

Singapore: Mutual Assistance In Criminal Matters Act

MUTUAL ASSISTANCE IN CRIMINAL MATTERS ACT (CHAPTER 190A) (As amended in April 2006)

PART I

PRELIMINARY

Short title

1. This Act may be cited as the Mutual Assistance in Criminal Matters Act.

Interpretation

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

"ancillary criminal matter" means —

- (a) the restraining of dealing with, or the seizure, forfeiture or confiscation of, property in connection with a Singapore offence or a foreign offence, as the case may be; or
- (b) the obtaining, enforcement or satisfaction of a Singapore confiscation order or a foreign confiscation order, as the case may be;

"appropriate authority" , in relation to a foreign country, means a person or authority whom the Attorney-General is satisfied is authorised under the law of that country —

- (a) in the case of a request by that country to Singapore for assistance in a criminal matter, to make the request; or
- (b) in the case of a request by Singapore to that country for assistance in a criminal matter, to receive the request;

"authorised officer" means —

- (a) the Director, the Deputy Director, any Assistant Director or other officer, of the Central Narcotics Bureau, appointed under section 3 (1) of the Misuse of Drugs Act (Cap. 185);
- (b) any special investigator of the Corrupt Practices Investigation Bureau appointed under section 3 (2) of the Prevention of Corruption Act (Cap. 241);
- (c) any Commercial Affairs Officer appointed under section 64 of the Police Force Act 2004;
- (d) any police officer; or
- (e) any other person or class of persons appointed by the Minister as an authorised officer or authorised officers for the purposes of this Act;

"corresponding drug law" , in relation to a foreign country, means a law stated in a certificate purporting to be issued by or on behalf of the government of the foreign country to be a law providing for the control and regulation in that country of —

(a) the production, supply, use, export and import of drugs and other substances in accordance with the provisions of the Single Convention of Narcotic Drugs signed at New York on 30th March 1961;

(b) the production, supply, use, export and import of dangerous or otherwise harmful drugs in pursuance of any treaty, convention or other agreement or arrangement to which the Government and the government of that country are for the time being parties; or

(c) the benefits of trafficking in the drugs or substances referred to in paragraph (a) or (b);

"criminal investigation" means an investigation —

(a) into a Singapore offence or a foreign offence, as the case may be; or

(b) for the purposes of an ancillary criminal matter;

"criminal matter" means —

(a) a criminal investigation;

(b) criminal proceedings; or

(c) an ancillary criminal matter;

"criminal proceedings" means a trial of a person for a Singapore offence or foreign offence, as the case may be, and includes any proceeding to determine whether a particular person should be tried for the offence;

"dealing", in relation to property, includes —

(a) receiving or acquiring the property;

(b) concealing or disguising the property (whether by concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it or otherwise);

(c) disposing of or converting the property;

(d) bringing the property into or removing the property from Singapore;

(e) using the property to borrow money, or as security (whether by way of charge, mortgage or pledge or otherwise); and

(f) where a debt is owed to the person holding the property, making a payment to any person in reduction of the amount of the debt;

"drug trafficking offence" means —

(a) any of the offences set out in the First Schedule to the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap. 65A);

(b) conspiracy to commit any of those offences;

(c) inciting another to commit any of those offences;

(d) attempting to commit any of those offences; or

(e) aiding, abetting, counselling or procuring the commission of any of those offences;

"financial institution" has the same meaning as in the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act;

"foreign confiscation order" means an order made by a court in a foreign country for the recovery, forfeiture or confiscation of —

(a) payments or other rewards received in connection with an offence against the law of that country that is a foreign offence, or the value of such payments or rewards; or

(b) property derived or realised, directly or indirectly, from payments or other rewards received in connection with such an offence, or the value of such property,

that is made on or after the appointed date for that country and includes an instrumentality forfeiture order;

"foreign country" means any country, or territory, other than Singapore;

"foreign drug trafficking offence" means an offence against the corresponding drug law of a foreign country;

"foreign law immunity certificate" means a certificate given, or a declaration made, by a foreign country or under the law of a foreign country, certifying or declaring that, under the law of that country, persons generally or a specified person could or could not, either generally or in specified proceedings and either generally or in specified circumstances, be required —

(a) to answer a specified question; or

(b) to produce a specified thing;

"foreign offence" means a foreign drug trafficking offence or a foreign serious offence;

"foreign serious offence" means an offence (other than a foreign drug trafficking offence) —

(a) against the law of a foreign country stated in a certificate purporting to be issued by or on behalf of the government of that country; and

(b) that consists of or includes conduct which, if it had occurred in Singapore, would have constituted a serious offence;

"instrumentality forfeiture order" means an order made by a court of a foreign country for the forfeiture and destruction of, or the forfeiture and other disposal of —

(a) any drug or other substance in respect of which an offence against the corresponding drug law of that country has been committed; or

(b) property which was used in connection with the commission of such an offence,

that is made on or after the appointed date for that country;

"items subject to legal privilege" means —

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

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

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

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

(ii) in connection with or in contemplation of judicial proceedings and for the purposes of such proceedings,

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

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

"Monetary Authority of Singapore" means the Monetary Authority of Singapore established under section 3 of the Monetary Authority of Singapore Act (Cap. 186);

"premises" includes —

- (a) a structure (whether or not movable or offshore), building, tent, vehicle, vessel, hovercraft or aircraft;
- (b) a place (whether or not enclosed or built upon); and
- (c) a part of premises (including premises of a kind referred to in paragraph (a) or (b));

"prescribed foreign country" means a foreign country declared by the Minister, by an order made under section 17 (1), as a prescribed foreign country;

"process" means any summons, warrant, order or other document in respect of a criminal matter that is issued —

- (a) out of any court of Singapore or by any Judge, District Judge, Magistrate, the Registrar or Deputy Registrar or an Assistant Registrar of the Supreme Court, or the Registrar or a Deputy Registrar of the Subordinate Courts; or
- (b) out of any court of a foreign country or by any judge, magistrate or officer of such a court,

as the case may be;

"serious offence" means —

- (a) any of the offences specified in the Second Schedule to the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap. 65A);
- (b) conspiracy to commit any of those offences;
- (c) inciting another to commit any of those offences;
- (d) attempting to commit any of those offences; or
- (e) aiding, abetting, counselling or procuring the commission of any of those offences;

"Singapore offence" means a drug trafficking offence or a serious offence;

"Singapore confiscation order" means a confiscation order within the meaning of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act;

"thing" includes material.

(2) For the purposes of this Act —

(a) a reference to a foreign country includes a reference to —

- (i) a territory of that country, other than a territory that is itself a prescribed foreign country; and
- (ii) a ship or aircraft of, or registered in, that country; and

(b) a reference to the law of a foreign country includes a reference to the law in force in any part of that country.

(3) In the definitions of "Singapore confiscation order" and "foreign confiscation order", a reference to an order includes an order, decree, direction or judgment, or any part thereof, howsoever described.

(4) In the definitions of "foreign confiscation order" and "instrumentality forfeiture order", a reference to the appointed date for a foreign country is a reference to —

- (a) in the case of a prescribed foreign country that was declared as such before the date of commencement of the Mutual Assistance in Criminal Matters (Amendment) Act 2006, the date the order under section 17 (1) making such declaration came into force; or

(b) in any other case, the date of commencement of the Mutual Assistance in Criminal Matters (Amendment) Act 2006.

Object of Act

3. The object of this Act is to facilitate the provision and obtaining, by Singapore, of international assistance in criminal matters, including —

- (a) the provision and obtaining of evidence and things;
- (b) the making of arrangements for persons to give evidence or assist in criminal investigations;
- (c) the recovery, forfeiture or confiscation of property in respect of offences;
- (d) the restraining of dealings in property, or the freezing of assets, that may be recovered, forfeited or confiscated in respect of offences;
- (e) the execution of requests for search and seizure;
- (f) the location and identification of witnesses and suspects; and
- (g) the service of documents.

Act not to limit cooperation with international organisations, etc.

4. —(1) This Act does not prevent the provision or obtaining of international assistance in criminal matters to or from the International Criminal Police (Interpol) or any other international organisation.

(2) This Act does not prevent the provision or obtaining of international assistance in criminal matters to or from any foreign country other than assistance of a kind that may be provided or obtained under this Act.

Act not authority for extradition of person

5. This Act does not authorise the extradition or rendition, or the arrest or detention with a view to the extradition or rendition, of any person.

PART II

REQUESTS BY SINGAPORE

Division 1 — Preliminary Provisions

Application of this Part

6. A request for assistance under this Part may be made to any foreign country.

Requests to be made by Attorney-General

7. A request by Singapore for assistance under this Part may be made only by the Attorney-General.

Division 2 — Assistance in Obtaining Evidence

Requests for taking of evidence, etc.

8. —(1) The Attorney-General may request the appropriate authority of a foreign country to arrange for —

- (a) evidence to be taken in the foreign country; and
- (b) the evidence to be sent to the Attorney-General,

if the Attorney-General is satisfied that there are reasonable grounds for believing that such evidence would be relevant to any criminal proceedings in Singapore.

(2) The Attorney-General may request the appropriate authority of a foreign country —

(a) to assist in obtaining, by search and seizure if necessary, any thing in the foreign country or a photograph or copy thereof; and

(b) to arrange for the thing or the photograph or copy thereof to be sent to the Attorney-General,

if the Attorney-General is satisfied that there are reasonable grounds for believing that such thing would be relevant to a criminal matter in Singapore.

(3) Any evidence, thing or photograph or copy of a thing received by the Attorney-General pursuant to a request under subsection (1) or (2) may, subject to the provisions of the Criminal Procedure Code (Cap. 68) and the Evidence Act (Cap. 97), be admitted as evidence at any criminal proceedings to which the request relates.

(4) In estimating the weight, if any, to be attached to a statement contained in any thing received by the Attorney-General pursuant to a request made under subsection (1) which has been admitted as evidence in any criminal proceedings to which the request relates, the court shall have regard to —

(a) whether it was possible to challenge the statement by questioning the person who made it; and

(b) whether the law of the foreign country concerned allowed the parties to the criminal proceedings to be legally represented when the evidence was being taken.

DIVISION 3 — ASSISTANCE IN ARRANGING ATTENDANCE OF

PERSON IN SINGAPORE

Requests for attendance of person in Singapore

9.—(1) Where the Attorney-General is satisfied that —

(a) there are reasonable grounds to believe that a person in a foreign country is capable of giving evidence or assistance relevant to a criminal matter involving a Singapore offence; and

(b) that person consents to travel to Singapore for the purpose of giving such evidence or assistance,

the Attorney-General may request the appropriate authority of the foreign country to assist in arranging for the attendance of the person in Singapore for the purpose of giving such evidence or assistance.

(2) The Attorney-General may make arrangements with the appropriate authority of the foreign country for the purposes of —

(a) the removal of the person to Singapore;

(b) the return of the person to the foreign country; and

(c) other relevant matters.

Penalty not to be imposed for refusal to consent

10. Where, pursuant to section 9, the Attorney-General requests the assistance of the appropriate authority of a foreign country in arranging the attendance, in Singapore, of any person, the person to whom the request relates shall not be subject to any penalty or liability or otherwise prejudiced in law by reason only of that person's refusal or failure to consent to attend as requested.

Immunities and privileges

11.—(1) A person who is in Singapore pursuant to a request made under section 9 shall not —

(a) be detained, prosecuted or punished in Singapore for any offence that is alleged to have been committed, or that was committed, before the person's departure from the foreign country concerned pursuant to the request;

(b) be subjected to any civil suit in respect of any act or omission that is alleged to have occurred, or that had occurred, before the person's departure from the foreign country pursuant to the request, being a civil suit to which the person could not be subjected if that person was not in Singapore; or

(c) be required to give evidence or assistance in relation to any criminal matter in Singapore other than the criminal matter to which the request relates.

(2) Subsection (1) ceases to apply if —

(a) the person has left Singapore; or

(b) the person has had the opportunity of leaving Singapore and has remained in Singapore otherwise than for —

(i) the purpose to which the request relates; or

(ii) the purpose of giving evidence or assistance in a criminal matter in Singapore certified by the Attorney-General, in writing, to be a criminal matter in which it is desirable that the person gives evidence or assistance.

(3) A certificate given by the Attorney-General under subsection (2) (b) (ii) has effect from the day specified in the certificate, which may be a day before the day on which the certificate is given.

Limitation on use of statement

12. Where —

(a) a person is in Singapore pursuant to a request made under section 9; and

(b) the person has made a statement in relation to the criminal matter to which the request relates or in relation to a criminal matter certified by the Attorney-General under section 11 (2) (b) (ii),

that statement —

(i) shall not be admitted or otherwise used in any prosecution of the person for an offence against the law of Singapore (other than for the offence of perjury, or contempt of court, in relation to the giving of that evidence) unless the appropriate authority of the foreign country concerned consents to its being so used; but

(ii) may be admitted or used against him in any criminal proceedings in Singapore —

(A) for the purpose of impeaching his credibility; or

(B) as evidence of any fact stated in that statement, of which direct oral evidence by him would be admissible,

if in giving evidence he makes a statement inconsistent with that statement.

Division 4 — Assistance in Enforcing Singapore Confiscation Orders

Requests for enforcement of Singapore confiscation order

13. —(1) The Attorney-General may request the appropriate authority of a foreign country to make arrangements —

(a) for the enforcement and satisfaction of a Singapore confiscation order; or

(b) where a Singapore confiscation order may be made in criminal proceedings which have been or are to be instituted in Singapore, to restrain dealing in any property against which the order may be enforced or which may be available to satisfy the order,

if the Attorney-General is satisfied that there are reasonable grounds for believing that some or all of the property concerned is located in that country.

(2) Where —

- (a) the Singapore confiscation order requires the payment of a specified amount; and
- (b) property is recovered in a foreign country pursuant to a request under subsection (1),

that specified amount shall be reduced by the value of property so recovered.

(3) A certificate purporting to be issued by or on behalf of the appropriate authority of a foreign country stating —

- (a) that property has been recovered in the foreign country pursuant to a request under subsection (1); or
- (b) the value of the property or the date on which it was recovered,

shall, in any judicial proceedings, be admissible as evidence of the matter so stated.

(4) Where the value of property recovered is expressed in a currency other than that of Singapore, the extent to which the amount payable under the Singapore confiscation order is to be reduced under subsection (3) shall be calculated on the basis of the exchange rate prevailing on the date on which the property was recovered in the foreign country concerned.

(5) For the purposes of subsection (4), a certificate purporting to be issued by the Monetary Authority of Singapore and stating the exchange rate prevailing on a specified date shall be admissible in any judicial proceedings as evidence of the matter so stated.

Division 5 — Assistance in Locating or Identifying Persons

Assistance in locating or identifying persons

14. Where the Attorney-General is satisfied that there are reasonable grounds for believing that there is, in any foreign country, a person who —

- (a) is or might be concerned in or affected by; or
- (b) could give or provide evidence or assistance relevant to,

any criminal matter in Singapore, the Attorney-General may request that country to assist in locating or, if the person's identity is unknown, in identifying and locating that person.

Division 6 — Assistance in Service of Process

Assistance in service of process

15. The Attorney-General may request the appropriate authority of a foreign country to assist in effecting service of any process where the Attorney-General is satisfied that, for the purposes of, or in connection with, any criminal matter in Singapore, it is necessary or desirable to serve that process on a person or authority in that country.

PART III**REQUESTS TO SINGAPORE****Division 1 — Preliminary Provisions****Application of this Part**

16. —(1) Subject to the provisions of this Part —

(a) assistance under sections 21 and 27 (1) and Divisions 7 and 8 may be provided to any foreign country; and

(b) assistance under section 27 (2) and Divisions 2 (other than section 21), 3, 5 and 6 may only be provided to any prescribed foreign country.

(2) Notwithstanding subsection (1) (b) but subject to the provisions of this Part, any assistance referred to in that provision may be provided to a foreign country that is not a prescribed foreign country if the appropriate authority of that country has given an undertaking to the Attorney-General that that country will comply with a future request by Singapore to that country for similar assistance in a criminal matter involving an offence that corresponds to the foreign offence for which assistance is sought.

(3) The foreign country referred to in subsection (2) shall be deemed a prescribed foreign country for the purposes of the relevant provisions of this Part and (if applicable) the Schedule.

Prescribed foreign countries

17. —(1) The Minister may, for the purposes of this Part, by order declare a foreign country as a prescribed foreign country if there is in force a treaty, memorandum of understanding or other agreement between Singapore and that country under which that country has agreed to provide assistance in criminal matters to Singapore.

(2) An order under subsection (1) may provide that the provisions of this Part shall apply to the foreign country subject to such conditions, exceptions or qualifications as are specified in the order, and in that event the provisions of this Part shall apply accordingly.

(3) The Minister may by a subsequent order vary or revoke any order previously made under this section.

Assistance may be subject to conditions

18. Assistance under this Part may be provided to a foreign country subject to such conditions as the Attorney-General determines in any particular case or class of cases.

Requests to be made to Attorney-General

19. —(1) Every request by a foreign country to Singapore for assistance under this Part shall be made to the Attorney-General.

(2) Every request shall —

(a) specify the purpose of the request and the nature of the assistance being sought;

(b) identify the person or authority that initiated the request; and

(c) be accompanied by —

(i) a certificate from the appropriate authority of that country that the request is made in respect of a criminal matter within the meaning of this Act;

(ii) a description of the nature of the criminal matter and a statement setting out a summary of the relevant facts and laws;

(iii) where the request relates to —

- (A) the location of a person who is suspected to be involved in or to have benefited from the commission of an offence; or
- (B) the tracing of property that is suspected to be connected with an offence, the name, identity, nationality, location or description of that person, or the location and description of the property, if known, and a statement setting forth the basis for suspecting the matter referred to in sub-paragraph (A) or (B);
- (iv) a description of the offence to which the criminal matter relates, including its maximum penalty;
- (v) details of the procedure that that country wishes to be followed by Singapore in giving effect to the request, including details of the manner and form in which any information or thing is to be supplied to that country pursuant to the request;
- (vi) where the request is for assistance relating to an ancillary criminal matter and judicial proceedings to obtain a foreign confiscation order have not been instituted in that country, a statement indicating when they are likely to be instituted;
- (vii) a statement setting out the wishes of that country concerning the confidentiality of the request and the reason for those wishes;
- (viii) details of the period within which that country wishes the request to be met;
- (ix) if the request involves a person travelling from Singapore to that country, details of allowances to which the person will be entitled, and of the arrangements for accommodation for the person while he is in that country pursuant to the request;
- (x) any other information required to be included with the request under any treaty, memorandum of understanding or other agreement between Singapore and that country; and
- (xi) any other information that may assist in giving effect to the request or which is required under the provisions of this Act.

Refusal of assistance

20. —(1) A request by a foreign country for assistance under this Part shall be refused if, in the opinion of the Attorney-General —

- (a) the appropriate authority of that country has, in respect of that request, failed to comply with the terms of any treaty, memorandum of understanding or other agreement between Singapore and that country;
- (b) the request relates to the investigation, prosecution or punishment of a person for an offence that is, or is by reason of the circumstances in which it is alleged to have been committed or was committed, an offence of a political character;
- (c) the request relates to the investigation, prosecution or punishment of a person in respect of an act or omission that, if it had occurred in Singapore, would have constituted an offence under the military law applicable in Singapore but not also under the ordinary criminal law of Singapore;
- (d) there are substantial grounds for believing that the request was made for the purpose of investigating, prosecuting, punishing or otherwise causing prejudice to a person on account of the person's race, religion, sex, ethnic origin, nationality or political opinions;
- (e) the request relates to the investigation, prosecution or punishment of a person for an offence in a case where the person —
 - (i) has been convicted, acquitted or pardoned by a competent court or other authority in that country; or

- (ii) has undergone the punishment provided by the law of that country, in respect of that offence or of another offence constituted by the same act or omission as the first-mentioned offence;
 - (f) the request relates to the investigation, prosecution or punishment of a person in respect of an act or omission that, if it had occurred in Singapore, would not have constituted a Singapore offence;
 - (g) the offence to which the request relates is not an offence of sufficient gravity;
 - (h) the thing requested for is of insufficient importance to the investigation or could reasonably be obtained by other means;
 - (i) it is contrary to public interest to provide the assistance;
 - (j) the appropriate authority fails to undertake that the thing requested for will not be used for a matter other than the criminal matter in respect of which the request was made, except with the consent of the Attorney-General;
 - (k) in the case of a request for assistance under Division 2 or 6, the appropriate authority fails to undertake to return to the Attorney-General, upon his request, any thing obtained pursuant to the request upon completion of the criminal matter in respect of which the request was made; or
 - (l) the provision of the assistance could prejudice a criminal matter in Singapore.
- (2) A request by a foreign country for assistance under this Part may be refused by the Attorney-General —
- (a) pursuant to the terms of any treaty, memorandum of understanding or other agreement between Singapore and that country;
 - (b) if, in the opinion of the Attorney-General, the provision of the assistance would, or would be likely to, prejudice the safety of any person (whether in Singapore or elsewhere);
 - (c) if, in the opinion of the Attorney-General, the provision of the assistance would impose an excessive burden on the resources of Singapore; or
 - (d) if, in the case of any assistance under sections 21 and 27 (1) and Divisions 7 and 8, that country is not declared as a prescribed foreign country under section 17 and the appropriate authority of that country fails to give an undertaking to the Attorney-General that that country will comply with a future request by Singapore to that country for similar assistance in a criminal matter involving an offence that corresponds to the foreign offence for which assistance is sought.

Division 2 — Assistance in Obtaining Evidence

Taking of evidence for criminal proceedings

21. —(1) Where a request is made by the appropriate authority of a foreign country that evidence be taken in Singapore for the purposes of any criminal proceedings pending in a court in the foreign country, the Attorney-General may by notice in writing, subject to such conditions as the Attorney-General may specify in the notice, authorise a Magistrate to take the evidence and transmit the evidence to the appropriate authority.

(2) Upon receipt of the notice made under subsection (1), the Magistrate shall —

- (a) take the evidence of each witness appearing before him to give evidence in relation to the criminal matter as if the witness were giving evidence on a charge against a person for an offence against the law of Singapore;
- (b) cause the evidence to be reduced in writing and certify at the end of that writing that the evidence was taken by him; and

(c) cause the writing, so certified, to be sent to the Attorney-General.

(3) The proceedings may be conducted in the presence or absence of the person to whom the criminal proceedings in the foreign country relates or of his legal representative (if any).

(4) The certificate referred to in subsection (2) shall state whether the person to whom the criminal proceedings in the foreign country relates or his legal representative (if any) was present at the proceedings.

(5) The laws for the time being in force with respect to the compelling of persons to attend before a Magistrate, and to give evidence, answer questions and produce documents, upon the hearing of a charge against a person for an offence against the law of Singapore shall apply, so far as they are capable of application, with respect to the compelling of persons to attend before a Magistrate, and to give evidence, answer questions and produce documents, for the purposes of this section.

(6) For the purposes of this section, the person to whom the criminal proceedings in the foreign country relates is competent, but not compellable, to give evidence.

(7) No person who is required under this section to give evidence for the purposes of any criminal proceedings in a foreign country shall be required to answer any question that the person could not be compelled to answer in those proceedings in that country.

(8) A duly certified foreign law immunity certificate is admissible in proceedings under this section as prima facie evidence of the matters stated in the certificate.

(9) Evidence taken under this section shall not be admissible in evidence, or otherwise used, for the purposes of any judicial proceedings, disciplinary proceedings, or other proceedings, in Singapore except a prosecution of the person who gave that evidence for the offence of perjury, or contempt of court, in respect of that evidence.

Production orders for criminal matters

22. —(1) Where a request is made by the appropriate authority of a prescribed foreign country that any particular thing or description of thing in Singapore be produced for the purposes of any criminal matter in that country, the Attorney-General or a person duly appointed by him may apply to the court for an order under subsection (3).

(2) An application for an order under subsection (3) in relation to any thing in the possession of a financial institution shall be made only to the High Court.

(3) If, on such an application, the court is satisfied that the conditions referred to in subsection (4) are fulfilled, it may make an order that the person who appears to the court to be in possession of the thing to which the application relates shall —

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

(b) give an authorised officer access to the thing,

within 7 days of the date of the order or such other period as the court considers appropriate.

(4) The conditions referred to in subsection (3) are —

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

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

(i) is likely to be of substantial value (whether by itself or together with another thing) to the criminal matter in respect of which the application was made; and

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

(c) that the court is satisfied that it is not contrary to the public interest for the thing to be produced or that access to it be given.

(5) The proceedings referred to in subsection (3) may be conducted in the presence or absence of the person to whom the criminal proceedings in the foreign country relates or of his legal representative (if any).

(6) No person who is required by an order under this section to produce or make available any thing for the purposes of any criminal proceedings in a foreign country shall be required to produce any thing that the person could not be compelled to produce in the proceedings in that country.

(7) A duly certified foreign law immunity certificate is admissible in proceedings under this section as prima facie evidence of the matters stated in the certificate.

(8) Proceedings under subsection (3) shall be heard in camera.

Supplementary provisions regarding production orders

23.—(1) Where a court orders a person under section 22 to give an authorised officer access to any thing on any premises, it may, on the same or a subsequent application of an authorised officer, order any person who appears to him to be entitled to grant entry to the premises to allow an authorised officer to enter the premises to obtain access to the thing.

(2) Where any material to which an order under section 22 relates consists of information contained in or accessible by means of any data equipment —

(a) an order under section 22 (3) (a) shall have effect as an order to produce the material in a form which can be taken away and which is visible and legible; and

(b) an order under section 22 (3) (b) shall have effect as an order to give access to the material in a form which is visible and legible.

(3) A person is not excused from producing or making available any thing by an order under section 22 on the ground that —

(a) the production or making available of the thing might tend to incriminate the person or make the person liable to a penalty; or

(b) the production or making available of the thing would be in breach of an obligation (whether imposed by law or otherwise) of the person not to disclose the existence of the contents of the thing.

(4) An order under section 22 —

(a) shall not confer any right to the production of, or of access to, items subject to legal privilege; and

(b) shall have effect notwithstanding any obligations as to secrecy or other restrictions upon the disclosure of information imposed by statute or otherwise.

(5) An authorised officer may photograph or make copies of any thing produced or to which access is granted pursuant to an order made under section 22.

(6) Where an authorised officer takes possession of any thing under an order made under section 22 or takes any photograph or makes any copy of the thing under subsection (5), he may retain the thing, photograph or copy for a period of up to one month pending a written direction from the Attorney-General as to the manner in which the thing, photograph or copy is to be dealt with (which may include a direction that the thing, photograph or copy be sent to the appropriate authority of the foreign country concerned).

(7) Rules of Court may provide for —

(a) the discharge and variation of orders under section 22; and

- (b) proceedings relating to such orders.
- (8) In this section, “data equipment” means any equipment which —
- (a) automatically processes information;
 - (b) automatically records or stores information;
 - (c) can be used to cause information to be automatically recorded, stored or otherwise processed on other equipment (wherever situated);
 - (d) can be used to retrieve information whether the information is recorded or stored in the equipment itself or in other equipment (wherever situated).

Immunities

24. —(1) No civil or criminal action, other than a criminal action for an offence under section 25, shall lie against any person for —

- (a) producing or giving access to any thing if he had produced or given access to the thing in good faith in compliance with an order made against him under section 22; or
- (b) doing or omitting to do any act if he had done or omitted to do the act in good faith and as a result of complying with such an order.

(2) Any person who complies with an order made under section 22 shall not be treated as being in breach of any restriction upon the disclosure of information or thing imposed by law, contract or rules of professional conduct.

Failure to comply with production order

25. Any person who —

- (a) without reasonable excuse contravenes or fails to comply with an order under section 22; or
- (b) in purported compliance with such an order, produces or makes available to an authorised officer any material known to the person to be false or misleading in a material particular without —
 - (i) indicating to the authorised officer that the material is false or misleading and the part that is false or misleading; or
 - (ii) providing correct information to the authorised officer if the person is in possession of, or can reasonably acquire, the correct information,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both.

Division 3 — Assistance in Arranging Attendance of Person in Foreign Country

Requests for attendance of person in foreign country

26. —(1) The appropriate authority of a prescribed foreign country may request the Attorney-General to assist in arranging the attendance, in that country, of a person in Singapore for the purposes of giving or providing evidence or assistance in relation to a criminal matter in that country.

- (2) Where, on receipt of a request referred to in subsection (1), the Attorney-General is satisfied that —
- (a) the request relates to a criminal matter in the foreign country involving a foreign offence;
 - (b) there are reasonable grounds to believe that the person concerned is capable of giving or providing evidence or assistance relevant to the criminal matter;
 - (c) the person concerned has freely consented to attend as requested;

- (d) the person is not —
- (i) a prisoner within the meaning of section 2 of the Prisons Act (Cap. 247); or
 - (ii) otherwise under detention in a prescribed institution; and
- (e) the appropriate authority has given adequate undertakings in respect of the matters referred to in subsection (3),

the Attorney-General may assist in making arrangements for the travel of the person to the foreign country.

(3) The matters in relation to which undertakings are to be given by the appropriate authority are —

- (a) that the person shall not —
- (i) be detained, prosecuted or punished for any offence against the law of the foreign country that is alleged to have been committed, or that was committed, before the person's departure from Singapore;
 - (ii) be subjected to any civil suit in respect of any act or omission of the person that is alleged to have occurred, or that had occurred, before the person's departure from Singapore, being a civil suit to which the person could not be subjected if that person was not in the foreign country; or
 - (iii) be required to give evidence or assistance in relation to any criminal matter in the foreign country other than the criminal matter to which the request relates,

unless —

- (A) the person has left the foreign country; or
- (B) the person has had the opportunity of leaving the foreign country and has remained in the foreign country otherwise than for the purpose of giving or providing evidence or assistance in relation to the criminal matter to which the request relates;

(b) that any evidence given by the person in the criminal proceedings to which the request relates (if any) will be inadmissible or otherwise disqualified from use in the prosecution of the person for an offence against the law of the foreign country, other than for the offence of perjury, or contempt of court, in relation to the giving of that evidence;

(c) that the person will be returned to Singapore in accordance with arrangements agreed to by the Attorney-General; and

(d) such other matters as the Attorney-General thinks appropriate.

(4) Where, pursuant to this section, the appropriate authority of a foreign country requests the assistance of the Attorney-General in arranging the attendance, in that country, of any person, the person to whom the request relates shall not be subject to any penalty or liability or otherwise prejudiced in law by reason only of that person's refusal or failure to consent to attend as requested.

Division 4 — Custody of Persons in Transit through Singapore

Custody of persons in transit

27. —(1) A person who is in custody in a foreign country and has consented to give evidence or assistance in relation to a criminal matter in another foreign country may be transported through Singapore, in the custody of another person, to that other foreign country, if the first-mentioned foreign country gives prior notice of this to the Attorney-General.

(2) Where one of the foreign countries is a prescribed foreign country, the person being transported through Singapore in custody may, if an aircraft, vessel or train by which the person is being transported

lands or calls in Singapore, be kept in such custody in Singapore with such authorised officer as the Attorney-General directs in writing until his transportation is continued.

(3) Where —

- (a) a person is being held in custody pursuant to a direction under subsection (2); and
- (b) the person's transportation is not, in the opinion of the Attorney-General, continued within a reasonable time,

the Attorney-General may direct that the person be transported in custody to the foreign country from which the person was first transported, and such direction shall be sufficient authority for that person's removal from Singapore by such means as the Attorney-General directs.

Escape from custody

28. —(1) Any person who, being a person held in custody pursuant to a direction under section 27 (2), escapes from custody shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both.

(2) Any police officer may, without warrant, arrest a person if the police officer has reasonable grounds to believe that the person was a person referred to in subsection (1).

(3) A person who has been arrested shall be returned to custody in accordance with the direction.

Division 5 — Enforcement of Foreign Confiscation Order, etc.

Requests for enforcement of foreign confiscation order

29. —(1) The appropriate authority of a prescribed foreign country may request the Attorney-General to assist in —

- (a) the enforcement and satisfaction of a foreign confiscation order, made in any judicial proceedings instituted in that country, against property that is reasonably believed to be located in Singapore; or
- (b) where a foreign confiscation order may be made in judicial proceedings which have been or are to be instituted in that country, the restraining of dealing in any property that is reasonably believed to be located in Singapore and against which the order may be enforced or which may be available to satisfy the order.

(2) On receipt of a request referred to in subsection (1), the Attorney-General may —

- (a) in the case of subsection (1) (a), act or authorise the taking of action under section 30 and the provisions of the Schedule; or
- (b) in the case of subsection (1) (b), act or authorise the taking of action under the provisions of the Schedule,

and in that event the provisions of the Schedule shall apply accordingly.

(3) For the purposes of this section and the provisions of the Schedule, judicial proceedings that are criminal proceedings are instituted in a prescribed foreign country when a person is produced and charged in court with a foreign offence.

Registration of foreign confiscation order

30. —(1) The Attorney-General or a person authorised by him may apply to the High Court for the registration of a foreign confiscation order.

(2) The High Court may, on an application referred to in subsection (1), register the foreign confiscation order if it is satisfied —

- (a) that the order is in force and not subject to further appeal in the foreign country;
 - (b) where a person affected by the order did not appear in the proceedings, that the person received notice of the proceedings in sufficient time to enable him to defend them; and
 - (c) that enforcing the order in Singapore would not be contrary to the interests of justice.
- (3) For the purposes of subsection (2), “appeal” includes —
- (a) any proceedings by way of discharging or setting aside a judgment; and
 - (b) an application for a new trial or a stay of execution.
- (4) The High Court shall cancel the registration of a foreign confiscation order if it appears to the Court that the order has been satisfied by payment of the amount due under it or by the person against whom it was made serving imprisonment in default of payment or other means.
- (5) Where an amount of money (if any) payable or remaining to be paid under a foreign confiscation order registered in the High Court under this section is expressed in a currency other than that of Singapore, the amount shall, for the purpose of any action taken in relation to that order, be converted into the currency of Singapore on the basis of the exchange rate prevailing on the date of registration of the order.
- (6) For the purposes of subsection (5), a certificate issued by the Monetary Authority of Singapore and stating the exchange rate prevailing on a specified date shall be admissible in any judicial proceedings as evidence of the facts so stated.

Proof of orders, etc., of prescribed foreign country

31. —(1) For the purposes of sections 29 and 30 and the Schedule —

- (a) any order made or judgment given by a court of a prescribed foreign country purporting to bear the seal of that court or to be signed by any person in his capacity as a judge, magistrate or officer of the court, shall be deemed without further proof to have been duly sealed or, as the case may be, to have been signed by that person; and
 - (b) a document, duly authenticated, that purports to be a copy of any order made or judgment given by a court of a prescribed foreign country shall be deemed without further proof to be a true copy.
- (2) A document is duly authenticated for the purpose of subsection (1) (b) if it purports to be certified by any person in his capacity as a judge, magistrate or officer of the court in question or by or on behalf of the appropriate authority of that country.

Evidence in relation to proceedings and orders in prescribed foreign country

32. —(1) For the purposes of sections 29 and 30 and the Schedule, a certificate purporting to be issued by or on behalf of the appropriate authority of a prescribed foreign country stating that —

- (a) judicial proceedings have been instituted and have not been concluded, or that judicial proceedings are to be instituted, in that country;
- (b) a foreign confiscation order is in force and is not subject to appeal;
- (c) all or a certain amount of the sum payable under a foreign confiscation order remains unpaid in that country, or that other property recoverable under a foreign confiscation order remains unrecovered in that country;
- (d) a person has been notified of any judicial proceedings in accordance with the law of that country; or
- (e) an order (however described) made by a court of that country has the purpose of —
 - (i) recovering, forfeiting or confiscating —

(A) payments or other rewards received in connection with an offence against the law of that country that is a foreign offence, or the value of the payments or rewards; or

(B) property derived or realised, directly or indirectly, from payments or other rewards received in connection with such an offence or the value of such property; or

(ii) forfeiting or destroying, or forfeiting or otherwise disposing of, any drug or other substance in respect of which an offence against the corresponding drug law of that country has been committed, or which was used in connection with the commission of such an offence,

shall, in any proceedings in a court, be admissible as evidence of the facts so stated.

(2) In any such proceedings, a statement contained in a duly authenticated document, which purports to have been received in evidence or to be a copy of a document so received, or to set out or summarise evidence given in proceedings in a court in a prescribed foreign country, shall be admissible as evidence of any fact stated therein.

(3) A document is duly authenticated for the purposes of subsection (2) if it purports to be certified by any person in his capacity as a judge, magistrate or officer of the court in the prescribed foreign country, or by or on behalf of an appropriate authority of that country.

(4) Nothing in this section shall prejudice the admissibility of any evidence, whether contained in any document or otherwise, which is admissible apart from this section.

Division 6 — Assistance in Search and Seizure

Request for search and seizure

33. —(1) The appropriate authority of a prescribed foreign country may request the Attorney-General to assist in obtaining any thing by search or seizure.

(2) Where, on receipt of a request referred to in subsection (1), the Attorney-General is satisfied that —

(a) the request relates to a criminal matter in that country in respect of a foreign offence; and

(b) there are reasonable grounds for believing that the thing to which the request relates is relevant to the criminal matter and is located in Singapore,

the Attorney-General, or an authorised officer directed by him, may apply to the court for a warrant referred to in section 34 in respect of specified premises.

(3) An application for a warrant referred to in section 34 in respect of any thing in the possession of a financial institution shall be made to the High Court.

(4) An application for a warrant referred to in section 34 in respect of any thing in the possession of a financial institution shall not be made unless that thing can be particularised.

Search warrants

34. —(1) On an application referred to in section 33, the court may issue a warrant authorising an authorised officer to enter and search the specified premises if the court is satisfied that —

(a) an order made under section 22 in relation to any thing on the premises has not been complied with; or

(b) the conditions in subsection (2) are fulfilled.

(2) The conditions referred to in subsection (1) (b) are that —

- (a) there are reasonable grounds for suspecting that a specified person has carried on or has benefited from a foreign offence;
 - (b) there are reasonable grounds for believing that the thing to which the application relates —
 - (i) is likely to be of substantial value (whether by itself or together with another thing) to the criminal matter in respect of which the application is made; and
 - (ii) does not consist of or include items subject to legal privilege; and
 - (c) the court is satisfied that it is not contrary to the public interest for the warrant to be issued.
- (3) A warrant issued under this section shall be subject to such conditions as the court may specify in the warrant.

Additional powers of person executing search warrant, etc.

35. —(1) Where an authorised officer has entered premises in the execution of a warrant issued under section 34, he may seize and retain any thing that is specified in the warrant, other than items subject to legal privilege.

(2) An authorised officer may photograph or make a copy of any thing seized under subsection (1).

(3) Where an authorised officer seizes, photographs or makes a copy of any thing under a warrant, he may retain the thing, photograph or copy for a period of up to one month pending a written direction from the Attorney-General as to the manner in which the thing, photograph or copy is to be dealt with (which may include a direction that that thing, photograph or copy be sent to the appropriate authority of the foreign country concerned).

(4) Any person who hinders or obstructs an authorised officer in the execution of a warrant issued under section 34 shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both.

Immunities

36. —(1) No civil or criminal action shall lie against any person for —

(a) producing or giving access to any thing if he had produced or given access to the thing in good faith in compliance with a warrant issued under section 34; or

(b) doing or omitting to do any act if he had done or omitted to do the act in good faith and as a result of complying with such a warrant.

(2) A person who complies with a warrant issued under section 34 shall not be treated as being in breach of any restriction upon the disclosure of information or thing imposed by law, contract or rules of professional conduct.

Division 7 — Assistance in Locating or Identifying Persons

Assistance in locating or identifying persons

37. —(1) The appropriate authority of a foreign country may request the Attorney-General to assist in locating, or identifying and locating, a person who is believed to be in Singapore.

(2) Where, on the receipt of a request made under subsection (1), the Attorney-General is satisfied that —

(a) the request relates to a criminal matter in the foreign country;

(b) there are reasonable grounds for believing that the person to whom the request relates —

(i) is or might be concerned in, or could give or provide evidence or assistance relevant to, the criminal matter; and

(ii) is in Singapore,

the Attorney-General may authorise, in writing, assistance in accordance with this section.

(3) Where, in relation to a request made under subsection (1), the Attorney-General authorises assistance in accordance with this section, the Attorney-General shall forward the request to the appropriate agency in Singapore.

(4) The agency referred to in subsection (3) shall use its best endeavours to locate or, as the case may be, identify and locate the person to whom the request relates, and shall advise the Attorney-General of the outcome of those endeavours.

(5) On receipt of such advice, the Attorney-General shall inform the appropriate authority of the result of the inquiries made pursuant to the request.

Division 8 — Assistance in Service of Process

Assistance in service of process

38. —(1) The appropriate authority of a foreign country may request the Attorney-General to assist in effecting the service of process on a person in Singapore.

(2) Where, on receipt of a request made under subsection (1), the Attorney-General is satisfied —

- (a) that the request relates to a criminal matter in that country;
- (b) that there are reasonable grounds for believing that the person to be served is in Singapore;
- (c) the country has furnished sufficient details of the consequences of a failure to comply with such process; and
- (d) where the request relates to the service of a summons to appear as a witness in that country, that that country has given an adequate undertaking in respect of the matters specified in section 39,

the Attorney-General may authorise assistance in accordance with this section.

(3) Where service is authorised under subsection (2), the Attorney-General shall direct an authorised officer or a process server of the Supreme Court to arrange service, and in such a case the authorised officer or process server shall —

- (a) use his best endeavours to have the process served —
 - (i) in accordance with procedures proposed in the request; or
 - (ii) if those procedures would be unlawful or inappropriate in Singapore, or if no procedures are so proposed, in accordance with the Rules of Court; and
- (b) if the document —
 - (i) is served, transmit to the Attorney-General for transmission to the appropriate authority a certificate by the Registrar of the Supreme Court as to service; or
 - (ii) is not served, transmit to the Attorney-General for transmission to the appropriate authority a statement by the Registrar of the Supreme Court of the reasons which prevented the service.

(4) Rules of Court may provide for —

- (a) the documents and other information to accompany the service of process; and
- (b) the form of the certificate referred to in subsection (3) (b) (i) and the statement referred to in subsection (3) (b) (ii).

Undertaking by foreign country

39. Where, pursuant to a request under section 38, the appropriate authority of a foreign country requests the assistance of the Attorney-General in effecting the service on any person of a summons to appear as a witness in that country, the Attorney-General shall, before authorising assistance in accordance with that section, obtain from the appropriate authority an undertaking that that person will not be subject to any penalty or liability or otherwise prejudiced in law by reason only of that person's refusal or failure to accept or comply with the summons, notwithstanding any contrary statement in the summons.

Penalty not to be imposed for failure to comply with summons

40. Where, pursuant to a request under section 38, the appropriate authority of a foreign country requests the assistance of the Attorney-General in effecting the service on any person of a summons to appear as a witness in that country, that person shall not be subject to any penalty or liability or otherwise prejudiced in law by reason only of that person's refusal or failure to accept or comply with the summons, notwithstanding any contrary statement in the summons.

PART IV**MISCELLANEOUS PROVISIONS****Attorney-General to give notice to Minister**

41. —(1) Unless the Minister otherwise directs, the Attorney-General shall cause a notice to be given to the Minister of every Singapore request and foreign request.

(2) A notice under subsection (1) shall —

- (a) in the case of a Singapore request, be given before the request is made;
- (b) in the case of a foreign request, be given as soon as reasonably practicable after receipt of the request and before the request is processed; and
- (c) be accompanied by —
 - (i) a copy of the request;
 - (ii) copies of all relevant documents;
 - (iii) a summary of the material facts supporting the request; and
 - (iv) such other matters and information as may be required by the Minister.

(3) Upon receipt of a notice under subsection (1), the Minister may, if he thinks that —

- (a) the taking of any action in relation to a Singapore request or foreign request is in the interests of the sovereignty, security or public order of Singapore, instruct the Attorney-General to take such action, and the Attorney-General shall comply with such instruction;
- (b) the taking of any action in relation to a Singapore request or foreign request is against the interests of the sovereignty, security or public order of Singapore, instruct the Attorney-General not to take such action, and the Attorney-General shall, notwithstanding the provisions of this Act, comply with such instruction.

(4) Where a foreign request has been complied with, the Attorney-General shall, if the Minister so requires, provide the Minister with particulars of any evidence, documents or other assistance provided pursuant to the request.

(5) In this section —

"foreign request" means a request from a foreign country to Singapore under Part III for assistance in a criminal matter;

"Singapore request" means a request by Singapore to a foreign country under Part II for assistance in a criminal matter.

Authentication of documents

42. —(1) Subject to sections 13, 31 and 32 and the rules of law relating to the admissibility of evidence, any document that is obtained, provided, or produced pursuant to a request made under this Act and that is duly authenticated is admissible in evidence in any criminal proceedings.

(2) A document is duly authenticated for the purposes of subsection (1) if —

(a) it purports to be signed or certified by a judge, magistrate, or official in or of a foreign country; and

(b) either —

(i) it is verified by the oath of a witness, or of an official of the government of that country; or

(ii) it purports to be sealed with an official or public seal of that country or of a Minister of State, or of a department or official of the government, of that country.

(3) Nothing in this section prevents the proof of any matter, or the admission in evidence of any document, in accordance with any other provision of this Act or any other law of Singapore.

Delegation

43. The Attorney-General may delegate to a public officer any of his powers under this Act.

Regulations

44. —(1) The Minister may make such regulations as are necessary or expedient to give full effect to or for carrying out the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), regulations may be made —

(a) to prescribe anything that is required or permitted to be prescribed under this Act; and

(b) to provide that any person who contravenes the regulations shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 12 months or to both.

Regulations for provision of assistance to certain bodies

45. —(1) The Minister may make regulations for the provision by Singapore of assistance in criminal matters to such international criminal tribunal as may be prescribed in order to discharge or facilitate the discharge of any obligation binding on Singapore by virtue of its being a member of an international organisation or a party to an international agreement.

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(2) Without prejudice to the generality of subsection (1), regulations may —

(a) provide for the application of the provisions of Part III to the international criminal tribunal subject to such modifications as may be specified in the regulations, including the provision of different or additional grounds for refusing assistance, providing assistance in respect of different offences, and a different manner of providing any form of assistance;

(b) notwithstanding the provisions of the Act, provide for forms of assistance other than those set out in Part III, including assistance by way of arresting any accused person, keeping him in custody and surrendering him to the international criminal tribunal;

(c) confer and impose on authorised officers powers and duties which may be necessary or expedient for the purpose of providing any assistance; and

(d) provide that any person who contravenes the regulations shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 12 months or to both.

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Rules of Court

46. Rules of Court may provide for the practice and procedure in relation to proceedings under this Act and the Schedule, including the summoning of witnesses, the production of documents, the taking of evidence on oath, the administering of oaths, the payment of expenses and allowances of witnesses.

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Amendment of Schedule

47. The Minister may, by notification in the *Gazette*, amend the Schedule.

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THE SCHEDULE

Section 29

ENFORCEMENT OF FOREIGN CONFISCATION ORDERS**PART I*****PRELIMINARY*****Interpretation**

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

"charging order" means an order made under paragraph 8 (1);

"defendant" means the person against whom, or in relation to whose property, the foreign confiscation order concerned has been or may be made;

"interest" , in relation to property, includes right;

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

"realisable property" means —

(a) where a foreign confiscation order (not being an instrumentality forfeiture order) has been made, any property in respect of which the order was made; or

(b) where a foreign confiscation order (not being an instrumentality forfeiture order) may be made in proceedings which have been, or are to be, instituted in the prescribed foreign country concerned, any property in respect of which such an order could be made.

(2) A reference to a restraint order in Part II of this Schedule is a reference to an order made under paragraph 7 (1), and a reference to a restraint order in Part III of this Schedule is a reference to an order made under paragraph 18.

(3) For the purposes of this Schedule —

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

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

(c) a reference to an interest held by a person beneficially in property includes a reference to an interest which would be held by him beneficially if the property were not so vested in his trustee in bankruptcy or liquidator; and

(d) property is transferred by one person to another if the first person transfers or grants to the other any interest in the property.

(4) For the purposes of this Schedule, judicial proceedings instituted in a prescribed foreign country that are criminal proceedings are concluded on the occurrence of one of the following events:

(a) the discontinuance of the proceedings;

(b) the acquittal of the defendant;

(c) the quashing of the defendant's conviction for the offence;

(d) the grant of a pardon in respect of the defendant's conviction for the offence;

(e) the court sentencing or otherwise dealing with the defendant in respect of his conviction for the offence without having made a foreign confiscation order;

(f) the satisfaction of a foreign confiscation order made in the proceedings, whether by payment of the amount due under the order, by the defendant serving imprisonment in default, by the recovery of all property liable to be recovered, or otherwise.

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

Application

2. This Schedule shall only apply to any matter which is the subject of a request under section 29, and in relation to which the Attorney-General has decided to act, or has authorised that action be taken, under the provisions of this Schedule.

PART II

ENFORCEMENT OF FOREIGN CONFISCATION ORDERS OTHER THAN INSTRUMENTALITY FORFEITURE ORDERS

Interpretation of this Part

3. —(1) For the purposes of this Part, the value of property (other than cash) in relation to any person holding the property —

(a) where any other person holds an interest in the property, shall be —

(i) the market value of the first-mentioned person's beneficial interest in the property; less

(ii) the amount required to discharge any incumbrance (other than a charging order) on that interest; and

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

(2) References in this Part to the value at any time (referred to in this paragraph as the material time) of a gift caught by this Schedule are references to —

(a) the value of the gift to the recipient when he received it adjusted to take account of subsequent changes in the value of money; or

(b) where sub-paragraph (3) applies, the value mentioned therein,

whichever is the greater.

(3) If at the material time the recipient holds —

(a) the property which he received (not being cash); or

(b) property which, in whole or in part, directly or indirectly represents in his hands the property which he received,

the value referred to in sub-paragraph (2) (b) shall be the value to him at the material time of the property mentioned in sub-paragraph (a) or, as the case may be, of the property mentioned in sub-paragraph (b), so far as it so represents the property which he received, but disregarding in either case any charging order.

(4) For the purposes of this Part, "foreign confiscation order" excludes an instrumentality forfeiture order.

Gifts caught by Schedule

4. —(1) A reference in this Part to a gift caught by this Schedule is a reference to a gift made, whether before, on or after 1st April 2000 —

- (a) by the defendant since the beginning of the period of 6 years ending when the judicial proceedings were instituted against him; or
- (b) by the defendant at any time, being a gift of property which is or is part of the benefits derived by the defendant from criminal conduct.

(2) For the purposes of this Part —

- (a) the circumstances in which the defendant is to be treated as making a gift include those where he transfers property to another person, directly or indirectly, for a consideration the value of which is significantly less than the value of the consideration provided by the defendant; and
- (b) in those circumstances, this section shall apply as if the defendant had made a gift of such share in the property as bears to the whole property the same proportion as the difference between the values referred to in sub-paragraph (a) bears to the value of the consideration provided by the defendant.

(3) For the purposes of sub-paragraph (1), “criminal conduct” means —

- (a) doing or being concerned in any act constituting a foreign offence;
- (b) entering into or being otherwise concerned in, whether in Singapore or elsewhere, an arrangement whereby —
 - (i) the retention or control by or on behalf of another person of that other person’s benefits of an act referred to in sub-paragraph (a) is facilitated; or
 - (ii) the benefits from an act referred to in sub-paragraph (a) by another person are used to secure funds that are placed at that other person’s disposal, directly or indirectly, or are used for that other person’s benefit to acquire property by way of investment or otherwise;
- (c) the concealing or disguising by a person of any property which is, or in part, directly or indirectly represents, his benefits from an act referred to in sub-paragraph (a); or
- (d) the conversion or transfer by a person of any property referred to in sub-paragraph (c) or the removal of such property from the jurisdiction.

Interest on amounts to be recovered under foreign confiscation orders

5. —(1) Where a fixed amount is payable under a foreign confiscation order which has been registered under section 30 of this Act, that amount shall be treated as a judgment debt and the provisions of any written law relating to the payment of interest on judgment debts shall apply to it.

(2) For the purposes of sub-paragraph (1), the date of registration of the order shall be treated as the date of the judgment debt.

(3) Where by virtue of sub-paragraph (1) any interest accrues on the amount payable under a foreign confiscation order, the defendant shall be liable to pay that interest and the amount of the interest shall for the purposes of enforcement be treated as part of the amount payable under the foreign confiscation order.

Cases in which restraint orders and charging orders may be made

6. —(1) The powers conferred on the High Court by paragraph 7 (1) to make a restraint order and by paragraph 8 (1) to make a charging order are exercisable where —

- (a) judicial proceedings have been instituted in a prescribed foreign country;
- (b) the proceedings have not been concluded; and
- (c) either a foreign confiscation order has been made in the proceedings or it appears to the High Court that there are reasonable grounds for believing that such an order may be made in them.

(2) Those powers are also exercisable where the High Court is satisfied that judicial proceedings are to be instituted in a prescribed foreign country and that there are reasonable grounds for believing that a foreign confiscation order may be made in them.

(3) Where the High Court has made an order under paragraph 7 (1) or 8 (1) by virtue of sub-paragraph (2), the Court shall discharge the order if the proposed judicial proceedings are not instituted within such time as the Court considers reasonable and which shall not in any event exceed a period of 3 months.

(4) The High Court shall not make an order under paragraph 7 (1) or 8 (1) if it is of the opinion that it is contrary to the public interest for the order to be made.

Restraint orders

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

(2) A restraint order may apply —

(a) to all realisable property held by a specified person, whether the property is described in the restraint order or not; and

(b) to all realisable property held by a specified person, being property transferred to him after the making of the restraint order.

(3) This section shall not have effect in relation to any property for the time being subject to a charge under paragraph 8.

(4) A restraint order —

(a) may be made only on an application by the Attorney-General or, in a case where a foreign confiscation order has been registered under section 30, by a receiver appointed under paragraph 10 or the Attorney-General;

(b) may be made on an ex parte application to a Judge in chambers; and

(c) notwithstanding anything in Order 11 of the Rules of Court, may provide for service on, or the provision of notice to, persons affected by the order in such manner as the High Court may direct.

(5) A restraint order may be discharged or varied in relation to any property.

(6) A restraint order shall be discharged when judicial proceedings in relation to which the order was made are concluded.

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

(a) to take possession of any realisable property; and

(b) in accordance with the directions of the Court, to manage or otherwise deal with any property in respect of which he is appointed,

subject to such exceptions and conditions as may be specified by the Court.

(8) The High Court may require any person having possession of property in respect of which the receiver is appointed under sub-paragraph (7) to give possession of it to the Public Trustee or such receiver.

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

(10) Property seized under sub-paragraph (9) shall be dealt with in accordance with the directions of the High Court.

Charging orders

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

(a) where a fixed amount is payable under a foreign confiscation order, of an amount not exceeding the amount so payable; or

(b) in any other case, of an amount equal to the value from time to time of the property charged.

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

(3) A charging order may be made —

(a) only on an application by the Attorney-General, or in a case where a foreign confiscation order has been registered under section 30, a receiver appointed under paragraph 10 or the Attorney-General; and

(b) on an ex parte application to a Judge in chambers.

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

(a) any interest in realisable property, being an interest held beneficially by the defendant or by a person to whom the defendant has, directly or indirectly, made a gift caught by this Schedule —

(i) in any asset of a kind mentioned in sub-paragraph (5); or

(ii) under any trust; or

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

(5) The assets referred to in sub-paragraph (4) are —

(a) immovable property in Singapore; or

(b) securities of any of the following kinds:

(i) securities of the Government or of any public authority;

(ii) stock of any body incorporated in Singapore;

(iii) stock of any body incorporated outside Singapore or of any country or territory outside Singapore, being stock registered in a register kept at any place within Singapore; and

(iv) units of any unit trust in respect of which a register of the unit holders is kept at any place within Singapore.

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

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

(8) The High Court may make an order discharging or varying the charging order and shall make an order discharging the charging order if the judicial proceedings against the defendant in the prescribed foreign country are concluded or the amount, payment of which is secured by the charge, is paid into the Court.

Charging orders: supplementary provisions

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

(2) A caveat may be lodged under the Land Titles Act (Cap. 157) or an entry may be made under the Registration of Deeds Act (Cap. 269), as the case may be, in respect of a charging order.

(3) Subject to any provision made under paragraph 12 or by the Rules of Court, a charge imposed by a charging order shall have the like effect and shall be enforceable in the same manner as an equitable charge created by the person holding the beneficial interest or, as the case may be, the trustees by writing under their hand.

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

Realisation of property

10. —(1) Where a foreign confiscation order has been registered in the High Court under section 30, the High Court may, on the application of the Attorney-General, exercise the powers conferred by sub-paragraphs (2) to (7).

(2) In respect of any sum of money payable under the foreign confiscation order, the High Court may make a garnishee order as if the sum were due to the Government in pursuance of a judgment or order of the High Court, but any such order shall direct that the sum payable be paid to the High Court.

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

(4) The High Court may empower the Public Trustee or any receiver appointed under sub-paragraph (3) or paragraph 7 or in pursuance of a charging order —

(a) to enforce any charge imposed under paragraph 8 on realisable property or on interest or dividends payable in respect of such property; and

(b) in relation to any realisable property other than property for the time being subject to a charge under paragraph 8, to take possession of the property subject to such conditions or exceptions as may be specified by the Court.

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

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

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

(8) Sub-paragraphs (5) to (7) shall not apply to property for the time being subject to a charge under paragraph 8.

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

Application of proceeds of realisation and other sums

11. —(1) Subject to sub-paragraph (2), the following sums in the hands of the Public Trustee or any receiver pursuant to paragraph 7 or 10 or in pursuance of a charging order, that is —

(a) the proceeds of the enforcement of any charge imposed under paragraph 8;

(b) the proceeds of the realisation, other than by the enforcement of such a charge, of any property under paragraph 7 or 10; and

(c) any other sums, being property held by the defendant,

shall, after such payments (if any) as the High Court may direct have been made out of those sums, be paid to the Court and applied for the purposes specified in sub-paragraph (2) and in the order so specified.

(2) Where a fixed amount is payable under the foreign confiscation order and after that amount has been fully paid, any other sums remain in the hands of the Public Trustee or receiver, he shall distribute those sums —

(a) among such of those who held property which has been realised under this Act; and

(b) in such proportions,

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

(3) Any sums remaining after all the payments required to be made under sub-paragraphs (1) and (2) have been made shall be paid into the Consolidated Fund.

Exercise of powers by High Court, etc.

12. —(1) This paragraph shall apply to the powers conferred on the High Court by paragraphs 7 to 11 or on the Public Trustee or any receiver pursuant to paragraph 7 or 10 or in pursuance of a charging order.

(2) Subject to sub-paragraphs (3) to (6), the powers shall be exercised with a view to recovering property which is liable to be recovered under a foreign confiscation order registered under section 30 or, as the case may be, with a view to making available for recovery property which may become liable to be recovered under any foreign confiscation order which may be made.

(3) In the case of realisable property held by a person to whom the defendant has, directly or indirectly, made a gift caught by this Schedule, the powers shall be exercised with a view to realising no more than the value for the time being of the gift.

(4) Except in the case of realisable property referred to in sub-paragraph (a) of the definition of “realisable property” in paragraph 1 (1), the powers shall be exercised with a view to allowing any person other than the defendant or the recipient of any such gift to retain or recover the value of any property held by him.

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

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

Bankruptcy of defendant, etc.

13. —(1) Where a person who holds realisable property is adjudged bankrupt —

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

(b) any proceeds of property realised by virtue of paragraph 7 (7) or 10 (6) or (7) for the time being in the hands of the Public Trustee or a receiver pursuant to paragraph 7 or 10,

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

(2) Where a person has been adjudged bankrupt, the powers conferred on the High Court by paragraphs 7 to 11 or on the Public Trustee or a receiver shall not be exercised in relation to —

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

(b) property which is not comprised in the bankrupt’s estate by virtue of section 78 (2) of the Bankruptcy Act; and

(c) property which is to be applied for the benefit of creditors of the bankrupt by virtue of a condition imposed under section 124 (3) (c) of the Bankruptcy Act.

(3) Nothing in the Bankruptcy Act (Cap. 20) shall be taken as restricting, or enabling the restriction of, the exercise of those powers referred to in sub-paragraph (2).

(4) Sub-paragraph (2) shall not affect the enforcement of a charging order —

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

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

(5) Where, in the case of a debtor, an interim receiver stands appointed under section 73 of the Bankruptcy Act and any property of the debtor is subject to a restraint order —

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

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

(6) For the purposes of section 127 (2) of the Bankruptcy Act, amounts payable under foreign confiscation orders shall be deemed to be debts due to the Government.

Winding up of company holding realisable property

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

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

(b) any proceeds of property realised by virtue of paragraph 7 (6) or 10 (6) or (7) for the time being in the hands of the Public Trustee or a receiver pursuant to paragraph 7 or 10,

but there shall be payable out of such property any expenses (including the remuneration of the liquidator or provisional liquidator) properly incurred in the winding up in respect of the property.

(2) Where, in the case of a company, such an order has been made or such a resolution has been passed, the powers conferred on the High Court by paragraphs 7 to 11 or on a receiver so appointed shall not be exercised in relation to any realisable property held by the company in relation to which the functions of the liquidator are exercisable —

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

(b) so as to prevent the payment out of any property of expenses (including the remuneration of the liquidator or any provisional liquidator) properly incurred in the winding up in respect of the property.

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

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

(5) In this paragraph —

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

"relevant time" means —

- (a) where no order for the winding up of the company has been made, the time of the passing of the resolution for voluntary winding up;
- (b) where such an order has been made and, before the making of the application for the winding up of the company by the High Court, such a resolution has been passed by the company, the time of the passing of the resolution; and
- (c) in any other case where such an order has been made, the time of the making of the order.

Receivers: supplementary provisions

15. Where the Public Trustee or a receiver appointed under paragraph 7 or 10 or in pursuance of a charging order takes any action in relation to property which is not realisable property, being action which he would be entitled to take if it were such property, believing, and having reasonable grounds for believing, that he is entitled to take that action in relation to that property, he shall not be liable to any person in respect of any loss or damage resulting from his action except in so far as the loss or damage is caused by his negligence.

Compensation

16. —(1) If a criminal investigation is begun in a prescribed foreign country against a person for a foreign offence or offences and any of the following circumstances occur, namely:

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

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

- (A) the applicant has suffered loss in consequence of anything done in relation to the property by, or in pursuance of an order of, the High Court under paragraph 7, 8 or 10; and
- (B) having regard to all the circumstances, the High Court considers it appropriate to make such an order.

(2) The High Court shall not order compensation to be paid under sub-paragraph (1) unless it is satisfied that there has been some serious default on the part of any person concerned in the criminal investigation or prosecution of the offence or offences concerned.

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

PART III

ENFORCEMENT OF INSTRUMENTALITY FORFEITURE ORDERS

Restraint orders

17. —(1) The High Court may in accordance with this paragraph make a restraint order to prohibit any person, subject to such conditions and exceptions as may be specified in the order, from dealing with any property in respect of which an instrumentality forfeiture order has been made, or in respect of which such an order could be made in the judicial proceedings referred to in sub-paragraph (2) or (3).

- (2) A restraint order may be made where —
- (a) judicial proceedings have been instituted in a prescribed foreign country;
 - (b) the proceedings have not been concluded; and
 - (c) either an instrumentality forfeiture order has been made in the proceedings or it appears to the High Court that there are reasonable grounds for believing that such an order may be made in them.
- (3) A restraint order may also be made where the High Court is satisfied that judicial proceedings are to be instituted in a prescribed foreign country and that there are reasonable grounds for believing that an instrumentality forfeiture order may be made in them.
- (4) Where the High Court has made a restraint order by virtue of sub-paragraph (3), the Court shall discharge the order if the proposed judicial proceedings are not instituted within such time as the Court considers reasonable and which shall not in any event exceed a period of 3 months.
- (5) A restraint order —
- (a) may be made only on an application by the Attorney-General;
 - (b) may be made on an ex parte application to a Judge in chambers; and
 - (c) notwithstanding anything in Order 11 of the Rules of Court, may provide for service on, or the provision of notice to, persons affected by the order in such a manner as the High Court may direct.
- (6) A restraint order —
- (a) may be discharged or varied in relation to any property; and
 - (b) shall be discharged when judicial proceedings in relation to which the order was made are concluded.
- (7) Where the High Court has made a restraint order, the Court may at any time appoint the Public Trustee or any person as receiver (referred to in this Part as a receiver) —
- (a) to take possession of any property specified in the order; and
 - (b) in accordance with the directions of the Court, to manage or otherwise deal with any property in respect of which he is appointed,
- subject to such exceptions and conditions as may be specified by the Court.
- (8) The High Court may require any person having possession of property in respect of which a receiver is appointed under sub-paragraph (7) to give possession of it to the receiver.
- (9) Where the High Court has made a restraint order, an authorised officer may, for the purpose of preventing any property specified in the restraint order being removed from Singapore, seize the property.
- (10) Property seized under sub-paragraph (9) shall be dealt with in accordance with the directions of the High Court.

Disposal of forfeited property

18. —(1) Where an instrumentality forfeiture order has been registered under section 30, the High Court may, on the application of the Attorney-General, order the forfeiture of the property specified in the instrumentality forfeiture order.

(2) Property forfeited under sub-paragraph (1) shall be disposed of in accordance with the High Court's directions.

(3) The High Court shall not in respect of any property exercise the powers conferred by sub-paragraphs (1) and (2) unless a reasonable opportunity has been given for persons holding any interest in the property to make representations to the Court.

Exercise of powers by High Court

19. —(1) This paragraph shall apply to the powers conferred on the High Court by this paragraph and paragraph 18 or on the Public Trustee or person appointed as receiver under paragraph 17.

(2) The powers shall be exercised with a view to recovering property which is liable to be recovered under an instrumentality forfeiture order registered under section 30 or, as the case may be, with a view to recovering property which may become liable to be recovered under any instrumentality forfeiture order which may be made.

Receivers: supplementary provisions

20. Where a receiver appointed under paragraph 17 takes any action in relation to property which is not liable to recovery under an instrumentality forfeiture order, being action which he would be entitled to take if it were such property, believing, and having reasonable grounds for believing, that he is entitled to take that action in relation to that property, he shall not be liable to any person in respect of any loss or damage resulting from his action except in so far as the loss or damage is caused by his negligence.

Compensation

21. —(1) If a criminal investigation is begun in a prescribed foreign country against a person for a foreign drug offence or offences and any of the following circumstances occur, namely:

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

the High Court may, on application by a person who held property and who has suffered loss in consequence of anything done in relation to that property in pursuance of an order under paragraph 18, order compensation to be paid by the Government to the applicant if, having regard to all the circumstances, the Court considers it appropriate to make such an order.

(2) The High Court shall not order compensation to be paid under sub-paragraph (1) unless it is satisfied that there has been some serious default on the part of any person concerned in the criminal investigation or prosecution of the offence or offences concerned.

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