



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 text.

SINGAPORE

Communicated by the Government of Singapore

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.
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DRUG TRAFFICKING (CONFISCATION OF BENEFITS) ACT

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

Drug Trafficking (Confiscation of Benefits) Act

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An Act to provide for the confiscation of benefits derived from drug trafficking and for purposes connected therewith.

PART I

PRELIMINARY

Short title
and com-
mencement.

1.—(1) This Act may be cited as the Drug Trafficking (Confiscation of Benefits) Act and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.* *wef 30-11-93 vide S463/93*

(2) The Minister may appoint different dates for the coming into operation of the different provisions of this Act.

Interpretation.

2.—(1) In this Act, unless the context otherwise requires —

“authorised officer” means —

Cap. 185.

(a) any officer of the Central Narcotics Bureau appointed under section 3 of the Misuse of Drugs Act^{1/} including the Director;

(b) any police officer; and

(c) any other person authorised in writing by the Minister for the purposes of this Act;

Cap. 19.

“bank” means a bank licensed under the Banking Act;

“charging order” means an order made under section 13 (1);

“confiscation order” means an order made under section 4;

“corresponding law” has the same meaning as in the Misuse of Drugs Act;

Cap. 70.

“customs officer” has the same meaning as in the Customs Act;

“dealing with property” is to be construed in accordance with section 12 (7);

“defendant” means a person against whom proceedings have been instituted for a drug trafficking offence or offences whether or not he has been convicted thereof;

1/ Note by the Secretariat: See E/NL.1997/43 for the Act amended up to 1995.

“drug trafficking” means doing or being concerned in, whether in Singapore or elsewhere, any act constituting —

- (a) an offence specified in the Schedule (other than an offence under section 41 or 43); or
- (b) a foreign offence punishable under a corresponding law,

and includes entering into or being otherwise concerned in, whether in Singapore or elsewhere, an arrangement whereby —

- (i) the retention or control by or on behalf of another person of that other person’s benefits of drug trafficking is facilitated; or
- (ii) the benefits of drug trafficking by another person are used to secure funds that are placed at that other person’s disposal or are used for that other person’s benefit to acquire property by way of investment;

“drug trafficking offence” means —

- (a) any of the offences specified in the Schedule;
 - (b) conspiracy to commit any of those offences;
 - (c) inciting another to commit any of those offences;
 - (d) attempting to commit any of those offences;
- or
- (e) aiding, abetting, counselling or procuring the commission of any of those offences;

“financial institution” includes —

- (a) a bank licensed under the Banking Act; Cap. 19.
- (b) a merchant bank that is approved as a financial institution under section 28 of the Monetary Authority of Singapore Act; Cap. 186.
- (c) a finance company licensed under the Finance Companies Act; Cap. 108.
- (d) a dealer or an investment adviser licensed under the Securities Industry Act; Cap. 289.
- (e) a futures broker, a futures trading adviser or a futures pool operator licensed under the Futures Trading Act; Cap. 116.

Cap. 142.

(f) a company or society registered under the Insurance Act; and

(g) such other company or class of companies which the Minister may by order prescribe;

“foreign offence” means an offence punishable under a corresponding law;

“gift caught by this Act” is to be construed in accordance with section 8 (8);

“interest”, in relation to property, includes right;

“making a gift” is to be construed in accordance with section 8 (9);

“material” includes any book, document or other record in any form whatsoever, and any container or article relating thereto;

“Monetary Authority of Singapore” means the Monetary Authority of Singapore established under section 3 of the Monetary Authority of Singapore Act;

Cap. 186.

“officer of the Bureau” means the Director or any officer of the Central Narcotics Bureau appointed under section 3 of the Misuse of Drugs Act;

Cap. 185.

“property” means money and all other property, movable or immovable, including things in action and other intangible or incorporeal property;

“realisable property” has the same meaning as in section 8 (1);

“restraint order” means an order made under section 12 (1);

“value of gift” is to be construed in accordance with section 8;

“value of property” is to be construed in accordance with section 8 (3);

(2) For the purposes of this Act —

(a) property is held by any person if he holds any interest in it;

(b) references to property held by a person include a reference to property vested in his trustee in bankruptcy or liquidator;

- (c) references to an interest held by a person beneficially in property include a reference to an interest which would be held by him beneficially if the property were not so vested in his trustee in bankruptcy or liquidator; and
- (d) property is transferred by one person to another if the first person transfers or grants to the other any interest in the property.

(3) For the purposes of this Act —

- (a) proceedings for an offence are instituted in Singapore when a person is produced and charged in court with the offence;
- (b) proceedings in Singapore for a drug trafficking offence are concluded on the occurrence of one of the following events:
 - (i) the discontinuance of the proceedings;
 - (ii) the acquittal of the defendant;
 - (iii) the quashing of the defendant's conviction for the offence;
 - (iv) the grant of the President's pardon in respect of the defendant's conviction for the offence;
 - (v) the court sentencing or otherwise dealing with the defendant in respect of his conviction for the offence without having made a confiscation order; and
 - (vi) the satisfaction of a confiscation order made in the proceedings (whether by payment of the amount due under the order or by the defendant serving imprisonment in default).

(4) For the purposes of this Act, an order is subject to appeal as long as an appeal or further appeal is pending against the order or (if it was made on a conviction) against the conviction; and for this purpose, an appeal or further appeal shall be treated as pending (where one is competent but has not been brought) until the expiration of the time for bringing the appeal.

Application. 3.—(1) This Act shall apply to any drug trafficking offence whether committed before or after the commencement of this Act except that nothing in this Act shall impose any duty or confer any power on any court in or in connection with proceedings against a person for a drug trafficking offence in respect of which he has been convicted by a court before the commencement of this Act.

(2) This Act shall apply to any property, whether it is situated in Singapore or elsewhere.

PART II

CONFISCATION OF BENEFITS OF DRUG TRAFFICKING

**Confiscation
orders.**

4.—(1) Subject to section 23, where a defendant is convicted of one or more drug trafficking offences, the court shall, on the application of the Public Prosecutor, make a confiscation order against the defendant in respect of benefits derived by him from drug trafficking if the court is satisfied that such benefits have been so derived.

(2) If the court is satisfied that benefits have been derived by the defendant from drug trafficking, the court shall, before sentencing or otherwise dealing with him in respect of the offence or, as the case may be, any of the offences concerned, determine in accordance with section 7 the amount to be recovered in his case by virtue of this section.

(3) The court shall then, in respect of the offence or offences concerned —

(a) take into account the confiscation order before imposing any fine on him; and

(b) subject to paragraph (a), leave the confiscation order out of account in determining the appropriate sentence or other manner of dealing with the defendant.

(4) Subject to section 24, for the purposes of this Act, a person who holds or has at any time (whether before or after the commencement of this Act) held any property or any interest therein disproportionate to his known sources of income, the holding of which cannot be explained to the

satisfaction of the court, shall, until the contrary is proved, be presumed to have derived benefits from drug trafficking:

Provided that any expenditure by such person (whether before or after the commencement of this Act) shall, until the contrary is proved, be presumed to have been met out of his benefits derived from drug trafficking.

5.—(1) Subject to section 24, for the purposes of this Act —

Assessing
benefits of
drug
trafficking.

(a) the benefits derived by any person from drug trafficking shall be any property or interest therein held by the person at any time, whether before or after the commencement of this Act, being property or interest disproportionate to his known sources of income and the holding of which cannot be explained to the satisfaction of the court; and

(b) the value of the benefits derived by him from drug trafficking shall be the aggregate of the values of the properties and interests therein referred to in paragraph (a).

(2) For the purpose of assessing the value of the benefits derived by the defendant from drug trafficking in a case where a confiscation order has previously been made against him, the court shall leave out of account any such benefits 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.

6.—(1) Where —

Statements
relating to
drug
trafficking.

(a) there is tendered to the court by the prosecution a statement as to any matters relevant to the determination whether benefits have been derived by the defendant from drug trafficking or to the assessment of the value of those benefits; and

(b) the defendant accepts to any extent any allegation in the statement,

the court may, for the purposes of that determination and assessment, treat his acceptance as conclusive of the matters to which it relates.

(2) Where —

(a) a statement is tendered under subsection (1) (a);
and

(b) the court is satisfied that a copy of that statement
has been served on the defendant,

the court may require the defendant to indicate to what extent he accepts each allegation in the statement and, so far as he does not accept any such allegation, to indicate any matters he proposes to rely on.

(3) If the defendant fails in any respect to comply with a requirement under subsection (2), he may be treated for the purposes of this section as accepting every allegation in the statement apart from any allegation in respect of which he has complied with the requirement.

(4) Where —

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

(b) the prosecution accepts to any extent any allegation in the statement,

the court may, for the purposes of that determination, treat the acceptance by the prosecution as conclusive of the matters to which it relates.

(5) An allegation may be accepted or a matter indicated for the purposes of this section either —

(a) orally before the court; or

(b) in writing.

(6) No acceptance by the defendant under this section that benefits have been derived by him from drug trafficking shall be admissible in evidence in any proceedings for an offence.

Amount to
be recovered
under
confiscation
order.

7.—(1) Subject to subsection (3), the amount to be recovered from the defendant under the confiscation order shall be the amount the court assesses to be the value of the benefits derived by the defendant from drug trafficking.

(2) If the court is satisfied as to any matter relevant for determining the amount that might be realised at the time the confiscation order is made (whether by an acceptance under section 6 or otherwise), the court may issue a certificate giving its opinion as to the matters concerned and shall do so if satisfied as mentioned in subsection (3).

(3) If the court is satisfied that the amount that might be realised at the time the confiscation order is made is less than the amount the court assesses to be the value of the benefits derived by the defendant from drug trafficking, the amount to be recovered from the defendant under the confiscation order shall be the amount appearing to the court to be the amount that might be so realised.

(4) If, on an application made in accordance with subsection (5), the court is satisfied that the amount that might be realised in the case of the person in question is greater than the amount taken into account in making the confiscation order (whether it was greater than was thought when the order was made or has subsequently increased), the court shall issue a certificate to that effect, giving its reasons.

(5) An application under subsection (4) may be made either by the Public Prosecutor or by a receiver appointed under section 12 or 15 in relation to the realisable property of the person in question.

(6) Where a certificate has been issued under subsection (4), the Public Prosecutor may apply to the court for an increase in the amount to be recovered under the confiscation order; and on that application the court may —

(a) substitute for that amount such amount (not exceeding the amount assessed as the value referred to in subsection (1)) as appears to the court to be appropriate having regard to the amount now shown to be realisable; and

(b) increase the term of imprisonment fixed in respect of the confiscation order under section 10 (1) if the effect of the substitution is to increase the maximum period applicable in relation to the order under section 10 (1).

8.—(1) In this Act, “realisable property” means —

Definition of
principal

- (a) any property held by the defendant; and
- (b) any property held by a person to whom the defendant has, directly or indirectly, made a gift caught by this Act.

(2) For the purposes of sections 6 and 7, the amount that might be realised at the time a confiscation order is made against the defendant shall be —

- (a) the total of the values at that time of all the realisable property held by the defendant; less
- (b) where there are obligations having priority at that time, the total amounts payable in pursuance of such obligations,

together with the total of the values at that time of all gifts caught by this Act.

(3) Subject to subsections (4) to (9), for the purposes of this Act, the value of property (other than cash) in relation to any person holding the property —

- (a) where any other person holds an interest in the property, shall be —
 - (i) the market value of the first-mentioned person's beneficial interest in the property; less
 - (ii) the amount required to discharge any incumbrance (other than a charging order) on that interest; and

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

(4) Subject to subsection (9), references in this Act to the value at any time (referred to in subsection (5) as the material time) of a gift caught by this Act are references to —

- (a) the value of the gift to the recipient when he received it adjusted to take account of subsequent changes in the value of money; or
- (b) where subsection (5) applies, the value mentioned therein,

whichever is the greater.

(5) Subject to subsection (9), if at the material time the recipient holds —

- (a) the property which he received (not being cash); or
- (b) property which, in whole or in part, directly or indirectly, represents in his hands the property which he received,

the value referred to in subsection (4) (b) shall be the value to him at the material time of the property mentioned in paragraph (a) or, as the case may be, of the property mentioned in paragraph (b) so far as it so represents the property which he received, but disregarding in either case any charging order.

(6) For the purposes of subsection (2), an obligation has priority at any time if it is an obligation of the defendant to —

- (a) pay an amount due in respect of a fine, or other order of a court, imposed or made on conviction of an offence, where the fine was imposed or order made before the confiscation order; or
- (b) pay any sum which would be included among the preferential debts in the defendant's bankruptcy commencing on the date of the confiscation order or winding up under an order of the court made on that date.

(7) For the purposes of subsection (6) (b), "preferential debts" —

- (a) in relation to bankruptcy, means the debts to be paid in priority under section 43 of the Bankruptcy Act (assuming the date of the confiscation order to be the date of the receiving order); and Cap. 20.
- (b) in relation to winding up, means the debts to be paid in priority in accordance with section 328 of the Companies Act (assuming the date of the confiscation order to be the commencement date of the winding up). Cap. 50.

(8) A gift (including a gift made before the commencement of this Act) is caught by this Act if —

- (a) it was made by the defendant at any time since the beginning of the period of 6 years ending when the proceedings for a drug trafficking offence were instituted against him or, where no such proceedings have been instituted, when an application under section 4 for a confiscation order is made against him; or
 - (b) it was made by the defendant at any time and was a gift of property which is or is part of the benefits derived by the defendant from drug trafficking.
- (9) For the purposes of this Act —
- (a) the circumstances in which the defendant is to be treated as making a gift include those where he transfers property to another person, directly or indirectly, for a consideration the value of which is significantly less than the value of the consideration provided by the defendant; and
 - (b) in those circumstances, this section shall apply as if the defendant had made a gift of such share in the property as bears to the whole property the same proportion as the difference between the values referred to in paragraph (a) bears to the value of the consideration provided by the defendant.

protection of
rights of
third party.

9.—(1) Where an application is made for a confiscation order under section 4, a person who asserts an interest in the property may apply to the court, before the confiscation order is made, for an order under subsection (2).

(2) If a person applies to the court for an order under this subsection in respect of his interest in property and the court is satisfied —

- (a) that he was not in any way involved in the defendant's drug trafficking; and
- (b) that he acquired the interest —
 - (i) for sufficient consideration; and
 - (ii) without knowing, and in circumstances such as not to arouse a reasonable suspicion, that the property was, at the

time he acquired it, property that was involved in drug trafficking,

the court shall make an order declaring the nature, extent and value (as at the time the order is made) of his interest.

(3) Subject to subsection (4), where a confiscation order has already been made, a person who asserts an interest in the property may apply under this subsection to the court for an order under subsection (2).

(4) A person who —

(a) had knowledge of the application under section 4 for the confiscation order before the order was made; or

(b) appeared at the hearing of that application,

shall not be permitted to make an application under subsection (3) except with the leave of the court.

(5) A person who makes an application under subsection (1) or (3) shall give not less than 7 days' written notice of the making of the application to the Attorney-General who shall be a party to any proceedings on the application.

PART III

ENFORCEMENT, ETC., OF CONFISCATION ORDERS

10.—(1) Subject to subsection (4), where a court orders the defendant to pay any amount under section 4, section 224 of the Criminal Procedure Code shall have effect as if —

Application
of procedure
for enforcing
fines.
Cap. 68.

(a) that amount were a fine imposed on him by the court; and

(b) the term for which the court directs the defendant to be imprisoned in default of payment of any amount under section 4 shall be as follows:

(i) if the amount does not exceed \$20,000, imprisonment for a term not exceeding 2 years;

(ii) if the amount exceeds \$20,000 but does not exceed \$50,000, imprisonment for a term not exceeding 5 years;

- (iii) if the amount exceeds \$50,000 but does not exceed \$100,000, imprisonment for a term not exceeding 7 years; and
- (iv) if the amount exceeds \$100,000, imprisonment for a term not exceeding 10 years.

(2) Where —

- (a) a warrant to commit the defendant to prison is issued for a default in payment of an amount ordered to be paid under section 4 in respect of an offence or offences; and
- (b) at the time the warrant is issued, the defendant is liable to serve any term of imprisonment in respect of the offence or offences,

the term of imprisonment to be served in default of payment of the amount shall not begin to run until after the term mentioned in paragraph (b).

(3) A District Court may, notwithstanding the provisions of any other written law, impose the maximum term of imprisonment on the defendant in default of the payment of any amount ordered to be paid under section 4.

(4) Where a defendant is convicted of a drug trafficking offence and sentenced to death, any amount which the court orders the defendant to pay under section 4 may, on an application by the Public Prosecutor to the High Court, be realised by the High Court exercising the powers conferred by section 15 (3) to (7).

(5) Where a defendant is convicted of a drug trafficking offence, any amount which the court orders the defendant to pay under section 4 and which, in the case of realisable property comprising wholly or partly cash, may be realised by the High Court making a garnishee order subject to Rules of Court.

11.—(1) The powers conferred on the High Court by section 12 (1) to make a restraint order and by section 13 (1) to make a charging order are exercisable where —

- (a) proceedings have been instituted against the defendant for a drug trafficking offence;
- (b) the proceedings have not been concluded; and

Cases in which restraint orders and charging orders may be made.

(c) the Court is satisfied that there is reasonable cause to believe that benefits have been derived by the defendant from drug trafficking.

(2) Those powers are also exercisable where the High Court is satisfied —

(a) that a person has been officially informed pursuant to section 122 (6) of the Criminal Procedure Code that he may be prosecuted for a drug trafficking offence; or Cap. 68.

(b) that investigation for a drug trafficking offence having been commenced against a person, he dies or cannot be found or is outside the jurisdiction,

and that there is reasonable cause to believe that benefits have been derived by that person from drug trafficking.

(3) For the purposes of sections 12 and 13, at any time when those powers are exercisable before proceedings have been instituted —

(a) references in this Act to the defendant shall be construed as references to the person referred to in subsection (2); and

(b) references in this Act to realisable property shall be construed as if, immediately before that time, proceedings had been instituted against the person referred to in subsection (2) for a drug trafficking offence.

(4) Where the High Court has made an order under section 12 (1) or 13 (1) by virtue of subsection (2), the Court shall discharge the order if the proposed proceedings are not instituted within such time as the Court considers reasonable and which shall not in any event exceed a period of 3 months.

12.—(1) The High Court may make a restraint order to prohibit any person from dealing with any realisable property, subject to such conditions and exceptions as may be specified in the order. Restraint orders.

(2) A restraint order may apply —

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

(3) This section shall not have effect in relation to any property for the time being subject to a charge under section 13.

(4) A restraint order —

- (a) may be made only on an application by the Public Prosecutor;
- (b) may be made on an ex parte application to a Judge in chambers; and
- (c) shall provide for notice to be given to persons affected by the order.

(5) A restraint order —

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

(6) Where the High Court has made a restraint order, the Court may at any time appoint the Public Trustee or any person as receiver —

- (a) to take possession of any realisable property; and
- (b) in accordance with the directions of the Court, to manage or otherwise deal with any property in respect of which he is appointed,

subject to such exceptions and conditions as may be specified by the Court; and may require any person having possession of property in respect of which the receiver is appointed under this section to give possession of it to the Public Trustee or such receiver.

(7) For the purposes of this section, dealing with property held by any person includes (without prejudice to the generality of the expression) —

- (a) where a debt is owed to that person, making a payment to any person in reduction of the amount of the debt; and
- (b) removing the property from Singapore.

(8) Where the High Court has made a restraint order, an authorised officer may, for the purpose of preventing any realisable property being removed from Singapore, seize the property.

(9) Property seized under subsection (8) shall be dealt with in accordance with the directions of the High Court.

13.—(1) The High Court may make a charging order on realisable property for securing the payment to the Government —

Charging orders in respect of land, securities, etc.

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

(2) For the purposes of this Act, a charging order is an order made under this section imposing on any such realisable property as may be specified in the order a charge for securing the payment of money to the Government.

(3) A charging order may be made —

- (a) only on an application by the Public Prosecutor; and
- (b) on an ex parte application to a Judge in chambers.

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

- (a) any interest in realisable property, being an interest held beneficially by the defendant or by a person

to whom the defendant has, directly or indirectly, made a gift caught by this Act —

- (i) in any asset of a kind mentioned in subsection (5); or
 - (ii) under any trust; or
- (b) any interest in realisable property held by a person as trustee of a trust if the interest is in such an asset or is an interest under another trust and a charge may, by virtue of paragraph (a), be imposed by a charging order on the whole beneficial interest under the first-mentioned trust.

(5) The assets referred to in subsection (4) are —

- (a) immovable property in Singapore; or
- (b) securities of any of the following kinds:
 - (i) securities of the Government or of any public authority;
 - (ii) stock of any body incorporated in Singapore;
 - (iii) stock of any body incorporated outside Singapore or of any country or territory outside Singapore, being stock registered in a register kept at any place within Singapore; and
 - (iv) units of any unit trust in respect of which a register of the unit holders is kept at any place within Singapore.

(6) In any case where a charge is imposed by a charging order on any interest in an asset of a kind mentioned in subsection (5) (b), the High Court may provide for the charge to extend to any interest or dividend payable in respect of the asset.

(7) Where the High Court has made a charging order, the Court may give such directions to the Public Trustee or any person as the Court thinks fit to safeguard the assets under the charging order.

(8) The High 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 are concluded or the amount, payment of which is secured by the charge, is paid into Court.

14.—(1) A charging order may be made either absolutely or subject to conditions as to notifying any person holding any 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.

Charging orders:
supplementary provisions.

(2) A caveat may be lodged under the Land Titles Act or an entry may be made under the Registration of Deeds Act, as the case may be, in respect of a charging order made under section 13.

Cap. 157.
Cap. 269.

(3) Subject to any provision made under section 15 or by Rules of Court, a charge imposed by a charging order shall have the like effect and shall be enforceable in the same manner as an equitable charge created by the person holding the beneficial interest or, as the case may be, the trustees by writing under their hand.

(4) Where a charging order has been protected by a caveat lodged under the Land Titles Act or by an entry registered under the Registration of Deeds Act, an order under section 13 (8) discharging the charging order may direct that the caveat be removed or the entry be cancelled.

15.—(1) Where —

(a) in proceedings instituted for a drug trafficking offence, a confiscation order is made;

(b) the order is not subject to appeal; and

(c) the proceedings have not been concluded,

the High Court may, on an application of the Public Prosecutor, exercise the powers conferred by subsections (3) to (7).

Realisation
of property.

(2) The High Court may, on the application of the Public Prosecutor, also exercise the powers conferred by subsections (3) to (7) where —

(a) a confiscation order is made against a person who is, by reason of section 22, taken to be convicted of a drug trafficking offence;

(b) the order is not subject to appeal; and

(c) the order has not been satisfied, whether by payment of the amount due under the order or by the defendant serving imprisonment by default.

(3) The High Court may appoint the Public Trustee or any person as receiver in respect of realisable property.

(4) The High Court may empower the Public Trustee or any receiver appointed under subsection (3) or section 12 or in pursuance of a charging order —

(a) to enforce any charge imposed under section 13 on realisable property or on interest or dividends payable in respect of such property; and

(b) in relation to any realisable property other than property for the time being subject to a charge under section 13, to take possession of the property subject to such conditions or exceptions as may be specified by the Court.

(5) The High Court may order any person having possession of realisable property to give possession of it to the Public Trustee or any receiver.

(6) The High Court may empower the Public Trustee or any receiver to realise any realisable property in such manner as the Court may direct.

(7) The High Court may order any person holding an interest in realisable property to make such payment to the Public Trustee or any receiver in respect of any beneficial interest held by the defendant or, as the case may be, the recipient of a gift caught by this Act as the Court may direct and the Court may, on the payment being made, by order transfer, grant or extinguish any interest in the property.

(8) Subsections (5) to (7) shall not apply to property for the time being subject to a charge under section 13.

(9) The High Court shall not in respect of any property exercise the powers conferred by subsection (4) (a), (6) or (7) unless a reasonable opportunity has been given for persons holding any interest in the property to make repre-

16.—(1) Subject to subsection (2), the following sums in the hands of the Public Trustee or any receiver pursuant to section 12 or 15 or in pursuance of a charging order, that is —

Application of proceeds of realisation and other sums.

- (a) the proceeds of the enforcement of any charge imposed under section 13;
- (b) the proceeds of the realisation, other than by the enforcement of such a charge, of any property under section 12 or 15; and
- (c) any other sums, being property held by the defendant,

shall, after such payments (if any) as the High Court may direct have been made out of those sums, be applied on the defendant's behalf towards the satisfaction of the confiscation order.

(2) If, after the amount payable under the confiscation order has been fully paid, any such sums remain in the hands of the Public Trustee or receiver, he shall distribute those sums —

- (a) among such of those who held property which has been realised under this Act; and
- (b) in such proportions,

as the High Court may direct after giving a reasonable opportunity for such persons to make representations to the Court.

17.—(1) This section shall apply to the powers conferred on the High Court by sections 12 to 16 or on the Public Trustee or any receiver pursuant to section 12 or 15 or in pursuance of a charging order.

Exercise of powers by High Court or receiver.

(2) Subject to subsections (3) to (6), the powers shall be exercised with a view to making available for satisfying the confiscation order or, as the case may be, any confiscation order that may be made in the defendant's case the value for the time being of realisable property held by any person by the realisation of such property.

(3) In the case of realisable property held by a person to whom the defendant has, directly or indirectly, made a gift

caught by this Act, the powers shall be exercised with a view to realising no more than the value for the time being of the gift.

(4) The powers shall be exercised with a view to allowing any person other than the defendant or the recipient of any such gift to retain or recover the value of any property held by him.

(5) An order may be made or other action taken in respect of a debt owed by the Government.

(6) In exercising those powers, no account shall be taken of any obligations of the defendant or of the recipient of any such gift which conflict with the obligation to satisfy the confiscation order.

Variation of
confiscation
orders.

18.—(1) If, on an application by the defendant in respect of a confiscation order, the High Court is satisfied that the realisable property is inadequate for the payment of any amount remaining to be recovered under the order, the Court shall issue a certificate to that effect, giving its reasons.

(2) For the purposes of subsection (1) —

(a) in the case of realisable property held by a person who has been adjudged bankrupt or whose estate has been sequestrated, the High Court shall take into account the extent to which any property held by him may be distributed among creditors; and

(b) the Court may disregard any inadequacy in the realisable property which appears to the Court to be attributable, wholly or partly, to anything done by the defendant for the purpose of preserving any property held by a person to whom the defendant had, directly or indirectly, made a gift caught by this Act from any risk of realisation under this Act.

(3) Where a certificate has been issued under subsection (1), the defendant may apply to the High Court which made the confiscation order for the amount to be recovered under the order to be reduced.

(4) The High Court which made the confiscation order shall, on an application under subsection (3) —

(a) substitute for the amount to be recovered under the order such lesser amount as the Court thinks just in all the circumstances of the case; and

(b) substitute for the term of imprisonment fixed under section 224 of the Criminal Procedure Code in respect of the amount to be recovered under the order a shorter term determined in accordance with that section (as it has effect by virtue of section 10) in respect of the lesser amount. Cap. 68.

19.—(1) Where a person who holds realisable property is adjudged bankrupt — Bankruptcy of defendant, etc.

(a) property for the time being subject to a restraint order made before the order adjudging him bankrupt; and

(b) any proceeds of property realised by virtue of section 12 (6) or 15 (6) or (7) for the time being in the hands of the Public Trustee or a receiver pursuant to section 12 or 15,

shall be excluded from the bankrupt's estate for the purposes of the Bankruptcy Act. Cap. 20.

(2) Where a person has been adjudged bankrupt, the powers conferred on the High Court by sections 12 to 16 or on the Public Trustee or a receiver shall not be exercised in relation to —

(a) property for the time being comprised in the bankrupt's estate for the purposes of the Bankruptcy Act;

(b) property which is not comprised in the bankrupt's estate by virtue of section 47 (1) (a) of that Act; and

(c) property which is to be applied for the benefit of creditors of the bankrupt by virtue of a condition imposed under section 33 (3) of that Act.

(3) Nothing in the Bankruptcy Act shall be taken as restricting, or enabling the restriction of, the exercise of those powers referred to in subsection (2).

(4) Subsection (2) shall not affect the enforcement of a charging order —

(a) made before the order adjudging the person bankrupt; or

(b) on property which was subject to a restraint order when the order adjudging him bankrupt was made.

Cap. 20.

(5) Where, in the case of a debtor, an interim receiver stands appointed under section 11 of the Bankruptcy Act and any property of the debtor is subject to a restraint order —

(a) the powers conferred on the receiver by virtue of that Act shall not apply to property for the time being subject to the restraint order; and

(b) any such property in the hands of the receiver shall, subject to a lien for any expenses (including his remuneration) properly incurred in respect of the property, be dealt with in such manner as the High Court may direct.

(6) For the purposes of section 35 (1) of the Bankruptcy Act, amounts payable under confiscation orders shall constitute debts due to the Government.

Winding up
of company
holding
realisable
property.

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

(a) property for the time being subject to a restraint order made before the relevant time; and

(b) any proceeds of property realised by virtue of section 12 (6) or 15 (6) or (7) for the time being in the hands of the Public Trustee or a receiver pursuant to section 12 or 15,

but 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, such an order has been made or such a resolution has been passed, the powers conferred on the High Court by sections 12 to 16 or on a receiver so appointed shall not be exercised in relation to any realisable property held by the company in relation to which the functions of the liquidator are exercisable —

(a) so as to inhibit him from exercising those functions for the purpose of distributing any property held by the company to the company's creditors; or

(b) so as to prevent the payment 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.

(3) Nothing in the Companies Act shall be taken as restricting, or enabling the restriction of, the exercise of those powers referred to in subsection (2). Cap. 50.

(4) Subsection (2) shall not affect the enforcement of a charging order made before the relevant time or on property which was subject to a restraint order at the relevant time.

(5) In this section —

“company” means any company which may be wound up under the Companies Act;

“the relevant time” means —

(a) where no order for the winding up of the company has been made, the time of the passing of the resolution for voluntary winding up;

(b) where such an order has been made and, before the presentation of the petition for the winding up of the company by the High Court, such a resolution had been passed by the company, the time of the passing of the resolution; and

(c) in any other case where such an order has been made, the time of the making of the order.

Receivers:
supplementary
provisions.

21. Where the Public Trustee or a receiver appointed under section 12 or 15 or in pursuance of a charging order takes any action in relation to property which is not realisable property, being action which he would be entitled to take if it were such property, believing, and having reasonable grounds for believing, that he is entitled to take that action in relation to that property, he shall not be liable to any person in respect of any loss or damage resulting from his action except in so far as the loss or damage is caused by his negligence.

PART IV

APPLICATION TO ABSCONDED PERSONS

Absconded
persons.

22.—(1) For the purposes of this Act, a person shall be taken to be convicted of a drug trafficking offence if the person absconds in connection with the drug trafficking offence and any reference in Part II to the defendant shall include reference to such a person.

(2) For the purposes of subsection (1), a person shall be taken to abscond in connection with a drug trafficking offence if whether before or after the commencement of this Act —

(a) investigations for a drug trafficking offence have been commenced against the person; and

(b) (i) the person dies before proceedings in respect of the offence were instituted, or if such proceedings were instituted, the person dies before he is convicted; or

(ii) at the end of the period of 6 months from the date on which investigations referred to in paragraph (a) were commenced against him, the person cannot be found or he is not amenable to extradition proceedings.

Confiscation
order where
person has
absconded.

23. Where a person is, by reason of section 22, to be taken to have been convicted of a drug trafficking offence, a court shall not make a confiscation order in reliance on the

person's conviction of the offence unless the court is satisfied —

- (a) on the evidence adduced before it that, on the balance of probabilities, the person has absconded; and
- (b) having regard to all the evidence before the court, that such evidence if unrebutted would warrant his conviction for the offence.

24.—(1) Proceedings under this Act shall be instituted or continued against the personal representatives of a deceased defendant or, if there are no personal representatives, such beneficiary or beneficiaries of the estate of the deceased defendant as may be specified by the court upon the application of the Public Prosecutor.

Effect of death on proceedings.

(2) Where the power conferred by this Act to make a confiscation order is to be exercised in relation to a deceased defendant, the order shall be made against the estate of the deceased defendant except that nothing in this Act shall subject any personal representative of the estate of the deceased defendant, or any beneficiary thereof, to any imprisonment under section 9¹⁰ if the property of the estate is inadequate for the payment of any amount to be recovered under the confiscation order.

(3) Sections 4 (4) and 5 shall not apply to any deceased defendant.

(4) For the purposes of Part II, the following provisions shall apply in determining whether a deceased defendant had derived benefits from drug trafficking or in determining those benefits or the value of those benefits:

- (a) a deceased defendant shall, until the contrary is proved, be presumed to have derived benefits from drug trafficking if he had, at any time (whether before or after the commencement of this Act) since the beginning of the period of 6 years ending at the date of his death, held any property or interest therein disproportionate to his known sources of income, the holding of which cannot be explained to the satisfaction of the court;

(b) the benefits derived by a deceased defendant from drug trafficking shall be any property or interest therein held by him during the period mentioned in paragraph (a), being property or interest therein disproportionate to his known sources of income, and the holding of which cannot be explained to the satisfaction of the court; and

(c) the value of the benefits derived by a deceased defendant from drug trafficking shall be the aggregate of the values of those properties and interests therein less the value of any such benefits that are shown to have been taken into account by any court in determining the amount to be recovered under any confiscation order previously made against the deceased defendant.

(5) In this section, “deceased defendant” means a person who dies —

(a) after investigations for a drug trafficking offence have been commenced against him; and

(b) (i) before proceedings in respect of the offence have been instituted against him; or

(ii) if such proceedings have been instituted, before he is convicted of the offence.

Service of
documents
on
absconders.

25. Where any document is required under this Act to be served on a person who cannot be found or who is outside Singapore and cannot be compelled to attend before a court in respect of proceedings under this Act, the court may dispense with service of the document upon him and the proceedings may be continued to their final conclusion in his absence.

PART V

INFORMATION GATHERING POWERS

Division 1 — Production orders

Production
orders.

26.—(1) An authorised officer may, for the purpose of an investigation into drug trafficking, apply to a court for an order under subsection (2) in relation to particular material or material of a particular description.

(2) Subject to section 40 (10), the court may, if on such an application it is satisfied that the conditions to subsection (4) are fulfilled, make an order that the person who appears to the court to be in possession of the material to which the application relates shall —

(a) produce the material to an authorised officer for him to take away; or

(b) give an authorised officer access to it, within such period as the order may specify.

(3) The period to be specified in an order under subsection (2) shall be 7 days unless it appears to the court that a longer or shorter period would be appropriate in the particular circumstances of the application.

(4) The conditions referred to in subsection (2) are —

(a) that there are reasonable grounds for suspecting that a specified person has carried on or has benefited from drug trafficking;

(b) that there are reasonable grounds for believing that the material to which the application relates —

(i) is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the application is made; and

(ii) does not consist of or include items subject to legal privilege; and

(c) that there are reasonable grounds for believing that it is in the public interest, having regard —

(i) to the benefit likely to accrue to the investigation if the material is obtained; and

(ii) to the circumstances under which the person in possession of the material holds it,

that the material should be produced or that access to it should be given.

(5) Where a court makes an order under subsection (2) (b) in relation to material on any premises, it may, on the same or a subsequent application of an authorised

officer, order any person who appears to him to be entitled to grant entry to the premises to allow an authorised officer to enter the premises to obtain access to the material.

(6) Rules of Court may provide for —

- (a) the discharge and variation of orders under this section; and
- (b) proceedings relating to such orders.

(7) Where the material, to which an application under this section relates, consists of information contained in or accessible by means of any data equipment —

- (a) an order under subsection (2) (a) shall have effect as an order to produce the material in a form in which it can be taken away and in which it is visible and legible; and
- (b) an order under subsection (2) (b) shall have effect as an order to give access to the material in a form in which it is visible and legible.

(8) In subsection (7), “data equipment” means any equipment which —

- (a) automatically processes information;
- (b) automatically records or stores information;
- (c) can be used to cause information to be automatically recorded, stored or otherwise processed on other equipment (wherever situated);
- (d) can be used to retrieve information whether the information is recorded or stored in the equipment itself or in other equipment (wherever situated).

(9) An order under subsection (2) —

- (a) shall not confer any right to production of, or access to, items subject to legal privilege;
- (b) shall have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by statute or otherwise; and
- (c) may be made in relation to material in the possession of a public body as defined in section 40 (11).

(10) A person is not excused from producing or making available any material when required to do so by an order under this section on the ground that —

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

(11) Where a person produces or makes available any material pursuant to an order under this section, the production or making available of the material, or any information or thing obtained as a direct or indirect consequence of the production or making available of the material shall not be admissible against the person in any criminal proceedings except a proceeding for an offence against section 28 (1).

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

27. Where a court makes a production order requiring a person to produce any material to any authorised officer, the person may apply to the court for a variation of the order and if the court is satisfied that the material is essential to the business activities of the person, the court may vary the production order so that it requires the person to make the material available to an authorised officer for inspection.

Variation of production order.

28.—(1) Where a person is required by a production order to produce any material to an authorised officer or make any material available to an authorised officer for inspection, the person shall be guilty of an offence under this section if the person —

Failure to comply with production order.

- (a) contravenes the order without reasonable excuse; or
- (b) in purported compliance with the order produces or makes available any material known to the

person to be false or misleading in a material particular without —

- (i) indicating to the authorised officer to whom the material is produced or made available that the material is false or misleading and the respect in which the material is false or misleading; and
- (ii) providing correct information to the authorised officer if the person is in possession of, or can reasonably acquire, the correct information.

(2) A person guilty of an offence under subsection (1) shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both.

Production orders in relation to foreign offences.

29.—(1) Where an authorised officer is authorised by any regulations made under this Act to apply to a court for a production order under this Act in respect of a foreign offence, the authorised officer may apply for the order accordingly and this Division applies to the application and to any production order made as a result of the application as if a reference in this Division to a drug trafficking offence were a reference to the foreign offence.

(2) Where an authorised officer takes possession of any material under a production order made in respect of a foreign offence, the authorised officer may retain the material for a period of one month pending a written direction from the Attorney-General as to the manner in which the material is to be dealt with (which may include a direction that the material be sent to an authority of the foreign country that requested the obtaining of the production order).

Production orders in relation to financial institutions.

30.—(1) Notwithstanding anything in sections 26 to 29, a financial institution, other than a money-changer or a remitter, which is regulated by the Monetary Authority of Singapore shall not be required to produce any material pertaining to any customer or his account nor give an authorised officer access to it, unless the production or

access is made in accordance with the provisions of any written law in force in Singapore.

(2) In this section —

“money-changer” means a person who is licensed to conduct money-changing business under the Money-changing and Remittance Businesses Act; Cap. 187.

“remitter” means a person who is licensed to conduct remittance business under the Money-changing and Remittance Businesses Act;

“written law” means the Banking Act, the Monetary Authority of Singapore Act, the Finance Companies Act, the Securities Industry Act, the Futures Trading Act and the Insurance Act. Cap. 19.
Cap. 186.
Cap. 108.
Cap. 289.
Cap. 116.
Cap. 142.

Division 2 — Search powers

31.—(1) An authorised officer may, for the purpose of an investigation into drug trafficking, apply to a court for a warrant under this section in relation to specified premises. Authority for search.

(2) On such application, the court may issue a warrant authorising an authorised officer to enter and search the premises if the court is satisfied —

(a) that an order made under section 26 in relation to material on the premises has not been complied with;

(b) that the conditions in subsection (3) are fulfilled; or

(c) that the conditions in subsection (4) are fulfilled.

(3) The conditions referred to in subsection (2) (b) are —

(a) that there are reasonable grounds for suspecting that a specified person has carried on or has benefited from drug trafficking;

(b) that the conditions in section 26 (4) (b) and (c) are fulfilled in relation to any material on the premises; and

- (c) that it would not be appropriate to make an order under that section in relation to the material because —
- (i) it is not practicable to communicate with any person entitled to produce the material;
 - (ii) it is not practicable to communicate with any person entitled to grant access to the material or entitled to grant entry to the premises on which the material is situated; or
 - (iii) the investigation for the purposes of which the application is made might be seriously prejudiced unless an authorised officer could secure immediate access to the material.
- (4) The conditions referred to in subsection (2) (c) are —
- (a) that there are reasonable grounds for suspecting that a specified person has carried on or has benefited from drug trafficking;
 - (b) that there are reasonable grounds for suspecting that there is on the premises material relating to the specified person or to drug trafficking which is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the application is made; but that the material cannot at the time of the application be particularised; and
 - (c) that —
 - (i) it is not practicable to communicate with any person entitled to grant entry to the premises;
 - (ii) entry to the premises will not be granted unless a warrant is produced; or
 - (iii) the investigation for the purposes of which the application is made might be seriously prejudiced unless an authorised officer arriving at the premises could secure immediate entry to them.

(5) Where an authorised officer has entered premises in the execution of a warrant issued under this section, he may seize and retain any material, other than items subject to legal privilege, which is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the warrant was issued.

(6) Any person who hinders or obstructs an authorised officer in the execution of a warrant issued under this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both.

32.—(1) Where an authorised officer is authorised by any regulations made under this Act to apply to a court for a search warrant under this Act in relation to any material in respect of a foreign offence, the authorised officer may apply for the warrant accordingly and this Division applies to the application and to any warrant issued as a result of the application if a reference in this Division to a drug trafficking offence were a reference to the foreign offence.

Search warrants in relation to foreign offences.

(2) If, in the course of searching, under a warrant issued under section 31, for any material in relation to a foreign offence, an authorised officer finds —

- (a) any material that the authorised officer believes, on reasonable grounds, to be the material in relation to the offence, although not of the kind specified in the warrant; or
- (b) any thing that the authorised officer believes, on reasonable grounds —
 - (i) to be relevant to a criminal proceeding or a criminal investigation in the foreign country in respect of the offence; or
 - (ii) will afford evidence of the commission of a criminal offence,

and the authorised officer believes, on reasonable grounds, that it is necessary to seize that material or thing in order to prevent its concealment, loss or destruction, the warrant

shall be deemed to authorise the authorised officer to seize the material or thing.

(3) Where an authorised officer takes possession of any material under a warrant issued in respect of a foreign offence, the authorised officer may retain the material for a period not exceeding one month pending a written direction from the Attorney-General as to the manner in which the material is to be dealt with (which may include a direction that the material is to be sent to an authority of the foreign country that requested the issue of the warrant).

33.—(1) An authorised officer may photograph or make copies of any material —

(a) produced or to which access is given under section 26; or

(b) seized under section 31.

(2) In sections 26, 27, 29, 31 and 32 —

“court” means the High Court and the District Court;

“items subject to legal privilege” means —

(a) communications between an advocate and solicitor and his client or any person representing his client made in connection with the giving of legal advice to the client;

(b) communications between an advocate and solicitor and his client or any person representing his client or between such an advocate and solicitor or his client or any such representative and any other person made in connection with or in contemplation of legal proceedings and for the purposes of such proceedings; and

(c) items enclosed with or referred to in such communications and made —

(i) in connection with the giving of legal advice; or

(ii) in connection with or in contemplation of legal proceedings and for the purposes of such proceedings.

Supple-
mentary
provisions to
sections 26,
27, 29, 31
and 32.

when they are in the possession of a person who is entitled to possession of them, but excluding, in any case, any communications or item held with the intention of furthering a criminal purpose;

“premises” includes any place and, in particular, includes —

(a) any vehicle, vessel, aircraft, hovercraft or off-shore structure; and

(b) any tent or movable structure.

34.—(1) Subject to subsection (2), nothing in section 31 or 32 shall apply where the material sought in respect of a foreign offence is in the possession of a financial institution regulated by the Monetary Authority of Singapore, other than a money-changer or remitter. Supplementary provisions to sections 31 and 32.

(2) The Attorney-General or a person duly appointed by him in writing may apply to the High Court for a search warrant under this Act in relation to any particular material in a specified premises in respect of an investigation into a foreign offence if he is satisfied that —

(a) the conditions in subsection (3); and

(b) the conditions in subsection (4); or

(c) the conditions in subsection (5),

are fulfilled.

(3) The conditions referred to in subsection (2) (a) are —

(a) that there exists a mutual legal assistance treaty, memorandum of understanding or other agreement or arrangement in drug-related matters between Singapore and the foreign government and the conditions therein have been fulfilled in respect of any particular request for assistance from the Singapore authority, which conditions shall be in addition to and not in derogation of the conditions herein;

(b) that the foreign authority has agreed to provide reciprocal assistance in drug-related matters to Singapore;

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- (c) that the foreign offence which is the subject of the investigation constitutes an offence against the laws of, or of a part of, the state of the foreign authority and the act or omission constituting the offence or the equivalent act or omission would, if it had occurred in Singapore, have constituted an offence under this Act or the Misuse of Drugs Act;
 - (d) that the seriousness of the foreign offence under investigation is of sufficient gravity and the material which is the subject of the application is of sufficient importance to the investigation and whether the material could not reasonably be obtained by other means;
 - (e) that the application is not likely to prejudice the sovereignty, security or national interest of Singapore;
 - (f) that it is not contrary to the public interest to make the application sought;
 - (g) that the foreign authority undertakes that the material sought pursuant to a search warrant under this section shall not be used for any other purposes except for the investigation of the foreign offence or for the prosecution of the offender concerned and the material shall be returned to the Singapore authority upon completion of the investigation or proceedings against the offender; and
 - (h) such other conditions as the Minister may prescribe.
- (4) The conditions referred to in subsection (2) are —
- (a) that there is a prima facie case that a specified person has carried on or has benefited from drug trafficking;
 - (b) that there are reasonable grounds for believing that the material to which the application relates —
 - (i) is likely to be of substantial value (whether by itself or together with other material)

to the investigation for the purpose of which the application is made; and

(ii) does not consist of or include materials subject to legal privilege; and

(c) that —

(i) it is not practicable to communicate with any person entitled to produce the material; or

(ii) it is not practicable to communicate with any person entitled to grant access to the material or entitled to grant entry to the premises on which the material is situated.

(5) The conditions referred to in subsection (2) (c) are —

(a) that there is a prima facie case that a specified person has carried on or has benefited from drug trafficking;

(b) that there are reasonable grounds for suspecting that there is on the premises material relating to the specified person or to drug trafficking which is likely to be of substantial value (whether by itself or together with other material) to the investigation in respect of which the application is made, but that the material cannot at the time of the application be particularised; and

(c) that —

(i) it is not practicable to communicate with any person entitled to grant entry to the premises; or

(ii) entry to the premises will not be granted unless a warrant is produced.

(6) A financial institution which complies with an order made under this section shall not be treated as being in breach of any restriction upon the disclosure of information or material relating to a customer's account whether by contract or statute.

(7) In this section —

“drug-related matters” include the subject of mutual assistance in the investigation of drug trafficking offences;

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“foreign authority” means a foreign government or an appropriate authority designated by a foreign government exercising any function corresponding to a function of the Minister in charge of this Act or the Misuse of Drugs Act;

“foreign country” means any country or territory outside Singapore;

“foreign government” means the government of a foreign country;

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“money-changer” means a person who is licensed to conduct money-changing business under the Money-changing and Remittance Businesses Act;

“remitter” means a person who is licensed to conduct remittance business under the Money-changing and Remittance Businesses Act;

“Singapore authority” means the Attorney-General of Singapore.

Division 3 — Obligations of financial institutions

Interpretation. 35. In this Division —

“customer generated financial transaction document”, in relation to a financial institution, means a financial transaction document of the institution —

(a) that relates to —

- (i) the opening or closing by a person of an account with the institution;
- (ii) the operation by a person of an account with the institution;
- (iii) the opening or use by a person of a deposit box held by the institution;
- (iv) the telegraphic or electronic transfer of funds by the institution on behalf of a person to another person.

(v) the transmission of funds between Singapore and a foreign country or between foreign countries on behalf of a person; or

(vi) an application by a person for a loan from the institution (where a loan is made to the person pursuant to the application); and

(b) that is given to the institution by or on behalf of the person (whether or not the document is signed by or on behalf of the person);

“essential customer generated financial transaction document”, in relation to a financial institution, means a customer generated financial transaction document other than a document that relates to the operation of an account held with the institution;

“financial transaction document”, in relation to a financial institution, means any document that relates to a financial transaction carried out by the institution in its capacity as a financial institution and, without limiting the generality of this, includes a document relating to —

(a) the opening, operating or closing of an account held with the institution; and

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

but does not include a cheque or payment order;

“minimum retention period”, in relation to a financial transaction document of a financial institution, means —

(a) if the document relates to the opening of an account with the institution, the period of 6 years after the day on which the account is closed;

(b) if the document relates to the opening by a person of a deposit box held by the institution, the period of 6 years after the day on which the deposit box ceases to be used by the person or

(c) in any other case, the period of 6 years after the day on which the transaction takes place.

Retention of records by financial institutions.

36.—(1) A financial institution shall, subject to subsection (4) and section 37, retain or retain a copy of each essential customer generated financial transaction document for the minimum retention period applicable to the document.

(2) Subject to subsection (4), a financial institution shall retain, or retain a copy of, each customer generated financial transaction document that is not an essential customer generated financial transaction document for the minimum retention period applicable to the document.

(3) Subject to subsection (4), a financial institution shall retain, or retain a copy of, each financial transaction document —

(a) that is not a customer generated financial transaction document; and

(b) whose retention is necessary to preserve a record of the financial transaction concerned,

for the minimum retention period applicable to the document.

(4) Subsections (1), (2) and (3) shall not apply to an essential customer generated financial transaction document, a customer generated financial transaction document that is not an essential customer generated financial transaction document and a financial transaction document that relates to a single deposit, credit, withdrawal, debit, transfer or transaction of an amount of money that does not exceed \$20,000 or such higher amount as is prescribed by the regulations made for the purposes of this subsection.

(5) A financial institution required to retain documents under this section shall retain and store them in a way that makes retrieval of the documents reasonably practicable.

(6) A financial institution that contravenes subsection (1), (2), (3) or (5) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000.

(7) This section does not limit any other obligation of a financial institution to retain documents.

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

Register of original documents.

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

(3) A financial institution that contravenes subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000.

38.—(1) Where a financial institution has information about an account held with the institution and the institution knows that —

Communi-
cation of
information
by financial
institutions
to law
enforcement
agencies.

(a) the information may be relevant to an investigation of, or the prosecution of a person for, any offence; or

(b) the information would otherwise be of assistance in the enforcement of this Act or any regulations made thereunder,

the institution may give the information to any authorised officer.

(2) An action, suit or proceeding shall not lie against —

(a) a financial institution; or

(b) a person who is an officer, employee or agent of the institution acting in the course of his employment or agency,

in relation to any action taken by that institution or person pursuant to subsection (1).

Protection
for financial
institution
where
information
given
pursuant to
section 38.

39. Where a financial institution, or a person who is an officer, employee or agent of the institution, gives information pursuant to subsection (1) of section 38 as soon as practicable after having the knowledge referred to in that subsection, the institution or person shall be taken, for the purposes of sections 41 and 43, not to have been in possession of that information at any time.

*Division 4 — Disclosure of information
held by public bodies*

closure of
information
held by
public
bodies.

40.—(1) Subject to subsection (4), the High Court may, on an application by the Public Prosecutor, order any material mentioned in subsection (3) which is in the possession of a public body to be produced to the Court within such period as the Court may specify.

(2) The power to make an order under subsection (1) is exercisable if —

(a) the powers conferred on the High Court by sections 12 (1) and 13 (1) are exercisable by virtue of section 11 (1); or

(b) those powers are exercisable by virtue of section 11 (2) and the High Court has made a restraint or charging order which has not been discharged,

but where the power to make an order under subsection (1) is exercisable by virtue only of paragraph (b), section 11 (3) shall apply for the purposes of this section as it applies for the purposes of sections 12 and 13.

(3) The material referred to in subsection (1) is any material which —

(a) has been submitted to an officer of a public body by the defendant or by a person who has at any time held property which was realisable property;

(b) has been made by an officer of a public body in relation to the defendant or such a person; or

(c) is correspondence which passed between an officer of a public body and the defendant or such a person.

and an order under that subsection may require the production of all such material, or of a particular description of such material, being material in the possession of the body concerned.

(4) An order under subsection (1) shall not require the production of any material unless it appears to the High Court that the material is likely to contain information that would facilitate the exercise of the powers conferred on the Court by section 12, 13 or 15 or on a receiver appointed under section 12 or 15 or in pursuance of a charging order.

(5) The High Court may by order authorise the disclosure to such a receiver of any material produced under subsection (1) or any part of such material; but the Court shall not make an order under this subsection unless a reasonable opportunity has been given for an officer of the public body to make representations to the Court.

(6) Material disclosed in pursuance of an order under subsection (5) may, subject to any conditions contained in the order, be further disclosed for the purposes of the functions under this Act of the receiver or the High Court.

(7) The High Court may by order authorise the disclosure to an authorised officer of any material produced under subsection (1) or any part of such material; but the Court shall not make an order under this subsection unless —

(a) a reasonable opportunity has been given for an officer of the public body to make representations to the Court; and

(b) it appears to the Court that the material is likely to be of substantial value in exercising functions relating to drug trafficking.

(8) Material disclosed in pursuance of an order under subsection (7) may, subject to any conditions contained in the order, be further disclosed for the purposes of functions relating to drug trafficking.

(9) Material may be produced or disclosed in pursuance of this section notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by statute or otherwise.

(10) An order under subsection (1) and, in the case of material in the possession of a public body, an order under section 26 (2) may require any officer of the public body (whether named in the order or not) who may for the time being be in possession of the material concerned to comply with it, and such an order shall be served as if the proceedings were civil proceedings against the Government.

(11) In this section “public body” means —

- (a) any Ministry or Government department; and
- (b) any body specified by the Minister by notification published in the *Gazette* to be a public body for the purposes of this section.

PART VI

OFFENCES

Assisting
another to
retain
benefits of
drug
trafficking.

41.—(1) Subject to subsection (3), a person who enters into an arrangement knowing that by the arrangement —

(a) the retention or control by or on behalf of another (referred to in this section as that other person) of that other person’s benefits of drug trafficking is facilitated (whether by concealment, removal from jurisdiction, transfer to nominees or otherwise); or

(b) that other person’s benefits of drug trafficking —

(i) are used to secure funds that are placed at that other person’s disposal; or

(ii) are used for that other person’s benefit to acquire property by way of investment,

and knowing that that other person is a person who carries on or has carried on drug trafficking or has benefited from drug trafficking, shall be guilty of an offence.

(2) In this section, references to any person’s benefits of drug trafficking include a reference to any property which in whole or in part, directly or indirectly, represented in his hands his benefits of drug trafficking.

(3) Where a person discloses to an authorised officer a suspicion or belief 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) if he does any act in contravention of subsection (1) and the disclosure relates to the arrangement concerned, he shall not be guilty of an offence under this section if the disclosure is made in accordance with this paragraph, that is —

(i) it is made before he does the act concerned, being an act done with the consent of the authorised officer; or

(ii) it is made after he does the act, but is made on his initiative and as soon as it is reasonable for him to make it;

(b) the disclosure shall not be treated as a breach of any restriction upon the disclosure of information imposed by law, contract or by rules of professional conduct; and

(c) he shall not be liable in damages for any loss arising out of —

(i) the disclosure;

(ii) any act done or omitted to be done in relation to the funds or investments in consequence of the disclosure.

(4) In any proceedings against a person for an offence under this section, it is a defence to prove —

(a) that he did not know that the arrangement related to any person's proceeds of drug trafficking;

(b) that he did not know that by the arrangement the retention or control by or on behalf of the relevant person of any property was facilitated or, as the case may be, that by the arrangement any property was used as mentioned in subsection (1); or

(c) that —

(i) he intended to disclose to an authorised officer such suspicion, belief or matter as is mentioned in subsection (3) in relation to the arrangement; and

- (ii) there is reasonable excuse for his failure to make disclosure in accordance with subsection (3) (a).

(5) A person who commits an offence under this section shall be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 7 years or to both.

Restriction
on revealing
disclosure
under section
41.

42.—(1) Subject to subsection (2), no witness in any civil or criminal proceedings shall be obliged —

- (a) to reveal that a disclosure was made under section 41 (3);
- (b) to reveal the identity of any person as the person making the disclosure; or
- (c) to answer any question if the answer would lead, or would tend to lead, to the revealing of any fact or matter referred to in paragraph (a) or (b).

(2) Subsection (1) shall not apply in any proceedings —

- (a) for an offence under section 41 or this section; or
- (b) where the court is of the opinion that justice cannot fully be done between the parties without revealing the disclosure or the identity of any person as the person making the disclosure.

(3) Subject to subsections (4), (5) and (6), no person shall publish or broadcast any information so as to reveal or suggest —

- (a) that a disclosure was made under section 41 (3); or
- (b) the identity of any person as the person making the disclosure.

(4) In subsection (3), “information” —

- (a) includes a report of any civil or criminal proceedings; and
- (b) does not include information published for statistical purposes by, or under the authority of, the Government.

(5) Subsection (3) shall not apply in respect of proceedings —

(a) against the person making the disclosure for an offence under section 41; or

(b) for an offence under this section.

(6) The court may, if satisfied that it is in the interests of justice to do so, by order dispense with the requirements of subsection (3) to such extent as may be specified in the order.

(7) If information is published or broadcast in contravention of subsection (3), each of the following persons —

(a) in the case of publication as part of a newspaper or periodical publication, any proprietor, editor, publisher and distributor thereof;

(b) in the case of a publication otherwise than as part of a newspaper or periodical publication, any person who publishes it and any person who distributes it;

(c) in the case of a broadcast, any person who broadcasts the information and, if the information is contained in a programme, any person who transmits or provides the programme and any person having functions in relation to the programme corresponding to those of the editor of a newspaper or periodical publication,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 6 months or to both.

(8) In this section —

“broadcast” includes broadcast by radio, film, videotape or television;

“publish” means publish in writing.

43.—(1) Any person who —

(a) conceals or disguises any property which is, or in whole or in part, directly or indirectly, represents, his benefits of drug trafficking; or

Concealing
or
transferring
benefits of
drug
trafficking.

(b) converts or transfers that property or removes it from the jurisdiction,

for the purpose of avoiding prosecution for a drug trafficking offence or the making or enforcement in his case of a confiscation order shall be guilty of an offence.

(2) Any person who, knowing that any property is, or in whole or in part, directly or indirectly, represents, another person's benefits of drug trafficking —

(a) conceals or disguises that property; or

(b) converts or transfers that property or removes it from the jurisdiction,

for the purpose of assisting any person to avoid prosecution for a drug trafficking offence or the making or enforcement of a confiscation order shall be guilty of an offence.

(3) Any person who, knowing that any property is, or in whole or in part directly or indirectly represents, another person's benefits of drug trafficking, acquires that property for no, or inadequate consideration shall be guilty of an offence.

(4) In subsections (1) (a) and (2) (a), references to concealing or disguising any property include references to concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it.

(5) For the purposes of subsection (3), consideration given for any property is inadequate if its value is significantly less than the market value of that property, and there shall not be treated as consideration the provision for any person of services or goods which are of assistance to him in drug trafficking.

(6) Any person who commits an offence under this section shall be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 7 years or to both.

PART VII

MISCELLANEOUS

44.—(1) Where, in relation to an investigation into drug trafficking, an order under section 26 has been made or has been applied for and has not been refused or a warrant under section 31 has been issued, a person who, knowing or suspecting that the investigation is taking place, makes any disclosure which is likely to prejudice the investigation shall be guilty of an offence.

Offence of
prejudicing
investigation.

(2) In proceedings against a person for an offence under this section, it is a defence to prove —

- (a) that he did not know or suspect that the disclosure was likely to prejudice the investigation; or
- (b) that he had lawful authority or reasonable excuse for making the disclosure.

(3) A person who commits an offence under this section shall be liable on conviction to a fine not exceeding \$30,000 or to imprisonment for a term not exceeding 3 years or to both.

45.—(1) If an investigation is begun against a person for a drug trafficking offence or offences and any of the following circumstances occur, namely:

Compensa-
tion.

- (a) no proceedings are instituted against that person;
- (b) proceedings are instituted against that person but do not result in his conviction for any drug trafficking offence; or
- (c) proceedings are instituted against that person and he is convicted of one or more drug trafficking offences, but —
 - (i) the conviction or convictions concerned are quashed; or
 - (ii) he is granted a pardon in respect of the conviction or convictions concerned,

the High Court may, on application by a person who held property which was realisable property, order compensation to be paid by the Government to the applicant if, having

regard to all the circumstances, it considers it appropriate to make such an order.

(2) The High Court shall not order compensation to be paid under subsection (1) unless it is satisfied —

(a) that there has been some serious default on the part of any person concerned in the investigation or prosecution of the offence or offences concerned; and

(b) that the applicant has suffered loss in consequence of anything done in relation to the property by, or in pursuance of an order of, the High Court under section 12, 13 or 15.

(3) The High Court shall not order compensation to be paid under subsection (1) in any case where it appears to the Court that the investigation would have been continued, or the proceedings would have been instituted or continued, as the case may be, if the serious default had not occurred.

(4) Without prejudice to subsection (1), where —

(a) a disclosure is made by any person in accordance with section 41 (3) in relation to any property;

(b) in consequence of the disclosure and for the purposes of an investigation or prosecution in respect of a drug trafficking offence or offences any act is done or omitted to be done in relation to that property; and

(c) no proceedings are instituted against any person in respect of that offence or offences or no order is made by the High Court under section 12 or 13 in relation to that property,

the Court may, on application by a person who held the property, order compensation to be paid by the Government to the applicant if, having regard to all the circumstances, it considers it appropriate to make such an order.

(5) The High Court shall not order compensation to be paid under subsection (4) unless it is satisfied —

(a) that there has been some serious default on the part of any person concerned in the investigation or prosecution of the offence or offences

concerned and that, but for that default, the act or omission referred to in subsection (4) (b) would not have occurred; and

(b) the applicant has, in consequence of the act or omission referred to in subsection (4) (b), suffered loss in relation to the property.

(6) The amount of compensation to be paid under this section shall be such as the High Court thinks just in all the circumstances of the case.

46.—(1) Any question of fact to be decided by a court in proceedings under this Act shall be decided on the balance of probabilities Standard of proof.

(2) Subsection (1) shall not apply in relation to any question of fact that is for the prosecution to prove in any proceedings for an offence under this Act or any regulations made thereunder.

47.—(1) Where it is necessary, for the purposes of this Act, to establish the state of mind of a body corporate in respect of conduct engaged in, or deemed by subsection (2) to have been engaged in, by the body corporate, it shall be sufficient to show that a director, employee or agent of the body corporate, being a director, employee or agent by whom the conduct was engaged in within the scope of his actual or apparent authority, had that state of mind. Conduct by directors, employees or agents.

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

(a) by a director, employee or agent of the body corporate within the scope of his actual or apparent authority; or

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

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

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

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

(a) by an employee or agent of the person within the scope of his actual or apparent authority; or

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

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

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

enforcement
external
orders.

48.—(1) The Minister may, by order published in the *Gazette* —

(a) direct in relation to a country or territory outside Singapore designated by the order (referred to in this Act as a designated country) that, subject to such modifications as may be specified, this Act shall apply to external confiscation orders and to proceedings which have been or are to be instituted in the designated country and may result in an external confiscation order being made there;

(b) make —

(i) such provision in connection with the taking of action in the designated

country with a view to satisfying a confiscation order;

(ii) such provision as to evidence or proof of any matter for the purposes of this section and section 49; and

(iii) such incidental, consequential and transitional provision, as appears to him to be expedient; and

(c) without prejudice to the generality of this subsection, direct that in such circumstances as may be specified proceeds arising out of action taken in the designated country with a view to satisfying a confiscation order and which are retained there shall nevertheless be treated as reducing the amount payable under the order to such extent as may be specified.

(2) An order under this section may make different provision for different cases or classes of cases.

(3) The power to make an order under this section includes power to modify this Act in such a way as to confer power on a person to exercise a discretion.

(4) In this section and section 49 —

“external confiscation order” means an order made by a court in a designated country for the purpose of recovering payments or other rewards received in connection with drug trafficking or their value;

“modifications” includes additions, alterations and omissions.

49.—(1) On an application made by or on behalf of the government of a designated country, the High Court may register an external confiscation order made there if —

Registration of external confiscation orders.

(a) it is satisfied that at the time of registration the order is in force and not subject to appeal;

(b) it is satisfied, where the person affected by the order did not appear in the proceedings, that he received notice of the proceedings in sufficient time to enable him to defend them; and

(c) it is of the opinion that enforcing the order in Singapore would not be contrary to the interests of justice.

(2) In subsection (1), “appeal” includes —

(a) any proceedings by way of discharging or setting aside a judgment; and

(b) an application for a new trial or a stay of execution.

(3) The High Court shall cancel the registration of an external confiscation order if it appears to the Court that the order has been satisfied by payment of the amount due under it or by the person against whom it was made serving imprisonment in default of payment or by any other means.

Exercise of
powers of
police law.
Cap. 185.

50. Section 15 of the Misuse of Drugs Act shall apply with the necessary modifications in relation to proceedings under this Act as it applies in relation to proceedings for an offence under that Act.

Powers of
arrest and
investi-
gations.

51.—(1) An authorised officer or a customs officer may arrest without warrant any person whom he reasonably believes has committed an offence under this Act or the regulations made thereunder.

Cap. 68.

(2) An authorised officer who is not a police officer may exercise all or any of the powers in relation to investigations into a seizable offence conferred on a police officer by the Criminal Procedure Code in any case relating to the commission of an offence under this Act or the regulations made thereunder or in any case where a seizable offence is disclosed under any written law in the course of an investigation under this Act.

(3) An authorised officer who is not a police officer may be authorised by the Public Prosecutor in writing to exercise all or any of the powers in relation to investigations conferred on a police officer by the Criminal Procedure Code in any case where a non-seizable offence is disclosed under any written law in the course of investigations under this Act.

(4) In this section, “seizable offence” and “non-seizable offence” have the same meanings as in section 2 of the Criminal Procedure Code.

Amendment
of Schedule.

52. The Minister may, by order published in the *Gazette*, amend the Schedule.

53.—(1) Except for the purpose of the performance of his duties or the exercise of his functions or when lawfully required to do so by any court or under the provisions of any written law, no authorised officer shall disclose any information or matter which has been obtained by him in the performance of his duties or the exercise of his functions under this Act.

Preservation
of secrecy.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding one year or to both.

54. Any person who obstructs or hinders any authorised officer acting in the discharge of his duty under this Act or any regulations made thereunder shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding 6 months or to both.

Obstructing
authorised
officers.

55. No court shall take cognizance of any offence under this Act or any regulations made thereunder except with the sanction of the Public Prosecutor.

Sanction of
Public
Prosecutor.

56. Where a body corporate is guilty of an offence under this Act and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Offences
committed
by body
corporate.

57.—(1) The Minister or any person authorised by him in writing may compound any offence under this Act or any regulations made thereunder which is prescribed to be a compoundable offence by collecting from a person reasonably suspected of having committed the offence a sum not exceeding \$1,000.

Composition
of offences.

(2) The Minister may make regulations to prescribe the offences under this Act or any regulations made thereunder which may be compounded.

Jurisdiction
of
Magistrate's
Court and
District
Court.
Cap. 68.

58.—(1) A Magistrate's Court or a District Court shall have jurisdiction to hear and determine any offence under this Act and, notwithstanding anything to the contrary in the Criminal Procedure Code, shall have power to impose the full penalty or punishment in respect of an offence under this Act.

(2) Nothing in subsection (1) shall be construed to confer any jurisdiction or power on a Magistrate's Court or a District Court where it is expressly provided in this Act that the High Court shall have such jurisdiction or power.

F lations.

59. The Minister may make regulations for prescribing anything which is required to be prescribed under this Act and generally for carrying out the purposes and provisions of this Act.

THE SCHEDULE

Section 2

DRUG TRAFFICKING OFFENCES

<i>Offence</i>	<i>Description*</i>
1. Section 5 of the Misuse of Drugs Act (Chapter 185)	Trafficking in a controlled drug.
2. Section 6 of the Misuse of Drugs Act	Manufacture of a controlled drug.
3. Section 7 of the Misuse of Drugs Act	Importation and exportation of a controlled drug.
4. Section 10 of the Misuse of Drugs Act	Cultivation of cannabis, opium and coca plants.
5. Sections 41 and 43 of this Act	Money laundering.