



**AN ACT TO AMEND THE NEW PENAL LAW, TITLE 26 AS AMENDED,  
OF THE LIBERIAN CODE OF LAWS REVISED, BY ADDING  
THERE TO A NEW SUB-CHAPTER G TO CHAPTER 15, MAKING THE  
LAUNDERING OF THE PROCEEDS OF CRIMINAL CONDUCT A  
CRIMINAL OFFENSE AND PROVIDING FOR THE CONFISCATION  
OF THE PROCEEDS AND VALUE OF SUCH CRIMINAL CONDUCT.**

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**AN ACT TO AMEND THE NEW PENAL LAW, TITLE 26 AS AMENDED, OF THE LIBERIAN CODE OF LAWS REVISED, BY ADDING THERETO A NEW SUB-CHAPTER G TO CHAPTER 15, MAKING THE LAUNDERING OF THE PROCEEDS OF CRIMINAL CONDUCT A CRIMINAL OFFENSE AND PROVIDING FOR THE CONFISCATION OF THE PROCEEDS AND VALUE OF SUCH CRIMINAL CONDUCT.**

*It is enacted by the Senate and House of Representatives of the Republic of Liberia, in Legislature Assembled:*

**Section 1. Amendment to Title 26.** That from and immediately upon the passage of this Act, the New Penal Law, Title 26 is hereby further amended by adding thereto a new Sub-Chapter G to Chapter 15, recited word for word, to read as follows:

***Chapter 15: OFFENSES AGAINST PROPERTY***

***Sub-Chapter G PREVENTION OF MONEY LAUNDERING***

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**PRELIMINARY.**

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**PART I.**  
**PRELIMINARY.**

**§15.100.Short Title.**

This Act shall be known and cited as the Prevention of Money Laundering Law.

**PART II.**  
**MONEY LAUNDERING AND OTHER OFFENSES.**

**§15.101.Assisting another to retain the benefit of criminal conduct.**

1. *Offense of assisting another to retain tainted benefits.* Subject to sub-section 3, if a person enters into or is otherwise concerned in an arrangement whereby:

- (a) The retention or control by or on behalf of another (“A”) of A’s proceeds of criminal conduct is facilitated (whether by concealment, removal from the jurisdiction, transfer to nominees or otherwise); or
- (b) A’s proceeds of criminal conduct:
  - (i) Are used to secure that funds are placed at A’s disposal; or
  - (ii) Are used for A’s benefit to acquire property by way of investment,

knowing or suspecting that A is a person who is or has been engaged in criminal conduct or who has benefited from criminal conduct, shall be guilty of an offense of a non-bailable first degree felony as defined in Chapter 50, Part III of the New Penal Law (1978).

2. *“Proceeds” to include property.* In this section, references to any person’s proceeds of criminal conduct include a reference to any property which in whole or in part directly or indirectly represented in his hands his proceeds of criminal conduct.

3. *Disclosure to Law Enforcement Officer.* Where a person discloses to a Law Enforcement Officer or Customs Officer a suspicion or belief that any funds or investments are derived from or used in connection with criminal conduct or discloses to a Law Enforcement Officer or Customs Officer any matter on which a suspicion or belief is based:

- (a) The disclosure shall not be treated as a breach of any restriction upon the disclosure of information imposed by statute or otherwise; and
- (b) If he does any act in contravention of sub-section 1 and the disclosure relates to the

arrangement concerned, he does not commit an offense under this section if:

- (i) The disclosure is made before he does the act concerned and the act is done with the consent of the Law Enforcement Officer or Customs Officer; or
- (ii) The disclosure is made after he does the act, but is made on his initiative and as soon as it is reasonable for him to make it.

4. *Defenses.* In proceedings against a person for an offense under this section, it is a defense to prove:

- (a) That he did not know or suspect that the arrangement related to any person's proceeds of criminal conduct; or
- (b) That he did not know or suspect that by the arrangement, the retention or control by or on behalf of A of any property was facilitated or, as the case may be, that by the arrangement any property was used, as mentioned in sub-section 1; or
- (c) That:
  - (i) He intended to disclose to a Law Enforcement Officer or Customs Officer such a suspicion, belief or matter as is mentioned in sub-section 3 in relation to the arrangement; but
  - (ii) There is reasonable excuse for his failure to make disclosure in accordance with sub-section 3(b).

5. *Disclosure to employer.* In the case of a person who was in employment at the relevant time, sub-sections 3 and 4 shall have effect in relation to disclosures, and intended disclosures, to the appropriate person in accordance with the procedure established by his employer for the making of such disclosures as they have effect in relation to disclosures, and intended disclosures, to a Law Enforcement Officer or Customs Officer.

6. *Penalty.* A person guilty of an offense under this section shall be liable to a penalty in accordance with Chapter 50 of the New Penal Law, as follows:

- (a) A non-bailable first degree felony;
- (b) Seizure of the proceeds (goods); and
- (c) Imprisonment for a period of not less than five (5) years and not more than ten (10) years.

7. *Definitions.* In this Part:

**“Confiscation order”** has the meaning given to it by section 15.119.7(a);

“*Criminal conduct*” means conduct which:

- (a) If it occurs in Liberia constitutes a non-bailable first-degree felony;
- (b) If it does not occur in Liberia would constitute such an offense if it had occurred in Liberia;

“*Property*” has the meaning given to it by section 15.139.1.

**§15.102. Acquisition, possession or use of property representing proceeds of criminal conduct.**

1. *Offense of acquiring tainted property.* A person is guilty of an offense if, knowing that any property is, or in whole or in part directly or indirectly represents, another person’s proceeds of criminal conduct, he acquires or uses that property or has possession of it.

2. *Effect of consideration.* It is a defense to a charge of committing an offense under this section that the person charged acquired or used the property or had possession of it for adequate consideration.

3. *Meaning of “acquire for inadequate consideration”.* For the purposes of sub-section 2:

- (a) A person acquires property for inadequate consideration if the value of the consideration is significantly less than the value of the property; and
- (b) A person uses or has possession of property for inadequate consideration if the value of the consideration is significantly less than the value of his use or possession of the property.

4. *Assistance in criminal conduct not consideration.* The provision for any person of services or goods which are of assistance to him in criminal conduct shall not be treated as consideration for the purposes of sub-section 2.

5. *Disclosure to Law Enforcement Officer.* Where a person discloses to a Law Enforcement Officer or Customs Officer a suspicion or belief that any property is, or in whole or in part directly or indirectly represents, another person’s proceeds of criminal conduct or discloses to a Law Enforcement Officer or Customs Officer any matter on which such a suspicion or belief is based:

- (a) The disclosure shall not be treated as a breach of any restriction upon the disclosure of information imposed by statute or otherwise; and
- (b) If he does any act in relation to that property in contravention of sub-section 1, he does not commit an offense under this section if:
  - (i) The disclosure is made before he does the act concerned and the act is done with the consent of the Law Enforcement Officer or Customs Officer; or
  - (ii) The disclosure is made after he does the act, but on his initiative and as soon as it

is reasonable for him to make it.

6. *Possession to include “doing an act in relation to”.* For the purposes of this section, having possession of any property shall be taken to be doing an act in relation to it.

7. *Defenses.* In proceedings against a person for an offense under this section, it is a defense to prove that:

- (a) He intended to disclose to a Law Enforcement Officer or Customs Officer such a suspicion, belief or matter as is mentioned in sub-section 5; but
- (b) There is reasonable excuse for his failure to make the disclosure in accordance with paragraph (b) of that sub-section.

8. *Disclosure to employer.* In the case of a person who was in employment at the relevant time, sub-sections 5 and 7 shall have effect in relation to disclosures, and intended disclosures, to the appropriate person in accordance with the procedure established by his employer for the making of such disclosures as they have effect in relation to disclosures, and intended disclosures, to a Law Enforcement Officer or Customs Officer.

9. *Penalty.* A person guilty of an offense under this section shall be liable to a penalty in accordance with Chapter 50 of the New Penal Law, as follows:

- (a) A non-bailable first-degree felony;
- (b) Seizure of the proceeds (goods); and
- (c) Imprisonment for a period of not less than five (5) years and not more than ten (10) years.

10. *No offense by Law Enforcement Officer, etc..* No Law Enforcement Officer or Customs Officer or other person shall be guilty of an offense under this section in respect of anything done by him in the course of acting in connection with the enforcement, or intended enforcement, of any provision of this Part or Part IV or of any other enactment relating to criminal conduct or the proceeds of such conduct.

### **§15.103. Concealing or transferring proceeds of criminal conduct.**

1. *Offense of concealing or transferring property.* A person is guilty of an offense if he:

- (a) Conceals or disguises any property which is, or in whole or in part directly or indirectly represents, his proceeds of criminal conduct; or
- (b) Converts or transfers that property or removes it from the jurisdiction,

for the purpose of avoiding prosecution for an offense to which this Part applies or the making or enforcement in his case of a confiscation order.



2. *Offense of assisting another to conceal or transfer property.* A person is guilty of an offense if, knowing or having reasonable grounds to suspect that any property is, or in whole or in part directly or indirectly represents, another person's proceeds of criminal conduct, he:

- (a) Conceals or disguises that property; or
- (b) Converts or transfers that property or removes it from the jurisdiction,

for the purpose of assisting any person to avoid prosecution for an offense to which this Part applies or the making or enforcement in his case of a confiscation order.

3. *Interpretation of "concealing".* In sub-sections 1 and 2 the references to concealing or disguising any property include references to concealing or disguising its nature, source, location, disposition, movement or ownership of any rights with respect to it.

4. *Penalty.* A person guilty of an offense under this section shall be liable to a penalty in accordance with Chapter 50 of the New Penal Law, as follows:

- (a) A non-bailable first-degree felony;
- (b) Seizure of the proceeds (goods); and
- (c) Imprisonment for a period of not less than five (5) years and not more than ten (10) years.

#### **§15.104. Tipping-off.**

1. *Offense of tipping-off during enquiry.* A person is guilty of an offense if:

- (a) He knows or suspects that a Law Enforcement Officer or Customs Officer is acting, or is proposing to act, in connection with an investigation which is being, or is about to be, conducted into money laundering; and
- (b) He discloses to any other person information or any other matter which is likely to prejudice that investigation or proposed investigation.

2. *Offense of tipping-off when disclosure to Law Enforcement Officer made.* A person is guilty of an offense if:

- (a) He knows or suspects that a disclosure ("the disclosure") has been made to a Law Enforcement Officer or Customs Officer under section 15.101 or 15.102; and
- (b) He discloses to any other person information or any other matter which is likely to prejudice any investigation which might be conducted following the disclosure.

3. *Offense of tipping-off when disclosure to employer made.* A person is guilty of an offense if:

- (a) He knows or suspects that a disclosure of a kind mentioned in section 15.101.5 or 15.102.8 (“the disclosure”) has been made; and
- (b) He discloses to any person information or any other matter which is likely to prejudice any investigation which might be conducted following the disclosure.

4. *Privileged communications.* Nothing in sub-sections 1 to 3 makes it an offense for a professional legal adviser to disclose any information or other matter:

- (a) To, or to a representative of, a client of his in connection with the giving by the adviser of legal advice to the client; or
- (b) To any person:
  - (i) In contemplation of, or in connection with, legal proceedings; and
  - (ii) For the purpose of those proceedings.

5. *Limitation to application of sub-section 4.* Sub-section 4 does not apply in relation to any information or other matter which is disclosed with a view to furthering any criminal purpose.

6. *Defenses.* In proceedings against a person for an offense under sub-section 1, 2 or 3, it is a defense to prove that he did not know or suspect that the disclosure was likely to be prejudicial in the way mentioned in that sub-section.

7. *Interpretation of “money laundering”.* In this section “money laundering” means doing any act which constitutes an offense under section 15.101, 15.102 or 15.103, or in the case of an act done otherwise than in Liberia, would constitute such an offense if done in Liberia.

8. *Penalty.* A person guilty of an offense under this section shall be liable to a penalty in accordance with Chapter 50 of the New Penal Law, as follows:

- (a) A non-bailable first-degree felony;
- (b) Seizure of the proceeds (goods); and
- (c) Imprisonment for a period of not less than five (5) years and not more than ten (10) years.

9. *No offense by Law Enforcement Officer, etc..* No Law Enforcement Officer or Customs Officer or other person shall be guilty of an offense under this section in respect of anything done by him in the course of acting in connection with the enforcement, or intended enforcement, of any provision of this Law or of any other enactment relating to an offense to which this Part applies.

### PART III.

## MEASURES TO PREVENT THE USE OF THE FINANCIAL SYSTEM FOR PURPOSES OF MONEY LAUNDERING.

### §15.105. Interpretation.

1. *Definitions in this Part.* In this Part:

“*Applicant for business*” means a person seeking to form a business relationship, or carry out a one-off transaction, with a person who is carrying out relevant financial business in Liberia;

“*Business relationship*” has the meaning given by section 15.106;

“*Case 1*”, “*Case 2*”, “*Case 3*” and “*Case 4*” have the meanings given in section 15.110;

“*One-off transaction*” means any transaction other than a transaction carried out in the course of an established business relationship formed by a person acting in the course of relevant financial business;

“*Relevant financial business*” has the meaning given by section 15.107;

2. *Interpretation of “money laundering” in this Part.* In this Part, except in so far as the context otherwise requires, “money laundering” means doing any act which constitutes an offense under section 15.101, 15.102 or 15.103 of this Law or in the case of an act done outside Liberia would constitute such an offense under this Law if done in Liberia.

3. *Interpretation of “criminal conduct” in this Part.* The reference in sub-section 2 to doing any act which constitutes an offense under section 15.101, 15.102, or 15.103 shall for the purpose of this Part be construed as a reference to doing any act which will constitute an offense under those sections if for the definition “criminal conduct” in section 15.101.7 there were substituted:

““*Criminal conduct*” means conduct which:

- (a) If it occurs in Liberia constitutes a non-bailable first degree felony; or
- (b) If it does not occur in Liberia:
  - (i) Would constitute such an offense if it had occurred in Liberia; and
  - (ii) Contravenes the law of the country in which it occurs.”.

4. *Established business relationship.* For the purposes of this section, a business relationship formed by any person acting in the course of relevant financial business is an established business relationship where that person has obtained, under procedures maintained by him in accordance

with section 15.110, satisfactory evidence of the identity of the person who, in relation to the formation of that business relationship, was the applicant for business.

**§15.106.Business relationships.**

1. *Requirement to be “acting in the course of business”.* Any reference in this section to an arrangement between two or more persons is a reference to an arrangement in which at least one person is acting in the course of a business.

2. *Interpretation of “business relationship”.* For the purposes of this Part, “business relationship” means any arrangement between two or more persons where:

- (a) The purpose of the arrangement is to facilitate the carrying out of transactions between the persons concerned on a frequent, habitual or regular basis; and
- (b) The total amount of any payment or payments to be made by any person to any other in the course of that arrangement is not known or capable of being ascertained at the time the arrangement is made.

**§15.107.Relevant financial business.**

For the purposes of this Part, “relevant financial business” means, subject to sub-section 2, the business of engaging in one or more of the following:

- (a) Deposit-taking business;
- (b) Investment business;
- (c) Insurance business;
- (d) Any other financial business regulated by the Government of the Republic of Liberia or prescribed from time to time by the Minister of Finance by order for the purpose of inclusion in this section.

**§15.108.Systems and training to prevent money laundering.**

1. *Requirement for systems and training.* No person shall, in the course of relevant financial business carried on by him in Liberia, form a business relationship, or carry out a one-off transaction, with or for another unless that person:

- (a) Maintains the following procedures established in relation to that business:
  - (i) Identification procedures in accordance with sections 15.110 and 15.112;
  - (ii) Record-keeping procedures in accordance with section 15.115;

- (iii) Except where the person concerned is an individual who in the course of relevant financial business does not employ or act in association with any other person, internal reporting procedures in accordance with section 15.117; and
  - (iv) Such other procedures of internal control and communication as may be appropriate for the purposes of forestalling and preventing money laundering;
- (b) Takes appropriate measures from time to time for the purpose of making employees whose duties include the handling of relevant financial business aware of:
- (i) The procedures under paragraph (a) which are maintained by him and which relate to the relevant financial business in question; and
  - (ii) The enactments relating to money laundering; and
- (c) Provides such employees from time to time with training in the recognition and handling of transactions carried out by, or on behalf of, any person who is, or appears to be engaged in money laundering.

2. *Penalty.* A person who carries on relevant financial business in contravention of sub-section 1 shall be guilty of an offense under this section and shall be liable on conviction to a penalty in accordance with Chapter 50 of the New Penal Law, as follows:

- (a) A non-bailable first-degree felony;
- (b) Seizure of the proceeds (goods); and
- (c) Imprisonment for a period of not less than five (5) years and not more than ten (10) years.

3. *Regulatory or supervisory standards.* In determining whether a person has complied with any of the requirements of sub-section 1, the court may take account of:

- (a) Any relevant supervisory or regulatory guidance which applies to that person;
- (b) In a case where no guidance falling within paragraph (a) applies, any other relevant guidance issued by a body that regulates, or is representative of, any trade, profession, business or employment carried on by that person.

4. *Defenses.* In proceedings against any person for an offense under sub-section 2, it shall be a defense for that person to show that he took all reasonable steps and exercised all due diligence to avoid committing the offense.

**§15.109. Offenses by bodies corporate, partnerships and unincorporated associations.**

1. *Offense by officers and corporation.* Where an offense under section 15.108 committed by a body corporate is proved to have been committed with the consent or connivance of, or to be

attributable to any neglect on the part of, any officer of the body corporate or any other person who was purporting to act in any such capacity he, as well as the body corporate, shall be guilty of that offense and shall be liable to a penalty as provided for under section 15.108.2.

2. *Application to members as officers.* Where the affairs of a body corporate are managed by the members, sub-section 1 shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were an officer of a body corporate.

3. *Application to partnerships.* Where an offense under section 15.108 committed by a partnership, or by an unincorporated association other than a partnership, is proved to have been committed with the consent or connivance of, or is attributable to any neglect on the part of, a partner in the partnership or (as the case may be) a person concerned in the management or control of the association, he, as well as the partnership or association, shall be guilty of that offense and shall be liable to a penalty as provided for under section 15.108.2.

### **§15.110. Identification procedures; business relationships and transactions.**

1. *Obligation to operate identification procedures.* Subject to sections 15.111 and 15.113, identification procedures maintained by a person are in accordance with this section if in Cases 1 to 4 set out below they require, as soon as is reasonably practicable after contact is first made between that person and an applicant for business concerning any particular business relationship or one-off transaction:

- (a) The production by the applicant for business of satisfactory evidence of his identity;  
or
- (b) The taking of such measures specified in the procedures as will produce satisfactory evidence of his identity,

and the procedures are, subject to sub-section 6, in accordance with this section if they require that where that evidence is not obtained the business relationship or one-off transaction in question shall not proceed any further.

2. *Case 1.* Case 1 is any case where the parties form or resolve to form a business relationship between them.

3. *Case 2.* Case 2 is any case where, in respect of any one-off transaction, any person handling the transaction knows or suspects that the applicant for business is engaged in money laundering, or that the transaction is carried out on behalf of another person engaged in money laundering.

4. *Case 3.* Case 3 is any case where, in respect of any one-off transaction, payment is to be made by or to the applicant for business of the amount of US\$15,000 or more.

5. *Case 4.* Case 4 is any case where, in respect of two or more one-off transactions:

- (a) It appears at the outset to a person handling any of the transactions that:

- (i) The transactions are linked; and
- (ii) The total amount, in respect of all the transactions, which is payable by or to the applicant for business is US\$15,000 or more; or

(b) At any later stage, it comes to the attention of such a person that the provisions of paragraph (a) are satisfied.

6. *Co-operation with Law Enforcement Officer, etc..* The procedures referred to in sub-section 1 are in accordance with this section if, when a report is made in circumstances falling within Case 2 (whether in accordance with section 15.117 or directly to a Law Enforcement Officer or Customs Officer), they provided for steps to be taken in relation to the one-off transaction in question in accordance with any directions that may be given by a Law Enforcement Officer or Customs Officer.

7. *Interpretation of "satisfactory evidence".* In this Part references to satisfactory evidence of a person's identity shall be construed in accordance with section 15.114.1.

#### **§15.111.Payment by post, etc..**

1. *Payment from account in name of applicant for business.* Where satisfactory evidence of the identity of an applicant for business would, apart from this sub-section, be required under identification procedures in accordance with section 15.110 but:

- (a) The circumstances are such that a payment is to be made by the applicant for business; and
- (b) It is reasonable in all the circumstances:
  - (i) For the payment to be sent by post or by any electronic means which is effective to transfer funds; or
  - (ii) For the details of the payment to be sent by post, to be given on the telephone or to be given by any other electronic means;

then, subject to sub-section 2, the fact that the payment is debited from an account held in the applicant's name at a deposit taking institution, in Liberia or elsewhere, subject to like requirements to those placed on such institutions by this Part, (whether the account is held by the applicant alone or jointly with one or more other persons) shall be capable of constituting the required evidence of identity.

2. *Exception to sub-section 1.* Sub-section 1 shall not have effect to the extent that:

- (a) The circumstances of the payment fall within Case 2; or
- (b) The payment is made by any person for the purpose of opening a relevant account.

3. *Interpretation of sub-section 1.* For the purposes of sub-section 1(b), it shall be immaterial

whether the payment or its details are sent or given to a person who is bound by section 15.108.1 or to some other person acting on his behalf.

4. *Interpretation of “relevant account”*. For the purposes of this section:

“**Relevant account**” means an account from which a payment may be made by any means to a person other than the applicant for business, whether such a payment:

- (a) May be made directly to such a person from the account by or on behalf of the applicant for business; or
- (b) May be made to such a person indirectly as a result of:
  - (i) A direct transfer of funds from an account from which no such direct payment may be made to another account; or
  - (ii) A change in any of the characteristics of the account.

#### **§15.112. Identification procedures; transactions on behalf of another.**

1. *Application of this section*. This section applies where, in relation to a person who is bound by section 15.108.1, an applicant for business is or appears to be acting otherwise than as principal.

2. *Procedure to establish identity of principal*. Subject to section 15.113, identification procedures maintained by a person are in accordance with this section if, in a case to which this section applies, they require reasonable measures to be taken for the purpose of establishing the identity of any person on whose behalf the applicant for business is acting.

3. *Interpretation of “reasonable measures”*. In determining, for the purposes of sub-section 2, what constitutes reasonable measures in any particular case regard shall be had to all the circumstances of the case and, in particular, to best practice which, for the time being, is followed in the relevant field of business and which is applicable to those circumstances.

4. *Reliance on “due diligence” assurance*. Without prejudice to the generality of sub-section 3, if the conditions mentioned in sub-section 5 are fulfilled in relation to an applicant for business who is, or appears to be, acting as an agent for a principal (whether undisclosed or disclosed for reference purposes only) it shall be reasonable for a person bound by section 15.108.1 to accept a written assurance from the applicant for business to the effect that evidence of the identity of any principal on whose behalf the applicant for business may act in relation to that person will have been obtained and recorded under procedures maintained by the applicant for business.

5. *Circumstances in which sub-section 4 may have effect*. The conditions referred to in sub-section 4 are that, in relation to the business relationship or transaction in question, there are reasonable grounds for believing that the applicant for business:

- (a) Acts in the course of a business in relation to which an overseas regulatory authority exercises regulatory functions; and



- (b) Is based or incorporated in, or formed under the law of, a country in which there are in force provisions at least equivalent to those required by either:
  - (i) Any relevant convention from time to time of the United Nations in respect of the prevention of the laundering of the proceeds of crime to which the Government of the Republic of Liberia is a party; or
  - (ii) Council Directive 91/308/EEC of the European Community, as amended and replaced from time to time.

**§15.113. Identification procedures; exemptions.**

1. *Exceptions.* Subject to sub-section 2, identification procedures under sections 15.110 and 15.112 shall not require any steps to be taken to obtain evidence of any person's identity:

- (a) Where there are reasonable grounds for believing that the applicant for business is a person who is bound by the provisions of section 15.108.1;
- (b) Where any one-off-transaction is carried out with or for a third party pursuant to an introduction effected by a person who has provided an assurance that evidence of the identity of all third parties introduced by him will have been obtained and recorded under procedures maintained by him, where that person identifies the third party and where:
  - (i) That person falls within paragraph (a); or
  - (ii) There are reasonable grounds for believing that the conditions mentioned in section 15.112.5(a) and (b) are fulfilled in relation to him;
- (c) Where the person who would otherwise be required to be identified, in relation to a one-off transaction, is the person to whom the proceeds of that transaction are payable but to whom no payment is made because all of those proceeds are directly reinvested on his behalf in another transaction:
  - (i) Of which a record is kept; and
  - (ii) Which can result only in another reinvestment made on that person's behalf or in a payment made directly to that person;
- (d) In relation to insurance business consisting of a policy of insurance in connection with a pension scheme taken out by virtue of a person's contract of employment or occupation where the policy:
  - (i) Contains no surrender clause; and
  - (ii) May not be used as collateral for a loan;

- (e) In relation to insurance business in respect of which a premium is payable in one installment of an amount not exceeding US\$2,500; or
- (f) In relation to insurance business in respect of which a periodic premium is payable and where the total payable in respect of any calendar year does not exceed US\$1,000.

2. *Section not to apply to Case 2 transactions.* Nothing in this section shall apply in circumstances falling within Case 2.

#### **§15.114. Identification procedures; supplementary provisions.**

1. *Adequacy of evidence of identity.* For the purposes of this Part, evidence of identity is satisfactory if:

- (a) It is reasonably capable of establishing that the applicant is the person he claims to be; and
- (b) The person who obtains the evidence is satisfied, in accordance with the procedures maintained under this Part in relation to the relevant financial business concerned, that it does establish that fact.

2. *Time span.* In determining for the purposes of section 15.110.1 the time span in which satisfactory evidence of a person's identity has to be obtained, in relation to any particular business relationship or one-off transaction, all the circumstances shall be taken into account including, in particular:

- (a) The nature of the business relationship or one-off transaction concerned;
- (b) The geographical location of the parties;
- (c) Whether it is practical to obtain the evidence before commitments are entered into between the parties or before money passes;
- (d) In relation to Cases 3 or 4, the earliest stage at which there are reasonable grounds for believing that the total amount payable by an applicant for business is US\$15,000 or more.

#### **§15.115. Record-keeping procedures.**

1. *Record keeping requirements.* Record-keeping procedures maintained by a person are in accordance with this Part if they require the keeping, for the prescribed period, of the following records:

- (a) In any case where, in relation to any business relationship that is formed or one-off transaction that is carried out, evidence of a person's identity is obtained under procedures maintained in accordance with section 15.110 or 15.112, a record that

indicates the nature of the evidence, and

- (i) Comprises a copy of the evidence; or
  - (ii) Provides such information as would enable a copy of it to be obtained; or
  - (iii) In a case where it is not reasonably practicable to comply with (i) or (ii), provides sufficient information to enable the details as to a person's identity contained in the relevant evidence to be re-obtained; and
- (b) A record containing details relating to all transactions carried out by that person in the course of relevant financial business.

2. *Records to be retained for five years.* For the purposes of sub-section 1, the prescribed period is, subject to sub-section 3, the period of at least five (5) years commencing with:

- (a) In relation to such records as are described in sub-section 1(a), the date on which the relevant business was completed within the meaning of sub-section 4; and
- (b) In relation to such records as are described in sub-section 1(b), the date on which all activities taking place in the course of the transaction in question were completed.

3. *Application of sub-section 1 where party insolvent.* Where a person who is bound by the provisions of section 15.108.1:

- (a) Forms a business relationship or carries out a one-off transaction with another person;
- (b) Has reasonable grounds for believing that that person has become insolvent; and
- (c) After forming that belief, takes any step for the purpose of recovering all or part of the amount of any debt payable to him by that person which has fallen due;

the prescribed period for the purposes of sub-section 1 is the period of at least five (5) years commencing with the date on which the first such step is taken.

4. *Interpretation of "date on which relevant business is completed".* For the purposes of sub-section 2(a), the date on which relevant business is completed is, as the case may be:

- (a) In circumstances falling within Case 1, the date of the ending of the business relationship in respect of which formation of the record under sub-section 1(a) was compiled;
- (b) In circumstances falling within Case 2 or 3, the date of the completion of all activities taking place in the course of the one-off transaction in respect of which the record under sub-section 1(a) was compiled;
- (c) In circumstances falling within Case 4, the date of the completion of all activities taking place in the course of the last one-off transaction in respect of which the record

under sub-section 1(a) was compiled,

and where the formalities necessary to end a business relationship have not been observed, but a period of five (5) years has elapsed since the date on which the last transaction was carried out in the course of that relationship, then the date of the completion of all activities taking place in the course of that last transaction shall be treated as the date on which the relevant business was completed.

#### **§15.116.Record-keeping Procedures; Supplementary Provisions.**

1. *Principal's responsibility.* Where a person bound by section 15.108.1 is a person acting as the servant or agent of another person ("the principal") it shall be the responsibility of the principal to ensure that record-keeping procedures in accordance with section 15.115 are maintained in respect of any relevant financial business carried on by the servant or agent which is investment business carried on by him for which the principal is responsible under the terms of his agreement with that servant or agent.

2. *Principal as well as agent guilty of offense.* Where record-keeping procedures in accordance with section 15.115 are not maintained in respect of business relationships formed, and one-off transactions carried out in the course of such relevant financial business as is referred to in sub-section 1, a principal shall be regarded as having contravened section 15.108 in respect of those procedures and he, as well as the servant or agent, shall be guilty of that offense and liable to a penalty as provided for under section 15.108.2.

#### **§15.117.Internal reporting procedures.**

Internal reporting procedures maintained by a person are in accordance with this section if they include provision:

- (a) Identifying a person ("the appropriate person") to whom a report is to be made of any information or other matter which comes to the attention of a person handling relevant financial business and which, in the opinion of the person handling that business, gives rise to a knowledge or suspicion that another person is engaged in money laundering;
- (b) Requiring that any such report be considered in the light of all other relevant information by the appropriate person, or by another designated person, for the purpose of determining whether or not the information or other matter contained in the report does give rise to such a knowledge or suspicion;
- (c) For any person charged with considering a report in accordance with paragraph (b) to have reasonable access to other information which may be of assistance to him and which is available to the person responsible for maintaining the internal reporting procedures concerned; and
- (d) For securing that the information or other matter contained in a report is disclosed to a Law Enforcement Officer or Customs Officer where the person who has considered

the report under the procedures maintained in accordance with the preceding provisions of this section knows or suspects that another person is engaged in money laundering.

**§15.118. Transitional Provisions.**

1. *No retrospective effect.* Nothing in this Part shall require a person who is bound by section 15.108.1 to maintain procedures in accordance with sections 15.110 and 15.112 which require evidence to be obtained, in respect of any business relationship formed by him before the date on which this Part comes into force, as to the identity of the person with whom that relationship has been formed.

2. *Existing business relationship to be treated as established business relationship.* For the purposes of section 15.105.4, any business relationship referred to in sub-section 1 shall be treated as if it were an established business relationship.

**PART IV.**

**CONFISCATION OF THE PROCEEDS OF CRIMINAL CONDUCT.**

**§15.119. Confiscation orders.**

1. *Power to order payment.* The court shall have power, in addition to dealing with an offender in any other way, to make an order under this section requiring him to pay such sum as the court thinks fit.

2. *Circumstances in which order may be made.* The court may make an order against an offender where:

- (a) He is found guilty of any offense to which this Part applies; and
- (b) It is satisfied that:
  - (i) He has benefited from that offense or from that offense taken together with some other offense of which he is convicted in the same proceedings, or which the court takes into consideration in determining his sentence; and
  - (ii) His benefit is at least the minimum amount.

3. *Interpretation of "benefits from an offense".* For the purposes of this Part, a person benefits from an offense if he obtains property as a result of or in connection with its commission, and his benefit is the value of the property so obtained.

4. *Pecuniary advantage.* Where a person derives a pecuniary advantage as a result of or in connection with the commission of an offense, he is to be treated for the purposes of this Part as if

he had obtained as a result of or in connection with the commission of the offense a sum of money equal to the value of the pecuniary advantage.

5. *Calculation of amount payable.* The sum which an order made by the court under this section requires an offender to pay must be at least the minimum amount, but must not exceed:

- (a) The benefit in respect of which it is made; or
- (b) The amount appearing to the court to be the amount that might be realized at the time the order is made,

whichever is the less.

6. *Minimum amount.* For the purposes of this Part, the minimum amount is US\$20,000, or such other amount not less than US\$20,000 as the Minister of Justice may prescribe by order from time to time.

7. *Interpretation.* In this Part:

- (a) An order made by the court under this section is referred to as a “confiscation order”;
- (b) References to an offense to which this Part applies are references to any felony; and
- (c) A person against whom proceedings have been instituted for an offense to which this Part applies is referred to (whether or not he has been convicted) as “the defendant”.

#### **§15.120. Making of confiscation orders.**

1. *No order unless evidence that minimum order can be made.* The court shall not make a confiscation order unless the prosecutor has given written notice to the court to the effect that it appears to him that, were the court to consider that it ought to make such an order, it would be able to make an order requiring the offender to pay at least the minimum amount.

2. *Discretion of court.* If the prosecutor gives the court such a notice, the court shall determine whether it ought to make a confiscation order.

3. *Court to take account of civil proceedings.* When considering whether to make a confiscation order the court may take into account any information that has been placed before it showing that a victim of an offense to which the proceedings relate has instituted, or intends to institute, civil proceedings against the defendant in respect of loss, injury or damage sustained in connection with the offense.

4. *Confiscation order before imposition of penalty.* If the court determines that it ought to make such an order, the court shall, before sentencing or otherwise dealing with the offender in respect of the offense or, as the case may be, any of the offenses concerned, determine the amount to be recovered in his case by virtue of this section and make a confiscation order for that amount specifying the offense or offenses.

5. *Fine to take account of confiscation order.* Where the court makes a confiscation order against a defendant in any proceedings, it shall be its duty, in respect of any offense of which he is convicted in those proceedings, to take account of the order before:

- (a) Imposing any fine on him;
- (b) Making any order involving any payment by him,

but subject to that shall leave the order out of account in determining the appropriate sentence or other manner of dealing with him.

6. *No restriction on court from other statutory provisions.* No enactment restricting the power of the court dealing with an offender in a particular way from dealing with him also in any other way shall by reason only of the making of a confiscation order restrict the court from dealing with an offender in any way it considers appropriate in respect of an offense to which this Part applies.

7. *Civil standard of proof.* The standard of proof required to determine any question arising under this Part as to:

- (a) Whether a person has benefited as mentioned in section 15.119.2(b)(i);
- (b) Whether his benefit is at least the minimum amount; or
- (c) The amount to be recovered in his case by virtue of this section,

shall be that applicable in civil proceedings.

#### **§15.121. Postponed determinations.**

1. *Power to postpone.* Where the court is acting under section 15.119 but considers that it requires further information before:

- (a) Determining whether the defendant has benefited as mentioned in section 15.119.2(b)(i);
- (b) Determining whether his benefit is at least the minimum amount; or
- (c) Determining the amount to be recovered in his case by virtue of section 15.120,

it may, for the purpose of enabling that information to be obtained, postpone making the determination for such period as it may specify.

2. *More than one postponement.* More than one postponement may be made under sub-section 1 in relation to the same case.

3. *Length of postponement.* Unless it is satisfied that there are exceptional circumstances, the court shall not specify a period under sub-section 1 which:

- (a) By itself; or
- (b) Where there have been one or more previous postponements under sub-section 1 or 4, when taken together with the earlier specified period or periods,

exceeds six (6) months beginning with the date of conviction.

4. *Postponement in the event of an appeal.* Where the defendant appeals against his conviction, the court may, on that account:

- (a) Postpone making any of the determinations mentioned in sub-section 1 for such period as it may specify; or
- (b) Where it has already exercised its powers under this section to postpone, extend the specified period.

5. *Postponement on application or motion of the court.* Postponement or extension under sub-section 1 or 4 may be made:

- (a) On application by the defendant or the prosecutor; or
- (b) By the court of its own motion.

6. *Restriction on postponement after appeal.* Unless the court is satisfied that there are exceptional circumstances, any postponement or extension under sub-section 4 shall not exceed the period ending three (3) months after the date on which the appeal is determined or otherwise disposed of.

7. *Power to sentence during postponement.* Where the court exercises its power under sub-section 1 or 4, it may nevertheless proceed to sentence, or otherwise deal with, the defendant in respect of the offense or any of the offenses concerned.

8. *Effect of passing sentence during postponement.* Where the court has so proceeded, section 15.120 shall have effect as if:

- (a) In sub-section 4, the words from “before sentencing” to “offenses concerned” were omitted; and
- (b) In sub-section 5 after “determining” there were inserted “in relation to any offense in respect of which he has not been sentenced or otherwise dealt with”.

9. *Limitation on penalty if sentence passed during postponement.* In sentencing, or otherwise dealing with, the defendant in respect of the offense, or any of the offenses concerned at any time during the specified period, the court shall not:

- (a) Impose any fine on him;



(b) Make any such order as is mentioned in section 15.120.5(b).

10. *Interpretation of “the date of conviction”.* In this section “the date of conviction” means:

- (a) The date on which the defendant was convicted of the offense concerned; or
- (b) Where he was convicted in the same proceedings, but on different dates, of two or more offenses which may be taken together for the purposes of sub-section 2 or, as the case may be, 3 of section 15.119, the date of the latest of those convictions.

**§15.122.Statements, etc. relevant to making confiscation orders.**

1. *Defendant’s acceptance of prosecution statement.* Where:

- (a) A defendant has been convicted of an offense to which this Part applies and the prosecutor tenders to the court a statement as to any matters relevant:
  - (i) To determining whether the defendant has benefited from the offense or from any other offense to which this Part applies of which he is convicted in the same proceedings or which is taken into consideration in determining his sentence; or
  - (ii) To an assessment of the value of the defendant’s benefit from the offense or any other offense to which this Part applies of which he is so convicted or which is so taken into consideration; and
- (b) The defendant accepts to any extent any allegation in the statement,

the court may, for the purposes of so determining or making such an assessment, treat his acceptance as conclusive of the matters to which it relates.

2. *Court may require defendant to indicate acceptance or otherwise of statement.* Where:

- (a) A statement is tendered under sub-section 1(a), and
- (b) The court is satisfied that a copy of that statement has been served on the defendant,

the court may require the defendant to indicate to what extent he accepts each allegation in the statement and, so far as he does not accept any such allegation, to indicate any matters he proposes to rely on.

3. *Presumptions where defendant fails to comply with requirement under sub-section 2.* If the defendant fails in any respect to comply with a requirement under sub-section 2, he may be treated for the purposes of this section as accepting every allegation in the statement apart from:

- (a) Any allegation in respect of which he has complied with the requirement; and

- (b) Any allegation that he has benefited from an offense or that any property was obtained by him as a result of or in connection with the commission of an offense.

4. *Acceptance of defense statement by prosecution.* Where:

- (a) There is tendered to the court by the defendant a statement as to any matters relevant to determining the amount that might be realized at the time the confiscation order is made; and
- (b) The prosecutor accepts to any extent any allegation in the statement;

the court may, for the purposes of that determination, treat the acceptance by the prosecutor as conclusive of the matters to which it relates.

5. *Acceptance in court or in writing.* An allegation may be accepted or a matter indicated for the purposes of this section either:

- (a) Orally before the court; or
- (b) In writing in accordance with rules of court.

6. *Certificate from court.* If the court is satisfied as to any matter relevant for determining the amount that might be realized at the time the confiscation order is made (whether by an acceptance under this section or otherwise), the court may issue a certificate giving the court's opinion as to the matters concerned and shall do so if satisfied that the amount that might be realized at the time the confiscation order is made is less than the amount the court assesses to be the value of the defendant's benefit from the offense or, if more than one, all the offenses in respect of which the order may be made.

**§15.123. Definition and interpretation of principal terms used.**

1. *Definitions.* In this Part:

***“Realizable property”*** means:

- (a) Any property held by the defendant; and
- (b) Any property held by a person to whom the defendant has directly or indirectly made a gift caught by this Part;

***“Realizable amount”***, for the purposes of this Part, is the amount that might be realized at the time a confiscation order is made, that is to say:

- (a) The total of the values at that time of all the realizable property held by the defendant; less
- (b) Where there are obligations having priority at that time, the total amounts payable in

pursuance of such obligations,

together with the total of the values at that time of all gifts caught by this Part.

2. *Value of property other than cash.* Subject to the following provisions of this section, for the purposes of this Part the value of property (other than cash) in relation to any person holding the property:

- (a) Where any other person holds an interest in the property, is:
  - (i) The market value of the first-mentioned person's beneficial interest in the property, less
  - (ii) The amount required to discharge any incumbrance (other than a charging order) on that interest; and
- (b) In any other case, is its market value.

3. *Value of property at any time.* References in this Part to the value at any time (referred to in sub-section 4 as "the material time") of any property obtained by a person as a result of or in connection with the commission of an offense are references to:

- (a) The value of the property to him when he obtained it adjusted to take account of subsequent changes in the value of money; or
- (b) Where sub-section 4 applies, the value there mentioned,

whichever is the greater.

4. *Value at material time.* If at the material time a person holds:

- (a) The property which he obtained (not being cash); or
- (b) Property which, in whole or in part, directly or indirectly represents in his hands the property which he obtained,

as a result of or in connection with the commission of an offense, the value referred to in sub-section 3(b) is the value to him at the material time of the property mentioned in paragraph 2(a) or, as the case may be, of the property mentioned in paragraph 2(b), so far as it so represents the property which he obtained, but disregarding any charging order.

5. *Value of gift.* Subject to sub-section 11, references in this Part to the value at any time (referred to in sub-section 6 as "the material time") of a gift caught by this Part are references to:

- (a) The value of the gift to the recipient when he received it adjusted to take account of subsequent changes in the value of money; or

(b) Where sub-section 6 applies, the value there mentioned.

6. *Value of gift at material time.* Subject to sub-section 11, if at the material time he holds:

(a) The property which he received (not being cash); or

(b) Property which, in whole or in part, directly or indirectly represents in his hands the property which he received;

as a result of or in connection with the commission of an offense, the value referred to in sub-section 5 is the value to him at the material time of the property mentioned in paragraph (a) or, as the case may be, of the property mentioned in paragraph (b), so far as it so represents the property which he received, but disregarding any charging order.

7. *Priority of obligations.* For the purposes of sub-section 1, an obligation has priority at any time if it is an obligation of the defendant to:

(a) Pay an amount due in respect of a fine, or other order of a court, imposed or made on conviction of an offense, where the fine was imposed or order made before the confiscation order; or

(b) To pay any sum which would be included among the preferential debts (within the meaning given by sub-section 8) in the defendant's bankruptcy commencing on the date of the confiscation order or winding up under an order of the court made on that date.

8. *Preferential debts.* For the purposes of sub-section 7 "the preferential debts" means debts specified in any statute determining preferential debts in the event of, in the case of an individual, bankruptcy or, in the case of an association, insolvency.

9. *Application to gifts.* A gift is caught by this Part if:

(a) It was made by the defendant at any time after the commission of the offense or, if more than one, the earliest of the offenses to which the proceedings for the time being relate; and

(b) The court considers it appropriate in all the circumstances to take the gift into account.

10. *Offenses.* The reference in sub-section 9 to an offense to which the proceedings for the time being relate includes, where the proceedings have resulted in the conviction of the defendant, a reference to any offense which the court takes into consideration when determining his sentence.

11. *Interpretation of "making a gift".* For the purposes of this Part:

(a) The circumstances in which the defendant is to be treated as making a gift include those where he transfers property to another person directly or indirectly for a consideration the value of which is significantly less than the value of the consideration

provided by the defendant; and

- (b) In those circumstances, the preceding provisions of this section shall apply as if the defendant had made a gift of such share in the property as bears to the whole property the same proportion as the difference between the values referred to in paragraph (a) bears to the value of the consideration provided by the defendant.

**§15.124. Application of procedure for enforcing fines.**

1. *Imprisonment in default of payment.* Where the court orders the defendant to pay an amount under this Part the court shall make an order fixing the term of imprisonment which he is to undergo if any sum which he is liable to pay is not duly paid or recovered.

2. *Application of Penal Law.* Chapter 50 of the Penal Law shall apply in relation to terms of imprisonment fixed under sub-section 1.

3. *Reduction in period of imprisonment in the event of part payment.* Where the amount due at the time imprisonment is imposed is so much as remains due after part payment, then subject to sub-section 4, the maximum period applicable to the amount shall be the period applicable to the whole sum reduced by such number of days as bears to the total number of days therein the same proportion as the part paid bears to the total sum.

4. *Minimum period of imprisonment.* In calculating the reduction required under sub-section 3 any fraction of a day shall be left out of account and the maximum period shall not be reduced to less than five (5) days.

**§15.125. Cases in which restraint orders and charging orders may be made.**

1. *Circumstances in which restraint or charging order may be made.* The powers conferred on the court by sections 15.126.1 and 15.127.1 are exercisable where:

- (a) Proceedings have been instituted in Liberia against the defendant for an offense to which this Part applies;
- (b) The proceedings have not been concluded; and
- (c) Either a confiscation order has been made or it appears to the court that there are reasonable grounds for thinking that a confiscation order may be made in them.

2. *Power before institution of proceedings.* Those powers are also exercisable where:

- (a) The court is satisfied that a person is to be charged with an offense to which this Part applies; and
- (b) It appears to the court that a confiscation order may be made in proceedings for the offense.

3. *Application of sub-section 2.* For the purposes of sections 15.126 and 15.127 at any time when those powers are exercisable before proceedings have been instituted:

- (a) References in this Part to the defendant shall be construed as references to the person referred to in sub-section 2(a);
- (b) References in this Part to the prosecutor shall be construed as references to the person who the court is satisfied is to have the conduct of the proposed proceedings; and
- (c) References in this Part to realizable property shall be construed as if, immediately before that time, proceedings had been instituted against the person referred to in sub-section 2(a) for an offense to which this Part applies.

4. *Obligation to discharge when no proceedings commenced.* Where the court has made an order under section 15.126.1 or 15.127.1 by virtue of sub-section 2, the court shall discharge the order if proceedings in respect of the offense are not instituted within such time as the court considers reasonable.

### **§15.126. Restraint orders.**

1. *Power to prohibit dealing in realizable property.* The court may by order (referred to in this Part as a “restraint order”) prohibit any person from dealing with any realizable property subject to such conditions and exceptions as may be specified in the order.

2. *Living costs and legal expenses.* Without prejudice to the generality of sub-section 1, a restraint order may make such provision as the court thinks fit for living expenses and legal expenses.

3. *Application of restraint order.* A restraint order may apply:

- (a) To all realizable property held by a specified person, whether the property is described in the order or not; and
- (b) To realizable property held by a specified person, being property transferred to him after the making of the order.

4. *No application to property subject to charging order.* This section shall not have effect in relation to any property for the time being subject to a charge under section 15.127.

5. *Application for restraint order.* A restraint order:

- (a) May be made only on an application by the prosecutor;
- (b) May be made on an *ex parte* application *in camera*; and
- (c) Shall provide for notice to be given to persons affected by the order.

6. *Discharge of order.* A restraint order:

- (a) May be discharged or varied in relation to any property; and
- (b) Shall be discharged when proceedings for the offense are concluded.

7. *Application to discharge order.* An application for the discharge or variation of a restraint order may be made by any person affected by it.

8. *Appointment of receiver.* Where the court has made a restraint order, the court may at any time appoint a receiver:

- (a) To take possession of any realizable property; and
- (b) In accordance with the court's directions, to manage or otherwise deal with any property in respect of which he is appointed,

subject to such exceptions and conditions as may be specified by the court and may require any person having possession of property in respect of which a receiver is appointed under this section to give possession of it to the receiver.

9. *Dealing with property.* For the purposes of this section, "dealing with property" held by any person includes (without prejudice to the generality of the expression):

- (a) Where a debt is owed to that person, making payment to any person in reduction of the amount of the debt; and
- (b) Removing the property from Liberia.

10. *Power to seize property.* Where the court has made a restraint order, a Law Enforcement Officer or Customs Officer may, for the purpose of preventing any realizable property being removed from Liberia, seize the property.

11. *Seized property.* Property seized under sub-section 10 shall be dealt with in accordance with the court's directions.

#### **§15.127. Charging orders in respect of land, securities, etc..**

1. *Power to make charging order.* The court may make a charging order on realizable property for securing the payment to the court:

- (a) Where a confiscation order has not been made, of an amount equal to the value from time to time of the property charged; and
- (b) In any other case, of an amount not exceeding the amount payable under the confiscation order.

2. *Interpretation of "charging order".* For the purposes of this Part, a "charging order" is an order made under this section imposing on any such realizable property as may be specified in the

order a charge for securing the payment of money to the court.

3. *Application for charging order.* A charging order:

- (a) May be made only on an application by the prosecutor;
- (b) May be made on an *ex parte* application *in camera*;
- (c) Shall provide for notice to be given to persons affected by the order; and
- (d) May be made subject to such conditions as the court thinks fit and, without prejudice to the generality of this paragraph, such conditions as it thinks fit as to the time when the charge is to become effective.

4. *Property which may be subject to charging order.* Subject to sub-section 6, a charge may be imposed by a charging order only on:

- (a) Any interest in realizable property being an interest held beneficially by the defendant or by a person to whom the defendant has directly or indirectly made a gift caught by this Part:
  - (i) In any asset of a kind mentioned in sub-section 5; or
  - (ii) Under any trust; or
- (b) Any interest in realizable property held by a person as trustee of a trust if the interest is in such an asset or is an interest under another trust and a charge may by virtue of paragraph (a) be imposed by a charging order on the whole beneficial interest under the first-mentioned trust.

5. *Interpretation of "assets".* The assets referred to in sub-section 4 are:

- (a) Land in Liberia; or
- (b) Securities of any of the following kinds:
  - (i) Government stock;
  - (ii) Stock of any body incorporated within Liberia;
  - (iii) Stock of any body incorporated outside Liberia or of any country or territory outside Liberia, being stock registered in a register kept at any place within Liberia.

6. *Charging order may extend to interest or dividend.* In any case where a charge is imposed by a charging order on any interest in an asset of a kind mentioned in sub-section 5(b), the court may provide for the charge to extend to any interest or dividend payable in respect of the asset.



7. *Power to discharge order.* The court may make an order discharging or varying the charging order and shall make an order discharging the charging order if the proceedings for the offense are concluded or the amount payment of which is secured by the charge is paid into court.

8. *Application to discharge order.* An application for the discharge or variation of a charging order may be made by any person affected by it.

**§15.128. Realization of property.**

1. *Power to realize property.* Where:

- (a) A confiscation order is made;
- (b) The order is not subject to appeal; and
- (c) The proceedings in which it was made have not been concluded,

the court may, on an application by the prosecutor, exercise the powers conferred by sub-sections 2 to 6.

2. *Power to appoint receiver.* The court may appoint a receiver in relation to realizable property.

3. *Receiver's powers.* The court may empower a receiver appointed under sub-section 2 or under section 15.126 or in pursuance of a charging order:

- (a) To enforce any charge imposed under section 15.127 on realizable property or on interest or dividends payable in respect of such property; and
- (b) In relation to any realizable property other than property for the time being subject to a charge under section 15.127, to take possession of the property subject to such conditions or exceptions as may be specified by the court.

4. *Order to transfer property to receiver.* The court may order any person having possession of realizable property to give possession of it to any such receiver.

5. *Receiver to realize property.* The court may empower any such receiver to realize any realizable property in such manner as the court may direct.

6. *Payment instead of transfer of property.* The court may order any person holding an interest in realizable property to make such payment to the receiver in respect of any beneficial interest held by the defendant or, as the case may be, the recipient of a gift caught by this Part as the court may direct and the court may, on the payment being made, by order transfer, grant or extinguish any interest in the property.

7. *Application of sub-sections 4 to 6 to charged property.* Sub-sections 4 to 6 do not apply to property for the time being subject to a charge under section 15.127.

8. *Representations by third parties.* The court shall not in respect of any property exercise the powers conferred by sub-section 3(a), 5 or 6 unless a reasonable opportunity has been given for persons holding any interest in the property to make representations to the court.

**§15.129. Application of proceeds of realization and other sums.**

1. *Order of application of moneys.* Subject to sub-section 2, the following sums in the hands of a receiver appointed under this Part or in pursuance of a charging order, that is:

- (a) The proceeds of the enforcement of any charge imposed under section 15.127;
- (b) The proceeds of the realization, other than by the enforcement of such a charge, of any property under section 15.126 or 15.128; and
- (c) Any other sums, being property held by the defendant;

shall first be applied in payment of such expenses incurred by a person acting as an insolvency practitioner as are payable under section 15.134.2 and then shall, after such payments (if any) as the court may direct have been made out of those sums, be applied on the defendant's behalf towards the satisfaction of the confiscation order.

2. *Distribution of amounts remaining after satisfaction of confiscation order.* If, after the amount payable under the confiscation order has been fully paid, any such sums remain in the hands of such a receiver, the receiver shall distribute them:

- (a) Among such of those who held property which has been realized under this Part; and
- (b) In such proportions,

as the court may direct after giving a reasonable opportunity for such persons to make representations to the court.

3. *Moneys received by the court.* The receipt of any sum by the clerk to the court on account of an amount payable under a confiscation order shall reduce the amount so payable, but the clerk to the court shall apply the money received for the purposes specified in this section and in the order so specified.

4. *Insolvency practitioner's expenses.* The clerk to the court shall first pay any expenses incurred by a person acting as an insolvency practitioner and payable under section 15.134.2 but not already paid under sub-section 1.

5. *Receiver's expenses.* If the money was paid to the clerk to the court by a receiver appointed under this Part or in pursuance of a charging order, the clerk to the court shall next pay the receiver's remuneration and expenses.

6. *Liquidator's expenses.* After making:

(a) Any payment required by sub-section 4; and

(b) In a case to which sub-section 5 applies, any payment required by that sub-section, the clerk to the court shall reimburse any amount paid under section 15.133.2(b).

7. *Payment of balance to government.* Any balance in the hands of the clerk to the court after he has made all payments required by the preceding provisions of this section shall be paid into any special fund of the Government of the Republic of Liberia established for this purpose and otherwise into the Treasury of the Government.

#### **§15.130.Exercise of powers by court or receiver.**

1. *Application of section.* This section applies to the powers conferred on the court by sections 15.126 to 15.129, or on a receiver appointed under this Part or in pursuance of a charging order.

2. *Power to be exercised to realize value of property to satisfy confiscation order.* Subject to the following provisions of this section, the powers shall be exercised with a view to making available for satisfying the confiscation order or, as the case may be, any confiscation order that may be made in the defendant's case, the value for the time being of realizable property held by any person by the realization of such property.

3. *In relation to a gift.* In the case of realizable property held by a person to whom the defendant has directly or indirectly made a gift caught by this Part the powers shall be exercised with a view to realizing no more than the value for the time being of the gift.

4. *In relation to third parties.* The powers shall be exercised with a view to allowing any person other than the defendant or the recipient of any such gift to retain or recover the value of any property held by him.

5. *Confiscation order to take priority.* In exercising those powers, no account shall be taken of any obligations of the defendant or of the recipient of any such gift which conflict with the obligation to satisfy the confiscation order.

#### **§15.131.Variation of confiscation orders.**

1. *Position where realizable property inadequate.* If, on an application by the defendant in respect of a confiscation order the court is satisfied that the realizable property is inadequate for the payment of any amount remaining to be recovered under the order, the court shall issue a certificate to that effect, giving the court's reasons.

2. *Considerations to be taken into account by court.* For the purposes of sub-section 1:

(a) In the case of realizable property held by a person who has been adjudged bankrupt or whose estate has been sequestrated the court shall take into account the extent to which any property held by him may be distributed among creditors; and

- (b) The court may disregard any inadequacy in the realizable property which appears to the court to be attributable wholly or partly to anything done by the defendant for the purpose of preserving any property held by a person to whom the defendant had directly or indirectly made a gift caught by this Part from any risk of realization under this Part.

3. *Application to reduce amount of confiscation order.* Where a certificate has been issued under sub-section 1, the defendant may apply to the court for the amount to be recovered under the confiscation order to be reduced.

4. *Substitution of reduced amount.* The court shall, on an application under sub-section 3:

- (a) Substitute for the amount to be recovered under the order such lesser amount as the court thinks just in all the circumstances of the case; and
- (b) Substitute for the term of imprisonment fixed under section 15.124.1 in respect of the amount to be recovered under the order a shorter term determined in accordance with that section in respect of the lesser amount.

5. *Rules of court.* Rules of court may make provision:

- (a) For the giving of notice of any application under this section;
- (b) For any person appearing to the court to be likely to be affected by any exercise of its powers under this section to be given an opportunity to make representations to the court.

### **§15.132. Bankruptcy of defendant, etc..**

1. *Effect of bankruptcy.* Where a person who holds realizable property is adjudged bankrupt:

- (a) Property for the time being subject to a restraint order made before the order adjudging him bankrupt; and
- (b) Any proceeds of property realized by virtue of section 15.126(8) or 15.128(5) or (6) for the time being in the hands of a receiver appointed under section 15.126 or 15.128,

is excluded from the bankrupt's estate for the purposes of bankruptcy proceedings.

2. *Restriction on receiver.* Where a person had been adjudged bankrupt, the powers conferred on the court by sections 15.126 to 15.129 or on a receiver appointed under those sections shall not be exercised in relation to:

- (a) Property for the time being comprised in the bankrupt's estate for the purposes of the bankruptcy proceedings;
- (b) Property which is to be applied for the benefit of creditors of the bankrupt,

but nothing in that Act shall be taken as restricting, or enabling the restriction of, the exercise of those powers.

3. *Application of sub-section to charging order.* Sub-section 2 does not affect the enforcement of a charging order:

- (a) Made before the order adjudging the person bankrupt; or
- (b) On property which was subject to a restraint order when the order adjudging him bankrupt was made.

### **§15.133. Winding up of corporation holding realizable property.**

1. *Effect of winding up.* Where realizable property is held by a corporation and an order for the winding up of the corporation has been made or a resolution has been passed by the corporation for the voluntary winding up of the corporation, the functions of the liquidator (or any provisional liquidator) shall not be exercisable in relation to:

- (a) Property for the time being subject to a restraint order made before the relevant time; and
- (b) Any proceeds of property realized by virtue of section 15.126.8 or 15.128.5 or 6 for the time being in the hands of a receiver appointed under section 15.126 or 15.128.

2. *Restriction on liquidator.* Where, in the case of a corporation, such an order has been made or such a resolution has been passed, the powers conferred on the court by section 15.126 to 15.129 or on a receiver so appointed shall not be exercised in relation to any realizable property held by the corporation in relation to which the functions of the liquidator are exercisable:

- (a) So as to inhibit him from exercising those functions for the purposes of distributing any property held by the corporation to the corporation's creditors; or
- (b) So as to prevent the payment out of any property of expenses (including the remuneration of the liquidator or any provisional liquidator) properly incurred in the winding up in respect of the property.

3. *Application of sub-section 2 to charging order.* Sub-section 2 does not affect the enforcement of a charging order made before the relevant time or on property which was subject to a restraint order at the relevant time.

4. *Interpretation.* In this section:

“**Corporation**” means any corporation which may be wound up under any statute in effect in Liberia in relation to corporate entities registered there; and

“**The relevant time**” means:

- (a) Where no order for the winding up of the corporation 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 application for the winding up of the corporation by the court, such a resolution had been passed by the corporation, 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.

**§15.134. Persons acting as insolvency practitioners.**

1. *Protection of insolvency practitioner.* Without prejudice to the generality of any enactment, where:

- (a) Any person acting as an insolvency practitioner seizes or disposes of any property in relation to which his functions are not exercisable because it is for the time being subject to a restraint 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 the 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 a person so acting shall have a lien on the property, or the proceeds of its sale, for such of his expenses as were incurred in connection with the liquidation, 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. *Reimbursement of expenses.* Any person who, acting as an insolvency practitioner, incurs expenses:

- (a) In respect of such property as is mentioned in sub-section 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 a restraint order; or
- (b) Other than in respect of such property as is so mentioned, being expenses which, but for the effect of a restraint order, might have been met by taking possession of and realizing the property,

shall be entitled (whether or not he has seized or disposed of that property so as to have a lien under that sub-section) to payment of those expenses under section 15.129.1 or 15.129.4.

3. *Interpretation of “acting as an insolvency practitioner”.* In this Part, the expression “acting as an insolvency practitioner” includes a trustee in bankruptcy or interim receiver of an insolvent person, a trustee under a deed of arrangement made for the benefit of the creditors, a liquidator,

administrator or receiver in the winding up of a corporation, and any other person acting in a similar capacity.

**§15.135.Receivers; supplementary provisions.**

1. *Receiver not liable for error.* Where a receiver appointed under section 15.126 or 15.128 or in pursuance of a charging order:

- (a) Takes any action in relation to property which is not realizable property, being action which he would be entitled to take if it were such property; and
- (b) Believes, and has reasonable grounds for believing, that he is entitled to take that action in relation to that property,

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

2. *Payment of expenses by prosecutor.* Any amount due in respect of the remuneration and expenses of a receiver so appointed shall, if no sum is available to be supplied in payment of it under section 15.129.5 be paid by the prosecutor or, in a case where proceedings for an offense to which this Part applies are not instituted, by the person on whose application the receiver was appointed.

**§15.136.Compensation.**

1. *Order for compensation where no conviction or conviction quashed.* If proceedings are instituted against a person for an offense or offenses to which this Part applies and either:

- (a) The proceedings do not result in his conviction for any such offense; or
- (b) Where he is convicted of one or more such offenses:
  - (i) The conviction or convictions concerned are quashed; or
  - (ii) He is pardoned in respect of the conviction or convictions concerned,

the court may, on an application by a person who held property which was realizable property, order compensation to be paid to the applicant if, having regard to all the circumstances, it considers it appropriate to make such an order.

2. *Court to be satisfied.* The court shall not order compensation to be paid in any case unless the court is satisfied:

- (a) That there has been some serious default on the part of a person concerned in the investigation or prosecution of the offense concerned; and
- (b) That the applicant has suffered loss in consequence of anything done in relation to the

property by or in pursuance of an order under sections 15.126 to 15.129.

3. *Circumstances in which court may not order compensation.* The court shall not order compensation to be paid in any case where it appears to the court that the proceedings would have been instituted or continued even if the serious default had not occurred.

4. *Amount of compensation.* The amount of compensation to be paid under this section shall be such as the court thinks just in all the circumstances of the case.

5. *Payment from government funds.* Compensation payable under this section shall be paid out of any special fund set up for this purpose and otherwise from The Treasury of the Republic of Liberia.

### **§15.137. Enforcement of external orders.**

1. *External confiscation orders.* The Minister of Justice may, by order:

(a) Direct in relation to a country or territory outside Liberia designated by the order (a “designated country”) that, subject to such modifications as may be specified, this Part shall apply to external confiscation orders and to proceedings which have been or are to be instituted in the designated country and may result in an external confiscation order being made there;

(b) Make:

(i) Such provision in connection with the taking of action in the designated country with a view to satisfying a confiscation order;

(ii) Such provision as to evidence or proof of any matter for the purposes of this section and section 15.138; and

(iii) Such incidental, consequential and transitional provision,

as it appears to the Minister to be expedient, and;

(c) Without prejudice to the generality of this sub-section, direct that in such circumstances as may be specified, proceeds which arise out of action taken in a designated country with a view to satisfying a confiscation order shall be treated as reducing the amount payable under the order to such extent as may be specified.

2. *Definitions.* In this Part:

“*External confiscation order*” means an order made by a court in a designated country for the purpose:

(a) Of recovering:



- (i) Property obtained as a result of or in connection with conduct corresponding to an offense to which this Part applies; or
  - (ii) The value of property so obtained; or
- (b) Of depriving a person of a pecuniary advantage so obtained;

“*Modifications*” includes additions, alterations and omissions.

3. *Variation in Ministerial orders.* An order under this section may make different provision for different cases or classes of case.

4. *Power of Minister to modify this Part.* The power to make an order under this section includes power to modify this Part in such a way as to confer power on a person to exercise a discretion.

#### **§15.138.Registration of external confiscation orders.**

1. *Registration of external confiscation order.* On an application made by or on behalf of the Government of a designated country, the court may register an external confiscation 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 against whom the order is made 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 Liberia would not be contrary to the interests of justice.

2. *Interpretation of “appeal”.* In sub-section 1, “appeal” includes:

- (a) Any proceedings by way of discharging or setting aside a judgment; and
- (b) An application for a new trial or a stay of execution.

3. *Cancellation of order.* The court shall cancel the registration of an external confiscation order if it appears to the court that the order has been satisfied by payment of the amount due under it or by the person against whom it was made serving imprisonment in default of payment or by any other means.

#### **§15.139.Interpretation.**

1. *Generally.* In this Part and in Part II:

**“Interest”**, in relation to property, includes right;

**“Proceeds of criminal conduct”**, in relation to any person who has benefited from criminal conduct, means that benefit;

**“Property”** includes money and all other property, real or personal, heritable or moveable, including things in action and other intangible or incorporeal property.

2. *Particular provisions defined or construed.* The expressions listed in the left hand column below are respectively defined or (as the case may be) fall to be construed in accordance with the provisions of this Law listed in the right-hand column in relation to those expressions:

<b><u>Expression</u></b>	<b><u>Relevant provision</u></b>
“Benefited from an offense”	section 15.119.3
“Charging order”	section 15.127.2
“Confiscation order”	section 15.119.7 (a)
“Criminal conduct”	section 15.101.7
“Dealing with property”	section 15.126(9)
“Defendant”	section 15.119.7(b)
“Gift caught by this Part”	section 15.123.10
“Making a gift”	section 15.120.12
“Realizable property”	section 15.123.1
“Restraint order”	section 15.126.1
“Value of gift”	section 15.123.6 & 7
“Value of property”	section 15.123.3 to 5.

3. *Location of property.* This Part and Part II apply to property wherever situated.

4. *Retrospective application.* References in this Part and Part II to offenses include a reference to offenses committed before the commencement of this Law, but nothing in this Part confers any power on any court in connection with proceedings against a person for an offense instituted before the commencement of this Part.

5. *“Property obtained” and “pecuniary advantage derived”.* References in this Part and Part II to property obtained, or to a pecuniary advantage derived, in connection with the commission of an offense include a reference to property obtained or to a pecuniary advantage derived, both in that connection and in some other connection.

6. *Provision to have effect for interpretation.* The following provisions shall have effect for the interpretation of this Part and Part II:

- (a) Property is held by any person if he holds any interest in it;
- (b) References to an interest held by a person beneficially in property include a reference to an interest which would be held by him beneficially if the property were not so vested;

- (c) Property is transferred by one person to another if the first person transfers or grants to the other any interest in the property;
- (d) An order is subject to appeal until (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an appeal on which the order could be varied or set aside.

*Section 2. Effective date.* This Act shall take effect immediately upon publication in handbills.

**ANY LAW TO THE CONTRARY NOTWITHSTANDING**





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