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LEGAL SUPPLEMENT — C

BILL No. 2 of 2017

Tuesday 24th January, 2017

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24th January, 2017

The following Bill which will be introduced in the National Assembly is published for general information.

S.E. Isaacs,
Clerk of the National Assembly.



GUYANA

BILL No. 2 of 2017

STATE ASSETS RECOVERY BILL 2017

ARRANGEMENT OF SECTIONS

SECTION

PART I
PRELIMINARY

1. Short title.
2. Interpretation.

PART II
ESTABLISHMENT OF THE STATE ASSETS RECOVERY AGENCY

3. The State Assets Recovery Agency and the Director as a corporation sole.
4. Director and Deputy Director of SARA.
5. Appointments of Director, Deputy Director, staff, terms and conditions of appointments, finance etc.
6. Functions of SARA.
7. Functions of the Director.
8. Director's powers to determine operations.
9. Designation of Director and officers of SARA by Ministers.
10. Accreditation and training.
11. Cooperation between SARA and other agencies.
12. Annual plan.
13. Code of Conduct and code of practice.

PART III
ESTABLISHMENT OF THE RECOVERY OF STATE ASSETS FUND

14. Establishment of a Recovery of State Assets Fund.

PART IV
CIVIL RECOVERY AND PRESERVATION OF STATE PROPERTY
OBTAINED THROUGH UNLAWFUL CONDUCT

15. Nature of proceedings.
16. Meaning of unlawful conduct.
17. Property obtained through unlawful conduct.
18. Director to take appropriate action to recover State property.

CIVIL RECOVERY INVESTIGATION

19. Civil recovery investigation.
20. Director's investigation powers.
21. Offences prejudicing an investigation.

DISCLOSURE OF INFORMATION

22. Information obtained by Director.
23. Disclosure of information to Director by permitted persons upon request.
24. Offence.
25. Further disclosure of information disclosed to the Director by a permitted person.
26. Further disclosure of information by Director.

RESTRAINT ORDER

27. Restraint Order.
28. Application for a Restraint Order.
29. Other contents of a Restraint Order.
30. Application to vary or discharge of Restraint Order.
31. Expiration of a Restraint Order.
32. Notice of application.
33. Living expenses.
34. Affidavit specifying property and income.
35. Registration of orders.

ANCILLARY ORDERS

36. Ancillary orders.
37. Application for ancillary order.
38. Notice of application.
39. Statement.
40. Appointment of Asset Manager.

CIVIL RECOVERY ORDER

41. Persons against whom a Civil Recovery Order may be made.
42. Property which may be the subject of a Civil Recovery Order.
43. Bonafide purchaser for value without notice.
44. Property other than State property.
45. Effect of Civil Recovery Order.
46. Court may adjourn hearing of application.
47. Dealing with civil recovery property prohibited.
48. Victims of theft, etc.
49. Consent Order.
50. Civil Recovery Order after interests in property not disclosed.
51. Compensation.
52. Director may discharge revenue functions of the Revenue Authority where a Civil Recovery Order is not appropriate.
53. Limitation.

**EVIDENCE IN PROCEEDINGS FOR
CIVIL RECOVERY ORDER AND RESTRAINT ORDER**

54. Evidence in proceedings.

GENERAL

55. Seizure of property by authorised persons.
56. Bankruptcy of respondent.
57. Trustee in bankruptcy.
58. Winding up of company.

PART V
ORDERS TO ASSIST INVESTIGATION
DISCLOSURE ORDER

- 59. Disclosure Order.
- 60. Requirements for making a Disclosure Order.
- 61. Offences.
- 62. Statements.
- 63. Privileged question, information and document.
- 64. Copies and retention of documents.
- 65. Application for a Disclosure Order.

CUSTOMER INFORMATION ORDER

- 66. Customer Information Order.
- 67. Order for financial institution to provide customer information.
- 68. Meaning of customer information.
- 69. Requirements for making of Customer Information Order.
- 70. Offences.
- 71. Statements.
- 72. Disclosure of customer information.
- 73. Application for Customer Information Order.

PRODUCTION ORDER

- 74. Production Order.
- 75. Order to grant entry.
- 76. Privileged material.
- 77. Copies or retention of material.
- 78. Computer information.
- 79. Government departments.
- 80. Application for a Production Order and an order to grant entry.

SEARCH AND SEIZURE WARRANT

81. Search and seizure warrant.
82. Requirements for a search and seizure warrant where production order not available.
83. Privileged or excluded material.
84. Application for search and seizure warrant.
85. Authority to do things under a warrant.
86. Copies and retention of material seized.

ACCOUNT MONITORING ORDER

87. Account Monitoring Order.
88. Requirements for making of Account Monitoring Order.
89. Statements.
90. Disclosure of information.
91. Application for an Accounting Monitoring Order.
92. Tipping off regarding Customer Information or Account Monitoring Order.

PART VI**INTERNATIONAL COOPERATION**

93. Sharing recovered property with a foreign state or territory.
94. Director may enter into agreements with authority of a foreign state or territory, etc.
95. Assistance to a foreign state or territory.
96. Registration of external orders.

- 97. Property vested in State until Director makes arrangement.
- 98. Evidence of corresponding law.
- 99. Evidence in a foreign state or territory.
- 100. Proceedings in foreign state or territory.
- 101. Director to inform Minister of request for evidence in foreign state and territory.
- 102. Civil Recovery Order relating to external unlawful conduct.

PART VII
MISCELLANEOUS

- 103. General penalty.
- 104. Immunity.
- 105. Offences against SARA's staff.
- 106. Transitional arrangements — staffing of SARA.
- 107. Regulations.

SCHEDULE

**A BILL
Intituled**

AN ACT to establish a State Assets Recovery Agency in consonance with the United Nations Convention Against Corruption 2003 headed by a Director who shall be a corporation sole to recover through civil proceedings State property unlawfully acquired by a public official or any other person, to provide for investigations leading to the granting by the High Court of Restraint and Civil Recovery Orders in respect of unlawfully acquired property, to engage in international cooperation in the recovery of stolen assets of States within the contemplation of the Act, and for related matters.

A.D. 2017

Enacted by the Parliament of Guyana:-

PART I

PRELIMINARY

- | | |
|-----------------|--|
| Short title. | 1. This Act may be cited as the State Assets Recovery Act 2017. |
| Interpretation. | 2. (1) In this Act –

“account monitoring order” means an order made under section 87;

“AMLCFT Act” means the Anti-Money Laundering and

Countering the Financing of Terrorism Act; |
| Cap. 10:11 | “Asset Manager” means a person appointed by the Court under |

section 40 to take possession, control and care of property and includes a Receiver;

"authorised officer" means –

- (a) the Director of SARA;
- (b) Deputy Director of SARA;
- (c) a designated member of the staff of SARA; or
- (d) an authorised person;

“authorised person” means a person authorised in writing by the Director either generally or in a special case, to act as an authorised officer;

“beneficial ownership” means ownership by a natural person or persons who ultimately exercise individually or jointly voting rights representing at least twenty-five per cent of the total shares, or otherwise have ownership rights of a legal entity; or ownership by a natural person or persons who ultimately owns or controls a customer or the person on whose behalf a transaction is being conducted and includes those persons who exercise ultimate effective control over a legal person or arrangement;

“Central Authority” notwithstanding the meaning given to it in section 3 of the Mutual Assistance in Criminal Matters Act, means the Minister responsible for legal affairs who shall discharge the functions of the central authority under the

Mutual Assistance in Criminal Matters Act in relation to this Act;

"Civil Recovery Order" means a non-conviction based asset recovery order made under section 42;

"Commissioner-General" means the Commissioner-General of the Revenue Authority appointed under section 21 of the Revenue Authority Act;

Cap. 79:04

"competent authority" means the Director of SARA and any person authorised by him in that behalf;

"Court" means the High Court;

"customer information order" means an order made under section 66;

"Director" means the Director of the State Assets Recovery Agency appointed under section 5;

"Disclosure Order" means an order made under section 59;

"document" means any record of information and includes –

- (a) anything on which there is writing;
- (b) any electronic document or electronically stored information;
- (c) anything on which there are marks, figures, symbols or perforations having meaning for persons qualified to interpret them;
- (d) anything from which sounds, images or writing can be

produced, with or without the aid of anything else; or

(e) a map, plan, drawing, photograph or similar thing;

"financial institution" has the same meaning as in the Financial

Cap. 85:03

Institutions Act and includes the other financial institutions

Cap. 10:11

as specified in the First Schedule to the AMLCFT Act;

"interest in property" means –

(a) a legal or equitable estate or interest in the property; or

(b) a right, power or privilege in connection with the property,

whether present or future and whether vested or contingent;

"Minister" means the Minister responsible for legal affairs;

"money" includes –

(a) the coin and paper money of Guyana or a foreign state or territory that is designated as legal tender and which is customarily used and accepted as a medium of exchange in the country of issue;

(b) monetary instruments that may be exchanged for money, such as cheques, travellers cheques, money orders, promissory notes or any other negotiable instruments including bearer negotiable instruments whether or not endorsed without restriction, or made out to a fictitious payee in a form in which title to the monetary instruments pass on delivery;

(c) money in electronic form;

“money laundering” has the same meaning as in section 2(1) of the
AMLCFT Act;

Cap. 10:11

"owner" in relation to an interest in property includes a person who
has effective control of the interest;

“person” includes any entity, natural or juridical, a corporation,
partnership, trust or estate, joint stock company, association,
syndicate, joint venture, or other unincorporated
organization or group, capable of acquiring rights or
entering into obligations;

"premises" includes all or part of any structure, building, aircraft,
vehicle, vessel or any land;

"proceeds of crime" has the same meaning as in section 2(1) of the
AMLCFT Act;

Cap. 10:11

"Production Order" means an order made under section 74;

“property” includes –

- (a) any property or interest in the property owned by the
State, a local government authority, a statutory body, a
public authority, including residential, commercial
and industrial land and other physical assets, such as
machinery and equipment;
- (b) State owned enterprises and all funds paid to such
enterprises or guaranteed for such enterprises by the

Government;

- (c) any benefit, profit, income or financial gain accruing, directly or indirectly, or incidental to the grant of any type of concession by the Government, but not including any benefit, profit, income or financial gain accruing to the beneficiary or beneficiaries of the particular concession exclusively under the terms of that particular concession;
- (d) investments, holdings;
- (e) money;
- (f) precious metals, gold and precious stones, jewellery made of precious metals, gold and precious stones;
- (g) legal documents or instruments in any form, including electronic or digital, evidencing title to or interests in assets of every kind;
- (h) all possessions, assets and all other property movable or immovable, tangible or intangible, including any discretionary trust or chose in action;
- (i) any other property wherever situated whether in Guyana or in a foreign state or territory and includes any interest in such property;
- (j) any benefit, income or profits from proceeds of crime or unlawful conduct; and

(k) property held by any other person and assets of every kind, whether tangible or intangible;

“public official” includes any person holding or a person who has held a legislative, executive, administrative or judicial office, whether appointed or elected, whether permanent or temporary, whether paid or unpaid, irrespective of that person’s seniority, or any other person who performed or performs a public function, including for a public agency or a public enterprise, or provided or provides a public service;

“recoverable property” means State property obtained through unlawful conduct involving a public official or any other person or any benefit obtained or derived in connection with a public official’s or any other person’s unlawful conduct in respect of State property;

“respondent” means the person upon whom an application notice is served;

“restraint order” means an order made under section 27;

“rules of court” means rules of the High Court;

“search and seizure warrant” means a warrant issued under section 81;

“State Assets Recovery Agency” means the State Assets Recovery Agency known as SARA established under section 3.

PART II**ESTABLISHMENT OF A STATE ASSETS RECOVERY AGENCY**

- The State Assets Recovery Agency and the Director as a corporation sole.
3. (1) There is established a State Assets Recovery Agency (SARA).
- (2) The person holding the post of Director of the State Assets Recovery Agency shall be a corporation sole.
- Director and Deputy Director of SARA.
4. (1) There shall be a Director and Deputy Director of SARA.
- (2) The Director assisted by the Deputy Director shall carry out the functions of SARA.
- (3) The Deputy Director shall act as Director during any vacancy in that office or if the Director is absent.
- (4) Anything which the Director is authorised or required to do may be done by –
- (a) any member of staff of SARA under the direction of the Director; or
- (b) a person providing services under arrangements made by the Director, if authorised in writing by the Director, generally or specifically, for that purpose.
- Appointments of Director, Deputy Director, terms and conditions of appointments, finance,
5. The provisions of the Schedule shall have effect in relation to the appointments of the Director, Deputy Director, their terms and

etc. Schedule conditions of appointment, staff, finance and other related matters of SARA.

Functions of SARA. 6. (1) In addition to the functions of SARA in other provisions of this Act, the functions of SARA are –

- (a) the investigation into whether property or interests in property constitutes State property obtained by or derived, directly or indirectly from, or in whole or in part, with or in connection with, unlawful conduct involving a public official or any other person, or whether benefit has been derived, directly or indirectly, in whole or in part, with or in connection with a public official's or any other person's unlawful conduct in respect of State property;
- (b) the tracing and identification of property, whether situated in Guyana or in a foreign state or territory, of persons, suspected to be State property obtained or derived, directly or indirectly, from unlawful conduct involving a public official or any other person, including where such property is held by, or for the benefit of, third parties;
- (c) the tracing and identification of specified property, wherever situated, that was acquired, in whole or in

part, with or in connection with property that, directly or indirectly, constitutes State property suspected to be the proceeds of unlawful conduct involving a public official or any other person, including where such specified property is held by, or for the benefit of, third parties;

- (d) the tracing and identification of any other benefit acquired or derived, directly or indirectly, in whole or in part, with or in connection with a public official's or any other person's unlawful conduct in respect of State property;
- (e) the taking of appropriate action under this Act to deprive or deny any person of the property referred to in paragraphs (b) and (c), or the benefit referred to in paragraph (d), in whole or in part, as may be appropriate;
- (f) to institute and conduct proceedings in the Court for the purposes of recovery or protection of State property, or for the freezing of proceeds of corruption or unlawful conduct or related offences, or the payment of compensation and disciplinary measures in relation to State property;
- (g) to raise public awareness on the dangers of corruption

and enlist public support in combating corruption and other crimes especially in relation to public offices and state property; and

(h) to advise, on its own initiative, any person on any matter within its function.

(2) SARA may cooperate and collaborate with other State organs and agencies and any foreign government or international or regional organization in the prevention and investigation of loss and recovery of State property.

(3) SARA shall exercise all its powers under this Act necessary or expedient for the efficient and effective execution of its functions.

(4) SARA may request and obtain professional and technical assistance or advice from such persons or organizations, whether local or foreign, as it considers appropriate.

Functions of the Director.

7. (1) The functions of SARA shall be discharged in the way which the Director considers is best calculated to contribute to the reduction of crime and the recovery of State property derived from unlawful conduct.

(2) The Director may do anything, including the carrying out of investigations, which the Director considers appropriate for facilitating, or incidental or conducive to, the discharge of the functions

of SARA.

(3) In discharging the functions of SARA the Director shall consider whether the recovery of State property may be better secured by means of criminal investigations and criminal proceedings.

Director's powers to determine operations.

8. The Director shall decide which particular operations are to be mounted by SARA and how those operations are to be conducted.

Designation of Director and officers of SARA by Ministers.

9. (1) The Minister responsible for finance on the request of the Director may in writing instruct the Commissioner-General to designate in writing the Director and other named officers of SARA as persons having the powers of a revenue and customs officer.

(2) The Minister responsible for public security on the request of the Director may in writing instruct the Commissioner of Police to designate in writing the Director and other named officers of SARA as persons having –

- (a) the powers of a police officer; and
- (b) the powers of an immigration officer,

and these persons shall on designation take the oath of office.

(3) An officer of SARA shall not be designated as having operational powers unless the Director is satisfied that the officer –

- (a) is capable of effectively exercising those powers;
- (b) has received adequate training in respect of the

exercise of those powers; and

- (c) is otherwise a suitable person to exercise those powers.

(4) In this section –

- Cap. 16:01 (a) “powers of a police officer” means powers granted by Part IV of the Police Act;
- Cap. 82:01 (b) “powers of a revenue and customs officer” means powers granted by section 3 of the Customs Act;
- Cap. 14:02 (c) “powers of an immigration officer” means powers authorised by the Chief Immigration Officer under section 4 of the Immigration Act;
- (d) “operational powers’ means any of the following –
- (i) the powers of a police officer;
 - (ii) the powers of a revenue and customs officer;
 - (iii) the powers of an immigration officer.

Accreditation and training.

10. (1) The Director may establish a system for the training and accreditation of legal counsel, prosecutors, auditors, receivers, financial investigators, accountants, police officers and other relevant professionals.

(2) The system of accreditation shall include provision for –

- (a) the monitoring of the performance of the accredited financial investigators; and

(b) the withdrawal of accreditation from any person who contravenes or fails to comply with any condition subject to which he was accredited.

(3) A person may be accredited in relation to this Act or in relation to particular provisions of this Act.

(4) The accreditation may be limited to specific purposes.

(5) The Director shall make provision for the training of persons in –

(a) the operation of this Act; and

(b) financial investigation.

(6) The Director shall ensure any training which is authorised or endorsed is subject to regular review for the purpose of ensuring that such training remain consistent with current best practices.

Cooperation between
SARA and other
agencies.

11. (1) The Director may –

(a) enter into an agreement with any Government Ministry or Department, Public Authority or statutory body in Guyana for the collection, use or disclosure of information, including personal information, for the purpose of exchanging or sharing information within Guyana or for any other purpose under this Act;

(b) participate in appropriate consultations with any

local or international civil society organisation;
and

- (c) if thought fit, conduct any appropriate investigation in conjunction either with the police or with any other person who is, in the opinion of the Director, a proper person to be concerned with it.

(2) Persons who have functions relating to the investigation or prosecution of offences shall co-operate with the Director in the discharge of the functions of the Director.

(3) There shall be mutual cooperation between the Director, the Director of Public Prosecutions and the Director of the Financial Intelligence Unit appointed under section 8 of the AMLCFT Act.

(4) Where the Director requests the Commissioner of Police for any assistance in connection with the discharge of the functions of the Director, either by the Commissioner of Police or any other member of the Police Force, the Commissioner of Police shall provide or ensure the provision of the assistance to the Director.

(5) The Director of Public Prosecutions and the Commissioner of Police shall, as soon as practicable, inform the Director of any criminal investigation or criminal proceeding involving State property which may become subject to forfeiture, confiscation or civil recovery.

(6) The Director shall, as soon as practicable, inform the Director of Public Prosecutions and the Commissioner of Police when commencing a civil recovery investigation.

(7) Where State property referred to in section 18 is subject to civil recovery proceedings under this Act, and that property is, or may be, subject to criminal proceedings that has not yet commenced or is pending —

(a) the Director may seek an adjournment of the civil recovery proceedings; or

(b) if it would be more effective to proceed under this Act, then the Director may proceed under this Act.

(8) There shall be mutually agreed memoranda of understanding between the Director and the Central Authority, and between the Director and other appropriate law enforcement authorities, and any other permitted Public Authority or statutory body specified under section 23(4) or designated by the Minister under section 23(5), regulating cooperation between them.

(9) The provisions of the memoranda of understanding shall be adhered to and complied with.

(10) The Director may provide assistance —

(a) to the government of a foreign state or territory or a body discharging functions of a public nature in a foreign state or territory if the government or the

body requests assistance; and

- (b) as the Director considers appropriate in all the circumstances, if request is made for assistance.

Annual plan.

12. (1) The Director shall, at least three months before the beginning of each financial year, prepare a plan setting out how SARA intends to discharge its functions, including an estimate of revenues and expenditures during the financial year.

(2) The annual plan shall include a statement of –

- (a) SARA's objectives for the financial year;
- (b) any strategic plan for the financial year, whether or not relating to his objectives;
- (c) SARA's priorities for the financial year;
- (d) the financial resources expected to be available for the financial year; and
- (e) the proposed allocation of those resources.

(3) The Director shall through the Minister cause a copy of the annual plan to be tabled in the National Assembly.

Code of Conduct and
code of practice.

Cap. 26:01

13. (1) The Director and staff of SARA shall be subject to the Code of Conduct as prescribed in Schedule 2 of the Integrity Commission Act.

(2) Subject to subsection (1), the Director shall prepare a code

of practice as to the discharge the functions of –

- (a) the Director;
 - (b) staff of SARA;
 - (c) accredited financial investigators.
- (3) The Director –
- (a) shall publish the draft code of practice;
 - (b) shall consider any representations made about the draft; and
 - (c) may amend the draft accordingly.
- (4) After the Director has proceeded under subsection (3) the Director through the Minister shall cause the code to be laid before the National Assembly.
- (5) A person mentioned in subsection (2) shall comply with the code of practice in the discharge of any functions.
- (6) A person who fails to comply with any provision of the code of practice may be subject to disciplinary action.

PART III

ESTABLISHMENT OF

THE RECOVERY OF STATE ASSETS FUND

Establishment of
Recovery of State

14. (1) There is established the Recovery of State Assets Fund for

Assets Fund.

the purposes of receiving –

- (a) credits from Civil Recovery Orders; and
- (b) payments made or debts recovered in relation to Civil Recovery Orders made under this Act.

(2) There shall be credited to the Fund –

- (a) twenty-five percent of all moneys derived from the enforcement of a Recovery Order;
- (b) the proceeds of sale of property which is the subject of an order under section 40;
- (c) any income derived from the investment of any amount standing to the credit of the Fund.

(3) The Director may authorise payments out of the Recovery of State Assets Fund –

- (a) to facilitate the discharge by SARA of its functions, including commencement of actions for the enforcement of this Act;
- (b) to compensate victims who suffered losses as a result of an unlawful conduct;
- (c) to transfer recovered property to a foreign state or territory or share it pursuant to any treaty, agreement or arrangement;
- (d) to fund such training or capacity building as may be required; and

- (e) for payment of fees to counsel, forensic experts, investigators, receivers and other professionals providing expertise and assistance.
- (4) Subject to subsections (2) and (3) any sums received by the Director shall be paid into the Consolidated Fund.

PART IV

CIVIL RECOVERY AND PRESERVATION OF STATE PROPERTY

OBTAINED THROUGH UNLAWFUL CONDUCT

- Nature of proceedings. 15. (1) All proceedings under this Act shall be civil proceedings.
- (2) The rules of evidence applicable in civil proceedings shall apply to proceedings under this Act.
- (3) The standard of proof required to determine any question arising under this Act shall be on the balance of probabilities.
- Meaning of unlawful conduct. 16. (1) Conduct is unlawful conduct if it constitutes an offence under any of the criminal, administrative, revenue or any other law of Guyana.
- (2) Conduct is unlawful conduct which –
- (a) occurs in a foreign state or territory and constitutes an offence under the law of the foreign state or territory; and
 - (b) if it occurred in Guyana would constitute an offence

under the criminal, administrative, revenue or any other law of Guyana.

(3) The Court shall decide on a balance of probabilities whether it is proved that any matters alleged to constitute unlawful conduct have occurred.

Property obtained through unlawful conduct.

17. (1) A person benefits from or obtains property through unlawful conduct, whether his own unlawful conduct or another's, if he obtains property –

- (a) by or in return for the unlawful conduct; or
- (b) as a result of or in connection with the unlawful conduct,

of a public official or any other person in relation to State property.

(2) In deciding whether any property was obtained through unlawful conduct –

- (a) it is immaterial whether or not any money, goods or services were provided in order to put the person in question in a position to carry out the unlawful conduct;
- (b) it is not necessary to show that the conduct was of a particular kind if –
 - (i) it is shown that the property was obtained through conduct of one of a number of kinds,

each of which would have been unlawful conduct; or

- (ii) by evidence it is shown that the circumstances in which the property was obtained were such as to give rise to an irresistible inference that it could only have been derived from unlawful conduct.

(3) If a person obtains a pecuniary advantage as a result of or in connection with unlawful conduct of a public official or any other person in relation to State property, he is to be taken to obtain as a result of, or in connection with the conduct, a sum of money equal to the value of the pecuniary advantage.

(4) References to property or a pecuniary advantage obtained in connection with unlawful conduct include references to property or a pecuniary advantage obtained in both that connection.

(5) If a person benefits from the unlawful conduct his benefit is the property obtained as a result of or in connection with the unlawful conduct.

(6) The following rules apply in relation to property –

- (a) property is obtained by a person if he obtains an interest in it;
- (b) references to an interest, in relation to land, are to any legal estate or equitable interest or power;

- (c) references to an interest, in relation to property other than land, include references to a right including a right to possession.

(7) Any reference to an officer of the Revenue Authority includes a reference to a collector of taxes or an inspector of taxes.

(8) For the purposes of this Act, the failure to make full and frank disclosure, or the provision of false or misleading information, by any person who is under a legal obligation to submit full financial disclosure as defined in the relevant law, to –

- (a) the Integrity Commission established under section 3 of the Integrity Commission Act;
 Cap. 26:01
- (b) the Revenue Authority, established under section 9 of the Revenue Authority Act; or
 Cap. 79:04
- (c) any other public authority,

amounts to a breach of the relevant law, and constitutes unlawful conduct.

Director to take appropriate action to recover State property.

18. (1) The Director shall take all necessary steps for the purpose of obtaining the civil recovery of property where the Director believes that the property constitutes –

- (a) State property derived, directly or indirectly from, unlawful conduct involving a public official or any

other person; or

(b) specified property which was acquired, in whole or in part, with or in connection with, State property that, directly or indirectly, constitutes proceeds of unlawful conduct of a public official or any other person; or

(c) benefit derived, directly or indirectly, in whole or in part, in connection with a public official's or any other person's unlawful conduct in respect of State property.

(2) The steps referred to in subsection (1) include those referred to section 11 and where appropriate, subject to any international agreement, cooperation with any police force or any authority of a foreign state or territory.

CIVIL RECOVERY INVESTIGATION

Civil recovery investigation.

19. (1) The Director may undertake, or authorise designated officers of SARA to undertake civil recovery investigations in the enforcement of the functions of SARA.

(2) A civil recovery investigation is an investigation into –
(a) whether any property, or any specified property, is State property obtained or derived, directly or indirectly, from unlawful conduct involving a

public official or any other person;

- (b) whether specified property was acquired, in whole or in part, with or in connection with State property obtained or derived, directly or indirectly, from unlawful conduct involving a public official or any other person;
- (c) whether a benefit has been derived, directly or indirectly, in whole or in part, with or in connection with a public official's or any other person's unlawful conduct in respect of State property;
- (d) who holds the property; or
- (e) the extent or whereabouts of the property.

(3) An investigation is not a civil recovery investigation if the property in question is detained under section 37 or 37A of the AMLCFT Act.

Cap. 10:11

Director's
investigation powers.

20. (1) The investigation powers of the Director shall be discharged only for the purposes of an investigation under section 19, or on a request made by a foreign court, tribunal or authority entitled to make such a request, in any case in which it appears to the Director that there is good reason to do so for the purpose of investigating any of the matters mentioned in section 19(2).

(2) The request by a foreign court, tribunal or authority referred to in subsection (1), may be made to the Court or the Central Authority (the Minister) acting under Part III, relating to Commonwealth Countries, or Part IV, relating to Countries other than Commonwealth Countries, of the Mutual Assistance in Criminal Matters Act.

(3) In response to a request received by the Central Authority (the Minister) from an foreign court, tribunal or authority, the Central Authority (the Minister) shall convey the request to the Director who shall not exercise his powers unless it appears to the Director on reasonable grounds that the investigation in respect of which he has been requested to obtain evidence involves property or interests in property, or any benefit, obtained or derived, directly or indirectly from, or in whole or in part, with or in connection with unlawful conduct involving a public official or any other person.

(4) Where an investigation under section 19 has been authorised by the Director, for the purposes of determining whether property should be made subject to a Restraint Order under section 27 or to a Civil Recovery Order under section 42, the Court may issue upon the application of an authorised officer –

- (a) a Disclosure Order under section 59;
- (b) a Customer Information Order under section 66;
- (c) a Production Order under section 74;

- (d) a Search and Seizure Warrant under section 81;
- (e) an Account Monitoring Order under section 87.

Offences prejudicing
an investigation.

21. (1) If a person knows or suspects that an authorised officer is acting or proposing to act in connection with a civil recovery investigation which is being or is about to be conducted, the person commits an offence if –

- (a) the person makes a disclosure which is likely to prejudice the investigation; or
- (b) the person falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of, documents which are relevant to the investigation.

(2) A person who commits an offence under subsection (1) is liable on summary conviction to a fine of two million dollars and imprisonment for two years.

(3) A person does not commit an offence under subsection (1)(a) if –

- (a) the person does not know or suspect that the disclosure is likely to prejudice the investigation;
- (b) the disclosure is made in the discharge of a

function under this Act or any other enactment relating to criminal conduct or benefit from criminal conduct or in compliance with a requirement imposed under or by virtue of this Act; or

- (c) the person is a professional legal adviser and the disclosure falls within subsection (4).

(4) A disclosure under subsection (3)(c) falls within this subsection if it is a disclosure –

- (a) to, or to a representative of a client of the professional legal adviser in connection with the giving by the adviser of legal advice to the client; or
- (b) to any person in connection with legal proceedings or contemplated legal proceedings.

(5) A person does not commit an offence under subsection (1)(b) if –

- (a) the person does not know or suspect that the documents are relevant to the investigation; or
- (b) the person does not intend to conceal any facts disclosed by the documents from any authorised officer carrying out the investigation.

DISCLOSURE OF INFORMATION

Information obtained
by Director.

22. (1) Information obtained by or on behalf of the Director in connection with the discharge of any of the Director's functions may be used by the Director in connection with the discharge of any other functions of the Director.

(2) Any person may disclose information to the Director if the disclosure is made for the purposes of any of the functions of SARA.

Disclosure of
information to
Director by permitted
persons upon request.

23. (1) Information relating to any unlawful conduct, tax or financial impropriety of any person, or any other relevant information that may assist the Director in discharging his functions, which is held by, or on behalf of, a permitted person listed in subsection (4), whether it was obtained before or after the coming into force of this Act, shall, upon request by the Director, be disclosed to the Director for the purpose of the discharge by the Director of his functions.

(2) A disclosure under this section is not to be taken to breach any restriction on the disclosure of information however imposed.

(3) This section does not affect a power to disclose which exists apart from this section.

(4) The permitted persons are –

- (a) the Director of Public Prosecutions;
 - (b) the Commissioner of Police;
 - (c) the Director of the Financial Intelligence Unit appointed under section 8 of the AMLCFT Act;
 - (d) the Head of the body known as Serious Organized Crime Unit;
 - (e) the Chairman of the Integrity Commission appointed under section 3 of the Integrity Commission Act;
 - (f) the Commissioner-General;
 - (g) the Governor of the Bank of Guyana appointed under section 9 of the Bank of Guyana Act;
 - (h) the Head of the Central Anti-Narcotics Unit, which Unit is referred to in section 22A of the Narcotic Drugs Psychotropic Substances (Control) Act;
 - (i) the Chairman of the Guyana Gold Board, appointed under section 3 of the Guyana Gold Board Act;
 - (j) the Chairman of the National Procurement and Tender Administration, appointed under section 16 of the Procurement Act;
 - (k) a police officer not below the rank of an Inspector appointed by the Commissioner of Police.
- Cap. 10:11
- Cap. 26:01
- Cap. 85:02
- Cap. 10:10
- Cap. 66:01
- No. 8 of 2003

(5) The Minister may designate as permitted persons, other persons who discharge functions of a public nature.

(6) A designation under subsection (5) shall specify the functions in respect of which the designation is made.

(7) A person shall not be subjected to any detriment by any act or any deliberate failure to act, by anyone on the ground that he has, in good faith, made a disclosure to the Director for the purposes of any of the functions of SARA.

Offence.

24. (1) Any person who threatens, in any way intimidates or menaces, assaults or attempts to assault a person who makes a disclosure to the Director or an officer of SARA under section 22 or 23 for the purposes of any of the functions of SARA commits an offence.

(2) A person who commits an offence under subsection (1) is liable on summary conviction to imprisonment for two years.

Further disclosure of information disclosed to the Director by a permitted person.

25. (1) Except as provided for under section 26, information obtained under section 23 from the Commissioner-General or from a person acting on his behalf shall not be further disclosed except –

(a) for a purpose connected with the discharge of the Director's functions; and

(b) with the consent of the Commissioner-General.

- (2) Consent under subsection (1) may be given –
- (a) in relation to a particular disclosure;
 - (b) in relation to disclosures made in circumstances specified or described in the consent.

(3) Information obtained under section 23 from a permitted person other than the Commissioner-General or a person acting on his behalf, may make the disclosure subject to such conditions as to further disclosure by the Director as the permitted person thinks appropriate, and the information shall not be further disclosed in contravention of the conditions subject to which they were disclosed.

Further disclosure of
information by
Director.

26. (1) Information obtained by or on behalf of the Director in connection with the discharge of any of his functions may be disclosed by the Director if the disclosure is for the purposes of any of the following –

- (a) any criminal investigation which is being or may be carried out, whether in Guyana or in a foreign state or territory;
- (b) any criminal proceedings which have been or may be started, whether in Guyana or in a foreign state or territory;
- (c) the discharge of the Director's functions;

Cap. 10:11

- (d) the discharge by the Director of Public Prosecutions or the Director of the Financial Intelligence Unit of their functions under of the AMLCFT Act;
- (e) the discharge by a customs officer, a police officer or a person authorised by the Director of the Financial Intelligence Unit of his functions under section 37 or 37A of the AMLCFT Act;
- (f) safeguarding national security;
- (g) investigations or proceedings in a foreign state or territory which have led or may lead to the making of an external Confiscation Order, Civil Recovery Order, Restraint Order, Freezing Order or other similar orders;
- (h) the discharge of a designated function.

(2) If the Director makes a disclosure of information for a purpose specified in subsection (1) he may permit further disclosure of the information by the person to whom he discloses it subject to such conditions as he thinks fit and that person shall not further disclose the information in contravention of the conditions.

(3) A disclosure under this section is not to be taken to breach any restriction on the disclosure of information.

(4) A designated function is a function which the Minister designates as a function of a public nature.

RESTRAINT ORDER

Restraint Order.

27. (1) Where, on application to it by an authorised officer, it appears to the Court, on evidence tendered by the applicant, consisting of or including evidence admissible by virtue of section 54, there are reasonable grounds to believe that –

- (a) (i) property or specified property constitutes, directly or indirectly, State property obtained or derived from unlawful conduct involving a public official or any other person;
 - (ii) specified property was acquired, in whole or in part, with or in connection with State property obtained or derived, directly or indirectly, from unlawful conduct involving a public official or any other person; or
 - (iii) a person has benefited, or is in receipt of benefit derived, directly or indirectly, in whole or in part, with or in connection with a public official's or any other person's unlawful conduct with respect to State property; and
- (b) the value of the property or, as the case may be, the

total value of the property or specified property or benefit, or the aggregate value of the property, specified property and benefit referred to in paragraph (a), is not less than ten million Guyana dollars,

the Court shall make a Restraint Order prohibiting the respondent, any other specified person or any other person having notice of the order from disposing or otherwise dealing with the whole or, if appropriate, a specified part of the property or benefit diminishing its value.

(2) A restraint order shall not be made under subsection

(1) where –

(a) it is shown to the satisfaction of the Court, on evidence tendered by the respondent or any other person –

- (i) that particular property does not, directly or indirectly, derive from or constitutes proceeds of any unlawful conduct and was not acquired, in whole or in part, with or in connection with property that, directly or indirectly, derive from any unlawful conduct, nor is benefit deriving from unlawful conduct;
- (ii) that the value of all the property to which the order relate is less than ten million dollars; or

- (b) the Court is satisfied there would be a serious risk of injustice.

Application for a Restraint Order.

28. A Restraint Order may be made on an *ex parte* application to a Judge in Chambers.

Other contents of a Restraint Order.

29. A Restraint Order –

- (a) may contain such provisions, conditions and restrictions as the Court considers necessary or expedient; and
- (b) shall provide for notice of it to be given to the respondent and any other person who appears to be or is affected by it unless the Court is satisfied that it is not reasonably possible to ascertain the respondent's or that other person's whereabouts.

Application to vary or discharge a Restraint Order.

30. (1) Where a Restraint Order is in force the Court on application to it in that behalf at any time by the respondent or any other person claiming an interest in any of the property concerned may, if it is shown to the satisfaction of the Court –

- (a) that the property or a specified part of it, is property to which section 27(2)(a)(i) applies; or
- (b) that the Order causes any other injustice,

vary or discharge the order or, as may be appropriate.

Cap. 10:11 (2) Where a Forfeiture Order or a Pecuniary Penalty Order made under Part IV of the AMLCFT Act relates to any specified property that is the subject of a Restraint Order made under this Act that is in force, the Restraint Order shall –

- (a) if it relates only to the specified property, stand discharged; and
- (b) if it also relates to other property, stand varied by the exclusion from it of the specified property.

Expiration of a Restraint Order.

31. Subject to section 30, a Restraint Order shall continue in force until –

- (a) the determination of the application for a Civil Recovery Order in relation to the property concerned;
- (b) the expiration of the ordinary time for bringing an appeal from that determination; and
- (c) if an appeal is brought, it or any further appeal is determined or abandoned or the ordinary time for bringing any further appeal has expired, whichever is the latest, and shall then lapse.

Notice of application.

32. Except when an *ex parte* application is made, notice of an

application shall be given –

- (a) where the application is under section 27, by the applicant to the respondent, unless the Court is satisfied that it is not reasonably possible to ascertain the latter's whereabouts; or
- (b) where the application is under section 30 by the respondent or other person making the application, to the applicant,

and in either case, to any other person in relation to whom the Court directs that notice of the application be given.

Living expenses.

33. (1) At any time while a Restraint Order is in force, the Court may, on application to it in that behalf by the respondents or any other person affected by the order, make such orders as it considers appropriate in relation to any of the property concerned if it considers it essential to do so for the purpose of enabling –

- (a) the respondent to discharge the reasonable living and other necessary expenses including legal expenses in or in relation to proceedings under this Act incurred or to be incurred by or in respect of the respondent and his dependents; or
- (b) the respondent or that other person to carry on a business, trade, profession or other occupation to

which any of that property relates,

and the Court shall not make an Order under this section unless it is satisfied that there is no other means by which the living and other necessary expenses can be paid.

(2) An Order under this section may contain such conditions and restrictions as the Court considers necessary and expedient for the purpose of protecting the value of the property concerned and avoiding any unnecessary diminution of the property.

(3) Notice of an application under this section shall be given by the person making the application to the Director and any other person in relation to whom the Court directs that notice of the application be given.

Affidavit specifying property and income.

34. (1) At any time during proceedings under sections 27 and 30 or while a Restraint Order is in force, the Court or in the case of an appeal in such proceedings, the Court of Appeal may by order direct the respondent or other person to file an affidavit specifying –

- (a) the property of which the respondent is in possession or control;
- (b) the income and the sources of income of the respondent during a period not exceeding ten years ending on the date of the application for the Order as the Court concerned may specify; or

(c) the matters required in both paragraphs (a) and (b).

(2) A statement made or document produced by a person examined under subsection (1) may not be used in evidence against him in criminal proceedings.

(3) Subsection (2) shall not apply –

Cap. 5:03

(a) on a prosecution for an offence of perjury under section 99 of the Evidence Act; or

(b) on a prosecution for some other offence where, in giving evidence, the person makes a statement inconsistent with the statement mentioned in subsection (2).

(4) A statement may not be used by virtue of subsection (3)(b) against a person unless –

(a) evidence relating to it is adduced; or

(b) a question relating to it is asked by or on behalf of that person in the proceedings arising out of the prosecution.

Registration of orders. 35. (1) Where a Restraint Order is made, the Registrar of the Supreme Court shall, in the case of registered land, furnish the Land Registry with notice of the order and the Registrar of Lands shall cause an entry in the appropriate register inhibiting, until such time as the order lapses, is discharged or is varied so as to exclude the registered land or

any charge on the land from the application of the order, any dealing with any registered land or charge on the land which appears to be affected by the order.

(2) Where notice of an order has been given under subsection (1) and the order is varied in relation to registered land, the Registrar of the Supreme Court shall furnish the Registrar of Lands with notice to that effect and the Registrar of Lands shall cause the entry made under subsection (1) of this section to be varied to that effect.

(3) Where notice of an order has been given under subsection (1) and the order is discharged or lapses, the Registrar of the Supreme Court shall furnish the Registrar of Lands with notice to that effect and the Registrar of Lands shall cancel the entry made under subsection (1).

(4) Where a Restraint Order is made, the Registrar of the Supreme Court shall in the case of transported land, furnish the Registrar of Deeds with notice of the order and the Registrar of Deeds shall cause the notice to be registered in the Deeds Registry.

(5) Where notice of an order has been given under subsection (4) and the order is varied, the Registrar of the Supreme Court shall furnish the Registrar of Deeds with notice to that effect and the Registrar of Deeds shall cause the notice registered under subsection (4) to be varied to that effect.

(6) Where notice of an order has been given under subsection (4) and the order is discharged or lapses, the Registrar of the Supreme

Court shall furnish the Registrar of Deeds with notice to that effect and the Registrar of Deeds shall cancel the registration made under subsection (4).

(7) Where a Restraint Order is made which applies to an interest in a company or to the property of a company, the Registrar of the Supreme Court shall furnish the Registrar of Companies with notice of the order and the Registrar of Companies shall cause the notice to be entered in the Register of Companies maintained under the Companies Act.

Cap. 89:01

(8) Where notice of an order has been given under subsection (7) and the order is varied, the Registrar of the Supreme Court shall furnish the Registrar of Companies with notice to that effect and the Registrar of Companies shall cause the notice registered under subsection (7) to be varied to that effect.

(9) Where notice of an order has been given under subsection (7) and the order is discharged or lapses, the Registrar of the Supreme Court shall furnish the Registrar of Companies with notice to that effect and the Registrar of Companies shall cancel the entry made under subsection (7).

ANCILLARY ORDERS

Ancillary Orders.

36. (1) The Court may, when it makes a Restraint Order or at any later time, make any Ancillary Order, whether or not affecting a person

whose interests in property are subject to the Restraint Order, that the Court considers appropriate and, without limiting the generality of this, the Court may make any one or more of the following Ancillary Orders

—

- (a) an order varying the interests in property to which the Restraint Order relates;
- (b) an order for the examination on oath of —
 - (i) the owner of an interest in property that is subject to the Restraint Order; or
 - (ii) another person,before the Court or before an officer of the Court concerning the affairs of the owner, including the nature and location of any property in which the owner has an interest;
- (c) an order for the examination on oath of a person who is the spouse or a cohabitee of the owner of an interest in property that is subject to the Restraint Order, or other person who may be of assistance to the Court, before the Court or before an officer of the Court, concerning the affairs of the person, including the nature and location of any property in which the person or that owner has an interest;
- (d) an order with respect to the carrying out of any

undertaking relating to the payment of damages or costs given on behalf of the Director in connection with the making of the Restraint Order;

- (e) an order determining any question relating to the interest, including any question affecting the liabilities of the owner of the interest or the functions of an Asset Manager;
- (f) an order requiring or authorising the seizure or taking of possession of property.

Application for ancillary order.

37. An order under section 36 may be made on application –

- (a) by an authorised officer;
- (b) if the Restraint Order directed an Asset Manager to take control of an interest in property, by the Asset Manager; or
- (c) with the leave of the Court, by any other person.

Notice of application.

38. The applicant for an order under section 36 shall give notice of the application –

- (a) if the applicant is a person referred to in section 37 (a) or (b), to the other person referred to in section 37(c); or
- (b) if the applicant is a person referred to in section 37

- (c), to the persons referred to in section 37(a) and
- (b).

Statement.

39. (1) A statement made or document produced by a person examined under section 36 may not be used in evidence against him in criminal proceedings.

(2) Subsection (1) shall not apply –

Cap. 5:03

(a) on a prosecution for an offence of perjury under section 99 of the Evidence Act; or

(b) on a prosecution for some other offence where, in giving evidence, the person makes a statement inconsistent with the statement mentioned in subsection (1).

(3) A statement may not be used by virtue of subsection (1) against a person unless –

(a) evidence relating to it is adduced; or

(b) a question relating to it is asked, by or on behalf of that person in the proceedings arising out of the prosecution.

Appointment of Asset
Manager.

40. (1) Where the Court has made a Restraint Order, the Court shall, if it deems it appropriate, or at the request of the Director, at the time of making the order or at a later time, appoint an Asset Manager to

do, subject to the directions of the Court or the Director, any one or more of the following –

- (a) to take possession or control of, and may insure, any property to which the order relates;
- (b) to become party to any proceedings affecting the property;
- (c) in the case of property that is perishable, or liable to deterioration, decay or injury by being detained in custody to sell or otherwise dispose of the said property; and
- (d) in accordance with the Court's directions, to manage, keep possession or dispose of or otherwise deal with any property in respect of which he is appointed, subject to such exceptions and conditions if any as may be specified by the Court, and may require any person having possession or control of property in respect of which the Manager is appointed to give possession of it to the Manager.

(2) Where the Court deems it appropriate, or at the request of the Director, appoints an Asset Manager, the asset manager shall inform the Director and the Court as soon as reasonably practicable if the Asset Manager thinks that –

- (a) any property to which the order applies by virtue

- of a claim that it is recoverable property is not recoverable property;
- (b) any property to which the order does not apply is recoverable property in relation to the same unlawful conduct; or
 - (c) any property to which the order applies is held by a person who is different from the person it is claimed holds it; or
 - (d) there has been any other material change of circumstances.
- (3) The Restraint Order shall require the Asset Manager –
- (a) to report his findings to the Court;
 - (b) to serve copies of his report on the Director and on any person who holds any property to which the order applies or who may otherwise be affected by the report.
- (4) Where an Asset Manager takes any action under this section-
- (a) in relation to property which is not property the subject of a Restraint Order, being action which he would be entitled to take if it were such property; and
 - (b) believing, and having reasonable grounds for believing, that he is entitled to take that action in relation to that property,

the Asset Manager shall not be liable to any person in respect of any loss or damage resulting from such action except in so far as the loss or damage is caused by his negligence.

CIVIL RECOVERY ORDER

Civil Recovery Order. 41. (1) The Director or other authorised officer may apply to the Court for a Civil Recovery Order against any person believed to be holding or have held, recoverable property, including where –

- (a) the person has not been charged with an offence;
- (b) the person has been acquitted of the offence;
- (c) the charge against the person was withdrawn before a verdict was returned or the proceedings were stayed;
- (d) the act which is the subject of the application was committed by a person who is deceased at the time of the application; or
- (e) the person, whether or not, the subject of criminal proceedings deliberately absconds and leaves Guyana; and in such absence the Court shall not permit that person to further a claim in any civil recovery proceedings whilst out of the jurisdiction except where that person is being held in custody in any other jurisdiction for commission of

criminal conduct in that jurisdiction.

(2) The Director or other authorised officer shall give notice of an application for a Civil Recovery Order to the respondent and to any other person, if any, as the Court may direct, unless the Court is satisfied that it is not reasonably possible to ascertain the whereabouts of the respondent, or that other person.

Property which may be the subject of a Civil Recovery Order.

42. (1) Subject to subsection (2), the Court, on an application to it under section 41, may make a Civil Recovery Order in relation -

- (a) to property or specified property held subject to a Restraint Order under section 27; or
- (b) to any other property,

directing that the whole or, if appropriate, a specified part of such property be transferred, subject to such terms and conditions as the Court may specify, to an Asset Manager or to such other person as the Court may determine.

(2) Subject to subsection (6), the Court shall not make a Civil Recovery Order in relation to any property the subject of an application under subsection (1) unless -

- (a) it is shown to the Court's satisfaction that the property, or specified property, subject to the application is -
 - (i) State property obtained or derived, directly

or indirectly, from unlawful conduct involving a public official or any other person; or

- (ii) specified property acquired, in whole or in part, with or in connection with State property derived, directly or indirectly, from unlawful conduct involving a public official or any other person; or
- (iii) a benefit derived, directly or indirectly, in whole or in part, in connection with a public official's or any other person's unlawful conduct in respect of State property; or

(b) the Court is satisfied that there would not be a serious risk of injustice.

(3) It shall be sufficient for the purposes of subsection (2) for the Director or other authorised officer to show, on the balance of probabilities, that the property is proceeds of the unlawful conduct, without having to show that any person has been charged in relation to such an offence.

(4) Where proceeds of the unlawful conduct referred to in subsection (2) have become intermingled with property acquired from legitimate sources, or have been transformed or converted, such property

shall be liable to civil recovery up to the assessed value of the intermingled, transformed or converted proceeds, and includes any income or other benefit derived from -

- (a) the proceeds of the unlawful conduct;
- (b) the property with which the proceeds have been intermingled;
- (c) the property into which the proceeds of the unlawful conduct have been transformed or converted.

(5) If the Director or other authorised officer establishes, on the balance of probabilities, that a person is or was in possession of property which constituted proceeds of unlawful conduct as referred to in subsection (2), and the whole, or part, of that property cannot with due diligence be traced or identified or has been substantially altered, destroyed or diminished in value, the Court may make a civil recovery order in a sum up to the assessed monetary value of the whole, or part, of that property as may be appropriate.

(6) In proceedings under subsection (1), before deciding whether to make a Civil Recovery Order, the Court shall give an opportunity to be heard, and to show cause why the Order should not be made, to any person claiming ownership of any of the property concerned.

Bona fide purchaser
for value.

43. Where a person holds recoverable property and is able to satisfy the Court, on a balance of probabilities, that the property was obtained in good faith for value without notice that it was recoverable property, the property ceases to be recoverable.

Property other than
State property.

44. If during the course of a civil recovery investigation or civil recovery proceedings property, other than State property, is discovered to have been obtained or derived, directly or indirectly, through unlawful conduct the Director may include that property as part of the civil recovery application or refer the matter to the appropriate law enforcement authority.

Effect of a Civil
Recovery Order.

45. (1) A Civil Recovery Order shall operate to deprive the respondent of his rights, if any, in or to the property to which it relates and, upon the making of the Order, subject to –

(a) the expiration of the ordinary time for bringing an appeal against the Order and if an appeal is brought until that appeal is determined or abandoned; and

(b) the expiration of the ordinary time for bringing a further appeal and if any further appeal is brought, until that appeal is determined or abandoned,

the property shall stand transferred to the Court appointed Asset Manager or other person to whom it relates.

(2) The Asset Manager may sell or otherwise dispose of any property transferred to him under this section, at the direction of the Court, and any proceeds of such a disposition and any moneys transferred to him under this section shall be paid into the Recovery of State Assets Fund and the Consolidated Fund, as appropriate.

Court may adjourn hearing of application.

46. The Court, if it considers it appropriate to do so in the interests of justice, on the application of the respondent or, if the whereabouts of the respondent cannot be ascertained, on its own initiative, may adjourn the hearing of an application under section 41 for a period not exceeding two years as it considers reasonable.

Dealing with civil recovery property prohibited.

47. (1) A person shall not dispose of, or otherwise deal with an interest in property that is the subject of a Civil Recovery Order.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction on indictment to a fine equivalent to the value of the property or to the interest concerned (as determined by the Court) and to imprisonment for two years, unless it is proved that the person had no notice that the interest was subject to the order concerned and had no reason to suspect that it was.

(3) This section does not prevent a person from being dealt with for a contempt of the Court, but a person may not, for the action, be punished both for a contempt of the Court and under this section.

(4) If an interest in property is disposed of or otherwise dealt with in contravention of this section and the disposition or dealing was either not for sufficient consideration or not in favour of a person who acted in good faith, the disposition or dealing is void.

(5) It is not a contravention of this section if an interest in property is disposed of or dealt with under the authority of this Act.

Victims of theft, etc.

48. (1) In proceedings for a Civil Recovery Order, a person who claims that any property alleged to be recoverable property, or any part of the property, belongs to him may apply to the Court for a declaration under this section.

(2) If the applicant appears to the Court to meet the following condition, the court may make a declaration to that effect that –

- (a) the person was deprived of the property he claims, or the property which it represents, by unlawful conduct;
- (b) the property he was deprived of was not recoverable property immediately before he was deprived of it; and
- (c) the property he claims belongs to him.

(3) Property to which a declaration under this section applies is not recoverable.

Consent Order.

49. (1) The Court may make an order staying any proceedings for a Civil Recovery Order on terms agreed by the parties for the disposal of the proceedings if each person to whose property the proceedings or the

agreement relates is a party both to the proceedings and the agreement.

- (2) An order under subsection (1) may –
 - (a) make provision for any property which may be recoverable property to cease to be recoverable;
 - (b) make any further provision which the Court thinks appropriate.

Civil Recovery Order
after interests in
property not disclosed.

50. (1) This section applies where –
 - (a) an application for a Civil Recovery Order is made;
and
 - (b) evidence or other representation was given or made in proceedings for the order, or examination proceedings under this Act,

by a person against whom the order is made as to that person's interest in property.

(2) The Director may apply to the Court for an order forfeiting to, and vesting in, the State a specified interest in property of that person, that was not disclosed in the evidence or representation, at the time the evidence or representation was given or made.

(3) The Court shall make the order under subsection (2) if it is satisfied on the balance of probabilities that the interest in property was an interest of the defendant at the time the evidence or representation was given or made.

(4) An order under subsection (2) may be made even if the interest in property was disposed of after the evidence or representation was given or made but may not extend to an interest in property if –

- (a) the whole or part of that interest was subsequently acquired by a person for sufficient consideration without knowledge, and in circumstances that would not arouse a reasonable suspicion, that the property or interest in property was at the time of acquisition derived from the unlawful conduct of a public official or any other person; or
- (b) the whole or part of the interest in that property subsequently vested in a person as a result of the distribution of the estate of a deceased person.

(5) An order under subsection (2) may be made notwithstanding the terms of any orders previously made by consent.

(6) Notice of an application under this section shall be given to the person or any other person having an interest in property to which the application relates and either of those persons may appear and adduce evidence at the hearing of the application.

(7) The absence of a person entitled to be given notice of an application for an order under this section does not prevent the Court from making the order.

Compensation.

51. (1) Where in the case of property to which a restraint order has at any time applied, the Court does not in the course of the proceedings decide that the property is recoverable property, the person whose property it is may make an application to the Court for compensation.

(2) Subsection (1) does not apply if the Court –

(a) has made a declaration in respect of the property by virtue of section 48; or

(b) makes an order under section 49.

(3) Where the Court has made a decision by reason of which no recovery order could be made in respect of the property, the application for compensation shall be made within the period of three months beginning-

(a) with the date of the decision; or

(b) if any application is made for leave to appeal, with the date on which the application is withdrawn or refused or, if the application is granted, on which any proceedings on appeal are finally concluded.

(4) Where the proceedings in respect of the property have been discontinued by the Director, the application for compensation shall be made within the period of three months beginning with the discontinuance.

(5) Where the Court is satisfied that the applicant has suffered loss as a result of the restraint order, it may require the Director to pay compensation to him.

(6) The amount of compensation to be paid under this section is the amount the Court thinks reasonable, having regard to the loss suffered and any other relevant circumstances.

Director may discharge revenue functions of the

52. (1) The revenue functions which the Director may discharge

Revenue Authority
where a Civil
Recovery Order is not
appropriate.

are the functions vested in the Commissioner-General which relate to –

- (a) income tax;
- (b) capital gains tax;
- (c) corporation tax;
- (d) process fees in respect of estates of deceased persons;
- (e) property tax.

(2) Where during the course of a civil recovery investigation the Director has reasonable grounds to suspect that –

- (a) income arising or a gain accruing to a person in respect of a chargeable period is chargeable to income tax or is a chargeable gain, as the case may be, and arises or accrues as a result of a public official's or any other person's unlawful conduct, whether wholly or partly and whether directly or indirectly, in relation to State property;
- (b) a company is chargeable to corporation tax on its profits arising in respect of a chargeable period and the profits arise as a result of a public official's or the company's or any other person's unlawful conduct, whether wholly or partly and whether directly or indirectly, in relation to State property;
- (c) there has been a transfer of value which is a

disposition made by a person as a result of which the value of his estate immediately after the disposition is less than it would be but for the disposition, and the value transferred is attributable, in whole or in part, directly or indirectly, to the proceeds of unlawful conduct in relation to State property; or

- (d) all or part of property comprised in a settlement, which amounts to a discretionary trust, whether or not any person has an interest in, possession of, or becomes beneficially entitled to, income from the trust, and the relevant property is, in whole or in part, directly or indirectly, proceeds of unlawful conduct in relation to State property,

and the Director determines that it is not appropriate, for whatever reason, to proceed with an application for a civil recovery order, the Director may serve on the Commissioner-General a notice containing the matters specified in subsection (3).

(3) The notice referred to in subsection (2) shall, notwithstanding anything in any other law, state that –

- (a) the notice vests in the Director in relation to the person or company under subsection (2)(a) or (b) and the person or trustees under subsection (2)(c)

or (d) the respective revenue functions for the period stated in the notice;

(b) that the Director is by law from the date of the notice assuming the functions of the Commissioner-General referred to in this section;

(c) that the Commissioner-General is not divested of his functions in relation to the laws mentioned in this section and he shall cooperate with the Director and facilitate the work of the Director.

(4) The Director may serve on the Commissioner-General a notice of withdrawal of the notice referred to in subsection (2) and shall do so if the conditions under subsection (2) ceased.

(5) Upon service of the notice of withdrawal under subsection (4) all powers of the Director in relation to the laws under this section shall cease and upon such cessation the Commissioner-General shall assume his powers enjoyed before the first notice was served by the Director.

(6) It is immaterial whether a chargeable gain period or any part of it falls before or after the commencement of this Act.

(7) For the purpose of the discharge by the Director of any functions vested in him by virtue of this Act it is immaterial that he cannot identify a source of any income.

(8) The Director shall –

- (a) apply any concession which has been published by the Revenue Authority and which is available generally to any person falling within its terms;
- (b) take account of any material published by the Revenue Authority which does not fall within paragraph (a).

(9) The person or trustees of the transfer or settlement referred to in subsection (2)(c) or (d), against whom this section is applied has the right of appeal against any assessment of tax made by the Director as if it was made by the Commissioner-General or an officer of the Revenue Authority.

Limitation.

53. (1) No proceedings shall be brought under this Act for a Civil Recovery Order in respect of any recoverable property after the expiration of twelve years from –

- (a) in the case of proceedings for a recovery order in respect of State property obtained, directly or indirectly, through unlawful conduct, discovery that the property was so obtained;
- (b) in the case of proceedings for a recovery order in respect of specified property which derives from, in whole or in part, with or in connection with, State Property obtained through the unlawful conduct of

a public official or any other person, discovery that the specified property was so derived; or

- (c) in the case of proceedings for a recovery order in respect of any other recoverable property, discovery that the property obtained through or in connection with unlawful conduct, was so obtained.

(2) In respect of Civil Recovery proceedings the time of the absence from Guyana of a person subject to the recovery proceedings, any period during which the unlawful conduct is concealed or its discovery is prevented, or of any concealment or absence of the property, shall not be reckoned as part of the twelve-year period of limitation.

(3) For the purposes of subsection (1), proceedings for a recovery order are brought when an initial application is made for a restraint or civil recovery order.

***EVIDENCE IN PROCEEDINGS FOR
CIVIL RECOVERY ORDER AND RESTRAINT ORDER***

Evidence in proceedings.

54. (1) Where an authorised officer states in proceedings under section 27 in an affidavit or on oral evidence, or in proceedings under sections 41 and 42, in an affidavit or, if the Court so directs, in oral evidence that the officer believes that –

- (a) the respondent holds property or specified property and that property is State property obtained or

- derived, directly or indirectly, from unlawful conduct involving a public official or any other person;
- (b) the respondent holds specified property and that the property was acquired, in whole or in part, with or in connection with State property obtained or derived, directly or indirectly, from unlawful conduct involving a public official or any other person; or
 - (c) that the respondent has benefited or is in receipt of benefit derived, directly or indirectly, in whole or in part, with or in connection with a public official's or any other person's unlawful conduct in respect of State property; and
 - (d) that the value of the property or the total value of the properties referred to in paragraphs (a), (b) and (c) is not less than ten million dollars,

then, if the Court is satisfied that there are reasonable grounds for the officer's belief, the statement shall be evidence of the matters referred to in paragraphs (a), (b) or (c), as may be appropriate, and of the value of the property.

(2) The Court may, if it considers it appropriate to do so, prohibit the publication of such information as it may determine in

relation to proceedings under this Act, including information in relation to applications for, the making or refusal of and the contents of orders and the persons to whom they relate.

(3) Production to the Court in proceedings under this Act of a document purporting to authorise a person, who is described in the document as an officer of SARA, required to perform the function conferred on an officer and signed by the Director shall be evidence that the person is an officer so authorised.

GENERAL

Seizure of property by authorised persons.

55. (1) Where an order of Court under this Act is in force, an authorised person may, for the purpose of preventing any property the subject of the order being removed from the State, seize the property.

(2) Property seized under this section shall be dealt with in accordance with the directions of the Court.

Bankruptcy of respondent.

56. (1) Where a person who is in possession or control of property is adjudicated bankrupt, property subject to a Restraint Order or a Civil Recovery Order, made before the order adjudicating the person bankrupt, is excluded from the property of the bankrupt.

(2) Where a person has been adjudicated bankrupt, the powers conferred on the Court by section 27 shall not be exercised in relation to property of the bankrupt.

Trustee in bankruptcy. 57. (1) Without prejudice to the generality of any provision of any other law, where –

- (a) a trustee in bankruptcy, seizes or disposes of any property in relation to which his functions are not exercisable because it is subject to a Restraint Order or a Civil Recovery Order; and
- (b) at the time of the seizure or disposal he believes, and has reasonable grounds for believing, that he is entitled, whether in pursuance of an order of a Court or otherwise, to seize or dispose of that property,

he shall not be liable to any person in respect of any loss or damage resulting from the seizure or disposal except in so far as the loss or damage is caused by his negligence in so acting, and he shall have a lien on the property, or the proceeds of its sale, for his expenses incurred in connection with the bankruptcy or other proceedings in relation to which the seizure or disposal purported to take place and for so much of his remuneration as may reasonably be assigned for his acting in connection with those proceedings.

(2) Where the trustee incurs expenses in respect of such property as is mentioned in subsection (1) (a) and in so doing does not know and has no reasonable grounds to believe that the property is for

the time being subject to an order of Court under this Act, he shall be entitled whether or not he has seized or disposed of the property so as to have a lien to payment of those expenses.

Winding up of
company.

58. (1) Where property, the subject of a Restraint Order or a Civil Recovery Order made before the relevant time, is in possession or control of a company and an order for the winding up of the company has been made or a resolution has been passed by the company for a voluntary winding up, the functions of the liquidator or any provisional liquidator shall not be exercisable in relation to the property.

(2) Where, in the case of a company, an order for its winding up has been made or a resolution for its winding up has been passed, the powers conferred by section 27 on the Court shall not be exercised in relation to any property held by the company in relation to which the functions of the liquidator are exercisable –

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

- (3) In this section “relevant time” means –
- (a) where no order for the winding up of the company has been made, the time of the passing of the resolution for voluntary winding up;
 - (b) where such an order has been made and, before the presentation of the petition for the winding up of the company by the Court, such a resolution had been passed by the company, the time of the passing of the resolution; and
 - (c) in any other case where such an order has been made, the time of the making of the order.

PART V

ORDERS TO ASSIST INVESTIGATION

DISCLOSURE ORDER

- Disclosure Order. 59. (1) A Judge may, on an application made to him by an authorised officer, make a Disclosure Order if he is satisfied that each of the requirements under section 60 for the making of the order is fulfilled.
- (2) The application for a disclosure order shall state that property specified in the application is subject to a civil recovery investigation being carried out by SARA and the order is sought for the

purposes of the investigation.

(3) A disclosure order is an order authorising the Director to give to any person the Director considers has relevant information notice in writing requiring him to do, with respect to any matter relevant to the investigation for the purposes of which the order is sought, any or all of the following –

- (a) answer questions, either at a time specified in the notice or at once, at a place so specified;
- (b) provide information specified in the notice, by a time and in a manner so specified;
- (c) produce documents, or documents of a description, specified in the notice, either at or by a time so specified or at once, and in a manner so specified.

(4) In this section “relevant information” is information, whether or not contained in a document, which the Director considers to be relevant to the investigation.

(5) A person is not bound to comply with a requirement imposed by a notice given under a disclosure order unless evidence of authority to give the notice is produced to him.

Requirements for making disclosure order.

60. The requirements for the making of a disclosure order shall be-

- (a) reasonable grounds for suspecting that the property specified in the application for the order constitutes State property –
 - (i) obtained by or derived directly or indirectly from unlawful conduct involving a public official or any other person;
 - (ii) derived in whole or in part with or in connection with unlawful conduct involving a public official or any other person; or
 - (iii) being a benefit derived directly or indirectly in whole or in part with or in connection with a public official's or any other person's unlawful conduct in respect of State property;
- (b) reasonable grounds for believing that information which may be provided in compliance with a requirement imposed under the order is likely to be of substantial value, whether or not by itself, to the investigation for the purposes of which the order is sought;
- (c) reasonable grounds for believing that it is in the public interest for the information to be provided,

having regard to the benefit likely to accrue to the investigation if the information is obtained.

Offences.

61. (1) A person commits an offence if without reasonable excuse he fails to comply with a requirement imposed on him under a disclosure order.

(2) A person commits an offence if in purported compliance with a requirement imposed on him under a disclosure order he –

(a) makes a statement which he knows to be false or misleading in a material particular; or

(b) recklessly makes a statement which is false or misleading in a material particular.

(3) A person who commits an offence under subsection (1) or (2) is liable on summary conviction to a fine of two million dollars and imprisonment for two years.

Statements.

62. (1) A statement made by a person in response to a requirement imposed on him under a disclosure order may not be used in evidence against him in criminal proceedings.

(2) Subsection (1) does not apply –

(a) on a prosecution for an offence of perjury under

Cap. 5:03

section 99 of the Evidence Act; or

- (b) on a prosecution for some other offence where, in giving evidence, the person makes a statement inconsistent with the statement mentioned in subsection (1).

(3) A statement may not be used by virtue of subsection (1) against a person unless –

- (a) evidence relating to it is adduced; or
- (b) a question relating to it is asked by him or on his behalf in the proceedings arising out of the prosecution.

Privileged question,
information and
document.

63. (1) A disclosure order does not confer the right to require a person to answer any privileged question, provide any privileged information or produce any privileged document, except that an attorney-at-law may be required to provide the name and address of a client of his.

(2) A privileged question is a question which the person would be entitled to refuse to answer on grounds of legal professional privilege in proceedings in the Court.

(3) Privileged information is any information which the person would be entitled to refuse to provide on grounds of legal

professional privilege in proceedings in the Court.

(4) Privileged material is any material which the person would be entitled to refuse to produce on grounds of legal professional privilege in proceedings in the Court.

(5) A disclosure order does not confer the right to require a person to produce privileged material.

(6) A disclosure order has effect in spite of any restriction on the disclosure of information.

Copies and retention
of documents.

64. (1) The Director may take copies of any documents produced in compliance with a requirement to produce them which is imposed under a disclosure order.

(2) Documents so produced may be retained for so long as it is necessary to retain them as opposed to a copy of them in connection with the investigation for the purposes of which the order was made.

(3) If the Director has reasonable grounds for believing that –

(a) the documents may need to be produced for the purposes of any legal proceedings; and

(b) they might otherwise be unavailable for those purposes,

they may be retained until the proceedings are concluded.

Application for
Disclosure Order.

65. (1) An application for a Disclosure Order may be made *ex parte* to a Judge in Chambers.

(2) Rules of court where necessary may make provision as to the practice and procedure to be followed in connection with proceedings relating to disclosure orders.

(3) An application to discharge or vary a disclosure order may be made to the Court by the Director or any person affected by the order.

(4) The Court may discharge or vary the order.

CUSTOMER INFORMATION ORDER

Customer Information
Order.

66. (1) A Judge may, on an application made by the Director or an officer acting on the authority of the Director, make a customer information order if he is satisfied that each of the requirements under section 69 for the making of the order is fulfilled.

(2) The application for a Customer Information Order shall state that –

(a) property specified in the application is subject to a civil recovery investigation;

(b) a person specified in the application appears to

hold the property;

(c) the order is sought for the purposes of the investigation; and

(d) the order is sought against the financial institution or financial institutions specified in the application.

(3) An application for a Customer Information Order may specify –

(a) all financial institutions;

(b) a particular financial institution; or

(c) a particular description of financial institutions.

Order for financial institution to provide customer information.

67. (1) A Customer Information Order is an order that a financial institution covered by the application for the order shall, on being required to do so by notice in writing given by an authorised officer, provide any such customer information as it has relating to the person specified in the application.

(2) A financial institution which is required to provide information under a Customer Information Order shall provide the information to an authorised officer in such manner, and at or by such time, as an authorised officer requires.

(3) If a financial institution on which a requirement is imposed by a notice given under a Customer Information Order requires the production of evidence of authority to give the notice, it is not bound to comply with the requirement unless evidence of the authority has been produced to it.

Meaning of customer information.

68. (1) “Customer information”, in relation to a person and a financial institution, is information whether the person holds or has held an account or accounts at the financial institution, whether solely or jointly with another, and if so, information as to –

- (a) the matters specified in subsection (2) if the person is an individual;
- (b) the matters specified in subsection (3) if the person is a company or limited liability partnership or a similar body incorporated or otherwise established in a foreign state or territory.

(2) The matters referred to in subsection (1)(a) are –

- (a) the account number or numbers;
- (b) the person’s full name;
- (c) his date of birth;
- (d) his most recent address and any previous

addresses;

- (e) the date or dates on which he began to hold the account or accounts and, if he has ceased to hold the account or any of the accounts, the date or dates on which he did so;
 - (f) such evidence of his identity as was obtained by the financial institution under any law relating to money laundering;
 - (g) the full name, date of birth and most recent address, and any previous addresses, of any other person who holds, or has held, an account at the financial institution jointly with him;
 - (h) the account number or numbers of any other account or accounts held at the financial institution to which he is a signatory and details of the person holding the other account or accounts.
- (3) The matters referred to in subsection (1)(b) are –
- (a) the account number or numbers;
 - (b) the person's full name;
 - (c) a description of any business which the person carries on;

- Cap. 89:01
- (d) the state or territory in which it is incorporated or otherwise established and any number allocated to it under the Companies Act or corresponding law of any foreign state or territory;
 - (e) any number assigned to it for the purposes of value added tax in Guyana;
 - (f) its registered office and any previous registered offices under the Companies Act or anything similar under corresponding legislation of any foreign state or territory;
- Cap. 89:02
- (g) its registered office and any previous registered offices under the Partnership Act or any corresponding law of any foreign state or territory;
 - (h) the date or dates on which it began to hold the account or accounts and, if it has ceased to hold the account or any of the accounts, the date or dates on which it did so;
 - (i) such evidence of its identity as was obtained by the financial institution under any law relating to money laundering;
 - (j) the full name, date of birth and most recent address and any previous addresses of any person who is a

signatory to the account or any of the accounts.

(4) The Minister may by order provide for information of a description specified in the order –

- (a) to be customer information; or
- (b) no longer to be customer information.

Requirements for making of Customer Information Order.

69. The requirements for the making of a Customer Information Order are –

- (a) there shall be reasonable grounds for suspecting that the property specified in the application for the order constitutes State property –
 - (i) obtained by or derived, directly or indirectly from unlawful conduct involving a public official, or any other person;
 - (ii) derived, in whole or in part, with or in connection with, unlawful conduct involving a public official, or any other person; or
 - (iii) being a benefit derived, directly or indirectly, in whole or in part, with or in connection with a public official's or any

other person's unlawful conduct in respect
of State property;

- (b) there shall be reasonable grounds for suspecting the person specified in the application holds all or some of the property;
- (c) there shall be reasonable grounds for believing that customer information which may be provided in compliance with the order is likely to be of substantial value, whether or not by itself, to the investigation for the purposes of which the order is sought; and
- (d) there shall be reasonable grounds for believing that it is in the public interest for the customer information to be provided, having regard to the benefit likely to accrue to the investigation if the information is obtained.

Offences.

70. (1) A financial institution commits an offence if without reasonable excuse it fails to comply with a requirement imposed on it under a customer information order.

(2) A financial institution commits an offence if, in purported

compliance with a customer information order, it –

- (a) makes a statement which it knows to be false or misleading in a material particular, or
- (b) recklessly makes a statement which is false or misleading in a material particular.

(3) A financial institution which commits an offence under this section shall on summary conviction be liable to a fine of three million dollars.

Statements.

71. (1) A statement made by a financial institution in response to a customer information order may not be used in evidence against it in criminal proceedings.

(2) Subsection (1) does not apply on a prosecution for an offence where, in giving evidence, the financial institution makes a statement inconsistent with the statement mentioned in subsection (1).

(3) A statement may not be used by virtue of subsection (2) against a financial institution unless –

- (a) evidence relating to it is adduced, or
- (b) a question relating to it is asked,

by or on behalf of the financial institution in the proceedings arising out

of the prosecution.

Disclosure of
customer information.

72. A Customer Information Order has effect in spite of any restriction on the disclosure of information.

Application for
Customer Information
Order.

73. (1) An application for a Customer Information Order may be made *ex parte* to a Judge in Chambers.

(2) Rules of court where necessary may make provision as to the practice and procedure to be followed in connection with proceedings relating to Customer Information Orders.

(3) An application to discharge or vary a Customer Information Order may be made to the Court by the person who applied for the order or any person affected by the order.

(4) The court may discharge or vary the order.

(5) If an authorised officer applies for a Customer Information Order, an application to discharge or vary the order need not be made by the same authorised officer.

(6) An authorised officer may not make an application for a Customer Information Order or an application to vary such an order unless he authorised to do so by the Director.

PRODUCTION ORDER

Production Order. 74. (1) A Judge may, on an application made to him by the Director or an officer acting on the authority of the Director, make a Production Order if he is satisfied that each of the requirements under subsection (5) for the making of the order is fulfilled.

(2) The application for a production order shall state that –

(a) property specified in the application is subject to a civil recovery investigation which is being carried out by SARA and the order is sought for the purposes of the investigation;

(b) the order is sought in relation to material, or material of a description, specified in the application; and

(c) a person specified in the application appears to be in possession or control of the material.

(3) A Production Order is an order either –

(a) requiring the person specified in the application for the order as appearing to be in possession or control of material, to produce it to an authorised officer for him to take away; or

(b) requiring that person to give an authorised officer

access to the material, within the period stated in the order.

(4) The period stated in a production order shall be a period of fifteen days beginning with the day on which the order is made, unless it appears to the Judge by whom the order is made that a longer or shorter period would be appropriate in the particular circumstances.

(5) The requirements for the making of a production order shall be –

(a) reasonable grounds for suspecting that the property the application for the order specifies as being subject to the investigation constitutes State property –

(i) obtained by or derived, directly or indirectly from unlawful conduct involving a public official, or any other person;

(ii) derived, in whole or in part, with or in connection with, unlawful conduct involving a public official, or any other person; or

(iii) being a benefit derived, directly or indirectly, in whole or in part, with or in connection with a public official's or any

other person's unlawful conduct in respect
of State property;

- (b) reasonable grounds for believing that the person the application specifies as appearing to be in possession or control of the material so specified is in possession or control of it;
- (c) reasonable grounds for believing that the material is likely to be of substantial value, whether or not by itself, to the investigation for the purposes of which the order is sought;
- (d) reasonable grounds for believing that it is in the public interest for the material to be produced or for access to it to be given, having regard to –
 - (i) the benefit likely to accrue to the investigation if the material is obtained;
 - (ii) the circumstances under which the person the application specifies as appearing to be in possession or control of the material holds it.

Order to grant entry. 75. If the Judge makes a Production Order requiring a person to give

an authorised officer access to material on any premises –

- (a) the Judge may, on an application made to him by an authorised officer and specifying the premises, make an order to grant entry in relation to the premises; and
- (b) the order to grant entry is an order requiring an authorised officer be permitted entry to the premises and be allowed access to the material.

Privileged material. 76. (1) A Production Order shall not require a person to produce, or give access to, privileged material.

(2) Privileged material is any material which the person would be entitled to refuse to produce on grounds of legal professional privilege in proceedings in the Court.

(3) A production order has effect in spite of any restriction on the disclosure of information however imposed.

Copies or retention of material. 77. (1) An authorised officer may take copies of any material which is produced, or to which access is given, in compliance with a production order.

(2) Subject to subsection (3), material produced in

compliance with a Production Order may be retained for so long as it is necessary to retain it, as opposed to copies of it, in connection with the investigation for the purposes of which the order was made.

(3) If an authorised officer has reasonable grounds for believing that –

- (a) the material may need to be produced for the purposes of any legal proceedings; and
- (b) it might otherwise be unavailable for those purposes,

it may be retained until the proceedings are concluded.

Computer information. 78. (1) This section applies if any of the material specified in an application for a Production Order consists of information contained in a computer or any other method of electronic storage, including on cloud or any external drive.

(2) If the order is an order requiring a person to produce the material to an authorised officer for him to take away, it has effect as an order to produce the material in a form in which it can be taken away by him and in which it is visible and legible.

(3) If the order is an order requiring a person to give an authorised officer access to the material, it has effect as an order to give

him access to the material in a form in which it is visible and legible.

Government
departments.

79. (1) A Production Order may be made in relation to material in the possession or control of a government department.

(2) An order so made may require any officer of the department, whether named in the order or not, who may for the time being be in possession or control of the material to comply with it.

(3) An order containing the requirement under subsection (2) shall be served as if the proceedings were civil proceedings against the department.

(4) If an order contains the requirement –

(a) the person on whom it is served shall take all reasonable steps to bring it to the attention of the officer concerned;

(b) any other officer of the department who is in receipt of the order shall also take all reasonable steps to bring it to the attention of the officer concerned.

(5) If the order is not brought to the attention of the officer concerned within the period stated in the order the person on whom it is served shall report the reasons for the failure to the Court.

Application for a
Production Order and
an order to grant entry.

80. (1) An application for a Production Order or an order to grant entry may be made *ex parte* to a Judge in Chambers.

(2) Rules of court where necessary may make provision as to the practice and procedure to be followed in connection with proceedings relating to Production Orders and orders to grant entry.

(3) An application to discharge or vary a Production Order or an order to grant entry may be made to the Court by the person who applied for the order or any person affected by the order.

(4) The Court may discharge or vary an order under this section.

(5) If an authorised officer applies for a Production Order or an order to grant entry, an application to discharge or vary the order need not be made by the same authorised officer.

SEARCH AND SEIZURE WARRANT

Search and seizure
warrant.

81. (1) A Judge may, on an application made to him by an authorised officer, issue a search and seizure warrant if he is satisfied that either of the requirements set out in subsection (4) for the issuing of the warrant is fulfilled.

(2) The application for a search and seizure warrant shall

state that –

- (a) property specified in the application is subject to a civil recovery investigation;
- (b) the warrant is sought for the purposes of the investigation;
- (c) the warrant is sought in relation to the premises specified in the application;
- (d) the warrant is sought in relation to material specified in the application, or, where material could not be identified at the time of the application, that there are reasonable grounds for believing that there is material on the premises specified in the application which –
 - (i) relates to the property specified in the application, the question whether it derives from unlawful conduct, the question as to who holds any such property, any question as to whether the person who appears to hold any such property holds other property which is proceeds of crime, or any question as to the extent or whereabouts of any property mentioned in this paragraph; and

- (ii) is likely to be of substantial value, whether or not by itself, to the investigation for the purposes of which the warrant is sought.

(3) A search and seizure warrant is a warrant authorising an appropriate person –

- (a) to enter and search the premises specified in the application for the warrant; and
- (b) to seize and retain any material found there which is likely to be of substantial value, whether or not by itself, to the investigation for the purposes of which the application is made.

(4) The requirements for the issue of a search and seizure warrant are –

- (a) that a production order made in relation to material has not been complied with and there are reasonable grounds for believing that the material is on the premises specified in the application for the warrant; or
- (b) that, where a production order is not available, section 82 is satisfied in relation to the warrant.

Requirements for a search and seizure warrant where Production Order not available.

82. (1) This section is satisfied in relation to a search and seizure warrant if –

- (a) subsection (2) applies; and
- (b) either of the first or second set of conditions, set out in subsections (3) and (4) respectively, is complied with.

(2) This subsection applies if there are reasonable grounds for suspecting that the property specified in the application for the warrant constitutes State property –

- (a) obtained by or derived, directly or indirectly from unlawful conduct involving a public official, or any other person;
- (b) derived, in whole or in part, with or in connection with, unlawful conduct involving a public official, or any other person; or
- (c) being a benefit derived, directly or indirectly, in whole or in part, with or in connection with a public official's or any other person's unlawful conduct in respect of State property.

(3) The first set of conditions is that –

- (a) there are reasonable grounds for believing that any

- material on the premises specified in the application for the warrant is likely to be of substantial value, whether or not by itself, to the investigation for the purposes of which the warrant is sought;
- (b) it is in the public interest for the material to be obtained, having regard to the benefit likely to accrue to the investigation if the material is obtained; and
- (c) it would not be appropriate to make a production order for any one or more of the following reasons –
- (i) that it is not practicable to communicate with any person against whom the production order could be made;
 - (ii) that it is not practicable to communicate with any person who would be required to comply with an order to grant entry to the premises;
 - (iii) that the investigation might be seriously prejudiced unless an authorized person is able to secure immediate access to the material.

- (4) The second set of conditions is that –
- (a) there are reasonable grounds for believing that there is material on the premises specified in the application for the warrant and that the material –
 - (i) relates to the property specified in the application, the question whether it derives from unlawful conduct, the question as to who holds any such property, or any question as to the extent or whereabouts of any property mentioned in this paragraph; and
 - (ii) is likely to be of substantial value, whether or not by itself, to the investigation for the purposes of which the warrant is sought;
 - (b) there are reasonable grounds for believing that it is in the public interest for the material to be obtained, having regard to the benefit likely to accrue to the investigation if the material is obtained, and
 - (c) any one or more of the following requirements is met –
 - (i) it is not practicable to communicate with

any person entitled to grant entry to the premises;

(ii) entry to the premises will not be granted unless a warrant is produced;

(iii) the investigation might be seriously prejudiced unless an authorised person arriving at the premises is able to secure immediate entry to them.

Privileged or excluded material.

83. (1) A search and seizure warrant does not confer the right to seize privileged material.

(2) Privileged material is any material which a person would be entitled to refuse to produce on grounds of legal professional privilege in proceedings in the Court.

(3) A search and seizure warrant does not confer the right to seize excluded material.

Application for search and seizure warrant.

84. (1) An application for a warrant may be made *ex parte* to a Judge in Chambers.

(2) A warrant may be issued subject to conditions.

(3) A warrant continues in force until the end of the period of

one month starting with the day on which it is issued.

Authority to do things
under a warrant.

85. (1) A warrant authorises the person it names to require any information which is held in a computer and is accessible from the premises specified in the application for the warrant, and which the named person believes relates to any matter relevant to the investigation, to be produced in a form –

(a) in which it can be taken away; and

(b) in which it is visible and legible.

(2) A warrant may include provision authorising a person who is exercising powers under it to do other things which –

(a) are specified in the warrant; and

(b) need to be done in order to give effect to it.

(3) If the Director gives written authority for members of staff of SARA to accompany the person a warrant names when executing it and a warrant is issued, the authorised member of staff shall give all assistance to the person named in the warrant.

Copies and retention
of material seized.

86. (1) Copies may be taken of any material seized under a warrant.

(2) Material seized under a warrant may be retained for so

long as it is necessary to retain it, as opposed to copies of it, in connection with the investigation for the purposes of which the warrant was issued.

(3) But if the Director has reasonable grounds for believing that –

- (a) the material may need to be produced for the purposes of any legal proceedings; and
- (b) it might otherwise be unavailable for those purposes,

it may be retained until the proceedings are concluded.

ACCOUNT MONITORING ORDER

Account Monitoring
Order.

87. (1) A Judge may, on an application made to him by an authorised officer, make an Account Monitoring Order if he is satisfied that each of the requirements under section 88 for the making of the order is fulfilled.

(2) The application for an Account Monitoring Order shall state that –

- (a) property specified in the application is subject to a civil recovery investigation;
- (b) a person specified in the application appears to

hold the property;

- (c) the order is sought for the purposes of the investigation; and
- (d) the order is sought against the financial institution specified in the application in relation to account information of the description so specified.

(3) Account information is information relating to an account held at the financial institution specified in the application by the person so specified, whether solely or jointly with another.

(4) The application for an Account Monitoring Order may specify information relating to –

- (a) all accounts held by the person specified in the application for the order at the financial institution so specified;
- (b) a particular account so held; or
- (c) a particular description of an account so held.

(6) An Account Monitoring Order is an order that the financial institution specified in the application for the order shall, for the period stated in the order, provide account information of the description specified in the order to an authorised officer in the manner and at the time stated in the order.

(7) The period stated in an Account Monitoring Order shall not exceed the period of ninety days beginning with the day on which the order is made.

Requirements for making of Account Monitoring Order.

88. The requirements for the making of an Account Monitoring Order are –

- (a) there shall be reasonable grounds for suspecting that the property specified in the application for the order constitutes State property –
 - (i) obtained by or derived, directly or indirectly from unlawful conduct involving a public official, or any other person;
 - (ii) derived, in whole or in part, with or in connection with, unlawful conduct involving a public official, or any other person; or
 - (iii) being a benefit derived, directly or indirectly, in whole or in part, with or in connection with a public official's or any other person's unlawful conduct in respect of State property;

- (b) the person specified in the application holds all or some of the property;
- (c) there shall be reasonable grounds for believing that account information which may be provided in compliance with the order is likely to be of substantial value, whether or not by itself, to the investigation for the purposes of which the order is sought; and
- (d) there shall be reasonable grounds for believing that it is in the public interest for the account information to be provided, having regard to the benefit likely to accrue to the investigation if the information is obtained.

Statements.

89. (1) A statement made by a financial institution in response to an Account Monitoring Order shall not be used in evidence against it in criminal proceedings.

(2) Subsection (1) does not apply –

- (a) in the case of proceedings for contempt of court; or
- (b) on a prosecution for an offence where, in giving evidence, the financial institution makes a

statement inconsistent with the statement mentioned in subsection (1).

(3) A statement shall not be used by virtue of subsection (2)(b) against a financial institution unless –

(a) evidence relating to it is adduced; or

(b) a question relating to it is asked,

by or on behalf of the financial institution in the proceedings arising out of the prosecution.

Disclosure of information.

90. An Account Monitoring Order has effect in spite of any restriction on the disclosure of information, however imposed.

Application for an Account Monitoring Order.

91. (1) An application for an Account Monitoring Order may be made *ex parte* to a Judge in Chambers.

(2) Rules of Court where necessary may make provision as to the practice and procedure to be followed in connection with proceedings relating to account monitoring orders.

(3) An application to discharge or vary an Account Monitoring Order may be made to the Court by the person who applied for the order or any person affected by the order.

(4) The Court may discharge or vary the order.

(5) If an authorised officer applies for an Account Monitoring Order, an application to discharge or vary the order need not be by the same authorised officer.

Tipping off regarding
Customer Information
Order and Account
Monitoring Order.

92. (1) A financial institution or an officer or employee of the financial institution which, pursuant to section 66 or 87, is required to provide customer information or account information in relation to any person and provides information, or enables information to be provided, to that person by any means whatsoever regarding the Customer Information Order or the Account Monitoring Order, as the case may be commits an offence.

(2) A financial institution or an officer or employee of the financial institution which contravenes subsection (1) commits an offence and is liable on summary conviction –

- (a) in the case of the officer or employee, to a fine of one million dollars and to imprisonment for three years; and
- (b) in the case of the financial institution, to a fine of not less than two million dollars nor more than ten million.

PART VI**INTERNATIONAL COOPERATION**

Sharing recovered property with a foreign state or territory.

93. (1) The Minister may enter into an arrangement with the competent authorities of a foreign state or territory for the reciprocal sharing with that state or territory of part of any property realised –

- (a) in the foreign state or territory, as a result of action taken by the Minister or Director pursuant to the recovery of State property; or
- (b) in Guyana, as a result of action taken in Guyana pursuant to a civil recovery order.

(2) Any proceeds or benefits from unlawful conduct –

- (a) recovered in a foreign state or territory pursuant to a request from Guyana; or
- (b) recovered in Guyana pursuant to a request by a foreign state or territory,

to the extent available under any sharing agreement of recovered property, arrangement or otherwise, shall be subject to the provisions of section 14.

Director may enter into agreements with authority of a foreign state or territory, etc.

94. The Director may enter into an agreement with any ministry, government department, public authority or police force of a foreign

state or territory for the collection, use or disclosure of information, including personal information, for the purpose of exchanging or sharing information with a foreign state or territory or for any purpose under this Act.

Assistance to foreign state or territory.

95. (1) The Court or Competent Authority shall cooperate with a court or competent authority of a foreign state or territory, taking the appropriate measures to provide assistance in matters concerning the recovery of property derived from unlawful conduct, in accordance with this Act, and within the limits of their respective legal systems.

(2) The Court or Competent Authority may receive a request from a court or competent authority of a foreign state or territory to identify, trace, produce, seize, restrain or recover property or assets of corresponding value, connected to or derived, directly or indirectly, from unlawful conduct, and may take appropriate actions, including those contained in sections 27, 41 and 42.

(3) The Court or Competent Authority may receive and take appropriate measures with respect to a request from a Court or competent authority of a foreign state or territory, for assistance in a civil or administrative, investigation or proceedings, as the case may be, involving property connected to or which is derived, directly or indirectly, from unlawful conduct, or violations of any provision of this

Act.

- (4) Assistance referred to in this section includes –
- (a) providing original or certified copies of relevant documents and records, including those of financial institutions and government agencies;
 - (b) obtaining testimony for the requested states;
 - (c) service of documents;
 - (d) examining objects and places, executing searches and seizures;
 - (e) providing information and evidentiary items, and provisional measures.

(5) Any provision referring to secrecy or confidentiality shall not be an impediment to compliance with this section, when the information is requested by or shared with the Court or other competent authority.

Registration of external orders.

96. (1) On an application made by or on behalf of the government or competent authority of a foreign state or territory referred to in section 95, the Court may register and enforce an external Restraint order or any other order having a similar effect where made in connection with civil recovery proceedings or a Civil Recovery Order made there if –

- (a) it is satisfied that at the time of registration the Order is in force and not subject to appeal;
- (b) it is satisfied, where the person affected by the Order did not appear in the proceedings, that he received notice of the proceedings in sufficient time to enable him to defend them; and
- (c) it is of the opinion that enforcing the Order in Guyana would not be contrary to the interest of justice.

(2) In subsection (1) (a), “appeal” includes any proceedings by way of discharging, setting aside or varying the Order.

(3) Notice of the registration of any foreign Order shall be published in the *Gazette* and two daily newspapers specified by the Government.

(4) The Court shall cancel the registration of an external Recovery Order if it appears to the Court that the Order has been satisfied by payment of the amount due under it.

Property vested in State until Director makes arrangement.

97. (1) Subject to subsections (2), (3) and (4), where an Order has been registered under section 96 and the Court is notified that it has been established to the satisfaction of a foreign court that the property

constitutes property which is connected to or derived, directly or indirectly, from unlawful conduct, the Court may order that the property be recovered and be vested in the State until such arrangement is made by the Director with the foreign state or territory for its disposal or transfer.

(2) Unless the foreign state or territory and the Government of Guyana agree otherwise, the Director may deduct such reasonable expenses incurred in the recovery, investigation and judicial proceedings which have led to the transfer referred to in subsection (1).

(3) The Court may make an order under subsection (1) on such conditions as it thinks fit to impose, including any condition as to payment of debts, sale, transfer or disposal of the property.

(4) Any person who claims to have an interest in property subject to an Order registered under section 96 may, within twenty-one days from the last publication of the registration under section 96(3), apply to the Court for an Order under subsection (5).

(5) Where the Court is satisfied that the person under subsection (4) acquired the property without knowing, and in circumstances such as not to arouse a reasonable suspicion, that the property was, at the time of acquisition, connected to or derived, directly or indirectly, from unlawful conduct, the court may make an Order declaring the nature of the interest of the applicant.

Evidence of
corresponding law.

98. (1) A document purporting to be issued by or on behalf of the Government of a foreign state or territory and purporting to state the terms of a corresponding law in force in that state or territory shall be admitted in evidence, in proceedings under this Act, on its production by the Director without further proof, and such document shall be conclusive evidence that –

- (a) it is issued by or on behalf of the government of that state or territory;
- (b) the terms of such law are as stated in the document;
- (c) any facts in the document to constitute an offence under such law do constitute such offence.

(2) “Corresponding law” in the case of any civil recovery proceedings under this Act means a law which corresponds with a provision of Guyana law which creates a relevant offence.

Evidence in a foreign
state or territory.

99. (1) Where the Director is carrying out a civil recovery investigation, the Director may employ the provisions of any agreement made under section 94, utilize any other provision under this Act or he may issue a letter of request if he believes that there is evidence in a

foreign state or territory –

- (a) that a person subject to the investigation has benefited from unlawful conduct involving State property; or
- (b) of the extent or whereabouts of that person's benefit from the unlawful conduct involving State property.

(2) Evidence obtained under this section or in pursuance of a letter of request shall not be used –

- (a) by any person other than the Director or any person subject to the investigation;
- (b) for any purpose other than that for which it is obtained.

(3) Evidence includes documents and other articles.

(4) Rules of court where necessary may make provision as to the practice and procedure to be followed in connection with proceedings relating to the issue of letters of request by the Director under this section.

Proceedings in foreign state or territory.

100. The Attorney-General or the Director may initiate legal proceedings in a court of a foreign state or territory subject to the

provisions and requirements of the national law of the foreign state or territory in order to establish title to or ownership of property acquired through the commission of any unlawful conduct including conduct that offends the United Nations Convention Against Corruption 2003 and to seek the recovery of that property.

Director to inform
Minister of request for
evidence in foreign
state or territory.

101. The Director shall inform in writing the Minister and the Minister responsible for foreign affairs of the initiation of legal proceedings in any foreign state or territory under section 100 or of any outgoing request for evidence from a relevant authority of the foreign state or territory under section 99(2).

Civil Recovery Order
relating to external
unlawful conduct.

102. (1) Where the Director has reasonable grounds to believe that property or interests in property was derived from external unlawful conduct the Director may make an application for a Civil Recovery Order relating to that property or interests in that property where the person who owns the property or has an interest in the property is domiciled in Guyana or the property is situated in Guyana.

(2) The Court may not make a Civil Recovery Order on any such application unless it is satisfied that no action has been taken under the law of any foreign state or territory against the property or any interests in property of the person concerned that are the subject of the

application as a result of the external unlawful conduct.

(3) For the purposes of subsection (2), an affidavit of an authorised officer that includes a statement that the officer has made due enquiry and is satisfied that no action has been taken under the law of any foreign state or territory against any interests in property of the person concerned that are the subject of the application as a result of the external unlawful conduct is proof, in the absence of evidence to the contrary, of the matters contained in the affidavit.

PART VII

MISCELLANEOUS

General penalty.

103. A person who commits any breach of this Act for which no penalty is expressly provided is liable on summary conviction to a fine of one million dollars and to imprisonment for three years and in the case of a body corporate a fine of ten million dollars.

Immunity.

104. (1) No proceedings or other action shall be brought or instituted against the Director or member of SARA staff, any person acting on behalf of SARA, an Asset Manager or other person appointed by the Court for any act done in good faith in the performance or intended performance of any duty under this Act, in the exercise or intended exercise of any power under this Act, or for any default in the performance or exercise in good faith of any such power or duty.

(2) No action or proceedings of any kind shall lie against a bank, building society or other financial institution or any other person in any Court in respect of any act or omission done or made in compliance with an order under this Act.

Offences against
SARA's staff.

105. (1) A person who makes or sends a threat to or, in any way intimidates or menaces, or assaults or attempts to assault a member of staff of SARA, or any member of the family of a member of staff of SARA commits an offence.

(2) A person who commits an offence under this section shall be liable on summary conviction to fine of two million dollars and to imprisonment for two years.

Transitional
arrangements –
staffing of SARA.

106. (1) Subject to appointments being made under section 5, a person who immediately before the commencement of this Act was employed by the body known as the State Assets Recovery Unit (SARU) shall after the commencement be deemed to be employed by the State Assets Recovery Agency (SARA) on the same terms and conditions which preceded that commencement.

(2) Within a period of not more than four months from the date of commencement of this Act, the Parliamentary Committee on appointments on the notification by the Minister shall recommend to the National Assembly a person to be appointed as Director of the SARA.

Regulations.

107. (1) The Minister may make regulations for the better carrying out of the provisions of this Act and for prescribing anything that needs to be prescribed under this Act.

(2) Regulations made under subsection (1) may provide for offences for breach of the Regulations and the penalty for any of the offences shall be a fine of one million dollars and imprisonment for three years and in the case of a body corporate a fine of ten million dollars.

SCHEDULE

s. 5

Appointment of
Director and Deputy
Director.

1. (1) The National Assembly shall –
- (a) by a simple majority; and
 - (b) on the recommendation of the Parliamentary Committee on Appointments,

appoint the Director and the Deputy Director of the State Assets Recovery Agency.

(2) The person appointed as Director or Deputy Director of SARA shall be a fit and proper person.

(3) The person appointed as the Director or Deputy Director shall –

- (a) (i) have significant experience in management or skills in leading investigations into asset recovery; or
- (ii) hold a degree in law, economics or finance from a recognized university; and
- (iii) have at least ten years' experience in a relevant field; five of which shall be at a senior management level; and

(b) have such other requirements that may be determined by the Parliamentary Committee on Appointments.

(4) The Clerk of the National Assembly shall by letter inform

the Director and the Deputy Director of their appointment.

Terms and conditions
of appointment of
Director and Deputy
Director.

2. (1) The terms and conditions of the appointment of the Director and Deputy Director, including their term of office shall be such as determined by the Parliamentary Committee on Appointments.

(2) The appointment of the Director and Deputy Director shall be for a period not less than three years and not more than five years.

(3) The Director and Deputy Director shall be eligible for reappointment.

Appointment of staff.

3. The Director shall appoint such staff for SARA, with the approval of the Minister as to numbers, remuneration and other terms and conditions of service, the Director considers necessary for the discharge of the functions of SARA.

Removal from office.

4. (1) The Director or the Deputy Director may for cause, be removed from office by the Parliamentary Committee on Appointments with the concurrence of a simple majority of the National Assembly.

(2) Subject to subparagraph (3) the Director, the Deputy Director or other member of Staff of the SARA may be removed from office if any one of them –

(a) becomes of unsound mind or incapable of carrying

out their duties;

- (b) becomes bankrupt or compounds with or suspends any payment to their creditors;
- (c) is convicted and sentenced to a term of imprisonment;
- (d) is convicted of any offence involving dishonesty;
- (e) is guilty of misconduct in relation to their duties;
- (f) contravenes any provision of the Code of Conduct referred to in section 18 or rules for public officers in respect of which they may be made liable to termination of their appointment.

(3) Before any action is taken against either the Director or the Deputy Director of SARA under subparagraph (1) or a member of staff under subparagraph (2) they shall be given an opportunity to make representations on their behalf.

Financing of SARA.

5. (1) The funds for the annual budget of SARA shall consist of the following –

- (a) funds determined by the National Assembly based on a budget tabled by the Director;
- (b) any grants, gifts, donations or other endowments given to SARA;
- (c) such funds as may vest in or accrue to SARA in the

performance of its functions under this Act or any other written law.

(2) Any gifts, funds, loans, donations or grants to SARA shall be disclosed to the National Assembly and made public before use.

Remuneration.

6. The remuneration of the Director and the staff of SARA shall be paid out of funds provided by the National Assembly.

Annual report.

7. (1) The Director shall, as soon as possible after the end of each financial year, prepare a report on how SARA has discharged its functions during the financial year.

(2) The report for any financial year apart from the first year shall include –

- (a) the Director's annual plan for the financial year;
- (b) costs associated with administration of the funds referred to in sections 14 and 93, including costs for external audits;
- (c) amounts credited to those funds; and
- (d) an assessment of the extent to which the functions of SARA have been discharged.

(3) The Director shall, through the Minister, cause a copy of each report to be laid before the National Assembly.

(4) "Financial year" means –

- (a) the period beginning with the day this Act comes into force and ending with the next date which concludes the first financial year; and
- (b) each subsequent period of twelve months beginning on the day the financial year commences.

Exemption from
taxation.

8. (1) SARA, its assets, property, income, operations and transactions are exempt from all taxation including customs duties, capital gains tax, income tax, and property tax.

(2) No taxation of any kind shall be levied on any obligation or security issued by SARA.

EXPLANATORY MEMORANDUM

Purpose of the Bill

The State Assets Recovery Bill 2017 is intended to give effect to the non-conviction based asset recovery recommendations contained in the United Nations Convention Against Corruption 2003, which was ratified by the Government of Guyana in April 2008. The Bill therefore introduces legislation to combat unlawful conduct and corrupt practices in relation to property and other assets owned by the State, or in which the State has an interest. In this context, the Bill provides for the establishment of the State Assets Recovery Agency (SARA) which has as its primary function, the civil recovery of State property obtained through the unlawful conduct of a public official or other person, or any benefit obtained in connection with that unlawful conduct, by way of civil proceedings taken in the High Court for a civil recovery order. The granting of a civil recovery order vests in the State, ownership of any property subject to the order. SARA will have a Director with responsibility for the effective management and execution of its functions.

Civil Recovery

Civil recovery is a form of non-conviction based asset forfeiture which allows for the recovery in civil proceedings before the High Court of property which is, or represents, property obtained through unlawful conduct. It is very important to note that the cause of action is against the property itself and not against the person who holds or has an interest in the property. Thus the person who holds the property, the subject of the intended recovery order, might not be the person who carried out the unlawful conduct, and a civil recovery order is not a conviction or a sentence.

The proceedings are civil in nature and the civil standard of proof (the balance of probabilities) applies. SARA will, nevertheless, require cogent evidence to satisfy the Court that property is the proceeds of unlawful conduct. But to establish that property was obtained through unlawful conduct, it will not be necessary to prove the commission of a particular criminal offence, by a particular person, on a particular occasion. It will be sufficient to prove

that the property was obtained through conduct of a particular type, e.g. corruption, bribery, fraud etc. This however, cannot be achieved solely on the basis that the person holding the property has insufficient identifiable lawful income to account for the extent of property he holds or has an interest in. Though the absence of any evidence from the person to explain the source of the property, or the giving of a false explanation, will allow the court to infer that the source was unlawful.

Provisions of the Bill

The Bill contains 7 Parts.

PART I PRELIMINARY

Part I contains general provisions such as the short title, commencement and interpretation provisions.

PART II ESTABLISHMENT OF THE STATE ASSETS RECOVERY AGENCY

Part II makes provision for the establishment of SARA and its Director as a corporation sole, the appointment of a Director, Deputy Director and staff of SARA, and the terms and conditions of their appointment. This part contains provisions (in the Schedule to section 5) on how the SARA will be financed, through a budget approved by the National Assembly, and its transparency obligations by requiring the Director to provide a detailed annual plan and annual report both of which must be laid before the National Assembly. In addition, SARA staff are all required to comply with the Code of Conduct prescribed in Schedule 2 of the Integrity Commission Act.

Sections 6 and 7 set out the respective functions of SARA and its Director. SARA's functions include the investigation, tracing and identification of State property suspected to

be the proceeds of unlawful conduct of a public official or other person, or any benefit, directly or indirectly, acquired in connection with that unlawful conduct, and to institute High Court proceedings for the civil recovery of that property. SARA is enabled to seek the recovery of such property wherever in the world that property may be located, and must also raise public awareness on the dangers of corruption and other crime.

As part of the need to maintain and upkeep public confidence in the criminal justice system the Director must, before undertaking civil recovery proceedings, consider whether the recovery of State property will be better secured by criminal proceedings (section 7). The Director and named members of SARA staff may exercise the powers of police, customs and immigration officers if so designated by the relevant Ministers, upon the Director's request (section 9). The Director is under a duty to ensure training in the operation of the Act is available to professionals and to ensure relevant staff are trained and accredited in financial investigation (section 10). Mutual cooperation between the Director of Public Prosecutions and Director of the Financial Intelligence Unit is a requirement, and the Commissioner of Police must provide such assistance as is requested by the Director. The Director may enter into binding memoranda of understanding with other Government or Public bodies, and is able to collaborate with any State organ, foreign government or international or regional organization, in the recovery of State property (section 11).

PART III

ESTABLISHMENT OF THE RECOVERY OF STATE ASSETS FUND

Part III contains provisions for the establishment of a Recovery of State Assets fund, into which 25% of the value of recovered property will be credited, with the remaining 75% credited to the Consolidated Fund. This Fund is intended to make the SARA partially self-funding. The Director is thus authorized to use the funds to commence actions under the Act, to make certain payments e.g. to pay experts to assist him in carrying out SARA functions, to fund training and capacity building or to compensate victims who suffered loss as a result of unlawful conduct.

PART IV
CIVIL RECOVERY AND PRESERVATION OF STATE PROPERTY OBTAINED
THROUGH UNLAWFUL CONDUCT

Part IV of the Bill contains provisions under which the Director may undertake a civil recovery investigation; seeks the preservation of property; sets out the circumstances in which disclosures of information may be made to, and by, the Director; and the procedure for commencing civil recovery actions in relation to property obtained through unlawful conduct.

Conduct is unlawful if it amounts to an offence under any of the laws of Guyana, or if committed overseas would amount to an offence there and under the laws of Guyana. The Court decides on the balance of probabilities whether unlawful conduct has occurred (section 16). A civil recovery investigation is an investigation into whether property was obtained by or in connection with unlawful conduct (section 19), and to facilitate the investigation the Director may apply to the Court for the issuance of one or more of the following orders, namely: a Disclosure Order, Customer Information Order, Production Order, Search and Seizure Warrant or an Account Monitoring Order, all of which are available under Part V of the Bill (section 20). However, the Director will cease to have access to those powers when proceedings for a recovery order commences in relation to the property in question or where a restraint order applies to the property. A criminal sanction is imposed for any unlawful breach of an investigatory order which prejudices the investigation (section 21).

Section 22 makes provision for any person to make a disclosure to the Director, if made for the purposes of SARA functions. Section 23 contains a list permitted persons who are obligated to disclose information upon request by, and to, the Director. It is a criminal offence to threaten, intimidate or assault any person who makes a disclosure to the Director (section 24).

Where the Director considers that there is a risk that property may be dissipated, destroyed or removed from the jurisdiction, he will be able to apply to the High Court, without notice, for a restraint order (section 27). For the order to be granted under this section, the Director must

satisfy the court that there are reasonable grounds to believe the property identified in the application has been obtained through unlawful conduct. A person claiming an interest in the property can apply to the Court to have the order varied or discharged on grounds set out in section 30 or may, under section 33, apply for living and legal expenses on being able to show there are no other available means. The court may make any ancillary order it considers appropriate, including ordering the holder of property subject to restraint to provide additional information, on oath, in relation to the property restrained and any other property in which that person has an interest (section 36). Where the restraint order is granted the court may, to ensure its effective management, place the property under the control of an Asset Manager who may be appointed by the court, or on application by the Director (section 40).

An application for civil recovery may be made against any person believed to be holding or have held recoverable property (section 41). A civil recovery order can be made in relation to property subject to a restraint order or to any other property, however, if during the recovery proceedings a person establishes lawful ownership of the property concerned, the property may not be recovered; nor will property be recoverable from persons who are able to prove that they purchased it for full value, in good faith without notice of its unlawful origins, thereby protecting third parties able to claim an interest in the property (section 42).

The main stage of the procedure is a hearing before the High Court, commenced as a civil action. The Director must give notice of the application to the person whom he believes holds the recoverable property and any other person holding property the Director wishes to include in the recovery action. The burden of proof is on the Director. If the Court finds, on the civil standard of the balance of probabilities, that the property was obtained through unlawful conduct, it will give judgment in favour of the Director. Judgment will take the form of a recovery order which vests the title to the property in the State (section 45). The Court may adjourn the proceedings if it considers it is the interest of justice to do so (section 46).

The Director has capacity to agree a reduced sum in satisfaction of a civil recovery claim (section 49). The Director should satisfy himself that the sum is reasonable, having regard to all relevant circumstances including the chances of recovering the full amount claimed and the time and public funds likely to be expended in attempting to do so.

Where the Director, for any reason, decides civil recovery proceedings are not appropriate he may assume the tax collection functions of the Commissioner-General in relation to a person's income, profits or chargeable gains where there are reasonable grounds to suspect that they arise from that person or another person's unlawful conduct. However, before doing so the Director must serve an appropriate Notice to that effect on the Commissioner-General. The notice does not divest the Commissioner-General of the assumed tax function but he must cooperate with the Director (section 52).

In addition to third party protections already referred to above, the Bill contains other safeguards to ensure fairness in civil recovery proceedings. Accordingly, parties are permitted the same rights of appeal as in other High Court actions; victims of theft are granted protection (section 48); if an application for civil recovery is unsuccessful, the court will be able to award compensation for any financial loss suffered by the respondent as a result of the restraint order applying to his property (section 51); there is a financial threshold of ten million Guyana dollars below which civil recovery may not be pursued; there is a 12-year limitation period on when civil recovery proceedings can be brought (section 53); and the Court has an overriding discretion not to make a civil recovery order if satisfied there would be a serious risk of injustice in doing so.

PART V

ORDERS TO ASSIST INVESTIGATION

Part V sets out in detail the five Orders available to the Director when undertaking a civil recovery investigation. These are: (i) *disclosure orders* (section 59) which empowers an authorized officer to give notice in writing to any person requiring him or her to answer questions, to provide information or to produce documents with respect to any matter

relevant to the investigation in relation to which the order is sought; (ii) *customer information orders* (section 66) which compels a financial institution covered by the application to provide any customer information it has relating to the person specified in the application on receipt of a written notice from an authorized officer asking for that information; (iii) *production orders* (section 74) which may be served on any person or institution, for example a financial institution, requiring the production of, or allowing access to, material within the time specified in the order; this might include documents such as bank statements. The production order may include an order to grant entry entitling the authorized officer to be granted entry to the premises and allowed access to the material. It does not include the power to search the premises; (iv) *search and seizure warrants* (section 81) which enables an authorized person to enter and search the premises specified in the application for the warrant, and seize and retain any material found there. A search and seizure warrant may be granted if a production order already made has not been complied with and there are reasonable grounds for believing that the required material is on the premises specified in the application for the warrant; and (v) *account monitoring orders* (section 87) which requires a specified financial institution to provide account information on a specified account for a specified period, up to 90 days in the manner and at, or by, the times specified in the order. Account information is information relating to an account held at a financial institution. This would most commonly be transaction details.

In respect of each order or warrant to be granted, there is a statutory requirement that there must be reasonable grounds for believing that the material or information is likely to be of substantial value (whether or not by itself) to the investigation, and that it is in the public interest that the material or information is obtained or accessed. The authorized officer must therefore be satisfied that the material or information will enhance the investigation, and that the public interest in obtaining the order outweighs the disadvantages to the person against whom the order is being made.

Part VI
INTERNATIONAL COOPERATION

Part VI contains provisions covering the nature and availability of legal assistance arrangements that may be concluded between Guyana and a foreign state or territory, in relation to matters concerning civil recovery. Thus the Minister of Legal Affairs may enter into reciprocal recovered property sharing agreements (section 93); the Director may enter into agreements to collect and share information with a relevant foreign authority (section 94); the Court or Director in acting upon a foreign request for assistance may take any action including where appropriate, a civil recovery investigation, restraint and civil recovery proceedings (section 95). The Director may make a direct request for overseas assistance, or may issue a letter of request, if he believes that there is relevant evidence in a country or territory outside Guyana. The request may be sent to any authority recognized by the Government of the country or territory concerned as being appropriate for receiving requests, or the court or tribunal specified within the request. Alternatively, a request may be sent through the Central Authority which should forward the request to the court, tribunal, Government or authority in the country or territory concerned. (section 99). The Director may also initiate proceedings in a foreign country to recover property he believes to be proceeds of any unlawful conduct (section 100), but in both cases the Director must inform the Minister of Legal Affairs and Minister of Foreign Affairs in writing of the request for assistance or of the institution of proceedings (section 101). This is designed to ensure the relevant Ministers are kept fully informed and to avoid the risk of a diplomatic incident being caused inadvertently.

Evidence obtained by means of a request for assistance cannot be used for any purpose other than for the purposes of the investigation for which it was obtained. However, the court, tribunal, government or authority that received the request and provided the evidence can consent to the use of the evidence for other purposes.

PART VII
MISCELLANEOUS

Part VII contains provisions granting immunity to the Director, SARA staff, any person acting on behalf of SARA, an Asset Manager or any person appointed by the Court for any act done in good faith in the intended performance of any duty under the Act; provisions providing protection for SARA staff making it a criminal offence punishable by imprisonment for, among other actions, threatening a member of SARA staff or a member of their family; transitional arrangements are to the effect that existing members of staff of SARU automatically become members of staff of SARA on the coming into force of the State Assets Recovery Act, and within six months thereof the Parliamentary Committee on appointments must recommend to the National Assembly a person to be appointed as Director of SARA. Section (107) enables the Minister to make Regulations for the carrying out of the provisions of the Act and imposes a criminal sanction for a breach of those Regulations.

A handwritten signature in black ink, appearing to read "Basil Williams", is written over a horizontal dotted line.

Hon. Basil Williams, S.C., M.P.
Attorney General and
Minister of Legal Affairs