) Subject to subsection (2), where the Public Prosecutor applies to the High Court for an order under this section and the High Court is satisfied on a

balance of probabilities that the property is tainted property, the High Court may order that the property, or such of the property as is specified by the High Court in the order, to be forfeited to the Government.

(2) Where a person claiming an interest in property to which an application relates satisfies the High Court that the person —

(a) has an interest in the property;

(b) did not acquire the interest in the property as a result of any serious offence carried out by the person and —

(i) had the interest before any serious offence occurred; or

(ii) acquired the interest for fair value after the serious offence occurred and did not know or could not reasonably have known at the time of the acquisition that the property was tainted property,

the Court shall order that the interest shall not be affected by the forfeiture order, and the High Court shall declare the nature and extent of the interest in question.

(3) The High Court may, when it makes a forfeiture order or at any time thereafter, make any other orders that it considers appropriate, including orders for and with respect to facilitating the transfer of property.

(4) Sections 61, 62, 68(2), (3), (4), (5), 69, 71, 73 and 74 shall apply with the appropriate modifications as are necessary to an application for a forfeiture order under this section.

(5) The High Court may grant a non-conviction based forfeiture order whether or not any person has been charged with or convicted of a money laundering offence or serious offence.

(6) In order to satisfy the Court under subsection (1), that property is tainted property, it is not necessary to show that the property was derived directly or indirectly, in whole or in part, from a particular criminal offence, or that any person has been charged in relation to such offence; only that it is proceeds from some criminal offence or offences or it was used or intended to be used to commit some criminal offence or offences.

(7) An application for non-conviction based forfeiture may be made in respect of property into which original tainted property been converted either by sale or otherwise.

(8) Property may be found to be tainted property under subsection (1) even if a person was acquitted of the offence, or if the charge was withdrawn before a judgment was delivered, or if proceedings were stayed.

(9) The High Court may grant a non-conviction based forfeiture order in respect of property whenever obtained.

(10) The High Court may grant a non-conviction based forfeiture order with respect to property acquired or used before the commencement of this Order.

(11) The High Court may grant a non-conviction based forfeiture order in respect of any property subject to a restraining order or any property seized under this Order.

(12) The High Court must order forfeiture if it finds the property to be tainted property, unless it would clearly not be in the interests of justice.

Forfeiture of property seized under this Order where there is no prosecution, or no proceedings or no claim thereto.

84. (1) Where any property has been seized under this Order, and —

(a) no prosecution for any offence under any law is instituted with regard to such property;

(b) no proceedings are commenced by the Public Prosecutor; and

(c) no claim in writing is made by any person that he is lawfully entitled to such property and that it is not liable to forfeiture under this Order or under any written law,

within 3 months from the date of its seizure, the property shall become forfeited to the Government immediately upon the expiration of the said period of 3 months.

(2) Where within 3 months from the date of the seizure of any property under this Order, a claim in writing is made thereto by any person mentioned in subsection (1)(c), the Public Prosecutor shall within 14 days after the expiry of the said period of 3 months, refer such claim to the High Court for its decision.

(3) The High Court to which a claim is referred under subsection (2) shall issue a summons requiring the person claiming that he is lawfully entitled to the property, and the person from whom it was seized, if he and his whereabouts are known, to appear before the Court and upon such appearance or in default of such appearance, upon due service of such summons being proved, the High Court shall proceed to the examination of the matter and if satisfied that such property is not tainted property, shall order the same to be released to the person

claiming the same upon proof that he is lawfully entitled thereto, and shall, in any other case, order the property to be forfeited.

(4) The provisions of this section shall be without prejudice to the power of an authorised officer to release from seizure any property under section 108.

(5) Where property has been forfeited under subsection (1), it shall not be a bar to any prosecution for an offence under any law being instituted in respect of such property at any time thereafter.

Chapter IV

Unexplained Wealth Declarations

Application for unexplained wealth declaration.

85. (1) The Public Prosecutor may apply to the High Court for an unexplained wealth declaration against a person (“respondent”).

(2) An application under subsection (1) may be made in conjunction with an application for a restraining order or at any other time.

Unexplained wealth.

86. (1) For the purposes of this Order, a person has unexplained wealth if the value of the person’s total wealth as described in subsection (2) is greater than the value of the person’s lawfully acquired wealth as described in subsection (3).

(2) The value of the person’s total wealth is the total value of property, and the services, advantages and benefits that together constitute the person’s wealth.

(3) The value of the person’s lawfully acquired wealth is the total value of property, and the services, advantages and benefits, that constitute the person’s wealth and were lawfully acquired.

Assessing value of unexplained wealth.

87. (1) The respondent’s unexplained wealth is the difference between —

- (a) the respondent’s total wealth; and
- (b) the respondent’s lawfully acquired wealth.

(2) When assessing the respondent’s wealth —

- (a) the value of any property, service, advantage or benefit that is a constituent of the respondent’s wealth is taken to be the greater of —

- (i) its value at the time that it was acquired;
- (ii) its value on the day that the application for the unexplained wealth was made; and

(b) the value of any property, service, advantage or benefit that was a constituent of the respondent's wealth but has been given away, used, consumed or discarded, or that is for any other reason no longer available, is taken to be an outgoing at the greater of —

- (i) its value at the time that it was acquired;
- (ii) its value immediately before it was given away, or was used, consumed or discarded, or stopped being available; and

(c) the Court on hearing an application under section 85 must not take account of —

- (i) any property that has been confiscated or forfeited under this Order or any other written law; or
- (ii) any property, service, advantage or benefit that was taken into account in making an earlier unexplained wealth declaration against the respondent; or
- (iii) any property, service, advantage or benefit in relation to which a benefit recovery order has been made.

Constituents of person's wealth.

88. The following property, services, advantages and benefits constitute a person's wealth —

(a) all property that the person owns, whether the property was acquired before or after the commencement of this Order;

(b) all property that the person effectively controls, whether the person acquired effective control of the property before or after the commencement of this Order;

(c) all property that the person has given away at any time, whether before or after the commencement of this Order;

(d) all other property acquired by the person at any time whether before or after the commencement of this Order, including consumer goods and consumer durables that have been consumed or discarded (but not including necessary food,

clothing and other items reasonably necessary for ordinary daily requirements of life);

(e) all services, advantages and benefits that the person has acquired at any time, whether before or after the commencement of this Order;

(f) all property, services, advantages and benefits acquired, at the request or direction of the person, by any another person at any time, whether before or after the commencement of this Order, including consumer goods and consumer durables that have been consumed or discarded (but not including necessary food, clothing and other items reasonably necessary for ordinary daily requirements of life);

(g) anything of monetary value acquired by the person or another person, in Brunei Darussalam or elsewhere, from the commercial exploitation of any product or any broadcast, telecast or other publication depends on or is derived from the person's involvement in the commission of a serious offence, whether or not the thing was lawfully acquired and whether or not the person has been charged with or convicted of the offence.

Unexplained wealth declaration.

89. (1) The Court on hearing an application under section 85 must declare that the respondent has unexplained wealth if it is more likely than not that the respondent's total wealth is greater than his lawfully acquired wealth.

(2) Any property, service, advantage or benefit that is a constituent of the respondent's wealth is presumed not to have been lawfully acquired unless the respondent establishes the contrary.

(3) Without limiting the matters to which a court may have regard in deciding whether the respondent has unexplained wealth, the Court may have regard to the amount of the respondent's income and outgoings at any time or at all times.

(4) When a court makes an unexplained wealth declaration, the Court must —

(a) assess the respondent's unexplained wealth in accordance with section 87;

(b) specify the assessed value of the unexplained wealth in the declaration; and

(c) order the respondent to pay to the Fund the amount specified in the declaration as the value of his unexplained wealth.

(5) When making an unexplained wealth declaration, the Court may make any necessary and convenient ancillary orders, including awarding costs as it sees fit.

Unexplained wealth payable to Fund.

90. (1) If the High Court makes an unexplained wealth declaration, the respondent must pay to the Fund the amount ordered by the High Court.

(2) The amount payable to the Fund may be satisfied, wholly or in part, by forfeiture of property that is subject to a restraining order or any property seized under this Order.

(3) Where the High Court makes an unexplained wealth declaration, section 74 shall apply with such modifications as the Court may determine.

PART V

FOREIGN ORDERS

Chapter 1

Requests by Brunei Darussalam

Request for enforcement of Orders.

91. The Attorney General may request an appropriate authority of a foreign country to make arrangements for —

(a) a confiscation or forfeiture order made in Brunei Darussalam against property that is believed to be located in that foreign country;

(b) a benefit recovery order made in Brunei Darussalam where some or all of the property available to satisfy the order is believed to be located in that foreign country;

(c) a restraining order made in Brunei Darussalam against property that is believed to be located in that foreign country, if the order was made in respect of a serious offence or a foreign serious offence.

Requests for issue of orders in foreign countries.

92. When criminal proceedings or investigations has commenced in Brunei Darussalam in relation to a serious offence, the Attorney General may request an appropriate authority of a foreign country to obtain the issue, in respect of the offence, any warrants, orders or other instruments necessary for the search, location, restraining and production of property suspected to be tainted property.

Chapter II

Requests by Foreign Countries

Foreign requests for restraining orders.

93. (1) Where a foreign country requests the Attorney General to obtain the issue of a restraining order against property some or all which is believed to be located in Brunei Darussalam and —

(a) criminal investigations have begun in the foreign country in respect of a serious offence;

(b) the person against whom the order is sought has been convicted;
or

(c) there are reasonable grounds to believe that the property is located in Brunei Darussalam,

then the Attorney General may apply to the High Court for a restraining order under subsection (2).

(2) Where the Attorney General makes application to the High Court under subsection (1), the Court may make a restraining order in respect of the property and Chapter I of this Part shall apply in relation to the application and to any restraining order made as a result, as if the serious offence the subject of the order had been committed in Brunei Darussalam with the following modifications —

(a) a reference in this Chapter to a serious offence were a reference to the foreign serious offence;

(b) a reference in this Chapter to a person charged or about to be charged with a serious offence were a reference to a person against whom a criminal proceeding in respect of a foreign serious offence has commenced, or is reasonably believed to be about to commence, in a foreign country;

(c) there were substituted for the words of section 50(2)(a) the following —

“the defendant has been convicted of a foreign serious offence, or a criminal proceeding in respect of a foreign serious offence has commenced, or is reasonably believed to be about to commence, against the defendant in a foreign country”;

(d) there were substituted for the words of section 50(2)(b) the following —

“where the defendant has not been convicted of a foreign serious offence, the offence which the defendant is believed to have committed and the grounds for that belief”;

(e) the reference in section 50(5)(b) to a person's reasonable legal expenses in defending a criminal charge included a reference to the person's reasonable legal expenses in being represented in a criminal proceeding in a foreign country; and

(f) sections 53(3), 54, 58 and 59 were omitted.

(3) Subject to subsections (4) and (5), a restraining order made in respect of a foreign serious offence ceases to have effect at the end of the period of 30 days commencing on the day on which the Order is made.

(4) Where the Court makes a restraining order in respect of a foreign serious offence, it may, on application by the Public Prosecutor before the end of the period referred to in subsection (2), extend the period of operation of the restraining order.

(5) Where —

(a) a restraining order against property is made in respect of a foreign serious offence; and

(b) before the end of the period referred to in subsection (3) (including that period extended under subsection (4), a foreign restraining order against the property is registered in the Court under section 94,

the restraining order referred to in paragraph (a) ceases to have effect upon the registration of the foreign restraining order referred to in paragraph (b).

Requests for enforcement of foreign restraining, confiscation and benefit recovery orders.

94. (1) Where a foreign country requests the Attorney General to make arrangements for the enforcement of —

(a) a foreign restraining order, against property that is believed to be located in Brunei Darussalam;

(b) a foreign confiscation order, made in respect of a serious offence, against property that is believed to be located in Brunei Darussalam;

(c) a foreign benefit recovery order, made in respect of a serious offence, where some or all of the property available to satisfy the order is believed to be located in Brunei Darussalam,

the Attorney General may apply to the High Court for registration of the order.

(2) The High Court shall, on application by the Attorney General, register a foreign restraining order if the Court is satisfied that at the time of registration, the order is in force in the foreign country.

(3) The High Court shall, on application by the Attorney General, register a foreign confiscation order or a foreign benefit recovery order if the Court is satisfied that —

(a) at the time of the registration, the order is in force in the foreign country and is not subject to appeal; and

(b) where the person the subject of the order did not appear in the confiscation proceedings in the foreign country, that —

(i) the person was given notice of the proceedings in sufficient time to enable him to defend them; or

(ii) the person had absconded or died before such notice could be given.

(4) For the purposes of subsections (2) and (3), a statement contained in the foreign request to the effect that —

(a) the foreign restraining order is in force in the foreign country;

(b) the foreign confiscation order is in force in the foreign country and is not subject to appeal; and

(c) the foreign benefit recovery order is in force in the foreign country and is not subject to appeal,

where the person the subject of the foreign confiscation order or foreign benefit recovery order did not appear in the proceedings in the foreign country, that he was given notice of the proceedings in sufficient time to enable him to defend them, or that the person had absconded or died before such notice could be given is *prima facie* evidence of those facts, without proof of the signature or official character of the person appearing to have signed the foreign request.

(5) Where a foreign restraining order, foreign confiscation order or foreign benefit recovery order is registered in accordance with this section, a copy of any amendments made to the order in the foreign country (whether before or after registration), may be registered in the same way as the order but shall not have effect for this order until they are so registered.

(6) The High Court shall, on application by the Attorney General, cancel the registration of —

(a) a foreign restraining order, if it appears to the Court that the order has ceased to have effect;

(b) a foreign confiscation order, if it appears to the Court that the order has been satisfied or has ceased to have effect;

(c) a foreign benefit recovery order, if it appears to the Court that the order has been satisfied or has ceased to have effect.

(7) Where an amount of money (if any) payable or remaining to be paid under a foreign confiscation order or foreign benefit recovery order registered in the High Court under this section is expressed in a currency other than that of Brunei Darussalam, the amount shall, for the purpose of any action taken in relation to that order, be converted into the currency of Brunei Darussalam on the basis of the exchange rate prevailing on the date of registration of that order.

(8) For the purpose of subsection (7), a certificate issued by the Authority stating the exchange rate prevailing on the specified date shall be admissible in any judicial proceedings as evidence of the facts so stated.

(9) Where a foreign restraining order against property is registered under this section, the High Court may, upon application by a person claiming an interest in the property, order the Attorney General, give an undertaking with respect the payment of damages or costs in relation to the registration to operation of the order.

(10) Subject to subsection (9), where the foreign restraining order, foreign confiscation order or foreign benefit recovery order comprises a *facsimile* copy of a duly authenticated foreign order, or amendment made to such an order, the *facsimile* shall be regarded for the purposes of this Order as the same as the duly authenticated foreign order.

(11) Registration effected by means of a *facsimile* message ceases to have effect at the end of the period of 21 days commencing on the date of registration, unless a duly authenticated original of the order has been registered by that time.

(12) Where a foreign restraining order has been registered pursuant to this section, Part IV applies in relation to the order as if the serious offence the subject of the order had been committed in Brunei Darussalam and the order had been made pursuant to that Part subject to the following modifications —

(a) sections 53, 54(3), 54(4), 58 and 59 were omitted;

(b) a reference in section in section 52, 54, 55 or 57 to a restraining order included a reference to an order under section 95; and

(c) the reference in section 54(1) to the making of a restraining order were a reference to the registration by the High Court of a foreign restraining order under this section and the making of an order under section 95.

(13) Where a foreign confiscation order has been registered pursuant to this section, Part IV applies in relation to the order as if the serious offence the subject of the order had been committed in Brunei Darussalam and the order had been made pursuant to that Part subject to the following modifications –

(a) all reference to an appeal against the making of an order and to the relevant appeal date were omitted; and

(b) a period of 6 weeks were substituted for the period of 6 months provided in section 71(3).

(14) Where a foreign benefit recovery order has been registered pursuant to this section, Part IV applies in relation to the order as if it were a benefit recovery order made by the High Court under Part IV at the time of registration and requiring payment to the Government of the amount payable under the order.

(15) Where a foreign benefit recovery order is registered in the High Court under this Part, any amount paid, whether in Brunei Darussalam or elsewhere, in satisfaction of the foreign benefit recovery order shall be taken to have been paid in satisfaction of the debt that arises by reason of the registration of the foreign benefit recovery order in the High Court.

(16) Subject to subsection (17), where any order has been registered under this section and the High Court is notified that it has been established to the satisfaction of the foreign court that the property constitutes proceed of crimes or tainted property, the Court may order that the property be recovered and be vested in the Government until such arrangement is made by the Attorney General with the foreign country for its transfer or disposal.

(17) The Court may make an order under subsection (16) on such conditions as it thinks fit to impose, including any condition as to payment of debts, sale, transfer or disposal of any property.

Registered foreign restraining orders – High Court may direct authorised officer or person appointed by High Court to take custody and control of property.

95. (1) Where a foreign restraining order against property registered in court under section 94, the High Court, may upon application by the Public Prosecutor order an authorised officer or any person appointed by the Court to take custody

and control of the property or part thereof as is specified in the order and to manage or deal with all or any part of the property in accordance with the directions of the Court.

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

(3) Where an authorised officer or any person appointed by the Court is given an order under subsection (1) in relation to property, an authorised officer or any person appointed by the Court may do anything that is reasonably necessary for preserving the property and for this purpose may exercise any power that the owner of the property could exercise and do so to the exclusion of the owner.

(4) Where an order is made under subsection (1) in respect of property of a person (in this subsection called the “respondent”), the Court may, at the time when it makes the order or any later time, order —

(a) the respondent to give the authorised officer or any person appointed by the Court a statement on oath setting out such particulars of the property, or dealings with the property, as it thinks proper;

(b) regulate the performance or exercise of functions, duties or powers under the restraining order by the authorised officer or any other person appointed by the High Court;

(c) the determination of any question relating to the property;

(d) where the registered foreign restraining order provides that a person’s reasonable expenses in defending a criminal charge be met out of the property, that expenses be taxed as provided in the order before being met; or

(e) the payment to the authorised officer or any person appointed by the High Court out of the property of the costs, charges and expenses incurred in connection with the performance or exercise by the authorised officer or any person appointed by the High Court of functions, duties or powers under the restraining order.

Foreign requests for location of proceeds of crime.

96. Where a foreign country requests the Attorney General to assist in locating property believed to be the proceeds of a serious crime committed in that country, the Attorney General may authorise the making of any application or investigations under this Order, for the purpose of acquiring the information sought by the foreign country.

Powers of investigation with regards tainted property in relation to foreign offences.

97. Where a foreign country request assistance to locate or seize property suspected to be tainted property in respect of an offence within its jurisdiction and the Attorney General has granted the request for assistance from a foreign country, under section 96, the provisions under Part VI shall apply *mutatis mutandis*.

Sharing confiscated property with foreign countries.

98. (1) The Attorney General may enter into —

(a) an assets sharing agreement with the competent authority of a foreign country in respect of such part of any property realised;

(b) arrangements for coordinating seizure, freezing, restraint and confiscation proceedings with the competent authority of a foreign country —

(i) in the foreign country, as a result of action taken by the Attorney General pursuant to section 91; or

(ii) in Brunei Darussalam, as a result of action taken in Brunei Darussalam pursuant to section 94(1),

as he thinks fit.

(2) On request by a foreign country made to him the Attorney General may transfer to the foreign country any property recovered in Brunei Darussalam in response to request for the enforcement of a foreign order.

(3) Unless the foreign country and Brunei Darussalam agree otherwise the Attorney General may deduct reasonable expenses incurred in the recovery, investigation and judicial proceedings which have led to a transfer referred to in subsection (2).

PART VI

POWERS OF INVESTIGATION

Power of arrest.

99. Any authorised officer may arrest without warrant any person whom he reasonably suspects of committing or attempting to commit an offence under this Order.

Powers of authorised officer.

100. (1) Where an authorised officer is satisfied, or has reason to suspect, that a person has committed an offence under this Order or that there is tainted property in relation to a serious offence, he may without warrant —

(a) enter any premises belonging to or in the possession or control of the person or his employee, and in the case of a body corporate, its director or manager;

(b) search the premises for any property, record, report or document;

(c) inspect, make copies of or take extracts from any record, report or document so seized and detained;

(d) take possession of, and remove from the premises, any property, record, report or document so seized and detained and detain it for such period as he deems necessary;

(e) search any person who is in, or on, such premises, if the authorised officer has reason to suspect that that person has on his person any property, record, report or document, including personal document, necessary, in the authorised officer's opinion for the purpose of investigation into an offence under this Order;

(f) break open, examine and search any article, container or receptacle; or

(g) stop, detain or search any conveyance.

(2) An authorised officer may, if it is necessary to do so —

(a) break open any outer or inner door of such premises or conveyance and enter such premises or conveyance;

(b) remove by force any obstruction to such entry, search, seizure, detention or removal as he is empowered to effect; or

(c) detain any person found on such premises, or in such conveyance, until the search is completed.

(3) An authorised officer may seize, take possession of, and detain for such duration as he thinks necessary, any property, record, report or document produced before him in the course of his investigation or found on the person who is being searched by him.

(4) An authorised officer, in the course of his investigation or search shall —

(a) prepare an inventory of every property, record, report or document seized signed by him and the occupant of the premises; and

(b) state in the inventory the location in which, or the person on whom, the property, record, report or document is found.

(5) The occupant of the premises entered in the course of the investigation or any person on his behalf, shall be present during the search, and a copy of the list prepared under subsection (4) shall be delivered to such person at his request.

Power to examine persons.

101. (1) Notwithstanding any written law, or oath, undertaking or requirement of secrecy or confidentiality to the contrary, or an obligation under an agreement or arrangement, express or implied, to the contrary, an authorised officer may order, orally or in writing, any person whom he believes to be acquainted with the facts and circumstances of the case —

(a) to attend before him for examination;

(b) to produce before him any property, record, report or document; or

(c) to furnish to him a statutory declaration or statement in writing setting out such information as he may require.

(2) The person examined under subsection (1)(a) shall be legally bound to answer all questions relating to such case put to him by the authorised officer.

(3) A person making a statement under subsection (1)(c) shall be legally bound to state the truth, whether or not such statement is made wholly or partly in answer to the questions of the authorised officer.

(4) An authorised officer examining a person under subsection (2) shall first inform that person of the provisions of subsections (2) and (3).

(5) A statement made orally by any person shall be reduced into writing and signed by the person making it or affixed with his thumb print —

(a) after it has been read to him in the language in which he made it; and

(b) after he has been given an opportunity to make any correction he may wish.

(6) Any person who —

(a) fails to appear before an authorised officer as required under subsection (1)(a);

(b) refuses to answer any question put to him by an authorised officer under subsection (2); or

(c) furnishes to an authorised officer any information or statement that is false or misleading in any material particular,

is guilty of an offence and liable on conviction to a fine not exceeding \$20,000, imprisonment for a term not exceeding one year or both, and, in the case of a continuing offence, to a further fine not exceeding \$1,000 for each day during which the offence continues after conviction.

Special powers of investigation in relation to statutory declaration.

102. (1) In the course of any investigation into or proceedings relating to an offence alleged or suspected to have been committed by any person a money laundering offence or serious offence or a conspiracy to commit, or an attempt to commit, or an abetment of any such offence, the authorised officer may, notwithstanding anything in any other written law to the contrary, by written notice require —

(a) any such person to furnish a statutory declaration stating —

- (i) all movable or immovable property or both belonging to or possessed by such person and by the spouse, parents, sons, daughters or relatives of such person or property held by third party, and specifying the date on which each of the properties enumerated was acquired whether by way of purchase, gift, bequest, inheritance or otherwise;
- (ii) all expenditure incurred by such person in respect of himself, his spouse, parents, sons, daughters or relatives with regard to living expenses and other private expenditure during any period specified in such notice;
- (iii) all liabilities incurred by such person, his agents, representatives or trustees, at such time or during such period as may be specified in such notice, and specifying in respect of each such liability whether it was incurred jointly (and, if so, with whom) or severally;

(b) any such person to furnish a statutory declaration or a statement in writing of any money or other property sent out of Brunei Darussalam by

him, his spouse, parents, sons, daughters or relatives during such period as may be specified in the notice;

(c) any such person to furnish a statutory declaration or, a statement in writing enumerating all movable or immovable property belonging to or possessed by such person where the authorised officer has reasonable grounds to believe that such information can assist the investigation;

(d) the manager of any bank to give copies of the accounts of such person or of the spouse or of the parents or sons or daughters or relatives of such person at the bank;

(e) the person in charge of any department, office or establishment of the Government, or the president, chairman, manager or chief executive officer of any public body or any other person to produce or furnish, as specified in the notice any document which is in his possession or under his control.

(2) Every person to whom a notice is issued by the authorised officer under subsection (1) shall, notwithstanding the provisions of any written law or any oath of secrecy to the contrary, comply with the terms of that notice within such times as may be specified therein and any person who wilfully neglects, or fails so to comply is guilty of an offence and liable on conviction to a fine of \$10,000 and imprisonment for a term of 3 years.

(3) Any disclosure made by virtue of subsection (1)(a) to (e) shall not be treated as a breach of any restriction upon the disclosure of information imposed by any contract, written law, rules of professional conduct or otherwise and shall not give rise to any civil or criminal liability.

Search of person.

103. (1) An authorised officer searching any person under section 100(1)(e) may detain the person for such period as may be necessary to have the search carried out, which shall not in any case exceed 48 hours without the authorisation of a magistrate, and may, if necessary, remove the person in custody to another place to facilitate such search.

(2) No person shall be searched under this Part except by an authorised officer of the same gender and such search shall be carried out with strict regard to decency.

Obstruction to exercise of powers by authorised officer.

104. (1) Any person who —

(a) refuses an authorised officer access to any premises, or fails to submit to the search of his person;

(b) assaults, obstructs, hinders or delays an authorised officer in effecting any entrance which he is entitled to effect;

(c) fails to comply with any lawful demands of any authorised officer in the execution of his duties under this Part;

(d) refuses to give to an authorised officer any property, document or information which may reasonably be required of him and which he has in his power to give;

(e) fails to produce to, or conceal or attempt to conceal from, an authorised officer, any property, record or document, which the authorised officer requires;

(f) rescues or attempts to rescue any thing which has been duly seized;

(g) furnishes to an authorised officer as true any information which he knows or has reason to believe to be false; or

(h) before or after any search or seizure, breaks or otherwise destroys any thing to prevent its seizure, or the securing of the property, record, report or document,

is guilty of an offence and liable on conviction to a fine not exceeding \$20,000, imprisonment for a term not exceeding one year or both, and, in the case of a continuing offence, to a further fine not exceeding \$1,000 for each day during which the offence continues after conviction.

Tipping off.

105. (1) Any person who —

(a) knows or has reason to suspect that an authorised officer is acting, or is proposing to act, in connection with an investigation which is being, or is about to be, conducted under or for the purposes of this Order and discloses to any other person information or any other matter which is likely to prejudice that investigation or proposed investigation; or

(b) knows or has reason to suspect that a disclosure has been made to an authorised officer under this Order and discloses to any other person information or any other matter which is likely to prejudice any investigation which might be conducted following the disclosure,

is guilty of an offence and liable on conviction to a fine not exceeding \$500,000, imprisonment for a term not exceeding 5 years or both.

(2) Nothing in subsection (1) makes it an offence for an advocate and solicitor or his employee to disclose any information or other matter —

(a) to his client or the client's representative in connection with the giving of advice to the client in the course and for the purpose of the professional employment of the advocate and solicitor; or

(b) to any person in contemplation of, or in connection with and for the purpose of any legal proceedings.

(3) Subsection (2) does not apply in relation to any information or other matter which is disclosed with a view of furthering an illegal purpose.

(4) In proceedings against a person for an offence under this section, it is a defence to prove that —

(a) he did not know or suspect that the disclosure made under subsection (1)(b) was likely to prejudice the investigation; or

(b) he had lawful authority or reasonable excuse for making the disclosure.

(5) An authorised officer or other person does not commit an offence under this section in respect of anything done by him in the course of acting in connection with the enforcement or intended enforcement of any provision of this Order or any other written law relating to a serious offence.

Delivery of property, record, report or document.

106. (1) An authorised officer may, by written notice, require any person to deliver to him any property, record, report or document which he has reason to suspect has been used in the commission of a money laundering offence or a serious offence that is in the possession or custody of, or under the control of, that person or within the power of that person to furnish.

(2) An authorised officer may grant permission to any person to inspect the property, record, report or document he had detained and take possession of under subsection (1) if the person is entitled to inspect such property, record, report or document under this Order.

(3) A person who —

(a) fails to deliver any property, record, report or document that is required by an authorised officer; or

(b) obstructs or hinders an authorised officer while exercising any of his powers under subsection (1),

is guilty of an offence and liable on conviction to a fine not exceeding \$10,000, imprisonment for a term not exceeding one year or both, and, in the case of a continuing offence, to a further fine not exceeding \$1,000 for each day during which the offence continues after conviction.

Seizing of property, record, report or document.

107. (1) An authorised officer may seize, take possession of and retain for such duration as he deems necessary, any property, record, report or document produced before him in the course of an examination under section 101(1)(a) or (b), or search of the person under section 103(1), for ascertaining whether anything relevant to the investigation is concealed, or is otherwise, upon such person.

(2) Any property, record, report or document seized by the authorised officer under subsection (1) shall be listed by such officer conducting the seizure and shall be signed by him and by the owner of such property or by the person from whom the property was seized as soon as possible and thereafter shall furnish a copy of the same to the said person.

Release of property, record, report or document seized.

108. (1) An authorised officer shall, unless otherwise ordered by any court —

(a) at the close of an investigation or any proceedings arising from the investigation; or

(b) with the prior written consent of the competent authority or the relevant enforcement agency, as the case may be, or of any authorised officer superior to him in rank, at any time before the close of an investigation,

release any property, record, report or document seized, detained or removed by him or any other authorised officer, to such person as he determines to be lawfully entitled to the property, record, report or document if he is satisfied that it is not required for the purpose of any prosecution or proceedings under this Order, or for the purpose of any prosecution under any other written law.

(2) The authorised officer effecting the release under subsection (1) shall record in writing the circumstances of, and the reason for, such release.

(3) Where the authorised officer is unable to determine the person who is lawfully entitled to the property, record, report or document or where there is more than one claimant to the property, record, report or document, or where the

authorised officer is unable to locate the person under subsection (1) who is lawfully entitled to the property, record, report or document, the authorised officer shall report the matter to a magistrate who shall then deal with the property, record, report or document as provided for under sections 363, 364 and 365 of the Criminal Procedure Code [Chapter 7].

Statement to be admissible.

109. The record of an examination under section 102(1)(a), any property, record, report or document produced under section 102(1)(b) or any statement under section 102(1)(c) shall, notwithstanding any written law to the contrary, be admissible as evidence in any proceedings in any court for, or in relation to, an offence or any other matter under this Order or any offence under any other written law, regardless whether such proceedings are against the person who was examined, or who produced the property, record, report or document, or who made the written statement on oath or affirmation, or against any other person.

Further provisions relating to seizure of property.

110. (1) Where any property is seized under this Order the seizure shall be effected by removing the movable property from the possession, custody or control of the person from whom it is seized and placing it under the custody of such person or authority and at such place as an authorised officer may determine.

(2) Where it is not practicable, or it is otherwise not desirable, to effect removal of any property under subsection (1), the officer referred to in that subsection may leave it at the premises in which it is seized under the custody of such person as he may specify with the necessary safeguards as determined by him.

Seizure of land.

111. (1) Where the Public Prosecutor is satisfied on information given to him by an authorised officer that any land is the subject-matter of an offence under this Order or any money laundering offence or serious offence or evidence of the commission of such offence, such property shall be liable to seizure, and the seizure shall be effected —

(a) by the issue of a Notice of Seizure by the Public Prosecutor setting out therein the particulars of the land which is seized in so far as such particulars are within his knowledge, and prohibiting all dealings in such land;

(b) by serving a copy of such Notice on the Commissioner of Lands.

(2) The Commissioner of Lands shall immediately upon being served with a Notice of Seizure under subsection (1) register it in the Register kept by him under section 7 of the Land Code (Chapter 40) in respect of that land.

(3) Where a Notice of Seizure has been registered under subsection (2), the Notice shall have the effect of prohibiting all dealings in respect of the land, and after such registration has been made no dealing in respect of the land shall be registered, regardless whether it was effected before or after the issue of such Notice or the making of such registration.

(4) Subsection (3) shall not apply to a dealing effected by an officer of a public body in his capacity as such officer, or otherwise by or on behalf of the Government.

(5) Any person who contravenes subsection (3) or does any act which results in, or causes, a contravention of subsection (3) is guilty of an offence and liable on conviction to a fine not exceeding the value of the property in respect of which the order had been contravened, or \$50,000, whichever is the higher, imprisonment for a term not exceeding 7 years or both.

(6) Where a Notice of Seizure has been issued under subsection (1) it shall be an offence for the registered proprietor of the land which is seized under such Notice, or for any other person having any interest in such land, who has knowledge of such Notice, to knowingly enter into any agreement with any person to sell, transfer, or otherwise dispose of or deal with, the whole or any part of such land.

Dealings with seized property after seizure to be void.

112. (1) After seizure of any property has been effected under this Order, and so long as such seizure remains in force, any dealing, contract, or other thing whatsoever, effected, done, or entered into by any person or between any persons in respect of such property, except any dealing effected under this Order or by virtue of this Order by a public officer in his capacity as such officer, or otherwise by or on behalf of the Government, or a local authority, or other statutory body, shall be null and void, and shall not be registered or otherwise howsoever given effect to by any person or authority.

(2) For so long as a seizure of any property under this Order remains in force, no action, suit or other proceeding of a civil nature shall be instituted, or if it is pending immediately before such seizure, be maintained or continued, in any court or before any other authority in respect of the property which has been so seized, and no attachment, execution or other similar process shall be commenced, or if any such process is pending immediately before such seizure, be maintained or continued, in respect of such property on account of any claim, judgment or decree, regardless whether such claim was made, or such judgment or decree was given, before or after such seizure was effected, except at the

instance of the Government or at the instance of a local authority or other statutory body, or except with the prior consent in writing of the Public Prosecutor.

Validity of seizure, or sale in consequence thereof, not to be affected by certain objections.

113. Where seizure of any property has been effected under this Order, the validity of such seizure, or of any sale or other form of disposal of such property, or of any destruction thereof in accordance with the provisions of this Order, in consequence of such seizure, shall not be affected by any objection thereto relating to the manner in which the seizure or sale was effected, or the place at which it was effected, or the person from whom it was effected, or the person to whom any notice of the seizure or sale was given, or omitted to be given, or any failure to conform to any procedural provision of this Order or of any other written law in effecting the seizure or sale.

Special provisions relating to seizure of business.

114. (1) Where an authorised officer has reason to believe that any business —

(a) is being carried on by or on behalf of any person against whom prosecution for a money laundering offence or a serious offence is intended to be commenced;

(b) is being carried on by or on behalf of a relative or an associate of such person;

(c) is a business in which such person, or a relative or associate of his has an interest which amounts to or carries a right to not less than 30 *per centum* of the entire business; or

(d) is a business over which such person or his relative or associate has management or effective control, either individually or together,

the authorised officer may with the consent of the Public Prosecutor seize the business in the manner provided under this Part or by an order in writing —

- (i) direct the extent and manner in which the business may be carried on;
- (ii) specify any person to supervise, direct or control the business including its accounts, or to carry on the business or such part of it as may be specified;
- (iii) direct that all or any proportions of the proceeds or profits of the business be paid to the Fund and retained there pending further directions in respect of it by the authorised officer;

- (iv) prohibit any director, officer or employee or any other person from being in any manner involved in the business with effect from the date of the letter of prohibition; or
- (v) direct that the premises where the business was carried on to be closed and if necessary or expedient, placed under guard or custody.

(2) Where an order is made by an authorised officer under subsection (1), it may include in the order, or may subsequently give any further direction orally or in writing of an ancillary or consequential nature or which may be necessary, for giving effect to, or for the carrying out the order.

(3) An order under subsection (1) may at any time be carried or revoked by the authorised officer and where it so varies or revokes the order, it may give any direction of an ancillary or consequential nature, or which may be necessary, for giving effect to, or for the carrying out of such variation or revocation.

(4) Subject to subsection (5), neither the Government nor any person shall, in consequence of any order under subsection (1) be responsible for the payment of any money, dues, debts, liabilities or charges payable to any person in respect of the business, or in respect of any movable or immovable property owned or possessed, occupied or used, by any person in relation to the business.

(5) Where a person is carrying on any activities of the business in pursuance of an order under subsection (1), he shall be responsible for the payment of the wages of such employees of the business as are engaged in performing any work in relation to those activities for the period during which such person carries on those activities and such wages shall be paid out of the profits derived from such activities or, if there are no such profits or if such profits are insufficient, from the assets and the properties of the business.

(6) In this section, “wages” means the wages payable under the contract of employment between the employee and the business.

Restriction on disposal of property etc.

115. (1) The Public Prosecutor may, by written notice to a person who is the subject of an investigation in respect of an offence alleged or suspected to have been committed under this Order or money laundering offence or any serious offence or against whom a prosecution for such offence has been instituted, direct that such person shall not dispose of or otherwise deal with any movable or immovable property specified in such notice without the consent of the Public Prosecutor.

(2) Where any property specified in a notice under subsection (1) includes any debt or obligation due by a bank, deposit-taking company or financial

institution to the person to whom the notice is given or any debt due to a bank, deposit-taking company or financial institution or any money deposited by that person to any bank, deposit-taking company or any financial institution the Public Prosecutor may serve on such bank, deposit-taking company or financial institution a copy of that notice, which copy notice shall have the effect of directing the bank, deposit-taking company or financial institution not to pay any money to the person or to use or take any money from that person's account to pay or override or set-off any debts of that person specified in the copy notice without the consent of the Public Prosecutor.

(3) A notice under subsection (1) —

(a) may be served by delivering it personally to the person to whom it is addressed or may, where the Court of a Magistrate is satisfied that such person cannot be found or is not in Brunei Darussalam, be served in such other manner as the court may direct on application *ex parte* by or on behalf of the Public Prosecutor;

(b) shall have effect from the time of service and shall continue in force for a period of 12 months or until cancelled by the Public Prosecutor, whichever is the earlier.

(4) Nothing in subsection (3) shall prevent the Public Prosecutor from making a further order in respect of the same property.

(5) The Public Prosecutor may impose such terms and conditions as he thinks fit to a consent to the disposal of or other dealing with any property specified in a notice under subsection (1).

(6) A person who disposes of or otherwise deals with any property specified in a notice under subsection (1) or a bank, deposit-taking company or financial institution which pays any money to a person or used or takes any money or fund for any purpose whatsoever specified in a copy of notice served on it under subsection (2) other than in accordance with the consent of the Public Prosecutor is guilty of an offence and liable on conviction to a fine of \$50,000, imprisonment for a term not exceeding 5 years and payment of the value of the property disposed or otherwise dealt with.

Surrender of travel documents.

116. (1) A Court of a Magistrate may, on the application of the authorised officer by written notice require a person who is the subject of an investigation in respect of a money laundering offence or serious offence to surrender to the authorised officer any travel documents in his possession.

(2) A notice under subsection (1) shall be served personally on the person to whom it is addressed.

(3) A person on whom a notice under subsection (1) is served shall forthwith comply with such notice.

(4) If a person on whom a notice under subsection (1) has been served fails to comply with forthwith the notice, he may thereupon be arrested and taken before a Court of a Magistrate.

(5) Where a person is taken before a Court of a Magistrate under subsection (4), the Court of a Magistrate shall, unless such person thereupon complies with the notice under subsection (1) or satisfies the Court of a Magistrate that he does not possess a travel document, by warrant commit him to prison there to be safely detained —

(a) until the expiry of the period of 28 days from the date of his committal to prison as aforesaid; or

(b) until such person complies with the notice under subsection (1) and a magistrate, by order in that behalf, orders and directs the Superintendent of Prisons to discharge such person from prison (which order shall be sufficient warrant for the Superintendent of Prisons so to do), whichever occurs first.

(6) A travel document which is surrendered to the authorised officer under this section may be detained for 9 months from the date on which it was surrendered and may be detained for a further 3 months if a magistrate, on application by the authorised officer, is satisfied that the investigation could not reasonably have been completed before the date of such application and authorises such further detention.

(7) Subject to subsection (6) a person to whom a notice under subsection (1) is served shall not leave Brunei Darussalam before the expiry of a period of 9 months or further from the date of surrender of the travel document unless an application made under section 117(1) for the return of travel document is granted.

(8) All proceedings before a magistrate under this section shall be conducted in chambers.

(9) In this section, “travel document” means a passport or other document establishing the identity or nationality of a holder.

Return of travel documents.

117. (1) When a travel document has been surrendered and retained by an authorised officer under section 116 a person affected by such order may at any time make application in writing, to a magistrate for its return, and every such application shall contain a statement of the grounds on which it is made.

(2) A magistrate shall not consider an application made under subsection (1) unless he is satisfied that reasonable notice in writing of it has been given to the Public Prosecutor or the authorised officer.

(3) Before an application is granted under this section the applicant may be required to —

(a) deposit such reasonable sum of cash money with the authorised officer as deems fit;

(b) provide local surety; or

(c) satisfy paragraphs (a) and (b).

(4) Any such applicant or surety may be required to deposit reasonable sum of cash money with the authorised officer as deems fit, for retention by the authorised officer until such time when the travel document is returned to the authorised officer.

(5) Failure of the applicant to return to Brunei Darussalam or to surrender the passport to the Bureau within the specified time will render the deposit held by the authorised officer to be forfeited to the Government.

(6) An application under this section may be granted subject to the conditions that —

(a) the applicant shall further surrender his travel document to the authorised officer at such time as may be specified; and

(b) the applicant shall appear at such time and place in Brunei Darussalam as may be specified.

(7) Where a travel document is returned to the applicant under this section subject to a condition imposed under subsection (6), then after the time specified under that subsection, the provisions of section 116(7) shall continue to apply in respect of the applicant and the provisions of section 116 shall continue to apply in respect of the travel document surrendered by the applicant pursuant to the condition as if no return had been made to the applicant under this section.

Power to intercept communications.

118. (1) Notwithstanding the provisions of any other written law, the Public Prosecutor, if he considers that it is likely to contain any information which is relevant for the purpose of any investigation into an offence under this Order, may, on the application of an authorised officer, authorise the said officer —

(a) to intercept, detain and open any postal article in the course of transmission by post;

(b) to intercept any message transmitted or received by any telecommunication; or

(c) to intercept, listen to and record any conversation by any telecommunication, and listen to the recording of the intercepted conversation.

(2) When any person is charged with an offence under this Order, any information obtained by a police officer under subsection (1), whether before or after such person is charged, shall be admissible at his trial in evidence.

(3) An authorisation by the Public Prosecutor under subsection (1) may be given either orally or in writing; but if an oral authorisation is given, the Public Prosecutor shall, as soon as practicable, reduce the authorisation into writing.

(4) A certificate by the Public Prosecutor stating that the action taken by the police officer under subsection (1) had been authorised by him under that subsection shall be conclusive evidence that it had been so authorised, and such certificate shall be admissible in evidence without proof of signature thereof.

(5) No person shall be under any duty, obligation or liability, or be in any manner compelled, to disclose in any proceedings the procedure, method, manner or means, or any matter related thereto, of any thing done under subsection (1)/(a), (b) or (c).

(6) In this section —

“postal article” has the same meaning as in the Post Office Act [Chapter 52];

“Public Prosecutor” means the Public Prosecutor personally;

“telecommunication” has the same meaning as in the Telecommunications Order, 2001 [S 38/2001].

Power to obtain telecommunication records.

119. An authorised officer and the Financial Intelligence Unit is authorised to obtain from any telecommunications corporation established in Brunei Darussalam telecommunication records of a person under investigation for committing or attempting to commit, a money laundering offence, serious offence, a terrorism financing offence or an offence under this Order.

Property tracking.

120. (1) Where the Financial Intelligence Unit or an authorised officer, as the case may be, has reason to believe that a person is committing, has committed or is about to commit a money laundering offence or serious offence, the Financial Intelligence Unit or authorised officer, as the case may be, may order —

(a) that any document relevant to identifying, locating or quantifying any property, or identifying or locating any document necessary for the transfer of the property, belonging to, or in the possession or under the control of that person or any other person, be delivered to it; or

(b) any person to produce information on any transactions conducted by or for that person with the first-mentioned person.

(2) Any person who —

(a) does not comply with an order under subsection (1); or

(b) discloses the existence or operation of the order to any person without authorisation from the authorised officer or Financial Intelligence Unit or, as the case may be,

is guilty of an offence and liable on conviction to a fine not exceeding \$20,000, imprisonment for a term not exceeding one year or both, and, in the case of a continuing offence, to a further fine not exceeding \$1,000 for each day during which the offence continues after conviction.

(3) For the purposes of this section, a person may not refuse to produce a document ordered to be produced under this section on the ground that —

(a) the document might tend to incriminate the person or make the person liable to a penalty; or

(b) the production of the document would be in breach of an obligation (whether imposed by a law of Brunei Darussalam or otherwise) of the person not to disclose either the existence or contents or both, of the document.

PART VII

PROSECUTION AND TRIAL OF OFFENCES

Prosecution of offences.

121. (1) A prosecution under this Order shall not be instituted except by or with the consent of the Public Prosecutor:

Provided that a person concerned in the commission of the offence investigated by the authorised officer may be arrested or a warrant for his arrest may be issued and executed, and any person so arrested may be remanded in custody or on bail, or may be brought before the court without his plea being taken as provided under subsection (2), notwithstanding that the consent of the Public Prosecutor to the institution of a prosecution for the offence has not been obtained, but the case shall not further be tried until that consent has been obtained.

(2) When a person is brought before a court under this section before the Public Prosecutor has consented to the prosecution the charge shall be explained to him but he shall not be called upon to plead, and the provisions of the law for the time being in force relating to criminal procedure shall be modified accordingly.

Jurisdiction of Courts.

122. (1) The High Court, Intermediate Court or a Court of a Magistrate may try any offence under this Order.

(2) Notwithstanding the provisions of any written law to the contrary, a Court of a Magistrate may award the full punishment for any offence under this Order.

PART VIII

GENERAL

Criminal Assets Confiscation Fund.

123. (1) There is hereby established a fund called the Criminal Assets Confiscation Fund, which subject to this section, shall be managed and controlled by the Permanent Secretary.

(2) The Minister, may authorise the payment into the Fund of such sum or sums as may be necessary to set up or maintain it, and any such payments shall be charged on and paid out of the Consolidated Fund.

(3) All amounts —

(a) contributed by the Government towards the establishment or maintenance of the Fund;

(b) recovered under or in satisfaction of a forfeited cash under section 46, confiscation order under section 68, a payment order under section 74, benefit recovery order under section 75, non-conviction based

forfeiture order under section 83 or unexplained wealth declaration under section 85; or

(c) received under an assets-sharing agreement;

(d) paid to Brunei Darussalam by a foreign country, under a treaty or arrangement or otherwise, for providing for mutual assistance in criminal matters; and

(e) other than amounts referred to in paragraph (d), paid to Brunei Darussalam by a foreign country in connection with assistance provided by Brunei Darussalam in relation to the recovery by that country of the proceeds of unlawful activity or the investigation or prosecution of unlawful activity,

shall be included in the monies which are paid into the Fund.

(4) Monies paid into the Fund shall not form part of the Consolidated Fund.

(5) Subject to subsection (6), monies in the Fund shall be applied by the Permanent Secretary to —

(a) compensate victims who have suffered losses as a result of serious offences;

(b) satisfy a compensation order under this Order;

(c) enable the appropriate law enforcement agencies to continue their fight against money laundering, serious offences or unlawful activity;

(d) discharging the obligations of Brunei Darussalam under any assets-sharing agreement;

(e) any matters that, in his opinion may assist in preventing, suppressing or otherwise dealing with criminal conduct and in dealing with criminal conduct;

(f) meeting the expenses incurred by the Permanent Secretary in administering the Fund.

(6) Before applying any measure under subsection (5), the Permanent Secretary shall consult the Public Prosecutor and such other persons as he may consider appropriate.

(7) Monies paid into the Fund, which not applied for any of the purposes mentioned in subsection (5) may be —

(a) held in the custody of the Permanent Secretary; or

(b) placed in the name of the Fund, in a current or deposit account, with one or more banks approved by the Permanent Secretary, and any interest earned on such monies while held in such an account shall be credited to such account.

(8) In this section, “Permanent Secretary” means the Permanent Secretary of the Ministry of Finance.

Compensation.

124. (1) If proceedings have been instituted against a person for an offence or offences to which this Order applies and either —

(a) the proceedings have not resulted in his conviction for any such offence; or

(b) where he was convicted of one or more such offences; and

(c) the conviction or convictions have been quashed; or

(d) His Majesty the Sultan and Yang Di-Pertuan has granted a pardon in respect of the conviction or convictions,

the High Court may, on an application by any person who held property which was realisable property, order compensation to be paid to the applicant out of the Fund if having regard to all circumstances, it considers it appropriate to make such an order.

(2) The High Court shall not order compensation to be paid in any case unless it is satisfied that —

(a) there has been some serious default on the part of a person concerned in the investigation or prosecution of the offence or offences; and

(b) the applicant has suffered loss in consequence of anything done in relation to the property by or in pursuance of an order under this Order.

(3) The High Court shall not order compensation to be paid in any case where it appears to the Court that the proceedings would have been instituted or continued even if the serious default had not occurred.

(4) The amount of compensation to be paid under this section shall be such as the Court thinks just in all the circumstances of the case.

Notice or order not to be invalid for error in description.

125. (1) No notice, notification or other process, issued, served or published, and no order, decision or judgment made, given, issued, served or published, under this Order shall be deemed to be invalid by reason of any error or omission in the description of the property or person mentioned therein if such property or person is identifiable from the description so mentioned.

(2) Notwithstanding subsection (1), where any order has been made, or a decision or judgment given, by any court in any proceedings under this Order, any error or omission in the order, decision or judgment relating to any description of any property or person may at any time be rectified by the court on its own motion or on the application of any party or any person affected by the order, decision or judgment.

Service of any notice or order.

126. (1) Any notice or order issued or made under this Order shall, where it is required to be served on an individual, be served —

(a) by delivering it personally to the person for whom it is intended;

(b) by delivering it to an adult person at the last known place of residence, occupation or business of the person for whom it is intended;

(c) by sending it by registered post to the person for whom it is intended;

(d) if an authorised officer is satisfied for reasons to be recorded by him in writing that the notice or order cannot be served in the manner provided in paragraph (a), (b), or (c) by —

(i) affixing it on a conspicuous place in the immovable property, if any, in relation to which the notice or order is issued or made, or on some conspicuous part of the premises in which the person for whom it is intended is known to have last resided, or to have been last employed, or to have last carried on business;

(ii) publication of the notice or order in one newspaper circulating in the area in which the person for whom it is intended is known to have last resided, or to have been last employed, or to have last carried on business; or

(e) in a manner as directed by the High Court.

(2) Any notice or order issued or made under this Order on any body, whether corporate or unincorporate, shall be served by delivering it at its place of business to a servant, agent or officer of such body, or, where an authorised officer is satisfied for reasons to be recorded in writing that it cannot be so delivered, by affixing it on a conspicuous part of the premises at the last known place of business of the body for whom it is intended, and by publication of the notice, order in a local newspaper in which the last known place of business is situated or in a manner as directed by the High Court.

Protection of informers and information.

127. (1) Except as hereinafter provided, no complaint as to an offence or any proceedings under this Order shall be admitted in evidence in any civil or criminal proceeding whatsoever, and no witness shall be obliged or permitted to disclose the name or address of any informer, or state any matter which might lead to his discovery.

(2) If any books, documents or papers which are in evidence or liable to inspection in any civil or criminal proceedings whatsoever contain any entry in which any informer is named or described or which might lead to his discovery, the court before which the proceeding is had shall cause all such passage to be concealed from view or to be obliterated so far as is necessary to protect the informer from discovery, but no further.

(3) Where any information relating to an offence under this Order is received by an officer of the Financial Intelligence Unit or reporting institution, the information and the identity of the person giving the information shall be secret between the officer and that person and everything contained in such information, the identity of that person and all other circumstances relating to the information, including the place where it was given, shall not be disclosed except for the purposes of section 15.

Agent provocateur.

128. (1) Notwithstanding any written law to the contrary, in any proceedings against any person for an offence under this Order, no *agent provocateur*, whether he is an officer of law enforcement agency or not, shall be presumed to be unworthy of credit by reason only of his having attempted to commit or to abet, or having abetted or having been engaged in a criminal conspiracy to commit, such offence if the main purpose of such attempt, abetment or engagement was to secure evidence against such person.

(2) Notwithstanding any written law to the contrary, a conviction for any offence under this Order solely on the uncorroborated evidence of any *agent provocateur* shall not be illegal and no such conviction shall be set aside merely because the court which tried the case has failed to refer in the grounds of its

judgment to the need to warn itself against the danger of convicting on such evidence.

Proceedings under Order are civil proceedings.

129. Except in relation to an offence under this Order —

(a) proceedings under this Order are civil proceedings;

(b) any question of fact to be decided by a court on the application under this Order is to be decided on the balance of probabilities;

(c) the rules of construction applicable only in relation to criminal law do not apply in the interpretation of this Order;

(d) the rules of evidence applicable in civil proceedings apply to proceedings under this Order.

Appeals.

130. (1) An appeal shall lie to the Court of Appeal from any order and declaration of the High Court under this Order and such order or declaration shall remain in force until the determination of such appeal.

(2) Subject to Rules of Court, an appeal under this section shall be made within the time and in the form and shall be heard in the manner of a civil appeal from the High Court.

(3) The Court of Appeal shall, on appeal, have the power to make such order under this section as it may think fit.

Ancillary orders.

131. (1) The High Court, may, when making an order under this Order or at any time, make any ancillary orders that it considers appropriate.

(2) Without limiting subsection (1), the High Court may make an ancillary order requiring that information about an order not to be disclosed to a particular person or class of persons.

Consent order.

132. The High Court may make an order in proceedings under this Order with the consent of the parties to the proceedings (and such an order may be made without consideration of the matters that the Court would otherwise be obliged to consider in the proceedings).

Admissibility of statements and documents of persons who are dead or cannot be traced etc.

133. Notwithstanding any written law to the contrary, for the purposes of any proceedings under this Order —

(a) any statement made by any person to an authorised officer in the course of an investigation under this Order; and

(b) any document, or copy of any document, seized from any person by an officer of an authorised officer in exercise of his powers under this Order, shall be admissible in evidence in any proceedings under this Order before any court, where the person who made the statement or the document or the copy of the document is dead, or cannot be traced or found, or has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which appears to the court unreasonable.

Proof of conviction and acquittal.

134. (1) For the purposes of any proceedings under this Order, the fact that a person has been convicted or acquitted of an offence by or before any court in Brunei Darussalam or by a foreign court shall be admissible in evidence for the purpose of proving, where relevant to any issue in the proceedings, that he committed or did not commit that offence, whether or not he is a party to the proceedings, and where he was convicted whether he was so convicted upon plea of guilt or otherwise.

(2) The court shall accept the conviction referred to in subsection (1) as conclusive unless —

(a) it is subject to review or appeal that has not yet been determined;

(b) it has been quashed or set aside; or

(c) the court is of the view that it is contrary to the interests of justice or the public interest to accept the conviction as conclusive.

(3) A person proved to have been convicted of an offence under this section shall be taken to have committed the act and to have possessed the state of mind, if any, which at law constitute that offence.

Preservation of secrecy.

135. (1) Except for the purpose of the performance of his duties or the exercise of his functions under this Order or when lawfully required to do so by any court or under the provisions of any written law, no person shall disclose any information or matter which has been obtained by him in the performance of his duties or the exercise of his functions under this Order.

(2) No person who has any information or matter which to his knowledge has been disclosed in contravention of subsection (1) shall disclose that information or matter to any other person.

(3) Any person who contravenes subsection (1) or (2) is guilty of an offence and liable on conviction to a fine not exceeding \$100,000, imprisonment for a term not exceeding 5 years or both.

Application.

136. (1) This Order shall apply to any offence committed under this Order —

(a) on the high seas on board any ship or on any aircraft registered in Brunei Darussalam;

(b) by a citizen of Brunei Darussalam or permanent resident on the high seas on board any ship or on any aircraft;

(c) by a citizen of Brunei Darussalam or permanent resident in any place outside and beyond the limits of Brunei Darussalam;

(d) by any person against a citizen of Brunei Darussalam;

(e) by any person against property belonging to the Government located outside Brunei Darussalam, including diplomatic or consular premises of Brunei Darussalam;

(f) by any person to compel the Government to do or refrain from doing any act;

(g) by any person who has his habitual residence in Brunei Darussalam;

(h) by any person against or on board a fixed platform while it is located on the continental shelf of Brunei Darussalam; or

(i) by any person who after the commission of the offence is present in Brunei Darussalam,

and may be dealt with as if it had been committed within Brunei Darussalam.

(2) Any proceedings taken against any person under this section which would be a bar to subsequent proceedings against that person for the same offence if the offence had been committed in Brunei Darussalam shall be a bar to further proceedings against him under any written law relating to extradition or the surrender of fugitive criminals in force in Brunei Darussalam in respect of the same offence in any territory beyond the limits of Brunei Darussalam.

Directions to prevent money laundering.

137. (1) The Authority may issue such directions concerning any person or any class of person as the Authority considers necessary for the prevention of the money laundering and other matters related thereto.

(2) Any person or any member of a class of person who fails or refuses to comply with any direction issued under subsection (1), is guilty of an offence and liable on conviction to a fine not exceeding \$1,000,000 and in the case of a continuing offence, to a further fine of \$100,000 for every day during which the offence continues after conviction.

Directions and guidelines to discharge Brunei Darussalam's obligations.

138. (1) The relevant regulatory or supervisory authority may issue such directions and guidelines to any person or any class of person under their regulation or supervision as they consider necessary in order to discharge or facilitate the discharge of any obligation by virtue of a resolution or decision of the United Nations Security Council.

(2) Any person or any member of a class of person to whom a direction or guideline has been issued shall comply with it notwithstanding any other duty imposed on him by any written law, rule of law or contract; and in carrying out any act in compliance with that direction or guideline he shall not be treated as being in breach of any such written law, contract or rules of professional conduct.

(3) No person or any class of person shall disclose any direction or guideline issued to him if the relevant regulatory or supervisory authority has notified him that they are of the opinion that any such disclosure would be against the public interest.

(4) Any person or any member of a class of person who fails or refuses to comply with a direction or guideline issued to him, or who discloses a direction or guideline issued to him in contravention of subsection (3), is guilty of an offence and liable on conviction to a fine not exceeding \$20,000.

(5) The relevant regulatory or supervisory authority shall report to the Minister on the action taken under this section every 6 months or as the Minister may require.

General offence.

139. Any person who contravenes —

(a) any provision of this Order or regulations made thereunder; or

(b) any specification or requirement made, or any order in writing, direction, instruction, or notice given, or any limit, term, condition or restriction imposed, in the exercise of any power conferred under or pursuant to any provision of this Order or regulations thereunder,

is guilty of an offence and liable on conviction, if no penalty is expressly provided for the offence under this Order or the regulations, to a fine not exceeding \$250,000.

Attempts and abetment.

140. Any person who attempts to commit any offence punishable under this Order, or abets, aids, counsels or procures the commission of any such offence, is guilty of that offence and liable on conviction to the penalties provided for such first-mentioned offence.

Offences by body corporate.

141. Where an offence against this Order committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of any —

(a) director, manager, secretary or other similar officer of that body corporate, or of any person who was purporting to act in that capacity; or

(b) other person who holds a controlling interest in that body corporate,

he, as well as the body corporate, is also guilty of that offence and liable to be proceeded against and punished accordingly.

Offences by individual.

142. Where a person is liable under this Order to a penalty for any act, omission, neglect or default, he shall be liable to the same penalty for the act, omission, neglect or default of his employee, director, controller, or agent if the act, omission, neglect or default was committed by —

(a) his employee in the course of the employee's employment;

(b) his director in carrying out the function of a director;

(c) his controller in carrying out the function of a controller; or

(d) his agent when acting on his behalf.

Falsification, concealment and destruction of document etc.

143. A person, with intent to deceive, in respect of a document to be produced or submitted under any provision of this Order, who makes or causes to be made a false entry, omits to make, or causes to be omitted, any entry, or alters, abstracts, conceals or destroys, or causes to be altered, abstracted, concealed or destroyed, any entry, forges a document, or makes use of or holds in his possession a false document, purporting to be a valid document, alters any entry made in any document, or issues or uses a document which is false or incorrect, wholly or partially, or misleading is guilty of an offence and liable on conviction to a fine not exceeding \$20,000, imprisonment for a term not exceeding one year or both, and, in the case of a continuing offence, to a further fine not exceeding \$1,000 for each day during which the offence continues after conviction.

Seizable and non-bailable offence.

144. Every offence against this Order shall be seizable and non-bailable for the purposes of the Criminal Procedure Code (Chapter 7).

Evidence of market value of drugs.

145. (1) In any proceedings under this Order or regulations made thereunder —

(a) an authorised officer; or

(b) any other person,

whom the Court is satisfied is experienced,

(c) in the investigation of offences under the Misuse of Drugs Act (Chapter 27); or

(d) in the assessment of the market value of drugs,

may give evidence under subsection (2).

(2) A person mentioned in subsection (1) may give evidence to the best of that person's information, knowledge and belief of the market value of a drug at a particular time or during a particular period, notwithstanding any law or practice relating to hearsay evidence.

(3) Any evidence given under this section is, in the absence of evidence to the contrary, conclusive evidence of the matters testified to.

Operation of other laws not affected.

146. Nothing in this order prejudices, limits or restricts —

(a) the operation of any other law which provides for the forfeiture of property or the imposition of penalties or fines; or

(b) the remedies available to the Government apart from this Order, for the enforcement of its rights and the protection of its interests; or

(c) any power of search or any power to seize or to detain property which is exercisable by an authorised officer apart from this Order.

Provisions as to bail or bond.

147. (1) A person who has been arrested by any authorised officer may be released on bail or on his own bond granted by any law enforcement agency.

(2) The provisions of Chapters XXXV and XXXVI of the Criminal Procedure Code (Chapter 7) shall apply to any bail or bond granted under this section; and for the purpose of the Criminal Procedure Code (Chapter 7), any reference to “officer”, “police officer” or “police officer not below the rank of inspector” shall be read to include any authorised officer.

Arrested person to be made over to police officer.

148. An authorised officer, other than a police officer, making an arrest under section 99 shall make over the person so arrested to the nearest police officer or, in the absence of a police officer, take such person to the nearest police station, and the person arrested shall be dealt with according to the law relating to criminal procedure for the time being in force as if he had been arrested by a police officer.

Immunity from proceedings.

149. No action, suit or other legal proceedings shall lie against any —

(a) party to a contract for failing, neglecting or refusing to carry out any act required by that contract; or

(b) person for failing, neglecting or refusing to carry out any act under any written law,

where such failure, neglect or refusal is solely attributable to, or occasioned by, the provisions of this Order or any regulations made thereunder.

Protection of persons for acts done under Order.

150. No person shall be liable in respect of any act done by him in the execution or purported execution of this Order or any regulations made thereunder if he did

it in the honest belief that his duty under this Order or any regulations made thereunder required or entitled him to do it.

Regulations.

151. (1) The Minister or the Authority, as the case may be, may with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations for providing for such matters as are necessary or expedient for giving effect to and carrying out the provisions of this Order and for the due administration thereof.

(2) Such regulations may include such incidental, consequential and supplementary provisions or as the Minister or the Authority, as the case may be, considers necessary or expedient.

(3) Any person or any member of a class of person who fails or refuses to comply or contravenes any regulations made under subsection (1) or (2), is guilty of an offence and liable on conviction to a fine not exceeding \$1,000,000 and in the case of a continuing offence, to a further fine of \$100,000 for every day during which the offence continues after conviction.

Rules of Court.

152. The Chief Justice may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make Rules of Court for the purposes of this Order.

Repeal of Chapters 209, 178, S 52/2000 and savings.

153. (1) Subject to subsection (2), the Anti-Money Laundering Act, the Drug Trafficking (Recovery of Proceeds) Act and the Criminal Conduct (Recovery of Proceeds) Order, 2000 are repealed.

(2) Anything done under those repealed laws and in force immediately before the date of commencement of this Order and so far as it is not inconsistent with this Order shall continue to be in force as if done under this Order, but the Minister or Authority, as the case may be, may at any time, with the approval of His Majesty the Sultan and Yang Di-Pertuan, amend or revoke any such thing.

Made this 26th. day of Rejab, 1433 Hijriah corresponding to the 16th. day of June, 2012 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM