

THE STATUTES OF THE REPUBLIC OF SINGAPORE

CORRUPTION (CONFISCATION OF BENEFITS) ACT
(CHAPTER 65A)

Act
16 of 1989

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Corruption (Confiscation of Benefits) Act

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

[10th July 1989]

PART I

PRELIMINARY

- Short title. 1. This Act may be cited as the Corruption (Confiscation of Benefits) Act.
- Interpre- 2.—(1) In this Act, unless the context otherwise
tation. requires —
- Cap. 241. “corruption offence” means an offence under the Pre-
vention of Corruption Act or under section 161,
Cap. 224. 162, 163, 164 or 165 of the Penal Code or any
conspiracy to commit, any attempt to commit or
any abetment of such an offence;
- “charging order” means an order made under section
12 (1);
- “confiscation order” means an order made under
section 4;
- “dealing with property” is to be construed in accord-
ance with section 11 (7);
- “defendant” means a person against whom proceedings
have been instituted for a corruption offence or
offences whether or not he has been convicted
thereof;
- “gift caught by this Act” is to be construed in accord-
ance with section 8 (8);
- “interest”, in relation to property, includes right;
- “making a gift” is to be construed in accordance with
section 8 (9);
- “officer of the Corrupt Practices Investigation Bureau”
means the Director of the Bureau appointed under
section 3 (1) of the Prevention of Corruption Act,
the Deputy Director and any assistant director and
special investigator of the Bureau appointed under
section 3 (2) of that Act;
- “property” means money and all other property, mov-
able or immovable, including things in action and
other intangible or incorporeal property;

“realisable property” has the meaning given by section 8 (1);

“restraint order” means an order made under section 11 (1);

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

“value of property” is to be construed in accordance with section 8 (4).

(2) For the purposes of this Act —

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

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

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

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

(3) For the purposes of this Act —

(a) proceedings for an offence are instituted in Singapore when a person is produced and charged in court with the offence;

(b) proceedings in Singapore for a corruption offence are concluded on the occurrence of one of the following events:

(i) the discontinuance of the proceedings;

(ii) the acquittal of the defendant;

(iii) the quashing of his conviction for the offence;

(iv) the grant of the President’s pardon in respect of his conviction for the offence;

(v) the court sentencing or otherwise dealing with him in respect of his conviction for

the offence without having made a confiscation order; and

- (vi) the satisfaction of a confiscation order made in the proceedings (whether by payment of the amount due under the order or by the defendant serving imprisonment in default).

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

Application.

3.—(1) This Act shall apply to any corruption offence whether committed before or after 10th July 1989 except that nothing in this Act imposes any duty or confers any power on any court in or in connection with proceedings against a person for a corruption offence in respect of which he has been convicted by a court before that date.

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

PART II

CONFISCATION OF BENEFITS OF CORRUPTION

Confiscation orders.

4.—(1) Subject to section 22, where a defendant is convicted of one or more corruption offences, the court shall, on the application of the Public Prosecutor, make a confiscation order against the defendant in respect of benefits derived by him from corruption if the court is satisfied that such benefits have been so derived.

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

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

- (a) take account of the confiscation order before imposing any fine on him; and
- (b) subject to paragraph (a), leave the confiscation order out of account in determining the appropriate sentence or other manner of dealing with the defendant.

(4) Subject to section 23, for the purposes of this Act, a person who holds or has at any time (whether before or after 10th July 1989) held any property or any interest therein disproportionate to his known sources of income, the holding of which cannot be explained to the satisfaction of the court, shall be deemed to have derived benefits from corruption.

5.—(1) Subject to section 23, for the purposes of this Act —

(a) the benefits derived by any person from corruption shall be —

(i) any property or interest therein held by the person at any time, whether before or after 10th July 1989, being property or interest disproportionate to his known sources of income and the holding of which cannot be explained to the satisfaction of the court, less

(ii) any such property or interest which the court will be taking into account in determining the amount to be recovered under an order under section 13 of the Prevention of Corruption Act made against that person; and

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

(2) For the purpose of assessing the value of the benefits derived by the defendant from corruption in a case where a confiscation order, or an order under section 13 of the

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Prevention of Corruption Act, has previously been made against him, the court shall leave out of account any such benefits of corruption that are shown to the court to have been taken into account in determining the amount to be recovered under that order.

Statements relating to corruption.

6.—(1) Where —

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

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

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

(2) Where —

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

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

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

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

(4) Where —

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

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

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

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

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

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

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

Amount to be recovered under confiscation order.

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

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

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

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

Definition of principal terms used.

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

- (a) the total of the values at that time of all the realisable property held by the defendant, less

(b) where there are obligations having priority at that time, the total amounts payable in pursuance of such obligations,

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

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

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

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

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

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

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

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

(b) where subsection (5) applies, the value mentioned therein,

whichever is the greater.

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

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

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

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

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

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

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

- (a) in relation to bankruptcy, means the debts to be paid in priority under section 43 of the Bankruptcy Act (assuming the date of the confiscation order to be the date of the receiving order); and Cap. 20.
- (b) in relation to winding up, means the debts to be paid in priority in accordance with section 328 of the Companies Act (assuming the date of the confiscation order to be the commencement date of the winding up). Cap. 50.
1988 Ed.

(8) A gift (including a gift made before 10th July 1989) is caught by this Act if —

- (a) it was made by the defendant at any time since the beginning of the period of 6 years ending when the proceedings for a corruption offence were instituted against him or, where no such proceedings have been instituted, when an application under section 4 for a confiscation order is made against him; or
- (b) it was made by the defendant at any time and was a gift of property which is or is part of the benefits derived by the defendant from corruption.

(9) For the purposes of this Act —

- (a) the circumstances in which the defendant is to be treated as making a gift include those where he transfers property to another person, directly or

indirectly, for a consideration the value of which is significantly less than the value of the consideration provided by the defendant; and

- (b) in those circumstances, this section shall apply as if the defendant had made a gift of such share in the property as bears to the whole property the same proportion as the difference between the values referred to in paragraph (a) bears to the value of the consideration provided by the defendant.

PART III

ENFORCEMENT, ETC., OF CONFISCATION ORDERS

Application
of procedure
for enforcing
fines.
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9.—(1) Where a court orders the defendant to pay any amount under section 4, section 224 of the Criminal Procedure Code shall have effect as if —

- (a) that amount were a fine imposed on him by the court; and
- (b) the term for which the court directs the defendant to be imprisoned in default of payment of any amount under section 4 shall be as follows:
- (i) if the amount does not exceed \$20,000, imprisonment for a term not exceeding 2 years;
 - (ii) if the amount exceeds \$20,000 but does not exceed \$50,000, imprisonment for a term not exceeding 5 years;
 - (iii) if the amount exceeds \$50,000 but does not exceed \$100,000, imprisonment for a term not exceeding 7 years;
 - (iv) if the amount exceeds \$100,000, imprisonment for a term not exceeding 10 years.

(2) Where —

- (a) a warrant to commit the defendant to prison is issued for a default in payment of an amount ordered to be paid under section 4 in respect of an offence or offences; and
- (b) at the time the warrant is issued, the defendant is liable to serve any term of imprisonment in respect of the offence or offences and any penalty imposed under section 13 of the Prevention of Corruption Act,

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

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

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

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

- (a) proceedings have been instituted against the defendant for a corruption offence;
- (b) the proceedings have not been concluded; and
- (c) the Court is satisfied that there is reasonable cause to believe that benefits have been derived by the defendant from corruption.

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

- (a) (i) in the case of an offence under the Prevention of Corruption Act, that the consent of the Public Prosecutor has been obtained under section 31 of that Act for the prosecution of a person; or
- (ii) in the case of any other corruption offence, that a person has been officially informed pursuant to section 122 (6) of the Criminal Procedure Code that he may be prosecuted for the offence; or

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(b) that investigation for a corruption offence having been commenced against a person, he dies or cannot be found or is outside the jurisdiction, and that there is reasonable cause to believe that benefits have been derived by that person from corruption.

(3) For the purposes of sections 11 and 12, at any time when those powers are exercisable before proceedings have been instituted —

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

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

(4) Where the High Court has made an order under section 11 (1) or 12 (1) by virtue of subsection (2), the Court shall discharge the order if the proposed proceedings are not instituted within such time as the Court considers reasonable which shall not in any event exceed a period of 3 months.

Restraint orders.

11.—(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 order or not; and

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

(3) This section shall not have effect in relation to any property for the time being subject to a charge under section 12.

(4) A restraint order —

(a) may be made only on an application by the Public Prosecutor;

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

(c) shall provide for notice to be given to persons affected by the order.

(5) A restraint order —

(a) may be discharged or varied in relation to any property; and

(b) shall be discharged when proceedings for the offences are concluded.

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

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

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

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

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

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

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

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

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

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

Charging orders in respect of land, securities, etc.

(3) A charging order may be made —

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

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

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

- (i) in any asset of a kind mentioned in subsection (5); or
- (ii) under any trust; or

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

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

(a) immovable property in Singapore; or

(b) securities of any of the following kinds:

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

(6) In any case where a charge is imposed by a charging order on any interest in an asset of a kind mentioned in subsection (5) (b), the 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 High Court may give such directions to the Public Trustee as the High Court thinks fit to safeguard the assets under the charging order.

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

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

(2) A caveat may be lodged under the Land Titles Act or an entry may be made under the Registration of Deeds Act, as the case may be, in respect of a charging order made under section 12. Cap. 157.
Cap. 269.
1989 Ed.

(3) Subject to any provision made under section 14 or by rules of court, a charge imposed by a charging order shall have the like effect and shall be enforceable in the same manner as an equitable charge created by the person holding the beneficial interest or, as the case may be, the trustees by writing under their hand.

(4) Where a charging order has been protected by a caveat lodged under the Land Titles Act or by an entry registered under the Registration of Deeds Act, an order under section 12(8) discharging the charging order may direct that the caveat be removed or the entry be cancelled.

14.—(1) Where —

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

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

(c) the proceedings have not been concluded,

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

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

- (a) a confiscation order is made against a person who is, by reason of section 21, taken to be convicted of a corruption offence;
- (b) the order is not subject to appeal; and
- (c) the order has not been satisfied, whether by payment of the amount due under the order or by the defendant serving imprisonment by default.

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

(4) The Court may empower the Public Trustee appointed under subsection (3) or section 11 or in pursuance of a charging order —

- (a) to enforce any charge imposed under section 12 on realisable property or on interest or dividends payable in respect of such property; and
- (b) in relation to any realisable property other than property for the time being subject to a charge under section 12, to take possession of the property subject to such conditions or exceptions as may be specified by the Court.

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

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

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

(8) Subsections (5) to (7) shall not apply to property for the time being subject to a charge under section 12.

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

15.—(1) Subject to subsection (2), the following sums in the hands of the Public Trustee pursuant to section 11 or 14 or in pursuance of a charging order, that is —

Application of proceeds of realisation and other sums.

- (a) the proceeds of the enforcement of any charge imposed under section 12;
- (b) the proceeds of the realisation, other than by the enforcement of such a charge, of any property under section 11 or 14; and
- (c) any other sums, being property held by the defendant,

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

(2) If, after the amount payable under the confiscation order has been fully paid, any such sums remain in the hands of the Public Trustee, 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.

16.—(1) This section shall apply to the powers conferred on the High Court by sections 11 to 15 or on the Public Trustee pursuant to section 11 or 14 or in pursuance of a charging order.

Exercise of powers by High Court or receiver.

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

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

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

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

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

Variation of
confiscation
orders.

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

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

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

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

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

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

- (a) substitute for the amount to be recovered under the order such lesser amount as the court thinks just in all the circumstances of the case; and
- (b) substitute for the term of imprisonment fixed under section 224 of the Criminal Procedure Code in respect of the amount to be recovered under the order a shorter term determined in accordance with that section (as it has effect by virtue of section 9) in respect of the lesser amount.

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

Bankruptcy
of defendant,
etc.

- (a) property for the time being subject to a restraint order made before the order adjudging him bankrupt; and
- (b) any proceeds of property realised by virtue of section 11 (6) or 14 (6) or (7) for the time being in the hands of the Public Trustee pursuant to section 11 or 14,

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

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(2) Where a person has been adjudged bankrupt, the powers conferred on the High Court by sections 11 to 15 or on the Public Trustee shall not be exercised in relation to —

- (a) property for the time being comprised in the bankrupt's estate for the purposes of the Bankruptcy Act;
- (b) property which is not comprised in the bankrupt's estate by virtue of section 47 (1) (a) of that Act; and
- (c) property which is to be applied for the benefit of creditors of the bankrupt by virtue of a condition imposed under section 33 (3) of that Act.

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

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

- (a) made before the order adjudging the person bankrupt; or
- (b) on property which was subject to a restraint order when the order adjudging him bankrupt was made.

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(5) Where, in the case of a debtor, an interim receiver stands appointed under section 10 of the Bankruptcy Act and any property of the debtor is subject to a restraint order —

- (a) the powers conferred on the receiver by virtue of that Act shall not apply to property for the time being subject to the restraint order; and
- (b) any such property in the hands of the receiver shall, subject to a lien for any expenses (including his remuneration) properly incurred in respect of the property, be dealt with in such manner as the High Court may direct.

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

Winding up of company holding realisable property.

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

- (a) property for the time being subject to a restraint order made before the relevant time; and
- (b) any proceeds of property realised by virtue of section 11 (6) or 14 (6) or (7) for the time being in the hands of the Public Trustee pursuant to section 11 or 14,

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

(2) Where, in the case of a company, such an order has been made or such a resolution has been passed, the powers conferred on the High Court by sections 11 to 15 or on a receiver so appointed shall not be exercised in relation to any realisable property held by the company in relation to which the functions of the liquidator are exercisable —

- (a) so as to inhibit him from exercising those functions for the purpose of distributing any property held by the company to the company's creditors; or
- (b) so as to prevent the payment out of any property of expenses (including the remuneration of the liquidator or any provisional liquidator) properly incurred in the winding up in respect of the property.

(3) Nothing in the Companies Act shall be taken as restricting, or enabling the restriction of, the exercise of those powers referred to in subsection (2). Cap. 50,
1988 Ed.

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

(5) In this section —

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

“the relevant time” means —

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

Receivers:
supple-
mentary
provisions.

20. Where the Public Trustee appointed under section 11 or 14 or in pursuance of a charging order takes any action in relation to property which is not realisable property, being action which he would be entitled to take if it were such property, believing, and having reasonable grounds for believing, that he is entitled to take that action in relation to that property, he shall not be liable to any person in respect of any loss or damage resulting from his action except in so far as the loss or damage is caused by his negligence.

PART IV

APPLICATION TO ABSCONDED PERSONS

Absconded
persons.

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

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

- (a) investigations for a corruption offence have been commenced against the person; and
- (b) (i) the person dies before proceedings in respect of the offence were instituted, or if such proceedings were instituted, the person dies before he is convicted; or
- (ii) at the end of the period of 6 months from the date on which investigations referred to in paragraph (a) were commenced against him, the person cannot be found or he is not amenable to extradition proceedings.

Confiscation
order where
person has
absconded.

22. Where a person is, by reason of section 21, to be taken to have been convicted of a corruption offence, a court shall not make a confiscation order in reliance on the person's conviction of the offence unless the court is satisfied —

- (a) on the evidence adduced before it that, on the balance of probabilities, the person has absconded; and

- (b) having regard to all the evidence before the court, that such evidence if unrebutted would warrant his conviction for the offence.

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

Effect of death on proceedings.

(2) Where the power conferred by this Act to make a confiscation order is to be exercised in relation to a deceased defendant, the order shall be made against the estate of the deceased defendant except that nothing in this Act shall subject any personal representative of the estate of the deceased defendant, or any beneficiary thereof, to any imprisonment under section 9 if the property of the estate is inadequate for the payment of any amount to be recovered under the confiscation order.

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

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

- (a) a deceased defendant shall be deemed to have derived benefits from corruption if he had, at any time (whether before or after 10th July 1989) since the beginning of the period of 6 years ending at the date of his death, held any property or interest therein disproportionate to his known sources of income, the holding of which cannot be explained to the satisfaction of the court;
- (b) the benefits derived by a deceased defendant from corruption shall be any property or interest therein held by him during the period mentioned in paragraph (a), being property or interest therein disproportionate to his known sources of income, and the holding of which cannot be explained to the satisfaction of the court; and

- (c) the value of the benefits derived by a deceased defendant from corruption shall be the aggregate of the values of those properties and interests therein less the value of any such benefits that are shown to have been taken into account by any court in determining the amount to be recovered under any confiscation order or order under section 13 of the Prevention of Corruption Act previously made against the deceased defendant.

Cap. 241.

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

- (a) after investigations for a corruption offence have been commenced against him; and
- (b) (i) before proceedings in respect of the offence have been instituted against him; or
- (ii) if such proceedings have been instituted, before he is convicted of the offence.

Service of documents on absconders.

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