

# REPRINT

## **MONEY LAUNDERING AND PROCEEDS OF CRIME ACT 2002**

**As in force at: 5 February 2024**

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|  | For details see Endnotes |
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**AN ACT TO ENABLE THE UNLAWFUL PROCEEDS OF ALL SERIOUS CRIME INCLUDING DRUG TRAFFICKING TO BE IDENTIFIED, TRACED, FROZEN, SEIZED AND EVENTUALLY CONFISCATED; TO ESTABLISH AN ANTI-MONEY LAUNDERING COMMISSION, AND TO REQUIRE FINANCIAL INSTITUTIONS AND CASH DEALERS TO TAKE PRUDENTIAL MEASURES TO HELP COMBAT MONEY LAUNDERING.**

## **MONEY LAUNDERING AND PROCEEDS OF CRIME ACT 2002**

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# MONEY LAUNDERING AND PROCEEDS OF CRIME ACT 2002

As in force at: 5 February 2024

## PART I PRELIMINARY

### 1 Short title and commencement

- (1) This Act may be cited as the *Money Laundering and Proceeds of Crime Act, 2002* and shall come into operation on such date as the Minister may appoint by Notice published in the *Gazette*.
- (2) Notwithstanding the provisions of subsection (1), as renumbered, different dates may be appointed for different provisions and different purposes.

### 2 Interpretation

- (1) In this Act, unless the context otherwise requires:

**“account”** means any facility or arrangement by which a financial institution does any of the following:

- (a) accepts deposits of currency;
- (b) allows withdrawals of currency;
- (c) pays cheques or payment orders drawn on the financial institution, or collects cheques or payment orders on behalf of a person other than the financial institution;
- (d) provides a safety deposit box or 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 stay of execution;

**“authorised officer”** means a person designated by the Minister as an authorised officer for the purposes of this Act;

**“cash”** means any coin or paper money that is designated as legal

tender in the country of issue and includes any bearer bond, traveller's cheque, postal note or money order;

**“cash dealer”** means:

- (a) a casino, gambling house or lottery operator (including a person who carries on such a business through the internet), when its customers engage in financial transactions equal to or above the minimum prescribed amount;
- (b) a real estate agent, when involved in transactions for its client relating to the buying and selling of real estate;
- (c) a dealer in precious metals or in precious stones, when the dealer engages in any cash transaction with a customer equal to or above the minimum prescribed amount;
- (d) an accountant when preparing or carrying out transactions for the client relating to the following activities:
  - (i) buying or selling real estate or businesses;
  - (ii) managing money, securities or other assets;
  - (iii) managing bank, savings or securities accounts;
  - (iv) organising contributions for the creation, operation or management of companies;
  - (v) creating, operating or managing a legal entity or an arrangement;
- (e) a trust or company service provider, which as a business, provides any of the following services:
  - (i) formation or management of a legal entity or an arrangement;
  - (ii) 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 any other legal entity or arrangement;



- (iii) providing a registered office, business address or accommodation, correspondence or administrative address for a legal entity or arrangement;
- (iv) acting as (or arranging for another person to act as) a trustee of an express trust;
- (v) acting as (or arranging for another person to act as) a nominee shareholder for another person;

**“Commission”** means the Anti-Money Laundering Commission established by section 11;

**“correspondent bank”** means a financial institution by which correspondent banking services are provided;

**“correspondent banking services”** means banking services provided by one financial institution to another financial institution;

**“cross-border correspondent banking services”** means correspondent banking services provided by a financial institution in one country to a financial institution in another country;

**“currency”** means the following:

- (a) the coin and paper money of Solomon Islands or of another country that is designated as legal tender and which is customarily used and accepted as a medium of exchange in Solomon Islands or the country of issue;
- (b) monetary instruments that may be exchanged for money, including cheques, travellers’ cheques, money orders, and negotiable instruments in a form in which title passes on delivery;
- (c) precious metals, precious stones, pearls or jewellery;
- (d) currency in electronic form;
- (e) any other prescribed kind of monetary instrument which is found at any place in Solomon Islands;

**“customer”** in relation to a transaction or an account, includes:

- (a) the person in whose name a transaction or account is arranged, opened or undertaken;
- (b) a signatory to a transaction or account;
- (c) any person to whom a transaction has been assigned or transferred;
- (d) any person who is authorised to conduct a transaction; or
- (e) any other prescribed person;

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

**“defendant”**:

- (a) means a person that is under investigation for a serious offence or has been charged with a serious offence, whether or not the defendant has been convicted of the offence; and
- (b) includes, in the case of proceedings for a restraining order under section 55, a person who is being investigated for or about to be charged with, a serious offence;

**“Director”** means the Director of the Unit;

**“document”** means any record of information, and includes

- (a) anything on which there is writing;
- (b) anything on which there are marks, figures, symbols, or perforations having meaning for persons qualified to interpret them;
- (c) anything from which sounds, images or writings can be produced, with or without the aid of anything else;
- (d) a map, plan, drawing, photograph or similar thing; or
- (e) an electronic document;

**“financial institution”** means any entity or person who conducts

one or more of the following business activities or operations for or on behalf of a customer:

- (a) banking as defined in the *Financial Institutions Act 1998*, including acceptance of deposits and other repayable funds from the public;
- (b) lending, including consumer credit, mortgage credit, factoring and financing of commercial transactions;
- (c) financial leasing;
- (d) money transmission services, including:
  - (i) collecting, holding, exchanging or remitting funds or the value of money; or
  - (ii) delivering funds;
- (e) issuing and managing means of payment (such as credit cards, travellers' cheques and bankers' drafts);
- (f) issuing financial guarantees and commitments;
- (g) trading for its own account or for account of customers in money market instruments (such as cheques, bills, certificates of deposit), foreign exchange, financial futures and options, exchange and interest rate and index instruments, commodity futures trading and transferable securities;
- (h) participating in securities issues and the provision of financial services related to such issues;
- (i) money-broking;
- (j) individual and collective portfolio management;
- (k) investing, administering or managing funds or money on behalf of other persons over the minimum prescribed amount;
- (l) safekeeping and administration of cash or liquid securities on behalf of other persons over the minimum prescribed amount;

- (m) safe custody services of currency over the minimum prescribed amount;
- (n) insurance, insurance intermediation, securities dealing or futures broking;
- (o) trustee administration or investment management of a superannuation or provident fund scheme;
- (p) any other business that the Minister may prescribe taking into consideration the interest of the national economy;

and **“financial institution”** includes the following:

- (aa) the Central Bank of Solomon Islands;
- (bb) a credit institution, as defined under the *Financial Institutions Act 1998*;

**“financing of terrorism offence”** means the offence of financing terrorism prescribed under the *Counter-Terrorism Act 2009*;

**“gift”** includes any transfer of property by a person (**“first person”**) to another person (**“transferee”**) 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 consideration 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;

**“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;

**“legal practitioner”** means a notary public, attorney, barrister or solicitor when preparing or carrying out transactions for the client relating to the following activities:

- (a) buying or selling real estate or businesses;
- (b) managing money, securities or other assets;
- (c) managing bank, savings or securities accounts;
- (d) organising contributions for the creation, operation or management of companies;
- (e) creating, operating or managing a legal entity or an arrangement;

**“minimum prescribed amount”** means the amount prescribed under the *Currency Declaration Act 2009*;

**“Minister”** means the Minister responsible for this Act;

**“occasional transaction”** means any transaction involving cash that is conducted by any person other than through an account in respect of which the person is the customer;

**“offence of money laundering”** means an offence of money laundering set out in section 17, and **“money laundering offence”** has the same meaning;

**“politically exposed person”** means an individual who is or has been entrusted with a prominent public function in Solomon Islands or another country such as Head of State or of government, Minister, judge, a member of legislature, the head of a government department or statutory body and any other prescribed person and includes any spouse, child, brother or sister or parent, brother-in-law, sister-in-law or parent-in-law) or close associate of such person;

**“proceeds of crime”:**

- (a) means any property or economic advantage derived or realised, directly or indirectly, as a result of or in connection with the commission of an offence irrespective of the identity of the offender and irrespective of whether committed before or after the commencement of this Act; and
- (b) includes, on a proportional basis, property into which any property derived or realised directly or indirectly from the

offence was later successively converted, transformed or intermingled, as well as income, capital or other economic gains derived or realised directly or indirectly from such property at any time since the offence;

**“property”** means:

- (a) currency;
- (b) any kind of asset whether corporeal or incorporeal, moveable or immovable, tangible or intangible, whether situated in Solomon Islands or another country, including any legal document or instrument, including electronic or digital, evidencing title to, or legal or equitable interest in such assets; or
- (c) bank credit, traveller’s cheque, bank cheque, money order, share, securities, bond, draft, letter of credit or other similar property, whether situated in Solomon Islands or another country, including any legal or equitable interest in any such property;

**“realisable property”** means:

- (a) any property held by a defendant; or
- (b) any property held by a person to whom a defendant has directly or indirectly made a gift;

**“record”** means any material on which data is recorded or marked and which is capable of being read or understood by a person, computer system or other device;

**“serious offence”** means an offence against a provision of:

- (a) any law in Solomon Islands relating to proceeds of crime or unlawful activity, for which the maximum penalty is imprisonment or other deprivation of liberty for a period of not less than twelve months; or
- (b) a law of another country, in relation to acts relating to proceeds of crime or unlawful activity, which if the acts had occurred in

Solomon Islands the acts would have constituted an offence for which the maximum penalty is imprisonment or other deprivation of liberty of not less than twelve months;

**“supervisory authority”** means the Central Bank of Solomon Islands, the Unit or any other prescribed authority;

**“suspicious transaction”** means a transaction referred to in section 14, 14A or 14B;

**“sworn statement”**, includes an affidavit;

**“tainted property”** means property determined to be tainted property under section 33;

**“terrorist”** has the meaning given to it in the *Counter-Terrorism Act 2009*;

**“terrorist financing offence”** means the terrorist financing offence set out under the *Counter-Terrorism Act 2009*;

**“terrorist organisation”** has the meaning given to it in the *Counter-Terrorism Act 2009*;

**“transaction”**, in relation to property, includes:

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

**“Unit”** means the Solomon Islands Financial Intelligence Unit established by section 11D.

- (2) A reference in this Act to the law of another country includes a reference to any law of, or in force in, that country or part of that country.

**3        Meaning of charge in relation to a serious offence**

Any reference in this Act to a person being charged or about to be charged with a serious offence is a reference to a procedure, however described, in Solomon Islands or elsewhere, by which criminal proceedings may be commenced.

**4        Meaning of conviction in relation to a serious offence**

For the purposes of this Act, a person shall be taken to be convicted of a serious offence if the person is convicted, whether summarily or on indictment, for the offence.

**5        Meaning of quashing of convictions**

For the purposes of this Act, a person's conviction for a serious offence shall be taken to be quashed in any case if the conviction is quashed or set aside.

**6        Meaning of value of property, etc.**

- (1) Subject to subsections (2) and (3), for the purposes of this Act the value of property (other than cash) in relation to any person holding the property is:
- (a) its market value, or
  - (b) where any other person holds an interest in the property:
    - (i) the market value of the first-mentioned person's beneficial interest in the property; less
    - (ii) the amount required to discharge any encumbrance (other than a charging order) on that interest.
- (2) Subject to section 8(2), references in this Act to the value, at any time referred to in subsection (3) as ***"the material time"***, of a gift, or of any payment or reward, are references to



- (a) the value of the gift, payment or reward to the recipient when he received it, adjusted to take account of any subsequent changes in the value of money; or
  - (b) where subsection (3) applies, the value there mentioned, whichever is the greater.
- (3) Subject to section 8(2), if at the material time the recipient holds:
- (a) the property which he received (not being cash); or
  - (b) 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, but disregarding in either case any charging order.

## **7 Meaning of dealing with property**

For the purposes of this Act, dealing with property held by any person includes, without prejudice to the generality of the expression:

- (a) where the property is a debt owed to that person, making a payment to any 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 Solomon Islands.

## **8 Meaning of gift**

- (1) A transfer of property amounts to a gift within the meaning of this Act if:
  - (a) 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

- (b) the Court considers it appropriate in all the circumstances to take the gift into account.

(2) For the purposes of this Act:

- (a) 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 consideration provided by the defendant; and
- (b) in those circumstances, the provisions of sections 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 paragraph (a) bears to the value of the consideration provided by the defendant.

## **9 Meaning of deriving a benefit**

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 person.

## **10 Meaning of benefiting from the proceeds of a serious offence**

For the purposes of this Act:

- (a) a person is deemed to have benefitted from an offence if the person has at any time after the commencement of this Act received any payment or other reward in connection with, or derived any pecuniary advantage from, the commission of a serious offence whether committed by that person or another person;
- (b) a person's proceeds of a serious offence are:
  - (i) any payments or other rewards received by the person in connection with; and
  - (ii) any pecuniary advantage derived by the person at any

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time from,

the commission of the offence received or derived after the commencement of this Act; and

- (c) the value of a person's proceeds of a serious offence is the aggregate of the values of the payments, rewards or pecuniary advantages received by him in connection with, or derived by him from, the commission of the offence.

## **PART IA            ESTABLISHMENT, FUNCTIONS AND POWERS OF THE ANTI-MONEY LAUNDERING COMMISSION AND THE SOLOMON ISLANDS FINANCIAL INTELLIGENCE UNIT**

### **11            Establishment of the Commission**

- (1) The Commission established under the repealed section 11 is hereby re-established and continues under this section as the Anti-Money Laundering Commission consisting of the following members:
  - (a) the Attorney General or a representative of the Attorney General, as the Chairperson;
  - (b) the Governor of the Central Bank of Solomon Islands or a representative of the Governor, as the Deputy Chairperson;
  - (c) the Commissioner of Police or a representative of the Commissioner;
  - (d) the Permanent Secretary for Finance or a representative of the Permanent Secretary;
  - (e) the Comptroller of Customs, or a representative of the Comptroller.
- (2) The Director of the Unit or a representative of the Director shall be the secretary to the Commission.
- (3) The Commissioner may invite any technical expert or any other person to advise the Commission on any matter relating to this Act.

- (4) The Commission may regulate its own procedures.
- (5) The members of the Commission are entitled to allowances and other expenses as are prescribed.

#### **11A Functions of the Commission**

The functions of the Commission are:

- (a) to provide overall management, control and supervision of the operations of the Unit and the Director;
- (b) to formulate, implement, monitor and review policies in relation to this Act;
- (c) to receive monthly reports from the Director in relation to the functions, powers operations and other responsibilities of the Unit;
- (d) to submit annual reports of its operations and of the Unit to the Minister for laying in Parliament;
- (e) to perform other functions conferred on it under this Act or any other written law.

#### **11B Powers of the Commission**

The powers of the Commission are:

- (a) to appoint a suitably qualified person as the Director;
- (b) to appoint other suitably qualified officers, employees, consultants or agents of the Unit as are necessary for the administration and operation of this Act;
- (c) to determine the remuneration and other terms and conditions of employment of persons appointed under paragraphs (a) and (b) or of persons seconded to the Unit, including their promotion, transfer, suspension, discipline and dismissal;
- (d) to authorise in writing any person subject to any terms and conditions that the Commission may specify, to carry out any power, duty or function conferred on the Director under this Act;

and

- (e) to exercise other powers conferred on it by this Act or under any other written law.

#### **11C Funds of the Commission**

The funds of the Commission and the Unit comprise:

- (a) moneys appropriated by Parliament; and
- (b) moneys from other sources (other than public funds) received by or on behalf of the Commission or Unit.

#### **11D Establishment of the Unit**

- (1) The Unit established under the repealed section 11A(4) is hereby re-established and continues under this section as the Solomon Islands Financial Intelligence Unit.
- (2) The Unit shall be charged with the administration of the provisions of this Act, subject to the supervision and control of the Commission.

#### **11E Director of the Unit**

- (1) This section establishes the position of the Director of the Unit who shall be appointed under section 11B.
- (2) A person is not entitled to be appointed as the Director if the person:
  - (a) is, or has been a member of Parliament, provincial assembly or local authority at any time during the immediately last four years;
  - (b) is or has been a director, officer or employee of or holds any shares in any financial institution or cash dealer; or
  - (c) is a financial institution or cash dealer.
- (3) The Director shall not hold any other office or be employed in any other occupation or capacity except with the prior approval of the Commission.

## **11F Powers and functions of the Director**

- (1) The Director shall exercise all the powers, duties and functions of the Unit under this Act or any other written law.
- (2) The Director shall report to the Commission on any exercise of the Director's or Unit's powers, duties and functions under this Act.
- (3) The functions of the Director are:
  - (a) to be responsible for the organisation and operation of the Unit, including preparing the annual reports of the Commission and the Unit and submit it to the Commission;
  - (b) to be responsible for the training of officers, employees, agents of the Unit or any other person on matters relating to this Act;
  - (c) to ensure that officers, employees, consultants, agents of the Unit or any other person acting on behalf of the Unit, take the prescribed oath of confidentiality and are issued with a certificate of identity as the authority to act on behalf of the Unit;
  - (d) to obtain, with prior consultation with the Commission, technical assistance from another country or international organisation, including but not limited to, the temporary employment of law enforcement and intelligence consultants from another country.
- (4) The Director shall not disclose any information, except in accordance with this Act, that would directly or indirectly identify an individual who provided a report or information to the Unit, or a person or an entity about whom a report or information was provided under this Act.

## **11G Delegation of powers**

- (1) The Director may, by notice in the *Gazette*, delegate to any officer, employee, consultant or agent of the Unit any power in this Part, except any power delegated by the Commission to the Director.
- (2) The exercise of any delegated power has the same effect as if it had been conferred directly to the person by this section and not by delegation.
- (3) If the person appointed as the Director ceases to hold office, any

delegation made by the person shall continue to have effect as if the delegation were made by the person for the time being holding office as Director.

- (4) Any delegation made under this section is revocable at will and no delegation prevents the exercise of the delegated power by the Director.

## **11H Functions and powers of the Unit in relation to information and reports**

- (1) The functions of the Unit are:
  - (a) to receive information or report in terms of the provisions of or for the purposes this Act, including information or report from another country, and to analyse, review and assess such information or report;
  - (b) to forward any information or report to the appropriate law enforcement agency, if the Director has reasonable grounds to suspect that such information or report may involve an offence of money laundering, a terrorist financing offence, the proceeds of crime or any other offence under this Act;
  - (c) to compile statistics and records, and disseminate information within Solomon Islands or to another country and make recommendations arising out of any information or report received;
  - (d) to issue guidelines on customer identification, record keeping and reporting, and the identification of suspicious transactions;
  - (e) where appropriate, to periodically provide feedback to a financial institution or cash dealer, legal practitioner or any relevant department, office, agency or institution of the Government or provincial government on the outcomes relating to any report or information provided under this Act;
  - (f) to destroy a suspicious transaction report received or collected on the expiry of six years from the date of receiving the report if there has been no further activity or information relating to the report or the person named in the report, or six years from the

date of the last activity relating to the person or report.

(2) The powers of the Unit are:

- (a) to request information or report from any financial institution, cash dealer or legal practitioner required under the provisions of this Act;
- (b) to make any enquiries from a financial institution, cash dealer or legal practitioner on whether or not a suspicious transaction has been reported;
- (c) to require a financial institution or cash dealer to disclose records in its possession, custody or control that pertain to any transaction or transfer relating to a particular account or person, within a particular period;
- (d) with a warrant issued under section 11K or on upon written request and with the consent of the financial institution, cash dealer or legal practitioner, to enter the premises or place of any financial institution, cash dealer or legal practitioner during ordinary business hours for the purpose of inspecting any record kept for the purposes of this Act, ask any question of any officer or employee of the financial institution, cash dealer or legal practitioner relating to such record, and make notes and take copies of the record, and for such purpose:
  - (i) to use or cause to be used any computer system or data processing system in the premises or place to examine any data contained in or available to the system;
  - (ii) to reproduce any record, or cause it to be reproduced from the data, in the form of a print out or other intelligible output and remove the print out or other output for examination or copying; and to use or cause to be used any copying equipment in the premises or place to make copies of any record;
- (e) to collect any information that the Unit considers relevant to any proceeds of crime, offence of money laundering, financing of terrorism offence or any other offence under this Act, 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 a Government department or agency;

- (f) to obtain from a Government department or agency the records of a person under investigation for committing, or attempting to commit a serious offence, offence of money laundering, financing of terrorism offence or an offence under this Act or obtain such records to trace proceeds of crime;
- (g) to obtain from any telecommunication company or authority established in Solomon Islands, the record of any telephone call of the person under investigation for committing, or attempting to commit a serious offence, offence of money laundering, financing of terrorism offence or an offence under this Act or to obtain such records to trace proceeds of crime;
- (h) to act on behalf of Solomon Islands in seeking information from any government agency, law enforcement agency, supervisory authority or auditing authority of another country for purposes of this Act;
- (i) to refer any report, and information pertaining to that report, to the Police if, on the basis of the Unit's analysis and assessment based the Director has reasonable grounds to suspect that a transaction or any other activity would be relevant to the investigation or prosecution of the offence of money laundering, terrorist financing offence or any other offence which may be relevant to trace the proceeds of crime and in that regard, send a copy of the report or information to the relevant supervisory authority and the Commission;
- (j) to instruct any financial institution, cash dealer or legal practitioner to take such steps as may be appropriate in relation to any information or report received by the Unit, to enforce compliance with this Act or to facilitate any investigation by the Unit or the Police;
- (k) where the Director has reasonable grounds to suspect that a transaction or attempted transaction may involve a serious offence, offence of money laundering, terrorist financing offence, or proceeds of crime, to direct orally or in writing that

the financial institution cash dealer or legal practitioner either to proceed or refrain from proceeding with the transaction or attempted transaction, for a period to be determined by the Unit, except that:

- (i) any direction shall not exceed five working days if the direction is in writing, unless extended by the order of a Judge before the five days expire;
- (ii) any direction given orally shall not exceed twenty-four hours and shall be recorded in writing within twenty-four hours of giving such direction;
- (l) to ask any question or obtain further information on any person or transaction referred to in a report made pursuant to this Act;
- (m) to provide or conduct training programmes for financial institutions, cash dealers or legal practitioners in relation to customer identification, keeping of record, reporting obligation, identification of suspicious transaction or any other obligation of financial institutions, cash dealers or legal practitioners under this Act;
- (n) to 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 financing of terrorist activities;
- (o) to conduct public education and awareness on matters relating to prevention, detection or deterrent of money laundering and financing of terrorism;
- (p) to disclose any report or information derived from such report to any Government department or agency, subject to the confidentiality requirements under this Act;
- (q) to disclose any report or information derived from such report under this Act to any government department or agency of another country or any international organisation;
- (r) to liaise and to enter into any agreement or arrangement regarding the exchange of information under this Act with any

government department or agency of another country or any international organisation;

- (s) to provide a written monthly report to the Commission on its activities; and
- (t) to provide to the Commission prior to the end of each financial year a written report on the Unit's expected activities and outcomes for the following year, without disclosing confidential information or information that may jeopardise any ongoing investigation or prosecution.

## **11I Disclosure of information and report to foreign agencies**

- (1) The Commission has the power to authorise the disclosure of any report or information to the government department or agency of another country or an international organisation, that has powers, functions and duties similar to those of the Unit:
  - (a) on such terms and conditions as are set out in an agreement or arrangement entered into under subsection (2); or
  - (b) where such an agreement or arrangement has not been entered into, on such terms and conditions as may be agreed upon by the Unit and the government department or agency of another country or international organisation at the time of disclosure.
- (2) The Unit, with the approval of the Commission, has the power to enter into a written agreement or arrangement with the government department or agency of another country or international organisation, with powers, functions and duties similar to the Unit regarding the exchange of information between the Unit and that institution, agency or organisation.
- (3) Any report or information exchanged under subsection (1) shall be limited to reporting or disclosing the report or information that the Unit, the government department or agency of another country or the international organisation has reasonable grounds to suspect would be relevant to the investigation or prosecution of a serious offence, a money laundering offence, financing of terrorism offence or an offence that is substantially similar to such offence.

- (4) Any agreement or arrangement entered into under subsection (2) shall include the following terms:
- (a) a restriction on the use of the report or information only for purposes relevant to investigating or prosecuting a serious offence, offence of money laundering, financing of terrorism offence or an offence that is substantially similar to such offences; and
  - (b) a condition that the report or information be treated in a confidential manner and not be further disclosed without the prior written consent of the Unit.

**11J Exemption from liability**

Section 25 applies to the Commission, the Director, an authorised officer, an employee, a consultant or an agent of the Unit.

**11K Examination of records**

- (1) The Director may apply to a Principal Magistrate for a search warrant to enter and search for any document, record or thing in the premises or place of a financial institution, cash dealer or legal practitioner or of its director, officer, employee, consultant or agent whom the Director has reasonable grounds to suspect has contravened this Act.
- (2) A search warrant issued under this section may authorise the seizure and removal of such document, record or thing on the premises.
- (3) The owner or occupier of the premises or place referred to in subsection (1), and any person found in the premises or place, shall:
  - (a) give the Director or any authorised person all reasonable assistance to enable the Director or authorised person to carry out the search;
  - (b) provide any information that may reasonably be required relating to the administration of this Act, or any regulations or guidelines made under it; or
  - (c) permit the taking of any document, record or thing which the

Director may consider relevant to the investigation.

- (4) Any person who willfully obstructs, hinders, or fails to cooperate with a person conducting a search pursuant to this section or harms or threatens to harm a person conducting such a search, commits an offence.

#### **11L Investigation powers**

The Director may, with or without the assistance of the Police, conduct investigations and enquiries on behalf of a financial intelligence unit from or a law enforcement agency of another country.

#### **11M Non-disclosure**

- (1) This section applies to any current or former Director, officer, employee, consultant or agent of the Unit.
- (2) A person referred to in subsection (1) shall not disclose any information or matter the person has knowledge of or obtained in the performance of the duties, functions or powers under this Act, except:
  - (a) for the purposes of performing his duties, functions or powers under this Act;
  - (b) if required by an order of the court;
  - (c) for the detection, investigation or prosecution of a serious offence, money laundering offence or financing of terrorism offence;
  - (d) for the purposes of tracing the proceeds of crime; or
  - (e) for purposes of enforcing the provisions of this Act.
- (3) Any person who wilfully discloses information or matter in contravention of subsection (2) commits an offence.

## **PART II                    FINANCIAL TRANSACTIONS REPORTING AND MONEY LAUNDERING**

### **12                    Financial institution, cash dealer or legal practitioner to verify customer's identity**

- (1) A financial institution, cash dealer or legal practitioner shall identify and verify the identity of the person, when the person:
  - (a) opens an account with the financial institution, cash dealer or legal practitioner;
  - (b) engages the services of the financial institution, cash dealer or legal practitioner for the purposes of providing one or more of the services set out in the definition of "financial institution", "cash dealer" or "legal practitioner";
  - (c) enters into a business relationship with the financial institution, cash dealer or legal practitioner; or
  - (d) conducts or attempts to conduct a transaction.
- (2) In addition to complying with subsection (1), the financial institution, cash dealer or legal practitioner shall identify and verify the identity of the other person for whom, or for whose ultimate benefit, the transaction is being conducted:
  - (a) when a person conducts or attempts to conduct a transaction through or by using the financial institution, cash dealer or legal practitioner; and
  - (b) the financial institution, cash dealer or legal practitioner has reasonable grounds to believe that the person is undertaking the transaction on behalf of that other person.
- (3) A financial institution, cash dealer or legal practitioner that contravenes subsection (1) or (2), without reasonable excuse, commits an offence.

### **12A                  Customer identification – other situations**

- (1) A financial institution or cash dealer shall identify and verify the

identity of a customer in accordance with the provisions set out in section 12C or 12F:

- (a) when carrying out a funds transfer for the customer, other than an electronic funds transfer;
  - (b) if it reasonably suspects that the customer is involved in a money laundering offence, financing of terrorism offence or serious offence; or
  - (c) if it has doubts about the accuracy or adequacy of the customer identification and verification documentation or information it had previously obtained.
- (2) A financial institution or cash dealer that contravenes subsection (1), without reasonable excuse, commits an offence.

## **12B Exceptions**

Sections 12(1), 12(2), and 12A(1)(a) do not apply to the following:

- (a) to a financial institution or cash dealer that is subject to regulation and supervision of a supervisory authority;
- (b) to any transaction that is part of an established business relationship with a person and the person has already produced satisfactory evidence of identity, unless the financial institution, cash dealer or legal practitioner suspects the transaction is suspicious or unusual;
- (c) to any transaction that is an occasional transaction not exceeding the minimum prescribed amount, other than an electronic funds transfer, unless the financial institution or cash dealer suspects the transaction is suspicious or unusual.

## **12C Identification details**

- (1) Without limiting section 12A or 12B, a financial institution, cash dealer or legal practitioner shall:
- (a) if the customer is an individual, adequately identify and verify the customer's identity, including obtaining information relating to the following:

- (i) the individual's name, address and occupation;
    - (ii) passport, driver's licence, national or official identifying document or any other document prescribed under subsection (3);
  - (b) if the customer is a legal entity, adequately verify its legal existence and structure, including obtaining information relating to the following:
    - (i) the customer's name, legal form, address and the directors;
    - (ii) the principal owners, beneficiaries and control structure;
    - (iii) provisions regulating the power to bind the entity;
    - (iv) the authorisation of any person purporting to act on behalf of the customer, and identify the person;
  - (c) when entering into a business relationship, obtain information on the purpose and intended nature of the business relationship; and
  - (d) have risk management systems capable of determining whether a customer is a politically-exposed person, and where the customer is determined to be such a person shall:
    - (i) take reasonable measures to establish the source of property;
    - (ii) obtain the approval of a senior manager of the financial institution or cash dealer or legal practice before establishing a business relationship with the customer; and
    - (iii) conduct regular and ongoing enhanced monitoring of the business relationship.
- (2) When verifying the identity of a customer, a financial institution, cash dealer or legal practitioner shall use:
- (a) official or other document prescribed under subsection (3); or



- (b) reliable and independent source document, data or information or such other evidence as is reasonably capable of verifying the identity of the customer.
- (3) The regulations may prescribe all or any of the following:
  - (a) any official or identifying document, or reliable and independent source document, data or information or any other evidence that is required for identification or verification of any particular customer or class of customers;
  - (b) the timing of the identification and verification requirements of any particular customer or class of customers;
  - (c) the threshold for or the circumstances in which the provisions of this Act apply in relation to any particular customer or class of customers.
- (4) A financial institution, cash dealer or legal practitioner that contravenes subsection (1) or (2), without reasonable excuse, commits an offence.

## **12D Cross-border correspondent banking services**

- (1) This section applies to a financial institution if the institution carries out cross-border correspondent banking services or has other similar relationships (in this section referred to as “transaction”).
- (2) The financial institution shall, in addition to its other obligations under this Act, do all of the following:
  - (a) adequately identify and verify the person with whom it conducts the transaction;
  - (b) gather sufficient information about the nature of the business of the person;
  - (c) determine from publicly available information the reputation of the person and the quality of supervision the person is subject to;
  - (d) assess the person’s anti-money laundering and terrorist financing controls;

- (e) obtain the approval of a senior manager of the financial institution before establishing a new transaction;
  - (f) document the responsibilities of the financial institution and the person.
- (3) If the financial institution allows a person with whom it carries such transaction to establish accounts in the financial institution for use by that person's customers, the financial institution shall, in addition to its other obligations under this Act, be satisfied that the person:
- (a) has verified the identity of and is performing on-going due diligence on that person's customers that have direct access to accounts of the financial institution; and
  - (b) may be able to provide to the financial institution the customer identification data of the customers referred to in this subsection upon request.

## **12E Intermediaries or third parties**

- (1) If a financial institution, cash dealer or legal practitioner relies on an intermediary or a third party to undertake its obligations under any provision of this Act, or to introduce business to it, the financial institution, cash dealer or legal practitioner shall:
- (a) satisfy itself that the intermediary or third party is regulated and supervised and the intermediary or a third party has measures in place to comply with the requirements set out in this Act; and
  - (b) ensure that copies of identification data and other relevant documentation relating to the requirements set out in this Act are made available to it from the intermediary or the third party upon request without delay; and
  - (c) immediately obtain the information required by this Act.
- (2) A financial institution, cash dealer or legal practitioner that contravenes subsection (1), without reasonable excuse, commits an offence.

**12F      Necessity of identification to conduct transaction**

- (1) If satisfactory evidence of the identity of a person is not produced to or obtained by a financial institution, cash dealer or legal practitioner under this Act, the financial institution, cash dealer or legal practitioner shall:
  - (a) prepare a suspicious transaction report on any transaction attempted to be conducted by the person; and
  - (b) give it to the Unit as if the transaction were a suspicious transaction.
- (2) The financial institution, cash dealer or legal practitioner shall not proceed any further with the transaction unless the Unit gives written permission to proceed with the transaction.
- (3) A financial institution, cash dealer or legal practitioner that contravenes subsection (1) or (2), without reasonable excuse, commits an offence.

**12G      Financial institution, cash dealer or legal practitioner to maintain account in true name**

- (1) A financial institution, cash dealer or legal practitioner shall maintain an account in the true name of the account holder.
- (2) A financial institution, cash dealer or legal practitioner shall not open, operate or maintain any anonymous account or any account which is in a fictitious, false or incorrect name.
- (3) A financial institution, cash dealer or legal practitioner that contravenes subsection (1) or (2) commits an offence.

**12H      Financial institution, cash dealer or legal practitioner to retain customers' records**

- (1) A financial institution, cash dealer or legal practitioner shall retain:
  - (a) if evidence of a person's identity ("the identified person") is obtained under this Act, a record that indicates the kind of evidence that was obtained, and comprises either a copy of the evidence or information that enables a copy of it to be obtained;

and

- (b) a record of any correspondence between the identified person and the financial institution, cash dealer or legal practitioner.
- (2) The records mentioned in subsection (1) shall be retained for six years from the date the evidence was obtained or the date of the correspondence.
- (3) A financial institution, cash dealer or legal practitioner that contravenes subsection (1) or (2) commits an offence.

## **12I Due diligence and monitoring transactions**

- (1) A financial institution, cash dealer or legal practitioner shall:
  - (a) conduct ongoing due diligence on its relationship with each of its customers, in accordance with the guidelines issued by the Unit; and
  - (b) conduct ongoing scrutiny of any transaction undertaken by each of its customers to ensure that the transaction being conducted is consistent with:
    - (i) the financial institution's, cash dealer's knowledge or legal practitioner's knowledge of the customer;
    - (ii) the customer's business and risk profile; and
    - (iii) where necessary, the source of funds.
- (2) A financial institution, cash dealer or legal practitioner shall pay special attention to the following:
  - (a) any business relation or transaction with any person in another country, which has been specified in writing by the Unit, that does not have any adequate system or law in place to detect, prevent or deter money laundering or the financing of terrorism;
  - (b) any electronic fund transfer, other than an electronic funds transfer referred to in this Act, that does not contain complete originator information.

- (3) For the purpose of subsections (1) and (2), a financial institution, cash dealer or legal practitioner shall:
  - (a) examine as far as practicable the background and purpose of any transaction, business relation or transfer and record its findings in writing; and
  - (b) upon a request in writing by the Unit, make available such findings to the Unit or any person authorised by the Unit, to assist the Unit or such authorised person in any investigation relating to a money laundering offence, financing of terrorism offence or any other serious offence.
- (4) A financial institution, cash dealer or legal practitioner that fails to comply with a request under subsection (3)(b), without reasonable excuse, commits an offence.

**12J      Opening accounts in false name, etc.**

- (1) A person shall not open or operate an account with a financial institution, cash dealer or legal practitioner in a false, fictitious or incorrect name.
- (2) If a person is commonly known by two or more different names, the person shall not use one of those names in opening an account with a financial institution, cash dealer or legal practitioner unless the person has previously disclosed the other name or names to the financial institution, cash dealer or legal practitioner.
- (3) If a person using a particular name in any dealing with a financial institution, cash dealer or legal practitioner discloses a different name or names by which that person is commonly known, the financial institution, cash dealer or legal practitioner shall:
  - (a) make a record of the disclosure; and
  - (b) give the Unit a copy of that record, upon requested in writing by the Unit.
- (4) For the purposes of this section, a person opens an account in a false name if:

- (a) the person, in opening the account, or becoming a signatory to the account, uses a name other than a name by which the person is commonly known; or
  - (b) the person 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 the financial institution, cash dealer or legal practitioner concerned) and, in doing so, uses a name other than a name by which the person is commonly known.
- (5) A person who contravenes subsection (1) or (2), without reasonable excuse, commits an offence.

**13 Financial institutions, cash dealers or legal practitioners to keep records**

- (1) A financial institution, cash dealer or legal practitioner shall keep records of every transaction it conducts, as are reasonably necessary, to enable the transaction to be readily reconstructed at any time by the Unit.
- (2) Without limiting subsection (1), such records shall contain the following information:
  - (a) the nature of the transaction;
  - (b) the amount of the transaction and the currency in which it was denominated;
  - (c) the date on which the transaction was conducted;
  - (d) the name, address and occupation, business or principal activity, as the case may be, of each person:
    - (i) conducting the transaction; and
    - (ii) for whom, or for whose ultimate benefit, the transaction is being conducted, if the financial institution, cash dealer or legal practitioner has reasonable grounds to believe that the person is undertaking the transaction on behalf of any other person;
  - (e) the type and identifying number of any account with the

financial institution, cash dealer or legal practitioner involved in the transaction;

- (f) if the transaction involves a negotiable instrument other than cash:
    - (i) the drawer of the instrument;
    - (ii) the name of the entity on which it is drawn;
    - (iii) the name of any payee;
    - (iv) the amount and date of the instrument; and
    - (v) 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, cash dealer or legal practitioner, and of each officer, employee or agent of the financial institution, cash dealer or legal practitioner who prepared the relevant record or a part of the record;
  - (h) any other prescribed information.
- (3) A financial institution, cash dealer or legal practitioner shall keep the records for six years after the completion of the transaction.
- (4) A financial institution, cash dealer or legal practitioner that contravenes subsection (1) or (3), without reasonable excuse, commits an offence.

### **13A Records in relation to reports and certain enquiries**

- (1) In addition to the requirements under section 13, a financial institution, cash dealer or legal practitioner shall keep:
- (a) a record of any suspicious transaction report or other report made by the financial institution, cash dealer or legal practitioner to the Unit; and
  - (b) a record of any enquiry relating to money laundering or the financing of terrorism made by the financial institution, cash dealer or legal practitioner to the Unit.

- (2) A financial institution, cash dealer or legal practitioner shall keep the records referred to in subsection (1) for six years from the date on which the report or the enquiry was made.
- (3) A financial institution, cash dealer or legal practitioner that contravenes subsection (1) or (2), without reasonable excuse, commits an offence.

### **13B      Originator information**

- (1) A financial institution or cash dealer shall include accurate originator information on an electronic funds transfer and on any other form of funds transfer, and such information is to continue to remain part of the transfer.
- (2) Subsection (1) does not apply:
  - (a) to an electronic funds transfer that results from a transaction carried out using a credit or debit card if the credit or debit card number is included in the information accompanying such a transfer unless for a money transfer effected from the use of a credit or debit card as means of payment; or
  - (b) to an electronic funds transfer or settlement between financial institutions or cash dealers where the originator and beneficiary of the funds transfer are financial institutions or cash dealers acting on their own behalf.
- (3) A financial institution or cash dealer that contravenes subsection (1), without reasonable excuse, commits an offence.

### **13C      Records to be made available**

A financial institution, cash dealer or legal practitioner shall make available any of its records to the Unit if requested to do so in writing by the Unit.

### **14      Financial institution to report suspicious transactions**

- (1) This section applies if a financial institution, cash dealer or legal practitioner suspects on reasonable grounds that a transaction or activity or attempted transaction or activity is or may be related to one



or more of the following:

- (a) the detection, investigation or prosecution of a person for a money laundering offence, financing of terrorism offence or any other serious offence;
  - (b) the commission of a money laundering offence, financing of terrorism offence or any other serious offence;
  - (c) an act preparatory to a money laundering offence or financing of terrorism offence.
- (2) The financial institution, cash dealer or legal practitioner shall:
- (a) prepare a report of such transaction or activity or attempted transaction or activity; and
  - (b) send the report to the Unit, as soon as possible, but no later than two working days after forming the suspicion.
- (3) A financial institution, cash dealer or legal practitioner that, without reasonable excuse, contravenes subsection (2) commits an offence.

#### **14A Transactions involving terrorist organisations**

Any transaction or attempted transaction by a terrorist organisation shall be deemed to be a suspicious transaction, which shall be reported to the Unit in accordance with the provisions of this Act or the prescribed procedures.

#### **14B Duty to report certain transactions with no legitimate purpose**

- (1) This section applies where a transaction or attempted transaction:
- (a) is complex, unusual or large and does not have any apparent or visible economic or lawful purpose; or
  - (b) is part of an unusual pattern of transaction that does not have any apparent or visible economic or lawful purpose.
- (2) The financial institution, cash dealer or legal practitioner shall:
- (a) prepare a report of the transaction or attempted transaction;

and

- (b) give the report to the Unit, as soon as possible, but no later than two working days from the date of forming the suspicion.
- (3) A financial institution, cash dealer or legal practitioner that, without reasonable excuse, contravenes subsection (2) commits an offence.

**14C Supervisory body or auditor to report suspicious transactions**

- (1) This section applies if a supervisory authority or the auditor of a financial institution, cash dealer or legal practitioner has reasonable grounds to suspect that a transaction, an attempted transaction or information that it has in its possession concerning any transaction or attempted transaction, is or may be related to one or more of the following:
  - (a) the detection, investigation or prosecution of a person for a money laundering offence, financing of terrorism offence or serious offence;
  - (b) the commission of a money laundering offence, financing of terrorism offence or serious offence;
  - (c) an act preparatory to money laundering offence or a financing of terrorism offence.
- (2) The supervisory authority, the auditor of the financial institution, a cash dealer or a legal practitioner shall report the transaction or attempted transaction or the information to the Unit, as soon as possible but no later than two working days from the date of forming the suspicion.
- (3) A supervisory authority, auditor of the financial institution, cash dealer or legal practitioner who contravenes subsection (2), without reasonable excuse, commits an offence.

**14D Financial institution, cash dealer or legal practitioner to report financial transaction**

- (1) A financial institution, cash dealer or legal practitioner shall report to the Unit the following:

- (a) any single cash transaction exceeding the minimum prescribed amount unless the originator and beneficiary of the transaction are financial institutions or cash dealers carrying on the business set out in the definition of “financial institution” or “cash dealer” and acting on their own behalf;
  - (b) any electronic or other funds transfer of an amount exceeding the minimum prescribed amount, in the course of a single transaction sent from Solomon Islands to another country; or
  - (c) any electronic or other funds transfer of an amount exceeding the minimum prescribed amount, in the course of a single transaction received in Solomon Islands from another country.
- (2) Subsection (1)(b) does not apply if the financial institution or cash dealer sends an electronic or other funds transfer to a person in Solomon Islands, even if the final recipient of the fund is outside Solomon Islands.
- (3) Subsection (1)(c) does not apply if the financial institution or cash dealer receives an electronic or other funds transfer from a person in Solomon Islands, even if the initial sender of the fund was outside Solomon Islands.
- (4) The report shall be given:
  - (a) for any transaction or transfer in Solomon Islands currency, within fifteen days after the date the transaction or transfer was made; or
  - (b) for any transaction or transfer in a foreign currency, within two days after the date the transaction or transfer was made.
- (5) A financial institution, cash dealer or legal practitioner that contravenes subsection (1) or (4) commits an offence.
- (6) The Central Bank of Solomon Islands, or the Unit may, on the application of a financial institution, cash dealer or legal practitioner, exempt in writing the reporting of transactions referred to in subsection (1)(a) relating to deposit or withdrawal by its established customers using their accounts with the financial institution, cash dealer or legal practitioner.

#### **14E      Avoidance of section 14D**

- (1) This section applies to a person who conducts two or more transactions or electronic or other funds transfers that are of an amount below the minimum prescribed amount.
- (2) A person commits an offence if the person conducts any transaction or transfer for the sole or dominant purpose of ensuring, or attempting to ensure, that a report in relation to the transactions or transfers will not be made under section 14D(1).
- (3) The court may take into account the following when deciding whether or not a person has committed an offence under subsection (2):
  - (a) the manner or form in which the transaction or transfer was conducted;
  - (b) the value of the currency involved in each transaction or transfer;
  - (c) the aggregate value of the currency involved in the transaction or transfer;
  - (d) the period of time over which the transaction or transfer occurred;
  - (e) the interval of time between the transaction and transfer;
  - (f) the location at which the transaction or transfer was initiated or conducted;
  - (g) any explanation made by the person concerned as to the manner or form in which the transaction or transfer was conducted.

#### **14F      Form and content of reports**

- (1) A report under section 14, 14A, 14B, 14C or 14D shall:
  - (a) subject to subsection (2), be in a form approved by the Commission and may be given by way of facsimile transmission or electronic mail or other means;

- (b) contain a statement of the grounds on which the person making the report:
    - (i) for a report under section 14, 14A, 14B or 14C, holds the suspicion; or
    - (ii) for a report under section 14D, became aware of the transaction; and
  - (c) be signed or otherwise authenticated by the person making the report.
- (2) A report under a section mentioned in subsection (1) may be made orally, including by telephone, but a written report shall be prepared in accordance with subsection (1) within twenty-four hours after the oral report is made.
- (3) A person who, without reasonable excuse, contravenes subsection (1) or (2) commits an offence.

**14G Additional information**

- (1) This section applies where a person has made a report or provided information about a transaction or attempted transaction under this Act to the Unit.
- (2) A person shall give to the Unit any further information that the person has about the transaction or attempted transaction, or the parties to the transaction or attempted transaction if requested to do so by the Unit.
- (3) A person who fails to comply with subsection (2), without reasonable excuse, commits an offence.

**14H Disclosure of reports and other information**

- (1) A person shall not disclose to any other person:
- (a) the fact that a financial institution or cash dealer, legal practitioner, supervisory authority or the auditor of a financial institution or cash dealer, has formed a suspicion in relation to a transaction or an attempted transaction;

- (b) any report made or likely to be made under this Act to the Unit;
  - (c) any information given or likely to be given under this Act to the Unit;
  - (d) any other information from which the person to whom the information is disclosed could reasonably be expected to infer any of the circumstances in paragraph (a), (b) or (c).
- (2) Subsection (1) does not apply to a disclosure made to the following:
- (a) any officer, employee, consultant or agent of a person who has made or is required to make a report or provide information under this Act for any purpose connected with the performance of that person's duties;
  - (b) a legal practitioner for the purpose of obtaining legal advice or representation in relation to the disclosure;
  - (c) the supervisory authority of a financial institution or cash dealer;
  - (d) any person authorised to assist the Unit under this Act.
- (3) A legal practitioner to whom information to which subsection (1) applies has been disclosed shall not disclose that information except to another legal practitioner, for the purpose of:
- (a) the performance of the first-mentioned legal practitioner's duty;  
or
  - (b) obtaining legal advice or representation in relation to the disclosure.
- (4) Nothing in this section prevents the disclosure of any information in connection with, or in the course of, proceedings before a court if the court is satisfied that the disclosure of the information is necessary in the interests of justice.
- (5) A person commits an offence if the person:
- (a) discloses any fact, report or information contrary to this section;
  - (b) discloses any fact, report or information contrary to this section

with intent to prejudice an investigation of a money laundering offence, financing of terrorism offence or any other serious offence; or

- (c) discloses any fact, report or information contrary to this section for the purpose of obtaining directly or indirectly an advantage or a pecuniary gain for himself or any other person.

**14I Protection of identity of persons and information in suspicious transaction and other reports**

- (1) Except for the purposes set out in subsection (2), a person shall not disclose any information that identifies or is likely to identify another person who has:
  - (a) handled a transaction in respect of which a suspicious transaction report or other report under this Act has been made;
  - (b) prepared a suspicious transaction report or other report under this Act; or
  - (c) given a suspicious transaction report or other report under this Act, or information under this Act, to the Unit.
- (2) In subsection (1), the purposes are:
  - (a) the detection, investigation or prosecution of a person for a money laundering offence, financing of terrorism offence or any other serious offence; or
  - (b) the enforcement of this Act or any other prescribed Act.
- (3) Nothing in this section prevents the disclosure of any information in connection with, or in the course of, proceedings before a court if the court is satisfied that the disclosure of the information is necessary in the interests of justice.
- (4) A person who contravenes subsection (1) without reasonable excuse commits an offence.

**14J Protection of persons reporting suspicious transaction**

No civil or criminal proceedings shall be taken in relation to any act

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taken in good faith under this Act or in compliance with any permission, authority or direction given under this Act against:

- (a) a financial institution, cash dealer or legal practitioner or an officer, employee or agent of the financial institution, cash dealer or legal practitioner acting in the course of employment or agency; or
- (b) the auditor or supervisory authority of a financial institution, cash dealer or legal practitioner or the officer, employee or agent of the auditor or supervisory authority acting in the course of employment or agency.

#### **14K False or misleading statements**

A person commits an offence if the person, in making a report or providing information required under this Act:

- (a) makes any statement that the person knows is false or misleading in a material particular; or
- (b) omits from any statement any matter or thing without which the person knows that the statement is false or misleading in a material particular.

#### **14L Legal professional privilege**

- (1) Nothing in this Act requires a legal practitioner to disclose any legal professional privileged communication.
- (2) If the information:
  - (a) relates to an offence of money laundering or involving proceeds of crime or financing of terrorism offence; and
  - (b) such information consists of receipts, payments, income, expenditure or financial transactions of the legal practitioner, client or other person,

such information is not a privileged communication if it is contained in or comprises the whole or part of any financial transaction records, account or document prepared or kept by the legal practitioner in connection with any account held by the legal practitioner.



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

A financial institution or a cash dealer 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 in determining whether sufficient basis exists to report the matter pursuant to section 14(1); and
- (c) require the identified person to report the matter pursuant to section 14(1), in the event that he determines that sufficient basis exists.

**16 Further preventive measures by financial institutions and cash dealers**

A financial institution or cash dealer shall establish and maintain internal reporting procedures to:

- (a) take appropriate measures for the purpose of making employees aware of the laws of Solomon Islands relating to money laundering, and related policies established and maintained by it pursuant to this Act; and
- (b) provide its employees with appropriate training in the recognition and handling of money laundering transactions.

**17 Offence of money laundering**

(1) A person who:

- (a) converts or transfers property;
- (b) conceals or disguises the true nature, origin, location, disposition, movement or ownership of that property; or

(c) acquires, possesses or uses any property,

knowing or having reasonable grounds to believe or suspect that the property in whole or in part is proceeds of crime or directly or indirectly represents any other person's proceeds of crime commits an offence and is liable on conviction:

- (i) for a natural person, to a fine not exceeding 500,000 penalty units or to imprisonment for a term not exceeding ten years, or both; or
- (ii) for a legal entity, to a fine not exceeding 1,000,000 penalty units.

- (2) For the purposes of proving an offence of money laundering, it is not necessary to prove which serious offence has been committed.
- (3) Nothing in this Act prevents a person that committed any other offence that generated the proceeds of crime from being convicted of an offence of money laundering in respect of those proceeds of crime.
- (4) A person who attempts, facilitates, aids and abets, conspires, counsel and procures or incites any other person to commit an offence of money laundering commits an offence and is liable on conviction to the penalties specified under subsection (1).
- (5) For the purposes of this section, when proving that property is the proceeds of crime it is not necessary that the person is convicted of the serious offence that generated the proceeds of crime.

## **18 Related offences**

- (1) A person shall not open or operate an account with a financial institution or a cash dealer in a false name.
- (2) A person who contravenes subsection (1) shall be guilty of an offence and on conviction be liable:
  - (a) in the case of a natural person, to a fine not exceeding 100,000 penalty units or to imprisonment not exceeding ten years or to both such fine and imprisonment; or

- (b) in the case of a legal entity, to a fine not exceeding 200,000 penalty units.
- (3) A financial institution or cash dealer who fails to comply with any requirement of this Part for which no penalty is specified commits an offence; and shall on conviction be liable:
  - (a) in the case of a natural person, to a fine not exceeding 250,000 penalty units or to imprisonment not exceeding ten years or to both such fine and imprisonment; or
  - (b) in the case of a legal entity, to a fine not exceeding 500,000 penalty units.
- (4) In determining whether a person has complied with any requirement of subsection (1) the Court shall have regard to all the circumstances of the case, including such custom and practice as may from time to time be current in the relevant trade, business, profession or employment, and may take account of any relevant guidance adopted and approved by a public authority exercising public interest supervisory functions in relation to the financial institution or cash dealer, or any other body that regulates or is representative of the trade, business, profession or employment carried on by that person.

## **20 Commission's power to obtain search warrant**

- (1) Any police officer may apply to the Magistrate's Court for a warrant to enter any premises belonging to or in the possession or control of a financial institution, cash dealer, or any officer or employee thereof, and to search the premises and remove any document, material or other thing therein for the purposes of the investigation, as ordered by the Court and specified in the warrant.
- (2) The Court shall grant the application if it is satisfied that there are reasonable grounds to believe that:
  - (a) the financial institution or cash dealer has failed to keep a transaction record, or report a suspicious transaction, as required by this Act; or
  - (b) an officer or employee of a financial institution or cash dealer is committing, has committed or is about to commit an offence of

money laundering.

## **21 Property tracking and monitoring Orders**

For the purpose of determining whether any property belongs to or is in the possession or under the control of any person, a police officer may, upon application to the Court obtain an order:

- (a) that any document relevant to:
  - (i) identifying, locating or quantifying any such property; or
  - (ii) identifying or locating any document necessary for the transfer of any such property,belonging to, or in the possession or control of that person be delivered forthwith to the police officer; or
- (b) that the financial institution or cash dealer forthwith produce to the police officer all information obtained about any transaction conducted by or for that person during such period before or after the order as the Court directs.

## **22 Orders to enforce compliance with obligations under this Part**

- (1) Any police officer may, upon application to the Court, after satisfying the Court that a financial institution or cash dealer has failed to comply with any obligation provided for under Part II, obtain an order against all or any officers or employees of the institution or dealer in such terms as the Court deems necessary, in order to enforce compliance with such obligation.
- (2) In granting the order pursuant to subsection (1), the Court may order that should the financial institution or cash dealer fail without reasonable excuse to comply with all or any provisions of the order, such institution, dealer, officer or employee shall pay a financial penalty in the sum and in the manner directed by the Court.

## **23 Secrecy obligations over-ridden**

The provisions of this Act shall have effect notwithstanding any obligations as to secrecy or other restriction on disclosure or information imposed by law or otherwise.

**24 Immunity where suspicious transaction reported**

No action, suit or other proceedings shall lie against any financial institution or cash dealer, or any officer, employee or other representative of the institution acting in the ordinary course of the person's employment or representation, in relation to any action taken in good faith by that institution or person pursuant to Part II.

**25 Immunity where official powers or functions exercised in good faith**

No suit, prosecution or other legal proceedings shall lie against the Government or any officer or other person in respect of anything done by or on behalf of that person, with due diligence and in good faith in the exercise of any power or the performance of any function under this Act or any regulation made thereunder.

**26 Restitution of restrained property**

Where an investigation has commenced against a person for a serious offence, property was restrained under this Act in relation to that offence, and any of the following occurs:

- (a) the person is not charged in Solomon Islands with the serious offence;
- (b) the person is charged with a serious offence in Solomon Islands, but not convicted of that offence; or
- (c) a conviction for that serious offence in Solomon Islands is taken to be quashed and no conviction for such an offence substituted,

the Court shall order restitution of the restrained property.

**27 Damages**

Nothing in this Act affects the right of a person whose property has been restrained to seek the payment of damages, either actual or punitive, in cases where it is alleged that the action involved any abuse of process.

## **PART III            CONFISCATION**

### **Division 1            Confiscation and Pecuniary Penalty Orders**

#### **28            Application for confiscation order or pecuniary penalty order**

- (1) Where a person is convicted of a serious offence, the Director of Public Prosecutions may, not later than two years after the conviction, apply to the Court for one or both of the following orders:
  - (a) a confiscation order against property that is tainted property or proceeds of crime in respect of the offence;
  - (b) a pecuniary penalty 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 a pecuniary penalty order may be made in respect of the offence for which the person was convicted without the leave of the Court. The Court shall not give such leave 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; or
  - (c) it is in the interest of justice that a new application be made.

#### **28A            Standard of proof**

The standard of proof for any proceedings under Part III for confiscation orders or pecuniary penalty orders is on the balance of probabilities.

## **29 Notice of application**

- (1) Where the Director of Public Prosecutions applies for a confiscation order against property in respect of the person's conviction of a serious offence:
  - (a) the Director of Public Prosecutions shall give not less than fourteen days written notice of the application to the person and to any other person who the Director of Public Prosecutions has reason to believe may have an interest in the property;
  - (b) the person and any other person who claims an interest in the property may appear and adduce evidence at the hearing of the application; and
  - (c) the Court may, at any time before the final determination of the application, direct the Director of Public Prosecutions to:
    - (i) give notice of the application to any person who, in the opinion of the Court, appears to have an interest in the property; and
    - (ii) publish in the *Gazette* or a newspaper published and circulating in Solomon Islands, a notice of the application.
- (2) Where the Director of Public Prosecutions applies for a pecuniary penalty order against a person:
  - (a) the Director of Public Prosecutions shall give the person not less than fourteen days notice of the application; and
  - (b) the person may appear and adduce evidence at the hearing of the application.

## **30 Amendment of application**

- (1) The Court hearing the application under section 28(1) may, before the final determination of the application, and on the application of the Director of Public Prosecutions, amend the application to include any other property or benefit, as the case may be, 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 Director of Public Prosecutions 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 not less than fourteen 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 to be included in the application for a confiscation order.
- (3) Any person who claims an interest in the property to be included in the application for a confiscation order may appear and adduce evidence at the hearing of the application to amend.
- (4) Where the Director of Public Prosecutions applies to amend an application for a pecuniary penalty order against a person and the effect of the amendment would be to include an additional benefit in the application he shall give the person not less than fourteen days written notice of the application to amend.

### **31 Procedure on application**

- (1) Where an application is made to the Court for a confiscation order or a pecuniary penalty order in respect of a person's conviction of a serious offence, the Court may, in determining the application, have regard to the transcript of any proceedings against the person for the offence.
- (2) Where an application is made for a confiscation order or a pecuniary penalty order to the Court before which the person was convicted, and the Court has not, when the application is made, passed sentence on the person for the offence, the Court may, if it is satisfied that it is reasonable to do so in all the circumstances, defer passing sentence until it has determined the application for the order.

### **32 Procedure for in rem confiscation order where person dies or absconds**

- (1) Where:



- (a) an information has been laid alleging the commission of the offence by a person; and
- (b) a warrant for the arrest of the person has been issued in relation to that information,

the Director of Public Prosecutions may apply to the Court for a confiscation order in respect of any tainted property or proceeds of crime if the defendant has died or absconded.

- (2) For the purposes of subsection (1), the person is deemed to have absconded if reasonable attempts to arrest the person pursuant to the warrant have been unsuccessful during the period of six months commencing on the day the warrant was issued, and the person shall be deemed to have so absconded on the last day of that period.
- (3) Where the Director of Public Prosecutions applies under this section for a confiscation order against any tainted property or proceeds of crime the Court shall, before hearing the application:
  - (a) require notice of the application to be given to any person who, in the opinion of the Court, appears to have an interest in the property or proceeds of crime; and
  - (b) direct notice of the application to be published in the *Gazette* and in a newspaper published and circulating in Solomon Islands containing such particulars and for so long as the Court may require.

### **33        Confiscation order on conviction**

- (1) Where, upon application by the Director of Public Prosecutions, the Court is satisfied that property is tainted property or proceeds of crime in respect of a serious offence for which a person has been convicted, the Court may order that specified property be confiscated.
- (2) In determining whether property is tainted property or proceeds of crime the Court may infer, in the absence of evidence to the contrary:
  - (a) that the property was used in or intended for use in 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 for which the person was convicted; or

- (b) that the property was derived, obtained or realised as a result of the commission of the offence if it was acquired by the person before, during or within a reasonable time after the period of the commission of the offence for which the person was convicted, and the Court is satisfied that the income of that person from sources unrelated to criminal activity of that person can not reasonably account for the acquisition of that property.
- (3) Where the 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, if any, of third parties 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 operation of the order; and
  - (d) the use that is ordinarily made of the property, or the use to which the property was intended to be put.
- (5) Where the Court makes a confiscation order, the Court may give such directions as are necessary or convenient for giving effect to the order.

#### **34 Effect of confiscation order**

- (1) Subject to subsection (2), where the Court makes a confiscation order against any property, the property vests absolutely in the Government of Solomon Islands by virtue of the order.
- (2) Where property ordered to be confiscated is registrable property:
  - (a) the property vests in the Government of Solomon Islands in

equity but does not vest in the Government of Solomon Islands at law until the applicable registration requirements have been complied with;

- (b) the Government of Solomon Islands is entitled to be registered as owner of the property; and
- (c) the Director of Public Prosecutions has power on behalf of the Government of Solomon Islands to do or authorise the doing of anything necessary or convenient to obtain the registration of the Government of Solomon Islands as owner, including the execution of any instrument to be executed by a person transferring an interest in property of that kind.

(3) Where the 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 of Solomon Islands 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 Permanent Secretary, Ministry of Finance.

(4) In this section:

**“registrable property”** means property the title to which is passed by registration in accordance with the provisions of the *Land and Titles Act*;

**“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 rules of court for the lodging of an appeal against a person’s conviction or for the lodging of an appeal against the making of a 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 lapses in accordance with the rules of court or is finally determined, whichever is the later.

### **35 Voidable transfers**

The Court may:

- (a) before making a confiscation order; and
- (b) in the case of property in respect of which a restraining order was made, where the order was served in accordance with section 59,

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 valuable consideration to a person acting in good faith and without notice.

### **36 Protection of third parties**

- (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 Court, before the confiscation order is made, for an order under subsection (2).
- (2) If a person applies to the Court for an order under this section in respect of property and the Court is satisfied on a balance of probabilities:
  - (a) that the person was not in any way involved in the commission of the offence; and
  - (b) where the person acquired the interest during or after the commission of the offence, that he 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, at the time he acquired it, property that was tainted property,

the Court shall make an order declaring the nature, extent and value

at the time the order is made of the person'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 twelve months commencing on the day on which the confiscation order is made, apply under this subsection to the 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 leave of the Court.

(5) A person who makes an application under subsection (1) or (3) shall give not less than fourteen days written notice of the making of the application to the Director of Public Prosecutions, who shall be a party to any proceedings in the application.

(6) Any person exercising the powers conferred on the Court by section 67 shall, on application by any person who has obtained an order under subsection (2), and where the period allowed by the rules of court with respect to the making of an appeal has expired and any appeal from that order has been determined:

(a) direct that the property or 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.

### **37 Discharge of confiscation order on quashing of conviction**

(1) Where the 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 quashing of the conviction discharges the order.

- (2) Where a confiscation order against property is discharged as provided for in subsection (1) or by the Court of Appeal hearing an appeal against the making of the order, any person who claims to have an interest in the property immediately before the making of the confiscation order may apply to the Commissioner of Lands in writing for the transfer of the interest to the person.
- (3) On receipt of an application under subsection (2) the Commissioner of Lands shall:
  - (a) if the interest is vested in the Government of Solomon Islands, give directions that the property or part thereof to which the interest of the applicant relates be transferred to the person; or
  - (b) in any other case, direct that there be payable to the person an amount equal to the value of the interest as at the time the order is made.
- (4) In the exercise of his powers under this section, and section 36(6), the Commissioner of Lands shall have the power to do or authorise the doing of anything necessary or convenient to effect the transfer or return of the property, including the execution of any instrument and the making of any application for the registration of an interest in the property on any appropriate register.

### **38 Payment instead of a confiscation order**

Where the Court is satisfied that a confiscation order should be made in respect of the property of a person convicted of a serious offence, but that the property or any part thereof or interest therein cannot be made subject to such an order and, in particular:

- (a) cannot, on the exercise of due diligence be located;
- (b) 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) is located outside Solomon Islands;
- (d) has been substantially diminished in value or rendered

worthless; or

- (e) has been co-mingled with other property that cannot be divided without difficulty,

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

### **39 Application of procedure for enforcing fines**

Where the Court orders a person to pay an amount under section 38, 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 Court shall:

- (a) notwithstanding anything contained in any other Act, impose in default of the payment of that amount, a term of imprisonment not exceeding five years; or
- (b) direct that the term of imprisonment imposed pursuant to paragraph (a) be served consecutively to any other form of imprisonment imposed on that person, or that the person is then serving.

### **40 Confiscation where a person dies or absconds**

- (1) Subject to section 32(3), where an application is made to the Court under section 32(1) for a confiscation order against any tainted property or proceeds of crime in consequence of a person having died or absconded in connection with a serious offence and the Court is satisfied that:
  - (a) any property or proceeds of crime is tainted property in respect of the offence;
  - (b) proceedings in respect of a serious offence committed in relation to that property or proceeds of crime were commenced; and
  - (c) the accused charged with the offence referred to in paragraph (b) has died or absconded,

the Court may order that the property or proceeds of crime or such property or proceeds of crime as is specified by the Court in the order be confiscated.

- (2) The provisions of sections 33, 34, 35 and 36 shall apply with such modifications as are necessary to give effect to this section.

## **Division 2            Pecuniary Penalty Orders**

### **41            Pecuniary penalty order on conviction**

- (1) Subject to this section, where the Director of Public Prosecutions applies to the Court for a pecuniary penalty order against a person in respect of that person's conviction for a serious offence the Court shall, if it is satisfied that the person has benefitted from that offence, order him to pay to the Government of Solomon Islands an amount equal to the value of his benefit from the offence or such lesser amount as the Court certifies in accordance with section 44(2) to be the amount that might be realised at the time the pecuniary penalty order is made.
- (2) The Court shall assess the value of the benefits derived by a person from the commission of an offence in accordance with sections 42, 43, 44 and 45.
- (3) The Court shall not make a pecuniary penalty order under this section:
  - (a) until the period allowed by the rules of court for the lodging of an appeal against conviction has expired without such appeal having been lodged; or
  - (b) where an appeal against conviction has been lodged, until the appeal lapses in accordance with the rules of court or is finally determined, whichever is the later date.

### **42            Rules of determining benefit and assessing value**

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



- (2) Where a person derived an advantage as a result of or in connection with the commission of a serious offence, his advantage shall be deemed to be a sum of money equal to the value of the advantage so derived.
- (3) The Court in determining whether a person has benefitted from the commission of a serious offence or from that offence taken together with other serious offences shall, unless the contrary is proved, deem:
- (a) all property appearing to the Court to be:
    - (i) held by the person on the day on which the application is made; and
    - (ii) all property appearing to the Court to be 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 six 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 for which the person was convicted;
- (b) any expenditure by the person since the beginning of that period 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 as property received by him free of any interest therein.

- (4) Where a pecuniary penalty 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 Court shall leave out of account any benefits that are shown to the Court to have been taken into account in determining the amount to be recovered under that 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 Court shall, subject to subsection (6) treat the value of the benefit as being not less than the amount of that excess.
- (6) If, after evidence of the kind referred to in subsection (5) is given, the person satisfies the Court that the whole or part of the excess was due to causes unrelated to the commission of the serious offence, subsection (5) does not apply to the excess or, as the case may be, that part.

**43        Statements relating to benefits from commission of serious offences**

- (1) Where:
    - (a) a person has been convicted of a serious offence and the Director of Public Prosecutions tenders to the Court a statement as to any matters relevant to:
      - (i) determining whether the person has benefitted from the offence or 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 the value of the person's benefit from the offence or any other serious offence of which he is convicted in the same proceedings or which is taken into account; and
    - (b) the person accepts to any extent an allegation in the statement,
- the Court may, for the purposes of so determining or making that

assessment, treat the acceptance, as conclusive of the matters to which it relates.

- (5) An allegation may be accepted of a matter indicated for the purposes of this section, either:
  - (a) orally before the Court; or
  - (b) in writing, in accordance with rules of court.
- (6) An acceptance by a person under this section that he received any benefits from the commission of a serious offence is admissible in any proceedings for any offence.

#### **44 Amount recovered under pecuniary penalty order**

- (1) Subject to subsection (2), the amount to be recovered in the person's case under a pecuniary penalty order shall be the amount which the 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 Court is satisfied as to any matter relevant for determining the amount which might be realised at the time the pecuniary penalty order is made (whether by acceptance under section 43 or otherwise), the Court may issue a certificate giving the Court's opinion as to the matters concerned, and shall do so if satisfied that the amount that might be realised at the time the pecuniary penalty order is made is less than the amount that the Court assesses to be the value of the person's benefit from the offence, or if more than one, all the offences in respect of which the pecuniary penalty order may be made.

#### **45 Variation of pecuniary penalty order**

Where:

- (a) the Court makes a pecuniary penalty order against a person in relation to a serious offence;
- (b) in calculating the amount of the pecuniary penalty order, the Court took into account a confiscation order of the property or

a proposed confiscation order in respect of property; and

- (c) an appeal against confiscation or a confiscation order is allowed, or the proceedings from the proposed confiscation order terminate without the proposed confiscation order being made;

the Director of Public Prosecutions may apply to the Court for a variation of the pecuniary penalty order to increase the amount of the order by the value of the property not so confiscated and the Court may, if it considers it appropriate to do so, vary the order accordingly.

#### **46 Lifting the corporate veil**

- (1) In assessing the value of benefits derived by a person from the commission of a serious offence, the Court may treat as property of the person any property that, in the opinion of the Court, 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) Without prejudice to the generality of subsection (1), the Court may have regard to:

- (a) shareholdings in, debentures over or directorships in any company that has an interest, whether direct or indirect, in the property, and for this purpose the 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 Director of Public Prosecutions makes an application for an order under subsection (3) that property is available to satisfy a pecuniary penalty order against a person:

- (a) the Director of Public Prosecutions shall give written notice of

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the application to the person and to any person who the Director of Public Prosecutions has reason to believe may have an interest in the property; and

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

#### **47 Enforcement of pecuniary penalty orders**

Where the Court orders a person to pay an amount under a pecuniary penalty order, the provisions of section 39 shall apply with such modifications as the Court may determine for the purpose of empowering the Court to impose a term of imprisonment on a person in default of compliance by him with a pecuniary penalty order.

#### **48 Discharge of pecuniary penalty orders**

A pecuniary penalty order is discharged:

- (a) if 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) if the order is quashed on appeal; or
- (c) on the satisfaction of the order by payment of the amount due under the order.

### **Division 3 Control of Property**

#### **49 Powers to search for and seizure of tainted property**

- (1) A police officer may:
  - (a) search a person for tainted property or proceeds of crime;
  - (b) enter upon land or upon or into premises and search the land or premises for tainted property or proceeds of crime; and
  - (c) in either case, seize any property found in the course of the search that the police officer believes, on reasonable grounds to be tainted property or proceeds of crime,

provided that the search or seizure is made:

- (i) with the consent of the person or the occupier of the land or premises as the case may be; or
  - (ii) under warrant issued under section 50.
- (2) Where a police officer searches a person under this Division, he may also search:
  - (a) the clothing that is being worn by the person; and
  - (b) any property in, or apparently in, the person's immediate control.

## **50 Search warrants in relation to tainted property**

- (1) Where a police officer has reasonable grounds for suspecting that there is, or may be within the next seventy-two hours, tainted property of a particular kind or proceeds of crime:
  - (a) on a person;
  - (b) in the clothing that is being worn by a person;
  - (c) otherwise in a person's immediate control; or
  - (d) upon land or upon or in any premises,

the police officer may lay before a magistrate an information on oath setting out those grounds and apply for the issue of a warrant to search the person, the land or the premises as the case may be, for tainted property of that kind or proceeds of crime.
- (2) Where an application is made under subsection (1) for a warrant to search a person, land or premises, the magistrate may, subject to subsection (4) issue a warrant authorising a police officer (whether or not named in the warrant) with such assistance and by such force as is necessary and reasonable:
  - (a) to search the person for tainted property of that kind or proceeds of crime;

- (b) to enter upon the land or in or upon any premises and to search the land or premises for tainted property of that kind or proceeds of crime; and
  - (c) to seize property found in the course of the search that the police officer believes on reasonable grounds to be tainted property of that kind or proceeds of crime.
- (3) A warrant may be issued under subsection (2) in relation to tainted property or proceeds of crime, whether or not an information has been laid in respect of the relevant offence.
- (4) A magistrate shall not issue a warrant under subsection (2) unless, where an information has not been laid in respect of the relevant offence at the time when the application for the warrant is made, the magistrate is satisfied that:
  - (a) an information will be laid in respect of the relevant offence within forty-eight hours; and
  - (b) the property is tainted property or proceeds of crime.
- (5) A warrant issued under this section shall state:
  - (a) the purpose for which it is issued, including a reference to the nature of the relevant offence;
  - (b) a description of the kind of property authorised to be seized;
  - (c) a time at which the warrant ceases to be in force; and
  - (d) whether entry is authorised to be made at any time of the day or night or during specified hours.
- (6) If during the course of searching under a warrant issued under this section, a police officer finds:
  - (a) property that the police officer believes on reasonable grounds to be tainted property or proceeds of crime either of a type not specified in the warrant or tainted property in relation to another serious offence; or
  - (b) any thing the police officer believes on reasonable grounds may

afford evidence as to the commission of a serious offence,  
the police officer may seize that property or thing and the warrant shall be deemed to authorise such seizure.

## **51 Searches in emergencies**

- (1) Where a police officer suspects on reasonable grounds that:
- (a) particular property is tainted property or proceeds of crime;
  - (b) it is necessary to exercise the power of search and seizure in order to prevent the concealment, loss or destruction of the property; and
  - (c) the circumstances are so urgent that they require immediate exercise of the power without the authority of a warrant or the order of a court,

the police officer may:

- (i) search a person;
  - (ii) enter upon land, or upon or into premises and search for the property; and
  - (iii) if property is found, seize the property.
- (2) If during the course of a search conducted under this section, a police officer finds:
- (a) property that the police officer believes on reasonable grounds to be tainted property or proceeds of crime; or
  - (b) any thing the police officer believes on reasonable grounds may afford evidence as to the commission of a criminal offence,

the police officer may seize that property or proceeds of crime or thing.

## **52 Record of property seized**

A police officer who seizes property under section 50 or section 51



shall detain the property seized, taking reasonable care to ensure that the property is preserved.

### **53 Return of seized property**

- (1) Where property has been seized under section 50 or section 51 (otherwise than because it may afford evidence of the commission of an offence), a person who claims an interest in the property may apply to the Court for an order that the property be returned to the person.
- (2) Where a person makes an application under subsection (1) and the Court is satisfied that:
  - (a) the person is entitled to possession of the property;
  - (b) the property is not tainted property or proceeds of crime; and
  - (c) the person in respect of whose conviction, charging or proposed charging the seizure of the property was made has no interest in the property,

the Court shall order the return of the property to the person.

### **54 Search for and seizure of tainted property in relation to foreign offences**

Where a foreign State requests assistance to locate or seize property suspected to be tainted property or proceeds of crime in respect of an offence within its jurisdiction, the provisions of sections, 50 and 51 apply *mutatis mutandis* provided that the Attorney-General has, under section 4 of the *Mutual Assistance in Criminal Matters Act, 2002*, authorised the giving of assistance to the foreign State.

## **Division 4 Restraining Orders**

### **55 Application for restraining order**

- (1) The Director of Public Prosecutions may apply to the Court for a restraining order against any realisable property held by the defendant or specified realisable property held by a person other than the defendant.

- (2) An application for a restraining order may be made *ex parte* and shall be in writing and be accompanied by a sworn statement stating:
- (a) where the defendant has been convicted of a serious offence:
    - (i) the serious offence for which he was convicted;
    - (ii) the date of the conviction;
    - (iii) the court before which the conviction was obtained and whether an appeal has been lodged against the conviction;
    - (iv) a description of the property in respect of which the restraining order is sought;
    - (v) the name and address of the person who is believed to be in possession of the property;
    - (vi) the grounds for the belief that the property is tainted property, proceeds of crime or property that may be used to satisfy a confiscation order or pecuniary penalty order in relation to the offence;
    - (vii) the grounds for the belief that the defendant derived a benefit directly or indirectly from the commission of the offence; and
    - (viii) where the application seeks a restraining order against property of a person other than the defendant, the grounds for the belief that the property is tainted property or proceeds of crime in relation to the offence or a gift caught by this Act, or is subject to the effective control of the defendant; or
  - (b) where the defendant is charged or is about to be charged with a serious offence:
    - (i) the serious offence for which he is charged or about to be charged;
    - (ii) the grounds for believing that the defendant committed the offence;

- (iii) a description of the property in respect of which the restraining order is sought;
  - (iv) the name and address of the person who is believed to be in possession of the property;
  - (v) the grounds for the belief that the property is tainted property or proceeds of crime in relation to the offence or property derived from a serious offence, or property that may be used to satisfy a confiscation order or pecuniary penalty order; and
  - (vi) the grounds for the belief that the defendant derived a benefit directly or indirectly from the commission of the offence; or
- (c) where the application seeks a restraining order against property of a person other than the defendant, the grounds for the belief that the property is tainted property or proceeds of crime or in relation to the offence and is subject to the effective control of the defendant or a gift caught by this Act; or
  - (d) the grounds for the belief that a confiscation order or a pecuniary penalty order may be or is likely to be made under this Part in respect of the property.

## **56 Restraining orders**

- (1) Subject to this section, where the Director of Public Prosecutions applies to the Court for a restraining order against property and the Court is satisfied that:
  - (a) the defendant has been convicted of a serious offence, or has been charged or is about to be charged with a serious offence;
  - (b) where the defendant has not been convicted of a serious offence, there are reasonable grounds for believing that the defendant committed the offence;
  - (c) there is reasonable cause to believe that the property is tainted property or proceeds of crime that may satisfy a confiscation order or pecuniary penalty order in relation to an offence, or that

the defendant derived a benefit directly or indirectly from the commission of the offence;

- (d) where the application seeks a restraining order against property of a person other than the defendant, there are reasonable grounds for believing that the property is tainted property or the proceeds of crime, that may satisfy a confiscation order or pecuniary penalty order in relation to an offence and that the property or proceeds is subject to the effective control of the defendant; or
- (e) there are reasonable grounds for believing that a confiscation order or a pecuniary penalty order is likely to be made under this Part in respect of the property,

the Court may make an order prohibiting the defendant or any person from disposing of, or otherwise dealing with, the property or such part thereof or interest therein as is specified in the order, except in such manner as may be specified in the order.

- (2) Where an order has been made under subsection (1) the Court may at the request of the Director of Public Prosecutions, if satisfied that the circumstances so require:
  - (a) direct the Registrar of the court or such other person as the Court may appoint, to take custody of the property or such part thereof as is specified in the order and to manage or otherwise deal with all or any part of the property in accordance with the directions of the Court; and
  - (b) require any person having possession of the property to give possession thereof to the Registrar of the Court or to the person appointed under paragraph (a) to take custody and control of the property.
- (3) An order under subsection (1) may be made subject to such conditions as the Court thinks fit and, without limiting the generality of this subsection, may make provision for meeting out of the property or a specified part of the property, any or all of the following:
  - (a) the person's reasonable living expenses (including the reasonable living expenses of the person's dependants, if any)

and reasonable business expenses;

- (b) the person's reasonable expenses in defending the criminal charge and any proceedings under this Division; and
  - (c) any specified debt incurred by the person in good faith.
- (4) In determining whether there are reasonable grounds for believing that property is subject to the effective control of the defendant, the Court may have regard to the matters referred to in section 46.
  - (5) Where the Registrar of the court or other person appointed under subsection (2) is given a direction in relation to any property, he may apply to the Court for directions on any question respecting the management or preservation of the property under his control.
  - (6) An application under section 55 shall be served on all persons interested in the application or such of them as the Court thinks expedient and all such persons shall have the right to appear at the hearing and be heard.
  - (7) When the application is made under section 55(1) on the basis that a person is about to be charged, any order made by the Court shall lapse if the person is not charged within reasonable time.

## **57 Undertaking by the Government of Solomon Islands**

- (1) Before making an order under section 56(1), the Court may require the Director of Public Prosecutions on behalf the Government of Solomon Islands to give such undertakings as the Court considers appropriate with respect to the payment of damages or costs, or both, in relation to the making and execution of the order.
- (2) For the purposes of this section, the Director of Public Prosecutions may give such undertakings with respect to the payment of damages or costs or both as are required by the Court.

## **58 Notice of application for restraining order**

Before making a restraining order the Court may require notice to be given to, and may hear, any person who, in the opinion of the Court, appears to have an interest in the property, unless the Court is of the

opinion that giving such notice before making the order would result in the disappearance, dissipation or reduction in value of the property.

**59 Service of restraining order**

A copy of a restraining order shall be served on a person affected by the order in such manner as the Court directs or as may be prescribed by rules of court.

**60 Registration of restraining order**

- (1) A copy of a restraining order which affects lands in Solomon Islands shall be registered with the Commissioner of Lands.
- (2) A restraining order is of no effect with respect to registered land unless it is registered as a charge under the *Land and Titles Act*.
- (3) Where particulars of a restraining order are registered under the *Land and Titles Act*, a person who subsequently deals with the property shall, for the purposes of section 61 be deemed to have notice of the order at the time of the dealing.

**61 Contravention of restraining order**

- (1) A person who knowingly contravenes a restraining order by disposing of or otherwise dealing with property that is subject to the restraining order commits an offence and shall upon conviction be liable:
  - (a) for a natural person, to a fine not exceeding 500,000 penalty units or to imprisonment for a term not exceeding five years, or both; or
  - (b) for a legal entity to a fine not exceeding 1,000,000 penalty units.
- (2) Where a restraining order is made against property and the property is disposed of, or otherwise dealt with, in contravention of the restraining order, and the disposition or dealing was not for sufficient consideration or not in favour of a person who acted in good faith and without notice, the Director of Public Prosecutions may apply to the Court that made the restraining order for an order that the disposition

or dealing be set aside.

- (3) Where the Director of Public Prosecutions makes an application under subsection (2) in relation to a disposition or dealing, the Court may:
- (a) set aside the disposing or dealing as from the day on which the disposition or dealing took place; or
  - (b) set aside the disposition or dealing as from the day of the order under this subsection and declare the respective rights of any persons who acquired interest in the property on, or after the day on which the disposition or dealing took place, and before the day of the order under this subsection.

## **62 Duration of restraining order**

A restraining order remains in force until:

- (a) it is discharged, revoked or varied;
- (b) a confiscation order or pecuniary penalty order made under this Act is paid in full satisfaction of the order.

## **63 Review of restraining orders**

- (1) A person who has an interest in property in respect of which a restraining order was made, may at any time, apply to the Court for an order under subsection (4).
- (2) An application under subsection (1) shall not be heard by the Court unless the applicant has given to the Director of Public Prosecutions at least three working days notice in writing of the application.
- (3) The Court may require notice of the application to be given to, and may hear, any person who in the opinion of the Court appears to have an interest in the property.
- (4) On an application under subsection (1), the Court may revoke or vary the order or make the order subject to such conditions as the Court thinks fit. For the purposes of this subsection the Court may:
  - (a) require the applicant to enter into recognisances; or

- (b) vary the order to permit the payment of reasonable living expenses to the applicant, including his dependants, if any, and reasonable legal or business expenses of the applicant.
- (5) An order under subsection (4) may only be made if the Court is satisfied that:
  - (a) the applicant is the lawful owner to the property or is entitled to lawful possession thereof, and appears to be innocent of any complicity in the commission of a serious offence or of any collusion in relation to such offence; and
  - (b) the property will no longer be required for the purposes of any investigation or as evidence in any proceedings.

#### **64        Extension of restraining orders**

- (1) The Director of Public Prosecutions may apply to the Court that made a restraining order for an extension of the period of the operation of the order.
- (2) Where the Director of Public Prosecutions makes an application under subsection (1), the Court may extend the operation of a restraining order for a specified period, if it is satisfied that a confiscation order may be made in respect of the property or part thereof or that a pecuniary penalty order may be made against the person.

### **Division 5        Realisation of Property**

#### **65        Realisation of property**

- (1) Where:
  - (a) a pecuniary penalty order is made;
  - (b) the order is not subject to appeal; and
  - (c) the order is not discharged,

the Court may, on application by the Attorney-General, exercise the powers conferred upon the Court by this section.



- (2) The Court may appoint a receiver in respect of realisable property.
- (3) The Court may empower a receiver appointed under subsection (2) to take possession of any realisable property subject to such conditions or exceptions as may be specified by the Court.
- (4) The Court may order any person having possession of realisable property to give possession of it to any such receiver.
- (5) The Court may empower any such receiver to realise any realisable property in such manner as the Court may direct.
- (6) The Court may order any person holding an interest in realisable property to make such payment to the receiver in respect of any beneficial interest held by the defendant or, as the case may be, the recipient of a gift within the meaning of this Act as the Court may direct, and the Court may, on the payment being made, by order transfer, grant or extinguish any interest in the property.
- (7) The Court shall not, in respect of any property, exercise the powers conferred by subsection (3), (4), (5) or (6), unless a reasonable opportunity has been given for persons holding any interest in the property to make representation to the Court.

## **66 Application of proceeds of realisation and other sums**

- (1) Subject to subsection (2), the following property in the hands of a receiver appointed under section 56 or 65 that is to say:
  - (a) the proceeds of the realisation of any property under section 65; and
  - (b) any other sums, being property held by the defendant,shall, after such payments, if any, as the Court may direct have been made out of those sums, be payable to the Registrar of the Court and be applied on the defendant's behalf towards the satisfaction of the pecuniary penalty order in the manner provided by subsection (3).
- (2) If, after the amount payable under the confiscation order has been fully paid, any such sums remain in the hands of such a receiver, the receiver shall distribute the sums remaining:

(a) among such of those persons who held property which has been realised under this Part; and

(b) in such proportions,

as the Court may direct, after giving a reasonable opportunity for those persons to make representations to the Court.

(3) Property received by the Registrar of the Court on account of an amount payable under a confiscation order shall be applied as follows:

(a) if received by him from a receiver under subsection (1), it shall first be applied in payment of the receiver's remuneration and expenses; and

(b) the balance shall be paid or, as the case may be, transferred, to the Government of Solomon Islands for the use of prevention of drug abuse or drug or alcoholic related diseases.

## **67 Exercise of powers by Court and receivers**

(1) The following provisions of this section apply to the powers conferred on the Court by sections 56, 63, 64 and 65 or on a Receiver appointed under section 56(2) or section 65(2).

(2) Subject to the following provisions of this section, the powers shall be exercised with a view to making available for satisfying the pecuniary penalty order or, as the case may be, any pecuniary penalty order that may be made in the defendant's case, the value for the time being of realisable property held by any person by the realisation of such property.

(3) In the case of realisable property held by a person to whom the defendant has directly or indirectly made a gift within the meaning of this Act, the powers shall be exercised with a view to realising no more than the value for the time being of the gift.

(4) The powers shall be exercised with the view to allowing any person other than the defendant or the recipient of any such gift to retain or recover the value of any property held by him.

- (5) An order may be made or other action taken in respect of the debt owed by Solomon Islands.
- (6) In exercising these powers, no account shall be taken of any obligations of the defendant or of the recipient of any such gift which conflict with the obligation to satisfy the confiscation order.

**68      Application of this Part in bankruptcy or winding up**

- (1) Where a person who holds realisable property is adjudged bankrupt:
  - (a) property for the time being subject to a restraining order made before the order adjudging him bankrupt; and
  - (b) any proceeds of property realised by virtue of section 65(5) or (6) for the time being in the hands of a person appointed under section 56(2) or 65(2),

is excluded from the property of the bankrupt for the purposes of the *Bankruptcy Act*.

- (2) Where a person has been adjudged bankrupt the powers conferred on the Court by sections 56 and 65 or on a person appointed under section 56(2) or 65(2) shall not be exercised in to property for the time being comprised in the property of the bankrupt for the purposes of the *Bankruptcy Act*.
- (3) Where in the case of a debtor, a receiver stands appointed under section 75 of the *Bankruptcy Act* and any property of the debtor is subject to a restraint order under or for the purposes of that Act, the powers conferred on the receiver by virtue of that Act do not apply to property for the time being subject to such restraint order.
- (4) Where a person is adjudged bankrupt and has directly or indirectly made a gift within the meaning of this Act:
  - (a) no order shall be made in pursuance of the provision of the *Bankruptcy Act* in respect of the making of the gift at any time when the person has been charged with a serious offence and the proceedings have not been concluded by the acquittal of the defendant or discontinuance of the proceedings, or when property of the person to whom the gift was made is subject to

a restraint order or a charging order made under or for the purposes of that Act; and

- (b) any order made in pursuance of the provisions of the *Bankruptcy Act* after the conclusion of the proceedings shall take into account any realisation under this Part of property held by the person to whom the gift was made.

## **69 Winding up of company holding realisable property**

- (1) Where realisable property is held by a company and an order for the winding up of the company has been made or a resolution has been passed by the company for its voluntary winding up, the functions of the liquidator or any provisional liquidator shall not be exercisable in relation to:

- (a) property for the time being subject to a restraining order made before the relevant time; or
- (b) any proceeds of property realised by virtue of section 65(5) or (6) for the time being in the hands of a person appointed under section 56(2) or 65(2),

but there shall be payable out of such property any expenses (including the remuneration of the liquidator or provisional liquidator,) properly incurred in the winding up in respect of the property.

- (2) Where, in the case of a company, such an order has been made or such a resolution has been passed, the powers conferred on the Court by section 56 or 65 shall not be exercised in relation to any realisable property held by the company in relation to which the functions of the liquidator are exercisable:

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

- (3) Subsection (2) does not affect the enforcement of a charging order:
- (a) made before the relevant time; or
  - (b) on property which was subject to a restraining order at the relevant time.
- (4) Nothing in the *Companies Act* shall be taken as restricting, or enabling the restriction of, the exercise of the powers conferred on the Court by section 56 or 65.
- (5) In this section:
- (a) **“company”** means any company within the meaning of the *Companies Act*;
  - (b) **“liquidator”** includes any person appointed to the office of liquidator (whether provisionally or otherwise) under the *Companies Act*; and
  - (c) **“relevant time”** means:
    - (i) where no order for the winding up of the company has been made, the time of the passing of the resolution for voluntary winding up;
    - (ii) where such an order has been made and before the presentation of the petition for the winding up of the company by the Court, such a resolution had been passed by the company, the time of the passing of the resolution; and
    - (iii) in any other case where such an order has been made, the time of the making of the order.

## **Division 6            Production Orders and other Information                                  Gathering Powers**

### **70                    Production orders**

- (1) Where a person has been charged with, suspected of having committed or convicted of a serious offence, and a police officer has

reasonable grounds for suspecting that any person has possession or control of:

- (a) a document relevant to identifying, locating or quantifying property of the person, or to identifying or locating a document necessary for the transfer of property of such person; or
- (b) a document relevant to identifying, locating or quantifying tainted property in relation to the offence, or to identifying or locating a document necessary for the transfer of tainted property in relation to the offence,

the police officer may apply *ex parte* and in writing to a judge in chambers for an order against the person suspected of having possession or control of a document of the kind referred. The application shall be supported by an affidavit.

- (2) The judge may, if he considers there are reasonable grounds for so doing, make an order that the person produce to a police officer, at a time and place specified in the order, any documents of the kind referred to in subsection (1), provided that an order under this subsection may not require the production of bankers books.
- (3) A police officer to whom documents are produced may:
  - (a) inspect the documents;
  - (b) make copies of the documents; or
  - (c) retain the documents for so long as is reasonably necessary for the purposes of this Act.
- (4) Where a police officer retains documents produced to him, he shall make a copy of the documents available to the person who produced them.
- (5) A person is not entitled to refuse to produce documents 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 law or otherwise) of the person not to disclose the existence or contents of the document.

## **72 Failure to comply with a production order**

Where a person is required by a production order to produce a document to a police officer, the person is guilty of an offence against this section if he:

- (a) contravenes the order without reasonable cause; or
- (b) in purported compliance with the order, produces or makes available a document known to the person to be false or misleading in a material particular and does not so indicate to the police officer and provide to the police officer any correct information of which the person is in possession, and shall on conviction be liable:
  - (i) for a natural person, to a fine not exceeding 500,000 penalty units or to imprisonment for a term not exceeding five years or both; or
  - (ii) for a legal entity, to a fine not exceeding 1,000,000 penalty units.

## **72A Non-disclosure of production orders**

- (1) A financial institution or cash dealer that is, or has been subject to a production order shall not disclose the existence or operation of the order to any person except:
  - (a) to an officer or agent of the institution for the purpose of ensuring compliance with the order;
  - (b) to a legal practitioner for the purpose of obtaining legal advice or representation in respect of the order; or
  - (c) to a police officer authorised in writing to receive the information.
- (2) A financial institution or cash dealer that contravenes subsection (1) commits an offence.

- (3) A person described in subsection (1)(a), (b) or (c) shall not disclose the existence of a production order except to another such person, and may do so only for the purposes of the performance of the person's duties or functions in relation to the execution or processing of the production order.
- (4) A person who contravenes subsection (3) commits an offence.
- (5) Nothing in this section prevents the disclosure of information concerning a production order for the purpose of or in connection with legal proceedings or in the course of proceedings before a court, provided that nothing in this section shall be construed as requiring a legal practitioner to disclose to any court the existence of a production order.

### **73            Production orders in relation to foreign offences**

Where a foreign State requests assistance to locate or seize property suspected to be tainted property in respect of an offence within its jurisdiction, the provisions of section 69 apply *mutatis mutandis*, provided that the Attorney-General has, under section 4(2) of the *Mutual Assistance in Criminal Matters Act, 2002*, authorised the giving of assistance to the foreign State.

### **74            Power to search for and seize documents relevant to locating property**

A police officer may:

- (a) enter upon land or upon or into premises;
- (b) search the land or premises for any document of the type described in section 70(1); and
- (c) seize any document found in the course of that search that the police officer believes, on reasonable grounds, to be a relevant document in relation to a serious offence,

provided that the entry, search and seizure is made with the consent of the occupier of the land or the premises, or under warrant issued under section 75.



**75            Search warrant for location of documents relevant to locating property**

(1) Where:

- (a) a person has been charged or convicted of a serious offence;  
or
- (b) the police officer has reasonable grounds for suspecting that there is, or may be within the next seventy-two hours, upon any land or upon or in any premises, a document of the type described in section 70(1) in relation to the offence,

the police officer may make application supported by information on oath to a magistrate for a search warrant in respect of that land or those premises.

(2) Where an application is made under subsection (1) for a warrant to search land or premises, the magistrate may, subject to subsection (4) issue a warrant authorising a police officer (whether or not named in the warrant), with such assistance and by such force as is necessary and reasonable:

- (a) to enter upon the land or in or upon any premises and to search the land or premises for property of that kind; and
- (b) to seize property found in the course of the search that the police officer believes on reasonable grounds to be property of that kind.

(3) A magistrate shall not issue a warrant under subsection (2) unless he is satisfied that:

- (a) a production order has been given in respect of the document and has not been complied with;
- (b) a production order in respect of the document would be unlikely to be effective;
- (c) the investigation for the purposes of which the search warrant is being sought might be seriously prejudiced if the police officer does not gain immediate access to the document without any

notice to any person; or

- (d) the document involved cannot be identified or described with sufficient particularity to enable a production order to be obtained.

(4) A warrant issued under this section shall state:

- (a) the purpose for which it is issued, including a reference to the nature of the relevant offence;
- (b) a description of the kind of documents authorised to be seized;
- (c) a time at which the warrant ceases to be in force; and
- (d) whether entry is authorised to be made at any time of the day or night or during specified hours.

(5) If during the course of searching under a warrant issued under this section, a police officer finds:

- (a) a document of the type described in section 70(1) that the police believes on reasonable grounds to relate to the relevant offence, or to another serious offence; or
- (b) any thing the police officer believes on reasonable grounds may afford evidence as to the commission of a serious offence,

the police officer may seize that property or thing and the warrant shall be deemed to authorise such seizure.

## **76 Search warrants in relation to foreign offences**

Where a foreign State requests assistance to locate or seize property suspected to be tainted property in respect of an offence within its jurisdiction, the provisions of section 75 apply *mutatis mutandis*, provided that the Attorney-General has, under section 4(2) of the *Mutual Assistance in Criminal Matters Act 2002*, authorised the giving of assistance to the foreign State.

## **77 Monitoring orders**

(1) The Director of Public Prosecutions or a police officer may apply, ex

*parte* and in writing to a judge for an order (in this section called a “(monitoring order)” directing a financial institution to give information to a police officer. An application under this subsection shall be supported by an affidavit.

- (2) A monitoring order shall:
  - (a) direct a financial institution to disclose information obtained by the institution about transactions conducted through an account held by a particular person with the institutions;
  - (b) not have retrospective effect; and
  - (c) only apply for a period of a maximum of three months from the date of making.
- (3) A judge shall not issue a monitoring order unless he is satisfied that there are reasonable grounds for suspecting that the person in respect of whose account the order is sought:
  - (a) has committed or was involved in the commission, or is about to commit or be involved in the commission of a serious offence; or
  - (b) has benefitted directly or indirectly, or is about to benefit directly or indirectly from the commission of a serious offence.
- (4) A monitoring order shall specify:
  - (a) the name or names in which the account is believed to be held; and
  - (b) the class of information that the institution is required to give.
- (5) Where a financial institution, which has been given notice of a monitoring order, knowingly:
  - (a) contravenes the order; or
  - (b) provides false or misleading information in purported compliance with the order,

the institution commits an offence against this subsection and shall

on conviction be liable:

- (i) for a natural person, to a fine not exceeding 500,000 penalty units or to imprisonment for a term not exceeding five years, or both; or
- (ii) for a legal entity, to a fine not exceeding 1,000,000 penalty units.

## **78 Monitoring orders not to be disclosed**

- (1) A financial institution that is, or has been subject to a monitoring order shall not disclose the existence or operation of the order to any person except to:
  - (a) an officer or agent of the institution for the purpose of ensuring compliance with the order;
  - (b) a legal practitioner for the purpose of obtaining legal advice or representation in respect of the order; or
  - (c) a police officer authorised in writing to receive the information.
- (2) A person who contravenes subsection (1) shall be guilty of an offence and on conviction be liable:
  - (a) for a natural person, to a fine not exceeding 500,000 penalty units or imprisonment for a term not exceeding five years, or both; or
  - (b) for a legal entity to a fine not exceeding 1,000,000 penalty units.
- (3) A person described in subsection (1)(a), (b) or (c) shall not disclose the existence or operation of a monitoring order except to another such person, and may do so only for the purposes of the performance of the person's duties or functions.
- (4) A person who contravenes subsection (3) commits an offence.
- (5) Nothing in this section prevents the disclosure of information concerning a monitoring order for the purpose of or in connection with legal proceedings or in the course of proceedings before a court, provided that nothing in this section shall be construed as requiring

a legal practitioner to disclose to any court the existence or operation of a monitoring order.

**79 Regulation**

The Minister may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient.

**80 General penalties**

A person who commits an offence under this Act for which no penalty is provided is liable on conviction:

- (a) for a natural person, to a fine not exceeding 500,000 penalty units or to imprisonment for a term not exceeding five years or both; or
- (b) for a legal entity to a fine not exceeding 1,000,000 penalty units.

## ENDNOTES

### 1

#### KEY

|                       |                               |
|-----------------------|-------------------------------|
| amd = amended         | Pt = Part                     |
| Ch = Chapter          | rem = remainder               |
| Div = Division        | renum = renumbered            |
| exp = expires/expired | rep = repealed                |
| GN = Gazette Notice   | Sch = Schedule                |
| hdg = heading         | Sdiv = Subdivision            |
| ins = inserted        | SIG = Solomon Islands Gazette |
| lt = long title       | st = short title              |
| LN = Legal Notice     | sub = substituted             |
| nc = not commenced    |                               |

### 2

#### LIST OF LEGISLATION

***Money Laundering and Proceeds of Crime Act 2002 (No. 5 of 2002)***

|             |  |
|-------------|--|
| Assent date | 10 March 2003  |
| Gazetted    | 12 April 2005  |
| Commenced   | All except Part II: 26 April 2005; Rem (Part II): 3 April 2006 |

***Money Laundering and Proceeds of Crime (Amendment) Act 2004 (No. 7 of 2004)***

|             |                 |
|-------------|-----------------|
| Assent date | 12 January 2005 |
| Gazetted    | 12 April 2005   |
| Commenced   | 12 April 2005   |

***Penalties Miscellaneous Amendments Act 2009 (No. 14 of 2009)***

|             |                |
|-------------|----------------|
| Assent date | 29 July 2009   |
| Gazetted    | 1 October 2009 |
| Commenced   | 1 October 2009 |

***Money Laundering and Proceeds of Crime (Amendment) Act 2010 (No. 6 of 2010)***

|             |               |
|-------------|---------------|
| Assent date | 21 April 2010 |
| Gazetted    | 23 April 2010 |
| Commenced   | 14 May 2010   |

***Legislation Amendment, Repeal and Validation Act 2023 (No. 17 of 2023)***

|             |                  |
|-------------|------------------|
| Assent date | 29 December 2023 |
| Gazetted    | 29 December 2023 |
| Commenced   | 5 February 2024  |

### 3

#### LIST OF AMENDMENTS

|     |                          |
|-----|--------------------------|
| s 1 | amd by Act No. 7 of 2004 |
| s 2 | sub by Act No. 6 of 2010 |

|             |   |
|-------------|---|
| Part 1A     | ins by Act No. 6 of 2010                            |
| s 11        | sub by Act No. 6 of 2009                            |
| s 11A       | ins by Act No. 7 of 2004; sub by Act No. 6 of 2010  |
| s 11B – 11M | ins by Act No. 6 of 2010                            |
| Part II Hdg | amd by Act No. 6 of 2010                            |
| s 12        | sub by Act No. 6 of 2010                            |
| s 12A – 12J | ins by Act No. 6 of 2010                            |
| s 13        | sub by Act No. 6 of 2010                            |
| s 13A – 13C | ins by Act No. 6 of 2010                            |
| s 14        | sub by Act No. 6 of 2010                            |
| s 14A – 14L | ins by Act No. 6 of 2010                            |
| s 17        | amd by Act No. 14 of 2009; sub by Act No. 6 of 2010 |
| s 18        | amd by Acts No. 14 of 2009; No. 6 of 2010           |
| s 19        | rep by Act No. 6 of 2010                            |
| s 20        | amd by Act No. 6 of 2010                            |
| s 21        | amd by Act No. 6 of 2010                            |
| s 22        | amd by Act No. 6 of 2010                            |
| s 24        | amd by Act No. 6 of 2010                            |
| s 28        | amd by Act No. 6 of 2010                            |
| s 28A       | ins by Act No. 6 of 2010                            |
| s 32        | amd by Act No. 6 of 2010                            |
| s 33        | amd by Act No. 6 of 2010                            |
| s 34        | amd by Act No. 17 of 2023                           |
| s 38        | amd by Act No. 17 of 2023                           |
| s 39        | amd by Act No. 6 of 2010                            |
| s 40        | amd by Act No. 6 of 2010                            |
| s 46        | amd by Act No. 17 of 2023                           |
| s 49        | amd by Act No. 6 of 2010                            |
| s 50        | amd by Act No. 6 of 2010                            |
| s 51        | amd by Act No. 6 of 2010                            |
| s 53        | amd by Act No. 6 of 2010                            |
| s 54        | amd by Acts No. 6 of 2010; No. 17 of 2023           |
| s 55        | amd by Act No. 6 of 2010                            |
| s 56        | amd by Acts No. 6 of 2010; No. 17 of 2023           |
| s 61        | amd by Acts No. 14 of 2009; No. 6 of 2010           |
| s 62        | amd by Act No. 6 of 2010                            |
| s 67        | amd by Act No. 17 of 2023                           |
| s 68        | amd by Act No. 17 of 2023                           |
| s 70        | amd by Act No. 6 of 2010                            |
| s 71        | rep by Act No. 6 of 2010                            |
| s 72        | amd by Acts No. 14 of 2009; No. 6 of 2010           |
| s 72A       | ins by Act No. 6 of 2010                            |
| s 77        | amd by Acts No. 14 of 2009; No. 6 of 2010           |
| s 78        | amd by Acts No. 14 of 2009; No. 6 of 2010           |
| s 79        | amd by Act No. 17 of 2023                           |
| s 80        | ins by Act No. 6 of 2010                            |