



BASEL INSTITUTE ON  
GOVERNANCE

# Annex I

A compilation of illicit  
enrichment legislation and  
other relevant legislation

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*Annex I for Illicit Enrichment:  
A Guide to Laws Targeting Unexplained Wealth*



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ISBN: 978-3-9525409-3-0 (PDF)

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Please use the following citation: Dornbierer, A., 2021. *Illicit Enrichment: A Guide to Laws Targeting Unexplained Wealth. Annex I: A complication of illicit enrichment legislation and other relevant legislation*. Basel: Basel Institute on Governance. Available at: [illicitenrichment.baselgovernance.org](http://illicitenrichment.baselgovernance.org)

This work was funded by the core donor group of the International Centre for Asset Recovery in 2020–2021: the Government of Jersey, Principality of Liechtenstein, Norwegian Agency for Development Cooperation (Norad), Swiss Agency for Development and Cooperation (SDC) and UK Foreign, Commonwealth & Development Office (FCDO).

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## Introduction

This annex is a compilation of all the relevant legislative instruments located during the research process behind the book *Illicit Enrichment: A Guide to Laws Targeting Unexplained Wealth* by Andrew Dornbierer, published by the Basel Institute on Governance in May 2021. In line with the definitions contained in Part 1 of the main publication, the laws included in this annex have been categorised as either:

- Criminal Illicit Enrichment Laws
- Qualified Criminal Illicit Enrichment Laws
- Civil Illicit Enrichment Laws
- Qualified Civil Illicit Enrichment Laws
- Administrative Illicit Enrichment Laws; or
- Other Relevant Laws

**The excerpts of the laws included in this annex do not represent official copies of these laws.** Furthermore, unless otherwise stated, the English translations included in this annex are not official translations, and have been made using freely accessible translation software. Consequently, it is likely that some translations are not perfect. In light of this possibility, the original untranslated text of the laws have also been provided.

In conducting the desk-based research for this publication, the author and research team sought to identify every current illicit enrichment law that is currently in force around the world. Due to language and accessibility constraints however, it is probable that laws from certain jurisdictions were not identified during the research process.

Furthermore, in order to assist with the analysis and categorisation of the identified laws, the author and research team also sought to identify every judicial decision or additional legal regulation relating to the application of these laws. Due to similar limitations however, it is probable that certain existing decisions or regulations were not located. Consequently, while the categorisation of these laws has been made as accurately as possible based on the wording of located sources, there is a possibility that subsequent unlocated judicial interpretations have taken a different view on the operation of a particular law, have ruled the law unconstitutional, or that regulations exist which include further requirements that must be met before an illicit enrichment law can be applied.

If any inaccuracies come to light following publication, every effort will be made to update this annex for future editions.

# Criminal illicit enrichment laws



## Afghanistan

### Penal Code (Published 15 May 2017)

**Unofficial Translation** (Ministry of Justice/Justice Sector Support Program/LCB - Translation of Penal Code Presidential Decree endorsed by President Ashraf Ghani on March 4, 2017 [Published OG # 1260 May 15, 2017] - translated on 2017 09 27)

#### Article 419 Illicit Enrichment of Assets

(1) When assets of a public official or his/her spouse and children significantly increase in proportion to his/her registered assets and lawful income and he or she cannot reasonably explain the reason and due source of the increase, the official shall be guilty of illicit enrichment and punished according to provisions of this chapter.

(2) Significant increase of assets according to paragraph (1) of this article occurs when the value of registered assets increases by an amount greater than 500,000 AFN during one year.

#### Article 420 Punishment of Illicit Enrichment

(1) The perpetrator of illicit increase of assets stated in paragraph (2) of article (419) shall, be punished as follows:

1. In case of increase of assets up to 10 million AFN, to short imprisonment.
2. In case of increase of assets more than 10 million to 100 million AFN to medium imprisonment.
3. In case of increase of assets to more than 100 million AFN, to long imprisonment.

## Algeria

### Law no. 06-01 of 20 February 2006 on the Prevention and the Fight Against Corruption (*Loi n°06 – 01 du 20 février 2006 relative à la prévention et à la lutte contre la corruption*)

**Unofficial Translation** (Courtesy of DeepL)

#### Article 37 Illicit enrichment

Any public official who cannot reasonably justify a substantial increase in his assets in relation to his legitimate income shall be punished by imprisonment for two (2) to ten (10) years and a fine of DA 200,000 to DA 1,000,000.

Any person who has knowingly contributed by any means whatsoever to concealing the illicit origin of the goods referred to in the preceding paragraph shall be liable to the same penalty for the offence of concealment provided for in this Act.

Illicit enrichment, referred to in paragraph 1 of this Article, is a continuous offence characterised by the possession of illicit property or its use in a direct or indirect manner.

**Original Text** (<http://www.interieur.gov.dz/index.php/fr/le-ministere/le-minist%C3%A8re/textes-legislatifs-et-reglementaires/40-le-dispositif-legal-regissant-la-wilaya-et-la-commune/397-la-loi-n%C2%B006-%E2%80%93-01-du-20-f%C3%A9vrier-2006-relative-%C3%A0-la-pr%C3%A9vention-et-%C3%A0-la-lutte-contre-la-corruption.html>)

### **Article 37 De l'enrichissement illicite**

Est puni d'un emprisonnement de deux (2) à dix (10) ans et d'une amende de 200.000 DA à 1.000.000 DA, tout agent public qui ne peut raisonnablement justifier une augmentation substantielle de son patrimoine par rapport à ses revenus légitimes.

Encourt la même peine édictée pour le délit de recel prévu par la présente loi, toute personne qui aura sciemment contribué par quelque moyen que ce soit à occulter l'origine illicite des biens visés à l'alinéa précédent.

L'enrichissement illicite, visé à l'alinéa 1er du présent article, est une infraction continue caractérisée par la détention des biens illicites ou leur emploi d'une manière directe ou indirecte.

## **Antigua and Barbuda**

### **The Prevention of Corruption Act (Law No.21 of 2004)**

**Original Text** (<http://laws.gov.ag/wp-content/uploads/2018/08/a2004-21.pdf>)

#### **7. Possession of unexplained property**

(1) A person who, being or having been a public official:

- (a) maintains a standard of living above that which is commensurate with his present or past official emoluments; or
- (b) is in control of pecuniary resources or property disproportionate to his present or past official emoluments,

unless he gives a satisfactory explanation to the court as to how he was able to maintain such standard of living or how such pecuniary resources or property came under his control, commits an offence.

(2) Where a court is satisfied in proceedings for an offence under Subsection 1 (b) that having regard to the closeness of his relationship with the accused and to other circumstances, there is reason to believe that any person was holding pecuniary resources or property in trust for or otherwise on behalf of the accused or acquired such resources or property the resources or property shall, until the contrary is proved, be presumed to have been in the control of the accused.

(3) For the purpose of this section "official emoluments" include a pension or gratuity payable under the Pensions Act.

#### **8. Penalty for offences**

(1) A person who commits an offence under sections 3, 4, 5, 6, or 7 is liable upon conviction on indictment to a fine not exceeding EC\$100,000 and to imprisonment for a term not

exceeding five years or, in addition to the penalty specified above, the court may do any or all of the following –

- (i) order the person convicted to pay the public body, and in such manner as the court directs, the amount or value of any property, benefit, or advantage received by him;
- (ii) forfeit his right to claim any non-contributory gratuity or pension to which he would otherwise have been entitled;
- (iii) declare any right under any non-contributory pension scheme to which he is entitled to be forfeited;
- (iv) declare him to be disqualified from holding any public office for a period not exceeding seven years from the date of conviction for the offence.

## Argentina

### Penal Code of Argentina, Law 11.179

*(Código Penal De La Nación Argentina, Ley 11.179 (T.O. 1984 actualizado))*

**Unofficial Translation** (Courtesy of DeepL)

#### **Article 268(2) Unlawful enrichment of officials and employees**

Any person who, upon being duly requested, does not justify the origin of appreciable enrichment of his or her own wealth or that of a third party seeking to conceal it, which occurs after assuming a public office or employment and up to two (2) years after having ceased to perform his or her duties, shall be punished by imprisonment of two (2) to six (6) years, a fine of two (2) to five (5) times the value of the enrichment, and absolute disqualification for life. (Paragraph replaced by section 36 of Law No. 27,401 B.O. 1/12/2017. Validity: ninety (90) days after its publication in the Argentine Official Gazette)

It will be understood that there was enrichment not only when the wealth had been increased with money, property or things, but also when debts had been cancelled or obligations affecting them had been extinguished.

A person who has brought an action to conceal enrichment shall be liable to the same penalty as the perpetrator of the act.

(Article replaced by Article 38 of Law No. 25,188 B.O. 1/11/1999. Validity: eight days after its publication).

**Original Text** (<http://servicios.infoleg.gob.ar/infolegInternet/anexos/15000-19999/16546/texact.htm>)

#### **Artículo 268(2) Enriquecimiento ilícito de funcionarios y empleados**

Será reprimido con prisión de dos (2) a seis (6) años, multa de dos (2) a cinco (5) veces del valor del enriquecimiento, e inhabilitación absoluta perpetua, el que al ser debidamente

requerido, no justificare la procedencia de un enriquecimiento patrimonial apreciable suyo o de persona interpuesta para disimularlo, ocurrido con posterioridad a la asunción de un cargo o empleo público y hasta dos (2) años después de haber cesado en su desempeño. (Párrafo sustituido por art. 36 de la Ley N° 27.401 B.O. 1/12/2017. Vigencia: a los noventa (90) días de su publicación en el Boletín Oficial de la República Argentina)

Se entenderá que hubo enriquecimiento no sólo cuando el patrimonio se hubiese incrementado con dinero, cosas o bienes, sino también cuando se hubiesen cancelado deudas o extinguido obligaciones que lo afectaban.

La persona interpuesta para disimular el enriquecimiento será reprimida con la misma pena que el autor del hecho.

(Artículo sustituido por art. 38 de la Ley N° 25.188 B.O. 1/11/1999. Vigencia: a los ocho días desde su publicación.)

## Armenia

**Criminal Code of the Republic of Armenia of April 29, 2003 No. ZR-528 (as amended on 13-11-2019)**

**Author's Note:** The original Armenian text of this law could not be confirmed.

**Unofficial Translation** (Courtesy of <https://cis-legislation.com/document.fwx?rgn=7472>)

### Article 310.1 Illegal enrichment

1. Illegal enrichment – increase for the accounting period of property and (or) reduction of obligations of person having the obligation on representation of the Republic of Armenia established by the law “About public service” declarations which significantly exceed its legal income and are not proved by them and if there are no other essential elements of offence which are the basis for illegal enrichment attracts imprisonment for a period of three up to six years with confiscation of property or without confiscation with deprivation of the right to hold certain positions or to be engaged in certain activities for the term of not over three years with confiscation of property.

2. In this Article the amount (cost) exceeding five thousand fold size of the minimum wage established at the time of crime execution is considered essential.

## Benin

**Act 2011-20 on the Fight against Corruption and Related Offences in the Republic of Benin, from 12.10.2011**

*(Loi N° 2011-20 du 12 Octobre 2011 portant lutte contre la corruption et autres infractions connexes en République du Bénin)*

## Unofficial Translation (Courtesy of DeepL)

### Article 55

Shall be punished by imprisonment for a term of five (05) to ten (10) years and by a fine corresponding to the surplus value of the assets which he is likely to dispose of: any person holding a public elective office or a government function, any magistrate, civil servant, state agent, soldier, military officer or member of the military or of a public authority, any person holding a public office, any public depositary or public or ministerial officer, all of whom are managers of any or all types of public establishments, national corporations, semi-public companies fully subject to State control, and legal entities benefiting from the financial assistance of the public power, professional bodies, private bodies responsible for the execution of a public service, associations or foundations recognized as being of public utility, which are not in a position to justify the lawful origin of their resources, property, assets and way of life.

The penalties are doubled when enrichment has been achieved during the exercise of a public office or function.

**Original Text** (<https://sgg.gouv.bj/doc/loi-2011-20/>)

### Article 55

Est puni d'un emprisonnement de cinq (05) ans à dix (10) ans et d'une amende correspondant à la valeur jugée excédentaire par rapport à la valeur des biens que le prévenu est susceptible de posséder, toute personne titulaire d'un mandat public électif ou d'une fonction gouvernementale, tout magistrat, agent civil de l'Etat, militaire ou paramilitaire ou d'une collectivité publique, toute personne revêtu d'un mandat public, tout dépositaire public ou officier public ou ministériel, tout dirigeant ou tout agent de toute nature des établissements publics, des sociétés nationales, des sociétés d'économie mixte soumises de plein droit au contrôle de l'Etat, des personnes morales de droit privé bénéficiant du concours financier de la puissance publique, des ordres professionnels, des organismes privés chargés de l'exécution d'un service public, des associations ou fondations reconnues d'utilité publique, qui, n'est pas en mesure de justifier l'origine licite de ses ressources, biens, patrimoine et train de vie.

Les peines sont portées au double lorsque enrichissement illicite aura été réalisé pendant l'exercice d'un mandat ou d'une fonction publique.

## Bhutan

### Anti-Corruption Act of Bhutan 2011

**Official Translation** ([https://www.acc.org.bt/sites/default/files/ACA%202011\\_1.pdf](https://www.acc.org.bt/sites/default/files/ACA%202011_1.pdf))

#### 60. Possession of unexplained wealth

(1) Any person who, being or having been a public servant or serving or having served in a Civil Society Organization or such other individual or organization using public resources:

- (a) Maintains a standard of living that is not commensurate with his or her present or past lawful sources of income; or
- (b) Is in control of assets disproportionate to his or her present or past official lawful sources of income shall be guilty of an offence.

(2) A person shall not be guilty of an offence under this section, if such person furnishes a satisfactory explanation to the Court:

- (a) As to how he or she was able to maintain such a standard of living; or
- (b) How such assets came under his or her lawful control.

(3) In a proceeding under this section, if the Court is satisfied that, having regard to the closeness of his or her relationship to the accused and to other circumstances, there is reason to believe that any person was holding assets in trust for or otherwise on behalf of the accused or acquired such resources or property as a gift from the accused, such assets shall, in the absence of evidence to the contrary, be presumed to have been in the control of the accused.

(4) An offence under this section shall be a misdemeanor.

(5) In addition to any penalty imposed under subsection (4), the Court may order a person convicted of an offence under subsection (1) of this section to pay into the Consolidated Fund:

- (a) A sum not exceeding the value of the pecuniary resources; or
- (b) A sum not exceeding the value of the assets, the acquisition by him or her of which was not explained to the satisfaction of the Court.

## Bolivia

**Law of Anti-Corruption, Illicit Enrichment and Fortune Investigation “Marcelo Quiroga Santa Cruz”, Law No 004 from 31.03.2010**

*(Ley De Lucha Contra La Corrupción, Enriquecimiento Ilícito e Investigación De Fortunas “Marcelo Quiroga Santa Cruz” (Ley No 004 from 31.03.2010))*

Unofficial Translation (Courtesy of DeepL)

### **Article 27. (Illicit Enrichment).**

The public servant, who has disproportionately increased his or her wealth in relation to his or her legitimate income and cannot be justified, shall be punished with imprisonment of five to ten years, disqualification from the exercise of public service and/or elected office, a fine of two hundred to five hundred days and the confiscation of the illegally obtained assets.

### **Article 28. (Illicit Enrichment of Individuals Affecting the State).**

Any natural person who, through private activity, has disproportionately increased his or her wealth in relation to his or her legitimate income, thereby affecting the wealth of the State, and who has not succeeded in preventing such a situation, shall be punished with imprisonment for

three to eight years, a fine of one hundred to three hundred days and the confiscation of the illegally obtained wealth. The representatives or former legal representatives of legal persons who, through private activity, have increased the wealth of the legal person, affecting the wealth of the State, and who cannot prove that those assets are the result of a lawful activity, shall be subject to the same offence and the same penalty; in addition, the legal person shall return to the State the assets that have been affected, in addition to those obtained as the result of the offence, and shall be fined 25% of their wealth.

#### Original Text

(<https://www.contraloria.gob.bo/portal/Uploads/PDFportal/20121217320.pdf>)

#### Artículo 27. (Enriquecimiento Ilícito).

La servidora pública o servidor público, que hubiere incrementado desproporcionadamente su patrimonio respecto de sus ingresos legítimos y que no pueda ser justificado, será sancionado con privación de libertad de cinco a diez años, inhabilitación para el ejercicio de la función pública y/o cargos electos, multa de doscientos hasta quinientos días y el decomiso de los bienes obtenidos ilegalmente.

#### Artículo 28. (Enriquecimiento Ilícito de Particulares con Afectación al Estado).

La persona natural que mediante actividad privada hubiere incrementado desproporcionadamente su patrimonio respecto de sus ingresos legítimos afectando el patrimonio del Estado, no logrando desvirtuar tal situación, será sancionada con la privación de libertad de tres a ocho años, multa de cien a trescientos días y el decomiso de los bienes obtenidos ilegalmente. Incurrirán en el mismo delito y la misma pena, los representantes o ex representantes legales de las personas jurídicas que mediante actividad privada hubieren incrementado el patrimonio de la persona jurídica, afectando el patrimonio del Estado y que no pueda demostrar que provienen de una actividad lícita; adicionalmente, la persona jurídica restituirá al Estado los bienes que le hubiesen sido afectados además de los obtenidos como producto del delito y será sancionada con una multa del 25% de su patrimonio.

## Botswana

### Corruption and Economic Crime Act, 1994 (as amended by Act No. 6 of 2013)

Original Text (<http://www.elaws.gov.bw/default.php?UID=602>)

#### 34. Possession of unexplained property

1. The Director or any officer of the Directorate authorized in writing by the Director may investigate any person where there are reasonable grounds to suspect that that person:

- (a) maintains a standard of living above that which is commensurate with his present or past known sources of income or assets; or
- (b) is in control or possession of pecuniary resources or property disproportionate to his present or past known sources of income or assets.

2. A person is guilty of corruption if he fails to give a satisfactory explanation to the Director or

the officer conducting the investigation under Subsection 1 as to how he was able to maintain such a standard of living or how such pecuniary resources or property came under his control or possession.

3. Where a court is satisfied in any proceedings for an offence under Subsection 2 that, having regard to the closeness of his relationship to the accused and to other relevant circumstances, there is reason to believe that any person was holding pecuniary resources or property in trust for or otherwise on behalf of the accused, or acquired such resources or property as a gift or loan without adequate consideration, from the accused, such resources or property shall, until the contrary is proved, be deemed to have been under the control or in the possession of the accused.

...

### 36. Penalty

Any person who is guilty of corruption or cheating the revenue under this Part shall, upon conviction, be liable to imprisonment for a term not exceeding 10 years or to a fine not exceeding P500 000, or to both.

## Brunei Darussalam

### Prevention of Corruption Act 1982

Original Text (<http://www.bmr.gov.bn/SitePages/Acts.aspx>)

### 12. Possession of Unexplained Property

1. Any person who, being or having been a public officer –

- (a) maintains a standard of living above that which is commensurate with his present or past emoluments; or
- (b) is in control of pecuniary resources or property disproportionate to his present or past emoluments,

shall, unless he gives a satisfactory explanation to the court as to how he was able to maintain such a standard of living or how such pecuniary resources or property came under his control, be guilty of an offence: Penalty, a fine of B\$30,000 and imprisonment for 7 years.

2. In addition to any penalty imposed under subsection (1) the court may order a person convicted of an offence under subsection (1) to pay to the Government –

- (a) a sum not exceeding the amount of the pecuniary resources; or
- (b) a sum not exceeding the value of the property,

the acquisition of which by him was not explained to the satisfaction of the court and any such sum ordered to be paid shall be recoverable as a fine.

3. Where a court is satisfied in proceedings for an offence under subsection (1) that, having regard to the closeness of his relationship to the accused and to other relevant circumstances,



there is reason to believe that any person was holding pecuniary resources or property in trust for or otherwise on behalf of the accused, or acquired such pecuniary resources or property as a gift, or loan without adequate consideration from the accused, such pecuniary resources or property shall until the contrary is proved, be deemed to have been under the control or in the possession of the accused.

...

## Burkina Faso

### Law No. 004-2015 for the Prevention and Repression of Corruption in Burkina Faso

*(Loi N° 004-2015/CNT Portant prévention et répression de la corruption au Burkina Faso)*

Unofficial Translation (Courtesy of DeepL)

#### Article 63

Shall be punished by imprisonment for a term of two years to five years and a fine of five million (5,000,000) to twenty-five million (25,000,000) CFA francs, anyone who cannot reasonably justify the increase in their lifestyle above a threshold set by regulation with regard to its lawful income.

The judgment court shall order the confiscation of the unjustified part of the assets.

Any person who has knowingly contributed by any means whatsoever to the offence of concealment provided for in article 74 below shall be liable to the same penalty as for the offence of concealment provided for in the present article.

The offence of appearance, thus referred to, is a continuing offence characterized by the possession of the illicit goods or their use in a direct or indirect manner.

**Original Text** ([http://www.justice.gov.bf/wp-content/uploads/2017/12/loi\\_004\\_portant\\_prevention\\_et\\_repressionde\\_la\\_corruption\\_au\\_burkina\\_faso.pdf](http://www.justice.gov.bf/wp-content/uploads/2017/12/loi_004_portant_prevention_et_repressionde_la_corruption_au_burkina_faso.pdf))

#### Article 63

Est puni d'un emprisonnement de deux ans à cinq ans et d'une amende de cinq millions (5 000 000) à vingt-cinq millions (25 000 000) de francs CFA, quiconque ne peut raisonnablement justifier l'augmentation de son train de vie au-delà d'un seuil fixé par voie réglementaire au regard de ses revenus licites.

La juridiction du jugement ordonne la confiscation de la partie non justifiée du patrimoine.

Encourt la même peine édictée pour le délit de recel prévu par l'article 74 ci-dessous, toute personne qui a sciemment contribué par quelque moyen que ce soit, à occulter le caractère illicite des biens à l'origine du train de vie visé dans le présent article.

Le délit d'apparence, ainsi visé, est une infraction continue caractérisée par la détention des biens illicites ou leur emploi d'une manière directe ou indirecte.

## Cambodia

### Anti-Corruption Law, 2010

**Official Translation** ([http://www.acu.gov.kh/en\\_sub\\_index.php?4a8a08f09d37b73795649038408b5f33=2&03c7c0ace395d80182db07ae-2c30f034=10&9e3669d19b675bd57058fd4664205d2a=8](http://www.acu.gov.kh/en_sub_index.php?4a8a08f09d37b73795649038408b5f33=2&03c7c0ace395d80182db07ae-2c30f034=10&9e3669d19b675bd57058fd4664205d2a=8))

#### Article 36: Illicit Enrichment

Illicit enrichment is an increase in the wealth of an individual and the individual cannot provide a reasonable explanation of its increase in comparison to his or her legal income. After the first assets and liabilities declaration, every person as described in article 17 (people required to declare assets and debt) and article 19 (other people required to declare assets and debt) of this law, who cannot provide a reasonable explanation of the wealth increase in comparison to his or her legal income, shall face confiscation of the unexplainable property. All of the confiscated property will become state property. If the unexplainable wealth increase is connected to any corruption offence as stated in this law, the wealth owner shall be punished in accordance with this law.

## Chile

### Criminal Code of 12 November 1874 (as amended by Law 20088 of 2006)

*(Código Penal de noviembre 12 de 1874 (enmendada por la Ley 20088 de 2006))*

**Unofficial Translation** (Courtesy of DeepL)

#### Article 241 bis.

Any public employee who, during the exercise of his or her duties, obtains a significant and unjustified increase in his or her wealth shall be liable to a fine equivalent to the amount of the undue increase in wealth and to the penalty of temporary absolute disqualification from holding public office and performing public functions at the minimum to medium levels.

The provisions of the preceding paragraph shall not apply if the conduct that caused the undue increase in wealth constitutes by itself any of the crimes described in this Title, in which case the penalties assigned to the respective crime shall be imposed.

The proof of unjustified enrichment referred to in this article shall always be the responsibility of the Public Prosecutor's Office.

If the criminal proceedings are initiated through a complaint or lawsuit and the public employee is acquitted of the crime established in this article or a final dismissal is issued in his or her favour for any of the reasons established in letters a) or b) of article 250 of the Code of Criminal Procedure, he or she shall be entitled to obtain from the complainant or denouncer compensation for the material and moral damage he or she has suffered, without prejudice to the criminal liability of the latter for the crime in article 211 of this Code.

**Original Text** (<https://www.leychile.cl/Navegar?idNorma=1984>)

#### **Artículo 241 bis.**

El empleado público que durante el ejercicio de su cargo obtenga un incremento patrimonial relevante e injustificado, será sancionado con multa equivalente al monto del incremento patrimonial indebido y con la pena de inhabilitación absoluta temporal para el ejercicio de cargo y oficios públicos en sus grados mínimo a medio.

Lo dispuesto en el inciso precedente no se aplicará si la conducta que dio origen al incremento patrimonial indebido constituye por sí misma alguno de los delitos descritos en el presente Título, caso en el cual se impondrán las penas asignadas al respectivo delito.

La prueba del enriquecimiento injustificado a que se refiere este artículo será siempre de cargo del Ministerio Público.

Si el proceso penal se inicia por denuncia o querrela y el empleado público es absuelto del delito establecido en este artículo o se dicta en su favor sobreseimiento definitivo por alguna de las causales establecidas en las letras a) o b) del artículo 250 del Código Procesal Penal, tendrá derecho a obtener del querellante o denunciante la indemnización de los perjuicios por los daños materiales y morales que haya sufrido, sin perjuicio de la responsabilidad criminal de estos últimos por el delito del artículo 211 de este Código.

## **China**

### **Criminal Law of the People's Republic of China**

**Official Translation** ([http://english.court.gov.cn/2015-12/01/content\\_22595464\\_34.htm](http://english.court.gov.cn/2015-12/01/content_22595464_34.htm))

#### **Article 395**

Any State functionary whose property or expenditure obviously exceeds his lawful income, if the difference is enormous, may be ordered to explain the sources of his property. If he cannot prove that the sources are legitimate, the part that exceeds his lawful income shall be regarded as illegal gains, and he shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention, and the part of property that exceeds his lawful income shall be recovered.

## **China - Hong Kong**

### **Cap.201 Prevention of Bribery Ordinance 1971**

**Original Text** ([https://www.elegislation.gov.hk/hk/cap201?xid=ID\\_1438402825079\\_002](https://www.elegislation.gov.hk/hk/cap201?xid=ID_1438402825079_002))

#### **10. Possession of unexplained property**

(1). Any person who, being or having been the Chief Executive or a prescribed officer –  
(Amended 14 of 2003, Section 17; 22 of 2008, Section 4)

- (a) maintains a standard of living above that which is commensurate with his present or past official emoluments; or
- (b) is in control of pecuniary resources or property disproportionate to his present or past official emoluments,

shall, unless he gives a satisfactory explanation to the court as to how he was able to maintain such a standard of living or how such pecuniary resources or property came under his control, be guilty of an offence.

(1A) If the accused in any proceedings for an offence under subsection (1) is or has been the Chief Executive, the court, in determining whether the accused has given a satisfactory explanation as provided in that subsection, shall take into account assets that he declared to the Chief Justice pursuant to Paragraph 2, Article 47 of the Basic Law. *(Added 22 of 2008 s. 4)*

(1B) The Chief Justice shall disclose to a court information about assets declared to him pursuant to Paragraph 2, Article 47 of the Basic Law if the disclosure is required by an order made by the court for the purposes of subsection (1A). *(Added 22 of 2008 s. 4)*

(2) Where a court is satisfied in proceedings for an offence under subsection (1)(b) that, having regard to the closeness of his relationship to the accused and to other circumstances, there is reason to believe that any person was holding pecuniary resources or property in trust for or otherwise on behalf of the accused or acquired such resources or property as a gift from the accused, such resources or property shall, in the absence of evidence to the contrary, be presumed to have been in the control of the accused. *(Added 9 of 1974 s. 3. Amended 48 of 1996 s. 3)*

*(3)-(4)(Repealed 56 of 1973 s. 2)*

(5) In this section, official emoluments includes a pension or gratuity payable under the Pensions Ordinance (Cap. 89), the Pension Benefits Ordinance (Cap. 99) or the Pension Benefits (Judicial Officers) Ordinance (Cap. 401). *(Amended 36 of 1987 s. 44; 85 of 1988 s. 51)*

...

## **12. Penalty for offences**

(1) Any person guilty of an offence under this Part, other than an offence under Section 3, shall be liable –

- (a) on conviction on indictment –
  - (i) for an offence under section 10, to a fine of HK\$1,000,000 and to imprisonment for 10 years;

...

- (b) on summary conviction –
  - (i) for an offence under section 10, to a fine of HK\$500,000 and to imprisonment for 3 years;

...

and shall be ordered to pay to such person or public body and in such manner as the court directs, the amount or value of any advantage received by him, or such part thereof as the court may specify.

*(Amended 28 of 1980 s. 5)*

...

(3) In addition to any penalty imposed under Subsection 1, the court may order a person convicted of an offence under Section 10(1)(b) to pay to the Government – *(Amended 1 of 2003, Section 3)*

- (a) a sum not exceeding the amount of the pecuniary resources; or
- (b) a sum not exceeding the value of the property,

the acquisition of which by him was not explained to the satisfaction of the court. *(Added 9 of 1974 s. 4)*

(4) An order under subsection (3) may be enforced in the same manner as a judgment of the High Court in its civil jurisdiction. *(Added 9 of 1974 s. 4. Amended 25 of 1998 s. 2)*

(5) An order may be made under subsection (3) in respect of an offence under section 10(1)(b) where the facts that gave rise to that offence arose before 15 February 1974. *(Added 61 of 1980 s. 2)*

#### **12AA. Confiscation of assets**

(1) Subject to this section, where a person is convicted on indictment of an offence under section 10(1)(b) the court may, in addition to any penalty imposed under section 12(1), order the confiscation of any pecuniary resources or property—

- (a) found at the trial to be in his control as provided in section 10; and
- (b) of an amount or value not exceeding the amount or value of pecuniary resources or property the acquisition of which by him was not explained to the satisfaction of the court.

(2) Any application for an order under subsection (1) shall be made by the Secretary for Justice within 28 days after the date of the conviction.

*(Amended L.N. 362 of 1997)*

(3) An order under subsection (1) shall not be made in respect of pecuniary resources or property held by a person other than the person convicted unless that other person has been given reasonable notice that such an order may be made and has had an opportunity to show cause why it should not be made.

(4) An order under subsection (1) shall not be made in respect of pecuniary resources or property held by a person other than the person convicted if that other person satisfies the court in any proceedings to show cause under subsection (3) that he had—

- (a) acted in good faith as regards the circumstances in which the pecuniary resources or property came to be held by him; and

(b) so acted in relation to the pecuniary resources or property that an order in the circumstances would be unjust.

(5) Nothing in subsection (4) shall be construed as limiting the court's discretion to decline to make an order under subsection (1) on grounds other than those specified in subsection (4).

(6) An order under subsection (1)–

(a) may be made subject to such conditions as the court thinks fit in all the circumstances of the case; and

(b) may be made in respect of an offence under section 10(1)(b) where the facts that gave rise to that offence occurred before the date of commencement of the Prevention of Bribery (Amendment) Ordinance 1987 (50 of 1987).

(7) A court may make orders under both subsection (1) and section 12(3) in respect of the same offence but shall not make orders under both provisions in respect of the same pecuniary resources or property.

(8) An order under subsection (1) may make provision for taking possession of pecuniary resources or property to which the order applies and for the disposal of such resources or property by or on behalf of the Government.

*(Amended 1 of 2003 s. 3)*

*(Added 50 of 1987 s. 4)*

## China – Macau

Law No. 11/2003

*(Lei No. 11/2003)*

**Unofficial Translation** (Courtesy of DeepL)

### Article 28 Unjustified wealth

1. Those obliged to make a declaration under the terms of Article 1 who, by themselves or through an intermediary, are in possession of assets or income abnormally higher than those indicated in the previous declarations made and who do not justify, specifically, how and when they came into their possession or do not satisfactorily demonstrate their lawful origin, shall be punished by imprisonment of up to three years or by a fine.

2. Assets or income whose possession or origin has not been justified in accordance with the preceding paragraph may, in a judicial ruling, be seized and declared lost in favour of the Macao Special Administrative Region.

**Original Text** (<https://bo.io.gov.mo/bo/i/2003/30/lei11.asp>)

### Artigo 28.º Riqueza injustificada

1. Os obrigados à declaração nos termos do artigo 1.º que, por si ou por interposta pessoa,

estejam na posse de património ou rendimentos anormalmente superiores aos indicados nas declarações anteriores prestadas e não justifiquem, concretamente, como e quando vieram à sua posse ou não demonstrem satisfatoriamente a sua origem lícita, são punidos com pena de prisão até três anos ou com pena de multa.

2. O património ou rendimentos cuja posse ou origem não haja sido justificada nos termos do número anterior, pode, em decisão judicial condenatória, ser apreendido e declarado perdido a favor da Região Administrativa Especial de Macau.

## Colombia

**Criminal Code of the Republic of Colombia, Law 599 DE 2000, from 24.07.2000**

*(Código Penal de la República de Colombia, Ley 599 DE 24.07.2000)*

**Unofficial Translation** (Courtesy of DeepL)

### **Article 412 Unlawful enrichment**

<See Notes on the validity of Article 33 of Law 1474 of 2011> <Article modified by Article 29 of Law 1474 of 2011 The new text is as follows: >

The public servant, or whoever has performed public functions, who during his connection with the administration or within five (5) years after his departure, obtains, for himself or for another, an unjustified increase in wealth, shall incur, provided that the conduct does not constitute another crime, in prison from nine (9) to fifteen (15) years, a fine equivalent to twice the value of the enrichment without exceeding the equivalent of fifty thousand (50.000) monthly legal minimum wages in force, and disqualification from the exercise of public rights and public functions for ninety-six (96) to one hundred and eighty (180) months.

**Original Text** ([http://www.secretariassenado.gov.co/senado/basedoc/ley\\_0599\\_2000\\_pr016.html#412](http://www.secretariassenado.gov.co/senado/basedoc/ley_0599_2000_pr016.html#412))

### **Artículo 412 Enriquecimiento ilícito**

Modificado por el art. 29, Ley 1474 de 2011, Modificado por el art. 33, Ley 1474 de 2011.

El servidor público, o quien haya desempeñado funciones públicas, que durante su vinculación con la administración o dentro de los cinco (5) años posteriores a su desvinculación, obtenga, para sí o para otro, incremento patrimonial injustificado, incurrirá, siempre que la conducta no constituya otro delito, en prisión de nueve (9) a quince (15) años, multa equivalente al doble del valor del enriquecimiento sin que supere el equivalente a cincuenta mil (50.000) salarios mínimos legales mensuales vigentes, e inhabilitación para el ejercicio de derechos y funciones públicas de noventa y seis (96) a ciento ochenta (180) meses.

## Congo (Democratic Republic of)

Congolese Criminal Code from 30.01.1940 (as amended by Law N° 05/006 from 29.03.2005)

*(Code Pénal Congolais, Décret du 30 janvier 1940 (tel que modifié par la loi N° 05/006 du 29.03.2005))*

Unofficial Translation (Courtesy of DeepL):

### Article 147

For the purposes of this Act, the following definitions apply:

...

#### 6. Illicit enrichment

A substantial increase in the assets of a public official or any other person whom he or she cannot reasonably justify in relation to his or her legitimate income.

...

### Article 147 bis

The acts listed below shall constitute acts of corruption...

#### 7. Illicit enrichment.

### Article 148

Any public official or other person who commits one of the acts referred to in article 147bis shall be punished by six months to two years of penal servitude and a fine of fifty to two hundred thousand constant Congolese francs.

The penalty provided for in the preceding paragraph may be doubled, in view of carrying out, in the exercise of his or her duties, an unjust act or to refrain from performing an act that is in keeping with his or her duties.

**Original Text** ([https://www.droitcongolais.info/files/311.03.05-Loi-du-29-mars-2005\\_Code-penal\\_modifications.pdf](https://www.droitcongolais.info/files/311.03.05-Loi-du-29-mars-2005_Code-penal_modifications.pdf))

### Article 147

Au sens de la présente Loi, on entend par:

...

#### 6. Enrichissement illicite

L'augmentation substantielle des biens d'un agent public ou de toute autre personne que celui-ci ou celle-ci ne peut raisonnablement justifier au regard de ses revenus légitimes.



**Article 147 bis**

Sont constitutifs d'actes de corruption, les actes énumérés ci-après:

...

7. l'enrichissement illicite.

**Article 148**

Tout agent public ou toute autre personne qui aura commis un des actes prévus à l'article 147 bis sera puni de six mois à deux ans de servitude pénale et d'une amende de cinquante à deux cent mille francs congolais constants.

La peine prévue à l'alinéa précédent pourra au double du maximum, en vue d'accomplir, dans l'exercice de ses fonctions, de son emploi ou de sa mission, un acte injuste ou de s'abstenir d'accomplir un acte qui rentre dans l'ordre de ses devoirs.

## Congo (Republic of)

### Law n° 5-2009 of 22 September 2009 on Corruption, Misappropriation, Fraud and Similar Offences

*(Loi n° 5-2009 du 22 septembre 2009 sur la corruption, la concussion, la fraude et les infractions assimilées)*

Unofficial Translation (Courtesy of DeepL)

#### Subsection 8: Illicit enrichment

##### Article 20:

Any public official, person entrusted with a public service mandate, person invested with an elective public mandate, any manager, agent or employee of a public enterprise or any other person who cannot reasonably justify the substantial increase of his assets in comparison with his legitimate income shall be found guilty of the crime of illicit enrichment and punished by imprisonment for a period of five to ten years at most without the possibility of benefiting from the proceeds of the work carried out.

Original Text (<https://www.sgg.cg/JO/2009/congo-jo-2009-40.pdf>)

#### Sous-section 8: De l'enrichissement illicite

##### Article 20:

Sera reconnu coupable du crime d'enrichissement illicite et puni de la réclusion pour une durée allant de cinq ans à dix ans au plus sans possibilité de bénéficier du produit des travaux effectués, tout agent public, personne chargée d'une mission de service public, personne investie d'un mandat public électif, tout dirigeant, mandataire ou salarié d'entreprise publique ou toute autre personne qui ne peut raisonnablement justifier l'augmentation substantielle de son patrimoine par rapport à ses revenus légitimes.

## Côte d'Ivoire

Ordinance No. 2013-660 on preventing and combating corruption and related offences (20.09.2013)

*(Ordonnance n° 2013-660 du 20 septembre 2013 relative à la prévention et à la lutte contre la corruption et les infractions assimilées)*

Unofficial Translation (Courtesy of DeepL)

### Article 56

Any public official who cannot reasonably justify a substantial increase in his assets compared to his income is punishable by 1 to 5 years of imprisonment and a fine equivalent to three times the value of the illicitly acquired property.

The burden of proving the lawful origin of his assets rests with the person prosecuted.

**Original Text** (<https://anrmp.ci/images/PDF/Ordonnance-n-2013-650.pdf>)

### Article 56

Est puni, d'un emprisonnement d'un à cinq ans et d'une amende équivalente au triple de la valeur des biens illicitement acquis, tout agent public qui ne peut raisonnablement justifier une augmentation substantielle de son patrimoine par rapport à ses revenus.

Il appartient à la personne poursuivie d'enrichissement illicite de prouver l'origine licite de son patrimoine.

## Cuba

Criminal Code of the Republic of Cuba, Law no. 62, from 29.12.1987

*(Ley no. 62, Código Penal de la República de Cuba, de 29.12.1987)*

Unofficial Translation (Courtesy of DeepL)

### Article 150

1. (Modified) The authority or official who, directly or through an intermediary, makes expenses or increases his or her wealth or that of a third party in an amount not proportional to his or her legal income, without justifying the lawfulness of the means used to make expenses or obtain such an increase in wealth, incurs the penalty of deprivation of liberty for three to eight years.

2. If the act is committed by a person not covered by the above paragraph, the penalty is imprisonment for two to five years or a fine of three hundred to one thousand installments, or both.

3. Those found responsible for the offences referred to in the preceding paragraphs are also subject to the accessory penalty of confiscation of property.

4. The penalties provided for in this article are imposed provided that the act does not constitute a major offence.

This article was amended by article 3 of Decree-Law No. 150 of 6 June 1994 (G.O. Ext. No. 6 of 10 June 1994, p. 14).

**Original Text** (<http://www.parlamentocubano.gob.cu/index.php/documento/codigo-penal-2/>)

### Artículo 150

1. (Modificado) La autoridad o funcionario que, directamente o por persona intermedia, realiza gastos o aumenta su patrimonio o el de un tercero en cuantía no proporcional a sus ingresos legales, sin justificar la licitud de los medios empleados para realizar gastos u obtener tal aumento patrimonial, incurre en sanción de privación de libertad de tres a ocho años.

2. Si el hecho se comete por persona no comprendida en el apartado que antecede, la sanción es de privación de libertad de dos a cinco años o multa de trescientas a mil cuotas o ambas.

3. A los declarados responsables de los delitos previstos en los apartados anteriores se les impone, además, la sanción accesoria de confiscación de bienes.

4. Las sanciones previstas en este artículo se imponen siempre que el hecho no constituya un delito de mayor entidad.

Este artículo fue modificado por el artículo 3 del Decreto-Ley No. 150 de 6 de junio de 1994 (G.O. Ext. No. 6 de 10 de junio de 1994, pág. 14).

## Djibouti

**Law No. 111/AN/11/6th L on Combating Terrorism and Other Serious Crimes (25.05.2011)**

*(Loi N° 111/AN/11/6ème L relative à la lutte contre le terrorisme et autres infractions graves (25.05.2011))*

**Unofficial Translation** (Courtesy of DeepL)

### Article 11

The fact that a public official cannot reasonably justify the substantial increase of his assets in relation to his legitimate income is punishable by 15 years imprisonment and a fine of FD 5,000,000.

**Original Text** (<https://www.presidence.dj/texte.php?ID=111&ID2=2011-05-25&ID3=Loi&ID4=10&ID5=2011-05-31&ID6=n>)

### Article 11

Le fait pour un agent public de ne pouvoir raisonnablement justifier l'augmentation substantielle de son patrimoine par rapport à ses revenus légitimes, est puni de 15 ans d'emprisonnement de 5.000.000 FD d'amende.

## Dominican Republic

Law No. 311-14 establishing the National Authorized and Uniform System of Declaration of Wealth of Public Officials and Civil Servants, from 11 August 2014

*(Ley No. 311-14 que instituye el Sistema Nacional Autorizado y Uniforme de Declaraciones Juradas de Patrimonio de los Funcionarios y Servidores Públicos. G. O. No. 10768 del 11 de agosto de 2014)*

Unofficial Translation (Courtesy of DeepL)

### Article 16. Proof of the origin of wealth.

Any public official, bound by this law, is obliged to prove the lawful origin of his wealth obtained during the exercise of his office at the time he is required to do so by the competent authority.

Paragraph: In the event that the origin of wealth cannot be proven, the competent authority may take legal action and promote the confiscation of the unproven wealth.

### Article 17. Destination of the confiscated wealth.

The wealth that is proven to constitute illicit enrichment in favor of the public official or his relatives up to the fourth degree of consanguinity or related, whose confiscation has been ordered by a judgment that has acquired the authority of irrevocable res judicata, shall become property of the Dominican State, as ordered by the competent judge.

### Article 18. Penalties for illicit enrichment.

Public officials found responsible for illicit enrichment shall be punished with a penalty of four (4) to ten (10) years of imprisonment, a fine equivalent to twice the amount of the increase, and disqualification from holding public office for a period of ten (10) years.

Paragraph: The disqualification penalty of ten (10) years is imposed as a complementary penalty, whose fulfilment begins at the end of the term of the imprisonment penalty imposed. The interposed persons who are guilty of the infractions attributed to the officials shall be punished as accomplices of the infractions they are guilty of.

### Article 19. Investigation by presumption.

The Public Ministry shall initiate the opening of an investigation for presumption of illicit enrichment of the public official obliged to make the sworn declaration of wealth, in the event of having completed the term or having been removed from office without complying with the requirements of this law, in accordance with the term established therein.

Original Text ([https://sie.gov.do/images/sie-documentos-pdf/marco-legal/leyes\\_marco\\_legal\\_sistema\\_de\\_transparencia/1\\_Ley\\_No.\\_311-14\\_Sobre\\_Declaracion\\_Jurada\\_de\\_Patrimonio.pdf](https://sie.gov.do/images/sie-documentos-pdf/marco-legal/leyes_marco_legal_sistema_de_transparencia/1_Ley_No._311-14_Sobre_Declaracion_Jurada_de_Patrimonio.pdf))

### Artículo 16. Prueba del origen del patrimonio.

Cualquier funcionario público, obligado por esta ley, está en la obligación de probar el origen lícito de su patrimonio obtenido durante el ejercicio del cargo en el momento que le sea requerido por la autoridad competente.

Párrafo.- En caso de que el origen del patrimonio no pueda ser probado, la autoridad competente puede accionar en justicia y promover la confiscación de los bienes no probados.

#### **Artículo 17. Destino del patrimonio decomisado.**

El patrimonio que se demuestre constituye enriquecimiento ilícito en favor del funcionario público o de sus familiares hasta el cuarto grado de consanguinidad o relacionados, cuyo decomiso haya sido ordenado por sentencia que haya adquirido la autoridad de la cosa irrevocablemente juzgada, pasa a ser propiedad del Estado dominicano, conforme ordene el juez competente.

#### **Artículo 18. Sanciones por enriquecimiento ilícito.**

Los funcionarios públicos que resulten responsables de enriquecimiento ilícito serán sancionados con la pena de cuatro (4) a diez (10) años de prisión mayor, una multa equivalente al duplo del monto del incremento, y la inhabilitación para ocupar funciones públicas por un período de diez (10) años.

Párrafo.- La pena de inhabilitación de diez (10) años se impone como pena complementaria, cuyo cumplimiento inicia a partir del término de la sanción privativa de libertad impuesta. Las personas interpuestas que resulten culpables de las infracciones atribuidas a los funcionarios, serán sancionadas como cómplices de las infracciones que resulten culpables.

#### **Artículo 19. Investigación por presunción.**

El Ministerio Público dará inicio a la apertura de una investigación por presunción de enriquecimiento ilícito del funcionario público obligado a hacer la declaración jurada de patrimonio, en el caso de haber finalizado el período o haber sido removido del cargo sin cumplir con los requerimientos de esta ley, conforme al plazo establecido en la misma.

## **Ecuador**

### **Integral Organic Criminal Code of the Republic of Ecuador of 10.02.2014**

*(Código Orgánico Integral Penal de la República de Ecuador, de 10.02.2014)*

Unofficial Translation (Courtesy of DeepL)

#### **Article 279. Illicit enrichment**

Public servants and persons acting by virtue of a State power in any of the institutions of the State, as determined in the Constitution of the Republic, who have obtained for themselves or for third parties an unjustified increase in wealth in their name or through an intermediary, as a result of their position or function, exceeding four hundred unified basic salaries of workers in general, will be sentenced to seven to ten years in prison.

Illicit enrichment will be understood to have occurred not only when the wealth has been increased with money, things or goods, but also when debts have been cancelled or obligations extinguished.

If the increase in wealth is greater than two hundred and less than four hundred unified basic

wages of the worker in general, the penalty shall be imprisonment for five to seven years.

If the increase in wealth is up to two hundred unified basic wages of the worker in general, the penalty shall be three to five years' imprisonment.

**Original Text** (<https://www.gobiernoelectronico.gob.ec/wp-content/uploads/2018/10/C%C3%B3digo-Org%C3%A1nico-Integral-Penal.pdf>)

#### **Artículo 279. Enriquecimiento ilícito.**

Las o los servidores públicos y las personas que actúen en virtud de una potestad estatal en alguna de las instituciones del Estado, determinadas en la Constitución de la República, que hayan obtenido para sí o para terceros un incremento patrimonial injustificado a su nombre o mediante persona interpuesta, producto de su cargo o función, superior a cuatrocientos salarios básicos unificados del trabajador en general, serán sancionados con pena privativa de libertad de siete a diez años.

Se entenderá que hubo enriquecimiento ilícito no solo cuando el patrimonio se ha incrementado con dinero, cosas o bienes, sino también cuando se han cancelado deudas o extinguido obligaciones.

Si el incremento del patrimonio es superior a doscientos y menor a cuatrocientos salarios básicos unificados del trabajador en general, la pena privativa de libertad será de cinco a siete años.

Si el incremento del patrimonio es hasta doscientos salarios básicos unificados del trabajador en general, la pena privativa de libertad será de tres a cinco años.

## **Egypt**

### **Law No. 62 of 1975, Regarding Illegal Gains**

**Unofficial Translation** (Courtesy of Transparency International)

[https://images.transparencycdn.org/images/2016\\_AssetDeclarationsInEgypt\\_EN.pdf](https://images.transparencycdn.org/images/2016_AssetDeclarationsInEgypt_EN.pdf)

#### **Article 1**

The following categories are subject to this law:

- (1) [All] Those carrying the burdens of the public authority and all employees of the state's administrative body, except the categories of third level.
- (2) Members of the higher executive committee of the Arab Socialist Union, and members of its other leadership formations that are determined by a decision from the president of the republic, and heads and members of the boards of the institutions that belong to it and the employees of this committee and those formations and institutions, except those whose salaries do not exceed the financial upper limit of the third level.
- (3) Head and members of the people's council and heads and members of local popular councils and others who have a public delegated status whether they were elected or appointed.

- (4) Heads of and members of boards and all employees of public commissions and public institutions and economic units belonging to them, except those of third level categories.
- (5) Heads of and members of boards and all employees in companies which the government or public commissions or public institutions or the economic units that belong to them contribute in their capital, except the foreigners and the employees whose salaries do not exceed the financial upper limit of the third level.
- (6) Heads of and members of administrative boards of professional syndicates and workers' unions and workers' trade unions, and special societies of public benefit.
- (7) Heads of and members of boards and all employees in cooperative societies, except the employees whose salaries do not exceed the financial upper limit of the third level.
- (8) Omdas and sheikhs.
- (9) Recovery commissioners and those delegated for recovery and the trustees on deposits and treasurers and delegates of purchases and sales and members of purchase and sale committees in parties mentioned in previous articles.
- (10) Financiers subject to taxation card system decided in law number 82 of 1973 if the transactions of the financier with the parties stated in mentioned law exceed fifty thousand pounds.

## **Article 2**

Every asset that is gained by a person subject to the provisions of this law for himself or to other because of exploiting the service or the status or a result of a behavior that breaches a legal punitive text or public morals IS considered an illegal gain.

And any increase in wealth that happens after assuming the service or the actualization of the status of the person subject to this law or his spouse or minor children when it is not proportional with their resources and he failed to prove a legal source of it IS considered a result of exploiting the service or the status or the breaching behaviour.

...

## **Article 18**

Everyone who had gained for himself or for the other an illegal gain is to be punished by imprisonment and a fine that is equal to the value of the illegal gain in addition to the sentence of recovery of the gain.

The abatement of the criminal suit due to death does not prevent recovery of the illegal gain upon a decision by a specialized criminal court based on a request by a commission among those commissions stated in article (5) during three years of the death date.

The court should order in relation to the spouse and the minor children who benefited from the illegal gain to execute the order from the assets of each of them equal to what he had benefited.

It can also order including anyone who benefited a significant benefit from among those who were not mentioned in the previous paragraph to be included in the order and executable on his assets equal to what he had benefited.

## El Salvador

**Criminal Code of the Republic of El Salvador, 26.04.1997 (as of 29.01.2020)**

*(Código Penal de la República de El Salvador, 26.04.1997 (29.01.2020))*

**Unofficial Translation** (Courtesy of DeepL)

### **Art. 333 Illicit Enrichment**

The official, public authority or public employee, who on the occasion of his or her position or of his functions obtains an unjustified increase in wealth, will be sanctioned with a prison term of three to ten years.

The same prison sentence shall be incurred by the person who is brought in to conceal the unjustified wealth increase.

In any case, special disqualification from the exercise of the position or employment will be imposed for the same amount of time.

**Original Text** (<https://www.asamblea.gob.sv/decretos/details/380>)

### **Art. 333.- Enriquecimiento Ilícito**

El funcionario, autoridad pública o empleado público, que con ocasión del cargo o de sus funciones obtuviere incremento patrimonial no justificado, será sancionado con prisión de tres a diez años.

En la misma pena de prisión incurrirá la persona interpuesta para simular el incremento patrimonial no justificado.

En todo caso, se impondrá inhabilitación especial para el ejercicio del cargo o empleo por el mismo tiempo.

**Constitution of the Republic of El Salvador (1983)**

*(Constitución de la República De El Salvador (1983))*

**Unofficial Translation** (Courtesy of DeepL)

### **Art. 240.-**

Public officials and employees who enrich themselves without just cause at the expense of the Public or Municipal Treasury shall be obliged to return to the State or the Municipality what they have illegitimately acquired, without prejudice to the responsibility they may have incurred in accordance with the law.



Unlawful enrichment is presumed when the increase in the capital of the official or employee, from the date on which he or she takes office until the date on which he or she leaves office, is significantly greater than that which he or she would normally have been entitled to receive, by virtue of the salaries and emoluments he or she has legally received, and increases in his or her capital or income for any other just cause. In determining such increase, the capital and income of the official or employee, his spouse and children shall be considered together.

The officers and employees determined by law are obliged to declare the status of their wealth before the Supreme Court of Justice, in accordance with the preceding paragraphs, within sixty days following the day on which they take office. The Court has the power to take such measures as it deems necessary to verify the veracity of the declaration, which it shall keep in reserve and shall serve only for the purposes provided for in this article. When the aforementioned officials and employees leave their posts, they shall make a new declaration of the state of their wealth. The law shall determine the penalties for failure to comply with this obligation.

Trials for enrichment without just cause may be brought only within ten years of the date on which the official or employee ceased to hold office, the exercise of which could have resulted in such enrichment.

**Original Text** ([https://www.oas.org/dil/esp/Constitucion\\_de\\_la\\_Republica\\_del\\_Salvador\\_1983.pdf](https://www.oas.org/dil/esp/Constitucion_de_la_Republica_del_Salvador_1983.pdf))

Constitución de la República De El Salvador (1983)

#### **Art. 240.-**

Los funcionarios y empleados públicos que se enriquecieron sin justa causa a costa de la Hacienda Pública o Municipal, estarán obligados a restituir al Estado o al Municipio lo que hubieren adquirido ilegítimamente, sin perjuicio de la responsabilidad en que hubieren incurrido conforme a las leyes.

Se presume enriquecimiento ilícito cuando el aumento del capital del funcionario o empleado, desde la fecha en que haya tomado posesión de su cargo hasta aquella en que haya cesado en sus funciones, fuere notablemente superior al que normalmente hubiere podido tener, en virtud de los sueldos y emolumentos que haya percibido legalmente, y de los incrementos de su capital o de sus ingresos por cualquier otra causa justa. Para determinar dicho aumento, el capital y los ingresos del funcionario o empleado, de su cónyuge y de sus hijos, se considerarán en conjunto.

Los funcionarios y empleados que la ley determine están obligados a declarar el estado de su patrimonio ante la Corte Suprema de Justicia, de acuerdo con los incisos anteriores, dentro de los sesenta días siguientes a aquél en que tomen posesión de sus cargos. La Corte tiene facultad de tomar las providencias que estime necesarias para comprobar la veracidad de la declaración, la que mantendrá en reserva y únicamente servirá para los efectos previstos en este artículo. Al cesar en sus cargos los funcionarios y empleados aludidos, deberán hacer nueva declaración del estado de sus patrimonios. La ley determinará las sanciones por el incumplimiento de esta obligación.

Los juicios por enriquecimiento sin causa justa sólo podrán incoarse dentro de diez años siguientes a la fecha en que el funcionario o empleado haya cesado en el cargo cuyo ejercicio pudo dar lugar a dicho enriquecimiento.

## Eswatini

### The Prevention of Corruption Act 2006

Original Text ([https://publicofficialsfinancialdisclosure.worldbank.org/sites/fdl/files/assets/law-library-files/Swaziland\\_Anti-Corruption%20Act\\_2006\\_EN.pdf](https://publicofficialsfinancialdisclosure.worldbank.org/sites/fdl/files/assets/law-library-files/Swaziland_Anti-Corruption%20Act_2006_EN.pdf))

#### 34. Possession of property etc. without reasonable explanation

(1) Subject to the provisions of subsection (2), a person who being or having been a public officer –

- (a) maintains a standard of living above that which is commensurate with the present or past official emoluments of that person; or,
- (b) is in control of pecuniary resources or property disproportionate to the present or past official emoluments of that person

shall be presumed to have committed an offence under section 21, 22, 23, 24, 25, 26, 28, 29, 30, 31, 32 or 33 and accordingly liable to the penalty prescribed in section 35.

(2) The presumption referred to in subsection (1) shall not apply in a case where the public officer gives the Commissioner or investigating officer a satisfactory account or explanation of how the officer maintains that standard of living and how the pecuniary resources or property came under the control of that officer.

(3) Where the Commissioner has reasonable ground to suspect that any person who has no known source of income or who is not known to be engaged in any gainful employment possesses or is in control of any property or pecuniary resources, the Commissioner shall request that person to give [a] satisfactory explanation in writing as to how the property or pecuniary resources have been acquired by or come under the control of that person.

(4) Where the person mentioned in subsection (3) is unable to give any satisfactory account or explanation that person shall be presumed to have committed an offence and liable on conviction to the penalty prescribed in section 35(1).

(5) Where a court is satisfied in the proceedings for an offence under subsection (1) or (4) that there is reason to believe that a person was holding pecuniary resources or property in trust or otherwise on behalf of the accused, or acquired those resources or that property as a gift or a loan without adequate consideration, from the accused, having regard to the relationship of that person to the accused, those resources or that property shall be presumed to have been in the control or in the possession of the accused.

(6) In this section “official emoluments” includes a pension or gratuity or any other retirement benefit payable under any law for the time being in force or under any terms and conditions of service or employment applicable to the public officer.

#### 35. Penalties

(1) A person who is convicted of an offence referred to in section 21, 22, 23, 24, 25, 26, 27 or 34 shall be liable to a fine not exceeding one hundred thousand Emalangeni or imprisonment not exceeding ten years or to both.

...

### 36. Additional penalty

(1) Where a person is convicted of an offence under this Part, the court shall in addition to any penalty it may impose under section 35 order the person convicted to pay to the rightful owner the amount or value, as determined by the court, of any advantage actually received by that person.

(2) Where after reasonable inquiry, the rightful owner cannot be ascertained or traced or is implicated in the commission of that particular offence under this Part, the court shall order that the amount or value of that advantage be forfeited to the Government.

(3) In addition to the fine a court may impose in terms of section 35, the court may impose a fine equal to five times the value of the advantage involved in the offence.

### 37. Dismissal on conviction

The conviction of a judicial officer or other public officer for an offence under this Part, shall, subject to any other law, warrant the dismissal from office of that judicial or public officer.

## Ethiopia

### The Criminal Code of the Federal Democratic Republic of Ethiopia Proclamation No.414/2004

Unofficial Copy (<https://www.wipo.int/edocs/lexdocs/laws/en/et/et011en.pdf>)

#### Article 419. Possession of Unexplained Property.

(1) Any public servant, being or having been in a public office, who:

- (a) maintains a standard of living above that which is commensurate with the official income from his present or past employment or other means; or
- (b) is in control of pecuniary resources or property disproportionate to the official income from his present or past employment or other means,

shall, unless he gives a satisfactory explanation to the Court [a]s to how he was able to maintain such a standard of living or how such pecuniary resources or property came under his control, be punished, without prejudice to the confiscation of the property or the restitution to the third party, with simple imprisonment or fine, or in serious cases, with rigorous imprisonment not exceeding five years and fine.

(2) Where the Court, during proceeding under sub-article (1)(b), is satisfied that there is reason to believe that any person, owing to his closeness to the accused or other circumstances, was holding pecuniary resource or property in trust for or otherwise on behalf of the accused, such resources or property shall, in the absence of evidence to the contrary, [be] presumed to have been under the control of the accused.

## Fiji

### Prevention of Bribery Act (Promulgation No. 12 of 2007)

**Original Text** (<https://ficac.org.fj/face/pdf/FICAC%20&%20Prevention%20of%20Bribery%20Act.pdf>)

#### 10. Possession of unexplained property

(1) Any person who, being or having been a prescribed officer –

- (a) maintains a standard of living above that which is commensurate with his present or past official emoluments; or
- (b) is in control of pecuniary resources of property disproportionate to his present or past official emoluments,

shall, unless he gives a satisfactory explanation to the court as to how he was able to maintain such a standard of living or how such pecuniary resources or property came under his control, be guilty of an offence.

(2) Where a court is satisfied in proceedings for an offence under subsection (1)(b) that, having regard to the closeness of his relationship to the accused and to other circumstances, there is reason to believe that any person was holding pecuniary resources or property in trust for or otherwise on behalf of the accused or acquired such resources or property as a gift from the accused, such resources or property shall, in the absence of evidence to the contrary, be presumed to have been in the control of the accused.

(3) In this section, “official emoluments” includes any pension or gratuity payable under any statutory law.

...

#### 12. Penalty for offences

(1) Any person guilty of an offence under this Part, other than an offence under section 3, shall be liable –

- (a) on conviction on indictment –
  - (i) for an offence under section 10, to a fine of \$1,000,000 and to imprisonment for 10 years;

...

- (b) on summary conviction –
  - (i) for an offence under section 10, to a fine of \$500,000 and to imprisonment for 3 years;

...

(3) In addition to any penalty imposed under subsection (1), the court may order a person

convicted of an offence under section 10(1)(b) to pay to the Government –

- (a) a sum not exceeding the amount of the pecuniary resources; or
- (b) a sum not exceeding the value of the property,

the acquisition of which by him was not explained to the satisfaction of the court.

(4) An order under subsection (3) may be enforced in the same manner as a judgment of the High Court in its civil jurisdiction.

#### **12AA. Confiscation of assets**

(1) Subject to this section, where a person is convicted on indictment of an offence under section 10(1)(b) the court may, in addition to any penalty imposed under section 12(1), order the confiscation of any pecuniary resources or property –

- (a) found at the trial to be in his control as provided in section 10; and
- (b) of an amount or value not exceeding the amount or value of pecuniary resources or property the acquisition of which by him was not explained to the satisfaction of the court.

(2) Any application for an order under subsection (1) shall be made by the Attorney-General within 28 days after the date of the conviction.

(3) An order under subsection (1) shall not be made in respect of pecuniary resources or property held by a person other than the person convicted unless that other person has been given reasonable notice that such an order may be made and has had an opportunity to show cause why it should not be made.

(4) An order under subsection (1) shall not be made in respect of pecuniary resources or property held by a person other than the person convicted if that other person satisfies the court in any proceedings to show cause under subsection (3) that he had –

- (a) acted in good faith as regards the circumstances in which the pecuniary resources or property came to be held by him; and
- (b) so acted in relation to the pecuniary resources or property that an order in the circumstances would be unjust.

(5) Nothing in subsection (4) shall be construed as limiting the court's discretion to decline to make an order under subsection (1) on grounds other than those specified in subsection (4).

(6) An order under subsection (1) – may be made subject to such conditions as the court thinks fit in all the circumstances of the case.

(7) A court may make orders under both subsection (1) and section 12(3) in respect of the same offence but shall not make orders under both provisions in respect of the same pecuniary resources or property.

(8) An order under subsection (1) may make provision for taking possession of pecuniary resources or property to which the order applies and for the disposal of such resources or property by or on behalf of the Government

## Guatemala

**Criminal Code, Decree No. 17-73 (as amended by the Law Against Corruption, Decree No 31-2012)**

*(Código Penal, Decreto Número 17-73 (modificado por Ley Contra La Corrupción, Decreto Número 31-2012))*

Unofficial Translation (Courtesy of DeepL)

### **Article 448 Bis.- Illicit enrichment**

(Added by Article 31 of Decree 31-2012 of the Congress of the Republic, Law against Corruption).

The crime of illicit enrichment is committed by the official, public employee or whoever exercises public functions, and up to five years after having ceased to exercise the public function, who obtains for himself or for any person a proprietary benefit, an increase in his level of expenses, cancellation of debts or obligations that do not correspond to that which he may have obtained, derived from the exercise of the position or from any income, and of which he cannot justify its licit origin.

The person responsible for this crime shall be punished with imprisonment from five to ten years, a fine from fifty thousand to five hundred thousand Quetzales and special disqualification.

### **Article 448 Ter.- Illicit enrichment of individuals**

(Added by Article 32 of Decree 31-2012 of the Congress of the Republic, Law Against Corruption).

The offence of illicit enrichment of private individuals is committed by anyone who, without being a public official or employee, administers, executes or manages public resources or State assets, up to five years after having ceased to hold such position, obtains for themselves or for any other person a patrimonial benefit, an increase in their level of expenditure, or cancellation of debts or obligations that do not correspond to what they may have obtained from their administration, execution or management or other lawful income.

The person responsible for this offence will be sanctioned with a prison sentence of four to eight years and a fine of fifty thousand to five hundred thousand Quetzales.

If a legal person is responsible for this offence, the provisions of article 38 of the Criminal Code shall apply to the imposition of the penalty.

...

### **Article 38.- Criminal liability of legal persons**

(Reformed by Article 2 of Decree 31-2012 of the Congress of the Republic, Law Against Corruption).

With regard to legal persons, directors, managers, executives, representatives, administrators, officials or employees of them, who have intervened in the act and without whose participation the act would not have taken place, shall be held responsible for the respective offences and

shall be punished with the same penalties indicated in this Code for individual persons.

Legal persons shall be liable in all cases in which, with their authorization or consent, their directors, managers, executives, representatives, administrators, officials or employees participate; in addition, when any of the following circumstances occur:

- a) When the criminal act is committed by the omission of control or supervision and the results are favorable to it.
- b) When the offence is committed by decision of the decision-making body.

In all offences for which legal persons are liable and for which there is no penalty, a fine shall be imposed of from ten thousand dollars (US\$10,000.00) to six hundred and twenty-five thousand United States dollars (US\$625,000.00), or the equivalent in national currency.

The fine shall be determined in accordance with the economic capacity of the legal person and shall be set taking into account the circumstances in which the offence was committed.

In case of recidivism, the definitive cancellation of its legal personality will be ordered.

**Original Text** ([http://ww2.oj.gob.gt/es/QueEsOI/EstructuraOI/UnidadesAdministrativas/CentroAnalisisDocumentacionJudicial/cds/CDs%20compilaciones/Compilacion%20Leyes%20Penales/expedientes/01\\_CodigoPenal.pdf](http://ww2.oj.gob.gt/es/QueEsOI/EstructuraOI/UnidadesAdministrativas/CentroAnalisisDocumentacionJudicial/cds/CDs%20compilaciones/Compilacion%20Leyes%20Penales/expedientes/01_CodigoPenal.pdf))

#### **Artículo 448 Bis.- Enriquecimiento ilícito**

(Adicionado por Artículo 31 del Decreto 31-2012 del Congreso de la República, Ley contra la Corrupción).

Comete delito de enriquecimiento ilícito, el funcionario, empleado público o quien ejerza funciones públicas, y hasta cinco años después de haber cesado en el ejercicio de la función pública, que obtenga para sí mismo o para cualquier persona un beneficio patrimonial, un incremento en su nivel de gastos, cancelación de deudas u obligaciones que no correspondan al que haya podido obtener, derivado del ejercicio del cargo o de cualquier ingreso y que no pueda justificar su procedencia lícita.

El responsable de este delito será sancionado con pena de prisión de cinco a diez años, multa de cincuenta mil a quinientos mil Quetzales e inhabilitación especial.

#### **Artículo 448 Ter.- Enriquecimiento ilícito de particulares**

(Adicionado por Artículo 32 del Decreto 31-2012 del Congreso de la República, Ley contra la Corrupción).

Comete el delito de enriquecimiento ilícito de particulares, quien sin ser funcionario o empleado público, administre, ejecute o maneje recursos públicos o bienes del Estado, hasta cinco años después de haber cesado en dicha función, que obtenga para sí mismo o para cualquier persona un beneficio patrimonial, incremento en su nivel de gastos, o cancelación de deudas u obligaciones que no correspondan al que haya podido obtener derivado de su administración, ejecución o manejo u otros ingresos lícitos.

El responsable de este delito será sancionado con pena de prisión de cuatro a ocho años y multa de cincuenta mil a quinientos mil Quetzales.

En caso que el responsable de este delito sea una persona jurídica, para la imposición de la pena se aplicará lo previsto en el artículo 38 del Código Penal.

...

**Artículo 38.- Responsabilidad penal de personas jurídicas**

(Reformado por Artículo 2 del Decreto 31-2012 del Congreso de la República, Ley contra la Corrupción).

En lo relativo a personas jurídicas se tendrá como responsables de los delitos respectivos a directores, gerentes, ejecutivos, representantes, administradores, funcionarios o empleados de ellas, que hubieren intervenido en el hecho y sin cuya participación no se hubiere realizado éste y serán sancionados con las mismas penas señaladas en este Código para las personas individuales.

Las personas jurídicas serán responsables en todos los casos en donde, con su autorización o anuencia, participen sus directores, gerentes, ejecutivos, representantes, administradores, funcionarios o empleados de ellas; además, cuando se dé alguna de las siguientes circunstancias:

- a) Cuando se comete el hecho delictivo por la omisión de control o supervisión y las resultas le son favorables.
- b) Cuando se comete el hecho delictivo por decisión del órgano decisor.

En todos los delitos donde las personas jurídicas resulten responsables y no se tenga señalada una pena, se impondrá multa desde diez mil Dólares (US\$10,000.00) hasta seiscientos veinticinco mil Dólares de los Estados Unidos de América (US\$625,000.00), o su equivalente en moneda nacional.

La multa será determinada de acuerdo a la capacidad económica de la persona jurídica y se fijará teniendo en cuenta las circunstancias en que se cometió el delito.

En caso de reincidencia se ordenará la cancelación definitiva de su personalidad jurídica.

**Guinea**

**Criminal Code, Law 59/2016**

*(Code Pénal, Loi 59/2016)*

Unofficial Translation (Courtesy of DeepL)

**Section VI: Illicit Enrichment**

**Article 776**

The illicit enrichment of any holder of an elective public office or a government function, of any magistrate, civil or military agent of the State or of a public body, of a person holding a public office, of a public depository or public or ministerial officer, of a manager or



agent of any nature of public establishments, national companies, semi-public companies subject by right to State control, legal persons under private law benefiting from financial assistance from the public authorities, professional bodies, private bodies responsible for the performance of a public service, associations or foundations recognised as being of public utility, shall be punished by imprisonment for a term of 3 to 10 years and a fine at least equal to the amount of the enrichment or only one of these two penalties, which may be increased to double that amount.

The offence of illicit enrichment is constituted when, upon simple formal request, one of the persons designated above is unable to justify the lawful origin of the resources that enable him to be in possession of an asset or to lead a lifestyle unrelated to his legal income.

The lawful origin of assets may be proved by any means. However, the mere proof of a gift is not sufficient to justify the lawful origin.

Where illicit enrichment is effected through the intermediary of a third party or a natural person managing the legal person, the accomplice shall be prosecuted as the principal perpetrator.

**Original Text** (<https://justiceguinee.gov.gn/laws/loi-059-portant-code-penal-octobre-2016/>)

## **Section VI : De l'enrichissement illicite**

### **Article 776**

L'enrichissement illicite de tout titulaire d'un mandat public électif ou d'une fonction gouvernementale, de tout magistrat, agent civil ou militaire de l'Etat, ou d'une collectivité publique, d'une personne revêtue d'un mandat public, d'un dépositaire public ou officier public ou ministériel, d'un dirigeant ou d'un agent de toute nature des établissements publics, des sociétés nationales, des sociétés d'économie mixte soumises de plein droit au contrôle de l'Etat, des personnes morales de droit privé bénéficiant du concours financier de la puissance publique, des ordres professionnels, des organismes privés chargés de l'exécution d'un service public, des associations ou fondations reconnues d'utilité publique, est puni d'un emprisonnement de 3 à 10 ans et d'une amende au moins égale au montant de l'enrichissement ou de l'une de ces deux peines seulement et pouvant être porté au double de ce montant.

Le délit d'enrichissement illicite est constitué lorsque, sur simple mise en demeure, une des personnes désignées ci-dessus, se trouve dans l'impossibilité de justifier l'origine licite des ressources qui lui permettent d'être en possession d'un patrimoine ou de mener un train de vie sans rapport avec ses revenus légaux.

L'origine licite des éléments du patrimoine peut être prouvée par tout moyen. Toutefois, la seule preuve d'une libéralité ne suffit pas à justifier de cette origine licite.

Dans le cas où l'enrichissement illicite est réalisé par l'intermédiaire d'un tiers ou d'une personne physique dirigeant la personne morale, le complice est poursuivi comme l'auteur principal.

## Guyana

### Integrity Commission Act 1997

Original Text ([https://parliament.gov.gy/documents/acts/6429-20\\_of\\_1997\\_integrity\\_commission\\_act\\_1997.pdf](https://parliament.gov.gy/documents/acts/6429-20_of_1997_integrity_commission_act_1997.pdf))

#### 42. Possession of unaccounted property or pecuniary resource

(1) Where a person who is or was a person in public life, or any other person on his behalf, is found to be in possession of property or pecuniary resource disproportionate to the known sources of income of the first mentioned person, and that person fails to produce satisfactory evidence to prove that the possession of the property or pecuniary resource was acquired by lawful means, he shall be guilty of an offence and shall be liable, on summary conviction, to a fine and to imprisonment for a term of not less than six months nor more than three years.

(2) In imposing a fine under subsection (1) on a person found guilty of an offence under that subsection, the court shall have regard to the value of the property or pecuniary resource in the possession of that person, which cannot be accounted for by his known sources of income or other lawful means of acquisition of the property or pecuniary resource and such fine shall be equivalent to one and one half times the value of the aforesaid property or pecuniary resource found to be in the possession of the said person.

## Haiti

### Law on the Prevention and Punishment of Corruption (Law No. CL-2014-008)

*(Loi portant prévention et répression de la corruption (Loi No. CL-2014-008))*

Unofficial Translation (Courtesy of DeepL)

#### Article 5.2. Illicit Enrichment

Any politician, public official, civil servant, magistrate or member of the police force who cannot reasonably justify a disproportionate increase in his or her assets in relation to his or her legitimate income shall be guilty of illicit enrichment.

Such act shall be punishable by imprisonment and a fine representing twice the value of such disproportion, without prejudice to the pecuniary penalties provided for in tax matters.

Any person found guilty of receiving illicit enrichment or the proceeds of illicit enrichment shall be sentenced to the same penalties as the perpetrator.

Original Text (<http://www.sgc.m.gouv.ht/wp-content/uploads/2017/03/Loi-portant-pr%C3%A9vention-et-r%C3%A9pression-de-la-corruption.pdf>)

#### Article 5.2. De l'enrichissement illicite

Toute personnalité politique, tout agent public, tout fonctionnaire, tout magistrat ou tout

membre de la force publique qui ne peut raisonnablement justifier une augmentation disproportionnée de son patrimoine par rapport à ses revenus légitimes est coupable d'enrichissement illicite.

Ce fait est puni de la réclusion et d'une amende représentant le double de la valeur de cette disproportion sans préjudice des sanctions pécuniaires prévues en matière fiscale.

Toute personne reconnue coupable du recel d'enrichissement illicite ou du produit de l'enrichissement illicite est condamnée aux mêmes peines que l'auteur.

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## 1987 Constitution of the Republic of Haiti

*(1987 Constitution de la République d'Haiti)*

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Unofficial Translation (Courtesy of DeepL)

### Article 241

The law sanctions offences against the tax authorities and illicit enrichment. Officials who are aware of such offences have the duty to report them to the competent authority.

### Article 242

Illicit enrichment may be established by all means of proof, including the presumption of a substantial disproportion between the official's means acquired since taking office and the accumulated amount of the salary or emoluments to which he is entitled as a result of the office held.

### Article 243

Officials guilty of the aforementioned offences shall be subject only to a limitation period of twenty years. This statute of limitations does not begin to run until he ceases to hold office or until the causes that would have prevented prosecution.

**Original Text** (<http://www.sgcm.gouv.ht/wp-content/uploads/2017/03/CONSTITUTION-DE-1987-VERSIONS-FRANCAISE-ET-CREOLE-ET-LOI-CONSTITUTIONNELLE-PORTANT-AMENDEMENT-DE-LA-CONSTITUTION.pdf>)

### Article 241

La loi sanctionne les infractions contre le fisc et l'enrichissement illicite. Les Fonctionnaires qui ont connaissance de tels faits ont pour devoir de les signaler à l'Autorité Compétente.

### Article 242

L'enrichissement illicite peut être établi par tous les modes de preuves, notamment par présomption de la disproportion marquée entre les moyens du fonctionnaire acquis depuis son entrée en fonction et le montant accumulé du Traitement ou des Emoluments auxquels lui a donné droit la charge occupée.

### Article 243

Le Fonctionnaire coupable des délits sus-désignés ne peut bénéficier que de la prescription vicennale. Cette prescription ne commence à courir qu'à partir de la cessation de ses fonctions ou des causes qui auraient empêché toute poursuite.

## Honduras

**Criminal Code (Decree No. 130-2017)**

*(Código Penal (Decreto No. 130-2017))*

Unofficial Translation (Courtesy of DeepL)

### Article 484.- Illicit Enrichment.

A public official or employee who increases his or her wealth by more than Five Hundred Thousand Lempiras (L.500,000) above his or her legitimate income during the exercise of his or her duties and up to two (2) years after leaving office, for reasons that cannot be reasonably justified, shall be punished by imprisonment for four (4) to six (6) years, a fine of an amount equal to or up to three times the illegally obtained enrichment and absolute disqualification for twice the term of the prison sentence.

The acts referred to in the preceding paragraph shall be punishable by imprisonment increased by one third (1/3), a fine of an amount equal to or up to four (4) times the unduly obtained enrichment and absolute disqualification for twice the term of imprisonment, if the amount of the illicit enrichment exceeds one million Lempiras (L.1,000,000).

**Original Text** ([https://www.tsc.gob.hn/web/leyes/Decreto\\_130-2017.pdf](https://www.tsc.gob.hn/web/leyes/Decreto_130-2017.pdf))

### Artículo 484.- Enriquecimiento Ilícito.

El funcionario o empleado público que incrementa su patrimonio en más de Quinientos Mil Lempiras (L.500,000) por encima de sus ingresos legítimos durante el ejercicio de sus funciones y hasta dos (2) años después de haber cesado en ellas y por motivos que no puedan ser razonadamente justificados, debe ser castigado con las penas de prisión de cuatro (4) a seis (6) años, multa por una cantidad igual o hasta el triple del enriquecimiento ilícitamente obtenido e inhabilitación absoluta por el doble del tiempo de la condena de prisión.

Los hechos a que se refiere el párrafo anterior deben ser castigados con la pena de prisión incrementada en un tercio (1/3), multa por una cantidad igual o hasta cuatro (4) veces el enriquecimiento indebidamente obtenido e inhabilitación absoluta por el doble del tiempo de la condena de prisión, si la cuantía del enriquecimiento ilícito supera el Millón de Lempiras (L.1.000.000).

## India

**Prevention of Corruption Act, 1988, (as amended by the Prevention of Corruption (Amendment) Act, 2018)**

**Original Text** ([https://www.indiacode.nic.in/show-data?actid=AC\\_CEN\\_26\\_36\\_00001\\_198849\\_1517807318890&sectionId=43725&sectionno=13&orderno=14](https://www.indiacode.nic.in/show-data?actid=AC_CEN_26_36_00001_198849_1517807318890&sectionId=43725&sectionno=13&orderno=14))

**Section 13 Criminal misconduct by a public servant**

(1) A public servant is said to commit the offence of criminal misconduct—

...

(b) if he intentionally enriches himself illicitly during the period of his office.

*Explanation 1.* — A person shall be presumed to have intentionally enriched himself illicitly if he or any person on his behalf, is in possession of or has, at any time during the period of his office, been in possession of pecuniary resources or property disproportionate to his known sources of income which the public servant cannot satisfactorily account for.

*Explanation 2.* — The expression “known sources of income” means income received from any lawful sources.”.

(2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than four years but which may extend to ten years and shall also be liable to fine.

### **Section 16 Matters to be taken into consideration for fixing fine**

Where a sentence of fine is imposed under [section 7 or section 8 or section 9 or section 10 or section 11 or sub-section (2) of section 13 or section 14 or section 15], the court in fixing the amount of the fine shall take into consideration the amount or the value of the property, if any, which the accused person has obtained by committing the offence or where the conviction is for an offence referred to in [clause (b)] of sub-section (1) of section 13, the pecuniary resources or property referred to in that clause for which the accused person is unable to account satisfactorily.

## **Jamaica**

### **The Corruption (Prevention) Act 2000**

**Original Text** (<https://moj.gov.jm/sites/default/files/laws/The%20Corruption%20Prevention%20Act.pdf>)

#### **14. Acts of Corruption**

(5) Where a public servant –

- (a) owns assets disproportionate to his lawful earnings; and
- (b) upon being requested by the Commission or any person duly authorized to investigate an allegation of corruption against him, to provide an explanation as to how he came by such assets, he –
  - (i) fails to do so; or
  - (ii) gives an explanation which is not considered to be satisfactory,

he shall be liable to prosecution for the offence of illicit enrichment and, on conviction thereof,

to the penalties specified in Section 15(1).

(5A) It shall be a defense to a person charged with an offence of illicit enrichment to show the court that he came by the assets by lawful means.

## 15. Offences

(1) Any person who commits an act of corruption commits an offence as is liable –

(a) on summary conviction in a Resident Magistrate’s Court –

- (i) in the case of a first offence, to a fine not exceeding one million [Jamaica Dollars] or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment; and
- (ii) in the case of a second or subsequent offence, to a fine not exceeding three million [Jamaica Dollars] or to imprisonment for a term not exceeding three years or to both such fine and imprisonment.

(b) On conviction in a Circuit Court –

- (i) in the case of a first offence to a fine not exceeding five million [Jamaica Dollars] or to imprisonment for a term not exceeding five years or to both such fine and imprisonment; and
- (ii) in the case of a second or subsequent offence, to a fine not exceeding ten million [Jamaica Dollars] or to imprisonment for a term not exceeding 10 years or to both such fine and imprisonment.

## Jordan

### Financial Declaration Law (No. 15 of 2006)

قانون اشهار الذمة المالية لسنة 2006

Unofficial Translation (Courtesy of Systran.net)

#### Article 6

Illegal enrichment is considered as all money, movable or immovable, obtained as a benefit or a usufruct right by any person to whom the provisions of this law apply, for him/herself or for others, by the exploitation of a position or capacity, and If an increase occurs in his/her property or the property of his/her minor children after assuming the position or in the performance of the capacity, and is inconsistent with their resources, and if such person is unable to prove a legitimate source of such increase, it shall be considered as the exploitation of the position or capacity.

#### Article 11

(a) Temporary hard labor shall be imposed on anyone who obtains unlawful enrichment for himself or others, and a fine equivalent to the amount of that enrichment and a similar return.

(b) the competent court shall order the third party who benefited from the illicit enrichment to return from his/her funds to the state treasury as much as he benefited.

(c) The failure of the lawsuit due to death does not preclude the ruling of reinstating the illicit enrichment within two years from the date of death

**Original Text** (<http://www.undp-aciac.org/resources/ac/legal.aspx?lc=6>)

#### المادة ستة

يعتبر اثناء غير مشروع كل مال، منقول او غير منقول، منفعة او حق منفعة يحصل عليه أي شخص تسري عليه احكام هذا القانون، لنفسه او لغيره، بسبب استغلال الوظيفة او الصفة، وإذا طرأت زيادة على ماله او على مال اولاده القصر بعد توليه الوظيفة او قيام الصفة وكانت لا تتناسب مع مواردهم وعجز هذا الشخص عن اثبات مصدر مشروع لتلك الزيادة فتعتبر ناتجة من استغلال الوظيفة او الصفة

#### المادة إحدى عشر

- أ- يعاقب بالأشغال الشاقصة المؤقتة كل من حصل على اثناء غير مشروع، لنفسه او لغيره، وبغرامة تعادل مقدار ذلك الاثراء ورد مثله.
- ب- على المحكمة المختصة ان تحكم على الغير الذي استفاد من الاثراء غير المشروع بالرد من امواله الى خزينة الدولة بقدر ما استفاد.
- ت- لا يمنع سقوط الدعوى بالوفاة من الحكم برد الاثراء غير المشروع وذلك خلال سنتين من تاريخ الوفاة

## Kuwait

### Law No. 2 of 2016 On Establishing Kuwait Anti-Corruption Authority and the Provisions on Disclosure of Assets and Liabilities

**Official Translation** (<https://www.nazaha.gov.kw/EN/Pages/KD.aspx>)

#### Article 1

For the purposes of applying the provisions of this law, the following words and phrases shall have the meanings assigned to them, unless the context otherwise requires:

...

- Illicit Gain: Any increase in the wealth or diminution of liabilities occurs - because of assuming an office or a capacity - to the official subject to this law, his minor children or those under his guardianship, custodianship or curatorship whenever it is disproportionate to their resources and it is unjustified.

#### Article 22

In applying this Law, Corruption Offences shall include the following:

...

6. The offences of Illicit Gain as set forth herein.

**Article 48**

Whoever commits the offence of Illicit Gain shall be punished by imprisonment for a term not exceeding five years and fine equals to the value of the Illicit Gain, which he obtained, in addition to ruling with the confiscation of the Illicit Gain, whether it was in his own account or in the account of his spouse or minor children or those under his guardianship or curatorship.

The lapse of the criminal action due to death shall not preclude the confiscation ruling of the Illicit Gain.

...

**Article 55**

The court may bring any natural or legal person, whom it believes to have earnestly benefited from the Illicit Gain, into the case. Further, the dismissal or confiscation ruling shall be enforceable to his wealth in proportion to the extent of benefits he gained.

## Kyrgyzstan

Criminal Code, No. 19 of 2 February 2017

**УГОЛОВНЫЙ КОДЕКС КЫРГЫЗСКОЙ РЕСПУБЛИКИ, от 2 февраля 2017 года № 19**

Unofficial Translation (Courtesy of Yandex)

**Article 323. Illicit enrichment**

1. The acquisition by an official of property (use), the value of which exceeds his official income, confirmed by legal sources for two full years, or the transfer of such property to close relatives, -

are punished by a fine of the VI category or imprisonment of the II category with deprivation of the right to hold certain positions or to engage in certain activities for a period of up to two years with a fine of the II category.

2. The same acts:

- 1) committed by an official in a responsible position;
- 2) if the value of the property exceeds the official income of the official, confirmed by legal sources for five full years, -

are punished by imprisonment of the III category with deprivation of the right to hold certain positions or to engage in certain activities for a period of up to three years with a fine of the III category.

**Original Text** (<http://cbd.minjust.gov.kg/act/view/ru-ru/111527>)

**Статья 323. Незаконное обогащение**

1. Приобретение должностным лицом в собственность (пользование) имущества, стоимость которого превышает его официальные доходы,



подтвержденные законными источниками за два полных года, или передача им такого имущества близким родственникам, -

наказываются штрафом VI категории или лишением свободы II категории с лишением права занимать определенные должности либо заниматься определенной деятельностью на срок до двух лет со штрафом II категории.

2. Те же деяния:

- 1) совершенные должностным лицом, занимающим ответственное положение;
- 2) если стоимость имущества превышает официальные доходы должностного лица, подтвержденные законными источниками за пять полных лет, -

наказываются лишением свободы III категории с лишением права занимать определенные должности либо заниматься определенной деятельностью на срок до трех лет со штрафом III категории.

## Lebanon

### Law on Financial Disclosure, Conflicts of Interest and the Punishment of Illicit Enrichment (Law No. 189 dated 16/10/2020)

قانون الذمة المالية وتضارب المصالح ومعاقبة التزاء غير المشروع  
(القانون رقم ١٨٩ تاريخ ٢٠٢٠/١٠/١٦)

#### Unofficial Translation

#### Article 10 - Elements of the offense of Illicit Enrichment

A- Illicit Enrichment is considered any significant increase that occurs in Lebanon and abroad after assuming the public office on the financial responsibility of any public official, whether he/she is subject to the permit or not, and when this increase cannot be reasonably justified in relation to his legitimate resources. The aforementioned lack of justification is considered an element of the offense.

B - For the implementation of the provisions of this Article, both the spouse and minor children are considered as one person, as well as aliases, and/or trustees - through serial property or other indirect, hierarchical means of control or outside them - pursuant to applicable laws.

#### Article 14 - Punishment

Whoever commits the offense of illicit enrichment shall be punished by imprisonment from three to seven years and a fine from thirty times to two hundred times for the official minimum wage.

The ruling decides to publish it in two local newspapers, as well as to return the funds acquired through illicit enrichment to the concerned and affected parties, if any, otherwise, it is confiscated in the interest of the treasury.

### Article 15 - Aggravation of the penalty

The punishment increases from one third to one half for every public official who uses violence, coercion, threat, enticement, distraction of influence, or abuse of power to influence procedures related to his/her prosecution or trial.

Original Text ([http://www.csb.gov.lb/announcements/Law189\\_2020\\_csb.pdf](http://www.csb.gov.lb/announcements/Law189_2020_csb.pdf))

#### المادة ١٥ - عناصر جرم الإثراء غير المشروع

أ- يعتبر إثراء غير مشروع كل زيادة كبيرة تحصل في لبنان والخارج بعد تولي الوظيفة العمومية على الذمة المالية لأي موظف عمومي، سواء أكان خاضعاً للتصريح أو غير خاضع له، متى كانت هذه الزيادة لا يمكن تبريرها بصورة معقولة نسبة لموارده المشروعة. ويعتبر عدم التبرير المذكور عنصراً من عناصر الجرم.

ب- لتطبيق أحكام هذه المادة يعتبر بمثابة الشخص الواحد كل من الزوج والأولاد القاصرين، كما والأشخاص المستعارين و/أو المؤتمنين و/أو الوصيين- من خلال تملكات متسلسلة أو وسائل سيطرة غير مباشرة متسلسلة أخرى أو خارجها- عملاً بالقوانين المرعية.

#### المادة ١٤ - العقوبة

يعاقب بالحبس من ثلاث إلى سبع سنوات وبغرامة من ثلاثين مرة إلى مائتي مرة الحد الأدنى الرسمي للأجور كل من أقدم على جرم الإثراء غير المشروع.

يقضي الحكم بنشره في جريدتين محليتين، كما يقضي برد الأموال المكتسبة بطريق الإثراء غير المشروع إلى الجهات المعنية والمتضررة إن وجدت، وإلا فمصادرتها لمصلحة الخزينة

#### المادة ١٥ - تشديد العقوبة

تشدد العقوبة من الثلث إلى النصف على كل موظف عمومي استخدم العنف أو الاكراه أو التهديد أو الترغيب أو صرف النفوذ أو استغلال السلطة للتأثير في إجراءات تتعلق بملاحقته أو محاكمته.

## Libya

### Law No. 3 of 1970 on Unjust Enrichment

قانون رقم (3) لسنة 1970 بشأن الكسب الحرام

Unofficial Translation (Courtesy of Systran/Google Translate)

#### Article 4

Any increase in the financial liability of any person is subject to the provisions of this Law if such increase is not commensurate with the financial resources of the declarant and the person covered by such declaration and if he/she fails to establish a proof of the source thereof, or if it is proved to have been acquired through the exploitation of the position, function, service or capacity of the declarant, whether directly or indirectly. Any person who engages with any of the persons mentioned in the previous articles or who colludes with him on the exploitation of his position, job, service or capacity shall also be considered a gain of a penalty of deprivation.

### Article 13

The ruling to return the forbidden earnings results in removal from the position, job, or service.

### Article 14

Every person who proves that he obtained unlawful earnings shall be punished with imprisonment and a fine not exceeding one thousand Egyptian pounds.

**Original Text** (DCAF <https://security-legislation.ly/node/33532/compare>)

#### مادة (أربعة)

يعتبر كسبا حراما كل زيادة تطرأ على الذمة المالية لأي ممن تسري في شأنهم أحكام هذا القانون إذا كانت هذه الزيادة لا تتناسب مع الموارد المالية لمقدم الإقرار ومن يشملهم هذا الإقرار، وعجز عن إثبات مصدرها، أو ثبت أنها اكتسبت بسبب استغلال المنصب أو الوظيفة أو الخدمة أو صفة مقدم الإقرار سواء كان ذلك بطريق مباشر أو غير مباشر.

كما يعتبر كسبا حراما كل مال حصل عليه أي شخص من طريق اشتراكه مع أي شخص ممن ذكروا في المواد السابقة أو تواطئه معه على استغلال منصبه أو وظيفته أو خدمته أو صفته.

#### مادة (ثلاثة عشر)

يترتب على الحكم برد الكسب الحرام العزل من المنصب أو الوظيفة أو الخدمة.

#### مادة (أربعة عشر)

يعاقب كل شخص يثبت أنه حصل على كسب حرام بالسجن وبغرامة لا تتجاوز ألف جنيه

## Lithuania

Law on the Approval and Entry into Force of the Criminal Code 26 September 2000 No VIII-1968 (as amended 21 November 2017 No XIII-791)

Unofficial Translation ([https://www.legislationline.org/download/id/8272/file/Lithuania\\_CC\\_2000\\_am2017\\_en.pdf](https://www.legislationline.org/download/id/8272/file/Lithuania_CC_2000_am2017_en.pdf))

### Article 189(1) Unjust Enrichment

1. A person who holds by the right of ownership the property whose value exceeds 500 MSLs, while being aware or being obliged and likely to be aware that such property could not have been acquired with legitimate income, shall be punished by a fine or by arrest or by a custodial sentence for a term of up to four years.

2. A person who takes over the property referred to in paragraph 1 of this Article from third parties shall be released from criminal liability for unjust enrichment where he gives a notice thereof to law enforcement institutions before the service of a notice of suspicion and actively cooperates in determining the origin of the property.

3. A legal entity shall also be held liable for the acts provided for in this Article.

## Madagascar

### Penal Code of Madagascar (as amended by Law No 2016-020 of 22 August 2016 on the Fight Against Corruption)

*(Code pénal Malagasy (modifié par Loi No 2016-020 du 22 août 2016 sur la lutte contre la corruption))*

Unofficial Translation (Courtesy of DeepL)

#### Article 183.1 - Illicit enrichment

Will be punished by imprisonment from 6 months to 5 years and a fine from 10 million Ariary to 200 million Ariary, any person in charge of a public authority or entrusted with a public service mission, any person invested with an elective public mandate, any manager, agent or employee of a public enterprise who cannot reasonably justify a substantial increase in his assets in relation to his legitimate income.

Any person who knowingly possesses illicit goods and resources originating from the above-mentioned persons shall be punished by the same penalties.

Legal persons found guilty of holding illicit goods and resources, of being an intermediary or beneficiary in any form whatsoever shall be sentenced to suspension of the exercise of any social and commercial activity for a period of at least 5 years and not exceeding 20 years and to pay five times the amount of the fines provided for the natural person or only one of these two penalties, without prejudice to the application of the provisions of Article 181.1 paragraph 4 of the Criminal Code.

Anyone who has knowingly benefited from any advantage resulting from the commission of the offence provided for and punished by this article shall be subject to the same penalties.

Illicit enrichment is a continuous offence characterized by the possession of assets or the use of illicit resources.

Proof of the lawful origin of the enrichment or resources may be furnished by any means.

However, a person shall be exempt from prosecution on the basis of this Article who, before the opening of an information or direct summons, has revealed the facts to the administrative or judicial authorities and has allowed the identification and conviction of the principal perpetrator.

The conviction decision may also order the confiscation for the benefit of the State, public authorities, public and para-public bodies of all or part of the property of the convicted person up to the amount of the damage suffered.

**Original Text** (<https://bianco-mg.org/loi-anticorruption/>; <https://www.dcn-pac.mg/uploads/loi/9952a6fa302bbb34c6055193f4769f19.pdf>)

#### Art. 183.1 - De l'enrichissement illicite

Sera punie d'un emprisonnement de 6 mois à 5 ans et d'une amende de 10 millions d'Ariary à 200 millions Ariary, toute personne dépositaire de l'autorité publique ou chargée d'une

mission de service public, toute personne investie d'un mandat public électif, tout dirigeant, mandataire ou salarié d'entreprise publique qui ne peut raisonnablement justifier une augmentation substantielle de son patrimoine par rapport à ses revenus légitimes.

Sera punie des mêmes peines toute personne qui aura sciemment détenu des biens et ressources illicites provenant des personnes ci-dessus visées.

Les personnes morales reconnues coupables de détention des biens et ressources illicites, d'intermédiaire, ou de bénéficiaire sous une forme quelconque seront condamnées à la suspension de l'exercice de toute activité sociale et commerciale d'une durée d'au moins 5 ans et n'excédant pas 20 ans ainsi que de payer le quintuple du montant des amendes prévues pour la personne physique ou l'une de ces deux peines seulement, sans préjudice de l'application des dispositions prévues par l'article 181.1 alinéa 4 du Code pénal.

Quiconque ayant été bénéficiaire en connaissance de cause d'un avantage quelconque résultant de la commission de l'infraction prévue et réprimée par le présent article se verra appliquer les mêmes peines.

L'enrichissement illicite constitue une infraction continue caractérisée par la détention du patrimoine ou l'emploi des ressources illicites.

Les preuves de l'origine licite de l'enrichissement ou des ressources pourront être rapportées par tous moyens.

Toutefois, sera exemptée de toute poursuite sur le fondement du présent article la personne qui, avant ouverture d'une information ou citation directe aura révélé les faits aux autorités administratives ou judiciaires et permis l'identification et la condamnation de l'auteur principal.

La décision de condamnation pourra en outre prononcer la confiscation au profit de l'Etat, des collectivités publiques, des organismes publics et parapublics de tout ou partie des biens du condamné jusqu'à concurrence du préjudice subi.

## Malawi

### Corrupt Practices Act 1995 (as amended in 2004)

Original Text ([https://malawilii.org/mw/consolidated\\_legislation/704](https://malawilii.org/mw/consolidated_legislation/704))

#### 32. Possession of unexplained property

(1) The Director, the Deputy Director or any officer of the Bureau authorized in writing by the Director may investigate any public officer where there are reasonable grounds to believe that such public officer—

- (a) maintains a standard of living above that which is commensurate with his present or past official emoluments or other known sources of income;
- (b) is in control or possession of pecuniary resources or property disproportionate to his present or past official emoluments or other known sources of income; or

- (c) is in receipt directly or indirectly of the benefit of any services which he may reasonably be suspected of having received corruptly or in circumstances which amount to an offence under this Act.

(2) Any public officer who, after due investigation carried out under the provisions of subsection (1), is found to—

- (a) maintain a standard of living above that which is commensurate with his present or past official emoluments or other known sources of income;
- (b) be in control or possession of pecuniary resources or property disproportionate to his present or past official emoluments or other known sources of income; or
- (c) be in receipt directly or indirectly of the benefit of any services which he may reasonably be suspected of having received corruptly or in circumstances which amount to an offence under this Act, shall, unless he gives a reasonable explanation, be charged with having or having had under his control or in his possession pecuniary resources or property reasonably suspected of having been corruptly acquired and, unless he gives a satisfactory explanation to the court as to how else he was able to maintain such a standard of living, or such pecuniary resources or property came under his control or his possession, or he came to enjoy the benefits of such services, he shall be guilty of an offence.

(3) In this section—

- (a) “official emoluments” includes a pension, gratuity or other terminal benefits;
- (b) “public officer” includes any person who has held office as a public officer on or after 6th July, 1964.

### **34. Penalty**

Any person who is guilty of an offence under this Part shall be liable to imprisonment for twelve years.

### **36B. Value of property**

In any proceedings for an offence under this Part, the court may infer that property was obtained or derived as a result of the commission of an offence where there is evidence establishing that the value after the commission of the offence of all the property of the accused exceeds the value of all his property before the commission of the offence, and the court is satisfied that his income from sources unrelated to the offence he is alleged to have committed cannot reasonably account for that increase in value.

### **37. Penalty additional to other punishment**

Where any person is convicted of an offence under Part IV, the court shall, in addition to any other penalty that it may pass under section 34—

- (a) order that any money or other pecuniary resources, wealth, property, profit, asset, business interest or other advantage, or the value thereof, as is ascertained by the court to have been acquired through or to be tainted with or otherwise connected with the commission of the offence shall be forfeited to the Government;

**Mali****Law No. 2014-015 of 27 May 2014 on the Prevention and Repression of Illicit Enrichment**

*(Loi N°2014-015/ Du 27 mai 2014 portant prévention et répression de l'enrichissement illicite)*

**Unofficial Translation** (Courtesy of DeepL)

**Article 2**

For the purposes of this Act, the following shall constitute illicit enrichment: either a substantial increase in the assets of any person, as referred to in article 3 below, which that person cannot justify in relation to his or her legitimate income, or a way of life pursued by that person unrelated to his or her legitimate income.

**Article 3**

Those subject to the present law include, any natural person, civil or military, depository of public authority, entrusted with public service even occasionally, or invested with an elective mandate; any agent or employee of the State, public authorities, State companies and enterprises, public establishments, cooperative bodies, unions, associations or federations of the said bodies, associations recognized as being of public utility, professional orders, bodies of an industrial or commercial nature in which the State or a public authority holds a fraction of the share capital, and in general, any person acting in the name of or on behalf of the public authority and/or with the means or resources of the latter.

The provisions of this Law shall also apply to any legal person who participated in the commission of the offense.

**Article 4**

Any person who intentionally permits or facilitates illicit enrichment is an accomplice in the commission of the offence.

The same shall apply to any person who, knowing that the property in his or her possession is derived from illicit enrichment, nevertheless consents to keep or conceal it by assisting the offender.

However, a person who, prior to the opening of an investigation into illicit enrichment, has revealed to the judicial authorities the facts constituting such an offence, shall not be prosecuted as an accomplice.

For the establishment of complicity, personal knowledge, intention or motivation may be inferred from objective factual circumstances.

**Article 5**

Illicit enrichment is a continuing offence. The limitation period shall run only from the day on which the elements constituting illicit enrichment are discovered. Illicit enrichment is an offence deemed to be consummated by the mere continuation of its effects.

...

**Article 37**

Where the value of property deemed illicit is less than or equal to 50,000,000 francs, the penalty shall be 1 to 3 years imprisonment and a fine equal to the said value.

Where the value of the goods deemed illicit is greater than 50,000,000 francs, the penalty shall be 3 to 5 years imprisonment and a fine equal to twice the value of the said goods.

Accomplices shall incur the same penalties as the principal perpetrator.

In all cases, the suspended sentence may be pronounced only when the unlawfully acquired amount has been repaid in full.

**Article 38**

A natural person convicted of illicit enrichment shall also be liable to the following additional penalties:

1. Confiscation of all or part of his property;
2. A permanent ban or prohibition for a period of three (03) to six (06) years from exercising the profession or activity in connection with which the offence was committed and a ban on performing any public function;
3. Temporary deprivation of civil and political rights for a period not exceeding ten (10) years.

**Article 39**

Any legal person, other than the State and its branches, on whose behalf or for whose benefit the offence of illicit enrichment was committed by one of its organs or representatives, shall be punished by a fine of five times the fine incurred by natural persons, whether or not such persons have been convicted as perpetrators or accomplices in the offence.

The liability of the legal person shall not exclude that of the natural person.

**Article 40**

The convicted legal person, other than the State or a company with public financial participation, shall also be subject to one of the following sanctions:

1. Exclusion from public contracts, either definitively or for a period of at least five years;
2. A prohibition, either definitively or for a period of at least five years, on the direct or indirect exercise of one or more commercial, professional or social activities in the course of which the offence was committed;
3. The closure, permanently or for a period of at least five years, of one or more establishments of the undertaking which were used to commit the offence;
4. The posting of the decision pronounced at the Court of First Instance and/or at the Town Hall or its dissemination in the written and/or audiovisual media, at its own expense.
5. Dissolution.



...

#### **Article 42**

In the event of a conviction for illicit enrichment, the competent court shall issue a confiscation order:

- of funds and property forming part of the proceeds of crime, including property intermingled with or derived from such proceeds or exchanged for such proceeds, or property the value of which corresponds to that of such proceeds;
- of property that forms the subject-matter of the offence;
- of the income and other benefits derived from such funds or property;
- of those funds or property that have been transferred to a party.

**Original Text** (<https://sgg-mali.ml/JO/2014/mali-jo-2014-26.pdf>)

#### **Article 2**

Au sens de la présente loi, constitue un enrichissement illicite: soit l'augmentation substantielle du patrimoine de toute personne, visée à l'article 3 ci-après, que celui-ci ne peut justifier par rapport à ses revenus légitimes, soit un train de vie mené par cette personne sans rapport avec ses revenus légitimes.

#### **Article 3**

Sont assujettis à la présente loi, toute personne physique civile ou militaire, dépositaire de l'autorité publique, chargée de service public, même occasionnellement, ou investie d'un mandat électif ; tout agent ou employé de l'Etat, des collectivités publiques, des sociétés et entreprises d'Etat, des établissements publics, des organismes coopératifs, unions, associations ou fédérations desdits organismes, des associations reconnues d'utilité publique, des ordres professionnels, des organismes à caractère industriel ou commercial dont l'Etat ou une collectivité publique détient une fraction du capital social, et de manière générale, toute personne agissant au nom ou pour le compte de la puissance publique et/ou avec les moyens ou les ressources de celle-ci.

Les dispositions de la présente loi sont aussi applicables à toute personne morale qui a participé à la commission de l'infraction.

#### **Article 4**

Toute personne ayant, intentionnellement, permis ou facilité les faits d'enrichissement illicite est complice dans la commission de l'infraction.

Il en est de même de toute personne qui, sachant que les biens en sa détention proviennent d'un enrichissement illicite, consent, néanmoins, à les garder ou à les dissimuler par assistance à l'auteur de l'infraction.

Toutefois ne sera pas poursuivie comme complice, la personne qui, avant l'ouverture d'une information pour enrichissement illicite, aura révélé aux autorités judiciaires les faits constitutifs d'une telle infraction.

Pour l'établissement de la complicité, la connaissance, l'intention ou la motivation personnelles peuvent se déduire des circonstances factuelles objectives.

#### **Article 5**

L'enrichissement illicite est une infraction continue. Le délai de prescription ne court qu'à compter du jour de la découverte des éléments constitutifs de l'enrichissement illicite. L'enrichissement illicite est une infraction réputée consommée par la seule continuation de ses effets.

...

#### **Article 37**

Lorsque la valeur des biens jugés illicites est inférieure ou égale à 50.000.000 de francs, la peine sera de 1 à 3 ans d'emprisonnement et d'une amende égale à ladite valeur.

Lorsque la valeur des biens jugés illicites est supérieure à 50.000.000 de francs, la peine sera de 3 à 5 ans d'emprisonnement et d'une amende égale au double de la valeur desdits biens.

Les complices encourent les mêmes peines que l'auteur principal. Dans tous les cas, la peine assortie du sursis ne peut être prononcée que lorsque le montant illicitement acquis est intégralement remboursé.

#### **Article 38**

La personne physique condamnée pour enrichissement illicite encourt, en outre, les peines complémentaires suivantes:

1. la confiscation de tout ou partie de ses biens;
2. l'interdiction définitive ou pour une durée de trois (03) à six (06) ans d'exercer la profession ou l'activité à l'occasion de laquelle l'infraction a été commise et interdiction d'exercer toute fonction publique;
3. la privation temporaire des droits civiques et politiques ne pouvant excéder dix (10) ans.

#### **Article 39**

Toute personne morale, autre que l'Etat et ses démembrements, pour le compte ou le bénéfice de laquelle l'infraction d'enrichissement illicite a été commise par l'un de ses organes ou représentants, sera punie d'une amende d'un taux égal au quintuple de celle encourue par les personnes physiques, que ces personnes aient été ou non condamnées comme auteurs ou complices de l'infraction.

La responsabilité de la personne morale n'exclut pas celle de la personne physique.

#### **Article 40**

La personne morale condamnée, autre que l'Etat ou une société à participation financière publique, encourt, en outre, l'une des sanctions suivantes:

1. l'exclusion des marchés publics, à titre définitif ou pour une durée de cinq ans au moins;

2. l'interdiction, à titre définitif ou pour une durée de cinq ans au moins, d'exercer directement ou indirectement une ou plusieurs activités commerciales, professionnelles ou sociales à l'occasion de laquelle ou desquelles l'infraction a été commise;
3. la fermeture définitive ou pour une durée de cinq ans, au moins, de l'un ou des établissement(s) de l'entreprise ayant servi à commettre les faits;
4. l'affichage de la décision prononcée au Tribunal et/ou à la Mairie ou sa diffusion dans la presse écrite et/ou audiovisuelle, à ses frais.
5. la dissolution.

...

#### Article 42

En cas de condamnation pour enrichissement illicite, le Tribunal compétent prononce une décision de confiscation:

- des fonds et des biens qui forment le produit de l'activité criminelle, y compris des biens mêlés à ce produit ou tirés de ce produit ou échangés contre ce produit, ou de biens dont la valeur correspond à celle de ce produit;
- de ceux qui forment l'objet de l'infraction;
- de ceux qui constituent le revenu et autres avantages tirés de ces fonds ou biens;
- de ceux qui ont été transférés à une partie.

## Marshall Islands

### Criminal Code 2011

**Original Text** ([http://rmiparlament.org/cms/images/LEGISLATION/PRINCIPAL/2011/2011-0059/CriminalCode2011\\_1.pdf](http://rmiparlament.org/cms/images/LEGISLATION/PRINCIPAL/2011/2011-0059/CriminalCode2011_1.pdf))

#### 240.8 Illicit Enrichment

- (1) Any current or former public servant or elected public official who -
- (a) maintains a standard of living above that which is commensurate with his/her present or past official salary and entitlements; or
  - (b) is in control of pecuniary resources or property disproportionate to his/her present or past official salary and entitlements, shall, unless he/she gives a satisfactory explanation to the court as to how he/she was able to maintain such a standard of living or how such pecuniary resources or property came under his/her control, be guilty of a felony in the second degree.
- (2) Where a court is satisfied in proceedings for an offense under subsection (1)(b) that, having regard to the closeness of his/her relationship to the accused and to other

circumstances, there is reason to believe that any person was holding pecuniary resources or property in trust for or otherwise on behalf of the accused or acquired such resources or property as a gift from the accused, such resources or property shall, in the absence of evidence to the contrary, be presumed to have been in the control of the accused.

(3) In this section, “entitlements” includes any pension or gratuity payable under any statutory law.

#### **240.9. Burden of Proof.**

In any proceedings against a person for an offense under this Article, the burden of proving a defense of lawful authority or reasonable excuse shall lie upon the accused.

#### **240.10 Prohibition of employment**

Where a public servant or person is convicted of an offense under any section of this Article, the court may, on the application of the prosecution or on its own motion, where it considers to be in the public interest so to do, order that the convicted person be prohibited from taking or continuing employment, whether temporary or permanent and whether paid or unpaid in any public body for a period of up to 10 years.

...

#### **Article 6.06 Sentence of Imprisonment for a Felony**

...

(2) A person who has been convicted of all other felonies may be sentenced to imprisonment as follows:

...

- (c) in the case of a felony of the second degree, for a term the maximum of which shall not be more than ten years;

### **Mauritania**

#### **Law No. 2016.014 on the Fight Against Corruption**

*(Loi n° 2016.014 relative à la lutte contre la corruption)*

Unofficial Translation (Courtesy of DeepL)

#### **Article 16 Illicit enrichment**

Any public official who cannot justify an increase in his or her assets in relation to his or her legitimate income shall be punished by deprivation of civil rights, as provided for in the Penal Code.

The same penalty shall be imposed on any person who has knowingly contributed by any means whatsoever to concealing the illicit origin of the property referred to in the preceding paragraph.

Illicit enrichment, as referred to in the first paragraph of this Article, is a continuous offense characterized by the possession of illicit property or its use in a direct or indirect manner.

**Original Text** (<http://www.cdah.gov.mr/images/RECUEILTEXTESDROITSDDELHOMME2019.pdf>)

### **Article 16 Enrichissement illicite**

Est puni de la privation des droits civiques, prévue par le code pénal, tout agent public qui ne peut justifier une augmentation de son patrimoine par rapport à ses revenus légitimes.

Encourt la même peine, toute personne qui aura sciemment contribué par quelque moyen que ce soit à occulter l'origine illicite des biens visés à l'alinéa précédent.

L'enrichissement illicite, visé à l'alinéa premier du présent article, est une infraction continue caractérisée par la détention des biens illicites ou leur emploi d'une manière directe ou indirecte.

## **Mexico**

**Federal Criminal Code, 14.08.1931 (last reform of 22.06.2017)**

*(Código Penal Federal, 14.08.1931 (última reforma de 22.06.2017))*

**Unofficial Translation** (Courtesy of DeepL)

### **Article 224 Illicit Enrichment**

Anyone who has acquired illicit enrichment as a result of his or her employment, position or commission in the public service shall be punished. Illicit enrichment shall exist when the public servant cannot prove the legitimate increase of his wealth or the legitimate origin of the goods in his name or of those in respect of which he conducts himself as owner.

For the purposes of the preceding paragraph, among the assets acquired by public servants or in respect of which they act as owners, there shall be counted those received by or at the disposal of their spouse and their direct economic dependants, unless the public servant proves that they obtained them by themselves.

It shall not be illicit enrichment in the event that the increase in the wealth is the result of a conduct that falls under another provision of this Title. In this case the provision and the corresponding sanction shall be applied, without giving rise to the contest of crimes.

The following sanctions shall be imposed on the person who commits the crime of illicit enrichment:

Confiscation for the benefit of the State of those assets whose origin cannot be proven.

When the amount of illicit enrichment does not exceed the equivalent of five thousand times the daily value of the Measurement and Actualisation Unit, three months to two years imprisonment and a fine of thirty to one hundred days shall be imposed.

When the amount of the illicit enrichment exceeds the equivalent of five thousand times the daily value of the Measurement and Actualisation Unit, a prison term of two years to

fourteen years and a fine of one hundred to one hundred and fifty days shall be imposed.

**Original Text** ([https://www.gob.mx/cms/uploads/attachment/file/235549/Co\\_digo\\_Penal\\_Federal\\_22\\_06\\_2017.pdf](https://www.gob.mx/cms/uploads/attachment/file/235549/Co_digo_Penal_Federal_22_06_2017.pdf))

#### **Artículo 224 Enriquecimiento Ilícito**

Se sancionará a quien con motivo de su empleo, cargo o comisión en el servicio público, haya incurrido en enriquecimiento ilícito. Existe enriquecimiento ilícito cuando el servidor público no pudiere acreditar el legítimo aumento de su patrimonio o la legítima procedencia de los bienes a su nombre o de aquellos respecto de los cuales se conduzca como dueño.

Para efectos del párrafo anterior, se computarán entre los bienes que adquieran los servidores públicos o con respecto de los cuales se conduzcan como dueños, los que reciban o de los que dispongan su cónyuge y sus dependientes económicos directos, salvo que el servidor público acredite que éstos los obtuvieron por sí mismos.

No será enriquecimiento ilícito en caso de que el aumento del patrimonio sea producto de una conducta que encuadre en otra hipótesis del presente Título. En este caso se aplicará la hipótesis y la sanción correspondiente, sin que dé lugar al concurso de delitos.

Al que cometa el delito de enriquecimiento ilícito se le impondrán las siguientes sanciones:

Decomiso en beneficio del Estado de aquellos bienes cuya procedencia no se logre acreditar.

Cuando el monto a que ascienda el enriquecimiento ilícito no exceda del equivalente de cinco mil veces el valor diario de la Unidad de Medida y Actualización se impondrán de tres meses a dos años de prisión y de treinta a cien días multa.

Cuando el monto a que ascienda el enriquecimiento ilícito exceda del equivalente de cinco mil veces el valor diario de la Unidad de Medida y Actualización se impondrán de dos años a catorce años de prisión y multa de cien a ciento cincuenta días multa.

## **Moldova**

**Criminal Code 2002 (as amended by the Criminal Law 326 as of 23.12.13)**

*(Ugolovnyĭ kodeks Respubliki Moldova 2002)*

**Unofficial Translation** (<https://www.legislationline.org/documents/section/criminal-codes/country/14/Moldova/show>)

#### **Article 330/2 Illicit enrichment**

(1) Ownership by a person with a responsibility position or by a public person, in person or through third parties, of goods if their value substantially exceeds the means acquired and if it was found, based on evidence, that they could not be obtained legally shall be punished by a fine from 6000 to 8000 conventional units or by imprisonment from 3 to 7 years, in both cases with the deprivation of the right to hold certain positions or exercise a specific activity for a period of 10 to 15 years.

(2) The same actions committed by a person with a public dignity position shall be punished by a fine from 8000 to 10000 conventional units or by imprisonment from 7 to 15 years, in both cases with the deprivation of the right to hold certain positions or exercise a specific activity for a period of 10 to 15 years.

**Unofficial Original Text** (<http://www.constcourt.md/public/ccdoc/hotariri/ro-h616042015ro7aa42.pdf>)

### **Articolul 330/2 Îmbogățirea ilicită**

(1) Deținerea de către o persoană cu funcție de răspundere sau de către o persoană publică, personal sau prin intermediul unor terți, a bunurilor în cazul în care valoarea acestora depășește substanțial mijloacele dobândite și s-a constatat, în baza probelor, că acestea nu aveau cum să fie obținute licit se pedepsește cu amendă în mărime de la 6000 la 8000 unități convenționale sau cu închisoare de la 3 la 7 ani, în ambele cazuri cu privarea de dreptul de a ocupa anumite funcții sau de a exercita o anumită activitate pe un termen de la 10 la 15 ani.

(2) Aceleași acțiuni săvârșite de o persoană cu funcție de demnitate publică se pedepsesc cu amendă în mărime de la 8000 la 10000 unități convenționale sau cu închisoare de la 7 la 15 ani, în ambele cazuri cu privarea de dreptul de a ocupa anumite funcții sau de a exercita o anumită activitate pe un termen de la 10 la 15 ani.

## **Mongolia**

### **Criminal Code (as amended 11 May 2017)**

**(ЭРҮҮГИЙН ХУУЛЬ (2017 оны 5 дугаар сарын 11-ний өдрийн хуулиар өөрчлөлт оруулсан))**

**Unofficial Translation** (Courtesy of Google Translate)

### **Article 22.10 Unjust Enrichment**

1. If a public official fails to reasonably explain the legality of a large increase in his / her assets and income, he / she shall be deprived of unjustified increase of assets and income and shall be deprived of the right to be appointed to public office for up to two years or restriction of the right to travel for a period of six months to three years, or imprisonment for a term of six months to three years.

This part was amended according to the law dated May 11, 2017

2. If this crime is committed by a politically influential person, unjustifiably increased assets and income shall be confiscated and the right to be appointed or elected to public office shall be suspended for two to five years and a fine of five thousand four hundred to twenty seven thousand togrogs shall be imposed. Shall be punishable by restriction of the right to travel for up to 5 years or by imprisonment for a period of 1 to 5 years.

**Original Text** (<https://www.legalinfo.mn/law/details/11634>)

**22.10 дугаар зүйл. Үндэслэлгүйгээр хөрөнгөжих**

1. Нийтийн албан тушаалтан өөрийн хөрөнгө, орлого их хэмжээгээр нэмэгдсэн нь хууль ёсны болохыг үндэслэлтэй тайлбарлаж чадаагүй бол үндэслэлгүйгээр нэмэгдсэн хөрөнгө, орлогыг хурааж, нийтийн албанд томилогдох эрхийг хоёр жил хүртэл хугацаагаар хасаж хоёр мянга долоон зуун нэгжээс арван дөрвөн мянган нэгжтэй тэнцэх хэмжээний төгрөгөөр торгох, эсхүл зургаан сараас гурван жил хүртэл хугацаагаар зорчих эрхийг хязгаарлах, эсхүл зургаан сараас гурван жил хүртэл хугацаагаар хорих ял шийтгэнэ.

/Энэ хэсэгт 2017 оны 5 дугаар сарын 11-ний өдрийн хуулиар өөрчлөлт оруулсан/

2. Энэ гэмт хэргийг улс төрд нөлөө бүхий этгээд үйлдсэн бол үндэслэлгүйгээр нэмэгдсэн хөрөнгө, орлогыг хурааж, нийтийн албанд томилогдох, эсхүл сонгогдох эрхийг хоёр жилээс таван жил хүртэл хугацаагаар хасаж таван мянга дөрвөн зуун нэгжээс хорин долоон мянган нэгжтэй тэнцэх хэмжээний төгрөгөөр торгох, эсхүл нэг жилээс таван жил хүртэл хугацаагаар зорчих эрхийг хязгаарлах, эсхүл нэг жилээс таван жил хүртэл хугацаагаар хорих ял шийтгэнэ.

## Mozambique

### Penal Code (Law No. 24/2019)

*(Código Penal (Lei no. 24/2019))*

Unofficial Translation (Courtesy of DeepL)

#### Article 428 (Illicit enrichment)

1. A public servant who, by himself or through an intermediary, acquires, possesses or holds assets that are not of lawful origin, incompatible with his income or legitimate assets, shall be punished by imprisonment for up to one year and a corresponding fine, if a more serious penalty is not applicable by virtue of another legal provision.

2. In case of conviction, the part of the assets that exceeds the amount proved by legitimate income shall be declared lost to the State.

Original Text ([http://www.ts.gov.mz/images/Lei\\_nº. 242019.pdf](http://www.ts.gov.mz/images/Lei_nº. 242019.pdf))

#### Artigo 428 (Enriquecimento ilícito)

1. O servidor público que, por si ou por interposta pessoa, adquirir, possuir ou detiver património sem origem lícita determinada, incompatível com os seus rendimentos ou bens legítimos, é punido com pena de prisão até 1 ano e multa correspondente, se pena mais grave lhe não couber por força de outra disposição legal.

2. Em caso de condenação, a parte do património que exceder o valor provado por rendimentos legítimos, é declarada perdida a favor do Estado.



## Nepal

### The Prevention of Corruption Act, 2059 (2002 AD)

Official Translation (<http://www.lawcommission.gov.np/en/archives/19323>)

#### 20. Property Deemed to be Acquired Illegally

(1) In case the statement of property submitted in accordance with prevailing laws by a public servant deemed to have held a public office in accordance with prevailing laws seems to be incompatible or unnatural or in case he/she maintains an incompatible or unsuitable lifestyle or it is proved that he/she has given someone a donation, gift, grant, present or has lent money beyond his/her capacity, he/she shall prove the sources from which he/she has acquired such property and if he fails to do so, such property shall be deemed to have been acquired in an illegal manner.

(2) In case it has been proved that a public servant has acquired property in an illegal manner as referred to in Sub-section (1), he/she shall be liable to a punishment of imprisonment for a term not exceeding two years as per the amount of the property acquired in such a manner, and a fine according to the amount of property and the illegal property acquired in such a manner shall also be confiscated.

## Nicaragua

### Criminal Code, Law No. 641, Approved 13 November 2007

*(Código Penal, Ley N.º. 641, Aprobado el 13 de Noviembre de 2007)*

Unofficial Translation (Courtesy of DeepL)

#### Article 448 Illicit enrichment

The authority, official or public employee who, without committing a more severely punished offence, obtains an increase in his or her wealth that is significantly in excess of his or her legitimate income during the course of his or her duties and cannot reasonably justify its origin, when required by the competent body specified by law, shall be punished by three to six years imprisonment and disqualification from holding public office or employment for the same period.

Original Text ([http://legislacion.asamblea.gob.ni/Normaweb.nsf/xpNorma\\_xsp?documentId=5C6133EBD4B985E50625744F005A5B2E&action=openDocument](http://legislacion.asamblea.gob.ni/Normaweb.nsf/xpNorma_xsp?documentId=5C6133EBD4B985E50625744F005A5B2E&action=openDocument))

#### Artículo 448 Enriquecimiento ilícito

La autoridad, funcionario o empleado público, que sin incurrir en un delito más severamente penado, obtenga un incremento de su patrimonio con significativo exceso, respecto de sus ingresos legítimos, durante el ejercicio de sus funciones y que no pueda justificar razonablemente su procedencia, al ser requerido por el órgano competente señalado en la ley, será sancionado de tres a seis años de prisión e inhabilitación por el mismo período para ejercer cargo o empleo público.

## Niger

### Ordinance No. 92-024 of 18 June 1992 on the suppression of illicit enrichment

*(Ordonnance no. 92-024 du 18 Juin 1992 portant répression de l'enrichissement illicite)*

**Author's Note:** Articles 4 and 5, as well as the term “in all other cases” (“dans tous les autres cas”) in Article 6 were ruled unconstitutional by the Constitutional Court decision: Arrêt n° 07/08/CC/MC du 20 novembre 2008. In the same decision, the Constitutional Court ruled that all other provisions in this law do not conflict with the constitution.

**Unofficial Translation** (Courtesy of DeepL)

#### Article 1

The offence of illicit enrichment is constituted when it is established that a person possesses assets and/or leads a lifestyle that his lawful income does not allow him to justify.

#### Article 2

Illicit enrichment constitutes a continuous offence which is deemed to be committed by the mere perpetuation of its criminal effects.

The limitation period for any public prosecution of the acts giving rise to illicit enrichment may not be invoked against it once the elements constituting illicit enrichment as a specific offence, as defined in Article 1, are present.

#### Article 3

An investigation for illicit enrichment may be opened as soon as it appears, after a preliminary investigation conducted by the public prosecutor's office seized by any legal means or acting ex officio, that a person's assets and/or lifestyle are unrelated to his lawful income.

#### Article 4

As soon as an investigation for illicit enrichment is opened, the Public Prosecutor's Office sends a requisition to the person concerned by the said investigation in order to obtain the communication of:

- (1) The state of his assets and the manner in which they are constituted.
- (2) The nature and amount of his income.

A reply to this requisition must obligatorily be made within the time limit set by the requisition.

#### Article 5

In the absence of a reply or an inaccurate or incomplete reply, the offence of illicit enrichment is presumed to have been committed unless proof to the contrary is provided by the person incriminated.

The lawful origin of the elements of the assets may be proved by any means.

However, proof of a gift shall be taken into account only to the extent that the gift does not,

having regard to the relationship between the donor and the donee, have the character of an act done by reason of favours that the donee may have granted to the author of the gift. The lawful origin of property collected in succession must be established in accordance with the rules applicable to the succession in question.

#### **Article 6**

In all other cases, the burden of proof of illicit enrichment lies with the public prosecutor's office. Such proof may be provided by all means.

#### **Article 7**

Professional secrecy can never be invoked against investigations carried out in the context of information opened for illicit enrichment if the examining magistrate considers that it constitutes an obstacle to the investigation or establishment of the said offence.

In such a case, the judge, on his own initiative or at the request of the Public Prosecutor's Office, may, by order, release from professional secrecy those who are bound by it.

#### **Article 8**

Any person having allowed or facilitated the accomplishment of the crime of illicit enrichment will be prosecuted as an accomplice.

However, the person who, prior to the opening of an investigation for illicit enrichment, has revealed to the judicial authorities the facts constituting such a crime will not be prosecuted.

#### **Article 9**

The person found guilty of the offence of illicit enrichment shall be punished by a prison sentence of between three and less than ten years and a fine of an amount at least equal to that of the person whose guilty party has illicitly enriched himself and, at the most, equal to twice this sum, or only one of these two penalties.

As a precautionary measure, the court shall order the seizure of property up to the amount of the fine at the same time as it pronounces the sentence.

Where the fine is not paid within a period of three months following the final decision, the confiscation of the property for the benefit of the State shall be pronounced as of right by the court having handed down the final decision.

The court of last resort shall pronounce the release of the sequestration in case of reversal of the decision in question.

#### **Article 10**

Any person charged with the offence of illicit enrichment who has, before judgment, returned the full amount or property of which he has been illicitly enriched may benefit from the stay of proceedings.

#### **Article 11**

This order shall be executed as a law of the State and published under the emergency procedure.

**Original Text** ([http://www.justice.gouv.ne/images/lois/pdfs/recueil\\_thematique\\_de\\_textes\\_legislatifs\\_et\\_reglementaires.pdf](http://www.justice.gouv.ne/images/lois/pdfs/recueil_thematique_de_textes_legislatifs_et_reglementaires.pdf), p. 408 f.)

### **Article premier**

Le délit d'enrichissement illicite est constitué lorsqu'il est établi qu'une personne possède un patrimoine et / ou mène un train de vie que ses revenus licites ne lui permettent pas de justifier.

### **Article 2**

L'enrichissement illicite constitue une infraction permanente qui est réputée consommée par la seule perpétuation de ses effets délictueux.

La prescription de l'action publique frappant éventuellement les faits à l'origine de l'enrichissement illicite ne peut lui être opposée dès lors que les éléments constitutifs de l'enrichissement illicite en tant que délit spécifique, tel que défini à l'article 1er, sont réunis.

### **Article 3**

Une information pour enrichissement illicite peut être ouverte dès lors qu'il apparaît, après enquête préliminaire diligentée par le ministère public saisi par toute voie de droit ou agissant d'office, que le patrimoine et/ou le train de vie d'une personne est sans rapport avec ses revenus licites.

### **Article 4**

Dès lors qu'est ouverte une information pour enrichissement illicite, le ministère public adresse une réquisition à la personne visée par ladite information afin qu'elle lui communique:

- 1) L'état de son patrimoine et les modalités de sa constitution.
- 2) La nature et le montant de ses revenus. Réponse doit obligatoirement être faite à cette réquisition dans le délai fixé par celle-ci.

### **Article 5**

En cas d'absence de réponse ou de réponse inexacte ou incomplète, le délit d'enrichissement illicite est présumé constitué sauf preuve contraire apportée par la personne incriminée.

L'origine licite des éléments du patrimoine peut être prouvée par tout moyen.

Toutefois, la preuve d'une libéralité n'est prise en compte qu'autant que cette libéralité ne revêt pas, eu égard aux rapports entre le donateur et le donataire, le caractère d'un acte fait en raison des faveurs que le donataire a pu accorder à l'auteur de la libéralité. L'origine licite des biens recueillis en succession doit être établie selon les règles applicables à la succession considérée.

### **Article 6**

Dans tous les autres cas, il appartient au ministère public d'administrer la preuve de l'enrichissement illicite. Cette preuve peut être apportée par tout moyen.

### Article 7

Le secret professionnel n'est jamais opposable aux investigations menées dans le cadre d'une information ouverte pour enrichissement illicite dès lors que le juge d'instruction estime qu'il constitue un obstacle à la recherche ou à la constatation de ladite infraction.

Dans ce cas, le juge, de sa propre initiative ou sur réquisition du ministère public, peut, par ordonnance, délier du secret professionnel ceux qui y sont astreints.

### Article 8

Toute personne ayant permis ou facilité l'accomplissement du délit d'enrichissement illicite sera poursuivie comme complice.

Toutefois, ne sera pas poursuivie la personne qui, avant l'ouverture d'une information pour enrichissement illicite, aura révélé aux autorités judiciaires les faits constitutifs d'un tel délit.

### Article 9

La personne reconnue coupable du délit d'enrichissement illicite sera punie d'une peine d'emprisonnement comprise entre trois et moins de dix ans ainsi que d'une amende d'un montant au moins égal à celui dont le coupable s'est illicitement enrichi et, au plus, égal au double de cette somme, ou de l'une de ces deux peines seulement.

A titre conservatoire, le tribunal prononce la saisie des biens à concurrence du montant de l'amende, en même temps qu'il prononce la condamnation.

A défaut de paiement de l'amende dans le délai de trois mois qui suivent la décision définitive, la confiscation des biens au profit de l'Etat est prononcée de plein droit par la juridiction ayant statué en dernier ressort.

La juridiction saisie en dernier ressort prononcera main-levée de la saisie conservatoire en cas d'infirmité de la décision en cause.

### Article 10

Toute personne inculpée du délit d'enrichissement illicite qui aura, avant le jugement, restitué l'intégralité de la somme ou des biens dont elle s'est illicitement enrichie pourra bénéficier du sursis.

### Article 11

La présente ordonnance sera exécutée comme loi de l'Etat et publiée selon la procédure d'urgence.

## Pakistan

### National Accountability Ordinance (XVIII of 1999)

Original Text ([https://dnb.sbp.org.pk/l\\_frame/NAB\\_Ord\\_1999.pdf](https://dnb.sbp.org.pk/l_frame/NAB_Ord_1999.pdf))

### Section 3 Ordinance to Override Other Laws

The provisions of this Ordinance shall have effect notwithstanding anything contained in any other law for the time being in force.

...

### **Section 9 Corruption and Corrupt Practices**

(a) A holder of a public office, or any other person, is said to commit or to have committed the offence of corruption and corrupt practices:

...

- (v) If he or any of his dependents or benamidar owns, possesses, or has any acquired right or title in any assets or holds irrevocable power of attorney in respect of any assets or pecuniary resources disproportionate to his known sources of income, which he cannot reasonably account for or maintains a standard of living beyond that which is commensurate with his sources of income;

...

### **Section 10. Punishment for corruption and corrupt practices**

(a) A holder of public office, or any other person who commits the offence of corruption and corrupt practices shall be punishable with rigorous imprisonment for a term which may extend to 14 years and with fine and such of the assets and pecuniary resources of such holder of public office or person, as are found to be disproportionate to the known sources of his income or which are acquired by money obtained through corruption and corrupt practices whether in his name or in the name of any of his dependents, or benamidars shall be forfeited to the appropriate Government, or the concerned bank or financial institution as the case may be.

...

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### **Prevention of Corruption Act 1947 (as amended)**

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**Original Text** (<http://www.fia.gov.pk/en/law/Offences/5.pdf>)

### **Section 5-C Possession of Property Disproportionate to Known Sources of Income**

(1) Any public servant who has in his possession any property, moveable or immoveable either in his own name or in the name of any other person, which there is reason to believe to have been acquired by improper means and which is proved to be disproportionate to the known sources of income of such public servant shall, if he fails to account for such possession to the satisfaction of the Court trying him, be punishable with imprisonment for a term which may extend to seven years and with a fine, and on such conviction the property found to be disproportionate to the known sources of income of the accused by the Court shall be forfeited to the Provincial Government.

...

## Palestine

**Author's Note:** There is some ambiguity surrounding how the The Anti Corruption Law No. (1) 2005 (as amended by Law by Decree No.(7) of 2010 Pertaining to the Amendment of the Law of Illegal Gain No.(1) 2005) and the Law of Illegal Gain No. (1) 2005 operate together. The Anti Corruption Law appears to substitute the text of Article 1 of the Law of Illegal Gain – thereby removing the definition of ‘illegal gains’ provided by this law without actually re-defining this term in the substituted text (instead just defining ‘illegal gains’ as a corruption offence). If this original definition of illegal gains is still valid, then these laws together can be considered an illicit enrichment law. If alternatively however, the original definition has actually been nullified, then further clarity is required before these laws can be categorised as illicit enrichment laws within the definition of this publication. Until further information comes to light, this publication has assumed the definition in the Law of Illegal Gain is still valid.

### The Anti Corruption Law No. (1) 2005 (as amended by Law by Decree No.(7) of 2010 Pertaining to the Amendment of the Law of Illegal Gain No.(1) 2005)

Official Translation (<https://www.pacc.ps/library/index/3>)

#### Article 1 The Original Law

The term “Law of Illegal Gain No. (1) [2005] shall be substituted with the term “Anti-Corruption Law No. (1) 2005”.

#### Article 2 Name of the Law

The term “the original law” wherever mentioned in this law shall denote the “Law of Illegal Gain No. (1) 2005”.

#### Article 3 Anti-Corruption

The crime of “illegal gain” wherever mentioned in the original law shall be substituted with the “crime of corruption” for the purposes of implementing this Law.

#### Article 4 Definitions

Article (1) of the original law shall be amended as follows: The following terms and expressions in this Law shall have the meanings specified below, unless the presumption determines otherwise:

...

Corruption: The following shall be considered corruption for the purposes of implementing this Law:

...

(6) Illegal gains.

...

### **Article 12 Accountability / Sources of Wealth**

Article (20) of the original law shall be amended as follows:

If it appears to the Commission the seriousness of the complaint submitted to it, it shall ask the person against whose wealth the complaint is lodged to show the source of that wealth. If the Commission is not convinced of the legitimacy of same, it shall prove by investigating the matter the illegitimacy of same.

...

### **Article 14 Penalties**

Article (25) of the original law shall be amended as follows:

1. Unless otherwise provided for in the Penal Code or in any other applicable law, whoever is convicted of a crime stipulated in this Law shall be punished with imprisonment for a term ranging from three to fifteen years and with a fine to the value of the funds which are the subject matter of the crime or with either of these penalties and the return of the funds emanating from the crime.

2. Whoever takes the initiative from among the perpetrators to notify the Commission of a crime of corruption before it or any of the authorities become aware of it shall be exempted from punishment. If the notification takes place after becoming aware of the crime, it shall be conditional that the outcome of the notification is the apprehension of the other perpetrators and the seizure of the funds which are the subject matter of the crime.

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## **The Law of Illegal Gain No.(1) of 2005**

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**Official Translation** (<https://www.pacc.ps/library/index/3>)

### **Article 1**

The following terms and expressions, mentioned in this Law, shall have the meanings specified below, unless the context determines otherwise:

...

The Illegal Gain: Each fund which one of the persons, who are subjects to the provisions of this Law, gains for himself or herself or for others by virtue of the exploitation of the position or capacity, or as a result of a conduct which violates a legal provision or public manners, or through any other illegal manner, even though it does not constitute a crime. Also deemed an illegal gain shall be each increase to the wealth which takes place following the assumption of the service or the rendering of the capacity upon the person subject to the provisions of this Law or to his or her spouse, or his or her minor descendants, in the event it is not compatible with their income and he or she fails to provide evidence of a legitimate source thereof. Also included under the provision of the illegal gain shall be each fund which any natural or judicial person gains by means of collusion with any person subject to the provisions of this Law as to exploit his or her position or capacity.

...



**Article 27**

1. In the event the person perpetrating the crime of the illegal gains or the partner therein initiates to notify the public authorities of the crime before it is being revealed and of the fund collected, he or she shall be exempted from the two punishments of imprisonment and fine stated for such crime.

2. In the event the person perpetrating the crime of the illegal gain or the partner therein during the interrogation conducted with him or her provides help as to reveal the crime and its perpetrators, the punishment shall be reduced to imprisonment and shall be exempted from the punishment of the fine.

...

**Article 33**

The lawsuits of the illegal gain and all relevant procedures shall not be subject to limitation by time.

## Panama

**Criminal Code of the Republic of Panama, Law 14-2007 (with amendments introduced by Law 26 of 2008)**

*(Código Penal de la República De Panamá, Ley 14 de 2007 (con las modificaciones y adiciones introducidas por la Ley 26 de 2008)*

.....  
**Unofficial Translation** (Courtesy of DeepL)

**Article 351 Unjustified Enrichment**

A public servant who, either personally or through an intermediary, increases his or her wealth unduly in relation to the legitimate income obtained during the exercise of his or her office and up to five years after leaving office, and whose lawful origin cannot be justified, shall be punished by imprisonment for three to six years.

The penalty shall be six to twelve years' imprisonment if the unjustified income obtained exceeds the sum of one hundred thousand balboas (B/.100,000.00).

The same sanction shall be applied to a person brought in to conceal an unjustified increase in wealth.

For the purposes of this provision, unjustified enrichment shall be understood to exist not only when the wealth has been increased with money, things or goods, with respect to its legitimate income, but also when debts have been cancelled or obligations affecting it have been extinguished.

**Original Text** ([http://www.oas.org/juridico/pdfs/mesicic5\\_pan\\_res\\_ane\\_act\\_corr\\_2.pdf](http://www.oas.org/juridico/pdfs/mesicic5_pan_res_ane_act_corr_2.pdf))

**Artículo 351 Enriquecimiento Injustificado**

El servidor público que, personalmente o por interpuesta persona, incrementa indebidamente su patrimonio respecto a los ingresos legítimos obtenidos durante el ejercicio de su

cargo y hasta cinco años después de haber cesado en el cargo, y cuya procedencia lícita no pueda justificar será sancionado con prisión de tres a seis años.

La pena será de seis a doce años de prisión si lo injustificadamente obtenido supera la suma de cien mil balboas (B/.100,000.00).

La misma sanción se aplicará a la persona interpuesta para disimular el incremento patrimonial no justificado.

Para efectos de esta disposición, se entenderá que hay enriquecimiento injustificado, no solo cuando el patrimonio se hubiera aumentado con dinero, cosas o bienes, respecto a sus ingresos legítimos, sino también cuando se hubieran cancelado deudas o extinguido obligaciones que lo afectaban.

## Paraguay

**Law No. 2523, preventing, typifying and punishing unlawful enrichment in the public service and trafficking influence (of 13.12. 2004)**

*(Ley No. 2523 Que previene, tipifica y sanciona el enriquecimiento ilícito en la función pública y el tráfico de influencias (de 13.12.2004))*

Unofficial Translation (Courtesy of DeepL)

### Article 2 Scope of application.

This Law shall be applicable to any person who performs a public function, or has powers of use, custody, administration or exploitation of public funds, services or goods, regardless of the denomination of the position, or the form of election, appointment or contracting, who incurs in the punishable acts typified in this Law.

### Article 3 Unlawful enrichment

1) Any public official involved in any of the situations described in Article 2, who, after commencing his functions, engages in any of the following situations, commits an act punishable by illicit enrichment and shall be sentenced to imprisonment of one to ten years:

- a) Has obtained the ownership, possession or use of assets, rights or services, whose acquisition, possession or use value exceeds his legitimate economic possibilities, and those of his spouse or cohabitant.
- b) Has cancelled, after entering the civil service, debts or extinguished obligations affecting his or her wealth, that of his or her spouse or partner, and relatives up to the second degree of consanguinity and affinity, in conditions exceeding his or her legitimate economic possibilities

(2) The additional penalty provided for in Article 57 of the Criminal Code shall also be applicable to the cases provided for in paragraph (1) of this article.

**Original Text** (<http://bacn.gov.py/archivos/4020/20150923141506.pdf>)

### **Artículo 2° Ambito de su aplicación.**

Esta Ley será aplicable a toda persona que cumpla una función pública, o tenga facultades de uso, custodia, administración o explotación de fondos, servicios o bienes públicos, cualquiera sea la denominación del cargo, o su forma de elección, nombramiento o contratación, que incurra en los hechos punibles tipificados en la presente Ley.

### **Artículo 3° Enriquecimiento ilícito.**

1) Comete hecho punible de enriquecimiento ilícito y será sancionado con pena privativa de libertad de uno a diez años, el funcionario público comprendido en cualquiera de las situaciones previstas en el Artículo 2º, quien con posterioridad al inicio de su función, incurra en cualquiera de las siguientes situaciones:

- a) Haya obtenido la propiedad, la posesión, o el usufructo de bienes, derechos o servicios, cuyo valor de adquisición, posesión o usufructo sobrepase sus legítimas posibilidades económicas, y los de su cónyuge o conviviente.
- b) Haya cancelado, luego de su ingreso a la función pública, deudas o extinguido obligaciones que afectaban su patrimonio, el de su cónyuge o su conviviente, y sus parientes hasta el segundo grado de consanguinidad y de afinidad, en condiciones que sobrepasen sus legítimas posibilidades económicas.

2) Será aplicable también a los casos previstos en el inciso 1) de este artículo, la pena complementaria prevista en el Artículo 57 del Código Penal.

### **Penal Code of the Republic of Paraguay Law No. 1160/97**

*(Código Penal de la República del Paraguay Ley No. 1160/97)*

**Unofficial Translation** (Courtesy of DeepL)

#### **Article 57 Wealth penalty**

1. In addition to a custodial sentence of more than two years' imprisonment, an order may be made, where expressly provided for by law and in accordance with the provisions of article 65, for the payment of a sum of money, the maximum amount of which shall be determined on the basis of the author's wealth.

2. The assessment of the wealth shall not include the benefits subject to confiscation.

3. Where immediate payment is not possible, the provisions of article 93, paragraph 2, shall apply.

4. A penalty to wealth that remains unpaid shall be replaced by a term of imprisonment of not less than three months and not more than three years. The duration of the substitute sentence shall be determined in the sentence.

**Original Text** ([https://www.pj.gov.py/ebook/libros\\_files/Coleccion\\_de\\_Derecho\\_Penal\\_Tomol.pdf](https://www.pj.gov.py/ebook/libros_files/Coleccion_de_Derecho_Penal_Tomol.pdf))

#### **Artículo 57. Pena patrimonial**

1º Junto con una pena privativa de libertad mayor de dos años se podrá ordenar, cuando ello

sea expresamente previsto por la ley y de acuerdo con lo previsto en el artículo 65, el pago de una suma de dinero cuyo monto máximo será fijado teniendo en consideración el patrimonio del autor.

2º En la valoración del patrimonio no serán incluidos los beneficios sometidos al comiso. Se aplicará, en lo pertinente, lo dispuesto en el artículo 92.

3º En los casos en que no sea posible el pago inmediato, se aplicará lo dispuesto en el artículo 93, inciso 2º.

4º Una pena patrimonial que quedare sin pago, será sustituida por una pena privativa de libertad no menor de tres meses ni mayor de tres años. La duración de la pena sustitutiva será determinada en la sentencia

## Peru

### Peruvian State Criminal Code, Legislative Decree N° 635

*(Código Penal del Estado Peruano, Decreto Legislativo N°635)*

Unofficial Translation (Courtesy of DeepL)

#### Article 401 Illicit enrichment

The public official or servant who, abusing his position, illicitly increases his patrimony with respect to his legitimate income shall be punished with imprisonment of not less than five nor more than ten years; disqualification, as appropriate, according to paragraphs 1, 2 and 8 of Article 36; and, with three hundred and sixty-five to seven hundred and thirty days-fine.

If the agent is a public official who has held senior management positions in State entities, agencies or companies, or is subject to the prerogative of impeachment and constitutional accusation, he shall be punished with imprisonment of not less than ten nor more than fifteen years; disqualification, as appropriate, pursuant to paragraphs 1, 2 and 8 of Article 36; and three hundred and sixty-five to seven hundred and thirty days-fine.

It is considered that there is an indication of illicit enrichment when the increase in the patrimony or personal economic expenditure of the public official or servant, in consideration of his sworn declaration of assets and income, is notoriously higher than what he could normally have had by virtue of his salaries or emoluments received or the increases in his capital or income for any other lawful cause.

**Original Text** (<https://leyes.congreso.gob.pe/Documentos/DecretosLegislativos/01243.pdf>)

#### Artículo 401º Enriquecimiento ilícito

El funcionario o servidor público que, abusando de su cargo, incrementa ilícitamente su patrimonio respecto de sus ingresos legítimos será reprimido con pena privativa de libertad no menor de cinco ni mayor de diez años; inhabilitación, según corresponda, conforme a los incisos 1, 2 y 8 del artículo 36; y, con trescientos sesenta y cinco a setecientos treinta días-multa.

Si el agente es un funcionario público que ha ocupado cargos de alta dirección en las entidades, organismos o empresas del Estado, o está sometido a la prerrogativa del antejucio y la acusación constitucional, será reprimido con pena privativa de libertad será no menor de diez ni mayor de quince años; inhabilitación, según corresponda, conforme a los incisos 1, 2 y 8 del artículo 36; y, con trescientos sesenta y cinco a setecientos treinta días-multa.

Se considera que existe indicio de enriquecimiento ilícito cuando el aumento del patrimonio o del gasto económico personal del funcionario o servidor público, en consideración a su declaración jurada de bienes y rentas, es notoriamente superior al que normalmente haya podido tener en virtud de sus sueldos o emolumentos percibidos o de los incrementos de su capital o de sus ingresos por cualquier otra causa lícita.

## Rwanda

### Law N° 54/2018 of 13/08/2018 on Fighting Against Corruption

**Original Text** ([https://www.minijust.gov.rw/fileadmin/user\\_upload/Minijust/Publications/Laws/Law\\_on\\_fighting\\_against\\_corruption\\_Page\\_52-73.pdf](https://www.minijust.gov.rw/fileadmin/user_upload/Minijust/Publications/Laws/Law_on_fighting_against_corruption_Page_52-73.pdf))

#### Article 9: Illicit enrichment

Any person who cannot justify the source of his or her assets compared with his or her lawful income commits an offence.

Upon conviction, he/she is liable to imprisonment for a term of not less than seven (7) years but not more than ten (10) years with a fine of three (3) to five (5) times the value of the property the legal source of which, he/she is not able to justify.

## Saint Lucia

### Integrity in Public Life Act, Act No.6 of 2004 (as of 31 December 2014)

**Original Text** ([http://portal.oas.org/en/sla/dlc/mesicic/docs/mesicic5\\_sl\\_anexo4.pdf](http://portal.oas.org/en/sla/dlc/mesicic/docs/mesicic5_sl_anexo4.pdf))

#### 30. Possession of unaccounted property or pecuniary resource

(1) Where upon examination of a complaint made under section 32, or otherwise, the Commission, in the course of an investigation under section 35 is of the view that a person in public life, or any other person on his or her behalf is in possession of property or pecuniary resource disproportionate to his or her legitimate sources of income, the Commission shall conduct a separate inquiry to determine whether such person has committed a breach of the provisions of this Act in connection with that property or pecuniary resource.

(2) On the conclusion of any inquiry under subsection (1), the Commission shall submit a report to the Director of Public Prosecutions and the Governor General.

(3) Where the Director of Public Prosecutions is satisfied, on the examination of the report

referred to in subsection (2) and other relevant evidence, that any person in public life ought to be prosecuted for an offence under section 31, the Director of Public Prosecutions shall institute and undertake criminal proceedings against the person in public life.

(4) Where the Commission has forwarded to the Director of Public Prosecutions a report under subsection (2), the Director of Public Prosecutions shall inform the Commission and the Governor General, in writing, about the action taken in pursuance of the report.

(5) In imposing a fine on a person found guilty of an offence under this section, the court shall have regard to the value of the property or pecuniary resource in the possession of that person, which cannot be accounted for taking into account his or her legitimate sources of income.

### **31. Act of corruption**

(1) A person in public life who commits any of the acts specified in Schedule 2 commits an act of corruption.

(2) Any person in public life who commits an act of corruption commits an offence and is liable—

(a) on summary conviction—

- (i) in the case of a first offence, to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 5 years, or to both such fine and imprisonment, and
- (ii) in the case of a second or subsequent offence, to a fine not exceeding \$300,000 or to imprisonment for a term not exceeding 7 years or to both such fine and imprisonment;

(b) on conviction on indictment—

- (i) in the case of a first offence, to a fine not exceeding \$500,000 or to imprisonment for a term not exceeding 10 years or to both such fine and imprisonment, and
- (ii) in the case of a second or subsequent offence to a fine not exceeding one million dollars or to imprisonment for a term not exceeding 15 years or to both such fine and imprisonment.

(3) For purposes of this section and sections 32, 33, 34, 35 and 36, person in public life includes—

- (a) the chairperson, managing director, chief executive officer of a body whether public or private, performing a public function; and
- (b) any person performing a public function.

### **32. Complaint to Commission**

(1) Any person who has reasonable grounds to believe that a person in public life—

- (a) is in breach of a provision of this Act;
- (b) has committed an act of corruption,

may make a complaint in writing to the Commission.

(2) The complaint shall state—

- (a) the particulars of the breach or act of corruption;
- (b) the particulars, as far as they are known, of the person against whom the complaint is made;
- (c) the nature of the evidence that the complainant proposes to produce in respect of the complaint; and
- (d) such other particulars as may be prescribed in regulations made by the Minister.

(3) A complaint to the Commission under this section may be presented in person, or may be sent by registered post to the Chairperson of the Integrity Commission.

...

### **35. Investigation of breach of Act**

(1) Where upon examination of a complaint made under section 32, or otherwise, the Commission is of the view that an investigation is necessary to ascertain whether any person in the public life has committed a breach of any provision of this Act, it shall inquire into the matter.

(2) The sittings of the Commission to take evidence or hear arguments in the course of any inquiry under subsection (1) shall be held in private.

(3) The complainant and the person in public life against whom any inquiry is held under this section are entitled to notice of the proceedings of the inquiry and to be represented in the inquiry either personally or by an attorney-at-law.

...

### **Schedule 2 Acts of Corruption**

A person in public life commits an act of corruption if —

...

(1) (l) he or she or any other person, on his or her behalf, acquires property or pecuniary resource disproportionate to his or her legitimate sources of income;

...

## São Tomé and Príncipe

Penal Code, Adopted by Law 6/2012

*(Código Penal, Aprovado pela Lei 6/2012)*

Unofficial Translation (Courtesy of DeepL)

### Article 455 Illicit enrichment

(1) An official who, during the period of performing public duties or during the three years following termination of such duties, acquires assets or a way of life which are manifestly disproportionate to his income and which do not result from any other lawful means of acquisition, in the likelihood that such assets or way of life may be derived from advantages obtained by committing crimes committed in the exercise of public functions, shall be punishable by imprisonment for a maximum of five years.

(2) For the purposes of the preceding paragraph, ‘assets’ means all assets existing in the country or abroad, including real estate, quotas, shares or shares in the capital of civil or commercial companies, rights over boats, aircraft or motor vehicles, portfolios of securities, term bank accounts, financial investments equivalent to credit rights.

(3) For the purposes of paragraph 1, ‘way of life’ means all expenditure on consumer goods or donations made at home or abroad.

(4) For the purposes of paragraph 1, income shall mean all gross income which is included in the declaration submitted for the purpose of tax assessment on the income of natural persons, or which, when exempt, should have been included therein.

**Original Text** (<http://www.ilo.org/dyn/natlex/docs/ELECTRON-IC/95154/111930/F-134767008/STP95154.pdf>)

### Artigo 455.º Enriquecimento ilícito

1. O funcionário que, durante o período do exercício de funções públicas ou nos três anos seguintes a cessação dessas funções, adquirir um património ou um modo de vida que seja manifestamente desproporcionais ao seu rendimento e que não resultem de outro meio de aquisição lícito, com perigo de aquele património ou modo de vida provir de vantagens obtidas pela prática de crimes cometidos no exercício de funções públicas, é punível com pena de prisão até 5 anos.

2. Para efeitos do número anterior entende-se por património todo o activo patrimonial existente no país ou no estrangeiro, incluindo o património imobiliário, quotas, acções ou partes sociais do capital de sociedades civis ou comerciais, de direitos sobre barcos, aeronaves ou veículos automóveis, carteiras de títulos, contas bancárias a prazo, aplicações financeiras equivalentes e direitos de créditos.

3. Para efeitos do n.º 1 entende-se por modo de vida todos os gastos com bens de consumo ou com liberalidades realizados no país ou no estrangeiro.

4. Para efeitos do n.º 1 entende-se por rendimento todos os rendimentos brutos constantes



da declaração apresentada para efeitos da liquidação de imposto sobre o rendimento das pessoas singulares, ou que a mesma, quando dispensada, devesse constar.

## Senegal

Penal Code, Law No 1965-60

*(Code Pénal, Loi No 1965-60)*

Unofficial Translation (Courtesy of DeepL)

### Article 163 bis Illicit enrichment (Law no. 81-53 of 10 July 1981)

Illicit enrichment of any holder of an elective public office or a government function, of any magistrate, civil or military agent of the State, or of a public authority, of a person holding a public mandate, of a public depositary or a public or ministerial officer, of a manager or agent of any kind of public establishments, national companies, semi-public companies subject by right to State control, legal persons governed by private law receiving financial assistance from the public authorities, professional bodies, private bodies responsible for the performance of a public service, associations or foundations recognised as being of public utility, shall be punished by imprisonment for five to ten years and a fine of at least the same amount for enrichment, which may be increased to double that amount.

The offence of illicit enrichment shall be constituted when, upon simple formal notice, one of the persons designated above is unable to prove the lawful origin of the resources that enable him to be in possession of assets or to lead a lifestyle unrelated to his lawful income.

The lawful origin of assets may be proved by any means.

However, the mere proof of a gift is not sufficient to justify the lawful origin.

Where illicit enrichment is carried out through the intermediary of a third party or a natural person directing the legal entity, the principal perpetrator shall be prosecuted as an accomplice.

**Original Text** (<http://www.servicepublic.gouv.sn/assets/textes/code-penal.pdf>)

### Article 163 bis De l'enrichissement illicite (Loi n° 81-53 du 10 juillet 1981)

L'enrichissement illicite de tout titulaire d'un mandat public électif ou d'une fonction gouvernementale, de tout magistrat, agent civil ou militaire de l'Etat, ou d'une collectivité publique, d'une personne revêtu d'un mandat public, d'un dépositaire public ou d'un officier public ou ministériel, d'un dirigeant ou d'un agent de toute nature des établissements publics, des sociétés nationales, des sociétés d'économie mixte soumises de plein droit au contrôle de l'Etat, des personnes morales de droit privé bénéficiant du concours financier de la puissance publique, des ordres professionnels, des organismes privés chargés de l'exécution d'un service public, des associations ou fondations reconnues d'utilité publique, est puni d'un emprisonnement de cinq à dix ans et d'une amende au moins égale au montant de l'enrichissement et pouvant être portée au double de ce montant.

Le délit d'enrichissement illicite est constitué lorsque, sur simple mise en demeure, une des

personnes désignées ci-dessus, se trouve dans l'impossibilité de justifier de l'origine licite des ressources qui lui permettent d'être en possession d'un patrimoine ou de mener un train de vie sans rapport avec ses revenus légaux.

L'origine licite des éléments du patrimoine peut être prouvée par tout moyen.

Toutefois, la seule preuve d'une libéralité ne suffit pas à justifier de cette origine licite.

Dans le cas où l'enrichissement illicite est réalisé par l'intermédiaire d'un tiers ou d'une personne physique dirigeant la personne morale seront poursuivis comme complices de l'auteur principal.

## Seychelles

### The Anti-Corruption Act 2016

Original Text ([https://www.accsey.com/publications\\_and\\_resources](https://www.accsey.com/publications_and_resources))

#### 25. Liability for Corrupt Acquisitions

(1) Unless the contrary is proved, a public officer shall be liable for the offence of having or having had under his or her control or possession pecuniary resources or property suspected of having been corruptly acquired if he or she—

- (a) maintains a standard of living not commensurate with his or her present or past official emoluments or other income;
- (b) is in control or possession of pecuniary resources or property disproportionate to his or her present or past official emoluments; or
- (c) is in receipt of the benefit of any service which he or she is reasonably suspected of having received corruptly or in circumstances which amount to an offence under this Act.

(2) Where a court is satisfied in proceedings for an offence under subsection (1) that, having regard to the closeness of the accused public officer's relationship to the other person who provides the benefit or service to the accused public officer and to other relevant circumstances, there is reason to believe that the other person was holding pecuniary resources or property in trust for or otherwise on behalf of the accused public officer, or acquired such pecuniary resources or property as a gift, or loan without adequate consideration, from the other person, such pecuniary resource or property shall, unless the contrary is proved be deemed to have been under the control or in the possession of the accused public officer.

#### 44. Penalty

(1) A person who is convicted of an offence under this Part, for which no penalty is provided, is liable –

- (a) on first conviction, to a fine not exceeding SCR300,000 or to imprisonment for a term not exceeding 7 years or to both such fine and imprisonment;
- (b) on a second or subsequent conviction, to a fine not exceeding SCR500,000 or to imprisonment for a term of not less than 10 years or to both such fine and imprisonment; and
- (c) in addition to any other penalty imposed under this Act, to forfeiture to the Republic of any pecuniary resource, property, advantage, profit or gratification received in the commission of an offence under this Act.

(2) Where a person is convicted of an offence under this Part, the court may, in addition to the sentence that it may impose under subsection (1), order the convicted person to pay to the rightful owner where he is not implicated in giving the gratification, the amount or value, as determined by the court, of any gratification actually received by that person, and such order shall be deemed to form part of the sentence.

(3) Where, after reasonable inquiry, the rightful owner cannot be ascertained or traced, or where the rightful owner is implicated, in the giving of the gratification, the court shall order that the amount or value thereof be paid into the Consolidated Fund.

## Sierra Leone

### Anti-Corruption Act 2008

**Author's Note:** The categorisation of this law as a 'Criminal Illicit Enrichment Law' may not be accurate depending on whether the definition of 'unexplained wealth' in Section 1 is taken into account by the court for a proceeding under Section 27, and if it is, whether the state is required to justify the 'allegation' required by Section 1. If the court does take into account the definition in Section 1, and the state needs to justify this allegation to a certain threshold, then this law should instead be categorised as a 'Qualified Criminal Illicit Enrichment Law'.

**Original Text** (<http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/80084/86345/F1403850332/SLE80084.pdf>)

#### 1. Interpretation

(1) In this Act, unless the context otherwise requires –

“unexplained wealth” includes assets of a person –

- (a) acquired at or around the time the person is alleged to have committed an act of corruption or economic crime; and
- (b) whose value is disproportionate to his lawful sources of income at or around that time and for which there is no reasonable or satisfactory explanation

#### 27. Possession of unexplained wealth

(1) Any person who, being or having been a public officer –

- (a) maintains a standard of living above that which is commensurate with his present or past official emoluments; or
- (b) is in control of pecuniary resources or property disproportionate to his present or past official emoluments,

unless he gives a satisfactory explanation to the court as to how he was able to maintain such a standard of living or how such pecuniary resources or property came under his control, commits an offence.

(2) Where the court is satisfied in proceedings for an offence under paragraph (b) of subsection (1) that, having regard to the closeness of his relationship to the accused and to other circumstances, there is reason to believe that any person was holding pecuniary resources or property in trust for or otherwise on behalf of the accused or acquired such resources or property as a gift from the accused, such resources or property shall, in the absence of evidence to the contrary, be presumed to have been in the control of the accused.

(3) A person guilty of an offence under subsection (1) shall on conviction be liable to a fine not less than thirty million leones or to imprisonment for a term not less than 3 years or to both such fine and imprisonment.

(4) In addition to any penalty imposed under subsection (3), the court may order a person convicted of an offence under paragraph (b) of subsection (1) to pay into the Consolidated Fund –

- (a) a sum not exceeding the amount of the pecuniary resources; or
- (b) a sum not exceeding the value of the property,

the acquisition by him of which was not explained to the satisfaction of the Court.

(5) An order under subsection (4) may be enforced in the same manner as a judgment of the High Court in its civil jurisdiction.

(6) In this section, “official emoluments” includes a pension or gratuity payable under the National Social Security and Insurance Trust Act, 2001.

## Sudan

### Illicit and Suspicious Enrichment Act (1989)

قانون الإثراء غير المشروع والمشبوه (1989)

Unofficial Translation (Courtesy of Systran.net)

#### Article 7 Definition of suspicious wealth

By suspicious wealth, it means all money that goes into anyone who cannot show any legitimate aspect of its acquisition

### Article 13 Self liberation of forbidden or suspicious wealth

Any person who enriched himself with illicit wealth or suspected or helped obtain it may free himself or his spouse or minor children at any stage prior to the opening of a criminal case against him.

For the purposes of the clause, liberation from crime is done through:

- (a) Refunding the money subject to forbidden or suspicious enrichment and explaining how the enrichment was carried out;
- (b) An indication of how enrichment was accomplished in relation to the person who assisted in it.

### Article 14 Seizure of wealth

The court may seize the money that is the subject of unlawful or suspicious wealth, and it must order its confiscation in the interest of the government upon conviction or confirmation of suspicious wealth, according to the case.

### Article 15 Punishment for unlawful wealth

Any person who enriches him/herself with forbidden wealth is punished with imprisonment for a period not exceeding ten years or with a fine not exceeding twice the amount of money subject of forbidden wealth, or both punishments.

### Article 16 Dismissal of the public employee

Every public official who is convicted of illicit wealth is relieved from his position, if suspected illicit wealth is proven against him, or dismissed from his position, as the case requires.

Original Text (<https://moj.gov.sd/sudanlaws/#/reader/chapter/105>)

المادة ٧ تعريف الثراء المشبوه

يقصد بالثراء المشبوه كل مال يطرأ على أي شخص ولا يستطيع بيان أي وجه مشروع لاكتسابه

المادة ١٣: التحلل من الثراء الحرام أو المشبوه

يجوز لكل شخص أنثري ثراءً حراماً أو مشبوهاً أو ساعد في الحصول عليه أن يحلل نفسه هو أو زوجه أو أولاده القصر في أي مرحلة قبل فتح الدعوى الجنائية ضده.

لأغراض البند يتم التحلل:

واحد. برد المال موضوع الثراء الحرام أو المشبوه و بيان الكيفية التي تم بها الإثراء أو

إثتان. بيان الكيفية التي تم بها الإثراء بالنسبة إلى الشخص الذي ساعد في ذلك

الحجز على الثراء. المادة ١٤: يجوز للمحكمة أن تحجز على المال موضوع الثراء الحرام أو المشبوه ويجب عليها أن تأمر بمصادرته لمصلحة الحكومة عند الإدانة أو ثبوت الثراء المشبوه بحسب الحال.

عقوبة الثراء الحرام. المادة ١٥: يعاقب كل شخص يثري ثراءً حراماً بالسجن لمدة لا تتجاوز عشر سنوات أو بغرامة لا تتجاوز ضعف مبلغ المال موضوع الثراء الحرام أو العقوبتين معاً

عزل الموظف العام و فصله. المادة ١٦: يعزل كل موظف عام تتم أدانته بالثراء الحرام أو يثبت ضده الثراء المشبوه أو يفصل من منصبه بحسب الحال.

## Tanzania

### The Prevention and Combating of Corruption Act 2007

Original Text (<https://www.fiu.go.tz/pcca.pdf>)

#### 27. Possession of unexplained property

(1) A person commits an offence who, being or having been a public official –

- (a) maintains a standard of living above that which is commensurate with his present or past lawful income;
- (b) owns property disproportionate to his present or past lawful income;

unless he gives a satisfactory explanation to the court as to how he was able to maintain such a standard of living or how such property came under his ownership.

(2) Where in proceedings for an offence under paragraph (b) of subsection (1) the court is satisfied that, having regard to the closeness or relationship to the accused and other circumstances, there is reason to believe that any person is or was holding property in trust for or otherwise on behalf of the accused or has acquired such property as a gift from the accused, such property shall, in the absence of evidence to the contrary, be presumed to be in the control of the accused.

(3) Subject to this section, where a person is convicted of an offence under this section [they] shall be liable on conviction to a fine not exceeding ten million shillings or to imprisonment for a term not exceeding seven years or to both.

(4) The court shall, in addition, to the penalty imposed under subsection (3) order the confiscation of any pecuniary gain or property –

- (a) found to be in the ownership of the accused; and
- (b) of an amount or money value not exceeding the amount or value of pecuniary gain or property the acquisition of which was not explained to the satisfaction of the court.

...

## Togo

Law No. 2015-10 of 24 November 2015 establishing a new Penal Code, amended by Law No. 2016-027 of 10 October 2016

*(Loi N°2015-10 du 24 novembre 2015 portant nouveau code pénal, modifiée par la loi N°2016-027 du 10 octobre 2016)*

Unofficial Translation (Courtesy of DeepL)

Article 620

Any acquisition of movable or immovable property by a public official or a person in charge of public authority which he or she cannot justify by his or her income declared to the tax authorities or by his or her legitimately acquired and duly attested assets shall be considered illicit enrichment.

#### Article 621

Any person guilty of illicit enrichment shall be punished by a prison sentence of one (01) to five (05) years and a fine corresponding to twice the value deemed to be in excess of the value of the property that the accused is likely to possess.

**Original Text** ([http://www.haplucia-togo.org/tempOne/documents/extrait\\_nouveau\\_code\\_penal\\_final.pdf](http://www.haplucia-togo.org/tempOne/documents/extrait_nouveau_code_penal_final.pdf))

#### Article 620

Est considéré comme un enrichissement illicite, toute acquisition de biens mobilier ou immobilier par un agent public ou une personne dépositaire de l'autorité publique, que celui ou celle-ci ne peut justifier par ses revenus déclarés à l'administration fiscale ou par son patrimoine légitimement acquis et dûment attesté.

#### Article 621

Toute personne coupable d'un enrichissement illicite est punie d'une peine d'emprisonnement d'un (01) à cinq (05) ans et d'une amende correspondant au double de la valeur jugée excédentaire par rapport à la valeur des biens que le prévenu est susceptible de posséder.

### Tunisia

Law No. 46 of 2018, dated August 1, 2018, relating to the declaration of gains and interests and the fight against illicit enrichment and conflicts of interest

قانون عدد ستة و أربعون لسنة 2018 مؤرخ في 1 آب 2018 يتعلق بالتصريح بالمكاسب والمصالح ومكافحة الإثراء غير المشروع وتضارب المصالح

Unofficial Translation (Courtesy of Systran.net)

#### Article 3

The persons provided for in Article 5 of this Law, and any natural person, whether appointed or elected whether permanent or temporary, who is entrusted with the powers of the public authority or who works with the State, a local group, institution, body or public enterprise, whether for a fee or without a fee, and any person who has the status of a public official or who is appointed by the judiciary to carry out judicial proceedings shall be subject to the provisions of this Law.

#### Article 4

The following terms shall mean the following

...

Illicit enrichment : Any significant increase in earnings of a person subject to the provisions of this Law for his or her benefit or for any related benefit, or a significant increase in the volume of his/her spending that is disproportionate to his/her resources and he/she cannot prove the legitimacy of their source.

**Article 37**

Any person who commits the offence of illicit enrichment within the meaning of this Law shall be punished by imprisonment for a period of six years and with a fine equal to the value of the unlawful gains.

In the same judgment, the Court shall also order the confiscation of all or some of the movable or immovable gains and financial assets or assets of the convicted party derived directly or indirectly from the crime of illicit enrichment, even if they are transferred to other financial liability, whether such funds remain unchanged or have been transferred to other gains, taking into account the rights of others in good faith.

The court rules that the convict will be deprived of public office and the right to vote and run for a period of ten years.

**Article 41**

Where the competent judicial authority provides evidence of suspected illicit enrichment, it shall invite the suspect to establish the lawfulness of the sources of his wealth or to spend it by all means.

**Article 42**

The judicial entity charged with the offence of illicit enrichment may authorize, in the context of research and investigations, all necessary actions to preserve the gains suspected of being lost, wasted or lost.

It may also authorize the sale of movable property whose real value is feared to be damaged or lost, and secure the amount thereof in the Tunisian State's public treasury for the sake of the case before issuing a ruling in accordance with the current order of operation.

**Article 43**

Tracing time limits for the crime of illicit enrichment shall take effect from the date of its discovery.

**Article 44**

The expiry of a criminal case due to death shall not prevent the ruling of confiscating the unlawful gains and their exploitation to the benefit of the State, to the of what was transferred to the heirs of the inheritance.

Taking into account the rights of others in good faith, the Court may decide to admit to any person who has obtained a serious interest in the crime of illicit enrichment other than the persons mentioned in the first paragraph of this chapter and to order against him the confiscation of his/her gains to the extent that he/she has benefited.



#### Article 45

Anyone who helped achieve the crime of illicit enrichment is considered an accomplice to the crime or who knows that the gains in his/her possession are derived from the crime of illicit enrichment and who has preserved or hid it in order to support the perpetrator shall also be considered an accomplice and shall be punished with the same penalty as Article 37 of this Law.

The partner in crime shall be exempted from the penalties applicable to the offence of illicit enrichment, with the exception of confiscation of unlawful gains, if he/she takes the initiative to inform the body or the judicial authorities with any evidence or information that enables the detection of the offence of illicit enrichment before the body or the judicial become aware of them and the crime of illicit enrichment being exposed.

Half of the prison sentence provided for by Article 37 of this Law shall be imposed if the notification is made during the search and investigation.

#### Article 46

Any concerned person who conceals or preserves gains from the crime of illicit enrichment in order to provide a subvention to the perpetrator, shall be punished with a fine equivalent to the value of the illicit gains in question and by confiscation provided for in Article 37, Paragraph 2, of this Law.

The person concerned shall be punished by one of the following supplementary penalties:

- Prohibition from participation in public transactions for at least five years;
- The content of the ruling against the concerned person shall be published in a newspaper at his/her expense;
- Dissolution and confiscation of his/her property entirely for the benefit of the State.

This does not preclude the application of the prison penalty prescribed in Article 37 of this Law on self-employed persons if their personal responsibility is proven.

**Original Text** (<https://legislation-securite.tn/fr/node/104356/compare>)

#### الفصل ثلاثة

يخضع لأحكام هذا القانون الأشخاص المنصوص عليهم بالفصل 5 من هذا القانون وكل شخص طبيعي، سواء كان معيّناً أو منتخبا بصفة دائمة أو مؤقتة، تُعهد إليه صلاحيات السلطة العمومية أو يعمل لدى الدولة أو جماعة محلية أو مؤسسة أو هيئة أو منشأة عمومية سواء كان ذلك بمقابل أو دون مقابل، وكل من له صفة مأمور عمومي أو من يعينه القضاء للقيام بمأمورية قضائية.

كما تخضع الجمعيات والأحزاب السياسية والذوات المعنوية المتعاقدة مع الدولة بأي وجه كان للتبع والعقوبات الخاصة بجريمة الإثراء غير المشروع المنصوص عليها بهذا القانون في صورة استفادتها من هذه

#### الفصل أربعة

يقصد بالعبارات التالية على معنى أحكام هذا القانون ما يلي

...

الإثراء غير المشروع : كل زيادة هامة في مكاسب الشخص الخاضع لأحكام هذا القانون تحصل عليها لفائدته أو لفائدة من تربطه

به صلة، أو زيادة ملحوظة في حجم إنفاقه تكونان غير متناسبتان مع موارده ولا يستطيع إثبات مشروعية مصدرهما

...

### الفصل سبعة و ثلاثون

يعاقب بالسجن مدة ست سنوات وبخطية تساوي قيمة المكاسب غير المشروعة كل مرتكب لجريمة الإثراء غير المشروع على معنى هذا القانون.

كما تحكم المحكمة في نفس الحكم بمصادرة جميع المكاسب المنقولة أو العقارية والأرصدة المالية أو بعضها للمحكوم عليه المتأتية بصورة مباشرة أو غير مباشرة من جريمة الإثراء غير المشروع ولو انتقلت إلى ذمة مالية أخرى، سواء بقيت تلك الأموال على حالها أو تم تحويلها إلى مكاسب أخرى، مع مراعاة حقوق الغير حسن النية.

وتحكم المحكمة بحرمان المحكوم عليه من مباشرة الوظائف العامة ومن حق الانتخاب والترشح لمدة عشر سنوات

...

### الفصل واحد و أربعون

في صورة توفّر الجهة القضائية المختصة على قرائن تتعلق بوجود شبهة إثراء غير مشروع، تتولّى دعوة المشتبه به لإثبات مشروعية مصادر ثروته أو إنفاقه، بكل الوسائل.

### الفصل إثنان و أربعون

يمكن للجهة القضائية المتعدهدة بجريمة الإثراء غير المشروع أن تأذن في إطار الأبحاث والتحقيقات باتخاذ كافة الإجراءات الضرورية للحفاظ على المكاسب موضوع الشبهة من التفتيت فيها أو تبديدها أو فقدان قيمتها.

ولها أن تأذن ببيع الممتلكات المنقولة التي يخشى تلفها أو فقدان قيمتها الحقيقية وتأمين مبلغها بالخزينة العامة للبلاد التونسية على ذمة القضية قبل صدور الحكم فيها طبقاً للتراتب الجاري بها العمل.

### الفصل ثلاثة و أربعون

. يبدأ سريان آجال سقوط التتبع بالنسبة إلى جريمة الإثراء غير المشروع من تاريخ اكتشافها

### الفصل أربعة و أربعون

لا يمنع انقضاء الدعوى الجزائية بالوفاة من الحكم بمصادرة المكاسب غير المشروعة وغلتها لفائدة الدولة في حدود ما آل إلى الورثة من التركة.

مع مراعاة حقوق الغير حسن النية، للمحكمة أن تقرر إدخال كل من تحققت له فائدة جديدة من جريمة الإثراء غير المشروع من غير الأشخاص المذكورين بالفقرة الأولى من هذا الفصل والحكم في مواجهته بمصادرة مكاسبه في حدود ما استفاد به.

### الفصل خمسة و أربعون

يعدّ شريكاً كل من ساعد على تحقيق جريمة الإثراء غير المشروع أو كان يعلم أنّ المكاسب التي بحوزته متأتية من جريمة الإثراء غير المشروع وقام بحفظها أو إخفائها من أجل إعانة مرتكبها ويعاقب بنفس العقاب المنصوص عليه بالفصل 37 من هذا القانون.

يعفى الشريك من العقوبات المستوجبة لجريمة الإثراء غير المشروع باستثناء عقوبة مصادرة المكاسب غير المشروعة كل من بادر بإبلاغ الهيئة أو السلطات القضائية بإرشادات أو معلومات، قبل علمها بها مكنت من كشف جريمة الإثراء غير المشروع.

ويعاقب بنصف العقوبة السجنية المنصوص عليها بالفصل 37 من هذا القانون إذا تمّ الإبلاغ أثناء البحث والتحقيق.

### الفصل ستة و أربعون

يعاقب كل شخص معنوي يقوم بإخفاء مكاسب متأتية من جريمة الإثراء غير المشروع أو بحفظها من أجل إعانة مرتكبها بخطية

تعادل قيمة المكاسب غير المشروعة موضوع الجريمة وبالمصادرة المنصوص عليها بالفقرة الثانية من الفصل 37 من هذا القانون.

كما يعاقب الشخص المعنوي بإحدى العقوبات التكميلية التالية :

- المنع من المشاركة في الصفقات العمومية لمدة خمس سنوات على الأقل،
- نشر مضمون الحكم الصادر في حق الشخص المعنوي بأحد الصحف على نفقته.
- حله ومصادرة أملاكه كلياً لفائدة الدولة

ولا يحول ذلك دون تطبيق عقوبة السجن المنصوص عليها بالفصل 37 من هذا القانون على مسيري الذات المعنوية إذا ثبتت مسؤوليتهم الشخصية.

## Turkey

Law on Declaration of Assets and Combat against Bribery, Law No. 3628 (Acceptance date 19.4.1990)

*(Kanun Mal Bildiriminde Bulunulması, Rüşvet ve Yolsuzluklarla Mücadele Kanunu Kanun No. 3628 (Kabul Tarihi: 19.4.1990))*

Unofficial Translation (Excerpt from: [https://publicofficialsfinancialdisclosure.worldbank.org/law-search?&f\[2\]=im\\_field\\_economy:\(186\)&items\\_per\\_page=10#searchlibrary](https://publicofficialsfinancialdisclosure.worldbank.org/law-search?&f[2]=im_field_economy:(186)&items_per_page=10#searchlibrary))

### Article 4 Unjust acquisition of property

Goods which cannot be proved to have been provided in accordance with law and public morale or increases revealed as expenses which cannot be considered commensurate with the income of the concerned in terms of the social life of the concerned are considered unjust acquisition of property within the context of the implementation of this Act.

...

### Article 13 Unjust acquisition of property, smuggling or concealing property

If a more severe penalty is not required by law, those who unjustly acquire property shall be punished with three years to five years of imprisonment and imposed a heavy fine from five million liras up to ten million liras. Those who smuggle or conceal the unjustly acquired property shall also be punished or fined in the same manner.

...

### Article 14 Confiscation

Properties unjustly acquired shall be confiscated. In cases where confiscation is not possible due to failure to get these properties or in the event that the entire property is not the subject of unjust acquisition of property, it shall be resolved to pay to the treasury a price equivalent to the asset unjustly acquired. This price shall be collected pursuant to the provisions of the Act on Collection Procedure of Public Receivables.

Original Text (<https://www.resmigazete.gov.tr/arsiv/20508.pdf>)

#### **Madde 4 Haksız mal edinme**

Kanuna veya genel ahlaka uygun olarak sağlandığı ispat edilmeyen mal-lar veya ilgilinin sosyal yaşantısı bakımından geliriyle uygun olduğu kabul edilemeyecek har-camalar şeklinde ortaya çıkan artışlar, bu Kanunun uygulanmasında haksız mal edinme sayılır.

...

#### **Madde 13 Haksız mal edinme, mal kaçırma veya gizleme**

Kanunen daha ağır bir cezayı gerektirmediği takdirde haksız mal edine-ne üç yıldan beş yıla kadar hapis ve beş milyon liradan on milyon liraya kadar ağır para cezası verilir. Haksız edinilen malı kaçıran veya gizleyene de aynı ceza verilir.

...

#### **Madde 14 Zoralm**

Haksız edinilmiş olan malların zoralmına hükmolunur. Bu malların el-de edilememesi veya bir malın tümünün haksız mal edinme konusu teşkil etmemesi sebepleri ile zoralmın mümkün olmadığı hallerde haksız edinilen değere eşit bedelinin hazineye öden-mesine karar verilir. Bu bedel, Amme Alacaklarının Tahsil Usulü Hakkında Kanun Hüküm-lerine göre tahsil olunur.

## **Uganda**

### **Anti Corruption Act 2009**

**Original Text** (<https://www.igg.go.ug/publications/legislation/>)

#### **31. Illicit enrichment**

(1) The Inspector General of Government or the Director of Public Prosecutions or an authorised officer, may investigate or cause an investigation of any person where there is reasonable ground to suspect that the person—

- (a) maintains a standard of living above that which is commensurate with his or her current or past known sources of income or assets; or
- (b) is in control or possession of pecuniary resources or property disproportionate to his or her current or past known sources of income or assets.

(2) A person found in possession of illicitly acquired pecuniary resources or property commits an offence and is liable on conviction to a term of imprisonment not exceeding ten years or a fine not exceeding two hundred and forty currency points or both.

(3) Where a court is satisfied in any proceedings for an offence under subsection (2) that having regard to the closeness of his or her relationship to the accused and to other relevant circumstances, there is reason to believe that any person was holding pecuniary resources or property in trust for or otherwise on behalf of the accused, or acquired such resources or property as gift or loan without adequate consideration, from the accused, those resources or property shall, until the contrary is proved, be deemed to have been under the control or

in possession of the accused.

(4) In any prosecution for corruption or proceedings under this Act, a certificate of a Government Valuer or a valuation expert appointed by the Inspector General of Government or the Director of Public Prosecutions as to the value of the asset or benefit or source of income or benefit is admissible and is proof of the value, unless the contrary is proved.

## Venezuela

### Decree with Range, Value and Force of Law Against Corruption (19 November 2014)

*(Decreto con Rango, Valor y Fuerza de Ley Contra La Corrupción (19 de noviembre de 2014))*

**Unofficial Translation** (Courtesy of Deepl)

#### Article 48.

A public official who has obtained in the exercise of his functions an increase in wealth disproportionate to his income, which he cannot justify upon request, and which does not constitute another offence, incurs illicit enrichment. For the determination of illicit enrichment of persons subject to this Decree with Rank, Value and Force of Law, the following shall be taken into account:

1. The financial situation of the person under investigation.
2. The amount of the wealth subject to enrichment in relation to the amount of its income and ordinary expenses.
3. The execution of acts that reveal a lack of integrity in the performance of the duties and that have a causal relationship with enrichment.
4. The advantages obtained by the execution of contracts with any of the entities indicated in Article 4 of this Decree with Rank, Value and Force of Law.

...

#### Article 75.

Any public official who, in the exercise of his functions, has obtained an increase in wealth disproportionate to his income, which he is unable to justify, and who has been duly required to do so and which does not constitute another crime, shall be punished with imprisonment of three (3) to ten (10) years. The same penalty shall be imposed on the person who interposes to conceal the unjustified increase in wealth.

**Original Text** ([http://historico.tsj.gob.ve/gaceta\\_ext/noviembre/19112014/E-19112014-4233.pdf#page=1/](http://historico.tsj.gob.ve/gaceta_ext/noviembre/19112014/E-19112014-4233.pdf#page=1/))

#### Artículo 48.

Incurre en enriquecimiento ilícito el funcionario público que hubiere obtenido en el ejercicio

de sus funciones un incremento patrimonial desproporcionado con relación a sus ingresos, que no pudiere justificar requerido y que no constituya otro delito.

Para la determinación del enriquecimiento ilícito de las personas sometidas a este Decreto con Rango, Valor y Fuerza de Ley, se tomarán en cuenta:

1. La situación patrimonial del investigado.
2. La cuantía de los bienes objeto del enriquecimiento en relación con el importe de sus ingresos y de sus gastos ordinarios.
3. La ejecución de actos que revelen falta de probidad en el desempeño del cargo y que tengan relación causal con el enriquecimiento.
4. Las ventajas obtenidas por la ejecución de contratos con alguno de los entes indicados en el artículo 4° de este Decreto con Rango, Valor y Fuerza de Ley.

...

#### **Artículo 75.**

El funcionario público que hubiere obtenido en el ejercicio de sus funciones un incremento patrimonial desproporcionado con relación a sus ingresos, que no pudiere justificar, y que haya sido requerido debidamente para ello y que no constituya otro delito, será sancionado con prisión de tres (3) a diez (10) años. Con la misma pena será sancionada la persona interpuesta para disimular el incremento patrimonial no justificado.



# Qualified criminal illicit enrichment laws



## Bangladesh

### The Anti-Corruption Commission Act, 2004

**Author's Note:** The categorisation of this law is somewhat uncertain, and depends on the interpretation of the requirement that there are 'reasonable grounds to believe that a person...has obtained ownership of moveable or immoveable property through dishonest means'. This publication assumes the word 'dishonest' means 'illegal'.

**Unofficial Translation** (<https://www.oecd.org/site/adboecdanti-corruptioninitiative/46812498.pdf>)

#### 27 Possession of property in excess of known sources of income

(1) If there are sufficient and reasonable grounds to believe that a person in his/her own name or any other person on his/her behalf is in possession and has obtained ownership of moveable or immoveable property through dishonest means and the property is not consistent with the known sources of his/her income and if he/she fails to submit to the court during trial a satisfactory explanation for possessing that property, then that person shall be sentenced to a prison term ranging from a minimum of three years to a maximum of 10 years imprisonment, and these properties shall be confiscated.

(2) If it is proved during the trial of charges under Subsection (1) that the accused person in his own name or any other person on his/her behalf has obtained ownership or is in possession of moveable or immoveable property not consistent with the known sources of his/her income then the court shall presume that the accused person is guilty of the charges and unless the person rebuts that presumption in court the punishment meted out on the basis of this presumption shall not be unlawful.

## China – Taiwan

### Anti-corruption Act (as amended 2016)

**Official Translation** (<https://www.aac.moj.gov.tw/5791/5793/5927/5931/241274/post>)

#### Article 6-1

If a public servant is suspect of violating any one of the following offenses and if the prosecutor has found during the investigation that the said person, his or her spouse or their under-aged children have had inconsistent increase in property or income at the time of the commission to the offense or within three years thereafter, the suspect may be ordered to make an account of the increased property or income. If the person fails to make a[n] account without reasonable excuse, cannot make a credible account or makes a false account, he or she shall be punished by imprisonment for a term of less than five years, detention and may also be punished by a fine not to exceed the amount of the unaccounted-for increase of property or income.

1. The crime set forth in Article 4 and the foregoing article.
2. The crimes set forth in Paragraph 1 of Article 121, Paragraphs 1-3 of Article 122, Articles 123-125, Paragraph 1 of Article 127, Articles 128-130, Paragraph 1 of Article 131, Paragraph 1 of Article 132, Article 133, Paragraph 2 of Article 231, Paragraph 3 of Article 231-1, Article 270, and Paragraph 1-5 of Article 296 in the Criminal Code.
3. The offense of Article 9 of the Organized Crime Control Act.
4. The offense provided for in Paragraph 1 of Article 10 of the Smuggling Penalty Act.
5. The offense set forth in Article 15 of the Drug Hazard Control Statute.
6. The offense of Article 36 of the Human Trafficking Act.
7. The offense set forth in Article 16 of the Weapons and Ammunition Control Statute.
8. The offense of Article 89 of the Medicinal Affairs Act.
9. The offense of covering up the offenders of the Child and Youth Sexual Exploitation Prevention Act
10. Other offenses committed through the use of the power given by one's official position, the opportunities and means thereof.

## Lesotho

### Prevention of Corruption and Economic Offences Act 1999 (as amended by the Prevention of Corruption and Economic Offences (Amendment) Act of 2006)

Original Text (<https://lesotholii.org/ls/legislation/num-act/1999/5> and <https://lesotholii.org/ls/legislation/num-act/2006/8>)

#### 31. Possession of unexplained property

(1) The Director or any officer of the Directorate authorized in writing by the director may investigate any public officer where there are reasonable grounds to suspect that that person –

- (a) maintains a standard of living above that which is commensurate with his present or past known source of income or assets reasonably suspected to have been acquired illegally; or
- (b) is in control or possession of pecuniary resources or property disproportionate to his present or past known sources of income or assets reasonably suspected to have been acquired illegally.

(2) A public officer is presumed to have committed the offence of corruption if he fails to give a satisfactory explanation to the Director or the officer conducting the investigation under subsection (1) as to how he was able to maintain such a standard of living or how such pecuniary resources or property came under his control or possession.

(3) Where a court is satisfied in any proceedings for an offence under subsection (2) that, having regard to the closeness of his relationship to the accused and to other relevant circumstances, there is reason to believe that any person was holding pecuniary resources or property as a gift, or loan without adequate consideration from the accused, such resources or property shall, until the contrary is proved, be deemed to have been under the control or in the possession of the accused.

### 31A. Private persons

Section 21, 22, 23, 24, 26 and 31 shall, with necessary modifications, apply to persons who are not public officers.

...

### 34. Penalty

Any person who commits the offence of corruption or cheating the revenue under this Part shall, upon conviction, be liable to a fine not less than M 5,000.00 [Maloti] and not more than M 10,000.00 or to imprisonment for a term not less than five years and not more than 10 years or both and in the case of juristic persons, the fine shall not be less than M 10,000.00.

## Malaysia

### Malaysia Anti-Corruption Commission Act 2009

**Original Text** ([https://www.sprm.gov.my/index.php?id=21&page\\_id=75&articleid=463](https://www.sprm.gov.my/index.php?id=21&page_id=75&articleid=463))

### 36. Powers to obtain information

(1) Notwithstanding any written law or rule of law to the contrary, an officer of the commission of the rank of commissioner and above, if he has reasonable ground to believe, based on the investigation carried out by an officer of the commission, that any property is held or acquired by any person as a result of or in connection with an offence under this Act, may by written notice—

- (a) require that person to furnish a statement in writing on oath or affirmation—
  - (i) identifying every property, whether movable or immovable, whether within 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;
  - (ii) identifying every property sent out of Malaysia by him during such period as may be specified in the notice;
  - (iii) setting out the estimated value and location of each of the properties identified under subparagraphs (i) and (ii), and if any of such properties cannot be located, the reason therefor;

- (iv) stating in respect of each of the properties identified under subparagraphs (i) and (ii) 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;
  - (v) setting out all other information relating to his properties, business, travel, or other activities as may be specified in the notice; and
  - (vi) setting out all his sources of income, earnings or assets;
- (b) require any relative or associate of the person referred to in paragraph (1)(a), or any other person whom the officer of the commission of the rank of commissioner and above has reasonable grounds to believe is able to assist in the investigation, to furnish a statement in writing on oath or affirmation—
- (i) identifying every property, whether movable or immovable, whether within or outside Malaysia, belonging to him or in his possession, or in which such person has any interest, whether legal or equitable, and specifying the date on which each of the properties identified was acquired, whether by way of any dealing, bequest, devise, inheritance, or any other manner;
  - (ii) identifying every property sent out of Malaysia by him during such period as may be specified in the notice;
  - (iii) setting out the estimated value and location of each of the properties identified under subparagraphs (i) and (ii), and if any of such properties cannot be located, the reason therefor;
  - (iv) stating in respect of each of the properties identified under subparagraphs (i) and (ii) 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;
  - (v) setting out all other information relating to each of the properties identified under subparagraphs (i) and (ii), and the business, travel, or other activities of such person; and
  - (vi) setting out all the sources of income, earnings or assets of such person; and
- (c) require any officer of any bank or 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 bank or any financial institution, to furnish copies of any or all accounts, documents and records relating to any person to whom a notice may be issued under paragraph (a) or (b).

(2) Every person to whom a notice is sent by the officer of the commission of the rank of commissioner and above under subsection (1) shall, notwithstanding any written law or

rule of law to the contrary, comply with the terms of the notice within such time as may be specified therein, 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 imprisonment for a term not exceeding five years and to a fine not exceeding one hundred thousand ringgit.

(3) Where the officer of the Commission of the rank of Commissioner and above has reasonable grounds to believe that any officer of a public body who has been served with the written notice referred to in subsection (1) owns, possesses, controls or holds any interest in any property which is excessive, having regard to his present or past emoluments and all other relevant circumstances, such officer of the Commission may by written direction require him to furnish a statement on oath or affirmation explaining how he was able to own, possess, control or hold such excess and if he fails to explain satisfactorily such excess, he commits an offence and shall on conviction be liable to—

- (a) imprisonment for a term not exceeding twenty years; and
- (b) a fine which is not less than five times the value of the excess, if the excess is capable of being valued, or ten thousand ringgit, whichever is the higher.

## Singapore

### Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (CDSA) (as amended in 2018)

**Original Text** (<https://sso.agc.gov.sg/Act/CDTOSCCBA1992#pr47AA->)

#### 2. Interpretation

“criminal conduct” means doing or being concerned in, whether in Singapore or elsewhere, any act constituting a serious offence or a foreign serious offence;

...

#### **47AA. Possessing or using property reasonably suspected to be benefits from drug dealing, etc.**

(1) Any person who possesses or uses any property that may be reasonably suspected of being, or of in whole, directly or indirectly, representing, any benefits of drug dealing or benefits from criminal conduct shall, if the person fails to account satisfactorily how the person came by the property, be guilty of an offence.

(2) Any person who commits an offence under subsection (1) shall be liable on conviction –  
 (a) if the person is an individual, to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 3 years or to both; or (b) if the person is not an individual, to a fine not exceeding \$300,000.

## Zambia

### Anti-Corruption Act 2012

**Author's Note:** More clarity is required regarding the potential impact that the definition of 'unexplained property' under Section 3 may have on a proceeding under Section 22. If Section 3 is taken into account in proceedings under Section 22, then, depending on interpretation, Section 3 might require the state to acquire a conviction of a separate offence before pursuing proceedings under Section 22. If this is the case, or even if the commission of a separate offence needs to be proven to a civil standard, then this law would not be classified as an illicit enrichment law within this publication (instead, depending on the standard of proof required, this law would be more similar to an extended confiscation law or a non-conviction based confiscation law). As the possession of unexplained property is an offence in itself however, and as Section 3 does not specify the need to demonstrate a 'separate' offence, there is also an argument that proof of the commission of a Section 22 offence is enough to satisfy the definition of 'unexplained property' in Section 3.

**Original Text** (<http://www.parliament.gov.zm/sites/default/files/documents/acts/Anti%20Corruption%20Act%2C%202012.PDF>)

### 3. Interpretation

..."unexplained property" means property in respect of which the value is disproportionate to a person's known sources of income at or around the time of the commission of the offence and for which there is no satisfactory explanation;

...

### 22. Possession of unexplained property

(1) Subject to the Constitution, any public officer who -

- (a) maintains a standard of living above which is commensurate with the public officer's present or past official emoluments or other income;
- (b) is in control or possession of pecuniary resources or property disproportionate to the public officer's present or past official emoluments; or
- (c) is in receipt of the benefit of any services which the public officer may reasonably be suspected of having received corruptly or in circumstances which amount to an offence under this Act;

Shall, unless the contrary is proved, be liable for the offence of having, or having had under the public officer's control or in the public officer's possession pecuniary resources or property reasonably suspected of having been corruptly acquired, or having misused or abused the public officer's office, as the case may be.

(2) Where the court is satisfied in proceedings for an offence under subsection (1) that, having regard to the closeness of the public officer's relationship to the accused and to other relevant circumstances, there is reason to believe that any person was holding pecuniary resources or property in trust for or otherwise on behalf of the accused, or acquired such

pecuniary resources or property as a gift, or loan without adequate consideration, from the accused, such pecuniary resources or property shall, unless the contrary is proved, be deemed to have been under the control or in the possession of the accused.

...

#### **41. General penalty**

A person who is convicted of an offence under this Part, for which no penalty is provided, is liable –

- (a) upon first conviction, to imprisonment for a period not exceeding fourteen years;
- (b) upon a second or subsequent conviction, to imprisonment for a term of not less than five years but not exceeding fourteen years; and
- (c) in addition to any penalty imposed under this Act, to forfeiture to the State of any pecuniary resource, property, advantage, profit, or gratification received in the commission of an offence under this Act.

...

#### **49. Effect of conviction**

(1) A person convicted of an offence under the Part shall, by reason of such conviction, be disqualified for a period of five years from the date of such conviction, from being elected or appointed to, or from holding or continuing to hold, any office or position in an public body...

# Administrative illicit enrichment laws



## Angola

### Law of Public Probity 2010

*(Lei da Probidade Pública 2010)*

Unofficial Translation (Courtesy of DeepL)

#### Article 25 Acts leading to illicit enrichment

(1) It constitutes an act of public misconduct leading to illicit enrichment to obtain any type of undue wealth advantage, by virtue of the position, mandate, function, activity or employment of the public agent.

For the purposes of the preceding paragraph, the following acts shall be considered as public improbity, in particular:

...

- (g) Acquiring, for oneself or others, in the exercise of a mandate, position, employment or public service, assets of any nature whose value is disproportionate to the value of the assets or the income of the public agent.

#### Article 31 Asset reintegration and sanctions

(1) Without prejudice to the corresponding criminal or other penalties provided for by law, the person responsible for the act of improbity shall be subject to the following sanctions:

...

- (b) for the circumstances foreseen in article 25, the loss of the benefits or amounts unlawfully added to his wealth, full compensation of the damage if there is loss of the public service, payment of a fine of up to three times the value of the illicit wealth increase and prohibition to contract with public entities or to receive tax incentives or benefits or credits, directly or indirectly, even if through a legal person of which he is a majority partner, for a period of 10 years;

**Original Text** (<http://www.parlamento.ao/documents/36058/0/08.LEI+DA+PROBI-DADE+P%C3%9ABLICA>)

#### Artigo 25 Actos que conduzem ao enriquecimento ilícito

(1) Constitui acto de improbidade pública conducente ao enriquecimento ilícito obter qualquer tipo de vantagem patrimonial indevida, em virtude de cargo, do mandato, da função, da actividade ou do emprego do agente público.

Para efeitos do número anterior consideram-se de improbidade pública, nomeadamente, os seguintes actos:

...

- (g) Adquirir, para si ou para outrem, no exercício de mandato, cargo, emprego ou função pública, bens de qualquer natureza cujo valor seja desproporcional à

evolução do património ou à renda do agente público.

### **Artigo 31 Reintegraç o patrimonial e sanções**

(1) Sem prejuízo das correspondentes sanções penais ou de outra natureza prevista na lei, o responsável pelo acto de improbidade sujeita-se às seguintes cominações:

...

- (b) para a hipótese prevista no artigo 25, perda dos ben ou valores acrescidos ilicitamente ao seu património, ressarcimento integral do dano se houver perda da função pública, pagamento de multa de até três vezes o valor do acréscimo patrimonial ilícito e proibição de contratar com entidades públicas ou receber incentivos ou benefícios fiscais ou creditícios, directa ou indirectamente, ainda que por intermédio de pessoa colectiva da qual seja sócio maioritário, pelo prazo de 10 anos;

## **Brazil**

**Law 8.429 of 2 June 1992**

*(Lei Nº 8.429, De 2 De Junho De 1992)*

**Unofficial Translation** (Courtesy of DeepL; [http://www.oas.org/juridico/pdfs/mesicic3\\_bra\\_en.pdf](http://www.oas.org/juridico/pdfs/mesicic3_bra_en.pdf) at [148])

### **Chapter II**

#### **Acts of Administrative Improbability**

##### **Section 1 Of the Acts of Administrative Improbability that Import Illicit Enrichment**

###### **Article 9**

An act of administrative improbity constituting illicit enrichment is deemed to be committed by any person who obtains an undue financial advantage by reason of his exercise of a position, mandate, function, employment or activity in the entities mentioned in article 1 of this law, and in particular (...)

VII: acquires, for himself or for another person, in the exercise of a mandate, position, employment or public function, goods of any nature the value of which is disproportionate to the evolution of the wealth or income of the public agent;

...

### **Chapter III Sentences**

###### **Article 12**

Regardless of the criminal, civil and administrative sanctions provided for in specific legislation, the person responsible for the act of improbity is subject to the following sanctions, which may be applied alone or cumulatively, according to the seriousness of the fact: (Written by Law 12.120, 2009).

I - in the event of article 9, loss of assets or amounts unlawfully added to wealth, full compensation for the damage, if any, loss of the civil service, suspension of political rights from eight to ten years, payment of a civil fine of up to three times the amount of the asset increase and prohibition to contract with the Government or receive tax benefits or incentives or credits, directly or indirectly, even if through a legal entity of which he is a majority shareholder, for a period of ten years;

...

**Original Text** ([http://www.planalto.gov.br/ccivil\\_03/Leis/L8429.htm](http://www.planalto.gov.br/ccivil_03/Leis/L8429.htm))

## **CAPÍTULO II**

### **Dos Atos de Improbidade Administrativa**

#### **Seção I Dos Atos de Improbidade Administrativa que Importam Enriquecimento Ilícito**

##### **Artículo 9**

Constitui ato de improbidade administrativa importando enriquecimento ilícito auferir qualquer tipo de vantagem patrimonial indevida em razão do exercício de cargo, mandato, função, emprego ou atividade nas entidades mencionadas no art. 1º desta lei, e notadamente...

VII - adquirir, para si ou para outrem, no exercício de mandato, cargo, emprego ou função pública, bens de qualquer natureza cujo valor seja desproporcional à evolução do patrimônio ou à renda do agente público;

...

## **CAPÍTULO III Das Penas**

### **Artículo 12**

Independentemente das sanções penais, civis e administrativas previstas na legislação específica, está o responsável pelo ato de improbidade sujeito às seguintes cominações, que podem ser aplicadas isolada ou cumulativamente, de acordo com a gravidade do fato: (Redação dada pela Lei no 12.120, de 2009).

I - na hipótese do art. 9º, perda dos bens ou valores acrescidos ilicitamente ao patrimônio, ressarcimento integral do dano, quando houver, perda da função pública, suspensão dos direitos políticos de oito a dez anos, pagamento de multa civil de até três vezes o valor do acréscimo patrimonial e proibição de contratar com o Poder Público ou receber benefícios ou incentivos fiscais ou creditícios, direta ou indiretamente, ainda que por intermédio de pessoa jurídica da qual seja sócio majoritário, pelo prazo de dez anos;

# Civil illicit enrichment laws

## Australia – Federal Jurisdiction

### Proceeds of Crime Act 2002

**Original Text** (<https://www.legislation.gov.au/Details/C2019C00006>)

#### **179A Simplified outline of this Part**

This Part provides for the making of certain orders relating to unexplained wealth.

A preliminary unexplained wealth order requires a person to attend court for the purpose of enabling the court to decide whether to make an unexplained wealth order against the person.

An unexplained wealth order is an order requiring the person to pay an amount equal to so much of the person's total wealth as the person cannot satisfy the court is not derived or realised, directly or indirectly, from certain offences.

...

#### **179B Making a preliminary unexplained wealth order requiring a person to appear**

(1) A court with proceeds jurisdiction must make an order (a preliminary unexplained wealth order) requiring a person to appear before the court for the purpose of enabling the court to decide whether or not to make an unexplained wealth order in relation to the person if:

- (a) a proceeds of crime authority applies for an unexplained wealth order in relation to the person; and
- (b) the court is satisfied that an authorised officer has reasonable grounds to suspect that the person's total wealth exceeds the value of the person's wealth that was lawfully acquired; and
- (c) any affidavit requirements in subsection (2) for the application have been met.

...

#### *Affidavit requirements*

(2) An application for an unexplained wealth order in relation to a person must be supported by an affidavit of an authorised officer that:

- (a) states that the authorised officer suspects that the person's total wealth exceeds the value of the person's wealth that was lawfully acquired; and
- (b) includes the grounds on which the authorised officer holds that suspicion.

#### *Considering application without notice*

(3) The court must make the order under subsection (1) without notice having been given to any person if the responsible authority requests the court to do so.

#### *Refusal to make preliminary unexplained wealth order*

(4) Despite subsection (1), the court may refuse to make the preliminary unexplained wealth

order if the court is satisfied that there are not reasonable grounds to suspect that the person's total wealth exceeds by \$100,000 or more the value of the person's wealth that was lawfully acquired.

**179C Application to revoke a preliminary unexplained wealth order**

(1) If a court makes a preliminary unexplained wealth order requiring a person to appear before the court, the person may apply to the court to revoke the order.

(2) The application must be made:

- (a) within 28 days after the person is notified of the preliminary unexplained wealth order; or
- (b) if the person applies to the court, within that period of 28 days, for an extension of the time for applying for revocation—within such longer period, not exceeding 3 months, as the court allows.

(4) However, the preliminary unexplained wealth order remains in force until the court revokes the order.

(5) The court may revoke the preliminary unexplained wealth order on application under subsection (1) if satisfied that:

- (a) there are no grounds on which to make the order at the time of considering the application to revoke the order; or
- (b) it is in the public interest to do so; or
- (c) it is otherwise in the interests of justice to do so.

**179CA Notice and procedure on application to revoke preliminary unexplained wealth order**

(1) This section applies if a person applies under section 179C for revocation of a preliminary unexplained wealth order.

(2) The applicant may appear and adduce material at the hearing of the application.

(3) The applicant must give the responsible authority:

- (a) written notice of the application; and
- (b) a copy of any affidavit supporting the application.

(4) The responsible authority may appear and adduce additional material at the hearing of the application.

(5) The responsible authority must give the applicant a copy of any affidavit it proposes to rely on to contest the application.

(6) The notice and copies of affidavits must be given under subsections (3) and (5) within a reasonable time before the hearing of the application.

**179D Notice of revocation of a preliminary unexplained wealth order**

If a preliminary unexplained wealth order is revoked under section 179C, the responsible

authority must give written notice of the revocation to the applicant for the revocation.

### **179E Making an unexplained wealth order**

(1) A court with proceeds jurisdiction must make an order (an unexplained wealth order) requiring a person to pay an amount to the Commonwealth if:

- (a) the court has made a preliminary unexplained wealth order in relation to the person; and
- (b) the court is not satisfied that the whole or any part of the person's wealth was not derived or realised, directly or indirectly, from one or more of the following:
  - (i) an offence against a law of the Commonwealth;
  - (ii) a foreign indictable offence;
  - (iii) a relevant offence of a participating state;
  - (iii) a State offence that has a federal aspect;
  - (iv) a territory offence.

(2) The court must specify in the order that the person is liable to pay to the Commonwealth an amount (the person's unexplained wealth amount) equal to the amount that, in the opinion of the court, is the difference between:

- (a) the person's total wealth; and
- (b) the sum of the values of the property that the court is satisfied was not derived or realised, directly or indirectly, from one or more of the following:
  - (i) an offence against a law of the Commonwealth;
  - (ii) a foreign indictable offence;
  - (iii) a relevant offence of a participating State;
  - (iii) a State offence that has a federal aspect;
  - (iv) a Territory offence;

reduced by any amount deducted under section 179J (reducing unexplained wealth amounts to take account of forfeiture, pecuniary penalties etc.).

(3) In proceedings under this section, the burden of proving that a person's wealth is not derived or realised, directly or indirectly, from one or more of the offences referred to in paragraph (1)(b) lies on the person.

(4) To avoid doubt:

- (a) when considering whether to make an order under subsection (1), the court may have regard to information not included in the application; and
- (b) the court may make an order under subsection (1) in relation to a person even if the person failed to appear as required by the preliminary unexplained wealth order.

(5) To avoid doubt, subsection (3) has effect despite section 317.

(6) Despite subsection (1), the court may refuse to make an order under that subsection if the court is satisfied that:

- (a) the person's unexplained wealth amount is less than \$100,000; or
- (b) it is not in the public interest to make the order.

...

### **179G Determining unexplained wealth amounts**

#### *Meaning of wealth*

(1) The property of a person that, taken together, constitutes the wealth of a person for the purposes of this Part is:

- (a) property owned by the person at any time;
- (b) property that has been under the effective control of the person at any time;
- (c) property that the person has disposed of (whether by sale, gift or otherwise) or consumed at any time;

including property owned, effectively controlled, disposed of or consumed before the commencement of this Part.

#### *Meaning of total wealth*

(2) The total wealth of a person is the sum of all of the values of the property that constitutes the person's wealth.

#### *Value of property*

(3) The value of any property that has been disposed of or consumed, or that is for any other reason no longer available, is the greater of:

- (a) the value of the property at the time it was acquired; and
- (b) the value of the property immediately before it was disposed of, consumed or stopped being available.

(4) The value of any other property is the greater of:

- (a) the value of the property at the time it was acquired; and
- (b) the value of the property on the day that the application for the unexplained wealth order was made.

...

### **179R Enforcement of an unexplained wealth order**

(1) An amount payable by a person to the Commonwealth under an unexplained wealth order is a civil debt due by the person to the Commonwealth.



(2) An unexplained wealth order against a person may be enforced as if it were an order made in civil proceedings instituted by the Commonwealth against the person to recover a debt due by the person to the Commonwealth.

(3) The debt arising from the order is taken to be a judgment debt.

(4) If an unexplained wealth order is made against a person after the person's death, this section has effect as if the person had died on the day after the order was made.

...

### **179U Parliamentary supervision**

(1) The operation of this Part and section 20A is subject to the oversight of the Parliamentary Joint Committee on Law Enforcement (the Committee).

#### *Appearing before the Committee*

(2) The Committee may require the Australian Crime Commission, the Australian Federal Police, the DPP or any other federal agency or authority that is the recipient of any material disclosed as the result of the operation of this Part to appear before it from time to time to give evidence.

#### *Report about unexplained wealth investigations and proceedings*

(3) The Commissioner of the Australian Federal Police must give the Committee a report in respect of each financial year that contains the following information:

- (a) the number of matters investigated in the year, by each enforcement agency, in respect of which a likely outcome may, or will, be the initiation of proceedings under this Part, and the basis for determining that number;
- (b) the number and results of applications in the year for:
  - (i) restraining orders under section 20A; and
  - (ii) unexplained wealth orders;
- (c) any other information of a kind prescribed by the regulations.

(4) The report must be given as soon as practicable after the report under section 67 of the Australian Federal Police Act 1979 in respect of the financial year is laid before a House of the Parliament in accordance with that section.

(5) If the Commissioner of the Australian Federal Police requests the DPP or the Chief Executive Officer (however described) of an enforcement agency to give the Commissioner information that the Commissioner considers necessary to prepare the report, the DPP or Chief Executive Officer must comply with the request.

## Australia - Northern Territory

### Criminal Property Forfeiture Act 2002

**Original Text** (<https://legislation.nt.gov.au/en/Legislation/CRIMINAL-PROPERTY-FORFEITURE-ACT-2002>)

#### 67 Application for unexplained wealth declaration

- (1) The DPP may apply to the Supreme Court for an unexplained wealth declaration against a person.
- (2) An application under subsection (1) may be made in conjunction with an application under Part 4, Division 2 for a restraining order, in proceedings under Part 5 for the hearing of an objection to the restraining of property, or at any other time.

#### 68 Unexplained wealth

- (1) For this Act, a person has unexplained wealth if the value of the person's total wealth as described in subsection (2) is greater than the value of the person's lawfully acquired wealth as described in subsection (3).
- (2) The value of the person's total wealth is the total value of all the items of property, and all the services, advantages and benefits, that together constitute the person's wealth.
- (3) The value of the person's lawfully acquired wealth is the total value of all the items of property, and all the services, advantages and benefits, that constitute the person's wealth and were lawfully acquired.

#### 69 Assessing the value of unexplained wealth

- (1) The respondent's unexplained wealth is the difference between:
  - (a) the respondent's total wealth; and
  - (b) the respondent's lawfully acquired wealth.
- (2) When assessing the respondent's wealth:
  - (a) the value of any property, service, advantage or benefit that is a constituent of the respondent's wealth is taken to be the greater of:
    - (i) its value at the time that it was acquired; and
    - (ii) its value on the day that the application for the unexplained wealth declaration was made; and
  - (b) the value of any property, service, advantage or benefit that was a constituent of the respondent's wealth but has been given away, used, consumed or discarded, or that is for any other reason no longer available, is taken to be an outgoing at the greater of:
    - (i) its value at the time that it was acquired; and

- (ii) its value immediately before it was given away, or was used, consumed or discarded, or stopped being available; and
- (c) the court that is hearing an application under section 67 must not take account of:
  - (i) any property that has been forfeited under this Act or any other Act; or
  - (ii) any property, service, advantage or benefit that was taken into account in making an earlier unexplained wealth declaration against the respondent; or
  - (iii) any property, service, advantage or benefit in relation to which a criminal benefits declaration has been made.

## **70 The constituents of a person's wealth**

The following property, services, advantages and benefits constitute a person's wealth:

- (a) all property that the person owns, whether the property was acquired before or after the commencement of this Act;
- (b) all property that the person effectively controls, whether the person acquired effective control of the property before or after the commencement of this Act;
- (c) all property that the person has given away at any time, whether before or after the commencement of this Act;
- (d) all other property acquired by the person at any time, whether before or after the commencement of this Act, including consumer goods and consumer durables that have been consumed or discarded (but not including necessary food, clothing and other items reasonably necessary for ordinary daily requirements of life);
- (e) all services, advantages and benefits that the person has acquired at any time, whether before or after the commencement of this Act;
- (f) all property, services, advantages and benefits acquired, at the request or direction of the person, by another person at any time, whether before or after the commencement of this Act, including consumer goods and consumer durables that have been consumed or discarded (but not including necessary food, clothing and other items reasonably necessary for ordinary daily requirements of life);
- (g) anything of monetary value acquired by the person or another person, in Australia or elsewhere, from the commercial exploitation of any product or any broadcast, telecast or other publication, where the commercial value of the product, broadcast, telecast or other publication depends on or is derived from the person's involvement in the commission of a forfeiture offence, whether or not the thing was lawfully acquired and whether or not the person has been charged with or convicted of the offence.

## **71 Unexplained wealth declaration**

- (1) The court that is hearing an application under section 67 must declare that the respondent has unexplained wealth if it is more likely than not that the respondent's total wealth is greater than his or her lawfully acquired wealth.

(2) Any property, service, advantage or benefit that is a constituent of the respondent's wealth is presumed not to have been lawfully acquired unless the respondent establishes the contrary.

(3) Without limiting the matters to which a court may have regard in deciding whether the respondent has unexplained wealth, the court may have regard to the amount of the respondent's income and outgoings at any time or at all times.

(4) When a court makes an unexplained wealth declaration, the court must:

- (a) assess the respondent's unexplained wealth in accordance with section 69; and
- (b) specify the assessed value of the unexplained wealth in the declaration; and
- (c) order the respondent to pay to the Territory the amount specified in the declaration as the value of his or her unexplained wealth.

(5) When making an unexplained wealth declaration, the court may make any necessary or convenient ancillary orders, including awarding costs as the court sees fit.

## 72 Unexplained wealth payable to Territory

(1) If a court makes an unexplained wealth declaration, the respondent must pay to the Territory the amount ordered by the court.

(2) The amount payable to the Territory may be satisfied, wholly or in part, by forfeiture under Part 7 of property that is subject to a restraining order under this Act.

...

## 136 Proceedings

(1) Proceedings on an application under this Act are taken to be civil proceedings for all purposes.

## Australia - South Australia

### Serious and Organised Crime (Unexplained Wealth) Act 2009

**Original Text** ([https://www.legislation.sa.gov.au/LZ/C/A/SERIOUS%20AND%20ORGANISED%20CRIME%20\(UNEXPLAINED%20WEALTH\)%20ACT%202009.aspx](https://www.legislation.sa.gov.au/LZ/C/A/SERIOUS%20AND%20ORGANISED%20CRIME%20(UNEXPLAINED%20WEALTH)%20ACT%202009.aspx))

## 8 Determining the value of property and benefits

The following provisions apply when determining the value of any property or benefits for the purposes of this Part:

- (a) the value of any property or benefit that has been disposed of, used, consumed or is for any other reason no longer available will be taken to be—
  - (i) the value of the property or benefit at the time it was acquired; or

- (ii) the value of the property or benefit immediately before it was disposed of, used, consumed or otherwise ceased to be available,

whichever is the higher;

- (b) the value of any other property or benefit will be taken to be—

- (i) the value of the property or benefit at the time it was acquired; or
- (ii) the value of the property or benefit on the day that the application for an unexplained wealth order was made,

whichever is the higher.

### **9 Unexplained wealth orders**

(1) If the DPP reasonably suspects that a person has wealth that has not been lawfully acquired, the DPP may authorise the Crown Solicitor to make an application to the District Court under this section.

(2) If, on an application by the Crown Solicitor under this section, the Court finds that any components of a person's wealth specified in the application have not been lawfully acquired, the Court may make an order (an unexplained wealth order) that the person pay to the Crown a specified amount.

(3) If the Court makes findings as to a person's wealth as specified in subsection (2), the Court should make an unexplained wealth order specifying an amount equal to the value of those components of the person's wealth that have not been lawfully acquired unless the Court determines that it would be manifestly unjust to make such an order (in which case the Court may reduce the amount payable or decline to make the order, as the Court thinks fit).

(4) The application—

- (a) must specify with sufficient particularity the components of the person's wealth to which the application relates; and
- (b) subject to subsection (6), must be served on the person and on any other persons that should, in the opinion of the Court, be served with the application.

(5) The Court may allow the Crown Solicitor to subsequently vary the components of the person's wealth specified in the application (and may, in such a case, make any consequential orders as to service of the application as so varied that the Court thinks fit).

(6) The Court may hear and determine an application in the absence of a party if—

- (a) the Court is satisfied that the person cannot be found; or
- (b) the person fails to appear after being given reasonable notice of the application.

(7) For the purposes of this section, each component of a person's wealth specified in the application will be presumed not to have been lawfully acquired unless the person proves otherwise.

(8) Property or a benefit that has been acquired by a person on the payment of any consideration

will only be taken to have been lawfully acquired by the person for the purposes of this Part if the consideration given for the property or benefit was lawfully acquired.

(9) Property or a benefit that has been acquired by a person as a prize or as the proceeds of any form of gaming will only be taken to have been lawfully acquired by the person for the purposes of this Part if any money or other item of value used by the person for the purposes of entering the prize draw or for the purposes of the gaming (as the case may be) was lawfully acquired.

(10) Property or a benefit that has been acquired by a person as a gift or on the distribution of the estate of a deceased person will only be taken to have been lawfully acquired for the purposes of this Part if the donor of the gift or the deceased person (as the case may be) lawfully acquired the property or benefit.

(11) If, in determining an application under this section relating to wealth of a person, the Court is satisfied—

- (a) that it is not reasonably possible for the person to establish that a component of his or her wealth was lawfully acquired (due to the effluxion of time, the circumstances in which that component was acquired or any other reason); and
- (b) that the person has acted in good faith,

the Court may determine that that component should be excluded from the application.

(12) The Court must not make an unexplained wealth order relating to—

- (a) property that has been forfeited under any Act or law (whether of the State or another jurisdiction); or
- (b) property or benefits in respect of which a pecuniary penalty order has been made against the person under the Criminal Assets Confiscation Act 2005; or
- (c) literary proceeds in respect of which a literary proceeds order has been made against the person under the Criminal Assets Confiscation Act 2005; or
- (d) property or benefits that have comprised (wholly or in part) the basis for a previous unexplained wealth order, or a corresponding unexplained wealth order.

...

#### **4.1 Proceedings under Act are civil proceedings**

Except in relation to an offence under this Act—

- (a) proceedings under this Act are civil proceedings; and
- (b) any question of fact to be decided by a court on an application under this Act is to be decided on the balance of probabilities; and
- (c) the rules of construction applicable only in relation to the criminal law do not apply in the interpretation of this Act; and
- (d) the rules of evidence applicable in civil proceedings apply to proceedings under this Act.

## Australia – Tasmania

### Crime (Confiscation of Profits) Act 1993

**Original Text** (<https://www.legislation.tas.gov.au/view/html/inforce/current/act-1993-020>)

#### 138 What constitutes a person's wealth

For the purposes of this Act, the following property and benefits constitute a person's wealth:

- (a) all property that the person owns, whether the property was acquired before or after the commencement of this Part;
- (b) all property that the person effectively controls, whether the person acquired effective control of the property before or after the commencement of this Part;
- (c) all property that the person has given away at any time, whether before or after the commencement of this Part;
- (d) all other property acquired by the person at any time, whether before or after the commencement of this Part, including consumer goods and consumer durables that have been consumed or discarded (but not including necessary food, clothing and other items reasonably necessary for the ordinary daily requirements of living);
- (e) all benefits, including commercial benefits, that the person has acquired at any time, whether before or after the commencement of this Part;
- (f) all property and benefits acquired, at the request or direction of the person, by another person at any time, whether before or after the commencement of this Part, including consumer goods and consumer durables that have been consumed or discarded (but not including necessary food, clothing and other items reasonably necessary for the ordinary daily requirements of living).

#### 139 Unexplained wealth

(1) For the purposes of this Act, a person may have unexplained wealth if the value of the person's total wealth as described in subsection (2) is greater than the value of the person's lawfully acquired wealth as described in subsection (3).

(2) The value of the person's total wealth is the total value of all the items of property and benefits that together constitute the person's wealth.

(3) The value of the person's lawfully acquired wealth is the total value of all the items of property and benefits that –

- (a) constitute the person's wealth; and
- (b) were lawfully acquired.

#### 140 Assessing the value of unexplained wealth

(1) A person's unexplained wealth is the difference in value between –

- (a) the value of a person's total wealth; and
  - (b) the value of a person's lawfully acquired wealth.
- (2) When assessing the value of a person's wealth –
- (a) the value of any property or benefit that is a constituent of the person's wealth is taken to be the greater of –
    - (i) its value at the time that it was acquired; or
    - (ii) its value on the day that the application for the unexplained wealth declaration was made; and
  - (b) the value of any property or benefit that was a constituent of the person's wealth but has been given away, used, consumed or discarded, or that is for any other reason no longer available, is taken to be an outgoing at the greater of –
    - (i) its value at the time that it was acquired; or
    - (ii) its value immediately before it was given away, or was used, consumed or discarded, or ceased being available; and
  - (c) the Supreme Court is not to take account of –
    - (i) any property that has been forfeited under this Act or any other Act; or
    - (ii) any property or benefit that was taken into account in making an earlier unexplained wealth declaration against the person; or
    - (iii) any property or benefit in relation to which a pecuniary penalty order has been made.

#### **141 Application for unexplained wealth declaration**

- (1) The DPP may apply to the Supreme Court for an unexplained wealth declaration to be made against a person.
- (2) An application under subsection (1) may be made –
- (a) in conjunction with an application under Part 2 of this Act; or
  - (b) in proceedings, under Division 4, for the hearing of an objection to the application of a specified restraining order in respect of property; or
  - (c) at any other time.

#### **142 Unexplained wealth declaration**

- (1) On hearing an application under section 141, the Supreme Court may make an unexplained wealth declaration against a person named in the application.
- (2) The Supreme Court must make an unexplained wealth declaration if satisfied that it is more likely than not that the value of the person's total wealth is greater than the value of his or her lawfully acquired wealth.



(3) Without limiting the matters to which the Supreme Court may have regard in determining the value of a respondent's total wealth, the Supreme Court may have regard to the amount of the respondent's income and outgoings at any time or at all times.

(4) On making an unexplained wealth declaration against a respondent, the Supreme Court –

- (a) is to specify in the declaration the assessed value of the respondent's unexplained wealth as determined by the Court; and
- (b) is to order, in the declaration, that the respondent pay to the State the amount specified in the declaration as the value of his or her unexplained wealth; and
- (c) may make any necessary or convenient ancillary orders, including awarding costs as it sees fit.

### **143 Unexplained wealth liability**

The unexplained wealth liability of a respondent is the total of –

- (a) the amount the respondent is ordered to pay under section 142(4)(b) in respect of an unexplained wealth declaration; and
- (b) any costs awarded under section 142(4)(c) in respect of the unexplained wealth declaration or the respondent.

### **144 Unexplained wealth payable to State**

(1) If the Supreme Court makes an unexplained wealth declaration, the respondent to the declaration must pay to the State the respondent's unexplained wealth liability.

(2) An unexplained wealth liability may be satisfied, wholly or in part, by forfeiture under Division 6 of restrained property.

...

### **183 Proceedings under this Part**

(1) Proceedings on an application under this Part are taken to be civil proceedings for all purposes.

...

## **Australia - Western Australia**

### **Criminal Property Confiscation Act 2000**

**Original Text** ([https://www.legislation.wa.gov.au/legislation/statutes.nsf/main\\_mrtile\\_231\\_homepage.html](https://www.legislation.wa.gov.au/legislation/statutes.nsf/main_mrtile_231_homepage.html))

### **11 Unexplained wealth declarations, applying for**

(1) The DPP or the CCC may apply to the court for an unexplained wealth declaration against a person.

(2) An application may be made in conjunction with an application for a freezing order, in proceedings for the hearing of an objection to confiscation, or at any other time.

[Section 11 amended: No.10 of 2018 s.28.]

### **12 Unexplained wealth declarations, making**

(1) On hearing an application under section 11(1), the court must declare that the respondent has unexplained wealth if it is more likely than not that the total value of the respondent's wealth is greater than the value of the respondent's lawfully acquired wealth.

(2) Any property, service, advantage or benefit that is a constituent of the respondent's wealth is presumed not to have been lawfully acquired unless the respondent establishes the contrary.

(3) Without limiting the matters to which the court may have regard, for the purpose of deciding whether the respondent has unexplained wealth, the court may have regard to the amount of the respondent's income and expenditure at any time or at all times.

(4) When making a declaration, the court is to –

- (a) assess the value of the respondent's unexplained wealth in accordance with section 13; and
- (b) specify the assessed value of the unexplained wealth in the declaration.

(5) The court may make any necessary or convenient ancillary orders.

[Section 12 amended: No. 10 of 2018 s. 29.]

### **13 Unexplained wealth, assessing value of**

(1) The value of the respondent's unexplained wealth is the amount equal to the difference between –

- (a) the total value of the respondent's wealth; and
- (b) the value of the respondent's lawfully acquired wealth.

(2) For the purposes of subsection (1), the value of any property, service, advantage or benefit that has been given away, used, consumed or discarded, or that is for any other reason no longer available, is the greater of –

- (a) its value at the time that it was acquired; and
- (b) its value immediately before it was given away, or was used, consumed or discarded, or stopped being available.

(3) The value of any other property, service, advantage or benefit is the greater of –

- (a) its value at the time that it was acquired; and
- (b) its value on the day that the application for the unexplained wealth declaration was made.

(4) However, when assessing the value of the respondent's unexplained wealth, the court is not to take account of –

- (a) any property that has been confiscated under this Act or any other enactment; or
- (b) any property, service, advantage or benefit that was taken into account for the purpose of making an earlier unexplained wealth declaration against the respondent; or
- (c) any property, service, advantage or benefit in relation to which a criminal benefits declaration has been made.

#### **14 Unexplained wealth declaration, effect of**

When the court makes an unexplained wealth declaration, the respondent is liable to pay to the State an amount equal to the amount specified in the declaration as the assessed value of the respondent's unexplained wealth.

...

#### **102 Proceedings, general provisions about**

(1) Proceedings on an application under this Act are taken to be civil proceedings for all purposes.

(2) Except in relation to an offence under this Act –

- (a) a rule of construction that is applicable only in relation to the criminal law does not apply in the interpretation of this Act; and
- (b) the rules of evidence applicable in civil proceedings apply in proceedings under this Act; and
- (c) the rules of evidence applicable only in criminal proceedings do not apply in proceedings under this Act; and
- (d) a question of fact to be decided by a court in proceedings on an application under this Act is to be decided on the balance of probabilities.

...

#### **144 Term used: unexplained wealth**

(1) For the purposes of this Act, a person has unexplained wealth if the value of the person's wealth under subsection (2) is greater than the value of the person's lawfully acquired wealth under subsection (3).

(2) The value of the person's wealth is the amount equal to the sum of the values of all the items of property, and all the services, advantages and benefits, that together constitute the person's wealth.

(3) The value of the person's lawfully acquired wealth is the amount equal to the sum of the values of each item of property, and each service, advantage and benefit, that both is a constituent of the person's wealth and was lawfully acquired.

## Fiji

**Proceeds of Crime Act 1997 (as amended by the Proceeds of Crime Amendment Act No.7 of 2005 and by the Proceeds of Crime (Amendment) Decree 2012 (Decree No.61 of 2012))**

**Original Text** (<https://www.fijifiu.gov.fj/Law-Regulations/Proceeds-of-Crime-Act.aspx>)

### **Proceedings civil, not criminal**

27B.

...

(2) Except in relation to an offence under this Act:

- (a) the rules of construction applicable only in relation to the criminal law do not apply in the interpretation of this Act; and
- (b) the rules of evidence applicable in civil proceedings apply, and those applicable only in criminal proceedings do not apply, to proceedings under this Act

...

### **Possession of unexplained wealth**

71F. Any person who –

- (a) maintains a standard of living above that which is commensurate with his or her present or past lawful emoluments, or
- (b) is in control of pecuniary resources or property disproportionate to his or her present or past lawful emoluments,

shall, unless he or she provides a satisfactory explanation to the court as to how he or she was able to maintain such a standard of living or how such pecuniary resources or property came under his or her control, be required to pay to the Forfeited Assets Fund the amount specified in the unexplained wealth declaration under section 71K.

### **Application for an unexplained wealth declaration**

71G. (1) The Director of Public Prosecutions may make an application in court for an unexplained wealth declaration against a person.

(2) An application under subsection (1) may be made in conjunction with an application under section 34 of the Act for a restraining order or at any other time.

(3) If the court makes an unexplained wealth declaration under subsection (1), the Director of Public Prosecutions may also make an application in court that the unexplained wealth is forfeitable.

## **Division 1 – Unexplained Wealth**

### **Unexplained Wealth**

71H. (1) For the purposes of this Decree, a person has unexplained wealth if the value of the person's total wealth as described in subsection (2) is greater than the value of the person's lawfully acquired wealth as described in subsection (3).

(2) The value of the person's total wealth is the total value of all the items of property and all the services, advantages and benefits that together constitute the person's wealth.

(3) The value of the person's lawfully acquired wealth is that person's total wealth that was lawfully acquired.

### **Assessing the value of unexplained wealth**

71I. When assessing the respondent's wealth, the court shall consider the following—

- (a) the value of any property, service, advantage or benefit is to be taken as its greater value—
  - (i) at the time that it was acquired; and
  - (ii) on the day that the application for the unexplained wealth declaration was made;
- (b) the value of any property, service, advantage or benefit that was a constituent of the respondent's wealth but has been given away, used, consumed or discarded, or that is for any other reason no longer available, is taken to be an outgoing at the greater of its value—
  - (i) at the time that it was acquired; and
  - (ii) immediately before it was given away, or was used, consumed or discarded, or is unavailable; and
- (c) when hearing an application under section 71G, it shall not take account of any property—
  - (i) that has been forfeited under this Decree or any other written law; or
  - (ii) service, advantage or benefit that was taken into account for the purpose of making an earlier unexplained wealth declaration against the respondent.

### **Division 2 – The constituents of a person's wealth**

#### **The constituents of a person's wealth**

71J. The following property, services, advantages and benefits constitute a person's wealth—

- (a) all property that the person owns, whether the property was acquired before or after the commencement of this Decree;
- (b) all property that the person effectively controls, whether the person acquired effective control of the property before or after the commencement of this Decree;
- (c) all property that the person has given away at any time, whether before or after the commencement of this Decree;
- (d) all other property acquired by the person at any time, whether before or after the

commencement of this Decree, including consumer goods and consumer durables that have been consumed or discarded (but not including necessary food, clothing and other items reasonably necessary for ordinary daily requirements of life);

- (e) all services, advantages and benefits that the person has acquired at any time, whether before or after the commencement of this Decree;
- (f) all property, services, advantages and benefits acquired, at the request or direction of the person, by another person at any time, whether before or after the commencement of this Decree, including consumer goods and consumer durables that have been consumed or discarded (but not including necessary food, clothing and other items reasonably necessary for ordinary daily requirements of life); and
- (g) anything of monetary value acquired by the person or another person, in Fiji or elsewhere, from the commercial exploitation of any product or any broadcast, telecast or other publication, where the commercial value of the product, broadcast, telecast or other publication depends on or is derived from the person's involvement in the commission of a serious offence, whether or not the thing was lawfully acquired and whether or not the person has been charged with or convicted of the offence.

#### **Unexplained wealth declaration**

71K. (1) The court that is hearing an application under section 71G shall declare that the respondent has unexplained wealth if it is more likely than not that the respondent's total wealth is greater than his or her lawfully acquired wealth.

(2) Any property, service, advantage or benefit that is a constituent of the respondent's total wealth is presumed not to have been lawfully acquired unless the respondent establishes the contrary.

(3) Without limiting the matters to which a court may have regard for the purpose of deciding whether the respondent has unexplained wealth, the court may have regard to the amount of the respondent's lawful income and outgoings at any time or at all times.

(4) When a court makes an unexplained wealth declaration, the court shall—

- (a) assess the respondent's total unexplained wealth in accordance with section 71I and 71J;
- (b) specify the assessed value of the unexplained wealth in the declaration; and
- (c) order the respondent to pay to the Forfeited Assets Fund the amount specified in the declaration as the value of his or her unexplained wealth.

(5) When making an unexplained wealth declaration, the court may make any necessary or convenient ancillary orders and declarations, including awarding costs as the court sees fit.

## Mauritius

### The Good Governance and Integrity Reporting Act 2015

Original Text (<https://www.irsa.mu/legislation>)

#### 2. Interpretation

...

“Agency” means the Integrity Reporting Services Agency established under section 4(1);

...

“unexplained wealth” includes any property –

- (a) under the ownership of a person to an extent which is disproportionate to his emoluments and other income;
- (b) the ownership, possession, custody or control of which cannot be satisfactorily accounted for by the person who owns, possesses, has custody or control of the property; or
- (c) held by a person for another person to an extent which is disproportionate to the emoluments or other income of that other person;

“Unexplained Wealth Order” means an order issued under section 16 for confiscation of property.

...

#### 3. Application of Act

...

(2) This Act shall apply to the property of citizens of Mauritius

...

(5) Any application made under this Act shall constitute civil proceedings and the onus shall lie on the respondent to establish, on a balance of probabilities, that any property is not unexplained wealth.

(6) This Act shall not apply to –

- (a) any property acquired or having come in the possession or under the custody or control of a person more than 7 years before the commencement of the Act;
- (b) unexplained wealth of less than 10 million rupees, other than to unexplained wealth of at least 2.5 million rupees in cash which has been seized by an enforcement authority during a criminal investigation.

(7) No application for an Unexplained Wealth Order shall be made under section 14 in relation to any property acquired or having come in the possession or under the custody or

control of a person more than 7 years before the date on which a request under section 5 (1)(a) is made.

...

## **5. Powers of Agency**

(1)

(a) On receipt of a report under section 9(1) or (2), or on its own initiative, the Agency may, in writing, request any person to explain, by way of affidavit within 21 working days or any such longer period which the Director may determine, the source of any funds which the person owns, possesses, has custody or control of, or which are believed to have been used in the acquisition of any property.

(b) Where the Agency does not receive a reply within the period specified in paragraph (a), it shall apply for a disclosure order under section 13.

(2) The Agency shall, after making such enquiry as it may determine following a request made under subsection (1)(a), report the matter to the Board.

(3) Where the Agency has reported a matter to the Board, it shall not initiate any action in respect of that matter, unless directed by the Board.

...

## **7. Integrity Reporting Board**

(1) There shall be an independent and impartial Integrity Reporting Board which shall consist of –

(a) a Chairperson, who shall be a retired Judge of the Supreme Court of Mauritius or of any other Commonwealth State, to be appointed by the President, on the advice of the Prime Minister; and

(b) 2 other members who shall be persons having sufficient knowledge and experience in the field of law, accountancy, finance, financial services, public administration, economics or fraud detection, to be appointed by the President, on the advice of the Prime Minister, for a period of 3 years and on such terms and conditions as the President may determine.

(2) The Board shall meet as often as is necessary but, where possible, not less than once every month and at such time and place as the Chairperson may determine.

(3) Any member who –

(a) has any direct or indirect financial interest in any matter to be considered by the Board shall, immediately after the relevant facts have come to his knowledge, disclose in writing the nature of the interest to the Minister and shall not be present during any deliberation, or take part in any decision, of the Board with respect to that matter;

(b) has or acquires, in any enterprise in Mauritius or elsewhere, any direct or indirect financial interest in any matter which arises before the Board, shall inform the Minister in writing of such fact.



## **8. Functions of Board**

(1) The functions of the Board shall be, where a report has been made to it pursuant to section 5(2), to determine –

- (a) whether an application for an Unexplained Wealth Order shall be made;
- (b) what further action, if any, shall be taken in respect of the report; and
- (c) whether any person deserves a reward and the quantum thereof.

(2) Notwithstanding any other enactment, the Board –

- (a) shall, in case of concurrent jurisdiction with an enforcement authority, prevail in relation to any action relating to the confiscation of property;
- (b) may request from an enforcement authority any information it considers relevant for the purposes of discharging its duties under this Act;
- (c) may call from any person for the communication or production of any relevant record, document or article.

(3) Any person who receives a request under subsection (2)(b) or (c) shall, within 14 days, comply with the request.

(4) Where an enforcement authority has already instituted any proceedings in connection with the confiscation of property, the Board may, after consultation with the enforcement authority –

- (a) request the enforcement authority to stay action;
- (b) direct the Agency to institute action for the confiscation of property pursuant to this Act.

(5)

- (a) Subject to paragraph (b), where suspected unexplained wealth is the subject of concurrent reports to an enforcement authority, the Board may, after consultation with the enforcement authority, direct the Agency to initiate action on the report to the exclusion of other bodies.
- (b) Where the Board determines that the report submitted by the Agency discloses reliable evidence of underlying criminal activity, it shall refer the matter to the relevant enforcement authority.
- (c) Where the Board determines that the Agency shall initiate action on the complaint, no further action for the confiscation of property shall be taken thereon by an enforcement authority.

...

## **9. Duty to report unexplained wealth**

(1) Notwithstanding any duty of confidentiality or any other provision under any other enactment, where, in the exercise of his functions –

- (a) the Commissioner of Police;
- (b) a judicial officer;
- (c) the Ombudsman;
- (d) the Director of Audit;
- (e) the Director of the Financial Intelligence Unit;
- (f) the Director-General of the Independent Commission Against Corruption;
- (g) the Director-General of the Mauritius Revenue Authority;
- (h) the Governor of the Bank of Mauritius;
- (i) an integrity reporting officer nominated by a public interest entity; or
- (j) an officer of a statutory corporation, or body corporate, has reasonable ground to suspect that a person has acquired unexplained wealth, he shall make a written report of the matter to the Agency.

(2) Where any other person has reasonable ground to suspect that a person has acquired unexplained wealth, he may make a written report of the matter to the Agency.

(3) Any person who makes a report under subsection (1) or (2) shall, as far as is reasonably possible, assist the Director in any enquiry which he may conduct in relation to the matter disclosed.

...

### **13. Disclosure order**

The Agency may apply, in relation to a suspected case of unexplained wealth, to the Judge in Chambers for a disclosure order –

- (a) to obtain information on property held by a person or by any other person on his behalf; or
- (b) requiring any person to disclose the sources of funds used to acquire, possess or control any property.

### **14. Application for Unexplained Wealth Order**

(1) Where the Board has reasonable grounds to believe that a person has unexplained wealth, it shall direct the Agency to apply to a Judge in Chambers for an Unexplained Wealth Order for the confiscation of that unexplained wealth.

(2) The Agency may amend an application for an Unexplained Wealth Order at any time before the final determination of the application by the Judge in Chambers where reasonable notice of the amendment is given to every person on whom the application has been served.

(3) Where an application is made under subsection (1), the Agency may apply for an order prohibiting the transfer, pledging or disposal of any property.

### **15. Service of application**

(1) Where the Agency makes an application for an Unexplained Wealth Order, it shall serve a copy of the application on the respondent and such other person as the Judge in Chambers may direct.

(2) The absence of the respondent, or of any other person on whom service has been effected, shall not prevent the Judge in Chambers from making an Unexplained Wealth Order in his absence.

### **16. Unexplained Wealth Order**

(1) Where the Agency makes an application –

(a) for an Unexplained Wealth Order;

and the Judge in Chambers is satisfied that the respondent has unexplained wealth, he shall make an Unexplained Wealth Order or an order for the payment of its monetary equivalent.

(2) Where the Judge in Chambers considers that an application for an order under subsection (1) cannot be granted on the basis of affidavit evidence, he shall refer the matter to the Supreme Court.

### **17. Realisation of property**

(1) Where an Unexplained Wealth Order is made and the order is not subject to an appeal, nor discharged, the property recovered and confiscated shall vest in the Agency.

(2) The Agency shall appoint a liquidator to realise any confiscated property.

### **18. General Fund**

(1) The Agency shall establish a General Fund into which shall be paid all sums received from the Consolidated Fund and any such source as the Minister may approve.

(2) The Agency may charge to the General Fund all remunerations, allowances, salaries, grants, fees, pensions, gratuities, working expenses, and all other charges properly arising, including any necessary capital expenditure.

(3) The Agency shall, not later than 3 months before the commencement of each financial year, submit to the Minister, for approval, an estimate of its income and expenditure for that financial year.

...

## Philippines

### Republic Act No. 1379, An Act Declaring Forfeiture in Favor of the State Any Property Found to have been Unlawfully Acquired by any Public Officer or Employee and Providing for the Proceedings Therefor (18 June 1955)

Original Text (<https://www.doe.gov.ph/transparency/laws-graft-and-corruption>)

#### Section 2. Filing of petition

Whenever any public officer or employee has acquired during his incumbency an amount of property which is manifestly out of proportion to his salary as such public officer or employee and to his other lawful income and the income from legitimately acquired property, said property shall be presumed prima facie to have been unlawfully acquired. The Solicitor General, upon complaint by any taxpayer to the city or provincial fiscal who shall conduct a previous inquiry similar to preliminary investigations in criminal cases and shall certify to the Solicitor General that there is reasonable ground to believe that there has been committed a violation of this Act and the respondent is probably guilty thereof, shall file, in the name and on behalf of the Republic of the Philippines, in the Court of First Instance of the city or province where said public officer or employee resides or holds office, a petition for a writ commanding said officer or employee to show cause why the property aforesaid, or any part thereof, should not be declared property of the State: Provided, That no such petition shall be filed within one year before any general election or within three months before any special election.

The resignation, dismissal, or separation of the officer or employee from his office or employment in the Government or in the Government-owned or controlled corporation shall not be a bar to the filing of the petition: Provided, however, that the right to file such petition shall prescribe after four years from the date of the resignation, dismissal or separation or expiration of the term of the officer or employee concerned, except as to those who have ceased to hold office within ten years prior to the approval of this Act, in which case the proceedings shall prescribe after four years from the approval thereof.

...

#### Section 5. Hearing

The Court shall set a date for a hearing, which may be open to the public, and during which the respondent shall be given ample opportunity to explain, to the satisfaction of the court, how he has acquired the property in question.

#### Section 6. Judgment

If the respondent is unable to show to the satisfaction of the court that he has lawfully acquired the property in question, then the court shall declare such property, forfeited in favor of the State, and by virtue of such judgment the property aforesaid shall become property of the State: Provided, that no judgment shall be rendered within six months before any general election or within three months before and special election. The Court may, in addition, refer this case to the corresponding Executive Department for administration or criminal action, or both.

## Section 7. Appeal

The parties may appeal from the judgment of the Court of First Instance as provided in the Rules of Court for appeals in civil cases.

## Section 8. Protection against self-incrimination

Neither the respondent nor any other person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda and other records on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to prosecution; but no individual shall be prosecuted criminally for or on account of any transaction, matter or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution and conviction for perjury or false testimony committed in so testifying or from administrative proceedings.

...

## 12. Penalties

Any public officer or employee who shall, after the effective date of this Act, transfer or convey any unlawfully acquired property shall be repressed with imprisonment for a term not exceeding five years, or a fine not exceeding ten thousand pesos, or both such imprisonment and fine. The same repression shall be imposed upon any person who shall knowingly accept such transfer or conveyance.

...

## 14. Effective date

This Act shall take effect on its approval, and shall apply not only to property thereafter unlawfully acquired but also to property unlawfully acquired before the effective date of this Act.

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## Republic Act No. 3019, Anti-Graft and Corrupt Practices Act

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Original Text (<https://www.doj.gov.ph/files/3019.pdf>)

### Section 8. Prima facie evidence of and dismissal due to unexplained wealth

If in accordance with the provisions of Republic Act Numbered [1379], a public official has been found to have acquired during his incumbency, whether in his name or in the name of other persons, an amount of property and/or money manifestly out of proportion to his salary and to his other lawful income, that fact shall be a ground for dismissal or removal. Properties in the name of the spouse and dependents of such public official may be taken into consideration, when their acquisition through legitimate means cannot be satisfactorily shown. Bank deposits in the name of or manifestly excessive expenditures incurred by the public official, his spouse or any of their dependents including but not limited to activities in any club or association or any ostentatious display of wealth including frequent travel abroad of a non-official character by any public official when such activities entail expenses

evidently out of proportion to legitimate income, shall likewise be taken into consideration in the enforcement of this section, notwithstanding any provision of law to the contrary. The circumstances hereinabove mentioned shall constitute valid ground for the administrative suspension of the public official concerned for an indefinite period until the investigation wealth is completed. (As amended by BP Blg., 195, March 16, 1982).

## Tanzania – Zanzibar

### The Zanzibar Anti-Corruption and Economic Crimes Act, 2012

**Author's Note:** The categorisation of this law as a 'Civil Illicit Enrichment Law' may not be accurate depending on whether the definition of 'unexplained assets' in Section 2 is taken into account by the court for a proceeding under Section 66, and if it is, whether the state is required to justify the 'allegation' required by Section 2. If the court does take into account the definition in Section 2, and the state needs to justify this allegation to a certain threshold, then this law should instead be categorised as a 'Qualified Civil Illicit Enrichment Law'.

**Original Text** (<https://zaeca.go.tz/pdf/SHERIA%20YA%20KUZUIA%20RUSHWA.pdf>)

#### 2. Interpretation

...

"Unexplained assets" means assets –

- (a) acquired at or around the time the person has allegedly committed a corruption or economic crime; and
- (b) whose value is disproportionate to that person's known sources of income at or around that time and for which there is no satisfactory explanation.

#### 66. Forfeiture of unexplained assets

(1) The Authority may, subject to relevant laws, commence proceedings under this section against a person if: –

- (a) after an investigation, the Authority is satisfied that the person has unexplained assets; or
- (b) the person has, in the course of the exercise by the Director General of his power of investigation or otherwise, been afforded a reasonable opportunity to explain the disproportion between the assets concerned and his income entitled to that person and the Authority is not satisfied that an adequate explanation of that disproportion has been given.

(2) The proceedings under this section shall be commenced in the High Court by way of originating summons.

(3) In proceedings under this section, the Director General or any other person authorized by the Director General shall adduce evidence that the person has unexplained assets and the

person whose assets are in question shall be afforded the opportunity to cross examine any witness called and to challenge any evidence adduced by the Director General and, subject to this section shall have and may exercise the rights usually afforded to a defendant in civil proceedings.

(4) If, after the Director General or any other person authorized by the Director General, adduced evidence that the person has unexplained assets, the Court shall require the person by testimony to satisfy the court that the assets were acquired otherwise than as the result of corrupt conduct.

(5) If, after such explanation, the court is not satisfied that all the assets concerned were acquired otherwise than as the result of corrupt conduct, it may order the person to pay to the Government an amount equal to the value of the unexplained assets.

(6) For the purpose of the proceedings under this section, the assets of the person whose assets are in question shall be deemed to include any assets of another person that the court finds:-

- (a) are held in trust for the person whose assets are in question or otherwise on his behalf; or
- (b) were acquired from the person whose assets are in question as a gift or loan without adequate consideration.

## Thailand

### Organic Act on Prevention and Suppression of Corruption B.E. 2561 (2018)

**Unofficial Translation** (Excerpt from: [https://www.unodc.org/documents/treaties/UNCAC/CountryVisitFinalReports/2019\\_09\\_02\\_Thailand\\_Final\\_Country\\_Report.pdf](https://www.unodc.org/documents/treaties/UNCAC/CountryVisitFinalReports/2019_09_02_Thailand_Final_Country_Report.pdf))

#### Section 4:

...

“unusual increase of assets” means the phenomenon where the assets and liabilities listed in the account showing assets and liabilities submitted by the person holding a political position upon vacation of office differ from the account showing assets and liabilities submitted at the time of taking office, in the manner that the assets unusually increase or liabilities unusually decrease;

“unusual wealth” means having an unusually large quantity of assets, having an unusual increase of assets, having an unusual decrease of liabilities or having illegitimate acquisition of assets in a consequence of the performance of duties or the exercise of power in office or in the course of duty.

...

**Section 58:**

When it appears that any person holding any of the following positions is under the circumstance of unusual wealth or under circumstances indicative of the commission of corruption, malfeasance in office, malfeasance in judicial office, an intentional exercise of power contrary to the Constitution or the law or serious violation or failure to comply with ethical standards, the Senate has the power to initiate the removal of such person from office in accordance with the provisions of this Chapter:

- (1) Prime Minister;
- (2) Minister;
- (3) Member of the House of Representatives;
- (4) Senator;
- (5) President of the Supreme Court of Justice;
- (6) President of the Constitutional Court;
- (7) President of the Supreme Administrative Court;
- (8) Prosecutor-General;
- (9) judge of the Constitutional Court;
- (10) Election Commissioner;
- (11) Ombudsman;
- (12) member of the State Audit Commission;
- (13) State Audit Governor;
- (14) Vice President of the Supreme Court of Justice;
- (15) Vice President of the Supreme Administrative Court;
- (16) Chief of the Military Judicial Office;
- (17) Deputy Prosecutor-General;
- (18) judge or prosecutor as prescribed by a publication of the NACC; (19) person holding a high-ranking position or person holding an equivalent position.

...

**Section 75:**

In the case where an allegation is made that any person holding a political position or any state official has become unusually wealthy, the person making the allegation shall submit the allegation to the NACC at the time the alleged culprit is a state official or has ceased to be a state official for, not more than five years, and the NACC shall conduct a preliminary determination as to whether the circumstances or the matter specified in the allegation falls within the competence of the NACC. If the alleged culprit is a person who has already



submitted an account showing particulars of assets and liabilities, the NACC shall also take such account into consideration.

In the case where a person holding a political position or state official has vacated the political office or has ceased to be a state official for more than five years, the allegation under paragraph one against the person holding a political position or state official may not be made, but without prejudice to the powers of the NACC to proceed to with inquiry on the allegation having been made or if there is a reasonable cause to suspect that a person holding a political position or state officials unusual wealthy. However, the NACC shall not proceed after ten years as from the date a person holding a political position or state official vacated the political office or ceased to be a state official, as the case may be.

...

**Section 77:**

In the case where the allegation meets the requirements in section 75 or the in case where there is a reasonable cause to suspect that a person holding a political position or a state official has become unusually wealthy, the NACC shall proceed in accordance with Chapter 4, Fact Inquiry.

**Section 78:**

In the case where the NACC discovers that any property of the alleged culprit is connected with the unusual wealth and is under the circumstance convincingly indicative of the possibility of its transfer, move, transformation or concealment, the NACC shall have the power to issue an order of temporary seizure or attachment of that property, without prejudice to the right of the alleged culprit to submit an application for taking such property for use with or without bail or security.

When there occurs a temporary seizure or attachment of the property under paragraph one, the NACC shall cause to be conducted proof of the property without delay. In the case where the alleged culprit is unable to present evidence that the property under temporary seizure or attachment is not connected with the unusual wealth, the NACC shall have the power to continue its seizure or attachment until the NACC passes a resolution that the allegation has no prima facie case, which must be within one year as from the date of the seizure or attachment or until the Court passes a final judgment dismissing that case. But, if the proof is successful, the property shall be returned to such person.

...

**Section 80:**

If the NACC has conducted a fact inquiry and passed a resolution that the alleged culprit has become unusually wealthy, the NACC shall proceed as follows:

(1) in the case where it is the alleged culprit under section 66, the President shall refer the matter to the Prosecutor-General for submission of a motion to the Supreme Court of Justice's Criminal Division for Persons Holding Political Positions requesting the Court to order that the property devolve upon the State;

(2) in the case where the alleged culprit is a person holding the position of President

of the Supreme Court of Justice, President of the Constitutional Court, President of the Supreme Administrative Court, judge of the Constitutional Court, Election Commissioner, Ombudsman, member of the State Audit Commission, Vice President of the Supreme Court of Justice, Vice President of the Supreme Administrative Court, Chief of the Military Judicial Office, Deputy Prosecutor-General or is a person holding a high-ranking position, the President shall refer the matter to the Prosecutor-General for submission of a motion to the court having competence to try and adjudicate the case requesting the Court to order that the property devolve upon the State;

(3) in the case where the alleged culprit is a person holding the position of Prosecutor-General, the President shall submit a motion to the court having competence to try and adjudicate the case requesting the Court to order that the property devolve upon the State;

(4) in the case where the alleged culprit is a State official who is not a person under (1), (2) and (3), the President shall refer the matter to the Prosecutor-General for submission of a motion to the Court having competence to try and adjudicate the case requesting the Court to order that the property devolve upon the State, and the President shall notify the superior or the person having the power to appoint or remove the alleged culprit for the purpose of issuing a punitive order of expulsion or dismissal on the deemed ground of the commission of corruption, except that in the case where the alleged culprit is a judicial official under the law on judicial service, judge of the Administrative Court under the law on establishment of Administrative Courts and Administrative Court procedures or public prosecutor under the law on public prosecutors service, the President shall notify the President of the Judicial Commission, the President of the Judicial Commission of Administrative Courts or the President of the Public Prosecutors Commission, as the case may be, for considering and proceeding with the matter in accordance with the law on judicial service, the law on establishment of Administrative Courts and Administrative Court procedures or the law on public prosecutors service.

In the case under (1) or (2), when the Prosecutor-General receives the report and documents together with the opinion from the NACC and is of the opinion that the report, documents and opinion referred to by the NACC are not so complete as to justify the institution of legal proceedings, the Prosecutor-General shall notify the NACC for further action. For this purpose, the incomplete items shall fully be specified at the same time. In this case, the NACC and Prosecutor-General shall appoint a working committee consisting of representatives of each side in an equal number for the purpose of collecting full evidence to be referred to the Prosecutor-General for further submission of a motion to the Supreme Court of Justice's Criminal Division of Persons Holding Political Positions or the court having competence to try and adjudicate the case, as the case may be, requesting the Court to give a subsequent order that the property devolve upon the State. In the case where such working committee fails to reach an agreement as to the legal proceedings, the NACC shall have the power to submit a motion to the Supreme Court of Justice's Criminal Division for Persons Holding Political Positions or the Court having competence to try and adjudicate the case, as the case may be, requesting the Court to order that the property devolve upon the State.

The proceedings under paragraph one shall be exempt from court fees. As for cases under (2), (3) or (4), the Civil Procedure Code shall apply *mutatis mutandis*.

**Original Text** (<http://www.ratchakitcha.soc.go.th/DATA/PDF/2561/A/052/1.PDF>)

**Author's Note:** Due to language constraints, an extraction of the appropriate sections in their original form could not be conducted. For reference, these sections can be viewed at the online source provided above.

# Qualified civil illicit enrichment laws

## Australia – Australian Capital Territory

### Confiscation of Criminal Assets Act 2003 (as amended by the Confiscation of Criminal Assets (Unexplained Wealth) Amendment Act 2020)

Original Text (<https://www.legislation.act.gov.au/a/2003-8/>)

#### 11A Meaning of total wealth

(1) In this Act:

*total wealth*, of a person to whom a proceeding for an unexplained wealth order relates, is the sum of all of the values of the person's wealth.

(2) In deciding the values of a person's wealth—

- (a) the value of property expended, consumed, disposed of, or for any other reason no longer available is the greater of—
  - (i) the value of the property at the time it was acquired; and
  - (ii) the value of the property immediately before expended, consumed, disposed of, or becoming unavailable; and
- (b) the value of any other property is the greater of—
  - (i) the value of the property at the time it was acquired; and
  - (ii) the value of the property on the day that the application for the unexplained wealth order was made.

#### 11B Meaning of wealth

In this Act:

*wealth*, of a person—

- (a) means property that is or at any time was—
  - (i) owned by the person; or
  - (ii) under the effective control of the person; or
  - (iii) expended, consumed or disposed of by the person; and

Examples—property disposed of by the person

1 property sold or traded

2 property transferred as a gift

3 money spent

- (b) includes property owned, effectively controlled, expended, consumed or disposed of by the person before the commencement of this section and whether in or outside the ACT.

### **11C Meaning of serious criminal activity**

(1) In this Act:

serious criminal activity means conduct by any person which, at the time of the conduct, was a serious offence.

(2) To remove any doubt, conduct is serious criminal activity—

- (a) whether or not charges for a serious offence have been laid against a person for the conduct; or
- (b) if charges for a serious offence have been laid against a person— whether or not the person—
  - (i) has been tried for the offence; or
  - (ii) has been acquitted, found guilty or convicted of the offences; or
  - (iii) has had a conviction for the offences quashed.

...

### **26A Unexplained wealth restraining orders—application**

(1) The DPP may apply to a relevant court for an unexplained wealth restraining order over any of the following:

- (a) stated property of a person;
- (b) stated property of a person and all other property of the person (including property acquired after the making of the order);
- (c) all property of a person (including property acquired after the making of the order);
- (d) all property of a person (including property acquired after the making of the order) other than stated property.

(2) The application must state the following:

- (a) that the application is for an unexplained wealth restraining order;
- (b) the person in relation to whom the order is sought;
- (c) any other person whose property the application relates to;
- (d) the property sought to be restrained (including whether it is the property of that person or someone else).

(3) The application must be supported by an affidavit under section 29A.

...

### **29A Unexplained wealth restraining order—affidavit supporting application**

(1) An affidavit by a police officer supporting an application under section 26A for an unexplained wealth restraining order must state that the police officer suspects that—

- (a) a person's total wealth exceeds the value of the person's wealth that was lawfully acquired; and
- (b) the whole or any part of the person's wealth was derived from serious criminal activity.

...

(2) Subsection (1) (b) does not require the police officer to specify in the affidavit a particular offence for serious criminal activity, and it is sufficient if the police officer suspects and the affidavit describes the nature of the activity in general terms.

(3) The affidavit must state, for the property mentioned in the application, or for each stated part of the property—

- (a) that the officer suspects that the property is either the property of the person in relation to whom the order is sought or the property of someone else; and
- (b) for property that the officer suspects is the property of someone else—
  - (i) that the officer suspects that the property is tainted property; or
  - (ii) that the officer suspects that the property is subject to the effective control of the person in relation to whom the order is sought.

(4) The affidavit must state that the police officer believes that the property sought to be restrained may be required to satisfy an unexplained wealth order.

(5) The affidavit must state the grounds for each belief or suspicion of the police officer stated in the affidavit.

...

### **32A Unexplained wealth restraining order—making**

(1) This section applies if an application is made under section 26A to a relevant court for an unexplained wealth restraining order.

(2) The relevant court must make an unexplained wealth restraining order over the property to which the application relates if, having regard to the police officer's affidavit supporting the application and any other evidence before the court, the court is satisfied there are reasonable grounds for the officer's suspicions stated in the affidavit.

(3) The restraining order may direct the public trustee and guardian to take control of the restrained property.

...

### **48A When unexplained wealth restraining order ends**

(1) An unexplained wealth restraining order ends if—

- (a) no application for an unexplained wealth order has been made in relation to the person to whom the restraining order relates within 6 weeks after the restraining order was made; or

- (b) an unexplained wealth order was applied for, the court refused to make the order and 1 of the following applies:
  - (i) the time for an appeal against the refusal has ended without an appeal being lodged;
  - (ii) an appeal against the refusal has lapsed;
  - (iii) an appeal against the refusal has been dismissed and finally disposed of.

(2) An unexplained wealth restraining order also ends if—

- (a) an application for an unexplained wealth order was made within 6 weeks after the restraining order was made; and
- (b) the court made the unexplained wealth order; and
- (c) either—
  - (i) the unexplained wealth order has been complied with; or
  - (ii) an appeal against the unexplained wealth order has been upheld and finally disposed of.

...

## **Part 7A Unexplained wealth orders**

### **Division 7A.1 General**

#### **98A Meaning of unexplained wealth order**

In this Act:

*unexplained wealth order* means an order under this part for the payment by a person of an amount assessed by a court, in accordance with section 98E, as the value of the person's unexplained wealth.

### **Division 7A.2 Making unexplained wealth orders**

#### **98B Unexplained wealth orders—application**

The DPP may apply to a relevant court for an unexplained wealth order in relation to a person.

#### **98C Unexplained wealth order—affidavit supporting application**

(1) If an unexplained wealth restraining order has not been made in relation to a person the subject of an application under section 98B, an affidavit by a police officer supporting the application for an unexplained wealth order against the person must state that the police officer suspects that—

- (a) a person's total wealth exceeds the value of the person's wealth that was lawfully acquired; and
- (b) the whole or any part of the person's wealth was derived from serious criminal activity.

...



(2) Subsection (1) (b) does not require the police officer to specify in the affidavit a particular offence for serious criminal activity, and it is sufficient if the police officer suspects and the affidavit describes the nature of the activity in general terms.

(3) The affidavit must state, for the property mentioned in the application, or for each stated part of the property—

- (a) that the officer suspects that the property is either the property of the person in relation to whom the order is sought or the property of someone else; and
- (b) for property that the officer suspects is the property of someone else—
  - (i) that the officer suspects that the property is tainted property; or
  - (ii) that the officer suspects that the property is subject to the effective control of the person in relation to whom the order is sought.

(4) The affidavit must state the grounds for each belief or suspicion of the police officer stated in the affidavit.

#### **98D Unexplained wealth orders—making**

(1) On application under section 98B, the relevant court must make an unexplained wealth order against a person if the court is not satisfied that the whole or any part of the person's wealth was not derived from serious criminal activity.

(2) However, the court may refuse to make an unexplained wealth order or may reduce the amount that would otherwise be payable as assessed, if the court, having regard to the purposes of this Act, thinks it is in the public interest to do so.

(3) A decision of the court to refuse to make an unexplained wealth order or to reduce an amount that would otherwise be payable as assessed is not in the public interest if based only on 1 or more of the following:

- (a) a specific serious offence has not been particularised or proved to be associated with the person's unexplained wealth;
- (b) the person or the person's dependants will not have the same standard of living as a result of the order or reduction.

(4) For subsection (1), wealth may be derived before the commencement of this section.

(5) In making an unexplained wealth order, the relevant court must not order the person to pay the Territory an amount that is more than the person's unexplained wealth assessed under section 98E.

...

#### **98E Unexplained wealth orders—assessment of unexplained wealth**

(1) This section applies for the purpose of making an assessment of the unexplained wealth of a person against whom an unexplained wealth order is made.

(2) The unexplained wealth, of a person, is the amount that in the opinion of a relevant court is—

- (a) the difference between—
  - (i) the person’s total wealth; and
  - (ii) the sum of the values of the property that the court is satisfied, on the balance of probabilities, was not derived from serious criminal activity; and
- (b) less an amount equal to whichever of the following applies to the person:
  - (i) the value of any property the person forfeited under a forfeiture order;

...

- (ii) the sum of any amounts payable by the person under a penalty order or an interstate penalty order.

(3) In a proceeding against a person for an unexplained wealth order, the burden of proof is on the person to prove that—

- (a) the person’s wealth was not derived from serious criminal activity; and
- (b) an order mentioned in subsection (2) (b) applies to the person.

(4) When working out the value of property for this section, the value is—

- (a) for wealth that has been consumed or otherwise disposed of—the greater of—
  - (i) the value at the time the wealth was acquired; and
  - (ii) the value immediately before the wealth was consumed or disposed of; or
- (b) in any other case—the greater of—
  - (i) the value at the time the wealth was acquired; and
  - (ii) the value at the time the application for the unexplained wealth order was made.

(5) In assessing the unexplained wealth of a person, the relevant court is not required to consider any wealth of which the DPP has not provided evidence.

#### **98F Unexplained wealth orders—hardship relief**

(1) A relevant court making an unexplained wealth order in relation to a person may make another order directing the Territory, once the unexplained wealth order is fully satisfied, to pay an amount (a relief amount) decided by the court to a dependant of the person if the court is satisfied that—

- (a) the unexplained wealth order would cause undue hardship to the dependant; and
- (b) the amount would relieve the hardship; and
- (c) if the dependant is at least 18 years old—the dependant had no knowledge of the person’s conduct that is the subject of the unexplained wealth order.

(2) When deciding the relief amount, the court—

- (a) must only allow an amount to assist the dependant to avoid undue hardship for

a period in which the dependant could not reasonably be expected to meet the dependant's reasonable living expenses; and

- (b) must as far as practicable, having regard to the minimum standard of living mentioned in section 37 (3) (a) (ii), when determining undue hardship not take into account hardship arising from the loss of a previous standard of living of the dependant to the extent that the previous standard of living was likely to have been the result of unexplained wealth.

(3) An amount decided by the court must not be more than the value of the person's unexplained wealth.

(4) An order under this section may relate to more than 1 of the person's dependants.

...

### **Division 7A.3 Satisfaction of unexplained wealth order**

#### **98G Creation of unexplained wealth charge over restrained property**

(1) This section applies if, in relation to a person—

- (a) a restraining order is made; and
- (b) an unexplained wealth order is made.

(2) On the making of the later of the orders, all of the restrained property is automatically charged to secure the payment to the Territory of the amount of the unexplained wealth order.

...

(3) If the restraining order is varied after the unexplained wealth order is made to add more property, the additional property is also automatically charged to secure payment to the Territory of the amount of the unexplained wealth order.

(4) A charge on property created by this section (an unexplained wealth charge)—

- (a) is subject to every encumbrance on the property that came into existence before the charge and that would have priority over the charge if this subsection had not been enacted; and
- (b) has priority over all other encumbrances; and
- (c) is a statutory interest of a kind to which the Personal Property Securities Act 2009 (Cwlth), section 73 (2) applies; and
- (d) is not affected by any change in the ownership of the property unless the change in ownership ends the unexplained wealth charge under section 98H (c) or (d).

#### **98H When unexplained wealth charge over property ends**

An unexplained wealth charge over property ends when the earliest of the following events happens:

- (a) the unexplained wealth order for which the charge was created ends;

...

(b) the restraining order over the property ends;

...

(c) the property is sold, or otherwise disposed of, with the consent of—

(i) the relevant court that made the unexplained wealth order; or

(ii) if a trustee (including the public trustee and guardian) controls the property—the trustee;

(d) the property is sold to a purchaser who—

(i) buys the property honestly and for sufficient consideration; and

(ii) at the time of the purchase, has no notice of the charge.

### **98I Unexplained wealth orders—enforceable as judgment debt**

The amount ordered to be paid by a relevant court under an unexplained wealth order is a judgment debt owing to the Territory.

...

## **Australia - New South Wales**

### **Criminal Assets Recovery Act 1990**

**Original Text** (<https://www.legislation.nsw.gov.au/#/view/act/1990/23/part3/div2>)

#### **28A Making of [an] unexplained wealth order**

(1) The Commission may apply to the Supreme Court for an unexplained wealth order requiring a person to pay to the Treasurer an amount assessed by the Court as the value of the unexplained wealth of the person.

(2) The Supreme Court must make an unexplained wealth order if the Court finds that there is a reasonable suspicion that the person against whom the order is sought has, at any time before the making of the application for the order:

(a) engaged in a serious crime related activity or serious crime related activities, or

(b) acquired serious crime derived property from any serious crime related activity of another person (whether or not the person against whom the order is made knew or suspected that the property was derived from illegal activities).

(3) A finding under this section need not be based on a reasonable suspicion as to the commission of a particular offence and can be based on a reasonable suspicion that some offence or other constituting a serious crime related activity was committed.

(4) The Supreme Court may refuse to make an unexplained wealth order, or may reduce the

amount that would otherwise be payable as assessed under section 28B, if it thinks it is in the public interest to do so.

(5) Engagement in a serious crime related activity or the acquisition of serious crime derived property referred to in subsection (2) extends to engagement in an activity or the acquisition of property before the commencement of this section.

### **28B Assessment for [an] unexplained wealth order—unexplained wealth**

(1) This section applies for the purpose of making an assessment for an unexplained wealth order of the unexplained wealth of a person against whom the order is made.

(2) The unexplained wealth of a person is the whole or any part of the current or previous wealth of the person that the Supreme Court is not satisfied on the balance of probabilities is not or was not illegally acquired property or the proceeds of an illegal activity.

(3) The burden of proof in proceedings against a person for an unexplained wealth order is on the person to prove that the person's current or previous wealth is not or was not illegally acquired property or the proceeds of an illegal activity.

(4) The current or previous wealth of a person is the amount that is the sum of the values of the following:

- (a) all interests in property of the person,
- (b) all interests in property that are subject to the effective control of the person,
- (c) all interests in property that the person has, at any time, expended, consumed or otherwise disposed of (by gift, sale or any other means),
- (d) any service, advantage or benefit provided at any time for the person or, at the person's request or direction, to another person,

whether acquired, disposed of or provided before or after the commencement of this section and whether within or outside New South Wales.

(5) In assessing the unexplained wealth of a person, the Supreme Court is not required to consider any current or previous wealth of which the Commission has not provided evidence.

(6) The value of anything included as current or previous wealth is:

- (a) in the case of wealth that has been expended, consumed or otherwise disposed of—the greater of:
  - (i) the value at the time the wealth was acquired, and
  - (ii) the value immediately before the wealth was expended, consumed or otherwise disposed of, or
- (b) in any other case—the greater of:
  - (i) the value at the time the wealth was acquired, and
  - (ii) the value at the time the application for the unexplained wealth order was made.

## 28C General provisions applying to proceeds assessment and unexplained wealth orders

...

(6) The amount a person is required to pay under a proceeds assessment order or unexplained wealth order is a debt payable by the person to the Crown on the making of the order and is recoverable as such.

### Australia – Queensland

#### Criminal Proceeds Confiscation Act 2002 (as amended by the Criminal Proceeds Confiscation (Unexplained Wealth and Serious Drug Offender Confiscation Order) Amendment Act 2013)

Original Text ([http://classic.austlii.edu.au/au/legis/qld/consol\\_act/cpca2002285/](http://classic.austlii.edu.au/au/legis/qld/consol_act/cpca2002285/))

#### Part 5A Unexplained Wealth Orders

##### Division 1 - Application for, and making and variation of, unexplained wealth orders

...

#### 89F Application for [an] unexplained wealth order

(1) The State may apply to the Supreme Court for an order (unexplained wealth order) requiring a person to pay to the State an amount assessed by the court to be the value of the person's unexplained wealth.

(2) The State must give notice of the application to—

- (a) the person against whom the order is sought; and
- (b) anyone else who the commission, or if the application is made for the State by a police officer, the commissioner of the police service reasonably suspects may be affected by the order.

(3) A person given notice under subsection (2) may appear at the hearing of the application.

(4) The absence of a person required to be given notice of the application does not prevent the Supreme Court from making an unexplained wealth order.

#### 89G Making of unexplained wealth order

(1) The Supreme Court must, on an application under section 89F, make an unexplained wealth order against a person if it is satisfied there is a reasonable suspicion that—

- (a) the person—
  - (i) has engaged in 1 or more serious crime related activities; or
  - (ii) has acquired, without giving sufficient consideration, serious crime derived property from a serious crime related activity of someone else, whether or not the person knew or suspected the property was derived from illegal activity; and

(b) any of the person's current or previous wealth was acquired unlawfully.

(2) However, the court may refuse to make the order if the court is satisfied it is not in the public interest to make the order.

(3) A finding of the court under subsection (1) (a) –

(a) need not be based on a reasonable suspicion that a particular offence was committed; and

(b) may be based on a reasonable suspicion that some offence that is a serious crime related activity was committed.

...

#### **89H Amount payable under unexplained wealth order**

(1) An unexplained wealth order must state, as the amount required to be paid to the State, the value of the person's unexplained wealth.

(2) The value of the person's unexplained wealth must be assessed by the Supreme Court under division 2 .

(3) However, the court may reduce the amount that would otherwise be payable as assessed under division 2 if it is satisfied it is in the public interest to do so.

...

#### **89J Notice of unexplained wealth order**

(1) Within 28 days after an unexplained wealth order is made, the commission or, if the application for the order was made for the State by a police officer, the commissioner of the police service must give the following persons the documents mentioned in *subsection (2)* –

(a) all known dependants of the person against whom the order is made;

(b) anyone else the commission or the commissioner of the police service reasonably suspects may be affected by the order.

(2) For *subsection (1)* , the documents are–

(a) a copy of the unexplained wealth order; and

(b) a written notice stating that a dependant of the person against whom the order is made may apply to the Supreme Court, within 3 months after the day the order is made, for a hardship order under *section 89Q* .

(3) If required by the court, the commission or the commissioner of the police service must also give notice of the making of the order to the persons the court considers appropriate, in the way and within the time the court considers appropriate.

### **Division 2 - Assessment of value of unexplained wealth**

#### **89K Application of div 2**

This division applies to property in Queensland or elsewhere.

**89L Assessment for [an] unexplained wealth order**

- (1) The “unexplained wealth” of a person is the amount mentioned in *subsection (2) or (3)*.
- (2) For *subsection (1)*, the amount may be the amount equivalent to—
- (a) the person’s current or previous wealth of which the State has given evidence; less
  - (b) any of the current or previous wealth mentioned in paragraph (a) that the person proves was lawfully acquired.
- (3) Alternatively, for *subsection (1)*, the amount may be the amount equivalent to the person’s expenditure for a period of which the State has given evidence less the income for that period that the person proves was lawfully acquired.
- (4) For *subsection (2)*, the value of a thing included as current or previous wealth is—
- (a) if the wealth has been disposed of, the greater of—
    - (i) the value when the wealth was acquired; or
    - (ii) the value immediately before the wealth was disposed of; or
  - (b) otherwise, the greater of—
    - (i) the value when the wealth was acquired; or
    - (ii) the value when the application for the unexplained wealth order was made.
- (5) However, the court may—
- (a) treat, as the value of the person’s current or previous wealth, the value it would have had if it had been acquired at the time the court decides the application; and
  - (b) without limiting paragraph (a), have regard to any decline in the purchasing power of money between the time the current or previous wealth was acquired and the time the court decides the application.

(6) In this section—

“acquired” includes provided or derived.

Division 3 - Operation of unexplained wealth orders

**89M Unexplained wealth order amount is debt payable to State**

- (1) The amount a person is ordered to pay to the State under an unexplained wealth order is a debt payable by the person to the State.
- (2) The unexplained wealth order may be enforced as if it were a money order made by the Supreme Court in a civil proceeding taken by the State against the person for the recovery of the amount payable under the unexplained wealth order.

...



**Australia – Victoria****Confiscation Act 1997**

**Original Text** ([http://classic.austlii.edu.au/au/legis/vic/consol\\_act/ca1997137/](http://classic.austlii.edu.au/au/legis/vic/consol_act/ca1997137/))

**40C Unexplained wealth restraining orders**

(1) An unexplained wealth restraining order is an order that no property or interest in property, that is property or an interest to which the order applies, is to be disposed of, or otherwise dealt with by any person except in the manner and circumstances (if any) specified in the order.

...

**40F Application for unexplained wealth restraining order**

(1) The DPP or an appropriate officer may apply without notice to a court for an unexplained wealth restraining order in respect of property if a police officer suspects on reasonable grounds that—

- (a) a person has engaged in serious criminal activity; and
- (b) that person has an interest in the property; and
- (c) in the case of property located outside Victoria—that serious criminal activity occurred within Victoria; and
- (d) the total value of the property that is the subject of the application is \$50 000 or more.

(2) The DPP or an appropriate officer may apply without notice to a court for an unexplained wealth restraining order in respect of property if a police officer suspects on reasonable grounds that—

- (a) the property was not lawfully acquired; and
- (b) either—
  - (i) the property is located in Victoria; or
  - (ii) the person who has acquired the property is ordinarily resident in Victoria.

(3) An application under subsection (1) or (2) must be supported by an affidavit of a police officer—

- (a) setting out any relevant matters; and
- (b) in the case of an application under subsection (1), stating that the police officer suspects that—
  - (i) a person has engaged in serious criminal activity; and
  - (ii) that person has an interest in the property; and

- (iii) in the case of property located outside Victoria—that serious criminal activity occurred within Victoria; and
- (iv) the total value of the property that is the subject of the application is \$50 000 or more; and
- (c) in the case of an application under subsection (2), stating that the police officer suspects that—
  - (i) the property was not lawfully acquired; and
  - (ii) either—
    - (A) the property is located in Victoria; or
    - (B) the person who has acquired the property is ordinarily resident in Victoria; and
- (d) setting out the grounds on which the police officer has the suspicion referred to in paragraph (b) or (c) (as the case may be).

(4) In addition, an affidavit supporting an application under subsection (2) must identify the person who has or the persons who have an interest in the property suspected of not having been lawfully acquired if that information is known to the police officer at the time of the application.

(5) An application under subsection (1) for an unexplained wealth restraining order does not need to specify a particular offence constituting the serious criminal activity but may specify one or more offences that constitute the serious criminal activity.

(6) For the purposes of this section, property in which a person has an interest includes—

- (a) property that is subject to the effective control of the person; and
- (b) property that was the subject of a gift from the person to another person regardless of when the gift was made.

(7) An application for a restraining order or a civil forfeiture restraining order in relation to property or an interest in property does not preclude an application for an unexplained wealth restraining order being made in relation to the same property or interest in property.

(8) An application for an unexplained wealth restraining order may be made more than once in respect of the same property or interest in property.

...

#### **40I Determination of application for unexplained wealth restraining order**

(1) On an application under section 40F(1) for an unexplained wealth restraining order, the court must make an unexplained wealth restraining order if it is satisfied that—

- (a) the deponent of the affidavit supporting the application does suspect that—
  - (i) a person has engaged in serious criminal activity; and
  - (ii) that person has an interest in the property sought to be restrained; and

- (iii) in the case of property located outside Victoria—the serious criminal activity occurred in Victoria; and
    - (iv) the total value of the property is \$50 000 or more; and
  - (b) there are reasonable grounds for the suspicion referred to in paragraph (a)(i), (ii) and (iii).
- (2) The court may be satisfied that the deponent of the affidavit reasonably suspects that a person with an interest in the property has engaged in serious criminal activity—
- (a) regardless of whether that person, or any other person, has been charged with, tried for, acquitted or convicted of, or has had a conviction quashed, pardoned or set aside for, an offence that is, or offences that are, suspected of constituting the serious criminal activity; and
  - (b) where more than one offence is specified as constituting the serious criminal activity—if the court is satisfied that the deponent reasonably suspects that the conduct of the person constitutes at least one of those offences.
- (3) On an application under section 40F(2) for an unexplained wealth restraining order, the court must make an unexplained wealth restraining order if it is satisfied that—
- (a) the deponent of the affidavit supporting the application does suspect that—
    - (i) the property sought to be restrained was not lawfully acquired; and
    - (ii) either—
      - (A) the property is located in Victoria; or
      - (B) the person who has acquired the property is ordinarily resident in Victoria; and
  - (b) there are reasonable grounds for that suspicion.
- (4) For the purposes of subsection (3)(b), in determining whether there are reasonable grounds for suspecting that property was not lawfully acquired, the court may have regard to one or more of the following—
- (a) the lawful income of a person with an interest in, or effective control of, the property;
  - (b) any suspected unlawful activity of a person with an interest in, or effective control of, the property;
  - (c) the prior ownership of the property and any suspected unlawful activity of a person, or persons, who previously owned the property;
  - (d) the circumstances under which the property has come to the attention of Victoria Police;
  - (e) any other relevant matter.

**40K Notice requiring declaration of interests in restrained property**

(1) Subject to subsection (2), if an unexplained wealth restraining order is made in respect of property, a police officer must give a notice to each person who the applicant for the unexplained wealth restraining order believes has an interest in that property requiring the person to give to the police officer a written declaration of interests in restrained property.

(2) If a notice under section 40M is given to a person who the applicant for the unexplained wealth restraining order believes has an interest in property restrained under the unexplained wealth restraining order, a police officer may, but is not required to, issue a notice under subsection (1).

(3) A notice under subsection (1) must—

- (a) be in the prescribed form; and
- (b) state the effect of section 40O.

...

**40M Notice to person suspected of engaging in serious criminal activity**

(1) If an unexplained wealth restraining order is made under section 40I(1) on the basis that a person is suspected of having engaged in serious criminal activity, a police officer may give a notice to the person requiring the person to give to the police officer a written declaration of the person's property interests.

(2) A notice under subsection (1) must—

- (a) be in the prescribed form; and
- (b) state the effect of section 40O.

(3) If a person suspected of having engaged in serious criminal activity is also a person to whom a notice under section 40K must be given—

- (a) a notice under subsection (1) may be given in place of the notice under section 40K; and
- (b) the giving of a notice to the person under section 40K does not preclude the giving of a notice to the person under subsection (1) at a later date.

**40N What must be included in a declaration by an owner of property?**

(1) Subject to subsection (2), a person who has been given a notice under section 40M must provide a written declaration of property interests that states the following information —

- (a) particulars of any sources of income of the person, including bequests;
- (b) any bank or building society accounts held by the person, whether solely or jointly;
- (c) any real property in which the person holds an interest;
- (d) any unit trusts, ledgers, shares or debentures in which the person holds an interest;
- (e) the amount of any cash held by the person, including cash held as virtual currency,

and the source of the cash;

- (f) any motor vehicles, boats, works of art, livestock or jewellery owned by the person that have an individual value of \$5000 or more;
- (g) any safe deposit boxes held by the person;
- (h) any charge and credit cards held by the person;
- (i) any accounts held by the person for the purposes of gambling;
- (j) any trusts in which the person has a beneficial interest;
- (k) any transfers of property made by the person to another person in the previous 6 years if the total value of those transfers is \$50 000 or more;
- (l) any transfers of property to the person made by another person in the previous 6 years if the total value of those transfers is \$50 000 or more.

(2) In addition, if a notice under section 40M is given to a person in place of a notice under section 40K, the declaration must include any statement required under section 40L.

...

#### **40Q Admissibility of statement**

(1) A statement made by a person in a declaration of property interests given in response to a notice under section 40K or 40M is admissible against that person in—

- (a) a proceeding for making a false or misleading statement in the declaration; or
- (b) any proceeding under this Act—

but is not otherwise admissible in evidence against that person.

(2) Any information, document or other thing obtained as a direct or indirect consequence of making a statement in a declaration of property interests given in response to a notice under section 40K or 40M is admissible against that person in—

- (a) a proceeding for making a false or misleading statement in the declaration; or
- (b) any proceeding under this Act—

but is not otherwise admissible in evidence against that person.

...

#### **40R Application for exclusion from unexplained wealth restraining order**

(1) If a court makes an unexplained wealth restraining order against property, any person claiming an interest in the property may apply to the court that made that order for a section 40S exclusion order.

...

#### 40ZA Forfeiture of unexplained wealth

(1) Subject to subsection (2), property that is the subject of an unexplained wealth restraining order is forfeited to the Minister on the expiry of 6 months after the making of the unexplained wealth restraining order.

(2) If, on the expiry of the 6 months referred to in subsection (1), an application under section 40R is still pending, the restrained property is forfeited to the Minister—

- (a) if the application is refused or dismissed—
  - (i) at the end of the period during which the person may appeal against the refusal or dismissal; or
  - (ii) if an appeal against the refusal or dismissal is lodged—when the appeal is abandoned or finally determined without the order having been made; or
- (b) if the application is withdrawn or struck out—on that withdrawal or striking out.

(3) For the purposes of subsection (2), an application under section 40R is not pending unless an application under section 40R(1) has been made—

- (a) within the period referred to in section 40R(2); or
- (b) where, under section 40R(3), the court has extended the period in which the application may be made—within the period as so extended and before the expiry of the period of 6 months referred to in subsection (1).

## Bahamas

### The Proceeds of Crime Act 2018

**Author's Note:** This law is only categorised as an illicit enrichment law in respect of its application to politically exposed persons and public office holders. Furthermore, the 'qualified' status of this law is somewhat blurred, and depends largely on the extent to which a law enforcement authority would need to justify a 'charge' under Section 75. The 'qualified' categorisation also assumes that the officer's statement in an application under Section 75(5) that they 'reasonably believe' that the property was unlawfully acquired can be subjected to judicial scrutiny.

**Original Text** ([http://laws.bahamas.gov.bs/cms/images/LEGISLATION/PRINCIPAL/2018/2018-0004/ProceedsofCrimeAct2018\\_1.pdf](http://laws.bahamas.gov.bs/cms/images/LEGISLATION/PRINCIPAL/2018/2018-0004/ProceedsofCrimeAct2018_1.pdf))

#### 75. Application for an Unexplained Wealth Order *nisi*.

(1) Proceedings under this Part shall be civil proceedings.

(2) This Part shall only apply if any one or more of the following conditions apply where the relevant person –

- (a) is or has been –
- (i) a politically exposed person;
  - (ii) a public office holder;
  - (iii) a respondent to an application for civil forfeiture pursuant to Part V of this Act;
  - (iv) convicted of an offence punishable with imprisonment in The Bahamas;
  - (v) convicted of an offence punishable with imprisonment under a law of a foreign jurisdiction, in relation to acts or omissions which, had they occurred in The Bahamas, would have constituted an offence in the Bahamas;
  - (vi) the recipient of property obtained by criminal conduct including gifts caught by the [Act];
  - (vii) the subject of restraint, confiscation, or forfeiture proceedings in a foreign jurisdiction; or
  - (viii) an individual or officer of an entity subject to United Nations Security Council sanction; and
- (b) has been charged with one or more of the following types of criminal conduct –
- (i) bribery;
  - (ii) a corruption offence of extortion or misconduct in public office;
  - (iii) falsification of accounts;
  - (iv) stealing by reason of service of employment;
  - (v) money laundering;
  - (vi) fraud;
  - (vii) drug trafficking;
  - (viii) firearms trafficking;
  - (ix) proliferation of weapons of mass destruction;
  - (x) human trafficking; or
  - (xi) any identified risk.

(3) Where a relevant person makes a statement pursuant to an order under this Part, anything disclosed in any statement and any information, document, or thing obtained as a direct or indirect consequence of the statement shall not be admissible against the person in any criminal proceeding except a proceeding in respect of the falsity of the statement.

(4) The enforcement authority may apply to a Court in writing for an order requiring the relevant person to file declarations and answer questions as required in relation to their assets.

(5) An application for an order under subsection (4) must be supported by an affidavit by an authorised officer stating –

- (a) the identity of the relevant person;
- (b) that the authorised officer reasonably suspects that the relevant person’s total wealth exceeds the value of his lawfully obtained wealth;
- (c) that any property the authorised officer believes is held by the relevant person was unlawfully obtained;
- (d) the property the authorised officer reasonably suspects is owned by the relevant person or is under his effective control.

(6) The Court may make an order without notice to the relevant person, if the enforcement authority requests the Court to do so and it appears necessary in the interests of justice.

**76. Court may make an order requiring person to appear**

(1) A Court may make an Unexplained Wealth Order *nisi*, requiring the relevant person to appear before the Court for the purpose of enabling the Court to decide whether or not to make an Unexplained Wealth Order *absolute* if –

- (a) the Court is satisfied that the authorised officer has reasonable grounds to suspect that the relevant person’s total wealth exceeds the value of his wealth that was lawfully obtained; and
- (b) the evidential requirements in section 75(5) for the application have been met.

(2) For the purposes of this Part –

“lawfully obtained” means property which has been acquired by the relevant person through legitimate activities and includes property acquired by inheritance, or other legitimate transfer; and

“unexplained wealth” means any money or property of an origin which cannot be explained as being lawfully obtained.

**77. Application to revoke an Unexplained Wealth Order *nisi*.**

(1) If the Court makes an Unexplained Wealth Order *nisi*, the relevant person may apply to the Court to revoke the order within twenty-eight days of notice of the order.

(2) If such an application is made, the Court may order an inter parties hearing date within fourteen days or the first available date.

(3) Where an application is made under this section, the applicant must give the enforcement authority –

- (a) written notice of the application; and
- (b) a copy of any affidavit supporting the application.

(4) Where an application is made under this section, the applicant may appear and adduce evidence.



(5) The enforcement authority may appear and adduce evidence at the hearing of any application made under this section and must give the relevant person a copy of any material it proposes to rely on to contest the application.

(6) The notice and copies of any evidence or pleadings under this section must be given no later than seven days before the hearing of the application.

(7) The Court may revoke the Unexplained Wealth Order *nisi* if satisfied that—

- (a) there are no grounds on which the order could be made absolute; or
- (b) it is in the interest of justice to do so.

### **78. Application for a Unexplained Wealth Order *absolute*.**

(1) The enforcement authority may apply to the Court for an Unexplained Wealth Order *absolute*.

(2) A Court may make an Unexplained Wealth Order *absolute* requiring the relevant person to pay a specified amount to the Crown if—

- (a) the Court has made an Unexplained Wealth Order *nisi*, which has not been revoked, in relation to the relevant person; and
- (b) the Court is satisfied on a balance of probabilities that any part of the relevant person's wealth was not lawfully obtained or held.

(3) The Court must specify in the order that the relevant person is liable to pay to the Crown an amount equal to the amount that the Court is satisfied does not represent the relevant person's lawfully acquired property (hereinafter referred to as the relevant person's "unexplained wealth amount").

(4) In proceedings under this section, the burden of proving that the relevant person's wealth is lawfully acquired lies on the relevant person.

(5) When considering the issues under subsection (2), the Court may have regard to information not included in the Unexplained Wealth Order *nisi*.

(6) When considering the amount of an Unexplained Wealth Order *absolute*, the Court must deduct an amount equal to the value, at the time of making the order, of any property of the relevant person forfeited under a forfeiture, confiscation order or an extended benefit order, including any foreign forfeiture or confiscation order.

### **79. Property subject to a person's effective control.**

(1) If —

- (a) the Court has made an absolute Unexplained Wealth Order; and
- (b) the enforcement authority applies to the Court for an order under this section; and
- (c) the Court is satisfied that particular property is subject to the effective control of the relevant person;

the Court may make an order declaring that the whole, or a specified part, of that property is available to satisfy the Unexplained Wealth Order.

(2) An order under subsection (1) may be enforced against the property as if the property were the relevant person's property.

(3) An order which restricts the right of the relevant person or any named person to deal with the property identified in this section may be made, upon application of the enforcement authority, if the Court is satisfied that the property would not be available to the enforcement authority without such a restriction.

(4) If the enforcement authority applies for an order under subsection (1) relating to particular property, the authority must give written notice of the application to –

- (a) the relevant person who is subject to the Unexplained Wealth Order, *absolute*; and
- (b) any other person whom it has reason to believe may have an interest in the property.

(5) The relevant person, and any person who claims an interest in the property, may appear and adduce evidence at the hearing of the application.

(6) For the purposes of this Act, “effective control” means in relation to property means the exercise of practical control over the property whether or not that control is supported by any property interest or other legally enforceable power and in determining whether property is subject to the effective control of a person –

- (a) it is not necessary to be satisfied that the person has an interest in the property;
- (b) regard may be had to –
  - (i) shareholdings in, non-shareholding membership in, debentures over, or directorships of a company that has an interest (whether direct or indirect) in the property;
  - (ii) a trust that has a relationship to the property;
  - (iii) family, domestic, business or other relationships between persons having an interest in the property, or in companies referred to in paragraph (a), or trusts referred to in paragraph (b), and other persons; and
  - (iv) the ability of the person to decide whether and to what extent the property may be dealt with.

(7) A Court may refuse to treat property as being subject to the effective control of a person if it is satisfied that a person's ownership or control of the property is subject to a lawful, bona fide trust held for the benefit of a third party to the extent that the same is shown, on a balance of probabilities by the trustee or settlor, not to consist of the proceeds of any crime.

#### **80. Enforcement of an Unexplained Wealth Order *absolute*.**

(1) An amount payable by the relevant person to the Crown under an Unexplained Wealth Order, *absolute* is a civil debt due by the relevant person to the Crown.

(2) An Unexplained Wealth Order *absolute* against a relevant person shall be enforced as an order made in civil proceedings instituted by the Crown against the relevant person to recover a debt due by him to the Crown.

## Kenya

## Anti-Corruption and Economic Crimes Act 2003 (as amended 2016)

**Original Text** (<http://eacc.go.ke/default/wp-content/uploads/2018/06/aceca.pdf>)

## 2. Interpretation

(1) In this Act, unless the context otherwise requires –

...

“unexplained assets” means assets of a person—

- (a) acquired at or around the time the person was reasonably suspected of corruption or economic crime; and
- (b) whose value is disproportionate to his known sources of income at or around that time and for which there is no satisfactory explanation.

### 55. Forfeiture of unexplained assets

(1) In this section, “corrupt conduct” means—

- (a) conduct that constitutes corruption or economic crime; or
- (b) conduct that took place before this Act came into operation and which—
  - (i) at the time, constituted an offence; and
  - (ii) if it had taken place after this Act came into operation, would have constituted corruption or economic crime.

(2) The Commission may commence proceedings under this section against a person if—

- (a) after an investigation, the Commission is satisfied that the person has unexplained assets; and
- (b) the person has, in the course of the exercise by the Commission of its powers of investigation or otherwise, been afforded a reasonable opportunity to explain the disproportion between the assets concerned and his known legitimate sources of income and the Commission is not satisfied that an adequate explanation of that disproportion has been given.

(3) Proceedings under this section shall be commenced in the High Court by way of originating summons.

(4) In proceedings under this section—

- (a) the Commission shall adduce evidence that the person has unexplained assets; and
- (b) the person whose assets are in question shall be afforded the opportunity to cross-examine any witness called and to challenge any evidence adduced by the Commission and, subject to this section, shall have and may exercise the rights

usually afforded to a defendant in civil proceedings.

(5) If after the Commission has adduced evidence that the person has unexplained assets the court is satisfied, on the balance of probabilities, and in light of the evidence so far adduced, that the person concerned does have unexplained assets, it may require the person, by such testimony and other evidence as the court deems sufficient, to satisfy the court that the assets were acquired otherwise than as the result of corrupt conduct.

(6) If, after such explanation, the court is not satisfied that all of the assets concerned were acquired otherwise than as the result of corrupt conduct, it may order the person to pay to the Government an amount equal to the value of the unexplained assets that the Court is not satisfied were acquired otherwise than as the result of corrupt conduct.

(7) For the purposes of proceedings under this section, the assets of the person whose assets are in question shall be deemed to include any assets of another person that the court finds—

- (a) are held in trust for the person whose assets are in question or otherwise on his behalf; or
- (b) were acquired from the person whose assets are in question as a gift or loan without adequate consideration.

(8) The record of proceedings under this section shall be admissible in evidence in any other proceedings, including any prosecution for corruption or economic crime.

(9) This section shall apply retroactively.

## Peru

### Legislative Decree No. 1373 on Extinction of Ownership, August 4, 2018.

*(Decreto Legislativo N° 1373 sobre extinción de dominio, 4 de agosto de 2018)*

**Author's Note:** The classification of this law is based on the definition in Article III (3.11) which outlines that for assets to be considered an 'unjustified increase in assets' there must be evidence to reasonably believe that the assets in question have come from unlawful sources – an unusual threshold in the jurisdiction of Peru. Until a more significant body of jurisprudence regarding this law is established, it is difficult to determine how this law will be consistently applied in practice.

**Unofficial Translation** (Courtesy of DeepI)

### Article II. Principles and criteria applicable to the declaration of forfeiture of ownership

For the application of this legislative decree, the following principles and criteria apply:

...

2.3. Autonomy: the process of extinction of ownership is independent and autonomous from the criminal, civil or other jurisdictional or arbitral process, and therefore the prior issuance of a judgment or award in the latter cannot be invoked to suspend or prevent the issuance of a judgment in the former.

...

2.5. Application in time: the extinguishment of ownership is declared regardless of whether the conditions for its application have occurred prior to the entry into force of this legislative decree.

2.6. Jurisdictional protection and due process: In the processing and exercise of the process of extinguishment of ownership, the rights to jurisdictional protection and due process, recognized in article 139, paragraph 3 of the Political Constitution of Peru, are observed, as well as the rights to defense, evidence and double instance, which are part of the content of the right to due process.

...

2.9. Burden of proof: for the admission of the claim for extinguishment of ownership, it is up to the Prosecutor to offer evidence or concurrent and reasonable indications of the illicit origin or destination of the property. Once the claim is admitted for processing, it is up to the requested party to prove the licit origin or destination of the property.

### **Article III. Definitions**

For the purposes of this legislative decree, the following definitions shall apply:

....

#### **3.11. Unjustified increase in assets:**

increase in the assets or economic expenditure of a natural or legal person notoriously higher than that which he/she could normally have received by virtue of his/her lawful labor or economic activity or his/her income from any other lawful cause, there being elements that allow to reasonably believe that such increase in assets comes from unlawful activities.

...

### **Article 2. Purpose of the Legislative Decree**

The purpose of this legislative decree is to regulate the process of extinction of ownership that proceeds against the assets mentioned in the assumptions of fact of Article I of the Preliminary Title, and whose origin or destination is related to illicit activities. Article 7 must also be observed for the proceeding, regardless of who has acquired the property or is in possession of it.

### **Article 3. Legal nature of the process of Extinction of Ownership**

The process of extinguishment of ownership, as well as being autonomous, is of a real and patrimonial nature.

....

### **Article 7. Requirements to proceed with the forfeiture of ownership process**

7.1. The following are the conditions for the proceeding for forfeiture of ownership:

...

- (b) In the case of assets that constitute an unjustified increase in the assets of a natural or legal person, because there are no elements that reasonably allow it to be considered that they are derived from lawful activities.

...

### **Article 12. Stages**

The process of extinguishment of ownership consists of two stages:

12.1. A patrimonial enquiry stage under the direction of the Specialised Prosecutor, in accordance with the attributions assigned in the present legislative decree; and

12.2. A judicial stage which begins with the admission of the claim for the extinguishment of ownership by the specialised court.

### **Article 13. Initiation of the investigation of assets**

It is the responsibility of the Specialised Public Prosecutor to initiate and direct the investigation into assets, either *ex officio* or by complaint, when any of the requirements set out in this legislative decree are met.

Once the asset investigation has been initiated, the Specialised Public Prosecutor's Office shall be notified so that it may participate in accordance with its functions and powers.

The asset investigation stage is of a confidential nature.

### **Article 14. Asset Investigation Stage**

14.1. The Specialised Prosecutor shall initiate the asset investigation by means of a duly reasoned decision and shall conduct the investigation with the aim of:

- (a) Identifying, individualising, locating and locating the assets of patrimonial value on which the process could fall, as they are in an assumption of extinction of ownership.
- (b) Locate the supposed owners of the assets that are under an assumption of extinguishment of ownership, or those who could intervene as third parties.
- (c) To gather evidence or concurring and reasonable indications that demonstrate the existence of any of the conditions for the extinguishment of ownership provided for in this legislative decree.
- (d) To gather evidence or concurring and reasonable indications that demonstrate the link or nexus of relationship between any of the assumptions for declaring the extinguishment of ownership, the corresponding illicit activity and the assets subject to extinguishment of ownership.
- (e) Request or execute the relevant precautionary measures.
- (f) Request the judge to lift bank secrecy, secrecy of communications, tax secrecy, stock market secrecy, and other measures that may be relevant for the purposes of the proceedings.

14.2. The asset investigation ends when its purpose has been fulfilled or within a maximum period of twelve (12) months, which may be extended once only, by means of a reasoned

decision for an equal period of time. In cases that are declared complex, in accordance with the complexity criteria established in the regulations, the maximum period shall be thirty-six (36) months, extendable for an equal period, once only, by means of a reasoned decision.

#### **Article 15. Precautionary measures**

15.1. The Specialised Prosecutor, ex officio or at the request of the Public Prosecutor, in order to guarantee the effectiveness of the proceedings for the extinguishment of ownership, may request the Judge for the precautionary measures he/she considers necessary.

The judge decides in a confidential hearing within 24 hours of receiving the request, assessing the plausibility of the facts and the danger of delay. For these purposes, he may order the search and seizure of real estate.

If the registration of the measure is necessary, the judicial reports are issued in the same act in which it is granted.

15.2. During the asset investigation stage, the Specialised Prosecutor is empowered to execute exceptionally and for reasons of urgency, a precautionary measure of immobilisation, seizure, inhibition or registration order on any of the assets.

15.3. Any precautionary measure executed by the Specialised Prosecutor during the asset investigation stage must be confirmed or rejected by the judge within twenty-four (24) hours of its execution.

15.4. In the case of registrable assets, the Public Registrar shall register the precautionary measure ordered by the Judge, under his responsibility, without prejudice to the immediate allocation or use of the same, resorting to the relevant legal mechanisms in the event that they are occupied. These registrations will be made by the sole merit of the judicial resolution ordering the measure. Once the precautionary measure ordered by the competent judicial authority has been registered and is in force, no act or contract, regardless of its nature, shall be recorded or registered in the registry entry of the property until the registration of the respective sentence, except for those acts of administration or disposition carried out or requested by the National Programme of Seized Property (PRONABI); a circumstance that is expressly stated in the respective entry. The annotation of the precautionary measure is made under the heading of charges and encumbrances in the corresponding registry entry.

15.6. Assets that cannot be registered are immediately transferred to the administration of the National Programme of Seized Assets (PRONABI).

15.7. Precautionary measures are requested, granted and executed before informing the requested party of the existence of the asset investigation.

15.8. Once the precautionary measures have been executed, the requested party shall be notified within five (5) working days of such measures.

15.9. The judicial decision granting or denying the precautionary measures may be appealed within three (3) working days of notification. The Specialised Chamber must set a date for the hearing of the case within five (5) working days of its elevation and acquit the degree at the same hearing. Exceptionally, when the facts are complex, the decision may be postponed for up to three (3) working days following the hearing of the case.

15.10. The precautionary measures are maintained until the final decision is reached in the process of extinguishment of ownership.

15.11. When precautionary measures are decreed in the asset investigation stage, the specialised prosecutor shall file the forfeiture of ownership lawsuit or file the case, as appropriate, within a period that shall not exceed the maximum period for that stage established in paragraph 2 of the previous article, under penalty of lifting the measure, in order to avoid affecting the rights of third parties, without prejudice to disciplinary, administrative or criminal actions for the omission incurred.

#### **Article 16. Conclusion of the investigation of assets**

Once the asset investigation has been concluded, the Specialised Prosecutor is empowered to:

16.1. Demand before the competent judge the declaration of extinction of ownership.

16.2. File the asset investigation, when it is not possible to substantiate any of the assumptions invoked in the present legislative decree. This decision may be the subject of a complaint by the Public Prosecutor within five (5) working days of notification. The Senior Public Prosecutor hears the complaint filed, and pronounces within ten (10) working days of receiving the proceedings, with the knowledge of the Specialised Public Prosecutor. If he considers the complaint to be well-founded, he can order the prosecutor in charge of the asset investigation to present the claim for extinction of ownership before the competent judge or to continue with the investigation when insufficient performance has been noted at this stage, observing the deadlines indicated in article 14.2; otherwise, he approves the file.

If no complaint is lodged against the decision to close the case, it is referred to the senior public prosecutor, who, within twenty (20) working days, may confirm it or order the filing of the complaint with the public prosecutor in charge of the investigation into the assets.

In any case, the decision to close the case is final and a new investigation into the assets can only be initiated if new evidence is found.

....

#### **Article 17. Requirements of the application for forfeiture of ownership**

17.1. The Public Prosecutor shall file a written application for forfeiture of ownership with the judge, containing the following:

- (a) The facts on which the petition is based.
- (b) The identification, description and economic valuation of the assets that are the object of the request for the extinguishment of ownership.
- (c) The assumption on which the claim is based.
- (d) The link between the assets and the unlawful activity or the unjustified increase in assets.
- (e) The name, identification details and address of the persons who may have an interest in the case or, if not, the reason why it was impossible to locate them.



- (f) Offering of the evidence or concurrent and reasonable indications that support the claim.
- (g) Request precautionary measures if necessary.

17.2. Additionally, the Specialised Public Prosecutor notifies the Public Prosecutor of the complaint within 24 hours, so that he/she may participate as a procedural subject, in defence of the interests of the State during the procedural stage.

### **Article 18. Qualification of the application for forfeiture of ownership**

18.1. Upon receipt of the application for the extinguishment of ownership filed by the Prosecutor, the Judge, within three (3) working days, issues a duly substantiated decision, and may admit the application for processing, declare it inadmissible or inadmissible, communicating said decision to the Prosecutor and the Public Prosecutor. In the event that the complaint derives from cases declared complex, the term shall be ten (10) working days.

18.2. In the event of noticing the absence of any formal requirement, it declares it inadmissible, granting a period of three (3) working days for rectification. Once this period has expired, if it has not been rectified, the application is filed, without prejudice to any administrative actions that may be applicable.

18.3. Against the decision that declares the claim inadmissible, the only remedy available is an appeal within five (5) working days. Once this period has expired, if no appeal is lodged, the claim shall be filed, without prejudice to any administrative actions that may be applicable.

18.4. In the same resolution admitting the claim for processing, the Court decides on the precautionary measures requested in the claim.

### **Article 19. Notification**

19.1. The decision admitting the claim is notified within two (2) working days of its issuance, either personally or by means of publications.

19.2. The personal notification is made by means of a letter addressed to the requested party or other persons who appear as holders of rights in rem over the property or who are directly affected by the process.

19.3. If personal service cannot be effected, service is effected by publication of edicts. Notification by publication of edicts is done by publishing the decision of admission for three (3) consecutive calendar days in the official newspaper or in another newspaper of major circulation in the locality where the competent Court is located. In the absence of newspapers in the locality where the Court is located, the publication is made in the nearest locality that has them and the edict is also posted on the panel of the Court and in places that ensure its wider dissemination. This notification is accredited by adding to the file a copy of the publications, in which the text of the announcement and the days and hours in which it was disseminated are recorded. The decision is deemed to have been notified on the day following the last publication.

19.4. The Judge may also order that the object of the notification be disseminated by radio broadcasting for three (3) consecutive calendar days. This notification is accredited by

adding to the file an affidavit issued by the radio broadcasting company, stating the text of the announcement and the days and times it was broadcast. The decision is deemed to have been notified on the day following the last radio broadcast.

19.5. The purpose of notification by edicts or radio broadcast is to summon all persons who consider themselves to have a legitimate interest in the process, so that they may appear to assert their rights.

#### **Article 20. Answer to the Complaint**

The requested party shall answer the claim within thirty (30) working days following the notification of the resolution admitting it for processing, offering the evidentiary means it deems appropriate to accredit the legality of the goods, objects, effects or profits that are the subject matter of the process of extinction of ownership. Within the same term it may deduce the exceptions foreseen in the regulations.

At the end of this term, the Judge shall set a date and time for the Initial Hearing, which must be held within the following ten (10) working days.

#### **Article 21. Declaration of Default**

The Judge declares the default of the requested party in the following cases:

- (a) When the requested party does not answer the claim within the time limit established in Article 20, in spite of having been validly notified.
- (b) When the requested party does not appear at the initial hearing or the evidentiary hearing, despite having been validly notified.

In these cases, the Judge requests the appointment of a public defender to watch over the rights of the defendant in the process.

The defendant may join the process at any time, subject to the stage of the process.

#### **Article 22. Initial Hearing**

22.1. The Initial Hearing cannot be extended, unless the attorney of the requested party takes notice of the case in that act, in which case it may be extended only once for a period of ten (10) working days.

22.2. In the Initial Hearing the Judge verifies the interest and legitimacy of the procedural parties, and that the parties propose exceptions or annulments.

22.3. At the Initial Hearing the Judge decides on the exceptions, and the admissibility or rejection of the evidence offered. In no case shall the process be suspended for preliminary questions, preliminary defenses or any other procedural mechanism that seeks such purpose.

22.4. Exceptionally, when the case is complex, the Initial Hearing may be suspended and continued on the following working day, or in any case, within a maximum period of ten (10) working days.

22.5. Once the Initial Hearing is over, the Judge sets a date and time for the Evidentiary Hearing, which must be held within the following ten (10) working days.

### **Article 23. Hearing for the taking of evidence**

23.1. The evidentiary hearing is not extendable, unless the attorney of the requested party takes notice of the case in that act, in which case it may be extended only once for an equal period of ten (10) working days.

23.2. The evidentiary hearing is held in a single act, in the premises of the Court and the evidence admitted is examined with the direct participation of the Judge, under his responsibility. Exceptionally, when the case is complex, the hearing is suspended and continues on the following working day, and if this is not possible, within a maximum period of five (5) working days.

23.3. Only in the event that the judge decides ex officio to conduct an expert examination, after the presentation of evidence offered by the parties, and this is observed by one of the parties, a complementary hearing for the presentation of evidence is held, which must take place within a period of no more than ten (10) working days after the observation has been presented.

24.4 Once the evidentiary proceedings have been concluded, in any of the cases referred to in numbers 23.2 and 23.3, the Public Prosecutor, the Public Prosecutor, the attorney of the requested party and the attorney of the third party who has appeared in the proceedings, present their respective pleadings.

23.5. At the end of the hearing, the Judge issues a sentence within a period not exceeding fifteen (15) working days. Exceptionally, when the case is complex, the issuing of the sentence is extended by up to fifteen (15) additional working days.

### **Article 24. Judgment of first instance**

The judgment issued in the first instance must rule on the merits or otherwise of the claim, based on the concurrent and reasonable indications, or on the pertinent, legal and timely evidence incorporated into the process.

### **Article 25. Appeal of Judgment**

25.1. Only an appeal may be filed against a judgment declaring the claim for extinguishment of ownership to be well founded or rejecting it, which is filed before the Judge who issued the judgment, within ten (10) working days of its notification.

25.2. The appeal is admitted or rejected within three (3) working days from its filing. If admitted, the file is forwarded to the respective Chamber.

25.3. The Chamber sets a date for the hearing of the case within fifteen (15) working days after the file is submitted and summons the interested parties to appear at the hearing and present their arguments and conclusions.

25.4. The Chamber resolves the appeal within fifteen (15) working days of the hearing of the case, which may exceptionally be extended for an equal period of time, when the case is complex, according to the criteria established in the rules of procedure.

24.5. If the Chamber annuls the sentence, the file returns to the Judge of first instance to issue a new sentence. If it confirms or revokes the sentence or issues any resolution in which it pronounces on the merits, the process of extinguishment of ownership is understood to be finalized.

...

### **Article 32. Scope of the judgement**

The judgement that declares the claim to be well founded must be based on concurrent and reasonable indications, or on the relevant, legal and timely evidence incorporated in the proceedings. It must declare the extinction of all rights in rem, principal or accessory, as well as the nullity of any act on the property that is the object of the process or the confiscation of the property previously seized in favour of the State. It also orders that these assets be transferred to the administration of the National Programme of Seized Assets (PRONABI) within twenty-four (24) hours of the issuance of the sentence. However, this entity cannot dispose of those assets until the sentence becomes *res judicata*.

...

### **Article 34. Effects of the final judgement declaring the claim for forfeiture of ownership to be founded**

34.1. The final judgement declaring the extinguishment of ownership has the effect of transferring the assets subject to it to the ownership of the State, represented by the National Programme of Seized Assets (PRONABI).

34.2. The Public Registrar registers the assets in the corresponding public registry, in favour of the State, represented by the National Programme of Seized Assets (PRONABI), under responsibility. For this purpose, only the official letter sent by the competent jurisdictional body or by the National Programme of Seized Assets (PRONABI) is required, attaching a certified copy of the resolution declaring the extinguishment of ownership of the assets.

**Original Text** (<https://www.gob.pe/institucion/congreso-de-la-republica/normas-legales/936641-1373>)

### **Artículo II. Principios y criterios aplicables para la declaración de extinción de dominio**

Para la aplicación del presente decreto legislativo, rigen los siguientes principios y criterios:

2.3. Autonomía: el proceso de extinción de dominio es independiente y autónomo del proceso penal, civil u otro de naturaleza jurisdiccional o arbitral, por lo que no puede invocarse la previa emisión de sentencia o laudo en éstos para suspender o impedir la emisión de sentencia en aquél.

..

2.5. Aplicación en el tiempo: la extinción de dominio se declara con independencia de que los presupuestos para su procedencia hayan ocurrido con anterioridad a la vigencia del presente decreto legislativo.

2.6. Tutela Jurisdiccional y Debido Proceso: en el trámite y ejercicio del proceso de extinción de dominio se observan los derechos a la tutela jurisdiccional y al debido proceso, reconocidos en el inciso 3 del artículo 139 de la Constitución Política del Perú, así como los derechos a la defensa, a la prueba y a la doble instancia que forman parte del contenido del derecho al debido proceso.

...

2.9. Carga de la prueba: para la admisión a trámite de la demanda de extinción de dominio, corresponde al Fiscal ofrecer las pruebas o indicios concurrentes y razonables del origen o destino ilícito del bien. Admitida a trámite la demanda, corresponde al requerido demostrar el origen o destino lícito del mismo.

### **Artículo III. Definiciones**

Para los efectos del presente decreto legislativo se entenderá como:

...

3.11. Incremento patrimonial no justificado: aumento del patrimonio o del gasto económico de una persona natural o jurídica notoriamente superior al que normalmente haya podido percibir en virtud de su actividad laboral o económica lícita o de sus ingresos por cualquier otra causa lícita, existiendo elementos que permitan considerar razonablemente que dicho incremento patrimonial proviene de actividades ilícitas.

...

### **Artículo 2. Objeto del Decreto Legislativo**

El presente decreto legislativo tiene como objeto regular el proceso de extinción de dominio que procede contra los bienes mencionados en los supuestos de hecho del artículo I del Título Preliminar, y cuya procedencia o destino esté relacionado a actividades ilícitas. Para la procedencia también debe observarse el artículo 7, sin importar quien haya adquirido el bien o lo tenga en su poder.

### **Artículo 3. Naturaleza jurídica del proceso de Extinción de Dominio**

El proceso de extinción de dominio, además de autónomo, es de carácter real y de contenido patrimonial.

...

### **Artículo 7. Presupuestos de procedencia del proceso de extinción de dominio**

7.1. Son presupuestos de procedencia del proceso de extinción de dominio, los siguientes:

...

(b) Cuando se trate de bienes que constituyan un incremento patrimonial no justificado de persona natural o jurídica, por no existir elementos que razonablemente permitan considerar que provienen de actividades lícitas

...

### **Artículo 12. Etapas**

El proceso de extinción de dominio consta de dos etapas:

12.1. Una etapa de indagación patrimonial bajo la dirección del Fiscal Especializado, de conformidad a las atribuciones asignadas en el presente decreto legislativo; y

12.2. Una etapa judicial que inicia con la admisión de la demanda de extinción de dominio por el Juzgado Especializado.

**Artículo 13. Inicio de la Indagación Patrimonial**

Corresponde al Fiscal Especializado iniciar y dirigir la indagación patrimonial de oficio o por denuncia, cuando se configure alguno de los presupuestos previstos en el presente decreto legislativo.

Iniciada la indagación patrimonial se notificará a la Procuraduría Pública Especializada, para que participe conforme a sus funciones y atribuciones.

La etapa de indagación patrimonial tiene carácter reservado.

**Artículo 14. Etapa de Indagación Patrimonial**

14.1. El Fiscal Especializado inicia la indagación patrimonial mediante decisión debidamente motivada y dirige dicha indagación, con la finalidad de:

- (a) Identificar, individualizar, localizar y ubicar los bienes de valor patrimonial sobre los cuales podría recaer el proceso, por encontrarse en un supuesto de extinción de dominio.
- (b) Localizar a los supuestos titulares de los bienes que se encuentran bajo un presupuesto de extinción de dominio, o a quienes podrían intervenir como terceros.
- (c) Recopilar elementos probatorios o indicios concurrentes y razonables, que demuestren la concurrencia de cualquiera de los presupuestos de extinción de dominio previstos en el presente decreto legislativo.
- (d) Recopilar los medios probatorios o indicios concurrentes y razonables que demuestren el vínculo o nexo de relación entre cualquiera de los supuestos para declarar la extinción de dominio, la actividad ilícita que corresponde y los bienes objeto de extinción de dominio.
- (e) Solicitar o ejecutar las medidas cautelares pertinentes.
- (f) Solicitar al juez el levantamiento del secreto bancario, secreto de las comunicaciones, reserva tributaria, reserva bursátil, y otras medidas que resulten pertinentes para los fines del proceso.

14.2. La indagación patrimonial finaliza cuando se ha cumplido su objeto o en un plazo máximo de doce (12) meses, prorrogable por única vez, mediante decisión motivada por un plazo igual. En los casos que se declaren complejos, conforme a los criterios de complejidad establecidos en el reglamento, el plazo máximo será de treinta y seis (36) meses prorrogables por igual plazo, por única vez mediante decisión motivada.

**Artículo 15. Medidas cautelares**

15.1. El Fiscal Especializado, de oficio o a pedido del Procurador Público, para garantizar la eficacia del proceso de extinción de dominio, puede solicitar al Juez las medidas cautelares que considere necesarias.

El Juez resuelve en audiencia reservada dentro de las 24 horas de recibida la solicitud, apreciando la verosimilitud de los hechos y el peligro en la demora. Para estos efectos, puede ordenar el allanamiento y registro domiciliario de inmuebles.

De ser necesaria la inscripción de la medida, se cursan los partes judiciales en el mismo acto en el que se concede.

15.2. Durante la etapa de indagación patrimonial, el Fiscal Especializado está facultado para ejecutar excepcionalmente y por motivos de urgencia, medida cautelar de orden de inmovilización, incautación, inhibición o inscripción sobre cualquiera de los bienes.

15.3. Toda medida cautelar que haya ejecutado el Fiscal Especializado en la etapa de indagación patrimonial, debe ser confirmada o rechazada por el Juez dentro de las veinticuatro (24) horas de ejecutada.

15.4. Tratándose de bienes inscribibles, el Registrador Público inscribe la medida cautelar ordenada por el Juez, bajo responsabilidad, sin perjuicio de que se disponga la asignación o utilización inmediata de los mismos, recurriendo a los mecanismos jurídicos pertinentes en caso se encuentren ocupados. Estas inscripciones se harán por el solo mérito de la resolución judicial que ordena la medida. Inscrita y vigente la medida cautelar ordenada por la autoridad judicial competente, no se anota ni se inscribe en la partida registral del bien, ningún acto o contrato, independientemente de su naturaleza, hasta la inscripción de la sentencia respectiva, salvo aquellos actos de administración o disposición realizados o solicitados por el Programa Nacional de Bienes Incautados (PRONABI); circunstancia que consta en forma expresa en el asiento respectivo. La anotación de la medida cautelar se extiende en el rubro de cargas y gravámenes de la partida registral correspondiente.

15.6. Los bienes no inscribibles, pasan inmediatamente a la administración del Programa Nacional de Bienes Incautados (PRONABI).

15.7. Las medidas cautelares se solicitan, conceden y ejecutan antes de poner en conocimiento del requerido la existencia de la indagación patrimonial.

15.8. Una vez ejecutadas las medidas cautelares, se notifica al requerido en el plazo de cinco (5) días hábiles sobre dichas medidas.

15.9. La resolución judicial que concede o deniega las medidas cautelares es apelable dentro de los tres (3) días hábiles de notificada. La Sala Especializada debe fijar fecha para la vista de la causa dentro de los cinco (5) días hábiles siguientes a su elevación y absolver el grado en la misma audiencia. Excepcionalmente, cuando los hechos revistan complejidad, puede aplazarse el pronunciamiento hasta tres (3) días hábiles posteriores a la realización de la vista de la causa.

15.10. Las medidas cautelares se mantienen hasta que no se resuelva definitivamente el proceso de extinción de dominio.

15.11. Cuando se decreten medidas cautelares en la etapa de indagación patrimonial, el Fiscal Especializado presenta la demanda de extinción de dominio o dispone el archivo, según corresponda, en un plazo que no excederá al máximo de esa etapa establecido en el inciso 2 del artículo anterior, bajo sanción de levantarse la medida, a fin de evitar afectar derechos de terceros, sin perjuicio de disponer las acciones disciplinarias, administrativas o penales por la omisión incurrida.

## **Artículo 16. Conclusión de la Indagación Patrimonial**

Concluida la indagación patrimonial, el Fiscal Especializado está facultado para:

16.1. Demandar ante el Juez competente la declaración de extinción de dominio.

16.2. Archivar la indagación patrimonial, cuando no sea posible fundamentar ninguno de los presupuestos invocados en el presente decreto legislativo. Dicha decisión puede ser objeto de queja por parte del Procurador Público dentro de los cinco (5) días hábiles de notificada. El Fiscal Superior conoce de la queja interpuesta, y se pronuncia dentro de los diez (10) días hábiles de recibidos los actuados, con conocimiento del Procurador Público Especializado. De considerarla fundada, puede ordenar al Fiscal a cargo de la indagación patrimonial la presentación de la demanda de extinción de dominio ante el Juez competente o continuar con la indagación cuando se hubiera advertido la insuficiente actuación en esta etapa, observando los plazos señalados en el artículo 14.2; en caso contrario, aprueba el archivo.

Si no se interpone queja contra la disposición de archivo, ésta se eleva en consulta al Fiscal Superior, quien, dentro del plazo de veinte (20) días hábiles, puede confirmarla u ordenar la presentación de la demanda al Fiscal encargado de la indagación patrimonial.

En cualquier caso, la disposición de archivo constituye cosa decidida y sólo puede iniciarse una nueva indagación patrimonial sobre los mismos bienes si se encuentran nuevas pruebas.

...

#### **Artículo 17. Requisitos de la demanda de extinción de dominio**

17.1. El Fiscal formula por escrito, ante el Juez, la demanda de extinción de dominio, conteniendo lo siguiente:

- (a) Los hechos en los que fundamenta su petición.
- (b) La identificación, descripción y valuación económica de los bienes objeto de la demanda de extinción de dominio.
- (c) El presupuesto en que fundamenta la demanda.
- (d) El nexos de relación entre los bienes y la actividad ilícita o el incremento patrimonial injustificado.
- (e) El nombre, los datos de identificación y el domicilio de las personas que pudieran tener interés en el asunto o, en caso contrario, debe señalar la razón que imposibilitó su localización.
- (f) Ofrecimiento de las pruebas o indicios concurrentes y razonables que sustenten la pretensión.
- (g) Solicitar las medidas cautelares si a ello hubiere lugar.

17.2. Adicionalmente, el Fiscal Especializado notifica la demanda dentro de las 24 horas al Procurador Público, a efectos de que participe como sujeto procesal, en defensa de los intereses del Estado durante la etapa procesal.

#### **Artículo 18. Calificación de la demanda de extinción de dominio**

18.1. Recibida la demanda de extinción de dominio presentada por el Fiscal, el Juez dentro del



plazo de tres (3) días hábiles, expide resolución debidamente fundamentada, pudiendo admitir a trámite la demanda, declararla inadmisibile o improcedente, comunicando dicha decisión al Fiscal y al Procurador Público. En los supuestos que la demanda derive de casos declarados complejos el plazo será de diez (10) días hábiles.

18.2. En caso de advertir la ausencia de algún requisito formal la declara inadmisibile, concediendo un plazo de tres (3) días hábiles para la subsanación. Vencido dicho plazo, si no se subsana, se archiva la demanda, sin perjuicio de las acciones administrativas a que haya lugar.

18.3. Contra la resolución que declara improcedente la demanda sólo procede el recurso de apelación dentro del plazo de cinco (5) días hábiles. Vencido dicho plazo, si no se apela, se archiva la demanda, sin perjuicio de las acciones administrativas a que haya lugar.

18.4. En la misma resolución de admisión de la demanda a trámite, el Juzgado resuelve sobre las medidas cautelares solicitadas en la demanda.

### **Artículo 19. Notificación**

19.1. La resolución que admite a trámite la demanda se notifica dentro de los dos (2) días hábiles siguientes a su expedición, personalmente o mediante publicaciones

19.2. La notificación personal se realiza mediante cédula dirigida al requerido u otras personas que figuren como titulares de derechos reales sobre el bien o que se vean directamente afectadas con el proceso.

19.3. Si no puede realizarse la notificación personal, se procede a la notificación mediante la publicación de edictos. La notificación mediante publicación de edictos, se hace publicando la resolución de admisión por tres (3) días calendario consecutivos en el diario oficial o en otro de mayor circulación de la localidad donde se encuentre el Juzgado competente. A falta de diarios en la localidad donde se encuentre el Juzgado, la publicación se hace en la localidad más próxima que los tuviera y el edicto se fija, además, en el panel del Juzgado y en los sitios que aseguren su mayor difusión. Esta notificación se acredita agregando al expediente copia de las publicaciones, en donde consta el texto del anuncio y los días y horas en que se difundió. La resolución se tiene por notificada el día siguiente de la última publicación.

19.4. El Juez puede ordenar además que se difunda el objeto de la notificación mediante radiodifusión, por tres (3) días calendario consecutivos. Esta notificación se acredita agregando al expediente declaración jurada expedida por la empresa radiodifusora, en donde consta el texto del anuncio y los días y horas en que se difundió. La resolución se tiene por notificada el día siguiente de la última transmisión radiofónica.

19.5. La notificación por edictos o radiodifusión tiene por objeto emplazar a todas las personas que se consideren con legítimo interés en el proceso, para que comparezcan a hacer valer sus derechos.

### **Artículo 20. Contestación de la Demanda**

El requerido absuelve la demanda dentro de los treinta (30) días hábiles siguientes a la notificación de la resolución que la admite a trámite, ofreciendo los medios probatorios que crea conveniente para acreditar la licitud de los bienes, objetos, efectos o ganancias que sean materia del proceso de extinción de dominio. Dentro del mismo plazo puede deducir las excepciones previstas en el reglamento.

Concluido este término, el Juez señala fecha y hora para llevar a cabo la Audiencia Inicial, la cual debe realizarse dentro de los diez (10) días hábiles siguientes.

#### **Artículo 21. Declaración de Rebeldía**

El juez declara la rebeldía del requerido, en los siguientes supuestos:

- (a) Cuando el requerido no contesta la demanda dentro del plazo establecido en el artículo 20, pese a haber sido notificado de modo válido.
- (b) Cuando el requerido no se presenta a la audiencia inicial o la audiencia de actuación de medios probatorios, pese a haber sido notificado de modo válido.

En estos supuestos, el Juez solicita el nombramiento de un defensor público, que vele por los derechos del requerido en el proceso.

El rebelde puede incorporarse al proceso en cualquier momento, sujetándose al estado en que éste se encuentre.

#### **Artículo 22. Audiencia Inicial**

22.1. La Audiencia Inicial es improrrogable, salvo que el abogado del requerido tome conocimiento de la causa en ese acto, en cuyo caso se puede prorrogar por única vez por un plazo de diez (10) días hábiles.

22.2. En la Audiencia Inicial el Juez verifica el interés y legitimación de las partes procesales, y que las partes propongan excepciones o nulidades.

22.3. En la Audiencia Inicial el Juez decide lo concerniente a las excepciones, y la admisibilidad o rechazo de las pruebas ofrecidas. En ningún caso el proceso se suspende por cuestiones previas, defensas previas o cualquier otro mecanismo procesal que busque tal finalidad.

22.4. Excepcionalmente, cuando el caso revista complejidad, la Audiencia Inicial puede suspenderse y continuar con ella el día hábil siguiente, o en todo caso, en un plazo máximo de diez (10) días hábiles.

22.5. Una vez finalizada la Audiencia Inicial, el Juez fija fecha y hora para llevar a cabo la Audiencia de Actuación de Medios Probatorios, la cual debe realizarse dentro de los diez (10) días hábiles siguientes.

#### **Artículo 23. Audiencia de Actuación de Medios Probatorios**

23.1. La Audiencia de Actuación de Medios Probatorios es improrrogable, salvo que el abogado del requerido tome conocimiento de la causa en ese acto, en cuyo caso podrá prorrogarse por única vez por un plazo igual de diez (10) días hábiles.

23.2. La Audiencia de Actuación de Medios Probatorios se realiza en un solo acto, en el local del Juzgado y se actúan los medios probatorios admitidos con participación directa del Juez, bajo responsabilidad. Excepcionalmente, cuando el caso revista complejidad, la audiencia se suspende y continúa en el día hábil siguiente, y de no ser esto posible, en un plazo máximo de cinco (5) días hábiles.

23.3. Sólo en caso el Juez disponga de oficio la realización de un examen pericial, luego de la actuación de medios probatorios ofrecidos por las partes, y éste sea observado por alguna de

las partes, se lleva a cabo una audiencia complementaria de actuación de medios probatorios, la cual debe realizarse en un plazo no mayor de diez (10) días hábiles de presentada la observación.

23.4. Concluida la actuación de medios probatorios, en cualquiera de los casos a que se refieren los numerales 23.2 y 23.3, el Fiscal, el Procurador Público, el abogado del requerido y el del tercero que se haya apersonado al proceso, presentan sus respectivos alegatos.

23.5. Culminada la audiencia, el Juez dicta sentencia dentro de un plazo que no exceda de quince (15) días hábiles. Excepcionalmente, cuando el caso revista complejidad, la expedición de la sentencia se prorroga hasta por quince (15) días hábiles adicionales.

#### **Artículo 24. Sentencia de primera instancia**

La sentencia expedida en primera instancia debe pronunciarse sobre la fundabilidad o no de la demanda, sustentándose en los indicios concurrentes y razonables, o en las pruebas pertinentes, legales y oportunamente incorporadas al proceso.

#### **Artículo 25. Apelación de Sentencia**

25.1. Contra la sentencia que declara fundada la demanda de extinción de dominio o que la desestima, procede únicamente el recurso de apelación, el cual es interpuesto ante el Juez que emitió la sentencia, dentro de los diez (10) días hábiles siguientes de notificada.

25.2. El recurso de apelación es admitido o rechazado dentro del término de tres (3) días hábiles contados desde su presentación. De ser admitido, se remite el expediente a la Sala respectiva.

25.3. La Sala fija fecha para la vista de la causa dentro de los quince (15) días hábiles siguientes de la elevación del expediente y, cita a los interesados para que comparezcan a la misma y expongan sus argumentos y conclusiones.

25.4. La Sala resuelve la apelación dentro de los quince (15) días hábiles de realizada la vista de la causa, prorrogables excepcionalmente por un plazo igual, cuando el caso revista complejidad, según los criterios establecidos en el reglamento

24.5. Si la Sala anula la sentencia, el expediente vuelve al Juez de primera instancia para que emita una nueva sentencia. Si confirma o revoca la sentencia o emite cualquier resolución en el cual se pronuncia sobre el fondo, se entiende finalizado el proceso de extinción de dominio.

...

#### **Artículo 32. Alcances de la sentencia**

La sentencia que declara fundada la demanda debe sustentarse en indicios concurrentes y razonables, o en las pruebas pertinentes, legales y oportunamente incorporadas al proceso. Debe declarar la extinción de todos los derechos reales, principales o accesorios así como la nulidad de todo acto recaído sobre el bien objeto del proceso o el decomiso de los bienes previamente incautados a favor del Estado. Asimismo, ordena que esos bienes pasen a la administración del Programa Nacional de Bienes Incautados (PRONABI) dentro de las veinticuatro (24) horas de expedida la sentencia. Sin embargo, esta entidad no puede disponer de aquellos bienes hasta que la sentencia adquiera la calidad de cosa juzgada.

...

Artículo 34. Efectos de la sentencia firme que declara fundada la demanda de extinción de dominio

34.1. La sentencia firme que declara la extinción de dominio tiene como efecto que los bienes objeto de la misma pasen a la titularidad del Estado, representado por el Programa Nacional de Bienes Incautados (PRONABI).

34.2. El Registrador Público inscribe los bienes en el registro público correspondiente, a favor del Estado, representado por el Programa Nacional de Bienes Incautados (PRONABI), bajo responsabilidad. Para ello, solo se requiere el oficio remitido por el órgano jurisdiccional competente o por el Programa Nacional de Bienes Incautados (PRONABI) adjuntando copia certificada de la resolución que declara la extinción de dominio de los bienes.

## Trinidad and Tobago

### Civil Asset Recovery and Management and Unexplained Wealth Act 2019

Original Text (<http://www.ttparliament.org/legislations/a2019-08.pdf>)

#### Part V. Unexplained Wealth Orders

##### 58. Application for Order for a declaration

(1) Where the Chairman of the Board of Inland Revenue, the Comptroller of Customs and Excise or the Commissioner of Police or such other person delegated by him not below the rank of Assistant Superintendent (hereinafter referred to as “the applicant”) during the course of an investigation for a specified offence reasonably suspects that—

- (a) the total wealth of the respondent exceeds the value of his lawfully obtained wealth;
- (b) the total wealth of the respondent is over five hundred thousand dollars;
- (c) the property is owned by the respondent or is under his effective control; and
- (d) the property was obtained through the commission of a specified offence,

he may apply to the High Court in writing for an order (“in this Part hereinafter referred to as a Preliminary Unexplained Wealth Order”), requiring the respondent to file a declaration and answer questions as required in relation to his assets.

(2) An application under subsection (1) shall be accompanied by an affidavit stating—

- (a) the identity of the respondent;
- (b) the grounds by which the applicant reasonably suspects that the total wealth of the respondent exceeds the value of his lawfully obtained wealth; and
- (c) the grounds by which the applicant reasonably suspects that any property is owned by the respondent or is under his effective control.

(3) An application under subsection (1) may be made ex parte.

#### **59. Form of declaration Schedule 2**

(1) A declaration under section 58(1) shall be in the form set out as Form 1 in Schedule 2.

(2) All documents filed in the High Court under Section 58 (1) shall be filed under seal.

#### **60. False declaration**

A person who knowingly and wilfully makes a statement which is false in any material particular on the declaration form under section 58 commits an offence and is liable on summary conviction to a fine of one hundred thousand dollars and to imprisonment of twenty years.

#### **61. Grant of a Preliminary Unexplained Wealth Order**

(1) Where the High Court is satisfied that there are reasonable grounds to suspect that the total wealth of the respondent exceeds the value of his wealth that was lawfully obtained, it may make a Preliminary Unexplained Wealth Order, requiring the respondent to file a declaration and appear before the High Court to answer questions relative to his assets for the High Court to decide whether to make an Unexplained Wealth Order.

(2) Where a Preliminary Unexplained Wealth Order has been made under this section, a notice of the making of the order shall be served on the respondent within 7 days from the making of the order.

#### **62. Application to Revoke a Preliminary Unexplained Wealth Order**

(1) Where the High Court makes a Preliminary Unexplained Wealth Order under section 61, the respondent may, within twenty-eight days of notice of the order under section 61(2), apply to the High Court for the order to be set aside or discharged.

...

#### **64. Application for an Unexplained Wealth Order**

(1) The applicant may apply to the High Court for an Unexplained Wealth Order.

(2) An application under subsection (1) shall be accompanied by—

- (a) an affidavit setting out the reasons why an Unexplained Wealth Order should be made; and
- (b) documents in support of the application.

#### **65. Grant of an Unexplained Wealth Order**

(1) Where the High Court has made a Preliminary Unexplained Wealth Order, which has not been revoked, in relation to a respondent and on the basis of the affidavit and documents submitted and evidence provided, is satisfied that—

- (a) on a balance of probabilities that any part of the wealth of the respondent was not lawfully obtained or held;
- (b) the total wealth of the respondent is over five hundred thousand dollars; or

- (c) particular property is held by, and subject to the effective control of the respondents, it may make an Unexplained Wealth Order.
- (2) It does not matter for the purposes of subsection (1)(b)–
- (a) whether or not there are other persons who also hold the property; or
- (b) whether the property was obtained by the respondent before or after the coming into force of this Act.
- (3) Where the High Court makes an order under this section, the order shall specify that the respondent is liable to pay into the Seized Assets Fund an amount being the “unexplained wealth amount” of the respondent, equal to the amount that the High Court is satisfied does not represent the lawfully acquired property of the respondent.
- (4) In proceedings under this section, the burden of proving the wealth of the respondent is lawfully acquired lies on the respondent.
- (5) When considering the issues under sub-section (1), the High Court may have regard to information and any evidence provided subsequently not included in the Preliminary Unexplained Wealth Order.
- (6) An order under subsection (1) may be enforced against the property as if the property were the property of the respondent.
- (7) An order that restricts the right of the respondent or any named person to deal with the property identified in this section may be made, upon application of the applicant under section 58(1), if the High Court is satisfied that the property would not be available to the Chairman of the Board of Inland Revenue, the Comptroller of Customs and Excise or the Commissioner of Police or such other person delegated by him not below the rank of Assistant Superintendent under section 58(1) without such restriction.
- (8) When considering the amount of an Unexplained Wealth Order, the High Court shall deduct an amount equal to the value, at the time of the making of the order, of any property the respondent forfeited under a Property Restriction Order under section 34, a Civil Asset Forfeiture Order under section 45, or a Confiscation Order or Forfeiture Order under the Proceeds of Crime Act.
- (9) The Chairman of the Board of Inland Revenue, the Comptroller of Customs and Excise or the Commissioner of Police or such other person delegated by him not below the rank of Assistant Superintendent under section 58(1) shall not, unless the High Court gives leave, apply for an Unexplained Wealth Order against any person if–
- (a) an application has previously been made for an Unexplained Wealth Order in relation to that person; and
- (b) the application has been finally determined on the merits.
- (10) Leave shall not be granted under sub-section (9) unless the High Court is satisfied that–
- (a) the wealth to which the new application relates was identified only after the first application was determined; or

- (b) the evidence became available only after the first application was determined; and
- (c) it is in the interest of justice to give the leave.

#### **66. Third party claims**

(1) If the applicant, under section 58(1), applies for an Unexplained Wealth Order in respect of a particular property, he or it, as applicable, shall give written notice of the application to—

- (a) the respondent, who is subject to the application for the Unexplained Wealth Order; and
- (b) any other person whom he or it has reason to believe may have an interest in the property.

(2) The respondent, and any person who claims an interest in the property, may appear and adduce evidence at the hearing of the application.

#### **67. Enforcement of Unexplained Wealth Order**

(1) An amount payable by the respondent into the Seized Assets Fund under an Unexplained Wealth Order is a civil debt due by the respondent to the State.

(2) An Unexplained Wealth Order against the respondent may be enforced as if it were an order made in civil proceedings instituted by the applicant under section 58(1) against the respondent to recover a debt due by him to the State.

(3) An Unexplained Wealth Order is for all purposes to be treated as a judgment debt.

Other relevant  
laws



## Investigational Unexplained Wealth Order laws

### Barbados

#### Proceeds and Instrumentalities of Crime Act, 2019-17

**Original Text** (<https://barbadosfiu.gov.bb/wp-content/uploads/2019/10/Proceeds-Instrumentalities-of-Crime-Act-2019-17.pdf>)

#### 135. Unexplained wealth orders

(1) A judge in Chambers may, on the application of the Recovery Authority, where he is satisfied that each of the requirements set out in section 136 is fulfilled, make an order requiring a person (“the respondent”) to provide a statement

- (a) setting out the nature and extent of the respondent’s interest in the property in respect of which the order is made;
- (b) explaining how the respondent obtained the property, including, in particular, how any costs incurred in obtaining the property were met; and
- (c) setting out such other information in connection with the property as may be so specified.

(2) An application for an unexplained wealth order

- (a) shall
  - (i) specify or describe the property in respect of which the order is sought; and
  - (ii) specify the person whom the Recovery Authority thinks holds the property, and the person specified may include a person outside Barbados; and
- (b) may be made without notice.

...

#### 136. Requirements for making of unexplained wealth order

(1) The requirements referred to in section 135(1) are that

- (a) there are reasonable grounds for suspecting that
  - (i) the respondent holds the property;
  - (ii) the value of the property is more than such amount as may be prescribed by the Minister by Order; and
  - (iii) the known sources of the respondent’s lawfully obtained income would have been insufficient for the purposes of enabling the respondent to obtain the property; and
- (b) the respondent is a politically exposed person; or

- (c) there are reasonable grounds for suspecting that
  - (i) the respondent is, or has been, involved in unlawful conduct, whether in Barbados or elsewhere; or
  - (ii) a person connected with the respondent is, or has been, so involved.
- (2) It does not matter for the purposes of subsection (1)(a)(i)
  - (a) whether or not there are other persons who also hold the property;
  - (b) whether the property was obtained by the respondent before or after the commencement date.
- (3) For the purposes of subsection (1)(a)(iii)
  - (a) regard is to be had to any mortgage, charge or other kind of security that it is reasonable to assume was or may have been available to the respondent for the purposes of obtaining the property;
  - (b) it is to be assumed that the respondent obtained the property for a price equivalent to its market value;
  - (c) income is “lawfully obtained” where it is obtained lawfully under the laws of the country from where the income arises;
  - (d) “known” sources of the respondent’s income are the sources of income, whether arising from employment, assets or otherwise, that are reasonably ascertainable from information available at the time of the making of the application for the order.
- (4) In subsection (1)(b), “politically exposed person” means
  - (a) an individual who is, or has been entrusted with a prominent public function within Barbados or by an international organisation or a country other than Barbados;
  - (b) a family member of a person referred to in paragraph (a);
  - (c) a person known to be a close associate of a person referred to in paragraph (a);
  - (d) a person otherwise connected with a person referred to in paragraph (a).
- (5) Where the property in respect of which an unexplained wealth order is sought comprises more than one item of property, the reference in subsection (1)(a)(ii) to the value of the property is to the total value of those items.

### **137. Effect of unexplained wealth order in cases of non-compliance**

- (1) Where the respondent fails, without reasonable excuse, to comply with the requirements imposed by an unexplained wealth order in respect of any property before the end of the response period, the property shall be presumed to be recoverable property for the purposes of any proceedings taken in respect of the property under Part III, unless the contrary is shown.
- (2) The presumption in subsection (1) applies in relation to property
  - (a) only so far as relating to the respondent’s interest in the property; and

- (b) only where the value of that interest is more than such amount as may be prescribed under section 136(1)(a)(ii).
- (3) It is for the court hearing the proceedings under Part III in relation to which reliance is placed on the presumption to determine the matters in subsection (2).
- (4) The “response period” is such period as the judge may specify under section 135(4) as the period within which the requirements imposed by the order are to be complied with, or the period ending the latest, where more than one is specified in respect of different requirements.
- (5) For the purposes of subsection (1)
- (a) subject to section 138, a respondent who purports to comply with the requirements imposed by an unexplained wealth order is not to be taken to have failed to comply with the order;
  - (b) where an unexplained wealth order imposes more than one requirement on a respondent, the respondent shall be taken to have failed to comply with the requirements imposed by the order unless each of the requirements is complied with or is purported to be complied with.
- (6) Where an unexplained wealth order is made in respect of property comprising more than one item of property, the reference in subsection (2)(b) to the value of the respondent’s interest in the property is to the total value of the respondent’s interest in those items.

**138. Effect of unexplained wealth order in cases of compliance or purported compliance**

- (1) This section applies where, before the end of the response period (as defined by section 137(4)), the respondent complies, or purports to comply, with the requirements imposed by an unexplained wealth order in respect of any property in relation to which the order is made.
- (2) Where a freezing order made under section 139 has effect in relation to the property, the Recovery Authority shall determine what enforcement or investigatory proceedings, if any, it considers ought to be taken in relation to the property.
- (3) A determination under subsection (2) shall be made within the period of 60 days starting with the date of compliance.
- (4) Where the determination under subsection (2) is that no further enforcement or investigatory proceedings ought to be taken in relation to the property, the Recovery Authority shall notify the court of that fact as soon as reasonably practicable, and in any event, before the end of the period of 60 days mentioned in subsection (3).
- (5) Where no freezing order is in effect in relation to the property, the Recovery Authority may, at any time, determine what, if any, enforcement or investigatory proceedings it considers ought to be taken in relation to the property.
- (6) A determination under this section to take no further enforcement or investigatory proceedings in relation to any property does not prevent such proceedings being taken subsequently, whether as a result of new information or otherwise, in relation to the property.
- (7) For the purposes of this section

- (a) the respondent complies with the requirements imposed by an unexplained wealth order only if all of the requirements are complied with;
- (b) references to the date of compliance are to the day on which the requirements imposed by the order are complied with, or, where the requirements are complied with over more than one day, the last of those days; and
- (c) where an order requires the sending of information in writing to, or the production of documents at, an address specified in the order, compliance with the order, so far as it relates to that requirement, occurs when the written information is received, or the documents are produced, at that address,

and in paragraphs (a) to (c) references to compliance include purported compliance.

(8) In this section “enforcement or investigatory proceedings” means any proceedings in relation to property taken under this Part or Part II or III.

## The United Kingdom

### Proceeds of Crime Act 2002 (as amended by the Criminal Finances Act 2017)

**Original Text** (<http://www.legislation.gov.uk/ukpga/2002/29/contents>)

#### 362A Unexplained wealth orders

(1) The High Court may, on an application made by an enforcement authority, make an unexplained wealth order in respect of any property if the court is satisfied that each of the requirements for the making of the order is fulfilled.

(2) An application for an order must—

- (a) specify or describe the property in respect of which the order is sought, and
- (b) specify the person whom the enforcement authority thinks holds the property (“the respondent”) (and the person specified may include a person outside the United Kingdom).

(3) An unexplained wealth order is an order requiring the respondent to provide a statement—

- (a) setting out the nature and extent of the respondent’s interest in the property in respect of which the order is made,
- (b) explaining how the respondent obtained the property (including, in particular, how any costs incurred in obtaining it were met),
- (c) where the property is held by the trustees of a settlement, setting out such details of the settlement as may be specified in the order, and
- (d) setting out such other information in connection with the property as may be so specified.

(4) The order must specify—

- (a) the form and manner in which the statement is to be given,
- (b) the person to whom it is to be given, and
- (c) the place at which it is to be given or, if it is to be given in writing, the address to which it is to be sent.

(5) The order may, in connection with requiring the respondent to provide the statement mentioned in subsection (3), also require the respondent to produce documents of a kind specified or described in the order.

(6) The respondent must comply with the requirements imposed by an unexplained wealth order within whatever period the court may specify (and different periods may be specified in relation to different requirements).

(7) In this Chapter “enforcement authority” means—

- (a) the National Crime Agency,
- (b) Her Majesty’s Revenue and Customs,
- (c) the Financial Conduct Authority,
- (d) the Director of the Serious Fraud Office, or
- (e) the Director of Public Prosecutions (in relation to England and Wales) or the Director of Public Prosecutions for Northern Ireland (in relation to Northern Ireland).

### **362B Requirements for making of unexplained wealth order**

(1) These are the requirements for the making of an unexplained wealth order in respect of any property.

(2) The High Court must be satisfied that there is reasonable cause to believe that—

- (a) the respondent holds the property, and
- (b) the value of the property is greater than £50,000.

(3) The High Court must be satisfied that there are reasonable grounds for suspecting that the known sources of the respondent’s lawfully obtained income would have been insufficient for the purposes of enabling the respondent to obtain the property.

(4) The High Court must be satisfied that—

- (a) the respondent is a politically exposed person, or
- (b) there are reasonable grounds for suspecting that—
  - (i) the respondent is, or has been, involved in serious crime (whether in a part of the United Kingdom or elsewhere), or
  - (ii) a person connected with the respondent is, or has been, so involved.

(5) It does not matter for the purposes of subsection (2)(a)–

- (a) whether or not there are other persons who also hold the property;
- (b) whether the property was obtained by the respondent before or after the coming into force of this section.

(6) For the purposes of subsection (3)–

- (a) regard is to be had to any mortgage, charge or other kind of security that it is reasonable to assume was or may have been available to the respondent for the purposes of obtaining the property;
- (b) it is to be assumed that the respondent obtained the property for a price equivalent to its market value;
- (c) income is “lawfully obtained” if it is obtained lawfully under the laws of the country from where the income arises;
- (d) “known” sources of the respondent’s income are the sources of income (whether arising from employment, assets or otherwise) that are reasonably ascertainable from available information at the time of the making of the application for the order;
- (e) where the property is an interest in other property comprised in a settlement, the reference to the respondent obtaining the property is to be taken as if it were a reference to the respondent obtaining direct ownership of such share in the settled property as relates to, or is fairly represented by, that interest.

(7) In subsection (4)(a), “politically exposed person” means a person who is–

- (a) an individual who is, or has been, entrusted with prominent public functions by an international organisation or by a State other than the United Kingdom or another EEA State,
- (b) a family member of a person within paragraph (a),
- (c) known to be a close associate of a person within that paragraph, or
- (d) otherwise connected with a person within that paragraph.

(8) Article 3 of Directive 2015/849/EU of the European Parliament and of the Council of 20 May 2015 applies for the purposes of determining–

- (a) whether a person has been entrusted with prominent public functions (see point (9) of that Article),
- (b) whether a person is a family member (see point (10) of that Article), and
- (c) whether a person is known to be a close associate of another (see point (11) of that Article).

(9) For the purposes of this section–

- (a) a person is involved in serious crime in a part of the United Kingdom or elsewhere

if the person would be so involved for the purposes of Part 1 of the Serious Crime Act 2007 (see in particular sections 2, 2A and 3 of that Act);

- (b) section 1122 of the Corporation Tax Act 2010 (“connected” persons) applies in determining whether a person is connected with another.

(10) Where the property in respect of which the order is sought comprises more than one item of property, the reference in subsection (2)(b) to the value of the property is to the total value of those items.

### **362C Effect of order: cases of non-compliance**

(1) This section applies in a case where the respondent fails, without reasonable excuse, to comply with the requirements imposed by an unexplained wealth order in respect of any property before the end of the response period.

(2) The property is to be presumed to be recoverable property for the purposes of any proceedings taken in respect of the property under Part 5, unless the contrary is shown.

(3) The presumption in subsection (2) applies in relation to property—

- (a) only so far as relating to the respondent’s interest in the property, and
- (b) only if the value of that interest is greater than the sum specified in section 362B(2)(b).

It is for the court hearing the proceedings under Part 5 in relation to which reliance is placed on the presumption to determine the matters in this subsection.

(4) The “response period” is whatever period the court specifies under section 362A(6) as the period within which the requirements imposed by the order are to be complied with (or the period ending the latest, if more than one is specified in respect of different requirements).

(5) For the purposes of subsection (1)—

- (a) a respondent who purports to comply with the requirements imposed by an unexplained wealth order is not to be taken to have failed to comply with the order (see instead section 362D);
- (b) where an unexplained wealth order imposes more than one requirement on the respondent, the respondent is to be taken to have failed to comply with the requirements imposed by the order unless each of the requirements is complied with or is purported to be complied with.

(6) Subsections (7) and (8) apply in determining the respondent’s interest for the purposes of subsection (3) in a case where the respondent to the unexplained wealth order—

- (a) is connected with another person who is, or has been, involved in serious crime (see subsection (4)(b)(ii) of section 362B), or
- (b) is a politically exposed person of a kind mentioned in paragraph (b), (c) or (d) of subsection (7) of that section (family member, known close associates etc of individuals entrusted with prominent public functions).

(7) In a case within subsection (6)(a), the respondent's interest is to be taken to include any interest in the property of the person involved in serious crime with whom the respondent is connected.

(8) In a case within subsection (6)(b), the respondent's interest is to be taken to include any interest in the property of the person mentioned in subsection (7)(a) of section 362B.

(9) Where an unexplained wealth order is made in respect of property comprising more than one item of property, the reference in subsection (3)(b) to the value of the respondent's interest in the property is to the total value of the respondent's interest in those items.

### **362D Effect of order: cases of compliance or purported compliance**

(1) This section applies in a case where, before the end of the response period (as defined by section 362C(4)), the respondent complies, or purports to comply, with the requirements imposed by an unexplained wealth order in respect of any property in relation to which the order is made.

(2) If an interim freezing order has effect in relation to the property (see section 362J), the enforcement authority must determine what enforcement or investigatory proceedings, if any, it considers ought to be taken in relation to the property.

(3) A determination under subsection (2) must be made within the period of 60 days starting with the day of compliance.

(4) If the determination under subsection (2) is that no further enforcement or investigatory proceedings ought to be taken in relation to the property, the enforcement authority must notify the High Court of that fact as soon as reasonably practicable (and in any event before the end of the 60 day period mentioned in subsection (3)).

(5) If there is no interim freezing order in effect in relation to the property, the enforcement authority may (at any time) determine what, if any, enforcement or investigatory proceedings it considers ought to be taken in relation to the property.

(6) A determination under this section to take no further enforcement or investigatory proceedings in relation to any property does not prevent such proceedings being taken subsequently (whether as a result of new information or otherwise, and whether or not by the same enforcement authority) in relation to the property.

(7) For the purposes of this section—

- (a) the respondent complies with the requirements imposed by an unexplained wealth order only if all of the requirements are complied with,
- (b) references to the day of compliance are to the day on which the requirements imposed by the order are complied with (or, if the requirements are complied with over more than one day, the last of those days), and
- (c) where an order requires the sending of information in writing to, or the production of documents at, an address specified in the order, compliance with the order (so far as relating to that requirement) occurs when the written information is received, or the documents are produced, at that address,



and in paragraphs (a) to (c) references to compliance include purported compliance.

(8) In this section “enforcement or investigatory proceedings” means any proceedings in relation to property taken under—

- (a) Part 2 or 4 (confiscation proceedings in England and Wales or Northern Ireland) (in relation to cases where the enforcement authority is also a prosecuting authority for the purposes of that Part),
- (b) Part 5 (civil recovery of the proceeds of unlawful conduct), or
- (c) this Chapter.

### **362E Offence**

(1) A person commits an offence if, in purported compliance with a requirement imposed by an unexplained wealth order, the person—

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

(2) A person guilty of an offence under this section is liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or to a fine, or to both;
- (b) on summary conviction in England and Wales, to imprisonment for a term not exceeding 12 months, or to a fine, or to both;
- (c) on summary conviction in Northern Ireland, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding the statutory maximum, or to both.

(3) In relation to an offence committed before the coming into force of section 282 of the Criminal Justice Act 2003 (increase in maximum sentence on summary conviction of offence triable either way), the reference in subsection (2)(b) to 12 months is to be read as a reference to 6 months.

### **362F Statements**

(1) A statement made by a person in response to a requirement imposed by an unexplained wealth order may not be used in evidence against that person in criminal proceedings.

(2) Subsection (1) does not apply—

- (a) in the case of proceedings under Part 2 or 4,
- (b) on a prosecution for an offence under section 362E,
- (c) on a prosecution for an offence under section 5 of the Perjury Act 1911 or Article 10 of the Perjury (Northern Ireland) Order 1979 (S.I. 1979/1714 (N.I. 19)) (false statements), or
- (d) on a prosecution for some other offence where, in giving evidence, the person

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

(3) A statement may not be used by virtue of subsection (2)(d) against a person unless—

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

by the person or on the person's behalf in proceedings arising out of the prosecution.

### **362G Disclosure of information, copying of documents, etc**

(1) An unexplained wealth order has effect in spite of any restriction on the disclosure of information (however imposed).

(2) But subsections (1) to (5) of section 361 (rights in connection with privileged information, questions and material) apply in relation to requirements imposed by an unexplained wealth order as they apply in relation to requirements imposed under a disclosure order.

(3) The enforcement authority may take copies of any documents produced by the respondent in connection with complying with the requirements imposed by an unexplained wealth order.

(4) Documents so produced may also be retained for so long as it is necessary to retain them (as opposed to a copy of them) in connection with an investigation of a kind mentioned in section 341 in relation to the property in respect of which the unexplained wealth order is made.

(5) But if the enforcement authority has reasonable grounds to believe that the documents—

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

they may be retained until the proceedings are concluded.

### **362H Holding of property: trusts and company arrangements etc**

(1) This section applies for the purposes of sections 362A and 362B.

(2) The cases in which a person (P) is to be taken to “hold” property include those where—

- (a) P has effective control over the property;
- (b) P is the trustee of a settlement in which the property is comprised;
- (c) P is a beneficiary (whether actual or potential) in relation to such a settlement.

(3) A person is to be taken to have “effective control” over property if, from all the circumstances, it is reasonable to conclude that the person—

- (a) exercises,
- (b) is able to exercise, or
- (c) is entitled to acquire,

direct or indirect control over the property.

(4) Where a person holds property by virtue of subsection (2) references to the person obtaining the property are to be read accordingly.

(5) References to a person who holds or obtains property include any body corporate, whether incorporated or formed under the law of a part of the United Kingdom or in a country or territory outside the United Kingdom.

(6) For further provision about how to construe references to the holding of property, see section 414.

### **362I Supplementary**

(1) An application for an unexplained wealth order may be made without notice.

(2) Rules of court may make provision as to the practice and procedure to be followed in connection with proceedings relating to unexplained wealth orders before the High Court in Northern Ireland.

(3) An application to the High Court in Northern Ireland to discharge or vary an unexplained wealth order may be made by—

- (a) the enforcement authority, or
- (b) the respondent.

(4) The High Court in Northern Ireland—

- (a) may discharge the order;
- (b) may vary the order.

## **Zimbabwe**

### **Money Laundering and Proceeds of Crime Act No.4 of 2013 (as amended by the Money Laundering and Proceeds of Crime (Amendment) Act 2019)**

**Original Text** ([http://www.veritaszim.net/sites/veritas\\_d/files/Money%20Laundering%20and%20Proceeds%20of%20Crime%20Amendment%20Act.pdf](http://www.veritaszim.net/sites/veritas_d/files/Money%20Laundering%20and%20Proceeds%20of%20Crime%20Amendment%20Act.pdf) / <https://gazettes.africa/archive/zw/2020/zw-government-gazette-dated-2020-02-21-no-13.pdf>)

### **37B Unexplained wealth orders**

(1) The High Court may, on an ex parte application made by an enforcement authority, make an unexplained wealth order in respect of any property if the court is satisfied that each of the requirements for the making of the order is fulfilled:

Provided that if the court is not so satisfied, it may dismiss the application or require the applicant to serve notice of the application on the respondent before proceeding with the application.

(2) An application for an order must—

- (a) specify or describe the property in respect of which the order is sought; and

- (b) specify the person whom the enforcement authority thinks holds the property (“the respondent”) (and the person specified may include a person outside Zimbabwe).
- (3) An unexplained wealth order is an order requiring the respondent to provide a statement—
- (a) setting out the nature and extent of the respondent’s interest in the property in respect of which the order is made; and
  - (b) explaining how the respondent obtained the property (including, in particular, how any costs incurred in obtaining it were met); and
  - (c) where the property is held by the trustees of a settlement, setting out such details of the settlement as may be specified in the order; and
  - (d) setting out such other information in connection with the property as may be so specified.
- (4) The order must specify—
- (a) the form and manner in which the statement is to be given; and
  - (b) the person to whom it is to be given; and
  - (c) the place at which it is to be given or, if it is to be given in writing, the address to which it is to be sent.
- (5) The order may, in connection with requiring the respondent to provide the statement mentioned in subsection (3), also require the respondent to produce documents of a kind specified or described in the order.
- (6) The respondent must comply with the requirements imposed by an unexplained wealth order within whatever period the court may specify (and different periods may be specified in relation to different requirements).
- (7) Any person subjected to any unexplained wealth order may at any time apply to the High Court that issued the order to set it aside on good cause shown.

### **37C Requirements for making of unexplained wealth order**

- (1) In deciding whether to make an unexplained wealth order the High Court must be satisfied that there is reasonable cause to believe that—
- (a) the respondent holds the property; and
  - (b) the value of the property is greater than one hundred thousand United States dollars or its equivalent in any currency.
- (2) The High Court must be satisfied that there are reasonable grounds for suspecting that the known sources of the respondent’s lawfully obtained income would have been insufficient for the purposes of enabling the respondent to obtain or hold the property.
- (3) The High Court must be satisfied that there are reasonable grounds for suspecting that—
- (a) the respondent is, or has been, involved in serious crime (whether in Zimbabwe or elsewhere); or

- (b) a person connected with the respondent is, or has been, so involved.
- (4) It does not matter for the purposes of subsection (1)–
- (a) whether or not there are other persons who also hold the property;
  - (b) whether the property was obtained by the respondent before or after the coming into force of this section.
- (5) For the purposes of subsection (2)–
- (a) regard is to be had to any mortgage, charge or other kind of security that it is reasonable to assume was or may have been available to the respondent for the purposes of obtaining the property;
  - (b) it is to be assumed that the respondent obtained the property for a price equivalent to its market value;
  - (c) income is “lawfully obtained” if it is obtained lawfully under the laws of the country from where the income arises;
  - (d) “known” sources of the respondent’s income are the sources of income (whether arising from employment, assets or otherwise) that are reasonably ascertainable from available information at the time of the making of the application for the order;
  - (e) where the property is an interest in other property comprised in a settlement, the reference to the respondent obtaining the property is to be taken as if it were a reference to the respondent obtaining direct ownership of such share in the settled property as relates to, or is fairly represented by, that interest.
- (6) For the purposes of this section, section 2A (“When persons deemed to be associates”) of the Income Tax Act [Chapter 23:06] applies in determining whether a person is connected with another.
- (7) Where the property in respect of which the order is sought comprises more than one item of property, the reference in subsection (1)(b) to the value of the property is to the total value of those items.

### **37D Effect of order, cases of non-compliance**

- (1) This section applies in a case where the respondent fails, without reasonable excuse, to comply with the requirements imposed by an unexplained wealth order in respect of any property before the end of the response period.
- (2) The property is to be presumed to be tainted property for the purposes of any proceedings taken in respect of the property under this Act, unless the contrary is shown.
- (3) The presumption in subsection (2) applies in relation to property–
- (a) only so far as relating to the respondent’s interest in the property; and
  - (b) only if the value of that interest is greater than the sum specified in section 37C(1)(b).

(4) For the purposes of subsection (1)–

- (a) a respondent who purports to comply with the requirements imposed by an unexplained wealth order is not to be taken to have failed to comply with the order (see instead section 37E(7);
- (b) where an unexplained wealth order imposes more than one requirement on the respondent, the respondent is to be taken to have failed to comply with the requirements imposed by the order unless each of the requirements is complied with or is purported to be complied with.

(5) Subsections (6) and (7) apply in determining the respondent’s interest for the purposes of subsection (3) in a case where the respondent to the unexplained wealth order is connected with another person who is, or has been, involved in serious crime.

(6) In a case within subsection (5), the respondent’s interest is to be taken to include any interest in the property of the person involved in serious crime with whom the respondent is connected.

(7) Where an unexplained wealth order is made in respect of property comprising more than one item of property, the reference in subsection (3)(b) to the value of the respondent’s interest in the property is to the total value of the respondent’s interest in those items.

### **37E Effect of order: cases of compliance or purported compliance**

(1) This section applies in a case where, before the end of the response period (as defined by section 37B(6)), the respondent complies, or purports to comply, with the requirements imposed by an unexplained wealth order in respect of any property in relation to which the order is made.

(2) If an interim freezing order has effect in relation to the property (see section 37I), the enforcement authority must determine what enforcement or investigatory proceedings, if any, it considers ought to be taken in relation to the property.

(3) A determination under subsection (2) must be made within the period of sixty days starting with the day of compliance.

(4) If the determination under subsection (2) is that no further enforcement or investigatory proceedings ought to be taken in relation to the property, the enforcement authority must notify the High Court of that fact as soon as reasonably practicable (and in any event before the end of the sixty-day period mentioned in subsection (3)).

(5) If there is no interim freezing order in effect in relation to the property, the enforcement authority may (at any time) determine what, if any, enforcement or investigatory proceedings it considers ought to be taken in relation to the property.

(6) A determination under this section to take no further enforcement or investigatory proceedings in relation to any property does not prevent such proceedings being taken subsequently (whether as a result of new information or otherwise, and whether or not by the same enforcement authority) in relation to the property.

(7) For the purposes of this section–

- (a) the respondent complies with the requirements imposed by an unexplained wealth order only if all of the requirements are complied with; and
- (b) references to the day of compliance are to the day on which the requirements imposed by the order are complied with (or, if the requirements are complied with over more than one day, the last of those days); and
- (c) where an order requires the sending of information in writing to, or the production of documents at, an address specified in the order, compliance with the order (so far as relating to that requirement) occurs when the written information is received, or the documents are produced, at that address; and in paragraphs (a) to (c) references to compliance include purported compliance.

### **37F Making false or misleading statements in response to unexplained wealth order**

(1) A person who, in purported compliance with a requirement imposed by an unexplained wealth order—

- (a) makes a statement that the person knows to be false or misleading in a material particular; or
- (b) makes a statement that is false or misleading in a material particular knowing that there is a real risk or possibility that it may be so false or misleading;

shall be guilty of an offence and liable to a fine not exceeding twenty per centum of the value of the property that is the subject of the unexplained wealth order or, if no such value specified, not exceeding twenty thousand United States dollars (US\$20 000) or the equivalent in Zimbabwe dollars at the prevailing interbank rate of exchange) or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment.

### **37G Uses in criminal proceedings of statements in response to unexplained wealth order**

(1) A statement made by a person in response to a requirement imposed by an unexplained wealth order may not be used in evidence against that person in criminal proceedings.

(2) Subsection (1) does not apply—

- (a) in the case of proceedings under Chapter IV (“Conviction-based Confiscation and Benefit Recovery Orders and Investigative Powers Appurtenant Thereto”); or
- (b) on a prosecution for an offence under section 37F; or
- (c) on a prosecution for an offence of perjury (section 183 of the Criminal Law Code); or
- (d) on a prosecution for some other offence where, in giving evidence, the person makes a statement inconsistent with the statement mentioned in subsection (1).

(3) A statement may not be used by virtue of subsection (2)(d) against a person unless—

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

by the person or on the person’s behalf in proceedings arising out of the prosecution.

**37H Disclosure of information, copying of documents, etc**

(1) An unexplained wealth order has effect in spite of any restriction on the disclosure of information (however imposed), but does not confer the right to require a person to—

- (a) answer any privileged question, that is to say a question which the person would be entitled to refuse to answer on grounds of legal professional privilege in proceedings in the High Court; or
- (b) provide any privileged information, that is to say, information which the person would be entitled to refuse to provide on grounds of legal professional privilege in proceedings in the High Court; or
- (c) produce any privileged document, that is to say, any document which the person would be entitled to refuse to produce on grounds of legal professional privilege in proceedings in the High Court;

(however, a legal practitioner may be required to provide the name and address of a client of his or hers).

(3) The enforcement authority may take copies of any documents produced by the respondent in connection with complying with the requirements imposed by an unexplained wealth order.

(4) Documents so produced may also be retained for so long as it is necessary to retain them (as opposed to a copy of them) in connection with an investigation of a kind mentioned Chapter IV (“Conviction-based Confiscation and Benefit Recovery Orders and Investigative Powers Appurtenant Thereto”) in relation to the property in respect of which the unexplained wealth order is made, but if the enforcement authority has reasonable grounds to believe that the documents—

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

they may be retained until the proceedings are concluded.



## Other Laws Referenced in Main Publication

### France

#### Penal Code

*(Code pénal)*

Unofficial Translation (Courtesy of DeepL)

#### Article 321-6

Modified by Law n°2006-64 of January 23, 2006 - art. 24 () JORF January 24, 2006

The fact of not being able to justify resources corresponding to one's lifestyle or not being able to justify the origin of a property held, while being in habitual relations with one or more persons who either commit crimes or offences punishable by at least five years' imprisonment and providing them with a direct or indirect profit, or are the victims of one of these offences, is punishable by three years' imprisonment and a fine of 75,000 euros.

The same penalties shall apply to facilitating the provision of fictitious resources to persons who commit crimes or offences punishable by at least five years' imprisonment and who benefit directly or indirectly from them.

**Original Text** ([https://www.legifrance.gouv.fr/codes/section\\_lc/LEGIT-EXT000006070719/LEGISCTA000006136043/#LEGISCTA000006136043](https://www.legifrance.gouv.fr/codes/section_lc/LEGIT-EXT000006070719/LEGISCTA000006136043/#LEGISCTA000006136043))

#### Article 321-6

Modifié par Loi n°2006-64 du 23 janvier 2006 - art. 24 () JORF 24 janvier 2006

Le fait de ne pas pouvoir justifier de ressources correspondant à son train de vie ou de ne pas pouvoir justifier de l'origine d'un bien détenu, tout en étant en relations habituelles avec une ou plusieurs personnes qui soit se livrent à la commission de crimes ou de délits punis d'au moins cinq ans d'emprisonnement et procurant à celles-ci un profit direct ou indirect, soit sont les victimes d'une de ces infractions, est puni d'une peine de trois ans d'emprisonnement et de 75 000 euros d'amende.

Est puni des mêmes peines le fait de faciliter la justification de ressources fictives pour des personnes se livrant à la commission de crimes ou de délits punis d'au moins cinq ans d'emprisonnement et procurant à celles-ci un profit direct ou indirect.

### Ireland

#### Proceeds of Crime Act 1996

**Original Text** (<http://www.irishstatutebook.ie/eli/1996/act/30/enacted/en/print>)

## 2. Interim order.

(1) Where it is shown to the satisfaction of the Court on application to it ex parte in that behalf by a member or an authorised officer—

- (a) that a person is in possession or control of—
  - (i) specified property and that the property constitutes, directly or indirectly, proceeds of crime, or
  - (ii) specified property that was acquired, in whole or in part, with or in connection with property that, directly or indirectly, constitutes proceeds of crime,

and

- (b) that the value of the property or, as the case may be, the total value of the property referred to in both subparagraphs (i) and (ii), of paragraph (a) is not less than £10,000,

the Court may make an order (“an interim order”) prohibiting the person or any other specified person or any other person having notice of the order from disposing of or otherwise dealing with the whole or, if appropriate, a specified part of the property or diminishing its value during the period of 21 days from the date of the making of the order.

(2) An interim order –

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

(3) Where an interim order is in force, the Court, on application to it in that behalf by the respondent or any other person claiming ownership of any of the property concerned may, if it is shown to the satisfaction of the Court that—

- (a) the property concerned or a part of it is not property to which subparagraph (i) or (ii) of subsection (1)(a) applies, or
- (b) the value of the property to which those subparagraphs apply is less than £10,000, discharge or, as may be appropriate, vary the order.

(4) The Court shall, on application to it in that behalf at any time by the applicant, discharge an interim order.

(5) Subject to subsections (3) and (4), an interim order shall continue in force until the expiration of the period of 21 days from the date of its making and shall then lapse unless an application for the making of an interlocutory order in respect of any of the property concerned is brought during that period and, if such an application is brought, the interim order shall lapse upon—

- (a) the determination of the application,
- (b) the expiration of the ordinary time for bringing an appeal from the determination,
- (c) if such an appeal is brought, the determination or abandonment of it or of any further

appeal or the expiration of the ordinary time for bringing any further appeal, whichever is the latest.

(6) Notice of an application under this section shall be given—

- (a) in case the application is under subsection (3), by the respondent or other person making the application to the applicant,
- (b) in case the application is under subsection (4), by the applicant to the respondent unless the Court is satisfied that it is not reasonably possible to ascertain his or her whereabouts,

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

### 3. Interlocutory order.

(1) Where, on application to it in that behalf by the applicant, it appears to the Court, on evidence tendered by the applicant, consisting of or including evidence admissible by virtue of section 8 —

- (a) that a person is in possession or control of—
  - (i) specified property and that the property constitutes, directly or indirectly, proceeds of crime, or
  - (ii) specified property that was acquired, in whole or in part, with or in connection with property that, directly or indirectly, constitutes proceeds of crime,

and

- (b) that the value of the property or, as the case may be, the total value of the property referred to in both subparagraphs (i) and (ii) of paragraph (a) is not less than £10,000,

the Court shall make an order (“an interlocutory order”) prohibiting the respondent or any other specified person or any other person having notice of the order from disposing of or otherwise dealing with the whole or, if appropriate, a specified part of the property or diminishing its value, unless, it is shown to the satisfaction of the Court, on evidence tendered by the respondent or any other person—

- (I) that that particular property does not constitute, directly or indirectly, proceeds of crime and was not acquired, in whole or in part, with or in connection with property that, directly or indirectly, constitutes proceeds of crime, or
- (II) that the value of all the property to which the order would relate is less than £10,000:

Provided, however, that the Court shall not make the order if it is satisfied that there would be a serious risk of injustice.

(2) An interlocutory order—

- (a) may contain such provisions, conditions and restrictions as the Court considers necessary or expedient, and

- (b) shall provide for notice of it to be given to the respondent and any other person who appears to be or is affected by it unless the Court is satisfied that it is not reasonably possible to ascertain his, her or their whereabouts.

(3) Where an interlocutory order is in force, the Court, on application to it in that behalf at any time by the respondent or any other person claiming ownership of any of the property concerned, may, if it is shown to the satisfaction of the Court that the property or a specified part of it is property to which paragraph (l) of subsection (1) applies, or that the order causes any other injustice, discharge or, as may be appropriate, vary the order.

(4) The Court shall, on application to it in that behalf at any time by the applicant, discharge an interlocutory order.

(5) Subject to subsections (3) and (4), an interlocutory order shall continue in force until—

- (a) the determination of an application for a disposal order in relation to the property concerned,
- (b) the expiration of the ordinary time for bringing an appeal from that determination,
- (c) if such an appeal is brought, it or any further appeal is determined or abandoned or the ordinary time for bringing any further appeal has expired,

whichever is the latest, and shall then lapse.

(6) Notice of an application under this section shall be given—

- (a) in case the application is under subsection (1) or (4), by the applicant to the respondent, unless the Court is satisfied that it is not reasonably possible to ascertain his or her whereabouts,
- (b) in case the application is under subsection (3), by the respondent or other person making the application to the applicant,

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

(7) Where a forfeiture order, or a confiscation order, under the Criminal Justice Act, 1994, or a forfeiture order under the Misuse of Drugs Act, 1977, relates to any property that is the subject of an interim order, or an interlocutory order, that is in force, (“the specified property”), the interim order or, as the case may be, the interlocutory order shall—

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

#### **4. Disposal order.**

(1) Subject to subsection (2), where an interlocutory order has been in force for not less than 7 years in relation to specified property, the Court, on application to it in that behalf by the applicant, may make an order (“a disposal order”) directing that the whole or, if appropriate, a specified part of the property be transferred, subject to such terms and conditions as the Court may specify, to the Minister or to such other person as the Court may determine.

(2) Subject to subsections (6) and (8), the Court shall make a disposal order in relation to any property the subject of an application under subsection (1) unless it is shown to its satisfaction that that particular property does not constitute, directly or indirectly, proceeds of crime and was not acquired, in whole or in part, with or in connection with property that, directly or indirectly, constitutes proceeds of crime.

(3) The applicant shall give notice to the respondent (unless the Court is satisfied that it is not reasonably possible to ascertain his or her whereabouts), and to such other (if any) persons as the Court may direct of an application under this section.

(4) A disposal order shall operate to deprive the respondent of his or her rights (if any) in or to the property to which it relates and, upon the making of the order, the property shall stand transferred to the Minister or other person to whom it relates.

(5) The Minister may sell or otherwise dispose of any property transferred to him or her under this section, and any proceeds of such a disposition and any moneys transferred to him or her under this section shall be paid into or disposed of for the benefit of the Exchequer by the Minister.

...

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

(7) The Court, if it considers it appropriate to do so in the interests of justice, on the application of the respondent or, if the whereabouts of the respondent cannot be ascertained, on its own initiative, may adjourn the hearing of an application under subsection (1) for such period not exceeding 2 years as it considers reasonable.

(8) The Court shall not make a disposal order if it is satisfied that there would be a serious risk of injustice.

...

## **7. Receiver.**

(1) Where an interim order or an interlocutory order is in force, the Court may at any time appoint a receiver—

- (a) to take possession of any property to which the order relates,
- (b) in accordance with the Court's directions, to manage, keep possession or dispose of or otherwise deal with any property in respect of which he or she is appointed, subject to such exceptions and conditions (if any) as may be specified by the Court, and may require any person having possession or control of property in respect of which the receiver is appointed to give possession of it to the receiver.

(2) Where a receiver takes any action under this section—

- (a) in relation to property which is not property the subject of an interim order or an interlocutory order, being action which he or she would be entitled to take if it were such property, and

- (b) believing, and having reasonable grounds for believing, that he or she is entitled to take that action in relation to that property, he or she shall not be liable to any person in respect of any loss or damage resulting from such action except in so far as the loss or damage is caused by his or her negligence.

### **8. Provisions in relation to evidence and proceedings under Act.**

(1) Where a member or an authorised officer states—

- (a) in proceedings under section 2, on affidavit or, if the Court so directs, in oral evidence, or
- (b) in proceedings under section 3, in oral evidence,

that he or she believes either or both of the following, that is to say:

- (i) that the respondent is in possession or control of specified property and that the property constitutes, directly or indirectly, proceeds of crime,
- (ii) that the respondent is in possession of or control of specified property and that the property was acquired, in whole or in part, with or in connection with property that, directly or indirectly, constitutes proceeds of crime,

and that the value of the property or, as the case may be, the total value of the property referred to in both paragraphs (i) and (ii) is not less than £10,000, then, if the Court is satisfied that there are reasonable grounds for the belief aforesaid, the statement shall be evidence of the matter referred to in paragraph (i) or in paragraph (ii) or in both, as may be appropriate, and of the value of the property.

(2) The standard of proof required to determine any question arising under this Act shall be that applicable to civil proceedings.

(3) Proceedings under this Act in relation to an interim order shall be heard otherwise than in public and any other proceedings under this Act may, if the respondent or any other party to the proceedings (other than the applicant) so requests and the Court considers it proper, be heard otherwise than in public.

(4) The Court may, if it considers it appropriate to do so, prohibit the publication of such information as it may determine in relation to proceedings under this Act, including information in relation to applications for, the making or refusal of and the contents of orders under this Act and the persons to whom they relate.

(5) Production to the Court in proceedings under this Act of a document purporting to authorise a person, who is described therein as an officer of the Revenue Commissioners, to perform the functions conferred on authorised officers by this Act and to be signed by a Revenue Commissioner shall be evidence that the person is an authorised officer.

### **9. Affidavit specifying property and income of respondent.**

At any time during proceedings under section 2 or 3 or while an interim order or an interlocutory order is in force, the Court or, as appropriate, in the case of an appeal in such proceedings, the Supreme Court may by order direct the respondent to file an affidavit in the Central Office of the High Court specifying—

- (a) the property of which the respondent is in possession or control, or
- (b) the income, and the sources of the income, of the respondent during such period (not exceeding 10 years) ending on the date of the application for the order as the court concerned may specify,

or both.

## Switzerland

### Federal Act on the Freezing and the Restitution of Illicit Assets held by Foreign Politically Exposed Persons of 18 December 2015 (Status as of 1 July 2016)

*(Loi fédérale sur le blocage et la restitution des valeurs patrimoniales d'origine illicite de personnes politiquement exposées à l'étranger / Bundesgesetz über die Sperrung und die Rückerstattung unrechtmässig erworbener Vermögenswerte ausländischer politisch exponierter Personen / Legge federale concernente il blocco e la restituzione dei valori patrimoniali di provenienza illecita di persone politicamente esposte all'estero)*

Official Translation (<https://www.fedlex.admin.ch/eli/cc/2016/322/en>)

#### Art. 4 Freeze for purposes of confiscation in the event mutual legal assistance proceedings fail

(1) The Federal Council may order an asset freeze in Switzerland in anticipation of initiating proceedings for the confiscation of assets:

- a. over which foreign politically exposed persons or their close associates have power of disposal;
- b. of which foreign politically exposed persons or their close associates are the beneficial owners; or
- c. which belong to a legal entity:
  - 1. through which foreign politically exposed persons or their close associates hold direct or indirect power of disposal over those assets, or
  - 2. of which foreign politically exposed persons or their close associates are the beneficial owners.

(2) An asset freeze shall be admissible if the following conditions are met:

- a. the assets have been made subject to a provisional seizure order within the framework of international legal assistance proceedings in criminal matters instigated at the request of the country of origin;
- b. the country of origin is unable to satisfy the requirements for mutual legal assistance owing to the total or substantial collapse, or the impairment, of its judicial system (failure of state structures);

- c. the safeguarding of Switzerland's interests requires the freezing of the assets.

(3) An asset freeze shall also be admissible where, following receipt of a request for mutual legal assistance, cooperation with the country of origin proves to be impossible because there are reasons to believe that proceedings in the country of origin do not satisfy the essential principles of procedure foreseen in Article 2 letter a of the Mutual Assistance Act of 20 March 1981 and where the safeguarding of Switzerland's interests so requires.

...

#### **Art. 14 Conditions and procedure**

(1) The Federal Council may instruct the Federal Department of Finance (FDF) to take legal action before the Federal Administrative Court for the confiscation of frozen assets.

(2) The Federal Administrative Court shall order the confiscation of assets:

- a. that are subject to the power of disposal of a foreign politically exposed person or a close associate of that individual, or of which those individuals are the beneficial owners;
- b. that are of illicit origin; and which
- c. have been frozen by order of the Federal Council in anticipation of their confiscation, pursuant to Article 4.

(3) No statute of limitations in respect of criminal prosecution or penalties may be applied.

(4) Should mutual legal assistance proceedings in criminal matters resume, confiscation proceedings shall be suspended until such time as a final decision has been reached in those proceedings.

#### **Art. 15 Presumption of illicit origin**

(1) There shall be a presumption that assets are of illicit origin where the following conditions are fulfilled:

- a. the wealth of the individual who has the power of disposal over the assets or who is the beneficial owner thereof increased inordinately, facilitated by the exercise of a public function by a foreign politically exposed person;
- b. the level of corruption in the country of origin or surrounding the foreign politically exposed person in question was notoriously high during his or her term of office.

(2) An increase shall be considered inordinate where there is a significant disproportion, inconsistent with ordinary experience and the prevailing circumstances in the country, between the income legitimately earned by the person with the power of disposal over the assets and the growth in that person's wealth.

(3) This presumption shall be reversed where it has been demonstrated with overwhelming probability that the assets in question were acquired legitimately.

**Original Text** (<https://www.fedlex.admin.ch/eli/cc/2016/322/fr> / <https://www.fedlex.admin.ch/eli/cc/2016/322/de> / <https://www.fedlex.admin.ch/eli/cc/2016/322/it>)



**(Français)****Art. 4 Blocage en vue de la confiscation en cas d'échec de l'entraide judiciaire**

(1) En vue de l'ouverture d'une procédure de confiscation, le Conseil fédéral peut décider du blocage en Suisse de valeurs patrimoniales:

- a. sur lesquelles des personnes politiquement exposées à l'étranger ou leurs proches ont un pouvoir de disposition;
- b. dont des personnes politiquement exposées à l'étranger ou leurs proches sont les ayants droits économiques, ou
- c. qui appartiennent à une personne morale:
  - 1. au travers de laquelle des personnes politiquement exposées à l'étranger ou leurs proches exercent un pouvoir de disposition direct ou indirect sur ces valeurs, ou
  - 2. dont des personnes politiquement exposées à l'étranger ou leurs proches sont les ayants droit économiques.

(2) Le blocage n'est admissible qu'aux conditions suivantes:

- a. les valeurs patrimoniales ont fait l'objet d'une mesure provisoire de saisie dans le cadre d'une procédure d'entraide judiciaire internationale en matière pénale ouverte à la demande de l'Etat d'origine;
- b. l'Etat d'origine n'est pas en mesure de répondre aux exigences de la procédure d'entraide judiciaire du fait de l'effondrement de la totalité ou d'une partie substantielle de son appareil judiciaire ou du dysfonctionnement de celui-ci (situation de défaillance);
- c. la sauvegarde des intérêts de la Suisse exige le blocage de ces valeurs patrimoniales.

(3) Le blocage est également admissible si, après le dépôt d'une demande d'entraide judiciaire, la coopération avec l'Etat d'origine s'avère exclue du fait qu'il existe des raisons de croire que la procédure dans l'Etat d'origine ne respecte pas les principes de procédure déterminants prévus à l'art. 2, let. a, de la loi du 20 mars 1981 sur l'entraide pénale internationale et pour autant que la sauvegarde des intérêts de la Suisse l'exige.

**Art. 14 Conditions et procédure**

(1) Le Conseil fédéral peut charger le Département fédéral des finances (DFF) d'ouvrir devant le Tribunal administratif fédéral une action en confiscation des valeurs patrimoniales bloquées.

(2) Le Tribunal administratif fédéral prononce la confiscation des valeurs patrimoniales qui:

- a. sont soumises au pouvoir de disposition d'une personne politiquement exposée à l'étranger ou d'un proche, ou dont ces personnes sont les ayants droits économiques;
- b. sont d'origine illicite, et qui

- c. ont été bloquées par le Conseil fédéral en prévision d'une confiscation, en vertu de l'art. 4.

(3) La prescription de l'action pénale ou de la peine ne peut être invoquée.

(4) En cas de reprise de la procédure d'entraide judiciaire internationale en matière pénale, la procédure en confiscation est suspendue jusqu'à droit connu.

#### **Art. 15 Présomption d'illicéité**

(1) L'origine illicite des valeurs patrimoniales est présumée lorsque les conditions suivantes sont remplies:

- a. le patrimoine de la personne qui a le pouvoir de disposition sur les valeurs patrimoniales ou qui est l'ayant droit économique de celles-ci a fait l'objet d'un accroissement exorbitant facilité par l'exercice de la fonction publique de la personne politiquement exposée à l'étranger;
- b. le degré de corruption de l'Etat d'origine ou de la personne politiquement exposée à l'étranger en cause était notoirement élevé durant la période d'exercice de la fonction publique de celle-ci.

(2) L'accroissement est exorbitant s'il y a une disproportion importante, ne s'expliquant pas par l'expérience générale de la vie et le contexte du pays, entre le revenu légitime acquis par la personne qui a le pouvoir de disposition sur les valeurs patrimoniales et l'augmentation du patrimoine en cause.

(3) La présomption est renversée si la licéité de l'acquisition des valeurs patrimoniales est démontrée avec une vraisemblance prépondérante.

#### **(Deutsch)**

#### **Art. 4 Sperrung im Hinblick auf eine Einziehung bei Scheitern der Rechtshilfe**

(1) Der Bundesrat kann im Hinblick auf die Einleitung eines Einziehungsverfahrens die Sperrung von Vermögenswerten in der Schweiz verfügen:

- a. über die ausländische politisch exponierte Personen oder ihnen nahestehende Personen Verfügungsmacht haben;
- b. an denen ausländische politisch exponierte Personen oder ihnen nahestehende Personen wirtschaftlich berechtigt sind; oder
- c. die juristischen Personen gehören:
  - 1. über die ausländische politisch exponierte Personen oder ihnen nahestehende Personen direkt oder indirekt Verfügungsmacht über die Vermögenswerte haben, oder
  - 2. an denen ausländische politisch exponierte Personen oder ihnen nahestehende Personen wirtschaftlich berechtigt sind.

(2) Die Sperrung ist nur zulässig, wenn die folgenden Voraussetzungen erfüllt sind:

- a. Die Vermögenswerte wurden im Rahmen eines auf Ersuchen des Herkunftsstaates

eingeleiteten internationalen Rechtshilfeverfahrens in Strafsachen vorläufig sichergestellt.

- b. Der Herkunftsstaat kann die Anforderungen an ein Rechtshilfeverfahren wegen des völligen oder weitgehenden Zusammenbruchs oder der mangelnden Verfügbarkeit seines Justizsystems nicht erfüllen (Versagen staatlicher Strukturen).
- c. Die Wahrung der Schweizer Interessen erfordert die Sperrung dieser Vermögenswerte.

(3) Die Sperrung ist ebenfalls zulässig, wenn sich die Zusammenarbeit mit dem Herkunftsstaat nach erfolgter Einreichung eines Rechtshilfeersuchens als ausgeschlossen erweist, weil Gründe für die Annahme bestehen, dass das Verfahren im Herkunftsstaat den massgeblichen Verfahrensgrundsätzen nach Artikel 2

Buchstabe a des Rechtshilfegesetzes vom 20. März 1981 nicht entspricht, und sofern die Wahrung der Schweizer Interessen es erfordert.

#### **Art. 14 Bedingungen und Verfahren**

(1) Der Bundesrat kann das Eidgenössische Finanzdepartement (EFD) beauftragen, vor dem Bundesverwaltungsgericht Klage auf Einziehung gesperrter Vermögenswerte zu erheben.

(2) Das Bundesverwaltungsgericht ordnet die Einziehung von Vermögenswerten an, die:

- a. der Verfügungsmacht einer ausländischen politisch exponierten Person oder ihr nahestehender Personen unterliegen oder an denen diese Personen wirtschaftlich berechtigt sind;
- b. unrechtmässig erworben wurden; und
- c. vom Bundesrat nach Artikel 4 im Hinblick auf eine Einziehung gesperrt wurden.

(3) Es kann keine Verjährung der Strafverfolgung oder der Strafe geltend gemacht werden.

(4) Das Einziehungsverfahren wird bei einer Wiederaufnahme des internationalen Rechtshilfeverfahrens in Strafsachen bis zum rechtskräftigen Entscheid darüber ausgesetzt.

#### **Art. 15 Vermutung der Unrechtmässigkeit**

(1) Es gilt die Vermutung, dass Vermögenswerte unrechtmässig erworben wurden, wenn:

- a. das Vermögen der Person, welche die Verfügungsmacht über die Vermögenswerte hat oder an diesen wirtschaftlich berechtigt ist, begünstigt durch die Ausübung des öffentlichen Amtes durch die ausländische politisch exponierte Person ausserordentlich stark gestiegen ist; und
- b. der Korruptionsgrad des Herkunftsstaats oder der betreffenden ausländischen politisch exponierten Person während deren Amtszeit notorisch hoch war.

(2) Der Vermögensanstieg ist ausserordentlich stark, wenn ein grosses, nicht durch die allgemeine Lebenserfahrung und den Kontext des Landes zu erklärendes Missverhältnis zwischen dem rechtmässigen Einkommen der Person, deren Verfügungsmacht die Vermögenswerte unterliegen, und dem fraglichen Vermögensanstieg besteht.

(3) Die Vermutung wird umgestossen, wenn mit überwiegender Wahrscheinlichkeit nachge-

wiesen werden kann, dass die Vermögenswerte rechtmässig erworben wurden.

**(Italiano)**

**Art. 4 Blocco in vista di una confisca in caso di fallimento dell'assistenza giudiziaria**

(1) In vista dell'apertura di un procedimento di confisca, il Consiglio federale può disporre il blocco di valori patrimoniali in Svizzera:

- a. che sottostanno alla facoltà di disporre di persone politicamente esposte all'estero o di persone a loro vicine;
- b. i cui aventi economicamente diritto sono persone politicamente esposte all'estero o persone a loro vicine; o
- c. che appartengono a una persona giuridica:
  - 1. attraverso la quale persone politicamente esposte all'estero o persone a loro vicine hanno facoltà di disporre, direttamente o indirettamente, di tali valori, o
  - 2. i cui aventi economicamente diritto sono tali persone politicamente esposte all'estero o persone a loro vicine.

(2) Il blocco è ammissibile unicamente alle condizioni seguenti:

- a. i valori patrimoniali sono stati oggetto di una misura provvisoria di sequestro nell'ambito di un procedimento di assistenza giudiziaria internazionale in materia penale aperto su richiesta dello Stato di provenienza;
- b. lo Stato di provenienza non può soddisfare le esigenze del procedimento di assistenza giudiziaria a causa di un totale o sostanziale collasso ovvero della indisponibilità del proprio sistema giudiziario interno (situazione di dissesto);
- c. la tutela degli interessi della Svizzera esige il blocco di tali valori patrimoniali.

(3) Il blocco è ammissibile anche se, dopo la presentazione di una domanda di assistenza giudiziaria, la collaborazione con lo Stato di provenienza è esclusa poiché sussistono motivi per ritenere che il procedimento nello Stato di provenienza non sia conforme ai principi procedurali determinanti di cui all'articolo 2 lettera a della legge del 20 marzo 1981 sull'assistenza internazionale in materia penale e sempre che la tutela degli interessi della Svizzera lo esiga.

**Art. 14 Condizioni e procedura**

(1) Il Consiglio federale può incaricare il Dipartimento federale delle finanze (DFF) di proporre dinanzi al Tribunale amministrativo federale un'azione di confisca dei valori patrimoniali bloccati.

(2) Il Tribunale amministrativo federale dispone la confisca dei valori patrimoniali che:

- a. sottostanno alla facoltà di disporre di una persona politicamente esposta all'estero o di persone a essa vicine oppure di cui dette persone sono gli aventi economicamente diritto;
- b. sono di provenienza illecita, e

- c. sono stati bloccati dal Consiglio federale in vista di una confisca conformemente all'articolo 4.

(3) Non può essere eccepita la prescrizione dell'azione penale o della pena.

(4) In caso di ripresa del procedimento di assistenza giudiziaria internazionale in materia penale, il procedimento di confisca è sospeso sino all'esito del procedimento di assistenza giudiziaria.

#### **Art. 15 Presunzione d'illiceità**

(1) La provenienza illecita dei valori patrimoniali è presunta se sono soddisfatte le condizioni seguenti:

- a. il patrimonio della persona che ha la facoltà di disporre dei valori patrimoniali o che ne è l'avente economicamente diritto ha fatto segnare una crescita esorbitante favorita dall'esercizio della funzione pubblica della persona politicamente esposta all'estero;
- b. il livello di corruzione dello Stato di provenienza o della persona politicamente esposta all'estero era notoriamente elevato nel periodo in cui quest'ultima esercitava la funzione pubblica.

(2) La crescita è esorbitante se vi è una notevole sproporzione, inspiegabile in base all'esperienza normale e al contesto del Paese, tra il reddito legittimo conseguito dalla persona che ha la facoltà di disporre dei valori patrimoniali e l'aumento del patrimonio in questione.

(3) La presunzione è infirmata se la liceità dell'acquisizione dei valori patrimoniali è dimostrata con una verosimiglianza preponderante.

## **Ukraine**

### **Criminal Code of Ukraine (as amended by Law No. 263-IX of 10/31/2019)**

**(Кримінальний кодекс України (Кодекс доповнено статтею 368-5 згідно із Законом № 263-IX від 31.10.2019))**

#### **Unofficial Translation** (Courtesy of Google Translate)

##### Article 368-5. Illegal enrichment

1. The acquisition by the person authorized to perform the functions of the state or local self-government assets, the value of which is more than six thousand five hundred tax-free minimum incomes exceeds its legal income, -

shall be punishable by imprisonment for a term of five to ten years, with deprivation of the right to hold certain posts or engage in certain activities for a term of up to three years.

Note. 1. Persons authorized to perform the functions of the state or local self-government are the persons mentioned in paragraph 1 of part one of Article 3 of the Law of Ukraine "On Prevention of Corruption".

2. Acquisition of assets shall be understood to mean the acquisition of property by a person authorized to perform the functions of state or local self-government, as well as the acquisition of assets for ownership by another natural or legal person, if it is proved that such acquisition was effected on behalf of a person authorized to perform state or local government functions, or that a person authorized to perform state or local government functions may, directly or indirectly, act on such assets of an action identical to the content of the exercise of the right to dispose of them.

3. Assets should be understood as funds (including cash, funds held in bank accounts or deposited with banks or other financial institutions), other property, property rights, intangible assets, including cryptocurrency, the amount of financial obligations, as well as works or services provided to a person authorized to perform the functions of state or local government.

4. The legitimate income of a person should be understood to mean the income lawfully obtained by a person from lawful sources, in particular those specified in clauses 7 and 8 of part one of Article 46 of the Law of Ukraine "On Prevention of Corruption".

5. In determining the difference between the value of the assets acquired and the legitimate income, the assets that are the subject of proceedings for the recognition of the assets as unfounded and their recovery into government revenue, as well as the assets recoverable in the state income in the course of such proceedings shall not be taken into account.

{Code supplemented by Article 368-5 under Law No. 263-IX of 10/31/2019}

**Original Text** (<https://zakon.rada.gov.ua/laws/show/2341-14>)

Стаття 368-5. Незаконне збагачення

1. Набуття особою, уповноваженою на виконання функцій держави або місцевого самоврядування, активів, вартість яких більше ніж на шість тисяч п'ятсот неоподатковуваних мінімумів доходів громадян перевищує її законні доходи, -

карається позбавленням волі на строк від п'яти до десяти років з позбавленням права обіймати певні посади чи займатися певною діяльністю на строк до трьох років.

Примітка. 1. Особами, уповноваженими на виконання функцій держави або місцевого самоврядування, є особи, зазначені у пункті 1 частини першої статті 3 Закону України "Про запобігання корупції".

2. Під набуттям активів слід розуміти набуття їх особою, уповноваженою на виконання функцій держави або місцевого самоврядування, у власність, а також набуття активів у власність іншою фізичною або юридичною особою, якщо доведено, що таке набуття було здійснено за дорученням особи, уповноваженої на виконання функцій держави або місцевого самоврядування, або що особа, уповноважена на виконання функцій держави або місцевого самоврядування, може прямо чи опосередковано вчиняти щодо таких активів дії, тотожні за змістом здійсненню права розпорядження ними.

3. Під активами слід розуміти грошові кошти (у тому числі готівкові кошти, кошти, що перебувають на банківських рахунках чи на зберіганні у банках або інших фінансових установах), інше майно, майнові права, нематеріальні активи, у тому числі криптовалюти, обсяг зменшення фінансових зобов'язань, а також роботи чи послуги, надані особі, уповноваженій на виконання функцій держави або місцевого самоврядування.

4. Під законними доходами особи слід розуміти доходи, правомірно отримані особою із законних джерел, зокрема визначених пунктами 7 і 8 частини першої статті 46 Закону України "Про запобігання корупції".

5. При визначенні різниці між вартістю набутих активів та законними доходами не враховуються активи, які є предметом провадження у справах про визнання активів необґрунтованими та їх стягнення в дохід держави, а також активи, стягнуті в дохід держави в рамках такого провадження.

{Кодекс доповнено статтею 368-5 згідно із Законом № 263-IX від 31.10.2019}

**Illicit Enrichment** by **Andrew Dornbierer** provides a comprehensive guide to illicit enrichment laws and their application to target unexplained wealth and recover proceeds of corruption and other crimes. The book covers both criminal and civil-based laws from around the world.

Investigators, prosecutors, legislators and academics alike will benefit from the clear descriptions and practical guidance on different approaches to targeting unexplainable increases in wealth, how to establish cases in court, and common legal challenges to illicit enrichment laws.

**Illicit Enrichment** was developed and published by the Basel Institute on Governance through its International Centre for Asset Recovery, with research support from the NYU School of Law.

ISBN 978-3-9525409-3-0



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