

**COMMONWEALTH
MODEL LAW
FOR THE PROHIBITION OF
MONEY LAUNDERING
&
SUPPORTING DOCUMENTATION**

Commonwealth Secretariat
London
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**MODEL LAW FOR THE PROHIBITION OF MONEY
LAUNDERING**

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DEFINITIONS AND PROVISION FOR REGULATIONS COMMON TO ALL PARTS OF THE DRAFT MODEL LAW

1. In this Law -

“*business transaction*” means any arrangement, including opening an account, between two or more persons where the purpose of the arrangement is to facilitate a transaction between the persons concerned and includes any related transaction between any of the persons concerned and another person.

“*business transaction record*” includes where relevant to a business transaction –

- (a) the identification records of all the persons party to that transaction;
- (b) a description of that transaction sufficient to identify its purpose and method of execution;
- (c) the details of any account used for that transaction. including Bank. Branch and Sort Code; and
- (d) the total value of that transaction.

“*competent authority*” means a person or persons appointed by (the Minister for Justice) to carry out the functions of the competent authority as provided in this Law. and includes any person exercising such functions on behalf of the competent authority:

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

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

“financial institution.” means any person whose regular occupation or business is the carrying out of -

- (a) any activity listed in the Schedule to this Law;
- (b) any other activity defined by the (Minister of Finance) as such by an order published in (the Gazette) amending the Schedule to this Law.

“freezing” means restraining any transaction or dealing in property:

“identification record” means -

- (a) where the person is a corporate body, the details -
 - (i) of the certificate of incorporation, (notarised) where the corporate body is incorporated abroad;
 - (ii) of the most recent annual return to the (State Registry) of the -corporate body, (notarised) where the corporate body is incorporated abroad;
 - (iii) of any officer of the corporation as required in sub-paragraph (b) of this definition;
- (b) otherwise, sufficient documentary evidence to prove to the satisfaction of a financial institution that the person is who that person claims to be:

and for these purposes “person” shall include any person who is a nominee, agent, beneficiary or principal in relation to a business transaction;

“money laundering” means -

- (a) (i) engaging, directly or indirectly, in a transaction that involves property that is proceeds of crime: or
 - (ii) receiving, possessing, concealing, disguising, transferring, converting, disposing of, removing from or bringing into the (territory) any property that is proceeds of crime; and
- (b) (i) knowing, or having reasonable grounds for suspecting that the property is derived or realised, directly or indirectly, from some form of unlawful activity; or
 - [(ii) where the conduct is conduct of a natural person, without reasonable excuse failing to take reasonable steps to ascertain whether or

not the property is derived or realised directly or indirectly, from some form of unlawful activity;] or

(iii) where the conduct is conduct of a financial institution, failing to implement or apply procedures and control to combat money laundering.

“*proceeds of crime*” means the proceeds of unlawful activity (wherever committed) and includes any property which is mingled with property that is proceeds of unlawful activity;

“*property*” includes money and all other property real or personal, heritable or moveable including things in action and other intangible or incorporeal property wherever situate and includes any interest in such property;

“*requesting State*” means any State which makes a request under the provisions of Part IV;

“*unlawful activity*” means any activity which under any law anywhere is a crime and is punishable by death or imprisonment for a maximum period of not less than twelve months.

2. A reference in this Law to a document includes a reference to:
 - (a) any part of a document;
 - (b) any copy, reproduction or duplicate of the document or of my part of the document, or
 - (c) any part of such copy, reproduction or duplicate.
3. The Minister (of)(for)(...) may make regulations as may be required for carrying into effect any of the provisions of this Law and may amend or revoke such regulations.

PART I

MONEY LAUNDERING PROHIBITED

Offence of Money Laundering

1. A person who, after the commencement of this Law, engages in money laundering is guilty of an offence.

Offence Committed by a Body of Persons

2. Where an offence under the provisions of section 1 is committed by a body of persons, whether corporate or unincorporate. every person who. at the time of the commission of-the offence, acted in an official capacity for or on behalf of such body of persons. whether as a director, manager, secretary or other similar officer. or was purporting to act in such capacity, shall be guilty of that offence.

Attempts; Aiding and Abetting; Conspiracy

3. Any person who attempts or who aids. abets. counsels, or procures the commission of, or who conspires to commit the offence of. money laundering is guilty of an offence.

Penalties

4. (1) A person guilty of an offence under the provisions of section 1 or 2 shall be liable on conviction to (penalty)
- (2) A person guilty of an offence under the provisions of section 3 shall on conviction be liable to (penalty)

Jurisdiction

3. Any act -

- [(1) done by a citizen of (territory); [anywhere];
- (2) done by a person on a ship or aircraft registered in (territory); or
- (3) done by a person outside (territory) with intent to do that act within (territory)

shall, if it would be an offence by that person within the jurisdiction of (territory) under the provisions of this Part of this Law, be an offence under those provisions.

PART II

ANTI MONEY LAUNDERING SUPERVISION

(Minister of Finance) to Appoint a Money Laundering Authority

1. The (Minister of Finance) shall appoint a person or persons to be known as the Money laundering Authority to supervise financial institutions in accordance with this Law.

Powers and Duties of the Money Laundering Authority

2. The Money Laundering Authority -

- (1) shall receive the reports issued by financial institutions pursuant to the provisions of sub-section 3(2);
- (2) shall send any such report to the law enforcement authorities if, having considered the report, the Money Laundering Authority also has reasonable grounds to suspect that the business transaction involves proceeds of crime:
- (3) or a person authorised by the Money Laundering Authority for such a purpose, may enter into the premises of any financial institution during (Ministry of Finance) working hours to inspect any business transaction record kept by that financial institution pursuant to the provisions of sub-section 3(3) and ask any questions relevant to such record and to make any notes or take any copies of the whole or any part of any such record:
- (4) shall send to the law enforcement authorities any information derived from an inspection carried out pursuant to the provisions of sub-section (3) of this section if it gives the Money Laundering Authority reasonable grounds to suspect that a business transaction involves proceeds of crime;
- (5) shall destroy any note or copy thereof made or taken pursuant to the provisions of sub-section (3) of this section within three years of the inspection save where any such note or copy has been sent to a law enforcement authority;
- (6) may instruct any financial institution to take such steps as may be appropriate to facilitate any investigation anticipated by the Money Laundering Authority following a report or investigation made under the provisions of this section;
- (7) may compile statistics and records, disseminate information within or without the State, make recommendations arising out of any information received, issue guidelines to financial institutions and advise the (Minister of Finance);
- (8) shall create training requirements and provide such training for any financial institution in respect of the business transaction record keeping and reporting obligations as provided in sub-sections (1) and (2) of section 3 of this Part.
- (9) may consult with any relevant person, institution or organisation for the purposes of the exercise of its powers or duties under sub-sections (6), (7) and (8) of this section.

- (10) shall not conduct any investigation into money laundering other than for the purpose of ensuring compliance by a financial institution with the provisions of section 3 of this Part of this Law.

Assistance to be Given by Financial Institutions

3. A financial institution shall -
 - (1) keep a business transaction record of any new or unrelated business transaction exceeding (\$1000) for a period of five years after the termination of the business transaction so recorded;
 - (2) as soon as the suspicion hereinafter referred to is formed, report to the Money Laundering Authority. any business transaction where the identity of the persons involved, the transaction or any other circumstances concerning that business transaction gives any officer or employee of the financial institution reasonable grounds to suspect that the transaction involves proceeds of crime;
 - (3) comply with any instruction issued to it by the Money Laundering Authority pursuant to sub-section 2(6); .
 - (4) permit any member of the Money Laundering Authority upon request to enter into any premises of the financial institution during the working hours of the (Ministry of Finance) and inspect the records kept pursuant to the provisions of sub-section 3(1) and to make any notes or take any copies of the whole or any part of any such record to answer any questions of the Money Laundering Authority in relation to such records;
 - (5) develop and apply internal policies, procedures and controls to combat money laundering and develop audit functions to evaluate such policies, procedures and controls;
 - (6) comply with the guidelines and training requirements issued and provided by the Money Laundering Authority respectively in accordance with sub-sections 2(6) and 2(7) thereof;
 - (7) develop a procedure to audit compliance with this section.

Money Laundering Authority's Power to Obtain Search Warrant

4. The Money Laundering Authority or a law enforcement agency, upon application to a Magistrate and satisfying him that there are reasonable grounds to believe that -

- (1) a financial institution has failed to keep a business transaction record as provided by the provisions of sub-section 3(1);
- (2) a financial institution has failed to report any business transaction as provided by the provisions of sub-section 3(2): or
- (3) an officer or employee of a financial institution is committing, has committed or is about to commit a money laundering offence;

may obtain a warrant to enter any premises belonging to, in the possession or control of the financial institution or any officer or employee of such institution and to search the premises and remove any document, material or other thing therein for the purposes of the Money Laundering Authority or law enforcement agency as ordered by the Magistrate and specified in the warrant.

Property Tracking and Monitoring Orders

5. The Money Laundering Authority or law enforcement agency upon application to a Magistrate and satisfying him that there are reasonable grounds for believing 'that a person is committing, has committed or is about to commit a money laundering offence may obtain an order:-

- (1) that any document relevant to:
 - (a) identifying, locating or quantifying any property; or
 - (b) identifying or locating any document necessary for the transfer of any property.

belonging to, or in the possession or under the control of that person be delivered forthwith to the Money Laundering Authority or law enforcement agency;

- (2) that a financial institution forthwith produce to the Money Laundering Authority or law enforcement agency all information obtained by the institution about any business transaction conducted by or for that person with the institution during such period before or after the date of the Order as the Magistrate directs.

Mandatory Injunction to Enforce Compliance

6. (1) The officers and employees of a financial institution shall take all reasonable steps to ensure the compliance by that financial institution with its obligation under this part of this law.
- (2) The Money Laundering Authority upon application to a judge of the (Supreme) court and satisfying him that a financial institution has failed without reasonable excuse to comply in whole or in part with any obligation as provided in sub-sections 3(1), 3(2), 3(4) or 3(5) of this Part may obtain a mandatory injunction against any or all of the officers or employees of that financial institution in such terms as the Court deems necessary to enforce compliance with such obligation.
- (3) in granting an injunction pursuant to sub-section 6(2) of this section the Court may order that should the financial institution or any officer or employee of that institution fail without reasonable excuse to comply with all or any 4 the provisions of that injunction such financial institution, officer or employee shall pay a financial penalty in the sum and in the manner directed by the Court.

Secrecy Obligations Overridden

7. The provisions of this Part of this Law shall have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by any law or otherwise.

Disclosure Protected

8. It shall not be unlawful for any person to make any disclosure in compliance with this Part of this Law.

Offences

9. (1) It is an offence for any person who knows or suspects that an investigation into money laundering has been, is being or is about to be made, or that an order has been made or may be made requiring the delivery or production of any document: -
 - (a) to divulge that fact or other information to another whereby the investigation is likely to be prejudiced; or
 - (b) to falsify, conceal, destroy or otherwise dispose of, or cause or permit the falsification, concealment, destruction or disposal of material which is or is likely to be relevant to the investigation.
- (2) A person guilty of an offence under the provisions of sub-section (1) of this section shall on conviction be liable to (penalty).

Other Measures to Avoid Currency Laundering

10. (1) A person who has been convicted of an indictable offence may not be licensed to carry on the business of a financial institution.
- (2) For the purposes of this section the expression “indictable offence” shall be deemed to include any similar offence committed abroad.

[Currency Reporting at the Border

11. (1) A person who leaves or enters (country) with more than (value) in cash or negotiable bearer instruments without first having reported the fact to the Money Laundering Authority shall commit an (indictable) offence.

(2) Where a person:

- (a) is about to leave (country) or has arrived in (country): or
- (b) is about to board or leave. or has boarded or left. any ship of aircraft:

an authorised officer may, with such assistance as is reasonable and necessary,

- (c) examine any article which a person has with him or her:
- (d) if the officer has reasonable grounds to suspect that an offence under subsection (1) may have been or is being committed, search the person

for the purpose of finding out whether the person has with him or her or on him or her or in his or her clothing any cash or negotiable bearer instruments in respect of which a report under sub-section (1) is required.

- (e) A person shall not be searched except by a person of the same sex.
- (3) An authorised officer, and any person assisting such officer, may board any ship or aircraft for the purposes of exercising the powers conferred by sub-section (2).
 - (4) Where an authorised officer has reasonable grounds to believe that cash or negotiable bearer instruments found in the course of an examination or search conducted under subsection (2) may afford evidence as to the

commission of an offence against section 11, the officer may seize the cash or negotiable bearer instruments.]

PART III

FREEZING AND FORFEITURE OF ASSETS IN RELATION TO MONEY LAUNDERING

Freezing of Property

1. (1) A competent authority upon application to a judge of the (Supreme) Court and satisfying him that the authority has charged or is about to charge a person with a money laundering offence may apply for an order freezing the property of, or in the possession or under the control of that person wherever it may be.
- (2) The Court in making any order freezing the property of that person may give directions as to -
 - (a) the period of effect of the freezing order;
 - (b) the disposal of that property for the purpose of:-
 - (i) determining any dispute as to the ownership of or other interest in the property or any part thereof;
 - (ii) its proper administration during the period of freezing;
 - (iii) the payment of debts incurred in good faith due to creditors prior to the order;
 - (iv) the payment of mneys to that person for the reasonable subsistence of that person and his family;
 - [(v) the payment of the costs of that person to defend criminal proceedings against him.]
- (3) An order made under the provisions of sub-section 1(1) shall cease to have effect at the end of the period of {forty eight hours/seven days} following the hour the order was made should the person against whom such order was made not have been charged with a money laundering offence within that time.
- [(4) The (Supreme) Court may refuse to make an order freezing property if the prosecutor refuses or fails to give the court such undertakings as the court considers appropriate with respect to the payment of damages or costs, or

both, in relation to the making of an order. No action for damages or costs shall lie in respect of any property subsequently forfeited.

OR

(4) The (Crown) shall not be liable for any damages or cost arising directly or indirectly from the making of a freezing order unless it can be proved that the application for the freezing of the property was not made in good faith.]

[(5) Where the Court makes an order for the administration of frozen property the person charged with the administration of the property shall not be liable for any loss or damage to the property or for the cost of proceedings taken to establish a claim to the property or to an interest in the property unless the court in which the claim is made is of the opinion that the person has been guilty of negligence in respect of the taking of custody and control of the property.]

Forfeiture of Property

2. (1) Upon application by a competent authority to a Judge of the (Supreme) Court any property of or in the possession or under the control of any person who is convicted of a money laundering offence and any property of that person the subject of a freezing order shall, unless proved to the contrary, be deemed to be derived from money laundering and forfeited by order of the Court.
- (2) In determining whether or not any property is derived from money laundering the Court will apply the standard of proof required in {criminal/civil} proceedings.
- (3) In making a forfeiture order the Court may give directions: -
 - (i) for the purpose of determining any dispute as to the ownership of or other interest in the property or any part thereof;
 - (ii) as to the disposal of the property.
- (4) Upon application to a Judge of the (Supreme) Court by a person against whom a forfeiture order has been made under the provisions of this section, the Court may order that a sum deemed by the Court to be the value of the property so ordered to be forfeited be paid by that person to the Court and upon satisfactory payment of that sum by that person the property ordered to be forfeited shall be returned to him.

Property Tracking and Monitoring

3. For the purpose of determining whether any property belongs to, is in the possession or under the control of any person the Court may upon application by a competent authority and if satisfied that there are reasonable grounds for so doing, order:

- (1) that any document relevant to:
 - (a) identifying, locating or quantifying property of that person;
 - (b) identifying or locating any document necessary for the transfer of property of that person;

be delivered forthwith to the competent authority;

- (2) a financial institution forthwith to produce to the competent authority all information obtained by the institution about any business transaction conducted by or for that person with the institution during such period before or after the date of the order as the Court directs;
- (3) upon being satisfied by the competent authority that any person is failing to comply with, is delaying or is otherwise obstructing an order made in accordance with the provisions of sub-section 3(1) or 3(2) that the competent authority may enter any premises of that person, search the premises and remove any document material or other thing therein for the purposes of executing such order.
- (4) where a person produces or delivers a document pursuant to an order under this section, the production or delivery of the document or any information, document or thing obtained as a direct or indirect consequence of the production or delivery of the document, is not admissible against the person in any proceedings except a proceeding for an offence of failing to comply with an order or a court.

Offences

4. (1) It is an offence for any person to falsify, conceal, destroy or otherwise dispose of, or cause or permit the falsification, concealment, destruction or disposal of any document or material which is or is likely to be relevant to the execution of any order made in accordance with the provisions of sub-section 3(1) or 3(2).
 - (2) A person guilty of an offence under the provisions of sub-section 4(1) shall on conviction be liable to (penalty).
5. (1) It is an offence for a person who is the subject of an order made under sub-section (1) or (2) of this section to disclose the existence or operation

of the order to any person except to an officer of a law enforcement authority named in the order, an officer or agent of the institution, for the purposes or ensuring that the order is complied with or a barrister or solicitor, for the purpose of obtaining legal advice or representation in relation to the order.

- (2) A person guilty of an offence under the provisions of sub-section 5(1) shall on conviction be liable to (penalty).

Secrecy Obligations Overridden

6. The provisions of this Part of this Law shall have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by any law or otherwise.

Disclosure Protected

7. It shall not be unlawful for any person to make any disclosure in compliance with this Part of this Law.

Limitations on Freezing and Forfeiture of Property

8. The provisions of sections 1 and 2 shall only apply to property coming into the possession or under the control of a person after the coming into force of this Law.

Appeals

9. Nothing in this Part of this Law shall prevent the operation of any appeal normally available against orders made by the (Supreme) Court.

PART IV

MUTUAL ASSISTANCE IN RELATION TO MONEY LAUNDERING

Co-operation with a Foreign State

1. Subject to the provisions of section 6, where a foreign State makes a request for assistance in the investigation or prosecution of a money laundering offence, the competent authority shall:

- (1) execute the request forthwith: or
- (2) inform the foreign State making the request of any reason-
 - (a) for not executing the request forthwith;

- (b) for delaying the execution of the request.

Competent Authority's Power to Obtain Search Warrant

2. The competent authority upon application to a Magistrate and upon production to the Magistrate of a request may obtain a warrant -

- (1) to enter any premises belonging to, in the possession or control of any person named in the warrant and search the premises;
- (2) to search the person of any person named in the warrant;]

and remove any document, material or other thing, for the purpose of executing the request as directed in the warrant.

Property Tracking and Monitoring Orders

3. The competent authority upon application to a Magistrate and upon production to the Magistrate of a request may obtain an order:-

- (1) that any document relevant to:
 - (a) identifying, locating or quantifying any property; or
 - (b) identifying or locating any document necessary for the transfer of any property;

belonging to, in the possession or under the control of any person the subject of the request be delivered to the competent authority;

- (2) that a financial institution forthwith produce to the competent authority all information obtained by the institution about any business transaction conducted by or for a person, the subject of the request with the institution during such period before or after the date of the order as the Magistrate directs.

Freezing and Forfeiture of Property

4. Subject to the provisions of section 6, the competent authority upon application to a judge of the [Supreme] Court and upon production to the judge of a request for the freezing or forfeiture of property of or in the possession or under the control of a person named in the request may obtain an order:-

- (1)
 - (a) freezing the property of or in the possession or under the control of the person named in the request for such period as is indicated in the order;
 - (b) giving directions as to the disposal of that property for the purpose of:
 - (i) determining any dispute as to ownership of or other interest in the property or any part thereof;
 - (ii) its proper administration during the period of freezing;
 - (iii) the payment of debts, incurred in good faith, due to creditors prior to the request;
 - (iv) the payment of moneys to that person for the reasonable subsistence of that person and his family; and
 - (v) payment of costs to defend any criminal proceedings referred to in the request.
- (2) forfeiting the property of or in the possession or under the control of any person named in the request.

Request Accompanied by an Evidence Order

5.
 - (1) Subject to the provisions of section 6 the competent authority may upon application to a judge of the (Supreme) Court and upon production to the judge of a request accompanied by an order issued by a Court of the requesting State directed to any person within the jurisdiction of the (Supreme) Court to deliver himself or any document or material in his possession or under his control to the jurisdiction of the Court of the requesting State for the purpose of giving evidence in specified proceedings in that Court, obtain an order directed to that person in the same terms as in the order accompanying the request.
 - (2) Upon being served with an order issued in accordance with the provisions of sub-section 5(1) the person served shall for the purposes of the order either:-
 - (a) deliver himself to the jurisdiction of the (Supreme) Court; or
 - (b) deliver himself to the jurisdiction of the Court of the requesting State, in accordance with the directions in the order.

- (3) If a person served with an order issued in accordance with the provisions of sub-section 5(1) elects to deliver himself to the jurisdiction of the Court of the requesting State and fails to comply with any direction in the order he shall be deemed immediately to have delivered himself to the jurisdiction of the (Supreme) Court as provided in sub-section 5(2)(a).
- (4) The (Supreme) Court shall conduct such proceedings as are necessary to take the evidence of any person delivering himself to the jurisdiction of the Court pursuant to the provisions of the sub-section 5(2)(a). Such evidence shall subsequently be transmitted by the competent authority to the foreign State.

Limitations on Compliance with Request

6. (1) The competent authority may refuse to comply with a request if:-
 - (a) the action sought by the request is contrary to any provisions of the Constitution; or
 - (b) the execution of the request is likely to prejudice the national interest.
- (2) The provisions of section 4 shall apply to property coming into the possession or under the control of a person after the coming into force of this law.

Requests to Other States

7. The competent authority may issue to a foreign State a request accompanied, if required, by an order issued in accordance with section 8.

Issuing Evidence Order Against Foreign Resident

8. The competent authority upon application to a judge of the (Supreme) Court may in respect of any proceedings for a money laundering offence apply for an order directed to any person resident in a foreign State to deliver himself or any document or material in his possession or under his control to the jurisdiction of the Court or, subject to the approval of the foreign State, to the jurisdiction of the Court of the Foreign State for the purpose of giving evidence in relation to those proceedings.

Evidence Pursuant to a Request

9. Evidence taken pursuant to a request in an)- proceedings in a Court of a foreign State shall be received as [prima facie] evidence in any proceedings to which such evidence relates.

Form of Requests

10. A request shall be in writing, including facsimile transmitted writing, dated and signed by or on behalf of the person making the request.

Contents of Requests

11. The request shall:-

- (1) confirm either that an investigation or prosecution is being conducted into or for a suspected money laundering offence or that a person has been convicted of a money laundering offence;
- (2) state the grounds on which any person is being investigated or prosecuted for the money laundering offence referred to in sub-section 11(1) or give details of the convictions of the person referred to in sub-section 11(1);
- (3) give particulars sufficient to identify any person referred to in sub-section 11(2);
- (4) give particulars sufficient to identify any financial institution or other person believed to have information, documents or material or assistance to the investigation or prosecution referred to in sub-section 11(1);
- (5) request the competent authority to whom the request is addressed to obtain from a financial institution or other person referred to in sub-section 11(4) all and any information, documents of material of assistance to the investigation or prosecution referred to in sub-section 11(1);
- (6) specify the manner in which and to whom any information, documents or material obtained pursuant to the request is to be produced;
- (7) state whether or not a freezing or forfeiture order is required and identify the property to be the subject of such an order; and
- (8) contain such other information as may assist the execution of the request.

Request for Forfeiture

12. A request for forfeiture shall have attached to it a copy of the final forfeiture order to the Court and a statement signed by a judge of that Court to the effect that no further appeal against such order can be made.

Request Not to be Invalidated

13. A request shall not be invalidated for the purpose of any legal proceedings by virtue of any failure to comply with the provisions of section 11 provided the competent authority is satisfied that there is sufficient compliance to enable it properly to execute the request.

Offences

14. (1) It is an offence -
- (a) for any person to falsify, conceal, destroy or otherwise dispose of or cause or permit the falsification, concealment, destruction or disposal of any document or material which is or is likely to be relevant to the execution of any order made in accordance with the provisions of this Part of this Law;
 - (b) for any person who knows or suspects that an investigation into money laundering has been, is being or is about to be made, or that an order has been made or may be made requiring the delivery or production of any document, to divulge that fact or other information to another whereby the investigation is likely to be prejudiced.
- (2) A person guilty of an offence under the provisions of sub-section 14(1) shall on conviction be liable to (penalty).

Secrecy Obligations Overridden

15. The provisions of this Part of this Law shall have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by any law or otherwise.

Disclosure Protected

16. It shall not be unlawful for any person to make any disclosure in compliance with this Part of this Law.

Asset Sharing

17. Where (the Minister of Finance) considers it appropriate, either because an international arrangement so requires or permits or in the interest of comity, he may order that the whole or any part of any property forfeited under the provisions of this Part of this Law, or the value thereof, be given or remitted to the requesting State.

PART V

EXTRADITION

Money Laundering an Offence for Extradition Purposes

1. For the purposes of any law relating to extradition or the rendition of fugitive offenders, money laundering is an offence for which extradition or rendition may be granted.

SCHEDULE

ACTIVITIES OF FINANCIAL INSTITUTIONS

1. Lending (including personal credits, mortgage credits, factoring with or without recourse, financial or commercial transaction including forfeiting)
2. Finance leasing
3. Venture risk capital
4. Money transmissions services
5. Issuing and administering means of payment (e.g. credit cards, travellers' cheques and bankers' drafts)
6. Guarantees and commitments
7. Trading for own account or account of customers in:—
 - (a) money marked instruments (cheques, bills, certificates of deposit etc.);
 - (b) foreign exchange;
 - (c) financial futures and options;
 - (d) exchange and interest rate instruments; and
 - (e) transferable instruments.
8. Underwriting share issues and the participation in such issues.
9. Money brokering
10. Investment business
11. Deposit taking

11. Insurance business transactions
13. Real property business transactions
14. Bullion dealing
15. Casinos and other gambling and betting services
16. Financial intermediaries

NOTES ON THE USE OF BRACKETS AND BRACES IN THE MODEL LAW

The model law contains a number of references in brackets and three different types of bracket are used.

Round Brackets “(…)” indicate that a country enacting a law based on this model must consider whether the words in the brackets (if any) are appropriate.

Square Brackets “[...]” indicate that the section or sub-section or word are not essential to the legislation and could be omitted. Compliance with the 40 Recommendations of the Financial Action Task Force could be achieved even if the parts in square brackets was omitted. These provisions have been included because experience has shown, in some countries, that they are useful or because the bracketed provisions give effect to discretionary recommendations.

Braces “{...}” indicate that one of the two alternatives contained therein should be chosen, or possibly that another alternative be inserted.

The following clauses use brackets or braces.

Definitions and Provision for Regulations etc.

Competent Authority refers to the Minister of Justice. Countries should, if necessary, replace these words with words describing the Minister or other member of the Government responsible for the administration of criminal justice and mutual assistance in criminal matters laws.

Financial Institution refers to the Minister of Finance. Countries should, if necessary, replace these words with words describing the Minister or other member of the Government responsible for the administration laws governing financial institutions (both banks and non-bank financial institutions)

Identification Record

(i) uses in sub-clauses (a)(i) and (a) (ii) the word “notarised”. If necessary this word should be replaced with the word applied in the enacting country to foreign document authentication or notarisation. The word may be omitted if the evidence laws of the enacting country provide for the admission of foreign documents without endorsement of any kind.

(ii) sub-clause (a)(ii) refers to “State Registry”. These words should be replaced by the name of the body which is the keeper of records of companies.

Money Laundering

(i) in subclause (a)(ii) the word “territory” should be replaced with the name of the country enacting the law.

(ii) sub-clause (b)(ii) is desirable but some countries have suggested that the standard applied is inappropriate and that something more than a failure to ascertain the source of the funds should be required. It is for countries to determine whether this clause is consistent with normal criminal justice policy as applied in the jurisdiction.

Proceeds of Crime contains the words “wherever committed” which are highly desirable in that they have the effect of making it irrelevant that the offence which produced the proceeds was committed in whole or in part outside the jurisdiction. Countries which only wish to criminalise the laundering of funds derived from offences committed within the jurisdiction could omit these words but to do so would deprive the legislation of major effect in combating transnational money laundering.

Clause 3 contains reference to an unnamed Minister. Enacting countries should insert the name of the minister who has overall responsibility for administering the legislation.

Part I - Money Laundering Prohibited

Clause 4 contains two references to “penalty”. These should be replaced with a suitable penalty determined by the enacting country.

Clause 5

(i) contains five references to “territory” which should be replaced with the name of the enacting country

(ii) the word “anywhere” gives the legislation extraterritorial effect over nationals no matter where conduct constituting an offence under the act takes place. It is optional but desirable.

Part II - Anti Money Laundering Supervision

Clause 1 both the heading and the substantive provision contains reference to the “Minister of Finance”. Where necessary this should be replaced with reference to the Minister administering this part of the legislation.

Sub-Clause 2(3) refers to the working hours of the “Ministry of Finance”. If necessary, this should be replaced with reference to any appropriate working hours in the enacting country, for example, “normal working hours” or “9.00 a.m. to 5.00 p.m.”

Sub-Clause 2(7) refers again to the “Minister of Finance”. Where necessary this should be replaced with reference to the Minister administering this part of the legislation.

Sub-Clause 3(1) contains reference to “\$1.000”. Enacting countries should consider what might be an appropriate figure to insert. In making this decision reference should be had to the normal markets in the country and financial institutions could be consulted.

Sub-Clause 3(4) see comment on sub-clause 2(3) above.

Sub-Clause 6(2) refers to the “Supreme” Court. Enacting countries should consider which of their courts they wish to vest with the power to issue injunctive relief under this clause and, if necessary, replace the word with the title of another court.

Clause 11 is in square brackets because currency reporting at the border is a topic recommended for consideration by countries but strict compliance with it is not necessary under the terms of the 40 Recommendations. Countries should first consider whether they believe that part of the money laundering process in the jurisdiction involves the physical transportation of funds across the border. If so, they may wish to enact clause 11. It should be noted that all that is required to make movement of funds legal is a report to the Money Laundering Authority - the provision does not introduce or re-introduce currency control.

Sub-clauses 11(1) and (2) contain the word “country” which should be replaced with the name of the enacting jurisdiction/country.

Sub-clause 11(1)

(i) also contains the word “value” which should be replaced by an amount specified in local currency (for example Australian specifies SAUD5,000) .

(ii) contains the word “indictable”. Enacting countries should consider whether this is the appropriate word. The intention is that failure to report be a relatively serious offence.

Part III - Freezing and Forfeiture of Assets in Relation to Money Laundering

Sub-clause 1(1) refers to the “Supreme” Court. Enacting countries should determine which court is to exercise the jurisdiction conferred by the provision and, if necessary, replace the word “Supreme”.

Sub-paragraph 1(2)(b)(v) is bracketed as an option for consideration by enacting countries. Practice varies between countries by no country of which we are aware gives unlimited access to frozen funds - most allow the courts to decide what would be a reasonable amount to release for legal costs.

Sub-clause 2(3) refers to “forty eight hours/seven days”. Enacting countries should consider, in light of the time it is likely to take to arrest and charge a person whose property is frozen. The time chosen should not be so long as to run the risk of a challenge of unlawful deprivation of property and hence the shortest reasonable time is the appropriate one to insert-

Sub-clause 1(4) has two versions. Neither is absolutely necessary but countries should consider whether one or the other is desirable:

- The first alternative requires the prosecution to indemnify the accused for loss incurred and/or costs in the event of an unsuccessful prosecution. If adopted, the word “Supreme” should be replaced, if necessary, with reference to the court mentioned in Sub-clause 1(1) of this part.

- The second alternative, which was suggested by small island states, indemnifies the prosecution from any action for loss or damage provided the application to freeze property was made in good faith. If adopted the word “Crown” should, if necessary, be replaced with appropriate reference to the nation.

Sub-clause 1(S) is desirable but not essential. It protects the administrator of frozen property from liability for loss except where the property, is negligently administered.

Sub-clause 2(1) refers to the “Supreme” court. If necessary this word should be replaced with reference to the court chosen to exercise jurisdiction.

Sub-clause 2(2) contains reference to “criminal/civil”. Enacting countries should chose which standard is appropriate. Many countries chose the “civil” option because the person has already been convicted of an offence and what the court is here deciding is what part of a person's property was derived from the offence for which conviction has already been recorded.

Sub-Clause 2(4) refers to the “Supreme” court. If necessary this word should be replaced with reference to the court chosen to exercise jurisdiction.

Sub-clause S(2) refers to “penalty” which should be replaced with an appropriate penalty according to the criminal justice practices of the enacting country. The penalty could equate to a penalty for obstructing the course of justice.

Sub-clause 9 refers to the “Supreme” court. If necessary this word should be replaced with reference to the court chosen to exercise jurisdiction.

Part IV - Mutual Assistance in Relation to Money Laundering

Sub-clause 2(2) is in brackets because it is not strictly necessary. Enacting countries should consider whether it is required. If included, countries may wish to add normal provisions relating to searches of persons (e.g., search must be by a person of the same sex).

Sub-clause 5(1) refers to the “Supreme” court. If necessary this word should be replaced with reference to the court normally exercising functions of taking evidence on behalf of a foreign country. Often, under mutual assistance in criminal matters legislation, this is a magistrate, in which case the words “judge of the (Supreme) Court” should be replaced with the word “magistrate” and in the second reference the words “of the (Supreme) Court” should be deleted.

Sub-clauses 5(2), 5(3) and 5(4) refer to the “Supreme” court. These references should be consistent with that chosen as appropriate in the sub-clause (1).

Clause 8 refers to the “Supreme” court. Enacting countries should consider which country should have power to issue an order that a person in a foreign state to give evidence. In making this decision the content of any mutual assistance in criminal matters legislation should be taken into account.

Clause 9 contains reference to “prima facie” evidence. Enacting countries should consider the question of admitting evidence obtained pursuant to a request made to a foreign country and consider whether such evidence should be subjected to any limits on its admission. This consideration will determine whether the words “prima facie” should be retained or not.

Sub-clause 14(2) refers to “penalty”. This word should be replaced with an appropriate penalty under the law of the enacting country. A penalty of the same magnitude as that applying under Part III. sub-clause 5(3) would be appropriate.

Clause 17 refers to the “Minister of Finance”. Enacting countries should consider whether this is the appropriate Minister. Other choices would include the Minister administering any mutual assistance in criminal matters legislation, a foreign minister (given the international relations aspect of this issue), or the minister administering proceeds of crime legislation.

**MODEL LAW
FOR THE PROHIBITION OF MONEY LAUNDERING**

EXPLANATORY MEMORANDUM

INTRODUCTION

1. The objective of the draft Model Law for the Prohibition of Money Laundering (“the Law”) is to prevent money laundering fairly and without imposing an undue administrative or financial burden on Governments or financial institutions.
2. The format of the Law allows for implementation in whole or in part. Each Part of the Law is drafted as a self standing element of the preventative measures required. However, with deletions of repetitive clauses the sum of the Parts forms an all encompassing preventative measure.
3. The mechanics of the Law are designed to be easy to apply, yet balanced as between the " rights of the State and the individual. In this respect the administration of regulations and mutual assistance is allowed to reflect the actual requirement, thus reducing administrative effort and cost to a minimum. Moreover, much reliance is placed on the Courts to enforce the powers of regulators and the obligations of mutual legal assistance. This addresses both the balance of rights issue and the need to keep down administration costs.
4. The Law thus provides the basic necessities required to prevent money laundering effectively and cost efficiently. The provisions of the Law may be extended as and when necessary as each State so requires.

DEFINITIONS AND PROVISION FOR REGULATIONS COMMON TO ALL PARTS OF THE LAW

1. *Clause 1* contains the definitions which relate both to the whole and each part of the Law. It not only defines terms but is used as a means of simplifying the text of the Law by eliminating the need for each Part to have extensive substantive provisions.
2. “*business transaction*” is defined to include all arrangements which facilitate transactions including the opening of accounts with financial institutions. Related arrangements, such as the preparation of a contract for a business transaction. are caught by the definition.
3. “*business transaction record*” is defined to include. *inter alia*, all records (documentary or otherwise) relevant to a business transaction. Of these, the most relevant are the records relating to the identification of account holders and details of transactions conducted with or by financial institutions.

4. “*competent authority*” is defined to include persons delegated by those appointed by the Minister for Justice. This is to avoid challenge to those properly exercising the powers of the competent authority e.g., law enforcement officials, counsel.
5. “*document*” is inclusively defined as a record of information and is defined in a way which will include paper and computer and audio records as well as other information.
6. “*financial institution*” is defined to cover persons (used in its widest sense) who regularly carry on any scheduled activity (either as principals or employees) or any other activity made the subject of the schedule by action of the Minister administering Part 11.
7. “*freezing*” is defined as restraining any transaction or dealing in property.
8. An “*identification record*” is an essential element of the minimum regulation/adequate prevention balance referred to earlier. The definition contains the minimum amount of information required to allow proper regulation and requires that identification records be in documentary form regardless of whether they relate to natural persons or bodies corporate. To ensure that identification records reveal the true identity of the beneficial owner of an account or a transaction, the definition operates, in conjunction with the substantive provision, to require identification of third persons who have an interest in the transaction.
9. The definition of “*money laundering*” has its origins in s.81 of the Australian Proceeds of Crime Act 1957. The offence requires knowledge or reasonable grounds for belief that the property involved is a benefit of unlawful activity. However, willful blindness can also amount to an offence when reasonable steps are not taken to ascertain whether or not the property is a benefit of unlawful activity.
10. The remaining definitions - “*proceeds of crime*”, “*property*”, “*requesting State*” and “*unlawful activity*” are self explanatory.
11. *Clause 2* amplifies the definition of “document”.
12. *Clause 3* provides a power to make regulations for giving proper effect to the law. This power can be exercised by whichever Minister is administering the relevant part of the Act. For example, if the Minister of Finance is administering Part II he/she would be the appropriate person to introduce subordinate legislation on matters relating to regulation of the financial sector while at the same time a Minister of Justice administering other Parts of the Act could introduce regulations relating to mutual assistance and/or confiscation.

PART I. MONEY LAUNDERING PROHIBITED

Clause 1 creates the offence of money laundering.

Clause 2 provides that where a body (corporate or unincorporate) of persons launders money those acting in an official capacity for the body will also commit the offence.

Clause 3 deals with conspiracy, attempt, aiding and abetting and other inchoate offences.

Clause 4 provides for penalties. These are to be determined by each State as it wishes.

Clause 5 provides for extraterritorial effect of the offence. Whether the offence follows a citizen is a matter for each State to determine as it wishes.

PART II. ANTI MONEY LAUNDERING SUPERVISION

Clause 1 empowers the Minister of Finance to appoint a person or persons to supervise financial institutions for the purpose of ensuring effective action is taken by such institutions against money laundering. The person so appointed is described as the Money Laundering Authority (the Authority). This provision allows for the appointment of one person acting part time or many persons or the holder of a named office in an agency or department.

Clause 2 sets out the powers and duties of the Authority. The amount of work of the Authority obviously depends on the size of and level of activity in the financial sector of any State.

Sub clause (1) obliges the Authority to receive reports of suspicious transactions issued by financial institutions under sub-clause 3(2).

Sub clause (2) obliges the Authority to consider suspicious transaction reports and send to law enforcement authorities any reports which give rise to a reasonable suspicion that the money involved is the proceeds of crime.

Sub clause (3) allows the Authority to enter premises of financial institutions and to inspect records required to be kept *under sub-clause 3(1)* and to ask any relevant questions. Such inspection may be made periodically or for a specific reason.

Sub clause (4) requires the reports of inspections to be sent to law enforcement authorities. The provision is designed to ensure that the investigative role is carried out by law enforcement authorities and not by the Authority.

Sub clause (5) requires the Authority to destroy, within three years of an inspection, records, notes or copies of documents obtained during or made in relation to an inspection where the records, notes or copies of documents have not been referred to a law enforcement authority.

Sub clause (6) permits the Authority to issue instructions to financial institutions to facilitate investigations.

Sub clause (7) allows for the compilation of statistics and records and the issue of guidelines to financial institutions by the Authority. These can range from warnings about particular persons suspected of money laundering to advice that persons with certain backgrounds should not participate in the business of a financial institution.

Sub clause (8) provides for training programmes for financial institutions.

Sub clause (9) permits the Authority to consult for the purposes of the exercise of its powers under sub-clauses (6), (7) and (8).

Sub clause (10) prohibits the Authority from carrying out any investigation into money laundering except for the purposes of ensuring compliance by a financial institution with the provisions of section 3 of this Part of this Law.

Clause 3 provides for the minimum assistance to be expected from a financial institution in combating money laundering.

Sub clause (1) obliges a financial institution to keep business transaction records in respect of any new or unrelated business transaction exceeding [\$1,000] for five years. Such records should in any event be kept, for example for purposes related to civil actions. The burden is not, therefore, undue.

Sub clause- (2) obliges the financial institutions to report suspicious transactions to the

Sub clause (3) obliges financial institutions to comply with instructions issued by the Authority pursuant to the power given to it by sub-clause 2(6) of this Part.

Sub clause (4) obliges financial institutions to allow the Authority to make its inspections of their records which the institution is obliged to keep under clause 3(1). If the Authority wishes to see other records it must obtain a Warrant under clause -1. This limits the powers of the Authority except where an extension of powers is granted by a Magistrate in accordance with the Act.

Sub clause (5) requires financial institutions to develop and apply relevant policies, procedures and controls and to audit the effectiveness of these measures.

Sub clause (6) obliges financial institutions to comply with the guidelines and training requirements of the Authority.

Sub clause (7) provides that financial institutions shall develop procedures to audit compliance with this clause.

Clause 4 permits the Authority or a law enforcement agency to obtain a search and removal warrant. The power is limited so as to be exercised only in the event of a suspected failure to comply with the Act by a financial institution or when an officer or employee of an institution is suspected of money laundering offences.

Clause 5 provides that a Magistrate may issue orders permitting the tracking down of property and also the monitoring of business transactions through financial institutions where it is suspected that they relate to persons involved in money laundering offences. Asset tracking is an essential element in combating money laundering. This provision, borrowed from the Australian Proceeds of Crime Act 1987, is a valuable tool in that respect.

Clause 6 allows for the Authority to enforce its powers through the Court by way of a mandatory injunction. This procedure avoids the Authority having excessive powers. It allows the Court to determine whether there has been an inexcusable compliance failure. It also allows the Court to fix any penalties to ensure compliance and to recover those penalties. The Court is in a better administrative position to do this than the Authority. Duplicated administration and concurrent cost are therefore avoided.

Clause 7 provides that compliance overrides the secrecy and confidentiality provisions of any other laws.

Clause 8 provides that no disclosure made in pursuance of a power or duty imposed by the Law can be unlawful. It is, in effect, a plea in bar to a prosecution for unlawful disclosure.

Clause 9 prohibits “tipping off” by making it an offence to divulge information about any, money laundering investigation or to try and disrupt such an investigation and makes it an offence to falsify, conceal or dispose of material relevant to the investigation.

Clause 10 prohibits a person with a criminal conviction from participating in the business of a financial institution. This clause is optional as the same effect could be achieved by the Authority issuing a guideline to that effect under sub-clause 6(6) and enforcing it under clause 6.

Clause 11 makes it an offence to leave or enter a State with more than a certain amount of cash or negotiable bearer instruments without first having reported the fact to the Authority. The financial limit is at the discretion of each State. The clause also permits authorised officers (probably police and/or customs officers) to conduct searches of persons and articles which enter or leave the country. It gives officers powers to board ships and aircraft and to seize currency which may afford evidence of the commission of an offence of not declaring the intended movement of the currency.

PART III. FREEZING AND FORFEITURE OF ASSETS IN RELATION TO MONEY LAUNDERING.

Clause 1 deals with the freezing or restraint of assets of a person who has been or is about to be charged with a money laundering offence.

Sub clause (1) empowers a competent authority to obtain an order from the [Supreme] Court freezing the property of a person charged or about to be charged with a money laundering offence. The competent authority may be a regulatory body or a law enforcement agency. The condition precedent for the issue of a warrant is an existing charge or a charge about to be made.

Sub clause (2) empowers the Court to give directions as to duration of a freezing order and the administration, disbursement and disposal of frozen property. The purpose of the clause is to ensure that there is a proper mechanism for dealing with the property pending final decision of the question whether it may be subject to confiscation or forfeiture.

Sub clause (3) ensures that a freezing order may only have effect for a period of [forty eight hours seven days] unless a charge for the offence on money laundering is made within that period.

Sub clause (4) is presented in two alternative versions: the first requires the prosecutor (or person seeking the making of a freezing order) to give an undertaking as to the payment of costs or damages in a case where the property frozen is not subsequently forfeited. The second alternative provides that (the Crown) shall not be liable for damages or costs arising from the freezing of property, whether or not it is subsequently forfeited, unless the application for a freezing order was not made in good faith.

(The choice between any or either of these alternatives is a matter for consideration - some countries consider that the existence of a potential liability in damages would render the taking of action to freeze property a very real risk.)

Sub clause (5) limits the liability of a person appointed to administer frozen property to damages caused by the negligence of that person in carrying out the administration.

Clause 2 deals with post conviction forfeiture of the proceeds of a money laundering offence.

Sub clause (1) makes provision for the forfeiture by the Court of any property of a person convicted of money laundering. The onus of proof as to whether property does not belong to the convicted person is upon him.

Sub clause (2) provides that the standard of proof concerning the relationship of property to money laundering is that applied in criminal or civil proceedings - a choice must be made here by the government introducing the measure.

Clause 3 mirrors clause 5 of Part 11 of the Law and relates to property tracking and the issue of monitoring orders with the addition of a sub-clause which prohibits the use in evidence in criminal proceedings of compulsorily acquired documents against the person required to produce them. an exception is made in respect of criminal proceedings for breach of an order of the court to produce.

Clause 4 relates to the falsification of documents and is essentially the same as paragraph (b) of clause 9 in Part 11 of the Law.

Clause 5 creates an offence of disclosing, except to named persons, the existence of an order made under clause 3.

Clause 6 operates in the same way as clause 7 of Part 11 to override the operation of any obligations (legal, contractual or other) to maintain secrecy.

Clause 7 mirrors clause 8 of Part II of the Law and provides that no disclosure made in pursuance of a power or duty imposed by the Law can be unlawful. It is, in effect, a plea in bar to a prosecution for unlawful disclosure.

Clause 8 prevents property acquired prior to the Law coming into force from being frozen or forfeited. Retroactivity is thus avoided.

Clause 9 preserves existing rights of appeal from the decision of the court ordering forfeiture.

PART IV. MUTUAL ASSISTANCE IN RELATION TO MONEY LAUNDERING

Clause 1 obliges the competent authority of a State to execute forthwith' a request from a foreign State or explain why it cannot do so. This obligation reflects the provisions of the Vienna Convention Against Illicit Trafficking in Narcotic Drugs and Psychotropic Substances and also international mutual assistance practice.

Clause 2 allows a competent authority to obtain a warrant to search premises for information or evidence required by a foreign State which is investigating or prosecuting a money laundering case. The clause also contains an optional provision permitting the authority to obtain a warrant to search a person where relevant information or evidence may be located on the person.

Clause 3 mirrors clause 5 of Part II and clause 3 of Part III and makes available to a competent authority acting at the request of a foreign State the same powers relating to the issue of property tracking documents and monitoring orders as would exist in support of a domestic action.

Clause 4 operates to make available to a foreign State the powers possessed by authorities of the requested country to freeze property belonging to a person who has been charged (or is to be charged) with a money laundering offence and forfeit the

proceeds of money laundering as would be available if the offence of money laundering had been committed in the requested country.

[The precondition for the operation of clauses 2, 3 and 4 (search warrants, tracking and monitoring orders and the freezing and forfeiture of property) is, however, the Request from the foreign State. The form and content of requests are dealt with in the explanation of Clause 10 below.]

Clause 5 deals with the obtaining of evidence to support a foreign prosecution.

Sub clause (1) permits a court, upon application by the competent authority, to issue an order requiring attendance to give evidence on the same terms as those contained in a Request from a foreign State produced to the Court.

Sub clause (2) obliges a person to whom a Clause 5(1) order is directed either to present himself to the jurisdiction of the Court or, failing that, to the jurisdiction of the foreign Court.

Sub clause (3) ensures that a person falls within the jurisdiction of the Court should he elect to present himself to the jurisdiction of the foreign Court and fail to do so or otherwise fail to comply with the provisions of the subpoena.

Sub clause (4) allows evidence to be taken by the Court and for that evidence to be transmitted to the foreign State.

Clause 6 deals with limitations on the power to grant assistance in response to a foreign request.

Sub clause (1) allows the competent authority of a State to refuse to comply with a request if to do so is contrary to the constitution or national interest. The words “national interest” are intended to cover existing laws, policy and procedure.

Sub clause (2) is included to ensure that rules against retroactivity are not broken. It mirrors clause 7 of Part 111.

Clause 7 permits the competent authority of a State to make a request, accompanied by a subpoena obtained under Clause 8 if required, to a foreign State.

Clause 8 provides for the competent authority of a State to obtain an order from the court directing a person resident in a foreign State to deliver himself to the jurisdiction of the Court or to the jurisdiction of that State for the purpose of giving evidence in money laundering proceedings. Those proceedings may be any proceedings in relation to any offence constituted in whole or in part by acts or omissions involving the use or custody of proceeds of crime.

Clause 9 ensures that evidence taken in a foreign Court will be received as [prima facie] evidence in any proceedings to which the evidence relates. The inclusion of the words “prima facie” would permit the Court to impose other tests relating to admissibility.

Clauses 10 and 11 provide for the format and contents of a Request. The contents are sufficient to protect the person being investigated or prosecuted. First, sub-clause 11(1) ensures that an investigation or prosecution is taking place; second, sub-clause 11(2) allows sufficient information to confirm claims made under sub-clause 11(1); third, sub-clause 11(3) avoids misidentification; and fourth, sub-clause 11(4) ensures sufficient information to identify the sources of information or material sought by the Request. The rest of Clause 11 contains the essence of the Request. Sub-clause 11(8) is essential if the Request is rejected as being vague in any respect as the Request may be resubmitted so as to contain the required further information.

Clause 12 ensures that a Request for a forfeiture order may only be made if there is no further appeal outstanding in the Requesting State.

Clause 13 avoids a Request being invalidated merely for the sake of form.

Clauses 14, 15 and 16: dealing with Offences. Overriding of Secrecy Provisions, and Protection of Disclosure are in similar terms to Clauses 9, 7 and 8 of Part II.

Clause 17 provides for asset sharing with the foreign State if the Minister of Finance, or another Minister as required, considers it appropriate either because of an existing international arrangement or in the interests of comity.

PART V. EXTRADITION

Clause 1 provides that money laundering is an offence for the purpose of extradition or rendition of fugitive offenders.

SCHEDULE

The Schedule defines the activities of financial institutions for the purpose of the definition of such institutions contained in the Definitions Part of the Law. The definition of “financial institution” is borrowed largely from Section 2 of the Malta Act to Regulate the Services of Financial Institutions 1994. The activities are self explanatory. States may need to tailor this list to ensure that it meets their specific needs.