THE FORFEITURE OF PROCEEDS OF CRIME ACT, 2010

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GOVERNMENT OF ZAMBIA

ACT

No. 19 of 2010

Date of Assent: 13th April, 2010

An Act to provide for the confiscation of the proceeds of crime; provide for the deprivation of any person of any proceed, benefit or property derived from the commission of any serious offence; facilitate the tracing of any proceed, benefit and property derived from the commission of any serious offence; provide for the domestication of the United Nations Convention against Corruption; and provide for matters connected with, or incidental to, the foregoing.

[16th April, 2010

ENACTED by the Parliament of Zambia. Enactment

PART I

PRELIMINARY

1. This Act may be cited as the Forfeiture of Proceeds of Crime Act, 2010, and shall come into operation on such date as the Minister may, by statutory instrument, appoint. Short title and commencement

2. In this Act, unless the context otherwise requires— Interpretation

" account " means any facility or arrangement through which a financial institution accepts deposits or allows withdrawals or fund transfers or a facility or arrangement for a fixed term deposit or a safety deposit box;

" administrator " means the person appointed as such under section *thirty-nine*;

" Attorney-General " means the person appointed as such under the Constitution; Cap. 1

" bank " means the Bank of Zambia or an institution providing any financial service within the meaning of the Banking and Financial Services Act; Cap. 387

" benefit " includes any property, service or advantage, whether direct or indirect;

" building society " means a body registered or incorporated

as a co-operative, housing society or similar society under any law;

Cap. 91

" casual gift " has the meaning assigned to it in the Anti-Corruption Commission Act;

" confiscation order " means an order made by the court under subsection (1) of section *nineteen*;

" court " means a High Court or a subordinate court;

" credit union " means a union or society carrying on credit business under any law;

Cap. 1

" Director of Public Prosecutions " means the person appointed as such under the Constitution;

" document " means any one or more of the following:

(a) anything on which there is writing;

(b) a map, a photograph, plan, graph or drawing;

(c) anything on which there are marks, figures, symbols or perforations having meaning for persons to interpret;

(d) a disk, tape, sound track or other device in which sound or other data not being visual images, are embodied so as to be capable, with or without the aid of some other equipment, of being reproduced therefrom; or

(e) a film, negative, tape or other device in which one or more visual images are embodied so as to be capable of being reproduced therefrom;

" encumbrance " in relation to a property, includes any interest, mortgage, charge, right, claim or demand made on the property;

"facsimile copy " means a copy obtained by facsimile transmission;

" film " includes a microfilm or microfiche;

Cap. 387

" financial institution " has the meaning assigned to it in the Banking and Financial Services Act;

" fixed term deposit " means an interest bearing deposit lodged for a fixed period;

" foreign confiscation order " means a confiscation order made in relation to a foreign serious offence;

" foreign forfeiture order " means a forfeiture order made in relation to a foreign serious offence;

" foreign restraining order " means a restraining order made in relation to a foreign serious offence;

" foreign serious offence " means a serious offence against the law of a foreign country;

" forfeiture order " means an order made by a court under subsection (1) of section *ten;*

" Fund " means the Forfeited Assets Fund established under section *seventy-five;*

" interest " in relation to property, means -

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

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

" police officer " means a member of the Zambia Police Force, and includes an officer from the Anti-Corruption Commission, Drug Enforcement Commission and any other investigative institution of the State;

" premises " includes vessel, aircraft, vehicle or any place, whether built upon or not;

" proceeds " in relation to an offence, means any property that is derived or realised, directly or indirectly, by any person from the commission of the offence in or outside Zambia;

" proceeds of crime " in relation to a serious offence or a foreign serious offence, means property or benefit that is -

(a) wholly or partly derived or realised directly or indirectly, by any person from the commission of a serious offence or a foreign serious offence;

(b) wholly or partly derived or realised from a disposal or other dealing with proceeds of a serious offence or a foreign serious offence;

(c) wholly or partly acquired proceeds of a serious offence or a foreign serious offence;

and includes, on a proportional basis, property into which any property derived or realised directly from the serious offence or foreign serious offence is later converted,

transformed or intermingled, and any income, capital or other economic gains derived or realised from the property at any time after the offence; or

(d) any property that is derived or realised, directly or indirectly, by any person from any act or omission that occurred outside Zambia and would, if the act or omission had occurred in Zambia, have constituted a serious offence;

" production order " means an order made by the court under section *fifty-seven;*

" property " includes any real or personal property, money, things in action or other intangible or incorporeal property, whether located in Zambia or elsewhere and includes property of corresponding value in the absence of the original illegally acquired property whose value has been determined;

" property-tracking document " in relation to an offence, means—

(a) a document relevant to—

(i) identifying, locating or quantifying the property of a person who committed the offence; or

(ii) identifying or locating any document necessary for the transfer of property of person who committed the offence; or

(b) a document relevant to—

(i) identifying, locating or quantifying tainted property in relation to the offence; or

(ii) identifying or locating any document necessary for the transfer of tainted property in relation to the offence;

Cap. 88

" public prosecutor " has the meaning assigned to it in the Criminal Procedure Code;

" realisable property " means, subject to subsections (3) and (4) of section *three*—

(a) any property held or controlled by a person who has been convicted of, or charged with, a serious offence;

(b) any property held by a person in respect of which a confiscation or forfeiture order may be made; and

(c) any property held by any other person to whom the person so convicted or charged has directly or indirectly made a casual gift within the meaning of this Act;

" relevant application period ", in relation to a person's conviction of a serious offence, means the period of twelve months after—

(a) where the person is to be taken to have been convicted of the offence by reason of paragraph *(a)* of the definition of "proceeds of crime" the day on which the person was convicted of the offence;

(b) where the person is to be taken to have been convicted of the offence by reason of paragraph *(b)* the definition of "proceeds of crime" the day on which the person was discharged without conviction; or

(c) where the person is to be taken to have been convicted of the offence by reason of paragraph (c) of the definition of "proceeds of crime" the day on which the court took the offence into account in passing sentence for the other offence referred to in that paragraph;

" relevant offence " in relation to tainted property, means—

(a) an offence by reason of the commission of which the property is tainted property; or

(b) any other offence that is prescribed by regulation as a serious offence for the purposes of this definition or is of a class of offences that is so prescribed;

" restraining order " means an order made by the court under subsection (1) of section *forty-two;*

" serious offence " means an offence for which the maximum penalty prescribed by law is death, or imprisonment for not less than twelve months;

" tainted property " in relation to a serious offence or a foreign serious offence, means—

(a) any property used in, or in connection with, the commission of the offence;

(b) property intended to be used in, or in connection with, the commission of the offence; or

(c) proceeds of the offence;

and when used without reference to a particular offence means tainted property in relation to a serious offence; and

"unlawful activity" means an act or omission that constitutes an offence under any law in force in Zambia or a foreign country.

Definition of certain terms

3. (1) In this Act, a reference to a benefit derived or obtained by, or otherwise accruing to, a person includes a reference to a benefit derived or obtained by, or otherwise accruing to, another person at the request or direction of the person.

(2) For the purposes of this Act, a person is taken to be convicted of a serious offence where—

(a) the person is convicted, whether summarily or on indictment, of the offence;

(b) the person is charged with, and found guilty of, the offence but is discharged upon conviction; or

(c) a court, with the consent of the person, takes the offence, of which the person has not been found guilty, into account in passing sentence on the person for another offence.

(3) Property is not realisable property if—

(a) there is in force, in respect of that property, a forfeiture order under this Act or under any other law; or

(b) a forfeiture order is proposed to be made against that property under this Act or any other law.

(4) For the purposes of sections *twenty-one* and *twenty-two,* the amount that may be realised at the time a confiscation order is made against a person is the total of the value at that time of all the realisable property held by the person less the total amounts payable

under an obligation, where there is an obligation having priority at that time, together with the total of the value at that time of all casual gifts falling within the meaning of this Act.

(5) For the purposes of subsection (4), an obligation has priority at any time where it is an obligation of the person to—

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

(b) pay an amount due in respect of any tax, rate, duty or other impost payable under any law; or

(c) pay any other civil obligation as may be determined by the court.

(6) Subject to subsections (7) and (8), for the purposes of this Act, the value of property, other than cash, in relation to a person holding the property, is—

(a) where any other person holds an interest in the property, the market value of the first-mentioned person's beneficial interest in the property, less the amount required to discharge any encumbrance on that interest; or

(b) in any other case, its market value.

(7) References in this Act to the value at any time, referred to in subsection (8) as "the material time" of the transfer of any property, are references to—

(a) the value of the property to the recipient when the recipient receives it, adjusted to take account of subsequent changes in the value of money; or

(b) where subsection (8) applies, the value mentioned in that subsection; whichever is the greater.

(8) Where at the material time a recipient holds—

(a) any property which the recipient received, not being cash; or

(b) any property which, in whole or in part, directly or indirectly represents in the recipient's hands the property which the recipient received;

the value referred to under paragraph *(b)* of subsection (6) is the value to the recipient at the material time of the property referred to in paragraph *(a)* or, as the case may be, of the property mentioned in paragraph *(b)*, so far as it represents the property which the recipient received.

(9) Subject to subsection (13), a reference to the value at any time, referred to in subsection (10) as "the material time", of a casual gift is a reference to—

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

(b) where subsection (10) applies, the value mentioned in that subsection;

whichever is the greater.

(10) Subject to subsection (13), where at the material time a person holds—

(a) property which the person received, not being cash; or

(b) property which, in whole or in part, directly or indirectly represents in the person's hands, the property which the person received;

the value referred to under paragraph *(b)* of subsection (9) is the value to the person at the material time of the property mentioned in paragraph *(a)* or the value of the property mentioned in paragraph *(b)* so far as it so represents the property which the person received.

(11) A gift, including a casual gift made before the commencement of this Act, falls under this Act where—

(a) it was made by the person convicted or charged at a time after the commission of the offence or, if more than one, the earliest of the offences to which the proceedings for the time being relate, and the court considers it appropriate in all the circumstances to take the casual gift into account;

(b) it was made by the person convicted or charged at any time and was a casual gift of property—

(i) received by the person in connection with the commission of a serious offence committed by the person or by another person; or

(ii) which in whole or in part directly or indirectly represented in the person's hands, property received by the person in that connection.

(12) Any reference in subsection (11) to " an offence to which the proceedings for the time being relate " includes, where the proceedings have resulted in the conviction of a person, a reference to any offence which the court takes into consideration when determining sentence.

(13) For the purposes of this Act—

(a) the circumstances in which a person must be treated as making a casual gift include those where the person transfers property to another person directly or indirectly for a consideration the value of which is significantly less than the value of the consideration provided or the property transferred by the person; or

(b) in the circumstances referred to under paragraph *(a)*, subsections (9), (10) and (11) shall apply as if the person had made a casual gift of such share in the property as bears to the whole property the same proportion as the difference between the value referred to in paragraph *(a)* bears to the value of the consideration provided or the property transferred by the person.

PART II

FORFEITURE ORDERS, CONFISCATION ORDERS AND RELATED MATTERS

Division 1-Application for forfeiture or confiscation order

Application for forfeiture order or confiscation order on conviction

4. (1) Subject to subsection (2), where a person is convicted of a serious offence committed after the coming into force of this Act, a public prosecutor may apply to the court for one or both of the following orders:

(a) a forfeiture order against property that is tainted property in respect of the offence;

(b) a confiscation order against the person in respect of benefits derived by the person from the commission of the offence.

(2) A public prosecutor shall not make an application after the end of the relevant application period in relation to the conviction unless the public prosecutor has reasonable grounds for doing so.

(3) An application under this section may be made in respect of one or more than one serious offence.

(4) Where an application under this section is finally determined, no further application for a forfeiture order or a confiscation order may be made in respect of the offence for which the person was convicted unless the court grants leave for the making of a new application on being satisfied—

(a) that the property or benefit to which the new application relates was identified after the previous application was determined;

(b) that necessary evidence became available only after the previous application was determined; or

(c) that it is in the interests of justice that the new application be made.

(5) Any application under subsection (2) shall be made ex parte and shall be in writing and be accompanied by an affidavit.

Jurisdiction of court

5. The court has jurisdiction to make a forfeiture order irrespective of the value of the property.

Notice of application

6. (1) Where a public prosecutor applies for a forfeiture order against property in respect of a person's conviction of an offence—

(a) the public prosecutor shall give written notice of the application to the person and any other person who the public prosecutor has reason to believe may have an interest in the property;

(b) the person, and any other person, who claims an interest in the property, may appear and adduce evidence at the hearing of the application; and

(c) the court may, at any time before the final determination of the application, direct the public prosecutor—

(i) to give notice of the application to any person who, in the opinion of the court, appears to have an interest in the property; or

(ii) to publish in the *Gazette* and in a daily newspaper of general circulation in Zambia, notice of the application, in the manner and containing such particulars and within the time that the court considers appropriate.

(2) Where a public prosecutor applies for a confiscation order against a person—

(a) the public prosecutor shall give the person written notice of the application; and

(b) the person may appear and adduce evidence at the hearing of the application.

Amendment of application

7. (1) The court hearing an application under subsection (1) of section *four* may, before final determination of the application, and on the application of a public prosecutor, amend the application to include any other property or benefit, as the case may be, upon being satisfied that—

(a) the property or benefit was not reasonably capable of identification when the application was originally made;

(b) necessary evidence became available only after the application was originally made; or

(c) the property or benefit was acquired after the application was originally made.

(2) Where a public prosecutor applies to amend an application for a forfeiture order and the amendment would have the effect of including property in the application for the forfeiture order, the public prosecutor shall give written notice of the application to amend to any person who the public prosecutor has reason to believe may have an interest in property to be included in the application for the forfeiture order.

(3) Any person who claims an interest in the property to be included in the application for the forfeiture order may appear and adduce evidence at the hearing of the application to amend.

(4) Where a public prosecutor applies to amend an application for a confiscation order against a person and the effect of the amendment would be to include an additional benefit in the application for the confiscation order the public prosecutor shall give the person written notice of the application to amend.

(5) Section *nine* shall apply for the purposes of written notice in subsection (4) where the person required to be notified has absconded.

Procedure on application

8. (1) Where an application is made to the court for a forfeiture order or a confiscation order in respect of a person's conviction of an offence, the court may, in determining the application, have regard to the transcript of any proceedings against the person for the offence.

(2) Where an application is made for a forfeiture order or a confiscation order to the court before which the person was convicted, and the court has not, when the application is made, passed sentence on the person for the offence, the court may, if it is satisfied that it is reasonable to do so in the circumstances, defer passing sentence until it has determined the application for the order.

Application for forfeiture order where person has absconded

9. (1) Where a person absconds in connection with a serious offence committed after the coming into force of this Act, a public prosecutor may, within a period of six months after the person so absconds, apply to the court for a forfeiture order under section *seventeen* in respect of any tainted property.

(2) For the purposes of this section, a person shall be deemed to have absconded in connection with an offence where—

(a) an information has been laid alleging the commission of the offence by the person;

(b) a warrant for the arrest of the person is issued in relation to that information;

(c) reasonable attempts to arrest the person pursuant to the warrant have been unsuccessful during a period of six months commencing on the day the warrant was issued; or

(d) the person dies after the warrant is issued or an investigation into the offence has commenced.

(3) A person is deemed to have absconded on the last day of the period of six months or where the person has died, on the date of death.

(4) Where a public prosecutor applies under this section for a forfeiture order against any tainted property the court shall, before hearing the application—

(a) require notice of the application to be given to any person who, in the opinion of the court, appears to have an interest in the property; or

(b) direct notice of the application to be published in the *Gazette* and in a newspaper of general circulation in Zambia, of such particulars and for so long as the court may require.

Division 2 - Forfeiture Orders

Forfeiture order on conviction

10. (1) Where a public prosecutor applies to the court for an order under this Part against any property and the court is satisfied that the property is tainted property, the court may order that the property, or such of the property as is specified by the court in the order, be forfeited to the State.

(2) In determining whether property is tainted property the court may infer—

(a) where the evidence establishes that the property was in the person's possession at the time of, or immediately after, the commission of the offence of which the person was convicted, that the property was used in, or in connection with, the commission of the offence;

(b) where the evidence establishes that the property, and in particular money, was found in the person's possession or under the person's control in a building, vehicle, receptacle or place during the course of investigations conducted by the police before or after the arrest and charge of the person for the offence of which the person was convicted, that the property was derived, obtained or realised as a result of the commission by the person of the offence of which the person was convicted;

(c) where the evidence establishes that the value, after the commission of the offence, of all ascertainable property of a person convicted of the offence exceeds the value of all ascertainable property of that person prior to the commission of that offence, and the court is satisfied that the income of that person from sources unrelated to criminal activity of that person cannot reasonably account for the increase in value, that the value of the increase represents property which was derived, obtained or realised by the person directly or indirectly from the commission of the offence of which the person was convicted; and

(d) where the evidence establishes that the property was under the effective control of the person at the time of, or immediately after, the commission of the offence of which the person was convicted, that the property was derived, obtained or realised as a result of the commission by the person of the offence of which the person was convicted, and for purposes of this paragraph effective control has the same meaning as in section *twenty-four* of this Act.

(3) Where the court orders that property, other than money, be forfeited to the State, the court shall specify in the order the amount that it considers to be the value of the property at the time when the order is made.

(4) In considering whether a forfeiture order should be made under subsection (1), the court may have regard to—

(a) the rights or interests, if any, of third parties in the property;

(b) the gravity of the offence concerned;

(c) any hardship that may reasonably be expected to be caused to any person by the operation of the order; and

(d) the use that is ordinarily made of the property, or the use to which the property was intended to be put.

(5) Where the court makes a forfeiture order, the court may give directions necessary or convenient to give effect to the order.

Effect of forfeiture order

11. (1) Subject to subsection (2), where the court makes a forfeiture order against any property, the property vests absolutely in the State by virtue of the order.

(2) Where a forfeiture order is made against registrable property —

(a) the property vests in the State in equity but does not vest in the State at law until the applicable registration requirements have been complied with;

(b) the State is entitled to be registered as owner of the property; and

(c) the Attorney-General has power on behalf of the State to do, or authorise the doing of, anything necessary or convenient to obtain the registration of the State as owner, including the execution of any instrument required to be executed by a person transferring an interest in property of that kind.

(3) If a forfeiture order has been made against registrable property —

(a) a public prosecutor has the power on behalf of the State to do anything necessary or convenient to give notice of, or otherwise protect, the equitable interest of the State in the property; and

(b) any action by, or on behalf of, the State is not a dealing for the purpose of paragraph *(a)* of subsection (4).

(4) Where the court makes a forfeiture order against property—

(a) the property shall not, except with the leave of the court and in accordance with any directions of the court, be disposed of, or otherwise dealt with, by or on behalf of the State, before the relevant appeal date; and

(b) if, after the relevant appeal date, the order has not been discharged, the property may be disposed of, and the proceeds applied or otherwise dealt with, in accordance with the direction of the Attorney-General.

(5) Without limiting the generality of paragraph *(b)* of subsection (4), the directions that may be given pursuant to that paragraph include a direction that property is to be disposed of in accordance with the provisions of any law specified in the direction.

(6) Money forfeited to the State under a forfeiture order shall be paid into the Fund.

(7) In this section—

" registrable property " means property the title to which is passed by registration on a register; and

" relevant appeal date " in relation to a forfeiture order made in consequence of a person's conviction of a serious offence, means —

(a) the date on which the period allowed by the rules of court for the lodging of an appeal against a person's conviction, or for the lodging of an appeal against the making of a forfeiture order, expires without an appeal having been lodged, whichever is the later; or

(b) where an appeal against a person's conviction or against the making of a forfeiture order is lodged, the date on which the appeal, or the later appeal, lapses in accordance with the rules of court or is finally determined.

Protection of third parties

12. (1) Where an application is made for a forfeiture order against any property, a person who claims an interest in the property may apply to the court, before the forfeiture order is made, for an order under subsection (2).

(2) Where a person applies to the court for an order under this subsection in respect of the person's interest in any property and the court is satisfied that—

(a) the applicant has an interest in the property;

(b) the applicant was not in any way involved in the commission of the offence in respect of which the forfeiture of the property is sought, or the forfeiture order against the property was made; and

(c) the applicant—

(i) had the interest before the serious offence occurred;

(ii) acquired the interest during or after the commission of the offence, *bona fide* and for fair value, and did not know or could not reasonably have known at the time of the acquisition that the property was tainted property;

the court may make an order declaring the nature, extent and value, as at the time when the order is made, of the applicant's interest.

(3) Subject to subsection (4), where a forfeiture order has already been made directing the forfeiture of any property, a person who claims an interest in the property may, before the end of the period of six months commencing on the day on which the forfeiture order is made, apply under this subsection to the court for an order under subsection (2).

(4) A person who had knowledge of an application for the forfeiture order before the order was made, or appeared at the hearing of the application, shall not be permitted to make an application under subsection (3), except with the leave of the court.

(5) A person who makes an application under subsection (1) or (3) shall give notice of the application to the Director of Public Prosecutions, who shall be a party to any proceedings in the application.

(6) An applicant or a public prosecutor may, in accordance with the rules of court, appeal against an order made under subsection (2).

(7) The Attorney-General shall, on application by any person who has obtained an order under subsection (2), and where the period allowed by the rules of court for appeal has expired or any appeal from that order has been determined—

(a) direct that the property, or the part thereof to which the interest of the applicant relates, be returned to the applicant; or

(b) direct that an amount equal to the value of the interest of the applicant, as declared in the order, be paid to the applicant.

(8) For the purposes of an application under subsection (1), where the person who claims an interest in the property is a minor, an application may be made on behalf of the minor by a guardian ad litem appointed by the court.

Discharge of forfeiture order on appeal and quashing of conviction

13. (1) Where the court makes a forfeiture order against property in reliance on a person's conviction of an offence and the conviction is subsequently quashed, the quashing of the conviction discharges the order:

Provided that the discharge shall not take effect until the date on which the period allowed by the rules of court for the lodging of an appeal expires without an appeal having been lodged, or the appeal has been finally determined in accordance with the rules of court.

(2) Where a forfeiture order against property is discharged as provided by subsection (1) or by the court hearing an appeal against the making of the order, any person who claims to have had an interest in the property immediately before the making of the forfeiture order may apply to the Attorney-General in writing, for the transfer of the interest to the person.

(3) The Attorney-General shall, on receipt of an application under subsection (2) from a person who had an interest in the property -

(a) where the interest is vested in the State, give directions that the property or part thereof to which the interest of the applicant relates be transferred to the person; or

(b) in any other case, direct that there be payable to the person an amount equal to the value of the interest as at the time the order is made.

(4) In the exercise of powers under this section and section *twelve*, the Attorney-General shall have the power to do, or authorise the doing of, anything necessary or convenient to effect the transfer or return of property, including the execution of any instrument and the making of an application for the registration of an interest in the property on any appropriate register.

Effect of discharge of forfeiture order

14. (1) If a forfeiture order is discharged, a person who claims to be the person in whom the property was vested immediately before the making of the forfeiture order may—

(a) where the property is still vested in the State institution in which it was vested under the forfeiture order, by application in writing to the Attorney-General, request the return of the property; or

(b) where the property is no longer vested in the State, apply to the court which made the forfeiture order for an order declaring the value, as at the time of making the order under this paragraph, of the property.

(2) On receipt of an application under paragraph *(a)* of subsection (1), the Attorney-General shall, subject to subsection (3), arrange for the property to be transferred to the applicant or other person or body as the Attorney-General determines and, for this purpose, the Attorney-General shall do, or authorise the doing of, anything necessary to carry out the transfer.

(3) On an application under paragraph *(b)* of subsection (1), the court may make an order declaring the value, as at the time of making the order, of the property.

(4) After an order is made under subsection (3), the applicant for the order may, by application in writing to the Attorney-General, request the payment of the amount declared by the order.

(5) On receipt of an application under subsection (4), the Attorney-General shall direct the State institution concerned to pay to the applicant or to such other person or body as the Attorney-General determines the amount declared by the order made under subsection (3) less the total amount paid by the State institution in respect of the property under any order.

Payment instead of forfeiture order

15. Where the court is satisfied that a forfeiture order should be made in respect of property of a person pursuant to section *ten* or *seventeen* but that the property or any part thereof or interest therein cannot be made subject to such an order and, in particular—

(a) cannot, on the exercise of due diligence, be located;

(b) has been transferred to a third party in circumstances that do not give rise to a reasonable inference that the title or interest was transferred for the purpose of avoiding the forfeiture of the property;

(c) is located outside Zambia;

(d) has been mixed with other property that cannot be divided without difficulty; or

(e) has been transferred to a *bona fide* third party purchaser for fair value without notice;

the court may, instead of ordering the property or part thereof or interest therein to be forfeited, order the person to pay to the State an amount equal to the value of the property, part or interest.

Enforcement of order for payment instead of forfeiture

16. (1) An amount payable by a person to the State under section *fifteen* is a debt due to the State and shall be summarily recoverable as a civil debt.

(2) An order made under section *fifteen* may be enforced as if it were an order made in civil proceedings instituted by the State against the person to recover a debt due by the person to the State and the debt arising from the order shall be taken to be a judgment debt.

Forfeiture order where person has absconded

17. (1) Subject to subsection (3) of section *nine*, where an application is made to the court under subsection (1) of section *ten* for a forfeiture order against any tainted property because a person has absconded in connection with a serious offence and the court is satisfied that—

(a) the property is tainted property in respect of the offence;

(b) proceedings in respect of a serious offence committed in relation to that property were commenced; and

(c) the accused charged with the offence referred to in paragraph *(b)* has absconded;

the court may order that the property, or such of the property as is specified by the court in the order, be forfeited to the State.

(2) Subsections (2), (3), (4) and (5) of section *ten* and sections *eleven* and *twelve* shall apply with such modifications as are necessary to give effect to this section.

Registered foreign forfeiture orders Cap. 98

18. If a foreign forfeiture order is registered in the court under the Mutual Legal Assistance in Criminal Matters Act, this Division applies in relation to the order as if—

(a) any reference to an appeal against the making of an order and to the relevant appeal date were omitted; and

(b) a period of six weeks were substituted for the period of six months provided in subsection (3) of section *twelve*.

Division 3 - Confiscation Orders

Confiscation order on conviction

19. (1) Subject to subsections (1) and (2) of section *twenty*, where a public prosecutor applies to the court for a confiscation order against a person in respect of that person's conviction of a serious offence, the court may, if it is satisfied that the person has benefited

from that offence, order the person to pay into court an amount equal to the value of the person's benefits from the offence or such lesser amount as the court certifies in accordance with section *twenty-two* to be the amount that might be realised at the time the confiscation order is made.

(2) The court shall assess the value of the benefits derived by a person from the commission of an offence in accordance with sections *twenty* to *twenty-three.*

(3) The court shall not make a confiscation order under this section —

(a) until the period allowed by the rules of court for the lodging of an appeal against conviction has expired without the appeal having been lodged; or

(b) where an appeal against conviction has been lodged, until the appeal lapses in accordance with the rules of court or is finally determined.

Rules for determining benefit and assessing value

20. (1) Where a person obtains property as a result of, or in connection with the commission of, a serious offence, the person's benefit is the value of the property so obtained.

(2) Where a person derives an advantage as a result of, or in connection with the commission of, a serious offence, the person's advantage is deemed to be a sum of money equal to the value of the advantage so derived.

(3) The court, in determining whether a person has benefited from the commission of a serious offence or from that offence taken together with other serious offences and, if so, in assessing the value of the benefit, shall, unless the contrary is proved, deem—

(a) all property appearing to the court to be held by the person on the day on which the application is made and all property appearing to the court to be held by the person at any time—

(i) within the period between the day the offence, or the earliest offence, was committed and the day on which the application is made; or

(ii) within the period of five years immediately before the day on which the application is made, whichever is the shorter;

to be property that came into the possession or under the control of the person by reason of the commission of that offence or offences;

(b) any expenditure by the person since the beginning of that period to be expenditure met out of payments received by the person as a result of, or in connection with, the commission of that offence or offences; or

(c) any property received or is deemed to have been received by the person at any time as a result of, or in connection with, the commission by the person of that offence, or offences, to be property received by the person free of any interests therein.

(4) Where a confiscation order has previously been made against a person, in assessing the value of any benefit derived by the person from the commission of the serious offence in respect of which the order was made, the court shall leave out of account any of the person's benefits that are shown to the court to have been taken into account in determining the amount to be recovered under that order.

(5) If evidence is given at the hearing of the application that the value of the person's property at any time after the commission of the serious offence exceeded the value of the person's property before the commission of the offence, the court shall, subject to subsection (6), treat the value of the benefits derived by the person from the commission of the offence as being not less than the amount of the excess.

(6) If, after evidence of the kind referred to in subsection (5) is given, the person satisfies the court that the whole or part of the excess was due to causes unrelated to the commission of the offence, subsection (5) does not apply to the excess or, as the case may be, that part.

Statements relating to benefits from commission of serious offences

21. (1) Where—

(a) a person has been convicted of a serious offence and the Director of Public Prosecutions tenders to the court a statement as to any matters relevant—

(i) to determining whether the person has benefited from the offence or from any other serious offence of which the person is convicted in the same proceedings or which is taken into account in determining that person's sentences; or

(ii) to an assessment of the value of the person's benefit from the offence or any other serious offence of which the person is so convicted in the same proceedings or which is so taken into account; and

(b) a person accepts to any extent an allegation in the statement tendered under paragraph *(a)*;

the court may, for the purposes of so determining or making that assessment, treat the person's acceptance as conclusive of the matters to which it relates.

(2) Where a statement is tendered under paragraph *(a)* of subsection (1) and the court is satisfied that a copy of that statement has been served on any person, the court may require the person to indicate to what extent the person accepts each allegation in the statement and, so far as the person does not accept any allegation, to indicate any matter the person proposes to rely on.

(3) Where any person fails in any respect to comply with a requirement under subsection (2), the person may be treated for the purposes of this section as having accepted every allegation in the statement, other than—

(a) an allegation in respect of which the person has complied with the requirement; and

(b) an allegation that the person has benefited from any serious offence or that any property or advantage was obtained by the person as a result of, or in connection with, the commission of the offence.

(4) Where—

(a) any person tenders to the court a statement as to any matters relevant to determining the amount that might be realised at the time the confiscation order is made; and

(b) a public prosecutor accepts to any extent any allegation in a tendered statement;

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

(5) An allegation may be accepted or matter indicated for the purposes of this section either orally before the court or in writing in accordance with rules of court.

(6) An acceptance by a person under this section that the person received any benefit from the commission of a serious offence is admissible in any proceedings for any offence.

Amount to be recovered under confiscation order

22. (1) Subject to subsection (2), the amount to be recovered in a person's case under a confiscation order shall be the amount which the court assesses to be the value of the person's benefit from the offence or, if more than one, all the offences in respect of which the order may be made.

(2) Where the court is satisfied as to any matter relevant to determining the amount which might be realised at the time the confiscation order is made, whether by an acceptance under section *twenty-one* or otherwise, the court may issue a certificate giving the court's opinion as to the matters concerned, and shall do so if satisfied that the amount that might be realised at the time the confiscation order is made is less than the amount that the court assesses to be the value of the person's benefit from the offence, or if more than one, all the offences in respect of which the confiscation order may be made.

Variation of confiscation orders

23. (1) Where—

(a) the court makes a confiscation order in relation to an offence;

(b) in calculating the amount of the confiscation order, the court took into account a forfeiture of property, a proposed forfeiture of property or a proposed forfeiture order in respect of property; and

(c) an appeal against any forfeiture or forfeiture order is allowed or the proceedings for the proposed forfeiture order terminate without the proposed forfeiture order being made;

a public prosecutor may apply to the court for a variation of the confiscation order to increase the amount of the order by the value of the property and the court may, if it considers it appropriate to do so, vary the order accordingly.

(2) Where—

(a) the court makes a confiscation order against a person in relation to an offence;

(b) in calculating the amount of the confiscation order, the court took into account, in accordance with subsections (4) and (5) of section *three*, an amount of tax paid by the person; and

(c) an amount is repaid or refunded to the person in respect of any tax;

a public prosecutor may apply to the court for a variation of the confiscation order to increase the amount of the order by the amount repaid or refunded and the court may, if it considers it appropriate to do so, vary the order accordingly.

Court may lift corporate veil

24. (1) In assessing the value of benefits derived by a person from the commission of an offence or offences, the court may treat as property of the person any property that, in the opinion of the court, is subject to the effective control of the person whether or not the person has—

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

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

(2) Without limiting the generality of subsection (1), the court may have regard to—

(a) shareholdings in, debentures over or directorships of a company that has an interest, whether direct or indirect, in the property, and for this purpose the court may order the investigation and inspection of the books of a named company;

(b) a trust that has a relationship to the property; and

(c) any relationship whatsoever 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.

(3) Where the court, for the purposes of making a confiscation order against a person, treats particular property as the person's property pursuant to subsection (1), the court may, on application by a public prosecutor, make an order declaring that the property is available to satisfy the order.

(4) Where the court declares that a property is available to satisfy a confiscation order—

(a) the order may be enforced against the property as if the property were property of the person against whom the order is made; and

(b) a restraining order may be made in respect of the property as if the property were property of the person against whom the order is made.

(5) Where a public prosecutor makes an application for an order under subsection (3) that any property is available to satisfy a confiscation order against a person—

(a) the public prosecutor shall give written notice of the application to the person and to any other person who the public prosecutor has reason to believe may have an interest in the property; and

(b) the person and that other person who claims an interest in the property may appear and adduce evidence at the hearing of the application.

Enforcement of confiscation orders

25. (1) An amount payable by a person to the State under a confiscation order is a debt due to the State and shall be summarily recoverable as a civil debt.

(2) A confiscation order against a person may be enforced as if it were an order made in civil proceedings instituted by the State against the person to recover a debt due by the person to the State and the debt arising from the order shall be taken to be a judgment debt.

Amounts paid in respect of registered foreign confiscation orders Cap. 98

26. Where a foreign confiscation order is registered in the court under the Mutual Legal Assistance in Criminal Matters Act, any amount paid, whether in Zambia or elsewhere, in satisfaction of the foreign confiscation order shall be taken to have been paid in satisfaction of the debt that arises by reason of the registration of the foreign confiscation order in the court.

Division IV - Civil Forfeiture Orders

Application for restraining order for tainted property

27. (1) Where there are reasonable grounds to suspect that any property is property in respect of which a forfeiture order may be made under section *thirty-one*, a public prosecutor may apply to the court for a restraining order under subsection (2) against that property.

(2) An application for a restraining order may be made *ex parte* and shall be in writing and be accompanied by an affidavit stating—

(a) a description of the property in respect of which the restraining order is sought;

(b) the location of the property; and

(c) the grounds for the belief that the property is tainted property for which a forfeiture order may be made under section *thirty-one*.

Prohibition from disposal, etc of tainted property

28. (1) Where a public prosecutor applies to the court for a restraining order against property and the court is satisfied that there are reasonable grounds for suspecting that the property is tainted property for which a forfeiture order may be made under section *thirty-one*, the court may make an order—

(a) prohibiting any person from disposing of, or dealing with, the property or any part thereof or interest except in the manner specified in the order; and

(b) at the request of the public prosecutor, where the court is satisfied that the circumstances so require, that the Attorney-General take custody of the property or any part thereof and manage or otherwise deal with all or any part of the property in accordance with the directions of the court.

(2) For the avoidance of doubt, the court may make an order under subsection (1) in respect of money or other property located in Zambia or elsewhere.

(3) Where the court gives the Attorney-General a direction under paragraph *(b)* of subsection (1), the Attorney-General may do anything that is reasonably necessary for preserving the property and for this purpose may exercise any power that the owner of the property could exercise and do so to the exclusion of the owner.

(4) Where a public prosecutor applies to the court for an order under subsection (1), a witness shall not be required to answer a question or to produce a document where the court is satisfied that answering the question or producing the document may prejudice the investigation of, or prosecution of a person for, an offence.

Application for non-conviction based forfeiture order for tainted property

29. A public prosecutor may apply to a court for an order forfeiting to the State all or any property that is tainted property.

Notice of application

30. Where a public prosecutor applies under section *twenty-nine* for a forfeiture order—

(a) the public prosecutor shall give not less than thirty days written notice of the application to any person who is known to have an interest in the tainted property in respect of which the application is being made;

(b) any person who claims an interest in the property in respect of which the application is made may appear and produce evidence at the hearing of the application; and

(c) the court may, at any time before the final determination of the application, direct the public prosecutor to—

(i) give notice of the application to any person who, in the opinion of the court, appears to have an interest in the property; and

(ii) publish in the *Gazette* or a daily newspaper of general circulation in Zambia, a notice of the application.

Non-conviction based forfeiture order for tainted property

31. (1) Subject to subsection (2), where a public prosecutor applies to the court for an order under this section and the court is satisfied on a balance of probabilities that the property is tainted property, the court may order that the property, or such of the property as is specified by the court in the order, be forfeited to the State.

(2) Where a person claiming an interest in property to which an application relates satisfies the court that the person—

(a) has an interest in the property; and

(b) did not acquire the interest in the property as a result of any serious offence carried out by the person and—

(i) had the interest before any serious offence occurred; or

(ii) acquired the interest for fair value after the serious offence occurred and did not know or could not reasonably have known at the time of the acquisition that the property was tainted property;

the court shall order that the interest shall not be affected by the forfeiture order, and the court shall declare the nature and extent of the interest in question.

(3) The court may, where it makes a forfeiture order or at any time thereafter, make any other orders that it considers appropriate, including orders for and with respect to facilitating the transfer of property.

(4) The validity of an order under subsection (1) is not affected by the outcome of criminal proceedings, or of an investigation with a view to institute such proceedings, in respect of an offence with which the property concerned is in some way associated.

(5) Sections *six* and *seven*, subsections (2), (3), (4) and (5) of section *ten* and sections *eleven, twelve, fifteen,* and *sixteen* shall apply with the appropriate modifications as are necessary to an application for a forfeiture order under this section.

Division 5 - General

Voiding of contract

32. A court may, before making a forfeiture order or confiscation order, set aside any conveyance or transfer of money or other property or interest therein that occurred in circumstances that give rise to a reasonable inference that the money, property or interest was conveyed or transferred for the purpose of avoiding the forfeiture order or confiscation order unless the conveyance or transfer was to a third party acting in good faith and without notice.

Proceedings civil, not criminal

33. (1) Any proceeding on an application for a restraining order, forfeiture order or confiscation order is not a criminal proceeding.

(2) Except in relation to an offence under this Act—

(a the rules of construction applicable only in relation to 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.

Onus of proof

34. The applicant in any proceedings under this Act bears the onus of proving the matters necessary to establish the grounds for making the order applied for.

PART III

PROVISIONS FOR FACILITATING POLICE INVESTIGATIONS AND PRESERVING PROPERTY LIABLE TO FORFEITURE AND CONFISCATION ORDER

Division 1 - Powers of search and seizure

Warrant to search premises, etc. for tainted property

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35. (1) A police officer may apply to a magistrate for a warrant to search premises for tainted property in the same way as a police officer may apply for the issue of a search warrant under the Criminal Procedure Code.

(2) Where an application is made under subsection (1), the magistrate may, subject to conditions, issue a search warrant under the Criminal Procedure Code and, subject to this Division, the warrant may be executed in the same manner as if it had been issued under the Criminal Procedure Code.

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Defects in warrants

36. A search warrant is not invalidated by any defect, other than a defect which affects the substance of the warrant in a material particular.

Police may seize other tainted property

37. In the course of a search under a warrant issued under section *thirty-five*, a police officer may seize—

(a) any property that the police officer believes, on reasonable grounds, to be tainted property in relation to any serious offence; or

(b) any thing that the police officer believes, on reasonable grounds, will afford evidence as to the commission of a criminal offence;

where the police officer believes, on reasonable grounds, that it is necessary to seize that property or thing in order to prevent its concealment, loss or destruction, or its use in committing, continuing or repeating the offence or any other offence.

Return of seized property

38. (1) Where any property has been seized under this Division, otherwise than because it may afford evidence of the commission of an offence, a person who claims an interest in the property may apply to the court for an order that the property be returned to the person.

(2) Where a person makes an application under subsection (1) and the court is satisfied that -

(a) the person is entitled to possession of the property;

(b) the property is not tainted property in relation to the relevant offence; and

(c) the person in respect of whose conviction, charging or proposed charging the seizure of the property was made has no interest in the property;

the court shall order the police officer to return the property to the person and the police officer shall arrange for the property to be returned.

(3) Where—

(a) any property has been seized under this Division, otherwise than because it may afford evidence as to the commission of an offence;

(b) at the time when the property was seized, information had not been laid in respect of a relevant offence; and

(c) at the end of a period of forty-eight hours after the time when the property was seized, information has not been laid in respect of a relevant offence;

a police officer shall, subject to subsections (5) and (6), arrange for the property to be returned to the person from whose possession it was seized as soon as practicable after the end of that period.

(4) Where—

(a) any property has been seized under this Division, otherwise than because it may afford evidence as to the commission of an offence; and

(b) no forfeiture order has been made against the property within a period of fourteen days after the property was seized and the property is in the possession of a police officer at the end of that period;

the police officer shall, subject to subsections (5) and (6), arrange for the property to be returned to the person from whose possession it was seized as soon as practicable after the end of that period.

(5) Where—

(a) any property has been seized under this Division, otherwise than because it may afford evidence as to the commission of an offence;

(b) but for this subsection, a police officer would be required to arrange for the property to be returned to a person as soon as practicable after the end of a particular period; and

(c) before the end of that period, a restraining order is made in relation to the property;

the police officer shall—

(i) if the restraining order directs the Attorney-General to take custody and control of the property, arrange for the property to be given to the Attorney-General in accordance with the restraining order; or

(ii) if the court that made the restraining order has made an order under subsection (6) in relation to the property, arrange for the property to be kept until it is dealt with under another provision of this Act.

(6) Where—

(a) any property has been seized under this Division, otherwise than because it may afford evidence as to the commission of an offence;

(b) a restraining order is made in relation to the property; and

(c) at the time when the restraining order is made, the property is in the possession of a police officer;

the police officer may apply to the court that made the restraining order for an order that the police officer retain possession of the property and the court may, if satisfied that there are reasonable grounds for believing that the property may afford evidence as to the commission of a relevant offence or any other offence, make an order that the police officer is to retain the property for so long as the property is so required as evidence as to the commission of that offence.

(7) Where the police officer applies to the court for an order under subsection (6), a witness shall not be required to answer a question or to produce a document if the court is satisfied that the answering of the question or the production of the document may prejudice the investigation of, or the prosecution of a person for, an offence.

(8) Where any property has been seized under this Division and while the property is in the possession of the police officer, a forfeiture order is made in respect of the property, the police officer shall deal with a property as required by the order.

Appointment of administrator

39. The Attorney-General may appoint an administrator to administer property forfeited or subject to any order made or to be enforced under this Act.

Search for and seizure of tainted property in relation to foreign offences Cap. 98

40. (1) Where a police officer is authorised, under the Mutual Legal Assistance in Criminal Matters Act, to apply to a magistrate for a search warrant under this Act in relation to tainted property in respect of a foreign serious offence, the police officer may apply for the warrant accordingly and this Division applies to the application and to any warrant issued as a result of the application as if—

(a) references in this Division to tainted property were references to tainted property in relation to a foreign serious offence;

(b) references in this Division to a relevant offence were references to a relevant foreign serious offence;

(c) references in this Division to seizure of property under this Division were references to seizure of property under a warrant issued under section *thirty-five* in respect of a foreign serious offence;

(d) the reference in paragraph *(c)* of subsection (2) of section *thirty-eight* to the person in respect of whose conviction, charging or proposed charging the seizure of the property was made were a reference to the person who is believed or alleged to have committed the relevant foreign serious offence;

(e) the reference in subsection (4) of section *thirty-eight* to a period of fourteen days were a reference to a period of thirty days;

(f) the references in subsections (5) and (6) of section *thirty-eight* to the making of a restraining order in relation to seized property were references to—

(i) the registration in the court under the Mutual Legal Assistance in Criminal Matters Act, of a foreign restraining order in relation to the seized property; or

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(ii) the making by the court under this Act of a restraining order in respect of the seized property in relation to the foreign serious offence;

(g) the reference in subsection (8) of section *thirty-eight* to the making of a forfeiture order were a reference to the registration in the court under the Mutual Legal Assistance in Criminal Matters Act of a foreign forfeiture order; and

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(h) section *thirty-seven* and subsection (3) of section *thirty-eight* were omitted.

(2) If, in the course of searching under a warrant issued under section *thirty-five,* for tainted property in relation to a foreign serious offence, a police officer finds—

(a) property that the police officer believes, on reasonable grounds, to be tainted property in relation to any foreign serious offence in respect of which a search warrant under section *thirty-five* is in force; or

(b) anything that the police officer believes, on reasonable grounds —

(i) to be relevant to a criminal proceeding in the foreign country in respect of the foreign serious offence; or

(ii) will afford evidence as to the commission of a criminal offence;

and the police officer believes, on reasonable grounds, that it is necessary to seize that property or thing in order to prevent its concealment, loss or destruction, or its use in committing, continuing or repeating the offence, the warrant shall be deemed to authorise the police officer to seize that property or thing.

Division 2 - Restraining orders

Application for restraining order

41. (1) Where there are reasonable grounds to suspect that any property is property in respect of which a forfeiture order may be made under sections *ten* or *eighteen*, a public prosecutor may apply to the court for a restraining order under subsection (3) against that property.

(2) Where there are reasonable grounds to suspect that a confiscation order may be issued under section *nineteen*, a public prosecutor may apply to the court for a restraining order under subsection (5) against any realisable property held by a person.

(3) An application for a restraining order may be made *ex parte* and shall be in writing.

(4) An application under subsection (1) shall be accompanied by an affidavit stating—

(a) a description of the property in respect of which the restraining order is sought;

(b) the location of the property; and

(c) the grounds for the belief that the property is tainted property for which a forfeiture order may be made under section *ten* or *eighteen.*

(5) An application under subsection (2) shall be accompanied by an affidavit stating—

(a) a description of the property in respect of which the restraining order is sought;

(b) the location of the property;

(c) the grounds for the belief that the person who is suspected of having committed a serious offence has obtained a benefit directly or indirectly from the commission of the offence; and

(d) where the application seeks a restraining order against property of a person other than the person who is suspected of having committed a serious offence, the grounds for the belief that the property is subject to the effective control of that person.

Restraining order

42. (1) Where a public prosecutor applies to the court for a restraining order against property under subsection (1) of section *forty-one* and the court is satisfied that there are reasonable grounds for suspecting that the property is tainted property, the court may make an order under subsection (3).

(2) Where a public prosecutor applies to the court for a restraining order against property under subsection (2) of section *forty-one* and the court is satisfied that—

(a) there are reasonable grounds for suspecting that the person suspected of having committed a serious offence has derived a benefit directly or indirectly from the commission of the offence;

(b) the property is the realisable property of the person; the court may make an order under subsection (3).

(3) Where satisfied under subsection (1) or (2), the court may make an order—

(a) prohibiting the defendant or any person from disposing of, or dealing with, the property or any part thereof or interest except in the manner specified in the order; and

(b) at the request of a public prosecutor, where the court is satisfied that the circumstances so require that the Attorney-General take custody of the property or any part thereof and manage or otherwise deal with all or any part of the property in accordance with the directions of the court.

(4) For the avoidance of doubt , the court may make an order under subsection (3) in respect of money or property located in Zambia or elsewhere.

(5) An order under subsection (1) may be made subject to conditions as the court thinks fit and, without limiting the generality of this section, may make provision for meeting, out of the property or a specified part of the property—

(a) the person's reasonable living expenses, including the reasonable living expenses of the person's dependants and reasonable business expenses;

(b) the person's reasonable expenses in defending a criminal charge and any proceedings under this Act; or

(c) other specified debt incurred by the person in good faith;

(6) The court shall not make any provision under subsection (2) unless it is satisfied that the person cannot meet the expenses or debt concerned out of property that is not subject to a restraining order.

(7) In determining whether there are reasonable grounds for believing that property is subject to the effective control of the defendant, the court may have regard to the matters referred to in subsection (2) of section *twenty-four.*

(8) Where the Attorney-General is given a direction under paragraph (f) of subsection (1), the Attorney-General may do anything that is reasonably necessary for preserving the property and for this purpose may exercise any power that the owner of the property could exercise and do so to the exclusion of the owner.

(9) Where a public prosecutor applies to the court for an order under subsection (1), a witness shall not be required to answer a question or to produce a document if the court is satisfied that answering the question or producing the document may prejudice the investigation of, or prosecution of a person for, an offence.

(10) The court may make a restraining order whether or not there are reasonable grounds for believing that there is an immediate risk of the property being disposed of or otherwise dealt with.

(11) The court hearing an application for an order under subsection (1) may, before final determination of the application, and on the application of a public prosecutor, amend the application to include any other property upon being satisfied that the property was acquired after the application was originally made.

Undertaking by Attorney-General

43. (1) Before making an order under section *forty-two*, the court may require the Attorney-General to give an undertaking as to damages or costs, or both, in relation to the making and execution of the order.

(2) For the purposes of this section, the Director of Public Prosecutions may, after consultation with the Attorney-General, give to the court an undertaking with respect to the payment of damages or costs, or both, as

Notice of application for restraining order

44. (1) Subject to subsection (2), before making a restraining order, the court shall require notice to be given to, and may hear, any person who, in the opinion of the court, may have an interest in the property.

(2) Where the Director of Public Prosecutions so requests, the court shall consider an application without requiring notice to be given under subsection (1).

(3) A restraining order in accordance with subsection (2) ceases to have effect after fourteen days or such lesser period as the court specifies in the order.

(4) The court may, on application by the Director of Public Prosecutions, extend the period of operation of a restraining order made under subsection (2) and shall not consider the application without requiring notice to be given under subsection (1).

Service of restraining order

45. (1) Subject to subsection (2), a copy of a restraining order shall be served on a person affected by the order in such manner as the court directs or as prescribed by rules of court.

(2) Where the court is satisfied that it is in the public interest to do so it may order that service under subsection (1) be delayed for a specified period.

Further orders

46. (1) Where the court makes, or has made, a restraining order, the court may, on application by the Director of Public Prosecutions, a person whose property is the subject of the restraining order, in this section called "the owner", or the Attorney-General, if the restraining order directs the Attorney-General to take custody and control of property or, with the leave of the court, any other person, make any ancillary orders it considers appropriate.

(2) Without limiting the generality of subsection (1), an ancillary order may—

(a) vary the property to which a restraining order relates;

(b) vary any condition to which a restraining order is subject;

(c) order the examination on oath before the court, of any person about the affairs of the owner or the defendant;

(d) provide for the carrying out of any undertaking with respect to the payment of damages or costs given by the State in connection with the making of the restraining order;

(e) direct the owner or the defendant to give a specified person a statement on oath setting out the particulars of the property, or dealings with the property, as the Court thinks fit; or

(f) where the restraining order directs the Attorney-General to take custody and control of property—

(i) regulate the performance or exercise, of the Attorney-General's functions, duties or powers under the restraining order;

(ii) determine any question relating to the property;

(iii) direct a person to do any act or thing to enable the Attorney-General to take custody and control of the property;

(iv) where the restraining order provides that a person's reasonable expenses in defending a criminal charge be met out of the property, direct that the expenses be taxed as provided in the order before being met; or

(v) make provision for the payment to the Attorney-General out of the property of the costs, charges and expenses incurred in connection with the performance or exercise by the Attorney-General of functions, duties or powers under the restraining order.

(3) Where a person who has an interest in property in respect of which a restraining order was made applies to the court for a variation of the order to exclude the person's interest from the order, the court shall grant the application if the court is satisfied -

(a) that the interest is not tainted property and that it cannot be required to satisfy a confiscation order; or

(b) that the applicant was not in any way involved in the commission of the offence in respect of which the restraining order was made and, where the applicant acquired the interest at the time of or after the commission, or alleged commission of, the offence, that the applicant acquired the interest—

(i) for sufficient consideration; and

(ii) without knowing, and in a circumstance such as not to arouse a reasonable suspicion, that the property was tainted property or that the property was a benefit obtained from or in connection with the commission of a serious offence; or

(c) in any case it is in the public interest to do so having regard to all the circumstances, including any financial hardship or other consequence of the interest remaining subject to the order.

(4) An application under subsection (1) shall not be heard by the court unless the applicant has given to the other person who is entitled to make an application under subsection (1) in relation to the restraining order, notice in writing of the application.

(5) The court may, require notice of the application to be given to, and hear, any person who, in the opinion of the court, appears to have an interest in the property.

(6) Where a person is required, in accordance with an order under paragraphs (c) or (e) of subsection (2), to make or give a statement on oath, the person is not excused from making or giving the statement on the ground that the statement, or part of the statement, might tend to incriminate the person or make the person liable to forfeiture or a penalty but the statement, and any information, document or thing obtained as a direct or indirect consequence of the statement, is not admissible against the person in any criminal proceedings except a proceeding in respect of the falsity of the statement.

Attorney-General to satisfy confiscation order

47. (1) Where—

(a) a confiscation order is made against a defendant's conviction of an offence; and

(b) a restraining order is made against any property of the defendant, or property of another person in relation to which an order under subsection (3) of section *twenty-four* is in force, in reliance on the defendant's conviction, or alleged commission, of the offence;

the court may, upon the making of the later of the orders or, on application by a public prosecutor, while the restraining order remains in force, direct the Attorney-General to satisfy the confiscation order by a payment out of the property to the Fund.

(2) The court may, for the purposes of enabling the Attorney-General to comply with a direction under subsection (1)—

(a) direct the Attorney-General to sell or otherwise dispose of the property or any part of the property as the court specifies; and

(b) order that the Attorney-General may execute, and do anything necessary to give validity and operation to, any deed or instrument in the name of a person who owns or has an interest in the property.

(3) Where the court makes an order under subsection (2), the execution of the deed or instrument by the Attorney-General has the same force and validity as if the deed or instrument had been executed by the person.

(4) The Attorney-General shall refrain from taking any action to sell any property pursuant to a direction under subsection (1) until the relevant appeal date.

(5) In this section "relevant appeal date", used in relation to a confiscation order made in consequence of a person's conviction of a serious offence, means—

(a) the date on which the period allowed by the rules of court for the lodging of an appeal against a person's conviction, or for the lodging of an appeal against the making of a confiscation order, expires without an appeal having been lodged, whichever is the later; or

(b) where an appeal against a person's conviction or against the making of a confiscation order is lodged, the date on which the appeal, or the later appeal, lapses in accordance with the rules of court or is finally determined.

Registration of restraining order

48. Where a restraining order applies to property of a particular kind and the provisions of any law provide for the registration of title to, or charges over, property of that kind, the authority responsible for administering that law may, on application by a public prosecutor, record on the register kept pursuant to those provisions the particulars of the restraining order and, if those particulars are so recorded, a person who subsequently deals with the property, for the purposes of section *forty-nine*, is deemed to have notice of the restraining order at the time of the dealing.

Contravention of restraining orders

49. (1) A person who knowingly contravenes a restraining order by disposing of, or dealing with, property that is subject to the restraining order commits a cognizable offence and is liable, upon conviction, to—

(a) in the case of a natural person, a fine not exceeding five hundred thousand penalty units or imprisonment for a period not exceeding five years, or to both; or

(b) in the case of a body corporate a fine not exceeding seven hundred thousand penalty units.

(2) Where a restraining order is made against any property and the property is disposed of, or dealt with, in contravention of the restraining order, and the disposition or dealing was either not for sufficient consideration or not in favour of a person who acted in good faith, a public prosecutor may apply to the court that made the restraining order for an order that the disposition or dealing be set aside.

(3) The court may, where a public prosecutor makes an application under subsection (2) in relation to a disposition or dealing—

(a) set aside the disposition or dealing as from the day on which the disposition or dealing took place; or

(b) set aside the disposition or dealing as from the day of the order under this subsection;

and declare the respective rights of any person who acquired interests in the property on or after the day on which the disposition or dealing took place and before the day of the order under this subsection.

Court may revoke restraining orders

50. (1) The court may, where the court has made a restraining order against a person's property, on application by the person, revoke the order if the applicant—

(a) where the applicant is a defendant, gives security satisfactory to the court for the satisfaction of any confiscation order that may be made against the person under this Act; or

(b) gives undertakings satisfactory to the court concerning the person's property.

(2) An applicant under subsection (1) shall give written notice of the application to a public prosecutor and, if the restraining order directed the Attorney-General to take control of the property, the Attorney-General.

When restraining order ceases to be in force

51. (1) Subject to subsection (2), a restraining order made in reliance on a person's conviction, or alleged commission, of a serious offence ceases to be in force, in whole or in part—

(a) where the order is made in reliance on the proposed charging of the person with the offence and the person is not so charged within a period of forty-eight hours after the making of the order, at the end of that period;

(b) when the charge against the person is withdrawn or the person is acquitted of the charge;

(c) when property subject to the order is used to satisfy a confiscation order which was made in reliance on the person's conviction of the offence;

(d) when the court refuses an application for a confiscation order in reliance on the person's conviction of the offence; or

(e) when property subject to the order is forfeited under section eleven or seventeen.

(2) Notwithstanding subsection (1), a restraining order ceases to be in force at the end of six months from the date of the restraining order.

(3) The court may, within the period referred to under subsection (1), on application by a public prosecutor, order that a restraining order shall continue in force until a specified time or event, where the court is satisfied that a forfeiture order may still be made in respect of the property or the property may be required to satisfy a confiscation order which has not yet been made.

(4) A public prosecutor shall give a person written notice of an application under subsection (3) in relation to a restraining order in respect of any property of the person.

Interim restraining order in respect of foreign serious offence Cap. 98

52. (1) Notwithstanding the Mutual Legal Assistance in Criminal Matters Act, the Director of Public Prosecutions shall apply for a restraining order under this Act against any property of a person in respect of a foreign serious offence, and this Division applies to the application and to any restraining order made as a result of the application as if—

(a) a reference in this Division to a serious offence were a reference to the foreign serious offence;

(b) a reference in this Division to a person charged or about to be charged with a serious offence were a reference to a person against whom a criminal proceeding in respect of a foreign serious offence has commenced, or is reasonably believed to be about to commence, in a foreign country;

(c) there were substituted for the words of paragraph (a) of subsection (1) of section *forty-two* the following words:

" the defendant has been convicted of a foreign serious offence, or a criminal proceeding in respect of a foreign serious offence has commenced, or is reasonably believed to be about to commence, against the defendant in a foreign country ";

(d) there were substituted for the words of paragraph (b) of subsection (1) of section *forty-two* the following words:

" where the defendant has not been convicted of a foreign serious offence, the offence which the defendant is believed to have committed and the grounds for that belief ";

(e) the reference in paragraph (b) of subsection (2) of section *forty-two* to a person's reasonable expenses in defending

a criminal charge included a reference to the person's reasonable expenses in being represented in a criminal proceeding in a foreign country; and

(f) paragraphs *(c)* and *(f)* of subsection (1) of section *forty-two*, paragraph *(a)* of subsection (3) of section *forty-six* and sections *forty-seven, fifty* and *fifty-one* were omitted.

(2) Subject to subsections (3) and (4), a restraining order made in respect of a foreign serious offence ceases to have effect at the end of the period of thirty days commencing on the day on which the order is made.

(3) Where the court makes a restraining order in respect of a foreign serious offence, it may, on application made by a public prosecutor before the end of the period referred to in subsection (2), extend the period of operation of the restraining order.

(4) Where—

(a) a restraining order against property is made in respect of a foreign serious offence; and

(b) before the end of the period referred to in subsection (2), including that period as extended under subsection (3), a foreign restraining order against the property is registered in the court under the Mutual Legal Assistance in Criminal Matters Act;

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the restraining order referred to in paragraph *(a)* ceases to have effect upon the registration of the foreign restraining order referred to in paragraph *(b)*.

General provision on registered foreign restraining order

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53. Where a foreign restraining order is registered in the court under the Mutual Legal Assistance in Criminal Matters Act, this Division applies to the order as if—

(a) section *forty-six*, subsections (3) and (4) of section *forty-seven* and sections *fifty* and *fifty-one* were omitted;

(b) a reference in sections *forty-five, forty-seven, forty-eight* or *forty-nine* to a restraining order included a reference to an order under section *fifty-four;* and

(c) the reference in subsection (1) of section *forty-seven* to the making of a restraining order were a reference to the registration by the court of a foreign restraining order under the Mutual Legal Assistance in Criminal Matters Act and the making of an order under section *fifty-four.*

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Court may direct Attorney-General to take custody, etc of property Cap. 98

54. (1) Where a foreign restraining order against any property is registered in the court under the Mutual Legal Assistance in Criminal Matters Act, the court may, upon application by the Director of Public Prosecutions, order the Attorney-General to take custody and control of the property or part thereof as is specified in the court's order and to manage or deal with all or any part of the property in accordance with the directions of the court.

(2) Before making an order under subsection (1), the court shall require notice to be given to, and may hear, any person who, in the opinion of the court, has an interest in the property.

(3) Where the Attorney-General is given an order under subsection (1) in relation to any property, the Attorney-General may do anything that is reasonably necessary for preserving the property and for this purpose may exercise any power that the owner of the property could exercise and do so to the exclusion of the owner.

(4) Where an order is made under subsection (1) in respect of property of a person, in this subsection called the " respondent ", the court may, at the time when it makes the order or any later time, order—

(a) the respondent to give the Attorney-General a statement on oath setting out such particulars of the property, or dealings with the property, as the court thinks proper;

(b) the performance or exercise of the Attorney-General's functions, duties or powers under the restraining order;

(c) the determination of any question relating to the property;

(d) where a registered foreign restraining order provides that a person's reasonable expenses in defending a criminal charge be met out of the property, that expenses be taxed as provided in the order before being met; or

(e) the payment to the Attorney-General out of the property of the costs, charges and expenses incurred in connection with the performance or exercise by the Attorney-General of functions, duties or powers under the restraining order.

Undertakings relating to registered foreign restraining orders Cap. 98

55. Where—

(a) a foreign restraining order against any property is registered in the court under the Mutual Legal Assistance in Criminal Matters Act; or

(b) the court makes an order under section *fifty-four* in respect of any property;

the court may, upon application by a person claiming an interest in the property, make an order as to the giving, or carrying out, of an undertaking by the Attorney-General on behalf of the State, with respect to the payment of damages or costs in relation to the registration, making or operation of the order.

Time when registered foreign restraining order ceases to be in force Cap. 98

56. A foreign restraining order registered in the court under the Mutual Legal Assistance in Criminal Matters Act ceases to be in force when the registration is cancelled in accordance with that Act or any other law.

Division 3 - Production orders and other powers

Production and inspection orders

57. (1) Where a police officer has reasonable grounds for suspecting that a person has possession or control of a property-tracking document, the police officer may apply to the court in Chambers in accordance with subsection (2) for an order under subsection (5) against the person suspected of having possession or control of the document.

(2) An application under subsection (1) shall be made ex parte and shall be in writing and be accompanied by an affidavit.

(3) Where a police officer applies for an order under subsection

(5) and includes in the affidavit a statement to the effect that the officer has reasonable grounds to believe that—

(a) the person who, was convicted of the offence, or is believed to have committed the offence, derived a benefit, directly or indirectly, from the commission of the offence; and

(b) property specified in the affidavit is subject to the effective control of the person referred to in paragraph *(a)*;

the court may treat any document relevant to identifying, locating or quantifying that property as a property-tracking document in relation to the offence for the purposes of this section.

(4) In determining whether to treat a document, under subsection (3), as a property-tracking document in relation to an offence, the court may have regard to the matters referred to in subsection (2) of section *twenty-four.*

(5) Notwithstanding any law which prohibits disclosure of information of a particular type, where an application is made under subsection (1) the court may, if satisfied that there are reasonable grounds for doing so, order the person to —

(a) produce to a police officer, at a specified time and place, any documents of the kind referred to in subsection (1) that are in the person's possession or control; or

(b) make available to a police officer for inspection, at a specified time or times, any documents that are in the person's possession or control.

Scope of police powers under production order, etc.

58. (1) Where a document is produced to a police officer, or made available to a police officer for inspection, pursuant to an order under section *fifty-seven,* the police officer may—

(a) inspect the document;

(b) take extracts from the document;

(c) make copies of the document; or

(d) in the case of an order under paragraph *(a)* of subsection (5) of section *fifty-seven,* retain the document if, and for so long as, retention of the document is reasonably necessary for the purposes of this Act.

(2) Where a police officer retains a document pursuant to an order under section *fifty-seven*, the police officer shall—

(a) give the person to whom the order was addressed a copy of the document certified by the police officer in writing to be a true copy of the document retained; and

(b) unless the person has received a copy of the document under paragraph *(a)*, permit the person to—

(i) inspect the document;

(ii) take extracts from the document; or

(iii) make copies of the document.

Evidential value of information

59. (1) Where a person produces or makes available a document pursuant to an order under section *fifty-seven*, the production or making available of the document, or any information, document or thing obtained as a direct or indirect consequence of the production or making available of the document, is not admissible against the person in any criminal proceedings except a proceeding for an offence under section *sixty-one.*

(2) For the purposes of subsection (1), proceedings on an application for a restraining order, a forfeiture order or a confiscation order are not criminal proceedings.

(3) A person is not excused from producing or making available a document when required to do so by an order under section *fifty-seven* on the ground that—

(a) the production or making available of the document might tend to incriminate the person or make the person liable to a penalty; or

(b) the production or making available of the document would be in breach of an obligation, whether imposed by any law or otherwise, of the person not to disclose the existence or contents of the document.

Variation of production order

60. Where a court makes a production order requiring a person to produce a document to a police officer, the person may apply to the court for a variation of the order and if the court hearing the application is satisfied that the document is essential to the business activities of the person, the court may vary the production order so that it requires the person to make the document available to a police officer for inspection.

Failure to comply with production order

61. (1) Where a person is required by a production order to produce a document to a police officer or make a document available to a police officer for inspection, the person commits an offence if the person—

(a) contravenes the order without reasonable excuse; or

(b) in purported compliance with the order produces or makes available a document known to the person to be false or misleading in a material particular without -

(i) indicating to the police officer to whom the document is produced or made available that the document is false or misleading and the respect in which the document is false or misleading; and

(ii) providing correct information to the police officer if the person is in possession of, or can reasonably acquire, the correct information.

(2) A person who contravenes subsection (1) commits an offence and is liable, upon conviction, to—

(a) if the offender is a natural person, a fine not exceeding five hundred thousand penalty units or imprisonment for a term not exceeding five years, or to both; or

(b) if the offender is a body corporate, a fine not exceeding seven hundred thousand penalty units.

Search warrant to facilitate investigation

62. (1) Where—

(a) a person is convicted of a serious offence and a police officer has reasonable grounds for suspecting that there is in any premises a property-tracking document in relation to the offence; or

(b) a police officer has reasonable grounds for suspecting that a person has committed a serious offence and there is in any premises a property-tracking document in relation to the offence;

the police officer may apply to a court for a warrant under subsection (4) to search the premises for the document.

(2) Where a police officer applies for a warrant under subsection (4) in respect of an offence and includes in the affidavit a statement to the effect that the officer has reasonable grounds to believe that -

(a) the person who was convicted of the offence, or who is believed to have committed the offence, derived a benefit, directly or indirectly, from the commission of the offence; and

(b) property specified in the affidavit is subject to the effective control of the person referred to in paragraph *(a)*;

the court may treat any document relevant to identifying, locating or quantifying that property as a property-tracking document in relation to the offence for the purposes of this section.

(3) In determining whether to treat a document, under subsection (2), as a property-tracking document in relation to an offence, the court may have regard to the matters referred to in subsection (2) of section *twenty-four.*

(4) Subject to subsection (5), and notwithstanding any law which prohibits disclosure of information of a particular type, where an application is made under subsection (1) for a warrant to search premises for a property-tracking document, the court may, issue a warrant of the kind and in the same manner, and subject to the same conditions, under the Criminal Procedure Code and, subject to this Division, the warrant may be executed in the same manner as if it had been issued under the Criminal Procedure Code.

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(5) A court shall not issue a search warrant under subsection (4) unless the court is satisfied that—

(a) it would not be appropriate to make a production order in respect of the document; or

(b) the investigation for the purposes of which the search warrant is being sought might be seriously prejudiced if the police officer does not gain immediate access to the document without notice to any person.

(6) Where a police officer enters premises in execution of a warrant issued under this section, the police officer may seize and retain—

(a) any document which the officer has reasonable grounds to believe is relevant to the investigation for the purpose of which the warrant was issued; or

(b) anything that the police officer believes, on reasonable grounds, will afford evidence as to the commission of a criminal offence.

Production orders and search warrants in relation to foreign offences Cap. 98

63. (1) Where under the Mutual Legal Assistance in Criminal Matters Act—

(a) a police officer is authorised to apply to a court for a search warrant under this Act in relation to a property-tracking document in respect of a foreign serious offence, the police officer may apply for the warrant accordingly; and

(b) the Attorney-General may apply to a court for a production order under this Act in respect of a foreign serious offence, the Attorney-General may apply for the order accordingly;

and this Division applies to the application and to any order or warrant issued as a result of the application as if a reference in this Division to a serious offence were a reference to a foreign serious offence.

(2) Where a police officer takes possession of a document under a warrant issued, or the Director of Public Prosecutions takes possession of a document under a production order made in respect of a foreign serious offence, the police officer or the Director of Public Prosecutions may retain the document for a period not exceeding one month pending a written direction from the Attorney-General as to the manner in which the document is to be dealt with, which may include a direction that the document is to be sent to an authority of the foreign country that requested the issue of the warrant.

Division 4 - Monitoring Orders

Monitoring orders

64. (1) The Director of Public Prosecutions may apply to a court in chambers under subsection (2) for a monitoring order directing a financial institution to give information to a police officer.

(2) An application under subsection (1) shall be made *ex parte* and shall be in writing and be accompanied by an affidavit.

(3) A monitoring order shall direct a financial institution to give information obtained by the financial institution about transactions conducted through an account held by a particular person with the financial institution.

(4) A monitoring order shall apply in relation to transactions conducted during the period specified in the order, being a period commencing not earlier than the day on which notice of the order is given to the financial institution and ending not later than three months after the date of the order.

(5) A court shall not make a monitoring order unless the court is satisfied that there are reasonable grounds for suspecting that—

(a) the person in respect of whose account the information is sought —

(i) has committed, or is about to commit, a serious offence or a foreign serious offence;

(ii) was involved in the commission, or is about to be involved in the commission, of a serious offence or a foreign serious offence; or

(iii) has benefited directly or indirectly, or is about to benefit directly or indirectly, from the commission of a serious offence or a foreign serious offence; or

(b) the account is related to or is being used for the purposes of the commission of a serious offence or a foreign serious offence.

(6) A monitoring order shall specify—

(a) the name or names in which the account is believed to be held;

(b) the class of information that the financial institution is required to give; and

(c) the name of the police officer to whom the information is to be given, and the manner in which the information is to be given.

(7) Where a financial institution that has been given notice of a monitoring order knowingly—

(a) contravenes the order; or

(b) provides false or misleading information in purported compliance with the order;

the financial institution commits an offence and is liable, upon conviction, to a fine not exceeding seven hundred thousand penalty units.

(8) A reference in this section to a transaction conducted through an account includes a reference to—

(a) the making of a fixed term deposit;

(b) in relation to a fixed term deposit, the transfer of the amount deposited, or any part of it, at the end of the term; and

(c) the opening, existence or use of a deposit box held by the financial institution.

Monitoring orders not to be disclosed

65. (1) A financial institution that is, or has been, subject to a monitoring order shall not disclose the existence or the operation of the order to any person except—

(a) the Commissioner of Police or a police officer authorised in writing by the Commissioner of Police to receive the information;

(b) an officer or agent of the financial institution, for the purpose of ensuring that the order is complied with; or

(c) a legal practitioner, for the purpose of obtaining legal advice or representation in relation to the order.

(2) A person referred to in paragraph *(a)*, *(b)* or *(c)* of subsection (1) to whom a disclosure of the existence or operation of a monitoring order has been made, whether in accordance with subsection (1) or a previous application of this subsection or otherwise, shall not —

(a) disclose the existence or operation of the order except to another person referred to in paragraphs *(a)*, *(b)* or *(c)* of subsection (1) for the purposes of—

(i) if the disclosure is made by a police officer, the performance of that person's duties;

(ii) if the disclosure is made by an officer or agent of the financial institution, ensuring that the order is complied with or obtaining legal advice or representation in relation to the order; or

(iii) if the disclosure is made by a legal practitioner, giving legal advice or making representations in relation to the order; or

(b) where the person is no longer a person referred to in paragraphs *(a)*, *(b)* or *(c)* of subsection (1), make a record of, or disclose, the existence or the operation of the order in any circumstances.

(3) Nothing in subsection (2) prevents the disclosure by a person referred to in paragraph *(a)* of subsection (1) of the existence or operation of a monitoring order—

(a) for the purposes of, or in connection with, legal proceedings; or

(b) in the course of proceedings before a court.

(4) A person referred to in paragraph (a) of subsection (1) shall not be required to disclose to any court the existence or operation of a monitoring order.

(5) A person who contravenes subsection (1) or (2) commits an offence and is liable, upon conviction, to—

(a) if the person is a natural person, a fine not exceeding five hundred thousand penalty units or imprisonment for a term not exceeding five years, or to both; or

(b) if the person is a body corporate, a fine not exceeding seven hundred thousand penalty units.

(6) A reference in this section to disclosing the existence or operation of a monitoring order to a person includes a reference to disclosing information to the person from which the person could reasonably be expected to infer the existence or operation of the monitoring order.

Division 5 - Obligations of Financial Institutions

Register of original documents

66. (1) Where a financial institution is required by law to release an original of a document before the end of the minimum retention period applicable to the document, the financial institution shall retain a complete copy of the document until the period has ended or the original document is returned, whichever occurs first.

(2) A financial institution shall maintain a register of documents released under subsection (1).

(3) A financial institution that contravenes subsection (1) or (2) commits an offence and is liable, upon conviction, to a fine not exceeding seven hundred thousand penalty units.

Division 6 - Disclosure of Information held by Government Departments

Direction to disclose information

67. (1) Notwithstanding any provision in any other law, the Attorney-General may direct the person in charge of any Government department or statutory body to disclose a document or information which is in the possession or under the control of that person or to which that person may reasonably have access, not being a document readily available to the public, if the Attorney-General is satisfied that the information is relevant to—

(a) establishing whether a serious offence has been, or is being, committed; or

(b) the making, or proposed or possible making, of an order under Part II or III of this Act.

(2) Where the Attorney-General directs disclosure of information under subsection (1), the person shall disclose the document or information to the Director of Public Prosecutions or a police officer authorised by the Director of Public Prosecutions.

Further disclosure of information and documents

68. (1) A person to whom information has been disclosed under section *sixty-seven* shall not further disclose the information except for the purpose of—

(a) the investigation, prosecution, or proposed or possible prosecution, of a person for a serious offence; or

(b) an investigation relating to proceedings, or proposed or possible proceedings, for the making of an order under this Act or an investigation relating to the making, or proposed or possible making, of such an order.

(2) A person to whom information has been disclosed under subsection (1) or this subsection, shall not disclose the information to another person except for the purpose referred to in paragraphs *(a)* and (b) of subsection (1).

(3) Where information is communicated to a person under section *sixty-seven,* or subsection (1) or (2), the person shall not—

(a) voluntarily give the information in evidence in a proceeding before the court other than a proceeding referred to in paragraph *(a)* or *(b)* of subsection (1); and

(b) be required to communicate the information to the court.

(4) A person who contravenes this section commits an offence and is liable, upon conviction, to a fine not exceeding two hundred

thousand penalty units or imprisonment for a term not exceeding two years, or to both.

Evidential value of copies

69. Where any document is examined or provided under section *sixty-seven,* the person by whom it is examined or to whom it is provided, or any officer or person authorised for the purpose by the person in charge of the relevant Government department or statutory body, may make or cause to be made one or more copies thereof and any copy purporting to be certified by the person in charge of the relevant Government department or statutory body to be a copy made pursuant to this section is evidence of the nature and content of the original document and has the same probative value as the original document would have had if it had been proved in the ordinary way.

PART IV

Disposal Orders

Disposal orders

70. (1) Where an application is made to a court under subsection (1) of section *nineteen* for an order in respect of a particular property, the court may order that the property be forfeited to the State and destroyed or disposed of in such manner as it thinks fit.

(2) A Court may give directions that are necessary to give effect to a disposal order made by it.

PART V

Offences

Possession of property suspected of being proceeds of crime

71. (1) A person who, after the commencement of this Act, receives, possesses, conceals, disposes of or brings into Zambia any money, or other property, that may reasonably be suspected of being proceeds of crime commits an offence and is liable upon conviction to—

(a) if the offender is a natural person, imprisonment for a period not exceeding five years; or

(b) if the offender is a body corporate, a fine not exceeding seven hundred thousand penalty units.

(2) It is a defence under this section, if a person satisfies the court that the person had no reasonable grounds for suspecting that the property referred to in the charge was derived or realised, directly or indirectly, from any unlawful activity.

(3) The offence under subsection (1) is not predicated on proof of the commission of a serious offence or foreign serious offence.

Conduct by directors, servants or agents

72. (1) Where it is necessary, for the purposes of this Act, to establish the state of mind of a body corporate in respect of conduct engaged in, or deemed by subsection (2) to have been engaged in, by the body corporate, it is sufficient to show that a director, servant or agent by whom the conduct was engaged in within the scope of the director's, servant's or agent's actual or apparent authority, had that state of mind.

(2) Any conduct engaged in on behalf of a body corporate -

(a) by a director, servant or agent of the body corporate within the scope of the director's, servant's or agent's actual or apparent authority; or

(b) by any other person at the direction or with the consent or agreement, whether express or implied of a director, servant or agent of the body corporate, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the director, servant or agent;

is deemed, for the purposes of this Act, to have been engaged in by the body corporate.

(3) Where it is necessary, for the purposes of this Act, to establish the state of mind of a person in relation to conduct deemed by subsection (4) to have been engaged in by the person, it is sufficient to show that a servant or agent of the person, being a servant or agent by whom the conduct was engaged in within the scope of the actual or apparent authority of the servant or agent, had that state of mind.

(4) Conduct engaged in on behalf of a person other than a body corporate—

(a) by a servant or agent of the person within the scope of the servant's or agent's actual or apparent authority; or

(b) by any other person at the direction or with the consent or agreement, whether express or implied, of a servant or agent, of the person, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the servant or agent;

is deemed, for the purposes of this Act, to have been engaged in by the person.

(5) A reference in this section to the state of mind of a person includes a reference to the knowledge, intention or purpose of the person and the person's reasons for the person's intention or purpose.

PART VI

FORFETED ASSESTS FUND

Establishment of Forfeited Assets Fund

73. (1) There is hereby established the Forfeited Assets Fund for the purposes of receiving credits from the proceeds of convictions of serious offences and payments made or debts recovered under this Act.

(2) The Minister may, by statutory instrument, provide for the administration, management and operation of the Fund.

Credits to Fund

74. There shall be credited to the Fund amounts equal to—

(a) proceeds of forfeiture orders;

(b) proceeds of confiscation orders;

(c) money paid under section *fifteen;*

(d) money paid to the Republic of Zambia by a foreign country, under a treaty or arrangement or otherwise, for providing mutual assistance in criminal matters; and

(e) money, other than money referred to in paragraph (d), paid to the Republic of Zambia by a foreign country in connection with assistance provided by the Republic of Zambia in relation to the recovery by that country of the proceeds of unlawful activity or the investigation or prosecution of unlawful activity.

Shared confiscated property with foreign countries to be credited to Fund

75. (1) The Attorney-General may enter into an arrangement with the competent authorities of a foreign country for the reciprocal sharing with that country of such part of any property realised -

(a) in the foreign country, as a result of action taken by the Attorney-General pursuant to a forfeiture or confiscation order; or

(b) in Zambia, as a result of action taken in Zambia pursuant to a forfeiture or confiscation order.

(2) Any proceeds or benefits of crime—

(a) forfeited or confiscated in a foreign country pursuant to a request by Zambia; or

(b) forfeited or confiscated in Zambia pursuant to a request by a foreign country;

to the extent available under any sharing of confiscated property arrangement or otherwise, shall be credited to the Fund.

Payments from Fund

76. (1) The purposes of the Fund are to—

(a) make such payments to foreign countries as the Minister, with the approval of the Minister responsible for finance, considers appropriate under an approved programme;

(b) make payments under a programme approved by the Minister under section *seventy-seven* and approved by the Minister responsible for finance;

(c) make such payments as the Minister considers necessary to satisfy Zambia's obligation in respect of -

(i) a registered foreign forfeiture order; or

(ii) a registered foreign confiscation order;

with the approval of the Minister responsible for finance;

(d) make payments, as directed, under section *fourteen;* and

(e) make payments for the purposes of the administration of the Fund.

(2) Any payment out of the Fund is deemed to be an appropriation by law.

Programmes for expenditure on enforcement, etc

77. (1) The Minister may, with the approval of the Minister responsible for finance, in writing, approve a programme for the expenditure in a particular financial year of money standing to the credit of the Fund.

(2) The expenditure under subsection (1) shall be approved for one or more of the following purposes:

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(a) measures for the enforcement of this Act, and the Mutual Legal Assistance in Criminal Matters Act;

(b) assets and the provision of services to strengthen law enforcement measures relevant to the Acts referred to in paragraph (a) and related crime prevention measures; and

(c) any priority health, education or development programmes approved with the relevant responsible minister.

PART VI

GENERAL PROVISIONS

Standard of proof

78. Save as otherwise provided in this Act, any question of fact to be decided by the court in proceedings under this Act is to be decided on the balance of probabilities.

Costs

79. (1) Where—

(a) a person brings, or appears at, a proceeding under this Act before a court in order—

(i) to prevent a forfeiture, confiscation or restraining order from being made against property of the person; or

(ii) to have property of the person excluded from a forfeiture,

confiscation or restraining order;

(b) the person is successful in any of the proceedings referred to under paragraph *(a)*; and

(c) the court is satisfied that the person was not involved in any way in the commission of the offence in respect of which the forfeiture, confiscation or restraining order was sought or made;

the court may order the State to pay all costs reasonably incurred by the person in connection with the proceedings or such part of those costs as is determined by the court.

(2) If upon the determination of a proceeding under this Act, the court is of the opinion that the charge was frivolous or vexatious, the court may order the person to pay the costs reasonably incurred by the State in connection with the proceedings or such part of those costs as is determined by the court.

Operation of other laws not affected

80. Nothing in this Act prejudices, limits or restricts—

(a) the operation of any other law which provides for the forfeiture of property or the imposition of penalties or fines;

(b) the remedies available to the State apart from this Act, for the enforcement of its rights and the protection of its interests; or

(c) any power of search or any power to seize or to detain property which is exercisable by a police officer apart from this Act.

Appeals

81. A person aggrieved by a decision made under this Act, may appeal against such decision.

No criminal or civil liability for compliance

82. (1) It shall not be a breach of professional confidentiality for a legal practitioner or any other person to comply with any order or direction of the court made under this Act.

(2) No proceedings for breach of professional confidentiality may be instituted against a legal practitioner or any other person who in good faith complies with an order or direction of the court in accordance with this Act.

Rules

83. The Chief Justice may, by statutory instrument, make rules of court for the better carrying into effect of the provisions of this Act and in particular prescribing anything which by any of those provisions is to be prescribed.

Regulations

84. The Minister may, by statutory instrument, make regulations to give effect to the provisions of this Act.