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Organised Crime Bill

Bill No. 21/2015.

Read the first time on 13 July 2015.

ORGANISED CRIME ACT 2015

(No. of 2015)

ARRANGEMENT OF SECTIONS

PART 1

PRELIMINARY

Section

1. Short title and commencement
2. General interpretation
3. Meaning of “item subject to legal privilege”
4. Purpose of Act

PART 2

ORGANISED CRIME OFFENCES

5. Locally-linked organised criminal group membership
6. Recruiting members for organised criminal group
7. Instructing commission of offence for organised criminal group
8. Procuring expenditure or application of property to support, aid or promote certain offences related to organised criminal group
9. Expending or applying property to support, aid or promote certain offences related to organised criminal group
10. Allowing organised criminal group to use premises
11. Receiving, retaining, etc., property of organised criminal group
12. Facilitation of commission of offence by organised criminal group
13. Commission of offence for organised criminal group

PART 3

ORGANISED CRIME PREVENTION ORDERS

Division 1 — Preliminary

Section

14. Interpretation of this Part and Parts 4 and 5

Division 2 — General

15. Organised crime prevention orders
16. Type of provision that may be made by organised crime prevention orders

Division 3 — Duration and nature of OCPO

17. Duration of OCPO
18. Persons against whom OCPO may be made
19. Electronic monitoring of individual subject to OCPO
20. Compliance with orders: authorised monitors

PART 4

FINANCIAL REPORTING ORDERS

21. Financial reporting order
22. Duration of FRO
23. Effect of financial reporting orders

PART 5

GENERAL PROVISIONS RELATING TO OCPO AND FRO

Division 1 — Enforcement

24. Powers of law enforcement officers to retain documents
25. Verification and disclosure of OCPO and FRO

Division 2 — Failure to comply with OCPO or FRO

26. Failure to comply with OCPO or FRO

Division 3 — General safeguards in relation to OCPO or FRO

27. Any individual must be 16 or older
28. Right of third parties to make representations
29. Notice requirements in relation to OCPO or FRO
30. Restrictions relating to other written law, etc.
31. Restrictions on use of information obtained

Division 4 — Variation and discharge of OCPO or FRO

Section

- 32. Variation of OCPO or FRO
- 33. Discharge of OCPO or FRO

Division 5 — Appeals

- 34. Right of appeal from High Court or State Court

Division 6 — Supplementary

- 35. Acquittal or pardon does not impact on subsequent making of OCPO or FRO
- 36. Transfer of case to trial court to make OCPO or FRO upon conviction on appeal
- 37. Evidence obtained in investigations may be used in proceedings for OCPO or FRO
- 38. Disclosure of information in accordance with orders

PART 6

DISQUALIFICATION ORDERS

- 39. Disqualification to act as director on conviction of certain offences

PART 7

POWERS TO INVESTIGATE AND TO OBTAIN
INFORMATION FROM COMPTROLLER OF INCOME TAX
AND COMPTROLLER OF GOODS AND SERVICES TAX

- 40. Powers of law enforcement officers
- 41. Power to obtain information from Comptroller of Income Tax and Comptroller of Goods and Services Tax

PART 8

DISCLOSURE AND TIPPING-OFF

- 42. Non-disclosure of information and identity of informer
- 43. Disclosure of information by informer
- 44. Tipping-off

PART 9

CONFISCATION OF BENEFITS
FROM ORGANISED CRIME ACTIVITIES*Division 1 — Preliminary*

Section

45. Purpose of Part
46. Interpretation of Part
47. Meaning of “gift caught by this Part”
48. Meaning and proof of “organised crime activity”
49. Application of Part
50. Nature of proceedings
51. No criminal proceedings required for confiscation order, etc.
52. Confiscation order must not impact on sentence
53. Acquittal, etc., does not impact on confiscation
54. Evidence obtained in investigations may be used in proceedings under this Part
55. Confiscation order not affected by CDSA confiscation order

Division 2 — Restraint orders and charging orders

56. Application for restraint or charging order
57. Restraint orders
58. Charging orders
59. Duration of orders
60. Extending duration of order

Division 3 — Confiscation orders

61. Application for confiscation order
62. Amount to be recovered under confiscation order
63. Confiscation order if subject has absconded or died
64. Settlement

*Division 4 — General provisions for proceedings
under Divisions 2 and 3*

65. Effect of death on proceedings
66. Exclusion of subject’s property for undue hardship
67. Relief for third party
68. Compensation
69. Rules of Court
70. Application of CDSA provisions
71. Right of appeal

Division 5 — Information-gathering powers

Section

72. Application of information-gathering powers in CDSA

PART 10

MISCELLANEOUS

73. Examination orders
74. Duty to give information of certain matters
75. Offences arrestable
76. Offences by bodies corporate, etc.
77. Consent of Public Prosecutor
78. Jurisdiction of courts
79. Composition of offences
80. Amendment of Schedule
81. Regulations
82. Orders and regulations to be presented to Parliament
83. Savings and transitional provision
84. Consequential and related amendments to other Acts
The Schedule — Serious offences
-

A BILL

intituled

An Act to detect, investigate, prevent and disrupt organised crime activities, to deprive persons involved in such activities of the benefits of their crime, and to make consequential and related amendments to certain other Acts.

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

PART 1
PRELIMINARY

Short title and commencement

1. This Act may be cited as the Organised Crime Act 2015 and
5 comes into operation on such date as the Minister may, by notification
in the *Gazette*, appoint.

General interpretation

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

“associate with” means —

- 10 (a) to be in habitual company with; or
(b) to habitually communicate with by any means
(including by post, facsimile, telephone, email or any
other form of electronic communication);

15 “conduct” means any act or omission, any series of acts or
omissions, or both;

“corporation” has the same meaning as in section 4(1) of the
Companies Act (Cap. 50);

“disqualification order” means a disqualification order referred
to in section 39;

20 “document” means anything in which information of any
description is recorded, whether in electronic or any other
form;

25 “engage”, in relation to any conduct, means engage, whether
directly or indirectly, in the conduct either alone or together
with any other person or persons;

“FRO” means a financial reporting order referred to in
section 21;

30 “group” means a group of 3 or more individuals (whether or not
ordinarily resident in Singapore), however organised,
including by forming a company or association or body of
persons, corporate or unincorporate, whether or not —

- (a) the company or association or body of persons is based within or outside Singapore; or
- (b) the company or association or body of persons is part of a larger group;

“illegal purpose”, in relation to a locally-linked organised criminal group or an organised criminal group, means the purpose referred to in the definition of “locally-linked organised criminal group” or “organised criminal group”, respectively; 5

“law enforcement agency” means — 10

- (a) the Singapore Police Force;
- (b) the Central Narcotics Bureau;
- (c) the Immigration & Checkpoints Authority;
- (d) the Commercial Affairs Department; or
- (e) any similar department or office of the Government prescribed by the Minister by notification in the *Gazette*; 15

“law enforcement officer” means —

- (a) a police officer;
- (b) an officer of the Central Narcotics Bureau;
- (c) an immigration officer appointed under section 3 of the Immigration Act (Cap. 133); 20
- (d) a Commercial Affairs Officer appointed under section 64 of the Police Force Act (Cap. 235); or
- (e) any other public officer or class of public officers authorised in writing by the Minister for the purposes of this Act; 25

“locally-linked organised criminal group” means a group that has as its only purpose, or one of its purposes, the obtaining of a financial or other material benefit from the commission by, or the facilitation of the commission by, any person (whether or not the person is a member of the group) of any serious offence; 30

“OCPO” means an organised crime prevention order referred to in section 15;

“organised criminal group” means a group that has as its only purpose, or one of its purposes, the obtaining of a financial or other material benefit from the commission by, or the facilitation of the commission by, any person (whether or not the person is a member of the group) of —

(a) any serious offence; or

(b) any act outside Singapore that, if it occurred in Singapore, would constitute any serious offence;

“Part 2 offence” means —

(a) any offence under section 5, 6, 7, 8, 9, 10, 11 or 12; or

(b) an abetment of, or a conspiracy or an attempt to commit, any offence referred to in paragraph (a);

“premises” includes any land, vehicle, vessel, aircraft or hovercraft;

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

“serious offence” means any offence specified in the Schedule.

(2) For the purposes of this Act, a person (*A*) facilitates the commission of an offence by any other person so long as *A* facilitates any conduct which *A* knows, or has reasonable grounds to believe, may amount to the offence, whether or not *A* knows —

(a) the particular offence being facilitated;

(b) the exact details of the offence being facilitated; or

(c) that an offence was actually committed.

(3) For the purposes of this Act, a group of persons is capable of being an organised criminal group whether or not —

(a) any of the persons in the group are subordinates or employees of any other persons in the group;

- (b) only one or some of the persons in the group are involved in planning, organising or carrying out any serious offence in furtherance of the illegal purpose of the organised criminal group; or
 - (c) the membership of the group changes from time to time. 5
- (4) In the following proceedings:
- (a) proceedings against any person for a Part 2 offence, or for any offence which is subject to the penalty under section 13;
 - (b) any application for an OCPO or FRO, or a disqualification order, to be made against any person; 10
 - (c) any application for an examination order to be made against any person under section 73;
 - (d) any proceedings in relation to any application to be made against any person under Part 9,

it is not necessary for the Public Prosecutor to prove that the person knew the identity of all or any of the persons who constitute the organised criminal group. 15

Meaning of “item subject to legal privilege”

- 3.—(1)** For the purposes of this Act, an item is subject to legal privilege if — 20
- (a) it is a communication made between a lawyer and a client, or a legal counsel acting as such and his or her 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; 25
 - (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; 30

(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

(iii) between a legal counsel acting as such for his or her 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;

(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

(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,

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

(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;

“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; 5
- (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 or her 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 10
- (c) an employee or officer of the employer; 15

“lawyer” means an advocate and solicitor, and includes an interpreter or other person who works under the supervision of an advocate and solicitor; 20

“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.

Purpose of Act

4. The purpose of this Act is to deal with organised crime with the object of — 25

- (a) punishing persons who are involved in the activities of organised criminal groups;
- (b) preventing, restricting and disrupting the activities of organised criminal groups and persons who are involved in such groups; 30
- (c) protecting members of the public from the harm caused, or likely to be caused, by such groups;

- (d) empowering a court to make various orders in order to prevent, restrict or disrupt the involvement of persons associated with such groups; and
- (e) establishing a regime for the confiscation of benefits from organised crime activities.

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PART 2

ORGANISED CRIME OFFENCES

Locally-linked organised criminal group membership

5.—(1) Any person who is or acts as a member of a group, knowing or having reasonable grounds to believe that the group is a locally-linked organised criminal group, commits an offence and shall be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 5 years or to both.

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(2) In determining whether a person is guilty of an offence under subsection (1), the matters which a court may consider include, but are not limited to —

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- (a) that person's involvement in meetings with other known members of the group;
- (b) whether that person is identified as a member by other known members (whether existing or former members) of the group;
- (c) whether that person adopts the style of dress, hand signs, language or tattoos used by known members of the group;
- (d) whether that person associates with known members of the group;
- (e) whether that person has recruited or attempted to recruit any other person to be a member of the group;
- (f) whether that person habitually visits premises or meeting places known to be used by the group, and the person knows or has reasonable grounds to believe that such premises or meeting places are owned or occupied by the group;
- (g) whether that person has been arrested more than once in the company of known members of the group for any serious

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offence that is consistent with the usual criminal activity of the group;

- (h) whether that person is identified as a member of the group by physical evidence such as photographs or other documentation; 5
- (i) whether that person has received or is receiving any financial or other material benefit from the group;
- (j) whether that person signed up to be a member of the group; and
- (k) whether that person has undergone any initiation ceremony or is subject to any disciplinary regime of the group. 10

Recruiting members for organised criminal group

6.—(1) A person in Singapore commits an offence if the person —

- (a) incites, induces or invites another person (whether within or outside Singapore); or 15
- (b) uses any violence, threat or intimidation towards any other person (whether within or outside Singapore) in order to incite, induce or invite that other person,

to become a member of, or to assist in the management of, a group, knowing or having reasonable grounds to believe that the group is an organised criminal group. 20

(2) A person outside Singapore commits an offence if the person —

- (a) incites, induces or invites another person (whether within or outside Singapore); or
- (b) uses any violence, threat or intimidation towards any other person (whether within or outside Singapore) in order to incite, induce or invite that other person, 25

to become a member of, or to assist in the management of, a group, knowing or having reasonable grounds to believe that the group is a locally-linked organised criminal group. 30

(3) Subject to subsection (4), a person who commits an offence under subsection (1) or (2) shall be liable on conviction —

(a) in the case of an individual, to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding 5 years or to both; or

(b) in any other case, to a fine not exceeding \$500,000.

5 (4) Where a person (*A*) commits an offence under subsection (1) or (2) and it is proved that *A* knows or has reasonable grounds to believe that the other person referred to in that subsection was, at the time of the offence, a vulnerable person or below 21 years of age, *A* shall be liable on conviction —

10 (a) in the case of an individual, to a fine not exceeding \$350,000 or to imprisonment for a term not exceeding 7 years or to both; or

(b) in any other case, to a fine not exceeding \$700,000.

15 (5) For the purposes of subsection (4), unless otherwise proven, *A* is presumed to know or to have reasonable grounds to believe that the other person referred to in subsection (1) or (2), as the case may be, was at the time of the offence, a vulnerable person or below 21 years of age.

20 (6) In this section, “vulnerable person” means any person who suffers from an impairment of, or a disturbance in the functioning of, the mind or brain resulting from any disability or disorder of the mind or brain which impairs the person’s ability to make a proper judgment in relation to whether or not to become a member of, or to assist in the management of, an organised criminal group.

25 **Instructing commission of offence for organised criminal group**

7.—(1) A person in Singapore commits an offence if the person instructs, directly or indirectly, any other person (whether within or outside Singapore) to commit —

(a) a Part 2 offence (other than an offence under this section); or

30 (b) an offence under any written law which the person instructing knows is at the direction of, or in furtherance of the illegal purpose of, an organised criminal group.

(2) A person outside Singapore commits an offence if the person instructs, directly or indirectly, any other person (whether within or outside Singapore) to commit —

- (a) a Part 2 offence (other than an offence under this section); or
- (b) an offence under any written law which the person instructing knows is at the direction of, or in furtherance of the illegal purpose of, a locally-linked organised criminal group.

(3) A person (*A*) who commits an offence under subsection (1) or (2) shall be guilty of an offence, and the punishment for the offence upon *A*'s conviction is as follows:

- (a) if the offence instructed is not committed in consequence of *A*'s instruction — the punishment provided for the offence instructed, but as modified by subsection (4);
- (b) if the offence instructed is committed in consequence of *A*'s instruction — the punishment provided for the offence instructed, but as modified by subsection (5);
- (c) if the person instructed commits the offence instructed with a different intention or knowledge from *A* — the punishment provided for the offence which would have been committed if the offence had been done with the intention or knowledge of *A*, but as modified by subsection (5);
- (d) if the offence instructed is not committed but a different offence, which is a probable consequence of the instructed offence, is committed instead — the punishment provided for the different offence, but as modified by subsection (5);
- (e) if the different offence referred to in paragraph (d) is committed in addition to the offence instructed, and constitutes a distinct offence — the punishment provided for the different offence referred to in paragraph (d), and for the offence instructed, but as modified by subsection (5);
- (f) if *A* gave the instruction with the intention of causing a particular effect by the offence instructed, but another offence with a different effect from that intended by *A* is committed instead and *A* knew that the offence instructed was likely to

cause the different effect — the punishment provided for the other offence with the different effect, but as modified by subsection (5).

5 (4) For the purposes of subsection (3)(a), the modifications are as follows:

(a) where the punishment, or one of the punishments, prescribed for the offence instructed is a fine, the maximum amount of fine is twice the maximum amount of fine prescribed for the offence instructed;

10 (b) where the punishment, or one of the punishments, prescribed for the offence instructed is a term of imprisonment (other than life imprisonment), the maximum imprisonment term is half of the maximum imprisonment term prescribed for the offence instructed;

15 (c) where the punishment, or one of the punishments, prescribed for the offence instructed is death or life imprisonment, that punishment is replaced with an imprisonment term which must not exceed 10 years;

(d) where —

20 (i) the punishment, or one of the punishments, prescribed for the offence instructed is death or life imprisonment; and

(ii) hurt is caused to any person as a result of an act for which the instructor is liable in consequence of the instruction,

25 that punishment is replaced with an imprisonment for a term which must not exceed 20 years.

(5) For the purposes of subsection (3)(b) to (f), the modifications are as follows:

30 (a) where the punishment, or one of the punishments, prescribed for the predicate offence is a fine, the maximum amount of fine is 4 times the maximum amount of fine prescribed for such offence;

- (b) where the punishment, or one of the punishments, prescribed for the predicate offence is imprisonment for a term which extends to less than 4 years, the maximum imprisonment term is replaced with a maximum imprisonment term not exceeding a period equal to the maximum term of imprisonment for the predicate offence plus 4 years; 5
- (c) where the punishment, or one of the punishments, prescribed for the predicate offence is imprisonment for a term which extends to 4 years or more (other than life imprisonment), the maximum imprisonment term is replaced with a maximum imprisonment term not exceeding a period equal to the maximum term of imprisonment for the predicate offence plus 10 years. 10
- (6) To avoid doubt, nothing in subsection (4)(a) or (b) or (5) affects the minimum sentence which is fixed or specified under any written law. 15
- (7) In proceedings for an offence under subsection (1) or (2), it is not necessary for the prosecution to prove that the accused instructed a particular person to commit an offence.
- (8) In subsection (5), “predicate offence” means — 20
- (a) in relation to subsection (3)(b) — the offence instructed;
- (b) in relation to subsection (3)(c) — the offence which would have been committed if the offence had been done with the intention or knowledge of *A*;
- (c) in relation to subsection (3)(d) — the different offence referred to in that subsection; 25
- (d) in relation to subsection (3)(e) — both the different offence referred to in subsection (3)(d) and the offence instructed; and
- (e) in relation to subsection (3)(f) — the other offence with the different effect referred to in that subsection. 30

Procuring expenditure or application of property to support, aid or promote certain offences related to organised criminal group

5 **8.—(1)** A person in Singapore who procures from any other person (whether within or outside Singapore) any expenditure or application of any property knowing or having reasonable grounds to believe that the expenditure or application of the property is in support of, or to aid or promote the commission of —

(a) a Part 2 offence (other than an offence under this section); or

10 (b) an offence under any written law, which is for the purpose of conferring a financial or other material benefit on an organised criminal group,

commits an offence and shall be liable on conviction —

15 (i) in the case of an individual, to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding 5 years or to both; or

(ii) in any other case, to a fine not exceeding \$500,000.

20 (2) A person outside Singapore who procures from any other person (whether within or outside Singapore) any expenditure or application of any property knowing or having reasonable grounds to believe that the expenditure or application of the property is in support of, or to aid or promote the commission of —

(a) a Part 2 offence (other than an offence under this section); or

25 (b) an offence under any written law, which is for the purpose of conferring a financial or other material benefit on a locally-linked organised criminal group,

commits an offence and shall be liable on conviction —

30 (i) in the case of an individual, to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding 5 years or to both; or

(ii) in any other case, to a fine not exceeding \$500,000.

Expending or applying property to support, aid or promote certain offences related to organised criminal group

9.—(1) A person in Singapore who expends or applies any property knowing or having reasonable grounds to believe that the expenditure or application of the property is in support of, or to aid or promote the commission of —

- (a) a Part 2 offence (other than an offence under this section); or
- (b) an offence under any written law, which is for the purpose of conferring a financial or other material benefit on an organised criminal group,

commits an offence and shall be liable on conviction —

- (i) in the case of an individual, to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding 5 years or to both; or
- (ii) in any other case, to a fine not exceeding \$500,000.

(2) A person outside Singapore who expends or applies any property knowing or having reasonable grounds to believe that the expenditure or application of the property is in support of, or to aid or promote the commission of —

- (a) a Part 2 offence (other than an offence under this section); or
- (b) an offence under any written law, which is for the purpose of conferring a financial or other material benefit on a locally-linked organised criminal group,

commits an offence and shall be liable on conviction —

- (i) in the case of an individual, to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding 5 years or to both; or
- (ii) in any other case, to a fine not exceeding \$500,000.

Allowing organised criminal group to use premises

10.—(1) Any person in Singapore who allows any group, or any member of a group, which the person knows or has reasonable grounds to believe is an organised criminal group, to use any premises

(whether within or outside Singapore) owned or occupied by the person, or over which the person has control, in order to support, aid or promote the commission of —

(a) a Part 2 offence (other than an offence under this section); or

5 (b) an offence under any written law, which is for the purpose of conferring a financial or other material benefit on the organised criminal group,

commits an offence and shall be liable on conviction —

10 (i) in the case of an individual, to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding 5 years or to both; or

(ii) in any other case, to a fine not exceeding \$500,000.

15 (2) Any person outside Singapore who allows any group, or any member of a group, which the person knows or has reasonable grounds to believe is a locally-linked organised criminal group, to use any premises (whether within or outside Singapore) owned or occupied by the person, or over which the person has control, in order to support, aid or promote the commission of —

(a) a Part 2 offence (other than an offence under this section); or

20 (b) an offence under any written law, which is for the purpose of conferring a financial or other material benefit on the locally-linked organised criminal group,

commits an offence and shall be liable on conviction —

25 (i) in the case of an individual, to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding 5 years or to both; or

(ii) in any other case, to a fine not exceeding \$500,000.

Receiving, retaining, etc., property of organised criminal group

30 **11.—**(1) A person in Singapore must not receive, retain, conceal, dispose of or otherwise deal with any property if the person knows or has reasonable grounds to believe that the property —

(a) is illegally obtained by an organised criminal group; or

(b) is used by an organised criminal group to commit, or to facilitate the commission of —

(i) a Part 2 offence (other than an offence under this section); or

(ii) an offence under any written law, which is for the purpose of conferring a financial or other material benefit on the organised criminal group.

(2) A person outside Singapore must not receive, retain, conceal, dispose of or otherwise deal with any property if the person knows or has reasonable grounds to believe that the property —

(a) is illegally obtained by a locally-linked organised criminal group; or

(b) is used by a locally-linked organised criminal group to commit, or to facilitate the commission of —

(i) a Part 2 offence (other than an offence under this section); or

(ii) an offence under any written law, which is for the purpose of conferring a financial or other material benefit on the locally-linked organised criminal group.

(3) A person who contravenes subsection (1) or (2) commits an offence and shall be liable on conviction —

(a) in the case of an individual, to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding 5 years or to both; or

(b) in any other case, to a fine not exceeding \$500,000.

Facilitation of commission of offence by organised criminal group

12.—(1) A person in Singapore commits an offence if the person engages in conduct which the person knows or has reasonable grounds to believe will facilitate —

(a) the commission of a Part 2 offence (other than an offence under this section); or

(b) the commission of any serious offence at the direction of, or in furtherance of the illegal purpose of, an organised criminal group.

5 (2) A person outside Singapore commits an offence if the person engages in conduct which the person knows or has reasonable grounds to believe will facilitate —

(a) the commission of a Part 2 offence (other than an offence under this section); or

10 (b) the commission of any serious offence at the direction of, or in furtherance of the illegal purpose of, a locally-linked organised criminal group.

(3) A person guilty of an offence under subsection (1) or (2) shall be liable on conviction —

15 (a) in the case of an individual, to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 5 years or to both; or

(b) in any other case, to a fine not exceeding \$200,000.

Commission of offence for organised criminal group

20 **13.**—(1) Where a court convicts a person for the commission, in Singapore, of an offence under any written law other than this Act (called the predicate offence) and it is proved that the offence —

(a) was committed at the direction of a group which the person knows or has reasonable grounds to believe is an organised criminal group; or

25 (b) was committed in furtherance of the illegal purpose of a group which the person knows or has reasonable grounds to believe is an organised criminal group,

the punishment which the court may impose is the same punishment provided for the predicate offence, but as modified by subsection (3).

30 (2) Where a court convicts a person for the commission, outside Singapore, of an offence under any written law other than this Act (called the predicate offence) and it is proved that the offence —

- (a) was committed at the direction of a group which the person knows or has reasonable grounds to believe is a locally-linked organised criminal group; or
- (b) was committed in furtherance of the illegal purpose of a group which the person knows or has reasonable grounds to believe is a locally-linked organised criminal group,

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the punishment which the court may impose is the same punishment provided for the predicate offence, but as modified by subsection (3).

(3) For the purposes of subsections (1) and (2), the modifications are as follows:

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(a) where the punishment, or one of the punishments, prescribed for the predicate offence is a fine, the maximum amount of fine is twice the maximum amount of fine prescribed for the predicate offence;

(b) where the punishment, or one of the punishments, prescribed for the predicate offence is imprisonment for a term which extends to less than 4 years, the maximum imprisonment term is an imprisonment term not exceeding a period equal to the maximum imprisonment term for the predicate offence plus 2 years;

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(c) where the punishment, or one of the punishments, prescribed for the predicate offence is imprisonment for a term which extends to 4 years or more (other than life imprisonment), the maximum imprisonment term is an imprisonment term not exceeding a period equal to the maximum imprisonment term for the predicate offence plus 5 years.

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(4) To avoid doubt, nothing in subsection (3) affects the minimum sentence which is fixed or specified under any written law.

PART 3

ORGANISED CRIME PREVENTION ORDERS

*Division 1 — Preliminary***Interpretation of this Part and Parts 4 and 5**

5 **14.**—(1) In this Part and Parts 4 and 5, unless the context otherwise requires —

“public” includes a section of the public or a particular member of the public;

“relevant parties”, in relation to an OCPO or FRO, means —

- 10 (a) the Public Prosecutor; and
- (b) the person in relation to whom the OCPO or FRO is to be made, or the person who is the subject of the OCPO or FRO, as the case may be.

15 (2) For the purposes of this Act, a person (*A*) is involved in a serious offence associated with an organised criminal group if conditions X in subsection (3), or conditions Y in subsection (4), are met.

(3) Conditions X are:

- 20 (a) *A*, in Singapore, has committed the serious offence (including an abetment of, or a conspiracy or an attempt to commit, the serious offence);
- (b) *A*, in Singapore, has facilitated the commission of the serious offence (including an abetment of, or a conspiracy or an attempt to commit, the serious offence) by any other person; or
- 25 (c) the conduct of *A* in Singapore was such that it was likely to facilitate the commission of the serious offence (including an abetment of, or a conspiracy or an attempt to commit, the serious offence) by *A* or any other person,

30 and the commission of the serious offence (including an abetment of, or a conspiracy or an attempt to commit, the serious offence) —

- (i) is at the direction of a group which *A* knows or has reasonable grounds to believe is an organised criminal group; or

- (ii) is in furtherance of the illegal purpose of a group which *A* knows or has reasonable grounds to believe is an organised criminal group.

(4) Conditions Y are:

- (a) *A*, outside Singapore, has committed the serious offence (including an abetment of, or a conspiracy or an attempt to commit, the serious offence); 5
- (b) *A*, outside Singapore, has facilitated the commission of the serious offence (including an abetment of, or a conspiracy or an attempt to commit, the serious offence) by any other person; or 10
- (c) the conduct of *A* outside Singapore was such that it was likely to facilitate the commission of the serious offence (including an abetment of, or a conspiracy or an attempt to commit, the serious offence) by *A* or any other person, 15

and the commission of the serious offence (including an abetment of, or a conspiracy or an attempt to commit, the serious offence) —

- (i) is at the direction of a group which *A* knows or has reasonable grounds to believe is a locally-linked organised criminal group; or 20
- (ii) is in furtherance of the illegal purpose of a group which *A* knows or has reasonable grounds to believe is a locally-linked organised criminal group.

(5) For the purposes of this Act, a person (*A*) is involved in a Part 2 offence if — 25

- (a) *A* has committed the Part 2 offence;
- (b) *A* has facilitated the commission of the Part 2 offence by any other person; or
- (c) the conduct of *A* was such that it was likely to facilitate the commission of the Part 2 offence by *A* or any other person. 30

(6) For the purposes of this Part and Parts 4 and 5, references to a person who is the subject of an OCPO or FRO are references to a person against whom the public are to be protected.

*Division 2 — General***Organised crime prevention orders**

5 **15.**—(1) Subject to the provisions of Part 5, the High Court may, upon the application of the Public Prosecutor, make an organised crime prevention order against a person if, upon giving the person a reasonable opportunity to be heard —

(a) the court is satisfied, on a balance of probabilities, that the person has been involved in a Part 2 offence, or a serious offence associated with an organised criminal group; and

10 (b) the court has reasonable grounds to believe that the order would protect the public by preventing, restricting or disrupting any involvement by the person in any Part 2 offence, or any serious offence associated with an organised criminal group.

15 (2) Subject to the provisions of Part 5, where a court convicts any person for having committed —

(a) a Part 2 offence; or

20 (b) a serious offence (including an abetment of, or a conspiracy or an attempt to commit, the serious offence) which is subject to the penalty under section 13,

the court may, upon the application of the Public Prosecutor, and upon giving the person a reasonable opportunity to be heard, make an organised crime prevention order at the time of sentencing the person if the court has reasonable grounds to believe that the order would
25 protect the public by preventing, restricting or disrupting any involvement by the person in any Part 2 offence or any serious offence associated with an organised criminal group.

(3) An organised crime prevention order made under this section may contain —

30 (a) such prohibitions, restrictions or requirements; and

(b) such other terms,

as the court considers appropriate for the purpose of protection as mentioned in subsection (1) or (2).

(4) Rules of Court may provide for the manner in which an application under subsection (1) may be made.

(5) To avoid doubt, any defence that is available to a person who is prosecuted for a Part 2 offence or serious offence (including an abetment of, or a conspiracy or an attempt to commit, the serious offence) which is subject to the penalty under section 13, is also available to the person in any proceedings under this section for the same act.

(6) A reference in subsection (1) to involvement in a serious offence associated with an organised criminal group includes involvement at any time (whether before, on or after the date of commencement of this section) in a serious offence associated with an organised criminal group.

Type of provision that may be made by organised crime prevention orders

16.—(1) This section contains examples of the type of provision that may be made by an OCPO but it does not limit the type of provision that may be made by an OCPO.

(2) Examples of prohibitions, restrictions or requirements that may be imposed on a person who is an individual (including a partner in a partnership) by an OCPO include prohibitions or restrictions on, or requirements in relation to all or any of the following:

- (a) an individual's financial, property or business dealings or holdings;
- (b) an individual's working arrangements;
- (c) the means by which an individual communicates or associates with others, or the persons with whom the individual communicates or associates;
- (d) the premises to which an individual has access;
- (e) the use of any premises or item by an individual;
- (f) an individual's travel (whether within Singapore, between Singapore and other places or otherwise).

(3) Examples of prohibitions, restrictions or requirements that may be imposed on a person that is a body corporate, partnership, limited liability partnership or unincorporated association by an OCPO include prohibitions or restrictions on, or requirements in relation to all or any of the following:

- (a) the financial, property or business dealings or holdings of the person;
- (b) the types of agreements to which the person may be a party;
- (c) the provision of goods or services by the person;
- (d) the premises to which the persons referred to in section 18(1)(b) to (f) have access;
- (e) the use of any premises or item by the person;
- (f) the employment of staff by the person.

(4) Examples of requirements that may be imposed on any person (whether an individual, body corporate, partnership, limited liability partnership or unincorporated association) by an OCPO include —

- (a) a requirement on a person to answer questions, or provide information, specified or described in an OCPO —
 - (i) at a time, within a period or at a frequency;
 - (ii) at a place;
 - (iii) in a form and manner; and
 - (iv) to a law enforcement officer,
 notified to the person by a law enforcement officer specified in the OCPO; or
- (b) a requirement on a person to produce documents specified or described in an OCPO —
 - (i) at a time, within a period or at a frequency;
 - (ii) at a place;
 - (iii) in a manner; and
 - (iv) to a law enforcement officer,

notified to the person by a law enforcement officer specified in the OCPO.

(5) The prohibitions, restrictions or requirements that may be imposed on an individual by an OCPO include prohibitions, restrictions or requirements in relation to an individual's private dwelling (including, for example, prohibitions or restrictions on, or requirements in relation to, where an individual may reside).

(6) Any reference in this Part to the production of documents is, in the case of a document which contains information recorded otherwise than in legible form, a reference to the production of a copy of the information in legible form.

Division 3 — Duration and nature of OCPO

Duration of OCPO

17.—(1) An OCPO must specify when it is to come into force and when it is to cease to be in force.

(2) An OCPO is not to be in force for more than 5 years beginning with the coming into force of the OCPO.

(3) An OCPO may specify different times for the coming into force, or ceasing to be in force, of different provisions of the OCPO.

(4) Where an OCPO specifies different times in accordance with subsection (3), the OCPO —

(a) must specify when each provision is to come into force and cease to be in force; and

(b) is not to be in force for more than 5 years beginning with the coming into force of the first provision of the OCPO to come into force.

(5) The fact that an OCPO, or any provision of an OCPO, ceases to be in force does not prevent the court which first made the OCPO from making a new OCPO to the same or similar effect.

(6) A new OCPO may be made in anticipation of an earlier OCPO or provision ceasing to be in force.

Persons against whom OCPO may be made

18.—(1) An OCPO may be made against —

(a) an individual, body corporate, partnership, limited liability partnership or unincorporated association;

5 (b) an officer or employee of a body corporate or any other person associated with a body corporate;

(c) a particular partner of a partnership or limited liability partnership;

10 (d) a senior officer or employee of a partnership or any other person associated with a partnership;

(e) a manager or employee of a limited liability partnership, or any other person associated with a limited liability partnership; or

15 (f) a member, officer or employee of an unincorporated association, or any other person associated with an unincorporated association.

(2) An OCPO against a partnership must be made in the name of the partnership (and not in that of any of the partners).

20 (3) An OCPO made in the name of a partnership continues to have effect despite a change of partners but only if at least one of the persons who was a partner before the change remains a partner after the change.

25 (4) Proceedings for an offence under section 26 alleged to have been committed by a partnership must be brought in the name of the partnership (and not in that of any of the partners).

(5) A fine imposed on a partnership on its conviction for an offence under section 26 is to be paid out of the partnership assets.

30 (6) An OCPO made against an unincorporated association must be made in the name of the association (and not in that of any of its members).

(7) An OCPO made in the name of an unincorporated association continues to have effect despite a change in the membership of the association but only if at least one of the persons who was a member

of the association before the change remains a member after the change.

(8) Proceedings for an offence under section 26 alleged to have been committed by an unincorporated association must be brought in the name of the association (and not in that of any of its members). 5

(9) A fine imposed on an unincorporated association on its conviction for an offence under section 26 is to be paid out of the funds of the association.

(10) In this section —

“officer of an unincorporated association” means any officer of an unincorporated association or any member of its governing body; 10

“partnership” does not include a limited liability partnership;

“senior officer of a partnership” means any person who has the control or management of the business carried on by the partnership at the principal place where it is carried on; 15

“unincorporated association” means any body of persons unincorporate but does not include a partnership.

Electronic monitoring of individual subject to OCPO

19.—(1) Subject to subsection (2), an OCPO may in addition include requirements for securing the electronic monitoring (by means of an electronic monitoring device) of the whereabouts of the individual subject to the OCPO during the period when the OCPO is in force against the individual. 20

(2) A court must not make an OCPO which includes the requirements referred to in subsection (1) unless the court is satisfied that electronic monitoring arrangements can be made by a law enforcement officer specified in the OCPO. 25

(3) Electronic monitoring arrangements made under this section may include entering into contracts with other persons for the electronic monitoring (by means of an electronic monitoring device) by them of the whereabouts of the individual subject to an OCPO. 30

Compliance with orders: authorised monitors

20.—(1) An OCPO against a body corporate, partnership, limited liability partnership or unincorporated association may authorise a law enforcement agency to enter into arrangements with —

- 5 (a) a specified person; or
 (b) any person who falls within a specified description of persons,

to perform specified monitoring services or monitoring services of a specified description.

- 10 (2) A person with whom the law enforcement agency has entered into arrangements in accordance with such an authorisation is known for the purposes of this section as an authorised monitor.

- (3) An OCPO which provides for an authorised monitor may, for the purpose of enabling the performance of monitoring services, impose requirements of the type mentioned in section 16(4) as if the references in that provision to a law enforcement officer included references to an authorised monitor.
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- (4) A law enforcement agency must inform the subject of an OCPO which provides for an authorised monitor of the name of, and an address for, any person with whom the agency has entered into arrangements in accordance with the authorisation in the OCPO.
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(5) Nothing in this section affects the ability of law enforcement agencies to enter into arrangements otherwise than in accordance with an authorisation under this section.

- 25 (6) In this section —
 “monitoring services” means —

- (a) analysing some or all information received in accordance with an OCPO;
- (b) reporting to a law enforcement officer as to whether, on the basis of the information and any other information analysed for this purpose, the subject of the OCPO appears to be complying with the OCPO or any part of it; and
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- (c) any related services;
 “specified”, in relation to an OCPO, means specified in the
 OCPO.

PART 4

FINANCIAL REPORTING ORDERS

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Financial reporting order

21.—(1) Subject to the provisions of Part 5, the High Court may, upon the application of the Public Prosecutor, make a financial reporting order against an individual if, upon giving the individual a reasonable opportunity to be heard —

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(a) the court is satisfied, on a balance of probabilities, that the individual has been involved in a Part 2 offence, or a serious offence associated with an organised criminal group; and

(b) the court has reasonable grounds to believe that the order would protect the public by preventing, restricting or disrupting any involvement by the individual in any Part 2 offence, or any serious offence associated with an organised criminal group.

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(2) Subject to the provisions of Part 5, where a court convicts any individual for having committed —

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(a) a Part 2 offence; or

(b) a serious offence (including an abetment of, or a conspiracy or an attempt to commit, the serious offence) which is subject to the penalty under section 13,

the court may, upon the application of the Public Prosecutor, and upon giving the individual a reasonable opportunity to be heard at the time of sentencing the individual, make a financial reporting order if the court has reasonable grounds to believe that the order would protect the public by preventing, restricting or disrupting any involvement by the individual in any Part 2 offence, or any serious offence associated with an organised criminal group.

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(3) Rules of Court may provide for the manner in which an application under subsection (1) may be made.

5 (4) To avoid doubt, any defence that is available to a person who is prosecuted for a Part 2 offence, or serious offence (including an abetment of, or a conspiracy or an attempt to commit, the serious offence) which is subject to the penalty under section 13, is also available to the individual in any proceedings under this section for the same act.

10 (5) A reference in subsection (1) to involvement in a serious offence associated with an organised criminal group includes involvement at any time (whether before, on or after the date of commencement of this section) in a serious offence associated with an organised criminal group.

Duration of FRO

15 **22.—(1)** An FRO —

(a) comes into force when it is made; and

(b) has effect for the period specified in the order, beginning with the date on which it is made.

20 (2) If the FRO is made under section 21(1), the period referred to in subsection (1)(b) must not exceed 5 years.

(3) If the FRO is made under section 21(2), the period referred to in subsection (1)(b) must not exceed a period equal to the sentence of imprisonment imposed by the court for the offence referred to in section 21(2) plus 5 years.

25 (4) The fact that an FRO ceases to be in force does not prevent the court which first made the FRO from making a new FRO to the same or similar effect.

(5) A new FRO may be made in anticipation of an earlier FRO ceasing to be in force.

Effect of financial reporting orders

23.—(1) A person in relation to whom an FRO has effect must —

(a) make a financial report, in respect of —

(i) the period of a specified length beginning with the date on which the order comes into force; and 5

(ii) subsequent periods of specified lengths, each period beginning immediately after the end of the previous one;

(b) set out in each financial report, in the specified manner, such particulars of the person’s financial affairs relating to the period in question as may be specified; 10

(c) include any specified documents with each financial report;

(d) make each financial report within the specified number of days after the end of the period in question; and

(e) make each financial report to the specified person. 15

(2) In this section, “specified” means specified by the court in the FRO.

PART 5

GENERAL PROVISIONS RELATING TO OCPO AND FRO

Division 1 — Enforcement 20

Powers of law enforcement officers to retain documents

24.—(1) A law enforcement officer —

(a) may take and retain copies of, or extracts from, any document produced to a law enforcement officer in pursuance of an OCPO or FRO; and 25

(b) may retain any document so produced for as long as he or she considers that it is necessary to retain it (rather than any copy of it) for the purposes for which the document was obtained.

(2) A law enforcement officer may retain any document produced to him or her in pursuance of an OCPO or FRO until the conclusion of 30

any legal proceedings if he or she has reasonable grounds for believing that the document —

(a) may have to be produced for the purposes of those proceedings; and

5 (b) might be unavailable unless retained.

Verification and disclosure of OCPO and FRO

25.—(1) In this section, “the specified person” means —

10 (a) in relation to an OCPO, the law enforcement officer specified in the OCPO who receives any answer or information from the person who is subject to the OCPO; and

(b) in relation to an FRO, the person to whom reports under the FRO are to be made.

(2) The specified person may, for the purpose of doing either of the things mentioned in subsection (4) —

15 (a) in relation to an OCPO, disclose any answer or information to any person who the specified person reasonably believes may be able to contribute to doing either of those things; and

20 (b) in relation to an FRO, disclose a report to any person who the specified person reasonably believes may be able to contribute to doing either of those things.

(3) Any other person may disclose information to —

(a) the specified person; or

25 (b) a person to whom the specified person has disclosed a report, for the purpose of contributing to doing either of the things mentioned in subsection (4).

(4) In subsections (2) and (3), the things mentioned are —

(a) checking the accuracy of the answer, information or report, or of any other report made pursuant to the same order; or

(b) discovering the true position.

(5) The specified person may also disclose any answer, information, or report for the purposes of the prevention, detection, investigation or prosecution of offences in Singapore.

(6) A disclosure under this section does not breach —

(a) any obligation of confidence owed by the person making the disclosure; or 5

(b) any other restriction however imposed (other than a restriction imposed under any written law) on the disclosure of information.

(7) In this section, references to a report include any of its contents, any document included with the report, or any of the contents of such a document. 10

Division 2 — Failure to comply with OCPO or FRO

Failure to comply with OCPO or FRO

26.—(1) A person must not, without reasonable excuse, fail to comply with an OCPO or FRO. 15

(2) Despite anything in the Criminal Procedure Code (Cap. 68), a person is not excused from complying with an OCPO or FRO on the ground that the supply of any information might tend to incriminate the person or make the person liable to a penalty. 20

(3) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction —

(a) in the case of an individual, to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 3 years or to both; or 25

(b) in any other case, to a fine not exceeding \$20,000.

(4) In proceedings for an offence under this section, a copy of the original OCPO or FRO or any variation of it, certified as such by the proper officer of the court which made it, is admissible as evidence of its having been made and of its contents to the same extent that oral evidence of those things is admissible in those proceedings. 30

(5) A person who, without reasonable excuse, includes false or misleading information pursuant to any requirement to provide information specified or described in an OCPO or FRO shall be guilty of an offence and shall be liable on conviction —

- 5 (a) in the case of an individual, to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 3 years or to both; or
- (b) in any other case, to a fine not exceeding \$20,000.

Division 3 — General safeguards in relation to OCPO or FRO

10 **Any individual must be 16 or older**

27. An OCPO or FRO must not be made against an individual who, at the time the OCPO or FRO is made, is below 16 years of age.

Right of third parties to make representations

15 **28.—**(1) A court must, before making an OCPO or FRO, on an application by a person (not being any of the relevant parties), give the person an opportunity to make representations in proceedings before it about the making of the OCPO or FRO if it considers that the making of the OCPO or FRO would be likely to have a significant adverse effect on that person.

20 (2) A court must, before varying an OCPO or FRO, on an application by a person (not being any of the relevant parties), give the person an opportunity to make representations in proceedings before it about the variation of the OCPO or FRO if it considers that —

- (a) the variation of the OCPO or FRO; or
- 25 (b) a decision not to vary it,

would be likely to have a significant adverse effect on that person.

(3) A court must, before discharging an OCPO or FRO, on an application by a person (not being any of the relevant parties), give the person an opportunity to make representations in proceedings before it about the discharge of the OCPO or FRO if it considers that —

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- (a) the discharge of the OCPO or FRO; or

(b) a decision not to discharge it, would be likely to have a significant adverse effect on that person.

(4) A court which is considering an appeal in relation to an OCPO or FRO must, on an application by a person (not being any of the relevant parties), give the person an opportunity to make representations in the proceedings if that person was given an opportunity to make representations in the proceedings which are the subject of the appeal.

(5) Rules of Court may provide for the manner in which any application under this section may be made in relation to an OCPO or FRO made under section 15(1) or 21(1), respectively.

Notice requirements in relation to OCPO or FRO

29.—(1) The subject of an OCPO or FRO is bound by it, or a variation of it, only if —

(a) he or she is represented (whether in person or otherwise) at the proceedings at which the OCPO or FRO or (as the case may be) variation is made; or

(b) a notice setting out the terms of the OCPO or FRO or (as the case may be) variation has been served on him or her.

(2) The notice to be served on an individual must, as far as is reasonably practicable, be served by delivering it personally to that individual.

(3) A notice to be served on a body corporate or a limited liability partnership must, as far as is reasonably practicable, be served by delivering it to the director, manager or secretary, or other like officer of the body corporate or limited liability partnership, at its registered office or principal place of business, and if service cannot be effected by that mode, the notice may be served by sending it by registered post addressed to the body corporate or limited liability partnership at the registered office or principal place of business of the body corporate or limited liability partnership.

(4) A notice to be served on a partnership other than a limited liability partnership must, as far as is reasonably practicable, be served by delivering it to any one of the partners or the secretary, or other like officer of the partnership, at its registered office or principal place of

business, and if service cannot be effected by that mode, the notice may be served by sending it by registered post addressed to the partnership at the registered office or principal place of business of the partnership.

5 (5) A notice to be served on an unincorporated association must, as far as is reasonably practicable, be served by delivering it to the president, the secretary or any member of the committee of the unincorporated association, or any person holding a position analogous to that of the president, secretary or member of the
10 committee, at the address of the unincorporated association, and if service cannot be effected by that mode, the notice may be served by sending it by registered post addressed to the unincorporated association at the address of the unincorporated association.

15 (6) Despite subsections (2) to (5), a notice may be served in any manner if any of the following persons, as the case may be, consents to such mode of service:

- (a) the person on whom the notice is to be served;
- (b) the director, manager or secretary or other like officer of a body corporate or limited liability partnership on whom the
20 notice is to be served;
- (c) any of the partners or the secretary or other like officer of a partnership (other than a limited liability partnership) on whom the notice is to be served;
- (d) the president, the secretary or any member of the committee
25 of an unincorporated association (or any person holding a position analogous to that of the president, secretary or member of the committee) on whom the notice is to be served.

30 (7) Where a notice is to be served on a person who cannot, by the exercise of due diligence, be found, the notice may be served by leaving a copy of the notice for the person with some adult member of the person's family or with the person's employee residing with the person.

35 (8) Where a notice is to be served on a person who cannot, by the exercise of due diligence, be found, and the notice cannot be effected in accordance with subsection (7), the serving officer must affix a

copy of the notice to some conspicuous part of the place in which the person to be served with the notice ordinarily resides, and in such a case, the notice, if the court so directs before or after such affixing, is deemed to have been duly served.

Restrictions relating to other written law, etc.

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30. Except as provided in section 26(2), an OCPO or FRO may not require a person to answer any question, provide any information or produce any document if —

- (a) the disclosure concerned is prohibited under any other written law; or
- (b) the information or document is an item subject to legal privilege.

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Restrictions on use of information obtained

31. A statement made by a person in response to a requirement imposed by an OCPO or FRO may not be used in evidence against the person in any criminal proceedings unless the statement —

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- (a) is used for the purpose of impeaching the person's credit in the manner provided in section 157 of the Evidence Act (Cap. 97); or
- (b) is used in proceedings for an offence under section 26.

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Division 4 — Variation and discharge of OCPO or FRO

Variation of OCPO or FRO

32.—(1) An application for the variation of an OCPO or FRO under this section may be made by the following persons to the court which first made the OCPO or FRO:

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- (a) the Public Prosecutor;
- (b) the person who is the subject of the OCPO or FRO;
- (c) any other person.

(2) A court may, on an application under this section by the Public Prosecutor, vary an OCPO or FRO if it has reasonable grounds to

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believe that the terms of the OCPO or FRO as varied would protect the public by preventing, restricting or disrupting involvement, by the person who is the subject of the OCPO or FRO, in a Part 2 offence, or a serious offence associated with an organised criminal group.

5 (3) Where an application is made under subsection (1), any term of the OCPO or FRO in relation to which the variation is applied for continues to have effect despite the application, and only ceases to have effect if the application is allowed by the court.

10 (4) The court must not entertain an application by the person who is the subject of the OCPO or FRO unless it considers that there has been a material change of circumstances affecting the OCPO or FRO.

(5) The court must not entertain an application by any person falling within subsection (1)(c) unless it considers that —

- 15 (a) the person is adversely affected by the order significantly;
- (b) condition A or B as specified in subsection (6) or (7), respectively, is met; and
- (c) the application is not for the purpose of making the OCPO or FRO more onerous on the person who is the subject of it.

(6) Condition A is that —

- 20 (a) the person falling within subsection (1)(c) —
 - (i) has, on an application under section 28, been given an opportunity to make representations; or
 - (ii) has made an application otherwise than under that section in relation to the OCPO or FRO; and
- 25 (b) there has been a material change of circumstances affecting the OCPO or FRO.

(7) Condition B is that —

- 30 (a) the person falling within subsection (1)(c) has not made an application of any kind in earlier proceedings in relation to the OCPO or FRO; and
- (b) it was reasonable in all the circumstances for the person not to have done so.

(8) A variation on an application by the Public Prosecutor may include an extension of the period during which the OCPO or FRO, or any provision of it, is in force (subject to the original limits imposed on the OCPO or FRO by sections 17 and 22, respectively).

(9) Rules of Court may provide for the manner in which an application under this section may be made in relation to an OCPO or FRO made under section 15(1) or 21(1), respectively.

Discharge of OCPO or FRO

33.—(1) An application for the discharge of an OCPO or FRO may be made by the following persons to the court which first made the OCPO or FRO:

- (a) the Public Prosecutor;
- (b) the person who is the subject of the OCPO or FRO;
- (c) any other person.

(2) Where an application is made under subsection (1) in relation to an OCPO or FRO, the OCPO or FRO continues to have effect despite the application, and only ceases to have effect if the application is allowed by the court which first made the OCPO or FRO.

(3) The court must not entertain an application by the person who is the subject of the OCPO or FRO unless it considers that there has been a material change of circumstances affecting the OCPO or FRO.

(4) The court must not entertain an application by any person falling within subsection (1)(c) unless it considers that —

- (a) the person is adversely affected by the OCPO or FRO significantly; and
- (b) condition A or B as specified in subsection (5) or (6), respectively, is met.

(5) Condition A is that —

- (a) the person, in earlier proceedings in relation to the OCPO or FRO —
 - (i) has, on an application under section 28, been given an opportunity to make representations; or

(ii) has made an application otherwise than under that section in relation to the OCPO or FRO; and

(b) there has been a material change of circumstances affecting the OCPO or FRO.

5 (6) Condition B is that —

(a) the person has not made an application of any kind in earlier proceedings in relation to the OCPO or FRO; and

(b) it was reasonable in all the circumstances for the person not to have done so.

10 (7) Rules of Court may provide for the manner in which an application under this section may be made in relation to an OCPO or FRO made under section 15(1) or 21(1), respectively.

Division 5 — Appeals

Right of appeal from High Court or State Court

15 **34.**—(1) An appeal may be made to the Court of Appeal or High Court in relation to a decision of the High Court, or of a District Court or Magistrate’s Court, respectively —

(a) to make, or not to make, an OCPO or FRO;

20 (b) to include, or not to include, any provision in an OCPO or FRO;

(c) to vary, or not to vary, all or any of the provisions in an OCPO or FRO; or

(d) to discharge, or not to discharge, an OCPO or FRO,

25 by any of the relevant parties, or any person who was given an opportunity to make representations in the proceedings concerned by virtue of section 28(1), (2) or (3), as the case may be.

30 (2) Where an appeal is made under subsection (1), an OCPO or FRO continues to have effect from the time it is made despite the appeal, and only ceases to have effect if the appeal is allowed by the Court of Appeal or High Court, as the case may be.

(3) Rules of Court may provide for the manner in which an appeal under subsection (1) may be made in relation to an OCPO or FRO made under section 15(1) or 21(1), respectively.

(4) Division 1 of Part XX to the Criminal Procedure Code (Cap. 68) applies to an appeal by the person referred to in subsection (1) in relation to an OCPO or FRO made under section 15(2) or 21(2), respectively.

Division 6 — Supplementary

Acquittal or pardon does not impact on subsequent making of OCPO or FRO

35.—(1) An application for an OCPO or FRO may be made under section 15(1) or 21(1) even after a person —

(a) is acquitted of a Part 2 offence, or a serious offence (including an abetment of, or a conspiracy or an attempt to commit, the serious offence) which is subject to the penalty under section 13; or

(b) is convicted of a Part 2 offence, or a serious offence (including an abetment of, or a conspiracy or an attempt to commit, the serious offence) which is subject to the penalty under section 13, and the person is subsequently acquitted pursuant to an appeal against the conviction, or is granted a pardon by the President in respect of the conviction.

(2) An OCPO or FRO made under section 15(2) or 21(2) ceases to have effect if the person subject to the OCPO or FRO —

(a) is subsequently acquitted pursuant to an appeal against the conviction; or

(b) is granted a pardon by the President in respect of the conviction.

Transfer of case to trial court to make OCPO or FRO upon conviction on appeal

36.—(1) Where —

- 5 (a) a person (*A*) is acquitted of a Part 2 offence, or a serious offence (including an abetment of, or a conspiracy or an attempt to commit, the serious offence) which is subject to the penalty under section 13;
- (b) upon an appeal against the acquittal, *A* is subsequently convicted by an appellate court; and
- 10 (c) the Public Prosecutor informs the appellate court that it intends to make an application for an OCPO or FRO against *A*,

the appellate court which convicted *A* may order the case to be transferred to the trial court for the application to be made.

- 15 (2) Where any case is transferred to the trial court under subsection (1), any application for an OCPO or FRO to the trial court in relation to *A* is deemed to be an application made under section 15(2) or 21(2), respectively.

Evidence obtained in investigations may be used in proceedings for OCPO or FRO

- 20 **37.** To avoid doubt, any book, document, statement or other information obtained in the exercise of any power under this Act or any other written law, is not inadmissible in any proceedings relating to an OCPO or FRO by reason only that it was first obtained in the
- 25 exercise of that power; and the admissibility of such matter is to be determined in accordance with the rules of evidence under any written law and any relevant rules of law.

Disclosure of information in accordance with orders

- 30 **38.** A person who complies with a requirement imposed by an OCPO or FRO to answer questions, provide information or produce documents, does not breach —

- (a) any obligation of confidence; or

- (b) any other restriction however imposed (other than a restriction imposed under any written law) on making the disclosure concerned.

PART 6

DISQUALIFICATION ORDERS

5

Disqualification to act as director on conviction of certain offences

39.—(1) Without prejudice to section 154 of the Companies Act (Cap. 50), where a person —

- (a) is convicted of any Part 2 offence, or a serious offence (including an abetment of, or a conspiracy or an attempt to commit, the serious offence) which is subject to the penalty under section 13; or 10
- (b) contravenes an OCPO or FRO, which was made upon the conviction for any offence, 15

the court may, upon an application by the Public Prosecutor, make a disqualification order in addition to any other sentence imposed.

(2) A person who has a disqualification order made against him or her under subsection (1) must not act as a director of a company or of a foreign company to which Division 2 of Part XI of the Companies Act applies, and the person must not take part, whether directly or indirectly, in the management of such a company or foreign company. 20

(3) Where a person disqualified under this section is sentenced to imprisonment, the disqualification in subsection (2) takes effect upon conviction and continues for a period of 5 years after the person's release from prison. 25

(4) Where a person disqualified under this section is not sentenced to imprisonment, the disqualification in subsection (2) takes effect upon conviction and continues for a period of 5 years, or for such shorter period as the court may specify in the disqualification order. 30

(5) A person who acts in contravention of a disqualification order made under subsection (1) shall be guilty of an offence and shall be

liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both.

(6) A person disqualified under this section may, upon giving the Minister responsible for the administration of Part V of the Companies Act not less than 14 days' notice, apply for leave —

(a) to act as a director of a company or of a foreign company to which Division 2 of Part XI of the Companies Act applies; or

(b) to take part, whether directly or indirectly, in the management of such a company or foreign company.

(7) Upon the hearing of any application made under subsection (6), the Minister may be represented at the hearing and may oppose the granting of the application.

PART 7

POWERS TO INVESTIGATE AND TO OBTAIN INFORMATION FROM COMPTROLLER OF INCOME TAX AND COMPTROLLER OF GOODS AND SERVICES TAX

Powers of law enforcement officers

40.—(1) A law enforcement officer may investigate any offence under this Act which is disclosed in the course of investigating into any other offence under any other written law which charges the law enforcement officer with the duty of investigating that other offence.

(2) A law enforcement officer may also investigate any offence under section 26, 39 or 73(12), or any offence under section 33 or 34(6) of the Corruption, Drug Trafficking and other Serious Crimes (Confiscation of Benefits) Act (Cap. 65A) as applied by section 72.

(3) If —

(a) a law enforcement officer conducts an investigation into any offence under this Act pursuant to subsection (1); and

(b) in the course of the investigation, no offence is disclosed under the other written law charging the law enforcement officer with the duty of investigating offences under the other written law,

the law enforcement officer may continue to conduct the investigation into the offence under paragraph (a).

(4) In investigating any offence (A) under this Act pursuant to subsection (1), (2) or (3), a law enforcement officer may exercise any power of investigation of an offence (B) under any provision of any other written law which charges the law enforcement officer with the duty of investigating offence (B), as if a reference in that provision to offence (B) were a reference to offence (A).

(5) Any evidence obtained by a law enforcement officer during an investigation under this section may, subject to any written law relating to the admissibility of evidence, be admitted in any civil or criminal proceedings under this Act.

(6) To avoid doubt, nothing in this section affects the power of investigation of a police officer under the Criminal Procedure Code (Cap. 68).

Power to obtain information from Comptroller of Income Tax and Comptroller of Goods and Services Tax

41.—(1) In the course of any investigation or proceedings into or relating to an offence punishable under this Act, the Public Prosecutor may, despite anything in any other written law to the contrary, by written notice require the Comptroller —

(a) to furnish, as specified in the notice, all information available to the Comptroller relating to the affairs of that person or of the person's parents, siblings, spouse, son or daughter; and

(b) to produce or furnish, as specified in the notice, any document or a certified copy of any document relating to that person or the person's parents, siblings, spouse, son or daughter which is in the possession or under the control of the Comptroller.

(2) The Comptroller to whom a notice is sent by the Public Prosecutor under subsection (1) is, despite the provisions of any written law or any oath of secrecy to the contrary, legally bound to comply with the terms of that notice within such time as may be specified therein.

(3) In this section, “Comptroller” means —

(a) the Comptroller of Income Tax, or any Deputy Comptroller or Assistant Comptroller of Income Tax appointed under section 3(1) of the Income Tax Act (Cap. 134); or

5 (b) the Comptroller of Goods and Services Tax, or any Deputy Comptroller or Assistant Comptroller of Goods and Services Tax appointed under section 4 of the Goods and Services Tax Act (Cap. 117A).

PART 8

DISCLOSURE AND TIPPING-OFF

Non-disclosure of information and identity of informer

10 **42.—**(1) Except as provided in subsection (3) —

(a) no information provided by an informer for an offence punishable under this Act is to be admitted in evidence in any
15 civil or criminal proceedings; and

(b) no witness in any civil or criminal proceedings is obliged —

(i) to disclose the name and address of any informer who has given information with respect to an offence punishable under this Act; or

20 (ii) to answer any question if the answer to that question would lead, or would tend to lead, to the discovery of the name or address of the informer.

(2) If any book, document or paper which is in evidence or liable to inspection in any civil or criminal proceedings contains any entry in
25 which any informer is named or described or which may lead to the informer’s discovery, the court must cause those entries to be concealed from view or to be obliterated so far as may be necessary to protect the informer from discovery.

(3) If —

30 (a) in any proceedings before a court for an offence punishable under this Act, the court, after full inquiry into the case, is satisfied that an informer wilfully made a material statement

which the informer knew or believed to be false or did not believe to be true; or

- (b) in any other proceedings, the court is of the opinion that justice cannot be fully done between the parties to the proceedings without the disclosure of the name of an informer,

the court may permit inquiry and require full disclosure concerning the informer.

Disclosure of information by informer

43. A person who provides information to a law enforcement officer for an offence punishable under this Act does not breach —

- (a) any obligation of confidence; or
 (b) any other restriction however imposed (other than a restriction imposed under any written law) on the provision of information.

Tipping-off

44.—(1) Any person —

- (a) who knows or has reasonable grounds to suspect that a law enforcement officer is acting, or is proposing to act, in connection with an investigation which is being, or is about to be, conducted under or for the purposes of this Act; and
 (b) who discloses to any other person information or any other matter which is likely to prejudice that investigation or proposed investigation,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$30,000 or to imprisonment for a term not exceeding 3 years or to both.

(2) Nothing in subsection (1) makes it an offence for an advocate and solicitor or his or her employee to disclose any information or other matter —

- (a) to, or to a representative of, a client of his or hers in connection with the giving of advice to the client in the course

of and for the purpose of the professional employment of the advocate and solicitor; or

(b) to any person —

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

(ii) for the purpose of those proceedings.

(3) Nothing in subsection (1) makes it an offence for a legal counsel in an entity or a person acting under his or her supervision to disclose any information or other matter —

(a) to the entity in connection with the giving of advice to the entity, or any officer or employee of the entity, in the course of and for the purpose of his or her employment as such legal counsel; or

(b) to any person —

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

(ii) for the purpose of those proceedings.

(4) Where a legal counsel is employed by one of a number of corporations that are related to each other under section 6 of the Companies Act (Cap. 50), subsection (3) applies in relation to the legal counsel and every corporation so related as if the legal counsel were also employed by each of the related corporations.

(5) Where a legal counsel is employed by a public agency and is required as part of his or her 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 another public agency or agencies, subsection (3) applies in relation to the legal counsel and the second-mentioned public agency or agencies as if the legal counsel were also employed by the second-mentioned public agency or agencies.

(6) Subsections (2) and (3) do not apply in relation to any information or other matter which is disclosed with a view to furthering any illegal purpose.

(7) In proceedings against a person for an offence under subsection (1), it is a defence to prove that the person did not know and had no reasonable ground to suspect that the disclosure was likely to be prejudicial in the way mentioned in subsection (1).

(8) A person is not guilty of an offence under this section in respect of anything done by the person in the course of acting in connection with the enforcement, or intended enforcement, of any provision of this Act or other penal legislation.

(9) In this section —

“investigation” includes an application for an examination order under section 73, or an application under section 30, 31, 34 or 42 of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap. 65A) as applied by section 72;

“legal counsel” has the same meaning as in section 3(7) of the Evidence Act (Cap. 97);

“public agency” has the same meaning as in section 128A(6) of the Evidence Act.

PART 9

CONFISCATION OF BENEFITS FROM ORGANISED CRIME ACTIVITIES

Division 1 — Preliminary

Purpose of Part

45.—(1) The purpose of this Part is to establish a regime for the confiscation of benefits from organised crime activities.

(2) The regime so established proposes to —

(a) eliminate the chance for persons to profit from carrying out organised crime activity; and

(b) remove any incentive for persons to carry out organised crime activity, and reduce their ability to do so.

Interpretation of Part

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

“CDSA” means the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap. 65A);

5 “charging order” means an order made under section 58(1);

“confiscation order” means an order made under section 61(2);

“Court” means the High Court;

“gift caught by this Part” has the meaning given to it in section 47;

10 “interest”, in relation to property, includes any right;

“organised crime activity” has the meaning given to it in section 48;

“realisable property” means —

(a) any property held by the subject; and

15 (b) any property held by a person to whom the subject has, directly or indirectly, made a gift caught by this Part;

“realisation power” means any power under section 19 of the CDSA as applied by section 70;

“restraint order” means an order made under section 57(1);

20 “statutory period”, in relation to a confiscation order or an application for a confiscation order, means —

25 (a) if the application for the confiscation order is preceded by a restraint order or charging order (or both) concerning the same subject and organised crime activity, the period of 7 years before the date of application for the restraint order or charging order or, if more than one of those orders were made, the earlier or earliest application for either of those orders; or

30 (b) if the application for the confiscation order is not preceded by a restraint order or charging order concerning the same subject and organised crime

activity, the period of 7 years before the date of application for the confiscation order;

“statutory period”, in relation to an application for a restraint order or charging order, means the period of 7 years before the date of application for the order or, if one or more such orders concerning the same subject and organised crime activity were made previously, the earlier or earliest application for either of those orders;

“subject” —

(a) in relation to a restraint order, a charging order, an order under section 19 of the CDSA as applied by section 70, an order under section 30, 31, 34 or 42 of the CDSA as applied by section 72, or an application for any of those orders, means the person identified in the application as the one who has carried out organised crime activity;

(b) in relation to an application for a confiscation order, means the person against whom the order is sought; or

(c) in relation to a confiscation order that has been made, means the person against whom the order is made.

(2) In this Part —

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

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

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

(d) a reference to an interest held by a person beneficially in property includes a reference to an interest which would be held by the person beneficially if the property were not so vested in the person’s trustee in bankruptcy or liquidator.

Meaning of “gift caught by this Part”

47.—(1) In this Part, a gift is caught by this Part if it was made by the subject at any time (including before the date of commencement of this Part) —

- 5 (a) in the case of a restraint order or charging order, in the period of 6 years before the date of application for the order or, if one or more such orders were made previously concerning the same subject and organised crime activity, the earlier or earliest application for either of those orders;
- 10 (b) in the case of a confiscation order —
- (i) if the application for the confiscation order is preceded by a restraint order or charging order (or both) concerning the same subject and organised crime activity, in the period of 6 years before the date of application for the restraint order or charging order or, if more than one of those orders were made, the earlier or earliest application for either of those orders; or
- 15 (ii) if the application for the confiscation order is not preceded by a restraint order or charging order concerning the same subject and organised crime activity, in the period of 6 years before the date of application for the confiscation order.
- 20

(2) In this Part, a gift is also caught by this Part if it was made by the subject at any time (including before the date of commencement of this Part) and which is or is part of the benefits derived by the subject from the organised crime activity.

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(3) In this Part, the circumstances in which the subject is to be treated as making a gift include circumstances where the subject 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 subject.

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Meaning and proof of “organised crime activity”

48.—(1) In this Part, “organised crime activity” means any activity —

- (a) carried out by a person in Singapore that amounts to a serious offence and —
- (i) is carried out at the direction of a group which the person knows or has reasonable grounds to believe is an organised criminal group; or 5
 - (ii) is carried out in furtherance of the illegal purpose of a group which the person knows or has reasonable grounds to believe is an organised criminal group;
- (b) carried out by a person outside Singapore that amounts to a serious offence and — 10
- (i) is carried out at the direction of a group which the person knows or has reasonable grounds to believe is a locally-linked organised criminal group; or
 - (ii) is carried out in furtherance of the illegal purpose of a group which the person knows or has reasonable grounds to believe is a locally-linked organised criminal group; or 15
- (c) carried out by a person that amounts to a Part 2 offence.
- (2) A person carries out an activity referred to in subsection (1) whether or not — 20
- (a) the person is charged with or convicted of an offence in connection with the activity;
 - (b) the person is acquitted of an offence in connection with the activity, including on appeal; or
 - (c) the President grants a pardon in respect of the person's conviction. 25
- (3) A reference in subsection (1)(a) or (b) to a serious offence includes an abetment of, or a conspiracy or an attempt to commit, the serious offence.
- (4) To avoid doubt, any defence that is available to a person who is prosecuted for an offence constituting the organised crime activity is also available to the subject in any proceedings under this Part for the same organised crime activity. 30

Application of Part

49.—(1) This Part applies in respect of organised crime activity which —

5 (a) if it is one that amounts to an offence referred to in section 48(1)(a) or (b), is carried out before, on or after the date of commencement of this Part; or

 (b) if it is one that amounts to an offence referred to in section 48(1)(c), is carried out on or after the date of commencement of Part 2.

10 (2) This Part applies to any property, whether situated in Singapore or elsewhere.

Nature of proceedings

50. Proceedings under this Part (other than offences under provisions of the CDSA incorporated by section 72) are civil proceedings.

No criminal proceedings required for confiscation order, etc.

51. The organised crime activity on which a confiscation order, restraint order or charging order is based does not need to be, or to have been, the subject of any criminal proceedings.

Confiscation order must not impact on sentence

20 **52.** A court sentencing a person for an offence referred to in section 48(1) must not take into account any confiscation order, or any application or proposed application for a confiscation order, in determining the appropriate sentence or other manner of dealing with the person for the offence.

Acquittal, etc., does not impact on confiscation

53.—(1) Subsection (2) applies if criminal proceedings are instituted or pending or have been discontinued or determined in respect of any organised crime activity that is the basis for —

30 (a) a restraint, charging or confiscation order; or

 (b) an application for such an order.

(2) If this subsection applies, the order or application is not affected by the criminal proceedings, even if —

- (a) the subject is acquitted, or is acquitted on appeal; or
- (b) the President grants a pardon in respect of the subject's conviction.

5

Evidence obtained in investigations may be used in proceedings under this Part

54. To avoid doubt, any book, document, statement or other information obtained in the exercise of any power under this Act or any other written law is not inadmissible in any proceedings under this Part by reason only that it was first obtained in the exercise of that power; and the admissibility of such matter is to be determined in accordance with the rules of evidence under any written law and any relevant rules of law.

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Confiscation order not affected by CDSA confiscation order

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55. A confiscation order is not affected by an application for or the making of a confiscation order under the CDSA in relation to the same subject and organised crime activity.

Division 2 — Restraint orders and charging orders

Application for restraint or charging order

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56. A restraint order or charging order —

- (a) may be made only on an application by the Public Prosecutor;
- (b) must be made to the Court and may be made on an ex parte application to a Judge in chambers; and
- (c) must provide for notice to be given to persons affected by the order.

25

Restraint orders

57.—(1) The Court, when hearing an application for a restraint order, may, if it has reasonable grounds to believe that the subject has carried out organised crime activity within the statutory period, make

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an order that realisable property is not to be disposed of, or dealt with, other than as provided for in the restraint order.

(2) A restraint order may be subject to such conditions and exceptions as the Court may specify in the order.

5 (3) The Court may vary a restraint order in relation to any property.

(4) In this section, dealing with property held by any person includes —

(a) where a debt is owed to that person, making a payment to any person in reduction of the amount of the debt; and

10 (b) removing the property from Singapore.

Charging orders

15 **58.**—(1) The Court, when hearing an application for a charging order, may, if it has reasonable grounds to believe that the subject has carried out organised crime activity within the statutory period, 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; or

20 (b) in any other case, of an amount not exceeding the amount payable under the confiscation order.

(2) A charging order is an order imposing on any property specified in the order a charge for securing the payment of money to the Government.

25 (3) A charging order may be subject to such conditions and exceptions as the Court may specify in the order.

(4) The Court may vary a charging order.

Duration of orders

30 **59.**—(1) A restraint or charging order expires on the earlier of the following:

- (a) the date that is the end of the period of 3 months after the date on which the order is made;
 - (b) the date of the satisfaction of, or the refusal by the Court to make, a confiscation order concerning the same subject and organised crime activity. 5
- (2) Despite subsection (1) —
- (a) if the Court refuses to make a confiscation order, but the Public Prosecutor indicates that the Public Prosecutor will appeal that decision, a restraint or charging order expires on the date specified in subsection (4); 10
 - (b) if a restraint or charging order is made on an *ex parte* application, it has effect until a day fixed for the hearing *inter partes* of the application, unless the Court otherwise directs; and
 - (c) subject to paragraph (a), if the duration of a restraint or charging order is extended by the Court, the restraint or charging order expires on the date specified by the Court under section 60. 15
- (3) On the expiry of a restraint or charging order, any further order associated with that restraint or charging order also expires. 20
- (4) If subsection (2)(a) applies, a restraint or charging order that is in force when the Court refuses to make a confiscation order does not expire until —
- (a) the last day of the prescribed period from the date of that decision, if a notice of appeal has not been lodged on or before that day; or 25
 - (b) if a notice of appeal has been lodged on or before the last day mentioned in paragraph (a), the day that appeal is withdrawn or dismissed or (if the appeal is allowed) such later day as the court hearing the appeal determines. 30
- (5) Despite any provision of this section, the Court —
- (a) may make an order discharging a restraint or charging order in relation to any property; and

(b) must make an order discharging a charging order if the amount, payment of which is secured by the charge, is paid into Court.

Extending duration of order

5 **60.**—(1) If the Court has made a restraint or charging order, the Public Prosecutor may, before the order expires, apply to the Court to extend its duration.

(2) The Public Prosecutor must serve a copy of the application on any person who, to the knowledge of the Public Prosecutor, will be
10 affected by the order.

(3) The Court may on such application order that the operation of the restraint or charging order be extended for a period not exceeding 3 months.

(4) On making an order of extension, the Court may vary the
15 restraint or charging order in any way it considers fit, including, without limitation, by specifying whether all or part of the property in question is to remain subject to the restraint or charging order during the extended period of operation.

(5) The duration of a restraint or charging order may be extended
20 more than once under this section.

(6) If, before a restraint or charging order would otherwise expire under section 59(1), an application is made to the Court under this section and the application is granted, the restraint or charging order expires on the date specified in the Court's order.

25 *Division 3 — Confiscation orders*

Application for confiscation order

61.—(1) The Public Prosecutor may apply to the Court for a confiscation order.

(2) The Court is to make a confiscation order against a subject if it is
30 satisfied on a balance of probabilities that —

(a) the subject has carried out organised crime activity within the statutory period; and

(b) the subject has derived benefits from the organised crime activity.

(3) For the purposes of subsection (2), if it is proved on a balance of probabilities that the subject holds or has at any time (whether before, on or after the date of commencement of this Part) held any property or any interest in the property (including income accruing from such property or interest) disproportionate to the subject's known sources of income, the holding of which cannot be explained to the satisfaction of the Court, then the subject is, until the contrary is proved on a balance of probabilities, presumed to have derived benefits from the organised crime activity.

(4) For the purposes of subsection (3), any expenditure by the subject (whether incurred before, on or after the date of commencement of this Part) is, until the contrary is proved, presumed to have been met out of the subject's benefits from the organised crime activity.

Amount to be recovered under confiscation order

62.—(1) The amount to be recovered from the subject under the confiscation order is the amount the Court assesses to be the value of the benefits the subject derived from the organised crime activity carried out within the statutory period.

(2) For the purposes of this section —

(a) the benefits derived by the subject from the organised crime activity is any property or any interest in property (including income accruing from such property or interest) held by the subject at any time, whether before, on or after the date of commencement of this Part, being property or interest that is disproportionate to the subject's known sources of income, and the holding of which cannot be explained to the satisfaction of the Court; and

(b) the value of the benefits derived by the subject from the organised crime activity is the sum of the values of the properties and interests referred to in paragraph (a).

(3) In determining the value of benefits under subsection (2)(b), the Court must leave out of account the value of any benefits of organised crime activity that are shown to the Court to have been taken into account in determining the amount to be recovered under any
5 confiscation order previously made against the subject under this Act or the CDSA.

(4) The amount in the confiscation order is recoverable from the subject by the Attorney-General in any civil court of competent jurisdiction as though it were a judgment debt due to the Government.

10 **Confiscation order if subject has absconded or died**

63.—(1) The Court may make a confiscation order even if the subject has absconded or died.

(2) In subsection (1), a subject has absconded if the subject is outside jurisdiction, or is unable to be found in the period of 6 months
15 before the date of the application for the confiscation order despite all reasonable efforts having been made to find the subject.

Settlement

64.—(1) The Public Prosecutor may enter into a settlement with any person as to any property or any sum of money to be confiscated under
20 this Part.

(2) A settlement does not bind the parties unless the Court approves it.

(3) The Court may approve the settlement if it is satisfied that it is consistent with —

25 (a) the purposes of this Part; and

(b) the overall interests of justice.

Division 4 — General provisions for proceedings under Divisions 2 and 3

Effect of death on proceedings

30 **65.**—(1) Where the power conferred by this Part to make a confiscation order is to be exercised in relation to a deceased

subject, the order is to be made against the estate of the deceased subject.

(2) Sections 61(3) and (4) and 62(2) and (3) do not apply to any deceased subject.

(3) The following provisions apply in determining whether a deceased subject had derived benefits from organised crime activity carried out by the subject within the statutory period and in determining those benefits and the value of those benefits: 5

(a) a deceased subject is, until the contrary is proved on a balance of probabilities, presumed to have derived benefits from the organised crime activity if the subject had, at any time (whether before, on or after the date of commencement of this Part) since the beginning of the period of 6 years ending at the date of the subject's death, held any property or interest in property disproportionate to the subject's known sources of income, and the holding of which cannot be explained to the satisfaction of the Court; 10 15

(b) the benefits derived by a deceased subject from the organised crime activity is any property or interest in property held by the subject during the period mentioned in paragraph (a), being property or interest disproportionate to the subject's known sources of income, and the holding of which cannot be explained to the satisfaction of the Court; 20

(c) the value of the benefits derived by a deceased subject from the organised crime activity is the sum of the values of those properties and interests less the value of any benefits of organised crime activity that are shown to the Court to have been taken into account in determining the amount to be recovered under any confiscation order previously made against the deceased subject under this Act or the CDSA. 25 30

(4) In this section, a reference to property or interest in property includes a reference to income accruing from such property or interest.

Exclusion of subject's property for undue hardship

5 **66.**—(1) On application by a subject within the prescribed time after a confiscation order has been made, the Court may exclude any property held by the subject from the exercise of any realisation power, if the Court is satisfied that, having regard to all of the circumstances, undue hardship is reasonably likely to be caused to the subject if the power is exercised in relation to that property.

(2) The circumstances to which the Court may have regard under subsection (1) include, without limitation —

10 (a) the use that is ordinarily made, or was intended to be made, of the property;

(b) the nature and extent of the subject's interest in the property; and

(c) the circumstances of the organised crime activity concerned.

15 (3) Nothing in this section prevents the exercise of any realisation power over property excluded under subsection (1) if —

(a) after the exercise of the realisation powers on other property, there is still a debt due to the Government under section 62(4); and

20 (b) the subject agrees to the exercise of those powers over the property excluded under subsection (1) in order to pay all or part of that debt.

Relief for third party

25 **67.**—(1) On application by a person other than the subject within the prescribed time after a confiscation order has been made, the Court may grant such relief in relation to the exercise of any realisation power on any property held by that person as the Court considers appropriate if the Court is satisfied that, having regard to all the circumstances, undue hardship is reasonably likely to be caused to the person if the realisation power is exercised in relation to that property.

30 (2) The circumstances to which the Court may have regard under subsection (1) include, without limitation —

- (a) the use that is ordinarily made, or was intended to be made, of the property;
- (b) the nature and extent of the person's interest in the property;
- (c) the degree, if any, to which the person had knowledge of the organised crime activity concerned; and 5
- (d) the circumstances of the organised crime activity concerned.

(3) On application by a person other than the subject within the prescribed time after a confiscation order has been made, the Court must grant such relief in relation to the exercise of any realisation power on property held by that person as the Court considers appropriate, if the Court is satisfied that — 10

- (a) the person was not in any way involved in the organised crime activity concerned;
- (b) the person had acquired the interest without knowing, and in circumstances that would not have aroused a reasonable suspicion, that the subject was involved in organised crime activity or the property were the benefits of such activity (if applicable); and 15
- (c) the person had acquired the interest for sufficient consideration. 20

(4) The Court is to exercise its power under subsection (3) with a view to allowing the person to retain or recover such value of any property held by the person.

(5) Regulations may be made under this Act for defining the value of property for the purposes of subsection (4). 25

Compensation

68.—(1) If —

- (a) no proceedings under Division 3 are instituted against the subject or such proceedings are withdrawn;
- (b) such proceedings are instituted but the Court refuses to make a confiscation order against the subject; or 30

(c) the confiscation order against the subject is revoked on appeal,

the Court may, on application by a person who held property which was realisable property, order compensation to be paid by the Government to the applicant if, having regard to all the circumstances, the Court considers it appropriate to make such order.

(2) The Court must not order compensation under subsection (1) unless it is satisfied that —

(a) there has been some serious default on the part of the Public Prosecutor, any person carrying out the duties of the Public Prosecutor under this Part, or a law enforcement officer; and

(b) the applicant has suffered loss as a result of anything done in relation to the property by, or as a result of a restraint or charging order, or the provisions of sections 16, 17 and 19 of the CDSA as applied by section 70.

(3) The amount of compensation that may be ordered is the amount that the Court thinks just, having regard to the loss suffered and any other relevant circumstances.

Rules of Court

69. Rules of Court may provide for the manner in which proceedings under this Part may be commenced or carried on.

Application of CDSA provisions

70.—(1) The following provisions of the CDSA apply in relation to a restraint order, a charging order, a confiscation order, and an application for any of these orders, as well as for the purpose of enabling the satisfaction of a confiscation order, as they apply in relation to a restraint order, a charging order and a confiscation order under the CDSA and an application for any of those orders, and for the purpose of enabling the satisfaction of a confiscation order under the CDSA, subject to the modifications in subsection (3):

Sections 10(2) to (6)(a), 11, 12(1) to (6) and (9)(b), 15(2A), 16(2), (3), (6), (8) and (9), 17(4) to (7), 18, 19(3) to (9), 20, 21, 22 (other than subsection (4)(b)), 23, 24 and 25.

(2) The provisions of this Part are, accordingly, to be read subject to the provisions of the CDSA referred to in subsection (1), as modified by subsection (3).

(3) The modifications to the provisions of the CDSA referred to in subsections (1) and (2) are —

- (a) a reference in those provisions to the defendant is a reference to the subject;
- (b) a reference to the court in those provisions (other than section 12(5) of the CDSA) is a reference to the Court;
- (c) a reference in those provisions to realisable property under the CDSA is a reference to realisable property as defined in section 46(1);
- (d) a reference in those provisions to a gift caught by the CDSA is a reference to a gift caught by this Part;
- (e) a reference in those provisions to the benefits derived by the defendant from drug dealing or from criminal conduct is a reference to the benefits derived by the subject from organised crime activity;
- (f) a reference in section 12(9)(b) of the CDSA to the circumstances under section 12(9)(a) of the CDSA is a reference to the circumstances under section 47(3);
- (g) a reference in those provisions to a receiver appointed under section 16 or 19 of the CDSA is a reference to a receiver appointed under that provision of the CDSA as applied by this section;
- (h) a reference in section 18(4) of the CDSA to section 17(8) of the CDSA is a reference to section 59(5);
- (i) an application to the Court to exercise the powers conferred by section 19(3) to (7) of the CDSA may be made, and those powers may be exercised, after the confiscation order is made and either in the same proceedings or in separate proceedings, except that an order under any of those provisions of the CDSA may only take effect, and any power conferred on the

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Public Trustee or a receiver by such an order may only be exercised —

(i) after any pending appeal against the confiscation order has been dealt with and the order is not revoked, or the period for bringing an appeal has lapsed; and

(ii) if the confiscation order has not been fully satisfied within the period specified in the order;

(j) except as otherwise stated in this section or prescribed in paragraph (k), a reference in those provisions to a provision of the CDSA is a reference to that provision of the CDSA as applied by this section; and

(k) such other modifications as may be prescribed for the purposes of this section.

Right of appeal

71.—(1) An appeal may be made to the Court of Appeal in relation to any decision of the Court under this Part.

(2) Rules of Court may provide for the manner in which an appeal under subsection (1) may be made.

Division 5 — Information-gathering powers

Application of information-gathering powers in CDSA

72.—(1) Sections 30 to 35, 42 (other than subsections (2), (2A), (7A)(b) and (8)) and 56 (other than subsection (1A)) of the CDSA also apply for the purpose of any proceeding or proposed proceeding under this Part, as they apply for the purpose of an investigation into drug dealing or criminal conduct, or (as the case may be) a drug dealing offence or serious offence, under the CDSA, subject to the modifications in subsection (2).

(2) The modifications to those provisions of the CDSA are —

(a) a reference in those provisions to an authorised officer is a reference to such law enforcement officer, or an officer within such class of law enforcement officers, as may be prescribed;

- (b) a reference in those provisions to grounds for suspecting that a specified person has carried on or has benefited from drug dealing or from criminal conduct is a reference to grounds for suspecting that the subject has carried out organised crime activity; 5
- (c) a reference in those provisions to a restraint order, charging order or confiscation order under the CDSA is a reference to a restraint order, charging order or confiscation order under this Part;
- (d) a reference in those provisions of the CDSA to a specified person or defendant is a reference to the subject; 10
- (e) an order under section 42 of the CDSA may be made by the Court only if it has reasonable grounds to believe that the subject has carried out organised crime activity; and
- (f) such other modifications as may be prescribed for the purposes of this section. 15

PART 10

MISCELLANEOUS

Examination orders

73.—(1) A law enforcement officer may, for the purpose of any proceeding or proposed proceeding under Part 3, 4, 5 or 9, apply to the High Court for an order under subsection (2) in relation to particular information, or information of a particular description. 20

(2) The High Court may, if on such an application it is satisfied that all of the conditions in subsection (3) are fulfilled, make an order that a person who appears to the High Court to be in possession of the information to which the application relates must do one or more of the following by such time as the order may specify: 25

- (a) attend before an authorised officer;
- (b) answer questions with respect to any matter that the authorised officer has reason to believe may be relevant to the proceeding or proposed proceeding; 30

(c) supply any information specified in the order or produce for inspection any document specified in the order.

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

(a) there are reasonable grounds for suspecting that —

5 (i) in relation to a proceeding or proposed proceeding under Part 3, 4 or 5 — a person has been involved in any Part 2 offence (as defined under section 14(5)) or any serious offence associated with an organised criminal group (as defined under section 14(2)); or

10 (ii) in relation to a proceeding or proposed proceeding under Part 9 — a person has carried out organised crime activity (as defined under section 48);

(b) there are reasonable grounds for suspecting that a specified person is able to do one or both of the following:

15 (i) answer any question on any matter that is likely to be of substantial value (whether by itself or together with other material) to the proceeding or proposed proceeding;

20 (ii) supply any information with respect to any matter that is likely to be of substantial value (whether by itself or together with other material) to the proceeding or proposed proceeding; and

25 (c) there are reasonable grounds for believing that it is in the public interest that the question is answered or the information is supplied (as the case may be), having regard to —

(i) the benefit likely to accrue to the proceeding or proposed proceeding if the information is supplied; and

30 (ii) the circumstances under which the person learns of the information.

(4) In an application for an order under this section, any defence that is available to a person who is prosecuted for an offence relating to the involvement mentioned in subsection (3)(a)(i), or an offence

constituting the organised crime activity in subsection (3)(a)(ii) (as the case may be), is also available to a person against whom the order is sought.

(5) A person required to attend before an authorised officer under subsection (2) must be given a reasonable opportunity to arrange for an advocate and solicitor to accompany the person. 5

(6) If any document is produced pursuant to an order under this section, an authorised officer may do any one or more of the following:

(a) retain the original document produced for as long as is necessary for the purposes of the proceeding or proposed proceeding; 10

(b) take copies of the document, or of extracts from the document;

(c) require the person producing the document to provide an explanation of the history, subject matter, and contents of the document and to answer any other questions that arise from that explanation and that the authorised officer has reason to believe may be relevant to the proceeding or proposed proceeding; 15
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(d) if necessary, require the person producing the document to reproduce, or assist an authorised officer to reproduce, in a usable form, any information recorded or stored in the document.

(7) An order under subsection (2) or a requirement under subsection (6) — 25

(a) does not confer any right to require a person to supply items subject to legal privilege; but

(b) has effect despite any obligation as to secrecy or other restriction upon the disclosure of information imposed by written law or otherwise. 30

(8) A person is not excused from complying with an order under subsection (2) or a requirement under subsection (6) on the ground that —

(a) the supply of any information might tend to incriminate the person or make the person liable to a penalty; or

(b) the supply of any information would be in breach of an obligation (whether imposed by written law or otherwise) of the person not to disclose the existence or contents of the material.

(9) Where a person complies with an order under subsection (2) or a requirement under subsection (6), any information so supplied is not admissible against the person in any criminal proceedings except a proceeding for an offence against subsection (12).

(10) A person who complies with an order under subsection (2) or a requirement under subsection (6) is not to be treated as being in breach of any restriction upon the disclosure of information imposed by written law or otherwise.

(11) No action lies against a person who in good faith supplies information in compliance with an order under subsection (2) or a requirement under subsection (6).

(12) A person shall be guilty of an offence if the person —

(a) contravenes or fails to comply with an order under subsection (2) or a requirement under subsection (6) without reasonable excuse; or

(b) in purported compliance with the order or requirement, supplies information known to the person to be false or misleading in a material particular.

(13) A person guilty of an offence under subsection (12) shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both.

(14) An authorised officer may exercise the powers conferred on him or her by this section despite any provision in any other written law relating to the supply of information or information of a particular description.

(15) An appeal lies from any order made under subsection (2), or the refusal to make such an order, by the High Court to the Court of Appeal.

(16) Rules of Court may provide for —

- (a) the manner in which an appeal under subsection (15) may be made;
- (b) the discharge and variation of orders under this section; and
- (c) proceedings relating to such orders.

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(17) In this Part, “authorised officer” means such law enforcement officer, or class of law enforcement officers, as may be prescribed.

Duty to give information of certain matters

74.—(1) Every person who is aware of any information relating to —

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- (a) the commission of;
- (b) an arrangement facilitating the commission of; or
- (c) the intention of any other person to commit or facilitate,

any offence punishable under this Act, must, in the absence of reasonable excuse (the burden of proving which lies upon the person so aware), immediately give the information to any law enforcement officer of the commission, arrangement or intention.

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(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction —

- (a) in the case of a natural person, to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months or to both; and
- (b) in any other case, to a fine not exceeding \$10,000.

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(3) For the purposes of subsection (1), it is a reasonable excuse for a person not to comply with that subsection if the person has already given the information referred to in that subsection to a law enforcement officer pursuant to any other written law.

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Offences arrestable

75. Every offence under this Act is arrestable for the purposes of the Criminal Procedure Code (Cap. 68).

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Offences by bodies corporate, etc.

76.—(1) Where an offence under this Act committed by a body corporate is proved —

5 (a) to have been committed with the consent or connivance of an officer of the body corporate; or

(b) to be attributable to any neglect on his or her part,

the officer as well as the body corporate shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

10 (2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director of the body corporate.

(3) Where an offence under this Act committed by a partnership is proved —

15 (a) to have been committed with the consent or connivance of a partner; or

(b) to be attributable to any neglect on his or her part,

the partner as well as the partnership shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

20 (4) Where an offence under this Act committed by an unincorporated association (other than a partnership) is proved —

(a) to have been committed with the consent or connivance of an officer of the unincorporated association or a member of its governing body; or

25 (b) to be attributable to any neglect on the part of such an officer or member,

the officer or member as well as the unincorporated association shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(5) In this section —

“body corporate” includes a limited liability partnership which has the same meaning as in section 2(1) of the Limited Liability Partnerships Act (Cap. 163A);

“officer” —

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(a) in relation to a body corporate, means any director, partner, member of the committee of management, chief executive, manager, secretary or other similar officer of the body corporate and includes any person purporting to act in any such capacity; or

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(b) in relation to an unincorporated association (other than a partnership), means the president, the secretary, or any member of the committee of the unincorporated association, or any person holding a position analogous to that of president, secretary or member of such a committee and includes any person purporting to act in any such capacity;

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“partner” includes a person purporting to act as a partner.

(6) The Minister may make regulations to provide for the application of any provision of this section, with such modifications as the Minister considers appropriate, to a body corporate or an unincorporated association formed or recognised under the law of a territory outside Singapore.

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Consent of Public Prosecutor

77. No prosecution in respect of any offence under this Act may be instituted except by or with the consent of the Public Prosecutor.

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Jurisdiction of courts

78. Despite any provision to the contrary in the Criminal Procedure Code (Cap. 68), a District Court or a Magistrate’s Court has jurisdiction to try any offence punishable under this Act, other than an offence punishable with death or imprisonment for life, and has power to impose the full penalty or punishment in respect of the offence.

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Composition of offences

79.—(1) The Minister or a public officer authorised by the Minister in writing may compound any offence under this Act which is prescribed as a compoundable offence by collecting from the person reasonably suspected of having committed the offence a sum not exceeding the lower of the following:

(a) one half of the amount of the maximum fine that is prescribed for the offence;

(b) \$5,000.

(2) On payment of such sum of money, no further criminal proceedings are to be taken against that person in respect of the offence.

(3) All sums collected under this section are to be paid into the Consolidated Fund.

Amendment of Schedule

80.—(1) The Minister may, by order published in the *Gazette*, amend the Schedule.

(2) The Minister may, in any order made under subsection (1), make such incidental, consequential or supplementary provision as may be necessary or expedient.

Regulations

81.—(1) The Minister may make regulations for anything that is required, permitted or necessary for carrying out the purposes and provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the Minister may make regulations for or with respect to all or any of the following matters:

(a) the electronic monitoring of an individual subject to an OCPO;

(b) the application of any provision of the Criminal Procedure Code (Cap. 68), with such exceptions, modifications and adaptations as are necessary in relation to an application

under section 15, 21, 28, 32 or 33, or in relation to an appeal under section 34;

(c) the prescribing of anything that is required or permitted to be prescribed under this Act.

(3) Regulations made under subsection (1) may —

(a) provide that a contravention of any specified provision of those regulations is an offence; and

(b) provide for penalties not exceeding a fine of \$10,000 or imprisonment for a term not exceeding 2 years or both, for each offence.

Orders and regulations to be presented to Parliament

82. All orders and regulations made under this Act are to be presented to Parliament as soon as possible after publication in the *Gazette*.

Savings and transitional provision

83. For a period of 2 years after the date of commencement of this Act, the Minister may, by regulations, prescribe such provisions of a savings or transitional nature consequent on the enactment of this Act as the Minister may consider necessary or expedient.

Consequential and related amendments to other Acts

84.—(1) The Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap. 65A, 2000 Ed.) is amended —

(a) by inserting, immediately after section 5, the following section:

“Confiscation order unaffected by confiscation order under Organised Crime Act 2015

5A. Subject to sections 7(2), 8(2) and 28(4) and (4A) (whichever is applicable), a confiscation order under section 4 or 5 (as the case may be) may be made against a person in relation to any act despite the fact that a confiscation order under Part 9 of the Organised Crime

Act 2015 has been made against that person in relation to the same act.”;

5 (b) by inserting, immediately after the words “confiscation order” in section 7(2), the words “or a confiscation order under Part 9 of the Organised Crime Act 2015,”;

(c) by inserting, immediately after the words “confiscation order” in section 8(2), the words “, a confiscation order under Part 9 of the Organised Crime Act 2015,”; and

10 (d) by inserting, immediately after the words “confiscation order” in section 28(4)(c) and (4A)(c), the words “under this Act or Part 9 of the Organised Crime Act 2015”.

(2) Section 281(2) of the Criminal Procedure Code (Cap. 68, 2012 Ed.) is amended by inserting, immediately after paragraph (c), the following paragraph:

15 “(ca) an offence punishable under the Organised Crime Act 2015;”.

(3) The Mutual Assistance in Criminal Matters Act (Cap. 190A, 2001 Ed.) is amended —

20 (a) by deleting the word “or” at the end of paragraph (a) of the definition of “Singapore confiscation order” in section 2(1);

(b) by inserting the word “or” at the end of paragraph (b) of the definition of “Singapore confiscation order” in section 2(1), and by inserting immediately thereafter the following paragraph:

25 “(c) a confiscation order within the meaning of Part 9 of the Organised Crime Act 2015;”;

(c) by deleting the words “criminal proceedings” in sections 8(3) and 12(ii) and substituting in each case the word “proceedings”; and

30 (d) by deleting the words “criminal proceedings” in section 13(1)(b) and substituting the words “any proceedings”.

THE SCHEDULE

Sections 2(1) and 80(1)

SERIOUS OFFENCES

| <i>Offences</i> | <i>Description*</i> | |
|---|--|----|
| Arms Offences Act (Cap. 14) | | 5 |
| 1. Section 4 | Using or attempting to use arms | |
| 2. Section 6 | Trafficking in arms | |
| Betting Act (Cap. 21) | | |
| 3. Section 3(1)(a) | Keeping or using a place as a common betting house or betting information centre | 10 |
| 4. Section 3(1)(c) | Having the care or management of, or in any manner assisting in the management or the business of a common betting house or betting information centre | |
| 5. Section 4 | Advancing or furnishing money to establish or conduct the business of a common betting house | 15 |
| 6. Section 5(3)(a) | Acting as a bookmaker | |
| Casino Control Act (Cap. 33A) | | |
| 7. Section 110A | Performing any function of an international market agent without valid licence granted by the Casino Regulatory Authority of Singapore | 20 |
| 8. Section 171 | Possession or use of certain things prohibited | |
| 9. Section 172 | Unlawful interference with gaming equipment | 25 |
| 10. Section 172A | Cheating at play | |
| 11. Section 174 | Forgery and counterfeiting | |
| Children and Young Persons Act (Cap. 38) | | |
| 12. Section 7 | Sexual exploitation of child or young person | 30 |
| 13. Section 12 | Unlawful transfer of possession, custody or control of child | |

* Note: The short description of offences in this Schedule is for ease of reference only.

THE SCHEDULE — *continued*

| | <i>Offences</i> | <i>Description*</i> |
|----|--|--|
| | 14. Section 13 | Importation of child by false pretences |
| | Common Gaming Houses Act (Cap. 49) | |
| 5 | 15. Section 4(1)(a) | Keeping or using a place as a common gaming house |
| | 16. Section 4(1)(c) | Having the care or management of, or in any manner assisting in the management of, a common gaming house |
| 10 | 17. Section 5 | Assisting in carrying on a public lottery, etc. |
| | 18. Section 6 | Advancing or furnishing money to establish or conduct the business of a common gaming house or for the purpose of a public lottery |
| | Computer Misuse and Cybersecurity Act (Cap. 50A) | |
| 15 | 19. Section 3 | Unauthorised access to computer material |
| | 20. Section 4 | Access with intent to commit or facilitate the commission of offence |
| | 21. Section 5 | Unauthorised modification of computer material |
| 20 | 22. Section 6 | Unauthorised use or interception of computer service |
| | 23. Section 7 | Unauthorised obstruction of use of computer |
| | 24. Section 8 | Unauthorised disclosure of access code |
| | Copyright Act (Cap. 63) | |
| 25 | 25. Section 136(1) | Making for sale or hire, etc., infringing copy of work |
| | 26. Section 136(2) | Importing into Singapore or having possession of infringing copy of work for purposes of sale, distribution, etc. |
| 30 | Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap. 65A) | |
| | 27. Section 43 | Assisting another to retain benefits of drug dealing |

* *Note:* The short description of offences in this Schedule is for ease of reference only.

THE SCHEDULE — *continued*

| <i>Offences</i> | <i>Description*</i> | |
|---|---|----|
| 28. Section 44 | Assisting another to retain benefits from criminal conduct | |
| 29. Section 46 | Acquiring, possessing, using, concealing or transferring benefits of drug dealing | 5 |
| 30. Section 47 | Acquiring, possessing, using, concealing or transferring benefits of criminal conduct | |
| Customs Act (Cap. 70) | | |
| 31. Section 132 | Knowingly advancing or furnishing money for business comprising sale, purchase, etc., of uncustomed goods | 10 |
| Explosive Substances Act (Cap. 100) | | |
| 32. Section 5 | Making or possessing explosives under suspicious circumstances | 15 |
| Goods and Services Tax Act (Cap. 117A) | | |
| 33. Section 62 | Penalty provisions relating to fraud, etc. | |
| Human Organ Transplant Act (Cap. 131A) | | |
| 34. Section 14(2A)(a) | Giving or offering to give valuable consideration for the sale or supply of, or for an offer to sell or supply, any organ from the body of another person | 20 |
| 35. Section 14(2A)(b) | Receiving valuable consideration for the sale or supply of, or for an offer to sell or supply, any organ from the body of another person | 25 |
| 36. Section 14(2A)(c) | Offering to sell or supply any organ from the body of another person for valuable consideration | |
| 37. Section 14(2A)(d) | Initiating or negotiating any contract or arrangement to sell or supply any organ from the body of another person | 30 |
| 38. Section 14(2A)(e) | Taking part in the management or control of a body corporate or body unincorporate whose activities consist of or include the initiation or | |

* *Note:* The short description of offences in this Schedule is for ease of reference only.

THE SCHEDULE — *continued*

| | <i>Offences</i> | <i>Description*</i> |
|----|---------------------------------------|--|
| | | negotiation of certain contracts or arrangements |
| 5 | Immigration Act (Cap. 133) | |
| | 39. Section 57(1)(c) | Engaging in the business or trade of conveying to or out of Singapore any person who is a prohibited immigrant |
| | Income Tax Act (Cap. 134) | |
| 10 | 40. Section 37J(4) | Giving false information, etc., to obtain cash payout or Productivity and Innovation Credit bonus |
| 15 | 41. Section 96A | Serious fraudulent tax evasion and action to obtain Productivity and Innovation Credit bonus |
| | Kidnapping Act (Cap. 151) | |
| | 42. Section 3 | Abduction, wrongful restraint or wrongful confinement for ransom |
| | 43. Section 4 | Knowingly receiving ransom |
| 20 | 44. Section 5 | Knowingly negotiating to obtain or for payment of ransom |
| | Misuse of Drugs Act (Cap. 185) | |
| | 45. Section 5 | Trafficking in controlled drugs |
| | 46. Section 6 | Manufacture of controlled drugs |
| 25 | 47. Section 7 | Import and export of controlled drugs |
| | 48. Section 10 | Cultivation of cannabis, opium and coca plants |
| 30 | 49. Section 10A | Manufacture, supply, possession, import or export of equipment, materials or substances useful for manufacture of controlled drugs |
| | 50. Section 11 | Responsibilities of owners, tenants, etc. |

* *Note:* The short description of offences in this Schedule is for ease of reference only.

THE SCHEDULE — *continued*

| <i>Offences</i> | <i>Description*</i> | |
|------------------------------------|---|----|
| 51. Section 11A | Arranging or planning gatherings where controlled drugs are to be consumed or trafficked | 5 |
| 52. Section 12A | Causing or procuring young person or vulnerable person to commit certain offences | |
| Moneylenders Act (Cap. 188) | | |
| 53. Section 14 | Unlicensed moneylending | |
| 54. Section 28 | Harassing borrower, besetting his residence, etc. | 10 |
| Passports Act (Cap. 220) | | |
| 55. Section 36 | Falsifying Singapore passports, etc. | |
| 56. Section 38 | Bringing, taking or sending false Singapore passports, etc., across international borders | 15 |
| 57. Section 41 | Improper use or possession of Singapore passports, etc. | |
| 58. Section 42 | Selling Singapore passport, etc. | |
| 59. Section 44 | Dishonestly obtaining Singapore passport, etc. | 20 |
| 60. Section 47 | Offences relating to false foreign travel documents | |
| Penal Code (Cap. 224) | | |
| 61. Section 130B | Piracy by law of nations | |
| 62. Section 130C | Piratical acts | 25 |
| 63. Section 204A | Obstructing, preventing, perverting or defeating course of justice | |
| 64. Section 204B | Bribery of witnesses | |
| 65. Section 231 | Counterfeiting coin | |
| 66. Section 232 | Counterfeiting current coin | 30 |
| 67. Section 233 | Making or selling instrument for counterfeiting coin | |

* *Note:* The short description of offences in this Schedule is for ease of reference only.

THE SCHEDULE — *continued*

| | <i>Offences</i> | <i>Description*</i> |
|----|--------------------|---|
| | 68. Section 234 | Making or selling instrument for counterfeiting current coin |
| 5 | 69. Section 237 | Import or export of counterfeit coin |
| | 70. Section 238 | Import or export of counterfeits of current coin |
| | 71. Section 302 | Punishment for murder |
| | 72. Section 304 | Culpable homicide not amounting to murder |
| 10 | 73. Section 307(1) | Attempt to murder |
| | 74. Section 308 | Attempt to commit culpable homicide |
| | 75. Section 347 | Wrongful confinement for the purpose of extorting property or constraining to an illegal act |
| 15 | 76. Section 348 | Wrongful confinement for the purpose of extorting confession or of compelling restoration of property |
| | 77. Section 363 | Kidnapping |
| | 78. Section 363A | Abduction |
| 20 | 79. Section 364 | Kidnapping or abducting in order to murder |
| | 80. Section 365 | Kidnapping or abducting with intent secretly and wrongfully to confine a person |
| | 81. Section 366 | Kidnapping or abducting a woman to compel her marriage, etc. |
| 25 | 82. Section 367 | Kidnapping or abducting in order to subject a person to grievous hurt, slavery, etc. |
| | 83. Section 370 | Buying or disposing of any person as a slave |
| | 84. Section 371 | Habitual dealing in slaves |
| 30 | 85. Section 372 | Selling minor for purposes of prostitution, etc. |
| | 86. Section 373 | Buying minor for purposes of prostitution, etc. |

* *Note:* The short description of offences in this Schedule is for ease of reference only.

THE SCHEDULE — *continued*

| <i>Offences</i> | <i>Description*</i> | |
|---------------------|---|----|
| 87. Section 373A | Importing woman for purposes of prostitution, etc. | |
| 88. Section 376B(1) | Commercial sex with person under 18 | 5 |
| 89. Section 379A | Theft of motor vehicle | |
| 90. Section 382 | Theft after preparation made for causing death or hurt in order to commit theft | |
| 91. Section 384 | Extortion | |
| 92. Section 385 | Putting person in fear of harm in order to commit extortion | 10 |
| 93. Section 386 | Extortion by putting a person in fear of death or grievous hurt | |
| 94. Section 387 | Putting person in fear of death or of grievous hurt in order to commit extortion | 15 |
| 95. Section 388 | Extortion by threat of accusation of an offence punishable with death, or imprisonment, etc. | |
| 96. Section 389 | Putting person in fear of accusation of offence, in order to commit extortion | 20 |
| 97. Section 392 | Punishment for robbery | |
| 98. Section 395 | Punishment for gang-robbery | |
| 99. Section 396 | Gang-robbery with murder | |
| 100. Section 411 | Dishonestly receiving stolen property | |
| 101. Section 413 | Habitually dealing in stolen property | 25 |
| 102. Section 414 | Assisting in concealment or disposal of stolen property | |
| 103. Section 419 | Punishment for cheating by personation | |
| 104. Section 420 | Cheating and dishonestly inducing a delivery of property | 30 |
| 105. Section 454 | Lurking house-trespass or house-breaking in order to commit an offence punishable with imprisonment | |

* *Note:* The short description of offences in this Schedule is for ease of reference only.

THE SCHEDULE — *continued*

| | <i>Offences</i> | <i>Description*</i> |
|----|-------------------|---|
| | 106. Section 455 | Lurking house-trespass or house-breaking after preparation made for causing hurt, etc. |
| 5 | 107. Section 457 | Lurking house-trespass by night or house-breaking by night in order to commit an offence punishable with imprisonment |
| 10 | 108. Section 458 | Lurking house-trespass by night or house-breaking by night after preparation made for causing hurt, etc. |
| | 109. Section 459 | Grievous hurt caused while committing lurking house-trespass or house-breaking |
| 15 | 110. Section 460 | Lurking house-trespass by night or house-breaking by night when death or grievous hurt is caused |
| | 111. Section 465 | Punishment for forgery |
| | 112. Section 467 | Forgery of a valuable security or will |
| | 113. Section 468 | Forgery for the purpose of cheating |
| 20 | 114. Section 472 | Making or possessing a counterfeit seal, plate, etc., with intent to commit a forgery punishable under section 467 |
| | 115. Section 473 | Making or possessing a counterfeit seal, plate, etc., with intent to commit a forgery punishable otherwise |
| 25 | 116. Section 473A | Making or possessing equipment for making a false instrument |
| | 117. Section 473B | Making or possessing equipment for making a false instrument with intent to induce prejudice |
| 30 | 118. Section 474 | Having possession of certain document or electronic record known to be forged, with intent to use it as genuine |
| | 119. Section 475 | Counterfeiting a device or mark used for authenticating documents described in |

* *Note:* The short description of offences in this Schedule is for ease of reference only.

THE SCHEDULE — *continued*

| | <i>Offences</i> | <i>Description*</i> |
|----|--|--|
| | 131. Section 11 | Bribery of Member of Parliament |
| | 132. Section 12 | Bribery of member of public body |
| 5 | Prevention of Human Trafficking Act 2014 (Act 45 of 2014) | |
| | 133. Section 3 | Trafficking in persons |
| | 134. Section 6 | Persons who receive payments in connection with exploitation of trafficked victims |
| | Remote Gambling Act 2014 (Act 34 of 2014) | |
| 10 | 135. Section 9 | Providing unlawful remote gambling service for another |
| | 136. Section 10 | Prohibition against overseas remote gambling service with Singapore-customer link |
| 15 | 137. Section 11 | Prohibition against Singapore-based remote gambling service |
| | Trade Marks Act (Cap. 332) | |
| | 138. Section 46 | Counterfeiting a trade mark |
| | 139. Section 47 | Falsely applying a registered trade mark to goods or services |
| 20 | 140. Section 48 | Making or possessing of article for committing offence |
| | 141. Section 49 | Importing or selling, etc., goods with falsely applied trade mark |
| | Women's Charter (Cap. 353) | |
| 25 | 142. Section 140(1)(a) to (h) | Offences relating to prostitution |
| | 143. Section 141 | Trafficking in women and girls |
| | 144. Section 142 | Importation of woman or girl by false pretences |
| | 145. Section 146 | Persons living on or trading in prostitution |
| 30 | 146. Section 147 | Keeping, managing or assisting in management of places of assignation |

* *Note:* The short description of offences in this Schedule is for ease of reference only.

THE SCHEDULE — *continued*

| <i>Offences</i> | <i>Description*</i> |
|------------------|--|
| 147. Section 148 | Keeping, managing or assisting in management of brothels |

* *Note:* The short description of offences in this Schedule is for ease of reference only.

EXPLANATORY STATEMENT

This Bill seeks to create certain offences related to the activities of an organised criminal group (OCG), and to provide for certain orders to be made by the courts in order to prevent and disrupt such activities. The Bill also makes provision for a non-conviction based confiscation regime which aims to eliminate the chance for persons to profit from carrying out organised crime activity, to remove the incentive for persons to carry out such activity, and to reduce the ability of persons to carry out such activity.

The Bill also makes related and consequential amendments to certain other Acts.

PART 1

PRELIMINARY

Part 1 introduces the fundamental concepts used in the Bill, including definitions for “locally-linked organised criminal group” and “organised criminal group”, and what it means to facilitate the commission of an offence. Certain evidentiary provisions are also provided in clause 2.

Clause 1 relates to the short title and commencement.

Clause 2 is a general interpretation provision. It contains the definitions of certain terms used in the Bill.

The term “group” is defined in clause 2 to mean a group of 3 or more individuals. This group may be organised in various ways, without any defined hierarchical or organisation structure. This may include the formation of a company or association or body of persons, corporate or unincorporate. The company or association or body of persons may be based within or outside Singapore and may comprise individuals who are not ordinarily resident in Singapore. The company or association or body of persons may also be part of a larger group. This wide definition of a group is necessary in order to reflect the organisation of modern day OCG, which may take various forms and structures (e.g. being highly compartmentalised and multi-layered) and involves individuals

residing in different jurisdictions. In order to form a group, it is not necessary for the roles and functions of its members to be clearly defined. However, the group does not include a randomly formed group which has as its purpose the immediate commission of an offence, and is not involved in organised criminal activities of concern to Singapore.

The term “locally-linked organised criminal group” refers to a group that has as its only purpose, or one of its purposes, the obtaining of a financial or other material benefit from the commission by, or the facilitation of the commission by, any person (whether or not the person is a member of the group) of any serious offence specified in the Schedule. This term is a subset of the other term “organised criminal group” which is also defined. An “organised criminal group”, besides encompassing a “locally-linked organised criminal group”, also includes a group that has as its only purpose, or one of its purposes, the obtaining of a financial or other material benefit from the commission by, or the facilitation of the commission by, any person (whether or not the person is a member of the group) of any act outside Singapore that, if it occurred in Singapore, would constitute a serious offence specified in the Schedule. In other words, it is possible for an “organised criminal group” to include a group which conducts its activities wholly outside Singapore. However, these activities must, if they had taken place in Singapore, constitute a serious offence specified in the Schedule.

Clause 2(2) provides for the interpretation of what it means for a person to facilitate the commission of an offence by another person. The facilitator must know, or have reasonable grounds to believe, that the conduct facilitated may amount to the offence. It is not necessary for the facilitator to know the particular offence being facilitated, nor the exact details of the offence being facilitated, nor that an offence was actually committed.

Clause 2(3) provides that a group of persons can form an OCG whether or not any of the persons in the group are subordinates or employees of any other persons in the group. It also does not matter if only one or some of the persons in the group are involved in planning, organising or carrying out any serious offence in furtherance of the illegal purpose of the OCG, or that the membership of the group changes from time to time.

Clause 2(4) provides that for the purposes of certain proceedings against a person which involves an OCG, the prosecution does not have to prove that the person knows the identity of all or any of the persons who constitute the OCG.

Clause 3 defines the term “item subject to legal privilege”. This term is adapted from the definition in section 2A of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap. 65A).

Clause 4 states the purpose of the Bill.

PART 2

ORGANISED CRIME OFFENCES

Part 2 sets out the general offences relating to the activities of an OCG, which include membership in an OCG, recruiting members for an OCG, instructing commission of an offence for an OCG, etc.

Clause 5 provides for the offence of being, or acting as, a member of a locally-linked OCG. The clause further provides for some indicia of membership which a court may take into consideration in determining whether a person is guilty of an offence under this clause. The list is not exhaustive and it is open to the court to take into consideration other indicia of membership which are not specifically stated in the clause.

Clause 6 provides for the offence of recruiting members for an OCG. The penalties for this offence are enhanced if the person recruited is a vulnerable person or a person who is below 21 years old. There is a presumption provided in clause 6(5) that unless otherwise proven, the recruiter is presumed to know, or have reasonable grounds to believe, that the person recruited, was at the time of the offence, a vulnerable person or below 21 years old.

Clause 7 provides for the offence of instructing a person to commit certain offences for an OCG. The penalties provided for this offence differ depending on various factors, which include whether the offence instructed was actually committed, whether the intention or knowledge of the person instructed differs from that of the instructor, whether the offence actually committed was a probable consequence of the offence instructed, etc.

As an example, a person in Singapore commits an offence under clause 7(1)(b) if he or she instructs another person to traffic in a Class A controlled drug, and the instructor knows that the commission of the trafficking offence is to further the illegal purpose of an OCG. Trafficking in drugs is an offence under section 5(1) of the Misuse of Drugs Act (Cap. 185) and punishable with the maximum penalty of 20 years' imprisonment and 15 strokes of the cane, and with minimum penalty of 5 years' imprisonment and 5 strokes of the cane. If the trafficking offence is actually committed, under clause 7(3)(b) read with the modifications specified in clause 7(5), the instructor is liable to be punished with the maximum penalty of 30 years' imprisonment (since the imprisonment term is increased by 10 years) and 15 strokes of the cane (no modifications being made to the caning prescribed), and the minimum penalty of 5 years' imprisonment (no modifications being made to the imprisonment term) and 5 strokes of the cane (no modifications being made to the caning prescribed).

For an offence under clause 7, it is not necessary for the prosecution to prove that the instructor instructed a particular person to commit an offence.

Clause 8 provides for the offence of procuring the expenditure or the application of property in order to support, aid or promote certain offences related to an OCG. For example, if a person (*A*) in Singapore approaches another person to provide funds to a group, and *A* knows, or has reasonable grounds to believe, that the funds are to be used to aid an offence of money laundering which is carried out for the purpose of conferring a financial or other material benefit on an OCG, an offence under clause 8(1) is committed.

Clause 9 provides for the offence of expending or applying property in order to support, aid or promote certain offences related to an OCG. In the example given in relation to clause 8, it is an offence for the person who provides the funds knowing, or having reasonable grounds to believe, that the funds are used to aid an offence of money laundering which is carried out for the purpose of conferring a financial or other material benefit on an OCG.

Clause 10 provides for the offence of allowing an OCG to use premises.

Clause 11 provides for the offence of receiving, retaining, concealing and disposing of or otherwise dealing with property of an OCG.

Clause 12 provides for the offence of facilitating the commission of an offence by an OCG.

Clause 13 empowers a court to impose enhanced penalties for the commission of any offence if the offence was committed at the direction of, or in furtherance of the illegal purpose of, an OCG.

PART 3

ORGANISED CRIME PREVENTION ORDERS

Part 3 provides for the making of an Organised Crime Prevention Order (OCPO) which can be made by a court in order to protect the public by preventing, restricting or disrupting the involvement by a person in certain offences.

Division 1 contains preliminary provisions.

Clause 14 defines certain terms which are used in Parts 3, 4 and 5. Clause 14(2), (3) and (4) defines what it means to be involved in a serious offence associated with an OCG.

Division 2 contains general provisions relating to an OCPO.

Clause 15(1) empowers a High Court to make an OCPO upon the application of the Public Prosecutor. An application under clause 15(1) can be made even in the absence of any conviction of an offence. However, before making an OCPO, the High Court must give the person against whom the application is made by the Public Prosecutor, a reasonable opportunity to be heard. The High Court can make an OCPO only if the court is satisfied (on a balance of probabilities) that a person

has been involved in a Part 2 offence or a serious offence which is associated with an OCG, and the court has reasonable grounds to believe that the order would protect the public by preventing, restricting or disrupting any involvement by the person in any Part 2 offence, or any serious offence associated with an OCG.

Clause 15(2) allows any trial court (whether a District Court, Magistrate's Court or the High Court) to make an OCPO upon the conviction of a person for a Part 2 offence or a serious offence (including an abetment of, or a conspiracy or an attempt to commit, the serious offence) subject to the penalty under clause 13. Before the court makes the OCPO, the court must give the person against whom the application is made by the Public Prosecutor, a reasonable opportunity to be heard. The trial court may make an OCPO at the time of sentencing the person for that offence. The trial court can make an OCPO only if the court has reasonable grounds to believe that the order would protect the public by preventing, restricting or disrupting any involvement by the person in any Part 2 offence, or any serious offence associated with an OCG.

Clause 16 contains examples of the types of provisions which may be included in an OCPO. The types of provisions which may be included in an OCPO and which are specified in clause 16 are not exhaustive. The relevant court may impose such prohibitions, restrictions or requirements which are necessary in order to protect the public by preventing, restricting or disrupting the involvement by the person who is subject to the OCPO.

Division 3 contains provisions which relate to the duration and nature of an OCPO.

Clause 17 specifies the duration of an OCPO. An OCPO may specify different times for the coming into force of different provisions of the OCPO. However, if the OCPO contains several provisions which come into force on different dates, the OCPO can only be in force for 5 years beginning with the coming into force of the first provision of the OCPO to come into force. The fact that an OCPO, or any provision of an OCPO, ceases to be in force does not prevent a court from making a new OCPO to the same or similar effect. A new OCPO may be made in anticipation of an earlier OCPO or provision ceasing to be in force.

Clause 18 specifies the persons who may be subject to an OCPO. Such persons include an individual, an officer or employee of a body corporate, a particular partner in a partnership, etc.

Clause 19 relates to the electronic monitoring of individuals subject to an OCPO.

Clause 20 provides that an OCPO against a body corporate, partnership, limited liability partnership or an unincorporated association may authorise a law enforcement agency to enter into arrangements with a specified person, or any person who falls within a specified description of persons. Such persons are called

authorised monitors whose duty is to perform monitoring services or monitoring services of a specified description. Monitoring services is defined to mean —

- (a) analysing some or all information received in accordance with an OCPO;
- (b) reporting to a law enforcement officer as to whether, on the basis of the information and any other information analysed for this purpose, the subject of the OCPO appears to be complying with the order or any part of it; and
- (c) any related services.

PART 4

FINANCIAL REPORTING ORDERS

Part 4 provides for the making of a Financial Reporting Order (FRO) which can be made by a court in order to protect the public by preventing, restricting or disrupting the involvement by a person in certain offences.

Clause 21(1) empowers a High Court to make an FRO upon the application of the Public Prosecutor. An application under clause 21(1) can be made even in the absence of any conviction of an offence. However, before making an FRO, the High Court must give the individual against whom an application is made by the Public Prosecutor, a reasonable opportunity to be heard. The High Court can make an FRO only if the court is satisfied (on a balance of probabilities) that a person has been involved in a Part 2 offence or a serious offence which is associated with an OCG and the court has reasonable grounds to believe that the order would protect the public by preventing, restricting or disrupting any involvement by the person in any Part 2 offence, or any serious offence associated with an OCG.

Clause 21(2) allows any trial court (whether a District Court, Magistrate's Court or the High Court) to make an FRO upon the conviction of a person for a Part 2 offence, or a serious offence (including an abetment of, or a conspiracy or an attempt to commit, the serious offence) which is subject to the penalty under clause 13. The trial court, may make an FRO at the time of sentencing of the person for that offence. However, before making the order, the trial court must give the individual against whom an application is made by the Public Prosecutor, a reasonable opportunity to be heard. The trial court can make an FRO only if the court has reasonable grounds to believe that the order would protect the public by preventing, restricting or disrupting any involvement by the person in any Part 2 offence, or any serious offence associated with an OCG.

Clause 22 provides for the duration of an FRO. An FRO comes into force on the date that it is made. An FRO made under clause 21(1) has effect for the period specified in the order, which must not exceed 5 years. An FRO made under clause 21(2) must not exceed a period equivalent to the term of imprisonment imposed by a court upon conviction of an offence referred to in section 21(2) plus

5 years. A new FRO may be made in anticipation of an earlier FRO ceasing to be in force.

Clause 23 provides for the effect of an FRO. A person subject to an FRO must make a financial report during certain periods and set out the particulars of the person's financial affairs relating to the period specified. The person must also include certain specified documents with each financial report to be submitted to a specified person.

PART 5

GENERAL PROVISIONS RELATING TO OCPO AND FRO

Part 5 provides for the general provisions relating to an OCPO or FRO.

Division 1 relates to certain enforcement provisions.

Clause 24 relates to the powers of law enforcement officers to retain documents.

Clause 25 allows the specified person (defined in clause 25(1)) to disclose information or a financial report with any other person if the specified person reasonably believes that such disclosure can contribute to checking the accuracy of the information or report or discovering the true position.

Division 2 relates to the failure to comply with an OCPO or FRO.

Clause 26 makes it an offence for a person to fail to comply with an OCPO or an FRO, without reasonable excuse. Despite anything in the Criminal Procedure Code (Cap. 68), a person is not excused from complying with an OCPO or FRO on the ground that the supply of any information might tend to incriminate the person or make the person liable to a penalty. However, the use of such information supplied is circumscribed by clause 31.

Division 3 relates to general safeguards in relation to an OCPO or FRO.

Clause 27 provides that an OCPO or FRO cannot be made against an individual who, at the time the OCPO or FRO is made, is below 16 years old.

Clause 28 provides that a court must, before making or varying or discharging an OCPO or FRO, upon the application of a person (not being the Public Prosecutor or the person subject to the OCPO or FRO), give the person an opportunity to make representations if the court considers that the making, varying or discharging of the OCPO or FRO would be likely to have a significant adverse effect on that person.

Clause 29 provides that the subject of an OCPO or FRO is bound by it or a variation of it only if the person is represented at the proceedings at which the OCPO or FRO is made, or a notice setting out the terms of the OCPO or FRO or variation has been served on the person. The clause further provides for the manner in which a notice is to be served on the person subject to the OCPO or FRO.

Clause 30 provides that an OCPO or FRO may not require a person to answer any question, provide any information or produce any document if the disclosure concerned is prohibited under any other written law, or the information or document is an item subject to legal privilege.

Clause 31 restricts the use of a statement made by a person in response to a requirement imposed by an OCPO or FRO. Such a statement cannot be used in evidence against the person in any criminal proceedings unless the statement is used for the purpose of impeaching the person's credit in the manner provided in section 157 of the Evidence Act (Cap. 97), or is used in proceedings for an offence under clause 26.

Division 4 relates to the variation and discharge of an OCPO or FRO.

Clause 32 provides that an application for the variation of an OCPO or FRO may be made to the court which first made the OCPO or FRO, as the case may be. The application may be made by the Public Prosecutor, the person who is subject to the OCPO or FRO, or any other person.

A court may, on an application under this clause by the Public Prosecutor, vary an OCPO or FRO if it has reasonable grounds to believe that the terms of the OCPO or FRO as varied would protect the public by preventing, restricting or disrupting involvement, by the person who is the subject of the OCPO or FRO, in certain offences.

The court must not entertain an application by the person who is the subject of the OCPO or FRO unless it considers that there has been a material change of circumstances affecting the OCPO or FRO. In relation to an application by any other person, the court must not entertain an application unless certain criteria are met.

Clause 33 provides that an application for the discharge of an OCPO or FRO may be made to the court which first made the OCPO or FRO, as the case may be. The application may be made by the Public Prosecutor, the person who is subject to the OCPO or FRO, or any other person.

The court must not entertain an application by the person who is the subject of the OCPO or FRO unless it considers that there has been a material change of circumstances affecting the OCPO or FRO. In relation to an application by any other person, the court must not entertain an application unless certain criteria are met.

Division 5 relates to appeals.

Clause 34 provides for the right of appeal by a person who was given an opportunity to make representations in the proceedings concerned by virtue of clause 28(1), (2) or (3). An appeal may be made by such a person to the Court of Appeal or the High Court in relation to a decision of the High Court or State Court, respectively —

- (a) to make, or not to make, an OCPO or FRO;
- (b) to include, or not to include, any provision in an OCPO or FRO;
- (c) to vary, or not to vary, all or any of the provisions in an OCPO or FRO; or
- (d) to discharge, or not to discharge, an OCPO or FRO.

Division 6 contains supplementary provisions.

Clause 35 provides that an application for an OCPO or FRO may be made under clause 15(1) or 21(1) even after a person —

- (a) is acquitted of a Part 2 offence, or a serious offence (including an abetment of, or a conspiracy or an attempt to commit, the serious offence) which is subject to the penalty under clause 13; or
- (b) is convicted of a Part 2 offence, or a serious offence (including an abetment of, or a conspiracy or an attempt to commit, the serious offence) which is subject to the penalty under clause 13, and the person is subsequently acquitted pursuant to an appeal against the conviction, or is granted a pardon by the President in respect of the conviction.

Clause 35 also provides that an OCPO or FRO made under clause 15(2) or 21(2) ceases to have effect if the person against whom the OCPO or FRO was made upon conviction —

- (a) is subsequently acquitted pursuant to an appeal against the conviction; or
- (b) is granted a pardon by the President in respect of the conviction.

Clause 36 provides for the transfer of a case to a trial court to make an OCPO or FRO if a person is acquitted by the trial court at first instance for certain offences, but the acquittal was reversed on appeal.

Clause 37 allows for any book, document, statement or other information obtained in the exercise of any power under the Bill or any other written law, to be admissible in any proceedings relating to an OCPO or FRO. Such evidence is not inadmissible by reason only that it was first obtained in this way. The admissibility of such matter is to be determined in accordance with the rules of evidence under any written law and any relevant rules of law.

Clause 38 provides that, except as provided in clause 26(2), a person who complies with a requirement imposed by an OCPO or FRO to answer questions, provide information or produce documents, does not breach any obligation of confidence, or any other restriction however imposed (other than a restriction imposed under any written law) on making the disclosure concerned.

PART 6

DISQUALIFICATION ORDERS

Part 6 provides for the making of a disqualification order to prevent a person who is convicted of certain offences from acting as a director of a company or a foreign company.

Clause 39 empowers a court, upon application by the Public Prosecutor, to make a disqualification order in addition to any other sentence imposed if a person is convicted of certain offences or contravenes an OCPO or FRO. A person subject to a disqualification order cannot act as a director of a company or a foreign company. The person cannot take part, whether directly or indirectly, in the management of such a company or foreign company. A person who is subject to a disqualification order may apply to a court for leave to act as a director of a company or foreign company, or to take part, whether directly or indirectly, in the management of such a company or foreign company.

PART 7

POWERS TO INVESTIGATE AND TO OBTAIN INFORMATION
FROM COMPTROLLER OF INCOME TAX AND
COMPTROLLER OF GOODS AND SERVICES TAX

Part 7 relates to the power of a law enforcement officer to investigate and to obtain information from the Comptroller of Income Tax and the Comptroller of Goods and Services Tax.

Clause 40 empowers a law enforcement officer to investigate any offence under the Bill, which is disclosed in the course of investigation into any offence under any other written law charging the law enforcement officer with the duty of investigating the offence under that other written law. A law enforcement officer may continue with the investigations even if it is subsequently revealed that no offence is disclosed under the other written law charging the officer with the duty of investigating offences under the other written law. A law enforcement officer may also investigate certain offences under the Bill (for example, for failure to comply with an OCPO or FRO). The law enforcement officer making an investigation under clause 40 may exercise all the powers under the other written law charging the law enforcement officer with the duty of investigating any offence under that written law.

To give an example, if an officer of the Central Narcotics Bureau commences an investigation into a drug trafficker for a trafficking offence under section 5(1) of the Misuse of Drugs Act, the officer may also investigate into an offence under clause 5 (recruiting members for an OCG) if investigations reveal that the drug trafficker is also recruiting members for an OCG which deals in illegal drugs. Even when the investigations subsequently reveal that the person is not involved in the

offence under section 5(1) of the Misuse of Drugs Act, the officer of the Central Narcotics Bureau who had conducted investigations into a clause 5 offence may continue to do so.

Clause 40(5) further provides that any evidence obtained by a law enforcement officer during an investigation under this clause may, subject to any written law relating to the admissibility of evidence, be admitted in any criminal proceedings for any offence under the Bill.

Clause 41 allows the Public Prosecutor, despite anything in any other written law to the contrary, to require the Comptroller of Income Tax or the Comptroller of Goods and Services Tax to furnish certain information, or to produce documents, specified in the notice. Such a requisition may be made in the course of any investigation or proceedings into or relating to an offence punishable under the Bill.

The Comptroller to whom a notice is sent by the Public Prosecutor is, despite the provisions of any written law or any oath of secrecy to the contrary, legally bound to comply with the terms of that notice within such time as may be specified in the notice.

PART 8

DISCLOSURE AND TIPPING-OFF

Part 8 relates to disclosure of information and tipping-off.

Clause 42 prevents the disclosure of information relating to, and the identity of, an informer who has given information with respect to any offence under the Bill.

Clause 43 provides that any person who provides information for an offence punishable under the Bill does not breach any obligation of confidence, or any other restriction however imposed (other than a restriction imposed under any written law) on making the disclosure concerned.

Clause 44 provides for the offence of tipping-off.

PART 9

CONFISCATION OF BENEFITS FROM ORGANISED CRIME ACTIVITIES

Part 9 seeks to provide for a non-conviction based regime for the confiscation of benefits from organised crime activities. The policy objectives of the regime (as stated in clause 45) are —

- (a) to eliminate the chance for persons to profit from carrying out organised crime activity; and

- (b) to remove any incentive for persons to carry out organised crime activity, and reduce their ability to do so.

The regime is similar to the conviction based regime for the confiscation of criminal benefits under the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap. 65A) (CDSA), except that a confiscation order may be obtained under the former by proving, on the civil standard of proof, that a person has committed the relevant offence. For this reason, the provisions are similar to the corresponding provisions in the CDSA but with adaptations made for a non-conviction based model of confiscation.

Clause 46 defines various expressions used in the Part.

Clause 47 defines the expression “gift caught by this Part”. If the subject of a confiscation order has made a gift caught by this Part to another person, the other person is liable to have property held by him or her confiscated and realised to satisfy the confiscation order.

Clause 48 defines the expression “organised crime activity”. “Organised crime activity” is either a serious offence with a nexus to an OCG, or a Part 2 offence. A confiscation order is to be made against a person who carried out “organised crime activity” and has benefited from it.

Clause 48(2) makes it clear that the confiscation regime operates independently of any criminal proceedings. Clause 48(4) makes it clear that any defence available to the subject if he or she were prosecuted for the organised crime activity, is also available to him or her in a proceeding under this Part.

Clause 49(1) provides that this Part applies to organised crime activity whether carried out before, on or after the date of commencement of the Part, if the activity is an offence in the Schedule (including an abetment of, or a conspiracy or an attempt to commit, such an offence) with a nexus to an OCG. However, this Part only applies to organised crime activity carried out on or after the date of commencement of Part 2, if the activity is a Part 2 offence.

Clause 49(2) provides that this Part applies to property wherever situated.

Clause 50 provides that the proceedings under this Part (other than offences of the CDSA incorporated by clause 72) are civil proceedings.

Clause 51 provides that criminal proceedings need not be conducted for the organised crime activity on which a confiscation order, restraint order or charging order is based.

Clause 52 provides that where organised crime activity gives rise to criminal proceedings, the court sentencing the person must not take into account any confiscation order or any application or proposed application for a confiscation order.

Clause 53 provides that where organised crime activity gives rise to criminal proceedings as well as proceedings under this Part, any acquittal, acquittal on appeal or Presidential pardon has no effect on a confiscation order, restraint order or charging order or application for such order.

Clause 54 clarifies that any evidence obtained in the exercise of any powers under the Bill or any other written law is not rendered inadmissible in proceedings under this Part by reason only that it was obtained in this way.

Clause 55 provides that a confiscation order made under this Part is not affected by a subsequent confiscation order under the CDSA or a subsequent application for such an order, in relation to the same subject and organised crime activity.

Division 2 (comprising clauses 56 to 60) makes provision for the preservation of property and securing payment of money to the Government while the authorities are gathering evidence to support an application for a confiscation order and before a confiscation order is satisfied or refused.

Clause 56 provides for applications for a restraint order or a charging order. A restraint order is an order restraining property from being disposed of or dealt with. A charging order is an order which imposes a charge on specified property for the purpose of securing payment of money to the Government. Applications for these orders are made by the Public Prosecutor to the High Court.

Clauses 57 and 58 provide the basis for the making of a restraint or charging order. A restraint or charging order may be made by the High Court if it has reasonable grounds to believe that the subject has carried out organised crime activity within the statutory period.

Clause 59 provides for the duration of restraint and charging orders. As a general rule, an order expires 3 months after it is made or on the date the associated confiscation order in question is satisfied or refused. This is subject to some exceptions which may either shorten or lengthen the period. The exceptions are if the Public Prosecutor indicates an intention to appeal a decision refusing an application for a confiscation order, if the restraint or charging order is made on an *ex parte* application, and if the duration of the order is extended under clause 60. The Court also has the right at any time to discharge an order in relation to any property, and must discharge a charging order if the secured amount has been paid into Court.

Clause 60 deals with the process for extending the duration of a restraint or charging order and the duration for each extension.

Division 3 (comprising clauses 61 to 64) deals with confiscation orders.

Clause 61 provides for the manner in which applications for confiscation orders may be made. It further provides that the Court must make a confiscation order if it is satisfied on the civil standard of proof that —

- (a) the subject has carried out organised criminal activity within a period of 7 years before the date of the application for the confiscation order or (if the application for the confiscation order is preceded by one or more restraint or charging orders) the application or earliest application for a restraint or charging order; and
- (b) the subject has benefited from the activity.

The subject is presumed to have benefited from the organised crime activity if he or she holds property that is disproportionate to his or her known income sources and cannot explain those holdings to the Court's satisfaction.

Clause 62 provides that the amount recoverable under a confiscation order is an amount assessed by the Court to be the value of the subject's benefits from the organised crime activity. The value of the benefit is equivalent to the value of the property held by the subject that is disproportionate to his or her known income sources and which he or she cannot explain to the satisfaction of the Court.

The justification for the reverse onus in both clauses 61 and 62 is the difficulty of obtaining evidence of the unlawful origins of property, as against the expectation that if the property is derived from lawful activity the owner should be able to establish that.

In determining the recoverable amount, the Court must deduct the value of any benefits of organised crime activity that are shown to have been taken into account in determining the amount to be recovered under a confiscation order previously made against the subject under this Part or the CDSA.

The amount in a confiscation order is recoverable as a judgment debt due to the Government.

Clause 63 provides that a confiscation order may be made against a subject who has absconded or died.

Clause 64 allows the Public Prosecutor to enter into a settlement with any person concerning money or property to be confiscated under this Part. However, such a settlement must first be approved by the Court.

Division 4 (comprising clauses 65 to 71) contains general provisions that apply to proceedings under both Divisions 2 and 3.

Clause 65 provides that where the subject is dead, any confiscation order against him or her is to be made against his or her estate. The clause also makes provision for determining when the deceased subject is presumed to have benefited from the organised crime activity, what those benefits are, and the value of those benefits.

Clause 66 allows a subject to apply to the Court to have his or her property excluded from the exercise of any realisation power to satisfy a confiscation order. The applicant may, at the Court's discretion, be granted relief if the Court is

satisfied that undue hardship is reasonably likely to be caused to the subject if the relief is not granted.

Clause 67 allows a third party to apply to the Court for relief from the exercise of any realisation power on his or her property. The Court may, in its discretion, exclude the property from the exercise of any realisation power to satisfy a confiscation order, if the Court is satisfied that undue hardship is reasonably likely to be caused to the third party if relief is not granted. The Court must however grant such relief that it considers appropriate if it is satisfied that the third party was not involved in any way in the organised crime activity, had acquired the property without knowing (and in circumstances that would not have aroused a reasonable suspicion of) the subject's involvement in organised crime activity or the fact that the property were benefits of such activity, and had acquired the property for sufficient consideration.

Clause 68 enables a person to apply to the Court for compensation for loss suffered by him or her because of the exercise of certain powers under this Part in relation to realisable property that was held by him or her. The Court may only order compensation if it is satisfied that there has been a serious default on the part of the authorities who initiated the proceedings or a prescribed law enforcement officer.

Clause 69 allows the Rules Committee constituted under the Supreme Court of Judicature Act (Cap. 322) to make Rules of Court for proceedings under this Part.

Clause 70 applies with modifications various provisions of the CDSA for the purposes of restraint, charging and confiscation orders, as well as applications for these orders, and for the purpose of enabling the satisfaction of a confiscation order. The provisions in Part 9 are to be read subject to the modified provisions of the CDSA.

Clause 71 provides that any decision of the High Court under this Part may be appealed to the Court of Appeal.

Division 5 (comprising clause 72) incorporates by reference various provisions of the CDSA for the purpose of gathering evidence for proceedings or proposed proceedings under this Part. These provisions enable an application to be made to a court for a production order or a search and seizure order.

PART 10

MISCELLANEOUS

Part 10 contains a variety of miscellaneous provisions needed for the proper administration of the Bill.

Clause 73 enables a law enforcement officer, for the purpose of any proceeding or proposed proceeding under Part 3, 4, 5 or 9, to apply to the High Court for an

order under clause 73(2) in relation to particular information, or information of a particular description.

Where an application is made, the High Court may, if it is satisfied that all of the conditions in clause 73(3) are fulfilled, make an order that a person who appears to the High Court to be in possession of the information to which the application relates must attend before an authorised officer, answer questions and supply information specified in the order.

The order made by the High Court does not confer any right to require a person to supply items subject to legal privilege; but has effect despite any obligation as to secrecy or other restriction upon the disclosure of information imposed by written law or otherwise.

Clause 74 requires a person who is aware of certain matters to give information of such matters to a law enforcement officer. It is an offence if a person fails to comply with this requirement.

Clause 75 provides that every offence under the Bill is arrestable for the purposes of the Criminal Procedure Code (Cap. 68).

Clause 76 relates to corporate offenders.

Clause 77 provides that a prosecution in respect of any offence under the Bill cannot be instituted except by or with the consent of the Public Prosecutor.

Clause 78 provides for the jurisdiction of the District Court or a Magistrate's Court to try any offence under the Bill, other than an offence punishable with death or imprisonment for life. The District Court or Magistrate's Court also has the power to impose the full penalty or punishment (including any enhanced punishment under clause 13) in respect of the offence.

Clause 79 enables the Minister or a public officer authorised by the Minister to compound an offence under the Bill that is prescribed under regulations as a compoundable offence.

Clause 80 relates to the amendment of the Schedule.

Clause 81 confers power on the Minister to make regulations for anything that is required, permitted or necessary for carrying out the purposes and provisions of this Bill.

Clause 82 requires all orders and regulations made under the Bill to be presented to Parliament as soon as possible after publication in the *Gazette*.

Clause 83 allows the Minister, for a period of 2 years after the date of commencement of the Bill, to make regulations of a savings or transitional nature.

Clause 84(1) amends the CDSA to provide that a confiscation order under that Act may be made against a person in respect of an activity despite the fact that a confiscation order under Part 9 of the Bill has been made against the same person

and in respect of the same activity. The clause further amends various provisions of the CDSA to ensure that, in a proceeding for a confiscation order under that Act, a defendant is given credit for any benefits of drug dealing or criminal conduct that are shown to have been taken into account in determining the amount to be recovered under a confiscation order previously made against the defendant under Part 9 of the Bill.

Clause 84(2) amends the Criminal Procedure Code to allow for evidence to be given through a live video or live television link if a person is charged for an offence under the Bill.

Clause 84(3) amends various provisions of the Mutual Assistance in Criminal Matters Act (Cap. 190A) to enable Singapore to request for assistance (other than the taking of evidence) from a foreign country for confiscation order proceedings under Part 9 of the Bill or to enforce such an order.

EXPENDITURE OF PUBLIC MONEY

This Bill will involve the Government in extra financial expenditure, the exact amount of which cannot at present be ascertained.
