



LAWS AND REGULATIONS

PROMULGATED TO GIVE EFFECT TO THE PROVISIONS OF THE INTERNATIONAL TREATIES ON NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES

In accordance with the relevant articles of the international treaties on narcotic drugs and psychotropic substances, the Secretary-General has the honour to communicate the following legislative texts.

CYPRUS

Communicated by the Government of Cyprus

NOTE BY THE SECRETARIAT

- (a) Some editing of texts may be done by the Secretariat in the interest of clarity. In this connection, words in square brackets [] have been added or changed by the Secretariat.
- (b) Only passages directly relevant to the control of narcotic drugs or psychotropic substances have been reproduced in this document. Non-relevant parts of laws and regulations have been deleted by the Secretariat; such deletions are indicated by [...].

THE CONFISCATION OF PROCEEDS OF TRAFFICKING OF NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES LAW OF 1992

***Note by the Secretariat:** This document is a direct reproduction of the text communicated to the Secretariat.

THE CONFISCATION OF PROCEEDS OF
TRAFFICKING OF NARCOTIC DRUGS AND
PSYCHOTROPIC SUBSTANCES LAW OF 1992.

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7. Realizable property and other principal terms.
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Law Number 39(I) of 1992.

**A LAW TO PROVIDE FOR THE CONFISCATION OF THE
PROCEEDS OF TRAFFICKING OF NARCOTIC
DRUGS AND PSYCHOTROPIC SUBSTANCES**

(5th June, 1992)

The House of Representatives enacts as follows:—

1. This Law may be cited as the Confiscation of Proceeds of Trafficking of Narcotic Drugs and Psychotropic Substances Law of 1992. Short title.

2.—(1) For the purposes of this Law, unless the context otherwise requires— Interpretation.

"Bonds" includes shares, debentures and other securities of a legal person irrespective of whether they constitute or not a charge on the property of the said legal person;

"civil proceedings" means any proceeding of civil nature which is not criminal.

"conclusion of criminal proceedings" with its cognate expressions means:

(a) The withdrawal of charge under section 91 of Criminal Procedure Law;

Cap. 155.
93 of 1972
2 of 1975
12 of 1975
41 of 1978
162 of 1989
142 of 1991
9(1) of 1992.

(b) the entering of nolle prosequi under section 154 of the Criminal Procedure Law;

(c) the acquittal of accused by the court of first instance or on appeal by the Supreme Court;

(d) pardon by the President of the Republic;

(e) sentencing for drug trafficking without the issue of confiscation order;

(f) the full compliance with a confiscation order either with the payment of the amount due or by serving the term of imprisonment in lieu of payment of the amount.

"court" means an assize court or a district court in the exercise of its criminal jurisdiction and for purposes of section 22 has the meaning assigned to it in subsection (10) of the said section;

"criminal proceedings" means a criminal proceeding within the meaning assigned to it in the Courts of Justice Law;

14 of 1960
50 of 1962
11 of 1963
8 of 1969
40 of 1970
58 of 1972
1 of 1980
35 of 1982
29 of 1983
91 of 1983
16 of 1984
51 of 1984
83 of 1984
93 of 1984
18 of 1985
71 of 1985
89 of 1985
96 of 1986
317 of 1987
49 of 1988
64 of 1990
136 of 1991
149 of 1991.

"dividend" includes interest and any kind of income derived from securities and any income derived from distribution of profits in connection with unit trusts;

"drug trafficking" means doing or being concerned in doing any of the following acts whether in or out of the Republic:

29 of 1977.

- (a) Producing or supplying a controlled drug where the production or supply contravenes the Narcotic Drugs and Psychotropic Substances Law or other corresponding law;
- (b) transporting or storing a controlled drug where possession of the drug contravenes the Narcotic Drugs and Psychotropic Substances Law or other corresponding law;
- (c) importing or exporting a controlled drug where the importation or exportation contravenes the Narcotic Drugs and Psychotropic Substances Law or the Customs and Excise Law or other corresponding law;
- (d) entering into an agreement or arrangement for the purpose of:
 - (i) assisting or facilitating a person to retain the proceeds from drug trafficking or to retain control on such proceeds;
 - (ii) securing or disposing of funds derived from drug trafficking so as to enable the person involved in drug trafficking to acquire property by way of investment;

29 of 1977
67 of 1983
20(I) of 1992.
82 of 1967
57 of 1969
4 of 1971
45 of 1973
12 of 1977.

"drug trafficking offence" means an offence committed in contravention:

- (a) Of sections 4, 5, 6, 7, 12, 20, 21, 22, 25 and 26 of the Narcotic Drugs and Psychotropic Substances Law;
- (b) of sections 39, 48, 49, 55, 191 and 193 of the Customs and Excise Law;

Cap. 154.
3 of 1962
43 of 1963
41 of 1964
69 of 1964
70 of 1965
5 of 1967
58 of 1967
44 of 1972
92 of 1972
29 of 1973
59 of 1974
3 of 1975
13 of 1979
10 of 1981
46 of 1982
86 of 1983
186 of 1986
111 of 1989.

- (c) of section 21 of this Law;
- (d) of sections 20(c) and 20(d) of the Criminal Code in connection with the commission of any of the offences referred in paragraphs (a), (b) and (c) above;

- (e) of section 370 of the Criminal Code in connection with the commission of any of the offences referred in paragraphs (a), (b) and (c) above;
- (f) of section 371 of the Criminal Code in connection with the commission of any of the offences referred in paragraphs (a), and (c) above;

"government stocks" includes development bonds, short term treasury bonds without interest, saving bonds and any other security issued in the name of a certain person but does not include a saving bond or other security which is not issued to the bearer;

"immovable property" has the same meaning as in the Immovable Property (Tenure Registration and Valuation) Law;

Cap. 224.
A3 of 1960
78 of 1965
10 of 1966
75 of 1968
51 of 1971
2 of 1978
16 of 1980
23 of 1982
68 of 1984
82 of 1984
86 of 1985
185 of 1986
12 of 1987
74 of 1988
117 of 1988

"movable property or movables" means any property which is not immovable;

"property" means movable and immovable property wherever they are;

"Republic" means the Republic of Cyprus;

"unit trusts" means any trust established for the purpose or having the effect of providing for persons having funds available for investment facilities of the right for the participation as beneficiaries under the trust in any profits or income arising from the acquisition, management or disposal of any property whatsoever.

(2) The words and phrases set out in the first column are interpreted in the sections of this Law set out in the second column:

Appeal	22(4)
Benefited from drug trafficking	3(2)
Charging Order	10
Company	18(4)
Confiscation Order	3(3)
Designated country	22(2)
External Order	22
Family of the accused	25(17)
Financial position of the accused	25(17)
Information	24(6)
Interference with property	9(9)
Making a gift	7(8)
Order of charge (see charging order)	
Order for sale of bonds	13
Order to make information available	24
Pecuniary penalty	3(4)
Preferential debts	7(6)
Privileged information	24(5)
Proceeds of drug trafficking	4(1),(4)
Prohibited gift	7(7)
Realizable property	7(1)
Restraint Order	9
Value of gift	7(5)
Value of property	7(4).

(3) References in this Law to offences include offences committed before the commencement of this Law, but the courts have no obligation to exercise any of the powers conferred on them by this Law in connection with a criminal case for drug trafficking instituted before the commencement of this Law.

Confiscation
Order.

3.—(1) A Court having convicted a person for a drug trafficking offence and before sentencing, shall, on the application of the Attorney General of the Republic, proceed to an inquiry in order to determine whether the accused has benefited, in any way, from drug trafficking.

(2) For the purposes of this Law a person who has at any time, whether before or after the commencement of this Law received any payment or other reward in connection with drug trafficking carried on by him or another is deemed to have benefited from drug trafficking.

(3) If the court determines that the accused has benefited from drug trafficking, the court, shall before sentencing in respect of the offence for which he has been convicted or for offences which the court can take into consideration in sentencing, proceeds to determine in accordance with the provisions of this section the amount to be recovered from the accused and consequently:

- (a) Issue an order, to be called a confiscation order, for the recovery of the amount in question in accordance with the provisions of section 8; and
- (b) impose any of the penalties which the court has power to impose.

(4) The issue of a confiscation order is not affected by any provision in any other law limiting the power of the court in imposing pecuniary penalties.

(5) In this Law reference to the proceeds of the accused from drug trafficking includes proceeds from drug trafficking which have been mixed with proceeds from other sources.

Assessing the
proceeds from
drug trafficking.

4.—(1) For the purposes of this Law:

- (a) All payments which have been made to the accused or to any other person at any time whether before or after the commencement of this Law in connection with drug trafficking carried on by him or another person are deemed to be proceeds of drug trafficking; and
- (b) the value of the proceeds of drug trafficking is the aggregate of the values of payment or other rewards made to him.

(2) The court may for the purpose of determining whether the accused has benefited from drug trafficking and of assessing the value of his proceeds of such trafficking make the following assumptions unless the contrary is proved in the circumstances of the case of the accused:

- (a) That any property acquired by the accused after his conviction or transferred to him at any time during the last six years prior to the commencement of criminal proceedings against him was acquired by him as a payment or reward in connection with drug trafficking carried on by him, at the earliest time at which he appears to the court to have acquired it.
- (b) that any expenditure of his since the beginning of that period was met out of payments or rewards received by him in connection with drug trafficking carried on by him;
- (c) that, for the purpose of valuing such property he received the property free of any charge and interests of other person in it.

(3) Subsection (2) above does not apply if the only drug trafficking offence against the accused is in respect of assisting another to conceal the proceeds contrary to the provisions of section 21.

(4) For the purposes of assessing the value of the accused's proceeds of drug trafficking in a case where a confiscation order has previously been made against him the court shall not take into account any of his proceeds of drug trafficking that are shown to the court to have been taken into account in determining the amount to be recovered under that order.

Statement of facts and particulars.

5.—(1) The prosecution, together with the application of the Attorney General of the Republic for an inquiry under section 3, or with such time as the court may direct, tenders a statement of allegations in which there are set out facts and particulars relevant to enquiry for the determination of whether the accused has benefited from drug trafficking or to the assessment of the value of the proceeds, and if the accused, in accordance with the procedure prescribed in this section, accepts the correctness of the contents or part of such statement, the court for the purposes of such enquiry and assessment may treat such acceptance as conclusive of the facts and particulars to which it relates.

(2) Following the tender by the prosecution of the statement of facts and particulars under subsection (1), the court, if satisfied that a copy of it has been served on the accused, calls upon him to declare whether he accepts any of the allegations contained in the statement and to submit a statement with regard to those of the allegations he does not accept (hereinafter to be referred as a statement in rebuttal) in which he shall indicate the particulars and the reasons on which he intends to rely both in rebutting the allegation of the prosecution on matters relevant to determining the amount that might be received from his realizable property. The statement in rebuttal is submitted within such time as the court may direct or with three days from the service of the statement of facts and particulars to the accused by the prosecution.

(3) Failure of the accused to comply with any of the directions of the court shall be treated for the purposes of this section as an acceptance of all the facts and particulars contained in the statement of facts and particulars.

(4) Where in the statement of rebuttal there are allegations relevant to determining the amount that might be realized at the time the confiscation order is made and the prosecution accepts all or some of such allegations, the court for the purposes of such determination may treat such acceptance on the part of the prosecution as conclusive proof of the allegations to which it relates.

(5) The acceptance of allegations either by the prosecution or by the accused is made before the court orally unless the court otherwise directs.

(6) The acceptance by the accused shall not be admissible as evidence in any other criminal proceedings.

(7) The court may fix a day for the inquiry and may adjourn same to another day whenever it appears to the court necessary to do so.

(8) The court delivers a reasoned decision on all matters of the inquiry.

6.—(1) Subject to subsection (2), the amount to be recovered under a confiscation order shall be the amount which the court assesses to be the value of the accused's proceeds of drug trafficking.

Amount to be recovered under a confiscation order.

(2) If the court is satisfied that the amount that might be realized at the time the confiscation order is made is less than the amount the court assesses to be the value of his proceeds of drug trafficking, the amount to be recovered in the accused's case under the confiscation order shall be the amount appearing to the court to be the amount that

might be so realised. In such a case it is also mentioned in the order the amount which ought to have been recovered as the amount representing the proceeds of the accused of drug trafficking.

(3) Where the court finds that the amount which can be recovered from the realizable property of the accused is less than the amount which ought to have been recovered may for such difference make an order for its cancellation or for postponement of its recovery if such an order is in the opinion of the court just and proper having regard being to the reasons for such difference.

Realizable
property and
other principal
terms.

7.—(1) In this Law 'realizable property' means, subject to subsection (2) below—

- (a) Any property held by the accused; and
- (b) any property held by another person to whom the accused has directly or indirectly made a prohibited by this Law gift.

(2) Property is not realizable if such property is subject to forfeiture by virtue of an order of the court issued in criminal proceedings.

(3) For the purposes of sections 5 and 6 the amount that might be realized at the time a confiscation order is made is:

- (a) The total of the values at that time of all realizable property held by the accused;
- (b) together with the total of the values at that time of all prohibited gifts;
- (c) less, where there are obligations having under subsection (6) below priority at that time, the total amounts payable in pursuance of such obligations.

(4) Subject to the following provisions of this section the value of property, other than cash is:

- (a) The market value of the property when such property belongs absolutely to one person;
- (b) when another person has an interest in such property, the market value of the property less the amount required to pay off the interest of the other person and to discharge any encumbrance, other than a charging order on that interest.

(5) Subject to the provisions of this section, reference in this Law to the value of a gift means the value of the property in the open market at the time the confiscation order is issued or at the time the gift is made, if the value of such property was then higher than its value at the time of the order.

(6) For the purposes of subsection (3) above the obligations of the accused that have priority as against other obligations are:

- (a) The obligation for the payment of amounts due in respect of fines or other order of the court imposed or made before the confiscation order; or
- (b) his obligation for the payment of amounts which would have been included among the preferential debts of the accused, if at the time of the confiscation order he was declared bankrupt or, in the case of a company, a winding up order was made;
- (c) any other bona fide claim against the accused which the court considers appropriate for according to it priority on such terms as the court in the circumstances of the cases deems fit.

"preferential debts" means—

- (i) in relation to bankruptcy, the debts to be paid in priority under section 38 of the Bankruptcy Law or any other law, as if the date of

the confiscation order was the date of the receiving order;

- (ii) in relation to winding up the preferential debts to be paid in priority under section 300 of the Companies Law or any other law as if the date of the confiscation order was the date of the winding up order;
- (iii) in relation to both bankruptcy and winding up of a company, any claim mentioned in paragraph (c) of subsection (6) above.

Cap. 113.
9 of 1968
7 of 1977
17 of 1979
105 of 1985
196 of 1986.

(7) The gifts, including gifts made before the commencement of this Law which are prohibited gifts under this Law are:

- (a) Those made by the accused at any time since the beginning of the period of six years ending when the criminal proceedings were instituted against him;
- (b) those made by the accused at any time and was a gift of property:
 - (i) Received by the accused in connection with drug trafficking committed by him or another; or
 - (ii) which in whole or in part directly or indirectly represented in the accused's hands property received by him in connection with drug trafficking carried on by him or by another person.

(8) For the purposes of this Law the accused is to be treated as making a gift where he transfers property to another directly or indirectly for a consideration the value of which is significantly less than the actual value of the property at the time of transfer. In such a case the preceding provisions of this section shall apply as if the accused has made a gift of that part of the property which by comparison to the total value of the property represents the proportion between the value of the consideration accepted for the transfer of the property and the actual value of the property at the time of the transfer.

8.—(1) Without prejudice to the power of the court mentioned in section 12 to 14, the effect of a confiscation order is the same with the effect of imposing a fine and the Table in section 12 of the Criminal Procedure Law shall be substituted for the purposes of this Law with the following:

Procedure for enforcing confiscation order.
Table.
Cap. 155.

TABLE

<u>First column</u>	<u>Second column</u>
An amount not exceeding £50	7 days
An amount exceeding £50 but not £100	14 days
An amount exceeding £100 but not £500	30 days
An amount exceeding £500 but not £1,000	60 days
An amount exceeding £1,000 but not £2,000	90 days
An amount exceeding £2,000 but not £5,000	6 months
An amount exceeding £5,000 but not £10,000	9 months
An amount exceeding £10,000 but not £20,000	12 months
An amount exceeding £20,000 but not £50,000	18 months
An amount exceeding £50,000 but not £100,000	2 years
An amount exceeding £100,000 but not £250,000	3 years
An amount exceeding £250,000 but not one million pounds	5 years
An amount exceeding one million pounds	10 years

(2) Where:

Cap. 155.

- (a) A warrant of commitment is issued under sections 123 and 124 of the Criminal Procedure Law for default in complying with a confiscation order; and
- (b) the accused at the time the warrant is issued is convicted to serve a term of imprisonment in respect of drug trafficking offences,

the term of imprisonment imposed under the above provisions of the Criminal Procedure Law adjusted to the provisions of subsection (1) above shall not begin to run until after the term mentioned in paragraph (b) above.

(3) For the purposes of this section:

95 of 1972.

- (a) Consecutive terms and terms which are wholly or partly concurrent shall be treated as a single term; and
- (b) there shall be disregarded terms of imprisonment which have been suspended under the Suspension Under Terms of Imprisonment in Certain Cases Law and the enforcement of which had not taken place when the commitment warrant was issued under subsection (1) above.

Restraint orders.

9.—(1) The court may make a restraint order where:

- (a) Criminal proceedings have been instituted or are about to be instituted in the Republic against a person for a drug trafficking offence;
- (b) the said proceedings have not been concluded;
- (c) the court is satisfied that there is reasonable ground to believe that the person mentioned in paragraph (a) above has benefited from drug trafficking.

(2) A restraint order made under subsection (1) prohibits the dealing in any way with any realizable property subject to such conditions and exceptions as may be specified in the order.

(3) A restraint order may apply:

- (a) To all realizable property held by a specified person whether the property is described in the order or not; and
- (b) to realizable property held by a specified person being properly transferred to him after the making of the order.

(4) This section shall not take effect in relation to any property which is subject to a charging order made under section 10.

(5) A restraint order:

- (a) May be made by the Attorney General of the Republic applying ex parte;
- (b) shall provide for service of notice to all persons affected by the order.

(6) A restraint order:

- (a) May be discharged or varied in relation to any property; and
- (b) shall be discharged when proceedings for the offences are concluded.

(7) the court may at any time after the making of a restraint order, appoint a receiver:

- (a) To take possession and place under his custody any realizable property;
- (b) in accordance with the court's directions to manage or otherwise deal with any property in respect of which he is appointed.

(8) The court may on appointing a receiver to impose such conditions as may be necessary and may direct any person in possession of property in respect of which the receiver was appointed to give possession of it to the receiver.

(9) For the purposes of this section and without prejudice to the generality of the expression, 'dealing with property' includes:

- (a) Making a payment towards a debt with a view to reducing same; and
- (b) removing or transporting the property outside Cyprus.

(10) Where the court has made a restraint order the realizable property may be seized for the purpose of preventing its removal outside Cyprus.

(11) Property seized under subsection (10) above shall be dealt with in acceptance with the court's directions.

10.—(1) The court may make a charging order before or after of a confiscation order is made but a charging order shall only be made before a confiscation order is made where: Charging orders.

- (a) Criminal proceedings have been instituted or are about to be instituted in the Republic for a drug trafficking offence;
- (b) the said proceedings have not been concluded;
- (c) the court is satisfied that there is reasonable ground to believe that the person mentioned in paragraph (a) above was benefited from drug trafficking.

(2) An order made under subsection (1) is called a charging order and notwithstanding the provisions in other laws it creates a charge on the realizable property specified in the order securing the payment to the Republic:

- (a) Where a confiscation order has not been made, of an amount equal to the value of the property charged;
- (b) in any other case of an amount not exceeding the amount payable under the confiscation order.

(3) A charging order is made by the Attorney General of the Republic applying *ex parte*.

(4) Subject to subsection (6) below, a charge may be imposed by a charging order only on:

- 51
- (a) Any interest in realizable property being an interest held beneficially by the accused in any asset of the kind mentioned in subsection (5) or under a trust;
 - (b) any interest in realizable property held by any other person either of the kind mentioned in subsection (5) or under a trust and to whom the accused has made a prohibited gift under this Law.

(5) Subject to the provisions of subsection (12), the kinds of assets referred to in subsection (4) above are:

- (a) Immovable property;
- (b) the following securities:
 - (i) Government stock;
 - (ii) stock of any body incorporated in the Republic;
 - (iii) stock of any body incorporated outside the Republic being stock registered in a register kept at any place within the Republic;
- (c) units of any unit trust in respect of which a register of the unit holders is kept at any place within the Republic;
- (d) funds in court.

(6) In any case where a charging order is made on any interest on any asset of a kind mentioned in paragraphs (b) and (c) of subsection (5) above the court may direct that the charge be extended so as to cover any interest or dividend payable in respect of the asset.

(7) The court may make an order discharging or varying the charging order and shall make an order discharging the charging order if the proceedings for the offence have been concluded or the amount the payment of which is secured by the charge, is paid into court.

(8) A charging order may be made either absolutely or subject to conditions as to notifying any person holding an interest in the property to which the order relates or as to the time when the charge is to become enforceable or as to other matters.

(9) The making of a charging order, in respect of the assets in paragraphs (b), (c) and (d) of subsection (5) above has all or some of the following effects as the court may specify, subject to such conditions and directions as it may consider necessary or supplementary of the effect or effects so specified:

- (a) The creation of a charge in favour of the Republic in the property for which the order is made for the payment of the amount mentioned in subsection (1) in priority to any other debt or obligation of the accused which was not the subject of charging order previously made in respect of the same assets, or of other charges not created prior to the making of the order in any other legal way;
- (b) the prohibition of transfers, sales, payments or other dealings in respect of the subject making of the order without prejudice to the enforcement of court decisions or orders made before the making of the order;
- (c) the prohibition of payment of dividends to the debtor in respect of the subject matter of the order;
- (d) in the case of a unit trust, the prohibition of any acquisition of the units or any dealing in connection with the units by any person legal or otherwise which performs functions under the trust.

After the service of the order to any person under this subsection, a duty is created for such person to comply with the context of the order and further if such person keeps any registers to enter into such register any transfers or any other dealings in respect of the subject matter of the order to and to effect any amendments in the register which are consequential to the making of the order.

(10) A charging order made in respect with immovable property is deposited with the District Lands Office of the District where the property affected in situated and thereafter the provisions of section 57, 60 and 61 of the Civil Procedure Law are applied with the necessary adjustments as if:

- (a) The charging order was a judgment of the court for a debt; and
- (b) the depositing of the order, constituted registration of a judgment of the court for a debt.

(11) Every order of the court varying or discharging a charging order on immovable property is deposited with the District Lands Office of the District where the property affected is situated and the District Lands Officer amends or deletes accordingly the relevant entry in the register kept under section 60 of the Civil Procedure Law.

(12)(a) The Council of Ministers may by Regulations amend subsection (5) by adding or removing from the kinds of assets which in its opinion, ought to have been added or deleted, provided that in the case of adding new assets such addition does not entail any amendments of the Law.

Cap. 6.
11 of 1965
161 of 1989
228 of 1989.

Cap. 6.

(b) Regulations made under this subsection are laid before the House of Representatives for approval and accordingly the provisions of section 3(2) of the Laying before the House of Representatives Regulations issued under the Authority of a Law, Law of 1989 applied.

99 of 1989
227 of 1990
27 of 1992.

11.—(1) The court may make an order discharging orders under sections 9 and 10 issued before the making of a confiscation order if the contemplated criminal proceedings have not commenced within a reasonable time or with the time specified by the court in making the order.

Supplementary provisions.

(2) When the power under sections 9 and 10 are exercised before the commencement of the criminal proceedings then:

- (a) The reference to the accused made in this Law shall be interpreted as reference to the person mentioned in section 9(1)(a) and section 10(1)(a);
- (b) the reference to realizable property made in this Law shall be interpreted as if the criminal proceedings against the person mentioned in section 9(1)(a) or in section 10(1)(a) for a drug trafficking offence were commenced immediately before the making of an order under sections 9 and 10.

12.—(1) After a confiscation order is made for which there was no appeal and which remains unsatisfying, the court may on the application of the prosecution exercise the following powers:

Appointment of a receiver.

- (a) Appoint a receiver for the realization of property;
- (b) empower the receiver so appointed or a receiver appointed under section 9(7) or under other provisions of the Law in respect of issuing charging orders:
 - (i) To enforce any charge imposed under section 10 on realizable property or on interest or dividend payable in respect of such property; and
 - (ii) subject to such conditions or exceptions as the court thinks appropriate to take possession of any realizable property not affected by a charge;
- (c) to order any person having possession of realizable property to give possession of it to any such receiver;
- (d) to empower any such receiver to realize realizable property in such manner as the court may direct;
- (e) to order any person holding any interest in realizable property to make such payment to the receiver in respect of any interest held by the accused, or as the case may be the recipient of a prohibiting gift and the court may on the payment being made, order the transfer grant or extinction of any interest in the property.

(2) Paragraphs (c), (d) and (e) of subsection (1) above do not apply to property effected by a charge created under section 10.

(3) The court shall not in respect of any property, exercise the powers conferred by paragraphs (b)(i), (d) and (e) of subsection (1), unless satisfied that a reasonable opportunity has been given to the persons holding any interest in the property to make representations to the court.

(4) A receiver appointed under this section has the same powers, to the extent to which they do not come into conflict with the provisions of this Law, as if he was appointed for purposes of sale disposition or realization of assets charged with a charging order for the satisfaction of a civil debt under the Charging Orders Law.

31(f) of 1992.

Order of sale of
stock.

13.—(1) Subject to the provisions of subsection (4), where the subject matter of a charging order is an asset mentioned in paragraphs (b) and (c) of subsection (5) of section 10, the sale, disposition or realization of such asset can only be effected by an order of the court made on the application of the prosecution or of a receiver appointed under section 12 and which is called an order of sale of stock.

(2) The court when making an order of sale of stock may impose such conditions as it may consider necessary for safeguarding the interests of any person having an interest in the sale of the said stock.

(3) The court before issuing an order of sale of stock secures the views of all interested persons including the views of the Registrar of Companies and Official Receiver, as well as the views of the directors of companies or other legal persons with a view to ascertaining the interests in the asset under charge which might be affected by its sale, realization or disposition. For this purpose the court may give such directions as it considers in the circumstances proper and necessary.

(4) Order of sale of stock can only be made after the issue of a confiscation order.

(5) Where the subject matter of a charging order is shares in a company their sale is only effected by public auction, unless the court otherwise directs and subsequently the provisions of the Charging Orders Law shall apply as if the charging order was issued for a civil debt under that Law.

31(1) 1992.

Application of
proceedings of
realization of
property.

14.—(1) The sums specified in subsection (2) which are in the hands of a receiver whether appointed either under section 9 or 12 or with a view to enforcing a charging order, shall be applied on the accused's behalf in accordance with the provisions of subsection (4) towards the satisfaction of the amount due under the confiscation order and such amount is reduced accordingly after the deductions of the sums specified in subsection (3).

(2) The sums applied under subsection (1) are:

- (a) The proceeds of the enforcement of any charge imposed under section 10;
- (b) the proceeds of the realization of property other than by enforcement of a charge, under section 9 or 12;
- (c) any other sums being property belonging to the accused.

(3) Irrespective of the provisions of section 126 of the Criminal Procedure Law the sums which are deducted from the sums specified in subsection (2) before the reduction of the amount due under a confiscation order are:

- (a) The remuneration and expenses of the receiver;
- (b) any sum paid by the prosecution under section 19(2);
- (c) payments effected by order of the court.

(4) The sums specified in subsection (2) are applied as follows:

- (a) the sums specified in subsection (3) are paid in the order they are enumerated in the said subsection unless the court otherwise directs;
- (b) any balance shall be treated as if it were a fine and is applied for the satisfaction of the amount payable under confiscation order;
- (c) if after the amount payable under the confiscation order has been fully paid there is any balance it is distributed among such of those who held property which has been realized in such proportions as the court may direct after giving a reasonable opportunity for such persons to make representations to the court.

General
principles in
exercising
certain powers.

15. The following principles apply to the powers conferred on the court under sections 10 and 14 or on a receiver appointed under sections 9 and 12 or in pursuance of a charging order:

- (a) In the case of realizable property held by a person to whom the accused has directly or indirectly made a prohibited gift the power is exercised with a view to realizing no more than the value of the gift;
- (b) the powers shall be exercised with a view to allowing any person other than the accused or the recipient of any prohibited gift to retain or recover the value of any property belonging to him;
- (c) in exercising those powers no account shall be taken of any obligations of the accused or of the recipient of any prohibited gift which conflict with the obligation to satisfy the confiscation order;
- (d) subject to the above principles the power shall be exercised with a view to satisfying the amount due under a confiscation order by recovering the current value of the realizable property.

16.—(1) If on any application by the accused in respect of a confiscation order the court is satisfied that the realizable property is inadequate for the payment of any amount remaining to be recovered under the order, may subject to subsection (2), vary the confiscation order:

Variation of a
confiscation
order.

- (a) By substituting for the amount to be recovered under the order such lesser amount as the court thinks just; and
 - (b) substitute for the terms of imprisonment fixed under section 126 of the Criminal Procedure law and section 8 of this Law in respect of the amount to be recovered under the order, a shorter period determined in accordance with the above provisions, in respect of the lesser amount.
- (2) For the purposes of subsection (1) above:
- (a) In the case of realizable property held by a person who had been adjudged bankrupt, the extent of that property which could be distributed among the creditors of the bankrupt be treated as property which cannot be recovered, but;
 - (b) it shall not be treated as property which cannot be recovered any inadequacy in the realizable property which appears to the court to be attributable wholly or partly to anything done by the accused for the purpose of preserving from any risk of realization under this Law any property held by a person to whom the accused had directly or indirectly made a prohibited gift.

(3) The application for variation is made in writing and is supported by a sworn statement in verification of the facts on which it is based and such application is served on the prosecution and on other affected persons as the court may direct.

(4) For the purposes of this section "court" means the court which made the confiscation order or other court of similar jurisdiction.

17.—(1) Where a person who holding realizable property is adjudged bankrupt, for the purposes of the Bankruptcy Law it is excluded from the bankrupt's estate:

Bankruptcy of
accused.
Cap. 5.
49 of 1985
197 of 1986.

- (a) Property which is the subject of a restraint order made before the order adjudging him bankrupt; and
- (b) any proceeds of property realized by virtue of sections 9(6), 12(1)(d) and 12(1)(e) being in the hands of a receiver appointed under section 9 or 12.

(2) Where a person has been adjudged bankrupt, the powers conferred on the court by sections 9 to 13 or on a receiver appointed for the purposes of those sections shall

not be exercised in relation to property of the bankrupt which under section 41 of the Bankruptcy Law is distributable among his creditors.

(3) Subsection (1) above does not affect the enforcement of a charging order made before the order adjudging the person bankrupt, or was made in respect of property which was subject to a restraint order when the order adjudging him bankrupt was made.

(4) Nothing in the Bankruptcy Law shall be taken as restricting in any way the exercise of the powers referred to in subsection (2).

(5) Where the Official Receiver acts as a provisional receiver under sections 9 and 10 of the Bankruptcy Law and the property of the debtor is subject to a restraint order such property shall be administered according to the directions of the court without prejudice to a lien for any expenses, including the remuneration of the receiver, incurred in respect of such property.

(6) Where a person is adjudged bankrupt and has directly or indirectly made a prohibited gift the provisions of section 46 of the Bankruptcy Law:

- (a) shall not apply in respect of the making of the gift at any time when criminal proceedings for a drug trafficking offence have been instituted against him and have not been concluded, or when property of the person to whom the gift was made is subject to a restraint order or charging order, but
- (b) shall apply after the conclusion of the criminal proceedings for drug trafficking, provided they are taken into account any realizations under this Law of property held by the person to whom the gift was made.

Winding up of
company
holding
realizable
property.

18.—(1) Where realizable property is held by a company and an order for the winding up of the company was made or a resolution has been passed by the company for a voluntary winding up, the functions of the liquidator or any provisional liquidator shall not be exercisable in relation to:

- (a) Property subject to a restraint order made before the relevant date as specified in subsection (4);
- (b) any proceeds of property realized by virtue of sections 9(6), 12(1)(d) or 12(1)(e) in the hands of a receiver appointed under section 9 or 12:

Provided that there shall be payable out of such property any expenses, including the remuneration of the liquidator or provisional liquidator, properly incurred in the winding up in respect of the property.

(2) Where in the case of a company for which a winding up order was made or a resolution has been passed by the company for its voluntary winding up the powers conferred on the court under sections 9 to 13 or on a receiver appointed under the said sections shall not be exercised in relation to any realizable property held by the company in relation to which the functions of the liquidator are exercisable if by such exercise:

- (a) He is inhibited from exercising those functions for the purpose of distribution any property held by the company to the company's creditors; or
- (b) he is prevented from paying out of any property of expenses, including the remuneration of the liquidator or any provisional liquidator, properly incurred in the winding up in respect of the property:

Provided that nothing in the Companies Law shall be taken as restricting in any way the exercise of these powers.

(3) Subsection (2) above does not affect the enforcement of a charging order made before the relevant date or on property which was subject of a restraint order at the relevant date as such date is defined in subsection (4).

(4) In this section:

"company" means a company which is wound up under the Companies Law;

"relevant date" means:

- (a) The date on which the resolution for the voluntary winding up of the company has been passed in the cases where:
 - (i) No winding up order has been made; or
 - (ii) a winding up order was made, but, before the presentation of the petition for the winding up of the company by the court such resolution has been passed by the company;
- (b) in any other case where such an order has been made, the date of the making of the order.

19.—(1) A receiver appointed under section 9 or 12 or in pursuance of a charging order shall not be liable to any person in respect of any loss or damage resulting from his action in relation to property of such person which was not realizable provided the said receiver:

Receiver.
Supplementary
provisions.

- (a) Would have been entitled to take such action if such property was realizable;
- (b) believed and had reasonable grounds for believing that he was entitled to take such action;
- (c) the loss or damage was not caused by his negligence.

(2) Any amount due in respect of the remuneration or expenses of a receiver appointed for the purposes of this Law, remain unpaid by reason of the fact that there were no available sums for the payment of such remuneration and expenses under section 14(3), then such unpaid amounts are paid by the Republic.

20.—(1) According to the provisions of this section, the court may order compensation to be paid to any person who had realizable property, in the case where the criminal proceedings which were instituted against him for a drug trafficking offence:

Compensation.

- (a) Do not result in conviction;
 - (b) resulted in conviction but such conviction was quashed on appeal and no conviction for any other drug trafficking offence was substituted.
- (2) The claim for compensation is made by action.
- (3) The court orders compensation if satisfied:
- (a) That there has been serious default on the part of a person concerned in the investigation or prosecution of the offence or offences concerned and that but for that default the proceedings would not have been instituted or continued; and
 - (b) that the plaintiff has suffered substantial loss in consequence of anything done in relation to the property by or in pursuance of any order of the court under sections 9 to 13 both inclusive.

(4) The amount of compensation shall be such as the court thinks just in all the circumstances of the case.

21.—(1) Subject to subsection (3) it is an offence the entering into an agreement or arrangement or being concerned in an agreement or arrangement whereby:

Assisting
another to
retain benefit of
drug trafficking
an offence.

- (a) It is assisted or facilitated in any way a person benefited from drug trafficking to retain or control such benefit whether by concealment or conversion or mixing same with other property or remove same outside Cyprus or transfer in the name of other persons or in any other way;
- (b) the proceeds of any person from drug trafficking are used for the purpose of such person to acquire property by way of investment.

(2) In this section, reference to any person's proceeds of drug trafficking include a reference to any property in his possession which is in whole or in part directly or indirectly representing his proceeds of drug trafficking.

(3) In criminal proceedings against a person for an offence under this section it is a defence to prove :

- (a) That he did not know or had no reason to believe that the person with whom he entered into the arrangement under subsection (1) above was a person involved in drug trafficking or benefited therefrom;
- (b) that he did not know or had reasons to believe that the arrangement related to proceeds of drug trafficking;
- (c) that he did not know or had reasons to believe that by entering into that arrangement:
 - (i) The person who benefited from drug trafficking was facilitated to retain or control directly or indirectly any property;
 - (ii) the proceeds of a person from drug trafficking would be used for acquiring by that person of property by way of investment.
- (d) that he intended to disclose to a police officer his suspicion or belief or the facts on which his suspicion or belief is based in respect of the arrangement or agreement and that there was a reasonable excuse for his failure to comply with the provisions of subsection (3)(b).

(4) Where a person disclosed to police officer with the rank of sub inspector and above his belief or suspicion that any funds or investments are derived from or used in connection with drug trafficking or any matter on which such a suspicion or belief is based:

- (a) The disclosure shall not be treated as a breach of any restriction upon the disclosure of information imposed by contract; and
- (b) if he does any act in contravention of subsection (1) above and the disclosure related to the act concerned he does not commit an offence under this section if the disclosure is made in accordance with this paragraph that is:
 - (i) The said act was made with the consent of the police officer after the aforesaid disclosure; or
 - (ii) if the act was made before the disclosure, the disclosure was made on his initiative and as soon as it was reasonable for him to make such disclosure.

(5) Offences committed under this section are punishable with imprisonment not exceeding fourteen years or with a fine or with both.

Enforcement of external order.

22.—(1) The Council of Ministers may by Regulations apply this section to any order made after the making of the Regulations by a court of a foreign country being an order:

- (a) Of a description specified in the Regulations;

(b) made for the purposes of recovering payments or other rewards received in connection with drug trafficking.

(2) For the purposes of this section the orders hereinabove mentioned shall be referred as "external orders" and the foreign country the orders of which are subject to the provisions of this section by virtue of the said Regulations shall be referred as "designated country".

(3) Subject to the provisions of subsection (4) the court may on application by or on behalf of the government of a designated country, register an external order made there for purposes of its enforcement.

(4) The court registers an external order, if satisfied that:

- (a) At the time of registration the order is in force in the designated country and is not subject to appeal as herein below interpreted;
- (b) where a person against whom the order is made did not appear in the proceedings, that he received notice of the proceedings in sufficient time to enable him to present his case and state his views;
- (c) if of the opinion that enforcing the order would not be contrary to the interests of justice of the Republic.

For purposes of paragraph (a) appeal includes any proceedings the object of which is the discharge or setting aside of a judgment of court or the retrial of the case or its stay of execution.

(5) The court shall cancel the registration of an external order if it appears to the court that the order has been satisfied:

- (a) By the payment of the amount due under the order; or
- (b) by the imprisonment of the person against whom the order was made for not complying with the order; or
- (c) otherwise.

(6) Sections 9 to 18 both inclusive in relation to an external order registered under this section, shall have effect subject to such modifications as may be specified in the Regulations made by the Council of Ministers under this section.

(7) Where the court is satisfied on an application by or on behalf of the government of a designated country that proceedings, which might result in an external confiscation order being made against a person, have been instituted in the designated country and have not been concluded, sections 9 and 10 of this Law shall have effect in relation to those proceedings:

- (a) As they would have effect in relation to proceedings instituted in Cyprus, against a person for drug trafficking offence which have not been concluded; and
- (b) as if reference to a confiscation order were references to an external order and reference to an application by the prosecution were a reference to an application by or on behalf of that government; and
- (c) subject to such modifications as may be specified in the Regulations being made under this section.

(8) The Council of Ministers may include in the Regulations any other provision which is considered expedient for better application of this section and in particular any provision:

- (a) As to evidence of any matter or thing;
- (b) as to the circumstances in which proceedings are to be treated for these purposes as instituted or concluded in any designated country.

(9) The Council of Ministers may vary or revoke Regulations previously made and may include such incidental consequential or transitional provisions as it considers expedient.

(10) For the purposes of this section "court" means a President or a Senior District Judge of the District Court of Nicosia.

Nature of
procedure in
making certain
orders.

23. Notwithstanding the criminal jurisdiction of the court, in the following cases it is followed the civil procedure:

- (a) Application for the making of a confiscation order under section 3;
- (b) application for the making of a restraint order under section 10;
- (c) application for the making of a charging order under section 11;
- (d) appointment of a receiver under section 12;
- (e) application for the making of an order of sale of stock under section 13;
- (f) application of or varying of confiscation order under section 16;
- (g) application for the registration of an external order under section 22;
- (h) application for any other matter connected with the making and enforcement of any of the above orders or any other matter connected with the provisions of this Law but unrelated to the prosecution of a drug trafficking offence.

Order to
disclose
material.

24.—(1) Irrespective of any provisions in other laws, for purposes of investigation into drug trafficking, the court may, on application by the investigator of the case to make an order of disclosure under the provisions of this section.

(2) The court before which such an application is being made, if satisfied that the conditions in subsection (3) are fulfilled may make an order called an order of disclosure addressed to the person who appears to the court to be in possession of the material to which the application relates calling upon such person to disclose or produce the said material to the investigator within seven days or within a longer or shorter period as it appears to the court appropriate in the particular circumstances of the case.

(3) The conditions referred to in subsection (2) are:

- (a) That there is reasonable ground for suspecting that a specified person has carried on or has benefited from drug trafficking;
- (b) that there is reasonable ground for suspecting that the material to which the application relates is likely to be of substantial value whether by itself or together with other material to the investigations for the purposes of which the application for disclosure is made;
- (c) that the material does not fall within the class of privileged material;
- (d) that there is reasonable ground for believing that it is in the public interest that the material should be produced or be disclosed having regard:
 - (i) To the benefit likely to accrue to the investigation if the material is obtained or disclosed; and
 - (ii) to the circumstances under which the person in possession of the material holds it.

(4) An order of disclosure:

- (a) May be made in relation to material in the possession of a government officer;
- (b) shall have effect notwithstanding any obligation to secrecy or other restriction upon the disclosure of information imposed by law or otherwise;

- (c) shall not confer any right to production or disclosure of information which is privileged information under subsection (5).
- (5) For the purposes of this section privileged information means:
 - (a) Communication between a lawyer and a client in connection with the obtaining of professional legal advice or professional legal services for the purposes of legal proceedings whether having started or not, being communication which would in legal proceedings be protected from disclosure by virtue of any rule of law relating to the confidentiality of communication;
 - (b) any other information which is not admissible in court for the protection of public interest.
- (6) For the purposes of this section "material" includes documents and materials contained in computers.
- (7) Where the material is contained in a computer:
 - (a) If the order directs the disclosure of such material, its effect is to disclose the material in a visible and legible form;
 - (b) if the order directs the production of the material to the investigator its effect is to produce to the investigator the material in a form which it can be taken away and in which it is visible and legible.
- (8) A person making any disclose which is likely to prejudice the search and investigation into drug trafficking knowing or suspecting that the search and investigation are taking place is guilty of an offence punishable with imprisonment not exceeding five years.

25.—(1) The court after having convicted a person for a drug trafficking offence before imposing sentence and where no application was made by the Attorney General of the Republic under section 3 shall proceed to inquire whether the accused had any benefit from drug trafficking for the purpose of imposing the appropriate sentence.

Inquiry for purposes of sentencing.

- (2) For purposes of this section the provisions of section 3(2) shall apply.
- (3) The inquiry under subsection (1) above is made according to the following provisions.
 - (4) The court calls upon the accused to give particulars of any matter relevant to sentencing including the financial position of the accused and of his family. The particulars must be supported by receipts, titles and other documents verifying their correctness.
 - (5) The examination is conducted by the court and questions by the prosecution and by the advocate of the accused are being put through the court. The court may if it considers it appropriate, allow the cross-examination and re-examination of the accused by the prosecution and by the advocate of the accused respectively.
 - (6) The accused may after the conclusion of his examination by the court call witnesses and adduce any evidence in support of his allegations following which the prosecution may call evidence and adduce evidence in rebuttal.
 - (7) The witnesses called to give evidence under subsection (6) above are examined and re-examined as if they were witnesses testifying in criminal proceedings.
 - (8) If at the conclusion of the inquiry the accused fails to give sufficient and satisfactory explanations regarding the manner he acquired the various properties owned by him or by his family and regarding any other matter relevant to sections 3 (2) and 4, the court may proceed on the assumption that:

- (a) Any property of his or part thereof acquired at any time since the beginning of the period of six years ending when the proceedings were instituted against him and for which no satisfactory explanations were given or were not supported by satisfactory evidence, has been acquired with proceeds of drug trafficking;
- (b) any property or part thereof of his family for which no satisfactory or sufficient explanations were given and which has been transferred at any time since the beginning of the period of six years ending when the proceedings were instituted against him was the subject of a gift which was made by the accused for the purpose of avoiding the consequences of the Law.

(9) The court after having determined that the accused had benefited from drug trafficking and subject to subsection (14) may impose a fine without prejudice to the power of the court to impose any other additional penalty.

(10) The court in assessing the fine to be imposed takes into account the benefit the accused had from drug trafficking as such benefit was determined in an inquiry under subsection (8) above.

(11) A person called as a witness in an inquiry under subsection (1) and who knowingly gives false and inaccurate information commits an offence punishable with imprisonment of four years.

(12) The court for the purpose of collecting the fine may, if it thinks fit, appoint a receiver who shall have the same functions as if appointed under section 12.

(13) Subject to subsection (12) the provisions of section 8 shall apply for the collection of the fine as if the reference made in that section to a confiscation order was a reference to a fine imposed after an inquiry under this section.

(14) Notwithstanding the provisions of any other law regarding the manner of enforcing orders for the payment of pecuniary penalties, an inquiry made by the court for the purposes of this section shall be deemed to be an inquiry being made under section 119 of the Criminal Procedure Law and the court does not impose a fine which in the light of the findings in the inquiry cannot be collected either from the property of the accused or from setting aside transfers and gifts of property to members of his family.

(15) The court may for the purpose of making an inquiry under this section make an order for compelling the accused or any other person to attend and to testify or to produce anything relevant to the inquiry.

(16) For the purposes of this section:

"financial position of the accused" include the income of the accused from whatever source and all his movable and immovable property which he has held or acquired during a period of six years prior to his conviction

"family of the accused" includes the father, the mother, the wife and his descendants.

Cap. 155.

Setting aside of gifts.

26.—(1) The court may make an order setting aside any prohibited gift within the meaning assigned to the term in section 7(7) or section 25(8) with a view to enforcing a confiscation order or collecting a fine or other pecuniary penalty.

(2) The court before making the order for the setting aside of the gift affords the person who is in possession of the property, the subject matter of the gift the opportunity to state his views and to show reason why the setting aside of the gift should not be ordered.

(3) Where the person in possession of the property the subject matter of the gift is a minor the opportunity mentioned in subsection (2) is afforded to his guardian.

(4) The court may order any property after the setting aside of the gift in pursuance to the provision of subsection (1) to be registered provisionally for purposes of enforcement of any order of the court in the name of the receiver or of other person specified in the order.

(5) Any property the subject matter of an order under subsection (1) is disposed in accordance with the directions of the court.

(6) For purposes of this section the provisions of section 7(8) shall apply.

27.—(1) The Supreme Court may make rules for the better carrying out of the Rules of this Law into effect. Rules.

(2) Until such rules are made the courts may apply the existing rules of court according to the nature of the proceedings with such variations and modifications as they are considered necessary.