



SAMOA

## PROCEEDS OF CRIME ACT 2007

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**PROCEEDS OF CRIME ACT 2007**

**2007**

**No. 4**

**AN ACT** to Provide for the Confiscation of Proceeds of Crime and for Related Purposes

*[Assent date: 30 January 2007]*

*[Commencement date: 7 February 2007]*

**BE IT ENACTED** by the Legislative Assembly of Samoa in Parliament assembled as follows:

**PART 1  
PRELIMINARY**

**1. Short title, commencement and application** – (1) This Act may be cited as the Proceeds of Crime Act 2007.

(2) This Act comes into force on a day or days nominated by the Minister.

(3) Notice of commencement of this Act or any part or section of this Act shall be published in Samoan and English in the *Savali* and one other newspaper circulating in Samoa.

(4) This Act applies in relation to:

- (a) an offence committed at any time (whether or not a person is convicted of the offence); and

- (b) a person's conviction of an offence at any time, whether in Samoa or not.

**2 Interpretation** – In this Act, unless the context otherwise requires:

“account”:

- (a) means a facility or arrangement by which a financial institution does any of the following—
- (i) accepts deposits of currency; or
  - (ii) allows withdrawals or transfers of currency; or
  - (iii) pays cheques or payment orders drawn on the financial institution or collects cheques or payment orders on behalf of a person other than the financial institution; and

- (b) includes any facility or arrangement for a safety deposit box or for any other form of safe deposit;

“Administrator” means the Attorney-General or the person appointed by the Attorney-General under section 82;

“agent” includes, any agent of a corporation including officers and agents of the corporation;

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

“authorised officer” for a provision of this Act, means a person, or a person in a class of persons, designated in writing by the Attorney-General as an authorised officer for the purposes of this Act;

“Authority” means the Money Laundering Prevention Authority established by the Money Laundering Prevention Act 2007;

“benefit” has the meaning given in section 3;

“books” includes any account, deed, paper, writing or document and any record of information however compiled, recorded or stored, whether in writing, on microfilm, by electronic process or otherwise;

“charge” for an offence, includes any procedure by which criminal proceedings are begun against a person, whether or not a summons to require the attendance of the person or a warrant for the arrest of the person has been issued;

- “Confiscated Assets Fund” means the confiscated assets fund established under the provisions of the Money Laundering Prevention Act 2007;
- “conviction” has the meaning given in subsection 4(1);
- “Court” means the Supreme Court of Samoa;
- “currency” means the cash of Samoa or of a foreign country that is designated as legal tender and which is customarily used and accepted as a medium of exchange in the country of issue;
- “data held in a computer” includes data held in a removable data storage device for the time being in a computer or data held in a data storage device on a computer network of which the computer forms a part;
- “dealing with property” includes:
- (a) if a debt is owed to that person, making a payment to a person in reduction of the amount of the debt; and
  - (b) removing the property from Samoa; and
  - (c) receiving or making a gift of the property; and .
  - (d) if the property is covered by a restraining order, engaging in a transaction that has the direct or indirect effect of reducing the value of the person’s interest in the property;
- “defendant” means a person charged with a serious offence, whether or not the person has been convicted of the offence, and for proceedings for a restraining order, includes a person who is about to be charged with a serious offence;
- “director” for a financial institution or company means:
- (a) a person occupying or acting in the position of director of the institution or company, by whatever name called, and whether or not validly appointed to occupy or duly authorised to act in the position; and
  - (b) a person in accordance with whose directions or instructions the directors of the institution or company are accustomed to act, other than when those directors only do so—
    - (i) in the proper performance of the functions attaching to the person’s professional capacity; or

(ii) in their business relationship with the person;  
 “discretionary trust” means a trust where:

- (a) a person, who may include the trustee, is empowered (either unconditionally or on the fulfilment of a condition) to exercise any power of appointment or other discretion; and
- (b) the exercise of the power or discretion, or the failure to exercise the power or discretion, has the effect of determining, to any extent, either or both of the following—
  - (i) the identities of those who may benefit under the trust; or
  - (ii) how beneficiaries are to benefit, as between themselves, under the trust;

“document”:

- (a) means any record of information; and
- (b) includes—
  - (i) anything on which there is writing; and
  - (ii) anything on which there are marks, figures, symbols, or perforations having a meaning for persons qualified to interpret them; and
  - (iii) anything from which sounds, images or writings can be produced, with or without the aid of anything else; and
  - (iv) a map, plan, drawing, photograph or similar thing; and
  - (v) an electronic document;

“effective control” has the meaning given in section 5;

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

“enforcement agency” means an agency:

- (a) specified in Schedule 1 to be a law enforcement, revenue or regulatory agency for the purposes of this Act; or
- (b) any other agency as may be determined by the Minister and published by notice in the *Savali*, which agency shall then be deemed to be included in Schedule 1;

“executive officer”, in relation to a company, means a person, by whatever name called and whether or not the person is

- a director of the company, who is concerned or takes part in the management of the company;
- “financial institution” has the same meaning as in the Money Laundering Prevention Act 2007;
- “Financial Intelligence Unit” or “FIU” means the Financial Intelligence Unit established under the provisions of the Money Laundering Prevention Act 2007;
- “financing of terrorism” means the offence of financing of terrorist acts as provided in section 23 of the Counter Terrorism Act 2014;
- “foreign forfeiture or confiscation order”, means an order, made under the law of a foreign State by a court or other judicial authority, for the purposes of:
  - (a) the confiscation or forfeiture of property in connection with; or
  - (b) the recovery of the proceeds of, a serious offence;
- “foreign pecuniary penalty order” means an order, made under the law of a foreign State by a court or judicial authority, imposing a pecuniary penalty in respect of benefits derived by a person from the commission of a serious offence against the law of that foreign State, but does not include an order for the payment of a sum of money by way of compensation, restitution, or damages to an injured person;
- “foreign restraining order” means an order made in respect of a serious offence under the law of a foreign State by a court or judicial authority, for the purpose of restraining a particular person or all persons from dealing with property or benefits that have been derived or may have been derived by a person from the commission of such an offence and includes a freezing order;
- “foreign serious offence” means a serious offence against the law of a foreign State;
- “foreign State” means:
  - (a) a country other than Samoa; and
  - (b) every constituent part of such country, including a territory, dependency or protectorate, which administers its own laws relating to international cooperation;
- “forfeiture order” means an order made under section 19;
- “gift” has the meaning given in section 9;

“gift caught by this Act” has the meaning given in section 10;  
“instrument” in relation to property, means the property:

- (a) is used in, or in connection with, the commission of a serious offence; or
- (b) is intended to be used in, or in connection with the commission of a serious offence; or
- (c) is wholly or partly derived or realised from the disposal or other dealing with an instrument of the serious offence or is wholly or partly acquired using an instrument of the serious offence; or
- (d) which is an instrument and has been credited to an account or disposed of or otherwise dealt with, whether the property is situated within or outside Samoa; “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, whether present or future and whether vested or contingent;

“Judge” means a Judge of the Supreme Court;

“Minister” means the Minister of Finance;

“money laundering” has the meaning given in section 11;

“monitoring order” means an order made under section 74;

“Mutual Assistance Act” means the Mutual Assistance in Criminal Matters Act 2007;

“officer”, in relation to a financial institution or company, means a director, secretary, executive officer or employee;

“pecuniary penalty order” means an order made under section 28 that is in force;

“person” means an entity, natural or juridical, including amongst others, a corporation, partnership, trust or estate, joint stock company, association, syndicate, joint venture or other unincorporated organisation or group, capable of acquiring rights or entering into obligations;

“police officer” means a member of the Samoan Police Service;

“premises” includes:

- (a) land, whether or not covered by buildings; and
- (b) any structure, whether or not attached to land; and
- (c) any means of transport;



- “proceedings” includes a 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 an alleged or proven offence, or property derived from such an offence;
- “proceeds of crime” has the meaning given in section 6;
- “production order” means an order made under section 66;
- “property” includes currency, investments, holdings, possession, assets and all other property real or personal, heritable or moveable including things in action and other intangible or incorporeal property wherever situate, whether in Samoa or elsewhere, whether whole or in part and includes an interest in such property;
- “property tracking document”, for an offence, means a document, data or data held in a computer, relevant to:
- (a) identifying, locating or quantifying property of a person who committed the offence; or
  - (b) identifying or locating a document necessary for the transfer of property of a person who committed the offence; or
  - (c) identifying, locating or quantifying tainted property for the offence; or
  - (d) identifying or locating a document necessary for the transfer of tainted property for the offence; or
  - (e) assisting in the reading or interpretation of a document referred to in paragraph (a), (b), (c) or (d);
- “quash” has the meaning in section 4;
- “realisable property” has the meaning in section 7;
- “registrable property” means property, title to which is passed by registration on a register kept pursuant to a provision of a law of Samoa;
- “relevant application period”, for a person’s conviction of a serious offence, means the period of 6 years after:
- (a) if the person was actually convicted of the offence, the day when the person was convicted of the offence; or
  - (b) if the person is deemed 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 deemed 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 section;

“restraining order” means an order made under section 48;

“serious offence” means an offence:

- (a) against a law of Samoa that would constitute unlawful activity; or
- (b) against the law of a foreign State that, if the relevant act or omission had occurred in Samoa, would be an offence that would constitute unlawful activity against any laws of Samoa;

“State” means the Independent State of Samoa;

“sufficient consideration”, for acquisition or disposal of property, means a consideration that reflects the value of the property, having regard solely to commercial considerations;

“tainted property” means proceeds of crime or an instrument, whether the property is situated within or outside Samoa;

“terrorist act” has the same meaning in the Counter Terrorism Act 2014;

“terrorist property” has the same meaning in the Counter Terrorism Act 2014;

“unlawful activity” means an act or omission that constitutes an offence and that is punishable, under the laws of Samoa, for a maximum period of not less than 12 months.

(2) A reference in this Act to the law of Samoa or a foreign State includes reference to a written or unwritten law of, or in force in, any part of Samoa or that foreign State, as the case may be.

**3. Meaning of “benefit”** – For the purposes of this Act:

- (a) a person benefits from an offence if the person receives, at any time, whether before or after the commencement of this Act, a payment, service or other reward in connection with, or derives a pecuniary advantage from, the commission of the offence; and
- (b) a reference to a benefit derived or obtained by, or otherwise accruing to, a person includes a benefit

derived or obtained by, or otherwise accruing to, any other person at the first mentioned person's request or direction.

**4. Meanings of “conviction” and “quash”** – (1) For the purposes of this Act, a person is taken to have been convicted of an offence if:

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

(2) For the purposes of this Act, a person's conviction for an offence is taken to be quashed in any case:

- (a) where subsection (1)(a) applies, if the conviction is quashed or set aside; or
- (b) where subsection (1)(b) applies, if the finding of guilt is quashed or set aside; or
- (c) where subsection (1)(c) applies, if either—
  - (i) the person's conviction for the other offence referred to in that section is quashed or set aside; or
  - (ii) the decision of the Court to take the offence into account in passing sentence for that other offence is quashed or set aside.

**5. Meaning of “effective control”**– (1) In this Act, unless the contrary intention appears, “effective control” means any of the following:

- (a) property may be subject to the effective control of a person whether or not the person has—
  - (i) a legal or equitable estate or interest in the property; or
  - (ii) a right, power or privilege in connection with the property;
- (b) property that is held on trust for the ultimate benefit of a person is deemed to be under the effective control of the person, however, if a person is 1 of 2 or more beneficiaries under a discretionary trust

and the property is initially owned by a person and, within 6 years either before or after an application for a restraining, forfeiture or confiscation order is made, disposed of to any other person without sufficient consideration, then the property is treated still to be under the effective control of the first person;

(2) In determining whether or not property is subject to the effective control of a person, regard may be had to:

- (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) family, domestic and business relationships between persons having an interest in the property, or in companies of the kind referred to in paragraph (a), or trusts of the kind referred to paragraph (b), and other persons.

**6. Meaning of “proceeds of crime”**– (1) In this Act, “proceeds of crime” means any property wholly or partly derived or realised, whether directly or indirectly, from a serious offence or terrorist act, whether situated within or outside of Samoa, including:

- (a) property into which any property derived or realised from the offence is later successively converted, transformed or intermingled; or
- (b) income, capital or other economic gains derived or realised from that property at any time since the offence or terrorist act; or
- (c) property wholly or partly derived or realised from a disposal or other dealing with proceeds of the serious offence or wholly or partly acquired using proceeds of the serious offence or terrorist act, including because of a previous application of this section; or
- (d) property which is proceeds of crime and has been credited to an account or disposed of or otherwise dealt with.

(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 deemed to be proceeds of crime.

(3) Property can be proceeds of crime even if no person has been convicted of the offence or terrorist act.

**7. Meaning of “realisable property”** – (1) In this Act, “realisable property” means any property:

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

**8. Meaning of “value of property”** – (1) Subject to subsection (2) the value of property (other than currency), in relation to a person holding the property is:

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

(2) References in this Act to the value of a gift or of a payment or reward are references to the value of the gift, payment or reward to the recipient when the recipient received it, adjusted to take account of any subsequent changes in the value of money.

**9. Meaning of “gift”** – (1) In this Act, “gift” includes a transfer (directly or indirectly) of property by one person to any other person for a consideration that is significantly less than the value of the property.

(2) In the circumstances mentioned in subsection (1), section 10 applies as if the person had made a gift of the transferred property to the extent of the difference between the market value of the property and the value of the consideration provided by the transferee.

**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 it was made, by the person convicted or charged:

- (a) after the commission of the offence or, if more than one offence, the earliest of the offences, and the Court considers it appropriate in all the circumstances to take the gift into account; or
- (b) 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 persons hands property received by the person, –in connection with the commission of any other serious offence committed by the person or by any other person.

## **PART 2**

### **MONEY LAUNDERING**

**11. Money Laundering Offences – (1)** A person commits the offence of money laundering if the person:

- (a) engages in a transaction that involves property, knowing or having reason to believe that the property is the proceeds of crime; or
- (b) acquires, possesses, uses, receives or brings into Samoa property, knowing or having reason to believe that the property is derived directly or indirectly from the proceeds of crime; or
- (c) converts or transfers property derived directly or indirectly from the proceeds of crime, with the aim of concealing or disguising the illicit origin of that property, or of aiding a person involved in the commission of the offence to evade the legal consequences thereof; or

- (d) conceals or disguises the true nature, origin, location, disposition, movement or ownership of the property derived directly or indirectly from the proceeds of crime; or
- (e) renders assistance to any other person for any of the above.

(2) Knowledge, intent or purpose required as an element of the activities, referred to in subsection (1), may be inferred from objective factual circumstances.

(3) A person who, without lawful or reasonable excuse, attempts or who aids, abets, counsels or procures the commission of, or who conspires to commit, the offence of money laundering, is guilty of an offence.

(4) A person may be convicted of a money laundering offence under this section notwithstanding the absence of a conviction in respect of the crime which generated the proceeds alleged to have been laundered.

**12. Offence committed by a body of persons** – If an offence under section 11 is committed by a body of persons, whether corporate or unincorporated, a person, who at the time of the commission of the offence, acted in an official capacity for or on behalf of such body of persons, whether as a director, manager, secretary or other similar officer, or was purporting to act in such capacity, shall be guilty of that offence, unless the person adduces evidence to show that the offence was committed without the person’s knowledge, consent or connivance.

**13. Penalties** – A person guilty of an offence under section 11 or 12 is liable on conviction to a fine not exceeding 1,000 penalty units or to imprisonment for a period not exceeding 7 years, or both.

### **PART 3 CONFISCATION**

#### *Division 1 – General*

**14. Application for forfeiture order or pecuniary penalty order** – (1) Subject to subsection (2), if a person is convicted of

a serious offence, the Attorney-General may apply to the Court for one or both of the following orders:

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

(2) Notwithstanding subsection (1), the Attorney-General shall not make such an application after the end of the relevant application period for the conviction.

(3) An application under this section may be made in relation to 2 or more serious offences involving or affecting the same person.

(4) Where an application under this section has been determined, no further application for an order under this section may be made in relation to the offence for which the person was convicted without leave of the Court.

(5) The Court may grant leave where:

- (a) the property or benefit to which the new application relates was identified after the previous application was determined; or
- (b) further significant 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.

**15 Notice of application** – (1) Subject to this Act and this section, if the Attorney-General makes an application for a forfeiture order under section 14, the Attorney-General shall give reasonable written notice of the application to the convicted person and to any other person who the Attorney-General has reason to believe may have an interest in the property.

(2) When an application made pursuant to section 14 is heard, the convicted person, and any other person who claims an interest in the property may appear and adduce evidence at the hearing of the application.

(3) Notwithstanding anything in this section, the Court may, at any time before the final determination of the application, direct the Attorney-General:

- (a) to give reasonable written notice of the application to a person who, in the opinion of the Court, appears to have an interest in the property; or



- (b) 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 Samoa.

(4) If the Attorney-General applies for a pecuniary penalty order under section 14 against a person, the Attorney-General shall give the person reasonable written notice of the application.

(5) A person subject to a pecuniary penalty order may appear and adduce evidence at the hearing of the application by the Attorney-General.

**16 Amendment of application** – (1) Subject to the provisions of this Act, 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 where:

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

(2) When the Attorney-General applies to amend an application for a forfeiture order or a pecuniary penalty order against a person and the effect of the amendment would be to include an additional property or benefit in the application for the forfeiture order or the pecuniary penalty order, as the case may be, the Attorney-General shall give reasonable written notice of the application to amend to a person whom the Attorney-General reasonably believes has an interest in the additional property or benefit.

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

**17. Procedure and deferral of decision on application** – (1) The Court may, in determining an application under section 14 take into account the transcript or Judge's notes of any proceedings against the person for the offence.

(2) In determining an application under section 14, the Court may defer its decision where the Court:

- (a) has not, when the application is made, passed sentence on the person for an offence which gives rise to the property becoming tainted; or
- (b) is satisfied that it is reasonable in all the circumstances to do so.

**18. Application for forfeiture order if person has absconded** – (1) When an information has been filed alleging that a person has committed a serious offence and, subject to subsection (2), the Attorney-General is of the opinion that the person will abscond before the information is determined by the Court, the Attorney-General may apply to the Court for a forfeiture order against any property which relates to the serious offence for which the information was laid.

(2) The Attorney-General may form the opinion that a person has absconded where:

- (a) reasonable attempts to arrest the person under a warrant have been unsuccessful during the period of 6 months commencing on the day the warrant was issued; or
- (b) a warrant for the person's arrest has been issued and the person dies.

(3) A person is taken to have absconded on the last day of the period mentioned under subsection (2)(a) or on the day the person dies.

(4) Subject to subsection (5), when the Attorney-General makes an application under subsection (1), the Court may, 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 Samoa.

(5) Notwithstanding subsection (4), the Court may, upon application by the Attorney-General, dispense with the requirement to give notice to a person under this section or under section 15 or 16, if the Court is satisfied that the person has absconded in connection with the offence.

*Division 2 - Forfeiture Orders*

**19. Forfeiture order on conviction – (1)** If, upon application by the Attorney-General, the Court is satisfied that property is tainted property in respect of a serious offence of which a person has been convicted or is terrorist property, 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 determining whether property is tainted property, the Court may infer, in the absence of evidence to the contrary:

- (a) that the property was used in, or in connection with the commission of the offence, if the property was in the person's possession or effective control at the time of, or immediately after the commission of the offence; or
- (b) that the property was derived, obtained or realised as a result of the person's committing the offence—
  - (i) if the property (in particular, money) was found, during investigations before or after the person was arrested for and charged with the offence, in the person's possession or under the person's control in a building, vehicle, receptacle or place; or
  - (ii) if the property was acquired by the person before, during or within a reasonable time after the commission of the offence of which the person was convicted, and the Court is satisfied that the person's income from sources unrelated to criminal activity cannot reasonably account for the acquisition of that property.

**(3)** If the Court orders that property (other than money) be forfeited to the State, the Court shall 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) a 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 a 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.

(6) A court is not to take into account the making of a forfeiture order, whether by consent or otherwise, when considering its sentence upon conviction.

**20. Effect of forfeiture order** – (1) If the Court makes a forfeiture order against property (other than registrable property), the order vests the property absolutely in the State.

(2) 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.

(3) 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(4)(a).

(4) If the Court makes a forfeiture order against property (including registrable property):

- (a) the property shall 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) an 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 passes, without such an appeal having been lodged.

**21. 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 shall 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 on a balance of probabilities:

- (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 commencing 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) shall 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 from an order under subsection (2).

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

- (a) return the property, or the part of it to which the interest of the applicant relates, to the applicant; or
- (b) pay an amount equal to the value of the interest of the applicant, as declared in the order, to the applicant.

## **22. 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 in relation to that property were commenced; and
  - (ii) any property is tainted property; 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 19 save for subsection (1), sections 20 and 21, apply to an order under this section.

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

(2) If a forfeiture order against property is discharged under subsection (1) or 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), the Administrator shall:

- (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) if 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 make an application to 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 21 or this section, including executing any instrument and applying to register an interest in the property on a register.

**24. Payment instead of forfeiture order** – (1) Where the Court is satisfied that a forfeiture order should be made against the property of a person, but that the property cannot be made subject to such an order for the reasons under subsection (2), the Court may, instead of ordering the property to be forfeited, order the person to pay to the State an amount equal to the value of the property.

(2) For the purposes of this section, the reasons to which a Court may make an order under subsection (1) are that the property:

- (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 Samoa; or
- (d) has been substantially diminished in value or rendered worthless; or
- (e) has been mingled with other property that cannot be divided without difficulty; or
- (f) is subject to customary land rights and cannot be forfeited; or
- (g) is property of a *bona fide* third party purchaser for value without notice.

**25. Enforcement of order for payment instead of forfeiture** – (1) An amount payable by a person to the State under an order under section 24 is a civil debt due by the person to the State.

(2) An order against a person under section 24 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 deemed to be a judgment debt.

(3) If an order is made against a person under section 24 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.

**26. Voidable transfers** – A Court may, before making a forfeiture order or a pecuniary penalty order, set aside or make void, any conveyance or transfer of money or property or interest therein that occurred in circumstances that give rise to a reasonable inference that the money, property or interest was transferred for the purpose of avoiding the forfeiture or pecuniary penalty order, unless the transfer was for valuable consideration to a third party acting in good faith and without notice.

**27. Registered foreign forfeiture orders** – If a foreign forfeiture order is registered in the Court under the Mutual Assistance Act, this Division applies to the order as if:



- (a) the order was 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 21(3) were 6weeks rather than 6months.

*Division 3 – Pecuniary Penalty Orders*

**28. Pecuniary penalty order on conviction – (1)** Where the Attorney-General applies to the Court for a pecuniary penalty order under this Act, 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 shall assess the value of the benefit derived by a person from committing an offence under sections 29, 30, 31, 32 and 33.

(3) The Court shall 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 from the commission of a serious offence, whether directly or indirectly, the person’s benefit is the value of the property so obtained.

(2) If a person obtains an advantage from the commission of a serious offence, whether directly or indirectly, the person’s advantage is deemed to be a sum of money equal to the value of the advantage so derived.

(3) 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:

- (a) if the offence or earliest offence was committed more than 6 years before the application is made, within 6 years before the application is made; and
- (b) in any other case, after the offence, or the earliest offence, was committed and before the application is made.

(4) Any expenditure by the person in the time mentioned in subsection (3) is taken to be expenditure met out of tainted property.

(5) A property received or taken to have been received by the person at any time as a result of, or in connection with, the commission of the offence or offences is taken to have been received free of any other interests.

(6) 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.

(7) 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 shall be disregarded.

**30. Statements about benefits from committing serious offence** – (1) If a person has been convicted of a serious offence, the Attorney-General may provide the Court with a statement about any matter relevant to:

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

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

- (a) to what extent the person accepts each allegation in the statement; and

(b) for each allegation that the person does not accept wholly or in part, any evidence or 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 orally before the Court or 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 any offence 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 shall issue a certificate under subsection (2) where 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 any offence 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)** In this section, an obligation of a person has priority at a time if it is an obligation to pay:

- (a) a fine, or an amount due under an order of a 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) an amount due as a tax, rate, duty, excise or other levy under an enactment; or
- (c) any other civil obligation as may be determined by the Court.

**33. Variation of pecuniary penalty orders – (1)**If the Court makes a pecuniary penalty order under this Act and in calculating the amount of the pecuniary penalty order, the Court took into account a forfeiture order of the property or a proposed forfeiture order in respect of the property and an appeal against the forfeiture or forfeiture order is allowed, or the proceedings for the proposed forfeiture order ended 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 not so confiscated and the Court may, if it considers it appropriate to do so, vary the order accordingly.

**(2)** Where the Court makes a pecuniary penalty order against a person in relation to a serious offence and in calculating the amount of the pecuniary penalty order, the Court took into account an amount of tax paid by the person and 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 the commission of a serious offence, the Court may order the investigation and inspection of the books of a particular company to determine whether the company has a direct or indirect interest in certain property.

(2) If the Court, in making a pecuniary penalty order against a person, treats particular property as being under the effective control of that person, the Court may, on application by the Attorney-General, make an order declaring that the property is available to satisfy the order.

(3) If the Court makes a declaration under subsection (2) that property is available to satisfy a pecuniary penalty order:

- (a) the order may be enforced against the property as if the property were the 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 the property of the person against whom the order is made.

(4) If the Attorney-General applies for an order under subsection (2), that property is available to satisfy a pecuniary penalty order against a person provided that:

- (a) the Attorney-General shall give reasonable written notice of the application to the person and to any other person whom the Attorney-General reasonably believes has 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 deemed 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 Samoa or elsewhere, in satisfaction of that order is deemed 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. Issuing a search warrant** – (1) An authorised officer of an enforcement agency may apply to a Judge or the Registrar of the Court for the issue of a warrant to search land or premises for tainted property or evidential material.

(2) If an application is made under subsection (1) for a warrant, the Judge or Registrar 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 evidential material and to seize it.

(3) The Judge or the Registrar may issue the warrant only if the Judge or Registrar, as the case may be, is satisfied that:

- (a) the property authorised to be seized is—
  - (i) tainted property; or
  - (ii) evidential material in relation to property to which the warrant relates; or
  - (iii) evidential material relating to a serious offence; and
- (b) an information has been laid or will be laid within 5 days for the relevant offence; and
- (c) there are reasonable grounds for issuing the warrant.

(4) A warrant issued under this section shall 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.

(5) Subject to any conditions specified in the warrant, every warrant issued under subsection (3) shall authorise the authorised officer executing the warrant:

- (a) to enter and search the premises specified in the warrant at any time by day or night during the currency of the warrant; and
- (b) to use such assistance as may be reasonable in the circumstances for the purpose of the entry and search; and
- (c) to use such force as is reasonable in the circumstances for the purposes of effecting entry, and for breaking open anything in or on the place or premises being searched; and
- (d) to search for and seize a thing referred to in the warrant.

(6) A person called upon to assist any authorised officer executing a warrant shall have the powers described in subsection (5)(c) and (d).

**38. Seizing other things** – 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 any other thing, the warrant is deemed to authorise the officer to seize the other thing if there are reasonable grounds for believing that:

- (a) the other thing to be tainted property in relation to a serious offence, or to provide evidence about the commission of a serious offence in Samoa; or
- (b) 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 any other offence.

**39. Responsibility for things seized** – (1) If a thing is seized under a search warrant, the responsible custodian shall:

- (a) arrange for the thing to be kept until it is dealt with in accordance with any other provision of this Act; and
- (b) ensure that all reasonable steps are taken to reasonably maintain the thing while it is so kept.

(2) The responsible custodian of a thing that is seized under a search warrant is the head of the enforcement agency of the authorised officer who is responsible for executing the warrant.

**40. General rule relating to the return of seized property** – (1) A person who claims an interest in property seized under section 37 or 38 may apply to the Court for an order that the property be returned to the person.

(2) The Court shall order that the property be returned to the person, where the Court is satisfied that:

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

**41. Return of seized property if no information laid** – If property has been seized under section 37 or 38 when the property was seized, an information had not been laid in relation to an offence because of which the property is tainted an information is not laid, in relation to an offence because of which the property is tainted, within 5 days after the property was seized, the responsible custodian of the property shall, subject to section 43, 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 5 days.

**42. Return of seized property if no forfeiture order made** – If property has been seized under sections 37 or 38 and no forfeiture order is made against the property within 28 days after the date of seizure the property is in the possession of the responsible custodian at the end of that period, the responsible



custodian shall, subject to section 43, 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.

**43. Retention of seized property if restraining order made or evidential material required** – (1) If property has been seized under section 37 or 38 and a restraining order is made against the property before the responsible custodian is required by this Act to return it and the restraining order directs the Administrator to take custody and control of the property, then, notwithstanding section 41 or 42, the responsible custodian shall arrange for the property to be given to the Administrator in accordance with the restraining order.

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

(3) If the Court makes an order under subsection (2) about the property, the Attorney-General shall arrange for the property to be kept until it is dealt with in accordance with any other provision of this Act.

(4) In proceedings for an order under subsection (2), 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 the prosecution of a person for, an offence.

**44. How Attorney-General shall deal with property subject to forfeiture order** – If property has been seized under this Division and while the property is in the possession of the responsible custodian or the Attorney-General, a forfeiture order is made against the property, the responsible custodian or Attorney-General, as the case may be, shall deal with the property as required by the order.

**45. Search and seizure in relation to foreign offences** – (1) Subject to subsection (2), where a foreign State requests assistance to locate or seize property suspected to be tainted property or evidential material in respect of a foreign serious

offence within its jurisdiction, the provisions of this Division shall apply mutatis mutandis.

(2) Subsection (1) only applies where the Attorney-General has authorised the giving of assistance to the foreign State under the provisions of the Mutual Assistance Act.

*Division 2—Restraining Orders*

**46. 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 the defendant.

(2) An application for a restraining order may be made ex parte.

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

- (a) if the relevant defendant has been convicted of a serious offence—
  - (i) the offence for 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 serious offence for 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 5 days; 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 or control 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 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 the defendant, the grounds for believing that the property is tainted property or is subject to the effective control of the defendant; and
- (h) the grounds for the belief that a forfeiture order or a pecuniary penalty order may be or is likely to be made in respect of the property.

**47. Notice of application for restraining order – (1)** Before making a restraining order, the Court shall require reasonable written notice to be given to, and may hear, a person who, in the opinion of the Court, may have an interest in the property.

**(2)** The Court may, at any time before the final determination of the application, direct the Attorney-General to give or publish notice of the application to a specified person or class of persons, in such manner as the Court may direct.

**(3)** Despite subsection (1), if the Attorney-General so requests, the Court may consider the application without requiring notice to be given, but any restraining order made shall cease to have effect after 14 days or a lesser period that the Court specifies in the order.

**(4)** The Court may, on application by the Attorney-General, extend the period of operation of a restraining order made under subsection (3), but shall not consider the application without requiring reasonable written notice to be given to a person who may have an interest in the property.

**48. Restraining orders – (1)** The Court may make a restraining order against property if it is satisfied that:

- (a) the defendant has been convicted of a serious offence or has been charged with a serious offence or will be charged with a serious offence within 5 days; and
- (b) if the defendant has not been convicted of a serious offence, there are reasonable grounds for

- believing that the defendant committed the offence; and
- (c) if the property is property of the defendant, there are reasonable grounds for believing that the property is tainted property in relation to a serious offence or terrorist actor that the defendant derived a benefit, directly or indirectly, from the commission of the offence; and
  - (d) if the property is property of a person other than the defendant, there are reasonable grounds for believing that the property is tainted property, or that the property is subject to the effective control of the defendant; and
  - (e) there are reasonable grounds for the belief that a forfeiture order or pecuniary penalty order may be or is likely to be made in respect of the property.
- (2) The order may:
- (a) prohibit the defendant or any other person from disposing of, or otherwise dealing with, the property, or such part thereof or interest therein, as is specified in the order, either absolutely or except in such manner as may be 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 such part thereof as is 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; and
  - (c) require a person having possession of the property to give possession thereof to the Administrator.
- (3) The order may be subject to any conditions that the Court thinks fit and, without limiting this subsection, may provide for meeting out of the property or a specified part of it, all or any of the following:
- (a) the person's reasonable living expenses (including the reasonable living expenses of the person's dependants, if any) and reasonable business expenses; or

(b) the person's reasonable expenses in defending a criminal, charge and any proceedings under this Act; or

(c) a specified debt incurred by the person in good faith.

(4) The order shall not make such provision under subsection (3), 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) If the Court gives the Administrator a direction under subsection (2)(b) in relation to any property, the Administrator may do anything that is reasonably necessary to maintain the property and for that purpose:

(a) may exercise a power that the owner of the property could exercise; and

(b) may do so to the exclusion of the owner.

(6) In proceedings for a restraining order, 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 a serious offence or the prosecution of a person for a serious offence.

(7) A restraining order may relate to more than one offence in relation to the defendant.

(8) The Court shall make a restraining order even if there is no risk of the property being disposed of or otherwise dealt with.

(9) The Court must specify that a restraining order covers property that is acquired by the defendant after the making of the order before such an order may affect property that is acquired after the making of the restraining order.

**49. Undertakings by State – (1)** 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.

(2) For the purposes of this section, the Attorney-General may give such undertakings with respect to the payment of damages or costs or both, as are required by the Court.

**50. Service of restraining order – (1)** A copy of a restraining order shall be served on a person affected by the order in such manner as 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.

**51. 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; or
  - (b) a person who owns the property which is the subject of the restraining order; or
  - (c) if the restraining order directs the Administrator to take custody and control of property - the Administrator; or
  - (d) with the leave of the Court, any other person.
- (2) An ancillary order may:
- (a) vary the property to which a restraining order relates; or
  - (b) vary a condition to which a restraining order is subject; or
  - (c) order a person to be examined on oath before the Court about the affairs of the owner or the defendant; or
  - (d) provide for carrying out an undertaking about the payment of damages or costs given by the State in connection with the making of the restraining order; or
  - (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; or
  - (f) if the restraining order directs the Administrator to take custody and control of property—
    - (i) regulate the performance or exercise of the Administrator’s functions, duties or powers under the restraining order; or
    - (ii) decide a question relating to the property; or
    - (iii) order a person to do anything to enable the Administrator to take custody and control of the property; or
    - (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; or

- (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; or
- (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 specified property from the order, the Court shall grant the application if the Court is satisfied that:

- (a) the property is not tainted property and that it cannot be required to satisfy a pecuniary penalty order; and
- (b) the applicant was not involved in the commission of the offence or any collusion in relation to such offence, for which the restraining order was made and, if the applicant acquired the interest at the time of or after the commission or alleged commission of the offence, the applicant acquired the interest—
  - (i) for sufficient consideration; and
  - (ii) without knowing, and in circumstances such as not to arouse a reasonable suspicion, that the property was tainted property; and
- (c) the property is no longer required for the purposes of an investigation or as evidence in a proceeding; and
- (d) 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 shall not hear an application under subsection (1) unless the applicant has given reasonable written notice of the application to every person who is entitled to make an application under that subsection for an ancillary order.

(5) The Court may require notice of the application to be given to, and may hear, a 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.

**52. 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) any other person against whom an order under subsection 34(2) 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 specified part of the property; and
- (b) order that the Administrator may execute and do anything necessary to give validity and effect to a 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 pursuant to 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 shall not take action to sell property under a direction under subsection (3):

- (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.

**53. Registration of restraining order – (1)** An authority that administers a law of Samoa 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 deemed to have notice of the restraining order at the time of the dealing, for the purposes of section 54.

**54. Contravention of restraining order – (1)** A person who knowingly contravenes a restraining order by disposing of or otherwise dealing with property that is subject to the restraining order, commits an offence punishable on conviction by:

- (a) for a natural person, a fine of 500 penalty units or imprisonment for 2 years, or both; or
- (b) for a body corporate, a fine of 2,500 penalty units.

(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 on which the disposition or dealing took place; or
- (b) set aside the disposition or dealing with effect from the day of the order under this subsection, and declare the rights of a person who acquired an interest in the property on, or after the day on which the disposition or dealing took place, and before the day of the order under this subsection.

**55. Court may revoke restraining orders – (1)** If the Court has made a restraining order against a person's property, the Court may, on application by the person, revoke the order:

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

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

**56. 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 the period mentioned in subsection (1), 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 shall 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—
  - (i) if the offence is an offence against the law of Samoa, within the period of 5 days after the making of the order, at the end of that period; or
  - (ii) if the offence is a foreign serious offence, within the period of 21 days 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.

**57. Restraining orders for foreign serious offences – (1)**

Subject to subsection (2), where a foreign State requests assistance to issue a restraining order in respect of a foreign serious offence within its jurisdiction, the provisions of this

Division, other than section 52, shall apply mutatis mutandis, except as provided to the contrary in this Act.

(2) Subsection (1) only applies where the Attorney-General has authorised the giving of assistance to the foreign State under the provisions of the Mutual Assistance Act.

(3) For the purposes of this section:

- (a) a person is a defendant if—
  - (i) the person has been convicted of a foreign serious offence; or
  - (ii) there are reasonable grounds for believing that the person has been or is about to be charged with a foreign serious offence; and
- (b) tainted property means tainted property in relation to a foreign serious offence; and
- (c) offence means a foreign serious offence.

(3) If a restraining order has been made against property under this section, and a foreign restraining order against the same property is subsequently registered in the Court, under the Mutual Assistance Act, the initial restraining order ceases to have effect from the date of registration of the foreign order.

### *Division 3 – Foreign Restraining Orders*

**58. Application of Division 5** – This Division applies to a foreign restraining order registered in the Court under the Mutual Assistance Act.

**59. 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 of it, in accordance with the directions of the Court.

(2) Before making an order under subsection (1), the Court shall require reasonable notice to be given to, and may hear, a 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), the Administrator may do anything that is reasonably necessary for maintaining the property and for that purpose:

- (a) may exercise a power that the owner of the property could exercise; and
- (b) may do so to the exclusion of the owner.

(4) If the Court makes an order under subsection (1) against property of a person who owns the property, the Court may, at any time, make an order:

- (a) directing the person owning the property to give to the Administrator a statement on oath setting out the particulars of the property or dealings with the property; or
- (b) regulating the performance or exercise of the Administrator's functions, duties or powers under the foreign restraining order; or
- (c) deciding a question about the property; or
- (d) directing that a person's reasonable expenses in defending a criminal charge be taxed before being met, where the relevant registered foreign restraining order makes provision for payment of such expenses out of the property; or
- (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.

**60. 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 59 for the property.

**61. Service of foreign restraining order – (1)** A copy of a foreign restraining order or an order under section 59 shall be served on a person affected by the order in such manner as 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.

**62. Administrator to satisfy pecuniary penalty order – (1)** In this section, a reference to a restraining order includes an order under section 59.

(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) any other person against whom an order under subsection 34(2) 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 a 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 a 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 pursuant to 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.

**63. Registration of registered foreign restraining order –**

(1) In this section, a reference to a restraining order includes an order under section 59.

(2) An authority that administers a law of Samoa 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 registered foreign 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 deemed to have notice of the restraining order at the time of the dealing, for the purposes of section 64.

**64. Contravention of registered foreign restraining orders –** (1) In this section, a reference to a registered foreign restraining order includes an order under section 59.

(2) A person who knowingly contravenes a registered foreign restraining order by disposing of or otherwise dealing with property that is subject to the said restraining order commits an offence punishable on conviction by:

- (a) for a natural person, a fine of 500 penalty units or imprisonment for 2 years, or both; or
- (b) for a body corporate, a fine of 2,500 penalty units.

(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 set aside:

- (a) the relevant disposition or dealing with effect from the day on which the disposition or dealing took place; or
- (b) the disposition or dealing with effect from the day of the order under this subsection, and declare the rights of a person who acquired an interest in the property on, or after the day on which the disposition or dealing took place, and before the day of the order under this subsection.

**65. 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 under that Act.

*Division 4 – Production Orders*

**66. Production orders** – (1) If a person has been convicted of, charged with, or is about to be charged with, a serious offence and an authorised officer of an enforcement agency has reasonable grounds for suspecting that a person has possession or control of property tracking documents, the officer may apply *ex parte* to a Judge in chambers for a production order against the person suspected of having possession or control of such documents.

(2) The application shall be in writing and supported by an affidavit.

(3) The Judge may, if the Judge considers there are reasonable grounds for so doing, make an order:

- (a) that the person produce one or more property tracking documents to an authorised officer; or
  - (b) that the person makes one or more property tracking documents available to an authorised officer for inspection.
- (4) A production order shall:
- (a) specify the nature of the documents required; and
  - (b) specify the place at which, the person must produce the documents or make the documents available; and
  - (c) specify the time at which, or the times between which, this must be done; and
  - (d) set out the effect of not complying with the order.

(5) The time or times specified under subsection 4(c) shall be at least 14 days from the day on which the order is given, however, the Judge making the order may specify an earlier time or times, if satisfied that it will not cause hardship to the person against whom the order is made.

(6) A person is not entitled to refuse to produce documents ordered to be produced under this section on the ground that:



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

**67. Powers under production orders – (1)** An authorised officer, to whom the property tracking documents are produced, may:

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

(2) If documents have been retained pursuant to subsection (1)(c), the authorised officer shall make a copy of the documents available to the person who produced them.

**68. Disclosing existence or nature of production orders –**

(1) A person commits an offence if:

- (a) the person is given a production order; and
- (b) the order specifies that information about the order must not be disclosed; and
- (c) the person discloses the existence or nature of the order to any other person.

(2) A person convicted of an offence under subsection (1) is liable to a fine not exceeding 500 penalty units or to imprisonment for a period not exceeding 5 years, or both.

(3) Subsection (1) does not apply where:

- (a) the person discloses the information to an employee, agent or other person in order to obtain a document that is required to comply with the order, and that other person is directed not to inform the person to whom the document relates about the matter; or
- (b) the disclosure is made to obtain legal advice or legal representation in relation to the order; or
- (c) the disclosure is made for the purposes of, or in the course of, legal proceedings.

**69. Failure to comply with a production order – (1)** If a production order requires a person to produce a document to an authorised officer, or make a document available to an authorised officer for inspection, the person commits an offence if the person:

- (a) refuses to comply with the order without lawful or reasonable excuse; or
- (b) in purported compliance with the order, produces or makes available a document that the person knows to be false or misleading in a material particular without—
  - (i) telling the authorised officer that the document is false or misleading, and the way in which it is false or misleading; and
  - (ii) giving correct information to the authorised officer if the person has, or can reasonably obtain, the correct information.

**(2)** A person convicted of an offence under subsection (1) is liable:

- (a) for a natural person, to a fine of 500 penalty units or imprisonment for 5 years, or both; or
- (b) for a body corporate, to a fine of 2,500 penalty units.

**70. Evidential value of information – (1)** If a person produces a document pursuant to an order under this Division, the production of the document, or any information, document or thing obtained as a direct or indirect consequence of the production of the document, is not admissible against the person in any criminal proceedings except proceedings under section 69.

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

**71. Production orders in relation to foreign offences – (1)** Subject to subsection (2), when a foreign State requests assistance to obtain the issue of a production order in respect of a property tracking document, sections 66, 67, 68, 69 and 70 apply with necessary modifications.

**(2)** Subsection (1) only applies if the Attorney-General has authorised the giving of assistance to the foreign State under the Mutual Assistance Act.

**72. Search warrant for location of documents relevant to locating property** – (1) An authorised officer of an enforcement agency may apply to a Judge for the issue of a warrant to search land or premises for property tracking documents in relation to a serious offence.

(2) If an application is made under subsection (1) for a warrant, the Judge 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 documents and to seize them.

(3) The Judge may issue the warrant only if the Judge is satisfied that:

- (a) a production order has been made in respect of the documents and has not been complied with; or
- (b) a production order in respect of the documents would be unlikely to be effective; or
- (c) the investigation for the purposes of which the search warrant is being sought might be seriously prejudiced if the authorised officer does not gain immediate access to the documents without any notice to any person; or
- (d) the documents involved cannot be identified or described with sufficient particularity to enable a production order to be obtained.

(4) A warrant issued under this section shall include:

- (a) a statement of the purpose for which it is issued, including a reference to the nature of the relevant offence; and
- (b) a description of the kind of documents 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.

(5) If, during the course of searching under a warrant issued under this section, an authorised officer finds:

- (a) a property tracking document that the authorised officer believes on reasonable grounds to relate to

the relevant offence or to any other serious offence;  
 or  
 (b) a thing the authorised officer believes on reasonable grounds will afford evidence as to the commission of a serious offence, –  
 the authorised officer may seize that property or thing and the warrant is taken to authorise the seizure.

**73. Search warrants in relation to foreign offences – (1)** Subject to subsection (2), when a foreign State requests assistance to obtain a search warrant to locate or seize property tracking documents, section 72 applies, with necessary modifications.

**(2)** Subsection (1) only applies if the Attorney-General has authorised the giving of assistance to the foreign State under the Mutual Assistance Act.

#### *Division 5 – Monitoring Orders*

**74. Monitoring orders – (1)** An authorised officer of an enforcement agency may apply *ex parte* to a Judge in chambers for a monitoring order directing a financial institution to provide information about transactions conducted during a particular period through an account held by a particular person with the institution.

**(2)** The Judge shall not make a monitoring order unless the Judge is satisfied that there are reasonable grounds for suspecting that:

- (a) the person in respect of whose account the order is sought—
  - (i) has committed, or is about to commit, a serious offence; or
  - (ii) was involved in the commission, or is about to be involved in the commission of, a serious offence; or
  - (iii) has benefited directly or indirectly, or is about to benefit directly or indirectly from the commission of a serious offence; or
- (b) the account is being used to commit a terrorist act or an offence of money laundering or the financing of terrorism.

- (3) A monitoring order shall:
- (a) specify the name or names in which the account is believed to be held; and
  - (b) specify the kind of information that the financial institution is required to provide; and
  - (c) specify the period during which the transaction must have occurred; and
  - (d) specify to which enforcement agency the information is to be provided; and
  - (e) specify the form and manner in which the information is to be given; and
  - (f) set out the effect of failing to comply with a monitoring order.
- (4) The period mentioned in subsection (3)(c):
- (a) begins no earlier than the day on which notice of the monitoring order is given to the financial institution; and
  - (b) ends no later than 6 months after the date of the order.

**75. Indemnity for those complying with monitoring orders** – (1) No action, suit or proceedings lies against:

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

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

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

**76. Disclosing existence or operation of monitoring orders**

- (1) A person commits an offence if:
- (a) the person discloses the existence or the operation of a monitoring order to any other person; and
  - (b) the disclosure is not to a person specified in subsection (3); and

- (c) the disclosure is not for a purpose specified in subsection (3).
- (2) A person commits an offence if the person:
- (a) receives information relating to a monitoring order in accordance with subsection (3); and
  - (b) ceases to be a person to whom information could be disclosed in accordance with subsection (3); and
  - (c) makes a record of, or discloses, the existence or the operation of the order.
- (3) A person may disclose the existence or the operation of a monitoring order to the following persons for the following purposes:
- (a) the Head of an enforcement agency or an authorised officer of that agency—
    - (i) for the purpose of performing that person’s duties; or
    - (ii) for the purpose of, or for purposes connected with, legal proceedings; or
    - (iii) for purposes arising in the course of proceedings before a court; or
  - (b) the Director of the Financial Intelligence Unit, or a member of the staff of the Financial Intelligence Unit, who is authorised by the Director to receive such information—
    - (i) for the purpose of performing that person’s duties; or
    - (ii) for the purpose of, or for purposes connected with, legal proceedings; or
    - (iii) for purposes arising in the course of proceedings before a court; or
  - (c) an officer or agent of the financial institution for the purpose of ensuring that the order is complied with; or
  - (d) a lawyer for the purpose of obtaining legal advice or representation in relation to the order.
- (4) A person convicted of an offence under subsection (1) or (2) is liable to a fine not exceeding 500 penalty units or to imprisonment for a period not exceeding 5 years, or both.

**77. Failure to comply with monitoring order – (1)** A financial institution, which has been given notice of a monitoring

order and which knowingly contravenes the order or provides false or misleading information in purported compliance with the order, commits an offence.

(2) A person convicted of an offence under subsection (1) is liable:

- (a) for a natural person, to a fine of 500 penalty units or imprisonment for 5 years, or both; or
- (b) for a body corporate, to a fine of 2,500 penalty units.

## **PART 5 MISCELLANEOUS**

**78. Conduct by directors, servants or agents – (1)** In this Act, the state of mind of a person may be established under 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 the person's 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 the person's actual or apparent authority; or
- (b) by any other person at the direction, or with the consent or agreement (whether express or implied), of a director, servant or agent of the body corporate, and 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 the person's 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 any other person at the direction or with the consent or agreement (whether express or implied) of a servant or agent of the first-mentioned person, and if giving 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.

**79. Proceedings are civil, not criminal** – (1) Proceedings on an application for a restraining order, a forfeiture order or a pecuniary penalty order are not criminal proceedings.

(2) Except for an offence under this Act:

- (a) the rules of construction applicable only in relation to the criminal law do not apply in the interpretation of this Act; and
- (b) the rules of evidence applicable in civil proceedings apply and those rules of evidence applicable only in criminal proceedings do not apply to proceedings under this Act.

**80. Onus and standard of proof** – (1) The applicant in any proceedings under this Act bears the onus of proving the matters necessary to establish the grounds for making the order applied for.

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

**81. Costs** –The Court may order the State to pay all or part of the costs reasonably incurred by a person in connection with proceedings under this Act if:

- (a) the person brings, or appears at, the proceedings under this Act—
  - (i) to prevent a forfeiture or restraining order; or



- (ii) to have property of the person excluded from a forfeiture 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 any way in the commission of the offence for which the forfeiture or restraining order was sought or made.

**82. 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.

**83. Immunity**–(1) No suit, prosecution or legal proceedings shall lie against the Government, the Minister, an enforcement agency, or any person exercising a function or power under this Act in respect of anything done by or on behalf of that person in good faith in the exercise of that power or the performance of that function.

(2) The legal costs of defending an action instituted against a person named in subsection (1) are borne by the Government.

**84. 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) a power of search or a power to seize or detain property that is exercisable by a police officer or enforcement agency, apart from this Act.

**85. Confiscated Assets Fund** – (1) There shall be credited to the Confiscated Assets Fund amounts equal to:

- (a) proceeds of forfeited assets under this Act; and
- (b) money paid under section 24, where the Court makes an order for payment instead of a forfeiture order; and
- (c) money paid pursuant to a pecuniary penalty order made under this Act; and

- (d) money paid to Samoa by a foreign State, under a treaty or arrangement providing for mutual assistance in criminal matters; and
  - (e) money, other than money referred to in paragraph (d), paid to Samoa by a foreign State in connection with assistance provided by Samoa in relation to the recovery by that country of the proceeds of crime or the investigation or prosecution of a serious offence; and
  - (f) proceeds of forfeiture orders or pecuniary penalty orders made under any other law.
- (2) Payments out of the Confiscated Assets Fund must be administered in accordance with the Money Laundering Prevention Act 2007.

**86. Regulations** – (1) The Head of State acting on the advice of Cabinet 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.
- (2) Regulations may be made under this section to provide for further procedures or other matters relating to confiscation and forfeiture orders or other orders and related matters, in relation to terrorist property.

**87. Consequential amendments** – (1) Section 21A of the Arms Ordinance 1960 is repealed.

(2) Section 25A of the Narcotics Act 1967 is repealed.

## **SCHEDULE**

### **(Section 2)**

#### **ENFORCEMENT AGENCY**

1. Police Service
2. Money Laundering Prevention Authority
3. Financial Intelligence Unit
4. Immigration Department
5. Customs Department
6. Central Bank of Samoa
7. Samoa International Finance Authority

**REVISION NOTES 2008 – 2023**

This is the official version of this Act as at 31 December 2023.

This Act has been revised by the Legislative Drafting Division from 2008 – 2023 respectively under the authority of the Attorney General given under the *Revision and Publication of Laws Act 2008*.

The following general revisions have been made:

- (a) Insertion of the commencement date;
- (b) Other minor editing has been done in accordance with the lawful powers of the Attorney General, where appropriate:
  - (i) “Every” and “any” changed to “a/an”;
  - (ii) Offence provisions: “shall be guilty” changed to “commits”;
  - (iii) Use of plain language:
    - “in relation to”, “in the case of” and “in respect of” changed to “for”;
    - “deemed” changed to “taken”;
    - “when” changed to “if”;
    - “mutantis mutandis” changed to “with necessary modifications”;
    - “in accordance with” changed to “under”;
  - (iv) Numbers in words changed to figures;
  - (v) Removal of “and” from “and/or”;
  - (vi) Removal of superfluous terms:
    - “the provisions of”;
  - (vii) Interpretation of certain words in section 2 paragraph – “account” and “document”;
  - (viii) Part numbering changed to decimal.

The following amendments were made since its enactment:

*By the Proceeds of Crime Amendment Act 2012 commenced on 8 January 2013:*

**Section 19(2)** for the word “and” at the end of paragraph (a) following the semicolon, substitute “or”.

*By the Counter Terrorism Act 2014 (No.7), commenced on 7 April 2014:*

- Section 2** - insert the definition of the terms “terrorist act” and “terrorist property” after the term and definition of “tainted property”;
- Section 6(1)** - insert the words “or terrorist act” after the words “serious offence”;
- Section 7(1)** - at the end of paragraph (c), remove the full stop and substitute with a semicolon; and insert a new paragraph (d) after paragraph (c);
- Section 19(1)** - insert the words “or terrorist property” after the words “convicted”;

- Section 46(3)(e)** - insert the words “or control” after the words “possession”;
- Section 48(1)(c)** - insert the words “or terrorist act” after the words “serious offence”;
- Section 74(2)(b)** - insert the words “a terrorist act or” after the words “to commit”;
- Section 86** - renumber the current provision as subsection 1 and insert a new subsection 2.

*This Act is administered by  
the Central Bank of Samoa.*

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