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PROCEEDS OF CRIME ACT, 2018

Arrangement of Sections

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No. 4 of 2018

PROCEEDS OF CRIME ACT, 2018

AN ACT TO CONSOLIDATE AND STRENGTHEN MEASURES TO RECOVER THE PROCEEDS AND INSTRUMENTALITIES OF CRIME AND TO COMBAT IDENTIFIED RISKS

[Date of Assent - 25th May, 2018]

Enacted by the Parliament of The Bahamas

PART I - PRELIMINARY

1. Short title and commencement.

- (1) This Act may be cited as the Proceeds of Crime Act, 2018.
- (2) This Act shall come into operation on such date as the Minister may appoint by notice published in the Gazette and different dates may be so appointed for the coming into operation of different parts or provisions.

2. Interpretation.

In this Act —

“AML” means Anti-Money Laundering measures;

“appropriate authority” means the authority appearing to the Competent Authority or the court to be the appropriate authority of a foreign country;

“authorised officer or person” means any peace officer or person authorised by the Attorney-General to make applications for orders under this Act and includes officers of the Royal Bahamas Police Force;

“beneficial owner” means a natural person—

- (a) who ultimately owns or controls, a customer or the natural person;

- (b) on whose behalf a transaction is being conducted; or
- (c) who exercises effective control over a legal person or legal arrangement;

“benefit” means any advantage, gain, profit, or payment or any derivative thereof, and the benefit that a person derives or obtains or that accrue to him including those that another person derives, obtains or that otherwise accrue to such other person, if the other person is under the control of, or is directed or requested by, the first person;

“benefit from criminal conduct” means any property or pecuniary advantage or any derivative thereof obtained as a result of or in connection with criminal conduct and any references to property or a pecuniary advantage obtained in connection with criminal conduct include references to property or a pecuniary advantage obtained in both that connection and some other;

“business relationship” means an association between an individual and a company entered into for any commercial purpose;

“cash” means—

- (a) notes and coins in any currency;
- (b) postal orders;
- (c) cheques of any kind, including travelers’ cheques;
- (d) bankers’ drafts;
- (e) bearer bonds and bearer shares;
- (f) virtual currency; or
- (g) any kind of monetary instrument which is found at any place in The Bahamas if such instrument is specified by the Minister;

“CFT” means Combatting Financing of Terrorism;

“Competent Authority” means the Attorney-General;

“confiscated assets” includes any assets obtained by way of confiscation, forfeiture or recovery of any proceeds or instrumentalities of any offence, or derived from any offence, any identified risks, unexplained wealth, cash or personal property;

“Confiscated Assets Committee” means the committee established under section 92;

“corruption” means any criminal conduct related to bribery, extortion, or misconduct in public office committed by or on behalf of a public officer;

“Court” means the Supreme Court unless the context otherwise provides;

“criminal conduct” means conduct relating to the commission of any offence;

“currency or money” means coin and paper money of any jurisdiction that is designated as legal tender or is customarily used and accepted as a medium of exchange, including virtual currency as a means of payment;

“customer” means any of the following —

- (a) the person for whom a transaction or account is arranged, opened or undertaken;
- (b) a signatory to a transaction or account;
- (c) any person to whom an account or rights or obligations under a transaction have been assigned or transferred;
- (d) any person who is authorised to conduct a transaction or control an account;
- (e) any person who attempts to take any of the actions referred to in (a) to (d) above; or
- (f) such other person as may be prescribed by regulations by the Minister;

“dealing with property” includes any of the following —

- (a) a transfer or disposition of property;
- (b) making or receiving a gift of property;
- (c) removing property from The Bahamas;
- (d) where property is a debt owed to a person, making a payment to any person in reduction or full settlement of the amount of the debt;
- (e) using property to obtain or extend credit, or using credit that is secured by the property; or
- (f) where property is an interest in a partnership, doing anything to diminish the value of the partnership;

“document” means a record of information kept in any form, including electronic format;

“effective control” has the meaning as provided in section 79;

“employer” means any person, body, association or organisation (including a voluntary organisation) in connection with whose activities an employee exercises a function (whether or not for gain or reward), and references to employment must be construed accordingly;

“enforcement authority” means in relation to—

- (a) domestic proceedings, the Director of Public Prosecutions, and any person authorised by the Director of Public Prosecutions;

- (b) proceedings undertaken in response to any international request to the Competent Authority, the Attorney-General or any person designated by him to act in those proceedings under this Act;
- “entity”** means a person, group, trust, partnership, fund or an unincorporated association or organisation;
- “financial institution”** has the same meaning as ascribed to it in the Financial Transactions Reporting Act, 2018;
- “Financial Intelligence Unit”** means the Unit established pursuant to section 3 of the Financial Intelligence Unit Act (*Ch. 367*);
- “Focal Point Officer”** mean an officer authorized by the Financial Intelligence Unit to receive disclosure of information relating to money laundering;
- “funds” or “property”** means any assets, economic resources, property of every kind, whether corporeal or incorporeal, tangible or intangible, movable or immovable, however acquired, wherever located, legal documents or instruments in any form, electronic or digital, evidencing title to, or interest in, such assets, economic resources or property, including but not limited to currency, bank credits, deposits and other financial resources, travellers cheques, bank cheques, money orders, promissory notes, shares, non-shareholding interest, securities, bonds, drafts, letters of credit, and any interest in, dividends or others income on or value accruing from or generated by, in full or in part, any such assets, economic resources or property;
- “gift”** means any property given by one person to another person and includes any property directly or indirectly given after the commission of an offence by the first person; to the extent of the difference between the market value of the property at the time of its transfer and —
- (a) the consideration provided by the transferee; or
- (b) the consideration paid by the transferor whichever is greater;
- “gift caught by the act”** is a gift made by the subject of an investigation or relevant person at any time after the commission of the offence, or, if more than one, the earliest of the offences to which the proceedings relate;
- “human trafficking”** means trafficking in persons as defined in the Trafficking in Persons (Prevention and Suppression) Act (*Ch. 106*);
- “identified risk”** means corruption, cybercrime, human trafficking, money laundering, or financing of proliferation of weapons of mass destruction, terrorism or financing of terrorism or such other risk as the Minister may prescribe by regulations;

“instrumentality” and “instrumentalities” includes any property used or intended to be used, in any manner, wholly or in part in or in connection with the commission of a criminal offence or criminal offences and shall include property that is used in or intended or allocated for use in the commission of any of the identified risks;

“interest” in relation to property, includes —

- (a) any legal or equitable estate or interest in the property whether arising in specie, by way of any liquidation or partial liquidation, by trust or annuities or any derivative interest whatsoever; or
- (b) any right, power or privilege in connection with the property;

“IRF” or “Identified Risk Framework” means any lawful measures or policies designed to minimize or eliminate identified risks;

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

“Minister” means the Attorney-General;

“money laundering” means —

- (a) any offence referred to in Part III;
- (b) any act or words which constitutes an attempt, conspiracy or incitement to commit an offence specified in paragraph (a);
- (c) any act or words which constitutes aiding, abetting, counselling or procuring the commission of an offence specified in paragraph (a); or
- (d) conduct committed outside The Bahamas which would constitute an offence specified in paragraph (a), (b) or (c) if the conduct was committed in The Bahamas;

“nominated officer” mean a person who is responsible for receiving disclosures from an employee;

“offence” including an offence under this Act means any criminal offence under the laws of The Bahamas, and any criminal offence under a law of a foreign jurisdiction, in relation to acts or omissions which, had they occurred in The Bahamas, would have constituted an offence in The Bahamas;

“pecuniary advantage” means a financial advantage that is obtained by criminal conduct. If a person obtains a pecuniary advantage as a result of or in connection with criminal conduct, he is to be taken to obtain as a result of or in connection with the criminal conduct a sum of money equal to the value of the pecuniary advantage;

“person” means any natural or legal person or entity;

“politically exposed person” means an individual who is or has been entrusted—

- (a) with a domestic prominent public function, inclusive of a head of state or government, legislator, politician, senior government, judicial or military official, senior executive of a state owned corporation, or important political party official;
- (b) with a prominent public function by a foreign jurisdiction, inclusive of, a head of state or government, legislator, senior politician, senior government, judicial or military official, senior executive of a state owned corporation, or senior political party official;
- (c) with a senior position at an international organisation or branch thereof, domestic or foreign, and includes a family member or close associate of a politically exposed person;

“proceeds” and “proceeds of crime” means any funds or property derived from or obtained, directly or indirectly, as a result of or in connection with the commission of any offence, including economic gains and funds or property converted or transformed, in whole or in part, into other funds or property; and it is immaterial —

- (a) who carried out the criminal conduct;
- (b) who benefited from it;
- (c) whether the criminal conduct occurred before or after the passing of this Act;

“property” means all property wherever situated and includes —

- (a) money;
- (b) all forms of property, real or personal, heritable or moveable;
- (c) things in action and other intangible or incorporeal property;

“property in which the relevant person has an interest” includes —

- (a) any property that is, on the day when the first application is made under Part III subject to the effective control of the relevant person;
- (b) any property or its value gifted by the relevant person to another person within the period of six years ending at the date of the first application made under Part IV;
- (c) any legal estate or equitable interest or power in land wherever situated;
- (d) any right (including a right to possession) in relation to property other than land wherever situated;

“property is obtained” means if a person obtains an interest in property;

“receiver” means a person appointed by a Court to take control of and deal with property in accordance with the Court’s order and the common law;

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

“relevant person” is a person who is the subject of an investigation for an offence, has been charged with an offence or has been convicted of an offence;

“Supervisory Authority” has the meaning ascribed to it in the Financial Transactions Reporting Act, 2018;

“terrorist” means any natural person who —

- (a) commits or attempts to commit, a terrorist act by any means, directly or indirectly, unlawfully and wilfully;
- (b) participates as an accomplice in a terrorist act;
- (c) organises, directs or encourages others to commit a terrorist act; or
- (d) contributes to the commission of a terrorist act by a group of persons acting with a common purpose where the contribution is made intentionally and with the aim of furthering the terrorist act or with the knowledge of the intention of the group to commit a terrorist act;

“terrorist act” includes —

- (a) an act which constitutes an offence under or defined in any of the treaties listed in the *First Schedule* of the Anti-Terrorism Act;
- (b) an act, which constitutes an offence within the scope of, and as defined in any one of the treaties listed in the annex to the 1999 International Convention for the Suppression of the Financing of Terrorism;
- (c) an act which constitutes an offence within the scope of, and as defined in any one of the following treaties —
 - (i) the 2010 Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation; and
 - (ii) the 2010 Protocol Supplementary to the Convention for the Suppression of the Unlawful Seizure of Aircraft; or
- (d) any other act that has the purpose by its nature or context, to intimidate the public or to compel a government or an international organisation to do or to refrain from doing any act and that is intended to cause —

- (i) death or serious bodily harm to a civilian or in a situation of armed conflict, to any other person not taking an active part in the hostilities;
- (ii) serious risk to health or safety of the public or any segment of the public;
- (iii) substantial property damage; whether to public or private property, where the damage involves a risk of the kind mentioned in subparagraph (ii) or an interference or disruption of the kind mentioned in subparagraph (iv); or
- (iv) serious interference with or serious disruption of an essential service, facility or system, whether public or private; not being an interference or disruption resulting from lawful advocacy or from protest, dissent or stoppage of work;

“terrorist organisation” means two or more persons acting together or any entity that —

- (a) commits, or attempts to commit, terrorist acts by any means, directly or indirectly, unlawfully and wilfully;
- (b) participates as an accomplice in terrorist acts;
- (c) organises or directs others to commit terrorist acts; or
- (d) contributes to the commission of terrorist acts by an entity acting with a common purpose where the contribution is made intentionally and with the aim of furthering the terrorist act or with the knowledge of the intention of the group to commit a terrorist act;

“terrorist property” means —

- (a) proceeds from the commission of a terrorist act;
- (b) property which has been, is being, or is intended to be used to commit a terrorist act;
- (c) property which has been, is being, or is intended to be used by a terrorist organisation;
- (d) property owned or controlled by, or on behalf of, a terrorist organisation; or
- (e) property which has been collected for the purpose of providing support to a terrorist organisation or funding a terrorist act;

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

- (a) opening of an account;

- (b) any deposit, withdrawal, exchange or transfer of funds, whether in currency or by cheque, payment order or other instrument or by electronic or other non-physical means;
- (c) the use of a safety deposit box or any other form of safe deposit;
- (d) entering into any fiduciary relationship;
- (e) any payment made or received in satisfaction, in whole or in part, of any contractual or other legal obligation;
- (f) any payment made in respect of a lottery, bet or other game of chance;
- (g) establishing or creating a legal person or legal arrangement; and
- (h) such other transaction as may be prescribed by the Minister by regulations;

“virtual currency” is a digital representation of value which can be digitally traded and functions as —

- (a) a medium of exchange;
- (b) a unit of account; or
- (c) a store of value, that does not have legal tender status or carry any security or guarantee in any jurisdiction.

3. Objectives.

(1) The objectives of this Act are—

- (a) to consolidate and strengthen provisions relating to—
 - (i) preventative and investigative measures against money laundering, terrorism financing, terrorism, corruption, proliferation of weapons of mass destruction, human trafficking, and related offences;
 - (ii) the recovery of the proceeds and instrumentalities of crime including providing for civil forfeiture of the proceeds of criminal conduct and illicit cash; and
- (b) to introduce powers relating to unexplained wealth, investigative orders; the confiscated assets fund and a confiscated assets committee.

(2) This Act applies notwithstanding any other law.

PART II – ADMINISTRATION OF ACT

4. Establishment of Ministerial Council.

- (1) There shall be a council to be known as the Ministerial Council which shall have the responsibility to —
 - (a) determine an identified risk as defined under section 2; and
 - (b) assess and make such recommendations as may be necessary from time to time to ensure the effective implementation of the Identified Risk Framework (hereinafter referred to as “IRF”) to minimize or eliminate identified risks.
- (2) The Ministerial Council shall be comprised of—
 - (a) the Attorney-General;
 - (b) the Minister of Finance;
 - (c) the Minister of Financial Services;
 - (d) the Minister of Foreign Affairs;
 - (e) the Minister of National Security; and
 - (f) such other person nominated by the Attorney-General with responsibility as provided under section 5 to be known as the National Identified Risk Framework Coordinator, *ex officio*.

5. National Identified Risk Framework Coordinator.

The National Identified Risk Framework Coordinator nominated pursuant to section 4. shall be responsible for —

- (a) chairing meetings of the Identified Risk Framework Steering Committee as established under section 6 (hereinafter referred to as the “IRF Steering Committee”);
- (b) liaising with regulators and maintaining an on-going review of their adherence to the IRF;
- (c) directing public training on identified risk matters and public outreach;
- (d) attending technical meetings of the Caribbean Financial Action Task Force (hereinafter referred to as the “CFATF”), Financial Action Task Force (hereinafter referred to as the “FATF”) and other recognised international agencies;
- (e) preparing summary reports of the activities of the IRF Steering Committee.

6. Establishment of Identified Risk Framework Steering Committee.

- (1) There shall be established a committee to be known as the Identified Risk Framework Steering Committee.
- (2) The IRF Steering Committee shall be comprised of —
 - (a) the National Identified Risk Framework Coordinator;
 - (b) a representative of the Office of the Attorney-General;
 - (c) a representative of the Office of the Director of Public Prosecution;
 - (d) a representative of the Financial Intelligence Unit;
 - (e) a representative of the Customs Department;
 - (f) a representative of the Royal Bahamas Police Force;
 - (g) a representative of the Royal Bahamas Defence Force;
 - (h) a representative of the Department of Immigration;
 - (i) a representative of the Ministry of Foreign Affairs;
 - (j) a representative of the Ministry of Finance;
 - (k) a representative of the Ministry of Financial Services;
 - (l) a representative of the Central Bank of The Bahamas; and
 - (m) such other person or representative of a statutory body, that has as part of its functions a requirement to regulate financial institutions, as the Attorney-General considers would contribute to the objectives of the IRF Steering Committee.
- (3) The IRF Steering Committee shall —
 - (a) coordinate a national risk assessment periodically to identify, assess and understand the identified risks and ensure that such assessments are updated and relevant;
 - (b) maintain surveillance of FATF pronouncements regarding country risk application of enhanced due diligence;
 - (c) have regard of reports by financial institutions and designated non-financial business professions of persistent regulatory failures by a jurisdiction or foreign financial institution and to prepare list of such jurisdictions or foreign financial institutions;
 - (d) advise financial institutions of obligations to apply enhanced due diligence to transactions emanating from jurisdictions or foreign financial institutions named by the IRF Steering Committee and the FATF;
 - (e) coordinate the development, regular review and implementation of national policies and activities designed to mitigate identified risks;

- (f) collect and analyse statistics and other information from competent authorities to assess the effectiveness of the IRF;
 - (g) coordinate measures to identify, assess and understand the impact of Parts IV, V and VI of this Act;
 - (h) report to the Ministerial Council; and
 - (i) establish appropriate mechanisms to provide information on identified risks to relevant financial institutions, self regulatory bodies and professional associations.
- (4) The IRF Steering Committee may regulate its own procedures.
- (5) The IRF Steering Committee may from time to time carry out consultation with relevant institutions and bodies.

PART III – IDENTIFIED RISK OFFENCES

7. Identified risk offences.

An identified risk offence for the purposes of this Act shall include —

- (a) any offence as provided in this Part;
- (b) such other activity that falls within the definition of identified risk, as provided for in section 2, that amounts to an offence under any other law;
- (c) any offence described in the *First Schedule*.

MONEY LAUNDERING

8. Proof of money laundering.

For the purpose of this Part —

- (a) no conviction for an offence shall be necessary to prove that the property is directly or indirectly the proceeds of crime, nor shall it be necessary to prove that a specific offence has been committed by any person;
- (b) knowledge, suspicion, intent or purpose may be inferred from objective factual circumstances.

9. Concealing.

- (1) A person commits an offence of money laundering if acting with knowledge or reasonable suspicion he —
 - (a) conceals the proceeds of any crime;

6. Establishment of Identified Risk Framework Steering Committee.

- (1) There shall be established a committee to be known as the Identified Risk Framework Steering Committee.
- (2) The IRF Steering Committee shall be comprised of —
 - (a) the National Identified Risk Framework Coordinator;
 - (b) a representative of the Office of the Attorney-General;
 - (c) a representative of the Office of the Director of Public Prosecution;
 - (d) a representative of the Financial Intelligence Unit;
 - (e) a representative of the Customs Department;
 - (f) a representative of the Royal Bahamas Police Force;
 - (g) a representative of the Royal Bahamas Defence Force;
 - (h) a representative of the Department of Immigration;
 - (i) a representative of the Ministry of Foreign Affairs;
 - (j) a representative of the Ministry of Finance;
 - (k) a representative of the Ministry of Financial Services;
 - (l) a representative of the Central Bank of The Bahamas; and
 - (m) such other person or representative of a statutory body, that has as part of its functions a requirement to regulate financial institutions, as the Attorney-General considers would contribute to the objectives of the IRF Steering Committee.
- (3) The IRF Steering Committee shall —
 - (a) coordinate a national risk assessment periodically to identify, assess and understand the identified risks and ensure that such assessments are updated and relevant;
 - (b) maintain surveillance of FATF pronouncements regarding country risk application of enhanced due diligence;
 - (c) have regard of reports by financial institutions and designated non-financial business professions of persistent regulatory failures by a jurisdiction or foreign financial institution and to prepare list of such jurisdictions or foreign financial institutions;
 - (d) advise financial institutions of obligations to apply enhanced due diligence to transactions emanating from jurisdictions or foreign financial institutions named by the IRF Steering Committee and the FATF;
 - (e) coordinate the development, regular review and implementation of national policies and activities designed to mitigate identified risks;

- (b) disguises the proceeds of any crime;
 - (c) converts the proceeds of any crime;
 - (d) transfers the proceeds of any crime;
 - (e) removes the proceeds of any crime from The Bahamas.
- (2) For the purposes of this section—
- (a) concealing or disguising criminal property includes concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it; and
 - (b) concealing or disguising the proceeds of crime also includes the proceeds of any identified risk activity.

10. Arrangements concerning proceeds of crime.

A person commits an offence of money laundering if he knows, suspects, or ought to reasonably have known or suspected that he has entered, or is entering into an arrangement which facilitates, by whatever means, the acquisition, retention, use, concealment or the control of proceeds of crime by or on behalf of another person.

11. Acquisition, use and possession of the proceeds of crime.

- (1) A person who knows or suspects or ought to reasonably have known or suspected that he —
- (a) acquired or is acquiring the proceeds of crime;
 - (b) used or is using the proceeds of crime; or
 - (c) possessed or possesses the proceeds of crime,
- commits an offence of money laundering.
- (2) For the purposes of this section —
- (a) a person acquires property for inadequate consideration if the value of the consideration is significantly less than the value of the property;
 - (b) a person uses or has possession of property for inadequate consideration if the value of the consideration is significantly less than the value of the use or possession;
 - (c) the provision by a person of goods or services which he knows or suspects may help another to carry out criminal conduct is not consideration.

12. Failure to disclose.

- (1) This section shall apply to a person, firm or sole practitioner engaged in one or more of the following activities —

- (a) accountancy, audit or taxation advice or services;
 - (b) legal or notarial services involving the participation in financial or real property transactions concerning —
 - (i) buying or selling of real property or interest therein;
 - (ii) buying or selling of business entities or interests therein;
 - (iii) the management of client money, securities or other assets;
 - (iv) the opening or management of bank savings or securities accounts;
 - (v) the organisation of contributions necessary for the creation, operation or management of companies;
 - (vi) the creation, operation or management of trusts, companies or similar structures.
- (2) A person commits an offence if each of the following three conditions is satisfied, namely —
- (a) that he —
 - (i) knows or suspects; or
 - (ii) reasonably ought to have known or suspected;
 that another person is engaged in money laundering or committing an offence related to an identified risk;
 - (b) that the information or other matter —
 - (i) on which his knowledge or suspicion is based; or
 - (ii) which gives reasonable grounds for such knowledge or suspicion;
 came to him in the course of his business;
 - (c) that he does not make the required disclosure as soon as is practicable after the information or other matter comes to him.
- (3) The required disclosure referred to in subsection (2) is a disclosure of the information or other matter —
- (a) to an officer of a body, office or department authorized to receive the disclosure for the purposes of this Part (hereinafter referred to as “the Focal Point Officer”);
 - (b) in the form and manner (if any) prescribed for the purposes of this subsection by the Focal Point Officer.
- (4) A person does not commit an offence under this section if —
- (a) he has a reasonable excuse for not disclosing the information or other matter;
 - (b) he does not reasonably know or suspect that another person is engaged in money laundering or an identified risk activity.

- (5) A disclosure to a Focal Point Officer is a disclosure which —
 - (a) is made to a person nominated by the alleged offender's employer to receive disclosures under this section (hereinafter referred to as "the Nominated Officer"); and
 - (b) is made in the course of the alleged offender's employment and in accordance with the procedure established by the employer for that purpose.

13. Failure to disclose by nominated officers.

- (1) A nominated officer commits an offence if—
 - (a) the nominated officer knows or suspects or has reasonable grounds for knowing or suspecting, that another person is engaged in money laundering or an identified risk activity;
 - (b) any information or other matter on which the knowledge or suspicion of the nominated officer is based or which gives reasonable grounds for such knowledge or suspicion, came to him in consequence of a disclosure made under section 19(1)(a); and
 - (c) he does not make the required disclosure as soon as is practicable after the information or other matter comes to him.
- (2) For the purposes of this section, a required disclosure is a disclosure of the information or other matter—
 - (a) to a Focal Point Officer;
 - (b) in the form and manner (if any) prescribed for by the Financial Intelligence Unit.
- (3) A person does not commit an offence under this section if he has a reasonable excuse for not disclosing the information or other matter.

14. Tipping off.

A person commits an offence if —

- (a) he knows or suspects that —
 - (i) any disclosure under this Part has been made; or
 - (ii) an action has been taken by the Financial Intelligence Unit in relation to anything under this Part; and
- (b) he makes a disclosure to another person which is likely to prejudice any investigation which might be conducted following the disclosure referred to in paragraphs (a)(i) or (a)(ii).

15. Penalties.

- (1) A person who commits an offence under sections 9 to 11 is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding seven years or to a fine not exceeding five hundred thousand dollars or to both; or
 - (b) on conviction on indictment, to imprisonment for a term not exceeding twenty years or to a fine or to both.
- (2) A person who commits an offence under sections 12 to 14 is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding twelve years or to a fine not exceeding five hundred thousand dollars or to both; or
 - (b) on conviction on indictment, to imprisonment for a term not exceeding twenty years or to a fine or to both.

16. Defences.

A person does not commit an offence in breach of sections 9 to 11 if—

- (a) he makes an authorised disclosure under section 19 and (if the disclosure is made before he does the act mentioned in subsection (1)) he has the appropriate consent;
- (b) he intended to make such a disclosure but had a reasonable excuse for not doing so;
- (c) he does an act for the purposes of carrying out his functions relating to the enforcement of any provision of this Act.

17. Appropriate consent.

- (1) For the purposes of section 16(a), “appropriate consent” is consent obtained from a Focal Point Officer.
- (2) A person must be treated as having the appropriate consent if —
 - (a) he makes a disclosure to a Focal Point Officer; and
 - (b) before the end of the notice period —
 - (i) he does not receive notice from a Focal Point Officer that consent to the doing of the act is refused;
 - (ii) he receives notice from a Focal Point Officer that consent to the doing of the prohibited act is refused, during the moratorium period and the period has expired without receiving a final refusal.
- (3) The notice period referred to in subsection (2)(b) is seven working days starting with the first working day after the person makes the disclosure.
- (4) The moratorium period referred to in subsection (2)(b)(i) is the period of thirty-one days starting with the day on which the person receives notice that consent to the doing of the act is refused.

- (5) A working day is a day other than a Sunday or a public holiday in The Bahamas.
- (6) For the purposes of this section, references to a prohibited act is a reference to an act mentioned in sections 9(1), 10 or 11(1), as the case may be.

PROTECTED AND AUTHORIZED DISCLOSURES

18. Protected disclosures.

- (1) A disclosure does not breach any restriction on the disclosure of information, if—
 - (a) the information or other matter disclosed came to the person making the disclosure (hereinafter referred to as the “discloser”) in the course of his trade, profession, business or employment;
 - (b) the information or other matter—
 - (i) causes the discloser to know or suspect; or
 - (ii) gives the discloser reasonable grounds for knowing or suspecting, that another person is engaged in money laundering;
 - (c) the disclosure is made to a nominated officer or Focal Point Officer as soon as is practicable after the information or other matter comes to the attention of the discloser.
- (2) A protected disclosure to a nominated officer is a disclosure which is made in the course of the discloser’s employment and in accordance with the procedure established by the employer for that purpose.

19. Authorized disclosures.

- (1) For the purposes of this Part, a disclosure is authorized if—
 - (a) it is a disclosure to a Focal Point Officer or a nominated officer by the alleged offender that property is criminal property;
 - (b) the disclosure is made on his own initiative; and
 - (c) it is made in the form and manner (if any) prescribed for the purposes of this subsection by order under section 18; and—
 - (i) the disclosure is made before the alleged offender does the prohibited act; or
 - (ii) the disclosure is made after the alleged offender does the prohibited act; and
 - (iii) there is a good reason for his failure to make the disclosure before he did the act.

- (2) An authorised disclosure is not to be taken to breach any restriction on the disclosure of information, however imposed.
- (3) A disclosure to a nominated officer is a disclosure which —
 - (a) is made to a person nominated by the alleged offender's employer to receive authorised disclosures; and
 - (b) is made in the course of the alleged offender's employment and in accordance with the procedure established by the employer for the purpose.
- (4) For the purposes of this section, references to a prohibited act is a reference to an act mentioned in sections 9(1) or 10 as the case may be.

20. Form and manner of disclosures.

- (1) The Minister may by order prescribe the form and manner in which a disclosure under this Part must be made.
- (2) An order under this section may provide that the form may require the discloser to provide additional information where specified in the form.
- (3) The additional information referred to in subsection (2) must be information which is necessary to enable the person to whom the disclosure is made to decide whether to start a money laundering investigation.
- (4) A disclosure made in pursuance of a request under subsection (2) is not to be taken to breach any restriction on the disclosure of information, however imposed.
- (5) Subsection (2) does not apply to a disclosure made to a nominated officer.

21. Application of Parts IV to VI.

Parts IV, V and VI of the Act shall apply to any identified risk offences as described in section 7.

PART IV – CONVICTION BASED CONFISCATION

22. Application of this Part.

- (1) An application under this Part can only be made if the offence for which a person was convicted was committed after the commencement of this Act and in the event that the person convicted had benefited from other criminal conduct committed before the commencement of the Act such benefit shall be taken into account when determining an extended benefit.

- (2) An application for a Restraint Order, a Confiscation Order, a Benefit Recovery Order or an Extended Benefit Recovery Order are not criminal proceedings and any fact to be proved shall be proved upon the balance of probabilities.

RESTRAINT ORDERS

23. Application for Restraint Order.

- (1) Where a person is a subject of an investigation for an offence, has been charged with an offence, or has been convicted of an offence (hereinafter referred to as "a relevant person") and there are reasonable grounds to believe that he has benefited from an offence or is in possession of property that is an instrumentality of an offence, or terrorist property, the enforcement authority may apply for an order under subsection (2) in respect of any of the following —
- (a) property that is the proceeds of such offence;
 - (b) instrumentalities of such offence;
 - (c) any property in which the relevant person has an interest;
 - (d) terrorist property.
- (2) An application for an order under this section to restrain property ("hereinafter referred to as "a restraint order") may be made to secure the property for the purposes of an application for an order under sections 30, 41 or 43.
- (3) An application under this section shall be made to a Justice of the Supreme Court and may be made *ex parte* and in camera unless to do so would not be in the interests of justice.
- (4) An application under this section shall be in writing and shall be supported by an affidavit indicating that an authorised person believes, and the grounds for his belief, that—
- (a) the relevant person has benefited from an offence;
 - (b) the property is the proceeds or consists of the instrumentalities of crime;
 - (c) the property is terrorist property; or
 - (d) the property is an instrumentality or derived or intended for use in an act of terrorism.
- (5) Where an application under subsection (2) is made prior to the conviction of a relevant person for an offence, the affidavit shall state the authorised person believes, and the grounds for such belief, that the relevant person

committed the offence, and is the subject of an investigation for the offence.

- (6) An application for a restraint order in respect of property for the purposes of a confiscation order shall be in writing and shall be supported by a affidavit indicating the grounds upon which an authorised person reasonably believes that the relevant person derived a benefit directly or indirectly from the commission of the offence.
- (7) Where property which is the subject of an application for a restraint order is the property of a third party, the affidavit shall indicate that the authorised person believes, and the grounds for his belief, that the property the subject of the application is property in which the relevant person has an interest.

24. Restraint Order.

- (1) Where the enforcement authority applies to the Court for a restraint order in accordance with this section, and the Court is satisfied having regard to the facts and beliefs set out in the affidavit in support of the application and any other relevant matter that there are reasonable grounds to suspect that subsection (1)(a) is satisfied or there are reasonable grounds to believe that any one of subsections (1)(b) and (1)(c) are satisfied, it may make an order in accordance with subsection (2) —
 - (a) where the relevant person has not been convicted of an offence, that he committed an offence and that the person is either the subject of a criminal investigation or has been charged with an offence;
 - (b) where the application for a restraint order is made for the purpose of securing property for a confiscation order, a benefit recovery order or an extended recovery order, that the property could properly be the subject of any such application; or that the relevant person derived a benefit from the commission of the offence and has an interest in that property; or
 - (c) where the application for a restraint order relates to terrorist property, that the property so relates.
- (2) The Court may order any one or more of the following —
 - (a) that the property, or such part of the property as specified in the order, is not to be disposed of, or otherwise dealt with, by any person, except in such manner and in such circumstances (if any) as are specified in the order;
 - (b) that the property, or such part of the property as is specified in the order, shall be seized, taken into possession, delivered up for safekeeping or otherwise secured by a named authorised officer, the enforcement authority or such other person appointed for this purpose by the Court; or

- (c) if the Court is satisfied that the circumstances so require, direct a Receiver to take custody and control of the property, or such part of the property as is specified in the order and to manage or otherwise deal with the whole or any part of the property in accordance with any direction from the Court.
- (3) Where a Receiver has been appointed under subsection (2)(c) in relation to property, he may do anything that is reasonably necessary to preserve the property and its value including, without limiting the generality of this subsection —
 - (a) becoming a party to any civil proceedings that affect the property;
 - (b) ensuring that the property is insured and that all obligations in respect of the property are satisfied;
 - (c) realising or otherwise dealing with the property if it is perishable, subject to wasting or other forms of loss, its value volatile, or the cost of its storage or maintenance is likely to exceed its value, provided this power may only be exercised without the prior approval of the Court where —
 - (i) all persons known by him to have an interest in the property consent to the realisation or other dealing with the property;
 - (ii) the delay involved in obtaining such approval is likely to result in a significant diminution in the value of the property; or
 - (iii) the cost of obtaining such approval would, in his opinion, be disproportionate to the value of the property concerned;
 - (d) where the property consists, wholly or partly, of a business —
 - (i) employing, or terminating the employment of, persons in the business;
 - (ii) doing anything that is necessary or convenient for carrying on the business on a sound and lawful commercial basis; and
 - (iii) selling, liquidating or winding up the business if it is not a viable, going concern, subject to obtaining the prior approval of the Court;
 - (e) where the property includes shares in a company, exercising rights attaching to the shares as if he were the registered holder of the shares.
- (4) Where the Court has appointed a Receiver, it may make further orders —
 - (a) regulating the manner in which the person may exercise his powers or perform his duties under the restraint order;
 - (b) determining any question relating to the property to which the restraint order relates, including any question with respect to the property to which the restraint order relates relating to the liabilities

of the owner or the exercise of the powers, or performance of the duties, of the person appointed; and

- (c) directing the owner or another person to do any act or thing necessary or convenient to be done to enable the person appointed to take custody and control of the property in accordance with the restraint order.
- (5) A restraint order in respect of property may be made whether or not there is any evidence of risk of the property being disposed of, or otherwise dealt with, in such a manner as would defeat the operation of this Act.

25. Notice of Restraint Order.

Where a restraint order is made, the enforcement authority shall, within two working days of the making of the order, or such other period as the Court may direct, give notice of the order to persons affected by the order.

26. International requests.

- (1) This section applies —
 - (a) if a restraint order under section 24 has been made; or
 - (b) in respect of an offence under the law of a foreign jurisdiction in relation to acts or omissions which, had they occurred in The Bahamas, would have constituted an offence in The Bahamas and a request for assistance has been made by the foreign jurisdiction for the restraint, confiscation or civil forfeiture of property relating to such acts or omissions, or for information or evidence that may be relevant to the proceeds, benefits or instrumentalities of the offence.
- (2) Where the enforcement authority believes that property in which the relevant person has an interest is situated in a foreign jurisdiction, it may request assistance from that foreign jurisdiction to enforce the restraint order in that foreign jurisdiction.
- (3) The appropriate authority of a Member State of the United Nations may request assistance and such request shall be facilitated by the Competent Authority save if any grounds of refusal exist at common law inclusive of breaches of natural justice.
- (4) The Competent Authority may decline to exercise its power under this section unless the appropriate authority undertakes to make such contribution towards the cost of the exercise as the Competent Authority considers appropriate.

27. Court may make further Orders when making Restraint Order.

- (1) Where a Court makes a restraint order, it may, at the time when it makes the order or at any later time, make any further orders that it considers appropriate to ensure the utility of the order.
- (2) Without limiting the generality of subsection (1), the Court may on the application of any person affected make —
 - (a) an order revoking the restraint order or varying the property to which it relates;
 - (b) an order varying any condition to which the restraint order is subject;
 - (c) an order directing the owner or the relevant person or a director or officer specified by the Court of a body corporate that is an owner or the relevant person to give to the enforcement authority and to any Receiver appointed pursuant to section 24(2)(c) a sworn statement setting out particulars of all property wherever situated or dealings with such property, of the owner or the relevant person, as the Court thinks proper;
 - (d) an order to provide for meeting, out of the property or a specified part of the property, all or any of the following —
 - (i) the relevant person's reasonable living expenses, including the reasonable living expenses of his dependants, if any, and reasonable business expenses; or
 - (ii) the relevant person's reasonable, proportionate and specified expenses in defending any related criminal charge or proceedings under this Act.
- (3) A Court may make provision under subsection (2)(d) for reasonable living and business expenses only if —
 - (a) the application is to be made before those expenses are incurred;
 - (b) the relevant person satisfies the Court that he cannot meet such expenses out of assets that are not subject to a restraint order;
 - (c) the relevant person has disclosed the extent of all his interests in all assets in which he has any interest and the Court determines it is in the interest of justice to make such a provision; and
 - (d) the application must be supported by evidence which explains how those expenses shall be incurred.
- (4) Where a person is required to give a statement pursuant to subsection (2) (c), the person is not excused from making the statement on the ground that the statement might incriminate the person, or make the person liable to a confiscation order, benefit recovery order, extended benefit recovery order or a penalty.

- (5) Where a person makes a statement pursuant to an order under subsection (2)(c), anything disclosed in any statement and any information, document or thing obtained as a direct or indirect consequence of the statement is not admissible against the person in any criminal proceeding except a proceeding in respect of the falsity of the statement.

28. Exclusion of property from Restraint Order.

- (1) Where a person who is not the relevant person has an interest in property that is subject to a restraining order makes an application to the Court to exclude his interest from the order, the Court may grant the application if it is satisfied —
- (a) that the property interest which is the subject of the application is not property in which the relevant person has an interest;
 - (b) that the property is not or does not represent proceeds or an instrumentality, and that the applicant was not, in any way, involved in the commission of the offence in relation to which the restraining order was made;
 - (c) where the applicant acquired the interest before the commission of the offence, that the applicant did not know that the relevant person would use, or intended to use, the property in or in connection with the commission of the offence;
 - (d) where the applicant acquired the interest at the time of or after the commission or alleged commission of the offence, that the interest was acquired in circumstances which would not arouse a reasonable suspicion that the property was proceeds or an instrumentality of crime.
- (2) For the purposes of this section, value of the applicant's interest shall be in proportion to the lawful consideration the applicant provided to the relevant person.
- (3) Where a relevant person who has interest in property, that is subject to a restraint order, applies to the Court to exclude his interest from the order, the Court shall grant the application only if it is satisfied —
- (a) in the case of an order that secures property for a confiscation order, that the property is not the proceeds or an instrumentality of crime or terrorist property; and
 - (b) in the case of an order that secures property for a benefit recovery order, or extended benefit recovery order, that a benefit recovery order or extended benefit recovery order cannot be made against the relevant person.
- (4) Where property is restrained to secure it for the purposes of a confiscation order, a benefit recovery or an extended benefit recovery order, a Court

may decline to exclude property from restraint under this section unless satisfied that each of the relevant provisions for exclusion apply.

29. Contravention of Restraint Order.

- (1) A person or any director of a legal person who knowingly contravenes a restraint order by disposing of or otherwise dealing with property that is subject to the restraint order commits an offence and is liable upon conviction on indictment to imprisonment for a period not exceeding twenty-five years or to a fine or both; or if the person is a legal person to a fine.
- (2) Where a restraint order is made against a property and the property is disposed of or otherwise dealt with in contravention of the restraint order, and the disposition was for insufficient consideration or the purchaser did not act in good faith, the enforcement authority may apply to the Court for an order that the disposition or dealing be set aside.

30. Seizure Order for property subject to Restraint Order.

- (1) On application by the authorised officer, the Court may make an order for the enforcement authority to search for and seize property that is the subject of a restraint order, or property which the Court reasonably believes is an instrumentality of crime, or terrorist property, provided it is satisfied that the restraint order may not be effective to preserve the subject of the restraint order.
- (2) An order under this section may also grant power to a person named in the order to enter any premises to which the order applies, and to use all necessary force to effect such entry.
- (3) If during the course of searching under an order granted under this section, the person named in the order finds anything that he believes on reasonable grounds —
 - (a) will afford evidence as to the commission of an offence; or
 - (b) is of a kind which could have been included in the order had its existence been known of at the time of application for the order,he may seize that property or thing and the seizure order shall be deemed to authorise such seizure.
- (4) Except where the Court orders otherwise, property seized under this section shall be retained by the enforcement authority until further order of the Court unless required as evidence in any criminal proceedings.

31. Protection of the Receiver.

Where a Court has appointed a Receiver in relation to property, he shall not be liable for any loss or claim arising out of the exercise of powers conferred upon him by the order or this Part unless the Court is satisfied that —

- (a) the applicant has an interest in the property in respect of which the loss or claim is made; and
- (b) the loss or claim arose by reason of the negligence or reckless or intentional misconduct of the person appointed.

32. Duration of Restraint Order.

Unless the Court otherwise orders in the interest of justice, a Court which makes a restraint order pursuant to this Part upon the basis that a person is the subject of an investigation shall discharge the order upon application if the person is not charged within three years of the date of the original order or up to the conclusion of any proceedings commenced, whichever is the later.

CONFISCATION AND BENEFIT RECOVERY ORDERS

33. Application for Confiscation Order.

- (1) Where a relevant person is convicted (whether before a magistrates' court or the Supreme Court), the enforcement authority may apply for one or more of the following orders, which shall be determined by the Court before which the relevant person was convicted —
 - (a) a confiscation order against property that is proceeds or an instrumentality of that offence or terrorist property;
 - (b) a benefit recovery order; or
 - (c) an extended benefit recovery order against the person.
- (2) Except with the leave of the Court, the enforcement authority must make an application under subsection (1) within six months of the date upon which a relevant person was convicted of the offence.
- (3) The Court shall grant leave under subsection (2) only if it is satisfied that it is in the interests of justice to do so.
- (4) The enforcement authority may amend an application for a confiscation order, a benefit recovery order or an extended benefit recovery order at any time prior to the final determination of the application by the Court, providing that reasonable notice of the amendment is given to affected persons.
- (5) Where an application under this section has been finally determined, the enforcement authority may not make a further application for a

confiscation order, benefit recovery order or an extended benefit recovery order in respect of the same offence without the leave of the Court.

- (6) The Court shall not give such leave unless it is satisfied that—
 - (a) the property or benefit to which the new application relates was identified after determination of the previous application; or
 - (b) necessary evidence became available after the previous application was determined; and
 - (c) it is in the interests of justice to do so.
- (7) For the purposes of this section, a person shall also be treated as convicted of an offence if—
 - (a) he is found not guilty by reason of insanity following a determination that the criminal acts were committed; or
 - (b) the Court takes the offence into consideration with the consent of the convicted person when passing sentence.

34. Application for Confiscation or Benefit Recovery Order.

- (1) On application by the enforcement authority the Court may treat a person as convicted for the purposes of section 33 where —
 - (a) that person was charged with an offence, a warrant for his arrest was issued in relation to the charge and reasonable attempts to arrest him pursuant to that warrant have been unsuccessful during the period of six months commencing on the day the warrant was issued; or
 - (b) that person was charged with an offence but died without the charge having been determined,having regard to all the evidence before the Court that such evidence is of sufficient weight to support a conviction for the offence.
- (2) For the purposes of subsection (1)(a), a person shall be deemed to have been convicted on the last day of the period referred to in that subsection.
- (3) The enforcement authority may not make application under section 43 for an extended benefit order in the case of a person deemed to be convicted under this section.
- (4) Where a person has died, any notice authorised or required to be given to a person under this Part may be given to the person's legal personal representative.
- (5) A reference in this Part to a person's interest in property is, if the person has died, a reference to an interest in the property that the person had immediately before his death.

35. Service of application and appearances.

- (1) Where the enforcement authority makes an application for an order under section 34(1) —
 - (a) it shall serve a copy of the application, which shall include a affidavit setting out all of the facts and matters upon which the enforcement authority relies, on the person convicted and on any other person whom the enforcement authority has reason to believe may have an interest in the property;
 - (b) the person convicted and any other person claiming an interest in the property may appear and adduce evidence at the hearing of the application; and
 - (c) the Court may, at any time before its final determination of the application, direct the enforcement authority to provide such notice as the Court deems appropriate to any person who, in the Court's opinion, appears to have an interest in the property.
- (2) The absence by absconding or death of the person, or of any person to whom notice has been given, does not prevent the Court from making an order in their absence.
- (3) The Court may waive the requirements under subsection (1) to give notice if —
 - (a) the person convicted is before the Court; and
 - (b) the Court is satisfied either that any other person who has an interest in the property is present before the Court or that it is fair to waive the requirement despite any such person not being present.

36. Procedure on application.

- (1) Where an application is made for an order under section 34, the Court may, in determining the application, have regard to any evidence received in the course of the proceedings against the person convicted.
- (2) Where an application for an order under section 34 is before the Court before which the relevant person was convicted, the Court may, if satisfied it is reasonable to do so, defer imposing a sentence until it has determined the application.
- (3) Where the Court determines not to defer imposing sentence, it shall leave out of account in deciding the appropriate sentence any financial orders which it may otherwise consider appropriate.
- (4) Where the Court does defer imposing sentence, it shall determine the extent of any order under section 34 before considering any other financial order.

37. Confiscation Order on conviction.

- (1) A confiscation order is an order *in rem*, following conviction for an offence, to forfeit to the Crown property that is the proceeds or instrumentalities of that offence or terrorist property.
- (2) The Court may make an order under this section if the enforcement authority has applied to the Court for an order under section 33, or if the Court believes it is appropriate to make such an order.
- (3) Where the Court is satisfied that property—
 - (a) is the proceeds of crime or terrorist property the Court shall order that such property be confiscated; or
 - (b) is an instrumentality of crime the Court shall order that it be confiscated.
- (4) In considering whether to make a confiscation order relating to an instrumentality, the Court may have regard to the rights and interests of third parties taking into account the interests of justice and in particular having regard to the public interest in the confiscation of the instrumentalities of crime.
- (5) In determining whether property is—
 - (a) an instrumentality, the Court may infer that the property is an instrumentality if it was in the relevant person's possession at the time of or immediately after the commission of the offence unless the relevant person satisfies the Court that such inference is inappropriate;
 - (b) proceeds, the Court may infer that the property was derived, obtained or realised as a result of or in connection with the commission of the offence, if it was acquired or possessed by the relevant person, during or after the commission of the offence, unless the relevant person satisfies the Court that such inference is inappropriate;
 - (c) terrorist property, the Court may infer that the property was derived, obtained or realised as a result of or in connection with terrorist acts if it was acquired or possessed by the relevant person, unless the relevant person satisfies the Court that such inference is inappropriate.
- (6) Where the Court makes an order under this section in respect of property other than money, the Court shall specify the monetary amount that it considers to be the value of the property at the time of its order.
- (7) Where a Court is minded to make a confiscation order under this section but the property is no longer available, the Court may make an order in a monetary value equivalent to the original property.

- (8) Where the Court makes an order under this section, it may give such directions as are necessary or convenient for giving effect to the order.

38. Enforcement of Confiscation Order abroad.

- (1) This section applies if a confiscation order under section 37 has been made and the order is no longer subject to appeal.
- (2) Where a confiscation order has been made in respect of property which is situated in a foreign jurisdiction, the enforcement authority may request assistance from the appropriate authorities in the foreign jurisdiction to enforce the said order.
- (3) If a request under subsection (2) has resulted in the realisation of property in the foreign jurisdiction, the property realised shall be applied in accordance with the terms of any agreement between The Bahamas and such foreign jurisdictions and any such realisation shall be treated as compliance by the relevant person with the terms of the order.

39. Effect of Confiscation Order.

- (1) Subject to subsection (2), where a Court makes a confiscation order, the property shall vest in the Treasurer of The Bahamas upon the making of the order.
- (2) Where title to property is conveyed or transferred by registration, the property shall vest in the Treasurer by virtue of the order.
- (3) Upon the vesting of property, the enforcement authority is authorised to do anything necessary or convenient to secure registration including executing instruments for transferring an interest in the property.
- (4) Where the Court makes a confiscation order, the property shall not, except with the leave of the Court and in accordance with any directions of the Court, be disposed of, or otherwise dealt with before the expiration of the appeal period applicable to the confiscation order, or, if an appeal is made, before the appeal is finally determined.

40. Exclusion of property from a Confiscation Order.

- (1) A person who is not the relevant person and who has an interest in property that is subject to a confiscation order may apply to the Court to exclude his interest from the order.
- (2) The Court shall grant the application under subsection (1) if satisfied—
 - (a) that the property is not proceeds of any offence or an instrumentality; or
 - (b) that the applicant was not in any way involved in the commission of the offence in relation to which the order was made; and

- (c) where the applicant acquired the interest before the commission of the offence, he did not know that the relevant person would use, or intended to use, the property in or in connection with the commission of the offence; or
 - (d) where the applicant acquired the interest at the time of or after the commission of the offence, the interest was acquired in circumstances which did not provide grounds for a reasonable suspicion that the property was proceeds of crime or an instrumentality.
- (3) For purposes of subsections (1)(c) and (1)(d), the value of the applicant's interest shall be in proportion to the consideration the applicant provided to the relevant person.
 - (4) An application under this section may be made whether or not the interest in property the subject of the application is or was the subject of a restraint order.
 - (5) An application under this section shall not be made more than three months after the day on which the confiscation order is made.
 - (6) A person who was served with the application for a confiscation order or made an appearance at the hearing on the application for a confiscation order may not, without leave of Court, make an application under this section after either the confiscation order was made or an application to exclude the property from restraint under section 28 was considered and dismissed.

41. Benefit Recovery Order on conviction.

- (1) A benefit recovery order is an order *in personam* requiring the relevant person to pay an amount equal to the benefit which he derived as a result of or in connection with his conviction and related criminal activities.
- (2) The Court may make an order under this section if the enforcement authority has applied to the Court for a benefit recovery order or if the Court considers it appropriate to do so.
- (3) Where the Court is satisfied that the relevant person has benefited from his conduct or has benefited from any criminal activity, it shall order him to pay an amount equal to the value of his benefit.
- (4) The Court shall assess the value of the benefit which a person has derived from an offence and other criminal activity in accordance with sections 42 to 44.
- (5) Where the Court makes a benefit recovery order against a person —
 - (a) the order shall not, except with the leave of the Court and in accordance with any directions of the Court, be enforced before the conclusion of any relevant appeal; and

- (b) if, after the relevant appeal date, the order has not been varied or quashed, the order shall then be enforced and any proceeds applied in accordance with this Part and any directions given by the Court.
- (6) Where the enforcement authority has applied to the Court for a benefit recovery order, it shall provide to the Court and serve upon the relevant person a statement setting out an assessment of the value of the benefit obtained by the relevant person and the Court may, for the purposes of determining whether benefit is established and the value of the benefit, treat any acceptance by the relevant person of the allegations set out in the statement as conclusive of the matters to which it relates.
- (7) The Court shall require the relevant person who has been served with a copy of a statement under subsection (6) to respond to each and every allegation in it and, in so far as he does not accept any allegation, to indicate on oath any facts upon which he proposes to rely.
- (8) The Court may treat the relevant person's failure to respond or to indicate the facts upon which he will rely as his acceptance of every allegation in the statement other than —
 - (a) an allegation regarding whether he complied with the requirement; and
 - (b) an allegation that he has benefited from the offence or that he obtained any property or advantage as a result of or in connection with the commission of the offence.
- (9) For the purposes of this section “**relevant appeal**” where used in relation to a benefit recovery order made in consequence of a person's conviction means—
 - (a) the date on which the period allowed by rules of Court for the lodging of an appeal against a person's conviction, or for the lodging of an appeal against the making of a benefit recovery order, expires without an appeal having been lodged, whichever is the later; or
 - (b) where an appeal against a person's conviction or against the making of a benefit recovery order is lodged, the date on which the appeal lapses in accordance with the rules of Court or is finally determined, whichever is the later.

42. Determination of the value of benefit.

- (1) For the purposes of this Part, the value of the benefit derived by a relevant person from an offence and other criminal activities may include —
 - (a) any money or other property received by the relevant person, or by another person at the request or by the direction of the relevant

person, as a result of or in connection with the commission of the offence;

- (b) the value of any property that was derived or realised, directly or indirectly, by the relevant person or by another person at the request or by the direction of the relevant person, as a result of or in connection with the commission of the offence;
- (c) the value of any service, financial or pecuniary advantage provided for the relevant person or another person, at the request or by the direction of the relevant person, as a result of or in connection with the commission of the offence; or
- (d) unless the Court is satisfied that the increase was unrelated to the commission of the offence, any increase in the value of property in which the relevant person has an interest in the period beginning immediately before the commission of the offence and ending at the date the Court makes its order,

but does not include any property confiscated under this Part.

- (2) In calculating, for the purposes of a benefit recovery order, the value of benefit derived by the relevant person from the commission of an offence —
 - (a) any expenditure in connection with the commission of the offence shall not be excluded; and
 - (b) the Court shall make such adjustment as is necessary to prevent a benefit from being counted more than once.
- (3) Where the benefit derived by the relevant person was in the form of illegal property, the Court may, in determining the value of that property, have regard to evidence given by a law enforcement officer or other person whom the Court considers has expert knowledge of the value of that type of property.

43. Extended Benefit Recovery Orders.

- (1) An extended benefit recovery order is an order *in personam* for the relevant person to pay an amount not restricted to the benefit obtained from the offence for which he has been convicted.
- (2) Upon the relevant person's conviction, the enforcement authority may apply to the Court for an extended benefit recovery order under this section.
- (3) Where an application is made under subsection (2), any order made must take into account any amount realised by virtue of any order made against the relevant person under any previous order made under this Part.

- (4) Where an application under subsection (2) is made, the Court may assess the benefit derived by the relevant person in accordance with subsection (7) if it is satisfied that —
 - (a) the relevant person has been convicted of an offence which might carry a sentence of imprisonment;
 - (b) the offence upon which the application is based is the third such offence of which the relevant person has been convicted, either in relation to the current proceeding or at any other time within ten years preceding the relevant person's conviction for the serious crime that is the subject of the application before the Court.
- (5) An extended benefit recovery order shall not be made if the value of the benefit is less than one thousand dollars and the Minister may from time to time by regulation vary this minimum monetary amount.
- (6) For the purpose of making an extended benefit recovery order under this section, the Court may have regard to evidence received in the course of the proceedings against the relevant person.
- (7) In assessing the value of the benefit derived by the relevant person for the purposes of an extended benefit recovery order, the Court shall, subject to subsection (8), include —
 - (a) any property transferred to the relevant person at any time after the commencement date, at the earliest time he or she appears to have held it;
 - (b) any property held by the relevant person at any time after the date of his conviction for the present offence, or at the earliest time he appears to have held it; and
 - (c) all expenditure and gifts made by the relevant person after the commencement day of the order.
- (8) For the purposes of this Part, the commencement day is the first day of the period of six years before the relevant person committed the offence, or where there are two or more offences, the earliest of those dates.
- (9) The Court shall not treat property as benefit specified property or expenditure if the relevant person proves upon the balance of probabilities that —
 - (a) in the case of property, the property was not used in, or in connection with, any criminal conduct and was not derived or realised, directly or indirectly, by the relevant person from any criminal conduct;
 - (b) in the case of an expenditure or gift caught by the act, the property expended or gifted was lawfully acquired and was not derived or realised, directly or indirectly, by any person from any criminal conduct; or

- (c) to include any item of property, expenditure or gift would pose a significant risk of injustice.
- (10) Where the enforcement authority has applied to the Court for an extended benefit recovery order, it shall provide to the Court, and serve upon the relevant person, a statement setting out an assessment of the value of the extended benefit obtained by the relevant person.
- (11) The Court shall, for the purposes of determining whether an extended benefit is established and its value, treat any acceptance by the relevant person of the allegations set out in the statement under subsection (10) as conclusive of the matters to which it relates.
- (12) The Court shall require any relevant person served with a copy of a statement under subsection (10) to respond to each allegation in it and, in so far as he does not accept any allegation, to indicate on oath any facts upon which he proposes to rely.
- (13) The Court may treat the relevant person's failure to respond or to indicate the facts upon which he will rely as his acceptance of every allegation in the statement other than an allegation regarding whether he complied with the requirement.

44. Amount recovered under Benefit and Extended Benefit Recovery Order.

- (1) The amount to be recovered under a benefit recovery or extended benefit recovery order shall be the amount specified in the order under sections 41 and 43 or, if a certificate is issued pursuant to subsection (6), for the lesser amount specified in the certificate.
- (2) The amount specified in the order shall be paid by no later than six months following the date of the recovery order.
- (3) If the amount required to be paid by a relevant person under a confiscation order is not paid when it is required to be paid, he must pay interest on the amount for the period for which it remains unpaid, and —
 - (a) the rate of interest is the same rate as that for interest on civil judgment debts;
 - (b) the amount of the interest must be treated as part of the amount to be paid under the confiscation order.
- (4) In the event that the order is not paid by the date identified in subsection (2), the relevant person shall serve a sentence of imprisonment in default of payment consecutively to any sentence imposed for the criminal conduct, if any, and such sentence will be determined by reference to the provisions and default table contained in the *Second Schedule*.
- (5) Where the Court imposes a term of imprisonment under subsection (3), it shall direct that —

- (a) notwithstanding any term of imprisonment imposed, the unpaid amount will remain due and owing; and
 - (b) that any law regarding the remission of sentences of prisoners serving a term of imprisonment shall not apply to the term of imprisonment imposed under subsection (3).
- (6) The Court shall grant a certificate on the application of the relevant person pursuant to this section if, having regard to the facts and beliefs set out in the affidavit in support of the application and any other relevant matter that there are reasonable grounds to believe that —
 - (a) the value of the financial resources held by the relevant person has declined to the extent that it is less than the benefit recovery order or extended benefit recovery order; and
 - (b) it is considered by the Court appropriate in the interests of justice to reduce the order.
- (7) An application made pursuant to subsection (5) —
 - (a) must be supported by a sworn affidavit of the relevant person and of any other person upon whose evidence the relevant person proposes to rely;
 - (b) shall be served upon the enforcement authority together with any supporting evidence.
- (8) The Court may extend time to pay pursuant to subsection 2(b) until an application pursuant to subsection (5) is finally determined, dismissed or withdrawn if it appears to the Court to be in the interests of justice to do so.
- (9) Where a certificate is granted pursuant to subsection (5), it shall specify a monetary amount equal to the total value of the financial resources held by the relevant person or subject to his effective control.
- (10) The Court may, on the application of the enforcement authority within three years after the grant of the certificate, vary or revoke it or issue a benefit recovery or extended benefit recovery order in a new amount, when —
 - (a) it is made aware of facts that would have led it to a different conclusion regarding the granting of a certificate or the amount of a certificate; or
 - (b) the value of the assets held by the relevant person not yet realised increase in value or the relevant person acquires possession or control of new and additional assets which, had they been available at the date of the certificate, would have resulted in the certificate not being granted or granted for a higher amount.

PROVISIONS RELATIVE TO RESTRAINT, CONFISCATION AND BENEFIT RECOVERY ORDERS

45. Satisfaction and discharge of orders.

- (1) An order made under this Part—
 - (a) is satisfied by payment of the amount due or transfer of the property due under the order;
 - (b) is discharged, if the conviction on the basis of which the order was made is quashed and no conviction for the offence or offences is substituted; or if the order itself is quashed.
- (2) A relevant person's conviction for an offence shall be taken to be quashed in any case —
 - (a) where that person is convicted of the offence, if the conviction is quashed or set aside;
 - (b) where that person is granted a pardon in respect of the conviction for the offence.

46. Appeals.

- (1) There shall be a right of appeal to the Court of Appeal against the making of or the refusal to make any order under this Part by any person affected by the application or order.
- (2) Any application to appeal against the grant, or the refusal to grant, an order under this Part shall be made in accordance with the procedural rules applicable to appeals against sentence.
- (3) There shall be a right of appeal to the Privy Council by any party affected by an adverse ruling of the Court of Appeal.

47. Realisation of property.

- (1) Where an order is made under this Part, and the order is neither subject to appeal, nor discharged, the Court may, on application by the enforcement authority, exercise the powers conferred upon the Court by this section.
- (2) The Court may appoint a Receiver to take possession and control of, and then to realise —
 - (a) where a confiscation order has been made, the property subject to confiscation pursuant to that order; and
 - (b) where a benefit recovery order or extended benefit recovery order has been made, any property in which the relevant person has an interest.

- (3) Where a Receiver has already been appointed pursuant to section 23 (2) (c), any order made pursuant to subsection (2) may be made in respect of that receiver.
- (4) The Court may make any further orders to assist the receiver in the discharge of his duties that the Court considers are reasonably necessary.
- (5) The Court shall, in respect of any property, exercise the powers conferred by this section provided that any person asserting any interest in the property has had a reasonable opportunity to make representations to the Court.

48. Application of monetary sums.

- (1) Monetary sums in the hands of the Receiver shall, after any such payments as the Court may direct to be made out of those sums, be paid to the Registrar of the Court and applied on the relevant person's behalf towards the satisfaction of the order made under this Part in the manner provided by subsection (3).
- (2) If, after payment of the amount payable under the order made under this Part, any sums under subsection (1) remain in the hands of the Receiver, such sums shall be distributed amongst persons who held property which has been realised under this Part and in such proportions as the Court directs, after giving a reasonable opportunity for those persons to make representations to the Court.
- (3) Property received by the Registrar of the Court in payment of amounts due under an order made under this Part shall be applied as follows—
 - (a) if received from a Receiver under subsection (1), it shall first be applied in payment of the Court approved remuneration of the Receiver and the Court approved expenses of the management of the property; and
 - (b) the balance shall be paid or transferred to the Confiscated Assets Fund.

49. Application of the powers under this Part.

- (1) The powers contained in this Part —
 - (a) shall be exercised —
 - (i) with a view to the value for the time being of property being made available (by the property's realisation) for satisfying any final order under this Part that has been or may be made against the relevant person;
 - (ii) in a case where an order, not being a restraint order, has not been made, with a view to securing that there is no diminution in the value of property;

- (iii) without taking account of any obligation of the relevant person or a recipient of a tainted gift caught by the act if the obligation conflicts with the object of satisfying any confiscation order that has been or may be made against the relevant person;
 - (b) may be exercised in respect of a debt owed by the Crown.
- (2) Subsection (1) has effect subject to the following rules —
 - (a) the powers must be exercised with a view to allowing a person, other than the relevant person or a recipient of a gift caught by the act, to retain or recover the value of any interest held by him;
 - (b) in the case of property held by a recipient of a gift caught by the act, the powers must be exercised with a view to realising no more than the value for the time being of the gift;
 - (c) in a case where a final order has not been made against the relevant person, property must not be sold if the Court so orders under subsection (3).
- (3) If, on an application by the relevant person, or by the recipient of a gift caught by the act, the Court decides that property cannot be replaced it may order that it must not be sold.
- (4) The Court may revoke or vary an order made under subsection (3).

PART V - NON CONVICTION BASED CIVIL FORFEITURE

50. Preliminary matters regarding civil forfeiture orders.

- (1) An order for civil forfeiture is an order *in rem*, granted by the Supreme Court in the exercise of its civil jurisdiction to forfeit to the Crown property that is or represents proceeds or instrumentalities or terrorist property.
- (2) The Court, on an application by the enforcement authority, shall grant a civil forfeiture order in respect of property within the jurisdiction of The Bahamas where it finds, on a balance of probabilities, that such property is proceeds of criminal conduct, an instrumentality or terrorist property.
- (3) In order to satisfy the Court under subsection (2)—
 - (a) that property is proceeds, it is not necessary to show that the property was derived directly or indirectly, in whole or in part, from a particular criminal offence, or that any person has been charged in relation to such an offence; only that it is proceeds from a criminal offence or offences;

- (b) that property is an instrumentality, it is not necessary to show that the property was used or intended to be used to commit a specific criminal offence, or that any person has been charged in relation to such an offence; only that it was used or intended to be used to commit some criminal offence or offences;
- (c) that property is terrorist property, it is not necessary to show that the property —
 - (i) was derived from a specific terrorist act;
 - (ii) has been or is being or is intended to be used by a terrorist organisation, or to commit a specific terrorist act, as long it is shown that it has been, is being or is intended to be used by some terrorist organisation or to commit some terrorist act;
 - (iii) is owned or controlled by or on behalf of a specific terrorist organisation, as long as it is shown to be owned or controlled by or on behalf of some terrorist organisation;
 - (iv) has been provided or collected for the purpose of supporting a specific terrorist organisation or funding a specific terrorist act, as long as it is shown to have been provided or collected for the purpose of providing support to some terrorist organisation or funding some terrorist act; or
 - (v) that any person has been charged in relation to such conduct, provided always the evidence reveals that the property is connected to terrorism however evidenced.
- (4) An application for civil forfeiture may be made in respect of property into which original proceeds have been converted either by sale or otherwise.
- (5) For the purposes of making a determination under subsection (2), proof that a person was convicted, found guilty or found not criminally responsible (but was found to have committed the criminal act) is proof that the person committed the conduct.
- (6) Property may be found to be proceeds under subsection (2) even if a person was acquitted of any offence(s), if charges were withdrawn before a verdict was returned, or if the proceedings were stayed for any reason.
- (7) An Order for civil forfeiture—
 - (a) can be sought in respect of property whenever obtained;
 - (b) may be granted with respect to property acquired or used before the Act came into force;
 - (c) may be sought where a person now deceased committed the conduct on which the application for forfeiture is based.

- (8) Civil forfeiture proceedings shall not be brought where the value or aggregate value of the property concerned is less than five thousand dollars.

PROPERTY FREEZING ORDERS

51. Property Freezing Order.

- (1) Where the enforcement authority reasonably believes that property is proceeds or instrumentalities or terrorist property, the enforcement authority may apply to the Court for a property freezing order in respect of such property.
- (2) Where the enforcement authority applies to the Court for an Order in accordance with this section, and the Court is satisfied having regard to the facts and beliefs set out in an affidavit in support of the application, and any other relevant matter, that there are reasonable grounds to believe that the property the subject of the application is proceeds of crime, or instrumentalities, or terrorist property it may make the order.
- (3) An application for a property freezing order may be—
 - (a) made *ex parte* and without notice;
 - (b) heard *in camera*.
- (4) The Court may make a property freezing order to preserve the property the subject of the application where it is satisfied that there are reasonable grounds to believe that the property, or part of it, is proceeds, or instrumentalities, or terrorist property.
- (5) Within seven days of a property freezing order being granted or such other period as the Court may direct, notice of the order shall be served on all persons known to the enforcement authority to have an interest in the property affected by the order, and such other persons as the Court may direct.

52. Additional property Freezing Orders.

- (1) Where the Court makes a property freezing order, the Court may, at the time when it makes the order, or at any later time, make any further orders that it considers appropriate upon the application of the enforcement authority or any person affected by the order.
- (2) Without limiting the generality of subsection (1), the Court may make any one or more of the following orders —
 - (a) an order that the property or part of the property specified in the property freezing order shall be seized, taken into possession,

- delivered up for safe-keeping or otherwise secured by the enforcement authority;
- (b) an order that the property or part of the property specified in the freezing order shall be dealt with in a particular manner including by an encumbrance which is ordered by the Court on such property in favour of the enforcement authority together with an order that prohibits any other encumbrance, or by a prohibition regarding dealing in or with such property;
 - (c) an order to appoint a Receiver to take custody or control of the property or a part of the property that is specified in the property freezing order, and to manage or otherwise deal with the whole or any part of the property in accordance with any directions of the Court;
 - (d) such other order for the preservation, management or disposition of the property or part of the property specified in the property freezing order as the Court considers appropriate.
- (3) Any costs associated with the appointment of a Receiver and the work subsequently undertaken by him pursuant to the appointment shall be paid from assets over which the Receiver is appointed provided such costs have been approved by the Court.
- (4) Where a Receiver has been appointed under paragraph (c) of subsection (2) in relation to property, he may do anything that is reasonably necessary to preserve the property and its value including, without limiting the generality of this section —
- (a) by becoming a party to any civil proceedings that affect the property;
 - (b) by ensuring that the property is insured;
 - (c) by realising or otherwise dealing with the property if it is perishable, subject to wasting or other forms of loss, its value volatile or the cost of its storage or maintenance likely to exceed its value, subject to the proviso that this power may only be exercised without the prior approval of the Court in circumstances where —
 - (i) all persons known by the Receiver to have an interest in the property consent to the realisation or other dealing with the property;
 - (ii) the delay involved in obtaining such approval is likely to result in a significant diminution in the value of the property; or
 - (iii) the cost of obtaining such approval would, in the opinion of the Receiver, be disproportionate to the value of the property concerned;

- (d) if the property consists, wholly or partly, of a business —
 - (i) employing, or terminating the employment of persons in the business;
 - (ii) doing any other thing that is necessary or convenient for carrying on the business on a sound commercial basis;
 - (iii) selling, liquidating or winding up the business if it is not a viable concern, subject to obtaining the prior approval of the Court; or
 - (iv) if the property includes shares in a company, exercising rights attaching to the shares as if the trustee were the registered holder of the shares.
- (5) The Court may exclude from the property freezing order—
 - (a) such amount as it considers appropriate for the payment of reasonable living expenses to any person whose property is the subject of a property freezing order; and
 - (b) such amount as it considers appropriate for the payment of proportionate, reasonable legal expenses incurred by any person whose property is the subject of a property freezing order.
- (6) The Court shall not exercise its discretion to exclude an amount in subsection (5) unless it is satisfied that the person cannot meet such expenses out of property that is not subject to a property freezing order and the Court determines that it is in the interests of justice to make such an exclusion.
- (7) Where a Court has made a property freezing order, it may upon application by anyone with an interest in the property or by the enforcement authority and at any time make any further order or orders in respect of the property including an order to revoke the freezing order or to vary the order, where it appears to the Court to be in the interests of justice to do so.

PROPERTY SEIZURE ORDERS

53. Property Seizure Order.

- (1) The Court may make a seizure order under this section on application by the enforcement authority, permitting an authorised officer to search for and seize property that the Court finds could be the subject of a property freezing order under section 51 in the following circumstances—
 - (a) a property freezing order would not be effective to preserve the property; or

- (b) there is a reasonable suspicion of risk of dissipation or alienation of the property if the order is not granted.
- (2) If during the course of a search under an order granted under this section, an authorised officer finds any property that he believes, on reasonable grounds, is of a kind which could have been included in the order had its existence, or its existence in that place, been known of at the time of application for the order, he may seize that property and the seizure order shall be deemed to authorise such seizure provided notice of the seizure of the property is reported within twenty-four hours to the Court and a record of the seizure of such property is left at the premises from where the property is seized and is given to the occupier of the premises.
- (3) Property seized under an order granted under this section, may only be retained by or on behalf of the enforcement authority for twenty-eight days and the enforcement authority may subsequently make application for a property freezing order in respect of such property.
- (4) If the enforcement authority believes that the execution of an order under this section may give rise to a breach of the peace or to other criminal conduct, it may request that appropriate law enforcement officers accompany the authorised officer.
- (5) An authorised officer for purposes of this section shall be an officer duly appointed for those purpose by the enforcement authority.

GRANT OF CIVIL FORFEITURE ORDERS

54. Applications for and granting of a Civil Forfeiture Order.

- (1) The enforcement authority may apply to the Court for a civil forfeiture order in respect of property which it believes is proceeds or instrumentalities of any offence of drug trafficking, money laundering, corruption, human trafficking, proliferation of weapons of mass destruction, terrorist property or other any identified risk.
- (2) An application pursuant to subsection (1) shall be made in accordance with the rules of civil procedure.
- (3) Where the enforcement authority makes an application for a civil forfeiture order against property under this section —
 - (a) it shall serve a copy of the application on any person whom the enforcement authority has reason to believe has an interest in the property;
 - (b) any person claiming an interest in the property may appear and adduce evidence at the hearing of the application; and

- (c) at any time before the final determination of the application, the Court may direct the enforcement authority to provide such notice as the Court deems appropriate to any person who, in the Court's opinion, appears to have an interest in the property.
- (4) Service of notice under subsection (2) shall be made in accordance with the rules applicable in civil Court proceedings.
- (5) Any person who asserts an interest in the property and who seeks to oppose the making of a civil forfeiture order, or who wishes to exclude his interest from a civil forfeiture order shall file an appearance in accordance with the civil procedure rules.
- (6) Where an application for a civil forfeiture order is before the Court, the Court may determine by its own procedures the evidence that may be adduced before it and shall in particular ensure that any person with an interest of any nature in the property which is the subject of the application has an opportunity to make representations to the Court as to whether an order for civil forfeiture should be granted.
- (7) Where the Court is satisfied on a balance of probabilities that any property specified in the application is proceeds, or instrumentalities, or terrorist property, it shall grant a civil forfeiture order in respect of such property.
- (8) A civil forfeiture order shall have the effect of vesting the forfeited property in a named representative of the enforcement authority or specified Receiver who shall be responsible for realizing the property in accordance with section 58.

55. Orders to protect legitimate owners.

- (1) If, in the course of a hearing of an application for a civil forfeiture order, the Court is satisfied on a balance of probabilities that any property which is the subject of the application is proceeds, instrumentalities, or terrorist property but that a person is a legitimate owner, the Court shall make any order it considers necessary to protect that person's interest in the property.
- (2) A legitimate owner means —
 - (a) in the case of proceeds, a person who —
 - (i) was the rightful owner of the property before the criminal conduct occurred and was deprived of the property by the criminal conduct; or
 - (ii) acquired the property in good faith and for fair value after the criminal conduct and did not and could not reasonably have known the property was proceeds;

- (b) in the case of instrumentalities, a person who has done all that can reasonably be done to prevent the property being used as an instrumentality; and
 - (c) in the case of terrorist property, a person who can satisfy the Court that he would be a legitimate owner if the property were proceeds or instrumentalities.
- (3) No order may be made under subsection (1) if the property is property that it is unlawful for the person to possess in The Bahamas.

56. Prohibited appearance of absconders.

A person who has absconded from any process of the Court and is still an absconder in The Bahamas may not appear, either personally or through a representative, in a proceeding for civil forfeiture or contest the granting of a civil forfeiture order.

PROVISIONS RELATIVE TO CIVIL FORFEITURE ORDERS

57. Appeals.

- (1) An appeal will lie to the Court of Appeal by any person affected by a decision of the Supreme Court in relation to a property freezing order.
- (2) An appeal will lie to the Court of Appeal against the grant, or the refusal to grant a civil forfeiture order.

58. Realisation of forfeited property.

- (1) Subject to any limits in the civil forfeiture order, the enforcement authority may take such steps to sell, destroy or otherwise deal with property as it sees fit.
- (2) Subject to subsection (1), the enforcement authority—
 - (a) must realise the value of the property vested in it by the civil forfeiture order, so far as practicable, in the manner best calculated to maximise the realised amount;
 - (b) or property manager should dispose of the forfeited property as soon as practicable.
- (3) The enforcement authority may incur reasonable expenditure for the purpose of realising the value of the forfeited property.
- (4) Any expenditure incurred by the enforcement authority under subsection (3) shall be recovered from the amount of money realised by the property forfeited. In the event that the sum realised is not sufficient to cover such

expenditure, the enforcement authority should recover the balance from the Confiscated Assets Fund.

- (5) The proceeds of the realisation of any property forfeited as a result of a civil forfeiture order shall be paid into the Confiscated Assets Fund created under Part IX.

59. Compensation and protection of Receiver.

- (1) If in the case of any property in respect of which an application for a civil forfeiture order has been made and where a property freezing order has been made, the Court does not make a civil forfeiture order or, following any appeal, the civil forfeiture order is set aside, the person whose property it is, may make an application to the Court for compensation.
- (2) The person making an application referred to in subsection (1) shall provide at least seven clear days' notice of the application to the Office of the Attorney-General.
- (3) If the Court has made a decision by reason of which no forfeiture order could be made in respect of the property, any application for compensation must be made within the period of three months from the date of the decision, or, if there is an appeal against the decision, from the date on which any proceedings on appeal are finally concluded.
- (4) The Court may grant an application made under this section in such amount as the Court thinks reasonable having regard to the loss suffered and any other relevant circumstances provided that the person affected suffered loss due to the unwarranted actions of the enforcement authority.
- (5) Where the Court has appointed a Receiver in relation to property, the Receiver shall not be personally liable for any loss or claim arising out of the exercise of powers conferred upon him by the order or this Part unless the Court in which the claim is made is satisfied that —
 - (a) the applicant has an interest in the property in respect of which the loss or claim is made; and
 - (b) the loss or claim arose by reason of the negligence or reckless or intentional misconduct of the Receiver.

60. Obtaining information from foreign authorities.

The enforcement authority may make a request to an appropriate foreign authority for information or evidence relevant to a civil forfeiture investigation or proceedings, and may enter into an agreement with such authority relating to such request and the disclosure or use of any information or evidence received.

61. Disclosure of information.

- (1) Any information obtained or that was obtained on behalf of the Financial Intelligence Unit in connection with the exercise of any of its functions may be disclosed to the enforcement authority in connection with any of the functions of the enforcement authority under this Part.
- (2) Information which is held by any of the following persons may be disclosed to the enforcement authority in connection with the exercise of any of its functions under this Part—
 - (a) Compliance Commission established under the Financial Transaction Reporting Act (*Ch. 368*);
 - (b) Securities Commission continued under the Securities Industry Act (*No. 10 of 2011*);
 - (c) Central Bank of The Bahamas; and
 - (d) The Gaming Board continued under the Gaming Act (*No. 40 of 2014*).
- (3) Information which the enforcement authority has obtained in connection with the exercise of any of its functions under this Part may be disclosed by it (notwithstanding any rules of confidentiality to the contrary) if the disclosure is for the purposes of a civil forfeiture investigation or proceeding in another jurisdiction, where the perpetrator of the criminal conduct which has given rise to the civil forfeiture proceedings is dead, or has absconded, his whereabouts are unknown, or his identity is unknown.
- (4) Information which the enforcement authority has obtained in connection with the exercise of any of its functions under this Part may be disclosed by it notwithstanding any rules of confidentiality to the contrary if the disclosure is for any one of the following —
 - (a) consideration of and bringing of proceedings for civil forfeiture under this Part or the enforcement of any Court order;
 - (b) a criminal investigation wherever that investigation may be undertaken;
 - (c) criminal proceedings wherever they may have been commenced.

PART VI - CASH AND PERSONAL PROPERTY FORFEITURE

62. General purpose of cash or personal property forfeiture under this Part.

- (1) This Part has effect for the purposes of enabling cash or personal property which is, or represents, property obtained through unlawful conduct, or which is intended to be used in unlawful conduct, to be forfeited in civil proceedings before the Court.
- (2) The powers conferred by this Part are exercisable whether or not any proceedings have been brought for an offence in connection with the cash or personal property.

63. Unlawful conduct.

- (1) Unlawful conduct is any act—
 - (a) that is unlawful under any law in The Bahamas; and
 - (b) which occurs in a jurisdiction outside The Bahamas and is unlawful under the law of that jurisdiction.
- (2) A Court of summary jurisdiction must decide on a balance of probabilities whether it is proved that—
 - (a) any matter alleged constitutes unlawful conduct;
 - (b) any cash or personal property is a proceed, or that any person who used or intended to use or intends to use any cash or personal property as an instrumentality in unlawful conduct.

64. Property obtained through unlawful conduct.

- (1) A person obtains property through unlawful conduct (whether his own conduct or another's) if he obtains property by or in return for the unlawful conduct.
- (2) In deciding whether any property was obtained through unlawful conduct—
 - (a) it is immaterial whether or not any money, goods or services were provided in order to put the person in question in a position to carry out the conduct;
 - (b) it is not necessary to show that the conduct was of a particular kind if it is shown that the property was obtained through conduct of one of a number of kinds, each of which would have been unlawful conduct.

SEARCH AND SEIZURE

65. Search by peace officer for cash or personal property.

- (1) If any peace officer who is lawfully on any premises has reasonable grounds for suspecting that there is on the premises cash or personal property —
 - (a) which is the proceeds or instrumentalities of crime or any identified risk; or
 - (b) which is intended to be used in the course of unlawful conduct; or
 - (c) which is terrorist property,he may search for the cash or personal property on those premises.
- (2) A peace officer may exercise the powers specified in subsection (3) if he has reasonable grounds for suspecting that a person (hereinafter referred to as “the suspect”) is carrying cash or personal property—
 - (a) which is proceeds or instrumentalities of crime or any identified risk; or
 - (b) which is intended to be used in the course of unlawful conduct.
- (3) The peace officer may, so far as he thinks it necessary or expedient, require the suspect to permit a search of —
 - (a) any article he has with him; or
 - (b) his person.
- (4) Any peace officer exercising powers by virtue of subsection (3)(b) may detain the suspect for so long as is necessary for the exercise of the search and where—
 - (a) the suspect is a female, she shall only be searched by a female peace officer; and
 - (b) the suspect is male, he shall only be searched by a male peace officer.
- (5) The powers conferred by this section are exercisable only so far as reasonably required for the purpose of finding cash or personal property.
- (6) For the purposes of this section, “**peace officer**” includes—
 - (a) an officer of the Royal Bahamas Police Force;
 - (b) an officer of the Royal Bahamas Defence Force;
 - (c) an officer of the Department of Immigration;
 - (d) an officer of the Customs Department;
 - (e) an inspector of Inland Revenue.

- (7) This section does not require a person to submit to an intimate search or strip search.

66. Approval of Magistrate to conduct search.

- (1) The powers conferred by this part may be exercised only with appropriate approval unless, in the circumstances, it is not practicable to obtain that approval before exercising the power.
- (2) For the purposes of this section, “**appropriate approval**” means the approval of a Magistrate or (if that is not practicable in any case) the approval of a senior authorised officer.
- (3) If the powers are exercised without the approval of a magistrate in a case where —
- (a) no cash or property is seized pursuant to section 67; or
 - (b) any cash or property seized is not detained for more than forty-eight hours,

the authorised officer who exercised the powers must give a written report to the person appointed by the Director of Public Prosecutions for that purpose.

67. Seizure of cash or personal property.

- (1) An authorised officer may seize any cash or personal property that he finds pursuant to a search lawfully carried out if he has reasonable grounds for suspecting that the cash or personal property is one or more of the following —
- (a) the proceeds or instrumentalities of unlawful conduct; or
 - (b) intended to be used in the course of unlawful conduct.
- (2) An authorised officer may also seize cash or personal property if he has reasonable grounds for suspecting only part of it —
- (a) to be the proceeds or instrumentalities of unlawful conduct or an identified risk; or
 - (b) is intended to be used in the course of unlawful conduct or an identified risk.

DETENTION AND FORFEITURE

68. Detention of seized cash or personal property.

- (1) Where an authorised officer continues to have reasonable grounds for his suspicion, cash or personal property seized under section 67 may be detained initially for a period of seventy-two hours.

- (2) The period for which the cash or personal property or any part of it may be detained may be extended by an order made by a magistrate; but the order may not authorise the detention of any of the cash or personal property—
 - (a) beyond the end of the period of three months beginning with the date of the order;
 - (b) in the case of any further order under this section, beyond the end of the period of two years beginning with the date of the first order.
- (3) An application for an order under subsection (2) may be made by an authorised officer.
- (4) A magistrate may make the order if satisfied, in relation to any cash or personal property to be further detained, that there are reasonable grounds for suspecting that the cash or personal property—
 - (a) is the proceeds or instrumentalities of unlawful conduct, terrorist property or of any identified risk and —
 - (i) its continued detention is justified while its derivation is further investigated or consideration is given to bringing (in The Bahamas or elsewhere) proceedings against any person for an offence with which the cash or personal property is connected; or
 - (ii) proceedings against any person for an offence with which the cash or personal property is connected have been started and have not been concluded;
 - (b) is intended to be used in unlawful conduct or an identified risk and —
 - (i) its continued detention is justified while its intended use is further investigated or consideration is given to bringing (in The Bahamas or elsewhere) proceedings against any person for an offence with which the cash or personal property is connected, or
 - (ii) proceedings against any person for an offence with which the cash or personal property is connected have been started and have not been concluded.
- (5) An application for an order under subsection (2) may also be made in respect of any cash or personal property seized under section 67(2), and the Court may make the order if satisfied that —
 - (a) the condition in subsections (3)(a), and (b) is met in respect of part of the cash or personal property; and
 - (b) it is not reasonably practicable to detain only that part.
- (6) An order under subsection (2) must provide for notice to be given to any person affected.

69. Detained cash to be paid into interest bearing account.

- (1) If cash is detained under section 68 for more than seventy-two hours, it must at the first opportunity thereafter be paid into an interest-bearing account and held there; and the interest accruing on the cash is to be added to it on its forfeiture or release.
- (2) In the case of cash seized and detained under this Part, the authorised officer or the person from whom the cash or personal property was seized after the paying of it into the account may apply to a Magistrate for an order to release the part of the cash or personal property to which the suspicion does not relate.
- (3) Subsection (1) does not apply if the cash or, as the case may be, the part to which the suspicion relates is required as evidence of an offence or evidence in proceedings under this Part.

70. Release of detained cash or personal property.

- (1) This section applies while any cash or personal property is detained under section 68.
- (2) A Magistrate may direct the release of the whole or any part of the cash or personal property if the conditions in section 68 for the detention of the cash or personal property are no longer met.
- (3) An authorised officer may apply to the Court under whose order cash or personal property is being detained, for an order to release the whole or any part of it if satisfied that the detention of the cash or personal property to be released is no longer justified.

71. Forfeiture of cash or personal property.

- (1) While cash or personal property is detained under section 68, an application for the forfeiture of the whole or any part of it may be made to a Magistrate's court by the authorised officer.
- (2) The court may order the forfeiture of the cash or personal property or any part of it if it is satisfied on a balance of probabilities that the cash or personal property or any part thereof —
 - (a) is the proceeds of unlawful conduct or an identified risk;
 - (b) is the instrumentalities of unlawful conduct or an identified risk;
 - (c) is intended to be used for the purposes of unlawful conduct or an identified risk.
- (3) In the case of property which belongs to joint owners, the order may not apply to so much of it as the Court thinks is attributable to the joint owner's share, provided that said property is not an instrumentality or a proceed of unlawful conduct or an identified risk.

- (4) Where an application for the forfeiture of any cash or personal property is made under this section, the cash or personal property is to be detained (and may not be released under any power conferred by this Part) until any proceedings in pursuance of the application (including any proceedings on appeal) are concluded.

72. Appeal against forfeiture order.

- (1) Any party to proceedings who is aggrieved by the forfeiture order made under section 71 in respect of detained cash or personal property may appeal to the Supreme Court.
- (2) An appeal under subsection (1) must be made within the period of twenty-eight days beginning with the date on which the order is made.
- (3) The appeal is to be by way of a rehearing.
- (4) The Supreme Court may make any order it thinks appropriate.
- (5) If the Court upholds the appeal, it may order the release of the cash or personal property.

73. Application of forfeited cash.

Cash forfeited and any accrued interest on it is to be paid into the Confiscated Assets Fund, except that it should not be paid in —

- (a) before the end of the period within which an appeal under section 72 may be made; or
- (b) if a person appeals under that section, before the appeal is determined or otherwise disposed of.

74. Protection of legitimate owners.

- (1) A person who claims that any cash or personal property detained under this Part, or any part of it, belongs to him may apply to the Magistrate's Court for the cash or personal property or part to be released to him.
- (2) The application may be made in the course of proceedings under section 68 or 70 or at any other time.
- (3) In an application made pursuant to subsection (1), if it appears to the court concerned that —
 - (a) the applicant was deprived of the cash or personal property which was not obtained by unlawful conduct;
 - (b) the property he was deprived of was not, immediately before he was deprived of it, the proceeds of unlawful conduct, represented or was not an instrumentality of unlawful conduct or was not then intended to be used in unlawful conduct; and
 - (c) that cash or personal property belongs to that person.

the Court may order the cash or personal property to which the application relates to be released to the applicant.

(4) If —

- (a) the applicant is not the person from whom the cash or personal property to which the application relates was seized;
- (b) it appears to the Court that that cash or personal property belongs to the applicant;
- (c) the Court is satisfied that the conditions in section 68 for the detention of that cash or personal property are no longer met or, if an application has been made under section 70, the Court decides not to make an order under that section in relation to that cash or personal property; and
- (d) no objection to the making of an order under this subsection has been made by the person from whom that cash or personal property was seized,

the Court may order the cash or personal property to which the application relates to be released to the applicant or to the person from whom it was seized.

PART VII - UNEXPLAINED WEALTH ORDERS

UNEXPLAINED WEALTH ORDER *NISI*

75. Application for an Unexplained Wealth Order *nisi*.

- (1) Proceedings under this Part shall be civil proceedings.
- (2) This Part shall only apply if any one or more of the following conditions apply where the relevant person —
 - (a) is or has been—
 - (i) a politically exposed person;
 - (ii) a public office holder;
 - (iii) a respondent to an application for civil forfeiture pursuant to Part V of this Act;
 - (iv) convicted of an offence punishable with imprisonment in The Bahamas;
 - (v) convicted of an offence punishable with imprisonment under a law of a foreign jurisdiction, in relation to acts or omissions which, had they occurred in The Bahamas, would have constituted an offence in The Bahamas;

- (vi) the recipient of property obtained by criminal conduct including gifts caught by the act;
 - (vii) the subject of restraint, confiscation or forfeiture proceedings in a foreign jurisdiction; or
 - (viii) an individual or officer of an entity subject to United Nations Security Council sanction; and
- (b) has been charged with one or more of the following types of criminal conduct—
 - (i) bribery;
 - (ii) a corruption offence of extortion or misconduct in public office;
 - (iii) falsification of accounts;
 - (iv) stealing by reason of service or employment;
 - (v) money laundering;
 - (vi) fraud;
 - (vii) drug trafficking;
 - (viii) firearms trafficking;
 - (ix) proliferation of weapons of mass destruction;
 - (x) human trafficking; or
 - (xi) any identified risk.
- (3) Where a relevant person makes a statement pursuant to an order under this Part, anything disclosed in any statement and any information, document or thing obtained as a direct or indirect consequence of the statement shall not be admissible against the person in any criminal proceeding except a proceeding in respect of the falsity of the statement.
- (4) The enforcement authority may apply to a Court in writing for an order requiring the relevant person to file declarations and answer questions as required in relation to their assets.
- (5) An application for an order under subsection (4) must be supported by an affidavit by an authorised officer stating—
 - (a) the identity of the relevant person;
 - (b) that the authorised officer reasonably suspects that the relevant person's total wealth exceeds the value of his lawfully obtained wealth;
 - (c) that any property the authorised officer believes is held by the relevant person was unlawfully obtained;
 - (d) the property the authorised officer reasonably suspects is owned by the relevant person or is under his effective control.

- (6) The Court may make an order without notice to the relevant person, if the enforcement authority requests the Court to do so and it appears necessary in the interests of justice.

76. Court may make order requiring person to appear.

- (1) A Court may make an Unexplained Wealth Order *nisi*, requiring the relevant person to appear before the Court for the purpose of enabling the Court to decide whether or not to make an Unexplained Wealth Order absolute if—
 - (a) the Court is satisfied that the authorised officer has reasonable grounds to suspect that the relevant person's total wealth exceeds the value of his wealth that was lawfully obtained; and
 - (b) the evidential requirements in section 75(5) for the application have been met.
- (2) For the purposes of this Part —

“**lawfully obtained**” means property which has been acquired by the relevant person through legitimate activities and includes property acquired by inheritance, or other legitimate transfer; and

“**unexplained wealth**” means any money or property of an origin which cannot be explained as being lawfully obtained.

77. Application to revoke an Unexplained Wealth Order *nisi*.

- (1) If the Court makes an Unexplained Wealth Order *nisi*, the relevant person may apply to the Court to revoke the order within twenty-eight days of notice of the order.
- (2) If such an application is made, the Court may order an inter parties hearing date within fourteen days or the first available date.
- (3) Where an application is made under this section, the applicant must give the enforcement authority —
 - (a) written notice of the application; and
 - (b) a copy of any affidavit supporting the application.
- (4) Where an application is made under this section, the applicant may appear and adduce evidence.
- (5) The enforcement authority may appear and adduce evidence at the hearing of any application made under this section and must give the relevant person a copy of any material it proposes to rely on to contest the application.
- (6) The notice and copies of any evidence or pleadings under this section must be given no later than seven days before the hearing of the application.

- (7) The Court may revoke the Unexplained Wealth Order *nisi* if satisfied that —
- (a) there are no grounds on which the order could be made absolute; or
 - (b) it is in the interest of justice to do so.

UNEXPLAINED WEALTH ORDER ABSOLUTE AND ENFORCEMENT

78. Application for an Unexplained Wealth Order absolute.

- (1) The enforcement authority may apply to the Court for an Unexplained Wealth Order *absolute*.
- (2) A Court may make an Unexplained Wealth Order *absolute* requiring the relevant person to pay a specified amount to the Crown if—
 - (a) the Court has made an Unexplained Wealth Order *nisi*, which has not been revoked, in relation to the relevant person; and
 - (b) the Court is satisfied on a balance of probabilities that any part of the relevant person's wealth was not lawfully obtained or held.
- (3) The Court must specify in the order that the relevant person is liable to pay to the Crown an amount equal to the amount that the Court is satisfied does not represent the respondent's lawfully acquired property (hereinafter referred to as the relevant person's "unexplained wealth amount").
- (4) In proceedings under this section, the burden of proving that the relevant person's wealth is lawfully acquired lies on the relevant person.
- (5) When considering the issues under subsection (2), the Court may have regard to information not included in the Unexplained Wealth Order *nisi*.
- (6) When considering the amount of an Unexplained Wealth Order *absolute*, the Court must deduct an amount equal to the value, at the time of making the order, of any property of the relevant person forfeited under a forfeiture, confiscation order or an extended benefit order, including any foreign forfeiture or confiscation order.

79. Property subject to a person's effective control.

- (1) If —
 - (a) the Court has made an absolute Unexplained Wealth Order; and
 - (b) the enforcement authority applies to the Court for an order under this section; and
 - (c) the Court is satisfied that particular property is subject to the effective control of the relevant person;
- the Court may make an order declaring that the whole, or a specified part, of that property is available to satisfy the Unexplained Wealth Order.

- (2) An order under subsection (1) may be enforced against the property as if the property were the relevant person's property.
- (3) An order which restricts the right of the relevant person or any named person to deal with the property identified in this section may be made, upon application of the enforcement authority, if the Court is satisfied that the property would not be available to the enforcement authority without such a restriction.
- (4) If the enforcement authority applies for an order under subsection (1) relating to particular property, the authority must give written notice of the application to —
 - (a) the relevant person who is subject to the Unexplained Wealth Order, *absolute*; and
 - (b) any other person whom it has reason to believe may have an interest in the property.
- (5) The relevant person, and any person who claims an interest in the property, may appear and adduce evidence at the hearing of the application.
- (6) For the purposes of this Act, “**effective control**” means in relation to property means the exercise of practical control over the property whether or not that control is supported by any property interest or other legally enforceable power and in determining whether property is subject to the effective control of a person —
 - (a) it is not necessary to be satisfied that the person has an interest in the property;
 - (b) regard may be had to —
 - (i) shareholdings in, non-shareholding membership in, debentures over, or directorships of a company that has an interest (whether direct or indirect) in the property;
 - (ii) a trust that has a relationship to the property;
 - (iii) family, domestic, business or other relationships between persons having an interest in the property, or in companies referred to in paragraph (a), or trusts referred to in paragraph (b), and other persons; and
 - (iv) the ability of the person to decide whether and to what extent the property may be dealt with.
- (7) A Court may refuse to treat property as being subject to the effective control of a person if it is satisfied that a person's ownership or control of the property is subject to a lawful, *bona fide* trust held for the benefit of a third party to the extent that the same is shown, on a balance of probabilities by the trustee or settlor, not to consist of the proceeds of any crime.

80. Enforcement of an Unexplained Wealth Order *absolute*.

- (1) An amount payable by the relevant person to the Crown under an Unexplained Wealth Order, *absolute* is a civil debt due by the relevant person to the Crown.
- (2) An Unexplained Wealth Order, *absolute* against a relevant person shall be enforced as an order made in civil proceedings instituted by the Crown against the relevant person to recover a debt due by him to the Crown.
- (3) An Unexplained Wealth Order, *absolute* is for all purposes to be treated as a judgment debt.
- (4) If an Unexplained Wealth Order *absolute* is made after the relevant person's death, this section has effect as if the relevant person had died on the day after the order was made.

81. Procedure and appeal.

- (1) The procedure for appeal under this Part, shall comply with the rules governing civil proceedings.
- (2) An appeal will lie to the Court of Appeal in relation to any order made by a Court under this Part by any person affected.
- (3) The enforcement authority cannot, unless the Court gives leave, apply for an Unexplained Wealth Order against any person if —
 - (a) an application has previously been made for an Unexplained Wealth Order in relation to that person; and
 - (b) the application has been finally determined on the merits.
- (4) The Court must not give leave unless —
 - (a) it is satisfied that the wealth to which the new application relates was identified only after the first application was determined;
 - (b) evidence only became available after the first application was determined;
 - (c) it is in the interests of justice to give the leave; or
 - (d) there is a matter of law to be determined on any matter affecting the making of an Unexplained Wealth Order *absolute*.
- (5) There shall lie a right of appeal to the Privy Council against any decision of the Court of Appeal in accordance with the applicable law and instruments for appeals to the Privy Council.

82. Application for a Receiver.

The enforcement authority may on application to the Court seek the appointment of a Receiver to have responsibility for taking possession of, preserving, managing, disposing of or otherwise dealing with any property which is the subject of any proceedings under this Act.

PART VIII - INVESTIGATIVE ORDERS

83. Application of Part.

This Part shall only apply to criminal conduct that was committed on or after commencement date of this Act.

84. Customer Information Order.

- (1) Where an authorised person applies to the Court for an Order in accordance with this section, and the Court is satisfied having regard to the facts and beliefs set out in the affidavit in support of the application, and any other relevant matter that there are reasonable grounds to believe that subsections (2) and (3) are satisfied, it may make an order that a financial institution provide to an authorised person any customer information, as defined in subsection (4), that it holds relating to the person or account specified in the application.
- (2) An application pursuant to this section —
 - (a) may be made *ex parte*;
 - (b) must state that there is an investigation into unlawful conduct and that the order is sought for the purposes of a criminal investigation into that offence.
- (3) The Court must be satisfied that there are reasonable grounds for believing that the financial institution may have information that is relevant to the investigation.
- (4) For the purposes of this section “**customer information**” is information as to whether a person holds, or has held, an account or accounts at a financial institution (whether solely or jointly), and information identifying a person who holds an account, and includes all information as to —
 - (a) the full name, date of birth and most recent address, and any previous addresses, of the person and of any person who holds, or has held, an account at the financial institution jointly with him;
 - (b) the account number or numbers of any other account or accounts held at the financial institution to which he is a signatory

- (c) the date or dates on which he began to hold the account or accounts and, if he has ceased to hold the account or any of the accounts, the date or dates on which he did so;
- (d) such evidence of his identity as was obtained by the financial institution;
- (e) a legal entity —
 - (i) a description of any business which it carries on;
 - (ii) the jurisdiction or territory in which it is incorporated or otherwise established and any number allocated to it;
 - (iii) its registered office, and any previous registered offices;
 - (iv) the full name, date of birth and most recent address and any previous addresses of any person who is a signatory to the account or any of the accounts;
 - (v) the beneficial owner(s); and
 - (vi) any other information which the Court specifies in the customer information order.
- (5) A financial institution shall provide the information to the authorised person in such manner, and by such time, as is specified in the order.
- (6) No obligation to maintain the confidentiality of information held by a financial institution, whether imposed by a law or contract, can excuse compliance with an order made under this section.
- (7) For the purposes of this section, “**a financial institution**” means a bank or other credit institution, a life insurance and investment-related insurance company, insurance underwriters, and insurance agents and brokers; an investment bank or firm; a brokerage firm; a mortgage company; check cashiers and sellers or redeemers of travellers’ cheques, money orders, or other monetary instruments; and any person that engages as a business in funds transfer, check cashing or the purchase, sale or conversion of currency.
- (8) Any person employed by a financial institution that has been served with an order under this section, or the financial institution itself, commits an offence under this section if he or the financial institution knowingly—
 - (a) fails to comply with the order; or
 - (b) provides false or misleading information in purported compliance with the order.
- (9) Any person employed by a financial institution that has been served with an order under this section, or the financial institution itself, commits an offence under this section if he or it discloses the existence or operation of the notice to any person except —

- (a) an officer or agent of the institution for the purpose of complying with the order;
 - (b) a legal adviser for the purpose of obtaining legal advice or representation in respect of the order; or
 - (c) an authorised person referred to in the order.
- (10) In the event of a summary conviction for an offence under either subsection (8) or (9) in the case of a natural person who is a director, employee or agent of a financial institution the penalty shall be imprisonment for a term not exceeding two years or a fine of five hundred thousand dollars or both, and in the case of a legal entity to a fine of one million dollars.

85. Monitoring Order.

- (1) Where an authorised person applies to the Court for a Monitoring Order , and the Court is satisfied having regard to the facts and beliefs set out in the affidavit in support of the application, and any other relevant matter, that there are reasonable grounds to believe that the conditions in subsection (3) are met, it may direct a financial institution to give information to an authorised person.
- (2) An application under subsection (1) may be made *ex parte*.
- (3) A monitoring order shall—
 - (a) direct a financial institution to disclose information obtained by the institution about transactions conducted through an account held by a particular person with the financial institution;
 - (b) not have retrospective effect;
 - (c) only apply for a period of a maximum of three months from the date it is made, unless renewed by the Court following a further application and then for no more than six months; and
 - (d) in any event, not be in place for more than six months in total.
- (4) A Court shall issue a monitoring order only if it is satisfied that there are reasonable grounds to believe that —
 - (a) the person in respect of whose account the order is sought—
 - (i) has committed, was involved in the commission, or is about to commit or be involved in the commission of an offence; and
 - (ii) has benefited directly or indirectly, or is about to benefit directly or indirectly, from the commission of an offence; or
 - (b) the account is relevant to identifying, locating or quantifying terrorist property.
- (5) A monitoring order shall specify —

- (a) the name or names in which the account is believed to be held; and
 - (b) the class of information that the financial institution is required to give.
- (6) Any person who is employed by a financial institution which has been served with an order under this section, or the financial institution itself, commits an offence if he or it knowingly—
 - (a) fails to comply with the order; or
 - (b) provides false or misleading information in purported compliance with the order.
- (7) Any person who is employed by a financial institution that is or has been subject to an order under this section, or the financial institution itself, commits an offence if he or it discloses the existence or operation of the order to any person except where the disclosure is made to —
 - (a) an officer or agent of the institution for the purpose of ensuring compliance with the order;
 - (b) a legal adviser for the purpose of obtaining legal advice or representation in respect of the order;
 - (c) the authorised person referred to in the order.
- (8) In the event of a summary conviction for an offence under either subsection (6) or (7), in the case of a natural person who is a director, employee or agent of a financial institution, the penalty shall be imprisonment for a term not exceeding two years or a fine of five hundred thousand dollars or both, and in the case of a body corporate to a fine of one million dollars.
- (9) Nothing in this section prevents the disclosure of information relating to a monitoring order for the purposes of or in connection with legal proceedings provided that nothing in this subsection shall be construed as requiring disclosure, to any Court of the existence or operation of a monitoring order.

86. Disclosure Order.

- (1) Where an authorised person applies to the Court for an Order in accordance with this section, and the Court is satisfied that there are reasonable grounds to believe the conditions set out in subsection (2) have been met, having regard to the facts and beliefs set out in the affidavit in support of the application, the Court may grant the Order.
- (2) An application may be made *ex parte*.
- (3) A Court may make a Disclosure Order where it is satisfied on reasonable grounds that —

- (a) any property specified in the application for the Order is proceeds, or instrumentalities;
 - (b) a person specified in the application for the Order has derived a benefit from his unlawful conduct;
 - (c) information which may be provided in compliance with a requirement imposed under the Order is likely to be of substantial value to a civil forfeiture investigation; and
 - (d) it is in the public interest for the information to be provided, having regard to the benefit likely to accrue to a civil forfeiture investigation if the information is obtained.
- (4) A Disclosure Order shall authorise the authorised person to give to any person it considers has relevant information, notice in writing requiring him, with respect to any matter relevant to an investigation for the purposes of which the Order is sought, to —
 - (a) answer questions, either at a time specified in the notice or at once, at a place so specified;
 - (b) provide information specified in the notice, by a time and in a manner so specified; or
 - (c) produce documents, or documents of a description, specified in the notice, either at or by a time so specified or at once, and in a manner so specified.
- (5) A person shall not be bound to comply with a requirement imposed by a notice given under a Disclosure Order unless evidence of authority to give the notice is produced to him.
- (6) Any information obtained from a person in compliance with the Disclosure Order shall not be used in evidence in any proceedings other than the civil forfeiture proceeding to which the order granted under this section relates, unless —
 - (a) he subsequently denies having made the disclosure; or
 - (b) he is charged with an offence relating to the provision of false or misleading information.
- (7) A Disclosure Order may not compel any person to disclose material subject to legal privilege.
- (8) A person who has been served with a Disclosure Order commits an offence if he —
 - (a) fails to comply with the order without reasonable excuse; or
 - (b) makes a statement, or produces or makes available a document, known to the person to be false or misleading in a material particular.

- (9) Where a person or a director of a legal person is convicted of an offence against this section, he will be liable, in the case of a natural person, upon conviction on indictment to imprisonment for up to five years or to a fine or both, and in the case of a legal entity, to a fine.

87. Production Order.

- (1) An authorised person may apply to the Magistrates' Court for a Production Order and such application may be made *ex parte*.
- (2) Where the Court is satisfied that the conditions set out in subsection (3) have been met having regard to the facts and beliefs set out in an affidavit in support of the application, that Court may make the order requiring a person believed to have possession or control of any document relevant in identifying, locating or quantifying property or necessary for its transfer to produce such document either at a time specified in the order or at once.
- (3) There must be reasonable grounds to believe that a person has been, is or will be involved in the commission of an offence, and that any specified person has possession or control of a document relating to —
 - (a) the property of a person involved in the commission of such an offence; or
 - (b) the proceeds or instrumentalities of such an offence.
- (4) If any of the material specified in an application for a production order consists of information contained in a computer, the production order has effect as an order to produce the material in a form in which it can be taken away, and in which it is visible and legible.
- (5) The authorised person to whom documents are produced under this section may —
 - (a) inspect the documents;
 - (b) make copies of the documents; or
 - (c) retain the documents for as long as is reasonably necessary for the purposes of this Part, provided that copies of the documents are made available to the person producing them if requested, or reasonable access is provided to the documents.
- (6) A person may not refuse to produce a document ordered to be produced under this section on the ground that —
 - (a) the document might tend to incriminate the person or make the person liable to a penalty; or
 - (b) the production of the document would be in breach of an obligation, whether imposed by a law of The Bahamas or otherwise, on the person not to disclose either the existence or contents, or both, of the document.

- (7) A production order granted under this section—
 - (a) does not require a person to produce or give access to any items subject to legal privilege;
 - (b) has effect notwithstanding any restriction on the disclosure of information, however imposed; and
 - (c) does not grant right of entry to premises other than for the purpose of serving notice of an order made under this section.
- (8) A production order may be made—
 - (a) in relation to material in the possession or control of a government department and may include material which would otherwise be regarded as confidential; and
 - (b) subject to such other conditions as the Court may impose.
- (9) The Magistrate's Court may vary or discharge an order under this section in accordance with applicable procedural rules.
- (10) If the application for a production order requires information which is restricted under the Banks and Trust Companies Regulations Act (*Ch. 316*) and the Central Bank of The Bahamas Act (*Ch. 351*), application shall be made *ex parte* to a Judge in Chambers and this section shall be applied in such manner as if references to the Magistrate's Court and that Court are reference to the Judge in Chambers.

88. Failure to comply with a Production Order.

- (1) Where a production order requires a person to produce a document to the enforcement authority, the person commits an offence if he —
 - (a) fails to comply with the order without reasonable excuse; or
 - (b) in purported compliance with the order, produces or makes available a document known to the person to be false or misleading in a material particular and does not so indicate to the enforcement authority and provide to it any correct information of which the person is in possession or control.
- (2) Where a person or director of a legal person is convicted of an offence under subsection (1), he will be liable, in the case of a natural person, upon conviction on indictment to imprisonment for up to ten years, or to a fine or both, and in the case of a legal person to a fine.

89. Power to search for and seize property.

- (1) An authorised person may apply to the Magistrates' Court for a search warrant and such application may be made *ex parte*.
- (2) Where the Court is satisfied that there are reasonable grounds to believe having regard to the facts and beliefs set out in the affidavit in support of

the application that the requirements in this section have been met, that Court may grant a search warrant for such property.

- (3) Before granting an order under this section the Magistrate's Court must be satisfied that—
- (a) a production order has been served and has not been complied with;
 - (b) a production order would be unlikely to be effective;
 - (c) the investigation for the purposes of which the search warrant is being sought might be seriously prejudiced if the authorised officer does not gain immediate access to the premises where the material is held without any notice to any person;
 - (d) the material involved cannot be identified or described with sufficient particularity to enable a production order to be obtained; or
 - (e) the material in respect of which the search warrant is sought is likely to be of substantial value to the investigation.
- (4) If during the course of searching under an order granted under this section, an authorised officer finds anything that he believes on reasonable grounds —
- (a) will afford evidence as to the commission of an offence; or
 - (b) is of a kind which could have been included in the order had its existence been known of at the time of application for the order,
- he may seize that property or thing and the seizure order shall be deemed to authorise such seizure.
- (5) An authorised officer who has seized property or other things pursuant to this section may retain it for as long as is reasonably necessary for the purposes of this Part provided that copies of any documents seized are made available to the person producing them if requested, or reasonable access is provided to them.

PART IX - CONFISCATED ASSETS

CONFISCATED ASSETS FUND

90. Continuation of Confiscated Assets Fund.

- (1) The fund known and existing as the Confiscated Assets Fund, established under section 52 of the Proceeds of Crime Act (*Ch. 93*), is hereby preserved and continues in existence as the Confiscated Assets Fund for the purposes of this Act.

- (2) The Minister of Finance may make regulations for the implementation of the provisions of this Part including the deposit and investment of any funds or assets received by the Confiscated Assets Fund under the provision of the Financial Administration and Audit Act (*No. 26 of 2010*) and the distribution of any funds deposited into the Confiscated Assets Fund.

91. Payments into and out of Fund.

- (1) There shall be credited to the Confiscated Assets Fund (hereinafter referred to as “the Fund”) —
- (a) all moneys derived from the fulfilment of confiscation, benefit recovery, extended benefit recovery and civil forfeiture orders and Unexplained Wealth Orders and from settlements of confiscation, recovery and forfeiture and unexplained wealth claims;
 - (b) any cash sums made subject to a forfeiture order pursuant to an application under this Act;
 - (c) any sums of money allocated from time to time, to the Fund by Parliament;
 - (d) any voluntary payment, grant or gift caught by the act made by any person for the purposes of the Fund;
 - (e) any income derived from the investment of any amounts that are credited to the Fund; and
 - (f) any sharing of confiscated or forfeited property and funds received from other States.
- (2) The Confiscated Assets Committee established in section 92 may authorise payments out of the Fund to —
- (a) compensate victims who suffer losses as a result of offences, criminal conduct, or an identified risk;
 - (b) pay expenses relating to the recovery, management and disposition of property under the provisions of this Act, including mortgages and liens against relevant property, and the fees of receivers, trustees, managers or other professionals providing assistance;
 - (c) share recovered property with foreign jurisdictions;
 - (d) pay third parties for interests in property as appropriate;
 - (e) enable the appropriate agencies to continue to address serious offences and terrorism;
 - (f) assist in the rehabilitation of drug users, public education regarding the dangers of drug abuse; and
 - (g) pay the costs associated with the administration of the Fund, including the costs of external audits.

CONFISCATED ASSETS COMMITTEE

92. Establishment of Confiscated Assets Committee.

- (1) There is hereby established a Committee to be known as the Confiscated Assets Committee (hereinafter referred to as "the Committee").
- (2) The Committee shall consist of —
 - (a) the Minister of Finance, who is the chairperson of the Committee;
 - (b) the Minister responsible for national security;
 - (c) the Minister;
 - (d) the Commissioner of Police;
 - (e) the Director of Public Prosecutions; and
 - (f) such other person designated by the Minister of Finance.

93. Functions of the Committee.

- (1) The functions of the Committee are to advise the Minister of Finance in connection with —
 - (a) all aspects of international asset sharing of confiscated or forfeited property as may be subject to any treaty or arrangement with another country or its designated Authority;
 - (b) all aspects of confiscation or forfeiture of property to the Crown and the transfer of confiscated or forfeited property to the Fund in terms of this Act or any other Act;
 - (c) the rendering of financial assistance to appropriate agencies in order to combat organised crime, money laundering, criminal gang activities and crime in general;
 - (d) the rendering of financial assistance to any other institution, organisation or fund established with the object to render assistance in any manner to witnesses, including protected witnesses and victims of crime;
 - (e) the policy to be adopted concerning the confiscation, forfeiture and realisation of property and the transfer of that property to the Fund in terms of this Act or any other Act;
 - (f) the allocation of property and moneys from the Fund to specific law enforcement agencies;
 - (g) providing compensation to whistleblowers from any confiscated assets derived directly from their evidence and also to provide for their upkeep if placed in a witness protection programme either here or abroad;

- (h) the allocation of property and moneys from the Fund towards the support of dependents of any peace officer killed or incapacitated in the performance of any duty under this Act or generally;
- (i) the allocation of property and moneys from the Fund to any institution, organisation or fund contemplated; and
- (j) the allocation of moneys for the administration of the Fund.

94. Powers of the Committee.

In order to fulfil the functions referred in section 93 the Committee may—

- (a) exercise any powers and perform any functions conferred or imposed on it by this Act, and any powers that are necessary or expedient for or incidental to the achievement of its objects;
- (b) co-opt any person to advise it on any specific matter.

95. Meetings of the Committee.

- (1) Meetings of the Committee shall be held at a time and place determined by the chairperson.
- (2) Unless otherwise prescribed, the procedures of the Committee shall, include—
 - (a) the manner in which decisions must be taken;
 - (b) the procedure to be followed at meetings of the Committee; and
 - (c) the manner in which the Committee must conduct its affairs.

96. Annual report and audit.

The Minister of Finance shall cause a report by the Auditor-General to be laid before Parliament not later than nine months from the end of the financial year detailing —

- (a) the amounts credited to the Fund;
- (b) the investments made with the amounts credited to the Fund; and
- (c) the payments made from the Fund including the specific purpose for which payments were made and to whom.

PART X - MISCELLANEOUS

97. Power to make regulations.

The Minister may from time to time make regulations for all or any of the following purposes —

- (a) prescribing the forms of application, reports and other documents required under this Act;
- (b) exempting or providing for the exemption of any transaction or class of transactions from all or any of the provisions of this Act;
- (c) prescribing what accounts and arrangements shall be deemed to be or not to be facilities, and the circumstances and conditions in which any account or arrangement shall be deemed to be or not to be a facility;
- (d) prescribing what persons or classes of persons shall be deemed to be or not to be financial institutions, and the circumstances and conditions in which any persons or classes of persons shall be deemed to be or not to be financial institutions;
- (e) prescribing what transactions shall be deemed to be or not to be transactions, and the circumstances and conditions in which any transaction shall be deemed to be or not to be a transaction;
- (f) prescribing the manner in which any notice or other document required by this Act to be given or served by, or to or on, any person is to be so given or served.

98. Repeals.

- (1) Subject to subsection (2), the enactments specified in the *Third Schedule* are repealed.
- (2) Notwithstanding the repeal by subsection (1) of the enactments specified in the *Second Schedule*, all notices, orders and regulations made under those enactments and in force in The Bahamas at the commencement of the Proceeds of Crime Act (*Ch. 93*) shall so far as they are not inconsistent with this Act remain in force as if made under this Act, and shall accordingly be subject to amendment or revocation by regulations made under this Act.

FIRST SCHEDULE

(section 7)

- (1) An offence under the Prevention of Bribery Act (*Ch. 88*).
- (2) An offence under this Act.
- (3) An offence under the Anti-Terrorism Act, 2018.
- (4) An offence which may be tried on information in The Bahamas other than a drug trafficking offence.

- (5) An offence under sections 109 to 120 of the Securities Industry Act, 2011 (*No. 10 of 2011*).
- (6) An offence under the Environmental Planning and Protection Act, 2018.
- (7) An offence under sections 63 to 68 of the Trademarks Act, 2015 (*No. 39 of 2015*).
- (8) An offence under sections 77 to 81 of the Patents Act, 2015 (*No. 40 of 2015*).
- (9) An offence under section 63 of the Penal Code Act (*Ch. 84*).
- (10) An offence committed anywhere that, if it had occurred in The Bahamas, would constitute an offence in The Bahamas as set out in this Schedule or under Part III of this Act.

SECOND SCHEDULE

(Section 44(4))

DEFAULT SENTENCES FOR NON-PAYMENT OF A CONVICTION BASED CONFISCATION ORDER

Default Sentences: The Overriding Objective

- (1) The Court must have particular regard to the purpose of the imposition of a period of imprisonment in default, that is to say to secure payment of the amount that the Court has ordered to be paid.
- (2) The period of imprisonment in default which is imposed should be such, within the maxima permitted, as to make it completely clear to the relevant person that he has nothing to gain by failing to comply with the order.
- (3) The purpose of the imposition of a period of imprisonment in default of payment is to secure payment of the amount which the Court has ordered to be confiscated. The purpose of the sentence of imprisonment for the substantive offence is to punish him for his offending. The default sentence has a completely different purpose. The principle of totality does not apply.

Fixing the length of the default sentence

- (1) The Court when imposing a period of imprisonment has a discretion up to the maximum period in the band.

- (2) In fixing the precise length of the default sentence, the Court has to consider all the circumstances and is not bound to follow an arithmetical approach.
- (3) The period in default falls to be reduced if the order has been partially complied with.
- (4) Although a Court must take into account intransigence, the Court must also take into account, in a case where the order is not for the maximum, what that maximum is.

AMOUNT	MAXIMUM DEFAULT PERIOD
An amount not exceeding \$500	7 Days
An amount exceeding \$500 but not exceeding \$1,000	14 Days
An amount exceeding \$1,000 but not exceeding \$2,500	28 Days
An amount exceeding \$2,500 but not exceeding \$5,000	3 Months
An amount exceeding \$5,000 but not exceeding \$10,000	6 Months
An amount exceeding \$10,000 but not exceeding \$20,000	12 Months
An amount exceeding \$20,000 but not exceeding \$50,000	18 Months
An amount exceeding \$50,000 but not exceeding \$100,000	2 Years
An amount exceeding \$100,000 but not exceeding \$250,000	3 Years
An amount exceeding \$250,000 but not exceeding \$1,000,000	5 Years
An amount exceeding \$1,000,000	10 Years

THIRD SCHEDULE

(Section 98)

Short title of Act	Extent of repeal
Proceeds of Crime Act (Ch. 93)	Repeal Whole Act
Evidence Act (Ch. 65)	Repeal section 67 (Where proceedings are not concluded at the time of the date of the commencement of this Act, section 67 shall still apply)

FINANCIAL TRANSACTIONS REPORTING ACT, 2018

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No. 5 of 2018

FINANCIAL TRANSACTIONS REPORTING ACT, 2018

AN ACT TO REPEAL AND REPLACE THE FINANCIAL TRANSACTIONS REPORTING ACT AND FOR MATTERS CONNECTED THERETO

[Date of Assent - 25th May, 2018]

Enacted by the Parliament of The Bahamas

PART I - PRELIMINARY

1. Short title and commencement.

- (1) This Act may be cited as the Financial Transactions Reporting Act, 2018.
- (2) This Act shall come into force on a date to be appointed by the Minister by notice to be published in the *Gazette*.

2. Interpretation.

- (1) In this Act —

“**account**” means any facility or arrangement by which a financial institution or a Designated Non-Financial Business and Profession does any of the following—

- (a) accepts deposits of cash;
- (b) allows withdrawal or transfer of cash;
- (c) pays negotiable or transferable instruments or other orders or collects negotiable or transferable instruments or payment orders on behalf of, any other person; or
- (d) provides any facility or arrangement for a safety deposit box or for any other form of safe deposit;

“accountant” means a public accountant registered and licensed under section 13 of The Bahamas Institute of Chartered Accountants Act, 2015 (*No. 15 of 2015*);

“auditor” includes a licensed internal or external auditor;

“beneficial owner” means —

- (a) a natural person who ultimately owns or controls a facility holder;
- (b) the natural person on whose behalf a transaction is being conducted;
- (c) a natural person who exercises ultimate effective control over a legal person or legal arrangement;
- (d) where no natural person is identified under subparagraphs (a), (b) or (c), the identity of the natural person who holds the position of senior managing official;

“business relationship” means an association between an individual and a company entered into for any commercial purpose;

“cash” means notes and coins in any currency and includes —

- (a) postal orders;
- (b) cheques of any kind, including travellers’ cheques;
- (c) bankers’ drafts;
- (d) bearer bonds and bearer shares;
- (e) virtual currency;

“Commission” means the Compliance Commission continued under section 31;

“Comptroller” has the same meaning as in section 2 of the Customs Management Act (*No. 32 of 2011*);

“controlling interest” means direct or indirect shareholders acting individually or as a group holding ten percent or more of the voting rights and shares in an entity;

“correspondent relationship” means the provision of banking, payment, cash management, international wire transfers, cheque clearing, payable through accounts, foreign exchange, securities transactions, cash transfers or similar services by one financial institution (hereinafter referred to as the ‘correspondent institution’), to another financial institution (hereinafter referred to as the ‘respondent institution’);

“counsel and attorney” means a counsel and attorney admitted to practice under the Legal Profession Act (*Ch. 64*);

“currency or money” means coin and paper money of any jurisdiction that is designated as legal tender or is customarily used and

accepted as a medium of exchange, including virtual currency as a means of payment;

“customer” means—

- (a) a person for whom a transaction or account is arranged, opened or undertaken;
- (b) a signatory to a transaction account;
- (c) a person to whom an account or rights or obligations under a transaction have been assigned or transferred;
- (d) a person who is authorised to conduct a transaction or control on account;
- (e) a person who attempts to take any of the actions referred to in (a) to (d) above; or
- (f) such other person as may be prescribed by the Minister;

“customer due diligence measures” means the measures imposed by sections 6 - 9 and 14;

“designated amount” means such amount as is for the time being prescribed by regulations made under section 59;

“Designated Non-Financial Business and Profession” has the meaning given to it in section 4;

“document” has the same meaning as in section 2 of the Evidence Act (*Ch. 65*);

“employer” means a person, body, association or organisation (including a voluntary organisation) in connection with whose activities an employee exercises a function (whether or not for gain or reward), and references to employment must be construed accordingly;

“entity” means a person, group, trust, partnership, fund or an unincorporated association or organisation;

“facility”, subject to any regulations made under this Act —

- (a) means an account or arrangement —
 - (i) that is provided by a financial institution to a facility holder; and
 - (ii) by, through or with which a facility holder may conduct two or more transactions whether or not they are so used; and
- (b) without limiting the generality of the foregoing, includes —
 - (i) a life insurance policy;
 - (ii) an annuity;
 - (iii) the provision, by a financial institution, of a facility for the safe custody, including a safety deposit box;

“facility holder” in relation to a facility —

- (a) means the person in whose name the facility is established and without limiting the generality of the foregoing, includes —
 - (i) any person to whom the facility is assigned; and
 - (ii) where the person in paragraph (a) is a mere nominee, the ultimate natural person who is the beneficial owner, settlor or beneficiary;
 - (iii) any person who is authorised to conduct transactions through the facility;
 - (iv) in relation to a facility that is a life insurance policy or annuity, any person who, for the time being, is the legal or beneficial owner of that policy or annuity; and
- (b) for the purposes of this Act, a person becomes a facility holder in relation to a facility when that person is first able to use the facility to conduct transactions;

“Financial Intelligence Unit” means the Financial Intelligence Unit established under section 3 of the Financial Intelligence Unit Act (*Ch. 367*);

“financial institution” has the meaning given to it by section 3;

“foreign financial institution” means a financial institution in a foreign jurisdiction that is subject to an equivalent regime of monitoring, supervision and regulation as is herein provided and is subject to equivalent or higher anti-money laundering and anti-terrorism financing standards of regulation as provided for by Bahamian law;

“funds” means —

- (a) any assets or property of any kind, however acquired, including but not limited to currency, bank credits, deposits and other financial resources, travellers cheques, bank cheques, money orders, promissory notes, shares, non-shareholding interests, securities, bonds, drafts and letters of credit;
- (b) any interest in, dividends or other income on or value accruing from or generated by, in full or in part, any such assets or property referred to in paragraph (a);
- (c) any legal documents or instruments in any form evidencing title to or interest in such assets or property in referred to in paragraph (a);

“identified risk” means corruption, cybercrime, human trafficking, money laundering, proliferation or financing of weapons of mass

- destruction, terrorism or financing of terrorism or such other risk as the Minister may prescribe by regulations;
- “identified risk framework”** means any lawful measures or policies designed to minimize or eliminate identified risks;
- “industry organisation”** means any organisation the purpose of which, or one of the purposes of which, is to represent the interests of any class or classes of financial institution;
- “Inspector of Banks and Trusts Companies”** means the Inspector of Banks and Trust Companies established under section 13 of the Banks and Trust Companies Regulation Act (*Ch. 316*);
- “Inspector of Financial and Corporate Services”** means the Inspector of Financial and Corporate Services appointed under section 11 of the Financial and Corporate Service Providers Act (*Ch. 369*);
- “life insurance policy”** means a policy within the meaning of section 2 of the Insurance Act (*Ch. 347*);
- “Minister”** means the Minister of Finance;
- “money laundering offence”** has the same meaning as in the Proceeds of Crime Act, 2018;
- “occasional transaction”** means a one-off transaction or linked transactions, that are carried out by a person otherwise than through a facility in respect of which that person is a facility holder;
- “originator”** means the person who allows a wire or cash transfer from his account, or where there is no account, the person that instructs a financial institution to perform a wire or cash transfer;
- “payable through accounts”** means a correspondent account used directly by a third party customer of the respondent institution to transact business on behalf of that party or on behalf of another person;
- “politically exposed person”** means an individual who is or has been entrusted—
- (a) with a domestic prominent public function, inclusive of a head of state or government, legislator, politician, senior government, judicial or military official, senior executive of a state owned corporation, or important political party official;
 - (b) with a prominent public function by a foreign jurisdiction, inclusive of, a head of state or government, legislator, senior politician, senior government, judicial or military official, senior executive of a state owned corporation, or senior political party official;
 - (c) with a senior position at an international organisation or branch thereof, domestic or foreign,

and includes a family member or close associate of a politically exposed person;

"precious metals" means any article made of or containing gold, silver or platinum and such other precious metal as may be prescribed;

"precious stones" includes diamonds, rubies, sapphires and emeralds;

"prescribed amount" in relation to Part III, means such amount as is for the time being prescribed for the purposes of that Part by regulations made under section 60;

"principal facility holder" means the facility holder whom that financial institution reasonably regards, for the time being, as principally responsible for the operation, use or administration of that facility;

"real estate broker" has the same meaning as in section 2 of the Real Estate (Brokers and Salesmen) Act (*Ch. 171*);

"real estate transaction" means a transaction involving real estate that is carried out —

- (a) by or under the supervision of a counsel and attorney by virtue of section 22 of the Legal Profession Act (*Ch. 64*); or
- (b) by a real estate broker who holds a licence in force under the Real Estate (Brokers and Salesmen) Act (*Ch. 171*);

"senior management" means an officer or employee of a financial institution with sufficient knowledge and seniority to make decisions affecting the institution's risk exposure and need not involve a member of the board or directors and includes a person responsible for compliance or duly authorised to bind the financial institution;

"superannuation scheme" means a scheme within the meaning of the Superannuation and other Trust Funds (Validation) Act (*Ch. 178*) but does not include —

- (a) a scheme established principally for the purpose of providing retirement benefits to employees where —
 - (i) contributions to the scheme by employees are made only by way of deduction from the salary or wages of those employees; and
 - (ii) the trust deed governing the scheme (or, as the case requires, the statute under which the scheme is constituted) does not permit a member to assign his interest in the scheme to any other person; or
- (b) a scheme in respect of which no advertisement has been published inviting the public or any section of the public to become contributors to the scheme;

“Supervisory Authority” means, in relation to a financial institution under section 3, the agency designated by law for ensuring compliance with the requirements of this Act and any other anti-money laundering laws of The Bahamas, and includes the Central Bank of The Bahamas, the Securities Commission of The Bahamas, the Insurance Commission of The Bahamas, the Inspector of Financial and Corporate Services, the Gaming Board and the Compliance Commission;

“Suspicious Transaction Guidelines” means guidelines issued by a supervisory authority;

“suspicious transaction report” means a report made pursuant to section 27(1);

“transaction” means —

- (a) a purchase, sale, loan, pledge, gift, transfer, delivery or other disposition, or the arrangement thereof, and includes but is not limited to —
- (b) any deposit, withdrawal, exchange or transfer of cash, whether in currency or by cheque, payment order, settlement or set off between clearing institutions or branch offices or other instrument or by electronic or other non-physical means;
- (c) the use of a safety deposit box or any other form of safe deposit;
- (d) entering into any fiduciary relationship;
- (e) any payment made or received in satisfaction, in whole or in part, of any contractual or other legal obligation;
- (f) any payment made in respect of a lottery, bet or other game of chance;
- (g) establishing or creating a legal person or legal arrangement; and
- (h) such other transaction as may be prescribed by the Minister by regulation;

“virtual currency” means a digital representation of value but does not have legal tender status in any jurisdiction that can be traded and function as —

- (a) a medium of exchange;
- (b) a unit of account;
- (c) a store of value.

(2) Where —

- (a) for the purposes of any provision of this Act, it is necessary to determine whether or not the amount of any cash (whether alone or together with any other amount of cash) exceeds the prescribed amount; and
- (b) the cash is denominated in a currency other than Bahamian currency,

the amount of the cash shall be taken to be the equivalent in Bahamian currency, calculated at the rate of exchange on the date of the determination, or, if there is more than one rate of exchange on that date, at the average of those rates.

- (3) For the purposes of subsection (2), a written certificate purporting to be signed by an officer of any bank in The Bahamas that —
 - (a) a specified rate of exchange prevailed between currencies on a specified day; and
 - (b) that at such rate, a specified sum in one currency is equivalent to a specified sum in terms of the currency of The Bahamas,
 shall be sufficient evidence of the rate of exchange so prevailing and of the equivalent sums in terms of the respective currency.

PART II – DUTY OF FINANCIAL INSTITUTIONS

3. Financial institutions.

- (1) For the purposes this Act, “**financial institution**” means—
 - (a) a bank or trust company licensed under the Banks and Trust Companies Regulation Act (*Ch. 316*);
 - (b) a company carrying on—
 - (i) long term insurance business, as defined in section 2 of the Insurance Act (*Ch. 347*);
 - (ii) insurance business as defined in section 2 of the External Insurance Act (*Ch. 348*); or
 - (iii) such other insurance business as the Minister may designate by notice published in the *Gazette*, after consultation with the IRF Steering Committee (established under section 5 of the Proceeds of Crime Act, 2018);
 - (c) a co-operative credit union registered under the The Bahamas Co-operative Credit Unions Act (*No. 9 of 2015*);
 - (d) the holder of a gaming licence, proxy gaming licence, mobile gaming licence, restricted interactive gaming licence and gaming house operator licence under the Gaming Act (*No. 40 of 2014*);

- (e) a broker-dealer within the meaning of section 2 of the Securities Industry Act (*No. 10 of 2011*);
 - (f) a trustee, administration manager or investment manager of a superannuation scheme;
 - (g) an investment fund administrator of an investment fund within the meaning of the Investment Funds Act (*Ch. 369A*);
 - (h) a person whose business or a principal part of whose business consists of—
 - (i) borrowing or lending or investing money;
 - (ii) administering or managing funds on behalf of other persons;
 - (iii) acting as trustee in respect of funds of other persons;
 - (iv) dealing in life insurance, and insurance business, which is investment related;
 - (v) providing financial services that involve the transfer or exchange of cash, including (without limitation) services relating to financial leasing, money transmissions, credit cards, debit cards, treasury certificates, bankers draft and other means of payment, financial guarantees, trading for account of others (in money market instruments, foreign exchange, interest and index instruments, transferable securities and futures), participation in securities issues, portfolio management, safekeeping of cash and liquid securities, investment related insurance and money changing; but not including the provision of financial services that consist solely of the provision of financial advice;
 - (i) a financial and corporate service provider licensed under the Financial and Corporate Service Providers Act (*Ch. 369*);
 - (j) a Designated Non-Financial Business and Profession as defined in section 4;
 - (k) a non-bank entity licensed and regulated by the Central Bank under the Payment Systems Act (*No. 7 of 2012*); and
 - (l) any other category of institutions that the Minister may by order designate.
- (2) A person shall not be regarded as a financial institution for the purposes of this Act merely because that person carries on business as a security guard within the meaning of section 2 of the Inquiry Agents and Security Guards Act (*Ch. 210*).

4. Designated non financial business and profession.

For the purposes of this Act, “Designated Non-Financial Business and Profession” means the business or profession of —

- (a) real estate agents and brokers, when they are involved as real estate broker in financial transactions for their client concerning the buying or selling of real estate, and with respect to both the vendors and purchasers;
- (b) land developer engaged in the sale or partition or condominiumizing of any part, parcel, lot or condominium unit of any larger tract or lot of land or any development of land involving the building of units sharing walls, common areas and utilities;
- (c) a person whose business or any part of whose business consists of —
 - (i) buying for the purpose of trade, sale, exchange, or otherwise dealing in any previously owned precious metals or precious stones, whether altering the same after acquisition or not; or
 - (ii) lending of cash on the security of previously owned precious metals or precious stones of which the person takes possession, but not ownership, in expectation of profit, gain or reward;
- (d) a pay day advance provider, hire purchase lender or any lender whose loans are secured by salary deductions;
- (e) a counsel and attorney or accountant when they engage in, or carry out transactions for a client concerning —
 - (i) the buying or selling of real estate;
 - (ii) a deposit or investment of cash;
 - (iii) the management of client funds or securities;
 - (iv) the management of bank, savings or securities accounts;
 - (v) the organisation of contributions for the creation, operation or management of a legal person;
 - (vi) the creation, incorporation, operation or management of a legal person or legal arrangement, and buying and selling of a business entity;
 - (vii) the provision of a registered office or acting as a registered agent;
 - (viii) the acting as or arranging for another person to act as, a nominee shareholder for another person;
- (f) an accountant, but only to the extent that the accountant receives cash in the course of that person’s business for the purposes of

- deposit or investment otherwise than as part of services rendered pursuant to a financial and corporate service provider's licence;
- (g) a trust and company service providers not otherwise covered by this Act which, as a business, prepare for and carry out or otherwise provide the following services or transactions to third parties —
 - (i) acting as a formation, registration or management agent of legal persons;
 - (ii) acting as, or arranging for another person to act as, a director or secretary of a company or a partner of a partnership, or to hold a similar position in relation to other legal persons;
 - (iii) providing a registered office, business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or legal arrangement;
 - (iv) acting as, or arranging for another person to act as, a trustee of an express trust or performing the equivalent function for another, similar form of legal arrangement;
 - (v) acting as, or arranging for another person to act as, a nominee shareholder for another person;
 - (h) the Savings Bank as constituted under the Savings Bank Act (*Ch. 315*);
 - (i) a friendly society enrolled under the Friendly Societies Act (*Ch. 313*);
 - (j) the Bahamas Mortgage Corporation established under The Bahamas Mortgage Corporation Act (*Ch. 254*);
 - (k) the Bahamas Development Bank established under the Bahamas Development Bank Act (*Ch. 357*); and
 - (l) such other businesses and professions as the Minister may designate by Order.

RISK ASSESSMENT

5. Conduct of risk assessment.

- (1) Every financial institution shall—
 - (a) take appropriate measures to identify, assess and understand its identified risks in relation to—
 - (i) its facility holders and the countries or jurisdictions of their origin;
 - (ii) the countries or jurisdictions of its operations; and

- (iii) its products, services, transactions and delivery channels;
 - (b) develop and implement a comprehensive risk management system approved by the financial institution's senior management and commensurate with the scope of its activities, incorporating continuous identification, measurement, monitoring and controlling of identified risks;
 - (c) take appropriate measures to manage and mitigate those risks referred to in subsection (1)(a);
 - (d) take account of any risk assessment carried out at a national level and any regulatory guidance issued by its Supervisory Authority; and
 - (e) upon request, provide the Supervisory Authority with a copy of its risk assessment.
- (2) Every financial institution shall carry out a risk assessment —
- (a) prior to the launch of a new product or business practice;
 - (b) prior to the use of new or developing technologies;
 - (c) when there is a major event or development in the management and operation of the group,
- to identify and assess the identified risks that may arise in relation to such products, business practices or technology for both new and pre-existing products and such assessment shall take into account —
- (i) the facility holder's geographic area, product, service, transaction and means of delivery risk factors, which shall be proportionate to the nature and size of the financial institution's business; and
 - (ii) the outcome of any risk assessment carried out at a national level, and any regulatory guidance issued.
- (3) Every financial institution shall document in writing the outcome of a risk assessment and shall keep the same up to date and make it available to relevant competent authorities and regulatory bodies upon request.

CUSTOMER DUE DILIGENCE

6. Financial institutions to undertake customer due diligence measures.

- (1) Every financial institution shall undertake customer due diligence measures when opening an account for or otherwise establishing a business relationship with a facility holder.
- (2) Where —

- (a) doubts exist about the veracity or adequacy of previously obtained identification information of a facility holder;
- (b) there is a suspicion of activities relating to identified risks involving the facility holder or the facility holder's account;
- (c) a person, who is neither a facility holder nor in an established business relationship with the financial institution wishes to carry out a transaction (to be referred to as an "occasional transaction");
- (d) it is determined that an occasional transaction is being conducted on behalf of another person,

sections 7 – 9, 13 and 14 shall apply.

- (3) A financial institution shall ensure that every facility holder's due diligence requirements under sections 7 through 9 and 14 are met with respect to facility holders and beneficial owners with which the financial institution has a business relationship and —
 - (a) such measures shall be applied at appropriate times and on the basis of materiality and risk, depending on the type and nature of the facility holder, the business relationship, products or transactions;
 - (b) the adequacy of any previous facility holder due diligence measures that may have applied must be considered; and
 - (c) any relevant regulations made hereunder must be taken into account.
- (4) A financial institution shall not establish or maintain an anonymous account or an account in a fictitious name.
- (5) Unless there is a suspicion of identified risks (in which case the full range of customer due diligence measures must be applied without regard to any monetary threshold) sections 6, 7, 10, 12 to 16 of this Act shall apply to —
 - (a) casinos and gaming houses only when a customer opens an account or engages in a financial transaction equal to or above the designated amount whether conducted as a single transaction or several transactions that appear to be linked; and
 - (b) real estate agents and brokers, when they are involved as real estate broker in financial transactions for their client concerning the buying or selling of real estate, and with respect to both the vendors and purchasers.
- (6) Notwithstanding section 1(2), a financial institution referred to in section 3(1)(b)(i), shall have one year from the date of the commencement of this Act to undertake customer due diligence measures in respect of existing facility holders in accordance herewith.

7. Due diligence measures.

- (1) In fulfilling the obligations imposed by subsection (1) of section 6, every financial institution shall—
 - (a) identify the identity of a facility holder by means of verifying reliable, independent source documents, data or information;
 - (b) identify and verify the identity of any person purporting to act on behalf of the facility holder, and verify that such person is properly authorised to act in that capacity;
 - (c) understand, and as appropriate, obtain information on the purpose and intended nature of the business relationship, including the ownership and control structure of the facility holder.
- (2) In addition to subsection (1), every financial institution shall identify and verify the beneficial owner of a facility, if any, and where the facility holder is a corporate entity, the obligation to verify the identity of beneficial owners will only be required for those beneficial owners having a controlling interest in the corporate entity.
- (3) When applying customer due diligence measures, a financial institution shall take into account the outcome of the risk assessment required to be conducted pursuant to section 5 with respect to each facility holder and business relationship.
- (4) Where the risks identified are low, the financial institution shall conduct simplified due diligence measures unless there is a suspicion of activities related to any identified risk in which case enhanced customer due diligence measures shall be undertaken.
- (5) In the case of a trust, a financial institution shall identify and verify —
 - (a) the settlor, the trustees, the protector (if any) and any other natural person or persons exercising effective control over the trust;
 - (b) the beneficiaries or class of beneficiaries, so that the financial institution is reasonably assured that it will be able to establish the identity of the beneficiary at the time of payout or when the beneficiary intends to exercise his vested rights;
 - (c) other regulated agents of, and service providers to, the trust, including the identity of any person purporting to act as a manager, accountant, investment advisor or tax advisor.
- (6) In the case of a life insurance policy or other investment related insurance policy, a financial institution shall —
 - (a) prior to the time of payout, take reasonable measures to document the name of an identified or designated beneficiary or obtain sufficient information concerning beneficiaries designated by characteristics or by class to assure the financial institution that it

will be able to establish the identity of the beneficiary at the time of the payout; and

- (b) at the time of payout, verify the identity of the beneficiary.
- (7) Any information obtained under subsections (1), (2) and (5) shall be kept accurate current and in accordance with the provisions of this Act.
- (8) A Supervisory Authority may —
 - (a) issue any guidelines, rules or codes of practice regarding identification and verification for natural and legal persons;
 - (b) in consultation with the IRF Steering Committee, issue any guidelines requiring any regulated undertaking to comply with customer due diligence requirements under this Act in respect of each customer.
- (9) If a financial institution forms a suspicion that a transaction relates to an identified risk the financial institution shall take into account the risk of tipping-off when performing the customer due diligence measures.
- (10) Where the institution reasonably believes that performing the customer due diligence measures will tip -off the facility holder or potential facility holder, it may choose not to pursue those measures, and shall file a suspicious transaction report.

8. Identification and verification.

- (1) Subject to subsection (3) every financial institution shall undertake identification and verification measures before opening an account or establishing a business relationship.
- (2) Where in relation to an existing business relationship or facility —
 - (a) any identified risk activity under the Proceeds of Crime Act, 2018 is suspected; or
 - (b) doubts exist about the veracity or adequacy of previously obtained identification information of the facility holder,identification and verification measures shall be completed before the facility holder may conduct any further business.
- (3) The relevant Supervisory Authority may prescribe the circumstances in which verification of the identity of the facility holder and beneficial owner identity may be completed as soon as reasonably practicable after the establishment of the business relationship, provided that —
 - (a) the financial institution effectively manages the risks of activities related to any identified risk; and
 - (b) a delay in verification is essential not to interrupt the normal conduct of the business.

9. Reliance on customer due diligence by third party.

- (1) A financial institution may rely on a third-party to undertake customer due diligence measures as required by section 6(3), except —
 - (a) where the third party is suspected of breach of the identified risk framework as defined; or
 - (b) where the relevant facility holder has committed any offence designated as an identified risk.
- (2) The financial institution relying on the third party shall —
 - (a) immediately obtain the necessary information required under section 6(3) from the third party, including the identity of each facility holder and beneficial owner;
 - (b) take adequate steps to satisfy itself that the third party—
 - (i) will upon request, provide without delay copies of identification information and other relevant documents relating to customer due diligence requirements; and
 - (ii) is subject to AML/CFT obligations, is under supervision for compliance with these obligations and it has adequate procedures for compliance with customer due diligence and record keeping requirements.
- (3) The Minister may by notice, prescribe from time to time designate any jurisdiction that he considers fulfils the terms of subsection (2)(b)(ii).
- (4) Notwithstanding any other provision in this section, the financial institution relying on a third party shall remain responsible for compliance with this Act, including customer due diligence and reporting requirements.
- (5) A financial institution relying on a third party that is part of the same financial group shall —
 - (a) apply customer due diligence, record-keeping requirements and internal controls and measures in accordance with the requirements under this Act;
 - (b) implement the customer due diligence, record-keeping requirements and internal controls and measures is supervised at the financial group level by a competent authority; and
 - (c) ensure that higher jurisdiction risk is adequately mitigated by the group's identified risk framework.
- (6) A financial institution or designated non-financial business and profession shall report to the IRF Steering Committee where there has been persistent regulatory failure in respect of the identified risk framework or recognized weak compliance with international customer due diligence requirements by any jurisdiction or foreign financial institution.

10. Correspondent relationship.

When entering into a correspondent relationship, a financial institution shall, in addition to applying the measures under sections 6 through 11 and 16 of this Act

- (a) identify and verify the identity of the respondent institution with which they enter into a correspondent relationship;
- (b) collect sufficient information on the respondent institution to fully understand the nature of its business and activities;
- (c) based on publicly available information, evaluate the reputation of the respondent institution and the quality of supervision to which it is subject, including whether it has been the subject of any identified risk investigation or regulatory action;
- (d) where applicable, obtain approval from a designated senior manager before establishing a new correspondent relationship;
- (e) evaluate the controls implemented by the respondent institution with respect to identified risks;
- (f) establish an agreement on the respective responsibilities of each party under the relationship, with particular regard to paragraph (e);
- (g) in the case of a trusts, an implied trust or other legal arrangement resulting in the severance of legal ownership from beneficial interest by means of a legal device or entity, be satisfied that the beneficial owner has been appropriately identified; and
- (h) in the case of a payable-through account, satisfy itself that the respondent institution —
 - (i) has conducted customer due diligence on the facility holder that have access to the account;
 - (ii) has implemented mechanisms for on-going monitoring with respect to the facility holder; and
 - (iii) is able to provide relevant customer due diligence information to the financial institution upon request.

11. Inability to fulfil customer identification obligations.

- (1) A financial institution that cannot fulfil the requirements of sections 5 through 9 and 14 of this Act shall—
 - (a) not open the account or establish the business relationship;
 - (b) not carry out the transaction;
 - (c) terminate the business relationship; and
 - (d) consider filing a suspicious transaction report in accordance with this Act.

(2) Any financial institution that —

- (a) intentionally opens an account or establishes a business relationship;
- (b) carries out a transaction;
- (c) fails to terminate a business relationship;

having failed to fulfil the requirements of sections 5 through 9 and 14 commits an offence and is liable upon summary conviction to a fine not exceeding five hundred thousand dollars or to imprisonment for a term of two years or both or in the case of a legal person to a fine not exceeding one million dollars.

12. On-going due diligence.

Every financial institution shall exercise risk based on-going due diligence throughout the course of each business relationship, which shall include —

- (a) ensuring that documents, data, information and records collected under the customer due diligence process are kept updated and relevant, and undertaking regular reviews of existing records, particularly for higher risk facility holders;
- (b) scrutinizing transactions to ensure that the transactions are consistent with the financial institution's knowledge of the customer, the facility holder's risk profile, and, where necessary, the source of funds;
- (c) ensuring the obligations with regard to high risk facility holders, politically exposed persons, and correspondent relationships are fulfilled at all times.

13. Enhanced customer due diligence.

- (1) Every financial institution shall apply enhanced customer due diligence measures to a business relationship or transaction with a facility holder, beneficial owner or financial institution from a jurisdiction assessed by the IRF Steering Committee and such enhanced measures shall be effective and proportionate to the risks identified.
- (2) The financial institution shall —
 - (a) examine as far as possible the background and purpose of all complex, unusually large transactions and all unusual patterns of transactions which have no apparent economic or visible lawful purpose;
 - (b) take such measures as may be prescribed from time to time, to counter the risks identified with respect to facility holders, beneficial owners or financial institutions assessed as high risk.

14. Risk assessment of politically exposed persons.

- (1) Every financial institution shall have in place appropriate risk management systems to determine whether a facility holder or beneficial owner is a politically exposed person and shall —
 - (a) prior to establishing or continuing a business relationship with such facility holder or beneficial owner, obtain the approval of senior management of the institution;
 - (b) take reasonable measures to identify the source of wealth and source of funds of the facility holder;
 - (c) conduct enhanced on-going monitoring of the business relationship.
- (2) A financial institution shall take reasonable measures to determine, prior to the time of pay-out on a life, or other investment related insurance policy, whether —
 - (a) a beneficiary thereof; or
 - (b) a beneficial owner of the beneficiary thereof,is a politically exposed person, and if, so shall inform senior management before paying out the policy, apply the measures of subsection (1)(b) and if necessary submit a suspicious transaction report in accordance with section 26.

RECORD KEEPING

15. Financial institutions to maintain records.

- (1) Every financial institution shall maintain all books and records with respect to their facility holders and transactions in accordance with subsection (2), and the financial institution shall ensure that such records and supporting information are available on a timely basis when required to be disclosed by law.
- (2) The books and records referred to in subsection (1) shall include, as a minimum—
 - (a) records obtained through customer due diligence measures, including account files, business correspondence, and copies of all documents evidencing the identity of facility holders and beneficial owners, and the results of any analysis undertaken in accordance with the provisions of this Act, all of which shall be maintained for not less than five years after the business relationship has ended;
 - (b) records of transactions, both domestic and international, that are sufficient to permit reconstruction of each individual transaction for both account holders and non-account holders, which shall be

maintained for not less than five years from the date of the transaction; and

- (c) records of any findings pursuant to section 11(1)(a) and related transaction information which shall be maintained for at least five years from the date of the transaction.
- (3) Where a financial institution enters liquidation, the liquidator of a financial institution shall maintain for five years from the date of dissolution, such records that would otherwise have been required to be kept by the financial institution but for the liquidation.

16. How records are to be kept.

Records required to be kept under section 15 by a financial institution shall be kept in written form in the English language, or in a form readily accessible and convertible in written form in the English language.

17. Mandatory destruction of records.

- (1) Subject to subsection (2), every financial institution shall ensure that —
 - (a) every record retained by that financial institution pursuant to any provision of this Part; and
 - (b) every copy of any such record,is destroyed as soon as practicable after the expiry of the period for which the financial institution is required, by any provision of this Part, to retain that record.
- (2) Nothing in this section requires the destruction of any record, or any copy of any record, in any case where there is a lawful reason for retaining that record.
- (3) Without limiting the generality of subsection (2), there is a lawful reason for retaining a record if the retention of that record is necessary —
 - (a) in order to comply with the requirements of any other written law;
 - (b) to enable any financial institution to carry on its business; or
 - (c) for the purposes of the detection, investigation or prosecution of any offence.

18. Record keeping offences.

- (1) A financial institution commits an offence under this section where in contravention of section 15 it fails, without reasonable excuse, to retain or to properly keep records.
- (2) A financial institution which commits an offence against this section is liable on summary conviction to a fine not exceeding —
 - (a) in the case of any individual, twenty thousand dollars;

- (b) in the case of a body corporate, one hundred thousand dollars.

INTERNAL CONTROLS

19. Financial institution to develop procedures.

- (1) Every financial institution shall develop and implement procedures for the prevention of activities related to identified risks.
- (2) The procedures referred to in subsection (1) shall be —
 - (a) approved by senior management and be monitored and enhanced, as necessary; and
 - (b) appropriate to the risks identified under section 5 or by the IRF Steering Committee;
 - (c) proportionate to the nature and size of the financial institution's business, but should at a minimum include —
 - (i) internal policies, procedures and controls to fulfil the obligations pursuant to this Act;
 - (ii) adequate screening procedures to ensure appropriate and high standards when hiring employees;
 - (iii) on-going training for all statutory directors, officers and employees to maintain awareness of the laws and regulations relating to identified risks, to assist in recognising transactions and actions that may be linked to identified risks, and instruct them in the procedures to be followed in such cases; and
 - (iv) independent audit arrangements to review and verify compliance with and effectiveness of the measures taken in accordance with this Act.

20. Designation of compliance officers.

- (1) Every financial institution shall designate a compliance officer at senior management level to be responsible for the implementation of and on-going maintenance of the identified risk internal procedures and controls of the financial institution in accordance with the requirements of this Act.
- (2) The compliance officer shall, on demand, have unrestricted access to all books, records and employees of the financial institution as may be necessary to fulfil his responsibilities.

21. Internal controls in a group of entities.

- (1) All financial institutions that are part of a group of entities that are required to be compliant with this Part, shall implement group wide policies and procedures against activities relating to identified risks, addressing all aspects under subsections (1) and (2) of section 19 and including policies and procedures for sharing of information within the group for or related to customer due diligence, management of any identified risks and for safeguarding the confidentiality and use of the shared information.
- (2) The policies and procedures referred to in subsection (1) shall be applied to all branches and majority owned subsidiaries of the group.
- (3) Any compliance officer who conducts group-level compliance, audit, anti-money laundering and counter terrorism financing functions shall have the power to request account and transaction information of facility holder from branches and subsidiaries as necessary to fulfil their functions.

22. Minister may prescribe measures to be imposed on financial institutions.

The Minister may by regulations prescribe the type and extent of measures a financial institution shall undertake with respect to each of the requirements in this Part, having regard to the identified risks, the size of the business or profession, and the standards set by relevant professional bodies.

23. Compliance with obligations by foreign subsidiaries and branches.

- (1) A financial institution shall require foreign branches and any subsidiaries over which it has control, to implement the requirements of this Act to the extent that the applicable laws and regulations in the jurisdiction where the foreign branch or subsidiary is domiciled so permit.
- (2) Where the applicable laws in a foreign branch or subsidiary prevents compliance with these obligations for any reason, the financial institution shall apply appropriate additional measures to manage identified risks and advise the relevant Supervisory Authority.

24. Prohibition against shell banks.

- (1) No —
 - (a) person shall establish, operate or deal with a shell bank;
 - (b) financial institution shall deal with a shell bank in another jurisdiction;
 - (c) financial institution shall enter into or continue a correspondent relationship with —

- (i) a shell bank; or
 - (ii) a respondent institution, that permits its accounts to be used by a shell bank.
- (2) Any person or financial institution that contravenes subsection (1) commits an offence.
- (3) For the purposes of this section—
 - “**physical presence**” means meaningful mind and management located within a jurisdiction. The existence of a local agent or low level staff does not constitute physical presence; and
 - “**shell bank**” means a bank that has no physical presence in the jurisdiction in which it is incorporated and licensed, and which is unaffiliated with a regulated financial group that is subject to effective consolidated supervision.

SUSPICIOUS TRANSACTIONS

25. Financial institutions to report suspicious transactions.

- (1) Notwithstanding any other law, where —
 - (a) any person conducts or seeks to conduct any transaction by, through or with a financial institution (whether or not the transaction or proposed transaction involves cash); and
 - (b) the financial institution knows, suspects or has reasonable grounds to suspect that the transaction or proposed transaction—
 - (i) involves the proceeds of criminal conduct as defined Proceeds of Crime Act;
 - (ii) is related to an offence under the Proceeds of Crime Act;
 - (iii) is an attempt to avoid the enforcement of any provision of the Proceeds of Crime Act; or
 - (iv) is an identified risk,

the financial institution shall, as soon as practicable after forming that suspicion, report the transaction or proposed transaction to the Financial Intelligence Unit (hereinafter referred to as a “suspicious transaction report”).
- (2) Subject to subsection (3), a suspicious transaction report shall —
 - (a) be in the prescribed form (if any);
 - (b) contain the details specified in the *First Schedule*;
 - (c) contain a statement of the grounds on which the financial institution holds the suspicion referred to in subsection (1)(b); and

- (d) be forwarded, in writing, to the Financial Intelligence Unit —
 - (i) by way of facsimile transaction; or
 - (ii) by such other means (including, without limitation, electronic mail or other similar means of communication) as may be agreed from time to time with the financial institution concerned.
- (3) Notwithstanding subsection (2)(a) or (d), where the urgency of the situation requires, a suspicious transaction report may be made orally to the Financial Intelligence Unit, but in any such case the financial institution shall, as soon as practicable, forward to the Financial Intelligence Unit a suspicious transaction report that complies with the requirements of subsection (2).

26. Auditors to report suspicious transactions.

Notwithstanding any other law, any person who, in the course of carrying out the duties of that person's occupation as an auditor, has reasonable grounds to suspect, in relation to any transaction, that the transaction is or may be relevant to the enforcement of the Proceeds of Crime Act, shall report that transaction to the Financial Intelligence Unit.

27. Protection of identity of persons, etc. relating to suspicious transaction reports.

- (1) Except for the purposes of the administration of this Act, no person shall disclose any information that will identify or is likely to identify the person who prepared or made a suspicious transaction report, or handled the underlying transaction.
- (2) No person shall be required to disclose a suspicious transaction report or any information contained in the report or provided in connection with it, in any judicial proceeding unless the Court is satisfied that the disclosure of the information is necessary in the interests of justice.

28. Protection of persons reporting suspicious transactions.

- (1) Where any information is disclosed or supplied by any person in a suspicious transaction report made, pursuant to section 25, by any person, no civil, criminal or disciplinary proceedings shall lie against that person —
 - (a) in respect of the disclosure or supply, or the manner of the disclosure or supply, of that information by that person; or
 - (b) for any consequences that follow from the disclosure or supply of that information.

- (2) Where any information is disclosed or supplied, pursuant to section 26, by any person, no civil, criminal or disciplinary proceedings shall lie against that person —
 - (a) in respect of the disclosure or supply, or the manner of the disclosure or supply, of that information by that person; or
 - (b) for any consequences that follow from the disclosure or supply of that information,unless the information was disclosed or supplied in bad faith.
- (3) Nothing in subsection (1) or subsection (2) applies in respect of proceedings for an offence under Part V.

29. Inapplicability of confidentiality provisions.

There shall be no liability for any breach of any secrecy or confidentiality provisions in any other law if a financial institution is fulfilling their obligations under this Act.

30. Tipping off.

- (1) A person commits an offence —
 - (a) if he knows or suspects that any disclosure relating to a suspicious transaction has been made; and
 - (b) if he makes a disclosure relating to the suspicious transaction which is likely to prejudice any investigation which might be conducted following the disclosure referred to in paragraph (a).
- (2) A person who commits an offence pursuant to subsection (1) is liable —
 - (a) on summary conviction to a term of imprisonment of twelve years or to a fine not exceeding five hundred thousand dollars or to both; or
 - (b) on conviction on indictment, to imprisonment for a term not exceeding twenty years or to a fine or to both.

PART III – ROLE OF THE COMPLIANCE COMMISSION

31. Continuation of Compliance Commission.

- (1) The body known and existing as the Compliance Commission, established under section 39 of the Financial Transactions Reporting Act (*Ch. 368*), immediately before the coming into operation of this Act is hereby preserved and continues in existence as the Compliance Commission.

- (2) The persons serving as members of the Commission on the date of the coming into force of this Act, shall continue in office and shall be for the purposes of this Act, as if they had been appointed under this Act on the same terms and conditions until the expiration of their term.
- (3) The *Second Schedule* shall have effect with respect to the constitution and procedures of the Commission and otherwise in relation thereto.

32. Functions of Commission.

- (1) The functions of the Commission are —
 - (a) to maintain a general review of financial institutions in relation to the conduct of financial transactions and to ensure compliance with the provisions of this Act;
 - (b) to conduct on-site examinations of the business of a financial institution when deemed necessary by the Commission at the expense of the financial institution, for the purpose of ensuring compliance with the provisions of this Act, and in such cases where the Commission is unable to conduct such examination, to appoint an auditor at the expense of the financial institution to conduct such examination and to report thereon to the Commission.
- (2) For the purposes of this section —
 - “**financial institution**” shall include those institutions specified in section 4 that are not otherwise subject to regulation by the Central Bank of The Bahamas, the Gaming Board, the Securities Commission of The Bahamas, the Insurance Commission of The Bahamas or the Inspector of Financial and Corporate Services.

33. Designated Non-Financial Business and Profession to register with Compliance Commission.

- (1) Every financial institution within the definition of section 32(2) shall register with the Commission in the form provided by the Commission.
- (2) Every financial institution referred to under subsection (1) —
 - (a) established before the coming into force of this Act which fails to register with the Commission within one month of the coming into force of this Act; or
 - (b) established after the coming into force of this Act, which fails to register within one month of commencement of business,commits an offence and is liable to a penalty of five thousand dollars for each day that the financial institution remains unregistered.
- (3) When a financial institution within the definition section 32(2) —
 - (a) has a change in registered office or principal place of business;

- (b) has a change in beneficial ownership, director, partner, compliance officer or money laundering reporting officer,

the financial institution shall within three months of such change, notify the Commission.

- (4) Where a financial institution fails to notify the Commission as required under subsection (3), the financial institution commits an offence and is liable to a penalty of five thousand dollars for each failure to notify in accordance with subsection (3).

34. Powers of Commission to require production of records.

- (1) In the performance of its functions under this Act, the Commission may at all reasonable times require a financial institution—
 - (a) to produce for examination, such records that are required to be kept pursuant to section 15; and
 - (b) to supply such information or explanation, as the Commission may reasonably require for the purpose of enabling the Commission to perform its functions under this Act.
- (2) Any person failing or refusing to produce any record or to supply any information or explanation as is required by subsection (1), commits an offence and is liable on summary conviction to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding three years or to both such fine and imprisonment.

35. Confidentiality.

- (1) Subject to subsections (2) and (3), the Commission or any officer, employee, agent or adviser of the Commission who discloses any information relating to the affairs of —
 - (a) the Commission;
 - (b) a financial institution; or
 - (c) a facility holder or client of a financial institution,that it or he has acquired in the course of its or his duties or in the exercise of the Commission's functions under this or any other law, commits an offence and is liable on summary conviction to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding three years.
- (2) Subsection (1) shall not apply to a disclosure —
 - (a) lawfully required or permitted by any court of competent jurisdiction within The Bahamas;
 - (b) for the purpose of assisting the Commission to exercise any functions conferred on it by this or any other Act, or by regulations made thereunder;

- (c) in respect of the affairs of a financial institution, facility holder or client of a financial institution, with the consent of the financial institution, facility holder or client, as the case may be, which consent has been voluntarily given;
 - (d) where the information disclosed is or has been available to the public from any other source;
 - (e) where the information disclosed is in a manner that does not enable the identity of a financial institution, facility holder or client of a financial institution to which the information relates to be ascertained;
 - (f) to a person with a view to the institution of, or for the purpose of —
 - (i) criminal proceedings;
 - (ii) disciplinary proceedings, whether within or outside The Bahamas, relating to the exercise by a counsel and attorney, auditor, accountant, valuer or actuary of his professional duties;
 - (iii) disciplinary proceedings relating to the discharge by a public officer, or a member or employee of the Commission of his duties; or
 - (g) in any legal proceedings in connection with —
 - (i) the winding-up or dissolution of a financial institution; or
 - (ii) the appointment or duties of a receiver of a financial institution.
- (3) Subject to subsection (6), the Commission may disclose to an overseas regulatory authority information necessary to enable that authority to exercise regulatory functions including the conduct of civil or administrative investigations and proceedings to enforce laws, regulations and rules administered by that authority.
- (4) In deciding whether or not to exercise its power under subsection (3), the Commission may take into account —
- (a) whether the inquiries relate to the possible breach of a law or other requirement which has no close parallel in The Bahamas or involve the assertion of a jurisdiction not recognised by The Bahamas; and
 - (b) the seriousness of the matter to which the inquiries relate and the importance to the inquiries of the information sought in The Bahamas.
- (5) The Commission may decline to exercise its power under subsection (3) if the overseas regulatory authority fails to undertake to make such contribution towards the cost of the exercise as the Commission considers appropriate.

- (6) Nothing in subsection (3) authorises a disclosure by the Commission unless the Commission —
- (a) has satisfied itself that the intended recipient authority is subject to adequate legal restrictions on further disclosures which shall include the provision of an undertaking of confidentiality; or
 - (b) has been given an undertaking by the recipient authority not to disclose the information provided without the consent of the Commission; and
 - (c) is satisfied that the assistance requested by the overseas regulatory authority is required for the purposes of the overseas regulatory authority's regulatory functions including the conduct of civil or administrative investigations or proceedings to enforce laws, regulations and rules administered by that authority; and
 - (d) is satisfied that information provided following the exercise of its power under subsection (3) will not be used in criminal proceedings against the person providing the information.
- (7) Where in the opinion of the Commission, it appears necessary in relation to any request for assistance received from an overseas regulatory authority, to invoke the jurisdiction of a Stipendiary and Circuit Magistrate in obtaining information requested by the overseas regulatory authority, the Commission shall —
- (a) immediately notify the Attorney-General with particulars of the request; and
 - (b) send the Attorney-General copies of all documents relating to the request,
- and the Attorney-General shall be entitled, in a manner analogous to *amicus curiae*, to appear or take part in any proceedings in The Bahamas, or in any appeal from such proceedings, arising directly or indirectly from any such request.
- (8) The Commission may cooperate with any other regulatory authority in The Bahamas, including the sharing of information that it has acquired in the course of its duties or in the exercise of its functions under this or any other law where it considers such cooperation or information may be relevant to the function of such other regulatory authority, or as a necessary part of a framework for consolidated supervision, oversight or regulation of the financial services sector.
- (9) In this section, “**overseas regulatory authority**” means an authority which in a country or territory outside The Bahamas exercises functions corresponding to any functions of the Commission.

36. Minister may designate other body to carry out regulatory functions under this Act.

Upon the recommendation of the Commission, the Minister may by order designate any professional body, association, or entity which represents a sector of financial institutions as defined in section 32(2), with statutory authority—

- (a) to regulate the activities of its members; and
- (b) to ensure compliance with the provisions of this Act upon such terms stipulated by the Commission.

37. Codes of practice.

- (1) The Commission may, from time to time, after consultation with —
 - (a) the Financial Intelligence Unit
 - (b) The Bahamas Bar Council;
 - (c) The Bahamas Institute of Chartered Accountants;
 - (d) The Bahamas Real Estate Association;
 - (e) such other bodies and organisations representative of such financial institutions as are required to be regulated under this Act,issue such codes of practice as the Commission thinks necessary —
 - (i) for the purpose of providing guidance as to the duties, requirements and standards to be complied with and the procedures (whether as to verification, record-keeping, reporting of suspicious transactions or otherwise) and best practices to be observed by financial institutions;
 - (ii) generally for the purposes of this Act.
- (2) Where a financial institution fails to comply with any code of practice issued pursuant to this section, the financial institution shall be subject to —
 - (a) any sanctioning powers that its Supervisory Authority may possess to deal with the violation or non-compliance; and
 - (b) prosecution pursuant to any regulations made hereunder or under any other law in order to enforce the codes of practice.

PART IV – INVESTIGATION AND POWERS OF SEARCH

38. Search warrants.

Any Magistrate who, on an application in writing made on oath, is satisfied that there are reasonable grounds for believing that there is in or on any place or thing —

- (a) any thing upon or in respect of which any offence against this Act or any regulations made under this Act has been, or is suspected of having been, committed;
- (b) any thing which there are reasonable grounds for believing —
 - (i) will be evidence as to the commission of any such offence; or
 - (ii) is intended to be used for the purpose of committing any such offence,

may issue a search warrant in respect of that thing.

39. Form and content of search warrant.

- (1) A search warrant shall be in the form prescribed and directed to a member of the Royal Bahamas Police Force (hereinafter referred to as the "Police Force") specified in the warrant, or generally to every member of the Police.
- (2) Every search warrant shall —
 - (a) specify the place or thing that may be searched pursuant to the warrant;
 - (b) specify the offence or offences in respect of which the warrant is issued;
 - (c) provide a description of the articles or things that are authorised to be seized;
 - (d) state the period during which the warrant may be executed, being a period not exceeding fourteen days from the date of issue;
 - (e) specify any special conditions (if any) as the person issuing the warrant may specify therein.

40. Powers conferred by warrant.

- (1) Subject to any special conditions specified in a warrant pursuant to section 39(3) every search warrant shall authorise the member of the Police Force executing the warrant —
 - (a) to enter and search the place or thing specified in the warrant at any time by day or night during the currency of the warrant;
 - (b) to use such assistance as may be reasonable in the circumstances for the purpose of the entry and search;
 - (c) to use such force as is reasonable in the circumstances for the purposes of effecting entry, and for breaking open anything in or on the place searched;
 - (d) to search for and seize any thing referred to in any of paragraphs (a) and (b) of section 38; and

(e) in any case where any thing referred to in any of those paragraphs is a document —

- (i) to take copies of the document, or extracts from the documents;
- (ii) to require any person who has the document in his or her possession or under his or her control to reproduce, or to assist the person executing the warrant to reproduce, in usable form, any information recorded or stored in the document.

(2) Every person called upon to assist any member of the Police Force executing a search warrant shall have the powers described in paragraphs (c) and (d) of subsection (1).

41. Person executing warrant to produce evidence of authority.

Any member of the Police Force executing a search warrant shall —

- (a) have that warrant with him or her;
- (b) produce it on initial entry and, if requested, at any subsequent time; and
- (c) shall, if requested at the time of the execution of the warrant or at any subsequent time, provide a copy of the warrant within seven days after the request is made.

42. Notice of execution of warrant.

Every member of the Police Force who executes a search warrant shall, not later than seven days after the seizure of any thing pursuant to that warrant, give to the owner or occupier of the place or thing searched, and to every other person whom the member of the Police Force has reason to believe may have an interest in the thing seized, a written notice specifying —

- (a) the date and time of the execution of the warrant;
- (b) the identity of the person who executed the warrant;
- (c) the thing seized under the warrant.

43. Custody of property seized.

Where property is seized pursuant to a search warrant, the property shall be kept in the custody of a member of the Police Force, except while it is being used in evidence or is in the custody of any court, until it is dealt with in accordance with this Act.

44. Procedure where certain documents seized.

Section 70 of the Criminal Procedure Code Act (*Ch. 91*) shall so far as applicable and with all necessary modifications, apply in respect of the seizure of any documents under any search warrant, as if the search warrant had been issued under section 70 of that Act.

45. Disposal of things seized.

- (1) This section shall apply with respect to any thing seized under a search warrant.
- (2) In any proceedings for an offence relating to any thing seized under a search warrant, the court may order, either at the trial or hearing or on an application, that the thing be delivered to the person appearing to the court to be entitled to it, or that it be otherwise disposed of in such manner as the court thinks fit.
- (3) Any member of the Police may at any time, unless an order has been made under subsection (2), return the thing to the person from whom it was seized, or apply to a Magistrate for an order as to its disposal and on any such application, the Magistrate may make any order that a court may make under subsection (2).
- (4) If proceedings for an offence relating to the thing are not brought within a period of three months of seizure, any person claiming to be entitled to the thing may, after the expiration of that period, apply to a Magistrate for an order that it be delivered to him and on any such application, the Magistrate may adjourn the application, on such terms as he thinks fit, for proceedings to be brought, or may make any order that a court may make under subsection (2).
- (5) Where any person is convicted in any proceedings for an offence relating to anything in respect of which a search warrant has been issued enabling seizure, and any order is made under this section, the operation of the order shall be suspended —
 - (a) in any case until the expiration of the twenty-one days for the filing of a notice of appeal or an application for leave to appeal;
 - (b) where a notice of appeal is filed within the time so prescribed, until the determination of the appeal; and
 - (c) where application for leave to appeal is filed within the time so prescribed, until the application is determined and, where leave to appeal is granted, until the determination of the appeal.
- (6) Where the operation of any such order is suspended until the determination of the appeal, the court determining the appeal may, by order, cancel or vary the order.

PART V - OFFENCES

46. Interpretation.

For the purposes of this Part, a “financial institution” includes a director, partner, officer, principal or employee thereof.

47. Failure to comply with identification requirements.

A financial institution which intentionally —

- (a) fails to carry out a risk assessment pursuant to section 5;
- (b) fails to undertake the identification of a facility holder or otherwise to fulfil the identification or other requirements of the facility holder in accordance with subsections (2) through (5) of section 6;
- (c) opens an anonymous account or an account in a fictitious name for a facility holder in violation of subsections (2) through (5) of section 6;
- (d) establishes a shell bank or enters into a correspondent relationship with a shell bank or a financial institution that allows its accounts to be used by a shell bank in breach of the requirements of section 24; or
- (d) fails to maintain books and records as required by section 16; destroys or removes such records; or fails to make such information available in a timely manner in response to a lawful request for such books or records,

commits an offence and is liable upon summary conviction to imprisonment for a term of up to five years or to a fine of up to five hundred thousand dollars or to both.

48. Failure to fulfil due diligence obligations.

A financial institution which intentionally—

- (a) fails to conduct ongoing due diligence with respect to the accounts and transactions of facility holders in compliance with section 12;
- (b) fails to comply with the obligations for enhanced due diligence in section 13; or
- (c) fails to maintain internal control programs in compliance with sections 19 through 23,

commits an offence and is liable upon summary conviction to imprisonment for a term of up to five years or to a fine of up to five hundred thousand dollars or to both.

49. Failure to report suspicious transactions.

A financial institution which intentionally fails to submit a report to the Financial Intelligence Unit as required by sections 25 and 26 commits a summary offence and is liable to imprisonment for a term of up to five years or to a fine of up to five hundred thousand dollars or to both.

50. False or misleading statements.

A financial institution which —

- (a) intentionally makes a false or misleading statement;
- (b) provides false or misleading information; or
- (c) otherwise fails to state a material fact in connection with its obligations under this Part, including the obligation to make a suspicious transaction or currency transaction report,

commits an offence and is liable upon summary conviction to imprisonment for a term of up to five years or to a fine of up to five hundred thousand dollars or both.

51. Confidentiality violation.

A financial institution which intentionally discloses to a facility holder or a third party information in violation of section 35 commits an offence and is liable upon summary conviction to imprisonment for a term of up to five years or to a fine of up to five hundred thousand dollars or to both.

52. Additional sanctions.

A financial institution convicted of an offence in sections 47 to 51 —

- (a) is subject, in addition to the penalties set out therein, to the sanctions and measures available to the competent supervisory, regulatory or disciplinary authority for administrative violations; and
- (b) may also be banned for such period as the Court, before whom the financial institution is convicted, thinks appropriate in all the circumstances, from pursuing the business or profession which provided the opportunity for the offence to be committed.

53. Defence.

- (1) It is a defence to a charge against a person in relation to a contravention of, or a failure to comply with, any provision of Part II, if the defendant proves —
 - (a) that he took all reasonable steps to ensure that he complied with that provision; or

- (b) that, in the circumstances of the particular case, he could not reasonably have been expected to ensure that he complied with the provision.
- (2) In determining, for the purposes of subsection (1)(a), whether or not a financial institution took all reasonable steps to comply with a provision of this Part, the court shall have regard to —
 - (a) the nature of the financial institution and the activities in which it engages;
 - (b) the existence and adequacy of any procedures established by the financial institution to ensure compliance with the provision, including —
 - (i) staff training; and
 - (ii) audits to test the effectiveness of any such procedures; and
 - (c) any relevant guidelines issued by the Financial Intelligence Unit or any guidelines issued by any other Supervisory Authority.

PART VI – MISCELLANEOUS

54. Liability of employers and principals.

- (1) Subject to subsection (3), anything done or omitted by a person as the employee of another person in the course of their employment shall be treated as done or omitted by that other person as well as by the first-mentioned person, where it was done with that other person's knowledge or approval.
- (2) Anything done or omitted by a person as the agent of another person shall, for the purposes of this Act, be treated as done or omitted by that other person as well as by the first-mentioned person, unless it is done or omitted without that other person's express, implied or apparent authority, precedent or subsequent.
- (3) In any proceedings under this Act against any person in respect of anything alleged to have been done or omitted to be done by an employee or agent of that person, it shall be a defence for that person to prove that the person took such steps as were reasonably practicable to prevent the employee or agent, as the case may be, from doing or omitting to do such thing.

55. Directors and officers of bodies corporate.

Where any body corporate is convicted of an offence against this Act or any regulations made hereunder this Act, every director and every officer concerned in the management of the body corporate is guilty of the offence where it is

proved that the act or omission that constituted the offence took place with that person's knowledge, authority, permission or consent, express or implied.

56. Non-compliance not excused by contractual obligations.

- (1) The provisions of this Act shall have effect notwithstanding anything to the contrary in any contract or agreement.
- (2) No person shall be exempted from compliance with any requirement of this Act by reason only that compliance with that requirement would constitute breach of any contract or agreement.

57. Administrative penalties.

- (1) Notwithstanding any penalties that may be imposed under this Act, any —
 - (a) financial institution that fails to comply with any provision of this Act or the Proceeds of Crime Act, 2018;
 - (b) employee, director or senior manager of a financial institution who knowingly concurs in a failure to comply with any provision of this Act or the Proceeds of Crime Act, 2018 ,

may be subject to an administrative penalty imposed by the Supervisory Authority with responsibility for regulating that financial institution and

- (i) in the case of a company, to a maximum penalty of two hundred thousand dollars;
 - (ii) in the case of an employee, director or a senior manager of a financial institution, to a maximum penalty of fifty thousand dollars.
- (2) A Supervisory Authority may not impose a penalty on a person specified in subsection (1)(a) or (b) for contravention of any customer due diligence measures if the Supervisory Authority is satisfied that the person took all reasonable steps and exercised all due diligence to ensure that the requirement would be complied with.
- (3) In deciding whether a person has contravened a provision of this Act, Supervisory Authority must consider whether at the time, the person followed any relevant guidance, rules or codes of practice issued by the Supervisory Authority.
- (4) When determining any penalty to be imposed on a person under subsection (1), a Supervisory Authority must take into account all relevant circumstances, including where appropriate —
 - (a) the gravity and the duration of the contravention or failure;
 - (b) the degree of responsibility of the person on whom the Supervisory Authority proposes to impose the penalty;

- (c) the financial strength of the person;
 - (d) the amount of profit gained or loss avoided by the person;
 - (e) the loss to third parties caused by the contravention or failure;
 - (f) the level of cooperation of the person with the Supervisory Authority;
 - (g) any previous contraventions or failures of the person; and
 - (h) any potential systemic consequences of the contravention or failure.
- (5) Where a Supervisory Authority proposes to impose a penalty on a person under subsection (1), the Supervisory Authority must issue a written warning to the person specifying —
- (a) the nature of the contravention which the person is believed to have committed;
 - (b) the amount of the penalty;
 - (c) a reasonable period, which may not be less than twenty-eight days from the date of the notice, within which the person to whom the warning is issued may make representations to the Supervisory Authority.
- (6) The Supervisory Authority may extend the period specified in the notice.
- (7) The Supervisory Authority must determine, within a reasonable period, whether to give the person concerned a notice of its decision.
- (8) A decision given pursuant to subsection (7), must —
- (a) be in writing;
 - (b) give the Supervisory Authority's reason for the decision to take the action to which the notice relates;
 - (c) give an indication of —
 - (i) any right to have the matter appealed provided under any other law governing that financial institution; and
 - (ii) the procedure for appeal.
- (9) If a Supervisory Authority decides not to take —
- (a) the action proposed in a warning issued; or
 - (b) the action referred to in its notice of decision,
- the Supervisory Authority must give a notice of discontinuance to the person to whom the warning notice or decision notice was given.
- (10) A notice of discontinuance must identify the proceedings which are being discontinued.

58. Act to bind the Crown.

This Act binds the Crown.

59. Regulations.

The Minister may from time to time make regulations for all or any of the following purposes —

- (a) prescribing the forms of application, reports and other documents required under this Act;
- (b) prescribing amounts that are required to be prescribed for the purposes of this Act;
- (c) prescribing, for the purposes of section 16 records to be kept and retained by financial institutions, or any specified class or classes of financial institutions, and the periods for which those records are to be retained;
- (d) exempting or providing for the exemption of any transaction or class of transactions from all or any of the provisions of this Act;
- (e) prescribing, for the purposes of this Act, what accounts and arrangements shall be deemed to be or not to be facilities, and the circumstances and conditions in which any account or arrangement shall be deemed to be or not to be a facility;
- (f) prescribing, for the purposes of this Act, what persons or classes of persons shall be deemed to be or not to be financial institutions, and the circumstances and conditions in which any persons or classes of persons shall be deemed to be or not to be financial institutions;
- (g) prescribing, for the purposes of this Act, what transactions shall be deemed to be or not to be occasional transactions, and the circumstances and conditions in which any transaction shall be deemed to be or not to be an occasional transaction;
- (h) prescribing the manner in which any notice or other document required by this Act to be given or served;
- (i) prescribing offences in respect of the contravention of or non-compliance with any provision of any regulations made under this section, and prescribing fines, that may, on conviction, be imposed in respect of any such offences;
- (j) providing for such matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for their due administration.

60. Extension of Act.

For the purposes of this Act, sections 25 – 30 shall apply to providers of general insurance business as defined in section 2 of the Insurance Act (*Ch. 347*).

61. Repeals.

The Financial Transactions Reporting Act (*Ch. 368*) is hereby repealed.

FIRST SCHEDULE

(section 25(2)(b))

DETAILS TO BE INCLUDED IN A SUSPICIOUS TRANSACTION REPORT

1. The name, address, date of birth, and occupation (or, where appropriate, business or principal activity) of each person conducting the transaction (if known to the person making the report).
2. The name, address, date of birth, and occupation (or, where appropriate, business or principal activity) of any person on whose behalf the transaction is conducted (if known to the person making the report).
3. Where an account with a financial institution is involved in the transaction
—
 - (a) the type and identifying number of the account;
 - (b) the name of the person in whose name the account is operated;
 - (c) the names of the signatories to the account.
4. The nature of the transaction.
5. The amount involved in the transaction.
6. The type of currency involved in the transaction.
7. The date of the transaction.
8. In relation to the financial institution through which the transaction was conducted, the name of the officer, employee, or agent of that financial institution who handled the transaction.
9. The name of the person who prepared the report.

SECOND SCHEDULE

(section 32(3))

1. Membership of Commission.

The Commission shall consist of three members, appointed by the Governor-General in writing, being persons appearing to the Governor-General to have wide experience in, and to have shown capacity in, financial and commercial matters, industry, law or law enforcement.

2. Term of appointment.

The members of the Commission may be appointed for a term of three years and be eligible for reappointment.

3. Exclusion from membership.

A person may not be appointed a member or remain a member of the Commission who —

- (a) is a member of either House of Parliament;
- (b) is a director, officer or servant of, or has a controlling interest in, any financial institution.