

THE PROCEEDS OF CRIME ACT, 1991
ARRANGEMENT OF SECTIONS

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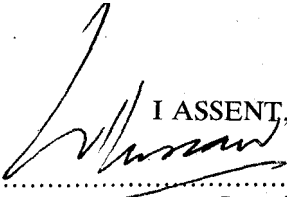
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THE UNITED REPUBLIC OF TANZANIA



No. 25 OF 1991


 I ASSENT,

 President
 9th April, 1992

An Act to make better provisions for dealing with proceeds of crime

[.....]

ENACTED by the Parliament of the United Republic of Tanzania.

PART I

PRELIMINARY PROVISIONS

- 1.-(1) This Act may be cited as the Proceeds of Crime Act, 1991. Short title and commencement
- (2) This Act shall come into operation on such date as the Minister may, by notice published in the *Gazette*, appoint.
- 2.-(1) This Act shall apply to Tanzania Zanzibar as well as to Mainland Tanzania. Application
- (2) This Act, other than section 57, shall not apply to the conviction of a person of an offence if he was convicted of it before the commencement of this Act.
- 3.-(1) In this Act, unless the context requires otherwise-
- "account" means any facility or arrangement through which a financial institution accepts deposits or allows withdrawals and includes as at facility or arrangement for- Interpretation
- (a) a fixed term deposit box;
- (b) a safety deposit box.

"agent" includes, if the agent is a body corporate, the officers and agents of that body corporate;

"appropriate officer" means the Attorney-General or a person in a category of persons declared by the regulations to be within this definition;

"approved" means approved by the Minister in writing for the purposes of the provision in which the term occurs;

"bank" means-

(a) the Bank of Tanzania;

(b) the People's Bank of Zanzibar; or

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(c) a bank within the meaning ascribed to it by the Banking and Financial Institutions Act, 1991.

"benefit" includes a service or an advantage;

"building society" means a society registered or incorporated as a building society, co-operative housing society or similar society under a law for the time being in force relating to such societies;

"confiscation order" means a forfeiture order or a pecuniary penalty order;

"corresponding law" means a law that is declared to be a law that corresponds to this Act;

"director" in relation to a financial institution or a body corporate means-

(a) if the institution or body corporate is incorporated for a public purpose by a law of the Parliament or House of Representatives, a constituent member of the institution or body corporate;

(b) any person occupying or acting in the position of director of the institution or body corporate by whatever name called and whether or not validly appointed to occupy or duly authorized to act in the position; and

any person in accordance with whose directions or instructions the directors of the institution or body corporate are accustomed to act.

"encumbrance" in relation to property, includes any interest, mortgage, charge, right, claim or demand in respect of the property;

"executive officer" in relation to a financial institution or body corporate, means any person, by whatever name called and whether or not he is a director of the institution or body corporate, who is concerned, or takes part in the management of the institution or body corporate.

"financial institution" means,-

(a) the Bank of Tanzania;

(b) the People's Bank of Zanzibar;

(c) a building society;

(d) a financial institution within the meaning ascribed to it by the Banking and Financial Institutions Act, 1991.

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"financial transaction" means-

(a) the opening, operating or closing of an account held with a financial institutions; or

(b) the opening or use of a deposit box held by a financial institution; or

(c) the telegraphic or electronic transfer of funds by a financial institution on behalf of one person to another person; or

(d) the transmission of funds between the United Republic, and foreign countries or between foreign countries on behalf of any person; or

(e) an application by any person for, or the receiving of, a loan from a financial institution.

"foreign forfeiture order" means a forfeiture order made under the law of a foreign country and registered in the United Republic in terms of section 32 of the Mutual Assistance Act, for enforcement against property believed to be located in the United Republic in respect of a foreign serious offence.

"foreign pecuniary penalty order" means an order made under the law of a foreign country and registered in the United Republic in term of section 32 of the Mutual Assistance Act, and which imposes a pecuniary penalty in respect of a foreign serious offence, but does not include an order for the payment of money by way of compensation, restitution or damages.

"foreign restraining order means an order made under the law of a foreign country and registered in the United Republic in terms of section 32 of the Mutual Assistance Act for enforcement against property believed to be located in the United Republic in respect of a foreign serious offence;

"foreign serious offence" means a serious offence committed against the law of a foreign country:

"forfeiture order" means an order made in terms of section 14;

"the Government" means the Government of the United Republic or the Revolutionary Government of Zanzibar, as the case, may be;

"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, whether present or future and whether vested or contingent;

"law enforcement agency", and substituting for it, the following definition: "Law enforcement agency" means the Police Force, and including any person authorized in writing by the Inspector General of Police to perform investigative or monitoring duties under this Act;

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- "magistrate" means a resident magistrate;
- "Minister" means the Minister for the time being responsible for legal affairs;
- "money-laundering offence" means the offence of money-laundering referred to in section 71;
- "monitoring Order" means an order made under section 65;
- "the Mutual Assistance Act" means the Mutual Assistance in Criminal Matters Act, 1991;
- "narcotic substance" means
- (a) prohibited drug in terms of the law for the time being relating to narcotic substances; or
 - (b) a substance declared by or under an), law to be a substance to which this definition applies;
- "officer" means a director, secretary, executive officer or employee;
- "ordinary arrestable offence" means an arrestable offence that is not a serious offence;
- "pecuniary penalty order" means an order under section 22;
- *Penalty amount" in relation to a pecuniary penalty order against a person, means the amount that the person is liable to pay the United Republic under the order;
- "police officer" means an), member of the police force of or above the rank of corporal;
- "premises" includes-
- (a) a structure, building, aircraft, vehicle or vessel;
 - (b) a place, whether enclosed or built upon or not; and
 - (c) a part of premises, including premises of a kind referred to in paragraph (a) or (b)-,
- "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;
- "proceeds of crime" means any property that is derived or realized, directly or indirectly, by any person from-
- (a) the commission of any serious offence;
 - (b) any act or omission which-
 - (i) occurred outside the United Republic;
 - (ii) related to a narcotic substance; and
 - (iii) would, if they had occurred in the United Republic, have constituted an arrestable offence or a serious narcotic offence; and
- "proceeds of an offence" or "profits of crime" shall be construed accordingly;
- "production" includes growing and manufacture;
- "production order" means an order made under section 62;

"property" means real or personal property of every description, whether situated in the United Republic or elsewhere and whether tangible or intangible and includes an interest in any such real or personal property;

"property-tracking document" means a document relevant for-

- (a) identifying, locating or quantifying the property of a person who committed a serious offence; or
- (b) identifying or locating any document necessary for the transfer of the property of a person who committed a serious offence; or
- (c) identifying, locating or quantifying tainted property in relation to a serious offence; or
- (d) identifying or locating any document necessary for the transfer of tainted property in relation to a serious offence;

"registrable property" means property the title to which is passed by registration on a register kept pursuant to a provision of any law;

"relevant application period" in relation to a person's conviction of an arrestable offence, means the period of six months after-

- (a) where the person is to be taken to have been convicted of the offence by reason of section 4(1)(a), 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 section 4(1)(b), the day on which the person was discharged without conviction;
- (c) where the person is to be taken to have been convicted of the offence by reason of section 4(1)(c) the day on which the court took the offence into account in passing sentence for the other offence referred to in paragraph (c);
- (d) where the person is to be taken to have been convicted of the offence by reason of section 4(1)(c), the day on which the person is to be taken to have absconded in connection with the offence;

"relevant offence" in relation to tainted property, means an offence by reason of the commission of which the property is tainted property;

reason order" means an order made under section 38;

"serious narcotics offence" means any offence relating to a narcotic substance-

- (a) which is punishable in the United Republic or in a foreign country by imprisonment for a period of not less than three years or by a more severe punishment; or
- (b) the market value of the property derived or obtained from the commission of which is or is likely to be not less than two million shillings or such greater or lesser amount as may be prescribed;

"serious offence" means any offence prescribed as such by or under section 6 and includes a specified offence;"

"Specified offence" means-

- (a) a serious narcotics offence;
- (b) money laundering contrary to Section 71;
- (c) any other offence which the Minister may, by order published in the *Gazette*, prescribe as such, subject to approval by resolution of the National Assembly;
- (d) conspiracy to commit, or aid, abet council or procure the Commission of an offence referred to in paragraphs (a), (b) or (c);
- (e) assisting another person to dispose of the proceeds of an offence referred to in paragraph (a); or
- (f) attempting to commit an offence referred to in paragraphs (a), (b) or (c);

"tainted property" in relation to a serious offence means-

- (a) any property used in, or in connection with, the commission of the offence; or
- (b) any proceeds of the offence; or
- (c) any property in the United Republic which is the proceeds of a foreign serious offence in respect of which an order may be registered in terms of Part VI of the Mutual Assistance Act; and when used without reference to a particular offence means tainted property in relation to an arrestable offence.

"trustee" means a trustee appointed by the High Court in terms of paragraph (b) of subsection (2) of section 38;

"unlawful activity" means an act or omission that constitutes an offence against any law for the time being in force in the United Republic.

(2) Any reference in this Act to a person being charged with an offence is a reference to an information being laid against the person for the offence whether or not-

- (a) summons to require the attendance of the person to answer the information has been issued; or
- (b) a warrant for the arrest of the person has been issued.

(3) A reference in this Act to a benefit derived by a person includes a reference to-

- (a) a benefit derived, directly or indirectly by the person; and
- (b) a benefit derived, directly or indirectly, by another person at the request or direction of the first person.

(4) Any reference in this Act to the property of a person includes a reference to property in respect of which the person has a beneficial interest.

(5) A reference in this Act to acquiring property, or an interest in property, for sufficient consideration is a reference to acquiring the property or the interest for a consideration that is sufficient and that, having regard solely to commercial considerations, reflects the value of the property or the interest.

(6) For the purposes of this Act, a person shall not be regarded as a director within the meaning of paragraph (c) of the definition "director" in subsection (1) by reason only that the directors act on advice given by him in the proper performance of the functions attaching to his professional capacity or to his business relationship with the directors of the financial institution or body corporate, as the case may be.

4.-(1) For the purposes of this Act, a person shall be taken to be convicted of an offence if-

- (a) he is convicted, whether summarily or otherwise, of the offence;
- (b) he is charged with, and found guilty and convicted of the offence but is discharged conditionally or unconditionally or pardoned: or
- (c) the person absconds in connection with the offence.

(2) This section shall not apply to a foreign serious offence.

5. For the purposes of this Act, except section 4, a person shall be taken to abscond in connection with an offence if and only if-

- (a) an information is 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, and
- (c) one of the following occurs, namely-
 - (i) the person dies before the warrant is executed;
 - (ii) at the end of a period of six months from the date of issue of the warrant-
 - (a) the person cannot be found, or
 - (b) the person is, for any other reason, not amenable to justice and, if the person is outside the United Republic, extradition proceedings are not instituted;
 - (iii) at the end of the Period of six months from the date of issue of the warrant-
 - (a) the person is, by reason of being outside the United Republic, not a menable to justice; and
 - (b) extradition proceedings are instituted; and subsequently those proceedings terminate without an order for the person's extradition being made.

6. In this Act, the expression "serious offence" means-

- (a) any dealing which amounts to drug trafficking under the law for the time being relating to drugs;
- (b) any specified offence;
- (c) any offence which the Minister may, by order published in the *Gazette*, prescribe as such, subject to approval by resolution of the National Assembly."

Meaning
of "con-
viction"
etc. of
offence

Meaning
of
abscond-
ing"

Meaning,
of serious
offence

Meaning of "dealing with property"

7. For the purposes of this Act, dealing with property of a person includes-

- (a) if a debt is owed to that person, making payment to any person in reduction of the amount of the debt;
- (b) removing the property from the United Republic;
- (c) receiving or making a gift of the property.

Appropriate court in relation to serious offence

8. Where a person is convicted of a serious offence before any court other than a Primary Court that court shall be the appropriate court in relation to the conviction.

PART II

CONFISCATION

Application for Confiscation Order

Application for confiscation order

9. -(1) Where a person is convicted of a serious offence, the Attorney-General may, subject to subsection (2), apply to the court convicting him, or to any appropriate court, not later than six months after the conviction of the person, for-

- (a) a forfeiture order against any property that is tainted property in respect of the offence; or
- (b) a pecuniary penalty order against the person in respect of any benefit derived by the person from the commission of the offence.

(2) The Attorney-General shall not, except with the leave of the court, make an application in terms of subsection (1) for a forfeiture order or a pecuniary penalty order-

- (a) if an application has previously been made under that subsection or in terms of any other enactment; and
- (b) the application has been finally determined on the merits.

(3) The court shall not grant leave in terms of sub-section (2) unless it is satisfied that-

- (a) the tainted property, or the benefit to which the new application relates was identified only after the first application was determined; or
- (b) necessary evidence became available only after the first application was determined: or
- (c) it is otherwise in the interests of justice to grant the leave.

(4) An application maybe made under this section in relation to one or more than one arrestable offence.

(5) An application may be made in terms of this section for a pecuniary penalty order in respect of an offence even if section 26 applies to the offence.

10.-(1) Where the Attorney-General makes an application in terms of subsection (1) of section 9 for a forfeiture order against property in respect of a person's conviction of an offence-

Notice of
applica-
tion

- (a) the Attorney-General shall give written notice of the application to the person or to any other person he has reason to believe may have an interest in the property. and
- (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 Attorney-General to give notice of the application to a specified person or class of persons in a manner and within such time as the court considers appropriate.

(2) Where the Attorney-General makes an application for a pecuniary penalty order against a person-

- (a) the Attorney-General shall give the person written notice of the application; and
- (b) the person may appear and adduce evidence at the hearing of the application.

11.-(1) Subject to subsection (2), where the Attorney-General applies for a confiscation order, the court hearing the application may amend the application at the request, or with the consent, of the Attorney-General.

Ammdend-
ment of
applica-
tion

(2) The court may not amend an application so as to include additional property in an application for a forfeiture order or an additional benefit in an application for a pecuniary penalty order unless it is satisfied that-

- (a) the property or benefit was not reasonably capable of identification when the application was originally made; or
- (b) necessary evidence became available only after the application was originally made.

(3) Where the Attorney-General requests to amend an application for a forfeiture order and the amendment has or would have the effect of including additional property in the application for the forfeiture order, then-

- (a) the Attorney-General shall give written notice of the request to amend to any person who he has reason to believe may have an interest in the property to be included in the application for the forfeiture order; and
- (b) 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 request to amend.

(4) Where the Attorney-General requests an amendment of application for a pecuniary penalty order against a person and the amendment has or would have the effect of including an additional benefit in the application for the pecuniary penalty order, the Attorney-General shall give the person written notice of the request to amend.

Making of
confisca-
tion order
where
person
has
abscond-
ed

12. Where a person is, by reason of section 4(1)(c), to be taken to have been convicted of an arrestable offence, a court shall not make a confiscation order in reliance on the person's conviction of the offence unless the court is satisfied, on the balance of probabilities, that the person has absconded and-

- (a) -the person has been committed for trial for the offence; or
- (b) the court is satisfied that having regard to all the evidence before it, a reasonable court could lawfully find the person guilty of the offence.

Procedure
on appli-
cation

13.-(1) Where an application is made to a court for a confiscation order in respect of a person's conviction of a serious offence, the court may, in determining the application, have regard to the transcript record of an), proceedings against the person in relation to the offence.

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

(3) Where a person is to be taken to have been convicted of an offence by reason of section 4(1)(c), and application is made to a court for a confiscation order in respect of the conviction, the reference in subsection (1) to a proceeding against the person for the offence shall include a reference to a proceeding against the person for the other offence referred to in that paragraph.

Forfeiture Orders

Forfeiture
orders

14.-(1) Where the Attorney-General applies to a court for a forfeiture order under section 11 against property in respect of a person's conviction of an offence and the court is satisfied that the property is tainted property in respect of the offence, the court may if it considers it appropriate, order that the property or such of the property as it may specify in the order, be forfeited to the United Republic.

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

(3) In granting an application for a forfeiture order in respect of any property, the court may have regard to-

- (a) any hardship that may reasonably be expected to be caused to any person by the operation of such an order;
- (b) the use that is ordinarily made, or was intended to be made, of the property; and
- (c) the gravity of the offence concerned.

(4) Any evidence given at the hearing of the application for a forfeiture order in respect of any property that the property concerned was in the possession of the convicted person at the time of, or immediately after, the commission of the offence and no evidence is given to show that the property was not used in, or in connection with, the commission of the offence, the court shall assume that the property was used in, or in connection with, the commission of the offence.

(5) In granting an application for a forfeiture order, the court may give any directions necessary or convenient for giving effect to the order, including, without limiting the generality of the foregoing, directions to an officer of the court to do anything necessary and reasonable to obtain possession of any document necessary for the transfer of any property subject to registration in the Registry of Titles.

(6) In granting a forfeiture order the court may, if it is satisfied that it would be in the public interest for a person's interest in the property to be transferred to him, determine the nature, extent and value of the interest and declare that the forfeiture order may, to the extent to which it relates to the interest, be discharged in accordance with section 30.

15.-(1) Subject to subsection (2), where a court makes a forfeiture order against property, the property shall vest in the United Republic.

Effects of
forfeiture
order

(2) Where a forfeiture order is made against property subject to registration in the Registry of Titles any rights in the property shall lie with the United Republic until the registration is effected.

(3) The Treasury Registrar shall be registered as owner of any property subject to a forfeiture order and the Minister shall do or authorize to be done anything necessary or convenient to obtain the registration of the Treasury Registrar as owner, including the execution of an instrument required to be executed by a person transferring an interest in property of that nature.

16.-(1) Where an application for a forfeiture order is made against property, any person who has an interest in the property may, before the forfeiture order is made, apply to the court for an order under subsection (6).

Effect of
forfeiture
order on
third per-
ties

(2) Subject to subsection (3) and (7), where a forfeiture order against property has been made, any person who has an interest in the property may apply to the court for an order under subsection (6).

(3) A person who was given notice of an application for a forfeiture order or who appeared at the hearing of the application shall not make an application to court in terms of subsection (2) except with the leave of the court.

(4) The leave of the court referred to in subsection (3) may be granted if the court is satisfied that there are special grounds for granting the leave.

(5) Without limiting the generality of subsection (4), the court may grant a person leave to apply if it is satisfied that the evidence which the person intended to adduce in connection with the application under subsection (2) was not available to him at the time of the hearing of the application.

(6) Where a person applies to a court for an order under this subsection in respect of his interest in property against which an application for a forfeiture order or a forfeiture order has been made and the court is satisfied that-

- (a) the applicant was not in any way involved in the commission of the offence concerned; or
- (b) if the applicant acquired his interest at the time, or after the commission of the offence, the applicant did so-
 - (i) for sufficient value; and
 - (ii) without knowing and in circumstances such as not to arouse reasonable suspicion that the property was, at the time of the acquisition, tainted property,
 the court shall make an order for the transfer of the interest by the Treasury Registrar to the applicant or for the payment by the Treasury Registrar to the applicant of an amount equal to the value of the interest, as the court thinks fit.

(7) Subject to subsection (8), an application under subsection (2) shall be made before the expiration of a period of six months commencing on the day on which the forfeiture order is made.

(8) Where a forfeiture order is made against property, the court that made the order may, on application being made to it, grant a person claiming an interest in the property leave to apply in terms of subsection (2), after the expiration of the period referred to in subsection (7) if it is satisfied that the person's failure to make his application within that period was not due to any neglect on his part.

(9) Any person who makes an application in terms of subsection (1) or (2) shall notify the Attorney-General.

(10) The Attorney-General shall be a party to proceedings upon an application in terms of subsection (1) or (2).

Discharge
of forfei-
ture order
on appeal
or on
quashing
of convic-
tion

17.-(1) A forfeiture order against property shall be discharged on the quashing of the conviction upon which the forfeiture order is based.

(2) Where a forfeiture order against property is discharged in terms of subsection (1) or on an appeal against the making of the order, the Attorney-General shall-

- (a) as soon as practicable after the discharge of the order, give written notice of the discharge of the order to any person whom he has reason to believe had an interest in the property immediately before the making of the order; or

(b) if required by the court, publish in the Gazette a notice of the discharge of the order in such manner and within such time as the court considers appropriate.

(3) A notice referred to in subsection (2) shall specify, in accordance with subsection (4), the manner in which any person who claims and interest in the property shall apply for the transfer of the interest to the person.

(4) Where a forfeiture order is discharged in terms of subsection (1) or on appeal against the making of the order, any person who, immediately before the making of the forfeiture order, claimed an interest in the property may apply to the Attorney General, in writing, for the transfer of the interest to him and on receipt of the application, the Attorney General shall-

(a) where the interest is vested in the Treasury Registrar, arrange for the transfer of the interest to the person; or-

(b) in any other case, pay to the person an amount equal to the value of the interest.

(5) Where the Attorney General is to arrange for the transfer of property to a person, he may do or authorize to be done anything necessary or convenient to effect the transfer, including the execution of any instrument and the making of an application for registration of an interest in the property.

18.-(1) Where a foreign forfeiture order is registered with the High Court in terms of Part VI of the Mutual Assistance Act, this Part shall, *mutatis mutandis*, apply in relation to the foreign order.

Registered foreign forfeiture orders

(2) Any property in relation to which a foreign forfeiture order has been registered in terms of subsection (1) may be disposed of or otherwise be dealt with in accordance with any direction of the Attorney-General or of a person authorized by the Attorney-General in writing for that purpose.

PART III

PECUNIARY PENALTY ORDERS

19. This Part shall apply to-

(a) property that falls into the possession, or under the control, of a person, whether within or outside the United Republic and whether before or after the date of commencement of this Act; and

(b) benefits that accrued to a person, whether within or outside the United Republic and whether before or after the date of commencement of this Act.

Application of Part III

20. An application for a pecuniary penalty order against a person in respect of his conviction of a specified offence shall not be granted by a court before the expiry of a period of six months commencing on the date of the conviction upon which the application is based or after the expiry of a period of twelve months from that date.

Special provision relating to specified offences

Pecuniary
penalty
orders

21.-(1) Where an application is made to a court for a pecuniary penalty order in respect of benefits derived by a person from the commission of an offence and the court is satisfied that the person derived benefits from the commission of the offence, the court may, in terms of section 22, assess the value of the benefits so derived and order that person to pay to the Treasury Registrar, subject to subsections (2) and (3), a pecuniary penalty equal to the value of the benefits assessed.

(2) Where property that is the proceeds of an offence has been forfeited in terms of this Act or any other enactment or a forfeiture order is proposed to be made against property that is the proceeds of an offence, the penalty referred to in subsection (1) shall be reduced by an amount equal to the value as at the time of the making of the pecuniary penalty order of the property forfeited.

(3) Where any amount of tax, whether under the law of Tanzania or a foreign country, has been paid by a person and that tax is attributable in whole or in part to the benefits in respect of which the pecuniary penalty order is being made, such amount may, if the court so directs, be deductible from the penalty assessed in terms of subsection (1).

(4) The court may reduce the amount payable by a person under a pecuniary penalty order made in relation to an offence by an amount equal to the amount paid by the person by way of restitution, compensation, damages or a fine in relation to the offence.

(5) In calculating the amount payable under a pecuniary penalty order, if the court took into account a forfeiture of, or a proposed forfeiture order in respect of, property and an appeal against the forfeiture order is allowed or the proceedings for the proposed forfeiture order are terminated before the order is made, the Attorney-General may apply to the court for a variation of the pecuniary penalty order to increase the pecuniary penalty by the value of the property concerned and the court may vary the order accordingly.

(6) In calculating the amount payable under a pecuniary penalty order, if the court took into account an amount of tax paid by the person and an amount is repaid or refunded to the person in respect of that tax, the Attorney-General may apply to the court for a variation of the pecuniary penalty order to increase the pecuniary penalty by the amount repaid or refunded and the court may vary the order accordingly.

(7) Any amount payable by a person to the United Republic in terms of a pecuniary penalty order shall be a civil debt due to the United Republic and shall be recoverable by civil process.

Assessment of
pecuniary
penalty

22.-(1) For the purposes of a pecuniary penalty order against a person (hereinafter referred to as "the defendant"), the value of the benefits derived by the defendant from the commission of an offence shall be assessed by the court having regard to-

(a) the amount of money or value of property that came into the possession or under the control of-

(i) the defendant; or

- (ii) any other person at the request or direction of the defendant;
by reason of the commission of the offence; and
 - (b) the value of any other benefit gained by-
 - (i) the defendant; or
 - (ii) my other person at the request or direction of the defendant;
by reason of the commission of the offence; and
 - (c) if the offence consisted of the doing of an act or thing in relation to a narcotic substance-
 - (i) the market value, at the time of the offence, of a similar or substantially similar narcotic substance; and
 - (ii) the amount that was, or the range or amounts that were ordinarily paid for doing a similar or substantially similar act or thing; and
 - (d) the value of the defendant's property before and after the commission of the offence; and
 - (e) the defendant's income and expenditure before and after the offence.
- (2) In assessing the value of a benefit for the purposes of this section the court may treat as the value of the benefit the value that benefit would have had the benefit derived at the time the valuation is being made and may have regard to any decline in the purchasing power of money between the time the benefit was derived and the time the valuation is being made.
- (3) When an application is made for a pecuniary penalty order against a person's property in respect of a serious offence other than a specified offence-
- (a) If evidence is adduced that the value of the person's property after the commission of the offence exceeded the value of person's property before the commission of the offence, then the court shall for the purposes of subsection (1) of section 23 but subject to paragraph (b) and subsection (7), treat the value of the benefits derived by the person from the commission of the offences as being not less than the amount of the excess;
 - (b) if, following the evidence referred to in paragraph (a), the person satisfies the court that-
 - (i) the whole of the excess was due to causes unrelated to the commission, of the offence, paragraph (a) shall " apply; or
 - (ii) a part of the excess was due to causes unrelated to the commission of the offence, paragraph (a) shall apply only to that part of the excess which is related to the commission of the offence.
- (4) Where an application is made for a pecuniary penalty order against a person's property in respect of a specified offence or offences-
- (a) all the property of that person at the time the application is made:
and

- (b) all the property of that person at any time-
 - (i) between the day the offence or the earliest offence, was committed and the day on which the application is made; or
 - (ii) with the period of five years immediately before the day on which the application is made; shall whichever is the shorter be deemed, unless the contrary is proved, to be property that came into the possession or under the control of the person by reason of the commission of the specified offence or offences.

(5) A benefit shall not be taken into account for the purposes of this section if a pecuniary penalty has been imposed in respect of the benefit in terms of this Act or any other enactment

(6) For the purposes of this section, where the property of a person has vested in a trustee of the person's insolvency, the property shall be taken to continue to be the property of the person.

(7) At the hearing of an application for a pecuniary penalty order, a police officer who has experience in the investigation of narcotic offences may testify, to the best of his information, knowledge and belief-

- (a) as to the market value of a narcotic substance at a particular time or during a particular period;
 - (b) as to the price, or range of prices, paid at a particular period for the doing of an act or thing in relation to a narcotic substance;
- notwithstanding any law or practice relating to hearsay evidence, and the testimony shall be *prima facie* evidence of the matters testified to.

Court
may lift
corporate
veil

23.-(1) In assessing the value of benefits derived by a person from the commission of any serious offence, the court may treat as property of the person an), 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 other 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) share holdings in, debentures over or directorships of any company that has an interest, whether direct or indirect in the property; and
 - (c) any family, domestic or business relationships between persons having an interest in the property, or in any company or trust referred to in paragraph (a) or (b), and any other persons.
- (3) Where for the purposes of making a pecuniary penalty order against a person, a court treats particular property as that person's property pursuant to subsection (1), it may on application by the Attorney-General, make an order declaring that the property is available to satisfy the order.

(4) Where the Attorney-General makes an application in terms of subsection (3)-

- (a) he shall give written notice of the application to the person and to any other person whom he has reason to believe may have an interest in the property; and
- (b) any person referred to in paragraph (a) may appear and adduce evidence at the hearing of the application.

24. Where a foreign pecuniary penalty order is registered in a court in the United Republic under the Mutual Assistance Act, any amount paid, whether in the United Republic, in the foreign country in which the order was made or elsewhere, in satisfaction of the foreign pecuniary penalty order, shall be taken to have been paid in satisfaction of the debt that arises by reason of the registration of the foreign pecuniary penalty order in that court.

Amounts paid in respect of registered foreign pecuniary penalty orders

PART IV

FORFEITURE IN RESPECT OF SPECIFIED OFFENCES

25.-(1) Subject to section 4.3(4), if at the expiration of six months from the day of conviction a restraining order issued in respect of the property of a person convicted of a specified offence is still in force, the property shall be forfeited to the United Republic.

(2) Subject to subsection (3), property forfeited to the United Republic under subsection (1) shall rest in the Treasury Registrar.

(3) Where immovable property or other property whose ownership passes through registration is forfeited to the United Republic, the Treasury Registrar shall be entitled to be registered as the owner of the property and the Minister shall have power to do, or to authorize to be done, anything necessary or convenient to effect the registration of the Treasury Registrar as the owner, including execution of any instrument required to be executed by a person transferring an interest in property of that kind.

(4) Where property is forfeited to the United Republic in accordance with this section:-

- (a) the property shall not, except with the leave of the court that issued the restraining order and in accordance with any directions the court may make, be disposed of or otherwise dealt with by or on behalf of the Treasury Registrar until any appeal instituted in relation to the matter has been determined or the time for instituting on appeal has lapsed without any appeal having been instituted; and
- (b) if, at the end of the period referred to in paragraph (a), the conviction has not been quashed, the property may be disposed of, or otherwise dealt with, in accordance with any direction of the Minister or of a person authorized by the Minister for the purposes of this paragraph.

Forfeiture of restrained property in relation to specified offences

(5) Any direction in terms of paragraph (b) of subsection (4) may include a direction that the property shall be disposed of in accordance with any enactment specified in the direction.

Recovery of property to which section 26 applies.

26.-(1) Where property is forfeited to the United Republic in terms of section 25, any person claims an interest in the property may, subject to subsections (2) and (4), apply to the court which issued the restraining order for an order under subsection (6) or (7).

(2) The application referred to in subsection (1) shall, subject to subsection (3), be made before the expiry of the period of six months commencing on the day on which the property is forfeited to the United Republic.

(3) The court may grant a person leave to apply after the expiry of the period referred to in subsection (2) if it is satisfied that the delay in making the application was not due to neglect.

(4) An application for an order under subsection (6) or (7) in relation to an interest in property shall not, except with the leave of the court, be made by a person who was given notice of the proceedings at the time of the application for the issue of the interdict.

(5) The court may grant a person leave in terms of subsection (4) if it is satisfied that his failure to have the property excluded from the restraining order was not due to any neglect on his part.

(6) Where a person applies for an order in respect of an interest in property and the court is satisfied:-

- (a) that the applicant was not in any way involved in the commission of the relevant specified offence, and
- (b) where the applicant acquired the interest at the time of or after the commission of the offence, that he did so lawfully and for sufficient value; and
- (c) that the property was acquired in circumstances such as would not arouse a reasonable suspicion that the property was tainted property:

the court may make an order declaring the nature, extent and value of the interest of the applicant and direct the Treasury Registrar to transfer the interest to the applicant or order the payment to the applicant by the Treasury Registrar of an amount equal to the value of the interest.

(7) Where a person applies for an order in respect of an interest in property and the court is satisfied that it would not be contrary to public interest for the interest to be transferred to the person and that there is no other reason why the interest should not be transferred to the person, the court may:

- (a) determine the nature, extent and value of the interest; and
- (b) order that section 25 shall cease to operate in relation to the interest if payment for the interest is made in terms of section 29.

27.-(1) Where a conviction in respect of property forfeited to the United Republic in terms of section 25 is quashed, the Attorney-General shall:-

Effect of quashing of conviction.

- (a) as soon as practicable after the quashing of the conviction, give notice of the quashing of the conviction to any person whom the Attorney-General has reason to believe may have had an interest in the property immediately before the property was forfeited; and
- (b) if ordered to do so by the court, give written notice or publish a notice in this *Gazette* of the quashing of the conviction to a specified person or class of persons within such time as the court may fix.

(2) A notice in terms of subsection (1) shall include a statement to the effect that a person claiming an interest in the property may apply in terms of subsection (3) for the transfer of the interest to the person.

(3) Any person who claims to have had an interest in property immediately before it was forfeited to the United Republic may apply to the Minister, in writing, for the transfer of the interest to himself and on receipt of application, the Minister shall:-

- (a) if the interest is in respect of property which is still vested in the United Republic, arrange for the transfer of the interest to the person; or
- (b) in any other case, arrange for the payment to the person of an amount equal to the value of the interest.

(4) In arranging for the transfer of any property in terms of paragraph (a) of subsection (3), the Minister shall have power to do, or authorize to be done anything necessary or convenient to effect the transfer, including the execution of any instrument.

28.-(1) Where a court makes an order in terms of subsection (6) of section 16 in respect of an interest in property, the payment to the Treasury Registrar of the amount specified in the order as the value of the interest shall discharge the forfeiture order to the extent to which it relates to the interest.

Person with interest in forfeited property may buy back interest

(2) Where a court makes an order in terms of subsection (7) of section 26, and a payment to the Treasury Registrar' of an amount specified in the order as the value of the interest is made, section 25 shall cease to apply in relation to the interest.

(3) The Minister shall arrange for the interests referred to subsections (1) and (2) to be transferred to the person in whom they were vested immediately before the property was forfeited to the United Republic and shall have power to do, or authorize to be done, anything necessary or convenient to effect the transfer. including the execution of any instrument.

Buying out other interests in forfeited property

29. Where a person is, in terms of this Part, authorized to take transfer of any interest in Property which is forfeited to the United Republic, he may, on giving notice to any other Person otherwise interested in the property immediately before the forfeiture took place, Purchase that other interest from the Treasury Registrar; save that the Person served with the notice may, within twenty-one days of the receipt of the notice, lodge with the Minister a written objection to the purchase of that interest.

Forfeiture where person cannot be brought before Court

30.-(1) Where the Attorney-General suspects on reasonable grounds that any person has acquired, holds or is dealing with tainted property and it is not possible:-

- (a) for any person to bring the Person before a court on a charge for any serious offence; or
- (b) for a foreign pecuniary penalty order or a foreign forfeiture order to be in respect of the person;

he may apply to the High Court for an order declaring the property forfeited to the United Republic.

(2) The High Court may, on an application in terms of subsection (1), if it is satisfied that the Property concerned is tainted property and that it is in the interests of justice that the property be forfeited to the United Republic, order accordingly.

PART V

CONTROL OF PROPERTY LIABLE TO CONFISCATION

Power of Search and Seizure

Powers to search for and seize tainted property.

31.-(1) Subject to subsection (2) a Police officer may search a person for, and seize, any Property which he believes, on reasonable grounds, to be tainted property.

- (2) The search or seizure referred to in subsection (1) shall be made-
 - (a) with the consent of the Person concerned; or
 - (b) under warrant issued under section 32; or
 - (c) in emergencies in accordance with section 34.

(3) Subject to subsection (2), a Police officer may enter upon any land or upon or into premises, search the land or premises for tainted property and seize any property found in the course of the search which the officer believes, on reasonable grounds, to be tainted property.

(4) In conducting a search in terms of this section, a police officer may also search (lie clothing that is being worn by the Person and any property under or apparently under the person's immediate control; save that nothing contained in this section shall be construed as authorizing a police officer to carry out a search by way of an examination of body cavities.

32.-(1) Where a police officer has reasonable grounds for believing' that there is tainted property of a particular kind on a person, his clothing or under his immediate control, or upon any land or upon or in any premises, he may apply to a magistrate for the issue of a search warrant for the tainted property.

Search warrants in relation to tainted property.

(2) On an application in terms of subsection (1), a police officer shall lay before the magistrate information on oath setting out the grounds upon which the warrant is sought and the magistrate may, subject to subsection (4), issue an warrant authorizing a police officer-

- (a) in the case of a search warrant in respect of land or premises, to enter upon the land, or upon or into the premises; and
- (b) to search for the tainted property: and
- (c) to seize property found in the course of the search which the police officer, on reasonable grounds believes to be tainted property.

(3) A search warrant may be issued in terms of subsection (2) in relation to tainted property whether or not information has been laid before the magistrate in respect of the relevant offence.

(4) A magistrate shall not issue a warrant in terms of this section unless he is satisfied that-

- (a) there are reasonable grounds for issuing the warrant; and
- (b) where information has not been laid More him in respect of the relevant offence at the time of the application for the warrant-
 - (i) the property is tainted property; and
 - (ii) information will be laid before him in respect of the relevant offence within forty-eight hours.

(5) A warrant issued in terms of this section shall specify-

- (a) the purpose for which the warrant is issued, including the nature of the relevant offence and
- (b) the kind of property authorized to be seized; and
- (c) the date on which the warrant shall cease to have effect; and
- (d) the time during which entry upon any land or premises is authorized.

(6) If in the course of searching under a search warrant issued in terms of this section for tainted property in relation to a particular offence, a police officer finds-

- (a) property which he believes on reasonable grounds to be tainted property in relation to the offence, although not of a kind specified in the warrant; or
- (b) tainted property in relating to another serious offence, or
- (c) anything that the police officer believes, on reasonable grounds, 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 or continuing or repeating the offence or any other offence. the warrant shall be deemed to authorize the police officer to seize that property or thing.

(7) A police officer acting in accordance with a warrant issued in terms of this section may require a person to remove any clothing that the person is wearing but only if the removal of the clothing is necessary and reasonable for an effective search of the person.

(8) A person shall not be searched in terms of this section except by a person of the same sex and with strict regard to decency.

Search
warrant
may be
granted.

33.-(1) Where, by reason of circumstances of urgency, a police officer considers it necessary to do so. he may apply for a search warrant to a magistrate by telephone.

(2) Before making the application referred to in subsection (1), the police officer shall prepare the information referred to in section 32(2).

(3) On an application in terms of subsection (1), a magistrate may, if satisfied after considering the information referred to in subsection (2) or any other information he may receive concerning the grounds upon which the issue of the search warrant is sought, that there are reasonable grounds for issuing the warrant, he shall issue the warrant and record thereon the reasons for granting it.

(4) Where a magistrate has issued a warrant in terms of subsection (3), he shall inform the police officer of the terms of the warrant and the date on which and the time at which it was signed and the police officer shall in turn complete a form of warrant in terms furnished by the magistrate. including the name of the magistrate.

(5) Not later than the day next following the date of the execution of the warrant or the expiry of the warrant, whichever is the earlier, the police officer shall give the magistrate who authorized the warrant the form of the warrant completed by him and the information in connection with the warrant. duly sworn.

(6) On receipt of the documents referred to in subsection (5), the magistrate shall attach to them the warrant signed by him and deal with the documents in the manner in which he would have dealt with them had the application been made in terms of section 32.

(6) On receipt of the documents referred to in subsection (5), the magistrate shall attach to them the warrant signed by him and deal with the documents in the manner in which he would have dealt with them had the application been made in terms of section 32.

(7) A form of warrant duly completed by a police officer in accordance with subsection (4) shall be authority for any search, entry or seizure.

34., A police officer may search a person for tainted property or enter upon land or into premises and search for tainted property and may seize any tainted property he finds in the course of the search if--

Searches
in
emergen-
cies

- (a) he believes on reasonable grounds that it is necessary to do in order to prevent the concealment, loss or destruction of, the tainted property; and
- (b) the search, entry or seizure is made in circumstances of such seriousness and urgency as to require and justify immediate search, entry or seizure without the authority of an order of the court or a warrant issued in terms of this Act.

35. Where property is seized in terms of this Part, the Inspector General of Police or other officer authorized by him in writing, shall arrange for the property to be kept and shall ensure that all reasonable steps are taken to preserve it while it is so kept until it is required for the purposes of this Act or disposed of in terms of this Act.

Responsi-
bility for
seized
property

36.-(1) Where property has been seized in terms of this Part and:-

- (a) it appears that the property was seized otherwise than because it may afford evidence of the commission of an offence; or
- (b) at the end of the period of forty-eight hours after its seizure, the matter has not been laid before a magistrate, or
- (c) no forfeiture order is made in respect of the property within fourteen days after the conviction of a person in connection with the property:

Return of
seized
property

any person who claims an interest in the property may apply to the court for an order that the property be returned to him.

(2) Where an application for an interdict or a forfeiture order in respect of property seized in terms of this Part is refused, the Inspector-General of Police shall arrange for the property to be returned to the person from whose possession it was seized as soon as practicable after the refusal of the application.

37.-(1) Where a police officer is authorized under the Mutual Assistance Act to apply to a magistrate for a search warrant under this Act in relation to tainted property in respect of a foreign specified offence, the provisions of this Part shall, mutatis mutandis, apply in relation to the application for the search warrant.

Search for
and sei-
Zure of
tainted
property
in relation
to foreign
offences

(2) If, in the course of searching for tainted property in relation to a foreign specified offence, a police officer finds:-

- (a) any property which he believes, on reasonable grounds, to be tainted property in relation to the foreign specified offence although not of the kind specified in the warrant;
- (b) any property which he believes, on reasonable grounds, to be tainted property in relation to another foreign specified offence in respect of which a search warrant is in force; or

- (c) any thing which he believes, on reasonable grounds-
- (i) to be relevant to criminal proceedings in the foreign country in respect of the foreign specified offence; or
 - (ii) will afford evidence as to the commission of a criminal offence;

and he 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, the warrant shall be deemed to authorize the police officer to seize that property or thing.

(3) Any person who claims an interest in property seized under a warrant issued in respect of a foreign specified offence may apply to court for an order the property be returned to him.

(4) On an application in terms of subsection (3), if the court is satisfied that-

- (a) the person is entitled to the property; and
- (b) the property is not tainted property in relation to the foreign specified offence;

the court shall order the Inspector-General of Police to return the property to that person.

(5) Where property has been seized in respect of foreign specified offence and, at the end or thirty days after the day on which the property was seized-

- (a) neither a foreign interdict nor a foreign forfeiture order in relation to the property has been registered in accordance with the Mutual Assistance Act: and
- (b) an interim restraining order has not been issued in terms of this Act in relation to the foreign specified offence;

the Inspector-General of Police shall arrange for the property to be returned to the person from whose possession it was seized as soon as practicable after the expiry of that period.

Restraining Orders

Restraining
Orders

38-(1) Where a person has been convicted of a serious offence or has been or is about to be charged with a serious offence, the Attorney-General may apply to a court for a restraining order in terms of this Part against all or any specified property of that person including property acquired after the issue of the restraining order and property of a person other than the person convicted.

(2) On an application in terms of subsection (1), the court may, subject to section 39-

- (a) order that the property specified in the application shall not be disposed of, or otherwise dealt with, by any person except in such manner and in such circumstances as are specified in the order; or
- (b) if it is satisfied that the circumstances so require, direct that the property or such part of the property as is specified in the order, be taken into the custody and control of a trustee appointed for that purpose by the court.

(3) A restraining order against a person's property may be granted subject to such conditions as the court thinks fit and may make provision for meeting out of the property-

- (a) that person's reasonable living expenses, including the reasonable living expenses of that person's dependents and reasonable business expenses: and
- (b) that person's reasonable expenses in defending a criminal charge; and
- (c) a specified debt incurred by that person in good faith, being a debt to which neither paragraph (a) nor (b) applies.

(4) A court shall not make any provision referred to in subsection (3) unless it is satisfied that the defendant cannot meet the expense or debt concerned out of property that is not subject to the interdict.

(5) Where a trustee takes charge of any property in terms of this section, he may do anything that is reasonably necessary for the purpose of preserving the property, including-

- (a) becoming a party to any civil proceedings affecting the property; and
- (b) ensuring that the property is insured; and
- (c) if the property consists, in whole or in part, of a business, employing or terminating the employment of persons in the business.

39.-(1) Where the offence concerned is a specified offence, the court shall, subject to this section, issue a restraining order against the property.

(2) Where the offence concerned is a serious offence other than a specified offence, the court shall, subject to this section, issue an interdict against the property unless the court is satisfied that it is not in the public interest to make such an order.

(3) Where the defendant has not been convicted of the offence concerned, the court shall not issue a restraining order unless-

- (a) the application for the interdict is supported by an affidavit of a police officer stating that he believes that the defendant committed the offence; and
- (b) the court is satisfied, having regard to the matters contained in the affidavit, that there are reasonable grounds for holding that belief.

Grounds
for issuing
a restraining
order

(4) Where the application is made pending the charging of the defendant with the offence concerned, the court shall not issue a restraining order unless it is satisfied that the defendant will be charged with the offence or a related offence within forty-eight hours.

(5) Where the offence concerned is a serious offence other than a specified offence, the court shall not issue a restraining order against the property of the defendant unless-

(a) the application is supported by an affidavit of a police officer stating that he believes that-

(i) the property is tainted property; or

(ii) the defendant derived a benefit, directly or indirectly, from the commission of the offence; and

(b) the court is satisfied, having regard to the matters contained in the affidavit, that there are reasonable grounds for holding that belief.

(6) Where a restraining order is sought against a person other than the defendant, the court shall not issue the restraining order unless-

(a) the application is supported by an affidavit of a police officer stating that he believes that-

(i) the property is tainted property in relation to the offence; or

(ii) the property is subject to the effective control of the defendant who derived a benefit, directly or indirectly, from the commission of the offence; and

(b) the court is satisfied, having regard to the matters contained in the affidavit, that there are reasonable grounds for holding that belief.

(7) In determining whether there are reasonable grounds to believe that property is in the effective control of the defendant, the court may have regard to the matters referred to in subsection (2) of section 23.

(8) A restraining order shall be granted in respect of property whether or not there is any risk of the property being disposed of, or otherwise dealt with, in such manner as would defeat the operation of this Act.

(9) A court may refuse to grant a restraining order if the Republic fails to give the court such undertakings as the court considers appropriate with respect to the payment of damages or costs in relation to the granting and operation of the order.

(10) An affidavit made a police officer for the purposes of this section shall set out the grounds on which the officer holds any particular belief.

Notice of application for restraining order

40. Subject to subsection (2), the Attorney-General shall give written notice of an application for a restraining order against property to:-

(a) the owner of the property; and

(b) any other person whom he has reason to believe may have an interest in property.

(2) The court may grant a restraining order notwithstanding that no notice of the application has been given in terms of subsection (1) if it is satisfied that:-

- (a) circumstances of urgency require the granting of the order; or
- (b) it would be contrary to the public interest to give notice of the application;

but, subject to subsection (3), a restraining order granted in terms of this subsection shall cease to have effect at the end of such period, not exceeding fourteen days, as may be specified by the court.

(3) The court may, on application by the Attorney-General before the expiry of the period referred to in subsection (2), extend the period of operation of the restraining order granted in terms of that subsection if the court is satisfied that there are circumstances justifying the extension and the owner of the property or any other person who may have an interest in the property shall be notified in writing of the application in terms of this subsection.

(4) The court may at any time before the final determination of an application for a restraining order or an extension of the period of operation of a restraining order, direct the Attorney-General to give or publish notice of the application to a specified person or class of persons, in such manner and within such time as the court may fix.

41. Where the Attorney-General has, in terms of section 40, given notice of an application for a restraining order or for the extension of the period of operation of restraining order, any person who claims an interest in the property may appear and adduce evidence at the hearing of the application.

Persons who may appear and adduce evidence
Court may make further orders

42.-(1) Subject to subsection (2), where a restraining order is made against a person's property, the Attorney-General shall give the person in written notice of the order.

(2) Where a court makes a restraining order, but it is satisfied that it would be in the public interest to delay giving notice of the order to a person, the court may order that giving the person notice of the restraining order be delayed for such period as is specified in the order under subsection (1) and the Attorney-General shall give the person notice of the restraining order as soon as practicable after the end of the period specified.

43.-(1) Where a court grants a restraining order, it may, at the time it makes the order or at any later time, make any ancillary order which it may consider necessary, including-

Court may make further orders

- (a) an order varying the property to which the restraining order relates; or
- (b) an order varying any condition to which the restraining order is subject; or

- (c) an order for the examination on oath of the person (in this section called the "respondent") whose property is subject to the restraining order or any other person concerning the affairs of the respondent, including the nature and location of the property of the respondent; or
 - (d) an order for the carrying out of any undertaking given by the United Republic in relation to the payment of damages or costs arising from the granting of the restraining order; or
 - (e) Where the property is in the custody or under the control of a trustee-
 - (i) an order directing the manner in which the trustee may exercise his powers or perform his duties in relation to the property; or
 - (ii) an order determining any question relating to the property including any question relating to the liabilities of the respondent;
 - (iii) an order directing the respondent to furnish the trustee, within a specified period, with a statement setting out such particulars of the property as the court may think proper.
- (2) An order under subsection (1) may be made on application by-
- (a) the Attorney-General; or
 - (b) the respondent; or
 - (c) the trustee; or
 - (d) with the leave of the court, any other person

and every person with an interest in the matter shall be notified by the applicant, in writing, of the application.

(3) Any person having an interest in property which is the subject of a restraining order may apply to court for the variation of the restraining order to exclude the person's interest from the order and the court shall grant such application-

- (a) if the offence concerned is not a specified offence and the interest is not tainted property; or
- (b) where the offence concerned is a specified offence, if it is satisfied that-
 - (i) the applicant was not in any way involved in the commission of the offence; and
 - (ii) the interest in the property was acquired for sufficient value, without knowledge, and in circumstances such as not to arouse a reasonable suspicion that the property was tainted property.

(4) An application in terms of subsection (3) may be granted by the court if the court is satisfied that it is in the public interest to do so having regard to all the circumstances of the case including-

- (a) any financial hardship or other consequence of the interest remaining subject to the restraining order; and
- (b) the seriousness of the offence; and
- (c) the likelihood that the interest may be subject to a forfeiture order or to section 25 or be required to satisfy a pecuniary penalty order.
- (5) A person who has been convicted of or has been charged or is about to be charged with, a specified offence and whose property is subject to a restraining order may apply to court for the exclusion of any property from the restraining order and the court shall grant such application if it is satisfied that-
- (a) the property was not used in, or in connection with, the commission of the offence; and
- (h) the interest in the property was lawfully acquired.
- (6) Where a person is examined before a court pursuant to an order under subsection (1), the person shall not be excused from answering any question on the ground that the answer might tend to incriminate him or make him liable to a penalty.
- (7) Where a person other than a person against whom charges have been or are to be laid is examined before a court pursuant to an order under subsection (1), a statement or disclosure made by that person in answer to a question put in the course of the examination, and any information, document or thing obtained as a direct or indirect consequence of the statement or disclosure, shall not be admissible against him in any criminal proceedings except proceedings for giving false testimony in the course of examination.
- (8) For the purposes of subsection (7), proceedings on an application for a restraining order, a forfeiture order or a pecuniary penalty order shall not be regarded as criminal proceedings.
- (9) Where the Attorney-General applies to 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 the answering of the question or production of the document may prejudice the investigation of, or the prosecution of any person for, an offence.
- 44.-(1) Where a court has made a pecuniary penalty order against a person whose property is in the custody or under the control of a trustee, the court may direct the trustee to pay to the United Republic an amount equal to the penalty amount out of the property held by him.
- (2) The court may, for the purposes of subsection (1), direct the sell or otherwise dispose of any of the property in his custody or under his control and authorize him to execute any, deed or instrument in the name of the person who owns or has an interest or right in the property.
- (3) The trustee shall not apply any money in terms of subsection (1) or dispose of any property in terms of subsection (2) until any appeal noted in relation to the matter has been determined or the time for noting any appeal has lapsed without any appeal having been noted.

Trustee to
discharge
pecuniary
penalty
order

Charge on
property
subject to
restrain-
ing order

45.-(1) Where-

- (a) a pecuniary penalty order is made against a person in reliance on his conviction of an offence; and
- (b) a restraining order is or has been made against his property or the property of another person in relation to which an order under section 23(3) is, or has been, made in reliance on his conviction of the offence or a related offence or in reliance on his being charged, or proposed charging, with the offence or a related offence.

then, upon the making of the later of the orders there shall be created, by virtue of this section and without any further assurance, a charge on the property to secure the payment to the United Republic of the penalty amount.

(2) Where a charge is created by subsection (1) on property of a person, the charge shall cease to have effect in respect of the property-

- (a) upon the quashing of the conviction in reliance on which the pecuniary penalty order was made;
- (b) upon the discharge of the pecuniary penalty order or the restraining order by a court hearing an appeal against the making of the order;
- (c) upon payment to the United Republic of penalty amount in satisfaction of the pecuniary penalty order;
- (d) upon the sale of the property to a purchaser in good faith for value who, at the time of purchase, has no notice of the charge,

whichever occurs first.

(3) A charge created on property by subsection (1)-

- (a) shall be subject to every encumbrance on the property that came into existence before the charge and that would, apart from this subsection, have priority over the charge;
- (b) shall have priority over all other encumbrances; and
- (c) subject to subsection (2). shall not be affected by any change of ownership of the property.

(4) Where a charge is created by subsection (1) on property of a particular kind and the provisions of any law in the United Republic provide for the registration of title to, or charges over, property of that kind, the Public Trustee or the Attorney-General, as the case be, may cause the charge so created to be registered under the provisions of that law and, if the charge is so registered, a person who purchases or otherwise acquires an interest in the property after the registration of the charge shall, for the purposes of subsection (2)(d), be deemed to have notice of the charge at the time of the purchase or acquisition.

Registra-
tion of
restrain-
ing orders

46. Where a restraining order has been granted in respect of immovable property or any property or interest in property that is subject to registration, the Attorney-General shall apply to the appropriate registrar for a recording in the register of the particulars of the restraining order.

40.-Every person who disposes of, or otherwise deals with, property which to his knowledge is subject to a restraining order shall be guilty of an offence and liable:-

Contra-
vention of
restrain-
ing orders

(a) in the case of an individual, to a fine not exceeding five hundred thousand shillings or the value of the property, whichever is the greater, or to imprisonment for a period not exceeding fifteen years, or to both such fine and such imprisonment; or

(b) in the case of a body corporate, to a fine not exceeding five million shillings or three times the value of the property, whichever is the greater.

(2) Any unauthorized dealing with property which is subject to a restraining order may be set aside by the court at the instance of the Attorney-General.

48.- (1) If, after a trustee has been directed to pay a pecuniary penalty out of the property of a person, the trustee is given notice in writing of proceedings in terms of the law for the time being in force in relation to insolvency against the person, he shall not take any action to sell or otherwise dispose of any property or pay the United Republic any money until the proceedings have been disposed of.

(2) Where a person whose property is in the custody or under the control of a trustee becomes insolvent, the property shall be deemed to be in the possession or under the control of the trustee as, or on behalf of, the trustee of the estate of the insolvent person.

49.- (1) A trustee shall not be personally liable for:-

(a) any loss or damage arising from his having taken custody or control of the property which is sustained by any person claiming the property or an interest in the property unless the court in which the claim is made is of the opinion that the trustee is guilty of negligence in respect of the taking of custody or control of the property; or

(b) the cost of proceedings instituted to establish a claim to the property or an interest in the property.

Protec-
tion of
trustee
from per-
sonal lia-
bility

(2) A trustee shall not be personally liable for any rate or tax due under any enactment in respect of property which is in his custody or under his control.

50.- (1) A trustee shall be entitled to remuneration and expenses in respect of the performance of his duties in relation to property in his custody or under his control.

Remuner-
ation and
expenses
of trustee

(2) The Minister shall by regulations published in the Gazette provide for or in respect of the remuneration and expenses of a trustee in relation to the performance of his duties under this Act.

Court may revoke restraining orders	<p>51.-(1) A court may, on application by a person against whom a restraining order has been issued, revoke the order if the person given security to the satisfaction of the court for the payment of any pecuniary penalty that may be imposed upon him.</p> <p>(2) A person who makes an application in terms of subsection (1) shall notify the Attorney-General and, where the property is in the custody or under the control of a trustee, the trustee.</p>
When restraining order ceases to have effect	<p>52.-(1) A restraining order shall cease to have effect if the charge against the person in relation to whom the order was issued is withdrawn or if the person is acquitted.</p> <p>(2) Where a court has made a confiscation order, a restraining order shall cease to have effect once the confiscation order is satisfied or otherwise discharged.</p>
Interim restraining in respect of foreign offence	<p>53.-(1) Where the Attorney-General is authorized under the Mutual Assistance Act, to obtain the issue of a restraining order in terms of this Act in respect of a foreign specified offence, the provisions of this Part relating to the application for a restraining order shall <i>mutatis mutandis</i>, apply in relation to the application for a restraining order in respect of the foreign specified offence.</p> <p>(2) A restraining order, granted in respect of a foreign specified offence shall cease to have effect on the expiry of a period of thirty days commencing on the day on which the order was granted.</p> <p>(3) On application by the Attorney-General before the expiry of the period referred to in subsection (2), a court may extend the period of operation of the restraining order.</p> <p>(4) Where a foreign restraining order is not registered the High Court in terms of the Mutual Assistance Act, before the expiry of the period referred to in subsection (2) or (3), the order referred to in subsection (1) shall cease to have effect.</p>
Registered foreign restraining orders	<p>54. Where a foreign restraining order has been registered with the High Court in terms of the Mutual Assistance Act, the provisions of this Part relating to restraining orders shall, subject to sections 55 and 56 <i>mutatis mutandis</i>, apply in relation to registered foreign interdicts or restraining orders,</p>
Trustee to take control of property in relation to registered foreign order	<p>55.-(1) Where a foreign restraining order has been registered in the United Republic, the court may, upon application by the Attorney-General, direct that the property, or any part of the property, be taken into the custody of or under the control of a trustee appointed by the court.</p> <p>(2) The owner of the property or any other person whom the Attorney-General has reason to believe may have an interest in the shall be notified in writing of any application in terms of subsection (1) —</p> <p>(3) The court may, before making a direction in terms of subsection (1), direct the Attorney-General to give or publish notice of the application to a specified person or class of persons, in such manner and within such time as the court considers appropriate.</p>

(4) Any person who claims an interest in property in respect of which an application in terms of subsection (1) has been made may appear and adduce evidence at the hearing of the application.

(5) Where a direction in terms of subsection (1) has been made, the court may at any time make any one or more of the following orders-

- (a) an order regulating the manner in which the trustee may exercise his powers or perform his duties; or
- (b) an order determining any question relating to that property; or
- (c) an order directing the owner of the property to furnish the trustee with such particulars relating to the property as the court thinks fit.

(6) A trustee may do anything that is reasonably necessary for the purpose of preserving the property, including-

- (a) becoming a party to any civil proceedings relating to or affecting the property; and
- (b) ensuring that the property is insured-, and
- (c) if the property consists, in whole or in part, of a business, employing or terminating the employment of persons in the business.

56. The court may, on application by any person claiming an interest in property which is subject to a foreign restraining order and which is in the custody of or under the control of a trustee, make an order requiring the Attorney-General to give or carry out undertaking with respect to the payment of damages or costs in relation to that foreign restraining order.

Under-
taking by
the Attor-
ney Gen-
eral

57.-(1) Where-

- (a) a foreign restraining order is registered in the United Republic in respect of property of a person convicted of or alleged to have committed, a foreign specified offence; and
- (b) a foreign pecuniary penalty order against the person is registered in the United Republic in relation to the matter; and
- (c) the property is in the custody, or under the control, of a trustee;

Discharge
of
tered
foreign

the court in which the foreign pecuniary penalty order is registered may direct the trustee to pay to the State an amount equal to the penalty amount out of the property.

(2) For the purposes of subsection (1) the court may-

- (a) direct the trustee to sell or otherwise dispose of such of the property under his control as the court may specify; and
- (b) authorize the trustee to execute any deed or instrument in the name of the person who owns or has an interest or right in the property.

PART VI
INFORMATION GATHERING POWERS
Production Orders

Produc-
tion
orders

58.-(1) Where a person has been convicted, or is reasonably suspected of having committed, a serious offence and a police officer has reasonable grounds for suspecting that any person has possession or control of any property-tracking document in relation to that offence he may apply to a court for an order directing the person, subject to subsection (5) to produce to a police officer any document described in the order which is in that person's possession or control.

(2) An application in terms of subsection (1) shall be supported by an affidavit setting out the grounds upon which the suspicion is based.

(3) Where, in an application for an order in terms of subsection (1), a police officer includes in the affidavit referred to in subsection (2) information that he has reasonable grounds to believe that the person concerned derived a benefit, directly or indirectly, from the commission of the offence and but that the property specified in the affidavit is subject to the effective control of the person, 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 in terms of subsection (3) whether to treat a document as a property-tracking document in relation to an offence, a court may have regard to matters referred to in subsection (2) of section 25.

(5) An order for the production of documents shall not be made-

(a) in respect of bankers' books; or

(b) unless the court is satisfied that there are reasonable grounds for making the order.

(6) Where a document is produced to a police officer, the police officer may-

(a) inspect the document; or

(b) take extracts from the document- or

(c) make copies of the document; or

(d) retain the document if, and for as long as, retention of the document is reasonably necessary.

(7) A police officer referred to in subsection (6) shall, at the request of the person to whom the order was addressed-

(a) give the person a copy of the document certified by the police officer in writing to be a true copy of the document; or

(b) permit the person to-

(i) inspect the document; or

- (ii) take extracts from the document; or
- (iii) make copies of the document.

(8) A person shall not be excused from producing a document on the ground that its production-

- (a) might tend to incriminate him or make him liable to penalty; or
- (b) would be in breach of any obligation or privilege not to disclose the existence or contents of the document.

(9) The production of a document in terms of this section or any information, document or thing obtained as a direct or indirect consequence of the production of the document, shall not be admissible against any person, other than the person against whom charges have or are to be laid, in any criminal proceedings except proceedings relating to:-

- (a) a contravention of the order of the court; or
- (b) the production of a document known to the person to be false or misleading in a material particular.

(10) For the purposes of subsection (9) proceeding on an application for restraining order a forfeiture order or a pecuniary penalty order shall not be regarded as criminal proceedings.

(11) In this section:-

"bankers books" means any accounting records used in the ordinary business of banking and includes ledgers, day-books, cash-books and account books.

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

Variation
of produc-
tion order

60.-(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, that person shall be guilty of an offence under this section if he:-

Failure
comply
with pro-
duction
order

- (a) contravenes the order without reasonable excuse; or
- (b) in purported compliance with the order produces or makes available a document known to them 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) An offence against subsection (1) shall be punishable, upon conviction by:-

- (a) if the offender is natural person, a fine not exceeding one million shillings or imprisonment for a term not exceeding five years, or both such fine and imprisonment; or
- (b) if the offender is body corporate, a fine not exceeding five million shillings.

Production orders in relation to foreign offences

61.-(1) Where a police officer is authorized in terms of the Mutual Assistance Act to apply to court for a production order under this Act in respect of a foreign specified offence, he may apply for an order and sections 63 and 64 shall, *mutatis mutandis*, apply in respect of the foreign specified offence.

(2) Where a police officer takes possession of a document under a production order made in respect of a foreign specified offence, he may retain the document for a period of 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 be sent to an authority of the foreign country which requested obtaining of the production order.

Search Powers

Powers to search for property tracking document

62.-(1) A police officer may enter upon any land or upon into any premises and-

- (a) search the land or premises for any property tracking document in relation to a serious offence; and
- (b) seize any document found in the course of the search which he believes, on reasonable grounds, to be a property-tracking document in relation to the serious offence.

(2) Entry by a police officer shall be made with the consent of the occupier of the land or premises or under a warrant issued in terms of section 68.

Search warrant for property tracking document

63.-(1) Where a person has been convicted of, or is reasonably suspected of having committed, a serious offence, and a police officer has reasonable grounds for suspecting that there is upon any land or upon or in any premises, a property-tracking document in relation to the offence, that police officer may apply to a court for a search warrant in respect of the land or premises and the court may subject to subsection (5), issue a search warrant authorizing a police officer, with such assistance as is necessary:-

- (a) to enter upon the land or into premises specified in the warrant to search for documents described in the warrant; and
- (b) to seize any document found in the course of the search that the police officer believes, on reasonable grounds, to be a property-tracking document.

(2) An application in terms of subsection (1) shall be supported by an affidavit setting out the grounds upon which the suspicion is based.

(3) Where, in an application for a warrant in terms of subsection (1), a police officer includes in the affidavit referred to in subsection (2) information that he has reasonable grounds to believe that the person concerned derived a benefit, directly or indirectly, from the commission of the offence and that the property specified in the affidavit is subject to the effective control of the person, 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, in terms of subsection (3), whether to treat a document 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 23

(5) A search warrant shall not be issued in terms of this section unless the court is satisfied that:-

- (a) the document concerned cannot be identified or described with sufficient particularity for the purposes of obtaining a production order; and
- (b) a production order has been given in respect of the document and has not been complied with; and
- (c) a production order is unlikely to be complied with; and
- (d) the investigation for the purposes of which the search warrant is sought might be seriously prejudiced if the police officer does not gain immediate access to the document without notice to any person; and
- (e) there are reasonable grounds for issuing the warrant.

(6) The search warrant shall state:-

- (a) the purpose for which it has been issued, including the nature of the serious offence which has been or is believed to have been committed-, and
- (b) the time during which entry is authorized; and
- (c) a description of the kind of documents authorized to be seized; and
- (d) a date, being not later than thirty days after the date of issue of the warrant, on which the warrant shall cease to have effect.

(7) If, in the course of searching for a particular document in relation to an offence, a police officer finds:-

- (a) another document which is not of the kind described in the warrant but which he believes, on reasonable grounds, to be a property-tracking document in relation of the offence concerned or a property-tracking document in relation to another serious offence; or

- (b) anything that he believes, on reasonable grounds, will afford evidence as to the commission of an offence; he may, if he believes on reasonable grounds that it is necessary to seize the document or thing in order to prevent its concealment, loss or destruction, seize the document or thing.

Search warrants in relation to foreign offences

64.-(1) Where a police officer is authorized in terms of the Mutual Assistance Act, to apply to a court for a search warrant under this Act for a property-tracking document in respect of a foreign specified offence, the police officer may apply for the warrant and section 63 shall *mutatis mutandis*, apply in respect of the application.

(2) Where a police officer takes possession of a document under a warrant in respect of a foreign specified offence, he may retain it for a period not exceeding thirty days 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.

Monitoring Orders

Monitoring orders

65.-(1) The Director of Public Prosecutions may apply to a court for a *monitoring order* directing a financial institution to give information to the Inspector General of Police, about financial transactions, conducted through an account held by a particular person with that financial institution.

(2) A monitoring order shall apply in relation to financial transactions conducted during a period specified in the order.

(3) A court shall not make a monitoring order unless it is satisfied that there are reasonable grounds for suspecting that the person in respect of whose account the information is sought:-

- (a) has committed or is reasonably suspected of having committed a specified offence; or
- (b) was involved in the commission of or is reasonably suspected of having been involved in the commission of, a specified offence; or
- (c) has benefited, directly or indirectly, from the commission of a specified offence.

(4) A monitoring order shall specify the name of names in which the account is believed to be held and the type of information that the financial institution is required to give.

(5) Any financial institution which contravenes a monitoring order of provides false or misleading information shall be guilty of an offence and liable to a fine not exceeding one million shillings.

66.-(1) A financial institution that is or has been subject to a monitoring order shall not disclose the fact to any person except a legal practitioner for the purpose of obtaining legal advice or representation in relation to the order.

Existence and operation Monitoring order not to be disclosed

(2) The Inspector-General of Police shall not disclose to any person other than a member of the Police Force in the performance of his duties, the existence of a monitoring order.

(3) The Inspector-General of Police shall not be required by any court to disclose the existence of a monitoring order.

(4) Any person who contravenes this section shall be guilty of an offence and liable to-

(a) in the case of an individual, a fine not exceeding two hundred thousand shillings to imprisonment for a period not exceeding ten years or to both such fine and such imprisonment;

(b) in the case of a body corporate, to a fine not exceeding one hundred thousand shillings.

67.-(1) Where a police officer is authorized in terms of the Mutual Assistance Act, to apply to a court for a monitoring order under this Act in respect of a foreign specified offence, section 66 shall, *mutatis mutandis*, apply in respect of the foreign specified offence.

Monitoring orders in relation offences

(2) Where the Inspector-General of Police is informed pursuant to a monitoring order made in relation to a foreign specified offence, he shall forthwith pass the information on to the Attorney General.

Obligations of Financial Institutions

68.-(1) Subject to section 69, every financial institution shall retain every document relating to a financial transaction in its original form for a minimum period of ten years.

Retention of records by financial institutions

(2) Subsection (1) shall not apply to a financial transaction relating to an amount not exceeding two thousand shillings or such other amount as the Minister may prescribe.

(3) Any financial institution which contravenes this section shall be guilty of an offence and liable to a fine not exceeding two hundred thousand shillings.

(4) This section shall not be construed as limiting any other obligation of a financial institution in terms of any other enactment to retain documents.

69.-(1) Where a financial institution is required by any enactment to release a document referred to in subsection (1) of section 68 before the period of ten years has elapsed the institution shall retain a copy of the document.

Register of original documents

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

(3) Any financial institution which contravenes this section shall be guilty of an offence and liable to a fine not exceeding ten thousand shillings.

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70.-(1) Where a financial institution has reasonable grounds for believing that information about an account held with it may be relevant to an investigation of, or the prosecution of a person for, an offence, the institution may give the information to a police officer.

(2) No action shall be taken against a financial institution or a director, officer, employee or agent of the financial institution acting in the course of his employment in relation to any action taken by that institution or person in terms of subsection (1).

PART VII MISCELLANEOUS PROVISIONS

Money
sunder-
ing

71.-(1) In this section, the term "transaction" includes the receiving or making of a gift,

(2) Any person who, after the commencement of this Act, engages in money laundering shall be guilty of an offence against this section and liable on conviction, to-

- (a) if he is an individual, a fine not exceeding twenty million shillings or twice the market value of the property, whichever is the greater, or to imprisonment for a period not exceeding fifteen years or to both such fine and imprisonment;
- (b) if the person is a body corporate, a fine not exceeding sixty million shillings or three times the market value of the property, whichever is the greater.

(3) A person shall be guilty of the offence of money-laundering if, and only if, he:-

- (a) engages, directly or indirectly, in a transaction, whether in or outside the United Republic, which involves the removal into or from the United Republic, of money or other property which is the proceeds of crime † or
- (b) receives, possesses, conceals, disposed of, brings into or removes from the United Republic, any money or other property which is the proceeds of crime;

and he knows or ought to know or to have known that the money or other property is or was derived or realised, directly or indirectly, from some form of unlawful activity.

72.-(1) No person shall acquire, hold or in any other way deal in any tainted property.

Prohibition in dealing in tainted property

(2) Any tainted property in relation to a foreign specified offence acquired, hold or dealt in contravention of this section shall be liable to be forfeited to the United Republic by order of the High Court on application by the Attorney-General .

73.-(1) For the purposes of this Act, where it is necessary to establish the state of mind of a body corporate in respect of conduct engaged in or deemed, in terms of subsection (2), to have been engaged in, by the body corporate, it shall be sufficient to show that a director, officer, employee or agent of the body corporate, being a director, employee or agent by whom the conduct was engaged in the course of his employment, had that state of mind.

Conduct of directors officers, employees or agents

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

- (a) a director, officer, employee or agent of the corporate body in the course of his employment; or
- (b) any other person at the direction or with the consent, whether express or implied, of a director, employee or agent of the body corporate, where the giving of the direction or consent is within the scope of authority of the director, officer, employee or agent;

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

(3) Any conduct engaged in on behalf of a person other than a body corporate by:-

- (a) an employee or agent of the person within the scope of his authority; or
- (b) any other person at the direction or with the consent, whether express or implied, of an employee or agent of the first-mentioned person, where the giving of the direction or consent is within the scope of authority of the employee or agent;

shall, for the purposes of this Act, be deemed to have been engaged in by the first-mentioned person.

(4) Where it is necessary to establish the state of mind of a person in relation to conduct deemed in terms of subsection (3) to have been engaged in by that person, it shall be sufficient to show that the employee or agent of that person, being an employee or agent by whom the conduct was engaged in within the scope of his authority, had that state of mind.

(5) Any reference in this section to the state of mind of a person includes a reference to the knowledge, intention, opinion, belief or purpose of that person and that person's reasons for that intention, opinion, belief or purpose -

Dealings
with for-
feited
property

74.-(1) A person who knows that a forfeiture order has been made in respect of registrable property shall not, unless the forfeiture order has been discharged, dispose of, or otherwise, deal with the property before the interest of the United Republic has been registered in the appropriate register.

(2) A person who contravenes or fails or refuses to comply with subsection (1) shall be guilty of an offence and liable on conviction:-

- (a) if he is an individual to a fine not exceeding two hundred thousand shillings or imprisonment for a period not exceeding five years or to both such fine and imprisonment;
- (b) if the person is a body corporate, to a fine not exceeding five million shillings.

Standard
of proof

75. Subject to section 12, any question of fact to be decided by a court on an application under this Act shall be decided on a balance of probabilities.

Appeals

76.-(1) Any person who has an interest in property against which a forfeiture order is made may appeal against that order:-

- (a) in the case of a person convicted of the offence in reliance on which the order was made, in the same manner as if the order were, or were part of, a sentence imposed on the person in respect of the offence; or
- (b) in any other case, in the same manner as if the person had been convicted of the offence in reliance on which the order was made and the order were, or were part of, a sentence imposed on the person in respect of the offence.

(2) A person against whom a pecuniary penalty is made may appeal against that order in the same manner as if it were, or were part of, a sentence imposed on the person in respect of the offence in reliance on which the order was made.

(3) Where a court makes a pecuniary penalty order, and makes an order under section 23(3) declaring that particular property is available to satisfy the order, any person who has an interest in the property may appeal against the order under section 23(3) in the same manner as if the person had been convicted of the offence in reliance on which the order was made and the order were, or were part of, a sentence imposed on the person in respect of the offence.

(4) On an appeal against a forfeiture order, a pecuniary penalty order or an order made under section 23(3), the order may be confirmed, discharged or varied.

(5) The Attorney-General may appeal against a forfeiture order, a pecuniary penalty court to make such an order in the same manner as if the order refusal by a court to make such an order in the same manner as if the order were, or were part of, a sentence imposed in respect of the offence in reliance on which the order was made.

(6) Nothing in this section shall be construed as affecting any right of appeal that a person would have apart from this section.

77. Where a person brings, or appears at, proceedings under this Act before a court in order to,;- Costs

- (a) prevent a forfeiture order or restraining order from being made against property of the person; or
- (b) to have property of the person excluded from a forfeiture order or restraining order,

if the person is successful in those proceedings, and the court is satisfied that person was not involved in any way in the commission of the offence in respect of which the forfeiture order or restraining order was sought or made, then the court may order the Government to pay all costs incurred by the person in connection with the proceedings or such part of these costs as is determined by the court.

78. Nothing in this Act shall be taken as limiting or restricting:-

- (a) the operation of any law of the United Republic or of the Revolutionary Government of Zanzibar providing for the forfeiture of property or the imposition of pecuniary penalties; or
- (b) the remedies available to the Government, apart from this Act, for the enforcement of its rights and the protection of its interests.

Operation
of other
laws not
affected

79. The Minister may make regulations for the better carrying out of the purposes and provisions of this Act, and prescribing matters which are:-

- (a) required or permitted by this Act to be prescribed;
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Regula-
tions

Passed in the National Assembly on the fifth day of November, 1991.

Mmwindadi

Clerk of the National Assembly