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Notification No. B 15 — The Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) (Amendment) Bill is hereby published for general information. It was introduced in Parliament on 28th May 2014.

**Corruption, Drug Trafficking
and Other Serious Crimes
(Confiscation of Benefits) (Amendment) Bill**

Bill No. 15/2014.

Read the first time on 28th May 2014.

A BILL

i n t i t u l e d

An Act to amend the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Chapter 65A of the 2000 Revised Edition).

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

Short title and commencement

1. This Act may be cited as the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) (Amendment) Act 2014 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

Amendment of section 2

2. Section 2 of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (referred to in this Act as the principal Act) is amended —

(a) by deleting the words “stated in a certificate purporting to be issued by or on behalf of the government of a foreign country to be a law providing for the control and regulation in that country” in the definition of “corresponding law” in subsection (1) and substituting the words “of a foreign country or part thereof providing for the control or regulation, in that country or part thereof;”;

(b) by deleting the definition of “criminal conduct” in subsection (1) and substituting the following definition:

““criminal conduct” means doing or being concerned in, whether in Singapore or elsewhere, any act constituting a serious offence or a foreign serious offence;”;

(c) by deleting the word “trafficking” in the definition of “defendant” in subsection (1) and substituting the word “dealing”;

(d) by deleting the definitions of “drug trafficking” and “drug trafficking offence” in subsection (1) and substituting the following definitions:

““drug dealing” means doing or being concerned in, whether in Singapore or elsewhere, any act constituting a drug dealing offence or a foreign drug dealing offence;

“drug dealing offence” means —

- (a) any offence specified in the First Schedule;
- (b) conspiracy to commit any such offence;
- (c) inciting another to commit any such offence; 5
- (d) attempting to commit any such offence; or
- (e) aiding, abetting, counselling or procuring the commission of any such offence;

“employer”, in relation to a legal counsel, 10
includes —

- (a) if the employer is one of a number of corporations that are related to each other under section 6 of the Companies Act (Cap. 50), every corporation so related as if the legal counsel is also employed by each of the related corporations; and 15
- (b) if the employer is a public agency within the meaning of section 128A(6) of the Evidence Act (Cap. 97) and the legal counsel is required as part of his duties of employment or appointment to provide legal advice or assistance in connection with the application of the law or any form of resolution of legal dispute to any other public agency or agencies, the other public agency or agencies as if the legal counsel is also employed by the other public agency or each of the other public agencies;” 20 25 30

(e) by deleting the definition of “financial institution” in subsection (1) and substituting the following definition:

““financial institution” has the same meaning as in section 27A(6) of the Monetary Authority of

Singapore Act (Cap. 186) read with section 27A(7) of that Act;”;

(f) by deleting the definitions of “foreign drug trafficking offence” and “foreign serious offence” in subsection (1) and substituting the following definitions:

““foreign drug dealing offence” means an offence against a corresponding law that consists of or includes conduct which, if the conduct had occurred in Singapore, would have constituted a drug dealing offence;

“foreign serious offence” —

(a) means an offence (other than a foreign drug dealing offence) against the law of a foreign country or part thereof that consists of or includes conduct which, if the conduct had occurred in Singapore, would have constituted a serious offence; and

(b) includes a foreign serious tax offence;

“foreign serious tax offence” means an offence against the national law of a foreign country that consists of the doing of any of the following (however described) wilfully with intent to evade, or to assist any other person to evade, any tax of that country:

(a) omitting from, or understating or overstating in, a return made for the purposes of that tax any information which should be included in the return;

(b) making any false statement or entry in any return, claim or application made, or any document or information required to be given, for the purposes of that tax;

- (c) giving any false answer, whether verbally or in writing, to any question or request for information asked or made for the purposes of that tax;
- (d) failing to inform the authority responsible for the collection of that tax, in the required manner, of any incorrect information appearing in any assessment made by that authority, when required to do so;
- (e) preparing or maintaining, or authorising the preparation or maintenance, of any false books of account or other records, or falsifying or authorising the falsification of any books of account or records;
- (f) making use of any fraud, art or contrivance, or authorising the use of any such fraud, art or contrivance;”;
- (g) by inserting, immediately after the definition of “interest” in subsection (1), the following definition:
- ““legal counsel” has the same meaning as in section 3(7) of the Evidence Act;”;
- (h) by inserting, immediately after the definition of “officer of the Bureau” in subsection (1), the following definition:
- ““possession”, in relation to any property, means actual or constructive possession of the property;”;
- and
- (i) by deleting the word “trafficking” in subsection (2)(f) and substituting the word “dealing”.

New section 2A

3. The principal Act is amended by inserting, immediately after section 2, the following section:

“Meaning of “item subject to legal privilege”

2A.—(1) For the purposes of this Act, an item is subject to legal privilege if —

- 5 (a) it is a communication made between a lawyer and a client, or a legal counsel acting as such and his employer, in connection with the lawyer giving legal advice to the client or the legal counsel giving legal advice to the employer, as the case may be;
- 10 (b) it is a communication made between 2 or more lawyers acting for a client, or 2 or more legal counsel acting as such for their employer, in connection with one or more of the lawyers giving legal advice to the client or one or more of the legal counsel giving legal advice to the employer, as the case may be;
- 15 (c) it is a communication made —
- (i) between a client, or an employer of a legal counsel, and another person;
- (ii) between a lawyer acting for a client and either the client or another person; or
- 20 (iii) between a legal counsel acting as such for his employer and either the employer or another person,
- in connection with, and for the purposes of, any legal proceedings (including anticipated or pending legal proceedings) in which the client or employer, as the case may be, is or may be, or was or might have been, a party;
- 25 (d) it is an item, or a document (including its contents), that is enclosed with or referred to in any communication in paragraph (a) or (b) and that is made or prepared by any person in connection with a lawyer or legal counsel, or one or more of the lawyers or legal counsel, in either paragraph giving legal advice to the client or the employer of the legal counsel, as the case may be; or
- 30

(e) it is an item, or a document (including its contents), that is enclosed with or referred to in any communication in paragraph (c) and that is made or prepared by any person in connection with, and for the purposes of, any legal proceedings (including anticipated or pending legal proceedings) in which the client or the employer of the legal counsel, as the case may be, is or may be, or was or might have been, a party, 5

but it is not any such communication, item or document that is made, prepared or held with the intention of furthering a criminal purpose. 10

(2) In this section —

“client”, in relation to a lawyer, includes an agent of or other person representing a client and, if a client has died, a personal representative of the client; 15

“employer”, in relation to a legal counsel, includes —

(a) if the employer is one of a number of corporations that are related to each other under section 6 of the Companies Act (Cap. 50), every corporation so related as if the legal counsel is also employed by each of the related corporations; 20

(b) if the employer is a public agency within the meaning of section 128A(6) of the Evidence Act (Cap. 97) and the legal counsel is required as part of his duties of employment or appointment to provide legal advice or assistance in connection with the application of the law or any form of resolution of legal dispute to any other public agency or agencies, the other public agency or agencies as if the legal counsel is also employed by the other public agency or each of the other public agencies; and 25

(c) an employee or officer of the employer; 30

“lawyer” means an advocate and solicitor, and includes an interpreter or other person who works under the supervision of an advocate and solicitor;

5 “legal counsel” means a legal counsel as defined in section 3(7) of the Evidence Act, and includes an interpreter or other person who works under the supervision of a legal counsel.”.

New section 3A

10 **4.** The principal Act is amended by inserting, immediately after section 3, the following section:

“Suspicious Transaction Reporting Office

3A.—(1) There shall be an office of the Government to be known as the Suspicious Transaction Reporting Office which shall be responsible for —

- 15 (a) the receipt and analysis of —
- (i) any thing disclosed to a Suspicious Transaction Reporting Officer pursuant to a requirement under subsection (3) or pursuant to section 39(1);
 - 20 (ii) any report under section 48C given to a Suspicious Transaction Reporting Officer under section 48C(5) or forwarded to a Suspicious Transaction Reporting Officer under section 48D;
 - (iii) any report under section 48E given to a Suspicious Transaction Reporting Officer under
25 section 48E(5);
 - (iv) any cash transaction report submitted to a Suspicious Transaction Reporting Officer under section 48J(1); and
 - 30 (v) any cash transaction report filed with a Suspicious Transaction Reporting Officer under any regulations made under section 200 of the Casino Control Act (Cap. 33A); and
- (b) the dissemination of the results of any such analysis.

(2) There shall be attached to the Suspicious Transaction Reporting Office such number of Suspicious Transaction Reporting Officers as appear to the Minister to be necessary for the performance of the responsibilities of the Suspicious Transaction Reporting Office. 5

(3) A Suspicious Transaction Reporting Officer who is attached to the Suspicious Transaction Reporting Office may require any person to disclose any document or information for the purposes of an analysis referred to in subsection (1).

(4) Where a person discloses any document or information to a Suspicious Transaction Reporting Officer pursuant to a requirement under subsection (3) — 10

(a) the disclosure shall not be treated as a breach of any restriction against the disclosure imposed by law, contract or rules of professional conduct; and 15

(b) the person shall not be liable for any loss arising out of the disclosure or any act or omission in consequence of the disclosure.”.

New Part IVA

5. The principal Act is amended by inserting, immediately after section 29, the following Part: 20

“PART IVA

CONFISCATION OF PROPERTY OF CORRESPONDING VALUE TO INSTRUMENTALITIES

Application of Part 25

29A.—(1) This Part applies in relation to any drug dealing offence or serious offence, whether committed before, on or after the date of commencement of section 5 of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) (Amendment) Act 2014. 30

(2) However, nothing in this Part imposes any duty or confers any power on a court in connection with any proceedings against a person for a drug dealing offence or a serious offence for which

he has been convicted by a court before the date of commencement of section 5 of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) (Amendment) Act 2014.

5 **Substitute property confiscation order**

29B.—(1) Where a defendant is convicted, or is by reason of section 26 taken to be convicted, of a drug dealing offence or a serious offence, the court shall, on the application of the Public Prosecutor, make a substitute property confiscation order against the defendant, if the court is satisfied that —

(a) the defendant had used or intended to use any property (referred to in this Part as an instrumentality) for the commission of the offence; and

(b) the instrumentality is not available for forfeiture as mentioned in subsection (2).

(2) For the purposes of subsection (1), an instrumentality is not available for forfeiture if —

(a) the instrumentality is not held by the defendant;

(b) the instrumentality is held by the defendant and has been seized under any written law, but has been ordered to be released, or to be disposed of in favour of any person other than the defendant; or

(c) the instrumentality has been sold or otherwise disposed of, or cannot be found.

(3) When a court makes a substitute property confiscation order against the defendant, the defendant is liable to pay to the Government the amount which —

(a) the court assesses to be the value of the instrumentality at the time the drug dealing offence or serious offence was committed; and

(b) is specified in the order.

(4) For the purposes of subsection (3), the value of the instrumentality shall be its full value, even if the defendant did

not expend any amount for the purpose of using it for the commission of the offence, or did not expend an amount equal to its full value for that purpose.

(5) If a substitute property confiscation order is made against 2 or more defendants in respect of the same instrumentality, the defendants are jointly and severally liable to pay to the Government the amount specified in the order. 5

Modified application of Parts II, III and IV

29C.—(1) The provisions of Parts II, III and IV shall apply in relation to, and for the purpose of enabling the satisfaction of, a substitute property confiscation order as they apply in relation to, and for the purpose of enabling the satisfaction of, a confiscation order, subject to — 10

(a) the following modifications:

- (i) a reference in section 4(2) or 5(2) to a court being satisfied that a defendant has derived benefits from drug dealing or from criminal conduct shall be read as a reference to a court being satisfied that the defendant had used or intended to use any property for the commission of the drug dealing offence or serious offence in question; 15 20
- (ii) a reference in section 4(2) or 5(2) to a determination in accordance with section 10 of the amount to be recovered by virtue of section 4 or 5 shall be read as a reference to a determination in accordance with sections 10 and 29B(3) and (4) of the amount to be recovered by virtue of section 29B; 25
- (iii) the reference in section 9(1) to a determination of whether benefits have been derived by a defendant from drug dealing or from criminal conduct shall be read as a reference to a determination of whether the defendant had used or intended to use any property for the 30

commission of the drug dealing offence or serious offence in question;

5 (iv) a reference in section 9(1) or 10(3) or (6) to an assessment of the value of benefits derived by a defendant from drug dealing or from criminal conduct shall be read as a reference to an assessment of the value of the instrumentality in accordance with section 29B(3) and (4);

10 (v) the reference in section 9(6) to an acceptance by a defendant that benefits have been derived by him from drug dealing or from criminal conduct shall be read as a reference to an acceptance by the defendant that he had used or intended to use any property for the commission of the drug dealing
15 offence or serious offence in question;

(vi) each reference in section 14 to an order to pay an amount under section 4 or 5 shall be read as a reference to an order to pay an amount under a substitute property confiscation order;

20 (vii) a reference in section 15(1) or (2) to the High Court being satisfied that there is reasonable cause to believe that benefits have been derived by a person from drug dealing or from criminal conduct shall be read as a reference to the High
25 Court being satisfied that there is reasonable cause to believe that the person had used or intended to use any property for the commission of the drug dealing offence or serious offence in question;

30 (viii) the reference in section 17(1)(a) to a confiscation order shall be read as a reference to a substitute property confiscation order; and

(b) such other modifications as may be prescribed for the purposes of this subsection.

(2) Where both a confiscation order and a substitute property confiscation order are made against a defendant in relation to the same drug dealing offence or serious offence, then —

- (a) a reference in section 17(1)(b) or 20(2) to the amount payable under a confiscation order shall be read as a reference to the total amount payable under both orders; 5
- (b) a reference in section 20(1) or 21(2) or (6) to the satisfaction of a confiscation order shall be read as a reference to the satisfaction of both orders; and
- (c) each reference in section 22 to the amount to be recovered under a confiscation order shall be read as a reference to the amount to be recovered under either order or both orders, as the case may be. 10

(3) In this section, a reference to Parts II, III and IV —

- (a) includes a reference to section 2, insofar as that section applies to the interpretation of the provisions of those Parts; but 15
- (b) excludes any reference to sections 4(1), (4), (4A), (5) and (6), 5(1), (6), (7) and (8), 7, 8, 10(1), 13 and 28(3A), (4), (4A), (4B) and (6), and all other provisions that are rendered inapplicable by regulations made for the purpose of subsection (1)(b).” 20

Amendment of section 31

6. Section 31 of the principal Act is amended —

- (a) by deleting the word “trafficking” in subsections (1) and (3)(a) and substituting in each case the word “dealing”; 25
- (b) by deleting subsection (7); and
- (c) by deleting the word “trafficking” in the section heading and substituting the word “dealing”.

Amendment of section 35

7. Section 35(2) of the principal Act is amended by deleting the definition of “items subject to legal privilege”. 30

Amendment of section 39

8. Section 39 of the principal Act is amended —

(a) by deleting the word “trafficking” in subsection (1) and substituting the word “dealing”;

5 (b) by deleting subsection (4) and substituting the following subsection:

“(4) Nothing in subsection (1) or (2) makes it an offence —

10 (a) for an advocate and solicitor, or an interpreter or other person who works under the supervision of an advocate and solicitor, to fail to disclose any information or other matter which is an item subject to legal privilege;

15 (b) for a legal counsel acting as such for his employer, or an interpreter or other person who works under the supervision of the legal counsel, to fail to disclose any information or other matter concerning the employer which is an item subject to legal privilege; or

20 (c) for an arbitrator to fail to disclose any information or other matter which came to his attention in the course of any arbitral proceedings in which he acted as an arbitrator.”; and

25 (c) by deleting subsection (9).

Amendment of section 40A

9. Section 40A(4) of the principal Act is amended by deleting the word “under” and substituting the words “pursuant to a requirement under section 3A(3) or pursuant to”.

Amendment of section 41

10. Section 41 of the principal Act is amended —

(a) by deleting paragraphs (a) and (b) of subsection (1) and substituting the following paragraphs:

“(a) disclosed to him pursuant to a requirement under section 3A(3) or pursuant to section 39(1);

(b) given to him under section 48C(5) or 48E(5);

(c) forwarded to him under section 48D;

(d) submitted to him under section 48J(1); or

(e) filed with him under any regulations made under section 200 of the Casino Control Act (Cap. 33A),”;

(b) by deleting the word “trafficking” in subsection (1)(i) and substituting the word “dealing”;

(c) by inserting, immediately after the word “agreed” in subsection (2)(a), the words “, or the corresponding authority of the foreign country has given an undertaking,”; and

(d) by deleting the words “disclosed to a Suspicious Transaction Reporting Officer under section 39(1), 48C or 48E or an immigration officer under section 48C” in subsection (2)(a) and substituting the words “disclosed, given, forwarded or submitted to, or filed with, a Suspicious Transaction Reporting Officer pursuant to a requirement under section 3A(3), pursuant to section 39(1), under section 48C(5), 48D, 48E(5) or 48J(1) or under any regulations made under section 200 of the Casino Control Act, or required to be given to an immigration officer under section 48C(5)”.

Amendment of section 43

11. Section 43 of the principal Act is amended —

- 5 (a) by deleting the word “trafficking” wherever it appears in subsections (1), (2), (3) and (4)(a) and substituting in each case the word “dealing”;
- (b) by deleting the words “7 years” in subsection (5)(a) and substituting the words “10 years”; and
- (c) by deleting the word “trafficking” in the section heading and substituting the word “dealing”.

10 **Amendment of section 44**

12. Section 44(5) of the principal Act is amended by deleting the words “7 years” in paragraph (a) and substituting the words “10 years”.

Amendment of section 46

15 13. Section 46 of the principal Act is amended —

- (a) by deleting the word “trafficking” in subsections (1)(a), (2) and (3) and substituting in each case the word “dealing”;
- (b) by deleting the words “7 years” in subsection (6)(a) and substituting the words “10 years”; and
- 20 (c) by deleting the word “trafficking” in the section heading and substituting the word “dealing”.

Amendment of section 47

14. Section 47(6) of the principal Act is amended by deleting the words “7 years” in paragraph (a) and substituting the words
25 “10 years”.

New section 47A

15. The principal Act is amended by inserting, immediately after section 47, the following section:

“Proof and knowledge, etc., of predicate offence

47A.—(1) For the purpose of proving under this Part whether the whole or any part of any property constitutes, or directly or indirectly represents, the benefits of drug dealing or the benefits from criminal conduct, it is not necessary for the prosecution to prove the particulars of any offence constituted by the drug dealing or criminal conduct.

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(2) For the purpose of proving under this Part whether a person knows or has reasonable grounds to believe that the whole or any part of any property constitutes, or directly or indirectly represents, the benefits of drug dealing or the benefits from criminal conduct —

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(a) it is sufficient for the prosecution to prove that the person knows or has reasonable grounds to believe that the whole or part of the property constitutes, or directly or indirectly represents, the benefits of an offence generally; and

15

(b) it is not necessary for the prosecution to prove that the person knows or has reasonable grounds to believe that the whole or part of the property constitutes, or directly or indirectly represents, the benefits of a particular offence.”.

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Amendment of section 48

16. Section 48 of the principal Act is amended —

(a) by inserting, immediately after subsection (3), the following subsection:

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“(3A) Nothing in subsection (1) or (2) makes it an offence for a legal counsel acting as such for his employer, or a person who works under the supervision of the legal counsel, to disclose any information or other matter —

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(a) to the employer in connection with the giving of legal advice to the employer, or to any employee or officer of the employer, in the course of and

for the purpose of the employment of the legal counsel as such; or

(b) to any person —

(i) in contemplation of, or in connection with, legal proceedings concerning the employer; and

(ii) for the purposes of those proceedings.”;

(b) by deleting the words “Subsection (3) does” in subsection (4) and substituting the words “Subsections (3) and (3A) do”; and

(c) by deleting the words “drug trafficking or a serious offence” in subsection (6) and substituting the words “drug dealing or criminal conduct”.

Amendment of section 48C

17. Section 48C of the principal Act is amended —

(a) by inserting, immediately after the words “prescribed amount” in subsection (1), the words “(or its equivalent in a foreign currency)”;

(b) by deleting subsection (4); and

(c) by deleting the words “subsection (5)(a), (c) and (d)” in subsection (6) and substituting the words “this section”.

Amendment of section 48E

18. Section 48E of the principal Act is amended —

(a) by inserting, immediately after the words “prescribed amount” in subsection (1), the words “(or its equivalent in a foreign currency)”;

(b) by deleting subsection (4); and

(c) by inserting, immediately after subsection (5), the following subsection:

“(6) The Minister may make regulations for the matters referred to in this section.”.

New Part VIB

19. The principal Act is amended by inserting, immediately after section 48G, the following Part:

“PART VIB

CASH TRANSACTION REPORTS

5

Interpretation of this Part

48H. In this Part, unless the context otherwise requires —

“cash” means currency notes and coins (whether of Singapore or of a foreign country) which are legal tender and circulate as money in the country of issue;

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“cash transaction” means a cash transaction which is of a type prescribed for the purposes of this definition;

“cash transaction report” means a cash transaction report submitted to a Suspicious Transaction Reporting Officer under section 48J(1);

15

“customer” means any person who is involved in any cash transaction with a prescribed person;

“prescribed person” means any person who is prescribed, or who belongs to a class of persons which is prescribed, for the purposes of this definition.

20

Customer due diligence measures, etc.

48I.—(1) A prescribed person shall perform such customer due diligence measures and internal control measures as may be prescribed, before entering into any of the following:

(a) a single cash transaction with a customer the value of which exceeds the prescribed amount (or its equivalent in a foreign currency);

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(b) 2 or more cash transactions in a single day with the same customer, or with customers whom the prescribed person knows act on behalf of the same person, the total value of which exceeds the prescribed amount (or its equivalent in a foreign currency).

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(2) The prescribed person shall not proceed with any cash transaction referred to in subsection (1) if there exists such circumstances as may be prescribed.

(3) A prescribed person shall maintain —

5 (a) a record of each cash transaction referred to in subsection (1) containing the prescribed information on that transaction;

 (b) a record of all information relating to a customer which is obtained through the customer due diligence measures performed for that transaction; and

10 (c) a copy of each supporting document relied on in support of any information referred to in paragraph (b).

(4) Any prescribed person who fails to comply with subsection (1), (2) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000 or to imprisonment for a term not exceeding 2 years or to both.

Cash transaction reports

20 **48J.**—(1) A prescribed person who enters into any cash transaction referred to in section 48I(1) shall submit to a Suspicious Transaction Reporting Officer, within the prescribed time, a cash transaction report relating to that transaction in the prescribed form.

(2) A prescribed person shall maintain —

25 (a) a copy of each cash transaction report submitted under subsection (1); and

 (b) a copy of each supporting document relied on in support of any information contained in that cash transaction report.

30 (3) Any prescribed person who fails to comply with subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000 or to imprisonment for a term not exceeding 2 years or to both.

Keeping of records

48K.—(1) A prescribed person shall maintain each record referred to in section 48I(3)(a) relating to a cash transaction, each record referred to in section 48I(3)(b) relating to information obtained through the customer due diligence measures performed for that transaction, and each copy referred to in section 48I(3)(c) of a supporting document relating to that information, for a period of 5 years after the date on which the cash transaction report relating to that transaction was submitted under section 48J(1).

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(2) A prescribed person shall maintain each copy referred to in section 48J(2)(a) of a cash transaction report, and each copy referred to in section 48J(2)(b) of a supporting document relating to information contained in that cash transaction report, for a period of 5 years after the date on which that cash transaction report was submitted under section 48J(1).

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(3) Any prescribed person who fails to comply with subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000 or to imprisonment for a term not exceeding 2 years or to both.”.

20

Amendment of section 53

20. Section 53 of the principal Act is amended —

- (a) by inserting, immediately after the words “a foreign country” in subsection (1), the words “or part thereof”;
- (b) by inserting, immediately after the words “that country” in subsection (1)(a) and (b), the words “or part thereof”; and
- (c) by inserting, immediately after the words “the foreign country” in subsection (2)(a) and (b), the words “or part thereof”.

25

Amendment of section 55

21. Section 55 of the principal Act is amended —

(a) by deleting the words “a seizable offence” wherever they appear in subsection (2) and substituting in each case the words “an arrestable offence”;

(b) by deleting the words “non-seizable offence” in subsection (3) and substituting the words “non-arrestable offence”; and

(c) by deleting subsection (4) and substituting the following subsection:

“(4) In this section, “arrestable offence” and “non-arrestable offence” have the same meanings as in section 2(1) of the Criminal Procedure Code.”.

Amendment of section 64

22. The principal Act is amended by renumbering section 64 as subsection (1) of that section, and by inserting immediately thereafter the following subsection:

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

(a) may provide that a contravention of any specified provision of the regulations shall be an offence; and

(b) may provide for penalties not exceeding a fine of \$20,000 or imprisonment for a term not exceeding 2 years or both for each offence.”.

Miscellaneous amendments

23. The principal Act is amended —

(a) by deleting the word “trafficking” in the long title and substituting the word “dealing”;

(b) by deleting the word “trafficking” wherever it appears in the following provisions and substituting in each case the word “dealing”:

Sections 3(1) and (2), 4(1), (2), (3), (3B), (4) and (4A), 5(8), 6(1), 7(1)(a) and (b) and (2) and section heading, 8(2), 9(1)(a) and (6) and section heading, 10(1) and (3), 12(7)(a) and (b), 13(2)(a) and (b)(ii), 14(4) and (5), 15(1)(a) and (c), (2) and (3)(b), 16(5)(b), 17(8), 19(1)(a) and (2)(a), 26(1) and (2), 27, 28(4), (4B)(b) and (5)(a), 30(1) and (4)(a), 34(1), (3)(a) and (4)(a) and (b), 42(7A)(b) and (8), 48A, 49(1) and 50(1) and (4)(b);

- (c) by deleting the word “TRAFFICKING” in the Part heading of Part II and substituting the word “DEALING”;
- (d) by deleting the word “TRAFFICKING” in the Schedule heading of the First Schedule and substituting the word “DEALING”; and
- (e) by deleting the word “*trafficking*” in the headings of Parts I and II of the First Schedule and substituting in each case the word “*dealing*”.

EXPLANATORY STATEMENT

This Bill seeks to amend the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap. 65A) for the following main purposes:

- (a) to remove the existing requirement for a law of a foreign country to be evidenced by a certificate issued by or on behalf of the government of that country in order for the law to be regarded as a “corresponding law”, or for an offence against that law to be regarded as a “foreign serious offence”;
- (b) to extend the ambit of the terms “criminal conduct” and “drug dealing” to cover every type of money laundering offence under section 43, 44, 46 or 47;
- (c) to align the definition of “financial institution” with the corresponding definition in the Monetary Authority of Singapore Act (Cap. 186);
- (d) to enable certain types of foreign tax offences to be treated as foreign serious offences, whether or not the foreign tax concerned is of a type that is imposed in Singapore;
- (e) to extend legal professional privilege under the Act to legal counsel;

- (f) to establish a Suspicious Transaction Reporting Office, and to confer certain additional powers on Suspicious Transaction Reporting Officers attached to that Office;
- (g) to enable the confiscation of property of a value corresponding to the value of the instrumentalities of a “drug dealing offence” or a “serious offence”;
- (h) to exempt arbitrators from suspicious transaction reporting requirements;
- (i) to enable a Suspicious Transaction Reporting Officer to communicate certain information to an authority of a foreign country responsible for receiving that information, if that authority has given a unilateral undertaking to communicate to Singapore, upon Singapore’s request, any such information received by that authority;
- (j) to increase the maximum term of imprisonment for the money laundering offences under sections 43, 44, 46 and 47 from 7 years to 10 years;
- (k) to provide for the amount of the cross-border cash movement reporting threshold to be prescribed in subsidiary legislation, instead of being specified in the Act;
- (l) to implement a cash transaction reporting regime for certain persons involved in certain cash transactions;
- (m) to replace the references to “seizable offence” and “non-seizable offence” in section 55 with references to “arrestable offence” and “non-arrestable offence”, respectively, for alignment with the Criminal Procedure Code (Cap. 68);
- (n) to replace certain references in the Act to “drug trafficking”, “drug trafficking offence” and “foreign drug trafficking offence” with references to “drug dealing”, “drug dealing offence” and “foreign drug dealing offence”, respectively, to avoid confusion with the term “trafficking” as defined in section 2 of the Misuse of Drugs Act (Cap. 185); and
- (o) to make certain miscellaneous changes.

Clause 1 relates to the short title and commencement.

Clause 2(a) amends the definition of “corresponding law” in section 2(1) —

- (a) to remove the existing requirement for a law of a foreign country to be evidenced by a certificate issued by or on behalf of the government of that country in order to be regarded as a “corresponding law”; and
- (b) to enable a law of a part of a foreign country (such as a state in a federation) to be a “corresponding law”.

Clause 2(b) replaces the definition of “criminal conduct” in section 2(1). The existing definition of “criminal conduct” excludes from its ambit any act constituting a money laundering offence under section 44 or 47, and instead enumerates the types of money laundering that would constitute “criminal conduct”. The new definition of “criminal conduct” extends its ambit to every act constituting a serious offence, which includes every type of money laundering offence under section 44 or 47.

Clause 2(c) amends the definition of “defendant” in section 2(1) to replace the reference in that definition to a “drug trafficking offence” with a reference to a “drug dealing offence” to avoid confusion with the term “trafficking” as defined in section 2 of the Misuse of Drugs Act.

Clause 2(d) replaces the existing definitions of “drug trafficking” and “drug trafficking offence” in section 2(1) with new definitions for “drug dealing” and “drug dealing offence”, respectively, as the references to “drug trafficking” and “drug trafficking offence” in the Act will be replaced with references to “drug dealing” and “drug dealing offence”, respectively, to avoid confusion with the term “trafficking” as defined in section 2 of the Misuse of Drugs Act. The terms “drug trafficking” and “drug dealing” have different ambits. The existing definition of “drug trafficking” excludes from its ambit any act constituting a money laundering offence under section 43 or 46, and instead enumerates the types of money laundering that would constitute “drug trafficking”. The new definition of “drug dealing” extends its ambit to every act constituting a drug dealing offence, which includes every type of money laundering offence under section 43 or 46.

Clause 2(d) also inserts a new definition for “employer” into section 2(1), as that term has an extended meaning when used in relation to a legal counsel.

Clause 2(e) replaces the definition of “financial institution” in section 2(1) to align that definition with the definition of “financial institution” in section 27A(6) of the Monetary Authority of Singapore Act read with section 27A(7) of that Act.

Clause 2(f) replaces the existing definition of “foreign drug trafficking offence” in section 2(1) with a new definition for “foreign drug dealing offence”, as the references to “foreign drug trafficking offence” in the Act will be replaced with references to “foreign drug dealing offence” to avoid confusion with the term “trafficking” as defined in section 2 of the Misuse of Drugs Act. The new definition of “foreign drug dealing offence” also clarifies that the offence must consist of or include conduct which, if the conduct had occurred in Singapore, would have constituted a drug dealing offence. This requirement is implied by the reference to “drug trafficking offence” in the existing definition of “foreign drug trafficking offence”.

Clause 2(f) also replaces the definition of “foreign serious offence”, and inserts a new definition for “foreign serious tax offence”, in section 2(1).

- (a) The existing requirement for a law of a foreign country to be evidenced by a certificate issued by or on behalf of the government of that country in order for an offence against that law to be regarded as a “foreign serious offence” has been omitted from the new definition of “foreign serious offence”.
- (b) A “foreign serious tax offence” is an offence against the national law of a foreign country that consists of the doing of any of certain specified acts wilfully with intent to evade, or to assist any other person to evade, any tax of that country. The specified acts are based on the elements of tax evasion under sections 96(1) and 96A(1) of the Income Tax Act (Cap. 134) and section 62(1) of the Goods and Services Tax Act (Cap. 117A). The foreign tax that is being evaded need not be of a type that is imposed in Singapore. The definition of “foreign serious offence” will be extended to include a “foreign serious tax offence”. Consequently, a tax offence of a foreign country will be treated as a foreign serious offence if it falls within the definition of “foreign serious tax offence”, whether or not the tax concerned is of a type that is imposed in Singapore.

Clause 2(g) inserts a new definition for “legal counsel” into section 2(1), as legal professional privilege under the Act will be extended to legal counsel.

Clause 2(h) inserts a new definition for “possession” into section 2(1), to clarify that the term “possession”, when used in relation to any property (for instance, in sections 16, 19, 46 and 47), refers to the actual or constructive possession of the property. The new definition does not apply when the term “possession” is used in relation to other things.

Clause 2(i) amends section 2(2)(f) to replace the reference in that provision to a “drug trafficking offence” with a reference to a “drug dealing offence” to avoid confusion with the term “trafficking” as defined in section 2 of the Misuse of Drugs Act.

Clause 3 inserts a new section 2A to extend the ambit of references to “item subject to legal privilege” and “items subject to legal privilege” to include certain communications and items made, and certain documents prepared, in connection with a legal counsel giving advice to his employer, or in connection with and for the purposes of any legal proceedings in which the employer is or may be, or was or might have been, a party. Consequently, clause 7 deletes the existing definition of “items subject to legal privilege” in section 35(2), and clauses 6(b) and 8(c) delete sections 31(7) and 39(9) (which define “items subject to legal privilege” for the purposes of sections 31 and 39 by reference to the definition in section 35(2)), respectively.

Clause 4 inserts a new section 3A to establish a Suspicious Transaction Reporting Office and to confer certain additional powers on Suspicious Transaction Reporting Officers attached to that Office. The Suspicious

Transaction Reporting Office is the office of the Government which is responsible for the receipt and analysis of any thing disclosed, given, forwarded or submitted to, or filed with, a Suspicious Transaction Reporting Officer pursuant to a requirement under the new section 3A(3), pursuant to section 39(1), under section 48C(5), 48D or 48E(5) or the new section 48J(1) or under any regulations made under section 200 of the Casino Control Act (Cap. 33A). A Suspicious Transaction Reporting Officer attached to the Suspicious Transaction Reporting Office may require any person to disclose any document or information for the purposes of any such analysis. A person who discloses any document or information to a Suspicious Transaction Reporting Officer pursuant to a requirement under the new section 3A(3) will not be treated as being in breach of any restriction upon disclosure imposed by law, contract or rules of professional conduct, and will not be liable for any loss arising out of the disclosure or any act or omission in consequence of the disclosure.

Clause 5 inserts a new Part IVA (comprising new sections 29A, 29B and 29C) to enable the confiscation of property of a value corresponding to the value of the instrumentalities of a drug dealing offence or a serious offence. Under the new Part IVA, a court may make a substitute property confiscation order if it is satisfied that a person convicted of a drug dealing offence or a serious offence had used or intended to use any property (the instrumentality) for the commission of the offence, and the instrumentality is not available for forfeiture. The new section 29A clarifies the scope of application of the new Part IVA. The new section 29B deals with the circumstances in which a substitute property confiscation order may be made and with related matters. The new section 29C applies Parts II, III and IV to a substitute property confiscation order with appropriate modifications.

Clause 6(a) and (c) amends section 31 (including the section heading) to replace the references in that section to “drug trafficking” and “drug trafficking offence” with references to “drug dealing” and “drug dealing offence”, respectively, to avoid confusion with the term “trafficking” as defined in section 2 of the Misuse of Drugs Act.

Clause 8(a) amends section 39(1) to replace the reference in that provision to “drug trafficking” with a reference to “drug dealing” to avoid confusion with the term “trafficking” as defined in section 2 of the Misuse of Drugs Act.

Clause 8(b) replaces section 39(4) to refine the list of persons currently exempted from the suspicious transaction reporting requirements in section 39, and to exempt, in addition to those persons, the following persons in the following circumstances from those requirements:

- (a) a legal counsel acting as such for his employer, or an interpreter or other person who works under the supervision of the legal counsel, in respect of any information or other matter concerning the employer which is an item subject to legal privilege (this being a consequence of the extension of the legal professional privilege under the Act to legal counsel);

- (b) an arbitrator in respect of any information or other matter which came to his attention in the course of any arbitral proceedings in which he acted as an arbitrator.

Clause 9 amends section 40A(4) to extend the protection conferred on an informer under section 40A to a person who makes a disclosure pursuant to a requirement of a Suspicious Transaction Reporting Officer under the new section 3A(3).

Clause 10(a) and (d) amends section 41(1) and (2)(a) to extend the types of information which a Suspicious Transaction Reporting Officer may communicate to a corresponding authority of a foreign country to include any thing disclosed pursuant to a requirement under the new section 3A(3), submitted under the new section 48J(1) or filed under any regulations made under section 200 of the Casino Control Act.

Clause 10(b) amends section 41(1)(i) to replace the reference in that provision to “foreign drug trafficking offence” with a reference to “foreign drug dealing offence” to avoid confusion with the term “trafficking” as defined in section 2 of the Misuse of Drugs Act.

Clause 10(c) amends section 41(2)(a) to enable a Suspicious Transaction Reporting Officer to communicate the information referred to in section 41(1) and (2)(a) to an authority of a foreign country responsible for receiving that information, if that authority has given a unilateral undertaking to communicate to Singapore, upon Singapore’s request, any such information received by that authority.

Clause 11(a) and (c) amends section 43 (including the section heading) to replace the references in that section to “drug trafficking” with references to “drug dealing” to avoid confusion with the term “trafficking” as defined in section 2 of the Misuse of Drugs Act.

Clauses 11(b), 12, 13(b) and 14 amend sections 43(5)(a), 44(5)(a), 46(6)(a) and 47(6)(a), respectively, to increase the maximum term of imprisonment for the money laundering offences under sections 43, 44, 46 and 47, respectively, from 7 years to 10 years.

Clause 13(a) and (c) amends section 46 (including the section heading) to replace the references in that section to “drug trafficking” with references to “drug dealing” to avoid confusion with the term “trafficking” as defined in section 2 of the Misuse of Drugs Act.

Clause 15 inserts a new section 47A to clarify that —

- (a) it is not necessary for the prosecution to prove the particulars of a predicate offence in order to prove that any property constitutes the benefits of drug dealing or criminal conduct; and

- (b) it is sufficient for the prosecution to prove that a person knows or has reasonable grounds to believe that any property constitutes or represents the benefits of an offence generally, in order to prove that the person knows or has reasonable grounds to believe that the property constitutes or represents the benefits of drug dealing or criminal conduct.

Clause 16(a) and (b) inserts a new section 48(3A) and makes a consequential amendment to section 48(4) to enable a legal counsel acting as such for an employer, or a person who works under the supervision of the legal counsel, to disclose information to the employer in connection with the giving of legal advice, or to any person in connection with and for the purposes of legal proceedings concerning the employer, even if the disclosure of the information is likely to prejudice any investigation, proposed investigation or investigation which might be conducted (this being a consequence of the extension of the legal professional privilege under the Act to legal counsel).

Clause 16(c) amends section 48(6) to replace the references in that provision to “drug trafficking” and “serious offence” with references to “drug dealing” and “criminal conduct”, respectively. The reference to “drug trafficking” is replaced with a reference to “drug dealing” to avoid confusion with the term “trafficking” as defined in section 2 of the Misuse of Drugs Act. The reference to “serious offence” is replaced with a reference to “criminal conduct” so that a person is not guilty of a tipping-off offence under section 48(1) or (2) in respect of anything done by him to enforce any provision of written law relating to criminal conduct (which extends, beyond conduct constituting a serious offence, to the doing, outside Singapore, of any act constituting a foreign serious offence).

Clauses 17 and 18 amend sections 48C and 48E, respectively, to provide for the amount of the cross-border cash movement reporting threshold (referred to in sections 48C(1) and 48E(1) as the “prescribed amount”) to be prescribed in subsidiary legislation, instead of being specified in the Act. The existing sections 48C(4) and 48E(4) specify \$30,000 (or its equivalent in a foreign currency) as the prescribed amount, but allow the Minister to specify, by notification in the *Gazette*, another amount in place of \$30,000. Upon the deletion of sections 48C(4) and 48E(4) by clauses 17(b) and 18(b), respectively, the “prescribed amount” will be prescribed by regulations made by the Minister under section 64, section 48C(6) (as amended by clause 17(c) to expressly enable the Minister to make regulations for all matters in section 48C) and the new section 48E(6) (which will be inserted by clause 18(c) to make section 48E structurally consistent with section 48C). Consequential to the deletion of sections 48C(4) and 48E(4), clauses 17(a) and 18(a) amend section 48C(1) and 48E(1), respectively, to clarify that the cross-border cash movement reporting requirements under sections 48C and 48E, respectively, also apply where cash in a foreign currency, the total value of which exceeds the equivalent of the prescribed amount in the foreign currency, is moved into or out from Singapore.

Clause 19 inserts a new Part VIB (comprising new sections 48H to 48K) to implement a cash transaction reporting regime for certain persons involved in certain cash transactions. The persons to be regulated, and the cash transactions to be reported, under the new Part VIB will be prescribed by regulations made under section 64. The regulations will also prescribe the customer due diligence measures and internal control measures to be performed by a prescribed person who engages in any prescribed cash transaction (or transactions) the value (or total value) of which exceeds the prescribed amount. In addition to such measures, a prescribed person will be prohibited from proceeding with certain prescribed cash transactions in certain circumstances, will be required to submit cash transaction reports relating to such prescribed cash transactions, and will be required to maintain certain records.

The new section 48H defines certain terms used in the new Part VIB. The new section 48I requires a prescribed person to perform the prescribed customer due diligence measures and internal control measures in certain circumstances, and provides for matters relating to such measures. The new section 48J requires a prescribed person to submit a cash transaction report to a Suspicious Transaction Reporting Officer in certain circumstances, and provides for related matters. The new section 48K requires a prescribed person to maintain certain records.

As it may be necessary to criminalise the failure of a prescribed person to comply with certain prescribed measures, clause 22 inserts a new subsection (2) into section 64 to expressly empower the Minister to make regulations providing for a contravention of any specified provision of those regulations to be an offence punishable with a fine not exceeding \$20,000 or with imprisonment for a term not exceeding 2 years or with both. The maximum fine of \$20,000 and the maximum imprisonment term of 2 years are pegged to the penalties for the offences under the new sections 48I(4), 48J(3) and 48K(3).

Clause 20 amends section 53 to provide for evidential matters relating to the proof of a corresponding law, or a law in relation to a foreign serious offence, in force in a part of a foreign country (such as a state in a federation).

Clause 21 amends section 55 to replace the references to “seizable offence” and “non-seizable offence” in that section with references to “arrestable offence” and “non-arrestable offence”, respectively, for alignment with the Criminal Procedure Code.

Clause 23 makes miscellaneous amendments to the Act to replace certain references to “drug trafficking”, “drug trafficking offence”, “drug trafficking offences” and “foreign drug trafficking offence” with references to “drug dealing”, “drug dealing offence”, “drug dealing offences” and “foreign drug dealing offence”, respectively, to avoid confusion with the term “trafficking” as defined in section 2 of the Misuse of Drugs Act.

EXPENDITURE OF PUBLIC MONEY

This Bill will not involve the Government in any extra financial expenditure.
