

LAWS OF MALAYSIA

Act 613 Anti-Money Laundering Act 2001

Incorporating all amendments up to 1 January 2006

PART VI FREEZING, SEIZURE AND FORFEITURE

Freezing of property

44. (1) Subject to section 50, where an enforcement agency, having the power to enforce the law under which a serious offence is committed, has reasonable grounds to suspect that an offence under subsection 4(1) has been, is being or is about to be committed by any person, it may issue an order freezing any property of that person, wherever the property may be, or in his possession, under his control or due from any source to him.

(2) An order under subsection (1) may include—

- (a) an order to direct that the property, or such part of the property as is specified in the order, is not to be disposed of, or otherwise dealt with, by any person, except in such manner and in such circumstances, if any, as are specified in the order; and
- (b) an order to authorize any of its officers to take custody and control of the property, or such part of the property as is specified in the order if the enforcement agency is satisfied that the circumstances so require.

(3) The enforcement agency in making the order under subsection (1) may give directions to the person named or described in the order as to—

- (a) the duration of the order;
- (b) the disposal of that property, for the purpose of—
 - (i) determining any dispute as to the ownership of or other interest in the property or any part of it;
 - (ii) its proper administration during the period of the order;
 - (iii) the payment of debts incurred in good faith due to creditors prior to the order;
 - (iv) the payment of money to that person for the reasonable subsistence of that person and his family; or
 - (v) the payment of the costs of that person to defend criminal proceedings against him; or
- (c) the manner in which the property should be administered or dealt with.

(4) An order made under subsection (1) may direct that the person named or described in the order shall—

(a) be restrained, whether by himself or by his nominees, relatives, employees or agents, from selling, disposing of, charging, pledging, transferring or otherwise dealing with or dissipating his property;

(b) not remove from or send out of Malaysia any of his money or property; and

(c) not leave or be permitted to leave Malaysia and shall surrender any travel documents to the Director General of Immigration within one week of the publication of the order.

(5) An order made under subsection (1) shall cease to have effect after ninety days from the date of the order, if the person against whom the order was made has not been charged with an offence under this Act.

(6) An enforcement agency shall not be liable for any damages or cost arising directly or indirectly from the making of an order under this section unless it can be proved that the order under subsection (1) was not made in good faith.

(7) Where an enforcement agency directs that frozen property be administered or dealt with, the person charged with the administration of the property shall not be liable for any loss or damage to the property or for the cost of proceedings taken to establish a claim to the property or to an interest in the property unless the court before which the claim is made finds that the person charged with the administration of the property has been negligent in respect of the administration of the property

Seizure of movable property

45. (1) In the course of an investigation into an offence under subsection 4(1), an investigating officer may, upon obtaining approval from an investigating officer senior in rank to him, seize any movable property which he has reasonable grounds to suspect to be the subject matter of such offence or evidence relating to such offence.

(2) A list of all movable property seized pursuant to subsection (1) and of the places in which they are respectively found shall be prepared by the investigating officer effecting the seizure and signed by him.

(3) A copy of the list referred to in subsection (2) shall be served as soon as possible on the owner of such property or on the person from whom the property was seized.

(4) This section shall not apply to any movable property liable to seizure under subsection (2) which is in the possession, custody or control of a financial institution.

Further provisions relating to seizure of movable property

46. (1) Where any movable property is seized under this Act, the seizure shall be effected by removing the movable property from the possession, custody or control of the person from whom it is seized and placing it under the custody of such person, and at such place, as the investigating officer may determine.

(2) Where it is not practicable, or it is otherwise not desirable, to remove any property under subsection (1), the investigating officer may leave it at the premises in which it is seized under the custody of such person as he may determine for the purpose.

(3) Notwithstanding subsection (1), when any movable property, including any movable property referred to in subsection (6), has been seized under this Act, an investigating officer, other than the investigating officer who effected the seizure, upon obtaining approval from an investigating officer senior in rank to him, may—

(a) temporarily return the movable property to its owner, or to the person from whose possession, custody or control it was seized, or to such person as may be entitled to it, subject to such terms and conditions as may be imposed, and subject in any case, to sufficient security being furnished to ensure that the movable property shall be surrendered on demand being made by the investigating officer who authorized the release and that such terms and conditions, if any, shall be complied with; or

(b) return the movable property to the owner, or to the person from whose possession, custody or control it was seized, or to such person as may be entitled to the movable property, with liberty for the person to whom the movable property is so returned to dispose of the movable property, such return being subject to security being furnished in an amount which is not less than an amount which represents the open market value of that property on the date on which it is so returned.

(4) Where any person to whom movable property is temporarily returned under paragraph (3)(a) fails to surrender the movable property on demand or comply with any term or condition imposed under that paragraph—

(a) the security furnished in respect of such movable property shall be forfeited; and

(b) that person commits an offence and shall on conviction be liable to a fine of not less than two times the amount of the security furnished by him or to imprisonment for a term not exceeding two years or to both, and, in the case of a continuing offence, to a further fine not exceeding one thousand ringgit for each day during which the offence continues after conviction.

(5) Where an order of forfeiture is made by the court in respect of movable property returned under paragraph (3)(b), such forfeiture shall be effected by forfeiting the security furnished by the person to whom the property was returned.

(6) When any movable property seized under this Act consists of money, shares, securities, stocks, debentures or any chose-in-action in the possession or under the custody or control of any person other than the person against whom the prosecution is intended to be taken, the seizure shall be effected by an investigating officer serving an order on such person—

(a) prohibiting him from using, transferring, or dealing with such property; or

(b) requiring him to surrender the property to an investigating officer in the manner and within the time specified in the order.

(7) Where any movable property seized is liable to speedy decay or deterioration, or is property which cannot be maintained without difficulty, or which is not practicable to maintain, and which cannot be dealt with under subsection (3), an investigating officer may sell or cause the property to be sold and shall hold the proceeds of the sale, after deducting the costs and expenses of the maintenance and sale of the movable property, to abide by the result of any proceedings under this Act.

Advocates and solicitors to disclose information

47. (1) Notwithstanding any other law, a Judge of the High Court may, on application being made to him in relation to an investigation into any offence under subsection 4(1), order an advocate and solicitor to disclose information available to him in respect of any transaction or dealing relating to any property which is liable to seizure under this Act.

(2) Nothing in subsection (1) shall require an advocate and solicitor to comply with any order under that subsection to the extent that such compliance would disclose any privileged information or communication which came to his knowledge for the purpose of any pending proceedings.

Investigation powers in relation to a financial institution

48. (1) Notwithstanding the provisions of any other written law or any rule of law, the Public Prosecutor, if he is satisfied that it is necessary for the purpose of any investigation into an offence under subsection 4(1), may authorize in writing an investigating officer to exercise in relation to any financial institution specified in the authorization all the powers of investigation set out in Part V and in subsection (2).

(2) An investigating officer authorized under subsection (1) may, in relation to the financial institution in respect of which he is so authorized—

- (a) inspect and take copies of any book, record, report or document belonging to or in the possession, custody or control of the financial institution;
- (b) inspect and take copies of any share account, purchase account, expense account or any other account of any person kept in the financial institution;
- (c) inspect the contents of any safe deposit box in the financial institution; or
- (d) request for any other information relating to any record, report, document, account or article referred to in paragraphs (a), (b) and (c).

(3) Notwithstanding anything in subsection (2), an investigating officer authorized under subsection (1) may take possession of any account, book, record, report, document, title, securities or cash to which he has access under that subsection where in his opinion—

- (a) the inspection of them, the copying of them, or the taking of extracts from them, cannot reasonably be undertaken without taking possession of them;
- (b) they may be interfered with or destroyed unless he takes possession of them; or

(c) they may be needed as evidence in any prosecution for an offence under subsection 4(1) or any other written law.

(4) Any person who wilfully fails or refuses to disclose any information or to produce any account, book, record, report, document or article under subsection (2) to the investigating officer authorized under subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding one year or to both, and, in the case of a continuing offence, to a further fine not exceeding one thousand ringgit for each day during which the offence continues after conviction.

(5) Where any person discloses any information or produces any account, book, record, report, document or article to an investigating officer authorized under subsection (1), neither the first-mentioned person nor any other person on whose behalf or direction or as whose agent or officer the first-mentioned person may be acting shall, on account of such disclosure or production, be liable to any prosecution for any offence under any law, or to any proceedings or claim by any person under any law, or under any contract, agreement or arrangement, or otherwise.

Public Prosecutor's powers to obtain information

49. (1) Notwithstanding any law or rule of law to the contrary, the Public Prosecutor, if he has reasonable grounds to believe, based on the investigation carried out under this Act, that an offence under subsection 4(1) has been committed, may by written notice—

(a) require any person suspected of having committed such offence;

(b) any relative or associate of the person referred to in paragraph (a); or

(c) any other person whom the Public Prosecutor has reasonable grounds to believe is able to assist in the investigation, to furnish a statement in writing on oath or affirmation—

(aa) identifying every property, whether movable or immovable, whether in or outside Malaysia, belonging to him or in his possession, or in which he has any interest, whether legal or equitable, and specifying the date on which each of the properties so identified was acquired and the manner in which it was acquired, whether by way of any dealing, bequest, devise, inheritance, or any other manner;

(bb) identifying every property sent out of Malaysia by him or on his behalf during such period as may be specified in the notice;

(cc) setting out the estimated value and location of each of the properties identified under paragraphs (aa) and (bb), and if any of such properties cannot be located, the reason for it;

(dd) stating in respect of each of the properties identified under paragraphs (aa) and (bb) whether the property is held by him or by any other person on his behalf, whether it has been transferred, sold to, or kept with any person, whether it has been diminished in value since its acquisition by him, and whether it has been

commingled with other property which cannot be separated or divided without difficulty;

(*ee*) setting out all other information relating to his property, business, travel, or other activities as may be specified in the notice; and

(*ff*) setting out all his sources of income, earnings or property.

(2) An officer of any financial institution, or any person who is in any manner or to any extent responsible for the management and control of the affairs of any financial institution, shall furnish a copy of all accounts, books, records, reports or documents relating to any person to whom a notice may be issued under subsection (1).

(3) Every person to whom a notice is sent by the Public Prosecutor under subsection (1) shall, notwithstanding any law or rule of law to the contrary, comply with the terms of the notice within such time as may be specified in the notice, and any person who wilfully neglects or fails to comply with the terms of the notice commits an offence and shall on conviction be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding one year or to both, and, in the case of a continuing offence, to a further fine not exceeding one thousand ringgit for each day during which the offence continues after conviction.

(4) Every person to whom a notice or direction is sent by the Public Prosecutor under this section shall be legally bound to state the truth and shall disclose all information which is within his knowledge, or which is available to him, or which is capable of being obtained by him.

(5) Where any person discloses any information or produces any accounts, books, records, reports or documents in response to a notice under subsection (1), such person, his agent or employee, or any other person acting on his behalf or under his direction, shall not, by reason only of such disclosure or production, be liable to prosecution for any offence under any law, or to any proceedings or claim by any person under any law or under any contract, agreement or arrangement, or otherwise.

(6) Subsection (5) shall not bar, prevent or prohibit the institution of any prosecution for any offence as provided by this section or the giving of false information in relation to any statement on oath or affirmation furnished to the Public Prosecutor pursuant to this section.

Seizure of movable property in financial institution

50. (1) Where the Public Prosecutor is satisfied on information given to him by an investigating officer that any movable property, including any monetary instrument or any accretion to it, which is the subject matter of an offence under subsection 4(1) or evidence in relation to the commission of such offence, is in the possession, custody or control of a financial institution, he may, notwithstanding any other law or rule of law, after consultation with Bank Negara Malaysia, the Securities Commission or the Labuan Offshore Financial Services Authority, as the case may

be, by order direct the financial institution not to part with, deal in, or otherwise dispose of such property or any part of it until the order is revoked or varied.

(2) A financial institution or any agent or employee of a financial institution shall not, on account of complying with an order of the Public Prosecutor under subsection (1), be liable to any prosecution under any law or to any proceedings or claim by any person under any law or under any contract, agreement, or arrangement, or otherwise.

(3) Any person who fails to comply with an order of the Public Prosecutor under subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding two times the amount which was parted with, dealt in or otherwise disposed of in contravention of the Public Prosecutor's order or one million ringgit, whichever is the higher, or to imprisonment for a term not exceeding one year or to both, and, in the case of a continuing offence, to a further fine not exceeding one thousand ringgit for each day during which the offence continues after conviction.

(4) In this section, "monetary instrument" includes the domestic currency or any foreign currency, travellers' cheque, personal cheque, bank cheque, money order, investment security or negotiable instrument in bearer form or otherwise in such form that title to it passes upon delivery or upon delivery and endorsement.