



ANALYSIS

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Price \$18.50

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2003, No. 12

An Act to provide for the confiscation of the proceeds of serious offences

(7 May 2003)

BE IT ENACTED by the Parliament of the Cook Islands in Session assembled, and by the authority of the same, as follows:

PART 1
PRELIMINARY

1. Short title and commencement - (1) This Act may be cited as the Proceeds of Crime Act 2003.

(2) This Act comes into force on a date to be determined by the Queen's Representative by Order in Executive Council.

2. Objects of Act - The principal objects of this Act are --
- (a) to deprive persons of the proceeds of, and benefits derived from, the commission of serious offences; and
 - (b) to provide for the forfeiture of property used in, in connection with, or for facilitating, the commission of serious offences; and
 - (c) to enable law enforcement authorities to trace those proceeds, benefits and property.
3. Definitions - (1) In this Act, unless the context otherwise requires, -
- "account" has the same meaning given by section 2 of the Financial Transactions Reporting Act 2003;
- "Administrator" means the Solicitor-General or the person appointed by the Attorney-General under section 102;
- "appeal" includes proceedings by way of discharging or setting aside a judgment, and an application for a new trial or for a stay of execution;
- "authorised officer" for the provisions of this Act, means a person, or a person in a class of persons, designated, in writing by the Attorney-General, as an authorised officer;
- "benefit" has the meaning given by section 4;
- "charge" in relation to an offence, includes any procedure by which criminal proceedings are commenced against a person;
- "Commissioner" means the Commissioner of Police appointed under section 3 of the Police Act 1981;
- "conviction" has the same meaning given by subsection 5(1);
- "Court" means the High Court of the Cook Islands and its appellate courts;
- "currency" means coin and paper money that is legal tender in its country of issue;
- "dealing with property" includes, -
- (a) for property that is a debt, making a payment to the creditor in reduction or discharge of the debt; and
 - (b) giving or receiving property as a gift; and
 - (c) removing property from the Cook Islands;

“defendant” means a person charged with a serious offence, whether or not he or she has been convicted of the offence; and, for proceedings for a restraining order, includes a person who is likely to be charged with a serious offence;

“document” means a record of information in any form, including -

- (a) a written or printed thing (including a map, plan, graph or drawing); and
- (b) a computer file, including a record that is kept in electronic form and can be accessed in the Cook Islands; and
- (c) a photograph; and
- (d) a disk, tape, film soundtrack or other thing in which sound or other data is embodied; and
- (e) a film, negative, tape or other thing in which a visual image is embodied;

“financial institution” has the same meaning given by section 2 of the Financial Transactions Reporting Act 2003;

“Financial Intelligence Unit” means the Financial Intelligence Unit established under section 20 of the Financial Transactions Reporting Act 2003;

“foreign forfeiture order” has the same meaning given by section 3 of the Mutual Assistance Act;

“foreign pecuniary penalty order” has the same meaning given by section 3 of the Mutual Assistance Act;

“foreign restraining order” has the same meaning given by section 3 of the Mutual Assistance Act;

“foreign serious offence” means a serious offence against the law of a foreign country;

“forfeiture order” means an order under section 17(1);

“gift” has the meaning given by section 8;

“gift caught by this Act” has the meaning given by section 10;

“interest”, for 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;

“Judge” means a Judge of the Court;

“Justice” means a Justice of the Peace for the Cook Islands appointed under Article 62 of the Constitution of the Cook Islands;

“Mutual Assistance Act” means the Mutual Assistance in Criminal Matters Act 2003;

“pecuniary penalty order” means an order made under subsection 26(1);

“police officer” means a member of the Police of the Cook Islands;

“proceedings” includes any procedure (including an inquiry, investigation, or preliminary or final determination of facts) conducted by or under the supervision of a Judge or Justice or Registrar of the Court in connection with -

- (a) an alleged or proven offence; or
- (b) property derived from that offence;

“proceeds”, in relation to property, means property into which any property derived or realized directly from a serious offence was later successively converted, transformed or intermingled, as well as income, capital or other economic gains derived or realized from such property at any time since the commission of the offence, whether the property is situated in the Cook Islands or elsewhere;

“production order” means an order under section 80;

“property” includes money and all other property, real or personal, whether situated in the Cook Islands or elsewhere, including an enforceable right of action and other intangible or incorporeal property;

“property of, or in the possession or control of a person” includes property that is subject of a gift;

“property-tracking document” for an offence, means a document relevant to -

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

“quash” has the meaning given by sections 5(2), (3) and (4);

“realisable property” has the meaning given by section 6;

“relevant application period” for a person’s conviction of a serious offence, means the period of 6 years after, -

- (a) if the person was actually convicted of the offence, the day when the person was convicted of the offence; or
- (b) if the person is taken to have been convicted of the offence because of section 5(1)(b), the day when the person was discharged without conviction; or
- (c) if the person is taken to have been convicted of the offence because of section 5(1)(c), the day when the Court took the offence into account in passing sentence for the other offence referred to in that section;

“restraining order” means an order made under sections 50 or 63;

“serious offence” means -

- (a) acts or omissions that constitute an offence against the law of the Cook Islands punishable by imprisonment for not less than 12 months or the imposition of a fine of more than \$5,000; or
- (b) acts or omissions that constitute an offence against the law of another country that, had those acts or omissions occurred in the Cook Islands, they would have constituted an offence against the law of the Cook Islands punishable by imprisonment for not less than 12 months or the imposition of a fine of more than \$5,000;

“tainted property” means -

- (a) property that is used in, or in connection with, the commission of a serious offence whether situated in the Cook Islands or elsewhere; or
- (b) property that is intended to be used in, or in connection with the commission of a serious offence whether situated in the Cook Islands or elsewhere; or
- (c) proceeds of that offence;

“trust” means an arrangement in which a person –

- (a) invests funds in a trust; and
- (b) is a beneficiary under a trust; and
- (c) receives profit or income from the acquisition, holding, management or disposal of property under the trust;

“unlawful activity” means an act or omission that constitutes an offence against a law of the Cook Islands or of a foreign country.

- (2) A reference in this Act to the law of a country includes -
 - (a) both the written and unwritten law of the country; and

(b) a law in force in a part of the country.

4. Meaning of "benefit" - For the purposes of this Act, -

- (a) a person benefits from an offence if the person receives, at any time, any payment or other reward in connection with, or derives any pecuniary advantage from, the commission of the offence; and
- (b) a reference to a benefit derived or obtained by, or otherwise accruing to, a person includes a benefit derived or obtained by, or otherwise accruing to, another person at the first mentioned person's request or direction.

5. Meaning of "conviction" and "quash" - (1) For the purposes of this Act, a person is taken to have been convicted of an offence if -

- (a) the person was convicted of the offence; or
- (b) the person was charged with, and found guilty of the offence, but is discharged without conviction; or
- (c) the person was not found guilty of the offence, but the Court, with the consent of the person, takes the offence into account in passing sentence on the person for another offence.

(2) If a person is taken, under subsection (1)(a), to have been convicted of an offence, for this Act, the conviction is taken to have been quashed if the person is granted a pardon in relation to the offence.

(3) If a person is taken, under subsection (1)(b), to have been convicted of an offence, for this Act, the conviction is taken to be quashed if the finding of guilt is quashed or set aside.

(4) If a person is taken, under subsection (1)(c), to have been convicted of an offence, for this Act, -

- (a) the conviction is taken to be quashed if the Court's decision to take the offence into account is quashed or set aside; and
- (b) the conviction is not taken to be quashed only because the person's conviction for the offence for which he or she was sentenced is quashed or set aside.

6. Meaning of "realisable property" - (1) In this Act, "realisable property" means any property held by a person -

- (a) who has been convicted of, or charged with, a serious offence; or
 - (b) to whom a person so convicted or charged has directly or indirectly made a gift caught by this Act.
- (2) However, property is not realisable property if -
- (a) there is in force against the property a forfeiture order made under this or another Act; or
 - (b) a forfeiture order is proposed to be made against the property under this or another Act.

7. How value of property is worked out - (1) Subject to subsection (2), for this Act, the value of property (other than currency), to a person holding the property, is, -

- (a) if another person holds an interest in the property, the market value of the person's beneficial interest in the property, less the amount required to discharge any encumbrance on that interest; or
- (b) in any other case, its market value.

(2) For the purposes of this Act, the value at a particular time of a transfer of property is the greater of -

- (a) the value of the property to the recipient when he or she receives it, adjusted to take account of subsequent changes in the value of money; and
- (b) the value to the recipient at that time of:
 - (i) the property; or
 - (ii) the property that, in whole or in part, directly or indirectly represents, in the recipient's hands, the property that he or she received.

8. Meaning of "gift" - (1) For the purposes of this Act, "gift" includes a transfer (directly or indirectly) of property by one person to another for a consideration that is significantly less than the value of the property.

(2) In the circumstances mentioned in subsection (1), sections 9 and 10 apply as if the person had made a gift of as much of the transferred property as bears to the whole property the same proportion as the difference between the value of the property and the value of the consideration.

9. Value of a gift - (1) For the purposes of this Act, the value at a particular time of a gift is the greater of -

- (a) the value of the gift to the recipient when he or she received it, adjusted to take account of changes in the value of money; or
- (b) if subsection (2) applies, the value mentioned in subsection (2).

(2) If, at a particular time, a person holds -

- (a) property (other than currency) that the person received as a gift; or
- (b) property that, in whole or in part, directly or indirectly represents, in the person's hands, property that the person received as a gift;

the value of the gift is the value to the person at that time of -

- (c) the property mentioned in paragraph (a); or
- (d) the property mentioned in paragraph (b), so far as it represents the property that the person received.

10. Meaning of "gift caught by this Act" - (1) A gift made by a person convicted of or charged with a serious offence, including a gift made before the commencement of this Act, is caught by this Act if -

- (a) it was made after the commission of the offence (or, if more than one, the earliest of the offences to which the proceedings for the time being relate) and the Court considers it appropriate in all the circumstances to take the gift into account; or
- (b) it was made by the person convicted or charged at any time and was a gift of property -
 - (i) received by the person in connection with the commission of a serious offence committed by the person or by another person; or
 - (ii) that, in whole or in part, directly or indirectly represented in the person's hands, property received by the person in that connection.

(2) For subsection (1), "offences to which the proceedings for the time being relate" includes, if those proceedings have resulted in the conviction of the person, a reference to any offence that the Court takes into consideration when determining sentence.

PART 2
FORFEITURE ORDERS, PECUNIARY PENALTY ORDERS
AND RELATED MATTERS

General

11. Application for forfeiture order or pecuniary penalty order on conviction -

(1) If a person is convicted of a serious offence committed after this Act commences, the Solicitor-General may apply to the Court for either or both of the following orders -

- (a) a forfeiture order against tainted property;
- (b) a pecuniary penalty order against the person for benefits derived by the person from the commission of the offence.

(2) However, the Solicitor-General may not make an application after the end of the relevant application period for the conviction.

(3) An application under this section may be made for one or more serious offences.

(4) After an application under this section is finally determined, no further application for a forfeiture order or a pecuniary penalty order may be made for the offence for which the person was convicted without leave of the Court.

(5) The Court may give leave for a new application only if -

- (a) the property or benefit to which the new application relates was identified after the previous application was determined; or
- (b) necessary evidence became available only after the previous application was determined; or

- (c) it is in the interests of justice that the new application be made.
- (6) Every application must, -
 - (a) in the case of an application for a forfeiture order, identify the property that is alleged to be tainted property;
 - (b) in the case of an application for a pecuniary penalty order, identify the benefits that are alleged to have been derived from the commission of the offence.

12. Notice of application - (1) If the Solicitor-General applies for a forfeiture order against tainted property in relation to a serious offence for which a person is convicted, -

- (a) the Solicitor-General must give reasonable written notice of the application to the person and to any other person whom the Solicitor-General has reason for believing 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 Solicitor-General:
 - (i) to give reasonable written notice of the application to any person who, in the opinion of the Court, appears to have an interest in the property; or
 - (ii) to publish notice of the application, containing the particulars that the Court directs and as often as the Court directs, in a newspaper published and circulating in the Cook Islands.

(2) If the Solicitor-General applies for a pecuniary penalty order against a person, -

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

13. Amendment of application - (1) The Court may, before finally determining an application for a forfeiture order or pecuniary penalty order, and on the application of the Solicitor-General, allow the amendment of the application to include any other property or benefit if -

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

(2) If -

- (a) the Solicitor-General applies to amend an application for a forfeiture order; and
- (b) the effect of the amendment would be to include additional property in the application for the forfeiture order,

the Solicitor-General must give reasonable written notice of the application to amend to any person whom the Solicitor-General has reason for believing may have an interest in the additional property.

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

(4) If -

- (a) the Solicitor-General applies to amend an application for a pecuniary penalty order against a person; and
- (b) the effect of the amendment would be to include an additional benefit in the application for the pecuniary penalty order,

the Solicitor-General must give the person reasonable written notice of the application to amend.

14. Procedure on application - On an application to the Court made under section 11, the Court may -

- (a) in determining the application, take into account the transcript of any proceedings against the person for the offence; or
- (b) defer passing sentence until the Court has determined the application if the Court:
 - (i) has not, when the application is made, passed sentence on the person for an offence because of which the property became tainted; and
 - (ii) it is satisfied that it is reasonable to do so in all the circumstances.

15. Application for forfeiture order if person has absconded - (1) If, in connection with a serious offence committed after this Act commences, -

- (a) an information has been laid alleging that a person committed the offence; and
- (b) a warrant for the person's arrest is issued for that information; and
- (c) the person absconds,

the Solicitor-General may, within 6 months after the person absconds, apply to the Court for a forfeiture order for any tainted property.

(2) For the purposes of this section, -

- (a) a person is taken to have absconded in connection with an offence if reasonable attempts to arrest the person under a warrant have been unsuccessful during the 6 months starting on the day that the warrant was issued; and

- (b) the person is taken to have absconded on the last day of that 6 months.
- (3) If the Solicitor-General applies, under subsection (1), for a forfeiture order against property, the Court must, before hearing the application, require -
 - (a) reasonable written notice of the application to be given to any person who, in the opinion of the Court, appears to have an interest in the property; or
 - (b) notice of the application, containing the particulars that the Court directs, to be published as often as the Court directs, in a newspaper published and circulated in the Cook Islands.
- (4) A forfeiture order under this section may be made even if the person against whom the warrant is issued dies after the issue of the warrant.

Forfeiture orders

16. Certain tainted property excluded from forfeiture order - A forfeiture order must not be made against tainted property that is native freehold land under the Cook Islands Act 1915.

17. Forfeiture order on conviction - (1) If -

- (a) the Solicitor-General applies to the Court for a forfeiture order against tainted property in relation to a person's conviction of a serious offence; and
- (b) the Court is satisfied that the property is tainted property in relation to that offence,

the Court may order that the property, or so much of the property as is specified by the Court in the order, be forfeited to the Crown.

(2) In deciding whether property is tainted property, the Court may infer, -

- (a) if the evidence establishes that the property was in the person's possession or effective control at the time of, or immediately after, the offence was committed, that the property was used in, or in connection with, committing the offence; and
- (b) if the evidence establishes that the property was found, during investigations by the police before or after the person was arrested for, and charged with, the offence:
 - (i) in the person's possession; or
 - (ii) under the person's control in a building, vehicle, receptacle or place,
 that the property was derived, obtained or realised as a result of the person's committing the offence; and

- (c) if-
 - (i) the evidence establishes that the value, after the person committed the offence, of all the person's ascertainable property is more than the value of all the person's ascertainable property before the person committed the offence; and
 - (ii) the Court is satisfied that the person's income from sources unrelated to criminal activity cannot reasonably account for the increase in value, that the value of the increase represents property that the person derived, obtained or realised directly or indirectly from committing the offence.
- (3) If the Court orders that property (other than money) be forfeited to the Crown, the Court must specify in the order the amount that it considers to be the value of the property when the order is made.
- (4) In considering whether to make a forfeiture order against property, the Court may take into account -
 - (a) any right or interest of a third party in the property; and
 - (b) the gravity of the offence concerned; and
 - (c) any hardship that may reasonably be expected to be caused to any person by the operation of the order; and
 - (d) the use that is ordinarily made of the property, or the use to which the property was intended to be put.
- (5) If the Court makes a forfeiture order, the Court may give any directions that are necessary or convenient to give effect to the order.

18. Voiding of contract - A Court may, before making a forfeiture order under section 17, set aside any conveyance or transfer of property that occurred after the seizure of the property or service of the notice of application on persons affected by the order under section 12, unless the transfer was for valuable consideration to a person acting in good faith and without notice.

19. Effect of forfeiture order - (1) If the Court makes a forfeiture order against property, the order vests the property absolutely in the Crown.

- (2) If the Court makes a forfeiture order against property, -
 - (a) the property must not, except with the leave of the Court and in accordance with any directions of the Court, be disposed of, or otherwise dealt with, by or for the Crown, before:
 - (i) any appeal against the conviction, or the making of the order, is finally determined, or lapses; or
 - (ii) the last day allowed for the lodging of an appeal against the conviction or order passes without an appeal having been lodged; and

- (b) the property may be disposed of, and the proceeds applied or otherwise dealt with as the Administrator directs, after:
 - (i) the determination or lapsing of any appeal lodged against the conviction or the making of the order; or
 - (ii) the last day allowed for lodging an appeal is past without an appeal having been lodged.

20. Protection of third parties - (1) If an application is made for a forfeiture order against property, a person who claims an interest in the property may apply to the Court, before the forfeiture order is made, for an order under subsection (2).

(2) If a person applies to the Court for an order in respect of that person's interest in the property, the Court must make an order declaring the nature, extent and value (as at the time the order is made) of the person's interest if the Court is satisfied -

- (a) that the applicant was not in any way involved in committing an offence for which forfeiture of the property is sought, or a forfeiture order against the property was made; and
- (b) if the applicant acquired the interest at the time of, or after, the offence was committed:
 - (i) for sufficient consideration; and
 - (ii) without knowing, and in circumstances so as not to arouse a reasonable suspicion, that the property was, at the time of the acquisition, tainted property.

(3) If a forfeiture order has already been made against property, a person who claims an interest in the property may, within 6 months starting on the day when the order is made, apply to the Court for an order under subsection (2).

(4) A person may not make an application under subsection (3), except with the leave of the Court, if the person -

- (a) knew about the application for the forfeiture order before the order was made; or
- (b) appeared at the hearing of that application.

(5) A person who applies to the Court under subsection (1) or (3) must give reasonable written notice of the application to the Solicitor-General.

(6) The Solicitor-General -

- (a) is a party to the proceedings in an application under subsection (1) or (3); and
- (b) may make an application under subsection (1) for a person.

(7) An appeal lies to the Court of Appeal of the Cook Islands from an order made under subsection (2).

(8) On application by a person who has obtained an order under subsection (2), if the period allowed for appeals has expired and any appeal from that order has been determined or has lapsed, the Administrator must -

- (a) return the property, or the part of it to which the interest of the applicant relates, to the applicant; or

- (b) pay an amount equal to the value of the interest of the applicant, as declared in the order, to the applicant.

21. Forfeiture order where person has absconded - (1) This section applies if-

- (a) an application is made to the Court for a forfeiture order against property; and
- (b) the Court is satisfied that:
 - (i) any property is tainted property; and
 - (ii) proceedings for a serious offence committed for that property were commenced; and
 - (iii) the accused charged with the offence commenced under subparagraph (i) has absconded.

(2) The Court may order that the property, or so much of it as the Court specifies in the order, be forfeited to the Crown.

(3) Section 28 (except subsection (1)) and sections 29 and 30 apply (with any necessary modifications) to an order under this section.

22. Discharge of forfeiture order on appeal or quashing of conviction - (1) If the Court makes a forfeiture order against property in reliance on a person's conviction of a serious offence and the conviction is subsequently quashed, the quashing of the conviction discharges the order.

(2) If a forfeiture order against property is discharged -

- (a) under subsection (1); or
- (b) by the Court hearing an appeal against the making of the order,

a person who claims to have had an interest in the property immediately before the forfeiture order was made may apply to the Administrator, in writing, for the transfer of the interest to the person.

(3) On receipt of an application under subsection (2) from a person who had an interest in the property, the Administrator must, -

- (a) if the interest is vested in the Crown, transfer the property or interest in the property, or the part of it to which the interest relates, to the person; or
- (b) if the Crown has disposed of the interest, and subject to subsection (5), pay the person an amount equal to the value of the interest at the time the order is made.

(4) The Administrator -

- (a) may ask the Court to determine whether the person had the interest claimed under subsection (2); and
- (b) has power to do, or authorise the doing of, anything necessary or convenient to transfer or return property, including executing any instrument.

(5) If, on an application made under section 20 in respect of any interest in property, the Court has made an order under that section declaring that there is payable by the Crown to the applicant an amount equal to the value of the interest declared by the Court, an amount equal to that amount must be deducted from any amount required to be paid, under subsection (3)(b), to that applicant in respect of that interest.

23. Payment instead of forfeiture order - If the Court is satisfied that a forfeiture order should be made against property of a person, but that the property, or any part of it or interest in it, cannot be made subject to that order, and, in particular, -

- (a) cannot, with the exercise of due diligence, be found; or
- (b) has been transferred to a third party in circumstances that do not give rise to a reasonable inference that the title or interest was transferred to avoid the forfeiture of the property; or
- (c) is located outside the Cook Islands; or
- (d) has been mingled with other property that cannot be divided without difficulty,

the Court may, instead of ordering the property, part or interest to be forfeited, order the person to pay to the Crown an amount equal to the value of the property, part or interest.

24. Enforcement of order for payment instead of forfeiture - (1) An amount payable by a person to the Crown under an order made under section 23 is a civil debt due by the person to the Crown.

(2) An order against a person made under section 23 may be enforced as if it were an order made in civil proceedings instituted by the Crown against the person to recover a debt due by the person to the Crown; and the debt arising from the order is taken to be a judgment debt.

25. Registered foreign forfeiture orders - If a foreign forfeiture order is registered in the Court under the Mutual Assistance Act, sections 17 to 24 apply to the order as if -

- (a) the order were a forfeiture order made by the Court under this Act; and
- (b) references to an appeal against the making of an order were omitted; and
- (c) the period mentioned in section 20(3) were 6 weeks rather than 6 months.

Pecuniary penalty orders

26. Pecuniary penalty order on conviction - (1) If the Solicitor-General applies to the Court for a pecuniary penalty order against a person for the person's conviction of a serious offence, the Court may, if it is satisfied that the person has benefited from the offence, order the person to pay to the Crown -

- (a) an amount equal to the value of the person's benefit from the offence; or
 - (b) a lesser amount that the Court certifies to be the amount that might be realised at the time the pecuniary penalty order is made.
- (2) The Court must assess the value of the benefit derived by a person from committing an offence in accordance with sections 29 to 33.
- (3) The Court must not make a pecuniary penalty order under this section -
- (a) until the period for the lodging of an appeal against conviction has expired without an appeal having been lodged; or
 - (b) if an appeal against conviction has been lodged, until the appeal lapses or is finally determined.

27. Rules for determining benefit and assessing value - (1) If a person obtains tainted property, the person's benefit is the value of the property so obtained.

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

(3) Unless the contrary is proved, -

- (a) property is taken to be tainted property if it is held by a person:
 - (i) on the day when the application is made; and
 - (ii) at any time, -
 - (A) if the offence or earliest offence was committed more than 5 years before the application is made, within 5 years before the application is made; and
 - (B) in any other case, after the offence, or the earliest offence, was committed and before the application is made; and
- (b) any expenditure by the person in the time mentioned in subparagraph (a)(ii) is taken to be expenditure met out of tainted property; and
- (c) any property received or taken to have been received by the person at any time as a result of, or in connection with, committing the offence or offences is taken to have been received free of any other interests; and
- (d) if evidence is given at the hearing of the application that the value of the person's property increased after committing an offence, the increase is taken to be part of the person's benefit from the offence.

(4) If a pecuniary penalty order has previously been made against a person in relation to an offence, any of the person's benefits that are shown to the Court to have been taken into account in determining the amount to be recovered under the earlier order must be disregarded.

28. Statements about benefits from committing serious offences - (1) If a person has been convicted of a serious offence, the Solicitor-General may tender to the Court a statement about any matter relevant to -

- (a) deciding whether the person has benefited from the offence or from any other serious offence of which the person is convicted in the same proceedings or that is taken into account in passing sentence on the person; or
- (b) assessing the value of the person's benefit from the offence or any other serious offence of which the person is so convicted in the same proceedings or that is so taken into account.

(2) If the Court is satisfied that a copy of the statement has been served on the person, the Court may require the person to indicate -

- (a) to what extent the person accepts each allegation in the statement; and
- (b) for each allegation that the person does not accept wholly or in part, any matters that the person proposes to rely on.

(3) If the person accepts to any extent an allegation in the statement, the Court may, in deciding or assessing the matters mentioned in subsection (1), treat the person's acceptance as conclusive of the matters to which it relates.

(4) In this section, if a person fails, wholly or in part, to comply with a requirement under subsection (2), the Court may treat the person as having accepted every allegation in the statement, other than -

- (a) an allegation for which the person has complied with the requirement; or
- (b) an allegation that the person has benefited from the offence concerned, or that the person obtained any property or advantage as a result of, or in connection with, committing the offence.

(5) In this section, an allegation may be accepted, or matter indicated, either -

- (a) orally before the Court; or
- (b) in writing.

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

29. Amount to be recovered under pecuniary penalty order - (1) The amount to be recovered from a person under a pecuniary penalty order is the amount that the Court assesses to be the value of the person's benefit from the offence, or all the offences, concerned.

(2) If the Court is satisfied (whether by an acceptance under section 28 or otherwise) about a matter relevant to determining the amount that might be realised at the time a pecuniary penalty order is made, the Court may issue a certificate giving the Court's opinion about the matter.

(3) The Court must issue the certificate if it is satisfied that the amount that might be realised at the time the pecuniary penalty order is made is less than the amount that the Court assesses to be the value of the person's benefit from the offence, or all the offences, for which the pecuniary penalty order may be made.

30. Working out how much is realisable - (1) For sections 28 and 29, the amount that might be realised at the time a pecuniary penalty order is made against a person is the total of -

- (a) the values at that time of all the realisable property held by the person, less the total amounts payable under any obligation having priority at that time; and
- (b) the total of the values at that time of all gifts caught by this Act.

(2) For subsection (1), an obligation of a person has priority at a time if it is an obligation to -

- (a) pay a fine, or an amount due under an order of the Court imposed or made on conviction of an offence, if the fine was imposed or the order made before the pecuniary penalty order; or
- (b) pay an amount due as a tax, rate, duty, excise or other impost under an enactment; or
- (c) pay any other civil obligation as may be determined by the Court.

31. Variation of pecuniary penalty orders - (1) If -

- (a) the Court makes a pecuniary penalty order in relation to an offence; and
- (b) in calculating the amount of the pecuniary penalty order, the Court took into account a forfeiture of property or a proposed forfeiture of property or a proposed forfeiture order against property; and
- (c) an appeal against the forfeiture or forfeiture order is allowed, or the proceedings for the proposed forfeiture order terminate without the proposed order being made.

the Solicitor-General may apply to the Court to vary the pecuniary penalty order to increase the amount of the order by the value of the property, and the Court may, if it considers it appropriate to do so, vary the order accordingly.

(2) If -

- (a) the Court makes a pecuniary penalty order against a person in relation to an offence; and

(2) If the Court is satisfied (whether by an acceptance under section 28 or otherwise) about a matter relevant to determining the amount that might be realised at the time a pecuniary penalty order is made, the Court may issue a certificate giving the Court's opinion about the matter.

(3) The Court must issue the certificate if it is satisfied that the amount that might be realised at the time the pecuniary penalty order is made is less than the amount that the Court assesses to be the value of the person's benefit from the offence, or all the offences, for which the pecuniary penalty order may be made.

30. Working out how much is realisable - (1) For sections 28 and 29, the amount that might be realised at the time a pecuniary penalty order is made against a person is the total of -

- (a) the values at that time of all the realisable property held by the person, less the total amounts payable under any obligation having priority at that time; and
- (b) the total of the values at that time of all gifts caught by this Act.

(2) For subsection (1), an obligation of a person has priority at a time if it is an obligation to -

- (a) pay a fine, or an amount due under an order of the Court imposed or made on conviction of an offence, if the fine was imposed or the order made before the pecuniary penalty order; or
- (b) pay an amount due as a tax, rate, duty, excise or other impost under an enactment; or
- (c) pay any other civil obligation as may be determined by the Court.

31. Variation of pecuniary penalty orders - (1) If -

- (a) the Court makes a pecuniary penalty order in relation to an offence; and
- (b) in calculating the amount of the pecuniary penalty order, the Court took into account a forfeiture of property or a proposed forfeiture of property or a proposed forfeiture order against property; and
- (c) an appeal against the forfeiture or forfeiture order is allowed, or the proceedings for the proposed forfeiture order terminate without the proposed order being made.

the Solicitor-General may apply to the Court to vary the pecuniary penalty order to increase the amount of the order by the value of the property, and the Court may, if it considers it appropriate to do so, vary the order accordingly.

(2) If -

- (a) the Court makes a pecuniary penalty order against a person in relation to an offence; and

- (b) in calculating the amount of the pecuniary penalty order, the Court took into account an amount of tax paid by the person; and
 - (c) an amount is repaid or refunded to the person for that tax,
- the Solicitor-General may apply to the Court to vary the pecuniary penalty order to increase the amount of the order by the amount repaid or refunded, and the Court may, if it considers it appropriate to do so, vary the order accordingly.

32. Court may lift corporate veil - (1) In assessing the value of benefits derived by a person from committing a serious offence, the Court may treat as the person's property any property that, in the opinion of the Court, is under the person's effective control, whether or not the person has -

- (a) any legal or equitable interest in the property; or
 - (b) any right, power or privilege in connection with the property.
- (2) Without limiting subsection (1), the Court may take into account -
- (a) shareholdings in, debentures over, or directorships of, a company that has an interest (whether direct or indirect) in the property; and
 - (b) a trust that has a relationship to the property; and
 - (c) any relationship between persons having an interest in the property, or in companies of the kind mentioned in paragraph (a) or trusts of the kind mentioned in paragraph (b), and other persons.
- (3) For subsection (2) (a), to decide whether a particular company has a direct or indirect interest in property, the Court may order the investigation and inspection of the books of the company.
- (4) If the Court, in making a pecuniary penalty order against a person, treats particular property as the person's property under subsection (1), the Court may, on application by the Solicitor-General, make an order declaring that the property is available to satisfy the order.
- (5) If the Court declares that property is available to satisfy a pecuniary penalty order, -
- (a) the order may be enforced against the property as if the property were property of the person against whom the order is made; and
 - (b) a restraining order may be made for the property as if the property were property of the person against whom the order is made.
- (6) If the Solicitor-General applies for an order that property is available to satisfy a pecuniary penalty order against a person, -
- (a) the Solicitor-General must give reasonable written notice of the application to the person and to any other person who the Solicitor-General has reason for believing 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.

33. Enforcement of pecuniary penalty orders - (1) An amount payable by a person to the Crown under a pecuniary penalty order is a civil debt due by the person to the Crown.

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

34. Amounts paid in respect of registered foreign pecuniary penalty orders - If a foreign pecuniary penalty order is registered in the Court under the Mutual Assistance Act, any amount paid, whether in the Cook Islands or elsewhere, in satisfaction of that order is taken to have been paid in satisfaction of the debt that arises because of the registration of that order.

PART 3

FACILITATING INVESTIGATIONS AND PRESERVING PROPERTY

Powers of search and seizure

35. Warrant to search land etc. for tainted property - (1) A police officer may apply to the Judge, Justice or Registrar of the Court, for the issue of a warrant to search land or premises for tainted property in the same way as a police officer may apply for the issue of a search warrant under section 96 of the Criminal Procedure Act 1980-81.

(2) If an application is made under subsection (1) for a warrant, -

- (a) the Judge, Justice or Registrar of the Court may issue a warrant of that kind in the same way, and subject to the same conditions, as he or she would issue a search warrant under section 96 of the Criminal Procedure Act 1980-81; and
- (b) subject to sections 36 to 41, the warrant may be executed in the same way as if it had been issued under that section.

36. Police may seize tainted property - If, in the course of a search under a warrant issued under section 35 for a thing of a kind specified in the warrant, a police officer finds another thing, the warrant is taken to authorise the police officer to seize the other thing if that officer has reasonable grounds -

- (a) for believing the other thing to be tainted property or to afford evidence about the commission or a serious offence in the Cook Islands; or

- (b) for believing that it is necessary to seize the property or thing to prevent it being concealed, lost or destroyed, or used to commit, continue or repeat the offence or another offence.

37. Return of seized property - general rule - (1) If property has been seized under section 36, a person who claims an interest in the property may apply to the Court for an order that the property be returned to the person.

(2) The Court must order the Commissioner to return the property to the person if the Court is satisfied that -

- (a) the person is entitled to possession of the property; and
- (b) the property is not tainted property; and
- (c) the person for whose conviction, charging or proposed charging the property was seized has no interest in the property.

38. Return of seized property if no information laid - (1) Subsection (2) applies if -

- (a) property has been seized under section 36; and
- (b) when the property was seized, an information had not been laid for an offence because of which the property is tainted; and
- (c) an information is not laid for an offence for which the property is tainted within 48 hours after the property was seized.

(2) The Commissioner must, subject to section 40, arrange for the property to be returned to the person from whose possession it was seized as soon as practicable after the end of that 48 hours.

39. Return of seized property if no forfeiture order made - (1) Subsection (2) applies if -

- (a) property has been seized under section 36; and
- (b) no forfeiture order is made against the property within 14 days after it was seized; and
- (c) the property is in the Commissioner's possession at the end of that period.

(2) The Commissioner must arrange for the property to be returned to the person from whose possession it was seized as soon as practicable after the end of that period.

40. Retention of seized property if restraining order made - (1) Subsections (2), (3) and (4) apply if -

- (a) property has been seized under section 36; and
- (b) a restraining order is made against the property before the Commissioner is required by this Act to return it; and

(c) the restraining order directs the Administrator to take custody and control of the property.

(2) Despite sections 38 or 39, the Commissioner must arrange for the property to be given to the Administrator in accordance with the restraining order.

(3) If, when the restraining order is made, the property is in the Commissioner's possession, the Commissioner may apply to the Court for an order that the Commissioner keep possession of the property.

(4) If the Court is satisfied that there are reasonable grounds for believing that the property may afford evidence as to the commission of an offence, the Court may order that the Commissioner retain the property for as long as the property is so required as evidence.

(5) If the Court makes an order under subsection (4) about the property, the Commissioner must arrange for the property to be retained until it is dealt with in accordance with another provision of this Act.

(6) In proceedings for an order under subsection (4), the Court may order that a witness need not -

(a) answer a specified question; or

(b) produce a specified document,

if the Court is satisfied that answering the question or producing the document may prejudice the investigation of, or the prosecution of a person for, an offence.

41. How Commissioner must deal with property subject to forfeiture order -

(1) Subsection (2) applies if -

(a) property has been seized under this Act; and

(b) while the property is in the Commissioner's possession, a forfeiture order is made against the property.

(2) The Commissioner must deal with the property as required by the order.

Search for and seizure of tainted property — foreign serious offences

42. Application of sections 43 to 47 - (1) If, under the Mutual Assistance Act, a police officer is authorised to apply to the Court, for a search warrant for tainted property, sections 43 to 47 apply to -

(a) the application; and

(b) any warrant issued as a result of the application.

(2) In this section and in sections 43 to 47, -

(a) references to tainted property are taken to be references to tainted property in relation to a foreign serious offence; and

(b) references to a relevant offence are taken to be references to a relevant foreign serious offence.

43. Police may seize tainted property - (1) Subsection (2) applies if, in the course of searching under a warrant mentioned in section 42 for tainted property, a police officer finds -

- (a) property that there are reasonable grounds for believing is tainted property for which another search warrant under that section is in force; or
- (b) any thing that there are reasonable grounds to believe:
 - (i) is relevant to a criminal proceeding in the foreign country for the foreign serious offence; or
 - (ii) will afford evidence as to the commission of a relevant offence.

(2) If there are reasonable grounds for believing that it is necessary to seize the property or thing in order to prevent its concealment, loss or destruction, or its use in committing, continuing or repeating the relevant offence, the warrant is taken to authorise the police officer to seize the property or thing.

44. Return of seized property - general rule - (1) If property has been seized under subsection 43(2), a person who claims an interest in the property may apply to the Court for an order that the property be returned to the person.

(2) The Court must order the Commissioner to return the property to the person if the Court is satisfied that -

- (a) the person is entitled to possession of the property; and
- (b) the property is not tainted property; and
- (c) the person who is believed or alleged to have committed the relevant offence has no interest in the property.

45. Return of seized property if no forfeiture order made - (1) Subsection (2) applies if -

- (a) property has been seized under subsection 43(2); and
- (b) no forfeiture order is made against the property within 30 days after it was seized; and
- (c) the property is in the Commissioner's possession at the end of that period.

(2) The Commissioner must arrange for the property to be returned to the person from whose possession it was seized as soon as practicable after the end of that period.

46. Retention of seized property if restraining order made - (1) Subsections (2), (3) and (4) apply if -

- (a) property has been seized under subsection 43(2); and
- (b) but, for that subsection, the Commissioner would be required to arrange for the property to be returned to a person as soon as practicable after the end of a period; and

- (c) before the end of that period:
 - (i) a foreign restraining order against the property is registered in the Court; or
 - (ii) the Court makes a restraining order in respect of the relevant offence against the property.
- (2) The Commissioner must, -
 - (a) if the restraining order directs the Administrator to take custody and control of the property, arrange for the property to be given to the Administrator in accordance with the restraining order; or
 - (b) if the Court has made an order under subsection (4) about the property, arrange for the property to be retained until it is dealt with in accordance with another provision of this Act.
- (3) If the property is in the Commissioner's possession when the restraining order is made or registered, the Commissioner may apply to the Court for an order that the Commissioner retain possession of the property.
- (4) The Court may, if satisfied that there are reasonable grounds for believing that the property may afford evidence as to the commission of a relevant offence, order that the Commissioner may retain the property for as long as the property is so required as evidence.
- (5) In proceedings for an order under subsection (4), the Court may order that a witness need not -
 - (a) answer a specified question; or
 - (b) produce a specified document,
 if the Court is satisfied that answering the question, or producing the document, may prejudice the investigation of, or the prosecution of a person for, an offence.

47. How Commissioner must deal with property subject to forfeiture order -

- (1) Subsection (2) applies if -
 - (a) property has been seized under this Act; and
 - (b) while the property is in the Commissioner's possession, a foreign forfeiture order against the property is registered in the Court.
- (2) The Commissioner must deal with the property as required by the order.

Restraining orders

48. Application for restraining order - (1) The Solicitor-General may apply to the Court for a restraining order against -
- (a) any realisable property held by a defendant; or
 - (b) realisable property, specified in the application, held by a person other than a defendant.
- (2) An application for a restraining order may be made *ex parte*.

(3) An application for a restraining order must be in writing and must be accompanied by an affidavit stating –

- (a) that the Solicitor-General suspects that the suspect committed the offence within the 6 years preceding the application, or since the application was made; or
- (b) if the application is to restrain property of a person other than the suspect, that the Solicitor-General suspects that:
 - (i) the property is subject to the effective control of the suspect; or
 - (ii) in any other case, the property is the proceeds of the offence; and
- (c) the grounds on which the Solicitor-General holds those suspicions;
- (d) if the defendant is about to be charged with a serious offence, the grounds for believing that the defendant will be charged with an offence within 5 working days.

49. Notice of application for restraining order - (1) Before making a restraining order, the Court -

- (a) must require the Solicitor-General to give reasonable written notice to any person who may have an interest in the property; and
 - (b) may hear any person to whom notice is given.
- (2) However, if the Solicitor-General so requests, -
- (a) the Court must consider the application without requiring notice to be given in accordance with subsection (1); but
 - (b) a restraining order made in reliance on this subsection ceases to have effect after 14 days or any lesser period that the Court specifies in the order.
- (3) The Court -
- (a) may, on application by the Solicitor-General, extend the period of operation of a restraining order made in reliance on subsection (2); but
 - (b) must not consider the application without requiring reasonable written notice to be given to any person who may have an interest in the property.

50. Restraining order - (1) The Court may make a restraining order against property if it is satisfied that -

- (a) a defendant has been convicted of a serious offence, has been charged with a serious offence or will be charged with a serious offence within 48 hours; and
- (b) if the defendant has not been convicted of the serious offence, there are reasonable grounds for believing that the defendant committed the offence; and

- (c) if the property is property of the defendant, there are reasonable grounds for believing that the property is tainted property, or that the defendant derived a benefit directly or indirectly from the commission of the offence; and
- (d) if the property is property of a person other than the defendant, there are reasonable grounds for believing that the property is tainted property, or that the property is subject to the effective control of the defendant.

(2) The order may -

- (a) prohibit the defendant or any other person from disposing of, or otherwise dealing with, the property, or a part of it or interest in it specified in the order, either absolutely or except in a way specified in the order; and
- (b) at the request of the Solicitor-General, if the Court is satisfied that the circumstances so require, direct the Administrator:
 - (i) to take custody of the property or a part of it specified in the order; and
 - (ii) to manage or otherwise deal with all, or any part of, the property in accordance with the directions of the Court.

(3) In deciding whether there are reasonable grounds for believing that property is subject to the effective control of the defendant, the Court may take into account the matters mentioned in section 32(2).

(4) The order may be subject to any conditions that the Court thinks fit and, without limiting this subsection, may provide for meeting, out of the property or a specified part of it, all or any of the following -

- (a) the person's reasonable living expenses (including the reasonable living expenses of the person's dependants, if any) and reasonable business expenses;
- (b) the person's reasonable expenses in defending a criminal charge and any proceedings under this Act;
- (c) another specified debt incurred by the person in good faith.

(5) However, the order must not make such provision unless the Court is satisfied that the person cannot meet the expenses or debt out of property that is not subject to a restraining order.

(6) If the Court gives the Administrator a direction under subsection (2)(b) for property, the Administrator may do anything that is reasonably necessary to preserve the property and, for that purpose, -

- (a) may do anything for the property that its owner could do; and
- (b) may do so to the exclusion of the owner.

(7) In proceedings for a restraining order, the Court may order that a witness need not -

- (a) answer a specified question; or

(b) produce a specified document,
if the Court is satisfied that answering the question or producing the document may prejudice the investigation of, or prosecution of a person for, an offence.

51. Undertakings by the Crown - Before making a restraining order, the Court may require the Crown to give an undertaking about the payment of damages or costs, or both, for the making and execution of the order.

52. Service of restraining order - (1) A copy of a restraining order must be served on a person affected by it in the way the Court directs.

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

53. Ancillary orders and further orders - (1) If the Court makes a restraining order, any of the following may apply to the Court for an ancillary order -

- (a) the Solicitor-General;
 - (b) a person whose property is the subject of the restraining order (the "owner");
 - (c) if the restraining order directs the Administrator to take custody and control of the property, the Administrator;
 - (d) with the leave of the Court, any other person.
- (2) An ancillary order may do any of the following -
- (a) vary the property to which a restraining order relates;
 - (b) vary any condition to which a restraining order is subject;
 - (c) order a person to be examined on oath before the Court about the affairs of the owner or of the defendant;
 - (d) provide for carrying out any undertaking about the payment of damages or costs given by the Crown in connection with the making of the restraining order;
 - (e) direct the owner or the defendant to give a specified person a statement on oath setting out the particulars of the property, or dealings with the property, that the Court directs;
 - (f) if the restraining order directs the Administrator to take custody and control of property, do any of the following:
 - (i) regulate the performance or exercise of the Administrator's functions, duties or powers under the restraining order;
 - (ii) decide a question about the property;
 - (iii) order a person to do anything to enable the Administrator to take custody and control of the property;

- (iv) if the restraining order provides that a person's reasonable expenses in defending a criminal charge be met out of the property, order that those expenses be taxed as provided in the ancillary order before being met;
- (v) provide for the payment to the Administrator out of the property of the costs, charges and expenses incurred in connection with the performance or exercise by the Administrator of functions, duties or powers under the restraining order;
- (g) anything else that the Court considers necessary in the circumstances.

(3) If a person who has an interest in property against which a restraining order is made applies to the Court for a variation of the order to exclude the person's interest from the order, the Court must grant the application if the Court is satisfied that -

- (a) the interest is not tainted property and that it cannot be required to satisfy a pecuniary penalty order; or
- (b) the applicant was not in any way involved in the commission of the offence for which the restraining order was made and, if the applicant acquired the interest at the time of or after the commission (or alleged commission) of the offence, the applicant acquired the interest:
 - (i) for sufficient consideration; and
 - (ii) without knowing, and in circumstances so as not to arouse a reasonable suspicion, that the property was tainted property; or
- (c) it is in the public interest to do so having regard to all the circumstances, including any financial hardship or other consequence of the interest remaining subject to the order.

(4) The Court must not hear an application made under subsection (1) unless the applicant has given reasonable written notice of the application to each person who is entitled to make an application under that subsection for the restraining order.

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

(6) If a person is required, in accordance with an order made under subsection (2)(c) or (e), to make a statement on oath, -

- (a) the person is not excused from making the statement on the ground that the statement, or part of it, might tend to incriminate the person or make the person liable to forfeiture or to a penalty; and
- (b) the statement, and any information, document or thing obtained as a direct or indirect consequence of it, is not admissible against the person in any criminal proceedings except a proceeding for perjury in making the statement.

54. Administrator may satisfy pecuniary penalty order - (1) This section applies if -

- (a) a pecuniary penalty order is made against a defendant in reliance on the defendant's conviction of a serious offence; and
 - (b) a restraining order is made in reliance on the defendant's conviction, or alleged commission, of the offence, against property of:
 - (i) the defendant; or
 - (ii) another person for whom an order made under subsection 32(4) is in force.
- (2) The Court may direct the Administrator to satisfy the pecuniary penalty order by a payment to the Crown out of the property -
- (a) on the making of the later of the orders; or
 - (b) on application by the Solicitor-General, at any time while the restraining order remains in force.
- (3) To enable the Administrator to comply with a direction under subsection (2), the Court may -
- (a) direct the Administrator to sell or otherwise dispose of a part of the property that the Court specifies; and
 - (b) order that the Administrator may execute, and do anything necessary to give validity and effect to, any deed or instrument in the name of a person who owns or has an interest in the property.
- (4) If the Court makes an order of the kind mentioned in subsection (3)(b), the execution of a deed or instrument by the Administrator in accordance with the order has the same force and validity as if the deed or instrument had been executed by the person in whose name the Administrator executed it.
- (5) The Administrator must not take action to sell property under a direction made under subsection (2) until -
- (a) the periods for the lodging of an appeal against the relevant conviction, and the making of the relevant pecuniary penalty order and restraining order, have expired without any appeal having been lodged; or
 - (b) if an appeal is lodged against a relevant conviction, or the making of the relevant pecuniary penalty order or restraining order, the appeal lapses in accordance with the rules of court or is finally determined.

55. Registration of restraining order - (1) An authority that administers a law of the Cook Islands that provides for the registration of title to, or charges over, property of a particular kind may, on application by the Solicitor-General, record on a register kept under that law the particulars of a restraining order that applies to property of that kind.

(2) For section 56, if those particulars are so recorded, a person who subsequently deals with the property is taken to have notice of the restraining order at the time of the dealing.

56. Contravention of restraining order - (1) A person who knowingly contravenes a restraining order by disposing of, or otherwise dealing with, property that is subject to the restraining order commits an offence punishable by -

- (a) for a natural person, a fine of up to \$30,000 or a term of imprisonment of up to 5 years, or both; or
- (b) for a body corporate, a fine of up to \$150,000.

(2) If a restraining order is made against property and the property is disposed of, or otherwise dealt with, in contravention of the restraining order, the Solicitor-General may apply to the Court for an order setting aside the disposition or dealing.

(3) If the Court is satisfied that the disposition or dealing was either not for sufficient consideration, or not in favour of a person who acted in good faith, the Court may -

- (a) set aside the disposition or dealing with effect from the day on which it took place; or
- (b) set aside the disposition or dealing with effect from the day of the Court's order, and declare the right of any person who acquired an interest in the property on or after the day on which the disposition or dealing took place and before the day of the order.

57. Court may revoke restraining order - (1) If the Court has made a restraining order against a person's property, the Court may, on application by the person, revoke the order, -

- (a) if the applicant is a defendant, the applicant gives security satisfactory to the Court for the satisfaction of any pecuniary penalty order that may be made against the person under this Act; or
- (b) the applicant gives undertakings satisfactory to the Court about the property.

(2) An applicant under subsection (1) must give reasonable written notice of the application to the Solicitor-General and, if the restraining order directed the Administrator to take control of property, the Administrator.

58. When restraining order ceases to be in force - (1) A restraining order ceases to be in force at the end of 6 months after the day when it was made, unless it ceases sooner under subsection (5).

(2) Within that period, on application by the Solicitor-General, the Court may order that the order continues in force until a specified time or event if the Court is satisfied that -

- (a) a forfeiture order may still be made against the property; or

- (b) the property may be required to satisfy a pecuniary penalty order that has not yet been made.
- (3) An order made under subsection (2) does not have the effect of continuing a restraining order in force after the time when it would cease to be in force under subsection (5).
- (4) The Solicitor-General must give a person reasonable written notice of an application under subsection (2) about a restraining order against the person's property.
- (5) A restraining order made in reliance on a person's conviction, or alleged commission, of a serious offence ceases to be in force, in whole or in part, -
- (a) if the order is made in reliance on the proposed charging of the person with the offence and the person is not so charged within the period of 48 hours after the making of the order, at the end of that period; or
 - (b) when the charge against the person is withdrawn or the person is acquitted of the charge; or
 - (c) when property subject to the order is used to satisfy a pecuniary penalty order that was made in reliance on the person's conviction of the offence; or
 - (d) when the Court refuses an application for a pecuniary penalty order in reliance on the person's conviction of the offence; or
 - (e) when property subject to the order is forfeited under Part 2.

Interim restraining orders for foreign serious offences

59. Application of sections 60 to 69 - Sections 60 to 69 apply to an application by the Solicitor-General for a restraining order under this Act against any property of a person in relation to a foreign serious offence, and to any restraining order made as a result of the application.

60. Definition of "defendant" - A person is a "defendant" for the purposes of sections 61 to 69 if -

- (a) he or she has been convicted of a foreign serious offence; or
- (b) there are reasonable grounds for believing that a criminal proceeding has commenced, or is about to be commenced, against him or her in a foreign country.

61. Application for interim restraining order - (1) If the Attorney-General authorises the Solicitor-General, under the Mutual Assistance Act, to apply for a restraining order under this Act against any property of a defendant, the Solicitor-General may apply to the Court for an interim restraining order against -

- (a) any realisable property held by the defendant; or
- (b) realised property, specified in the application, that is held by a person other than the defendant.

- (2) The application may be made *ex parte*.
- (3) The application must be in writing, and must be accompanied by an affidavit stating, -
 - (a) if the defendant has been convicted of a foreign serious offence, the offence of which the defendant was convicted, the date of the conviction, the court before which the conviction was obtained and whether an appeal has been lodged against the conviction; and
 - (b) if the defendant has not been convicted of a foreign serious offence, the offence for which criminal proceedings are believed to have been commenced, and the grounds for believing that the defendant committed the foreign serious offence; and
 - (c) if it is believed that criminal proceedings are about to be commenced against the defendant, the grounds for believing that the proceedings will be commenced within 48 hours; and
 - (d) a description of the property against which the restraining order is sought; and
 - (e) the name and address of the person who is believed to be in possession of the property; and
 - (f) if the application seeks a restraining order against property of a defendant, the grounds for believing that the property is tainted property in relation to a foreign serious offence, or that the defendant derived a benefit directly or indirectly from committing that offence; and
 - (g) if the application seeks a restraining order against property of a person other than a defendant, the grounds for believing that the property is tainted property in relation to a foreign serious offence, or is subject to the effective control of the defendant.

62. Notice of application for interim restraining order - (1) Before making an interim restraining order, the Court must require the Solicitor-General to give reasonable written notice to any person who may have an interest in the property and may hear any person to whom notice is given.

- (2) However, if the Solicitor-General requests, -
 - (a) the Court must consider the application without requiring notice to be given in accordance with subsection (1); but
 - (b) an interim restraining order made in reliance on this subsection ceases to have effect after 14 days or any lesser period that the Court specifies in the order.
- (3) The Court may, on application by the Solicitor-General, -
 - (a) extend the period of operation of an interim restraining order made in reliance on subsection (2); but

- (b) must not consider the application without requiring reasonable written notice to be given to any person who may have an interest in the property.

63. Interim restraining order - (1) Subsection (2) applies if the Solicitor-General applies to the Court for an interim restraining order against property of a defendant and the Court is satisfied that -

- (a) the defendant has been convicted of a foreign serious offence, or a criminal proceeding for a foreign serious offence has commenced, or is reasonably believed to be about to commence, against the defendant in a foreign country; and
- (b) if the defendant has not been convicted of a foreign serious offence, the offence that the defendant is believed to have committed and the grounds for that belief; and
- (c) if the application seeks a restraining order against property of a person other than a defendant, there are reasonable grounds for believing that the property is tainted property in relation to a foreign serious offence, or that the property is subject to the effective control of the defendant.

(2) The Court may make an order prohibiting the defendant or any other person from disposing of, or otherwise dealing with, the property, or any part of it or interest in it specified in the order, either absolutely or except in a way specified in the order.

(3) An order made under subsection (2) may be subject to any conditions that the Court thinks fit and, without limiting this subsection, may provide for meeting, out of the property or a specified part of it, all or any of the following -

- (a) the person's reasonable living expenses (including the reasonable living expenses of the person's dependants, if any) and reasonable business expenses;
- (b) the person's reasonable expenses in defending a criminal charge and any proceedings under this Act or in being represented in a criminal proceeding in a foreign country;
- (c) another specified debt incurred by the person in good faith.

(4) However, the order must not make provision of that kind unless the Court is satisfied that the person cannot meet the expenses or debt out of property that is not subject to a restraining order.

(5) In deciding whether there are reasonable grounds for believing that property is subject to the effective control of the defendant, the Court may take into account the matters mentioned in subsection 32(2).

(6) In proceedings for an order made under subsection (2), the Court may order that a witness need not -

- (a) answer a specified question; or
- (b) produce a specified document,

if the Court is satisfied that answering the question or producing the document may prejudice the investigation of, or prosecution of a person for, an offence.

64. Undertakings by the Crown - Before making an interim restraining order, the Court may require the Crown to give an undertaking about the payment of damages or costs, or both, for the making and execution of the order.

65. Service of interim restraining order - (1) A copy of an interim restraining order must be served on a person affected by it in the way the Court directs or as required by rules of court.

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

66. Ancillary orders and further orders - (1) If the Court makes an interim restraining order, any of the following may apply to the Court for an ancillary order -

- (a) the Solicitor-General;
- (b) a person whose property is the subject of the interim restraining order (the "owner");
- (c) with the leave of the Court, any other person.

(2) An ancillary order may do any of the following -

- (a) vary the property to which an interim restraining order relates;
- (b) vary any condition to which an interim restraining order is subject;
- (c) order a person to be examined on oath before the Court about the affairs of the owner or of the defendant;
- (d) provide for carrying out any undertaking about the payment of damages or costs given by the Crown in connection with the making of the interim restraining order;
- (e) order the owner or the defendant to give a specified person a statement on oath setting out the particulars of the property, or dealings with the property, that the Court directs;
- (f) anything else that the Court considers necessary in the circumstances.

(3) If a person who has an interest in property against which an interim restraining order is made applies to the Court for a variation of the order to exclude the person's interest from the order, the Court must grant the application if the Court is satisfied that -

- (a) the applicant was not in any way involved in the commission of the offence for which the order was made and, if the applicant acquired the interest at the time of or after the commission (or alleged commission) of the offence, that the applicant acquired the interest:
 - (i) for sufficient consideration; and

- (ii) without knowing, and in circumstances so as not to arouse a reasonable suspicion, that the property was tainted property in relation to a foreign serious offence; or
 - (b) it is in the public interest to do so having regard to all the circumstances, including any financial hardship or other consequence of the interest remaining subject to the order.
- (4) The Court must not hear an application made under subsection (1) unless the applicant has given reasonable written notice of the application to each person who is entitled to make an application under that subsection for the interim restraining order.
- (5) The Court may require notice of the application to be given to, and may hear, any person who, in the opinion of the Court, appears to have an interest in the property.
- (6) If a person is required, in accordance with an order made under subsection (2)(c) or (e), to make a statement on oath, -
- (a) the person is not excused from making the statement on the ground that the statement, or part of it, might tend to incriminate the person or make the person liable to forfeiture or to a penalty; and
 - (b) the statement, and any information, document or thing obtained as a direct or indirect consequence of it, is not admissible against the person in any criminal proceedings except a proceeding for perjury in making the statement.

67. Registration of interim restraining order - (1) An authority that administers a law of the Cook Islands that provides for the registration of title to, or charges over, property of a particular kind may, on application by the Solicitor-General, record on a register kept under that law the particulars of an interim restraining order that applies to property of that kind.

(2) For section 68, if those particulars are so recorded, a person who subsequently deals with the property is taken to have notice of the interim restraining order at the time of the dealing.

68. Contravention of interim restraining order - (1) A person who knowingly contravenes an interim restraining order by disposing of, or otherwise dealing with, property that is subject to the interim restraining order commits an offence punishable by, -

- (a) for a natural person, a fine of up to \$30,000 or a term of imprisonment of up to 5 years, or both; or
- (b) for a body corporate, a fine of up to \$150,000.

(2) If an interim restraining order is made against property and the property is disposed of, or otherwise dealt with, in contravention of that order, the Solicitor-General may apply to the Court for an order setting aside the disposition or dealing.

(3) If the Court is satisfied that the disposition or dealing was either not for sufficient consideration or not in favour of a person who acted in good faith, the Court may -

- (a) set aside the relevant disposition or dealing with effect from the day on which it took place; or
- (b) set aside the disposition or dealing with effect from the day of the Court's order, and declare the right of any person who acquired an interest in the property on or after the day on which the disposition or dealing took place and before the day of the order.

69. When interim restraining order ceases to be in force - (1) An interim restraining order ceases to be in force at the end of 30 days starting on the day on which the order is made.

(2) However, -

- (a) if the Court makes an interim restraining order, it may, on application by the Solicitor-General made before the end of the period mentioned in subsection (1), extend the period of operation of the order; and
- (b) if:
 - (i) an interim restraining order is made against property; and
 - (ii) before the end of the period referred to in subsection (1) (including any extension of that period under paragraph (a)), a foreign restraining order against the property is registered in the Court under the Mutual Assistance Act,the interim restraining order ceases to have effect when the foreign restraining order is registered.

Foreign restraining orders

70. Application of sections 72 to 77 - Sections 72 to 77 apply to -

- (a) a foreign restraining order registered in the Court under the Mutual Assistance Act;
- (b) an order for custody and control made under section 71.

71. Foreign restraining orders - Court may direct Administrator to take custody and control of property - (1) On application by the Solicitor-General, the Court may, if satisfied that the circumstances so require, order the Administrator -

- (a) to take custody and control of the property subject to the order or of any part of it specified in the order; and
- (b) to manage or otherwise deal with the property or part in accordance with the directions of the Court.

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

(3) If the Court makes an order under subsection (1) for property, the Administrator -

- (a) may do anything that is reasonably necessary for preserving the property; and
- (b) for that purpose may exercise any power that the owner of the property could exercise; and
- (c) may do so to the exclusion of the owner.

(4) If the Court makes an order under subsection (1) against property of a person (the "respondent"), the Court may, when it makes the order or afterwards, make any of the following orders -

- (a) an order directing the respondent to give the Administrator a statement on oath setting out the particulars of the property, or dealings with the property, as the Court directs;
- (b) an order regulating the performance or exercise of the Administrator's functions, duties or powers under the foreign restraining order;
- (c) an order deciding any question about the property;
- (d) if the relevant registered foreign restraining order provides that a person's reasonable expenses in defending a criminal charge must be met out of the property, an order directing that those expenses be taxed, as provided in the order, before being met;
- (e) an order providing for the payment to the Administrator out of the property of the costs, charges and expenses incurred in connection with the performance or exercise by the Administrator of functions, duties or powers under the foreign restraining order.

72. Foreign restraining orders – undertakings - On application by a person claiming an interest in the property, the Court may make an order about giving, or carrying out, an undertaking by the Solicitor-General, for the Crown, about the payment of damages or costs for the registration, making or operation of -

- (a) a foreign restraining order against property that is registered in the Court under the Mutual Assistance Act; or
- (b) an order made by the Court under section 71.

73. Service of restraining order - (1) A copy of a foreign restraining order or an order made under section 71 must be served on a person affected by it in any way the Court directs or as required by rules of court.

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

74. Administrator to satisfy pecuniary penalty order - (1) In this section, a reference to a foreign restraining order includes an order under section 71.

(2) This section applies if -

- (a) a foreign pecuniary penalty order is registered in the Court against a defendant; and
- (b) a foreign restraining order is registered against property of:
 - (i) the defendant; or
 - (ii) another person for whom an order made under section 32(4) is in force.

(3) The Court may direct the Administrator to satisfy the pecuniary penalty order by a payment to the Crown out of the property -

- (a) on the registration of the later of the orders; or
- (b) on application by the Solicitor-General, at any time while the restraining order remains in force.

(4) To enable the Administrator to comply with a direction under subsection (3), the Court may -

- (a) direct the Administrator to sell or otherwise dispose of a specified part of the property; and
- (b) order that the Administrator may execute, and do anything necessary to give validity and effect to, any deed or instrument in the name of a person who owns, or has an interest in, the property.

(5) If the Court makes an order of the kind mentioned in subsection (4)(b), the execution of a deed or instrument by the Administrator in accordance with the order has the same force and validity as if the deed or instrument had been executed by the person in whose name the Administrator executed it.

75. Registration of foreign restraining order - (1) In this section, a reference to a foreign restraining order includes an order under section 71.

(2) An authority that administers a law of the Cook Islands that provides for the registration of title to, or charges over, property of a particular kind may, on application by the Solicitor-General, record on a register kept under that law the particulars of a foreign restraining order that applies to property of that kind.

(3) For section 76, if those particulars are so recorded, a person who subsequently deals with the property is taken to have notice of the restraining order at the time of the dealing.

76. Contravention of foreign restraining orders registered under section 75 - (1) In this section, a reference to a foreign restraining order includes an order under section 71.

(2) A person who knowingly contravenes a foreign restraining order registered under section 75 by disposing of, or otherwise dealing with, property that is subject to the restraining order commits an offence punishable by, -

- (a) for a natural person, a fine of up to \$30,000 or a term of imprisonment of up to 5 years, or both; or
- (b) for a body corporate, a fine of up to \$150,000

(3) If a foreign restraining order is registered under section 75 against property and the property is disposed of, or otherwise dealt with, in contravention of the restraining order, the Solicitor-General may apply to the Court for an order setting aside the disposition or dealing.

(4) If the Court is satisfied that the disposition or dealing was either not for sufficient consideration or not in favour of a person who acted in good faith, the Court may -

- (a) set aside the relevant disposition or dealing with effect from the day on which it took place; or
- (b) set aside the disposition or dealing with effect from the day of the Court's order, and declare the right of any person who acquired an interest in the property on or after the day on which the disposition or dealing took place and before the day of the order.

77. Foreign restraining order registered under Mutual Assistance Act - when order ceases to be in force - A foreign restraining order registered in the Court under the Mutual Assistance Act ceases to be in force when the registration is cancelled in accordance with that Act.

Production orders and other information gathering powers

78. Definition of "production order" - In sections 79 to 86 "production order" includes an order that requires a person to make a document available for inspection.

79. Application for production order - (1) Subsection (2) applies if -

- (a) a person has been convicted of a serious offence and there are reasonable grounds for suspecting that a person has possession or control of a property-tracking document or property-tracking documents for the offence; or
- (b) there are reasonable grounds for suspecting that a person has committed a serious offence and that a person has possession or control of a property-tracking document or property-tracking documents for the offence.

(2) A police officer may apply to a Judge for a production order against the person.

(3) The application -

- (a) may be made *ex parte*; and
- (c) must be in writing and must be accompanied by an affidavit.

(4) Subsection (5) applies if a police officer applies for a production order for a serious offence, and includes in the affidavit a statement to the effect that there are reasonable grounds for believing that -

- (a) the person who was convicted of the offence, or who is believed to have committed the offence, derived a benefit, directly or indirectly, from the commission of the offence; and
- (b) property specified in the affidavit is under the effective control of the person mentioned in paragraph (a).

(5) For this section, the Judge hearing the application may treat any document relevant to identifying, locating or quantifying that property as a property-tracking document for the offence.

(6) In deciding whether to treat a document as a property-tracking document for an offence, the Judge may take into account the matters mentioned in section 32(2).

80. Production orders - (1) The Judge may, if satisfied that there are reasonable grounds for doing so, make a production order requiring a person -

- (a) to produce to a police officer, at a specified time and place, any documents of the kind mentioned in section 79(1) that are in the person's possession or control; or
- (b) to make available to a police officer for inspection, at a specified time or times and place or places, any documents of that kind that are in the person's possession or control.

(2) The order has effect despite any law that prohibits disclosure of information.

(3) If a production order requires a person to produce or make available a document that is a computer file, the order is taken to require the person -

- (a) to allow the police officer named in the order, or a person acting under the direction of that officer, to use a computer on which the document is held; and
- (b) to give the officer any password necessary to provide the officer with access to the document; and
- (c) to enable the officer to use any computer software necessary to provide the officer with access to the document.

81. Scope of police powers under production order - (1) If a document is produced to a police officer, or made available to a police officer for inspection, under a production order, the police officer may do any of the following -

- (a) inspect the document;
- (b) take extracts from it;
- (c) print it;
- (d) make copies of it;

- (e) for an order made under section 80(1)(a), keep the document if, and for as long as, reasonably necessary for the purposes of this Act.
- (2) If a police officer keeps a document, the police officer must -
 - (a) make a copy of the document, certify the copy in writing to be a true copy, and give the copy to the person to whom the order was addressed; or
 - (b) allow the person:
 - (i) to inspect the document; or
 - (ii) to take extracts from it; or
 - (iii) to make copies of it.

82. What use can be made of information - (1) If a person produces, or makes available, a document under a production order, -

- (a) the production or making available of the document; or
- (b) any information, document or thing obtained as a direct or indirect consequence of the production or making available of the document,

is not admissible against the person in any criminal proceedings except a proceeding for an offence under section 84.

(2) A person required by a production order to produce or make available a document is not excused from doing so on the ground that producing the document or making it available -

- (a) might tend to incriminate the person or make the person liable to a penalty; or
- (b) would be in breach of an obligation (whether imposed by an Act or otherwise) not to disclose the existence or contents of the document.

83. Variation of production order - (1) If a production order requires a person to produce a document to a police officer, the person may apply to a Judge to vary the order.

(2) If the Judge is satisfied that the document is essential to the person's business activities, the Judge may vary the production order so that it requires the person to make the document available to a police officer for inspection.

84. Failure to comply with production order - (1) If a production order requires a person to produce a document to a police officer, or make a document available to a police officer for inspection, the person commits an offence if the person -

- (a) contravenes the order without reasonable excuse; or
- (b) in purported compliance with the order, produces or makes available a document that the person knows to be false or misleading in a material particular without:
 - (i) telling the police officer that the document is false or misleading, and the way in which it is false or misleading; and

- (ii) giving correct information to the police officer if the person has, or can reasonably obtain, the correct information.
- (2) An offence against subsection (1) is punishable by, -
 - (a) if the offender is a natural person, a fine of up to \$30,000 or a term of imprisonment of up to 5 years, or both; or
 - (b) if the offender is a body corporate, a fine of up to \$150,000.

85. Search warrant to facilitate investigation - (1) A police officer may apply to a Judge for a warrant under subsection (4) to search premises for a document if -

- (a) a person is convicted of a serious offence and there are reasonable grounds for suspecting that there is on those premises a property-tracking document for the offence; or
- (b) there are reasonable grounds for suspecting that a person has committed a serious offence and there is on those premises a property-tracking document for the offence.

(2) If a police officer applies for a warrant under subsection (1) for an offence and includes in an accompanying affidavit a statement to the effect that there are reasonable grounds for believing that -

- (a) the person who was convicted of the offence, or who is believed to have committed the offence, derived a benefit, directly or indirectly, from committing the offence; and
- (b) property specified in the affidavit is subject to the effective control of the person,

the Judge may treat any document relevant to identifying, locating or quantifying the property as a property-tracking document for the offence under this section.

(3) In deciding whether to treat a document under subsection (2) as a property-tracking document for an offence, the Judge may take into account the matters mentioned in section 32(2).

(4) Despite any enactment that prohibits disclosure of information, if an application is made under subsection (1) for a warrant to search premises for a property-tracking document, -

- (a) the Judge may, if satisfied that there are reasonable grounds for doing so, issue a warrant of that kind in the same way, and subject to the same conditions, as the Judge could issue a search warrant under section 96 of the Criminal Procedure Act 1980-81; and
- (b) subject to this section and sections 78 to 84, and section 86, the warrant may be executed in the same way as if it had been issued under that section.

(5) However, a Judge may not issue a search warrant under subsection (4) unless the Judge is satisfied that -

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

- (b) the investigation for the purposes of which the search warrant is being sought might be seriously prejudiced if the police officer does not gain immediate access to the document without warning to any person.
- (6) If a police officer enters premises in execution of a warrant issued under this section, the police officer may seize -
- (a) any document that is likely to be of substantial value (whether by itself or together with other documents) to the investigation for the purpose of which the warrant was issued; and
- (b) anything that the police officer believes, on reasonable grounds, will afford evidence as to the commission of an offence.
- (7) In this section, "premises" includes any place and any building, receptacle or vehicle.

86. Production orders and search warrants for foreign serious offences - (1) If a police officer is authorised, under the Mutual Assistance Act, to apply to a Judge -

- (a) for a production order under this Act for a foreign serious offence; or
- (b) for a search warrant under this Act for a property-tracking document for a foreign serious offence,

sections 78 to 85 apply to the application and to any order or warrant issued as a result of the application as if a reference in sections 78 to 85 to a serious offence were a reference to the foreign serious offence.

(2) If a police officer takes possession of a document under a production order made, or a warrant issued, in respect of a foreign serious offence, the police officer may keep the document until the Solicitor-General gives a written direction about how the document is to be dealt with, but not for longer than 1 month.

(3) A direction by the Solicitor-General under subsection (2) about a document may include a direction that the document must be sent to an authority of the foreign country that requested the issue of the relevant order or warrant.

PART 4 **MONITORING ORDERS**

87. Application for monitoring order - (1) The Solicitor-General may apply to the Court for a monitoring order that a financial institution provide information about transactions conducted during a particular period through an account held by a particular person with the financial institution.

(2) The Court may make a monitoring order if the Court 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 about to commit, a serious offence; or

- (b) was involved in the commission, or is about to be involved in the commission, of a serious offence; or
- (c) has benefited directly or indirectly, or is about to benefit directly or indirectly, from the commission of a serious offence.

88. Contents of monitoring order - (1) A monitoring order must -

- (a) specify the name or names in which the account is believed to be held; and
- (b) specify the kind of information that the financial institution is required to provide; and
- (c) specify the period during which the transaction must have occurred; and
- (d) specify to which enforcement agency the information is to be provided; and
- (e) specify the form and manner in which the information is to be given; and
- (f) set out the effect of failing to comply with a monitoring order.

(2) The period mentioned in subsection (1)(c) must -

- (a) begin no earlier than the day on which notice of the monitoring order is given to the financial institution; and
- (b) end no later than 6 months after the date of the order.

89. Protection from suits for those complying with monitoring order - (1) No action, suit or proceedings lies against-

- (a) a financial institution; or
- (b) an officer, employee or agent of the financial institution acting in the course of that person's employment or agency,

in relation to any action taken by the financial institution or person in complying with a monitoring order or in the mistaken belief that action was required under the order.

(2) A financial institution, or person who is an officer, employee or agent of a financial institution, who provides information under a monitoring order is taken, for purposes of offences relating to money laundering, not to have been in possession of that information at any time.

90. Making false statements in applications - (1) A person is guilty of an offence if -

- (a) the person makes a statement (whether orally, in a document or any other way); and
- (b) the statement -
 - (i) is false or misleading; or
 - (ii) omits any matter or thing without which the statement is misleading; and
- (c) the statement is made in, or in connection with, an application for a monitoring order.

(2) An offence against subsection (1) is punishable by a fine of up to \$20,000, or a term of imprisonment of up to 2 years, or both.

91. Disclosing existence or operation of monitoring order - (1) A person is guilty of an offence if -

- (a) the person discloses the existence or the operation of a monitoring order to another person; and
- (b) the disclosure is not to a person mentioned in subsection (5); and
- (c) the disclosure is not for a purpose mentioned in subsection (5).

(2) A person is guilty of an offence if -

- (a) the person discloses information to another person; and
- (b) that other person could infer the existence or operation of a monitoring order from that information; and
- (c) the disclosure is not to a person mentioned in subsection (5); and
- (d) the disclosure is not for a purpose mentioned in subsection (5).

(3) A person is guilty of an offence if -

- (a) the person receives information relating to a monitoring order in accordance with subsection (5); and
- (b) the person ceases to be a person to whom information could be disclosed in accordance with subsection (5); and
- (c) the person makes a record of, or discloses, the existence or the operation of the order.

(4) An offence against subsections (1), (2) and (3) is punishable by a fine of up to \$20,000, or a term of imprisonment of up to 2 years, or both.

(5) A person may disclose the existence or the operation of a monitoring order to the following persons for the following purposes -

- (a) the Solicitor-General or an authorised officer:
 - (i) for the purpose of performing that person's duties; or
 - (ii) for the purpose of, or for purposes connected with, legal proceedings; or
 - (iii) for purposes arising in the course of proceedings before a court;
- (b) the Head of the Financial Intelligence Unit, or a member of the staff of the Financial Intelligence Unit who is authorised by the Head of the Financial Intelligence Unit as a person who may be advised of the existence of a monitoring order:
 - (i) for the purpose of performing that person's duties; or
 - (ii) for the purpose of, or for purposes connected with, legal proceedings; or

- (iii) for purposes arising in the course of proceedings before a court;
- (c) an officer or agent of the financial institution for the purpose of ensuring that the order is complied with;
- (d) a barrister or solicitor for the purpose of obtaining legal advice or representation in relation to the order.

92. Failure to comply with monitoring order - A person who is given a monitoring order and fails to comply with the order is guilty of an offence punishable by a fine of up to \$20,000 or a term of imprisonment of up to 2 years, or both.

PART 5
DISCLOSURE OF INFORMATION
HELD BY GOVERNMENT DEPARTMENTS

93. Direction to disclose information - (1) This section applies to a document or information -

- (a) that is in the possession or under the control of a person in charge of a Government department or a statutory body; or
- (b) to which the person has access.

(2) Despite any other law, the Solicitor-General may direct the person to give or disclose, to the Solicitor-General or an authorised officer, the document or information if the Solicitor-General is satisfied that the document or information is relevant to -

- (a) establishing whether a serious offence has been, or is being, committed; or
- (b) the making, or proposed or possible making, of an order under Part 2 or 3.

94. Further disclosure of information and documents - (1) A person to whom a document or information has been disclosed under section 93 must not further disclose the document or information except for -

- (a) the investigation of, or the prosecution, or proposed or possible prosecution of, a person for a serious offence; or
- (b) an investigation relating to proceedings, or proposed or possible proceedings, for the making of an order under this Act or for an investigation relating to the making, or proposed or possible making, of an order.

(2) A person to whom a document or information has been disclosed in accordance with this Part must not disclose the document or information to another person except for a purpose mentioned in subsection (1)(a) or (b).

- (3) If a document or information is disclosed to a person under section 82 or subsection (1) or (2), the person -
- (a) must not voluntarily give the document or information in evidence in a proceeding before the Court other than a proceeding of a kind mentioned in subsection (1)(a) or (b); and
 - (b) may not be required to give the document or information to the Court.
- (4) A person who discloses a document or information in contravention of this section is guilty of an offence punishable by a fine of up to \$20,000 or a term of imprisonment of up to 2 years, or both.

95. Evidential value of copies - (1) A document that is examined by or given to the Solicitor-General or an authorised officer under a direction given under section 93 may be copied by -

- (a) the person who examines it or to whom it is given; or
 - (b) an officer or person authorised for the purpose by the person in charge of the Government department or statutory body to which the direction was given.
- (2) A copy purporting to be certified by the person in charge of the Government department or statutory body to be a copy made under subsection (1) -
- (a) is evidence of the nature and content of the original document; and
 - (b) has the same probative force as the original document would have had if it had been proved in the ordinary way.

PART 6
CURRENCY REPORTING AND
SUSPICIOUS CURRENCY MOVEMENTS

96. Currency reporting at border - (1) Any person who leaves or arrives in the Cook Islands with more than \$10,000 in cash or negotiable bearer instruments on his or her person or in his or her luggage without first having reported the fact to a Customs officer commits an offence punishable by-

- (a) in the case of an individual, to a fine of up to \$20,000 or a term of imprisonment not exceeding 2 years; or both;
 - (b) in the case of a body corporate, to a fine of up to \$50,000.
- (2) For the purpose of this Part, the term "negotiable bearer instrument" means a document representing ownership of debts or obligations, including bills of exchange, promissory notes, or certificates of deposit, whether made payable to the bearer or not.
- (3) If a person -
- (a) is about to leave the Cook Islands or has arrived in the Cook Islands; or

(b) is about to board or leave, or has boarded or left, any ship or aircraft in the Cook Islands,
 an authorised officer may, with any assistance as is reasonable and necessary, and with use of force as is necessary -

- (c) examine any article which a person has with him or her or in his or her luggage; and
- (d) if the officer has reasonable grounds to suspect that an offence under subsection (1) may have been or is being committed, search the person,

for the purpose of determining whether the person has with him or her or on him or her or in his or her clothing, any currency or negotiable bearer instruments in respect of which a report under subsection (1) is required.

(4) A person must not be searched except by a person of the same sex.

(5) An authorised officer, and any person assisting that officer, may stop, board and search any ship, aircraft or conveyance for the purposes of exercising the powers conferred by subsection (3) or (4) of this section

97. Seizure of currency or negotiable bearer instruments - An authorised officer may seize and detain any currency or negotiable bearer instrument that is being imported into or exported from the Cook Islands, whether or not it is found in a search under section 96(3), if there are reasonable grounds for believing that it is -

- (a) derived from a serious offence; or
- (b) intended by any person for use in the commission of a serious offence.

98. Detention of seized currency or negotiable bearer instrument - (1) Currency or any negotiable bearer instrument detained under section 97 may not be detained for more than 48 hours after it is seized.

(2) However, the Court may order its continued detention for a period not exceeding 3 months from the day it is seized on being satisfied that -

- (a) there are reasonable grounds for the suspicion mentioned in section 97; and
- (b) its continued detention is justified while:
 - (i) its origin or derivation is further investigated; or
 - (ii) consideration is given to the institution (in the Cook Islands or elsewhere) of criminal proceedings against a person for an offence with which the currency or negotiable bearer instrument is connected.

(3) The Court may subsequently order the continued detention of the currency or negotiable bearer instrument if satisfied of the matters mentioned in subsections (2)(a) and (b) but the total period of detention may not exceed 2 years from the date of the first order made under subsection (2).

99. Release of detained currency or negotiable bearer instrument - (1) Currency or any negotiable bearer instrument detained under section 98 may be released in whole or in part to the person on whose behalf it was imported or exported if -
- (a) on application by or for that person and after considering any views of the Solicitor-General to the contrary, the Court orders that its continued detention is no longer justified; or
 - (b) an authorised officer is satisfied that its continued detention is no longer justified.
- (2) However, currency or a negotiable bearer instrument detained under section 98 must not be released if -
- (a) an application is made for:
 - (i) a pecuniary penalty order or an order made under section 23, against the whole or any part of the currency or negotiable bearer instrument; or
 - (ii) a restraining order against it pending determination of its liability to confiscation; or
 - (iii) the registration of a foreign pecuniary penalty order or foreign restraining order against it; or
 - (b) proceedings are under way in the Cook Islands or elsewhere against a person for the offence with which the currency is connected,
- until the proceedings relating to the relevant application, or the proceedings for the offence, have been concluded.

PART 7
MISCELLANEOUS

100. Confiscated Assets Fund - (1) There is a fund known as the Confiscated Assets Fund ("the Fund").
- (2) Without further appropriation than this section, the following must be paid into the Fund -
- (a) money paid to the Crown instead of a forfeiture order under section 23;
 - (b) money paid to the Crown under a pecuniary penalty order under section 26;
 - (c) money paid to the Crown by a foreign jurisdiction in respect of confiscated assets, whether under a treaty or arrangement providing for mutual assistance in criminal matters or otherwise.
- (3) The Financial Secretary, with the approval of the Minister of Finance, may authorise payments to be made out of the Fund -
- (a) for purposes related to law enforcement, including in particular the investigation of suspected cases of money laundering;

- (b) to satisfy an obligation of the Crown to a foreign jurisdiction in respect of confiscated assets, whether under a treaty or arrangement providing for mutual assistance in criminal matters or otherwise;
- (c) to meet the remuneration and expenses of the Administrator;
- (d) to pay compensation or costs awarded under this Act;
- (e) to cover costs associated with the administration of the Fund.

101. Conduct by directors, servants or agents - (1) For this Act, the state of mind of a person may be established in accordance with this section.

(2) For conduct engaged in, or taken under subsection (3) to have been engaged in, by a body corporate, it is sufficient to show that a director, servant or agent of the body corporate who engaged in the conduct within the scope of his or her actual or apparent authority had that state of mind.

(3) For this Act, conduct engaged in for a body corporate is taken to have been engaged in by the body corporate if it is engaged in -

- (a) by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority; or
- (b) both:
 - (i) by another person at the direction of, or with the consent or agreement (whether express or implied) of, a director, servant or agent of the body corporate; and
 - (ii) if giving the direction, consent or agreement is within the scope of the actual or apparent authority of the director, servant or agent.

(4) For conduct taken, under subsection (5), to have been engaged in by a person (other than a body corporate), it is sufficient to show that a servant or agent of the person who engaged in the conduct within the scope of his or her actual or apparent authority had that state of mind.

(5) For this Act, conduct engaged in for a person (other than a body corporate) is taken, for this Act, to have been engaged in by the person if it is engaged in by -

- (a) a servant or agent of the person within the scope of the servant or agent's actual or apparent authority; or
- (b) by another person at the direction of, or with the consent or agreement (whether express or implied) of, a servant or agent of the first-mentioned person if the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the servant or agent.

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

102. Appointment of Administrator - Under this Act, the Attorney-General may, by instrument, appoint a person to administer property that is forfeited or subject to a restraining order.

103. Standard of proof - Except as otherwise provided in this Act, a question of fact to be decided by the Court in proceedings under this Act must be decided on the balance of probabilities.

104. Costs - (1) The Court may order the Crown to pay all costs reasonably incurred by a person in connection with proceedings, or a part of any proceedings, if -

- (a) the person brings, or appears at, the proceedings under this Act before a Court:
 - (i) to prevent a forfeiture order, pecuniary penalty order, an order made under section 23 or a restraining order, from being made against property of the person; or
 - (ii) to have property of the person excluded from a forfeiture order, pecuniary penalty order, an order made under section 23 or a restraining order;
- (b) the person is successful in those proceedings; and
- (c) the Court is satisfied that the person was not involved in any way in the commission of the offence for which the forfeiture order, pecuniary penalty order, order made under section 23 or restraining order, was sought or made.

(2) Any order issued under subsection (1) must specify the costs to be paid to the Crown.

105. Non-liability of Administrator - The Administrator is not personally liable for any act done, or omitted to be done, by him or her in performing the Administrator's functions under this Act.

106. Operation of certain other laws not affected - Nothing in this Act prejudices, limits or restricts -

- (a) the operation of any other law that provides for the forfeiture of property or the imposition of penalties or fines; or
- (b) the remedies available to the Crown, apart from under this Act, for the enforcement of its rights and the protection of its interests; or
- (c) any power of search or any power to seize or detain property that is exercisable by a police officer apart from under this Act.

107. Regulations - The Queen's Representative may, by Order in Executive Council, make regulations for all or any of the following purposes -

- (a) for the purposes of determining whether or not the amount of currency exceeds any prescribed amount, the manner and method of determining whether any currency denominated in a foreign currency is taken to be the equivalent in the domestic currency;
- (b) for the purposes of prescribing forms for this Act;
- (c) providing for any matters that are contemplated by, or are necessary for, giving full effect to this Act and for its administration.

108. Consequential repeal of Money Laundering Prevention Act 2000 - The Money Laundering Prevention Act 2000 is repealed.

This Act is administered by the Crown Law Office