



ANNUAL REPORT 2010

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Mr. Alan Shatter, T.D.
Minister for Justice, Equality & Defence
94 St. Stephen's Green
Dublin 2

Dear Minister

In accordance with the terms of Section 21 of the Criminal Assets Bureau Act 1996, I am pleased to present to you the 2010 Annual Report of the Criminal Assets Bureau.

The report demonstrates that the Criminal Assets Bureau has had another successful year in the context of pursuing its statutory remit. It is evident that organised crime continues to pose a serious threat to society and in this regard, the Bureau continues to demonstrate its effectiveness as an integral part of the law enforcement response to criminal conduct of this nature.

The Bureau is in its 15th year and among the most notable aspects which have contributed to the successes achieved to date has been the multi-agency and multi-disciplinary approach chosen at its inception. The approach has proven to be one of the most enduring features in terms of the effectiveness of the Bureau and the attached report demonstrates continued development in this area through the expansion of the Criminal Assets Divisional Profiler Programme during 2010.

On the international front, the Bureau continues to liaise closely through the CARIN Network and other initiatives under the auspices of the European Commission in the

area of identification, targeting and deprivation of criminal assets which have migrated to other jurisdictions.

Among the most significant developments in recent times has been the designation of the Criminal Assets Bureau as the Asset Recovery Office for the Republic of Ireland under the terms of the EU Framework Council Decision of 2007. Requests for assistance under the Directive, all of which operate on a reciprocal basis, from other designated Asset Recovery Offices are dealt with by the staff of the Criminal Assets Bureau.

In addition to the liaison in place at wider EU level, the Bureau has developed strong cross-border links through its participation in both the Cross Border Fuel Enforcement and Tobacco Fraud Enforcement Groups. Both of these initiatives have yielded significant success by targeting individuals engaged in this type of criminal conduct in this jurisdiction and in the jurisdiction of Northern Ireland.

In conclusion, the report demonstrates that the Bureau continues to exercise its statutory objectives and in that regard the results achieved during the year have contributed significantly to the overall response to the threat posed by individuals engaged in serious and organised crime.

Yours sincerely



**MARTIN CALLINAN
COMMISSIONER OF
AN GARDA SÍOCHÁNA**

29th June, 2011

Criminal Assets Bureau

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Commissioner
An Garda Síochána
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Dublin 8

Dear Commissioner

It is my pleasure to present to you the 15th Annual Report of the Criminal Assets Bureau for the calendar year 2010. This report is submitted for presentation to the Minister for Justice, Equality & Defence, pursuant to the provisions of Section 21 of the Criminal Assets Bureau Act, 1996.

The Bureau continued to pursue its statutory remit in targeting persons suspected of being involved in criminal conduct and their assets wherever possible. During 2010, fifteen (15) new proceedings were brought before the High Court under the Proceeds of Crime legislation. The majority of these actions were taken against persons suspected of drug trafficking. In addition, actions were taken against persons suspected of involvement in other forms of criminal conduct including prostitution, theft offences and the illicit trade in counterfeit goods.

The total sum forwarded to the Minister for Finance for the benefit of the Central Exchequer arising from proceedings taken under Proceeds of Crime legislation exceeded €3.1 million. In addition, the Criminal Assets Bureau, using appropriate Revenue provisions, forwarded in excess of €4 million to the Central Exchequer and

also recovered in excess of €180,000 in respect of overpayments under Social Welfare provisions.

The Bureau continues to co-ordinate its strategy in line with the Policing Plans of An Garda Síochána and the strategies of the Revenue Commissioners and the Department of Social Protection. The Bureau continues to liaise with the Office of the Director of Public Prosecutions, An Garda Síochána and the Revenue Commissioners in co-ordinating legal remedies in pursuit of the proceeds of criminal conduct. In this regard, the Divisional Assets Profiler Programme has been extended and further developed during 2010. The primary aim of this development is to enhance the Bureau's effectiveness by the provision of training to related agencies leading to extended co-operation among the agencies in question.

The Bureau continues to work with international crime investigation agencies, successfully targeting proceeds of foreign criminality or criminal proceeds which have migrated abroad, and continues to develop its relationships with Interpol, Europol and CARIN. The Bureau, as the designated Assets Recovery Office in Ireland, continues to represent Ireland at the platform of the Assets Recovery Offices in Brussels.

I am happy to report that the Bureau continues to enjoy excellent support from members of the public. In general, the Bureau continues to enjoy good working relationships with the Financial Institutions, Accountancy Bodies and the other regulatory agencies within the country. In addition to the focus on serious organised criminals operating at national and international levels, the Bureau has as a core priority the support of efforts to combat criminal conduct at local community level and the Divisional Profiler Programme has been enhanced further in this endeavour.

I wish to acknowledge with gratitude the support and co-operation afforded to the Bureau throughout the year by An Garda Síochána, the Office of the Revenue Commissioners, the Department of Social Protection, the Department of Justice and Equality, the Department of Finance, the Office of the Attorney General and the Office of the Director of Public Prosecutions. I would also like to particularly acknowledge the expertise and commitment of the solicitors and staff allocated by the

Chief State Solicitor to the work of the Bureau. I also wish to acknowledge the contribution of Counsel engaged by the Bureau.

Finally, as Chief Bureau Officer, I must acknowledge the high level of support, dedication and commitment demonstrated by all Bureau Officers and staff of the Bureau comprising the Bureau Legal Officer, the personnel seconded from the Department of Justice and Equality, An Garda Síochána, the Department of Social Protection and the Revenue Commissioners.

In many respects, the level of commitment to co-operation between the staff of the various state bodies represented at the Bureau has been the key to the success achieved to date. This level of co-operation remains the cornerstone of the Bureau's effectiveness in facing the challenges which lie ahead.

Yours sincerely



D/CHIEF SUPERINTENDENT

**EUGENE CORCORAN
CHIEF BUREAU OFFICER**

29th June, 2011

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Criminal Assets Bureau

Annual Report

2010

Chapter 1

1. INTRODUCTION

- 1.1 This is the fifteenth Annual Report of the activities of the Criminal Assets Bureau (hereinafter referred to as the Bureau) and covers the period from 1st January 2010 to 31st December 2010 inclusive.
- 1.2 The Bureau was established in 1996 by the Criminal Assets Bureau Act 1996 (hereinafter referred to as “the Act”). The Act was amended by the Proceeds of Crime (Amendment) Act 2005. Sections 4 and 5 of the Act set out the statutory objectives and functions of the Bureau and these sections are attached at Appendix 1 of this report.
- 1.3 This report is prepared pursuant to Section 21 of the Act which requires the Bureau to present a report, through the Commissioner of An Garda Síochána, to the Minister for Justice, Equality & Defence, of its activities during the year.

Chapter 2

2. PERSONNEL

- 2.1 The Bureau is staffed by officers from An Garda Síochána, the Office of the Revenue Commissioners, the Department of Social Protection, the Department of Justice and Equality and the Bureau Legal Officer.
- 2.2 In September 2010 Detective Chief Superintendent Eugene Corcoran was appointed Chief Bureau Officer, replacing Detective Chief Superintendent Patrick G. Byrne who retired from An Garda Síochána.
- 2.3 Due to an increase in investigations pursuant to the Social Welfare remit of the Bureau, an application was made to the Department of Social Protection for an additional staff member to be seconded to the Bureau.
- 2.4 The total number of staff at the Bureau as of 31st December 2010 was sixty eight (68) with one (1) Clerical Officer vacancy. This vacancy is expected to be filled early in 2011. The breakdown of staffing at the Bureau is as shown in Chart 1 overleaf:
- 2.5 In addition the Chief State Solicitor assigns two (2) Solicitors, two (2) Legal Executives and two (2) Clerical Officers to provide the necessary legal support services to the Bureau. Following the resignation of a Solicitor in 2009, a vacancy still exists. The Bureau continues to press for the assignment of a full complement of staff in light of ongoing and increased legal services required by the Bureau.

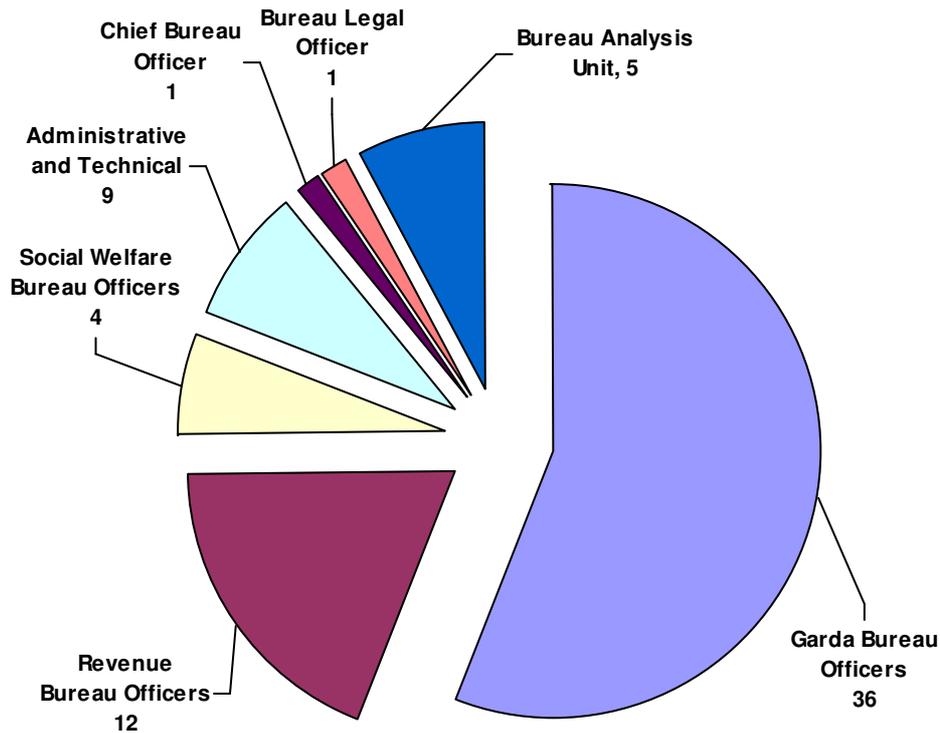


Chart 1:- Bureau Officers and Staff

2.6 The Divisional Criminal Assets Profiler Programme continued throughout 2010 with the training of fifty one (51) additional Criminal Asset Profilers (forty seven (47) of which were Gardaí and four (4) Customs Officers). This increased the number of trained Criminal Asset Profilers to one hundred and sixty seven (167). The Divisional Criminal Asset Profilers continue to liaise and assist the Bureau with investigations within their respective Divisions and Districts. In addition, Criminal Asset Profilers prepare profiles on criminals operating within their operational area and refer these profiles to the Bureau for consideration of action pursuant to the Bureau's statutory remit.

Chapter 3

3. FINANCE

3.1 During the course of the year the Bureau expended monies provided to it through the Oireachtas by the Minister for Justice, Equality & Defence in order to carry out its statutory functions and to achieve its statutory objectives.

3.2 The Bureau expended €6.531 million as broken down in the following Table 1.

Table 1:- Accounts for the period 1st January 2010 – 31st December 2010

		€000	€000
<i>Monies provided by the Oireachtas</i>			<i>6,531</i>
<i>Expenditure</i>	<i>Pay</i>	<i>5,583</i>	
	<i>Non-Pay</i>	<i>948</i>	
	<i>Total</i>	<i>6,531</i>	<i>6,531</i>

3.3 All such amounts are audited by the Comptroller and Auditor General, as is provided for by Statute.

Chapter 4

4. ACTIONS BY THE BUREAU

4.1 During the course of the year the Bureau undertook a number of Court actions and actions otherwise than through the Courts in the exercise of its statutory objectives. This report sets out details of the actions in question including the results achieved by the Bureau in the execution of its statutory obligations to target the proceeds of criminal conduct.

4.2 The nature of the actions undertaken by the Bureau cover a wide range of activities. These include the exercise of powers under Revenue and Social Welfare legislation together with the use of statutory powers specifically designated for use by members of the Criminal Assets Bureau and An Garda Síochána.

4.3 Court applications were made by the Bureau, pursuant to Sections 14 and 14A of the Act, to obtain Search Warrants and Production Orders which were used by the Bureau to uplift evidence in carrying out its investigations. The numbers of Warrants and Orders obtained are set out in Table 2 below.

Table 2:- Number of Warrants and Orders

<i>Description</i>	<i>Number</i>
<i>Search Warrants under Section 14 of the Act</i>	<i>126</i>
<i>Orders to make material available under Section 14A of the Act</i>	<i>233</i>

4.4 A substantial part of the work of the Bureau culminates in proceedings before the High Court. During 2010 the Bureau initiated a number of actions under the Proceeds of Crime Act 1996 and 2005 (hereinafter referred to as the PoC Act) and other legislation. In addition, considerable resources are required in order to advance actions which have been initiated in previous years.

PROCEEDS OF CRIME ACTIONS

- 4.5 Proceedings under Proceeds of Crime legislation are usually commenced by the Chief Bureau Officer, or the Bureau in its own name, making an application to the High Court under Section 2 of the PoC Act seeking an Interim Order, which prohibits dealing with property if the Court is satisfied, on the civil standard of proof, that such property is the proceeds of criminal conduct and has a value of not less than €13,000.
- 4.6 Following the making of an Order under Section 2 of the PoC Act, the Bureau must, in order to keep the prohibition in place, apply to the same Court within twenty-one (21) days for an Order under Section 3 of the same Act. If such an application is successful the High Court makes an Interlocutory Order, which in effect freezes the property until further notice. The Court may discharge or vary the freezing order at any time on being satisfied that all or part of the property is not the proceeds of criminal conduct or for other reasons set out in the legislation.
- 4.7 A Section 3 application may be made even where no Section 2 Order is in place or has been sought. An application for an Order under Section 2 is made where there is an immediate concern that property may be dissipated or in other circumstances, including where a receiver needs to be appointed to preserve its value.
- 4.8 Once a Section 2 or Section 3 Order is in place it is open to any person to seek to vary or set aside such freezing Order (Section 2(3) or Section 3(3) of the PoC Act), if that person can satisfy the Court that they have a legitimate right to the property and/or the property is not the proceeds of criminal conduct.

- 4.9 A receiver may be appointed by the Court under Section 7 of the PoC Act, either to preserve the value of or dispose of property which is already frozen under Section 2 or Section 3 Orders. In 2010 the Bureau obtained fifteen (15) Receivership Orders. In all cases the Receiver appointed by the Court was the Bureau Legal Officer. These cases involved properties, cash, money in bank accounts and motor vehicles. In some Receivership cases the High Court made Orders for possession and sale by the Receiver. A Receivership Order cannot be made unless a Section 2 or Section 3 Order is already in place.
- 4.10 Section 4 of the PoC Act provides for the making of Disposal Orders whereby the High Court may make an order transferring assets, which have already been frozen under a Section 3 Order for at least seven years, to the Minister for Finance or to such other person as the Court may determine.
- 4.11 The Proceeds of Crime (Amendment) Act 2005 made provision for the obtaining of a Section 4A consent Disposal Order whereby the High Court may make a similar Order to that of a Section 4 Order on consent, in cases where the Section 3 Order is in existence for less than seven years.
- 4.12 There were fifteen (15) new cases taken under the PoC Act during 2010. Fourteen (14) of these cases were by way of Section 2 Orders and one (1) was by way of a Section 3 Order. The number of Orders obtained under Sections 2, 3(1), 3(3), 4A, and 7 of the PoC Act and their values, are shown in Table 3.

Table 3:- Orders obtained under the Proceeds of Crime Act 1996 & 2005

<i>Description</i>	<i>Number of Orders</i>	<i>Number of Respondents</i>	<i>Amount €</i>	<i>Amount STG £</i>
<i>Interim Orders under Section 2</i>	<i>14</i>	<i>24</i>	<i>7,019,475.88</i>	<i>63,535.00</i>
<i>Interlocutory Orders under Section 3(1)</i>	<i>17</i>	<i>31</i>	<i>4,526,527.72</i>	<i>Nil</i>
<i>Variation Orders under Section 3(3)</i>	<i>3</i>	<i>3</i>	<i>23,000.00</i>	<i>Nil</i>
<i>Consent Disposal Orders under Section 4A</i>	<i>12</i>	<i>24</i>	<i>2,810,902.52</i>	<i>Nil</i>
<i>Receivership Orders under Section 7</i>	<i>15</i>	<i>26</i>	<i>2,633,531.25</i>	<i>55,560.00</i>

Some figures include sums converted from other currencies

4.13 Arising from Proceeds of Crime actions, a total of €3,114,312.59¹ was paid over to the Minister for Finance during 2010. These funds related to Section 4 and Section 4A Orders obtained during the course of the year and previous years.

RECEIVERSHIP ACCOUNTS

4.14 The following Table 4 sets out the opening balance as of 1st January 2010, the activity during the year and the closing balance as of 31st December 2010 in receivership accounts held at the Bureau.

¹ This includes denominations of Sterling and Dollars converted to Euro.

Table 4:- Statement of Receivership Accounts

	€	STG £	US\$
<i>Opening Balance Receivership Accounts 01/01/2010</i>	<i>7,885,440.82</i>	<i>838,810.70</i>	<i>791,268.26</i>
<i>Amounts realised, inclusive of interest and operational advances</i>	<i>3,727,982.13</i>	<i>4,740.14</i>	<i>2,092.22</i>
<i>Payments out, inclusive of payments to the Minister for Finance and Operational Receivership Expenditure</i>	<i>3,677,942.90</i>	<i>14,755.25</i>	<i>93,900.30</i>
<i>Closing Balance Receivership Accounts 31/12/2010</i>	<i>7,935,480.05</i>	<i>828,795.59</i>	<i>699,460.18</i>

REVENUE ACTIONS

- 4.15 The Bureau is empowered under the Act to apply, where appropriate, the relevant powers of the Taxes Acts to the profits or gains derived from criminal conduct and suspected criminal conduct. The application of these powers enables the Bureau to carry out its statutory remit and is an effective means of depriving those engaged in criminal conduct and suspected criminal conduct, of the opportunity to derive a benefit from such profits or gains.
- 4.16 The provisions of the Disclosure of Information for Taxation and Other Purposes Act 1996 were used extensively during the year in providing for the transfer of information between the Revenue Commissioners and the Bureau.
- 4.17 Following investigations into the financial affairs of those engaged in criminal conduct, or suspected criminal conduct, the Bureau applied the provisions of the Taxes Acts, where appropriate. A number of investigations were concluded by agreement providing for the payment of tax, interest and penalties.

- 4.18 Revenue Bureau Officers raised assessments on thirty one (31) individuals during 2010. Persons have an entitlement to make an appeal to the Appeal Commissioners where they are aggrieved by an assessment. During the year, sixteen (16) individuals invoked this right. Of these individuals, ten (10) had their appeal applications refused by the Bureau due to failure to comply with the relevant provisions of the Taxes Acts. Five (5) of these individuals appealed the refusal to the Appeal Commissioners. During the year the Appeal Commissioners upheld the Bureau's decision to refuse the appeal in four (4) of these cases. At 31st December 2010, there was one (1) case listed for determination by the Appeal Commissioner. Summary of the outcome of appeals refused by the Bureau is set out at Table 10.
- 4.19 At 1st January 2010, there were five (5) cases at the Appeal Commissioners stage and during the year six (6) individuals complied with the relevant provisions of the Taxes Acts and properly invoked their right of appeal. The Appeal Commissioners determined the tax appeals in four (4) cases by confirming the assessments made by the Bureau whilst two (2) individuals withdrew their appeal prior to hearing by the Appeal Commissioner. At 31st December 2010, there were five (5) cases at various stages in the appeals process. Summary of the outcome of appeals at Appeal Commissioner Stage is set out at Table 11.
- 4.20 At the 1st January 2010, there were two (2) Appeal cases at the Circuit Court stage and during the year four (4) individuals appealed the determination of the Appeal Commissioners to the Circuit Court. The Judge of the Circuit Court determined the tax appeal in one (1) case by confirming the assessments made by the Bureau, whilst three (3) individuals withdrew their appeals before the Judge of the Circuit Court. At the 31st December 2010, there were two (2) cases at various stages in the Circuit Court appeals process. Summary at the outcome of Circuit Court Appeals is set out at Table 12.

- 4.21 The Bureau applied the enforcement procedures of the Taxes Acts (including the use of Attachment Orders) against the financial assets of tax defaulters and instituted High Court recovery proceedings in the pursuit of taxes due.
- 4.22 The following Tables 5 to 12 inclusive give details of Revenue actions taken by the Bureau, including the amounts of taxes charged by assessment, demanded and collected or otherwise recovered and cases at the Appeal Commissioner and Circuit Court stage.

Table 5: Tax charged by assessment

<i>Description</i>	<i>€</i>
<i>Income Tax</i>	<i>8,676,614</i>
<i>Value Added Tax</i>	<i>1,866,252</i>
<i>PAYE/PRSI</i>	<i>889,545</i>
<i>Capital Gains Tax</i>	<i>95,785</i>
<i>TOTAL</i>	<i>11,528,196</i>

Table 6: Tax and interest demanded

<i>Description</i>	<i>€</i>
<i>Income Tax</i>	<i>19,709,881</i>
<i>Value Added Tax</i>	<i>3,871,348</i>
<i>PAYE/PRSI</i>	<i>4,275,438</i>
<i>Capital Gains Tax</i>	<i>116,958</i>
<i>TOTAL</i>	<i>27,973,625</i>

Table 7: Tax and interest collected

<i>Description</i>	<i>€</i>
<i>Income Tax</i>	<i>3,591,626</i>
<i>Capital Gains Tax</i>	<i>325,000</i>
<i>Value Added Tax</i>	<i>142,090</i>
<i>Stamp Duty</i>	<i>4,000</i>
<i>Vehicle Registration Tax</i>	<i>21,782</i>
<i>TOTAL</i>	<i>4,084,498</i>

Table 8:- High Court proceedings instituted for recovery of tax and interest

	<i>No. of cases</i>	<i>€</i>
<i>Total</i>	<i>9</i>	<i>18,705,440</i>

Table 9:-Tax and interest recovered using Powers of Attachment

	<i>No. of cases</i>	<i>€</i>
<i>Total</i>	<i>14</i>	<i>471,600</i>

Table 10:-Outcome of Appeals refused by Bureau

<i>Description</i>	<i>No. of cases</i>
<i>Cases on hand at 1/1/2010</i>	<i>-</i>
<i>Appeals refused by Inspector in 2010</i>	<i>10</i>
<i>Refusal by Inspector appealed to Appeal Commissioner</i>	<i>5</i>
<i>Bureau decision upheld by Appeal Commissioner</i>	<i>4</i>
<i>Cases on hand at 31/12/2010</i>	<i>1</i>

Table 11:-Outcome of Appeals at Appeal Commissioner Stage

<i>Description</i>	<i>No. of cases</i>
<i>Cases at appeal stage at 1/1/2010</i>	<i>5</i>
<i>Appeals properly invoked in 2010</i>	<i>6</i>
<i>Appeals determined by Appeal Commissioner</i>	<i>4</i>
<i>Appeals withdrawn</i>	<i>2</i>
<i>Cases at appeal stage 31/12/2010</i>	<i>5</i>

Table 12:-Outcome of Circuit Court Appeals

<i>Description</i>	<i>No. of cases</i>
<i>Cases on hand at 1/1/2010</i>	<i>2</i>
<i>Appeal Commissioner decision appealed to Circuit Court</i>	<i>4</i>
<i>Appeal determined by Circuit Court Judge</i>	<i>1</i>
<i>Appeals withdrawn</i>	<i>3</i>
<i>Cases on hand at 31/12/2010</i>	<i>2</i>

SOCIAL WELFARE ACTIONS

4.23 The Bureau also takes action under the Social Welfare Acts in relation to persons engaged in criminal conduct. Arising from investigations by Bureau Officers, action pursuant to the Social Welfare remit of the Bureau was taken against eighty five (85) persons. A number of Social Welfare payments were terminated or reduced, resulting in savings to the Exchequer as set out at Table 13 below.

Table 13:- Social Welfare savings by scheme type

<i>Scheme Type</i>	<i>€</i>
<i>Jobseeker's Allowance</i>	<i>69,128.80</i>
<i>One Parent Family Payment</i>	<i>214,676.20</i>
<i>Disability Allowance</i>	<i>79,968.00</i>
<i>Carer's Allowance</i>	<i>182,301.20</i>
<i>State Pension Contributory</i>	<i>28,056.00</i>
<i>State Pension Non-Contributory</i>	<i>59,568.00</i>
<i>Total</i>	<i>633,698.20</i>

4.24 There were sixteen (16) appeals lodged with the Chief Appeals Officer against decisions made by Social Welfare Bureau Officers. The Chief Appeals Officer certified that the ordinary appeals procedure was inadequate to secure the effective processing of these appeals and directed that the appellants submit their appeals to the Circuit Civil Court. Three (3) appeals were withdrawn, eight (8) appellants did not proceed with their appeals (not lodging them in the Circuit Court as directed by the Chief Appeals Officer) and five (5) were ongoing as of 31st December 2010.

4.25 Of the seven (7) appeal cases carried over from 2009 and two (2) from 2008, three (3) cases were heard before the Circuit Civil Court and the decisions made by the Social Welfare Bureau Officers were upheld. One (1) case was withdrawn on the day of the hearing. The appellants in the remaining four (4) cases did not proceed to Court and their appeals are deemed closed. In one (1) case a decision has not been given as of 31st December 2010.

4.26 Arising from Bureau investigations, Social Welfare overpayments were identified and assessed, details of which are set out in Table 14 below.

Table 14:- Social Welfare overpayments by scheme type

<i>Scheme Type</i>	<i>€</i>
<i>Jobseeker's Allowance</i>	<i>772,623.66</i>
<i>One Parent Family Payment</i>	<i>341,137.71</i>
<i>Disability Allowance</i>	<i>292,682.31</i>
<i>Carer's Allowance</i>	<i>209,714.35</i>
<i>State Pension Contributory</i>	<i>55,905.70</i>
<i>State Pension Non-Contributory</i>	<i>93,140.00</i>
<i>Total</i>	<i>1,765,203.73</i>

4.27 The recovery of monies as per Table 15 below was effected by repayments, by instalments and by deductions from current entitlements.

Table 15:- Social Welfare recovery of monies by scheme type

<i>Scheme Type</i>	<i>€</i>
<i>Jobseeker's Allowance</i>	<i>84,078.00</i>
<i>One Parent Family Payment</i>	<i>38,025.00</i>
<i>Disability Allowance</i>	<i>2,920.00</i>
<i>Carer's Allowance</i>	<i>3,380.00</i>
<i>State Pension Contributory</i>	<i>50,000.00</i>
<i>State Pension Non-Contributory</i>	<i>2,869.00</i>
<i>Total</i>	<i>181,272.00</i>

4.28 In two (2) cases, Summary Summons proceedings commenced with a view to recovering amounts overpaid.

OTHER INVESTIGATIONS

- 4.29 Arising from investigations being conducted by the Bureau pursuant to its statutory remit, evidence of suspected breaches of criminal offences was uncovered and, as a result, a number of persons were arrested and files were prepared seeking the directions of the Director of Public Prosecutions (hereinafter referred to as the DPP) and a number of criminal prosecutions ensued.
- 4.30 Two (2) individuals were arrested for suspected revenue offences contrary to Section 1078 of the Taxes Consolidation Act 1997 and files are currently being prepared for submission to the DPP. In a further prosecution for breaches of Section 1078 of the Taxes Consolidation Act 1997, which was initiated in 2009, the defendant pleaded guilty and was awaiting sentence as of 31st December 2010.
- 4.31 Two (2) individuals were arrested in respect of suspected breaches of the Social Welfare Consolidation Act 2005 and suspected breaches of the Criminal Justice (Theft and Fraud Offences) Act 2001 related to suspected fraudulent claims for social welfare. In respect of these, one (1) file was forwarded to the DPP and a second file was being prepared as of 31st December 2010 for submission to the DPP.
- 4.32 In a separate investigation, an individual was interviewed in respect of substantial fraudulent claims for social welfare over a number of years. A file was submitted to the DPP who directed forty eight (48) charges contrary to the provisions of the Social Welfare Consolidation Act 2005 and Criminal Justice (Theft and Fraud Offences) Act 2001. The prosecution will commence in 2011.

- 4.33 Four (4) individuals were arrested on suspicion of money laundering offences contrary to the provisions of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010. In respect of these individuals, two (2) files are currently being prepared for the DPP. In respect of the other two (2) individuals, insufficient evidence was gathered to ground a criminal prosecution. In these cases, appropriate action was taken against certain assets owned by them under the PoC Act.
- 4.34 During the year, the DPP directed that six (6) people be charged with offences contrary to Section 1(2) of the Public Bodies Corrupt Practices Act, 1889 as amended by Section 4(2) of the Prevention of Corruption Act 1916 and Section 38 of the Ethics in Public Office Act 1995. A prosecution against these persons was initiated and a trial date was fixed in the Circuit Criminal Court for 2011. The investigation concerned was reported upon in the Annual Report for 2009.
- 4.35 As reported in the 2009 Annual Report, one (1) person was charged with two (2) breaches of Section 13 (1) of the Act, as amended, relating to intimidating and threatening of a Social Welfare Bureau Officer and a Revenue Bureau Officer. The accused appeared before the District Court in March 2010 and pleaded guilty to the two (2) charges and was fined €1,000 on each charge.
- 4.36 In the 2009 Annual Report the Bureau reported on the file submitted to the DPP in 2008 as a result of Operation Tie, which was an investigation into VRT irregularities. Four (4) individuals were charged and sent forward to the Circuit Criminal Court for trial. One (1) of these individuals had sought a Judicial Review of the proceedings but this Judicial Review was withdrawn in 2010 and the case is now listed for hearing in 2011.

Chapter 5

5. LITIGATION AND CASE LAW

This has been yet another busy year for the Bureau from a litigation point of view.

PROCEEDS OF CRIME ACT

5.1 Some fifteen (15) new proceeds of crime applications were instigated, involving twenty two (22) respondents, three (3) of which involved the correlation and presentation of a significant body of evidence. Interlocutory Orders were obtained in fourteen (14) cases, while twelve (12) cases were disposed of under Section 4A PoC Act, resulting in a transfer to the Minister for Finance of a sum in excess of €3 million. Significant use has also been made of the power to appoint a receiver and some fifteen (15) such orders were made in the course of the year.

REVENUE

5.2 Summary Summons proceedings relating to the collection of tax due and outstanding were issued in ten (10) cases.

SIGNIFICANT JUDGEMENTS

5.3 **CAB v Barry O'Brien and Majella O'Brien**

Judgement of Mr. Justice Feeney delivered on the 12th January 2010

The Second Named Respondent, the wife of the First Named Respondent, submitted that the making of an Interlocutory Order over the family home would interfere with the exercise of her rights recognised under Article 8(1) of the European Convention on Human Rights. This article requires national authorities to respect a person's private and family life, their home and correspondence, except where it is necessary in the interests of a democratic

society. It was also argued that it would be necessary for the Bureau to demonstrate that such order was proportionate. No case was made that Mrs O'Brien had contributed to the purchase or funding of the family home out of funds which were her own and which were not the proceeds of crime.

The Court concluded:

1. The PoC Act does not make any particular distinction in relation to property, which is a family home.
2. It noted the following quotation from the judgement of Mr. Justice Keane, in *Murphy v G.M. and Others* [2001] 4IR. "It is quite clear that the Court must be sensitive to any actual property rights that might be identified, or any other rights which might have been identified. But in principle, it is quite clear that there is no constitutional grievance if a person benefiting from property obtained from the proceeds of crime is deprived of their use."
3. It is clear that the High Court, in considering whether or not a serious risk of injustice would arise if an Interlocutory Order were to be made, must conduct a balancing act. It must consider in reality whether the making of the order would be proportionate given the full circumstances of the Respondents and any other party claiming a risk of injustice as against the objective intended and identified in the PoC Act, the so called legislative intent of the PoC Act.
4. Given the legislative intent of the PoC Act 1996 is the taking of property which has been proved, on the balance of probabilities, to represent the proceeds of crime, there is no issue but that such intent is a legitimate aim and can be said to be within the provisions of Article 8(2) of the European Convention on Human Rights as being necessary in a democratic society.

5. The Court is satisfied the application for an Interlocutory Order in relation to the family home is not improper and in seeking such an order the Applicant is performing its function in a manner compatible with the State's obligations under the European Convention on Human Rights Act 2003. The Applicant is not acting in an ultra vires manner but is acting in accordance with the legislative intent of the PoC Act.
6. The fact that the Second Named Respondent contributed the bulk of her social welfare payments to the upkeep of the family cannot be said to attach to the property or to give her a right to the property or to remain therein.

The Court made an order pursuant to Section 3 and 7 over all the properties in the schedule. A stay at the moment applies over such orders pending appeal.

5.4 ***CAB v MAC Aviation and Others: Feeney J. 22nd March 2010***

Applications for an Interim Order under the PoC Act shall be held in camera and any other proceedings may, if the Court considers this proper, be heard otherwise than in public.

Submissions were made by the respondent that the Bureau's application for an Interlocutory Order should be heard in camera. The Court had to consider the legal parameters by which such an application should be considered, in particular how the words "if the Court considers this proper" should be interpreted. The Court concluded:

1. It is appropriate for a Court to hear the application itself in camera as to do otherwise would have the potential to predetermine the issue.
2. In considering the issue of what is or is not proper, the Court must consider the matter not only against the framework of the Constitution but also the Convention of Human Rights in relation to the requirement to administer justice in public.

3. The Court is satisfied that the correct test does not require the establishment of exceptional circumstances but there must be real and discernable reasons to lead the Court to exercise its discretion.
4. The primary object of the Court is to see that justice is done and it is only when the presence of the public or public knowledge of the proceedings would defeat that object that the Courts have any discretion to hear cases other than in public.

The Court concluded that in the light of the pre-existing publicity, the absence of any trade within this jurisdiction resulting in there being no business trade to protect within this jurisdiction, given the use of fictitious names within the business records of the First Named Respondent and in the absence of any criminal proceedings within this jurisdiction, the Court is satisfied that the Respondent has failed to establish any real basis which supports a claim that it would be proper for this Court to conduct the interlocutory hearing otherwise than in public.

5.5 ***CAB v M & Others: Judgement Feeney J. 20th January 2010***

In a similar judgement, when considering an application under Section 8(4) of the PoC Act, the Court prohibited the publication of the Respondents names on the basis that to do so might put their lives in danger. The Respondents themselves had previously brought a successful application to have a journalist and publisher cited for contempt for breach of an earlier order, where material relating to the interlocutory proceedings was published.

5.6 PUBLICATION ISSUE

There is a misconception amongst many that all hearings in relation to CAB matters are heard in camera. The practice whereby Court Registrars cite cases not by their names, but by their initials may require further consideration following the judgement in MAC Aviation. The Bureau Legal Officer has written to the Chief Registrar on the matter and a proposal suggesting that at a particular stage of proceedings, cases be listed by name, unless an order declaring that the case should be heard in camera has been made by the Court. Use of initials should be retained for the first number of appearance hearings in order to preserve a respondents right to make an application and have it considered by the Court. The Chief Registrar is in agreement with the principal and is formulating a procedure to put its terms into effect.

5.7 *CAB v McC. and M: Feeney J. 19th July 2010*

The Bureau sought an Interlocutory Order over properties, investment accounts and bank accounts held by a Respondent property development company and its directors. The evidence submitted by the Bureau was that the seed capital for the establishment of the property company, which financed all subsequent property transactions, was the proceeds of crime. The evidence also demonstrated the use of funds in a non-transparent manner in order to disguise the true beneficiary and the employment of a scheme of layering of funds masking identification of their true source.

The Court was prepared to acknowledge that the use of the word “indirectly” within the provisions of Section 2 and 3 of the PoC Act was sufficient to allow the making of an order over any benefit or profits where the seed capital could be shown to be generated from the proceeds of crime. In this case the funds over which an order was made was significantly higher than the benefit from the original criminal transaction. The Court was happy to acknowledge that where the seeds of significant profit were the proceeds of crime, the profit itself, regardless of its value, would be subject to the PoC Act.

SIGNIFICANT ONGOING CASES CONSIDERED BY THE COURT

5.8 *CAB v John, Geraldine, Tracy and Darren Gilligan and Others*

All four Respondents moved an application pursuant to Section 3(3) of the PoC Act to seek the return of all assets frozen. In such an application the onus is on the respondents to prove, on evidence, that the property the subject of the Interlocutory Order does not constitute the proceeds of crime. This is in line with the judgement of the Supreme Court delivered in this case in October 2008. Their application was heard over a five week period during June and July 2010. Evidence was given by and on behalf of all four Respondents and some of the Bureau witnesses, who had sworn affidavits, were cross-examined. Ultimately, subject to one exception, their applications were dismissed early in 2011, the judgement of which will be reported in the next Annual Report. The Bureau now proposes to seek a Disposal Order to have the assets transferred to the Minister for Finance.

5.9 *McKenna v Jackson Way Properties Limited*

This is the first application brought by the Bureau pursuant to Section 16(B) of the PoC Act 1996 as amended. Shortly after the hearing had commenced the DPP instructed that a Director of that company, together with a number of former councillors, be charged with corruption offences. An application made by that Director for an adjournment of the hearing, on the basis that it would undermine his ability to defend the criminal charges levelled against him, was, without objection of the Bureau, acceded to by the High Court. This matter will be recommenced following determination of the criminal proceedings.

CO-OPERATION WITH THE DPP

5.10 *DPP v Wharrie and Others; conviction under the Misuse of Drugs Act 1977 (as amended)*

The Bureau Legal Officer had been appointed as receiver, at the request of the DPP, over the instrumentalities used to assist the commission of the above offence. All such instrumentalities, which included two ribs, three off road motor vehicles and a catamaran sailing vessel located in Spain, were taken into possession by the receiver. With the assistance of an order from the prosecuting magistrate in Spain in relation to the sailing vessel, all such items were sold by public auction realising the sum of €100,000. All expenses involved in the receivership, together with the fees outstanding for the storage of the vehicles and mooring of the sailing vessel, were discharged and the sum of €73,488.26 is held for the benefit of the State pending determination of the appeal to the Court of Criminal Appeal.

5.11 **ECONOMIC DOWNTURN**

Due to the significant downturn of the value of property, the receiver found himself in possession of, and under the direction of the Court to sell property, the disposal of which would not fully discharge the mortgages outstanding. This provision applied to eight (8) properties out of a total of thirteen (13) which have been sold or are in the process of being sold. All such sales were conducted in consultation with, and with the full agreement of, the Banks or Financial Institutions concerned, while the sale price was approved by the High Court. All of the proceeds of such sales, less the cost of the receivership, were applied to the partial discharge of the mortgage.

While such transactions do not bring a noted benefit or profit to the Bureau, they still progressed an overriding objective, which was to extinguish any interest any criminal may hold in the proceeds of their criminal conduct. This ensures no benefit will accrue following any subsequent upturn in the property market.

5.12 **REVIEW OF LEGISLATION**

Following submissions made both to the Attorney General and the Department of Justice and Equality, a committee was established within the latter Department to consider the effectiveness of the legislation utilised by the Bureau and whether or not a Bill with suggested amendments should be submitted to the Dáil. This committee met on a number of occasions. It was acknowledged, due to the abundance of legal precedent that had been occasioned by the Courts when considering the legislation that an in-depth analysis of all judgements needed to be conducted. The Bureau Legal Officer was tasked with and has conducted this analysis. At the time of writing, his submissions have been furnished to the Department, been analysed by the committee and a number of recommendations are being prepared for consideration by the Minister for Justice, Equality and Defence.

CHAPTER 6

6. INTERNATIONAL DEVELOPMENTS

- 6.1 During the course of 2010 the Bureau received delegations and working groups from the following countries: America, Croatia, Montenegro, The Netherlands, Sweden and the United Kingdom.
- 6.2 Bureau Officers also attended and made presentations at a number of international conferences which included Austria, Belgium, Bulgaria, Czech Republic, France, Germany, Latvia, Montenegro, The Netherlands, Slovenia, Spain, Sweden and the United Kingdom.
- 6.3 The members of the Bureau Analysis Unit continue to develop expertise in Forensic Accounting, Computer Forensics and Financial Crime Analysis and in doing so attended a number of international training courses, conferences and seminars.
- 6.4 In 2010 the Bureau continued its function as the designated Asset Recovery Office (ARO) for the Republic of Ireland, dealing with requests for information and co-operation regarding the identification and seizure of assets linked to criminal conduct received from within the EU. There are now twenty seven (27) AROs established in twenty two (22) Member States. The Bureau was represented at two (2) ARO Platform meetings held in Brussels. The Bureau has continued to utilise the ARO in Member States to progress its own investigations.
- 6.5 Members of the Bureau participated in expert missions to Bulgaria, Latvia and Slovenia as part of the Europol Financial Crimes and Property Unit (EFCPU) Initiative. This initiative is concerned with providing support to Member States by way of assistance in establishing their ARO.

6.6 During December 2010 the Bureau together with representatives from the Department of Justice and Equality and the Department of Foreign Affairs, participated in the United Nations Open-Ended Inter-governmental Asset Recovery Focal Points meeting and the Asset Recovery Working Group meeting on the prevention of corruption and asset recovery in Vienna.

6.7 **Camden Assets Recovery Inter-agency Network (CARIN)**

The Bureau continues to be involved in the Camden Assets Recovery Inter-agency Network (CARIN) and attended the Annual Conference which was held in September 2010 in Prague. The Conference focused on communication and co-operation between all agencies involved in asset tracing and confiscation together with training for investigators. Other important topics covered at the Conference included the establishment of an EU wide database of outstanding Confiscation Orders relating to assets, the establishment of Central Registers of Bank Accounts and the rights of victims to recover assets. In 2010 the Bureau representing Ireland, was nominated to the CARIN Steering Group and will take up this position in 2011.

CO-OPERATION WITH THE AUTHORITIES IN THE UNITED KINGDOM

6.8 The Bureau continued to work in close co-operation with the Serious Organised Crime Agency (SOCA) in the United Kingdom. In this regard, the Bureau has, on a number of occasions, met with the staff of SOCA to discuss a number of parallel cases together with new investigations of common interest to both agencies.

6.9 **Cross Border Fuel Enforcement Group**

The Bureau continued to participate in the Cross Border Fuel Enforcement Group and attended regular meetings. The Bureau along with SOCA, HMRC and PSNI continued to focus its attention on the activities of individuals who are suspected of being involved in fuel smuggling and fuel laundering and has resulted in a number of actions pursuant to the statutory remit of the Bureau in this area. This has resulted in the service of substantial revenue assessments on individuals operating on a cross border basis, identified by the Working Group.

6.10 **Establishment of the Cross Border Tobacco Fraud Enforcement Group**

During 2010 a Cross Border Tobacco Fraud Enforcement Group was established. The Cross Border Tobacco Fraud Enforcement Group includes representatives from the Bureau, An Garda Síochána, Irish Customs, PSNI, SOCA, HMRC and the UK Border Agency. The group focused on Organised Crime Groups involved in the smuggling of cigarettes and tobacco across the border. As a result, a number of investigations have been undertaken and proceedings have been initiated against persons who are suspected of being involved in criminal activity.

6.11 The Bureau also participated in the Organised Crime Cross-Border Co-operation Seminar held in Belfast, Northern Ireland, the purpose of which was to identify new crime trends and to agree on areas of co-operation between the law enforcement authorities on both sides of the Border. A number of areas were highlighted for attention including tobacco smuggling, fuel smuggling and head shops.

Chapter 7

7. CONCLUSION

- 7.1 In 2010 the Criminal Assets Bureau has again demonstrated the effectiveness of the multi-agency, multi-disciplinary and partnership approach in targeting the proceeds of criminal conduct. During 2010 the Bureau continued to pursue its statutory remit by carrying out investigations into suspected proceeds of criminal conduct and implementing all available statutory provisions in respect of proceeds of crime together with revenue and social welfare legislation.
- 7.2 The Bureau continues to work with international crime investigation agencies, successfully targeting proceeds of foreign criminality or criminal proceeds which have migrated abroad, and in this regard continues to develop its relationship with Interpol, Europol and CARIN. The Bureau, as the designated Assets Recovery Office in Ireland, continues to represent Ireland at the platform of the Assets Recovery Offices within the European Union.
- 7.3 The Bureau has noted a concern from some jurisdictions in the recognition of orders from countries having statutory provision similar to the Republic of Ireland which utilise a “non-conviction based forfeiture regime”. In order to allay some of the concerns expressed, the Bureau contributed to two (2) separate international conferences, which drew a comparative analysis between the Supreme Court’s conclusion that the PoC Act was constitutional and rights which would accrue under the European Convention on Human Rights. The Bureau continues to provide support to relevant European administrative bodies and in particular, the European Commission, in seeking to achieve recognition of non-conviction based orders in appropriate cases among Member States. The primary aim of this strategy is to reach a point where Member States, who do not wish to adopt non-conviction based forfeiture regimes themselves, at least acknowledge the legitimacy, within

the Human Rights context of such orders and therefore recognise such orders or requests in the context of investigations conducted under that regime.

7.4 The approach advocated by the Bureau in relation to cases being heard otherwise than in public has been endorsed in the Judgment of Feeney J. in *Criminal Assets Bureau v MAC Aviation and Others*. It is the Bureau's position that matters of public importance of this nature are decided by the Courts. The Judgment referred to reaffirms the Bureau's statutory position that its activities in Court should be conducted in public except in exceptional circumstances where there is a real risk that to do so would constitute a denial of justice. In this regard, there exists a comparison with the criminal trial process, the public nature of which not only engenders public confidence in the process but also acts as a deterrent.

7.5 Following reports submitted by the Bureau, both to the Attorney General and the Minister for Justice, Equality and Defence, relating to the effective implementation of all relevant legislation, the Minister had established a committee within his Department to analyse this subject to determine whether statutory amendments are necessary and, if so, prepare draft heads for a Bill to be considered by the Attorney General. To assist that committee in its deliberations, a comprehensive analysis of the Judicial precedent as it applied to that legislation was conducted by the Bureau and presented to the committee, following which recommendations are being considered for submission to the Minister for Justice, Equality and Defence.

7.6 Notwithstanding the downturn in the economy and the fact that the value of criminal assets in the State has also reduced, the Bureau continues to proactively pursue its statutory objective to deny and deprive criminals of the benefits of their ill-gotten gains.

7.7 It would, however, be imprudent for the Bureau not to acknowledge the effect of the economic downturn when developing its strategy. These effects include:

- Proceeds of criminal conduct, which can be traced to investment in real property, currently having a negative value
- Difficulties encountered by the receiver in selling property
- The necessity of a heightened liaison with financial institutions who have a mortgage, charge or an interest in such property
- Executing judgements obtained either for tax or social welfare due against personnel who now have a significantly reduced net worth or who are effectively bankrupt

7.8 Alternative tactics are now being adopted by the Bureau, including a greater focus on cash, bank accounts and personalty and the acknowledgement of the right of financial institutions to enforce their own charge held over property which is the proceeds of crime.

7.9 While another consequence will be a reduction in the total of the financial return generated by the Bureau, the ultimate outcome of the Bureau's actions remain the same vis a vis the criminal targeted, namely that any interest they may have held in the proceeds of crime is eliminated. This is the primary function of the Bureau.

7.10 While maintaining a focus on major criminal targets, the Bureau still continues its policy of also targeting lower value assets. It is the Bureau's view that this policy, while not necessarily returning a significant income to the State, does engender public confidence in the criminal justice system as a whole and acts as a deterrent in general. The Bureau proposes to continue to effect such an approach and deliver active support to local communities.

- 7.11 The Bureau maintains continued liaison both with the DPP and An Garda Síochána to co-ordinate legal remedies in the pursuit of the proceeds of criminal conduct.
- 7.12 The Bureau continues to co-ordinate its own strategy with the Policing Plan and overall strategy of An Garda Síochána. It continues to support the rollout of the Garda Divisional Profiler Programme, providing ongoing lectures, training and expertise and receiving in turn intelligence, information and evidence from said profilers. The Bureau will continue to support and utilise the fruits of this programme. In like manner, the Bureau maintains ongoing liaison with both the Office of the Revenue Commissioners and the Department of Social Protection to ensure its operations are consistent with their overall strategy, practices and guidelines.
- 7.13 The Bureau continues to focus on fulfilling its statutory objectives targeting criminal assets from both a national and international perspective and in particular ensuring that it plays its part in the overall fight against crime and supporting communities. A central focus of this objective has been to ensure that the Bureau remains an integral part of the response to serious and organised crime in all Garda Síochána Divisions.

Appendix 1

OBJECTIVES OF THE BUREAU

Section 4 of the Criminal Assets Bureau Act 1996 as amended by the Proceeds of Crime (Amendment) Act 2005

- 4.—Subject to the provisions of this Act, the objectives of the Bureau shall be—
- (a) the identification of the assets, wherever situated, of persons which derive or are suspected to derive, directly or indirectly, from criminal conduct,
 - (b) the taking of appropriate action under the law to deprive or to deny those persons of the assets or the benefit of such assets, in whole or in part, as may be appropriate, and
 - (c) the pursuit of any investigation or the doing of any other preparatory work in relation to any proceedings arising from the objectives mentioned in paragraphs (a) and (b).

FUNCTIONS OF THE BUREAU

Section 5 of the Criminal Assets Bureau Act 1996 as amended by the Proceeds of Crime (Amendment) Act 2005 –

5.—(1) Without prejudice to the generality of Section 4, the functions of the Bureau, operating through its Bureau Officers, shall be the taking of all necessary actions—

- (a) in accordance with Garda functions, for the purposes of, the confiscation, restraint of use, freezing, preservation or seizure of assets identified as deriving, or suspected to derive, directly or indirectly, from criminal conduct,
- (b) under the Revenue Acts or any provision of any other enactment, whether passed before or after the passing of this Act, which relates to revenue, to ensure that the proceeds of criminal conduct or suspected criminal conduct are subjected to tax and that the Revenue Acts, where appropriate, are fully applied in relation to such proceeds or conduct, as the case may be,
- (c) under the Social Welfare Acts for the investigation and determination, as appropriate, of any claim for or in respect of benefit (within the meaning of Section 204 of the Social Welfare (Consolidation) Act, 1993) by any person engaged in criminal conduct, and
- (d) at the request of the Minister for Social Welfare, to investigate and determine, as appropriate, any claim for or in respect of a benefit, within the meaning of Section 204 of the Social Welfare (Consolidation) Act, 1993, where the Minister for Social Welfare certifies that there are reasonable grounds for believing that, in the case of a particular investigation, Officers of the Minister for

Social Welfare may be subject to threats or other forms of intimidation,

and such actions include, where appropriate, subject to any international agreement, co-operation with any police force, or any authority, being an authority with functions related to the recovery of proceeds of crime, a tax authority or social security authority, of a territory or state other than the State.

(2) In relation to the matters referred to in subsection (1), nothing in this Act shall be construed as affecting or restricting in any way—

- (a) the powers or duties of the Garda Síochána, the Revenue Commissioners or the Minister for Social Welfare, or
- (b) the functions of the Attorney General, the Director of Public Prosecutions or the Chief State Solicitor.