

Dangerous Drugs (Forfeiture of Property) Act 1988

1 Dangerous Drugs (Forfeiture of Property)

LAWS OF MALAYSIA

REPRINT

Act 340

DANGEROUS DRUGS

(FORFEITURE OF PROPERTY)

ACT 1988

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2

DANGEROUS DRUGS (FORFEITURE

OF PROPERTY) ACT 1988

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3

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Act 340

DANGEROUS DRUGS (FORFEITURE

OF PROPERTY) ACT 1988

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY

Section

1. Short title

2. Interpretation PART II

OFFENCES IN RELATION TO PROPERTY

3. Use of property for activity constituting certain offences

4. Dealing with, or using, holding, receiving or concealing illegal property

5. Forfeiture of property upon conviction for an offence under section 3 or 4

6. Forfeiture on proof of offence under section 3 or 4 PART III

FORFEITURE OF PROPERTY OF LIABLE PERSONS

7. Persons liable to be proceeded against under this Part

8. Application to the High Court

9. Notice to show cause against forfeiture

10. Forfeiture of property in certain cases

11. Forfeiture of certain types of property

12. Certain dealings to be null and void 4 Laws of Malaysia ACT 340

13. Proceedings not to abate upon death of person affected

14. Proceedings under this Part to be within the criminal jurisdiction of the High Court

PART IV

ARREST, INVESTIGATION AND SEIZURE

15. Power of arrest and detention
16. Power of entry, search and seizure
17. Search of person
18. Obstruction of inspection and search
19. Indemnity
20. Power to intercept communication
21. Special powers of investigation
22. Public Prosecutor's powers to obtain information
23. Public Prosecutor's powers to request information from certain officers
24. Order by Public Prosecutor in relation to a person intended to be proceeded against under section 8, or intended to be or being prosecuted for certain offences
25. Seizure of movable property
26. Further provisions relating to seizure of movable property
27. Special provision relating to seizure of a business
28. Seizure of immovable property
29. Dealings with seized property after seizure to be void
30. Validity of seizure, or sale in consequence thereof, not to be affected by certain objections
31. Release of property seized
32. Forfeiture of property seized under this Act where there is no prosecution, or no proceedings under Part III or no claim thereto PART V

FORFEITURE

33. Vesting of forfeited property in the Government Section

5 Dangerous Drugs (Forfeiture of Property)

PART VI

EVIDENCE AND PROCEDURE

Section

34. Construction and interpretation of this Act

35. Presumption as to liable person and illegal property

36. Admissibility of documentary and other evidence obtained by the Public Prosecutor in exercise of any power under this Act

37. Examination of offenders

38. Protection of informers

39. Evidence of agent provocateur admissible

40. Notice or order not to be invalid for error in description

41. Power of a police officer under other laws relating to criminal procedure

PART VII

ASSISTANCE TO A FOREIGN COUNTRY

42. Interpretation

43. Request for assistance and authority to render same

44. Information and particulars in relation to persons, bodies, etc.

45. Service of processes or documents

46. Transmission of copies of statements, or records, or results of investigation in Malaysia

47. Examination of witness by a police officer

48. Examination of witness by a Magistrate

49. Search of person or premises
50. Seizure and transmission of property or article
51. Interception of communication
52. Exercise of powers of investigation by the Public Prosecutor
53. Manner or mode of transmission of information, statements, evidence, movable property, etc., to foreign government or foreign authority
54. Transfer of a person in custody in Malaysia into the custody of an authority in a foreign country
55. Payment by a foreign government to the Malaysian Government under this Part

6 Laws of Malaysia ACT 340

PART VIII

GENERAL

Section

56. Attempts, abetments and criminal conspiracies punishable as offences
57. No bail to be granted in respect of certain offences
58. Offences by bodies corporate or unincorporate and by servants and agents
59. Service of any notice or order
60. General penalty
61. Rewards
62. Regulations
63. Extradition

FIRST SCHEDULE

SECOND SCHEDULE

7 Dangerous Drugs (Forfeiture of Property)

LAWS OF MALAYSIA

Act 340

DANGEROUS DRUGS (FORFEITURE
OF PROPERTY) ACT 1988

An Act to make provisions for offences in relation to property, and for the seizure and forfeiture of property, connected with activity related to offences under this Act, the Dangerous Drugs Act 1952, or any foreign law corresponding to these Acts or to the provisions for offences under these Acts; for assistance to foreign countries in relation to matters connected with dangerous drugs; and for matters connected with the aforesaid provisions.

[10 June 1988]

WHEREAS action has been taken and further similar action is being threatened by a substantial body of persons both inside and outside Malaysia--

(1) to organize and carry out trafficking in dangerous drugs, including their importation into and exportation from Malaysia; (2) to spread the dependence on dangerous drugs among various classes of people in Malaysia, thereby causing widespread detriment to public health, security, safety and morals; and (3) to acquire property by trafficking in dangerous drugs and to utilize property for such trafficking;

AND WHEREAS the action taken and threatened is prejudicial to public order in Malaysia;

AND WHEREAS Parliament considers it necessary to stop such action; Now, therefore, pursuant to Article 149 of the Constitution BE IT ENACTED by the Seri Paduka Baginda Yang di-Pertuan Agong with the advice and consent of the Dewan Negara and Dewan Rakyat in Parliament assembled, and by the authority of the same, as follows:

8 Laws of Malaysia ACT 340

PART I

PRELIMINARY

Short title

1. This Act may be cited as the Dangerous Drugs (Forfeiture of Property) Act 1988.

Interpretation

2. (1) Subject to subsection (2), and unless the context otherwise requires, terms and expressions used in this Act have the same meaning as assigned thereto in the Dangerous Drugs Act 1952 [Act 234].

(2) In this Act, unless the context otherwise requires-- "associate", in relation to a person, includes--

(a) any person who had been or is residing in the residential premises (including appurtenances) of such person; (b) any person who had been or is an agent or nominee of such person;

(c) any person who had been or is managing the affairs or keeping the accounts of such person;

(d) any partnership firm of which such person, or any agent or nominee of his, is or had been a partner or a person in charge or control of its business or affairs;

(e) any corporation within the meaning of the Companies Act 1965 [Act 125], of which such person, or any agent or nominee of his, had been or is a director or had been or is in charge of or control of its business or affairs, or in which such person, together with any agent or nominee of his, has or have, or had, shares to the total value of not less than ten per centum of the total issued capital of the corporation;

(f) any person who had been or is a partner, or a person in charge or control of the business or affairs, of a partnership firm referred to in paragraph (d) at any time when such person, or any agent or nominee of his, had been or is a partner in the partnership firm;

9 Dangerous Drugs (Forfeiture of Property)

(g) any person who had been or is a director, or a person in charge or control of the business or affairs, of a corporation referred to in paragraph (e) at any time when such person, or any agent or nominee of his, had been or is a director, or had been or is in charge or control of the business or affairs, of the corporation, or at any time when such person, together with any agent or nominee of his, has or have, or had, shares to the total value of not less than ten per centum of the total issued capital of the corporation; (h) any

person who had been or is an agent of any partnership firm or corporation referred to in paragraph (d) or (e) respectively;

(i) any person who had been or is keeping the accounts of any partnership firm or corporation referred to in paragraph (d) or (e) respectively;

(j) the trustee of any trust, where--

(i) the trust has been created by such person; or (ii) the total value of the assets contributed by such person to the trust at any time, whether before or after the creation of the trust, amounts, or had

amounted, at any time, to not less than twenty per centum of the total value of the assets of the trust; (k) any person who has in his possession any property belonging to such person; and

(l) any person who is indebted to such person;

"bank" means a bank licensed under the *Banking Act 1973 [Act 102], or an Islamic bank licensed under the Islamic Banking Act 1983 [Act 276], or a merchant bank, or any person carrying on any banking business under any written law, or a licensed finance company under the **Finance Companies Act 1969 [Act 6], or the National Savings Bank established under the Bank Simpanan Nasional Act 1974 [Act 146], or any co-operative society registered under any written law relating to co-operative societies; *NOTE--The Banking Act 1973 [Act 102] has since been repealed by the Banking and Financial Institutions Act 1989 [Act 372]?see section 128 of Act 372. **NOTE--The Finance Companies Act 1969 [Act 6] has since been repealed by the Banking and Financial Institutions Act 1989 [Act 372]?see section 128 of Act 372. 10 Laws of Malaysia ACT 340

"banker's books" includes ledgers, day books, cash books, account books and all other books and documents used in the ordinary course of the business of a bank;

"business" means any activity carried on for the purpose of gain or profit and includes all property derived from or used in or for the purpose of carrying on such activity, and all rights and liabilities arising from such activity;

"conviction" includes any finding of guilt or any order involving any finding of guilt by any court of competent authority in Malaysia or outside Malaysia, regardless whether or not the conviction or finding of guilt is ordered to be recorded, and whether or not the person convicted or found guilty is sentenced to any punishment; "corresponding foreign law" or "foreign law corresponding to" means the provision of any law of any country, territory or place outside

Malaysia which is similar in whole, or in part, or in substance, to the Malaysian law in relation to which this expression is used; "dealing" includes--

(a) a purchase, sale, loan, charge, mortgage, lien, pledge, caveat, transfer, delivery, assignment, subrogation, transmission, gift, donation, trust, settlement, deposit, withdrawal, transfer between accounts, extension of credit; (b) any purchase or sale of any securities, monetary instrument, or other instrument whatsoever by whatever means effected; (c) any agency or grant of power of attorney; and (d) any other disposition or dealing in whatever form, or of whatever description or nature, howsoever styled, which results in any right, interest, title or privilege, whether present or future or whether vested or contingent, in the whole or part of any property being conferred on any person;

"designated police officer" means a police officer of the rank of Superintendent or above, designated in writing by name or office by the Inspector-General of Police for the purposes of this Act either generally or in relation to any specific provision of this Act;

11 Dangerous Drugs (Forfeiture of Property)

"diminished in value", in relation to any property, means the whole or part of the property being expended, utilized, destroyed, or being subjected to any dealing, process or other act, so that it ceases to exist, or is reduced in value or size, or is altered in character;

"document" includes--

(a) any letters, figures, marks, inscription, writing, sign, caricature, picture, drawing, or representation in any form; and

(b) any visual recording (whether of still or moving images) or sound recording,

on any substance, material, thing or article;

"final acquittal" means an acquittal at the level of original jurisdiction where there is no appeal against the acquittal, but where there is an appeal against such acquittal, or against any conviction whether at the level of original jurisdiction or at a lower level of appellate jurisdiction, it means an order at the final level of appellate jurisdiction providing for an acquittal, and "finally acquitted" has a corresponding meaning; and for the purpose of this definition "appeal" includes any proceedings in whatever form

and howsoever styled in relation to the decision given at the level of original jurisdiction or a lower level of appellate jurisdiction, but does not include any proceedings in relation to a pardon or exercise of leniency by an executive authority;

"final conviction" means a conviction at the level of original jurisdiction where there is no appeal against the conviction or against the sentence or other order arising from the conviction, but where there is such an appeal, or where there is an appeal against any order of acquittal, discharge or otherwise whether given at the level of original jurisdiction or at a lower level of appellate jurisdiction, it means an order at the final level of appellate jurisdiction providing for a conviction, and "finally convicted" has a corresponding meaning; and for the purpose of this definition "appeal" includes any proceedings in whatever form and howsoever styled in relation to the decision given at the level of original jurisdiction or a lower level of appellate jurisdiction, but does not include any proceeding in relation to a pardon or exercise of leniency by an executive authority;

12 Laws of Malaysia ACT 340

"financial institution" includes a bank, or any person within Malaysia, which, in fact, lawfully or unlawfully, carries on any banking business or finance business as defined in the Banking Act 1973 or the Finance Companies Act 1969, respectively, and any bank or person outside Malaysia, which, in fact, lawfully or unlawfully, carries on any similar business;

"forfeited" means, in relation to any property, that property forfeited to the Government of Malaysia in accordance with this Act;

"held" means, in relation to any property, that property held by a holder;

"hold" means, in relation to any property, the holding of that property by a holder;

"holder" includes, in relation to any property, any person who is the owner of, any person who is in possession of, any person who is in occupation of, any person who has the custody or control of, and any person who has any other right, interest, title, claim, power, duty or obligation whatsoever in relation to, that property; "illegal property" means any property, whether within or outside Malaysia--

(a) which is wholly or partly derived or obtained from or by means of any prohibited activity carried out by any person after the commencement of this Act;

(b) which is the income, earnings or assets wholly or partly derived or obtained from or by means of any property referred to in paragraph (a);

(c) which is wholly or partly derived or obtained from or by means of any property referred to in paragraph (a) or (b); (d) which is wholly or partly traceable or attributable to any property referred to in paragraph (a), (b), or (c), or to any income, earnings or assets of any such property;

(e) which, after the commencement of this Act, is or was used to assist or facilitate any prohibited activity; 13Dangerous Drugs (Forfeiture of Property)

(f) which is the subject matter of an offence under section 3, 4, or subsection 24(7) or of any Scheduled offence committed after the commencement of this Act; or

(g) which, due to any circumstance such as, but not limited to, its nature, value, location or place of discovery, or the time, manner or place of its acquisition, or the person from whom it was acquired, or its proximity to other property referred to in the foregoing paragraphs, can be reasonably believed to be property falling within the scope of any of the foregoing paragraphs;

"liable person" means a person referred to in section 7 as being liable to be proceeded against under Part III;

"Minister" means the Minister charged with the responsibility for internal security;

"monetary instrument" means coin or currency of Malaysia or of any other country, traveller's cheque, personal cheque, bank cheque, money order, investment security in bearer form or otherwise in such form that title thereto passes upon delivery or upon delivery and endorsement, and negotiable instrument in bearer form or otherwise in such form that title thereto passes upon delivery or upon delivery and endorsement;

"prescribed" means prescribed by regulations made under section 62;

"proceedings under this Act" means any proceedings under any provision of this Act, including any prosecution for an offence under this Act;

"prohibited activity" means any act, activity, or conduct taking place in whole or in part within or outside Malaysia which-- (a) constitutes an offence under section 3 or 4 of this Act, or under any foreign law corresponding thereto or which constitutes a Scheduled offence; or

(b) although not constituting such an offence, is of such a nature or occurs in such circumstances that it could be reasonably believed therefrom that it would have ultimately resulted in or led to the commission of such an offence;
14 Laws of Malaysia ACT 340

"property" means any movable or immovable property, and includes--

(a) any right, interest, title, claim, chose in action, power, privilege, whether present or future and whether vested or contingent, in relation to any property, or which is otherwise of value;

(b) any conveyance executed for conveying, assigning, appointing, surrendering, or otherwise transferring or disposing of immovable property whereof the person executing the conveyance is proprietor or possessed or wherein he is entitled to a contingent right, either for his whole interest or for any less interest;

(c) any monetary instrument;

(d) any other instrument or securities;

(e) any business; and

(f) any other tangible or intangible property;

"public body" includes--

(a) the Government of Malaysia;

(b) the Government of a State;

(c) any local authority and any other statutory authority established by, and exercising powers vested in it by, any written law;

(d) any department, service or undertaking of the Government of Malaysia, the Government of a State, a local authority, other statutory authority, or of any authority, organization, body or individual specified under paragraph (e); or

(e) any authority, organization or body, or any individual referred to by name or office, specified by the Minister by notification in the Gazette to be a public body for the purposes of this Act;

"public officer" includes any person in the permanent or temporary employment of a public body;

"purchaser in good faith for valuable consideration" means any transferee, assignee, chargee, mortgagee, pledgee, holder of a lien, or lessee, of any property where the transfer, assignment, charge, 15Dangerous Drugs (Forfeiture of Property)

mortgage, pledge, lien, or lease was obtained by him for adequate valuable consideration in money or money's worth, without notice-- (a) that the property is illegal property; or

(b) of any circumstances from which, if reasonable inquiries had been made, it might have been discovered that the property is illegal property;

"relative", in relation to a person, means--

(a) spouse of the person;

(b) brother or sister of the person;

(c) brother or sister of the spouse of the person; (d) any lineal ascendant or descendant of the person; (e) any lineal ascendant or descendant of the spouse of the person;

(f) spouse of a person referred to in paragraph (b), (c), (d) or (e);

(g) any lineal descendant of a person referred to in paragraph (b) or (c);

(h) brother or sister or spouse of the brother or sister of any lineal ascendant of the person or his spouse; or

(i) any lineal descendant or spouse of any lineal descendant of a person referred to in paragraph (h);

"Scheduled offence" means an offence specified or described in the First Schedule to this Act;

"securities" includes stocks, bonds, shares, debentures, funds and certificates of deposit;

"senior police officer" shall have the same meaning as in the Police Act 1967 [Act 344];

"trust" includes any legal obligation in favour of any beneficiary subject to which any person holds any property.

(3) For the purpose of the definition of "relative" in subsection (2)--

(a) the adoption of any person by another under any written law of Malaysia or any country, territory or place outside Malaysia, or under any custom recognized by any class of persons in Malaysia or in any country, territory or place outside Malaysia, shall be treated as creating between the adopter and the adopted person the same natural relationship as the adoptive relationship, and other relationships in relation thereto shall be determined accordingly; and

(b) references therein to a relationship include, where relevant, a relationship by the half blood.

PART II

OFFENCES IN RELATION TO PROPERTY

Use of property for activity constituting certain offences

3. (1) Any person who, whether within or outside Malaysia, whether directly or indirectly, whether on behalf of himself or on behalf of any other person, enters into or causes to be entered into any dealing in relation to any property, or in any other manner uses or causes to be used any property--

(a) with the intention, of promoting, managing, establishing, or carrying on any act, activity or conduct which constitutes a Scheduled offence; or

(b) with the intention of facilitating or assisting in the promotion, management, establishment or carrying on of the act, activity or conduct referred to in paragraph (a), whether or not such Scheduled offence has been committed, or any person has been charged with or convicted of such offence, shall be guilty of an offence and shall be sentenced to imprisonment for a term of not less than five years and not more than twenty years. (2) It shall not be an offence under subsection (1) where-- (a) the act which constitutes an offence under subsection (1) is committed wholly outside Malaysia; and

17 Dangerous Drugs (Forfeiture of Property)

(b) the act, activity or conduct referred to in paragraph (1) (a) or (b) constitutes exclusively an offence under a foreign law referred to in Item 5 of the First Schedule to this Act. Dealing with, or using, holding, receiving or concealing illegal property

4. (1) Any person who, whether within or outside Malaysia whether directly or indirectly, whether on behalf of himself or on behalf of any other person, enters into or causes to be entered into any dealing in relation to any property, or otherwise uses or causes to be used, or holds, receives, or conceals any property, knowing or having reason to believe that such property or any part thereof is illegal property, shall be guilty of an offence and shall be sentenced to imprisonment for a term of not less than five years and not more than twenty years.

(2) Where the property which is the subject matter of an offence under subsection (1) is illegal property by reason of its being related to an act, activity or conduct which constitutes an offence referred to in paragraph (a) of the definition of "prohibited activity" under subsection 2(2), the person charged for the offence under subsection (1) shall be liable therefor whether or not any person has been charged with or convicted of the said offence referred to in paragraph (a) of the said definition of "prohibited activity".

(3) It shall not be an offence under subsection (1) where— (a) the act which constitutes an offence under subsection (1) is committed wholly outside Malaysia; and

(b) such act relates to illegal property which is property derived or obtained from or by means of an act, activity or conduct which constitutes an offence exclusively under a foreign law referred to in paragraph (a) of the definition of "prohibited activity" under subsection 2(2).

Forfeiture of property upon conviction for an offence under section 3 or 4

5. Where any person is convicted of an offence under section 3 or 4, the court which convicts him shall forfeit all the property which is the subject matter of that offence or which has been used for the commission of that offence:

18 Laws of Malaysia ACT 340

Provided that no conveyance which has been used for the commission of the offence shall be forfeited if the offence was committed by a person other than the owner or person in charge of the conveyance and it is proved to the court that the use of such conveyance for the commission of the offence was without the consent of the owner or person in charge of the conveyance and was not due to any neglect, default, or lack of reasonable care by the owner or the person in charge of the conveyance. Forfeiture of property upon conviction for an offence under section 3 or 4

6. Where it is proved to the satisfaction of the court that an offence under section 3 or 4 has been committed, the court shall make an order for the forfeiture of all property which is the subject matter of that offence or

which has been used for the commission of that offence, notwithstanding that no person may have been convicted of the offence:

Provided that the proviso to section 5 shall apply in relation to an order for forfeiture under this section.

PART III

FORFEITURE OF PROPERTY OF LIABLE PERSONS

Persons liable to be proceeded against under this Part

7. (1) The following persons shall be liable to be proceeded against under this Part:

(a) every person--

(i) who has been finally convicted of an offence under section 3, 4, or subsection 24(7), or under a foreign law corresponding to these sections, or of a Scheduled offence, committed at any time after the

commencement of this Act;

(ii) who is or was detained after the commencement of this Act pursuant to an order of detention or restriction made under any law, in respect of any activity

relating to or involving the trafficking in any

dangerous drug:

19 Dangerous Drugs (Forfeiture of Property)

Provided that the activity forming the ground of detention took place after the commencement of this Act;

(iii) who holds, conceals, receives, or uses or causes or allows to be used, any illegal property, knowing or having reason to believe the same to be illegal

property;

(b) every relative of a person referred to in paragraph (a); (c) every associate of a person referred to in paragraph (a); (d) any holder, whether or

not a relative as is referred to in paragraph (b), or an associate as is referred to in paragraph (c), (hereinafter in this paragraph referred to as the "present holder") of any property which was at any time previously held by a person referred to in paragraph (a) unless the present holder or, as the case may be, any one who held such property after the person referred to in paragraph (a) and before the present holder, is or was a purchaser of the property in good faith for valuable consideration; (e) where a person referred to in paragraph (a), (b), (c) or (d) is deceased, his personal representative, or, where there is no personal representative, such person or persons having a beneficial interest in the estate of the deceased as may be specified by a Sessions Court upon application by the Public Prosecutor and after the Sessions Court has given an opportunity to such person or persons to be heard in the matter.

(2) A person shall be a relative, associate, or holder, as is referred to in paragraph (1) (b), (c) or (d) respectively, if he is or was at any time such relative, associate or holder, and regardless whether he became such relative, associate, or holder in relation to the person referred to in paragraph (a) before or after the person referred to in paragraph (a) became a liable person. (3) No proceedings against a liable person shall be instituted under this Part if there is pending against him in any court in Malaysia any prosecution for an offence under section 3 or 4, or for an offence referred to in Item 1, 2, 3 or 4 of the First Schedule, and where during the pendency in the High Court of proceedings against a liable person under this Part there is instituted against him in a court in Malaysia any prosecution for any of the aforesaid 20 Laws of Malaysia ACT 340

offences, the proceedings in the High Court under this Part shall be stayed until the proceedings in respect of such prosecution have been finally concluded in the court of original jurisdiction or, where there is an appeal, in the court of final appellate jurisdiction. (4) Where any proceedings in the High Court against a liable person under this Part are prohibited from being instituted, or are stayed, under subsection (3) such prohibition or stay shall not-- (a) affect any earlier seizure of any property, or any earlier order of the Public Prosecutor, under Part IV, or any other earlier exercise by a police officer or the Public Prosecutor of any of his powers under Part IV, arising out of such person being a liable person, and such seizure or such order, or such exercise of powers, as the case may be, shall continue to remain in full force and effect during the pendency of the prosecution and thereafter until the final conclusion of the proceedings under this Part; or

(b) prevent the further or continued exercise, or the fresh exercise, by a police officer or the Public Prosecutor of this respective powers under Part IV arising out of such person being a liable person.

Application to the High Court

8. (1) If the Public Prosecutor has reason to believe that any person is a liable person he may apply ex parte to the High Court for an order of forfeiture of all the properties of which such person is a holder and which the Public Prosecutor has reason to believe are illegal properties.

(2) The application, supported by an affidavit or affidavits, shall--

(a) identify the liable person to be proceeded against, state his address of residence or business, if known, and other relevant particulars, which are known;

(b) state the grounds on which he is a liable person; (c) identify the properties to be forfeited, set out their estimated value, and, if known, their location; and

21 Dangerous Drugs (Forfeiture of Property)

(d) state any other matter, circumstance or information which, in the opinion of the Public Prosecutor, is relevant to the application.

(3) An application under subsection (1) shall be made by filing the same with the Registrar of the High Court who shall thereupon immediately fix a date for its hearing before the High Court. (4) For the avoidance of doubt, it is hereby declared that successive applications may be made under this section--

(a) against any person provided that--

(i) the proceedings under this Part in respect of the earlier application against him under this section have been finally concluded in the High Court, or where there is an appeal, in *the Federal Court; and (ii) the fresh application does not relate to any property which was the subject matter of any earlier application against him;

(b) in respect of any property provided that--

(i) the proceedings under this Part in respect of the earlier application in which it is included as the subject matter of the application have been finally concluded in the High Court, or where there is an appeal, in *the Federal Court, and it has been decided that the property is not illegal property; and

(ii) the fresh application is not against any person against whom any earlier application under this section

had been made.

Notice to show cause against forfeiture

9. (1) If at the hearing of the application of the Public Prosecutor under subsection 8(1), the High Court is satisfied that the application is made in accordance with the requirements of section 8, the Court shall issue a notice upon the liable person specified in the application (hereinafter in this Act referred to as the "person affected") and annexing thereto the affidavit or affidavits referred to in subsection 8(2), and calling upon the person affected to attend *NOTE--Previously referred to "the Supreme Court"?see section 46 of the Constitution (Amendment) Act 1994 [Act A885].

22 Laws of Malaysia ACT 340

before the High Court on a date specified in the notice, which shall not be less than thirty days from the date of the notice, to show cause why all or any of the properties identified under paragraph 8(2) (c), should not be forfeited.

(2) A notice under subsection (1) shall, in addition to being served on the person affected, be published in the Gazette on the same date on which it is issued, or as soon as practicable thereafter. (3) Where a notice to any person under subsection (1) specifies any property as being held on behalf of such person by any other person, or as being transferred or sold to, or deposited or kept with, any other person, a copy of the notice shall be served upon such other person.

(4) Where before a notice is issued under subsection (1) the Public Prosecutor informs the High Court that the liable person referred to in his application has died regardless whether he died before or after the application was filed, and that no specification of a beneficiary or beneficiaries has been made by a Sessions Court under paragraph 7(1) (e), the notice shall be issued against the personal representative of such person, and where there is no personal representative, against such beneficiary or beneficiaries of his estate as may be specified by the High Court upon an application by the Public Prosecutor, and after giving such beneficiary or beneficiaries an opportunity to be heard.

(5) The Public Prosecutor may at any stage during the pendency of any proceedings under subsection (1), apply to the Court for an amendment of the notice issued under that subsection-- (a) by the exclusion there from of any property specified therein;

(b) by the inclusion therein of any property not specified therein; or

(c) in any other respect,

and the Court may, after giving the person affected an opportunity to be heard, make such order on the application as the Court deems just and proper, and where the Court grants the application, whether with or without modifications, it may give such directions in the matter as it may consider necessary, expedient or desirable. 23Dangerous Drugs (Forfeiture of Property)

Forfeiture of property in certain cases

10. (1) At the hearing of the notice to show cause issued under subsection 9(1), the Court shall proceed to consider any evidence that may be given by the person affected or by any other witness tendered by him showing--

(a) that he is not a liable person;

(b) that all or any of the properties specified in the Public Prosecutor's application are not illegal properties; or (c) that he is not the holder of all or any of such properties specified in the Public Prosecutor's application. (2) The Public Prosecutor shall be entitled--

(a) to cross-examine the person affected or any other witness tendered by him;

(b) where the person affected does not give evidence himself as a witness, to examine the person affected on oath or affirmation as to any matter relevant to the application; and

(c) to adduce evidence of witnesses to rebut the evidence adduced by or on behalf of the person affected.

(3) Where at the hearing of the notice to show cause under subsection 9(1) the Public Prosecutor satisfies the Court that the person against whom the notice to show cause has been issued cannot be served with the notice as he cannot be traced or has absconded or is outside Malaysia and cannot be compelled to attend before the Court, or where at any time during the proceedings under this section the person affected fails to attend the proceeding after he has been served with the said notice to show cause, the proceeding shall be continued to its final conclusion in his absence. (4) The Court shall, at the conclusion of the proceedings under subsections (1) and (2), record a finding--

(a) whether the person affected is a liable person; (b) whether all or any of the properties specified in the Public Prosecutor's application are illegal properties; and (c) whether the person affected is the holder of all or any of

such illegal properties.

24 Laws of Malaysia ACT 340

(5) Where the Court records a finding under subsection (4) to the effect that the person affected is a liable person, that all or any of the properties specified in the Public Prosecutor's application are illegal properties and that the person affected is the holder of such illegal properties, it shall order that such properties, subject to the provisions of this Part, be forfeited.

(6) Where the Court finds that all or any of the properties specified in the Public Prosecutor's application are illegal properties but that the person affected is not the holder thereof, then regardless of whether or not the Court finds the person affected to be a liable person the Court shall order that such properties be forfeited, unless another person claims to be lawfully entitled thereto as a purchaser thereof in good faith for valuable consideration or the Public Prosecutor informs the Court that he intends to make a fresh application in respect of such illegal properties against a liable person other than the person affected.

(7) Where another person claims under subsection (6) to be lawfully entitled to the illegal properties as a purchaser thereof in good faith for valuable consideration the Court shall proceed to consider such claim, and if, after giving an opportunity to the Public Prosecutor to rebut such claim, the Court is satisfied that such person is not a purchaser thereof in good faith for valuable consideration, it shall order that such properties be forfeited.

Forfeiture of certain types of property

11. (1) Where the Court is satisfied that any property which the Court has ordered to be forfeited under subsection 10(5)-- (a) cannot be located or traced;

(b) has been disposed of to a purchaser in good faith for valuable consideration;

(c) has been removed from Malaysia;

(d) is outside Malaysia;

(e) has been commingled with other property which cannot be separated or divided without difficulty; or

(f) has been diminished in value,

25 Dangerous Drugs (Forfeiture of Property)

the Court shall order that any other property of the person affected be forfeited to the value of any property referred to in paragraph (a), (c), (d), or (e), or, in the case of property referred to in paragraph (b) or (f), to the extent of the disposal, or to the extent to which it has been diminished in value, as the case may be, and where there is no other property available for forfeiture, or where the value of the other property ordered to be forfeited is less than the value of the property originally ordered to be forfeited, the Court shall order that an amount equal to the full value of the property originally ordered to be forfeited, or to such full value less the value of the other property ordered to be forfeited, as the case may be, be forfeited, and if such person fails to pay such amount within such period, not exceeding thirty days from the date of such order, as the Court may direct, the Court shall sentence him to imprisonment for a term of not less than three years and not more than seven years.

(2) Where the person in respect of whose property an order of forfeiture under section 10 has been made had died before the order was made or dies after it is made and subsection (1) applies in respect of any property so forfeited, the said subsection shall have effect against the estate of the deceased in the same manner as it would have had against him and his property: Provided that no order for payment of an amount shall be made against the personal representative of the estate of the deceased or any beneficiary of such deceased if no property in the estate of the deceased is available for forfeiture or for payment of such amount.

(3) (a) For the purposes of this section, the value of any property shall be its market value at the date on which the order under subsection 10(5) was made, or such value as may be determined by a person having special means of knowledge in respect of such property.

(b) In the event of any dispute over the value of any property, the court shall determine the value after hearing representations by the person affected and the Public Prosecutor. 26 Laws of Malaysia ACT 340

Certain dealings to be null and void

12. (1) Any dealing, contract, or other thing whatsoever effected, done, or entered into, by any person or between any persons after the issue of a notice under subsection 9(1) in respect of any property referred to in, or affected by, the said notice shall be null and void, and shall not be registered or otherwise howsoever given effect to by any person or authority.

(2) For so long as the proceedings under this Part in respect of the notice under section 9 have not been finally concluded in the High Court or in *the Federal Court no action, suit or other proceeding of a civil nature shall be instituted or if they are already pending, be maintained or continued in any court or before any other authority against the person named in the notice, or in respect of whose estate or property the notice is issued, or in respect of any property referred to in, or affected by, the notice, and no attachment, execution or other similar process shall be commenced or if it is already pending, be continued with against any such person or in respect of any property on account of any claim, judgment or decree, regardless whether such claim was made, or such judgment or decree was given, before or after the notice was issued, except at the instance of the Government of Malaysia, or of any State, or at the instance of a local authority or other statutory body, or except with the prior consent in writing of the Public Prosecutor. (3) Nothing contained in this section shall derogate from the provisions of subsection 24(8), 24(9) or section 29. Proceedings not to abate upon death of person affected

13. (1) Proceedings under this Part shall not abate upon the death of the person affected but shall be continued to their final conclusion, regardless whether or not such death results from the execution of a sentence of death for any offence under any written law and whether or not such offence is related to or involves any dangerous drug, and where proceedings under this Part are instituted against a person who is under a sentence of death such proceedings shall not impede, delay or in any manner or for any reason affect the process for the execution of such sentence.

*NOTE--Previously referred to "the Supreme Court"?see section 46 of the Constitution (Amendment) Act 1994 [Act A885].

27Dangerous Drugs (Forfeiture of Property)

(2) Where the person affected dies before the conclusion of any proceedings under this Part, but after the issue of the notice against him under subsection 9(1), the proceedings shall be continued against the personal representative of the deceased liable person or, if there is no such personal representative, such beneficiary or beneficiaries of the estate of the deceased liable person as may be specified by the High Court upon application by the Public Prosecutor, and after the High Court has given an opportunity to such beneficiary or beneficiaries to be heard in the matter.

(3) Where at any time after any specification of a beneficiary or beneficiaries has been made by a Sessions Court under paragraph 7(1) (e) or by the High Court under subsection 9(4) and subsection (2), representation to the estate of the deceased has been duly taken out, the Public Prosecutor shall

apply to the High Court for the said beneficiary or beneficiaries to be substituted by the personal representative, and the High Court shall order accordingly after giving an opportunity to be heard to the said beneficiary or beneficiaries and the said personal representative, and in making any such order the High Court may give all such directions of a transitional, incidental or ancillary nature, or as may be deemed necessary by the High Court.

Proceedings under this Part to be within the criminal jurisdiction of the High Court

14. Proceedings under this Part shall be dealt with by the High Court in the exercise of its criminal jurisdiction and the law relating to criminal procedure in the High Court shall apply to such proceedings subject to such modifications as may be prescribed in this Part or in any regulations made under this Act. PART IV

ARREST, INVESTIGATION AND SEIZURE

Power of arrest and detention

15. (1) Every offence under this Act shall be a seizable offence for the purposes of the Criminal Procedure Code [Act 593]. (2) Any police officer may arrest without a warrant— (a) any person whom he reasonably suspects to have committed or to be committing an offence under this Act;

28 Laws of Malaysia ACT 340

(b) any person whom he reasonably believes to be a liable person under paragraph 7(1)(a); or

(c) without prejudice to paragraph (b), any person against whom the Public Prosecutor intends to make an application under section 8 and has notified his intention in writing to a police officer.

(3) Where a person arrested under subsection (2) is serving a sentence of imprisonment, or is under detention under any law relating to preventive detention, or is otherwise howsoever in lawful custody, he shall, upon an order in writing by a senior police officer, be produced before such officer or before any other senior police officer at such place as may be specified in the order for the purpose of investigations into the matter in respect of which he is liable to be arrested under subsection (2), and for such purpose he may be kept in police custody for a period not exceeding fourteen days; and while in such custody such person shall be deemed to be continuing to serve

his term of imprisonment or detention, as the case may be.

(4) A person arrested under subsection (2) shall be informed of the provisions of subsection (2) under which he is being arrested, and, except in a case falling under subsection (3), shall within twenty-four hours (excluding the time of any necessary journey) be produced before a Magistrate, and shall not be further detained without the order of a Magistrate.

(5) A Magistrate may make an order for the detention in police custody of the person produced before him under subsection (4) for a period not exceeding fourteen days if he is satisfied that such detention is necessary for the purpose of investigations in relation to the matter in respect of which he has been arrested. Power of entry, search and seizure

16. (1) Whenever it appears to any senior police officer that there is reasonable cause to suspect that in or on any premises there is concealed or deposited any property liable to forfeiture under this Act, or as to which an offence under this Act is reasonably suspected to have been committed, or any book or document directly or indirectly relating to or connected with any dealing, or intended 29Dangerous Drugs (Forfeiture of Property)

dealing, whether within or outside Malaysia, in respect of any property liable to seizure or forfeiture under this Act or which would, if carried out, be an offence under this Act, he may at any time by day or by night--

(a) enter such premises and there search for, and seize and detain, any such property, book or document;

(b) search any person who is in or on such premises, and for the purpose of such search, detain such person and remove him to such place as may be necessary to facilitate such search;

(c) arrest any person who is in or on such premises in whose possession any property liable to seizure or forfeiture under this Act is found, or whom the officer reasonably believes to have concealed or deposited such property; (d) seize and detain any book or document found in or on such premises or on such person;

(e) break open, examine, and search, any article, container or receptacle; or

(f) stop, search and detain any conveyance.

(2) Such officer may if it is necessary so to do-- (a) break open any outer or inner door or window of such premises and enter thereinto;

(b) forcibly enter such premises and every part thereof; (c) remove by force any obstruction to such entry, search, seizure and removal as he is empowered to effect; or (d) detain every person found in or on such premises, until such premises have been searched.

(3) Subsections (1) and (2) shall not apply in relation to banker's books in a bank.

Search of person

17. (1) A senior police officer may search, or cause to be searched, any person whom he has reason to believe has on his person any property liable to seizure or forfeiture under this Act, or any article whatsoever necessary for the purpose of any investigation under 30 Laws of Malaysia ACT 340

this Act, and for the purpose of such search may detain such person for such period as may be necessary to have the search carried out, which shall not in any case exceed twenty-four hours without the authorization of a Magistrate, and may remove him in custody to such place as may be necessary to facilitate such search. (2) A search of a person under this section or under section 16 may extend to a medical examination of his body, both externally and internally, by a medical officer.

(3) No female person shall be searched under this section or under section 16 except by another female.

Obstruction of inspection and search

18. Any person who-- (a) refuses any officer authorized to enter or search, access to any premises, or fails to submit to search by a person authorized to search him;

(b) assaults, obstructs, hinders or delays him in effecting any entrance which he is entitled to effect under this Act, or in the execution of any duty imposed or power conferred by this Act;

(c) fails to comply with any lawful demands of any police officer in the execution of his duty under this Act; (d) refuses or neglects to give any information which may reasonably be required of him and which he has it in his power to give;

(e) fails to produce or conceals or attempts to conceal any property, document, or books in relation to which there is reasonable ground for suspecting that an offence has been or is being committed under this Act, or

which is liable to seizure under this Act;

(f) rescues or endeavours to rescue or causes to be rescued any thing which has been duly seized;

(g) furnishes to any officer as true, information which he knows or has reason to believe to be false; or

31 Dangerous Drugs (Forfeiture of Property)

(h) before or after any seizure, breaks or otherwise destroys anything to prevent the seizure thereof, or the securing of the same,

shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding two thousand ringgit or to imprisonment for a term not exceeding one year or to both.

Indemnity

19. (1) The Government shall not be liable to make good any damage which any goods or any property may sustain as a result of an entry, search, seizure or detention under any provision of this Act, unless such damage shall have been caused by the wilful neglect or default of a public officer employed by the Government. (2) If the amount of compensation in respect of any damage so caused is not agreed upon between the Government and the claimant, it shall upon application by the Public Prosecutor or the person claiming the compensation be summarily ascertained and determined by a Court of a First Class Magistrate.

Power to intercept communication

20. (1) Notwithstanding the provisions of any other written law, whether enacted before or after the commencement of this Act, the Public Prosecutor, if he considers that it is likely to contain any information which is likely to be relevant for the purpose of any investigation into an offence under section 3, 4, or subsection 24(7), or any corresponding foreign law, or for the purpose of any proceedings under Part III, or for any other purpose under this Act, may, on the application of a police officer not below the rank of Superintendent of Police authorize any police officer-- (a) to intercept, detain and open any postal article in the course of transmission by post;

(b) to intercept any message transmitted or received by any telecommunication; or

(c) to intercept or listen to any conversation by any telecommunication.

(2) When any person is charged with an offence under section 3, 4, or subsection 24(7), or when any proceedings are taken under Part III, any information obtained by a police officer in pursuance of subsection (1), whether before or after such person is charged, or before or after such proceedings are commenced, shall be admissible at his trial in evidence, or in the proceedings as aforesaid, as the case may be.

(3) An authorization by the Public Prosecutor under subsection (1) may be given either orally or in writing, and either to any particular police officer or generally to the Inspector-General of Police and all other police officers:

Provided that where an oral authorization is given, the Public Prosecutor shall, as soon as practicable, reduce the authorization into writing.

(4) A certificate by the Public Prosecutor that the action taken by a police officer in pursuance of subsection (1) had been authorized by him under subsection (1) shall be conclusive evidence that it had been so authorized, and such certificate shall be admissible in evidence without proof of signature thereof.

(5) No person shall be under any duty, obligation or liability, or be in any manner compelled, to disclose in any proceedings the procedure, method, manner or means, or any matter whatsoever related thereto, with regard to anything done under paragraph (a), (b) or (c) of subsection (1).

(6) For the purpose of this section--

"postal article" shall have the same meaning as in the *Post Office Act 1947 [Act 211]; and

"telecommunication" shall have the same meaning as in the **Telecommunications Act 1950 [Act 20].

Special powers of investigation

21. (1) Notwithstanding the provisions of any other written law, whether enacted before or after the commencement of this Act, the Public Prosecutor, if satisfied that it is necessary for the purpose of any investigation into an offence under section 3, 4, or subsection *NOTE--The Post Office Act 1947 [Act 211] has since been repealed by the Postal Services Act 1991 [Act 465]?see section 50 of Act 465.

****NOTE--**The Telecommunications Act 1950 [Act 20] has since been repealed by the Communications and Multimedia Act 1998 [Act 588]?see section 273 of Act 588. 33Dangerous Drugs (Forfeiture of Property)

24(7), or any corresponding foreign law, or for the purpose of any proceedings under Part III, or for any other purpose under this Act, may by order in writing authorize any senior police officer named in the order to make an investigation in the matter in such manner or mode as may be specified in the order.

(2) Without prejudice to the generality of subsection (1), the order may authorize the investigation, inspection, and taking of copies, of any banker's book or bank account, or any share account or purchase account, expense account or any other account, or the inspection of any safe deposit box, in any bank, financial institution, company, firm, association, society, or other body whatsoever, and shall be sufficient authority for the disclosure or production by any person of all or any information or accounts or documents or articles as may be required by the officer so authorized. (3) Any person who wilfully fails or refuses to disclose any such information or to produce any such accounts or documents or articles to the person so authorized shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding two thousand ringgit or to imprisonment for a term not exceeding one year or to both.

(4) Where any person discloses any such information or produces any such accounts or documents or articles, to the person so authorized, neither the first mentioned person nor any other person on whose behalf or direction, or as whose agent or employee, the first mentioned person may be acting, shall, on account of such disclosure or production, be liable to any prosecution for any offence under or by virtue of any law, or to any proceeding or claim in any form or of any description by any person under or by virtue of any law, or under or by virtue of any contract, agreement or arrangement, whether express or implied, or otherwise howsoever. Public Prosecutor's powers to obtain information

22. (1) Notwithstanding the provisions of any other written law, whether enacted before or after the commencement of this Act, for the purpose of any investigation into, or any proceedings relating to, an offence under section 3, 4, or subsection 24(7), or any 34 Laws of Malaysia ACT 340

corresponding foreign law suspected to have been committed by any person, or for the purpose of any proceedings under Part III against any person, the Public Prosecutor may, by written notice-- (a) require any such person to furnish a sworn statement in writing--

(i) identifying each item of movable or immovable property, whether within or outside Malaysia,

belonging to or possessed by such person, or by his relatives or associates, and specifying the date on which each of the properties so identified was

acquired and the manner in which it was acquired, whether by way of any dealing, bequest, inheritance, or otherwise howsoever;

(ii) identifying each property sent out of Malaysia by him or by his relatives or associates during such period as may be specified in the notice;

(iii) setting out the estimated value and location of each of the properties identified under subparagraphs (i) and (ii), and if any of such properties cannot be located, the reason therefor;

(iv) stating in respect of each of the properties identified under subparagraphs (i) and (ii) whether the property is held by himself or by any other person on his

behalf, whether it has been transferred, sold to, or kept with any other person, whether it has been

diminished in value since its acquisition by him, and whether it has been commingled with other

property which cannot be separated or divided without difficulty;

(v) setting out all other information relating to his properties, business, travel, or other activities whatsoever, or to the properties, business, travel or other activities whatsoever, of his relatives or

associates, as may be specified in the notice; and (vi) setting out all his sources of income, earnings or assets;

(b) require any relative or associate of such person, or any other person in respect of whom the Public Prosecutor 35Dangerous Drugs (Forfeiture of Property)

has reasonable grounds to believe that the information from him will assist in the investigation, to furnish a sworn statement in writing--

(i) identifying each movable or immovable property, whether within or outside Malaysia, belonging to

or possessed by him, and specifying the date on

which each of the properties identified was acquired, and the manner in which it was acquired, whether

by way of any dealing, bequest, inheritance, or

otherwise howsoever;

(ii) identifying each property sent out of Malaysia by him during such period as may be specified in the notice;

(iii) setting out the estimated value and location of each of the properties identified under subparagraphs (i) and (ii), and if any of such properties cannot be located, the reason therefor;

(iv) stating in respect of each of the properties identified under subparagraphs (i) and (ii) whether the property is held by himself or any other person on his behalf, whether it has been transferred, sold to, or kept with any other person, whether it has been diminished in value since its acquisition by him, and whether it has been commingled with other property which

cannot be separated or divided without difficulty; (v) setting all other information relating to his properties, business, travel, or other activities whatsoever, as may be specified in the notice; and

(vi) setting out all his sources of income, earnings or assets;

(c) require any public officer to produce or furnish any document, or a certified copy of any document, which is in his possession or under his control; and

(d) require any officer or employee of any bank or financial institution, or any person who is in any manner or to any extent responsible for the management and control of the affairs of any bank or any financial institution, to furnish copies of any or all accounts, documents and records relating to any person to whom a notice can be or has been issued under paragraph (a) or (b).

36 Laws of Malaysia ACT 340

(2) Every person to whom a notice is sent by the Public Prosecutor under subsection (1) shall, notwithstanding the provisions of any written law,

whether enacted before or after the commencement of this Act, or of any oath, undertaking or requirement of secrecy to the contrary, or of any obligation under any contract, agreement or arrangement, whether express or implied, to the contrary, comply with the terms of the notice within such time as may be specified therein, and any person who wilfully neglects or fails so to comply with the same shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding two thousand ringgit or to imprisonment for a term not exceeding one year or to both. (3) Where any person discloses any such information or produces any such accounts or documents or articles, to the person so authorized, neither the first mentioned person nor any other person on whose behalf or direction or as whose agent or employee, the first mentioned person may be acting, shall, on account of such disclosure or production, be liable to any prosecution for any offence under or by virtue of any law, or to any proceeding or claim in any form or of any description by any person under or by virtue of agreement or arrangement, whether express or implied, or otherwise howsoever.

Public Prosecutor's powers to request information from certain officers

23. (1) Notwithstanding anything contained in any other written law, whether enacted before or after the commencement of this Act, the Public Prosecutor shall have power to require any public officer within such time as he may specify to furnish such information in relation to any person, question or matter as in the opinion of the Public Prosecutor will be useful for, or relevant to, the purposes of this Act, and such public officer shall be legally bound to furnish the same to the Public Prosecutor within the specified time.

(2) Where any public officer furnishes any information under subsection (1) he shall not on such account be liable to any prosecution for any offence under or by virtue of any law, or to any proceeding or claim in any form or of any description by any person under or by virtue of any law, or under or by virtue of any contract, agreement or arrangement, whether express or implied, or otherwise howsoever.

37 Dangerous Drugs (Forfeiture of Property)

Order by Public Prosecutor in relation to a person intended to be proceeded against under section 8, or intended to be or being prosecuted for certain offences

24. (1) Where the Public Prosecutor-- (a) intends to make an application to the High Court under section 8 against any person;

(b) intends to institute against any person any prosecution for an offence under section 3 or 4, or for an offence referred to in Item 1, 2, 3 or 4 of the First Schedule; or (c) has already instituted against any person any prosecution for an offence as mentioned in paragraph (b) and

proceedings in respect of such prosecution are pending, the Public Prosecutor may, by order published in the Gazette, name or describe such person and require the person so named or described to comply with such provisions as may be set out in the order.

(2) For the purpose of paragraph (1) (c), proceedings in respect of a prosecution shall be regarded as pending where the decision of the court of original jurisdiction in which they are being held has not yet been delivered.

(3) Without prejudice to the generality of subsection (1), the order referred to therein may require the person named or described in the order--

(a) to disclose to the Public Prosecutor within such time as may be specified in the order the value, nature, whereabouts, and all other relevant particulars, of all properties, or any particular property, held by such person or by any relative or associate of his;

(b) to disclose to the Public Prosecutor within such time as may be specified in the order the value, nature, whereabouts, and all other relevant particulars, of all properties or any particular property, held by him or by any relative or associate of his during the five years preceding the date of the order, not being a period before the commencement of this Act;

(c) not to deal with, expend or dispose of any property held by him without the prior written approval of the Public Prosecutor;

38 Laws of Malaysia ACT 340

(d) not to remove from or send out of Malaysia, or cause to be removed from or sent out of Malaysia, any property held by him without the prior written approval of the Public Prosecutor; or

(e) not to leave Malaysia without the prior written approval of the Public Prosecutor, and to surrender all his travel documents, whether issued by the Government of Malaysia or any other government, to the Director General of Immigration within one week of the publication of the order.

(4) An order under subsection (1) may require all relatives and associates generally of the person named or described under subsection (1) in the order, or any particular class or description of his relatives or associates, or any

particular relative or associate of his, specified in the order, to comply with such provisions as may be contained in the order, including provisions corresponding to paragraphs (3) (a), (b), (c) and (d) in relation to properties held by the relative or associate.

(5) An order under subsection (1) may also require all persons generally, or any particular class or description of persons specified in the order, who hold, or any particular person specified in the order who holds, otherwise than as a purchaser in good faith for valuable consideration, any property in which any person named or described under subsection (1) in such order, has an interest or had an interest during the five years preceding the date of the order, not being a period before the commencement of this Act-- (a) to disclose to the Public Prosecutor within the time specified in the order the value, nature, whereabouts, and all other relevant particulars of such property;

(b) not to remove from or send out of Malaysia, or cause to be removed from or sent out of Malaysia, any such property without the prior written approval of the Public Prosecutor; and

(c) not to deal with, expend, or dispose of any such property without the prior written approval of the Public Prosecutor. (6) Where an order has been made under subsection (1), the Public Prosecutor may by notice in writing require any person to whom the order applies to make all such disclosures, or give all such information, or to do or refrain from doing any particular act, 39Dangerous Drugs (Forfeiture of Property)

in relation to any property affected by the order for the purpose of securing compliance with the order by any person to whom the order applies, and any such notice shall be without prejudice to the liability under subsection (7) of the person to whom the notice is issued for failure to comply with any provision of the order, whether or not such provision is affected by the notice. (7) Where an order has been published under subsection (1), it shall as from the date of such publication, be an offence for any person to--

(a) contravene any requirement, direction, term or other provision of the order or of any notice issued under subsection (6);

(b) conceal, hide, destroy or alter any object, article, material or thing, or accounts, books or other documents, or any entries therein, of or relating to any person or property affected by the order;

(c) remove from or send out of Malaysia or cause to be removed from or sent out of Malaysia, anything referred to in paragraph (b) without the prior

written approval of the Public Prosecutor; and

(d) deal with, expend, dispose of, or remove from or send out of Malaysia, or cause to be dealt with, expended, disposed of, or removed from or sent out of Malaysia, any property affected by the order, without the prior written approval of the Public Prosecutor,

and any person who commits such offence shall, on conviction, be liable to a fine not exceeding five hundred thousand ringgit. (8) Any dealing, contract, or other thing whatsoever, effected, done, or entered into, by any person or between any persons after the publication of an order under subsection (1) in respect of any property affected by such order, except any dealing effected under this Act by a public officer in his capacity as such officer, or otherwise by or on behalf of the Government of Malaysia, or the Government of a State, or a local authority or other statutory body, shall be null and void, and shall not be registered or otherwise howsoever given effect to by any person or authority. (9) For so long as an order under subsection (1) remains in force no action, suit or other proceeding of a civil nature shall be instituted or if they are already pending, be maintained or continued 40 Laws of Malaysia ACT 340

in any court or before any other authority against the person named or described under subsection (1) in such order, or in respect of any property affected by such order, and no attachment, execution or other similar process shall be commenced, or if any such process is pending, be maintained or continued, against such person or in respect of such property on account of any claim, judgment or decree, regardless whether such claim was made, or such judgment or decree was given, before or after such order was made and published under subsection (1), except at the instance of the Government of Malaysia, or the Government of a State, or at the instance of a local authority or other statutory body, or except with the prior consent in writing of the Public Prosecutor. (10) An order under subsection (1)--

(a) shall, in the case of an order against a person referred to in paragraph (1) (a), cease to remain in force if no application to the High Court under section 8 is filed by the Public Prosecutor in the High Court against such person within fourteen days of the date of publication of the order; (b) shall, in the case of an order against a person referred to in paragraph (1) (b), cease to remain in force if such person is not charged in court for an offence under section 3 or 4, or an offence referred to in Item 1, 2, 3 or 4 of the First Schedule, within fourteen days of the date of publication of the order;

(c) shall cease to remain in force if the High Court records a finding under subsection 10(4) that the person named in the order under subsection (1) is

not a liable person, or in the case of a person prosecuted for an offence as aforesaid, if he is finally acquitted of the offence; and (d) shall cease to apply to any property in respect of which the High Court records a finding under subsection 10(4) that it is not illegal property,

and the Public Prosecutor shall publish in the Gazette a notification of every such cessation within ten days of the cessation taking effect.

(11) The Public Prosecutor may at any time amend or revoke an order under subsection (1), but any such revocation shall not be a bar to any fresh order being made under subsection (1) at any time thereafter against any person to whom the earlier order applied or in respect of any property affected by the earlier order. 41Dangerous Drugs (Forfeiture of Property)

(12) A notification under subsection (10) or a revocation or amendment of an order under subsection (11) may contain provisions in respect of any matter which is consequential, ancillary or incidental to such notification, revocation or amendment.

(13) Where an order under subsection (1) ceases to remain in force, or ceases to apply to any property under subsection (10) such cessation shall not be a bar to any fresh order under subsection (1) being made at any time thereafter against any person to whom the earlier order applied, or in respect of any property affected by the earlier order, provided such fresh order relates to a fresh application or a fresh prosecution as is referred to in subsection (1).

Seizure of movable property

25. (1) Any movable property which a senior police officer reasonably suspects to be the subject matter of an offence under this Act, or which has been used for the commission of that offence, or illegal property, shall be liable to seizure.

(2) Whenever any movable property is seized under subsection (1), the officer effecting the seizure shall as soon as practicable serve a notice in writing of such seizure and the grounds thereof on the owner of such property, if such owner and his whereabouts are known:

Provided that such notice shall not be required to be served where such seizure is made in the presence of the person against whom proceedings under Part III are intended to be taken, or in the presence of the owner of such property or his agent, or in the case of a ship or an aircraft, in the presence of the master or pilot, as the case may be.

(3) Subsection (1) shall not apply to any ship of more than one hundred tons burden, or to any train or to any aircraft, belonging to any person carrying on a regular lawful passenger or freight service within Malaysia or to and from Malaysia, except where prosecution for an offence under this Act is to be instituted, or proceedings under Part III are to be taken, against the owner of such ship, train or aircraft.

42 Laws of Malaysia ACT 340

Further provisions relating to seizure of movable property

26. (1) Where any movable property is seized under this Act, the seizure shall be effected by removing the movable property from the possession of the person from whom it is seized and placing it under the custody of such person or authority and at such place as a senior police officer may determine:

Provided that where it is not practicable, or it is otherwise not desirable, to effect removal of such property he may leave it at the premises in which it is seized under the custody of such person as he may detail for the purpose.

(2) Notwithstanding subsection (1), when any movable property, including any movable property referred to in subsection (4), has been seized under this Act, a senior police officer superior in rank to the senior police officer who effected the seizure may at his discretion--

(a) temporarily return the movable property to the owner thereof or to the person from whose possession, custody or control it was seized, or to such person as a senior police officer may consider entitled thereto, subject to such terms and conditions as a senior police officer may impose, and, subject, in any case, to sufficient security being furnished to the satisfaction of a senior police officer that the movable property shall be surrendered to a senior police officer on demand being made by a senior police officer and that the said terms and conditions, if any, shall be complied with; or

(b) return the movable property to the owner thereof or to the person from whose possession, custody or control it was seized, or to such person as a senior police officer may consider entitled thereto, with liberty for the person to whom the movable property is so returned to dispose of the same, such return being subject to security being furnished to the satisfaction of a senior police officer in an amount not less than an amount which, in the opinion of a senior police officer, represents the open market value of such property on the date on which it is so returned subject to the condition that if the property is forfeited under this Act, the security shall be forfeited under subsection (3) in lieu of the property.

43 Dangerous Drugs (Forfeiture of Property)

(3) Where any person fails to comply with the terms under which any property was temporarily returned under paragraph (2) (a), or where any property returned under paragraph (2) (b) is forfeited, the security furnished by the person to whom the property was returned shall be forfeited, and in the case of a person to whom any property was returned under paragraph (2) (a), he shall be guilty of an offence and shall be sentenced to a fine of not less than two and not more than ten times the amount of the security furnished by him under paragraph (2) (a), and to imprisonment for a term not exceeding one year.

(4) When any movable property seized under this Act consists of money, shares, securities, stocks, debentures or any chose-in-action, in the possession or under the control of any person other than the person against whom the prosecution, or proceedings under Part III, is or are intended to be taken, the seizure shall be effected by the senior police officer serving an order on such person--

(a) prohibiting him from using, transferring, or dealing with such property;
or

(b) requiring him to surrender the property to a senior police officer in the manner and within the time specified in the order.

(5) Where the movable property seized is liable to speedy decay or deterioration, or is property which cannot be maintained without difficulty, or which it is not practicable to maintain, and which cannot be dealt with under subsection (2), a senior police officer may sell or cause to be sold the same by public auction or in such manner as may be practicable and hold the proceeds of the sale, after deducting therefrom the costs and expenses of the maintenance and sale of the property, to abide the result of any proceedings under this Act.

Special provision relating to seizure of a business

27. (1) Where a designated police officer reasonably suspects that any business--

(a) is being carried on by or on behalf of any person against whom prosecution for an offence under section 3, 4, or subsection 24(7) of this Act or any proceeding under Part III is intended to be commenced;

(b) is being carried on by or on behalf of a relative or an associate of such person;

(c) is a business in which such person, or a relative or associate of his has an interest which amounts to or carries a right to not less than thirty per centum of the entire business; (d) is a business over which such person, his relative or associate has management or effective control, either individually or together,

such designated police officer may do any or all of the following things:

(aa) seize the business in the manner provided under this Part; (bb) by an order in writing--

(i) direct the extent and manner in which the business may be carried on;

(ii) specify a public officer or officers by name or office to supervise, direct or control the business, including its accounts, or to carry on the business or such part of it as may be specified;

(iii) direct that all or any proportion of the proceeds or profits of the business be paid to the Public Trustee and retained by him pending further directions in respect thereof by the designated police officer; (iv) prohibit any director, officer or employee from being in any manner involved in the business with effect from the date of the letter of prohibition; or

(v) direct that the premises where the business was carried on to be closed and, if necessary or expedient, placed under guard or custody.

(2) Where the public officer in respect of whom an order intended to be made under subsection (1) is other than a police officer, such order shall not be made in relation to him except, in the case of a member of the public service, with the consent of the Secretary General of the Ministry in which the public officer is serving, and in the case of any other public officer, with the consent of the executive head of the authority, body or organization in which he is employed.

45 Dangerous Drugs (Forfeiture of Property)

(3) Where an order is made by a designated police officer under paragraph (1) (bb), he may include in the order, or give subsequently thereto either in writing or orally, any direction of an ancillary or consequential nature, or which may be necessary, for giving effect to, or for the carrying out of, the order. (4) An order under paragraph (1) (bb) may at any time be varied or revoked by a designated police officer and where he so varies or revokes it,

he may give any direction of an ancillary or consequential nature, or which may be necessary, for giving effect to, or for the carrying out of, such variation or revocation. (5) Save as otherwise provided in subsection (6), neither the Government nor any public officer shall, in consequence of any order under subsection (1) be responsible for the payment of any moneys, dues, debts, liabilities or charges whatsoever payable to any person in respect of the business, or in respect of any movable or immovable property owned, possessed, occupied or used, by any person in relation to the business.

(6) Where a public officer or officers are carrying on any activities of the business in pursuance of an order under subparagraph (1) (bb) (ii), they shall be responsible for the payment of the wages of such employees of the business as are engaged in performing any work in relation to those activities for the period during which such public officer or officers carry on those activities, and such wages shall be paid out of the profits derived from such activities, or, if there are no such profits or if such profits are insufficient, from the proceeds derived from such activities, or if there are no such proceeds or if such proceeds are insufficient, from the assets and properties of the business; "wages" in this subsection means the wages payable under the contract of employment between the employee and the business.

(7) The provisions of this section shall have effect notwithstanding anything inconsistent or in conflict therewith, or contrary thereto, contained in this Act.

Seizure of immovable property

28. (1) Where a police officer of or above the rank of Assistant Superintendent of Police reasonably suspects any immovable property 46 Laws of Malaysia ACT 340

to be the subject matter of an offence under this Act, or illegal property, it shall be liable to seizure, and such seizure shall be effected--

(a) by the issue of a Notice of Seizure by a police officer of or above the rank of Assistant Superintendent of Police setting out therein the particulars of the immovable property which is seized insofar as such particulars are within his knowledge, and prohibiting all dealings in such immovable property;

(b) by posting, where practicable, a copy of such Notice in a conspicuous position on the immovable property; and (c) by serving a copy of such Notice on the Land Administrator or the Registrar of Titles, as the case may be, in Peninsular Malaysia, or on the Registrar of Titles or Collector of Land Revenue, as the case may be, in Sabah, or on the Registrar of Titles or

Director of Lands and Surveys, as the case may be, in Sarawak, of the area in which the immovable property is situated.

(2) The Land Administrator, the Collector of Land Revenue, the Director of Lands and Surveys, or the Registrar of Titles, as the case may be, referred to in subsection (1) shall immediately thereupon endorse the terms of the Notice of Seizure on the document of title in respect of the immovable property in the Register at his office.

(3) Where an endorsement of a Notice of Seizure has been made under subsection (2), the Notice shall have the effect of prohibiting all dealings in respect of the immovable property, and, accordingly, after such endorsement has been made no dealing in respect of the immovable property shall be registered, regardless whether it was effected before or after the issue of such Notice or the making of such endorsement.

(4) Subsection (3) shall not apply to a dealing effected under this Act or by virtue of this Act by a public officer in his capacity as such officer, or otherwise by or on behalf of the Government of Malaysia, or the Government of a State, or a local authority or other statutory body.

47 Dangerous Drugs (Forfeiture of Property)

Dealings with seized property after seizure to be void

29. (1) After seizure of any property has been effected under this Act, and so long as such seizure remains in force, any dealing, contract, or other thing whatsoever, effected, done, or entered into by any person or between any persons in respect of such property, except any dealing effected under this Act or by virtue of this Act by a public officer in his capacity as such officer, or otherwise by or on behalf of the Government of Malaysia, or the Government of a State, or a local authority, or other statutory body, shall be null and void, and shall not be registered or otherwise howsoever given effect to by any person or authority.

(2) Subsection (1) shall be in addition to and not in derogation of subsections 28(3) and (4).

(3) For so long as a seizure of any property under this Act remains in force, no action, suit or other proceeding of a civil nature shall be instituted, or if it is pending immediately before such seizure, be maintained or continued, in any court or before any other authority in respect of the property which has been so seized, and no attachment, execution or other similar process shall be commenced, or if any such process is pending immediately before such seizure, be maintained or continued, in respect of such property on account of

any claim, judgment or decree, regardless whether such claim was made, or such judgment or decree was given, before or after such seizure was effected, except at the instance of the Government of Malaysia or the Government of a State, or at the instance of a local authority or other statutory body, or except with the prior consent in writing of the Public Prosecutor. Validity of seizure, or sale in consequence thereof, not to be affected by certain objections

30. Where seizure of any property has been effected under this Act, the validity of such seizure, or of any sale or other form of disposal of such property, or of any destruction thereof in accordance with the provisions of this Act, in consequence of such seizure, shall not be affected by any objection thereto relating to the manner in which the seizure or sale was effected, or the place at which it was effected, or the person from whom it was effected, or the person to whom any notice of the seizure or sale was given, or omitted to be given, or any failure to conform to any procedural provision of this Act or of any other written law in effecting the seizure or sale.

48 Laws of Malaysia ACT 340

Release of property seized

31. (1) Where property has been seized under this Act, a designated police officer other than the police officer who effected the seizure, may at any time thereafter before it is forfeited under this Act release such property to such person as he determines to be lawfully entitled to the property if he is satisfied that such property is not liable to forfeiture under this Act or under the Dangerous Drugs Act 1952, and is not otherwise required for the purpose of any proceedings under this Act, or for the purpose of any prosecution under any other law, and in such event neither the officer effecting the seizure, nor the Government, nor any person acting on behalf of the Government, shall be liable to any proceedings by any person if the seizure thereof and the release thereof had been effected in good faith.

(2) A record in writing shall be made by the officer effecting any release of any property under subsection (1) in respect of such release specifying therein in detail the circumstances of, and the reason for, such release, and he shall send a copy of such record to the Public Prosecutor and to the Inspector-General of Police within seven days of the release.

Forfeiture of property seized under this Act where there is no prosecution, or no proceedings under Part III or no claim thereto

32. (1) Where any property has been seized under this Act, other than under or by virtue of Part VII, and--

(a) no prosecution for any offence under any law is instituted with regard to such property;

(b) no proceedings are commenced by the Public Prosecutor for the forfeiture of such property under Part III; and (c) no claim in writing is made by any person that he is lawfully entitled to such property and that it is not liable to forfeiture under this Act or under the Dangerous Drugs Act 1952,

within three months from the date of its seizure, the property shall become forfeited immediately upon the expiration of the said period of three months.

49 Dangerous Drugs (Forfeiture of Property)

(2) Where within three months from the date of the seizure of any property under this Act, a claim in writing is made thereto by any person in the terms mentioned in paragraph (1) (c), the Public Prosecutor shall within fourteen days after the expiry of the said period of three months, refer such claim to a Sessions Court for its decision.

(3) The Sessions Court to which a claim is referred under subsection (2) shall issue a summons requiring the person claiming that he is lawfully entitled to the property, and the person from whom it was seized, if he and his whereabouts are known, to appear before the court and upon such appearance or in default of such appearance, upon due service of such summons being proved, the Sessions Court shall proceed to the examination of the matter and if satisfied that no offence under this Act or under the Dangerous Drugs Act 1952 has been committed in respect of the property claimed and that such property is not illegal property, shall order the same to be released to the person claiming the same upon proof that he is lawfully entitled thereto, and shall, in any other case, order the property to be forfeited.

(4) The provisions of this section shall be without prejudice to the power of a police officer to release from seizure any property under section 31.

(5) Where property has been forfeited under subsection (1), it shall not be a bar to any prosecution for an offence under any law being instituted in respect of such property at any time thereafter. PART V

FORFEITURE

Vesting of forfeited property in the Government

33. (1) Where any property is forfeited under this Act, the property shall vest in the Government free from any right, interest or encumbrance of any person except a right, interest or encumbrance which is held by a purchaser in good faith for valuable consideration and which is not otherwise null and void under any provision of this Act.

50 Laws of Malaysia ACT 340

(2) Where any person who holds any encumbrance to which the property is subject claims that he holds the encumbrance as a purchaser in good faith for valuable consideration and that the encumbrance is not otherwise null and void under any provision of this Act, and the Government disputes such claim, the Public Prosecutor may apply to the High Court to determine the question and the Court shall determine the same after giving an opportunity to be heard to the person holding the encumbrance and hearing the reply of the Public Prosecutor to any representations which may be made before that Court by the person holding the encumbrance. (3) Where any property is vested in the Government under subsection (1), the vesting shall take effect without any transfer, conveyance, deed or other instrument whatsoever and where any registration of such vesting is required under any law, the authority empowered to effect the registration shall do so in the name of such public officer or such authority, person or body as the Public Prosecutor may specify.

(4) Where the property vested in the Government under subsection (1) is immovable property, the vesting shall upon production to the Registrar of Titles or the Land Administrator, as the case may be, in Peninsular Malaysia, or to the Registrar of Titles or the Collector of Land Revenue, as the case may be, in Sabah, or to the Registrar of Titles or the Director of Lands and Surveys, as the case may be, in Sarawak, of the order of Court forfeiting the immovable property, or in the case of property forfeited under subsection 32(1), of a Certificate of the Public Prosecutor certifying that it has been forfeited thereunder, be registered in the name of the Federal Lands Commissioner.

PART VI

EVIDENCE AND PROCEDURE

Construction and interpretation of this Act

34. In any proceedings under this Act the provisions of this Act shall be construed and interpreted so as to give effect to the purposes of this Act without regard for ambiguities, or infirmities of language, or other defects

or deficiencies therein, or to objections which are trivial in nature or which do not affect the merits or the substance of the issues before the court.

51 Dangerous Drugs (Forfeiture of Property)

Presumption as to liable person and illegal property

35. Where any proceedings under this Act are brought against any person or in respect of any property on the ground that such person is a liable person or that such property is illegal property, the court shall presume that person to be a liable person and that property to be illegal property, unless the person proceeded against proves to the contrary by admissible evidence and where he adduces any such evidence, the Public Prosecutor shall have the right to rebut the same.

Admissibility of documentary and other evidence obtained by the Public Prosecutor in exercise of any power under this Act

36. Where the Public Prosecutor or any senior police officer has obtained any document or other evidence in exercise of his powers under this Act or by virtue of this Act, such document or copy of the document or other evidence, as the case may be, shall be admissible in evidence in any proceedings under this Act, notwithstanding anything to the contrary in any written law.

Examination of offenders

37. (1) Whenever two or more persons are charged with an offence under this Act, the court may require one or more of them to give evidence as a witness or witnesses for the prosecution. (2) Any person referred to in subsection (1) who refuses to be sworn or to answer any question shall be dealt with in the same manner as witnesses so refusing may be dealt with by a court. (3) Every person required to give evidence under subsection (1), who in the opinion of the court makes true and full discovery of all things as to which he is examined, shall be entitled to receive a certificate of indemnity under the hand of the presiding officer of the court stating that he has made a true and full discovery of all things as to which he was examined, and such certificate shall be a bar to all legal proceedings against him in respect of all such things as aforesaid.

(4) Nothing contained in this section shall be construed as prohibiting the Public Prosecutor from requiring any person against 52 Laws of Malaysia ACT 340

whom proceedings have been instituted under Part III, to give evidence in any other proceeding under Part III or in any trial in relation to an offence under this Act or a Scheduled offence. Protection of informers

38. (1) No witness in any proceedings under this Act shall be obliged--

(a) to disclose the name and address of any informer who has given information with respect to an offence under this Act, or any Scheduled offence, or with respect to any matter relating to or leading to any proceedings under Part III, or with respect to any matter relating to or leading to the detention of any person under the provisions of the Emergency (Public Order and Prevention of Crime) Ordinance 1969 [P.U. (A) 187/1969], or the Dangerous Drugs (Special Preventive Measures) Act 1985 [Act 316]; or

(b) to answer any question if the answer thereto would lead, or would tend to lead, to the discovery of the name or address of such informer.

(2) If any book, document or paper which is in evidence or liable to inspection in any proceedings under this Act or the Dangerous Drugs Act 1952 contains an entry in which any informer is named or described or which might lead to his discovery, the court shall cause all such entries to be concealed from view or to be obliterated so far as may be necessary to protect the informer from discovery. Evidence of agent provocateur admissible

39. (1) Notwithstanding any rule of law, or the provisions of this Act, or any other written law, whether enacted before or after the commencement of this Act, to the contrary, no agent provocateur shall be presumed to be unworthy of credit by reason only of his having attempted to commit, or attempted to abet or abetted the commission of, or having been engaged in a criminal conspiracy to commit, an offence by any person under this Act or under the Dangerous Drugs Act 1952 or under any corresponding foreign law if the attempt to commit or abet, or the abetment, or the criminal conspiracy was for the sole purpose of securing evidence against such person in relation to any offence under this Act, or in relation to any proceedings under Part III.

53 Dangerous Drugs (Forfeiture of Property)

(2) Notwithstanding any rule of law, or the provisions of this Act, or any other written law, whether enacted before or after the commencement of this Act, to the contrary, and notwithstanding that the agent provocateur is a police officer of whatever rank, any statement, whether oral or in writing made to an agent provocateur by any person, including any person who subsequently is charged with an offence under this Act, or proceeded against under Part III, shall be admissible in evidence and given due weight and consideration at any trial for an offence under this Act, or in any proceeding under Part III, whether the trial is of the person who made the statement, or of any other person, or the proceeding is against the person who made the

statement or any other person. Notice or order not to be invalid for error in description

40. (1) No notice, notification or other process, issued, served or published, and no order, decision or judgment made, given, issued, served or published, under this Act shall be deemed to be invalid by reason of any error or omission in the description of the property or person mentioned therein if such property or person is identifiable from the description so mentioned. (2) Without prejudice to subsection (1), where any order has been made, or a decision or judgment given, by any court in any proceedings under this Act, any error or omission in the order, decision or judgment relating to any description of any property or person may at any time be rectified by the court on its own motion or on the application of any party or any person affected by the order, decision or judgment.

Power of a police officer under other laws relating to criminal procedure

41. (1) The provisions of this Act in so far as they relate to the powers of a police officer shall be in addition to the powers of a police officer under any other law relating to criminal procedure and not in derogation thereof, but in the event of inconsistency or conflict between the provisions of this Act and those of such other law, the provisions hereunder shall prevail.

(2) Subject to subsection (1), the provisions of the Criminal Procedure Code relating to the powers of a police officer in relation to seizable offences shall apply in relation to matters under Part III in the same manner as they apply to seizable offences. 54 Laws of Malaysia ACT 340

PART VII

ASSISTANCE TO A FOREIGN COUNTRY

Interpretation

42. In this Part, unless the context otherwise requires-- "drug-related matter" means any investigation, inquiry, trial, or other proceeding in any foreign country under any law relating directly or indirectly to dangerous drugs or to any property used for or derived from any activity relating to dangerous drugs, whether the same be for an offence under such law, or for the forfeiture of property under such law;

"foreign authority" means any person designated by a foreign government as an authority competent to act on behalf of the foreign government for the purposes of this Act;

"foreign country" means any country, territory or place outside Malaysia;

"foreign government" means the government of a foreign country; "Malaysian authority" means the Inspector-General of Police. Request for assistance and authority to render same

43. Where a foreign government requests the Government of Malaysia, or where a foreign authority requests the Malaysian authority, for assistance in Malaysia in relation to any drug-related matter in the foreign country, it shall be lawful for the Malaysian authority on the direction of the Government or at his own instance to render or cause to be rendered all or any such assistance as is requested to the extent and in the manner authorized under this Part.

Information and particulars in relation to persons, bodies, etc.

44. A senior police officer may, on the direction of the Malaysian authority, obtain or ascertain all such particulars or information in respect of any person, body, business, enterprise or place, including copies of documents or official records of any department of the 55Dangerous Drugs (Forfeiture of Property)

Government or any statutory body, or any agency of the Government, or any extracts from any such documents or official records, as may be available to him, or as are capable of being lawfully obtained or ascertained by him, or as may be voluntarily furnished. Service of processes or documents

45. A senior police officer may, on the direction of the Malaysian authority, cause to be served by any police officer on any person or body in Malaysia any process or document whatsoever issued by any person, authority or court in any foreign country, but while non-compliance with any requirement contained in such process or document shall not render the person or body which is required to comply with the same to any penalty or liability in Malaysia under any Malaysian law, it shall render him or it liable to every such penalty or detriment as may be provided under the law of the foreign country concerned, including liability to the seizure or forfeiture of any property in Malaysia on the order of the authority or court of the foreign country empowered to make such order. Transmission of copies of statements, or records, or results of investigation in Malaysia

46. (1) The Malaysian authority may obtain and transmit, or cause to be obtained and transmitted, to the foreign government or foreign authority a copy of the record of any investigation in Malaysia by any person or authority competent to investigate the same, including any copy of--

(a) any report or any statement recorded from any witness, accused or other person;

(b) any document received or seized; or

(c) any conclusion or finding of any investigation, in relation to any offence under this Act or under any written law, or in relation to any proceeding under Part III.

(2) Copies of records of investigation may be transmitted under subsection (1), whether or not investigations have been completed and whether or not such investigations have resulted in a trial for an offence under this Act or the institution of a proceeding under Part III of this Act, and whatever the outcome of any trial or proceeding that has taken place as a result of the investigations. 56 Laws of Malaysia ACT 340

Examination of witness by a police officer

47. (1) A senior police officer may, on the direction of the Malaysian authority, order in writing or orally any person who is specified by the foreign government or foreign authority, or any other person who is reasonably suspected to have any relevant knowledge or information, to attend before him or any other senior police officer to be examined in respect of the drug-related matter specified by the foreign government or foreign authority. (2) A person to whom an order has been given under subsection (1) shall attend in accordance with the terms of the order to be examined and shall continue to so attend from day to day as directed by the police officer conducting the examination until the examination is completed.

(3) A person undergoing an examination under this section shall disclose all information which is within his knowledge, or which is available to him, or which is capable of being obtained by him, in respect of the matter in relation to which he is being examined, whether or not any question is put to him with regard thereto, and where any question is put to him he shall answer the same truthfully and to the best of his knowledge and belief. (4) A person being examined under this section shall produce all such documents, articles or things as may be relevant to the examination or as he may be required to produce by the senior police officer examining him, and the same may be retained in police custody or transmitted to the foreign government or foreign authority.

(5) Nothing contained in subsections (3) and (4) shall be construed as compelling the person who is being examined under this section to disclose any information or produce any document, article or thing which may incriminate him or his then lawful spouse for any offence under any law of Malaysia or of

the foreign country. (6) Any person who contravenes any provision of this section shall be guilty of an offence under this Act.

Examination of witness by a Magistrate

48. (1) A Magistrate of any Class at any place in Malaysia may examine on oath or affirmation any person specified by any foreign government or foreign authority who is present at any place in 57Dangerous Drugs (Forfeiture of Property)

Malaysia, whether or not such place is within the area of jurisdiction of the Magistrate, where such person appears before the Magistrate on an order given by any senior police officer on a direction by the Malaysian authority, or an order given by a Deputy Public Prosecutor, in consequence of any request received from the Malaysian authority.

(2) The examination under subsection (1) shall be in relation to such drug-related matter as may be specified by the foreign government or the foreign authority, and the person shall answer all questions put to him by the senior police officer, or the Deputy Public Prosecutor, either at his own instance or in accordance with any written interrogatories received from the foreign government or the foreign authority.

(3) In recording any evidence under this section there shall be excluded all evidence which is inadmissible under Malaysian law relating to evidence in criminal proceedings, or any evidence which is stated by the senior police officer or the Deputy Public Prosecutor to be inadmissible under the law of the foreign country. (4) A person who is ordered by a senior police officer or a Deputy Public Prosecutor to appear before a Magistrate for examination under this section shall comply with the terms of such order and shall continue to attend for such examination from day to day or as directed by the Magistrate or the senior police officer or the Deputy Public Prosecutor until the examination is completed. (5) A person who is being examined by a Magistrate under this section shall be entitled to be represented at the examination by an advocate who may put to such person all such questions as may be relevant to the matter in respect of which the person is being examined, but only after his examination by the senior police officer or the Deputy Public Prosecutor has been completed, and where such questions have been put by the advocate, the senior police officer or the Deputy Public Prosecutor shall be entitled to examine the person in relation to those questions and his answers thereto.

(6) Any person who—

(a) contravenes subsection (4); or

(b) fails to answer, or answers falsely, any question put to him during an examination under this section, 58 Laws of Malaysia ACT 340

except a question which he is not compellable to

answer under the Malaysian law relating to evidence in criminal proceedings, shall be guilty of an offence under this Act.

Search of person or premises

49. (1) A senior police officer may, on the direction of the Malaysian authority, search or cause to be searched-- (a) any person or premises specified by the foreign government or foreign authority in a request under section 43; (b) any person who, or any premises which, is suspected by the senior police officer to be necessary or expedient to be searched in relation to such request.

(2) For the purposes of any search under subsection (1), a senior police officer shall have and may exercise all or any of the powers exercisable by a senior police officer under sections 16 and 17 as if the circumstances specified in these sections for their exercise existed and sections 18 and 19 shall accordingly apply in relation to any search under subsection (1).

Seizure and transmission of property or article

50. (1) A senior police officer may, on the direction of the Malaysian authority seize any property, or article, the seizure of which is requested by a foreign government or a foreign authority under section 43--

(a) on the ground that the property is liable to forfeiture under the law of the foreign country; or

(b) on the ground that the property or article is required by the foreign government or foreign authority for the purpose of any drug-related matter either as evidence or otherwise howsoever.

(2) Where any movable property, or article is seized under subsection (1), the Malaysian authority may transmit the same to the foreign government or the foreign authority on an undertaking by the foreign government to the Malaysian Government that the same shall be returned to the Malaysian authority upon the final conclusion of all proceedings in the foreign country in the drug-related matter, unless the Malaysian Government then notifies the foreign government that it does not require its return. 59 Dangerous Drugs (Forfeiture of

Property)

(3) Where any movable property, or article seized under paragraph (1) (b) is not transmitted to the foreign government or the foreign authority under subsection (2), or where it is returned to the Malaysian Government upon the final conclusion of all proceedings in the foreign country in the drug-related matter, the Malaysian authority shall return it to the person from whom it was seized unless it is required for the purpose of any prosecution or proceedings under this Act or under any other written law.

(4) Subsections 25(2) and (3), sections 26, 27, 28, 29, 30 and 31 shall, subject to the respective modifications set out in the third column of the Second Schedule, apply to a seizure of any property under subsection (1).

(5) Upon the final conclusion of all proceedings in the foreign country in respect of the drug-related matter in relation to which any property was seized under paragraph (1) (a), the property shall, subject to subsections (6) and (7), be dealt with in accordance with the order of the authority or court in the foreign country which is empowered under the law of that country to make such order. (6) Where the order of the authority or court in the foreign country requires the property to be returned to any person in Malaysia, the property shall upon its return to the Malaysian authority be returned to such person unless the Malaysian authority requires such property for the purpose of any prosecution or proceedings under this Act or under any other written law.

(7) Where the order of the foreign authority or the foreign court is a final order for the forfeiture of such property, it shall be deemed to be an order for the forfeiture of the same to the Malaysian Government made by a High Court in Malaysia and shall be registered by a Registrar of a High Court in Malaysia, and shall, accordingly, be dealt with in accordance with the provisions of this Act applicable to an order for forfeiture by a High Court made under Part III.

(8) For the purposes of subsection (7), "final order" means an order which is not subject to any appeal in the foreign country; and for the purposes of this definition, "appeal" includes any proceeding in whatever form and howsoever styled in relation to the decision given at the level of original jurisdiction or a lower level of appellate jurisdiction and any proceeding in relation to a pardon or exercise of leniency by an executive authority in that foreign country.

60 Laws of Malaysia ACT 340

(9) No person shall be entitled to claim any compensation from the Malaysian

Government or the foreign government or from any person or authority acting on behalf of the Malaysian Government or the foreign government, or under the authority of Malaysian law or the law of the foreign country, in respect of any seizure or disposal or release of such property under Malaysian law or the law of the foreign country.

(10) The reference in subsection (1) to a senior police officer shall, in relation to the seizure of any property which is a business, be construed as a reference to a designated police officer. Interception of communication

51. Where the Malaysian authority is satisfied that for the purpose of rendering any assistance to a foreign authority in relation to any drug-related matter, it is necessary, expedient or desirable for a senior police officer to exercise the powers under section 20 for the interception of any communication, he may authorize a senior police officer to exercise the same in the manner in which a senior police officer is empowered to exercise them in relation to any offence or in relation to any proceedings for the forfeiture of property under this Act.

Exercise of powers of investigation by the Public Prosecutor

52. Where, upon being informed by the Malaysian authority of any request for assistance by a foreign country or a foreign authority under section 43, the Public Prosecutor is satisfied that it is necessary, expedient or desirable for him to exercise his powers under section 22, 23 or 24, he may exercise the same in the same manner and to the same extent as he may exercise them in relation to the matters specified under those sections respectively. Manner or mode of transmission of information, statements, evidence, movable property, etc., to foreign government or foreign authority

53. Where any information, statement or evidence has been obtained in Malaysia under this Part, or any movable property, or article has been seized in Malaysia under this Part, the same shall, if it is directed by the Malaysian authority to be transmitted to the 61Dangerous Drugs (Forfeiture of Property)

foreign government or foreign authority, be transmitted to it in such manner or mode as the Malaysian authority may direct, or if there is no such direction, in such manner or mode as the authority or officer who obtained or seized the same, or who is otherwise responsible for its transmission, deems appropriate. Transfer of a person in custody in Malaysia into the custody of an authority in a foreign country

54. (1) Where upon request by a foreign government or a foreign authority under section 43 for the production before any authority or court in the

foreign country as a witness for the prosecution in any proceedings before such authority or court, of any person who is undergoing imprisonment in Malaysia, or is under preventive detention in Malaysia under any law relating to preventive detention, or is otherwise in lawful custody in Malaysia, the Malaysian authority may issue an order for the transfer of such person into the custody of such officer or officers of the foreign country as may be designated by the foreign government or foreign authority for the purpose of transporting such person from Malaysia to the foreign country and, thereafter, to be detained in that country under the custody of such authority or person as may be lawful in that country and produced from time to time under custody before the authority or court in the foreign country in which he is required to attend as a witness. (2) Immediately upon his further attendance being dispensed with by the authority or court in the foreign country before which his attendance is required, the person shall be transported in the custody of an officer or officers of the foreign country to Malaysia and returned into the custody of the Malaysian officer or officers having lawful authority to take him into custody, and he shall, thereafter, continue to undergo the imprisonment, detention or custody which he was undergoing prior to the transfer of his custody under subsection (1).

(3) The period during which such person was under foreign custody under this section shall count towards the period of his imprisonment, detention or other custody in Malaysia. (4) No transfer of any person into foreign custody shall be effected unless the foreign government gives an undertaking to the Government of Malaysia to bear and be responsible for all the expenses of the transfer of custody, to keep the person under 62 Laws of Malaysia ACT 340

lawful custody throughout the transfer of his custody, and to return him into Malaysian custody immediately upon his release from attendance before the authority or court in the foreign country. Payment by a foreign government to the Malaysian Government under this Part

55. The Government of Malaysia and any foreign government may enter into any arrangement in respect of the payment by the foreign government to the Government of Malaysia of any expenses incurred by the Government of Malaysia under this Part. PART VIII

GENERAL

Attempts, abetments and criminal conspiracies punishable as offences

56. (1) Any person who-- (a) attempts to commit any offence under this Act or under any corresponding foreign law;

(b) does any act preparatory to or in furtherance of the commission of any

offence under this Act or under any corresponding foreign law;

(c) abets or is engaged in a criminal conspiracy to commit (as those terms are defined in the Penal Code [Act 574]) any offence under this Act or under any corresponding foreign law whether or not the offence is committed in consequence thereof,

shall be guilty of such offence and be liable to the punishment provided for such offence.

(2) Any provision of this Act which contains a reference to an offence under any specific provision of this Act shall be read as including a reference to an offence under subsection (1) in relation to the offence under that specific provision.

63 Dangerous Drugs (Forfeiture of Property)

No bail to be granted in respect of certain offences

57. (1) Bail shall not be granted to an accused person charged with an offence under section 3, 4, or subsection 24(7). (2) Subsection (1) shall have effect notwithstanding any other written law or any rule of law to the contrary.

Offences by bodies corporate or unincorporate and by servants and agents

58. (1) Where an offence under this Act has been committed by a body, whether corporate or unincorporate, whether in or outside Malaysia, every person who at the time of the commission of the offence was a director, manager, secretary or other officer of the body, or was purporting to act in any such capacity or was in any manner or to any extent responsible for the management of any of the affairs of such body or was assisting in such management shall be guilty of that offence.

(2) Where any person (hereinafter referred to as the "principal") would be liable under this Act to any punishment, penalty or forfeiture for any act, omission, neglect or default he shall be liable to the same punishment, penalty or forfeiture for every such act, omission, neglect or default of any clerk, servant or agent, of his, or of the clerk or servant of such agent:

Provided that such act, omission, neglect or default was committed by the principal's clerk or servant in the course of his employment, or by the agent when acting on behalf of the principal, or by the clerk or servant of such agent in the course of his employment by the agent or otherwise on behalf of the agent.

(3) Nothing contained in subsection (2) shall in any manner derogate from the liability of the clerk, servant or agent or of the clerk or servant of the agent referred to therein for the act, omission, neglect or default.

64 Laws of Malaysia ACT 340

Service of any notice or order

59. (1) Any notice or order issued or made under this Act shall, where it is required to be served on a natural person, be served-- (a) by delivering it personally to the person for whom it is intended;

(b) by delivering it to an adult person at the last known place of residence, occupation or business of the person for whom it is intended;

(c) by sending it by registered post to the person for whom it is intended; or

(d) if a designated police officer is satisfied for reasons to be recorded by him in writing that the notice or order cannot be served in the manner provided in paragraph (a), (b), or (c), by--

(i) affixing it on a conspicuous place in the immovable property, if any, in relation to which the notice or order is issued or made, or on some conspicuous

part of the premises in which the person for whom it is intended is known to have last resided, or to have been last employed, or to have last carried on business; and

(ii) publication of the notice or order in one newspaper circulating in the area in which the person for whom it is intended is known to have last resided, or to have been last employed, or to have last carried on business.

(2) Any notice or order issued or made under this Act on any body, whether corporate or unincorporate, shall be served by delivering it at its place of business to a servant, agent or officer of such body, or, where a designated police officer is satisfied for reasons to be recorded in writing that it cannot be so delivered, by affixing it on a conspicuous part of the premises at the last known place of business of the body for whom it is intended, and by publication of the notice or order in one newspaper circulating in the area in which the last known place of business is situated. 65Dangerous Drugs (Forfeiture of Property)

General penalty

60. Every person convicted of an offence under this Act for which no penalty is specifically provided shall, in respect of each offence, be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding two years or to both. Rewards

61. The Inspector-General of Police may order such rewards as he may deem fit to be paid to any police officer or other public officer or other person for services rendered in connection with the detection of any offence under this Act, or in relation to any proceeding under Part III, or in connection with any seizure made under this Act.

Regulations

62. The Minister may make regulations for the further, better and more convenient carrying out of the provisions or purposes of this Act and without prejudice to the generality of this provision, the Minister may make regulations--

(a) for providing forms in respect of any notice or order or other proceedings under this Act;

(b) for prescribing anything required to be prescribed under this Act.

Extradition

63. An offence under section 3 or 4 shall be deemed to be-- (a) an extradition crime for the purposes of the *Extradition Ordinance 1958 [Ord. 2 of 1958]; or

(b) an extradition offence for the purposes of the **Commonwealth Fugitive Criminals Act 1967 [Act 54 of 1967]:

*NOTE--The Extradition Ordinance 1958 [Ord. 2 of 1958] has since been repealed by the Extradition Act 1992 [Act 479]?see section 54 of Act 479.

**NOTE--The Commonwealth Fugitive Criminals Act 1967 [Ord. 54 of 1967] has since been repealed by the Extradition Act 1992 [Act 479]?see section 54 of Act 479. 66 Laws of Malaysia ACT 340

Provided that any proceeding against any person under section 3 or 4 which would be a bar to subsequent proceeding against the person for the same offence shall be a bar to further proceedings against him under the Extradition Ordinance 1958 or the Commonwealth Fugitive Criminals Act 1967.

67Dangerous Drugs (Forfeiture of Property)

FIRST SCHEDULE

[Subsection 2(2)]

Item Offence

1. An offence under subsection 6B(1) and punishable under subsection 6B(3) of the Dangerous Drugs Act 1952.
2. An offence under subsection 39B(1) and punishable under subsection 39B(2) of the Dangerous Drugs Act 1952.
3. An abetment of the commission of, or an attempt to commit, or an act preparatory to or in furtherance of the commission of, an offence specified under Item 1 or 2, punishable under section 33 read with subsections 6BB(3) and 39B(2) respectively of the Dangerous Drugs Act 1952.
4. An offence under section 34 of the Dangerous Drugs Act 1952 in relation to an offence specified under Item 1 or 2.
5. Any offence under any foreign law corresponding to the provision for an offence specified under Item 1, 2, 3, or 4.

[Subsection 50(4)]

(1) (2) (3)

Item Subsection Modification

1. 25(2) Substitute-- (i) "subsection 50(1)" for "subsection (1)";
(ii) "a proceeding in the foreign country for forfeiture of the property or for the purpose of the
drug-related matter is" for "proceedings under Part III are".
2. 25(3) Substitute-- (i) "Subsection 50(1)" for "Subsection (1)";
(ii) "a proceeding in the foreign country for forfeiture of the property or for the purpose of the
drug-related matter is" for "prosecution for an
offence under this Act is to be instituted, or

proceedings under Part III are".

3. 26(1) Substitute "subsection 50(1)" for "this Act".

4. 26(2) Substitute-- (i) "subsection 50 (1)" for "this Act" where it first appears;

68 Laws of Malaysia ACT 340

(ii) "a final order of the foreign authority or the foreign court" for "this Act" in paragraph (b).

5. 26(4) Substitute-- (i) "subsection 50(1)" for "this Act";

(ii) "proceeding in the foreign country for forfeiture of the property or for the purpose of the

drug-related matter is" for "prosecution, or

proceedings under Part III, is or are".

6. 26(5) Substitute "proceeding in respect of a drug-related matter in the foreign country" for "proceedings under this Act".

7. 27(1) Substitute "(1) Where the property to be seized under subsection 50(1) is a business, the seizure shall be effected by a designated police and" for "(1) Where a designated police officer reasonably suspects that any business-- (a) is being carried on by or on behalf of any person against whom prosecution for an offence under

section 3, 4, or subsection 24(7) of this Act or any proceeding under Part III is intended to be

commenced;

(b) is being carried on by or on behalf of a relative or an associate of such person;

(c) is a business in which such person, or a relative or associate of his has an interest which amounts to or carries a right to not less than thirty per centum of the entire business;

(d) is a business over which such person, his relative or associate has

management or effective control, either individually or together,".

8. 28(1) Substitute-- (i) "(1) Where a senior police officer seizes any immovable property under subsection 50(1) " for

"(1) Where a police officer of or above the rank of Assistant Superintendent of Police reasonably

suspects any immovable property to be the subject matter of an offence under this Act, or illegal

property, it shall be liable to seizure, and";

(ii) "senior police officer" for "police officer of or above the rank of Assistant Superintendent of

Police" in paragraph (a).

(1) (2) (3)

Item Subsection Modification

69Dangerous Drugs (Forfeiture of Property)

9. 31(1) Amend-- (i) after "forfeited under this Act" by inserting ", or under a final order of a foreign authority or a

foreign court referred to in subsection 50(7),";

(ii) after "forfeiture under this Act" by inserting "or under such final order".

(1) (2) (3)

Item Subsection Modification

70 Laws of Malaysia ACT 340

LAW OF MALAYSIA

Act 340

DANGEROUS DRUGS (FORFEITURE OF

PROPERTY) ACT 1988

LIST OF AMENDMENTS

Amending law Short title In force from

? NIL ?

71Dangerous Drugs (Forfeiture of Property)

LAWS OF MALAYSIA

Act 340

DANGEROUS DRUGS (FORFEITURE OF
PROPERTY) ACT 1988

LIST OF SECTIONS AMENDED

Section Amending authority In force from

? NIL ?

DICETAK OLEH

PERCETAKAN NASIONAL MALAYSIA BERHAD,

KUALA LUMPUR

BAGI PIHAK DAN DENGAN PERINTAH KERAJAAN MALAYSIA