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CHAPTER 284

PROCEEDS OF CRIME

Act 13 of 2002
Act 30 of 2005

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PROCEEDS OF CRIME

An Act to provide for the confiscation of proceeds of crime, and for related purposes.

PART 1 – PRELIMINARY

1. Principal objects

The principal objects of this Act are:

- (a) to deprive persons of the proceeds of, and benefits derived from, the commission of serious offences; and
- (b) to provide for the forfeiture of property used in, in connection with, or for facilitating, the commission of serious offences; and
- (c) to enable law enforcement authorities to trace such proceeds, benefits and property.

2. Definitions for Act

(1) In this Act, unless the contrary intention appears:

“account” means a facility or arrangement by which a financial institution does any one or more of the following:

- (a) accepts deposits of currency;
- (b) allows withdrawals or transfers of currency;
- (c) pays cheques or payment orders drawn on a financial institution by, or collects cheques or payment orders for, a person;
- (d) supplies a facility or arrangement for a safety deposit box;

“Administrator” means the Attorney General or the person appointed by the Attorney General under section 84;

“appeal” includes proceedings by way of discharging or setting aside a judgement, and an application for a new trial or for a stay of execution;

“Authority” means the Financial Intelligence Unit established by the Financial Transactions Reporting Act [Cap. 268];

“authorised officer” means:

- (a) the Commissioner of Police; or
- (b) a police officer authorised by the Commissioner of Police for a provision of this Act; or
- (c) a person authorised by the Minister for a provision of this Act;

“benefit” has the meaning given by section 3;

“charge”, in relation to an offence, includes any procedure by which criminal proceedings are begun against a person, and, in relation to an offence prosecuted summarily, includes the issue of the relevant summons;

“conviction” has the meaning given by section 4(1);

“Counter Terrorism and Transnational Organised Crime Act” means the Counter Terrorism and Transnational Organised Crime Act [Cap. 313];

“Court” means the Supreme Court of Vanuatu;

“currency” means coin and paper money that is legal tender in its country of issue;

“dealing with property” includes:

- (a) for property that is a debt – making a payment to the creditor in reduction or discharge of the debt; and
- (b) giving or receiving property as a gift; and
- (c) removing property from Vanuatu;

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

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

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

“financial institution” has the same meaning as in the Financial Transactions Reporting Act [Cap. 268];

“foreign pecuniary penalty order” has the same meaning as in the Mutual Assistance Act;

“foreign forfeiture order” has the same meaning as in the Mutual Assistance Act;

“foreign restraining order” has the same meaning as in the Mutual Assistance Act;

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

“forfeiture order” means an order made by the Court under section 20(1);

“gift” has the meaning given by section 8;

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

“interest”, in property, means:

- (a) a legal or equitable estate or interest in the property; or
- (b) a right, power or privilege in connection with the property;

“Mutual Assistance Act” means the Mutual Assistance in Criminal Matters Act [Cap. 285];

“pecuniary penalty order” means an order under section 28(1);

“police officer” means a member of the Vanuatu Police;

“proceedings” include any procedure (including an inquiry, investigation, or preliminary or final determination of facts) conducted by or under the supervision of a judge or judicial officer in connection with:

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

“proceeds of crime” has the meaning given by section 5;

“property” includes money and all other property, real or personal, including an enforceable right of action and other intangible or incorporeal property;

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

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

“relevant application period”, for a person’s conviction of a serious offence, means the period of 12 months after:

- (a) if the person was actually convicted of the offence – the day when the person was convicted of the offence; or
- (b) if the person is taken to have been convicted of the offence because of section 4(1)(b) – the day when the person was discharged without conviction; or
- (c) if the person is taken to have been convicted of the offence because of section 4(1)(c) – the day when the court took the offence into account in passing sentence for the other offence referred to in that paragraph;

“restraining order” means an order under section 52 or 65;

“serious offence” means:

- (a) an offence against a law of Vanuatu for which the maximum penalty is imprisonment for at least 12 months; or
- (b) an offence against the law of another country that, if the relevant act or omission had occurred in Vanuatu, would be an offence against the law of Vanuatu for which the maximum penalty is imprisonment for at least 12 months;

“tainted property”, in relation to a serious offence, means:

- (a) property intended for use in, or used in or in connection with, the commission of the offence; or
- (b) proceeds of crime;

“terrorist property” has the same meaning as provided for under the Counter Terrorism and Transnational Organised Crime Act;

“unit trust” means an arrangement in which a person:

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

“Unit” has the same meaning as provided for under the Financial Transactions Reporting Act [Cap. 268];

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

- (2) A reference in this Act to the law of a country includes a law in force in a part of the country (for example, the law of a State of a country that has a federal system of government).

3. Meaning of benefit

For this Act:

- (a) a person benefits from a serious offence if the person receives, at any time, any payment or other reward in connection with, or derives any pecuniary advantage from the commission of the offence;

- (b) a reference to a benefit derived or obtained by, or otherwise accruing to, a person includes a benefit derived or obtained by, or otherwise accruing to, another person at the first-mentioned person's request or direction.

4. Meaning of conviction and quash

- (1) For this Act, a person is taken to have been convicted of an offence if:
- (a) the person was convicted of the offence; or
 - (b) the person was charged with, and found guilty of, the offence but is discharged without conviction; or
 - (c) the person was not found guilty of the offence, but the Court, with the consent of the person, takes the offence into account in passing sentence on the person for another offence.
- (2) If a person is taken, under subsection (1)(b), to have been convicted of an offence, for the purposes of this Act the conviction is taken to be quashed if the finding of guilty is quashed or set aside.
- (3) If a person is taken, under subsection (1)(c), to have been convicted of an offence, for the purposes of this Act the conviction is taken to be quashed if the Court's decision to take the offence into account is quashed or set aside.

5. Meaning of proceeds of crime

- (1) In this Act:
- "proceeds of crime" means property derived or realised directly or indirectly from a serious offence, including:
- (a) property into which any property derived or realised directly from the offence is later successively converted or transformed; and
 - (b) income, capital or other economic gains derived or realised from that property since the offence.
- (2) If property that is proceeds of crime ("the original proceeds") is intermingled with other property from which it cannot readily be separated, that proportion of the whole represented by the original proceeds is taken to be proceeds of crime.

6. Meaning of realisable property

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

7. How value of property is worked out

- (1) For this Act, the value of property (other than currency) to a person holding the property is:
- (a) if another person holds an interest in the property – the market value of the person's beneficial interest in the property, less the amount required to discharge any encumbrance on that interest; and

- (b) in any other case – its market value.
- (2) For this Act, the value at a particular time of a transfer of property is the greater of:
 - (a) the value of the property to the recipient when he or she receives it, adjusted to take account of subsequent changes in the value of money; and
 - (b) the value to the recipient at that time of:
 - (i) the property; or
 - (ii) of property that, in whole or in part, directly or indirectly represents in the recipient's hands the property that he or she received.

8. Meaning of gift

- (1) In this Act:

“gift” includes a transfer (directly or indirectly) of property by one person to another for a consideration that is significantly less than the value of the property.

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

9. What is the value of a gift

For this Act, the value at a particular time of a gift is the greater of:

- (a) the value of the gift to the recipient when he or she received it, adjusted to take account of changes in the value of money; or
- (b) property that, in whole or in part, directly or indirectly represents in the person's hands property that the person received as a gift.

10. When a gift is caught by this Act

A gift made by a person convicted of or charged with a serious offence, including a gift made before the commencement of this Act, is caught by this Act if:

- (a) it was made after the commission of the offence (or, if more than one offence, the earliest of them) and the Court considers it appropriate in all the circumstances to take the gift into account; or
- (b) it was made, by the person convicted or charged, at any time and was itself a gift of property:
 - (i) received by the person; or
 - (ii) that in whole or in part, directly or indirectly, represented in the person's hands property received by the person;

in connection with the commission of another serious offence committed by the person or by another person.

PART 2 – MONEY-LAUNDERING

11. Money-laundering

- (1) In this section:

“transaction” includes the receiving or making of a gift.

- (2) A person who, after the commencement of this Act, engages in money-laundering is guilty of an offence punishable on conviction by:
- (a) if the offender is a natural person – a fine of VT 10 million or imprisonment for 10 years, or both; or

- (b) if the offender is a body corporate – a fine of VT 50 million.
- (3) A person engages in money-laundering only if the person:
 - (a) acquires, possesses or uses property or engages directly or indirectly, in an arrangement that involves property that the person knows or ought reasonably to know to be proceeds of crime; or
 - (b) converts or transfers property that the person knows or ought reasonably to know to be proceeds of crime; or
 - (c) conceals or disguises the true nature, source location, disposition, movement, ownership of or rights with respect to property that the person knows or ought reasonably to know to be proceeds of crime.

12. Possession of property suspected of being proceeds of crime

- (1) A person who, after the commencement of this Act, receives, possesses, conceals, disposes of or brings into Vanuatu money, or other property, that may reasonably be suspected of being proceeds of crime is guilty of an offence punishable on conviction by:
 - (a) if the offender is a natural person – a fine of VT 10 million or imprisonment for 10 years, or both; or
 - (b) if the offender is a body corporate – a fine of VT 50 million.
- (2) It is a defence to a charge of contravening subsection (1) that the person charged had no reasonable grounds for suspecting that the property referred to in the charge was derived or realised, directly or indirectly, from some form of unlawful activity.
- (3) A person is not liable to be convicted of an offence against both section 11 and this section because of one act or omission.

13. *(Repealed)*

14. *(Repealed)*

PART 3 – FORFEITURE ORDERS, PECUNIARY PENALTY ORDERS AND RELATED MATTERS

Division 1 – General

15. Application for forfeiture order or pecuniary penalty order on conviction

- (1) If a person is convicted of a serious offence committed after this Act commences, the Attorney General may apply to the Court for either or both of the following orders:
 - (a) a forfeiture order against tainted property in relation to the offence;
 - (b) a pecuniary penalty order against the person for benefits derived by the person from the commission of the offence.
- (2) However, the Attorney General may not make such an application after the end of the relevant application period for the conviction.
- (3) A single application under this section may be made in connection with 2 or more serious offences.
- (4) After an application under this section is finally determined, no further application for a forfeiture order or a pecuniary penalty order may be made in relation to the offence for which the person was convicted without leave of the Court.

- (5) The Court may give leave for a new application only if:
- (a) the property or benefit to which the new application relates was identified after the previous application was determined; or
 - (b) necessary evidence became available only after the previous application was determined; or
 - (c) it is in the interests of justice that the new application be made.

16. Notice of application

- (1) If the Attorney General applies for a forfeiture order against tainted property in relation to a serious offence for which a person is convicted:
- (a) the Attorney General must give 14 days' (from the date of application) written notice of the application to the person and to any other person who the Attorney General has reason for believing may have an interest in the property; and
 - (b) the person, and any other person who claims an interest in the property, may appear and adduce evidence at the hearing of the application; and
 - (c) the Court may, at any time before the final determination of the application, direct the Attorney General:
 - (i) to give reasonable written notice of the application to any person who, in the opinion of the Court, appears to have an interest in the property; or
 - (ii) to publish notice of the application, containing the particulars that the Court directs and as often as the Court directs, in a newspaper published and circulating in Vanuatu.
- (2) If the Attorney General applies for a pecuniary penalty order against a person:
- (a) the Attorney General must give the person 14 days' (from the date of application) written notice of the application; and
 - (b) the person may appear and adduce evidence at the hearing of the application.

17. Amendment of application

- (1) The Court may, before finally determining an application for a forfeiture order or pecuniary penalty order, and on the application of the Attorney General, allow the amendment of the application to include any other property or benefit if:
- (a) the other property or benefit was not reasonably capable of identification when the application for the order was originally made; or
 - (b) necessary evidence became available only after that application was originally made.
- (2) If:
- (a) the Attorney General applies to amend an application for a forfeiture order; and
 - (b) the effect of the amendment would be to include additional property in the application for the forfeiture order;
- the Attorney General must give 14 days' (from the date of application) written notice of the application to amend to any person who the Attorney General has reason for believing may have an interest in the additional property.
- (3) Any person who claims an interest in the additional property may appear and adduce evidence at the hearing of the application to amend.

- (4) If:
- (a) the Attorney General applies to amend an application for a pecuniary penalty order against a person; and
 - (b) the effect of the amendment would be to include an additional benefit in the application for the pecuniary penalty order;
- the Attorney General must give the person 14 days' (from the date of application) written notice of the application to amend.

18. Procedure on application

On an application to the Court under section 15, the Court may:

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

19. Application for forfeiture order if person has absconded or died

(1) If, in connection with a serious offence committed after this Act commences, each of the following occurs:

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

the Attorney General may, within 6 months after the person absconds or dies, apply to the Court for a forfeiture order against any tainted property.

(2) For this section:

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

(3) If the Attorney General applies under subsection (1) for a forfeiture order against property, the Court must, before hearing the application, require:

- (a) reasonable written notice of the application to be given to any person who, in the opinion of the Court, appears to have an interest in the property; or
- (b) notice of the application, containing the particulars that the Court directs, to be published as often as the Court directs in a newspaper published and circulating in Vanuatu.

Division 2 – Forfeiture orders

20. Forfeiture order on conviction

(1) If:

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

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

- (2) In deciding whether property is tainted property, the Court may infer:
- (a) if the evidence establishes that the property was in the person's possession at the time of, or immediately after, the offence was committed – that the property was used in, or in connection with, committing the offence; and
 - (b) if the evidence establishes that the property (in particular, money) was found, during investigations before or after the person was arrested for and charged with the offence:
 - (i) in the person's possession; or
 - (ii) under the person's control in a building, vehicle, receptacle or place –that the property was derived, obtained or realised as a result of the person's committing the offence; and
 - (c) if:
 - (i) the evidence establishes that the value, after the person committed the offence, of all the person's ascertainable property is more than the value of all the person's ascertainable property before the person committed the offence; and
 - (ii) the Court is satisfied that the person's income from sources unrelated to criminal activity cannot reasonably account for the increase in value–that the value of all or part of the increase represents property that the person derived, obtained or realised directly or indirectly from committing the offence.
- (3) If the Court orders that property (other than money) be forfeited to the State, the Court must specify in the order the amount that it considers to be the value of the property when the order is made.
- (4) In considering whether to make a forfeiture order against property, the Court may take into account:
- (a) any right or interest of a third party in the property; and
 - (b) the gravity of the offence concerned; and
 - (c) any hardship that may reasonably be expected to be caused to any person by the operation of the order; and
 - (d) the use that is ordinarily made of the property, or the use to which the property was intended to be put.
- (5) If the Court makes a forfeiture order, the Court may give any directions that are necessary or convenient to give effect to the order.

21. Effect of forfeiture order

- (1) In this section:
- “registrable property” means property the title to which is passed by registration on a register kept under a law in force in Vanuatu.
- (2) If the Court makes a forfeiture order against property (other than registrable property), the order vests the property absolutely in the State.

- (3) If the Court makes a forfeiture order against registrable property:
- (a) the order vests the property in the State in equity, but does not vest it in the State at law until the applicable registration requirements have been complied with; and
 - (b) the State is entitled to be registered as owner of the property; and
 - (c) the Administrator may do, or authorise the doing of, anything necessary or convenient to obtain the registration of the State as owner, including the execution of any necessary instrument.
- (4) If the Court makes a forfeiture order against registrable property:
- (a) the Attorney General may do anything necessary or convenient to give notice of, or otherwise protect, the State's equitable interest in the property; and
 - (b) anything done by the Attorney General under paragraph (a) is not a dealing for the purposes of subsection (5)(a).
- (5) If the Court makes a forfeiture order against property (including registrable property):
- (a) the property must not, except with the leave of the Court and in accordance with any directions of the Court, be disposed of, or otherwise dealt with, by or for the State, before:
 - (i) any appeal against the conviction, or the making of the order, is finally determined, or lapses; or
 - (ii) the last day for the lodging of an appeal against the conviction or order passes without such an appeal having been lodged; and
 - (b) the property may be disposed of, and the proceeds applied or otherwise dealt with as the Administrator directs, after:
 - (i) the determination or lapsing of any appeal lodged against the conviction or the making of the order; or
 - (ii) the last day for lodging such an appeal is past without such an appeal having been lodged.

21A. Voidable transfers

The court may:

- (a) before making a forfeiture order; or
- (b) in the case of property in respect of which a restraining order was made – when the order was served in accordance with section 54,

set aside any conveyance or transfer of the property that occurred after the seizure of the property or the service of the restraining order, unless the conveyance or transfer was made for valuable consideration to a person acting in good faith and without notice.

22. Protection of third parties

- (1) If an application is made for a forfeiture order against property, a person who claims an interest in the property may apply to the Court, before the forfeiture order is made, for an order under subsection (2).
- (2) If a person applies to the Court for an order about the person's interest in property, the Court must make an order declaring the nature, extent and value (as at the time the order is made) of the person's interest if the Court is satisfied:
 - (a) that the applicant was not involved in committing an offence in relation to which forfeiture of the property is sought, or a forfeiture order against the property was made; and

- (b) if the applicant acquired the interest when, or after, the offence was committed – that the applicant 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 of the acquisition, tainted property.
- (3) If a forfeiture order has already been made against property, a person who claims an interest in the property may, within 6 months starting on the day when the order is made, apply to the Court for an order under subsection (2).
- (4) A person may not make an application under subsection (3), except with the leave of the Court, if the person:
 - (a) knew about the application for the forfeiture order before the order was made; or
 - (b) appeared at the hearing of that application.
- (5) A person who applies to the Court under subsection (1) or (3) must give 28 days written notice of the application to the Attorney General.
- (6) The Attorney General:
 - (a) is a party to the proceedings in an application under subsection (1) or (3); and
 - (b) may make an application under subsection (1) for a person.
- (7) An appeal lies to the Court of Appeal of Vanuatu from an order under subsection (2).
- (8) Subsection (9) applies if:
 - (a) a person has obtained an order under subsection (2); and
 - (b) the period for appeals has expired and any appeal from that order has been determined or has lapsed; and
 - (c) the Administrator has received the property under a forfeiture order.
- (9) On application by the person, the Administrator must:
 - (a) return the property, or the part of it to which the interest of the person relates, to the person; or
 - (b) pay an amount equal to the value of the interest of the applicant, as declared in the order, to the person.

23. Forfeiture order where person has absconded

- (1) This section applies if:
 - (a) an application is made to the Court for a forfeiture order against property; and
 - (b) the Court is satisfied that:
 - (i) proceedings for a serious offence committed for that property were commenced; and
 - (ii) any property is tainted property in relation to the offence; and
 - (iii) the accused charged with the offence has absconded.
- (2) The Court may order that the property, or so much of it as the Court specifies in the order, be forfeited to the State.
- (3) Section 20 (except subsection (1)), and sections 21 and 22, apply (with any necessary modifications) to an order under this section.

24. Discharge of forfeiture order on appeal or quashing of conviction

- (1) If the Court makes a forfeiture order against property in reliance on a person's conviction of an offence and the conviction is subsequently quashed, the quashing of the conviction discharges the order.
- (2) If a forfeiture order against property is discharged:
- (a) under subsection (1); or
 - (b) by the Court hearing an appeal against the making of the order;
- a person who claims to have had an interest in the property immediately before the forfeiture order was made may apply to the Administrator, in writing, for the transfer of the interest to the person.
- (3) On receipt of an application under subsection (2) from a person who had such an interest in the property, the Administrator must:
- (a) if the interest is vested in the State – transfer the property or interest in the property, or the part of it to which the interest relates, to the person; or
 - (b) the State has disposed of the interest – pay the person an amount equal to the value of the interest at the time the order is made.
- (4) The Administrator may ask the Court to determine whether the person had the interest claimed under subsection (2).
- (5) The Administrator has power to do, or authorise the doing of, anything necessary or convenient to transfer or return property under section 22 or this section, including executing any instrument and applying to register an interest in the property on a register.

25. Payment instead of forfeiture order

If the Court is satisfied that a forfeiture order should be made against property of a person, but that the property, or any part of it or interest in it, cannot be made subject to such an order, and, in particular:

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

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

26. Enforcement of order for payment instead of forfeiture

- (1) An amount payable by a person to the State under an order under section 25 is a civil debt due by the person to the State.
- (2) An order against a person under section 25 may be enforced as if it were an order made in civil proceedings instituted by the State against the person to recover a debt due by the person to the State, and the debt arising from the order is taken to be a judgment debt.
- (3) If an order is made against a person under section 25 and the person is, or becomes, a bankrupt, the order may be enforced against the person or against any property of the person that is not vested in the person's trustee in bankruptcy.

27. Registered foreign forfeiture orders

If a foreign forfeiture order is registered in the Court under section 41 of the Mutual Assistance Act, this Division applies to the order as if:

- (a) the order were an order made by the Court under this Division; and
- (b) references to an appeal against the making of an order were omitted; and
- (c) the period mentioned in section 22(3) were 6 weeks rather than 6 months.

Division 3 – Pecuniary penalty orders

28. Pecuniary penalty order on conviction

- (1) If the Attorney General applies to the Court for a pecuniary penalty order against a person in relation to the person's conviction of a serious offence, the Court may, if it is satisfied that the person has benefited from the offence, order the person to pay to the State:
 - (a) an amount equal to the value of the person's benefit from the offence; or
 - (b) a lesser amount that the Court certifies to be the amount that might be realised at the time the pecuniary penalty order is made.
- (2) The Court must assess the value of the benefit derived by a person from committing an offence in accordance with sections 29, 30, 31, 32 and 33.
- (3) The Court must not make a pecuniary penalty order under this section:
 - (a) until the period for the lodging of an appeal against conviction has expired without an appeal having been lodged; or
 - (b) if an appeal against conviction has been lodged – until the appeal lapses, or is finally determined.

29. Rules for determining benefit and assessing value

- (1) If a person obtains property as the result of, or in connection with committing, a serious offence, the person's benefit is the value of the property so obtained.
- (2) If a person derives an advantage as the result of, or in connection with committing, a serious offence, the person's advantage is taken to be a sum of money equal to the value of the advantage so derived.
- (3) Unless the contrary is proved:
 - (a) property is taken to be tainted property if it is held by a person on the day when the application is made, and at any time:
 - (i) if the offence or earliest offence was committed more than 5 years before the application is made – within 5 years before the application is made; and
 - (ii) in any other case – after the offence, or the earliest offence, was committed and before the application is made; and
 - (b) any expenditure by the person in the time mentioned in paragraph (a)(ii) is taken to be expenditure met out of tainted property; and
 - (c) any property received or taken to have been received by the person at any time as a result of, or in connection with, committing the offence or offences is taken to have been received free of any other interests; and
 - (d) if evidence is given at the hearing of the application that the value of the person's property increased after committing an offence, the increase is taken to be part of the person's benefit from the offence.

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

30. Statements about benefits from committing serious offences

- (1) If a person has been convicted of a serious offence, the Attorney General may tender to the Court a statement about any matter relevant to:

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

- (2) If a statement under subsection (1) has been tendered by the Attorney General and the Court is satisfied that a copy of the statement has been served on the person, the Court may require the person to indicate:

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

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

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

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

- (5) An allegation may be accepted, or matter indicated, for this section either:

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

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

31. Amount to be recovered under pecuniary penalty order

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

- (2) If the Court is satisfied (whether by an acceptance under section 30 or otherwise) about a matter relevant to determining the amount that might be realised at the time a pecuniary penalty order is made, the Court may issue a certificate giving the Court's opinion about the matter.

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

32. Working out how much is realisable

- (1) For sections 30 and 31, the amount that might be realised at the time a pecuniary penalty order is made against a person is the total of:
- (a) the values at that time of all the realisable property held by the person, less the total amounts payable under any obligation having priority at that time; and
 - (b) the total of the values at that time of all gifts caught by this Act.
- (2) For subsection (1), an obligation of a person has priority at a time if it is an obligation to:
- (a) pay a fine, or an amount due under an order of the Court imposed or made on conviction of an offence, if the fine was imposed or the order made before the pecuniary penalty order; or
 - (b) pay an amount due as a tax, rate, duty, excise or other impost under an enactment; or
 - (c) pay any other civil obligation as may be determined by the Court.

33. Variation of pecuniary penalty orders

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

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

- (2) If:
- (a) the Court makes a pecuniary penalty order against a person in relation to an offence; and
 - (b) in calculating the amount of the pecuniary penalty order, the Court took into account an amount of tax paid by the person; and
 - (c) an amount is repaid or refunded to the person for that tax;

the Attorney General may apply to the Court to vary the pecuniary penalty order to increase the amount of the order by the amount repaid or refunded and the Court may, if it considers it appropriate to do so, vary the order accordingly.

34. Court may lift corporate veil

- (1) In assessing the value of benefits derived by a person from committing an offence, the Court may treat as the person's property any property that, in the opinion of the Court, is under the person's effective control, whether or not the person has:
- (a) any legal or equitable interest in the property; or
 - (b) any right, power or privilege in connection with the property.
- (2) Without limiting subsection (1), the Court may take into account:
- (a) shareholdings in, debentures over, or directorships of a company that has an interest (whether direct or indirect) in the property; and
 - (b) a trust that has a relationship to the property; and

- (c) any relationship between persons having an interest in the property, or in companies of the kind mentioned in paragraph (a) or trusts of the kind mentioned in paragraph (b), and other persons.
- (3) To decide, for subsection (2)(a), whether a particular company has a direct or indirect interest in property, the Court may order the investigation and inspection of the books of the company.
- (4) If the Court, in making a pecuniary penalty order against a person, treats particular property as the person's property under subsection (1), the Court may, on application by the Attorney General, make an order declaring that the property is available to satisfy the order.
- (5) If the Court declares that property is available to satisfy a pecuniary penalty order:
 - (a) the order may be enforced against the property as if the property were property of the person against whom the order is made; and
 - (b) a restraining order may be made in relation to the property as if the property were property of the person against whom the order is made.
- (6) If the Attorney General applies for an order that property is available to satisfy a pecuniary penalty order against a person:
 - (a) the Attorney General must give reasonable written notice of the application to the person and to any other person who the Attorney General has reason for believing may have an interest in the property; and
 - (b) the person and any other person who claims an interest in the property may appear and adduce evidence at the hearing of the application.

35. Enforcement of pecuniary penalty orders

- (1) An amount payable by a person to the State under a pecuniary penalty order is a civil debt due by the person to the State.
- (2) A pecuniary penalty order against a person may be enforced as if it were an order made in civil proceedings instituted by the State against the person to recover a debt due by the person to the State, and the debt arising from the order is taken to be a judgment debt.
- (3) If a pecuniary penalty order is made against a person and the person is, or becomes, a bankrupt, the order may be enforced against the person or against any property of the person that is not vested in the person's trustee in bankruptcy.

36. Amounts paid for registered foreign pecuniary penalty orders

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

PART 4 – FACILITATING INVESTIGATIONS AND PRESERVING PROPERTY

Division 1 – Powers of search and seizure

37. Warrant to search land etc. for tainted property or terrorist property

- (1) An authorised officer may apply to the Court for the issue of a warrant to search land or premises for tainted property or terrorist property.
- (2) If an application is made under subsection (1) for a warrant, the Court may issue the warrant authorising the authorised officer, with such assistance, and by such force, as is necessary and reasonable:

- (a) to enter the land or premises; and
 - (b) to search the land or premises for the tainted property or terrorist property and to seize it.
- (3) The Court may issue the warrant only if it is satisfied that:
- (a) the property authorised to be seized is tainted property; and
 - (b) an information has been laid or will be laid within 48 hours for the relevant offence in relation to the tainted property or a forfeiture order under section 19 of the Counter Terrorism and Transnational Organised Crime Act has been or will be made within 14 days against the terrorist property; and
 - (c) there are reasonable grounds for issuing the warrant.
- (4) A warrant issued under this section must include:
- (a) a statement of the purpose for which the warrant is issued, including a reference to the nature of the relevant offence; and
 - (b) a description of the kind of property authorised to be seized; and
 - (c) a time at which the warrant ceases to have effect; and
 - (d) a statement whether entry is authorised at any time or at specified times.

38. Authorised officer may seize tainted property or terrorist property

- (1) If, in the course of a search under a warrant issued under section 37, for a thing of a kind specified in the warrant, an authorised officer finds another thing, the warrant is taken to authorise the officer to seize the other thing if there are reasonable grounds:
- (a) for believing the other thing to be tainted property in relation to a serious offence or to be terrorist property, or to afford evidence about the commission of a criminal offence, or the existence of terrorist property in Vanuatu; or
 - (b) for believing that it is necessary to seize the property or thing to prevent it being concealed, lost or destroyed, or used to commit, continue or repeat the offence or another offence.
- (2) Any property seized must be given to the Attorney General.

39. Return of seized property – general rule

- (1) If property has been seized under section 38(1), a person who claims an interest in the property may apply to the Court for an order that the property be returned to the person.
- (2) The Court must order that the property be returned to the person if the Court is satisfied that:
- (a) the person is entitled to possession of the property; and
 - (b) the property is not tainted property or terrorist property; and
 - (c) in the case of tainted property, the person in relation to whose conviction, charging or proposed charging the property was seized has no interest in the property.

40. Return of seized property if no information laid in relation to offence for tainted property or forfeiture order made against terrorist property

If:

- (a) property has been seized under section 38(1); and
- (b) when the property was seized, an information had not been laid in relation to an offence because of which the property is tainted or a forfeiture order had not been granted in relation to the terrorist property; and

- (c) an information is not laid, in relation to an offence because of which the property is tainted, within 48 hours after the property was seized, or a forfeiture order had not been granted in relation to the terrorist property within 14 days;

the Attorney General must, subject to section 42, arrange for the property to be returned to the person from whose possession it was seized as soon as practicable after the end of that 48 hours or 14 days.

41. Return of seized or tainted property if no forfeiture order made

If:

- (a) tainted property has been seized under section 38(1); and
(b) any proceedings for an offence because of which the property is tainted have been completed; and
(c) the Attorney General does not apply for a forfeiture order under section 20 of this Act within 14 days after the proceedings are completed; and
(d) the property is in the Attorney General's possession;

the Attorney General must, subject to section 42, arrange for the property to be returned to the person from whose possession it was seized as soon as practicable.

42. Retention of seized property if restraining order made

(1) If:

- (a) property has been seized under section 38(1); and
(b) a restraining order is made against the property before the Attorney General is required by this Act to return it; and
(c) the restraining order directs the Administrator to take custody and control of the property;

then, despite section 40 or 41, the Attorney General must arrange for the property to be given to the Administrator in accordance with the restraining order.

- (2) If, when the restraining order is made the property is in the Attorney General's possession, the Attorney General may apply to the Court for an order that the Attorney General keep possession of the property.
(3) If the Court is satisfied that there are reasonable grounds for believing that the property may afford evidence as to the commission of an offence or is terrorist property, the Court may order that the Attorney General may retain the property for as long as the property is so required as evidence.
(4) If the Court makes an order under subsection (3) about the property, the Attorney General must arrange for the property to be kept until it is dealt with in accordance with another provision of this Act.
(5) In proceedings for an order under subsection (3), the Court may order that a witness need not:
(a) answer a specified question; or
(b) produce a specified document;

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

43. How Attorney General must deal with property subject to forfeiture order

If:

- (a) property has been seized under this Division; and

- (b) while the property is in the Attorney General's possession, a forfeiture order is made against the property;

the Attorney General must deal with the property as required by the order.

Division 2 – Search for and seizure of tainted property in relation to foreign offences or terrorist property

44. Application of this Division

- (1) If, under section 19 of the Mutual Assistance Act, an authorised officer is directed to apply to the Court for a search warrant for tainted property in relation to a foreign serious offence or for terrorist property, this Division applies to:
- (a) the application; and
 - (b) any warrant issued as a result of the application.
- (2) In this Division:
- (a) references to tainted property are taken to be references to tainted property in relation to a foreign serious offence; and
 - (b) references to an offence are taken to be references to a foreign serious offence.

45. Authorised officer may seize tainted property or terrorist property

- (1) Subsection (2) applies if, in the course of searching under a warrant referred to in section 44 for tainted property in relation to a foreign serious offence or terrorist property, an authorised officer finds:
- (a) property that there are reasonable grounds for believing is tainted property in relation to a foreign serious offence or terrorist property for which another search warrant under that section is in force; or
 - (b) anything that there are reasonable grounds for believing:
 - (i) is relevant to a criminal proceeding in the foreign country for the foreign serious offence; or
 - (ii) will afford evidence as to the commission of a criminal offence or the existence of terrorist property.
- (2) If there are reasonable grounds for believing that it is necessary to seize the property or thing in order to prevent its concealment, loss or destruction, or its use in committing, continuing or repeating the offence, the warrant is taken to authorise the officer to seize the property or thing.

46. Return of seized property – general rule

- (1) If property has been seized under section 45(2), a person who claims an interest in the property may apply to the Court for an order that the property be returned to the person.
- (2) The Court must order the Attorney General to return the property to the person if the Court is satisfied that:
- (a) the person is entitled to possession of the property; and
 - (b) the property is not tainted property or terrorist property; or
 - (c) in the case of tainted property – the person who is believed or alleged to have committed the relevant foreign serious offence has no interest in the property.

47. Return of seized property if no forfeiture order made

- (1) Subsection (2) applies if:

- (a) property has been seized under section 45(2); and
 - (b) no forfeiture order is made against the property within 30 days after it was seized; and
 - (c) the property is in the Attorney General's possession at the end of that period.
- (2) The Attorney General must arrange for the property to be returned to the person from whose possession it was seized as soon as practicable after the end of that period.

48. Retention of seized property if restraining order made

- (1) Subsections (2), (3) and (4) apply if:
- (a) property has been seized under section 45(2); and
 - (b) but for that subsection, the Attorney General would be required to arrange for the property to be returned to a person as soon as practicable after the end of a period; and
 - (c) before the end of that period:
 - (i) a foreign restraining order against the property is registered in the Court; or
 - (ii) the Court makes a restraining order against the property; and
 - (d) the Attorney General is not the Administrator.
- (2) The Attorney General must:
- (a) if the restraining order directs the Administrator to take custody and control of the property – arrange for the property to be given to the Administrator in accordance with the restraining order; or
 - (b) if the Court has made an order under subsection (4) about the property – arrange for the property to be kept until it is dealt with in accordance with another provision of this Act.
- (3) If the property is in the Attorney General's possession when the restraining order is made or registered, the Attorney General may apply to the Court for an order that the Attorney General retain possession of the property.
- (4) The court may, if satisfied that there are reasonable grounds for believing that the property may afford evidence as to the commission of an offence or that the property is terrorist property, order that the Attorney General may retain the property for as long as the property is so required as evidence or is so required.
- (5) In proceedings for an order under subsection (4), the Court may order that a witness need not answer a question, or produce a document, if the Court is satisfied that answering the question, or producing the document, may prejudice the investigation of an offence or the prosecution of a person.

49. How Attorney General must deal with property subject to forfeiture order

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

Division 3 – Restraining orders

50. Application for restraining order

- (1) The Attorney General may apply to the Court for a restraining order against:

- (a) any realisable property held by a defendant; or
 - (b) realisable property, specified in the application, held by a person other than a defendant; or
 - (c) any terrorist property.
- (2) An application for a restraining order may be made *ex parte*.
- (3) An application for a restraining order under subsection (1)(a) or (1)(b) must be in writing, and must be accompanied by an affidavit stating:
- (a) if the relevant defendant has been convicted of a serious offence:
 - (i) the offence of which the defendant was convicted, the date of the conviction, the court before which the conviction was obtained; and
 - (ii) whether an appeal has been lodged against the conviction, the result of any appeal and, if an appeal has not been finalised, what stage it has reached; and
 - (b) if the defendant has not been convicted of a serious offence – the offence with which the defendant is, or is about to be, charged and the grounds for believing that the defendant committed the offence; and
 - (c) if the defendant is about to be charged with a serious offence – the grounds for believing that the defendant will be charged with a serious offence within 48 hours; and
 - (d) a description of the property against which the restraining order is sought; and
 - (e) the name and address of the person who is believed to be in possession of the property; and
 - (f) if the application seeks a restraining order against property of a defendant – the grounds for believing that the property is tainted property in relation to an offence, or that the defendant derived a benefit directly or indirectly from committing the offence; and
 - (g) if the application seeks a restraining order against property of a person other than a defendant – the grounds for believing that the property is tainted property in relation to an offence, or is subject to the effective control of a defendant; or
 - (h) the grounds for believing that a forfeiture order under section 20 may be or is likely to be made in respect of the property.
- (4) An application for a restraining order under subsection (1)(c) must be in writing and must be accompanied by an affidavit stating:
- (a) the grounds for believing that the property is terrorist property and that a forfeiture order under section 19 of the Counter Terrorism and Transnational Organised Crime Act may be or is likely to be made against the property; and
 - (b) a description of the property against which the restraining order is sought; and
 - (c) the name and address of the person who is believed to be in possession of the property.

51. Notice of application for restraining order

(1) Before making a restraining order, the Court:

- (a) must require the Attorney General to give 14 days' written notice to any person who may have an interest in the property; and
- (b) may hear any person to whom notice is given.

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

52. Restraining orders

- (1) The Court may make a restraining order against property under section 50(1)(a) or 50(1)(b) if it is satisfied that:
 - (a) a defendant has been convicted of a serious offence, has been charged with a serious offence or will be charged with a serious offence within 48 hours; and
 - (b) if the defendant has not been convicted of the offence – there are reasonable grounds for believing that the defendant committed the offence; and
 - (c) if the property is property of the defendant – there are reasonable grounds for believing that the property is tainted property, or that the defendant derived a benefit directly or indirectly from the commission of the offence; and
 - (d) if the property is property of a person other than the defendant – there are reasonable grounds for believing that the property is tainted property in relation to the offence, or that the property is subject to the effective control of the defendant; or
 - (e) there are reasonable grounds for believing that a forfeiture order under section 20 may or is likely to be made in respect of the property.
- (1A) The Court may make a restraining order against property under section 50(1)(c) if it is satisfied that there are reasonable grounds for believing that the property is terrorist property and that a forfeiture order under section 19 of the Counter Terrorism and Transnational Organised Crime Act may or is likely to, be made against the property.
- (2) An order under this section may:
 - (a) prohibit the defendant or any other person from disposing of, or otherwise dealing with, the property, or a part of it or interest in it specified in the order, either absolutely or except in a way specified in the order; and
 - (b) at the request of the Attorney General, if the Court is satisfied that the circumstances so require, direct the Administrator:
 - (i) to take custody of the property or a part of it specified in the order; and
 - (ii) to manage or otherwise deal with all, or any part of, the property in accordance with the directions of the Court.
- (3) In deciding whether there are reasonable grounds for believing that property is subject to the effective control of the defendant under subsection (1), the Court may take into account the matters mentioned in section 34(2).
- (4) An order under this section may be subject to any conditions that the court thinks fit and, without limiting this subsection, may provide for meeting, out of the property or a specified part of it, all or any of the following:

- (a) the reasonable living expenses of any person affected by the order (including the reasonable living expenses of the person's dependants if any) and reasonable business expenses;
 - (b) a person's reasonable expenses in defending a criminal charge and any proceedings under this Act;
 - (c) any specified debt incurred in good faith by any person affected by the order.
- (5) However, the order must not make such provision unless the Court is satisfied that the person cannot meet the expenses or debt out of property that is not subject to a restraining order.
- (6) If the Court gives the Administrator a direction under subsection (2)(b) in relation to property, the Administrator may do anything that is reasonably necessary to preserve the property, and, for that purpose:
- (a) may do anything in relation to the property that its owner could do, and
 - (b) may do so to the exclusion of the owner.
- (7) In proceedings for a restraining order, the Court may order that a witness need not answer a specified question or produce a specified document if the Court is satisfied that answering the question or producing the document may prejudice the investigation of, or prosecution of a person for, an offence.

53. Undertakings by State

Before making a restraining order, the Court may require the State to give an undertaking about the payment of damages or costs, or both, in relation to the making and execution of the order.

54. Service of restraining order

- (1) A copy of a restraining order must be served on a person affected by it in the way the Court directs.
- (2) If the Court is satisfied that it is in the public interest to do so, it may order that service under subsection (1) be delayed for a specified period.

55. Ancillary orders and further orders

- (1) If the Court makes a restraining order, any of the following may apply to the Court for an ancillary order:
- (a) the Attorney General;
 - (b) a person whose property is the subject of the restraining order (the "owner");
 - (c) if the restraining order directs the Administrator to take custody and control of property – the Administrator;
 - (d) with the leave of the Court – any other person.
- (2) An ancillary order may do any one or more of the following:
- (a) vary the property to which a restraining order relates;
 - (b) vary any condition to which a restraining order is subject;
 - (c) order a person to be examined on oath before the Court about the affairs of the owner or the defendant;
 - (d) provide for carrying out any undertaking about the payment of damages or costs given by the State in connection with the making of the restraining order;
 - (e) direct the owner or the defendant to give a specified person a statement on oath setting out the particulars of the property, or dealings with the property, that the Court directs;

- (f) if the restraining order directs the Administrator to take custody and control of property – do any one or more of the following:
 - (i) regulate the performance or exercise of the Administrator’s functions, duties or powers under the restraining order;
 - (ii) decide a question relating to the property;
 - (iii) order a person to do anything to enable the Administrator to take custody and control of the property;
 - (iv) if the restraining order provides that a person’s reasonable expenses in defending a criminal charge be met out of the property – direct that those expenses be taxed as provided in the ancillary order before being met;
 - (v) provide for the payment to the Administrator out of the property of the costs, charges and expenses incurred in connection with the performance or exercise by the Administrator of functions, duties or powers under the restraining order;
 - (g) anything else that the Court considers necessary in the circumstances.
- (3) If a person who has an interest in property against which a restraining order is made applies to the Court for a variation of the order to exclude the person’s interest from the order, the Court must grant the application if the Court is satisfied that:
- (a) the interest is not tainted property and that it cannot be required to satisfy a pecuniary penalty order or the interest is not terrorist property; or
 - (b) in the case where the interest is tainted property the applicant was not involved in the commission of the offence in relation to which the restraining order was made and, if the applicant acquired the interest at the time of or after the commission (or alleged commission) of the offence, the applicant acquired the interest:
 - (i) for sufficient consideration; and
 - (ii) without knowing, and in circumstances such as not to arouse a reasonable suspicion, that the property was tainted property; or
 - (ba) in the case where the interest is terrorist property– the applicant 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 terrorist property; or
 - (c) it is in the public interest to do so having regard to all the circumstances, including any financial hardship or other consequence of the interest remaining subject to the order.
- (4) The Court must not hear an application under subsection (1) unless the applicant has given 14 days’ written notice of the application to each other person who is entitled to make an application under that subsection for the restraining order.
- (5) The Court may require notice of the application to be given to, and may hear, any person who, in the opinion of the Court, appears to have an interest in the property.
- (6) If a person is required, in accordance with an order under subsection (2)(c) or (2)(e), to make a statement on oath:
- (a) the person is not excused from making the statement on the ground that the statement, or part of it, might tend to incriminate the person or make the person liable to forfeiture or a penalty; and

- (b) the statement, and any information, document or thing obtained as a direct or indirect consequence of it, is not admissible against the person in any criminal proceedings except a proceeding for perjury in making the statement.

56. Administrator to satisfy pecuniary penalty order

(1) This section applies if:

- (a) a pecuniary penalty order is made against a defendant in reliance on the defendant's conviction of an offence; and
- (b) a restraining order is made, in reliance on the defendant's conviction, or alleged commission, of the offence, against property of:
 - (i) the defendant; or
 - (ii) a person in relation to which an order under section 34(4) is in force.

(2) The Court may direct the Administrator to satisfy the pecuniary penalty order by a payment to the State out of the property:

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

(3) To enable the Administrator to comply with a direction under subsection (2), the Court may:

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

(4) If the Court makes an order of the kind mentioned in subsection (3)(b), the execution of a deed or instrument by the Administrator in accordance with the order has the same force and validity as if the deed or instrument had been executed by the person in whose name the Administrator executed it.

(5) The Administrator must not take action to sell property under a direction under subsection (4):

- (a) until:
 - (i) the periods for the lodging of an appeal against the relevant conviction, and the making of the relevant pecuniary penalty order and restraining order, have expired without any such appeal having been lodged; or
 - (ii) if an appeal is lodged against a relevant conviction, or the making of the relevant pecuniary penalty order or restraining order – all the appeals lapse or are finally determined; or
- (b) if proceedings in bankruptcy against the owner of the property are in progress or the owner is a bankrupt.

57. Registration of restraining order

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

(2) If those particulars are so recorded, a person who subsequently deals with the property is taken, for section 58, to have notice of the restraining order at the time of the dealing.

58. Contravention of restraining orders

- (1) A person who knowingly contravenes a restraining order by disposing of, or otherwise dealing with, property that is subject to the restraining order commits an offence punishable by:
- (a) for a natural person – a fine of VT 1 million or imprisonment for 2 years, or both; or
 - (b) for a body corporate – a fine of VT 5 million.
- (2) If a restraining order is made against property and the property is disposed of, or otherwise dealt with, in contravention of the restraining order, the Attorney General may apply to the Court for an order setting aside the disposition or dealing.
- (3) If the Court is satisfied that the disposition or dealing was either not for sufficient consideration, or not in favour of a person who acted in good faith, the Court may:
- (a) set aside the relevant disposition or dealing with effect from the day when it took place; or
 - (b) set aside the disposition or dealing with effect from the day of the Court's order, and declare the right of any person who acquired an interest in the property on or after the day when the disposition or dealing took place and before the day of the order.

59. Court may revoke restraining order

- (1) If the Court has made a restraining order against a person's property, the Court may, on application by the person, revoke the order if:
- (a) for an applicant who is a defendant – the applicant gives security satisfactory to the Court for the satisfaction of any pecuniary penalty order that may be made against the person under this Act; or
 - (b) the applicant gives undertakings satisfactory to the Court about the property.
- (2) An applicant under subsection (1) must give reasonable written notice of the application to the Attorney General and, if the restraining order directed the Administrator to take control of property, the Administrator.

60. When restraining order ceases to be in force

- (1) A restraining order ceases to be in force at the end of 6 months after the day when it was made, unless it ceases sooner under subsection (5).
- (2) Within that period, on application by the Attorney General, the Court may order that the order continues in force until a specified time or event, if the Court is satisfied that:
- (a) a forfeiture order may still be made against the property; or
 - (b) the property may be required to satisfy a pecuniary penalty order that has not yet been made.
- (3) An order under subsection (2) does not have the effect of continuing a restraining order in force after the time when it would cease to be in force under subsection (5).
- (4) The Attorney General must give a person reasonable written notice of an application under subsection (2) about a restraining order against the person's property.
- (5) A restraining order made in reliance on a person's conviction, or alleged commission, of a serious offence ceases to be in force, in whole or in part:
- (a) if the order is made in reliance on the proposed charging of the person with the offence and the person is not so charged within the period of 48 hours after the making of the order – at the end of that period; or
 - (b) if the order is made in reliance on the charging of the person with the offence – when:

- (i) the charge against the person is withdrawn; or
- (ii) the person is acquitted of the charge and the time for an appeal by the State has lapsed; or
- (c) when property subject to the order is used to satisfy a pecuniary penalty order that was made in reliance on the person's conviction of the offence; or
- (d) when the Court refuses an application for a pecuniary penalty order in reliance on the person's conviction of the offence; or
- (e) when property subject to the order is forfeited under Division 2 of Part 3.

Division 4 – Interim restraining orders for foreign offences

61. Application of this Division

This Division applies to an application by the Attorney General for a restraining order under this Act against any property of a person in relation to a foreign serious offence or against any terrorist property, and to any restraining order made as a result of the application.

62. Definition for this Division – defendant

A person is a “defendant” for this Division if:

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

63. Application for interim restraining order

(1) If, under the Mutual Assistance Act, the Attorney General applies for a restraining order under this Act against any property of a defendant or any terrorist property, the Attorney General may apply to the Court for an interim restraining order against:

- (a) any realisable property held by the defendant; or
- (b) specified realisable property held by another person; or
- (c) any terrorist property.

(2) The application may be made *ex parte*.

(3) An application under subsection (1)(a) or (b) must be in writing, and must be accompanied by an affidavit stating:

- (a) if the defendant has been convicted of a foreign serious offence – the offence of which the defendant was convicted, the date of the conviction, the court before which the conviction was obtained and whether an appeal has been lodged against the conviction; and
- (b) if the defendant has not been convicted of a foreign serious offence – the offence for which criminal proceedings are believed to have been commenced, and the grounds for believing that the defendant committed the offence; and
- (c) if it is believed that criminal proceedings are about to be commenced against the defendant – the grounds for believing that the proceedings will be commenced within 48 hours; and
- (d) a description of the property against which the restraining order is sought; and
- (e) the name and address of the person who is believed to be in possession of the property; and
- (f) if the application seeks a restraining order against property of a defendant – the grounds for believing that the property is tainted property in relation to a

foreign serious offence, or that the defendant derived a benefit directly or indirectly from committing such an offence; and

- (g) if the application seeks a restraining order against property of a person other than a defendant – the grounds for the belief that the property is tainted property in relation to a foreign serious offence, or is subject to the effective control of the defendant; or
 - (h) the grounds for believing that a forfeiture order under section 20 maybe or is likely to be made in respect of the property.
- (4) An application under subsection (1)(c) must be in writing and must be accompanied by an affidavit stating:
- (a) the grounds for believing that the property is terrorist property and that a foreign forfeiture order may be or is likely to be made against the property; and
 - (b) a description of the property against which the restraining order is sought ; and
 - (c) the name and address of the person who is believed to be in possession of the property.

64. Notice of application for interim restraining order

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

65. Interim restraining orders

- (1) Subsection (2) applies if the Attorney General applies to the Court for an interim restraining order under section 63(1)(a) or (b) against property of a defendant and the Court is satisfied that:
 - (a) the defendant has been convicted of a foreign serious offence, or a criminal proceeding for a foreign serious offence has commenced, or is reasonably believed to be about to commence, against the defendant in a foreign country; and
 - (b) if the defendant has not been convicted of a foreign serious offence – there are reasonable grounds for believing that the defendant committed the offence; and
 - (c) if the application seeks a restraining order against property of the defendant – there are reasonable grounds for believing that:
 - (i) the property is tainted property in relation to a foreign serious offence; or
 - (ii) the defendant derived a benefit directly or indirectly from the commission of the offence; and
 - (d) if the application seeks a restraining order against property of a person other than a defendant – there are reasonable grounds for believing that the property is:
 - (i) tainted property in relation to a foreign serious offence; or

- (ii) subject to the effective control of the defendant; or
- (e) there are reasonable grounds for believing that a forfeiture order under section 20 may be or is likely to be made in respect of the property.
- (1A) The court may make an interim restraining order against property under section 63(1)(c) if it is satisfied that there are reasonable grounds for believing that the property is terrorist property and that a foreign forfeiture order may or is likely to, be made against the property.
- (2) The Court may make an order prohibiting the defendant or any other person from disposing of, or otherwise dealing with, the property, or a part of it or interest in it specified in the order, either absolutely or except in a way specified in the order.
- (3) An order under subsection (2) may be subject to any conditions that the Court thinks fit and, without limiting this subsection, may provide for meeting, out of the property or a specified part of it, all or any of the following:
 - (a) the person's reasonable living expenses (including the reasonable living expenses of the person's dependants, if any) and reasonable business expenses;
 - (b) the person's reasonable expenses in defending a criminal charge and any proceedings under this Act or in being represented in a criminal proceeding in a foreign country;
 - (c) another specified debt incurred by the person in good faith.
- (4) However, the order must not make provision of that kind unless the Court is satisfied that the person cannot meet the expenses or debt out of property that is not subject to a restraining order.
- (5) In deciding whether there are reasonable grounds for believing that property is subject to the effective control of the defendant, the Court may take into account the matters mentioned in section 34(2).
- (6) In proceedings for an order under subsection (2), the Court may:
 - (a) take into account evidence that would otherwise be inadmissible; and
 - (b) order that a witness need not:
 - (i) answer a specified question; or
 - (ii) produce a specified document;

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

66. Undertakings by State

Before making an interim restraining order, the Court may require the State to give an undertaking about the payment of damages or costs, or both, in relation to the making and execution of the order.

67. Service of interim restraining order

- (1) A copy of an interim restraining order must be served on a person affected by it in the way the Court directs.
- (2) If the Court is satisfied that it is in the public interest to do so, it may order that service under subsection (1) be delayed for a specified period.

68. Ancillary orders and further orders

- (1) If the Court makes an interim restraining order, any of the following may apply to the Court for an ancillary order:

- (a) the Attorney General;
 - (b) a person whose property is the subject of the interim restraining order (the “owner”);
 - (c) with the leave of the Court – any other person.
- (2) An ancillary order may do any 1 or more of the following:
- (a) vary the property to which an interim restraining order relates;
 - (b) vary any condition to which an interim restraining order is subject;
 - (c) order a person to be examined on oath before the Court about the affairs of the owner or the defendant;
 - (d) provide for carrying out any undertaking about the payment of damages or costs given by the State in connection with the making of the interim restraining order;
 - (e) order the owner or the defendant to give a specified person a statement on oath setting out the particulars of the property, or dealings with the property, that the Court directs;
 - (f) anything else that the Court considers necessary in the circumstances.
- (3) If a person who has an interest in property against which an interim restraining order is made applies to the Court for a variation of the order to exclude the person’s interest from the order, the Court must grant the application if the Court is satisfied:
- (a) in the case where the interest is tainted property – that the applicant was not involved in the commission of the offence in relation to which the order was made and, if the applicant acquired the interest at the time of or after the commission (or alleged commission) of the offence, that the applicant acquired the interest:
 - (i) for sufficient consideration; and
 - (ii) without knowing, and in circumstances such as not to arouse a reasonable suspicion, that the property was tainted property; or
 - (aa) in the case where the interest is terrorist property – that the applicant 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 terrorist property; or
 - (b) that it is in the public interest to do so having regard to all the circumstances, including any financial hardship or other consequence of the interest remaining subject to the order.
- (4) The Court must not hear an application under subsection (1) unless the applicant has given reasonable written notice of the application to each other person who is entitled to make an application under that subsection for the interim restraining order.
- (5) The Court may require notice of the application to be given to, and may hear, any person who, in the opinion of the Court, appears to have an interest in the property.
- (6) If a person is required, in accordance with an order under subsection (2)(c) or (e), to make a statement on oath:
- (a) the person is not excused from making the statement on the ground that the statement, or part of it, might tend to incriminate the person or make the person liable to forfeiture or a penalty; and

- (b) the statement, and any information, document or thing obtained as a direct or indirect consequence of it, is not admissible against the person in any criminal proceedings except a proceeding for perjury in making the statement.

69. Registration of interim restraining order

- (1) An authority that administers a law of Vanuatu that provides for the registration of title to, or charges over, property of a particular kind may, on application by the Attorney General, record on a register kept under that law the particulars of an interim restraining order that applies to property of that kind.
- (2) If those particulars are so recorded, a person who subsequently deals with the property is taken, for section 70, to have notice of the order at the time of the dealing.

70. Contravention of interim restraining order

- (1) A person who knowingly contravenes an interim restraining order by disposing of, or otherwise dealing with, property that is subject to the order commits an offence punishable by:
 - (a) for a natural person – a fine of VT 1 million or imprisonment for 2 years, or both; or
 - (b) for a body corporate – a fine of VT 5 million.
- (2) If an interim restraining order is made against property and the property is disposed of, or otherwise dealt with, in contravention of the restraining order the Attorney General may apply to the Court for an order setting aside the disposition or dealing.
- (3) If the Court is satisfied that the disposition or dealing was either not for sufficient consideration, or not in favour of a person who acted in good faith, the Court may:
 - (a) set aside the relevant disposition or dealing with effect from the day when it took place; or
 - (b) set aside the disposition or dealing with effect from the day of the Court's order, and declare the right of any person who acquired an interest in the property on or after the day when the disposition or dealing took place and before the day of the order.

71. When interim restraining order ceases to be in force

- (1) An interim restraining order ceases to have effect at the end of 30 days starting on the day when the order is made.
- (2) However, if the Court makes an interim restraining order, it may, on application by the Attorney General made before the end of the period mentioned in subsection (2), extend the period of operation of the order.
- (3) Also, if:
 - (a) an interim restraining order is made against property; and
 - (b) before the end of the period mentioned in subsection (1) (including any extension of that period under subsection (2)), a foreign restraining order against the property is registered in the Court under the Mutual Assistance Act;the interim restraining order ceases to have effect when the foreign restraining order is registered.

Division 5 – Foreign restraining orders

72. Application of Division 5

This Division applies to a foreign restraining order registered in the Court under section 41 of the Mutual Assistance Act.

73. Registered foreign restraining orders – Court may direct Administrator to take custody and control of property

- (1) On application by the Attorney General, the Court may, if satisfied that the circumstances so require, order the Administrator:
 - (a) to take custody and control of the property subject to the order, or of a part of it specified in the order; and
 - (b) to manage or otherwise deal with the property or part in accordance with the directions of the Court.
- (2) Before making an order under subsection (1), the Court must require reasonable notice to be given to, and may hear, any person who, in the opinion of the Court, may have an interest in the property.
- (3) If the Court makes an order under subsection (1) in relation to property, the Administrator:
 - (a) may do anything that is reasonably necessary for preserving the property; and
 - (b) for that purpose may exercise any power that the owner of the property could exercise; and
 - (c) may do so to the exclusion of the owner.
- (4) If the Court makes an order under subsection (1) against property of a person (the “respondent”), the court may, when it makes the order or afterwards, make any one or more of the following orders:
 - (a) an order directing the respondent to give to the Administrator a statement on oath setting out the particulars of the property, or dealings with the property, that the Court directs;
 - (b) an order regulating the performance or exercise of the Administrator’s functions, duties or powers under the foreign restraining order;
 - (c) an order deciding any question about the property;
 - (d) if the relevant registered foreign restraining order provides that a person’s reasonable expenses in defending a criminal charge be met out of the property – an order directing that those expenses be taxed, as provided in the order, before being met;
 - (e) an order providing for the payment to the Administrator out of the property of the costs, charges and expenses incurred in connection with the performance or exercise by the Administrator of functions, duties or powers under the foreign restraining order.

74. Registered foreign restraining orders – undertakings

On application by a person claiming an interest in property, the Court may make an order about giving, or carrying out, an undertaking by the Attorney General, for the State, about the payment of damages or costs for the registration, making or operation of:

- (a) a foreign restraining order against property that is registered in the Court under the Mutual Assistance Act; or
- (b) an order made by the Court under section 73 for the property.

75. Service of restraining order

- (1) A copy of a restraining order or an order under section 73 must be served on a person affected by it in the way the Court directs.
- (2) If the Court is satisfied that it is in the public interest to do so, it may order that service under subsection (1) be delayed for a specified period.

76. Administrator to satisfy pecuniary penalty order

- (1) In this section, a reference to a restraining order includes an order under section 73.
- (2) This section applies if:
- (a) a foreign pecuniary penalty order is registered in the Court against a defendant; and
 - (b) a foreign restraining order is registered against property of:
 - (i) the defendant; or
 - (ii) another person against whom an order under section 34(4) is in force.
- (3) The Court may direct the Administrator to satisfy the pecuniary penalty order by a payment to the State out of the property:
- (a) on the registration of the later of the orders; or
 - (b) on application by the Attorney General, at any time while the restraining order remains in force.
- (4) To enable the Administrator to comply with a direction under subsection (3), the Court may:
- (a) direct the Administrator to sell or otherwise dispose of a specified part of the property; and
 - (b) order that the Administrator may execute, and do anything necessary to give validity and effect to, any deed or instrument in the name of a person who owns, or has an interest in, the property.
- (5) If the Court makes an order of the kind mentioned in subsection (4)(b), the execution of a deed or instrument by the Administrator in accordance with the order has the same force and validity as if the deed or instrument had been executed by the person in whose name the Administrator executed it.

77. Registration of registered foreign restraining order

- (1) In this section, a reference to a restraining order includes an order under section 73.
- (2) An authority that administers a law of Vanuatu that provides for the registration of title to, or charges over, property of a particular kind may, on application by the Attorney General, record on a register kept under that law the particulars of a restraining order that applies to property of that kind.
- (3) If those particulars are so recorded, a person who subsequently deals with the property is taken, for section 78, to have notice of the restraining order at the time of the dealing.

78. Contravention of registered foreign restraining orders

- (1) In this section, a reference to a registered foreign restraining order includes an order under section 73.
- (2) A person who knowingly contravenes a registered foreign restraining order by disposing of, or otherwise dealing with, property that is subject to the restraining order commits an offence punishable by:
- (a) for a natural person – a fine of VT 1 million or imprisonment for 2 years, or both; or
 - (b) for a body corporate a fine of VT 5 million.
- (3) If a foreign restraining order is registered against property and the property is disposed of, or otherwise dealt with, in contravention of the restraining order, the Attorney General may apply to the Court for an order setting aside the disposition or dealing.

- (4) If the Court is satisfied that the disposition or dealing was either not for sufficient consideration, or not in favour of a person who acted in good faith, the Court may:
- (a) set aside the relevant disposition or dealing with effect from the day when it took place; or
 - (b) set aside the disposition or dealing with effect from the day of the Court's order, and declare the right of any person who acquired an interest in the property on or after the day when the disposition or dealing took place and before the day of the order.

79. Registered foreign restraining orders – when order ceases to be in force

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

PART 5 – SUSPICIOUS CURRENCY MOVEMENTS

79A. Currency reporting at the border

- (1) A person who leaves or arrives in Vanuatu with more than VT 1 million in cash or negotiable bearer instruments on his or her person or on his or her luggage without first having reported the fact to the Department of Customs, commits an offence punishable on conviction by a fine not exceeding VT 1 million or imprisonment for 2 years or both.
- (2) A person who, without reasonable excuse, makes or causes to be made a cash report to the Department of Customs, knowing that it is false or misleading in any material respect is guilty of an offence punishable, on conviction by a fine not exceeding VT 1 million or imprisonment for 2 years or both.
- (3) For the purpose of this part, “negotiable instrument” means a document representing ownership of debts or obligations, including bills of exchange or promissory notes, whether made payable to the bearer or otherwise.
- (4) When a person is about to leave Vanuatu or has arrived in Vanuatu, or is about to board or leave, or has boarded or left, any ship or aircraft, an authorized officer may with such assistance as is reasonable and necessary and with the use of force if necessary:
- (a) examine any article which a person has with him or her or in his or her luggage; and
 - (b) if the officer has reasonable grounds to suspect that an offence under subsection (1) has been or is likely to be committed, search the person,
- for the purpose of determining whether the person has in his or her possession any cash or negotiable bearer instrument in respect of which a report under subsection (1) is required.
- (5) A person must only be searched by an authorized officer of the same sex.
- (6) An authorized officer and any person assisting such officer, may stop, board and search any ship or aircraft for the purpose of exercising the powers under this section.
- (7) Where an authorized officer has reasonable grounds for believing that cash or negotiable bear instruments found in the course of an examination or search under this section may afford evidence as to the commission of an offence under this section the authorized officer may seize and detain the cash or negotiable bearer instruments.
- (8) An authorised officer who has seized cash or negotiable bearer instruments under this section or section 80 must report such seizure to the Unit.

- (9) A person who, otherwise than by force, wilfully obstructs any authorised officer in the exercise or performance of any power or duty conferred or imposed on that officer by this Part is guilty of an offence punishable, on conviction by a fine not exceeding VT 1 million or imprisonment for 2 years or both.

79B. Detention of seized currency

- (1) Currency detained under section 79A may not be detained for more than 24 hours after it is seized.
- (2) The authorized officer may apply to the Court that the seized currency be continued to be detained
- (3) The Court may order that the seized currency be continued to be detained for a period not exceeding 3 months from the day it was seized, upon being satisfied that:
- (a) there are reasonable grounds for the suspicion mentioned in section 79A(1); and
 - (b) the continued detention of the seized currency is justified while:
 - (i) its origin or derivation is further investigated; or
 - (ii) consideration is given to the institution (in Vanuatu or elsewhere) of criminal proceedings against a person for an offence with which the currency is connected.
- (4) The Court may subsequently order the continued detention of the currency if satisfied of the matters mentioned in subsection (2)(a) and (2)(b), however, the maximum period of detention must not exceed 2 years from the date of the first order made under subsection (2).

79C. Release of detained currency

- (1) Currency detained under section 79B may be released in whole or in part to the person from whom it was seized if:
- (a) an application by or for that person and after considering any views of the Attorney General to the contrary, the Court orders that its continued detention is no longer justified; or
 - (b) an authorised officer is satisfied that its continued detention is no longer justified.
- (2) Currency detained under section 79B must not be released if:
- (a) an application is made for:
 - (i) a confiscation order against the whole or part of the currency; or;
 - (ii) a restraining order against it pending determination of its liability to confiscation; or
 - (iii) the registration of a foreign confiscation order or foreign restraining order against it; or
 - (b) proceedings are underway in Vanuatu or elsewhere against a person for an offence with which the currency is connected;
- unless the proceedings relating to the relevant application, or the proceedings for the offence, have been concluded.

80. Seizure and detention of suspicious imports or exports of currency

An authorised officer may seize and detain any currency that is being brought into or taken out of Vanuatu if:

- (a) the amount is not less than the equivalent of 1 million vatu (or a higher amount prescribed by regulation for this paragraph); and

- (b) there are reasonable grounds for suspecting that it is:
 - (i) property derived from a serious offence; or
 - (ii) intended by any person for use in the commission of a serious offence.

81. Detention of seized currency

- (1) Currency detained under section 80 may not be detained for more than 24 hours after it is seized.
- (2) However, the Court may order its continued detention for a period not exceeding 3 months from the day it is seized, upon being satisfied that:
 - (a) there are reasonable grounds for the suspicion mentioned in section 80(b); and
 - (b) its continued detention is justified while:
 - (i) its origin or derivation is further investigated; or
 - (ii) consideration is given to the institution (in Vanuatu or elsewhere) of criminal proceedings against a person for an offence with which the currency is connected.
- (3) The Court may subsequently order the continued detention of the currency if satisfied of the matters mentioned in subsection (2)(a) and (2)(b), but the total period of detention may not exceed 2 years from the date of the first order made under subsection (2).

82. Release of detained currency

- (1) Currency detained under section 80 may be released in whole or in part to the person for whom it was imported or exported if:
 - (a) on application by or for that person and after considering any views of the Attorney General to the contrary, the Court orders that its continued detention is no longer justified; or
 - (b) an authorised officer is satisfied that its continued detention is no longer justified.
- (2) However, currency detained under section 80 must not be released if:
 - (a) an application is made for:
 - (i) a confiscation order against the whole or any part of the currency; or
 - (ii) a restraining order against it pending determination of its liability to confiscation; or
 - (iii) the registration of a foreign confiscation order or foreign restraining order against it; or
 - (b) proceedings are under way in Vanuatu or elsewhere against a person for an offence with which the currency is connected;

until the proceedings relating to the relevant application, or the proceedings for the offence, have been concluded.

PART 5A – PRODUCTION ORDERS

82A. Application for a production order

- (1) If an authorised officer has reasonable grounds for believing that a person has been, is or will be involved in the commission of a serious offence, and that a person (other than the first-mentioned person) has possession or control of a document relevant to:

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

the officer may apply to the court for a production order against the person having possession or control of the document.

- (2) If an authorised officer has reasonable grounds for believing that a person has possession or control of a document relevant to:

- (a) identifying, locating or quantifying terrorist property; or
- (b) identifying or locating any document relevant for the transfer of terrorist property;

the officer may apply to the court for a production order against the person having possession or control of the document.

- (3) An application under subsection (1) or (2) may be made *ex parte* and must be in writing and supported by an affidavit.

- (4) The court if it is satisfied that there are reasonable grounds to do so may make an order requiring the person to produce to the authorised officer at a specified time and place any documents referred to in subsection (1) or (2).

- (5) The authorised officer to whom the documents are produced may:

- (a) inspect the documents; or
- (b) make copies of the documents; or
- (c) retain the documents for as long as is reasonably necessary for the purposes of this Act.

- (6) If the authorized officer retains the documents produced to him or her, he or she must make a copy of the documents available to the person who produced them.

- (7) A person is not entitled to refuse to produce any document required under a production order on the ground that production of the document:

- (a) may incriminate him or her, or cause him or her to be liable to a penalty; or
- (b) will be in breach of his or her obligation (whether statutory or otherwise) not to disclose the existence and/or the content of the document.

82B. Evidential value of documents produced or information obtained

- (1) If a person produces a document under section 82A(1) or (2), the document, or any information, or thing obtained as a direct or indirect consequence of the production of the document, is not admissible against him or her in any criminal proceedings except for proceedings under section 82C.

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

82C. Failure to comply with a production order

- (1) If a person is required to produce a document under a production order, the person is guilty of an offence if he or she:

- (a) contravenes the order (without reasonable cause); or

- (b) produces a document known to him or her to be false or misleading in a material particular and he or she does not indicate to the authorised officer that the document is false or misleading and the respect to which the document is false or misleading and provide the correct information to the authorised officer.
- (2) A person who is guilty of an offence under subsection (1) is punishable on conviction by:
- (a) if the person is a natural person – a fine not exceeding VT 1 million or imprisonment for 2 years, or both; or
 - (b) if the person is a body corporate – a fine not exceeding VT 5 million.

82D. Production orders in relation to foreign serious offences

If a foreign State requests assistance in obtaining documents of the type described in section 79A(1) or (2) in respect of a foreign serious offence or property suspected to be terrorist property, the provisions of this Division apply provided that the Attorney General has under section 48 of the Mutual Assistance Act authorised the giving of the assistance to the foreign State.

82E. Power to search for and seize documents relevant to locating property

An authorised officer may:

- (a) enter upon land or upon or into premises;
- (b) search the land or premises for any documents of the type described in section 82A(1) or (2); and
- (c) seize any document found in the course of the search that the authorized officer believes on reasonable grounds to be a relevant document in relation to a serious offence or terrorist property;

provided that the entry, search and seizure is made with the consent of the owner or occupier of the land or premises, or under warrant issued under section 82F.

82F. Search warrant for documents relevant to locating property

- (1) Where an authorised officer has reasonable grounds for suspecting that there is, or may be, within the next 48 hours, upon any land or upon or in any premises, a document of the type described in section 82A(1) or (2), the officer may make an application accompanied by an affidavit to the court for a search warrant in respect of that land or premises.
- (2) Where an application is made under subsection (1), the court may, subject to subsection (4), issue a search warrant authorising the authorised officer, with such assistance and by such force as is necessary and reasonable:
 - (a) to enter upon the land or upon or into the premises;
 - (b) to search the land or premises for documents of the type described in section 82A(1) or (2); and
 - (c) to seize any document found in the course of the search that the officer has reasonable grounds for believing to be such documents.
- (3) The court shall not issue a search warrant under subsection (2) unless it is satisfied that:
 - (a) a production order has been given in respect of the document and the order has not been complied with; or
 - (b) a production order is unlikely to be complied with; or

- (c) the investigation for the purposes for which the warrant is being sought might be seriously prejudiced if the authorised officer does not gain immediate access to the document without notice to any person; or
 - (d) the document involved cannot be identified or described with sufficient particularity to enable a production order to be obtained.
- (4) A search warrant issued under this section shall state:
- (a) the purpose for which it is issued, including a reference to the nature of the relevant offence, if any;
 - (b) a description of the kind of documents authorised to be seized;
 - (c) the period which the warrant is in force; and
 - (d) whether entry is authorised to be made at any time of the day or night or during specified hours.
- (5) If during the course of conducting a search under a search warrant issued under this section, an authorised officer finds:
- (a) a document of the type described under section 82A(1) or (2) that the officer has reasonable grounds for believing to relate to the relevant offence, to another serious offence or to terrorist property; or
 - (b) anything that the officer has reasonable grounds for believing will afford evidence to the commission of a serious offence;

the officer may seize that property or thing and the warrant shall be deemed to authorise such seizure.

82G. Search warrant in relation to foreign offences

If a foreign State requests assistance in obtaining documents of the type described in section 79A(1) or (2) in respect of a foreign serious offence or property suspected to be terrorist property, the provisions of this Division apply provided that the Attorney General has under section 48 of the Mutual Assistance Act authorised the giving of the assistance to the foreign State.

PART 5B – MONITORING ORDERS

82H. Application for a monitoring order

- (1) An authorised officer may apply to the court for a monitoring order directing a financial institution to provide information to him or her if he or she has reasonable grounds for believing or suspecting that:
- (a) the person in respect of whose account the order is sought has committed or was involved in the commission, or is about to commit or be involved in the commission of, a serious offence; or
 - (b) the person in respect of whose account the order is sought has benefited directly or indirectly, or is about to benefit directly or indirectly, from the commission of a serious offence; or
 - (c) an account is relevant to identifying, locating or quantifying terrorist property.
- (2) An application under subsection (1) may be made *ex parte* and must be in writing and supported by an affidavit.
- (3) The court, if it is satisfied that there are reasonable grounds to do so, may make an order directing a financial institution to disclose to an authorized officer information obtained by the institution about transactions conducted through an account of a person with the institution if it is satisfied that there are reasonable grounds to do so.

- (4) A monitoring order granted under subsection (3) must:
- (a) specify the name of the person in respect of whose account the order is sought; and
 - (b) specify the class of information the financial institution is required to give; and
 - (c) only apply for a period of 3 months from the date of the order and shall not have retrospective effect.

82I. Failure to comply with a monitoring order

- (1) If a monitoring order has been made on a financial institution, the institution is guilty of an offence if it:
- (a) contravenes the order (without reasonable cause); or
 - (b) provides information known to it to be false or misleading in a material particular and it does not indicate to the authorised officer that the document is false or misleading and the respect to which the document is false or misleading and provide the correct information to the authorised officer.
- (2) A financial institution which is guilty of an offence under subsection (1) is punishable on conviction by a fine not exceeding VT 5 million.

82J. Non-disclosure of monitoring orders

- (1) A financial institution that is, or has been subject to a monitoring order, its officers, employees or agents or any other person shall not disclose the existence or operation of the order to any person except:
- (a) an officer, employee or agent of the institution for the purpose of ensuring compliance with the order; or
 - (b) a legal advisor for the purpose of obtaining legal advice or representation in respect of the order.
- (2) A person described under (1)(a) or (1)(b) shall not disclose the existence or operation of a monitoring order except to another such person and for the purpose of carrying out the person's duties or functions.
- (3) Nothing in subsection (1) or (2) prevents the disclosure of information concerning a monitoring order for the purposes of, or in connection with, legal proceedings, (provided that nothing in this subsection shall be construed as requiring a legal advisor to disclose to any court the existence or operation of a monitoring order).
- (4) A person who is guilty of an offence under subsection (1) or (2) is punishable on conviction by:
- (a) if the person is a natural person – a fine not exceeding VT 1 million or imprisonment for 2 years, or both; or
 - (b) if the person is a body corporate – a fine not exceeding VT 5 million.

PART 6 – MISCELLANEOUS

83. Conduct by directors, servants or agents

- (1) For this Act, the state of mind of a person may be established in accordance with this section.
- (2) For conduct engaged in, or taken under subsection (3) to have been engaged in, by a body corporate, it is sufficient to show that a director, servant or agent of the body corporate who engaged in the conduct within the scope of his or her actual or apparent authority had that state of mind.

- (3) Conduct engaged in for a body corporate is taken, for this Act, to have been engaged in by the body corporate if it is engaged in:
- (a) by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority; or
 - (b) both:
 - (i) by another person at the direction or with the consent or agreement (whether express or implied) of a director, servant or agent of the body corporate; and
 - (ii) if giving the direction, consent or agreement is within the scope of the actual or apparent authority of the director, servant or agent.
- (4) For conduct taken, under subsection (5), to have been engaged in by a person (other than a body corporate), it is sufficient to show that a servant or agent of the person who engaged in the conduct within the scope of his or her actual or apparent authority had that state of mind.
- (5) Conduct engaged in for a person (other than a body corporate) is taken, for this Act, to have been engaged in by the person if it is engaged in by:
- (a) a servant or agent of the person within the scope of the servant or agent's actual or apparent authority; or
 - (b) by another person at the direction or with the consent or agreement (whether express or implied) of a servant or agent of the first-mentioned person, if the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the servant or agent.
- (6) A reference in this section to the state of mind of a person includes the person's knowledge, intention, opinion, belief or purpose, and the person's reasons for that intention, opinion, belief or purpose.

84. Appointment of Administrator

The Attorney General may by instrument appoint a person to administer property forfeited, or subject to a restraining order, under this Act.

85. Standard of proof

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

86. Costs

The Court may order the State to pay all costs reasonably incurred by a person in connection with proceedings, or a part, specified in the order, of those costs if:

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

87. Non-liability of Administrator

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

88. Operation of certain other laws not affected

Nothing in this Act prejudices, limits or restricts:

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

89. Repeal of the Serious Offences (Confiscation of Proceeds) Act No. 50 of 1989

The Serious Offences (Confiscation of Proceeds) Act No. 50 of 1989 is repealed.

90. Transitional

A request or order that was made under the Serious Offences (Confiscation of Proceeds) Act No. 50 of 1989 and has not been finalised at the commencement of this Act is taken to be a request or order made under this Act.

91. Regulations

The Minister may make regulations prescribing matters:

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

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