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58(I)/2010

**THE PREVENTION AND SUPPRESION OF MONEY
LAUNDERING AND TERRORIST FINANCING LAWS OF 2007
AND 2010**

Unit for Combating Money Laundering – MOKAS

Unofficial consolidated translation made by the
Unit for Combating Money Laundering – MOKAS

Law No. 188(I)/2007**THE PREVENTION AND SUPPRESSION OF MONEY
LAUNDERING AND TERRORIST FINANCING LAW OF 2007**ARRANGEMENT OF SECTIONS

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**A LAW WHICH CONSOLIDATES AND REVISES THE PREVENTION
AND SUPPRESSION OF MONEY LAUNDERING
ACTIVITIES**

PART I - INTRODUCTORY PROVISIONS

1. This Law may be cited as the Prevention and Suppression of Money Laundering and Terrorist Financing Law of 2007.

2.-(1) For the purposes of this Law, unless the context otherwise requires- Interpretation.

"Advisory Authority" means the Advisory Authority for Combating Money Laundering and Terrorist Financing which is established under section 56;

"Asset Recovery Office" means the asset recovery office as it is defined in the Council Decision 2007/845/JHA of 6 December 2007 concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or other property related to, crime.

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

"beneficial owner" means the natural person or natural persons, who ultimately own or control the customer and/or the natural person on whose behalf a transaction or activity is being conducted. The beneficial owner shall at least include:

(a) In the case of corporate entities:

- (i) the natural person or natural persons, who ultimately own or control a legal entity through direct or indirect ownership or control of a sufficient percentage of the shares or voting rights in that legal entity, including through bearer share holdings, a percentage of 10% plus one share be deemed sufficient to meet this criterion;
- (ii) the natural person or natural persons, who otherwise exercise control over the management of a legal entity.

(b) In the case of legal entities, such as foundations and legal arrangements, such as trusts, which administer and distribute

funds:

- (i) Where the future beneficiaries have already been determined, the natural person or natural persons who is the beneficiary of 10% or more of the property of a legal arrangements or entity;
- (ii) Where the individuals that benefit from the legal arrangement or entity have not yet to be determined, the class of persons in whose main interest the legal arrangement or entity is set up or operates;
- (iii) The natural person or natural persons who exercise control over 10% or more of the property of a legal arrangement or entity.

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

"business relationship" means a business, professional or commercial relationship which is connected with the professional activities of persons engaged in financial and other business activities in accordance with this section and which is expected, at the time when the contact is established, to have an element of duration.

"countries of the European Economic Area" means Member State of the European Union or other contracting state which is a party to the agreement for the European Economic Area signed in Porto on the 2nd of May 1992 and was adjusted by the Protocol signed in Bruxelles on the 17th of May 1993, as amended.

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

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

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

Cap. 155.
 93 of 1972
 2 of 1975
 12 of 1975
 41 of 1978
 162 of 1989
 142 of 1991

- (b) the entering of nolle prosequi under section 154 of the Criminal Procedure Law;
- (c) the acquittal of the accused by the court of first instance or on appeal by the Supreme Court;
- (d) pardon by the President of the Republic;
- (e) sentencing for a prescribed offence without the issue of a confiscation order;
- (f) the full compliance with a confiscation order either by paying the amount due or by serving the term of imprisonment in lieu of payment of the amount due;

"court" means an assize court or a district court in the exercise of its criminal jurisdiction and for the purposes of section 38 (Procedure for the enforcement of foreign orders) has the meaning ascribed to it in Part IV of this Law;

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

14 of 1960
50 of 1962
11 of 1963
8 of 1969
40 of 1970
58 of 1972
1 of 1980
35 of 1982
29 of 1983
91 of 1983
16 of 1984
51 of 1984
83 of 1984
93 of 1984
18 of 1985
71 of 1985
89 of 1985
96 of 1986
317 of 1987
49 of 1988
64 of 1990
136 of 1991
149 of 1991
237 of 1991

42(I) of 1992
 43(I) of 1992
 102(I) of 1992
 26(I) of 1993
 82(I) of 1995
 102(I) of 1996
 4(I) of 1997
 53(I) of 1997
 90(I) of 1997
 27(I) of 1998
 53(I) of 1998.

“credit institution” means every credit institution within the meaning of section 4 (1) of the Directive 2006/48/EC of the European Parliament and of the Council of 14th June 2006 on the taking up and pursuit of the business of credit institutions.

“customer” means a person aiming to conclude a business relationship or conduct a single operation with another person engaged in financial or other business activities in or from the Republic.

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

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

(a) of sections 4, 5, 5A, 6, 7, 7A, 9, 10, 12, 20, 21, 22, 25 and 26 of the Narcotic Drugs and Psychotropic Substances Law;

29 of 1977
 67 of 1983
 20(I) of 1992.
 5(I) of 2000
 4(I) of 2001
 9(I) of 2003
 146(I) of 2005.

(b) of sections 100 of the Customs and Excise Law;

82 of 1967
 57 of 1969
 4 of 1971
 45 of 1973
 12 of 1977
 104 of 1987
 98 of 1989
 5 of 1991.
 2(a) of 41(I)
 of 1998.

- (c) of sections 20 (c) and 20(d) of the Criminal Code in connection with the commission of any of the offences referred to in paragraphs (a) and (b) above;
- Cap. 154.
3 of 1962
43 of 1963
41 of 1964
69 of 1964
70 of 1965
5 of 1967
58 of 1967
44 of 1972
92 of 1972
29 of 1973
59 of 1974
3 of 1975
13 of 1979
10 of 1981
46 of 1982
86 of 1983
186 of 1986
111 of 1989
236 of 1991
6(I) of 1994
3(I) of 1996
99(I) of 1996
36(I) of 1997
40(I) of 1998
45(I) of 1998
15(I) of 1999
37(I) of 1999
38(I) of 1999
129(I) of 1999
30(I) of 2000
43(I) of 2000
77(I) of 2000
162(I) of 2000
169 (I) of 2000.
- (d) of section 370 of the Criminal Code in connection with the commission of any of the offences referred to in paragraph (a) and (b) above;
- (e) of section 371 of the Criminal Code in connection with the commission of any of the offences referred to in paragraph (a) above;

“E.U. Directive” means the Directive 2005/60/EC of the European Parliament and the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing.

“Financial business” includes the following:

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- (a) Acceptance of deposits by the public.
- (b) Lending money to the public.
- (c) Finance leasing, including hire purchase financing.
- (d) Money transmission services.
- (e) Issue and administration of means of payment such as credit cards, travellers' cheques, bankers' drafts and electronic money.
- (f) Guarantees and commitments.
- (g) Trading in one's own account or on account of another person in-
 - (i) Stocks or securities including cheques, bills of exchange, bonds, certificates of deposits;
 - (ii) foreign exchange;
 - (iii) financial futures and options;
 - (iv) exchange and interest rate instruments;
 - (v) transferable instruments.
- (h) Participation in share issues and the provision of related services.
 - (i) Consultancy services to enterprises concerning their capital structure, industrial strategy and related issues and consultancy services as well as services in the areas of mergers and acquisitions of businesses.
- (j) Money broking;
- (k) Investment services, including dealing in investments, managing investments, giving investment advice and establishing and operating collective investment schemes. For the purposes of this section, the term "investments" includes long-term insurance contracts, whether or not associated with investment schemes.

- (l) Safe custody services.
- (m) Custody and trustee services in relation to stocks.
- (n) Any of the services and activities-
 - (i) which are defined in Part I and III of the third Annex of the Investment Services and Activities and Regulated Markets Law which are from time to time in force and which are provided in relation to financial instruments listed in Part III of the same Annex.
 - (ii) which are defined in sections 41 and 100 of the Open-Ended Undertaking for Collective Investment in Transferable Securities and Related Issues Law.
- (o) Agent for the conclusion of insurance policies.
- (p) Without prejudice to the generality of paragraphs (d) and (e), any of the services determined in the Annex of the Payment Services Law, as it stands.**

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

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

Cap. 224.
A3 of 1960
78 of 1965
10 of 1966
75 of 1968
51 of 1971
2 of 1978
16 of 1980
23 of 1982
68 of 1984
82 of 1984
86 of 1985
189 of 1986
12 of 1987
74 of 1988
117 of 1988
43 of 1990

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

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

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

"other activities" includes the following:

(a) Exercise of professional activities by auditors, external accountants and tax advisors, including transactions for the account of their customers in the context of carrying out financial business

(b) Exercise of professional activities on behalf of independent lawyers, with the exception of privileged information, when they participate, whether-

(i) by assisting in the planning or execution of transactions for their clients concerning the-

(aa) buying and selling of real property or business entities;

(bb) managing of client money, securities or other assets;

(cc) opening or management of bank, saving or securities accounts;

(dd) organisation of contributions necessary for the creation, operation or management of companies;

(ee) creation, operation or management of trusts,

companies or similar structures.

(ii) by acting on behalf and for the account of their clients in any financial or real estate transaction.

(c) Dealing in real estate transactions, conducted by real estate Agents, according to the provisions of the Real Estate Agents, according to the provisions of the Real Estate Agents Law, which are from time to time in force.

(d) Trading in goods such as precious stones or metals, wherever payment is made in cash and in an amount of €15.000 or more, whether the transaction is executed in a single operation or in several operations which appear to be linked.

(e) The following trust services and company services to third parties:

(i) forming companies or other legal persons;

(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 other legal persons;

(iii) providing a registered office, business address, correspondence or administrative address and other related services for a company, a partnership or any other legal person or arrangement;

(iv) acting as or arranging for another person to act as a trustee of an express trust or a similar legal arrangement;

(v) acting as or arranging for another person to act as a nominee shareholder for another person;

“person” means natural or legal person.

“politically exposed persons” means the natural persons who have their place of residence in another European Union Member State or in third countries and who are or have been entrusted with prominent public functions and their immediate family members or persons known to be close associates of such persons.

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

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

"proceeds" means any kind of property or economic benefit which has been generated directly or indirectly from the commission of a predicate offence.

"property" means movable and immovable property **whether situated in the Republic of Cyprus or abroad.**

"Republic" means the Republic of Cyprus;

"Supervisory Authorities" means the authorities established under section 59;

"Shell bank" means a credit institution or an institution engaged in equivalent activities incorporated in a jurisdiction which it has no physical presence, involving meaningful mind and management, and which is unaffiliated with a regulated financial group.

"single operation" means any transaction other than a transaction carried out in the course of an established business relationship formed by a person acting in the course of financial or other business.

"Terrorist financing offences" means the offences defined in section 4 of the International Convention for Combating Terrorist Financing (Ratification and other provisions) Law No. 18(III)/2005.

"Trust" has the same meaning given to this term by the Trustees Law, Cap. 193 and includes trust.

"Unit" means the Unit for Combating Money Laundering established under section 54;

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

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

Appeal	37
Charging order	15
Company	21
Confiscation order	8
External order	37
Family of the accused	49
Financial position of the accused	49
Freezing order	32
Information	44
Interference with property	14
Making a gift	13
Order for sale of bonds	18
Order for the disclosure of information	45
Pecuniary penalty	8(2)
Preferential debts	13
Privileged information	44
Proceeds of prescribed offence	7
Prohibited gift	13
Realizable property	13
Restraint order	14
Value of gift	13
Value of property	13

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

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

(a) laundering offences;

(b) predicate offences.

4.-(1) Every person who-

(a) knows or b) at the material time ought to have known that any kind of property constitutes proceeds from the commission of a predicate offence, carries out the following activities: Laundering offences.

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

commits an offence punishable by fourteen years' imprisonment or by a pecuniary penalty of up to Euro 500.000 or by both of these penalties in the case of (a) above and by five years' imprisonment or by a pecuniary penalty of up to Euro 50.000 or by both in the case of (b) above.

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

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

5. Predicate offences are:

Predicate offences.

- (a) All criminal offences punishable with imprisonment exceeding one year, as a result of which proceeds have been derived which may constitute the subject of a money laundering offence as defined by section 4.
- (b) Financing of Terrorism offences as these are specified in Article 4 of the Financing of Terrorism (Ratification and other provisions) Laws of 2001 and 2005, as well as the collection of funds for the financing of persons or organisations associated with terrorism.
- (c) Drug Trafficking offences, as these are specified in section 2 of this law.

PART II - CONFISCATION ORDERS, TEMPORARY ORDERS AND OTHER MEASURES

A. Confiscation Orders

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

Inquiry in order to determine whether the accused acquired proceeds.

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

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

Assessing the proceeds from the commission of a predicate offence.

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

- (b) the value of the proceeds acquired by the accused from the commission of a predicate offence is the aggregate value of payments or other rewards made to him or the product of a predicate offence, or proceeds as this term is defined in section 2 of this Law.

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

- (a) any property acquired by the accused after committing the said offence or transferred into his name at any time during the last six years prior to the commencement of criminal proceedings against him, was acquired by him as early as the court considers that it has been so, constitutes proceeds, payment or reward from the commission of a predicate offence.
- (b) any expenditure incurred by the accused during the above period was met out of payments or rewards made to him in connection with a predicate offence committed by him;
- (c) for the purpose of valuing such property, he received the property free of any charge or any interest of any other persons in it.

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

- (a) it is proved that they do not apply to the accused; or
- (b) the court considers that there would be a serious risk of injustice against the accused, if they were to apply.

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

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

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

Confiscation
order.

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

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

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

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

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

TABLE

<u>First column</u>	<u>Second column</u>
An amount not exceeding 100 euro	7 days
An amount exceeding 100 euro but not exceeding 200 euro	14 days
An amount exceeding 200 euro but not exceeding 1000 euro	30 days
An amount exceeding 1000 euro but not exceeding 2000 euro	60 days
An amount exceeding 2000 euro but not exceeding 4000 euro	90 days
An amount exceeding 4000 euro but not exceeding 10000 euro	6 months
An amount exceeding 10000 euro but not exceeding 20000 euro	9 months
An amount exceeding 20000 euro but not exceeding 40000 euro	12 months
An amount exceeding 40000 euro but not exceeding 100000 euro	18 months
An amount exceeding 100000 euro but not exceeding 200000 euro	2 years
An amount exceeding 200000 euro but not exceeding 500000 euro	3 years
An amount exceeding 500000 euro but not exceeding two million	

euro	5 years
An amount exceeding two million euro	10 years

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

10. The enforcement of an order for the confiscation of means shall be effected by forfeiture by following instructions that may be given by the court according to the kind of instrumentality.

Procedure for enforcing an order for the confiscation of instrumentalities.

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

Procedure to issue a confiscation order.

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

(3) Failure of the accused to comply with any of the directions of the court shall be treated for the purposes of this section as an admission of all

the facts and particulars contained in the statement of facts and particulars.

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

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

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

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

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

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

Amount to be recovered under a confiscation order.

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

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

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

Realizable property and preferential

(a) any property held by the accused **whether situated in the Republic of Cyprus or abroad**; and

(b) any property held by another person to whom the accused has directly or indirectly made a gift prohibited by this Law **whether situated in the Republic of Cyprus or abroad**.

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

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

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

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

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

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

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

(b) when another person has an interest in such property, the market value of the property less the amount required to pay off the interest of the other person and to discharge any encumbrance, other than an encumbrance based on a charging order.

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

(6) For the purposes of subsection (3) above the obligations of the

accused that have priority over other obligations, are:

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

and "Preferential debts" in this subsection means:

- (i) in relation to bankruptcy, the debts to be paid in priority under section 38 of the Bankruptcy Law or any other law, as if the date on which the confiscation order was made was the date on which the receiving order of the company was made;
- (ii) in relation to the winding up of a company, the debts to be paid in priority, under section 300 of the Companies Law or any other law, as if the date the confiscation order was made was the date the winding up order was made;
- (iii) in relation both to the bankruptcy of a natural person and the winding up of a company, the claims mentioned in paragraph (c) of subsection (6) above.

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

- (a) those made by the accused at any time during the last six years prior to the institution of criminal proceedings against him; ~~and~~ **or**
- (b) those made by the accused at any time and relate to property-
 - (i) received by the accused in connection with a predicate offence committed by him or any other person; or
 - (ii) which in whole or in part, directly or indirectly, represent property received by the accused in connection with a predicate offence

committed by him or by another person or

- (c) Those made by the accused after the institution of criminal proceedings against him.

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

B. Interim Orders

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

Restraint order,
discharge or
variation of a
restraint order
and appointment
of a receiver.

- (a) criminal proceedings have been instituted and have not been concluded or are about to be instituted in the Republic against a person for the commission of a predicate offence, or an application by the Attorney General has been made under sections 28 (Confiscation order where accused has died or absconded), 35 (Reconsideration of a case) or 36 (Re-assessment of proceeds) of this Law; or
- (b) the Unit possesses information which creates a reasonable suspicion that a person may be charged with the commission of a laundering offence; and
- (c) the court is satisfied that there is a reasonable ground to believe that-
- (i) where an application under section 36 is submitted, the provisions of subsection (3) of the same section are fulfilled; and
 - (ii) the person mentioned in paragraphs (a) and (b) above has benefited from the commission of a predicate offence.

(2) A restraint order made under subsection (1) prohibits transactions in any way in realizable property. The prohibition shall be subject to such

conditions and exceptions as may be specified in the order.

(3) A restraint order may apply-

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

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

(5) A restraint order-

- (a) may be made following an ex parte application by the Attorney-General; and
- (b) shall provide for service of notice to all persons affected by the order.

(6) A restraint order-

- (a) may be discharged or varied in relation to the property concerned;
- (b) shall be discharged when the criminal proceedings against the accused for the offences with which he is charged are concluded;
- (c) shall be discharged if an application under section 35 (Reconsideration of a case) or section 36 (Re-assessment of proceeds) is not submitted within a reasonable, in the opinion of the court, period of time.

(7) The court may at any time after the making of a restraint order, appoint a receiver-

- (a) to take possession of any realizable property and place it under his custody; and
- (b) to manage or otherwise deal with the said property, in accordance with the directions of the court.

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

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

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

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

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

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

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

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

Charging order, discharge or variation of a charging order.

- (a) criminal proceedings have been instituted and have not been completed or are about to be instituted in the Republic against a person for the commission of a predicate offence, or an application by the Attorney-General has been made under sections 28 (Confiscation order where accused has died or absconded), 35 (Reconsideration of a case) or 36 (Re-assessment of proceeds) of this Law; or
- (b) the Unit possesses information which creates a reasonable suspicion that a person may be accused of the commission of a laundering offence; and
- (c) the court is satisfied that there is a reasonable ground to believe that-
 - (i) where an application under section 36 is submitted (Re-

assessment of proceeds), the provisions of subsection (3) of the same section are satisfied; and

- (ii) the person mentioned in paragraphs (a) and (b) above has benefited from the commission of a predicate offence.

(2) An order made under subsection (1) shall be called a charging order and, notwithstanding the provisions of other laws, it shall create a charge on the realizable property specified in the order, with the purpose of securing payment to the Republic-

- (a) of an amount equal to the value of the property charged, where a confiscation order has not been made; and
- (b) in any other case, of an amount not exceeding the amount payable under the confiscation order.

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

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

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

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

- (a) immovable property;
- (b) the following bonds:
 - (i) government stocks,
 - (ii) bonds of any legal body incorporated in the Republic;
 - (iii) bonds of any legal body incorporated outside the Republic being stocks registered in a register kept at any place within the Republic;

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

(d) funds in court.

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

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

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

(9) The making of a charging order, in respect of the assets in paragraphs (b), (c), and (d) of subsection (5) above, has all or some of the following effects which the court may specify, subject to such conditions and directions as it may consider necessary or supplementary to the effect or effects so specified:

(a) the creation of a charge in favour of the Republic in the property for which the order is made by the payment of the amount mentioned in subsection (1) with priority of the interest of the Republic as against any other debt or obligation of the accused which has not previously been the subject of a charging order made in respect of the same assets, or as against any other charges not created prior to the making of the order in any legal way;

(b) the prohibition of transfers, sales, payments or other dealings in respect of the subject matter of the order, without prejudice to the enforcement of court decisions or orders made before the making of the order;

(c) the prohibition of payment of dividends to the debtor in respect of the subject matter of the order;

- (d) in the case of a unit trust, the prohibition of any acquisition of the units or any dealing in connection with the units by any natural or legal person which performs functions under the trust.

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

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

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- (a) the charging order was a judgement of the Court for debt; and
- (b) the depositing of the order constituted registration of a judgement of the court for debt.

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

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

(b) Regulations made under this subsection are laid before the House of Representatives for approval and following that the provisions of subsection (2) of section 3 of the Laying before the House of Representatives Regulations issued under the authority of a Law, Law of 1989 apply.

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227 of 1990
27(I) of 1992.

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

- (a) if it is satisfied that the promotion of a procedure or application is delayed without any reasonable ground; or

- (b) if the Attorney-General declares that he does not intend to promote the said procedure or application.

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

Cancellation of restraint and charging orders.

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

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

C. Other measures

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

Appointment of a receiver following the issue of a confiscation order.

- (a) appoint a receiver for the realization of the property;
- (b) empower the receiver so appointed or a receiver appointed under subsection (7) of section 14 or under other provisions which relate to the making of charging orders-
 - (i) to enforce any charge imposed under section 15 on realizable property or on interest or dividend payable in respect of such property; and
 - (ii) subject to such conditions or exceptions as the court thinks appropriate to take possession of any other realizable property not affected by a charge;

- (c) to order any person having possession of realizable property to give possession of it to any such receiver;
- (d) to empower any such receiver to realize realizable property in such manner as the court may direct;
- (e) to order any person holding an interest in realizable property to make such payment to the receiver in respect of any interest held by the accused, or, as the case may be, the recipient of a prohibited gift, and then the court may, after the payment is made, order the transfer, grant or extinction of any interest in the property.

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

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

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

31(I) of 1992.

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

Order for sale of bonds.

(2) The court, when making an order for sale of bonds, may impose such conditions as it may consider necessary for safeguarding the interests of any person having an interest in the sale of the said bonds.

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

considers in the circumstances proper and necessary.

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

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

31(I) of 1992.

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

Application of proceeds from the realization of property.

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

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

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

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

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

- (a) the sums specified in subsection (3) are paid in the order in which they are enumerated in the said subsection, unless the court otherwise directs;

- (b) any balance shall be treated as if it were a fine and is applied for the satisfaction of the amount payable under the confiscation order;
- (c) if after the amount payable under the confiscation order has been fully paid there is any balance, it is distributed among the persons who had a right over the property which has been realized in such proportions as the court may direct, after giving a reasonable opportunity to such persons to make representations to the court.

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

General principles in exercising certain powers.

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

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

Variation of a confiscation order.

- (a) by substituting for the amount to be recovered under the confiscation order such lesser amount as the court considers just; and
- (b) by substituting for the terms of imprisonment prescribed by section 126 of the Criminal Procedure Law and section 9 (Procedure for enforcing a confiscation order. Table) of this Law in respect of the

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amount to be recovered under the order, a shorter period corresponding, in accordance with the above provisions, to the lesser amount which will be recovered.

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

- (a) in the case of realizable property held by a person who has been adjudged bankrupt, the amount of that property which could be distributed among the creditors of the bankrupt shall be treated as property which cannot be recovered, but:
- (b) any inadequacy in the realizable property which appears to the court to be attributable wholly or partly to anything done by the accused for the purpose of preserving from any risk of realization under this Law any property held by a person to whom the accused had directly or indirectly made a prohibited gift shall not be treated as property which cannot be recovered.

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

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

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

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

(2) Where a person has been adjudged bankrupt, the powers conferred on the court by sections 14 to 18 or on a receiver appointed for the purposes of those sections shall not be exercised in relation to any property of the bankrupt which, under section 41 of the Bankruptcy Law, is subject to distribution among his creditors.

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(3) Subsection (1) above does not affect the enforcement of a charging

order made before the making of a bankruptcy order or made in respect of property which was subject to a restraint order when the order adjudging him bankrupt was made.

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

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

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

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

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

(ii) the gift was made at the time when an application against him, under sections 28 (Confiscation order where the accused has died or absconded) 35 (Reconsideration of a case) or 36 (Re-assessment of proceeds), was pending; or

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

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

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

Winding up of a company holding realizable property.

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

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

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

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

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

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

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 41(I) of 1994
 15(I) of 1995
 21(I) of 1997.

(3) Subsection (2) above does not affect the enforcement of a charging order made before the relevant date or in relation to property which was the subject of a restraint order at the relevant date, as such date is defined in subsection (4).

- (4) For the purposes of this section:

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

"relevant date" means-

- (a) the date on which the resolution for the voluntary winding up of the company has been passed in the cases where-
 - (i) no winding up order has been made; or
 - (ii) a winding up order was made, but before the filing of the petition for the winding up of the company by the court, such resolution was passed by the company;
- (b) in any other case where such an order has been made, the date of the making of the order.

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

Liability and remuneration of the receiver.

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

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

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

Compensation.

- (a) did not result in a conviction; or
 - (b) resulted in a conviction but such conviction was quashed on appeal and no conviction for any other predicate offence was substituted.
- (2) The claim for compensation is made by action.

(3) The court orders compensation under section 25(1) above if it is satisfied that-

- (a) there has been serious default on the part of a person participating in the investigation or prosecution of the offence or offences concerned and that but for that default, the proceedings would not have been instituted or continued, and
- (b) the plaintiff has suffered substantial loss in consequence of anything done in relation to his property by virtue of any order of the court under sections 14 to 18 both inclusive.

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

(5) The provisions of this section shall not apply where the court makes a confiscation order under section 28.

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

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

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

- (a) the bona fide disclosure shall not be treated as a breach of any restriction on the disclosure of information imposed by contract; and does not result in any kind of responsibility for the said person and
- (b) if he does any act in contravention of section 4 (Laundering offences) and the disclosure is related to the act concerned, this person shall not commit the offence of assisting another to commit a laundering offence under the said section, if the following conditions are satisfied:

- (i) the said act was done with the consent of the police officer or

Unit after the aforesaid disclosure; or

- (ii) if the act was done before the disclosure, the disclosure was made on his initiative and without delay as soon as it was reasonable for him to make such disclosure.

(c) The non-execution or the delay in the execution of an order by the said persons upon instructions of the Unit, with regard to sums or investments referred to above, shall not constitute violation of any contractual or other obligation on the said persons or/and his/his employers.

(3) Where a person is, at the material time, an employee of another person whose activities are supervised by one of the authorities established under section 59, subsections (1) and (2) above shall apply in respect of disclosures or intended disclosures to the competent person as referred to in section 69 and in accordance with the procedure the employer wishes to establish for the purposes of such disclosures, and these disclosures shall have the same effect as disclosures or intended disclosures the Unit.

27.-(1) A person who-

Other offences
in connection
with laundering
and financing of
terrorism
offences.

- (a) knows or reasonably suspects that another person is engaged in laundering or financing of terrorism offences, and
- (b) the information on which that knowledge or reasonable suspicion is based, comes to his attention in the course of his trade, profession, business or employment,

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

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

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

(4) An offence under this section shall be punishable by imprisonment not exceeding five years or by a pecuniary penalty not exceeding five

thousand euro or by both of these penalties.

28.-(1) Subject to the provisions of subsection (3) and upon the application of the Attorney-General, the court which has convicted a person for the commission of a predicate offence may make a confiscation order under section 8 (Confiscation order) against an accused who has died or absconded.

Confiscation order where the accused has died or absconded.

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

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

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

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

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

Power to set aside a confiscation order where the accused who had absconded returns.

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

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

Variation of a confiscation order made under section

(2) Where the accused claims that-

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

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

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

- (a) it shall make a new assessment under section 7 (Assessment of proceeds from the commission of a predicate offence); and
- (b) may, if it considers just after taking into consideration all the circumstances of the case, vary the amount of the confiscation order.

5 of 41(l)
of 1998.

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

Prohibition of
publicizing
information.

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

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

(2) Any person who publishes information in contravention of the directions of the court under subsection (1), shall commit an offence

punishable by one year's imprisonment or by a pecuniary penalty of two thousand euro (2000) or by both of these penalties.

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

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

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

Freezing order of property against an absent suspect.

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

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

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

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

Order of confiscation of property against an absent suspect.

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

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

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

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

Compensation paid to an absent suspect against whom an order for the freezing or confiscation of his property was made.

- (a) the court has made a freezing order under section 32 (Freezing order of property against an absent suspect) or a confiscation order under section 33 (Confiscation of property order against an absent suspect) against a suspect who was outside the jurisdiction of the Republic; and
- (b) the suspect is subsequently put on trial for the same offence and acquitted.

(2) The court which acquits the defendant shall set aside the freezing or confiscation order.

(3) Upon an action made by the person who had property, the court may order compensation to be paid to this person if satisfied that the person concerned has suffered loss as a result of the making of the freezing or confiscation order under section 32 or 33, as the case may be.

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

PART III - RECONSIDERATION AND REVISION OF CONFISCATION ORDERS

35.-(1) Where-

Reconsideration of a case.

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

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

whether the accused acquired proceeds from the commission of a predicate offence; and

(b) the Attorney General-

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

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

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

(3) For the purposes of this section and where the court has decided to proceed with an inquiry under this section, the provisions of this Law which would have applied if the inquiry were made on the date of conviction of the accused, shall apply *mutatis mutandis*.

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

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

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

Re-assessment
of proceeds.

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

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

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

- (a) in the period to which the assessment of section 7 refers; or
- (b) in any earlier period.

(3) The court if-

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

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

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

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

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

- (a) may substitute for the amount to be recovered under the confiscation order such greater amount as it considers just, and
- (b) where the court replaces the amount of the order, it shall also replace the terms of imprisonment prescribed by section 128 of the Criminal Procedure Law and by section 9 of this Law.

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

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

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

PART IV - INTERNATIONAL CO-OPERATION

37. For the purposes of this Part:

Interpretation of principal terms.

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

"Convention" means-

2 of 25(I)
of 1997.

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

49 of 1990.

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

(c) The United Nations Convention Against Transnational Crime; and

(d) The Treaty on Mutual Legal Assistance in Penal Matters between Cyprus and USA, which has been ratified by the Treaty between the Government of the Republic of Cyprus and the Government of the U.S.A. on Mutual Legal Assistance in Criminal Matters (Ratification) Law.

(e) The United Nations Convention against Corruption which was ratified with the United Nations Convention against Corruption (Ratification) Law"

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"court" means the President or a Senior District Judge of the District

Court of Nicosia;

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

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

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

38.-(1) The request for enforcement shall be submitted by or on behalf of a foreign country to the Ministry of Justice and Public Order which, if satisfied that the request comes from a foreign country and concerns a foreign order within the meaning of this Part, shall thereafter transmit the request to the Unit which submits it to the court, **if the Unit considers that the requirements of this law are met.**

Procedure for the enforcement of external orders.

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

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

- (a) At the time of registration the external order was in force and enforceable and no appeal is pending against the said order;
- (b) where the external order was made in the absence of the accused **or of any person affected by the order**, the accused **or any person affected by the order** received notice of the proceedings in time to enable him to present his case and state his views;
- (c) the enforcement of the order would not be contrary to the interests of justice of the Republic;

- (d) the grounds for refusal of co-operation mentioned in the International Conventions or Bilateral do not concur

38.A. Any order issued, on the basis of the provisions of this law by a Court of the Republic of Cyprus following an application of the Attorney-General, which relates to property situated abroad, it is transmitted by the Unit for execution to the competent authorities of the foreign country, through the Ministry of Justice and Public Order.

Transmission to a foreign country of an order issued on the basis of the provisions of this law.

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

Effect of registration.

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

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

7 of 41(l) of 1998.

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

Cancellation of registration.

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

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

External order shall be binding.

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

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

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

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

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

- (a) to the proof of any matter or thing;
- (b) to the circumstances which in any foreign country may be considered as constituting the commencement or conclusion of procedures for the making of an external order.
- (3) Where on the request of or on behalf of a foreign country the court is satisfied that proceedings have been instituted but not concluded in this country during which a foreign order may be made, the court shall make a restraint or charging order by applying sections 14 and 15 of this Law.

PART IV A CO-OPERATION WITH MEMBER STATES

43.A. For the purposes of this Part:

Interpretation of terms.

“Certificate” means, in relation to a freezing order, the certificate specified in the Framework Decision 2003/577/JHA and in relation to a confiscation order, the certificate specified in the Framework Decision 2006/783/JHA, as they successively stand.”

“Council Decision 2003/577/JHA” means the Council Framework Decision 2003/577/JHA of 22 July 2003, on the execution in the European Union of orders freezing property or evidence;

“Council Decision 2006/783/JHA” means the Council Framework

Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscations orders;

“confiscation order” means a final penalty or measure imposed by a Court in the issuing state, following proceedings in relation to a criminal offence or offences, resulting in a definitive deprivation of property;

“Court” means the President or a Senior District Judge of the District Court of Nicosia;

“evidence” means objects, documents or data which could be produced as evidence in criminal proceedings, in relation to a prescribed offence;

“freezing order” means any measure taken by a competent judicial authority in the issuing state, in order provisionally to prevent the destruction, transformation, moving, transfer or disposal of property that could be subject to confiscation or evidence;

“issuing state” means the Member State where the judicial authority or Court of which as defined in the national law of the issuing state, has issued validated or in any way confirmed a freezing order or confiscation order in the framework of criminal proceedings.

“member state” means a Member state of the European Union.

“property” means property of any description, whether corporeal or incorporeal, movable or immovable, and legal documents and instruments evidencing title to or interest in such property, which according to the competent judicial authority in the issuing state:

(i) is the proceeds of a prescribed offence, or equivalent to the full value or part of the value of such proceeds, or

(ii) constitutes the instrumentalities of such offence;

43.B. Any order issued, in accordance with the provisions of this law, by a Court of the Republic of Cyprus following an application by the Attorney-General, which relates to property situated in a member state, is transmitted by the Unit for execution directly to the competent authorities of the said member state, accompanied by the certificate signed by the Unit.

Transmission to a member state of an order issued on the basis of the provisions of this law.

43.C. (1) Any request for execution as regards freezing order or confiscation order is submitted directly to the Unit, which, if it considers that the requirements of this Part are met, submits it to the Court as soon as possible for registration and enforcement and informs as soon as possible the competent authority of the issuing state.

Procedure for the enforcement of freezing or confiscation orders within the Republic.

(2) The Unit does not submit a confiscation order to the Court for registration, unless at the time of the application for execution the said confiscation order is in force and enforceable and no appeal is pending against the order.

It is provided that, for the purposes of this section, the term “appeal” shall include any proceedings the object of which is the setting aside of a judgment of the court or the retrial of the case or the stay of its execution.

(3) Any request for execution transmitted to the Unit in accordance with subsection (1) of the section, is accompanied by the certificate which is acceptable both in Greek and in English.

(4) Subject to the provisions of this Part, the Court, following the submission by the Unit of the application for execution in accordance with subsection (1) of this section, registers the freezing order or the confiscation order for the purposes of its execution.

43.D. (1) In case the Unit receives two or more requests for enforcement of confiscation orders which:

Multiple requests for the enforcement of confiscation orders.

(a) relate to an amount of money and which have been issued against the same person, and the said person does not have sufficient means in the Republic of Cyprus so as to enable all the orders to be executed, or

(b) relate to the same specific item of property,

then the Unit decides, according to the law in force, which confiscation orders are to be executed:

It is provided that for taking the above decision, the Unit may take into account, among others, the existence of frozen assets, the relative seriousness and the place of the commission of the offence which each confiscation order relates, the dates of the respective orders and the dates of transmission of the respective orders.

43.E. A freezing order may not be enforced, if the Unit or the Court

Reasons for

consider that:-

(a) the certificate is not produced or is incomplete or manifestly does not correspond to the freezing order;

(b) there is immunity or privilege which makes it impossible to execute the freezing order;

(c) the execution of the freezing order infringes the *ne bis in idem* principle;

(d) the freezing order relates to an act which under the law of the Republic does not constitute an offence which permits freezing.

non-enforcement of a freezing order.

43.F. A confiscation Order may not be enforced, if the Unit or the Court consider that:-

(a) the certificate is not produced or is incomplete or manifestly does not correspond to the confiscation order;

(b) there is immunity or privilege which makes it impossible to execute the confiscation order;

(c) the execution of the confiscation order infringes *the ne bis in idem* principle;

(d) the confiscation order relates to an act which under the law of the Republic does not constitute an offence which permits confiscation;

(e) the rights of any interested party, including bona fide third parties, under the law of the Republic of Cyprus, make it impossible to execute the confiscation order, including the case where this is the result of the application of legal remedies in accordance with the law of the Republic of Cyprus;

(f) according to the certificate, the person concerned did not appear personally and was not represented by a legal counselor in the proceedings resulting in the confiscation order, unless the certificate states that the person was informed personally or via his legal representative, in accordance with the law of the issuing state, or that the person has indicated that he does not contest the confiscation order; or

(g) the confiscation order relates to criminal offences which are

Reasons for non-enforcement of a confiscation order.

regarded as having been committed wholly or partly within the territory of the Republic of Cyprus or outside the territory of the issuing state.

43.G. The Court or the Unit may, in the case the certificate is not produced or is incomplete, specify a deadline for its presentation, completion or correction or accept an equivalent document.

Deadline for the production or completion of the certificate.

43.H. (1) In case of a decision to refuse execution of a freezing order or confiscation order, the Unit shall notify forthwith and in writing the competent judicial authorities of the issuing state.

Notification of the decision refusing execution or impossibility to execute.

(2) In case the freezing order or confiscation order is in practice impossible to be executed because-

(a) in the case of a confiscation order, the property has already been confiscated or has disappeared or has been destroyed or cannot be found in the location indicated in the certificate or the location of the property has not been indicated in a sufficiently precise manner, even after consultation with the issuing state or

(b) in case of a freezing order the property or evidence have disappeared, or have been destroyed, or cannot be found in the location indicated in the certificate which accompanies the application for execution, or the location of the property or evidence has not been indicated in a sufficiently precise manner, even after consultation with the issuing state,

the Unit notifies forthwith the competent judicial authorities of the issuing state.

43. I. (1) The execution of a freezing order may be postponed by the Court or the Unit in the following instances:

Reasons for postponement of execution of a freezing order.

(a) where its execution might damage an ongoing criminal investigation, for such time as it deems reasonable;

(b) where the property or evidence concerned have already been subjected to a freezing order in criminal proceedings pending in the Republic of Cyprus or in a foreign country or in a member state and until that freezing order is lifted:

It is provided that for the purposes of this paragraph, the term

“foreign country” has the meaning given to this term by section 37 of this law.

(c) in case of an order freezing property in criminal proceedings with a view to its subsequent confiscation, when that property is already subject to an order made in the course of other criminal proceedings in the Republic and until that order is lifted.

(2) The Unit submits forthwith to the competent authority in the issuing state a written report on the postponement of the execution of the freezing order, including the grounds for postponement and, if possible, the expected duration of the postponement.

(3) As soon as the ground for postponement has ceased to exist, the Unit shall forthwith take the necessary measures for the execution of the freezing order and informs in writing the competent authority in the issuing state.

43.J. (1) The execution of a confiscation order may be postponed by the Court or the Unit, in the following instances:

Reasons for postponement of execution of a confiscation order.

(a) where the confiscation order concerns an amount of money and is considered that there is a risk that the total value derived from its execution may exceed the amount specified in the confiscation order, because of simultaneous execution of the confiscation order in more than one member state;

(b) where legal measures have been taken against the said order;

(c) where the execution of the confiscation order might damage an ongoing criminal investigation or proceedings, until such time as it deems reasonable;

(d) where it is considered necessary to have the confiscation order or parts thereof translated, for the time necessary to be translated; or

(e) where criminal proceedings have already been initiated in the Republic for the property concerned.

(2) The Unit, for the duration of the postponement, takes all the measures it would have taken in a similar domestic case, so as to assure that the property to which the confiscation order relates, remains available for the purpose of the execution of the confiscation

order.

(3) The Unit submits immediately to the competent authority of the issuing state a written report on the postponement of the execution of the confiscation order, including the grounds for postponement and, if possible, the expected duration of the postponement.

(4) As soon as the ground for postponement has ceased to exist, the Unit shall forthwith take the necessary measures for the execution of the confiscation order and informs in writing the competent authority of the issuing state.

43. H.A. (1) Any freezing order or any confiscation order registered by virtue of the provisions of section 43C, shall become enforceable as if the order had been made by a competent court of the Republic under this Law.

Effect of
registration.

(2) The Unit notifies in writing without delay the competent authority of the issuing state on the execution of the freezing order or the confiscation order.

(3) Where the freezing order relates to the freezing of evidence, shall remain valid, until the transfer of the said evidence to the issuing state.

(4) Money which has been obtained from the execution of a confiscation order shall be disposed of by the Republic as follows:

(a) if the amount obtained from the execution of the confiscation order is below EUR10,000 or the equivalent to that amount in a different currency, the amount shall accrue to the Republic;

(b) in all other cases, the Republic transfers to the issuing state 50% of the amount and the remaining balance is deposited to the state budget of the Republic.

(5) Property other than money, which has been obtained from the execution of the confiscation order shall be disposed of as follows:

(a) the said property is sold and the proceeds of the sale shall be disposed of in accordance with paragraph (4) of this section, or

(b) where the said property is not possible to be sold, the property may be disposed of in another way in accordance with the existing law.

(6) The value of the confiscated property must not exceed the maximum amount specified in the confiscation order.

(7) Notwithstanding the provisions of paragraph (5), the Republic is not required to sell or return to the issuing state specific items covered by the confiscation order to be executed, when these constitute cultural objects forming part of its national heritage:

It is provided that, for the purposes of this section, the term “cultural object” has the meaning given to this term under paragraph 1 section 2 of the Directive 93/7/EEC of the Council, of 15 March 1993, on the return of cultural objects unlawfully removed from the territory of a Member State.

43.H.B. The Unit takes the necessary measures for the termination of execution of the confiscation order as soon as it is informed in writing by the competent authority of the issuing state of any decision or measure, as a result of which the order ceases to be enforceable or is withdrawn for any reason.

Termination of execution of a confiscation order.

43.H.C. The Court shall cancel the registration of a freezing order or a confiscation order if it appears to the Court that the order has been complied with-

Cancellation of registration.

(a) by the payment of the amount due under the freezing order or the confiscation order; or

(b) in any other way that may be provided for under the legislation of the issuing state.

43.H. D. (1) A freezing order or a confiscation order may be amended or revised only by a Court or any other competent authority of the issuing state.

Freezing or confiscation orders shall be binding.

(2) The court, when exercising the powers conferred upon it by section 43.H.A., as well as other powers in respect of the execution of a freezing order or confiscation order, shall be bound by the findings as to the facts in so far as they are stated in the conviction or decision of a court or judicial authority of the issuing state or in so far as such conviction or judicial decision is implicitly based on them.

43. H. E. Where in the freezing order or confiscation order there is a reference to a sum of money to be received in the currency of another

Currency of freezing order

country, this amount shall be converted into the currency of the Republic at the rate of exchange ruling at the time the request for registration was made. or confiscation order.

43.H.F. (1) Sections 14 to 23 both inclusive shall also apply in cases of freezing orders or confiscation orders. Implementation of the provisions of this law in freezing orders and confiscation orders.

(2) Where, on the request of or on behalf of the issuing state, the court is satisfied that proceedings have been instituted but not concluded in this country during which a freezing order or a confiscation order may be made, the court shall make a restraint or charging order by applying sections 14 and 15 of this Law.

43.H.G. If the Republic is responsible for injury caused to any affected person due to the execution of a freezing order or a confiscation order, it requests from the issuing state to reimburse to the Republic any sums paid in damages except if, and to the extent that, the injury is exclusively due to the contact of the Republic. Reimbursement of paid sums.

PART V - ORDERS FOR THE DISCLOSURE OF INFORMATION

44. For the purposes of this Part-

Interpretation of terms.

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

"privileged information" means-

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

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

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

45.-(1) Without prejudice to the provisions of other laws, in relation to the receipt of information or documents in the course of investigating the possible commission of offences, for the purposes of inquiry in relation to prescribed offences or in relation to inquiry for the determination of proceeds or instrumentalities, the court may, on the application of the investigator of the case, make an order for disclosure under the provisions of this Part.

Order for disclosure.

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

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

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

Conditions for the making of an order for disclosure.

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

- (a) there is a reasonable ground for suspecting that a specified person has committed or has benefited from the commission of a prescribed offence;
- (b) there is reasonable ground for suspecting that the information to which the application relates is likely to be, whether by itself or together with other information, of substantial value to the investigations for the purposes of which the application for disclosure has been submitted;
- (c) the information does not fall within the category of privileged information;
- (d) there is a reasonable ground for believing that it is in the public interest that the information should be produced or disclosed,

having regard to:

- (i) the benefit likely to result for the investigation from the disclosure or provision of the said information; and
- (ii) the circumstances under which the person in possession of the information holds it.

(3) The order for disclosure-

- (a) may also be made in relation to information which is in the possession of a government officer;
- (b) shall have effect despite any obligation for secrecy or other restriction upon the disclosure of information imposed by law or otherwise;
- (c) shall not confer any right for production or disclosure of information which is privileged.
- (d) It is served only to the person who has in his possession the information referred to in the application.

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

Information contained in a computer.

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

48. Any person who discloses that, information or other relevant material regarding knowledge or suspicion for money laundering have been submitted to the Unit or makes a disclosure which may impede or prejudice the interrogation and investigation carried out in respect of prescribed offences or the ascertainment of proceeds, knowing or suspecting that the said interrogation and investigation are taking place, shall be guilty of an offence punishable by imprisonment not exceeding five years;

Offences in relation to the disclosure of information.

It is provided that, in case where a person exercising the professional activity of auditor or external accountant or legal

professional, attempts to prevent a customer from getting involved in illegal activity, this shall not constitute a disclosure of information in the meaning ascribed to this section.

49.-(1) Without prejudice to the provisions of section 48 of this Law, persons engaged in financial business according to section 2 of this Law, may disclose to other persons belonging to the same group and are operating in countries of the European Economic Area or third countries which, according to a decision of the Advisory Authority for Combating Money Laundering and Terrorist Financing, they have been designated as imposing procedures and measures for preventing money laundering and Financing of Terrorism equivalent to those laid down by the EU Directive, that information has been submitted to the Unit by virtue of section 27 of this Law or that the Unit conducts or will probably conduct investigations for money laundering or terrorist financing offences.

Exception from the restriction on the disclosure of information.

It is provided that, for the purposes of this section “group” means a group of companies which consists by the parent company, subsidiary companies as well as entities in which the parent company or its subsidiaries own directly or indirectly at least 20% of the voting right or the share capital of the company. The terms parent and subsidiary companies have the meaning ascribed to them by the International Financial Reporting Standards issued by the International Accounting Standards Board.

(2) Without prejudice to the provisions of section 48, persons acting in the exercise of their professional activities as auditors, external accountants, independent legal professionals, may disclose to other persons who perform their professional activities within the same legal person or network which operates in countries of the European Economic Area or third countries which according to the decision of the Advisory Authority for Combating Money Laundering and Terrorist Financing, have been designated as countries which impose procedures and measures for preventing money laundering and terrorist financing, equivalent to those laid down by the EU Directive, information forwarded to the Unit by virtue of section 27 of this law, or that the Unit conducts or will probably conduct inquiries for money laundering or terrorist financing offences. A “network” means the larger structure to which the person belongs and which shares common ownership, management or compliance control.

(3) Persons referred to in paragraph (1) and (2) above may exchange between them information related to the same customer and the same transaction involving two or more persons provided that they are situated in countries of the European Economic Area or third countries which according to the decision of the Advisory Authority for Combating Money Laundering and Terrorist Financing have been designated as countries which impose

procedures and measures for preventing money laundering and terrorist financing equivalent to those laid down by the EU Directive and that the persons who exchange between them the information belong to the same business sector. The information exchanged is used exclusively for the purposes of the prevention of money laundering and terrorist financing.

(4) The disclosure or the exchange of information according to paragraphs (1), (2) and (3) above, shall not be treated as a breach of any contractual or other legal restriction on the disclosure of information.

(5) The disclosure to the competent Supervisory Authorities from persons engaged in financial business and other business activities that information has been forwarded to the Unit, by virtue of section 27 of this law, or that the Unit conducts or will probably conduct investigations for money laundering and terrorist financing offences, does not constitute breach of any contractual or other legal restriction on the disclosure of information.

PART VI - SUMMARY INQUIRY

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

Conduct of a summary inquiry.

(2) For the purposes of this Part-

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

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

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

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

Procedure to be followed.

- (a) the court shall call upon the accused to give particulars of any matter relevant to the imposition of the penalty including the financial position of the accused and his family. The particulars must be supported by receipts, titles and other documents verifying their correctness;
- (b) the examination of the accused is conducted by the court through which questions are submitted by the prosecution and by the advocate of the accused. The court, if it considers expedient, may allow the cross-examination and re-examination of the accused by the prosecution and by the advocate of the accused respectively;
- (c) the accused may after the conclusion of his examination by the court call witnesses and adduce any evidence in support of his allegations following which the prosecution may call witnesses and adduce evidence in rebuttal;
- (d) the witnesses called to give evidence under subsection (c) above shall be cross-examined and re-examined as if they were witnesses testifying in criminal proceedings;
- (e) if at the conclusion of the inquiry the accused fails to give sufficient and satisfactory explanations regarding the manner in which he acquired the various assets owned by him or his family and regarding any other matter relevant to section 7 (Assessing the proceeds from the commission of a predicate offence), the court may proceed on the assumption that:
 - (i) any property of his or part thereof acquired at any time during the last six years prior to the institution of criminal proceedings and for which no satisfactory explanations were given or which were not supported by satisfactory evidence, has been acquired with proceeds from the commission of a predicate offence;
 - (ii) any property of his family or part thereof for which no sufficient or satisfactory explanations were given and which has been transferred at any time during the last six years prior to the institution of proceedings against him was the subject of a gift which was made by the accused for the purpose of avoiding the consequences of the Law.
- (f) the court, after having determined that the accused benefited from the commission of a predicate offence and subject to subsection (3) of section 49 (Conduct of summary inquiry), may impose a

pecuniary penalty without prejudice to the power of the court to impose any other additional penalty;

- (g) the court, in assessing the fine to be imposed, takes into account the benefit the accused had from the commission of a predicate offence as such benefit was determined in an inquiry under this section;
- (h) the court may, for the purpose of making an inquiry under this section, make any order in order to compel the accused or any other person to attend and to testify or to produce anything relevant to the inquiry.

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

False statements.

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

Enforcing a pecuniary penalty.

(2) Subject to subsection (1), the provisions of section 9 (Procedure for enforcing a confiscation order. Table) shall apply for the enforcement of a pecuniary penalty as if the reference made in that section to a confiscation order were a reference to a pecuniary penalty imposed after an inquiry had been conducted under this Part.

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

PART VII

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

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

Composition of the Unit for Combating Money Laundering Offences.

and Excise, respectively.

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

(3) The members of the Unit shall be deemed to be investigators by virtue of section 4 of the Criminal Procedure Law.

Cap. 155.

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

(5) Without prejudice to the remaining provisions of the present section, operational posts may be created for the needs of the Unit, under the Law Office of the Republic.

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

Functions of the Unit.

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

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

(c) co-operate with the corresponding Units abroad, **as well as with Asset Recovery Offices**, for the purposes of investigation of laundering offences and terrorist financing offences by the exchange of information and by other relevant ways of co-operation.

9 of 41(l) of 1998.

(d) issue directives for the better exercise of its functions.

9 of 41(l) of 1998.

(e) issue instructions to persons engaged in financial and other business activities for the suspension or non-execution of a transaction, whenever there is reasonable suspicion that the transaction is connected with money laundering or terrorist financing.

(f) inform persons engaged in financial or other business activities on the results of the investigation of the reports submitted to the Unit, in accordance with sections 27 and 69 of this Law.

(2) For purposes of subsection (1)

(a) members of the Unit, upon the making of a judicial order, may enter

any premises including premises of a financial institution; and

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

56.-(1) The Council of Ministers shall establish an Advisory Authority for Combating Money Laundering Offences and terrorist financing offences which shall be composed of a representative of-

Composition of
Advisory
Authority.

- (a) The Unit for Combating Money Laundering;
- (b) The Central Bank of Cyprus;
- (c) all other Supervisory Authorities of the financial sector;
- (d) the Ministry of Finance;
- (e) the Customs Department;
- (f) the Ministry of Foreign Affairs;
- (g) the Customs Department;
- (h) the Cyprus Police;
- (i) the Department of Registrar of Companies and Official Receiver;
- (j) the Association of International Banks;
- (ja) the Association of Commercial Banks;
- (jb) the Cyprus Bar Association, the Institute of Certified Public Accountants of Cyprus and other professional bodies which the Council of Ministers may prescribe.
- (jc) any other organisation or service the Council of Ministers may prescribe.

(2) The Advisory Authority shall be presided by the Attorney General of the Republic or the Head of the Unit for Combating Money Laundering as his representative.

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

57. The Advisory Authority shall-

Powers of the

- (a) inform the Council of Ministers of any measures taken and the general policy applied against money laundering and terrorist financing offences;
- (b) advise the Council of Ministers about additional measures which, in its opinion, should be taken for the better implementation of this Law;
- (c) promote the Republic internationally as a country which complies with all the conventions, resolutions and decisions of international bodies in respect of combating laundering and terrorist financing offences.
- (d) (i) Designates the third countries outside the European Economic Area which impose procedures and take measures for preventing money laundering and terrorist financing equivalent to those laid down by the EU Directive
 - (ii) For this purpose it applies the relevant decisions of the European Commission, according to Article 40 (4) of the EU Directive.
 - (iii) Notifies the competent Supervisory Authorities of its decision with the purpose of further notification of the said decision to the persons falling under their supervision.

PART VIII
SPECIAL PROVISIONS IN RESPECT OF
FINANCIAL AND OTHER BUSINESS ACTIVITIES

58. Any person carrying on financial or other business activities, is obliged to apply adequate and appropriate systems and procedures in relation to the following:

Procedures for
preventing
Money
Laundering and
Terrorist
Financing.

- (a) customer identification and customer due diligence, in accordance with the provisions of sections 60-66 of this Law;
- (b) record-keeping in accordance with provisions of section 68 of this Law;
- (c) internal reporting and reporting to MOKAS, in accordance with the provisions of section 69 of this Law;

- (d) internal control, risk assessment and risk management in order to prevent money laundering and terrorist financing;
- (e) detailed examination of each transaction which by its nature may be considered to be particularly vulnerable to be associated with money laundering offences or terrorist financing and in particular complex or unusually large transactions and all other unusual patterns of transactions which have no apparent economic or visible lawful purpose.
- (f) informing their employees in relation to:
 - (i) The systems and procedures in accordance with paragraphs (a) to (e) of this section
 - (ii) the present Law
 - (iii) the Directives issued by the competent Supervisory Authority according to section 59 (4) of this Law and
 - (iv) the European Union's Directives on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing.
- (g) ongoing training of their employees in the recognition and handling of transactions and activities which may be related to money laundering or terrorist financing.

59.-(1) Supervisory Authorities, in relation to financial business are-

Supervisory
Authorities.

(a) The Central Bank of Cyprus-

(i) for banks, including branches of banks which hold an operational license granted by a competent authority of a member state, in relation to activities determined by the Banking Law;

(ii) for electronic money institutions, including branches and agents of electronic money institutions, which hold a relevant operational license granted by a competent authority of a member state, in relation to the activities determined by the Electronic Money Institutions Law, as it stands, for which supervisory responsibilities have been assigned to the Central Bank;

86(I) of 2004.

(iii) for payment institutions, including branches and agents of payment institutions, which hold a relevant operational license granted by a competent authority of a member state, in relation to the activities

determined by the Payment Services Law, as it stands, for which supervisory responsibilities have been assigned to the Central Bank;

(iv) for the persons supervised by the Central Bank , in relation to the activities determined by the Central Bank of Cyprus Law or any other law and for which the Central Bank exercises supervision.

(b) The Authority for the Supervision and Development of Cooperative Societies in relation to the activities determined by the Co-Operative Societies laws of 1985-2007;

(c) The Securities and Exchange Commission:

(i) regarding the services and activities that are provided by the Investment Firms as these are defined in the Investment Services and Activities and Regulated Markets Law, as amended and

(ii) regarding the services and activities that are provided by the Management Companies and Investment Companies as these are defined in the Open-Ended Undertaking for Collective Investment in Transferable Securities (UCITS) and Related Issues Law, as amended.

(d) The Insurance Commissioner in relation to the activities determined by the Law on Insurance Services and other related Issues 2002-2005.

(2) Supervisory Authorities in relation to other business activities are:

(a) The Council of the Institute of Certified Public Accountants of Cyprus, for the professional activities of auditors and external accountants **and tax advisors, as well as companies carrying the said activities;**

(b) The Council of the Cyprus Bar Association for the professional activities of independent legal professionals, as determined in this law;

(c) The Unit for Combating Money Laundering, for the professional activities of Real Estate Agents and of Dealers in precious metals and stones, as determined in this law.

(3) In relation to persons carrying out financial or other business in accordance with section 2 of this law, other than those referred to in paragraphs (1) and (2), the Supervisory Authority is designated by the Council of Ministers.

(4) A Supervisory Authority, for the purpose of preventing money laundering and terrorist financing and for the purposes of this law, issues directives to persons falling under its supervision, which are binding and obligatory as to their application for the persons they are addressed to:

It is provided that, the directives issued by a Supervisory Authority determine the details and specify the way of applying the provisions of this Part by the supervised persons and require the assumption and implementation of procedures and systems for the effective prevention of the risks of committing or attempting the commission of money laundering or financing of terrorism offences.

(5) The Supervisory Authorities monitor, assess and supervise the implementation of this Part of the Law and of the directives issued in accordance with paragraph (4) by the persons falling under their supervision.

(6) (a) The Supervisory Authority may take all or any of the following measures in cases where a person falling under its supervision fails to comply with the provisions of this Part of the Law or with the Directives issued by the competent Supervisory Authority in accordance with paragraph (4) of this section or the EC Regulation no. 1781/2006 of the European Parliament and the Council of 15th November 2006:

- (i) To require the supervised person to take such measures within a specified time frame as may be set by the Supervisory Authority in order to remedy the situation;
- (ii) To impose an administrative fine of up to €200.000 having first given the opportunity to the supervised person to be heard, and in the case the failure continues, to impose an administrative fine of up to €1.000 for each day the failure continues;
- (iii) To amend or suspend or revoke the license of operation of the supervised person.

It is provided that, the competent Supervisory Authority may at its discretion publicize the imposition of the administrative fine.

(b) Independent legal professional or auditor or external accountant who fails to comply with the provisions of this section and the directives issued by the Competent Supervisory Authority in accordance with paragraph (4) of this section, is referred by the competent Supervisory Authority to the competent Disciplinary Board which will decide accordingly.

(7) Where a Supervisory Authority-

(a) possesses information, and

(b) is of the opinion that any person subject to its supervision is engaged in money laundering or terrorist financing offences,

it transmits, as soon as possible, the information to the Unit.

(8) The Supervisory Authorities in relation to financial business, may exchange information with the Unit, within the framework of their obligations, emanating from this Law.

60. Persons engaged in financial and other business apply customer identification procedures and customer due diligence measures in the following cases:

Application of customer due diligence and identification procedures.

(a) When establishing a business relationship;

(b) When carrying out occasional transactions amounting to EURO 15,000 or more, whether the transaction is carried out in a single operation or in several operations which appear to be linked;

(c) When there is a suspicion of money laundering or terrorist financing, regardless of the amount of the transaction;

(d) When there are doubts about the veracity or adequacy of previously customer identification data.

61.-(1) Customer identification procedures and customer due diligence measures shall comprise:

Ways of application of customer due diligence and identification procedures.

(a) identifying the customer and verifying the customer's identity on the basis of documents, data or information obtained from a reliable and independent source;

(b) identifying the beneficial owner and taking risk-based and adequate measures to verify the identity on the basis of documents, data or information obtained from a reliable and independent source so that the person carrying on in financial or other business knows who the

beneficial owner is; as regards legal persons, trusts and similar legal arrangements, taking risk based and adequate measures to understand the ownership and control structure of the customer;

- (c) obtaining information on the purpose and intended nature of the business relationship;
- (d) Conducting ongoing monitoring of the business relationship including scrutiny of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the information and data in the possession of the person engaged in financial or other business in relation to the customer, the business and risk profile, including where necessary, the source of funds and ensuring that the documents, data or information held are kept up-to-date.

(2) Persons engaged in financial or other business activities apply each of the customer due diligence measures and identification procedures set out in paragraph (1) above, but may determine the extent of such measures on a risk-sensitive basis depending on the type of customer, business relationship, product or transaction. Persons engaged in financial or other business activities must be able to demonstrate to the competent Supervisory Authorities that the extent of the measures is appropriate in view of the risks of the use of their services for the purposes of money laundering and terrorist financing.

(3) For the purposes of the provisions relating to identification procedures and customer due diligence requirements, proof of identity is satisfactory if-

- (a) It is reasonable possible to establish that the customer is the persons he claims to be; and
- (b) The person who examines the evidence is satisfied, in accordance with the procedures followed under this Law, that the customer is actually the person he claims to be.

62.-(1) The verification of the identity of the customer and the beneficial owner is performed before the establishment of a business relationship or the carrying out of the transaction.

When to apply customer due diligence and identification procedures.

(2) By way of derogation from paragraph (1), the verification of the identity of the customer and the beneficial owner may be completed during

the establishment of a business relationship if this is necessary not to interrupt the normal conduct of business and where there is little risk of money laundering or terrorist financing occurring. In such situations these procedures shall be completed as soon as practicable after the initial contact and before any transactions are carried out.

(3) By way of derogation from paragraphs (1) and (2), in relation to life insurance business, the verification of the identity of the beneficiary under the policy may take place after the business relationship has been established. In that case, verification shall take place at or before the time of payout or at or before the time the beneficiary intends to exercise rights vested under the policy.

(4) In cases where the person engaged in financial or other business activities is unable to comply with sub-paragraphs (a) to (c) of paragraph (1) of section 61, it may not carry out a transaction through a bank account, establish a business relationship or carry out the transaction, or must terminate the business relationship and shall consider making a report to the Unit in accordance with sections 27 and 69 of this law.

(5) Independent legal professionals, auditors and external accountants are not obliged to apply paragraph (4) above, in situations where they are acting in the course of ascertaining the legal position of their client or performing their task of defending or representing that client in judicial proceedings, including advice on instituting or avoiding proceedings.

(6) Identification procedures and customer due diligence requirements must be applied not only to all new customers but also to existing customers at appropriate times, depending on the level of risk of being involved in money laundering or financing of terrorism offences.

63.-(1) Persons engaged in financial or other business activities may, **in the cases referred to in paragraphs (a), (b) and (d) of section 60, not apply the due diligence procedures referred to in section 61 and in paragraph (1) of section 62** in respect of the following customers:

Simplified customer due diligence and identification procedures.

- (a) Credit or financial institution covered by the EU Directive.
- (b) Credit or financial institution carrying out one or more of the financial business activities as these are defined in section 2 of this law and which is situated in a country outside the European Economic Area, which:
 - (i) in accordance with a decision of the Advisory Authority for Combating Money Laundering and Terrorist Financing, imposes

requirements equivalent to those laid down by the EU Directive and

- (ii) it is under supervision for compliance with those requirements.
- (c) Listed companies whose securities are admitted to trading on a regulated market in a country of the European Economic Area or in a third country which is subject to disclosure requirements consistent with community legislation;
- (d) Domestic public authorities of countries of the European Economic Area.

It is provided that, in cases mentioned in paragraphs (a) to (d) of this section, persons engaged in financial or other business activities have to gather sufficient information to establish if the customer qualifies for an exemption as mentioned in these paragraphs.

(2) In the cases referred to in paragraphs (a), (b) and (d) of section 60, it is not required to apply the due diligence procedures referred to in section 61 and in paragraph (1) of sections 62 in respect of:

- (a) life insurance policies where the annual premium is no more than euro 1,000 or the single premium is not more than euro 2,500;
- (b) insurance policies for pension schemes if there is no surrender clause and the policy cannot be used as collateral;
- (c) a pension or similar scheme that provides retirement benefits to employees, where contributions are made by way of deduction from wages and the scheme rules do not permit the assignment of a member's interest under the scheme;
- (d) electronic money, as defined by section 2 of the Electronic Money Institution Law,
 - (i) if the device cannot be recharged, the maximum amount stored in the device is no more than euro 150; or
 - (ii) if the device can be recharged, a limit of euro 2,500 is imposed on the total amount transacted in a calendar year, except when an amount of euro 1,000 or more is redeemed in the same calendar year by the bearer.

64.-(1) Persons engaged in financial or other business activities apply the following enhanced customer due diligence measures, in addition to the

Enhanced due diligence measures.

measures referred to in sections 60, 61 and 62 in the following situations:

(a) Where the customer has not been physically present for identification purposes, apply one or more of the following measures:

- (i) Obtain additional documents, data or information for verifying customer's identity;
- (ii) take supplementary measures to verify or certify the documents supplied, or requiring confirmatory certification by a credit or financial institution covered by the EU Directive.
- (iii) Ensure that the first payment of the operations is carried out through an account opened in the customer's name with a credit institution which operates in a country within the European Economic Area.

(b) In respect of cross-frontier correspondent banking relationships with credit institutions-customers from third countries, it is required to:

- (i) Gather sufficient information about the credit institution-customer to understand fully the nature of the business and the activities of the customer and to assess, from publicly available information, the reputation of the institution and the quality of its supervision;
- (ii) Assess the systems and procedures applied by the credit institution-customer for the prevention of money laundering and terrorist financing;
- (iii) Obtain approval from senior management before entering into correspondent bank account relationship;
- (iv) Document the respective responsibilities of the person engaged in financial or other business activities and of the credit institution-customer.
- (v) With respect to payable-through accounts, must be ensured that the credit institution-customer has verified the identity of its customers and performed ongoing due diligence on the customers having direct access to the correspondent bank accounts and that it is able to provide relevant customer's due diligence data to the correspondent institution, upon request.

(c) In respect of transactions or business relationships with politically

exposed persons residing in a country within the European Economic Area or a third country, it is required from persons engaged in financial or other business activities to:

- (i) have appropriate risk-based procedures to determine whether the customer is a politically exposed person;
- (ii) have senior management approval for establishing business relationships with such customers;
- (iii) take adequate measures to establish the source of wealth and source of funds that are involved in the business relationship or transaction;
- (iv) conduct enhanced ongoing monitoring of the business relationship.

(2) Enhanced customer due diligence measures must be taken in all other instances which due to their nature entail a higher risk of money laundering or terrorist financing.

65.-(1) Persons engaged in financial or other business activities, take reasonable measures for collecting adequate documents, data or information for establishing and verifying the identity of the third person on whose behalf the customer is acting;

Transactions on behalf of another person.

It is provided that, in such a case it has to be established that the customer is duly authorised by the third person for this purpose.

(2) For customers which are companies or legal entities it must be verified that the natural person who appears to act on behalf of the customer is properly authorised for this purpose and his identity must be established and verified.

66.-(1) (a) Persons who possess a license to carry banking business in accordance with the provisions of the Banking Law of 1997 or the Cooperative Societies Law of 1985 are prohibited to enter into or continue any business relationship with a shell bank.

Prohibition from cooperating with a shell bank or keeping anonymous accounts.

(b) Persons referred to in paragraph (a) above have to take the necessary measures to ensure that they are not engaged in or continue correspondent banking relations with a bank which is known to permit its accounts to be used by a shell

bank.

(2) It is prohibited for persons engaged in financial or other business activities to open or maintain anonymous or numbered accounts or accounts in names other than those stated in official identity documents.

(3) Persons carrying financial or other business activities have to pay special attention to every threat or danger for money laundering or terrorist financing which may result from products or transactions which may favour anonymity, shall take measures, if needed, to prevent their use for such activities **and to apply to the extent possible reasonable measures and procedures to face the dangers arising from technological developments and new financial products.**

67.-(1) Persons engaged in financial or other business activities in accordance with section 60 of this law may rely on third parties for applying the requirements laid down in sub-paragraphs (a), (b) and (c) of paragraph (1) section 61 of this Law in respect of customers identification procedures and customer due diligence measures:

Performance by third parties.

It is provided that, the ultimate responsibility for meeting those requirements shall remain with the person who is engaged in the financial or other business activities and who relies on the third party.

(2) (a) For the purposes of this section, third party means credit institution or financial institution or auditors or independent legal professionals or person providing to third parties trust and company services included in paragraph (e) of the definition of the term “other business activities”, falling under the EU Directive and which:

- (i) they are subject to mandatory professional registration, recognised by law; and
- (ii) they subject to supervision regarding their compliance with the requirements of the EU Directive;

(b) Third party for the purposes of this section may be any other person who is engaged in financial or other business as defined in section 2 of this Law, or accountants or independent legal professionals or persons providing to third parties trust and company services as included in paragraph (e) of the definition of the term “other business activities” and who operate in countries outside the European Economic Area and which according to a decision of the Advisory Authority for Combating Money Laundering and Financing of Terrorism, have been determined that they impose equivalent procedures and measures for the prevention of money

laundering and terrorist financing to those laid down by the EU Directive.

It is provided that the abovementioned third persons have to fulfil the requirements set out in subparagraph (i) and (ii) of paragraph (a) of this section.

(c) the terms financial institutions and persons engaged in financial business activities, for the purposes of this section, do not include-

(i) payment institution, as this is defined in section 2 of the Payment Services Law, when the activity carried out by the Payment Institution falls under point 6 of the annex to the Payment Services Law,

(ii) currency exchange office, and

(iii) persons which have been granted a licence by the Central Bank of Cyprus for the establishment and operation of a money transfer business, before the Payment Services Law came into force and they continue to hold the said license.

(3) Persons engaged in financial or other business activities must request from the third party to:

- (a) make immediately available data, information and documents obtained as a result of the application of the procedures establishing identity and customers due diligence measures in accordance with sub-paragraphs (a), (b) and (c) of paragraph (1) of section 61 and
- (b) forward immediately to them, copies of these documents and relevant information on the identity of customer or the beneficial owner which the third party collected when applying the above procedures and measures.

68.-(1) Persons engaged in financial or other business activities are required to keep records for a period of at least five years of the following documents:

Record keeping.

- (a) Copies of the evidential material of the customer identity.
- (b) relevant evidential material and details of all business relations and transactions, including documents for recording transactions in the accounting books and

- (c) relevant documents of correspondence with the customers and other persons with whom they keep a business relation.

(2) The five year period is calculated following the carrying out of the transactions or the end of the business relationship.

(3) Persons engaged in financial or other business activities shall ensure that all the documents referred to in paragraph (1) above are made available rapidly and without delay to the Unit and the competent Supervisory Authorities for the purpose of discharging the duties imposed on them by this law.

68.A.-(1) Persons engaged in financial business activities apply in their branches and subsidiary companies established in third countries outside the European Economic Area, measures and procedures for due diligence, customer identification and record keeping, equivalent to those provided for in this Part and in the directives issued by the competent Supervisory Authorities in relation to financial business activities;

Due diligence and customer identification procedures and record keeping for countries outside the European Economic Area.

It is provided that, in the event that the measures and procedures required by the law and the Directives of the Supervisory Authority of the third country differ from those provided for in this Part and in the directives of the competent Supervisory Authority in the Republic, then the branch and/or the subsidiary company established in the third country, applies the stricter requirements of the two;

It is further provided that, in the event that the legislation of the third country does not allow the application of equivalent measures as provided above, the person engaged in financial business activities which maintains a branch and/or a subsidiary company in the third country, is required-

- (i) to inform immediately the competent Supervisory Authority, and
- (ii) to take additional measures in order to face the risk of money laundering or terrorist financing.

(2) Persons engaged in financial business activities notify their branches and subsidiary companies established in third countries, of the policy and procedures they apply according to section 58 for the prevention of money laundering and terrorist financing offences.

68.B. Persons engaged in financial business activities apply systems and procedures which make possible the timely response to enquiries of the Unit or the competent Supervisory Authority as to whether they keep or have kept during the last five (5) years a business relationship with specific persons and the type of this business relationship.

Timely response to the enquiries of the Unit or the Supervisory Authorities.

68.C. In the event that a the customer of a person engaged in financial or other business activities, or a person who is authorised to act on behalf of the customer, or a third person according to paragraph (a) of subsection (2) of section 67, on whom the person engaged in financial or other business activities relies for the performance of the procedures for customer identification and due diligence measures, knowingly provides false or misleading evidence or information for the identity of the customer or of the ultimate beneficial owner or provides false or forged identification documents, is guilty of the offence and, in case of conviction, is subject to imprisonment not exceeding 2 years or to a pecuniary penalty of up to €100.000 or to both of these penalties.

Offence of providing false or misleading evidence or information and false or forged documents.

68.D.-(1) Irrespective of the provisions of section 68.A, every financial group appoints a manager from a company of the group which was incorporated in the Republic and commands the biggest amount of total assets from all the companies of the group which have been incorporated in the Republic as a coordinator, for ensuring the implementation by all the companies of the financial group, including their branches abroad, which are engaged in financial business activities, of adequate and appropriate systems and procedures for the effective prevention of money laundering and terrorist financing offences.

Definition of coordinator in a financial business group.

(2) For the purposes of this section-

(a) the term “financial group” means a financial group which includes at least two (2) companies engaged in financial business activities and is composed of a parent company, incorporated in the Republic and one or more subsidiary companies incorporated in the Republic and/or outside the Republic and does not include a parent company established in the Republic, which is not engaged in financial business activities with one or more subsidiary companies established exclusively outside the Republic and

(b) the terms “parent company” and “subsidiary company” have the meaning ascribed to these terms in section 148 of the Companies Law.

69.-(1) Persons engaged in financial or other business activities apply the following internal reporting procedures:

Internal procedures and reporting to MOKAS.

(a) Appoint a person as a money laundering compliance officer to whom a report is to be made about any information or other matter which comes to the attention of the person handling financial or other business activities and which, in the opinion of the person handling that business, proves or creates suspicion that another person is engaged in a money laundering offence or terrorist financing.

(b) requiring that, any such report to be considered in the light of all other relevant information by the money laundering compliance officer, for the purpose of determining whether or not the information or other matter contained in the report proves this fact or creates such a suspicion.

(c) allowing the money laundering compliance officer in accordance with paragraph (b) above to have direct and timely access to other information, data and documents which may be of assistance to him and which is available to the person engaged in financial or other business activities.

(d) Securing that the information or other matter contained in the report is transmitted to the Unit when the person who has considered the report under the above procedures, ascertains or has reasonable suspicions that another person is engaged in money laundering or terrorist financing or that the transaction may be connected to such activities.

It is provided that, the obligation to report to the Unit includes also the attempt to execute such suspicious transactions.

70. Persons engaged in financial and other business activities refrain from carrying out transactions which they know or suspect to be related with money laundering or terrorist financing before they inform the Unit of their suspicion in accordance with sections 27 and 69 of this law;

Refrain from carrying out suspicious transactions before informing the Unit.

It is provided that, if it is impossible to refrain from carrying out the transaction or is likely to frustrate efforts to pursue the beneficiaries of a suspected money laundering or terrorist financing operation, the persons engaged in financial or other business activities, must inform the Unit immediately afterwards.

71. The non-execution or the delay in execution of any transaction for the account of a customer, by a person engaged in financial or

Non-execution or delay in

other business activities shall not constitute breach of any contractual or other obligation of the said person towards its customer if it is due to-

- (a) the non provision of sufficient details or information for-**
 - (i) the nature and the economic or commercial purpose of the transaction, and/or**
 - (ii) the parties involved, as required by the Regulation (EC) no. 1781/2006 of the European Parliament and of the Council of 15 November 2006 on information on the payer accompanying transfers of funds, or**

(b) the knowledge that the money held to the credit of the account or the transaction, may be connected with money laundering or terrorist financing offences or with the commission of other criminal offence.

executing transaction for the account of a customer by a person engaged in financial or other business activities.

PART IX - MISCELLANEOUS PROVISIONS

72. Upon the making of any order under this Law, in instances where no other express provision is made in this Law, the relevant provisions of the Civil Procedure Law and the Civil Procedure Rules apply, with the exemption of the provisions of section 9 of the Civil Procedure Law which relates to orders obtained ex-parte.

Application of civil proceedings.

It is provided that, a Court which adjudicates applications for the making of any order under this law, shall apply the standard of proof applicable in these proceedings.

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

Setting aside of gifts.

(2) The court, before making the order for the setting aside of the gift, shall afford the person in possession of the property which constitutes the subject-matter of the gift the opportunity to express his views and to give reasons why the setting aside of the gift should not be ordered.

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

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

name of the receiver or other person specified in the order.

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

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

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

Extradition of a person who has committed a prescribed offence.

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

Service of orders.

It is provided that, the supervisory authority shall be obliged to notify forthwith all the persons subject to its supervision about the order made under this Law.

76.-(1) The competent Supervisory Authorities, the Unit, the Ministry of Justice and Public Order, the Police, the Customs and Excise Department, have to maintain comprehensive statistics on matters related to their competences.

Statistical Data.

(2) Such statistics shall as a minimum cover the suspicious transaction reports made to the Unit, the inspections made by the Supervisory Authorities, the administrative penalties and the disciplinary sanctions imposed by the Supervisory Authorities, the number of cases investigated, the number of criminal prosecutions, the number of convictions and the assets frozen, seized or confiscated.

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

Rules of Court.

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

78.-(1) Upon the enactment of this Law, the Prevention and Suppression of Money Laundering Activities Laws of 1996-2004 shall be repealed due to the revision of its provisions and their inclusion in this Law, without prejudice to any act or action that was done or instituted under the repealed Law.

Repeal and reservation.

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

79. This Law will come into force on 1st January 2008.

Date of
enforcement of
the present law.

maria k/consolidated law 188(l)_2007, 58(l)_2010 final 30.7.10