

**A BILL
ENTITLED**

AN ACT to Provide measures to combat terrorism
and for connected matters.

BE IT ENACTED by the Queen's Most Excellent
Majesty, by and with the advice and consent of the
Senate and House of Representatives of Jamaica, and by
the Authority of the same, as follows:-

Short title
and com-
mencement.

1. This Act may be cited as the Terrorism Prevention
Act, 2003, and shall come into operation on a day to
be appointed by the Minister by notice published in
the *Gazette*.

Interpre-
tation.

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

"applicable property" means any property -

- (a) that has been used, in whole or in part,
to facilitate or carry out a terrorism
offence; or
- (b) derived, obtained or realized directly or
indirectly from the commission of a
terrorism offence;

"Court means the Supreme Court;

"entity" means a person, group, trust, partnership
or fund or an unincorporated association or
organization;

"financial institution" means -

- (a) a bank licensed under the Banking Act;
- (b) a financial institution licensed under the
Financial Institutions Act;
- (c) a building society registered under the
Building Societies Act;

- (d) a society registered under the Co-operative Societies Act;
- (e) an insurance company registered under the Insurance Act;
- (f) a person licensed under the Bank of Jamaica Act to operate an exchange bureau;
- (g) a person licensed under the Securities Act as a dealer or investment adviser;
- (h) money transfer and remittance agents and agencies;
- (i) any other person declared by the Minister, by order subject to affirmative resolution, to be a financial institution for the purposes of this Act;

"interest" in relation to property, means -

- (a) a legal or equitable interest in the property; or
- (b) a right, power or privilege in connection with property;

"listed entity" means an entity declared to be a listed entity in accordance with section 14;

"property" includes money and all other property, real or personal, including things in action and other intangible or incorporeal property;

"terrorism offence" means -

- (a) an offence constituted by an act or omission referred to in the definition of "terrorist activity";
- (b) an offence under section 4, 5, 6, 7, 8, 10, 11 or 12; or

- (c) a conspiracy or attempt to commit, or aiding or abetting, procuring or counselling in relation to, an offence referred to in paragraph (b);

"terrorist activity" means an act or omission in or outside Jamaica that, if committed in Jamaica, would be one of the following offences -

- (a) an offence under section 12, 13, 16, 17, 17A or 18 of the Aircraft (Tokyo, Hague and Montreal Conventions) Act; or
- (b) an offence referred to in section 3(1);
- (c) an offence under section 3(2); or
- (d) a conspiracy or attempt to commit, or aiding, abetting, procuring or counselling in relation to, an offence referred to in paragraph (a), (b) or (c);

"terrorist group" means -

- (a) an entity that has, as one of its purposes or activities, facilitating or carrying out any terrorist activity; or
- (b) a listed entity,

and includes an association of such entities.

(2) For the purposes of this Act, a terrorist activity is facilitated whether or not -

- (a) the facilitator knows the specific nature of the terrorist activity facilitated;

- (b) any particular terrorist activity was foreseen or planned at the time it was facilitated; or
- (c) any terrorist activity was actually carried out.

Terrorist Activity and Offences

Terrorist
activity.
First
Schedule.

3. - (1) A person who commits an offence set out in the First Schedule commits an indictable offence and shall be liable to imprisonment for life.

(2) Any person who commits an act, or omits to act, in the circumstances referred to in subsection (4) commits an offence if the act or omission intentionally -

- (a) causes -
 - (i) death; or
 - (ii) serious bodily harm,
to a person;
- (b) endangers a person's life;
- (c) causes a serious risk to the health or safety of the public or any segment of the public;
- (d) causes substantial property damage, whether to public or private property, if such damage is likely to result in the conduct or harm referred to in any of paragraphs (a) to (c) and (e); or
- (e) causes serious interference with or serious disruption of an essential service, facility or system, whether public or private:

Provided that nothing in this paragraph refers to any lawful advocacy, protest, dissent or stoppage of work, which does not involve an activity that is intended to result in the conduct or harm referred to in paragraph (a), (b) or (c).

(3) An offence under subsection (2) does not include -

- (a) an act or omission that is committed during an armed conflict and, at the time and in the place of its commission, is in accordance with international law applicable to the conflict; or
- (b) the activities undertaken by military forces of a State in the exercise of their official duties, to the extent that those activities are governed by other rules of international law.

(4) The circumstances mentioned in subsection (2) are that the act or omission is committed in whole or in part for a political, religious or ideological purpose, objective or cause with the intention of -

- (a) intimidating the public, or a segment of the public, with regard to its security, including its economic security; or
- (b) compelling a person, a government or a domestic or an international organization to do or to refrain from doing any act, whether the person, government or organization is inside or outside Jamaica.

(5) A person who commits an offence under subsection (2) commits an indictable offence and shall be liable, in the case of an offence under -

- (a) subsection (2)(a)(i), to a sentence of death; or
- (b) subsection (2)(a)(ii), (b), (c), (d) or (e), to imprisonment for life.

Providing,
making
available

4. - (1) A person commits an offence if that person directly or indirectly, wilfully and without lawful justification or excuse, collects property, provides or

etc., invites a person to provide, or makes available,
 property property or financial or other related services -
 or (a) intending that they be used, or knowing that
 services they will be used, in whole or in part -
 for (i) for the purpose of facilitating
 terrorist or carrying out any terrorist
 purposes. activity; or
 (ii) for the benefit of any entity who
 that person knows is committing or
 facilitating any terrorist
 activity; or
 (b) knowing that, in whole or part, they will
 be used by or will benefit a terrorist group.

(2) A person who commits an offence under
 subsection (1) commits an indictable offence and is
 liable -

(a) in the case of an individual, to imprisonment
 for life; or

(b) in the case of a body corporate, to a fine.

Using or 5. Every person who, for the purpose of
 possessing facilitating or carrying out a terrorist activity -
 property (a) uses property, directly or indirectly, in
 for terror- whole or in part; or
 rist (b) possesses property intending that it be so
 purposes. used or knowing that it will be so used
 directly or indirectly in whole or in part,
 commits an indictable offence and is liable to
 imprisonment for life, in the case of an individual,
 or to a fine in the case of a body corporate.

Dealing 6. - (1) No person in Jamaica and no Jamaican
 in property outside Jamaica shall knowingly -

for (a) deal directly or indirectly in or with any

terrorist property that is owned or controlled by or purposes. on behalf of a terrorist group;

- (b) enter into or facilitate, directly or indirectly, any transaction in respect of property referred to in paragraph (a);
- (c) provide any financial or other related services in respect of that property to, for the benefit of or at the direction of, a terrorist group; or
- (d) convert any such property or take any steps to conceal or disguise that the property is owned or controlled by or on behalf of a terrorist group.

(2) A person who contravenes this section commits an indictable offence and shall be liable upon conviction to -

- (a) imprisonment for life, in the case of an individual; or
- (b) a fine, in the case of a body corporate.

Partici- 7. - (1) Every person who knowingly participates in or pation in contributes to, directly or indirectly, any activity of activity a terrorist group for the purpose of enhancing the of ability of any terrorist group to facilitate or carry terrorist out a terrorist activity commits an indictable offence group. and is liable upon conviction to imprisonment for life, in the case of an individual, or to a fine in the case of a body corporate.

(2) An offence may be committed under subsection (1) whether or not -

- (a) a terrorist group actually facilitates or carries out a terrorist activity;

(b) the participation or contribution of the accused actually enhances the ability of a terrorist group to facilitate or carry out a terrorist activity; or

(c) the accused knows the specific nature of any terrorist activity that may be facilitated or carried out by a terrorist group.

(3) Participating in or contributing to an activity of a terrorist group includes -

(a) providing, receiving or recruiting a person to receive training in order to facilitate or commit terrorist activity;

(b) providing or offering to provide a skill or an expertise for the benefit of, at the direction of or in association with a terrorist group;

(c) recruiting a person in order to facilitate or commit -

(i) a terrorism offence; or

(ii) an act or omission outside Jamaica that, if committed in Jamaica, would be a terrorism offence;

(d) entering or remaining in any country for the benefit of, at the direction of or in association with a terrorist group; or

(e) making oneself available, in response to instructions from any of the persons who constitute a terrorist group, to facilitate or commit -

(i) a terrorism offence; or

(ii) an act or omission outside Jamaica

that, if committed in Jamaica, would be a terrorism offence.

(4) In determining whether an accused participates in or contributes to any activity of a terrorist group, the Court may consider, among other factors, whether the accused -

(a) uses a name, word, symbol or other representation that identifies, or is associated with, the terrorist group;

(b) frequently associates with any of the persons who constitute the terrorist group;

(c) receives any benefit from the terrorist group; or

(d) repeatedly engages in activities at the instruction of any of the persons who constitute the terrorist group.

Facilitat-
ing
terrorist
activity.

8. Every person who knowingly facilitates a terrorist activity commits an indictable offence and is liable upon conviction to -

(a) imprisonment for life, in the case of an individual; or

(b) a fine, in the case of a body corporate.

Com-
mission
of
offence
for
terrorist
group.

9. - (1) Every person who commits a terrorism offence under this Act for the benefit of, at the direction of or in association with, a terrorist group, commits an indictable offence and is liable upon conviction to -

(a) imprisonment for life, in the case of an individual; or

(b) a fine, in the case of a body corporate.

(2) An offence may be committed under subsection (1) whether or not the accused knows the identity of

Instruct- any of the persons who constitute the terrorist group.
 ing com- 10. - (1) Every person who knowingly instructs,
 mission directly or indirectly, any person to carry out any
 of activity for the benefit of, at the direction of or in
 offence association with, a terrorist group, for the purpose of
 for enhancing the ability of any terrorist group to
 terrorist facilitate or carry out a terrorist activity, commits
 group. an indictable offence and is liable upon conviction

to -

(a) imprisonment for life, in the case of an individual; or

(b) a fine, in the case of a body corporate.

(2) An offence may be committed under subsection (1) whether or not -

(a) the activity that the accused instructs to be carried out is actually carried out;

(b) the accused instructs a particular person to carry out the activity referred to in paragraph (a);

(c) the accused knows the identity of the person instructed to carry out the activity referred to in paragraph (a);

(d) the person whom the accused instructs to carry out that activity knows that it is to be carried out for the benefit of, at the direction of, or in association with, a terrorist group;

(e) a terrorist group actually facilitates or carries out a terrorist activity;

(f) the activity referred to in paragraph (a) actually enhances the ability of a terrorist

group to facilitate or carry out a terrorist activity; or

- (g) the accused knows the specific nature of any terrorist activity that may be facilitated or carried out by a terrorist group.

Instruct-
ing
to carry
out
terrorist
activity.

11. - (1) Every person who, directly or indirectly, knowingly instructs, any person to carry out a terrorist activity commits an indictable offence and is liable upon conviction to -

- (a) imprisonment for life, in the case of an individual; or
(b) a fine, in the case of a body corporate.

(2) An offence may be committed under subsection (1) whether or not -

- (a) the terrorist activity is actually carried out;
(b) the accused instructs a particular person to carry out the terrorist activity;
(c) the accused knows the identity of the person whom the accused instructs to carry out the terrorist activity; or
(d) the person whom the accused instructs to carry out the terrorist activity knows that it is a terrorist activity.

Harbour-
ing or
conceal-
ing.

12. - (1) No person shall harbour or conceal, or prevent, hinder or interfere with the apprehension of, any other person whom he knows or has reason to believe has committed or is planning or is likely to commit any terrorist activity.

(2) A person who contravenes subsection (1) commits an indictable offence and shall be liable upon conviction to -

(a) imprisonment for life, in the case of an individual; or

Informa- (b) a fine, in the case of a body corporate.

tion 13. - (1) Subject to subsections (2) and (3), a person
about commits an offence if that person fails to disclose to a
terrorism Constable, as soon as is reasonably practicable, any
offence. information that comes to that person's attention in the
course of his trade, profession or employment and based
on which he believes or suspects that another person has
committed a terrorism offence.

(2) It shall be a defence for any person charged with an offence under subsection (1) to prove that -

(a) he had a reasonable excuse for not making the disclosure; or

(b) where the information referred to in subsection (1) comes to the person in the course of his employment and his employer has an established procedure for the disclosure of the information, the person disclosed the information in accordance with the procedure.

(3) An attorney-at-law shall not be required to disclose any information obtained, or belief based on any information disclosed to him -

(a) by his client in connection with the provision of legal advice; or

(b) by any person for the purpose of actual or contemplated legal proceedings,
and not being a disclosure with a view to furthering a criminal purpose.

(4) A person who commits an offence under this

section is liable upon summary conviction in a Resident Magistrate's Court to a fine not exceeding one million dollars or to imprisonment for a term not exceeding twelve months, or to both such fine and imprisonment.

Order in
respect
of listed
entity.

Orders, Reports and Warrants

14. - (1) The Director of Public Prosecutions may recommend to the Minister that an order be made under subsection (2) in respect of an entity where the Director of Public Prosecutions has reasonable grounds to believe that the entity -

- (a) has knowingly committed or participated in the commission of a terrorism offence; or
- (b) is knowingly acting on behalf of, at the direction of, or in association with, an entity referred to in paragraph (a).

(2) In making a recommendation under subsection (1), the Director of Public Prosecutions may take into account information obtained from an international organization or from another State.

(3) The Minister may, by order published in the *Gazette*, declare an entity to be a listed entity for the purposes of this Act if the Minister is satisfied that there is evidence to support a recommendation made under subsection (1).

(4) An entity in respect of which an order under subsection (3) is made may, within sixty days after the date of publication of the order, or within such longer period as the Minister may allow, apply in writing to the Minister for the revocation of the order.

(5) Prior to deciding on an application made under subsection (4), the Minister shall consult with the Director of Public Prosecutions.

(6) The Minister shall consider an application made under subsection (4) within thirty days after the receipt of that application and if the Minister decides that -

- (a) there are reasonable grounds for revocation, he shall forthwith revoke the order, publish a notice of revocation in the *Gazette* and notify the applicant in writing of the revocation;
- (b) there are no reasonable grounds for the revocation, he shall refuse the application and shall, within fourteen days of the decision, inform the applicant of that decision.

(7) Within sixty days of receiving information of the decision referred to in subsection (6)(b), the applicant may, after giving the Director of Public Prosecutions seven days notice of the application, apply to a Judge of the Supreme Court for a review of that decision.

(8) Upon an application made under subsection (7), the Judge shall -

- (a) examine, in Chambers, the evidence relied on in making an order under subsection (3) and may, at the request of the Director of Public Prosecutions, hear all or part of that evidence in the absence of the applicant and any counsel representing the applicant if the Judge is of the opinion that the disclosure of the evidence would be prejudicial to national security or

endanger the safety of any person;

(b) so as to enable the applicant to be reasonably informed of the reasons for the decision, provide the applicant with a statement summarizing the evidence available to the Judge, other than evidence the disclosure of which would, in the Judge's opinion, be prejudicial to national security or endanger the safety of any person;

(c) provide the applicant with a reasonable opportunity to be heard;

(d) on the basis of the evidence available to the Judge, determine whether the decision is reasonable and, if the decision is found not to be reasonable, make an order for its revocation.

(9) For the purposes of a review under this section, the Judge may receive in evidence anything that, in the opinion of the Judge, is reliable and relevant, even if it would not otherwise be admissible evidence in law.

(10) Every six months, the Director of Public Prosecutions shall review all orders made under subsection (3) so as to determine whether the circumstances referred to in subsection (1)(a) or (b) continue to exist in respect of the listed entity and, if such circumstances no longer exist, shall make a written recommendation to the Minister for the revocation of the order in respect of the listed entity.

(11) Upon receipt of a recommendation under subsection (10), the Minister shall, by notice

published in the *Gazette*, revoke the order.

Duty of entities to report. 15. - (1) In this section and sections 16 to 18 "designated authority" means the Director of Public Prosecutions or such other person as the Minister may designate by order.

(2) The following entities shall determine on a continuing basis whether they are in possession or control of property owned or controlled by or on behalf of a listed entity -

- (a) foreign companies in respect of their business in Jamaica relating to banking, securities, insurance, investment advice or trusts;
- (b) financial institutions;
- (c) societies to which the Friendly Societies Act applies.

(3) Every entity referred to paragraph (2) shall report to the designated authority at least once in every four calendar months, or in response to a request made to it by the designated authority, either -

- (a) that it is not in possession or control of any property referred to in subsection (1); or
- (b) that it is in possession of such property, in which case it shall also report the number of persons, contracts or accounts involved and the total value of the property.

(4) In making a report under subsection (3) the entity shall comply with such directions as may be given by the designated authority.

(5) No criminal or civil proceedings shall lie against a person who makes a report in good faith

under subsection (3).

(6) An entity that makes a report under subsection (3) to the designated authority shall not disclose the existence of that report to any other person.

(7) A person who contravenes any of the provisions of this section commits an offence and shall be liable on summary conviction in a Resident Magistrate's Court to -

- (a) in the case of an individual, a fine not exceeding one million dollars or to imprisonment for a term not exceeding twelve months, or to both such fine and imprisonment; or
- (b) in the case of a body corporate, a fine not exceeding three million dollars.

(8) In proceedings against a person for an offence against this section, it is a defence for the person charged that he had a reasonable excuse for not making the report required under subsection (3).

Duty to
report
suspicious
transac-
tions.

16. - (1) This section applies to every entity referred to in any of paragraphs (a) to (c) of section 15(2).

(2) The entity shall, in relation to each customer, pay special attention to all complex, unusual or large transactions, or unusual patterns of transactions whether completed or not, which appear to the entity to be inconsistent with the normal transactions carried out by that customer with the entity.

(3) Each entity shall promptly report to the designated authority, all complex, unusual large

transactions and unusual patterns of transactions, which have no apparent economic or obviously lawful purpose.

(4) An entity which fails to comply with subsection (3) commits an offence and is liable on summary conviction in a Resident Magistrate's Court to -

(a) in the case of an individual, a fine not exceeding one million dollars or to imprisonment for a term not exceeding twelve months, or to both such fine and imprisonment; or

(b) in the case of a body corporate, a fine not exceeding three million dollars.

(5) In proceedings against a person for an offence under this section, it is a defence for the person charged that he had a reasonable excuse for not making the report required under subsection (3).

(6) Where a member of staff of the entity, other than an officer referred to in section 18(3), is charged with an offence under this section, it is a defence for that member of staff that he disclosed the information or other matter in question to that officer in accordance with the procedures established pursuant to section 18.

(7) Where a report is made in accordance with subsection (3), the financial institution concerned, its directors and employees shall be exempt from -

(a) any liability to prosecution for an offence under section 4, 5 or 6;

(b) any criminal, civil or administrative

liability, as the case may be, for breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, regardless of the outcome of the report.

Unauthorized disclosures.

17. - (1) A person commits an offence if, knowing or suspecting that a designated authority is acting or is proposing to act, in connection with an investigation which is being, or is about to be conducted in relation to a terrorism offence, he discloses information or any other matter, relating to the investigation, to any other person, except -

- (a) an attorney-at-law for the purpose of obtaining legal advice; or
- (b) for the purpose of facilitating the investigation or any proceedings which might be conducted following the investigation.

(2) A person commits an offence if, knowing or suspecting that a report has been made to the designated authority under section 15(3) or 16(3), he discloses information or any matter, relating to the report, to any other person, except -

- (a) an attorney-at-law for the purpose of obtaining legal advice; or
- (b) for the purpose of facilitating any investigation or proceedings which might be conducted following that report.

(3) A person commits an offence if, knowing or suspecting that a disclosure to the officer designated by the entity for that purpose has been made, he discloses information or any other matter, relating to

that disclosure, to any other person, except -

- (a) an attorney-at-law for the purpose of obtaining legal advice; or
- (b) for the purpose of facilitating any investigation or proceedings which might be conducted following that disclosure.

(4) Nothing in subsections (1) to (3) makes it an offence for an attorney-at-law to disclose information or any other matters to -

- (a) a person who is, or a representative of, a client of that attorney-at-law, in connection with the giving of legal advice to that client; or
- (b) any other person, in contemplation of or in connection with, legal proceedings and for the purpose of those proceedings.

(5) A person convicted of an offence under subsection (1), (2) or (3) is liable to -

- (a) in the case of an individual, a fine not exceeding two million dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment; or
- (b) in the case of a body corporate, a fine not exceeding six million dollars.

Regulatory
controls by
certain
entities.

18. - (1) Every entity referred to in any of paragraphs (a) to (c) of section 15(2) shall establish and implement such programmes, policies, procedures and controls as may be necessary for the purpose of enabling it to fulfil its duties under sections 15 and 16.

(2) Without prejudice to the generality of subsection(1), the programmes referred to in that subsection shall include -

- (a) the establishment of procedures to ensure high standards of integrity of employees;
- (b) the development of a system to evaluate the personal employment and financial history of those employees;
- (c) the establishment of programmes for training of employees on a continuing basis and for instructing employees as to their responsibilities in respect of the provisions of this Act;
- (d) arrangements for an independent audit in order to ensure that the aforesaid programmes are implemented.

(3) For the purposes of this section, the entity shall designate one of its officers who performs management functions to be responsible for ensuring the implementation of the programmes, policies, procedures and controls referred to in subsection (1), including the reporting of transactions referred to in section 16(3)(complex, unusual large transactions).

(4) The entity shall consult with the competent authority for the purpose of carrying out its obligations under this section.

(5) In subsection (4), "competent authority" means the Minister responsible for finance or such other persons as he may specify in writing for the purpose of this section.

(6) An entity which contravenes subsection (1) or (3) commits an offence and is liable on summary conviction before a Resident Magistrate to a fine not exceeding one million dollars.

Monitoring
orders.

19. - (1) The Director of Public Prosecutions may apply to a Judge in Chambers in accordance with subsection (3) for an order (in this section and section 20 referred to as a "monitoring order") directing a financial institution to give a constable named by the Director of Public Prosecutions in the application, information and such documents as are specified in the application, other than items subject to legal privilege.

(2) The constable referred to in subsection (1) shall be a constable designated in writing by the Commissioner of Police.

(3) An application under subsection (1) shall be made *ex parte* and shall be in writing and be accompanied by an affidavit.

(4) A monitoring order shall direct a financial institution to disclose information or to produce documents, or both, obtained by or under the control of the institution about transactions conducted through an account held by a particular person with the institution.

(5) Subject to subsection (6), a monitoring order shall apply in relation to transactions conducted during the period specified in the order, being a period commencing not earlier than the day on which notice of the order is given to the financial institution and ending no later than three months after the date of the order.

(6) The Director of Public Prosecutions may apply, at any time while the order remains in force, for an extension of the period mentioned in subsection (5).

(7) A Judge shall not make a monitoring order in respect of any account unless he is satisfied that -

- (a) the person in respect of whose account the information is, or documents are, sought -
 - (i) has committed or is about to commit a terrorism offence; or
 - (ii) has benefited directly or indirectly, or is about to benefit directly or indirectly, from the commission of such an offence;
- (b) proceeds from the account have been used or are about to be used directly or indirectly to facilitate the commission of a terrorism offence; or
- (c) proceeds realised directly or indirectly from the commission of a terrorism offence have been credited to the account.

(8) A monitoring order shall specify -

- (a) the name or names, if known, in which the account is believed to be held;
- (b) the class of information and a description of any documents that the institution is required to give; and
- (c) the name of the constable to whom the information is, or documents are, to be given.

(9) A financial institution that is notified of a monitoring order and knowingly -

- (a) contravenes the order; or

(b) provides false or misleading information or documents in purported compliance with the order, commits an offence and is liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding one million dollars, in the case of an individual, or a fine not exceeding three million dollars in the case of a body corporate.

(10) A reference in this section to a transaction conducted through an account includes a reference to -

- (a) the making of a fixed term deposit or a financial investment;
- (b) in relation to a fixed term deposit, the transfer of the amount deposited or any part thereof at the end of the term; and
- (c) the opening, existence or use of a deposit box held by the institution.

(11) Nothing in sections 4(providing, making available, etc. property or services for terrorist purposes), 5 (using or possessing property for terrorist purposes) or 6 (prohibition against dealing in property) shall apply to a financial institution that is subject to a monitoring order in so far as that institution continues to conduct business with the person to whom the order relates.

Monitoring
orders
not to be
disclosed.

20. - (1) A financial institution that is, or has been, subject to a monitoring order shall not disclose the existence or the operation of the order to any person except -

- (a) an officer or agent of the institution for the purpose of ensuring that the order is complied with;

(b) an attorney-at-law, for the purpose of obtaining legal advice or representation in relation to the order.

(2) A person referred to in subsection (1)(a) or (b), to whom disclosure of the existence or operation of a monitoring order has been made, and a constable referred to in section 19(1) shall not -

(a) disclose the existence or operation of the order except to another person referred to in that subsection for the purpose of -

(i) the performance of that person's duties, if the disclosure is made by the constable referred to in section 19(1);

(ii) ensuring that the order is complied with or obtaining legal advice or representation in relation to the order, if the disclosure is made by an officer or agent of the institution; or

(iii) giving legal advice or making representations in relation to the order, if the disclosure is made by an attorney-at-law; or

(b) make a record of or disclose the existence or the operation of the order in any circumstances even when he ceases to be a person referred to in subsection (1).

(3) Nothing in subsection (2) prevents the disclosure by a person referred to in subsection (1)(b) of the existence or operation of a monitoring order -

- (a) for the purposes of, or in connection with, legal proceedings; or
- (b) in the course of proceedings before a Court.

(4) A person referred to in subsection (1)(b) shall not be required to disclose to any Court the existence or operation of a monitoring order.

(5) A person who contravenes subsection (1) or (2) commits an offence and is liable on summary conviction in a Resident Magistrate's Court -

- (a) in the case of an individual, to a fine not exceeding one million dollars or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment;
- (b) in the case of a body corporate, to a fine not exceeding three million dollars.

(6) A reference in this section to disclosing the existence or operation of a monitoring order to a person includes a reference to disclosing information to the person from which that person could reasonably be expected to infer the existence or operation of the monitoring order.

Examination
and
production
orders.

21. - (1) The Director of Public Prosecutions may, if the conditions referred to in subsection (2) are met, apply for -

- (a) an order that information or documents be made available for examination; or
- (b) a production order.

(2) The conditions referred to in subsection (1) are that the Director of Public Prosecutions has reasonable grounds for suspecting that -

- (a) a terrorism offence has been, is being, or is

likely to be committed; and

- (b) an entity has possession or control of any information or document relevant to the commission or likely commission of the terrorism offence.

(3) An application under this section shall be made *ex parte* in writing to a Judge in Chambers and shall be accompanied by an affidavit, sworn on the information and belief of the Director of Public Prosecutions or a person designated by the Director of Public Prosecutions for that purpose, deposing to the following matters -

- (a) the offence under investigation;
- (b) the entity or property, as the case may be, in relation to which the information or documents referred to in paragraph (c) are required;
- (c) the type of information or documents in respect of which disclosure or production is sought and the form in which they should be disclosed or produced; and
- (d) the facts relied on to justify the suspicion, on reasonable grounds, that -

- (i) the entity referred to in paragraph (b) has committed or is likely to commit a terrorism offence; or

- (ii) the property referred to in that paragraph has been used or is likely to be used to commit such an offence,

and that the information or documents referred to in paragraph (c) are likely to be of substantial value, whether alone or together with other material, to an investigation in respect of that

offence.

(4) Subject to any conditions that the Judge considers advisable in the public interest, the Judge to whom an application is made under subsection (1) may order any entity having possession or control of the information or documents referred to in subsection (3)(c) to -

- (a) make the information or documents available for examination by a constable named in the order; or
- (b) produce the information or documents to the constable:

Provided that the order shall not require the constable to remove or retain any accounting records (including ledgers, daybooks, cash books and account books) used in the ordinary business of banking, but may allow the constable to examine or copy them wherever they are located.

(5) Where any information or document is made available for examination or is produced to a constable pursuant to subsection (4) -

- (a) in the case of any information or document made available for examination, the constable may examine, take extracts from, or make copies of the information or document; or
- (b) in the case of any information or document produced, the constable may -
 - (i) examine, take extracts from, or make copies of the information or document; or
 - (ii) retain the information or document, if and for so long as, its retention is

reasonably necessary for the purposes of this Act.

(6) Where a constable retains any information or document pursuant to an order made under this section, the constable shall give to the entity in respect of whom the order is made -

- (a) a receipt for the information or document, as the case may be; and
- (b) a copy of the information or document, as the case may be, certified by the constable in writing to be a true copy of the information or document.

(7) An entity in respect of which an order is made under subsection (4) shall comply with the order within the period specified in the order:

Provided that the Judge may, on the application of that entity, extend the time allowed for complying with the order.

(8) An order under subsection (4) requiring an entity to make available or produce information or documents -

- (a) may provide for such assistance as the constable may require to execute the order;
- (b) shall specify the time and place in which the information or documents are to be made available or produced, as the case may be; and
- (c) shall be served on the person in respect of whom it is made, in the manner that the Judge directs or as may be prescribed by rules of court.

(9) A person in respect of whom an order is made under this section requiring the production of a

document, may apply to a Judge in Chambers, for a variation of the order on the ground that the document is essential to the business activities of that person.

(10) The person in respect of whom the order is made may, by application to a Judge in Chambers, object to the disclosure of any information or document on the ground that -

- (a) a privilege is attached by law to the information or document; or
- (b) disclosure of the information or document would not, for any other reason, be in the public interest.

(11) An application under subsection (9) or (10) shall be made within five days after the date of service of the order, or within such greater period, having regard to the peculiar circumstances of the case, as the Judge may specify in the order.

(12) In determining an application under subsection (9) or (10), the Judge may, if he considers it necessary, examine the information or document in relation to which the application is made and, the Judge shall -

- (a) in the case of an application under subsection (9), if satisfied as to the ground mentioned in that subsection, grant the application and order that the entity make the document available to the constable pursuant to subsection (4)(a); or
- (b) in the case of an application under subsection (10), if satisfied as to any of the grounds mentioned in that subsection, grant the application and order that disclosure or production be refused.

(13) Where any information or document is copied pursuant to subsection (5), any such copy that is certified by a Resident Magistrate to be a copy made under that subsection is evidence of the nature and content of the original information or document and has the same probative value as the original information or document would have if it had been proved in the ordinary way.

(14) A Resident Magistrate shall not certify any copy under subsection (13) unless the Resident Magistrate has seen or heard, as the case may require, the original information or document.

(15) In the case of -

(a) accounting records referred to in subsection (4);

or

(b) a document in respect of which a production order is varied pursuant to subsection (12)(a),

a Resident Magistrate may, for the purpose of complying with subsection (14), order the entity having possession or control of the records to produce the records at such time and place as the Resident Magistrate considers appropriate to prevent or minimise any disruption to the business in which the records are used.

Failure to
comply with
examination
or
production
order.

22. - (1) An entity commits an offence if -

(a) without reasonable excuse, it fails to comply with an order made under section 21; or

(b) in purported compliance with such an order, it produces or makes available any information or document that it knows to be false or misleading in a material particular and the entity does not -

(i) indicate, to the constable to whom the information or document is produced or made available, that the information or document is false or misleading; and

(ii) provide to that constable such correct information as it has in its possession or as it can reasonably acquire.

(2) An entity which commits an offence under subsection (1) is liable on summary conviction before a Resident Magistrate to -

(a) in the case of an individual, a fine not exceeding one million dollars or to imprisonment for a term not exceeding one year, or to both such fine and imprisonment; or

(b) in the case of a body corporate, a fine not exceeding three million dollars.

Warrant
search
premises
for appli-
cable
property.

23. - (1) Subject to subsection (3), where a Justice of the Peace is satisfied by information on oath that there are reasonable grounds for suspecting that applicable property is to be found on any premises specified in the information, he may issue a search warrant in accordance with subsection (2).

(2) The warrant mentioned in subsection (1) may authorize a constable named in the warrant to enter the premises specified in the warrant, with such assistance and by such force as is necessary and reasonable to -

(a) enter upon the premises;

(b) search the premises for applicable property;

(c) seize property found in the course of the search that the constable believes, on reasonable grounds, to be applicable property.

(3) A warrant shall not be issued under this section unless the informant or some other person has given to the Justice of the Peace, on oath, any further information that the Justice of the Peace may require concerning the grounds on which the issue of the warrant is sought.

(4) A warrant issued under this section shall include -

- (a) a statement of the purpose for which the warrant is issued, and a reference to the nature of the terrorism offence;
- (b) a description of the kind of property to be seized;
- (c) the time, not being later than twenty-eight days, upon the expiration of which the warrant ceases to have effect; and
- (d) a statement as to whether entry is authorized to be made at any time of the day or night, or during the specified hours of the day or night.

Other
applicable
property
may be
seized.

24. - (1) A warrant issued pursuant to section 23 shall be deemed to authorize the constable to seize property that he believes, on reasonable grounds, to be applicable property -

- (a) in relation to the terrorism offence, although not of a kind specified in the warrant; or
- (b) in relation to another terrorism offence, if the constable believes, on reasonable grounds, that it is necessary to seize that property in order to prevent its concealment, loss or destruction or its use in connection with the offence specified as aforesaid or any other offence.

Record of

25. - (1) A constable who executes a warrant issued under

property section 23 shall -

seized.

- (a) detain the property seized, taking reasonable care to ensure that it is preserved so that it may be dealt with in accordance with this Act;
- (b) upon the execution of the warrant, prepare a list of the property seized and give a copy thereof to the owner or occupier of the premises who is present at the time of the seizure; and
- (c) as soon as is practicable after the execution of the warrant, but within a period of seventy-two hours thereafter, prepare a written report, identifying the property seized and the location where the property is being detained and send a copy of the report to the Clerk of Courts in that location.

(2) The Clerk of Courts referred to in subsection (1)(c) shall furnish a copy of the report to -

- (a) the person from whom the property was seized;
- (b) the designated authority; and
- (c) any other person who appears to the Clerk of Courts to have an interest in the property.

Return of property seized.

26. - (1) Where property is seized otherwise than because it may afford evidence as to the commission of a terrorism offence, any person who claims an interest in the property may apply to the Court for an order that the property be returned to him.

(2) Where application is made under subsection (1), the Court shall order the return of the property to the applicant if the Court is satisfied that -

- (a) the applicant is entitled to possession of the property;

- (b) the property is not applicable property in relation to a terrorism offence; and
- (c) the person in respect of whose conviction, charging or proposed charging the seizure was made, has no interest in the property.

(3) Subject to section 27, the property shall be returned to the person from whose possession it was seized, as soon as practicable after the end of a period of seventy-two hours after seizure if at the end of that period an information has not been laid in respect of a terrorism offence.

Retention
of property
seized.

27. - (1) Subject to subsections (2) and (3), where property is seized under section 23 otherwise than because it may afford evidence as to the commission of a terrorism offence and -

- (a) but for this subsection, the property would be returned to a person as soon as is practicable after a particular period; and

- (b) before the end of that period, a restraint order is made in relation to the property,

it shall be dealt with in accordance with the restraint order or with any other provision of this Act.

(2) If, at the time when a restraint order is made against property referred to in subsection (1), the property is in the possession of the Commissioner of Police, the Commissioner of Police may apply to the Court that made the restraint order for an order that he retain possession of the property.

(3) The Court may, if satisfied that there are reasonable grounds for believing that the property may afford evidence as to the commission of a terrorism offence, make an order that the Commissioner of Police

retain the property for so long as it is required as evidence as to the commission of a terrorism offence.

(4) In any proceedings on an application under subsection (2), a witness shall not be required to answer any question or to produce any document if the Court is satisfied that the answering of the question or the production of the document may prejudice the investigation of, or the prosecution of a person for, an offence.

(5) Where an application for a restraint order has been refused in relation to property referred to in subsection (1) and, at the time of such refusal, the property is in the possession of the Commissioner of Police the property shall, as soon as practicable after the refusal, be returned to the person from whose possession it was seized.

(6) Where property is seized under section 23 and, while the property is in the possession of the Commissioner of Police, a forfeiture order is made in respect thereof, the property shall be dealt with in accordance with the forfeiture order.

Order of
for-
feiture.

28. - (1) The Director of Public Prosecutions may make an application to the Court for an order of forfeiture in respect of applicable property wherever situate, whether inside or outside of Jamaica.

(2) Where the Director of Public Prosecutions makes an application under subsection (1) -

(a) he shall -

(i) give no less than fourteen days' written notice of the application to the entity convicted of the terrorism offence and to any other person who the Director of

Public Prosecutions has reason to believe may have an interest in the property; and

- (ii) publish a copy of the notice in the *Gazette* and in a daily newspaper printed and circulated in Jamaica;
- (b) the entity convicted of the terrorism offence and any other person who claims an interest in the property may appear and adduce evidence at the hearing of the application;
- (c) the Court, at any time before the final determination of the application -
 - (i) shall make an order for a valuation to be carried out in relation to the property and give such ancillary directions as the Court considers necessary for that purpose; and
 - (ii) may direct the Director of Public Prosecutions to give notice of the application to any person who, in the opinion of the Court, appears to have an interest in the property.

(3) Where an application is made under subsection (1), the Court may -

- (a) in determining the application, have regard to the transcript of any proceedings against the entity for the offence;
- (b) if satisfied that the property in respect of which the application is made is applicable property, order that the property or such part thereof as the Court may specify in the order, be forfeited to the Crown.

(4) Where the Court orders that property, other than money, be forfeited to the Crown, the Court shall specify in the order the amount representing the value of the property pursuant to a valuation carried out under subsection (2)(c)(i).

(5) In considering whether a forfeiture order should be made under subsection (1) the Court shall have regard to -

- (a) the rights and interests, if any, of third parties in the property;
- (b) the gravity of the offence concerned;
- (c) any hardship that may reasonably be expected to be caused to any person by the operation of the order; and
- (d) the use that is ordinarily made of the property, or the intended use of the property.

(6) Where the Court makes a forfeiture order under subsection (1), the Court may give such directions as are necessary or convenient for giving effect to the order.

(7) The Director of Public Prosecutions may, in accordance with rules of court, appeal against a decision of the Court to refuse an application under subsection (1).

Amendment
of appli-
cation.

29. - (1) The Court hearing an application under section 28(1) (hereafter in this section referred to as the original application) may, before final determination thereof, and on the application of the Director of Public Prosecutions, amend the original application to include any other property, upon being satisfied that -

- (a) the property was not reasonably capable of

identification when the original application was made; or

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

(2) Where the Director of Public Prosecutions applies to amend an original application and the amendment would have the effect of including additional property in the original application, he shall give not less than fourteen days' written notice of the application to amend to any person who he has reason to believe may have an interest in the property to be included in the original application.

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

Effect of forfeiture order. 30. - (1) Subject to subsection (2), where the Court makes a forfeiture order against any property, the property vests absolutely in the Crown by virtue of the order.

(2) Where such property is subject to the Registration of Titles Act -

(a) the property vests in the Crown in equity but not at law until the applicable registration requirements have been complied with;

(b) the Crown is entitled to be registered as owner of the property;

(c) the Commissioner of Lands has power on behalf of the Crown to do, or authorize the doing of, anything necessary or convenient to obtain the registration of the Crown as owner, including the

execution of any instrument required to be executed by a person transferring an interest in that kind of property.

(3) Where the Court makes a forfeiture order against property -

- (a) the property shall not, except with the leave of the Court and in accordance with any directions of the Court, be disposed of, or otherwise dealt with, by or on behalf of the Crown, before the relevant appeal date;
- (b) if, after the relevant appeal date, the order has not been discharged, the property may be disposed of and the proceeds applied or otherwise dealt with in accordance with the directions of the Attorney-General.

(4) Without prejudice to the generality of subsection (3)(b), the directions that may be given pursuant thereto include a direction that property is to be disposed of in accordance with the provisions of any enactment specified in the direction.

(5) In this section, "relevant appeal date" means -

- (a) the date on which the period allowed by the rules of court for the lodging of an appeal against a person's conviction, or against the making of a forfeiture order, expires without an appeal having been lodged, whichever is the later; or
- (b) where the appeal against a person's conviction or against the making of a forfeiture 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.

(6) A forfeiture order under this Act shall not affect the operation of the provisions of any other law respecting the forfeiture of property.

(7) Property is subject to forfeiture under section 28(3)(b) only to the extent that it is not required to satisfy the operation of the provisions of any other law respecting restitution to, or compensation of, persons affected by the commission of offences.

(8) Before making a forfeiture order, the Court may set aside any conveyance or transfer of the property that occurred after the seizure of the property or the service of the restraint order, unless the conveyance or transfer was made for valuable consideration to a person acting in good faith and without notice.

Protection
of third
parties.

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

(2) If, pursuant to subsection (1), a person applies for an order the Court shall make an order declaring the nature, extent and value (as at the time the order is made) of the person's interest if the Court is satisfied -

- (a) that the person was not in any way involved in the commission of the offence; and
- (b) where the person acquired the interest during or after the commission of the offence, that he acquired the interest -
 - (i) for sufficient consideration; and

(ii) without knowing, or having reasonable grounds to suspect, that at the time he acquired it, the property was used in, or derived, obtained or realized directly or indirectly from, the commission of a terrorism offence.

(3) Subject to subsection (4), where a forfeiture order has already been made against property, a person who claims an interest in the property may, before the end of the period of three months commencing on the day on which the forfeiture order is made or such longer period as the Court may, having regard to all the circumstances, allow, apply under this subsection to the Court for an order under subsection (2).

(4) A person who -

(a) had knowledge of the application for the forfeiture order before the order was made; or
(b) appeared at the hearing of that application, shall not, except with the leave of the Court, be permitted to make an application under subsection (3).

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

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

(7) Where a person has obtained an order under subsection (2) and the period allowed by rules of court with respect to the making of appeals has expired or any appeal from that order made pursuant to subsection (6) has been determined in the person's favour, the Attorney-General shall, on application of that person, direct that -

- (a) the property or the part thereof to which the applicant's interest relates, be returned to the applicant; or
- (b) an amount equal to the value of the applicant's interest, as declared in the order, be paid to the applicant.

Discharge
of for-
feiture
order on
appeal or on
quashing of
conviction.

32. - (1) Where a forfeiture order is made in respect of a person's conviction of a terrorism offence and the conviction is subsequently quashed, the quashing of the conviction discharges the order.

(2) Where a forfeiture order is discharged as provided in subsection (1) or, as the case may be, by the Court on an appeal against the order, any person who claims to have had an interest in the property immediately before the making of the forfeiture order, may apply to the Attorney-General in writing for the return or, as the case may be, the transfer of the interest to him.

(3) On the receipt of an application under subsection (2), the Attorney-General shall -

- (a) if the interest is still vested in the Crown, direct that the property or part thereof to which the applicant's interest relates, be transferred or returned to the applicant; or

(b) in any other case, direct that there be payable to the applicant, an amount equal to the value of the interest at the time when the order is made.

(4) In the exercise of the powers conferred by this section and section 31, the Attorney-General shall have power to do or authorize the doing of anything necessary or convenient to effect the transfer or return of property, including the execution of any instrument and the making of an application for the registration of an interest in the property.

Appeals
against
forfeiture
orders.

33. - (1) A person who has an interest in property against which a forfeiture order is made may appeal against that order -

(a) in the case of a person convicted of the terrorism offence in respect of which the order was made, in the same manner as if the order were, or were part of, a sentence imposed on that person in respect of that offence; or

(b) in any other case, in the same manner as if the person had been convicted of the terrorism offence in respect of which the order was made and the order were, or were part of, a sentence imposed on that person in respect of that offence.

(2) Nothing in this section shall be taken to affect any right of appeal that a person would have apart from this section.

Application
for res-
traint
order.

34. - (1) Where a person (in this section and section 35 called "the defendant") has been -

(a) convicted of a terrorism offence ; or

(b) charged with a terrorism offence,

the Director of Public Prosecutions may apply to the Court for a restraint order against any property in respect of which a forfeiture order may be made under section 28(3)(b).

(2) An application for a restraint order may be made *ex parte* and shall be in writing and be accompanied by an affidavit stating -

- (a) where the defendant has been convicted of a terrorism offence, the terrorism offence for which the defendant was convicted, the date of the conviction, the Judge before whom the conviction was obtained and whether an appeal has been lodged against the conviction;
- (b) where the defendant has been charged with a terrorism offence, the terrorism offence for which he is charged and the grounds for believing that the defendant committed the offence;
- (c) a description of the property in respect of which the restraint order is sought;
- (d) the name and address of the person who is believed to be in possession of the property;
- (e) the grounds for believing that the property is applicable property in relation to the offence;
- (f) where the application seeks a restraint order against a person other than the defendant, the grounds for believing that the property is applicable property in relation to the offence or is subject to the effective control of the defendant; and

- (g) the grounds for believing that a forfeiture order may be or is likely to be made under this Act.

Restraint
orders.

35. - (1) Subject to this section, the Court may, on the application of the Director of Public Prosecutions, make a restraint order against property wherever situate, whether inside or outside of Jamaica, if the Court is satisfied that -

- (a) the defendant has been convicted of a terrorism offence;
- (b) the defendant is charged with a terrorism offence and there are reasonable grounds for believing that the defendant committed the offence;
- (c) there are reasonable grounds for believing that the property is applicable property in relation to the terrorism offence for which the defendant is convicted or charged;
- (d) Where the application seeks a restraint order against property of a person other than the defendant, there are reasonable grounds for believing that the property is applicable property in relation to the terrorism offence for which the defendant is convicted or charged or that the property is subject to the effective control of the defendant; or
- (e) there are reasonable grounds for believing that a forfeiture order is likely to be made under this Act.

(2) A restraint order may -

- (a) prohibit the defendant or any other person from disposing of, or otherwise dealing with, the

property or such part thereof or interest therein as is specified in the order, except in such manner as may be specified in the order; and

(b) at the request of the Director of Public Prosecutions, where the Court is satisfied that the circumstances so require -

- (i) direct such person as the Court may appoint to take custody of the property or such part thereof as is specified in the order and to manage or otherwise deal with all or any part of the property in accordance with the directions of the Court; and
- (ii) require any person having possession of the property to give possession thereof to the person appointed under sub-paragraph (i) to take custody of the property.

(3) A restraint order may be made subject to such conditions as the Court thinks fit and, without limiting the generality of the foregoing, may make provision for meeting out of the property, or a specified part of the property, all or any of the following -

- (a) the person's reasonable living expenses including the reasonable living expenses of the person's dependants (if any) and reasonable business expenses;
- (b) the person's reasonable expenses in defending the criminal charge and any proceedings under this Act.

(4) In determining whether there are reasonable grounds for believing that property is subject to the effective control of the defendant, the Court may have regard to -

- (a) shareholding in, debentures over or directorships in, any company that has an interest (direct or indirect) in the property, and for this purpose the Court may order the investigation and inspection of the books of a company named in the order;
- (b) any trust that has a relationship with the property;
- (c) any relationship between persons having interests in the property or in such company or trusts as is referred to in paragraph (a) or (b), and any other persons.

(5) Where a person appointed under subsection (2)(b)(i) is given a direction in relation to any property, that person may apply to the Court for directions on any question respecting the management or preservation of the property concerned.

(6) An application under subsection (5) shall be served upon all persons interested in the application or such of them as the Court thinks expedient, and all such persons shall be entitled to appear and be heard at the hearing.

(7) A person appointed under subsection (2)(b)(i) shall, in acting on directions given by the Court, be deemed to have discharged his duty in the subject-matter of the application.

Under- 36. - (1) Before making an order under section 35, the
 takings Court may require the Crown to give such undertakings as
 by Crown. the Court considers appropriate with respect to the
 payment of damages or costs, or both, in relation to the
 making and execution of the order.

(2) For the purposes of this section, the
 Director of Public Prosecutions may, after consultation
 with the Attorney-General, on behalf of the Crown, give
 to the Court such undertakings with respect to the
 payment of damages or costs, or both, as are required by
 the Court.

Notice of 37. Before making a restraint order, the Court may
 application require notice to be given to, and may hear, any person
 for who, in the opinion of the Court, appears to have an
 restraint interest in the property, unless the Court is of the
 order. opinion that giving such notice before making the order
 would result in the disappearance, dissipation or
 reduction in the value of the property.

Service 38. A copy of a restraint order shall be served on a
 of person affected by the order in such manner as the Court
 restraint directs or as may be prescribed by rules of Court.
 order.

Registra- 39. - (1) A copy of a restraint order that affects
 tion of registered land in Jamaica shall be registered with the
 restraint Registrar of the Supreme Court and with the Registrar of
 order. Titles who shall record the particulars of the order in
 the Register Book of Titles.

(2) A restraint order is of no effect with
 respect to registered land unless it is so registered.

(3) Where particulars of a restraint order are
 registered as required by this section, a person who
 subsequently deals with the property concerned shall,

for the purposes of section 31, be deemed to have notice of the order at the time of the dealing.

(4) The registration of a restraint order under this section shall be exempt from the payment of fees under the Registration of Titles Act and stamp duty under the Stamp Duty Act.

Contraven-
tion of
restraint
order.

40. - (1) A 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 -

(a) on summary conviction in a Resident Magistrate's Court -

(i) in the case of an individual, to a fine not exceeding one million dollars or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment; or

(ii) in the case of a body corporate, to a fine not exceeding three million dollars;

(b) on conviction on indictment in a Circuit Court -

(i) in the case of an individual, to a fine or to imprisonment for a term not exceeding seven years or to both such fine and imprisonment; or

(ii) in the case of a body corporate, to a fine.

(2) Where a restraint order is made against property and -

- (a) the property is disposed of or otherwise dealt with in contravention of the restraint order; and
- (b) the disposition or dealing was not for sufficient consideration or not in favour of a person who acted in good faith and without notice,

the Director of Public Prosecutions may apply to the Court for an order that the disposition or dealing be set aside.

(3) The Court may, on the application of the Director of Public Prosecutions under subsection (2), set aside the disposition or dealing -

- (a) as from the day on which the disposition or dealing took place; or
- (b) as from the day of the order under this subsection,

and declare the respective rights of any persons who acquired interests in the property on or after the day on which the disposition or dealing took place, and before the day of the order under this subsection.

Duration
of
restraint
order.

41. - (1) A restraint order remains in force until -

- (a) it is revoked under section 42 or 44;
- (b) it ceases to be in force under section 43;
- (c) a forfeiture order is made in respect of the property that is the subject of the order; or
- (d) the property that is the subject of the order becomes forfeited to the Crown under any other enactment.

(2) A restraint order shall cease to be in force in respect of any property or interest therein or any part thereof which is excluded from its application

pursuant to section 42(5).

Review of
restraint
orders and
search
warrants.

42. - (1) A person who has an interest in property in respect of which a restraint order is made or that was seized under a warrant issued pursuant to section 23 may, at any time, apply to the Court -

- (a) for an order under subsection (5); or
- (b) for permission to examine the property.

(2) An application under subsection (1) shall not be heard by the Court unless the applicant has given the Director of Public Prosecutions not less than three days' notice in writing of the application.

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

(4) On an application under subsection (1)(a) in respect of any property, the Court may act in accordance with subsection (5) after hearing the applicant, the Director of Public Prosecutions or any other person who is notified under subsection (3).

(5) For the purposes of subsection (4), the Court may order that the property or any part thereof be returned to the applicant or, in the case of a restraint order, revoke the order or vary it to exclude the property or any interest therein or any part thereof from the application of the order, or make the order subject to such conditions as the Court thinks fit -

- (a) if the applicant enters into a recognizance before the Court, with or without sureties, in such amount and with such conditions, as the Court directs, and where the Court considers it appropriate, deposits with the Court such sum

of money or other valuable security as the Court directs;

(b) if the conditions referred to in subsection (6) are satisfied; or

(c) for the purpose of -

(i) meeting the reasonable living expenses of the person who was in possession of the property at the time the order was made or the warrant was executed or any person who, in the opinion of the Court, has an interest in the property and of the dependants of that person;

(ii) meeting the reasonable business or legal expenses of a person referred to in sub-paragraph (i).

(6) An order under subsection (5) in respect of property may be made if the Court is satisfied that -

(a) a restraint order should not have been made or a warrant should not have been issued pursuant to section 23, in respect of the property;

(b) the applicant is the lawful owner, or lawfully entitled to possession, of the property and appears innocent of any complicity in a terrorism offence or of any collusion in relation to such offence; and

(c) the property will no longer be required for the purpose of any investigation or as evidence in any proceedings.

(7) On an application to the Court under subsection (1)(b), the Court may order that the applicant be permitted to examine the property subject

to such terms as appear to the Court to be necessary or desirable to ensure that the property is safeguarded and preserved for the purpose for which it may subsequently be required.

Automatic 43. - (1) Subject to this section, a restraint order
expiry shall not continue in force for a period of more than
of six months after the date when the order is made unless,
restraint before the expiration of that period, the Director of
orders. Public Prosecutions applies to the Court for an
extension of the period of operation of the order.

(2) Where the Director of Public Prosecutions makes an application under subsection (1) and the Court is satisfied that a forfeiture order may be made in respect of the property concerned or part thereof, the Court may specify the period of operation of the restraint order and may make such other order as the Court considers appropriate in relation to the operation of the order.

Disposal 44. - (1) Where the Court is satisfied that property
of property will no longer be required for the purposes of -
seized or (a) section 28(3)(b) (forfeiture order on
dealt with. conviction);

(b) any other enactment providing for forfeiture;

(c) any investigation; or

(d) evidence in any proceedings,

the Court shall, on the application of the Director of Public Prosecutions or any person having an interest in the property, act in accordance with the following subsections.

(2) The Court may revoke any restraint order in respect of the property.

(3) Where the property has been seized under a warrant issued under section 23, or is under the control of a person appointed pursuant to section 35(2)(b)(i), the Court may order that the property be -

(a) returned to the person from whom it was taken, if that person's possession of the property is lawful;

(b) returned to the lawful owner or the person who is lawfully entitled to possession of it if -

(i) the person from whom it was taken was not lawfully entitled to possession of it; and

(ii) the lawful owner or the person lawfully entitled to its possession is known;

(c) order that the property be forfeited to the Crown if -

(i) possession of it by the person from whom it was taken is unlawful; and

(ii) the lawful owner or person lawfully entitled to its possession is not known or cannot upon reasonable enquiry, be ascertained.

General

Consent of Director of Public Prosecutions. 45. Proceedings in respect of a terrorism offence or an offence under section 13 (failure to report terrorism offence), 15 or 16 (duty of entities to report) shall not be instituted without the consent of the Director of Public Prosecutions.

Extension of Jamaican 46. For the purpose of conferring jurisdiction, any offence committed outside of Jamaica shall be deemed to

local criminal jurisdiction. have been committed in any place in Jamaica where the offender may for the time being be, if, had such offence been committed in Jamaica, the offence would be a terrorism offence.

Regulations. 47. The Minister may make regulations generally for giving effect to the provisions and purposes of this Act.

Amendments to other Acts. 48. The Acts specified in Column A of the Second Schedule are amended in the manner set out in relation thereto in Column B of that Schedule.

FIRST SCHEDULE

(Section 3)

<p>Offences Implementing the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation.</p>	<p>1. - (1) Unlawfully and intentionally seizing or exercising control over a ship by the use or threat of force, violence or any other form of intimidation. (2) Unlawfully and intentionally - (a) committing an act of violence against a person on board a ship, whether or not any physical contact or harm occurs; (b) destroying or damaging a ship or the cargo of a ship; (c) placing, or causing to be placed, on a ship any device or substance that destroys or damages or is likely to destroy or damage that ship or its cargo; (d) destroying or causing</p>
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serious damage to maritime navigational facilities or causing serious interference with the operation of such facilities;

- (e) communicating false information, knowing such information to be false,

so as to endanger, or create a serious likelihood of endangering, the safe navigation of a ship.

(3) This paragraph shall not apply to -

- (a) a warship;
- (b) a government ship being used as a naval auxiliary or for customs or police purposes; or
- (c) a ship that is laid up or withdrawn from navigation.

(4) The provisions of this paragraph shall not affect any immunity attached to a foreign warship or other government vessel operated for non-commercial purposes.

(5) In this paragraph-
"ship" means a vessel, of any type whatsoever, not permanently attached to the seabed, including dynamically supported craft, submersibles or any other floating craft;

"warship" means a ship -

- (a) that belongs to the armed forces of a State;
- (b) that bears the external marks distinguishing ships of that nationality;
- (c) that is under the command of an officer duly commissioned by the government of the State;
- (d) whose name appears in the appropriate service list or its equivalent; and
- (e) that is manned by a crew which is under regular armed forces discipline.

Offences implementing the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf.

2. - (1) In this paragraph, "fixed platform" means an artificial island, installation or structure permanently attached to the sea-bed for the purpose of exploration or exploitation of resources or for other economic purposes.

(2) Unlawfully and intentionally seizing or exercising control over a fixed platform by the use or threat of force, violence or any other form of intimidation.

(3) Unlawfully and intentionally -

- (a) committing any act of violence against a person on board a fixed platform, whether or

- not any physical contact or harm occurs;
- (b) destroying or damaging a fixed platform; or
- (c) placing or causing to be placed, on a fixed platform any device or substance that is likely to destroy or damage the fixed platform,

so as to endanger, or create a reasonable likelihood of endangering, the safety of the fixed platform.

Offences implementing the Convention for the Suppression of Terrorist Bombings.

3. - (1) Unlawfully and intentionally delivering, placing, discharging or detonating an explosive or other lethal device in, into or against any public place, State or government facility, public transportation system or infrastructure facility, with the intention of causing -

- (a) death or serious bodily injury to any person; or

- (b) extensive destruction of such place, facility or system, where such destruction results or is likely to result in major economic loss,

or organizing or directing any person to do so.

(2) In this paragraph, "an explosive or other lethal device" includes -

- (a) any incendiary weapon

or device designed or having the capability to cause death, serious bodily injury or substantial damage to property; or

- (b) any weapon or device designed or having the capability to cause death, serious bodily injury or substantial damage to property, through the release, dissemination or impact of toxic chemicals, biological agents, toxins or similar substances, or radiation or radioactive, material.

Offences implementing the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents.

4. - (1) Unlawfully and intentionally -

- (a) injuring, kidnapping or otherwise attacking any internationally protected person; or
- (b) attacking that person's official premises, private accommodation or means of transport.

(2) For the purposes of this paragraph "internationally protected person" means -

- (a) a Head of State, including any member of a collegial body performing the functions of Head of State under the constitution of the State concerned, a Head

of Government or a Minister for Foreign Affairs, whenever any such person is in a foreign State, as well as the members of his family who accompany him;

- (b) any representative or official of a State or any official or other agent of an international organization of an intergovernmental character who, at the time when and in the place where an offence is committed against him, his official premises, his private accommodation or his means of transport, is entitled pursuant to international law to special protection from any attack on his person, freedom or dignity, as well as members of his family forming part of his household.

Offences implementing the International Convention Against the Taking of Hostages.

5. Seizing, or detaining, and threatening to kill, injure, or continue to detain, any person in order to compel any entity, State, government or international intergovernmental organization to do or refrain from doing any act.

Offences implementing
the Convention on the
Physical Protection of
Nuclear Materials.

6. - (1) Receiving,
possessing, using,
transferring, altering or
disposing or dispersing of
nuclear material -

- (a) without lawful
authority; and
- (b) which causes or is
likely to cause death
or serious injury to
any person or
substantial damage to
property.

(2) Stealing, robbing,
embezzling or fraudulently
obtaining, nuclear material.

(3) Demanding nuclear
material by threat, attack or
by any other form of
intimidation.

(4) Threatening -

- (a) to use nuclear
material to cause
death or serious
injury to any person
or substantial damage
to property; or
- (b) to steal or rob nuclear
material in order to
compel any person,

government or international organization to do or refrain from doing any act.

(5) In this paragraph -
"nuclear material" means -

(a) plutonium, except
plutonium with
isotopic
concentration
exceeding 80% in
plutonium-238;

(b) uranium-233;

(c) uranium containing
the isotopes 235
or 233 or both in
an amount such
that the abundance
of the ratio of
the sum of these
isotopes to the
isotope 238 is
greater than the
ratio of the
isotope 235 to the
isotope 238
occurring in
nature;

(d) uranium containing
the mixture of
isotopes as

occurring in
nature other than
in the form of ore
or ore-residue; or
(e) any material
containing one or
more of the
materials referred
to in paragraphs
(a) to (e).

SECOND SCHEDULE

(Section 48)

Amendments to Other Acts

<u>Column A</u>	<u>Column B</u>
<u>Act</u>	<u>Amendment</u>
<p>1. The Aircraft (Tokyo, Hague and Montreal Conventions) Act.</p>	<p>1. - (1) Insert the following as section 17A -</p> <p>"Acts 17A.-(1) It shall endanger- be an offence for ing safety any person to un- at air- lawfully and inten- port. tionally use any weapon, device or substance to -</p> <p style="padding-left: 40px;">(a) destroy or seriously damage the facilities of an airport or any aircraft that is not in service and is located at an airport;</p> <p style="padding-left: 40px;">(b) disrupt the services of an airport; or</p> <p style="padding-left: 40px;">(c) commit an act of violence against any person at an airport, in circumstances that safety at the airport becomes or is likely to become endangered.</p> <p style="padding-left: 40px;">(2) For the</p>

purposes of this paragraph, "airport" means an airport that serves international civil aviation."

(2) In section 18(1)(a) by inserting next after the words "section 16" the words "or 17A".

(3) In section 18(2) by deleting the words "section 16 or 17" and substituting therefor the words "section 16, 17 or 17A".

2. The Drug
Offences
(Forfeiture of
Proceeds) Act.

2. - (1) In section 2(1), in paragraph (b) of the definition of "tainted property", by inserting next after the words "realized directly" the words "or indirectly".

(2) In section 3 by inserting the following as subsection (5) -

" (5) The Director of Public Prosecutions may, in accordance with rules of court, appeal against the Judge's decision to refuse an application for a forfeiture order under this section."

(3) In section 4(1) by deleting paragraph (c) and substituting therefor the following -

"(c) the Judge, at any time before the final determination of the application -

(i) shall make an order for a valuation to be carried out in

relation to the property, and give such ancillary directions as the Judge considers necessary for that purpose; and

- (ii) may direct the Director of Public Prosecutions to give notice of the application to any person who, in the opinion of the Judge, appears to have an interest in the property.".

(4) In section 6 by deleting subsection (2).

(5) In section 7(2) by deleting the words "that he considers to be the value of the property at the time when the order is made" and substituting therefor the words "representing the value of the property pursuant to a valuation carried out under section 4(1)(c)(i)".

(6) In section 10(3) by deleting the word "six" and substituting therefor the word "three".

(7) In section 36(1) by deleting the words "that made the order".

3. The Extradition Act.

3. - (1) In section 2, in the definition of "treaty State" by deleting paragraphs (b) and (c) and inserting the following as paragraph (b) -

"(b) a contracting party to a Convention specified in Column A of the Schedule, in so far as specified in relation thereto in Column B of the Schedule."

(2) In section 5 by inserting the following as subsection

(3) -

" (3) A terrorism offence as defined by section 2 of the Terrorism Prevention Act is an extradition offence for the purposes of this Act and shall be deemed to be committed within the jurisdiction of any treaty State that appears to a Court in Jamaica, having regard to the provisions of the Conventions referred to in Column A of the Schedule, to be appropriate."

(3) By inserting the following as the Schedule -

" **SCHEDULE (Sections 2 and 5)**Column A

1. The Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents, adopted by the General Assembly of the United Nations on December 14, 1973.
2. The International Convention Against the Taking of Hostages, adopted by the General Assembly of the United Nations on December 17, 1979.
3. The International Convention for the Suppression of Terrorist Financing, adopted by the General Assembly of the United Nations on December 9, 1999.
4. The Convention on the Physical Protection of Nuclear Material, adopted at Vienna on October 26, 1979.
5. The Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, done at Rome on March 10, 1988.
6. The Protocol for the Suppression of Unlawful Acts Against the Safety

Column B

1. In so far as Article 8 of that Convention requires.
2. In so far as Article 10 of that Convention requires.
3. In so far as Article 11 of that Convention requires.
4. In so far as Article 11 of that Convention requires.
5. In so far as Article 11 of that Convention requires.
6. In so far as Article 1 of that Convention requires.

of Fixed Platforms
 Located on the
 Continental Shelf, done
 at Rome on March 10,
 1988.

7. The International
 Convention for the
 Suppression of Terrorist
 Bombings, adopted by the
 General Assembly of the
 United Nations on
 December 15, 1997.

8. The Convention on the
 Physical Protection of
 Nuclear Material, signed
 at New York and Vienna
 on March 3, 1980.

9. The Hague Convention.

10. The Montreal
 Convention and the
 Montreal Protocol to
 that Convention.

7. In so far as Article
 9 of that Convention
 requires.

8. In so far as article
 11 of that Convention
 requires.

9. In so far as article
 8 of that Convention
 requires.

10. In so far as article
 8 of that Convention
 requires.".

4. The Inter-
 ception of
 Communica-
 tions Act.

4. - (1) In subsection (1) of section
 2 by deleting the definition of
 "terrorism" and by inserting next
 after the definition of
 "telecommunications service" the
 following definition -

"terrorism offence" has the
 meaning assigned to it by
 section 2 of the Terrorism
 Prevention Act.".

(2) In subsection (2) of section
 2 by deleting the word "terrorism" and
 substituting therefor the words "any
 terrorism offence".

5. The Mutual
 Assistance
 (Criminal

5. - (1) In section 2 -
 (a) in the definition of
 "prescribed offence", by

Matters) Act.

inserting the following as paragraph (c) -

"(c) a terrorism offence as defined by section 2 of the Terrorism Prevention Act.";

(b) by deleting the definition of "relevant treaty" and substituting therefor the following -

"relevant treaty" means -

- (a) a treaty, convention or other international agreement (whether made before or after the 14th day of July, 1995) that is in force and to which Jamaica is a party, the purpose of which is to provide for mutual legal assistance in criminal matters;
- (b) any of the Conventions set out in the Second Schedule;".

(2) In section 15 -

(a) in the marginal note;

(b) in subsection (4),

by inserting the word "First" immediately before the word "Schedule".

(3) By renumbering the Schedule as the First Schedule and inserting the following as the Second Schedule -

" **SECOND SCHEDULE**

1. The Convention on the Prevention and Punishment of Crimes Against

Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on December 14, 1973.

2. The International Convention Against the Taking of Hostages, adopted by the General Assembly of the United Nations on December 17, 1979.

3. The International Convention for the Suppression of Terrorist Financing, adopted by the General Assembly of the United Nations on December 9, 1999.

4. The Convention on the Physical Protection of Nuclear Material, adopted at Vienna on October 26, 1979.

5. The Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation and the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on March 10, 1988.

6. The International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on December 15, 1997.

7. The Convention for the Suppression of Unlawful Seizure of Aircraft, signed at the Hague on December 16, 1970.

8. The Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on September 23, 1971, and the Protocol to that Convention, done at Montreal on February 24, 1988."

6. The Offences
Against the
Person Act.

6. In section 2(1) by deleting
paragraph (f) and substituting
therefor the following -

" (f) any murder committed by a
person in the course or
furtherance of -

(i) a terrorism offence
as defined in
section 2 of the
Terrorism Prevention
Act; or

(ii) an act involving the
use of violence by
that person which,
by reason of its
nature and extent,
is calculated to
create a state of
fear in the public
or any section of
the public.".

MEMORANDUM OF OBJECTS AND REASONS

In recent years acts of terrorism have constitute a substantial threat to both domestic and international peace and security.

Acts of terrorism threaten Jamaica's political institutions, the stability of the economy and the general welfare of the country.

Given the circumstances of September 11, 2001 the challenge of eradicating terrorism, with its sophisticated and trans-border nature, requires enhanced international cooperation and a strengthening of Jamaica's capacity to suppress, investigate and incapacitate terrorist activity. Jamaica is therefore obliged to act in concert with other nations in

combating terrorism, including fully implementing United Nations and international instruments relating to terrorism.

In an effort to take comprehensive measures to protect Jamaicans against terrorist activity while continuing to respect and promote the values reflected in, and the rights and freedoms guaranteed by, the Constitution of Jamaica, this Bill seeks to give effect to the decision to enact legislation to prevent and suppress the financing, preparation, facilitation and commission of acts of terrorism, as well as to protect the political, social and economic security of Jamaica and Jamaica's relations with its allies.

Of particular note are the following provisions:

1. CLAUSE 2

Clause 2 includes definitions for the following terms -

"applicable property" - This definition refers to property which may be subject to a forfeiture or restraint order. Relevant provisions are Clauses 23-44. The provisions mirror provisions of the Drug Offences (Forfeiture of Proceeds) Act.

"listed entity" - Clause 14 provides a procedure whereby certain entities may be inscribed on a list as being terrorist entities. This procedure has been adopted to implement paragraph 1(d) in particular of Security Council Resolution 1373 (Res. 1373).

"terrorism offence" - This term includes the offences comprised in the definition of "terrorist activity" as well as offences of financing or facilitating terrorist activity or attempting, conspiring, aiding, abetting, procuring, or counselling in relation to any such

offence.

"terrorist activity" - The activities which comprise "terrorist activity" include offences under the anti-terrorism conventions and acts, which if committed in whole or in part for any political, religious or ideological purpose and intentionally cause death or serious bodily harm, endanger life or cause risk to health or safety of the public. One important element of the definition is that it speaks to an act or omission in or outside Jamaica. Its importance lies in the fact that it provides the basis for the exercise of extra-territorial jurisdiction by Jamaica. Security Council obligations regarding the financing support and planning of terrorist acts, for example, are not restricted to those acts which take place in the territory of the implementing State. This extra-territorial jurisdiction is common in anti-terrorism conventions. (See Res. 1373 para. 2(e), see also Clause 46.)

2. CLAUSE 3

This clause elaborates on the elements of the crime of "terrorist activity". It may be noted that there are however two sets of activities that do not fall within its scope. Firstly, there is a proviso to sub-clause (2)(e) which protects lawful industrial action, and secondly, in sub-clause (3) armed conflict conducted in accordance with international law does not fall within the scope of the Bill. The exception relating to armed conflict are intended to implement the International Convention for the Suppression of Terrorist Bombings.

3. CLAUSES 4-6

These provisions implement the International Convention

for the Suppression of the Financing of Terrorism. The language of the Convention was adopted in paragraphs 1(b) - (d) of Res. 1373. These clauses require particular mens rea elements. For example, in Clause 4, the person commits an offence if that person *willfully and without lawful justification or excuse* collects property *intending* that it be used, or *knowing* that it will be used for eg. the purpose of facilitating or carrying out any terrorist activity.

With regard to jurisdiction, in Clause 6, Jamaica's jurisdiction over dealing in property for terrorist purposes is limited to territorial jurisdiction and jurisdiction based on nationality.

4. CLAUSE 7

This provision seeks to implement Res. 1373 para.2, which obliges all States to refrain from providing any form of support to entities or persons involved in terrorist acts, including by suppressing recruitment of members of terrorist groups and eliminating the supply of weapons to terrorists. Sub-clause (2) provides that an offence is committed although the objective of participation is not realized. The approach adopted is preferred to an approach which would criminalize membership in a group as distinct from participation and support. It was recommended by the Commonwealth Expert Working Group because it was considered that the creation of a membership offence may face constitutional challenges.

5. CLAUSES 8-11

Further support type offences are provided for in these clauses. In clause 8, facilitating a terrorist activity is criminalized. Clause 2(2) is relevant here, as it

speaks to the meaning of facilitating a terrorist activity.

These provisions have been modelled on the Canadian Criminal Code. They are intended to implement paragraph 2(e) of Res. 1373.

6. CLAUSE 13

This clause places a duty on persons who, in the course of their trade, profession or employment, come across material information that may assist in the prevention of a terrorism offence or the apprehension of the perpetrator of a terrorism offence, to disclose that information to a constable. Exceptions to the disclosure requirement are set out in sub-clause (3). Defences, including reasonable excuse, are provided in sub-clause (2).

7. CLAUSES 14 & 15

These Clauses are intended to implement Paragraph 1(c) of Res. 1373 to freeze funds and other financial assets or economic resources of entities owned or controlled directly or indirectly by persons who commit terrorist acts or participate in, or facilitate the commission of terrorist acts. They are modelled on the Commonwealth Model Legislative Provisions on measures to combat terrorism. The commentary on the provision indicates that this clause is integral to implementation of the relevant paragraph of Res. 1373. Once an entity is listed the various provisions of the offences with respect to dealing with property (clause 6) or providing financial or other services (clause 4) will become operative. It will also facilitate the freezing of assets of those entities listed by the Security Council. Clause 14

includes provisions to ensure that Judicial Review is available to a listed entity.

8. CLAUSES 16-20

These clauses treat with the duty of entities to report suspicious transactions, unauthorized disclosures, regulatory controls by certain entities and monitoring orders. Similar provisions are to be found in the Sections 6(b), 6(c), 7, 8 and 9 of the Money Laundering Act. Clause 18 is particularly important as it implements Article 18 of the Convention for the Suppression of Terrorist Financing.

9. CLAUSES 21-42

These Clauses are intended to implement Res. 1373 provisions relating to freezing of property of persons engaged in terrorism activities. The clauses also implement Article 1 of the Convention for the Suppression of Terrorist Financing which obliges each State Party to take appropriate measures in accordance with its domestic legal principles for the identification, detection and freezing or seizure of any funds used or allocated for the purpose of committing a terrorism offence, as well as the proceeds derived from such offences for purposes of forfeiture. Identical provisions are contained in the Drug Offences (Forfeiture of Proceeds) Act.

10. SECOND SCHEDULE

The Second Schedule sets out the consequential amendments to other Acts. The amendments to the Drug Offences (Forfeiture of Proceeds) Act are intended to

maintain consistency in the procedures and requirements of the statutory regimes.

K. D. Knight, Q. C.
Minister of Foreign Affairs & Foreign Trade