

1 NITIJELA OF THE MARSHALL ISLANDS

2  
3 23<sup>rd</sup> CONSTITUTIONAL REGULAR SESSION, 2002

BILL NO: 105 N.D.1

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6 \_\_\_\_\_ *P.L. 2002-68*

7 **AN ACT**

8  
9 To provide measures for identifying, tracing, freezing, and seizure and confiscation of  
10 proceeds of serious crime and property used in the commission of a serious offense and,  
11 for other purposes.

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13 **BE IT ENACTED BY THE NITIJELA OF THE MARSHALL ISLANDS:**

14  
15 **Part I - Preliminary**

16 **Section 1. Short title.**

17 This Act may be cited as the Proceeds of Crime Act, 2002.

18 **Section 2. Commencement.**

19 This Act shall come into effect on the date of certification in accordance with  
20 Article IV, section 21 of the Constitution.

21 **Section 3. Purpose.**

22 The purpose of this Act is to provide for the forfeiture and confiscation of the  
23 proceeds of crime and property used in the commission of serious offenses.

24 **Section 4. Application.**

25 The provisions of this Act shall extend and apply throughout the Republic of the  
26 Marshall Islands and also applies outside the Republic of the Marshall Islands.

27 **Section 5. Interpretations**

28 (1) In this Act, unless the context otherwise requires:

29 (a) "appeal" includes proceedings by way of discharging or setting  
30 aside a judgment, and an application for a new trial or for a stay of execution;

31 "Attorney General" means the Attorney General of the Marshall

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Islands, and includes the Deputy Attorney General or any Assistant Attorney General to whom the Attorney General delegates authority to carry out the duties and responsibilities of the Attorney General established by this Act;

(c) “covered property” means:

- (i) any property held by a defendant;
- (ii) any property in which defendant has an interest; and/or
- (iii) any property held by a person to whom a defendant has directly or indirectly made a gift caught by this Act;

(d) “defendant” means a person charged or about to be charged with a serious offense, whether or not he or she has been convicted of the offense, and includes in the case of proceedings for a restraining order under section 37, a person who is about to be charged with a serious offense;

(e) “document” means any material on which data is recorded or marked and which is capable of being read or understood by a person, computer system or other device, and any record of information, and includes;

- (i) anything on which there is writing;
- (ii) anything on which there are marks, figures, symbols, or perforations having meaning for persons qualified to interpret them;
- (iii) anything from which sounds, images or writings can be produced, with or without the aid of anything else;
- (iv) a map, plan, drawing, photograph or similar thing;

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1 (f) "gift" includes any transfer of property by a person to another  
2 person directly or indirectly:

3 (i) after the commission of a serious offense by the first  
4 person;

5 (ii) for a consideration the value of which is significantly less  
6 than the value of the property transferred; and

7 (iii) to the extent of the difference between the market value of  
8 the property transferred and the consideration provided by the transferee;

9 (g) "High Court" means the High Court of the Republic of the  
10 Marshall Islands;

11 (h) "interest", in relation to property, means:

12 (i) a legal or equitable estate or interest in the property;

13 (ii) a right, power or privilege in connection with the property;

14 (i) "person" means any natural or legal person;

15 (j) "proceeding" means any procedure conducted by or under the  
16 supervision of a judge or judicial officer however described in relation to any  
17 alleged or proven offense, or property derived from such offense, and includes an  
18 inquiry, investigation, or preliminary or final determination of facts;

19 (k) "proceeds of crime" means fruits of a crime, or any property  
20 derived or realized directly or indirectly from a serious offense and includes, on a  
21 proportional basis, property into which any property derived or realized directly  
22 from the offense was later successively converted, transformed or intermingled, as

1 well as income, capital or other economic gains derived or realized from such  
2 property at any time since the offense;

3 (l) "property" means currency and all other real or personal property  
4 of every description, whether situated in the Republic of the Marshall Islands or  
5 elsewhere and whether tangible or intangible, and includes an interest in any such  
6 property;

7 (m) "property of or in the possession or control of any person" includes  
8 any gift made by or to that person;

9 "realizable", with respect to "covered property" means:

10 (i) capable of being acquired, obtained, taken, seized,  
11 confiscated, or procured, in cash or capable of being liquidated and  
12 converted into cash; or

13 (ii) capable of being detected, located, found, discovered, and  
14 converted into cash through payment of the amount or value of  
15 defendant's interest therein;

16 (o) "serious offense" means a violation of:

17 (i) any law of Republic of the Marshall Islands, which is a  
18 criminal offense punishable by imprisonment for a term of more than one  
19 year;

20 (ii) a law of a foreign country, in relation to acts or omissions,  
21 which had they occurred in Republic of the Marshall, would have  
22 constituted a serious offense;

23 (p) "tainted property" means:

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1 (i). property used in, or in connection with, the commission of a  
2 serious offense; or

3 (ii). proceeds of crime, as defined in paragraph (k) of this section;

4 (2) A reference in this Act to the law of:

5 (a) the Republic of the Marshall Islands; or

6 (b) any foreign country,

7 includes a reference to a written or unwritten law of, or in force in, any part of the  
8 Republic of the Marshall Islands, or any part of that foreign country, as the case  
9 may be.

10 **Section 6. Charge in relation to a serious offense.**

11 Any reference in this Act to a person being charged or about to be charged with a  
12 serious offense is a reference to a procedure, however described, in the Republic of the  
13 Marshall Islands or elsewhere, by which criminal proceedings may be commenced.

14 **Section 7. Conviction in relation to a serious offense.**

15 (1) For the purposes of this Act, a person shall be considered to be convicted  
16 of a serious offense if:

17 (a) the person is convicted, whether upon a plea of guilty or no contest,  
18 or after trial, of the offense;

19 (b) the person is charged with, and found guilty of, the offense but is  
20 discharged without any conviction being recorded; or

21 (c) the High Court, with the consent of the convicted person, takes the  
22 offense, of which the person has not been found guilty, into account in passing  
23 sentence on the person for another serious offense.

1           (2) For the purposes of subsection (1), judgment or sentence need not have  
2       been imposed.

3 **Section 8. Quashing of convictions.**

4           For the purposes of this Act, a person's conviction for a serious offense shall be  
5       considered to be quashed in any case:

6           (1) where section 7(1)(a) applies, if the conviction is reversed or set aside;

7           (2) where section 7(1)(b) applies, if the finding of guilt is reversed or set  
8       aside;

9           (3) where section 7(1)(c) applies, if either:

10                  (a) the person's conviction for the other offense referred to in that  
11                  section, is reversed or set aside; or

12                  (b) the decision of High Court to take the offense into account in  
13                  passing sentence for that other offense is reversed or set aside.

14 **Section 9. Value of property.**

15           (1) Subject to subsections (2) and (3), for the purposes of this Act the value of  
16       property (other than cash) in relation to any person holding the property is:

17                  (a) its market value; or

18                  (b) where an innocent third party holds an interest in the property:

19                          (i) the market value of property, less the interest of the innocent  
20                          third party; or

21                          (ii) less the amount required to discharge any valid liens or  
22                          encumbrances.

23           (2) References in this Act to the value of a gift, or the value of any payment or

1 reward, means the value of the gift, payment or reward to the recipient when it was  
2 received, adjusted to account for any subsequent changes in the value of money.

3 Section 10.    **Dealing with property.**

4            For the purposes of this Act, dealing with property held by any person includes,  
5 without prejudice to the generality of the expression:

6            (1)    where the property is a debt owed to that person, making a payment to any  
7 person in reduction or full settlement of the amount of the debt;

8            (2)    making or receiving a gift of the property; or

9            (3)    removing the property from Republic of the Marshall Islands.

10 Section 11.    **Gift caught by this Act.**

11            (1)    A gift, including a gift made before the effective date of this Act, is caught  
12 by this Act where:

13            (a)    it was made by a defendant charged with or convicted of a serious  
14 offense, at any time after the commission of the offense to which the proceedings  
15 relate (or where more than one offense was committed, at any time after  
16 commission of the earliest of the offenses to which the proceedings relate); and,  
17 the High Court considers it appropriate, after consideration of all of the relevant  
18 circumstances, to take the gift into account; or where

19            (b)    it was made by a defendant charged with or convicted of a serious  
20 offense and was a gift of property:

21            (i)    received by the defendant in connection with the  
22 commission of a serious offense committed by the defendant or by  
23 another person; or

1 (ii) which (in whole or in part, directly or indirectly)  
2 represented (when in the defendant's hands) property received by the  
3 defendant in connection with the commission of a serious offense by the  
4 defendant or another person.

5 (2) For purposes of this Act:

6 (a) the circumstances in which a defendant must be treated as making  
7 a gift include those where the defendant transfers property to another person,  
8 directly or indirectly, for a consideration the value of which is significantly less  
9 than the value of the property transferred by the defendant; and,

10 (b) in those circumstances, the court shall apply the provisions of  
11 section 8, taking into account the difference between the value of the gift and the  
12 consideration, if any, provided to the defendant by the recipient.

13 Section 12. **Deriving benefit.**

14 A reference to a benefit derived or obtained by or otherwise accruing to a person  
15 includes a reference to a benefit derived or obtained by, or accruing to, a third party at the  
16 first person's request or direction.

17 Section 13. **Benefiting from the proceeds of a crime.**

18 For the purposes of this Act:

19 (1) a person is taken to have benefited from a crime if that person has at any  
20 time (whether before or after the commencement of this Act) received any payment or  
21 other reward in connection with, or derived any pecuniary advantage from, the  
22 commission of a serious offense, whether committed by that person or someone else;

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1 (2) a person's proceeds of a crime (whether received or derived before or after  
2 the commencement of this Act) are:

3 (a) any payments or other rewards received by the person at any time  
4 in connection with the offense; and/or

5 (b) any pecuniary advantage derived by the person at any time from  
6 the commission of offense;

7 (2) the value of a person's proceeds of a serious offense is the aggregate of the  
8 values of all payments, rewards or pecuniary advantages received by that person in  
9 connection with, or derived by the person from, the commission of the offense.

10 Section 14. **Restitution of restrained property.**

11 Where an investigation has begun against a person for a serious offense, property  
12 was restrained under this Act in relation to that offense, and any of the following occurs:

13 (1) the person is not charged in the Republic of the Marshall Islands with the  
14 serious offense;

15 (2) the person is charged with a serious offense in the Republic of the  
16 Marshall Islands, but not convicted of that offense;

17 (3) a conviction for that serious offense in the Republic of the Marshall  
18 Islands is quashed or reversed and no subsequent complaint is filed within a reasonable  
19 time thereafter,

20 the High Court shall order restitution of the restrained property together with the interest,  
21 if any, which has actually accrued, if such property is held in a financial institution.

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1 Section 15. **Damages.**

2 Nothing in this Act affects the right of a person whose property has been  
3 restrained to seek redress for due process or civil rights violations pursuant to the laws of  
4 the Republic of the Marshall Islands.

5 **Part II** Applications and Orders

6 Division 1 – Confiscation and Pecuniary Penalty Orders

7 Section 16. **Application for confiscation order or pecuniary penalty order.**

8 (1) Where a defendant is convicted of a serious offense, the Attorney General  
9 may apply to the High Court for one or both of the following orders:

10 (a) a confiscation order against property that is tainted property in  
11 respect of the offense;

12 (b) a pecuniary penalty order against the defendant in respect of  
13 benefits derived by the defendant from the commission of the offense;

14 provided, however, such application must be made within 1 year of the date the defendant  
15 was convicted for the serious offense.

16 (2) An application under subsection (1) may be made in respect of one or  
17 more than one offense.

18 (3) Where an application under this section is finally determined, no further  
19 application for a confiscation order or a pecuniary penalty order may be made in respect  
20 of the offense for which the defendant was convicted without the leave of the High Court.

21 The High Court shall not give such leave unless it is satisfied that:

22 (a) the property or benefit to which the new application relates,  
23 accrued or was identified after the previous application was determined;

1 (b) necessary evidence became available after the previous application  
2 was determined and could not reasonably have been discovered before such  
3 determination; or

4 (c) it is in the interest of justice that the new application be made.

5 Section 17. **Notice of application.**

6 (1) Where the Attorney General applies for a confiscation order against  
7 property in respect of the defendant's conviction of a serious offense:

8 (a) the Attorney General must give no less than 14 days written notice  
9 of the application to the defendant and to any other person who the Attorney  
10 General has reason to believe may have an interest in the property;

11 (b) the defendant and any other person who claims an interest in the  
12 property may appear and adduce evidence at the hearing of the application; and

13 (c) the High Court may, at any time before the final determination of  
14 the application, direct the Attorney General to:

15 (i) give notice of the application to any person who, in the  
16 opinion of the High Court, appears to have an interest in the property;

17 (ii) announce on public radio, and publish in a news journal  
18 published and circulating in the Republic of the Marshall Islands, a notice  
19 of the application.

20 (2) Where the Attorney General applies for a pecuniary penalty order against  
21 a defendant:

22 (a) the Attorney General shall give the defendant no less than 14 days  
23 notice of the application; and

1 (b) the defendant may appear and adduce evidence at the hearing of  
2 the application.

3 Section 18. **Amendment of application.**

4 (1) The High Court hearing the application under section 16(1) may, before  
5 the final determination of the application, and on the application of the Attorney General,  
6 amend the application to include any other property or benefit, as the case may be, upon  
7 being satisfied that:

8 (a) the property or benefit was not reasonably capable of identification  
9 when the application was made;

10 (b) necessary evidence became available only after the application was  
11 originally made.

12 (2) Where the Attorney General applies to amend an application for a  
13 confiscation order and the amendment would have the effect of including additional  
14 property in the application for confiscation, the Attorney General must give no less than  
15 14 days written notice of the application to amend, to any person who the Attorney  
16 General has a reason to believe may have an interest in the property to be included in the  
17 application for a confiscation order.

18 (3) Any person who claims an interest in the property to be included in the  
19 application of a confiscation order may appear and adduce evidence at the hearing of the  
20 application to amend.

21 (4) Where the Attorney General applies to amend an application for a

1 pecuniary penalty order against a defendant and the effect of the amendment would be to  
2 include an additional benefit in the application the Attorney General must give the  
3 defendant no less than 14 days written notice of the application to amend.

4 Section 19. **Procedure on application.**

5 (1) Where an application is made to the High Court for a confiscation order or  
6 a pecuniary penalty order in respect of a defendant's conviction of a serious offense, the  
7 High Court may, in determining the application, have regard to the transcript of any  
8 proceedings against the defendant for the offense.

9 (2) Where an application is made for a confiscation order or a pecuniary  
10 penalty order to the High Court before which the defendant was convicted, and the High  
11 Court has not, when the application is made, passed sentence on the defendant for the  
12 offense, the High Court may, if it is satisfied that it is reasonable to do so in all the  
13 circumstances, defer passing sentence until it has determined the application for the  
14 order.

15 Division 2. *Confiscation Order*

16 Section 20. **Procedure for *in rem* confiscation order where person dies or  
17 absconds.**

18 (1) Where:

19 (a) an information or complaint has been filed alleging the  
20 commission of a serious offense by a person; and

21 (b) a warrant for the arrest of the person has been issued in relation to  
22 that information or complaint,

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1 the Attorney General may apply to the High Court for a confiscation order in respect of  
2 any tainted property if the defendant has died or absconded.

3 (2) For the purposes of subsection (1) and section 21, the person is deemed to  
4 have absconded if reasonable attempts to arrest the person pursuant to the warrant have  
5 been unsuccessful during a period of 6 months commencing on the day the warrant was  
6 issued, and the person shall be deemed to have so absconded on the last day of that  
7 period.

8 (3) Where the Attorney General applies under this section for a confiscation  
9 order against any tainted property the High Court shall, before hearing the application:

10 (a) require notice of the application to be given to any person who, in  
11 the opinion of the High Court, appears to have an interest in the property;

12 (b) direct that notice of the application be announced on public radio,  
13 and published in a newspaper published and circulating in the Republic of the  
14 Marshall Islands, containing such particulars and for so long as the High Court  
15 may require.

16 **Section 21. Confiscation where a person dies or absconds.**

17 (1) Subject to section 20(3), where an application is made to the High Court  
18 under section 20(1) for a confiscation order against any tainted property by reason of a  
19 person having died, or absconded in connection with a serious offense, and the Court is  
20 satisfied that:

21 (a) any property is tainted property in respect of the offense;

22 (b) proceedings in respect of a serious offense committed in relation to  
23 that property were commenced; and

1 (c) the accused charged with the offense referred to in paragraph

2 (1)(b) has died or absconded;

3 the High Court may order that the property or such property as is specified by the High  
4 Court in the order be confiscated.

5 (2) The provisions of subsection 20(2), and sections 22, 23, 24 and 25 shall  
6 apply with such modifications as are necessary to give effect to this section.

7 **Section 22. Confiscation order on conviction.**

8 (1) Where, upon application by the Attorney General, the High Court is  
9 satisfied that property is tainted property in respect of a serious offense of which a  
10 person has been convicted, the High Court may order that specified property be  
11 confiscated.

12 (2) In determining whether property is tainted property the High Court may  
13 presume, in the absence of evidence to the contrary:

14 (a) that the property was used in or in connection with the commission  
15 of the offense if it was in the person's possession at the time of, or immediately  
16 after the commission of the offense for which the person was convicted;

17 (b) that the property was derived, obtained or realized as a result of the  
18 commission of the offense if it was acquired by the person before, during or  
19 within a reasonable time after the period of the commission of the offense of  
20 which the person was convicted, and the High Court is satisfied that the income of  
21 that person from sources unrelated to criminal activity of that person cannot  
22 reasonably account for the acquisition of that property.

23 (3) Where the High Court orders that property, other than money, be

1 confiscated, the High Court shall specify in the order the amount that it considers to be  
2 the value of the property at the time when the order is made, taking account of how such  
3 value is to be determined under section 9 of this Act.

4 (4) In considering whether a confiscation order should be made under  
5 subsection (1) the High Court shall have regard to:

6 (a) the rights and interests, if any, of innocent third parties in the  
7 property;

8 (b) the gravity of the offense concerned;

9 (c) any hardship that may reasonably be expected to be caused to any  
10 innocent person by the operation of the order; and

11 (d) the use that is ordinarily made of the property, or the use to which  
12 the property was intended to be put.

13 (5) Where the High Court makes a confiscation order, the High Court may  
14 give such directions as are necessary or convenient for giving effect to the order.

15 **Section 23. Effect of confiscation order.**

16 (1) Subject to subsection (2), where a Court makes a confiscation order  
17 against any property, the property vests absolutely in the Republic of the Marshall Islands  
18 by virtue of the order, except with respect to real property, where any legislation *or*  
19 customary land practices then in force prohibits the Republic of the Marshall Islands  
20 from taking title to such real property, in which case a lien shall immediately attach to the  
21 property in favor of the Republic of the Marshall Islands in the amount of the value of the  
22 property less any prior recorded encumbrances. In the case of such real property the  
23 Attorney General shall be authorized to make application to the High Court, and the High

1 Court may grant an order forcing the sale of such property (unless the sale of such  
2 property is prohibited by legislation, or customary land practices then in force in the  
3 Republic), with proceeds to be paid to the Republic of the Marshall Islands after sale, less  
4 prior recorded encumbrances

5 (2) Where property ordered to be confiscated is recordable property, and  
6 where not prohibited under the laws of the Republic of the Marshall Islands:

7 (a) the property vests in the Republic of the Marshall Islands in equity  
8 but does not vest in the Republic of the Marshall Islands at law until the applicable  
9 recordation requirements have been complied with;

10 (b) the Republic of the Marshall Islands is entitled to be recorded as  
11 owner of the property;

12 (c) the Attorney General has power on behalf of the Republic of the  
13 Marshall Islands to do or authorize the doing of anything necessary or convenient  
14 to obtain the recordation of the Republic of the Marshall Islands as owner,  
15 including the execution of any instrument to be executed by a person transferring  
16 an interest in property of that kind.

17 (3) Where the High Court makes a confiscation order against property:

18 (a) the property shall not, except with the leave of the High Court and  
19 in accordance with any directions of the High Court, be disposed of, or otherwise  
20 dealt with, by or on behalf of the Republic of the Marshall Islands before the  
21 relevant appeal date; and

22 (b) if, after the relevant appeal date, the order has not been discharged,

1 the property may be disposed of and the proceeds applied or otherwise dealt with  
2 in accordance with the direction of the Attorney General.

3 (4) In this section:

4 (a) "Recordable property" means real property the title to which is  
5 passed by recordation in accordance with the provisions of the law;

6 (b) "Relevant appeal date" used in relation to a confiscation order  
7 made in consequence of a person's conviction of a serious offense means:

8 (i) the date on which the period allowed by rules of court for  
9 the lodging of an appeal against a person's conviction or for the lodging of  
10 an appeal against the making of a confiscation order expires without an  
11 appeal having been lodged, whichever is the later; or

12 (ii) where an appeal against a person's conviction or against  
13 the making of a confiscation order is lodged, the date on which the appeal  
14 is finally determined.

15 Section 24. **Voidable transfers.**

16 The High Court may:

17 (1) before making a confiscation order; and

18 (2) in the case of property in respect of which a restraining order was made,  
19 where the order was served in accordance with section 40,

20 set aside any conveyance or transfer of the property that occurred after the seizure of the  
21 property or the service of the restraining order, unless the conveyance or transfer was  
22 made for valuable consideration to a person acting in good faith and without notice.

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1 Section 25.    **Protection of third parties.**

2           (1)   Where an application is made for a confiscation order against property, a  
3           person who claims an interest in the property may apply to the High Court, before  
4           the confiscation order is made, for an order under subsection (2).

5           (2)   If a person applies to the High Court for an order under this section in  
6           respect of property and the High Court is satisfied:

7                   (a)   that the person was not in any way involved in the commission of  
8           the offense; and

9                   (b)   where the person acquired the interest during or after the  
10          commission of the offense, that he or she acquired the interest:

11                           (i)   for sufficient consideration; and

12                           (iii)  without knowing, and in circumstances such as not to  
13                           arouse a reasonable suspicion, that the property was, at the time he or she  
14                           acquired it, tainted property,

15          the High Court shall make an order declaring the nature, extent and value (at the time the  
16          order is made) of the person's interest.

17          (3)   Subject to subsection (4), where a confiscation order has already been  
18          made directing the confiscation of property, a person who claims an interest in the  
19          property may, before the end of the period of 12 months commencing on the day on  
20          which the confiscation order is made, apply to the High Court for an order under  
21          subsection (2).

22          (4)   A person who:

23                   (a)   had knowledge of the application for the confiscation order before

1 the order was made; or

2 (b) appeared at the hearing of that application,

3 shall not be permitted to make an application under subsection (3), except with leave of  
4 the High Court.

5 (5) A person who makes an application under subsections (1) or (3) must give  
6 no less than 14 days written notice of the making of the application to the Attorney  
7 General, who shall be a party to any proceedings in the application.

8 (6) An applicant or the Attorney General may, in accordance with the rules of  
9 court, appeal the Court's order made under subsection (2).

10 (7) Any person appointed by the High Court under section 48 shall, on  
11 application by any person who has obtained an order under subsection (2), and where the  
12 period allowed by the rules of court with respect to the making of a claim has expired and  
13 any appeal from that order has been determined:

14 (a) direct that the property or part thereof to which the interest of the  
15 applicant relates, be returned to the applicant; or

16 (b) direct that an amount equal to the value of the interest of the  
17 applicant, as declared in the order, be paid to the applicant.

18 Section 26. **Discharge of confiscation order on quashing or reversal of conviction.**

19 (1) Where the High Court makes a confiscation order against property in  
20 reliance on a person's conviction of a serious offense and the conviction is subsequently  
21 reversed by a court of final jurisdiction, the reversal of the conviction discharges the  
22 order. However, upon notice of intent by the Attorney General to recharge the matter, the  
23 court may order continued detention of the property pursuant to section 22 of this Act.

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1           (2)     Where a confiscation order against property is discharged as provided for  
2 in subsection (1) or by the Court hearing an appeal against the making of the confiscation  
3 order, any person who claims to have had an interest in the property immediately before  
4 the making of the confiscation order may apply to the court in writing for the transfer of  
5 the interest to the person.

6           (3)     On receipt of an application under subsection (2) the court shall conduct a  
7 hearing to determine, by a preponderance of the evidence, ownership of the property, and  
8 if satisfied that the applicant is lawfully entitled, and has no complicity with respect to the  
9 offense, shall:

10           (a)     if the interest is vested in the Republic of the Marshall Islands give  
11 directions that the property or part thereof to which the interest of the applicant  
12 relates be transferred to the person; or

13           (b)     in any other case, direct that there be payable to the person an  
14 amount equal to the value of the interest as at the time the order is made.

15 **Section 27.     Payment instead of a confiscation order.**

16           Where the High Court is satisfied that a confiscation order should be made in  
17 respect of the property of a person convicted of a serious offense, but that the property or  
18 any part thereof or interest therein cannot be made subject to such an order and, in  
19 particular:

20           (1)     cannot, on the exercise of due diligence be located;

21           (2)     has been transferred to a third party in circumstances which do not give  
22 rise to a reasonable inference that the title or interest was transferred for the purpose of  
23 avoiding the confiscation of the property;

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1 (3) is located outside the Republic of the Marshall Islands;

2 (4) has been substantially diminished in value or rendered worthless; or

3 (5) has been commingled with other property that cannot be divided without  
4 difficulty;

5 the High Court may, instead of ordering the property or part thereof or interest therein to  
6 be confiscated, order the person to pay to the Republic of the Marshall Islands an amount  
7 equal to the value of the property, part or interest, taking account of section 9 of this Act.

8 **Section 28. Application of procedure for enforcing fines.**

9 Where the High Court orders a person to pay an amount under section 27, that  
10 amount shall be treated as if it were a fine imposed upon him or her in respect of a  
11 conviction for a serious offense, and the High Court shall:

12 (1) notwithstanding anything contained in any other Act, or law, impose for  
13 contumacious default of the payment of that amount, a term of imprisonment:

14 (a) of not more than 30 days, where the amount does not exceed  
15 \$1,000;

16 (b) of not more than one year, where the amount does not exceed  
17 \$5,000;

18 (b) of not more than five years, where the amount does not exceed  
19 \$50,000 dollars;

20 (d) of not more than ten years, where the amount exceeds \$50,000;

21 (2) direct that the term of imprisonment imposed pursuant to subsection (1) be  
22 served consecutively to any other form of imprisonment imposed on that person, or that  
23 the person is then serving;

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1 (3) direct that other provisions of the Marshall Islands National Code  
2 regarding the disposition of offenders serving a term of imprisonment shall not apply in  
3 relation to a term of imprisonment imposed on a person pursuant to subsection (1).

4

5 **Division 3 - Pecuniary Penalty Orders**

6 **Section 29. Pecuniary penalty order on conviction.**

7 (1) Subject to this section, where the Attorney General applies to the High  
8 Court for a pecuniary penalty order against a defendant in respect of the defendant's  
9 conviction for a serious offense, the Court shall, if it is satisfied that the defendant has  
10 benefited from that offense, order the defendant to pay to the Republic of the Marshall  
11 Islands an amount equal to the value of the defendant's benefit from the offense or such  
12 lesser amount as the Court determines in accordance with section 32 to be the amount  
13 that might be recovered at the time the pecuniary penalty order is made.

14 (2) The High Court shall assess the value of the benefits derived by a person  
15 from the commission of an offense in accordance with sections 30, 31, 32 and 33.

16 (3) The High Court shall not make a pecuniary penalty order under this  
17 section:

18 (a) until the period allowed by the rules of court for the lodging of an  
19 appeal against the conviction has expired without such appeal having been  
20 lodged; or

21 (b) where an appeal against the conviction has been lodged, until the  
22 appeal is dismissed in accordance with the rules of court or is finally determined,  
23 whichever is the later date.

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1 **Section 30. Determination of benefit and assessment of value.**

2 (1) Where a defendant obtains property as the result of, or in connection with  
3 the commission of a serious offense, the defendant's benefit is the value of the property  
4 so obtained. Value means fair market value at the time the property was obtained or at  
5 the time of conviction, at whichever time the value is greater.

6 (2) Where a defendant derived an advantage as a result of or in connection  
7 with the commission of a serious offense, the defendant's advantage shall be deemed to  
8 be a sum of money equal to the value of the advantage so derived.

9 (3) The High Court, in determining whether a person has benefited from the  
10 commission of a serious offense or from that offense taken together with other serious  
11 offenses shall, unless the contrary is proved by the defendant beyond a reasonable doubt,  
12 presume:

13 (a) all property appearing to the High Court to be:

14 (i) held by the person on the day on which the application is made;

15 and

16 (ii) all property appearing to the High Court to be held by the

17 person at any time:

18 (aa) within the period between the day the serious offense, or  
19 the earliest serious offense, was committed and the day on  
20 which the application is made; or

21 (bb) within the period of 6 years immediately before the day on  
22 which the application is made, whichever is the longer,

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1 to be property that came into the possession or under the control of the person by reason  
2 of the commission of that serious offense or those serious offenses for which the  
3 defendant was convicted;

4 (b) any expenditure by the defendant since the commission of the  
5 offense to be expenditure met out of payments received by the defendant as a  
6 result of, or in connection with, the commission of that serious offense or those  
7 serious offenses; and

8 (c) any property received or deemed to have been received by the  
9 defendant at any time as a result of, or in connection with the commission by the  
10 defendant of that serious offense, or those serious offenses, to be property  
11 received by the defendant free of any interest therein.

12 (4) Where a pecuniary penalty order has been previously made against a  
13 defendant, in assessing the value of any benefit derived by the defendant from the  
14 commission of the serious offense, the High Court shall leave out of account any benefits  
15 that are shown to the High Court to have been taken into account in determining the  
16 amount to be recovered under that order.

17 (5) If evidence is given at the hearing of the application that the value of the  
18 defendant's property at any time after the commission of the serious offense exceeded  
19 the value of the defendant's property before the commission of the offense, then the High  
20 Court shall, subject to subsection (6) treat the value of the benefit as being not less than  
21 the amount of that excess.

22 (6) Subsection (5) shall not apply to the excess or part of the defendant's  
23 property if, after evidence of the kind referred to in that subsection is given, the defendant

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1 satisfies the High Court beyond a reasonable doubt that the whole or part of the excess  
2 was due to causes unrelated to the commission of the serious offense.

3 Section 31. **Statements relating to benefits from commission of serious offenses.**

4 (1) Where:

5 (a) a defendant has been convicted of a serious offense and the  
6 Attorney General tenders to the High Court a statement as to any matters relevant  
7 to:

8 (i) determining whether the defendant has benefited from the  
9 offense or from any other serious offense of which defendant is convicted in  
10 the same proceedings or which is taken into account in determining his or  
11 her sentence; or

12 (iii) an assessment of the value of the defendant's benefit from  
13 the offense or any other serious offense of which defendant is convicted in  
14 the same proceedings or which is taken into account; and

15 (b) the defendant admits to any extent, an allegation in the statement,  
16 the High Court may, for the purposes of so determining or making that assessment, treat  
17 the defendant's admission as conclusive of the matters to which it relates.

18 (2) Where:

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

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

1 the High Court may require the defendant to indicate to what extent the defendant admits  
2 each allegation in the statement and, so far as the defendant does not admit any  
3 allegation, to indicate any matters the defendant proposes to deny or reply on.

4 (3) Where the defendant fails in any respect to comply with a requirement  
5 under subsection (2), the defendant may be treated for the purposes of this section as  
6 having admitted every allegation in the statement, except for any allegation in respect of  
7 which the defendant complied with the requirements of subsection (2).

8 (4) Where:

9 (a) the defendant tenders to the High Court a statement as to any  
10 matters relevant to determining the amount that might be recovered at the time the  
11 pecuniary penalty order is made; and

12 (c) the Attorney General admits to any extent any allegation in the  
13 statement,

14 the High Court may, for the purposes of that determination, treat the admission of the  
15 Attorney General as conclusive of the matters to which it relates.

16 (5) An allegation may be admitted, or denied, or a matter indicated for the  
17 purposes of this section, either:

18 (a) orally before the High Court; or

19 (b) in writing, in accordance with the rules of court.

20 (6) An admission by a defendant under this section that the defendant  
21 received any benefits from the commission of a serious offense is admissible in any  
22 proceedings for any offense.

23

1 Section 32.    **Amount recovered under pecuniary penalty order.**

2           (1)   The amount to be recovered from the defendant under a pecuniary penalty  
3 order shall be the amount that the High Court assesses to be the value of the defendant's  
4 benefit from the serious offense, or if more than one offense, the aggregate benefit of all  
5 the offenses.

6           (2)   Where the amount of the benefit derived by the defendant from the serious  
7 offense(s) greatly exceeds the amount which might be recovered from the defendant at  
8 the time the pecuniary penalty order is made, the High Court may make a pecuniary  
9 penalty order in such amount as the court finds is realizable at the time of issuance of the  
10 order, but shall be required to issue findings of fact justifying such lesser amount.

11 Section 33.    **Variation of pecuniary penalty order.**

12           Where:

13           (1)   the High Court makes a pecuniary penalty order against a defendant in  
14 relation to a serious offense;

15           (2)   in calculating the amount of the pecuniary penalty order, the Court took  
16 into account a confiscation order of property or a proposed confiscation order in respect  
17 of property; and

18           (3)   an appeal against confiscation or a confiscation order is allowed, or the  
19 proceedings from the proposed confiscation order terminate without the proposed  
20 confiscation order being made,

21 the Attorney General may apply to the High Court for a variation of the pecuniary  
22 penalty order to increase the amount of the order by the value of the property not so

1 confiscated and the High Court may, if it considers it appropriate to do so, vary the order  
2 accordingly.

3 Section 34.    **Lifting the corporate veil.**

4            (1)    In assessing the value of benefits derived by a defendant from the  
5 commission of a serious offense, the High Court may treat as property of the defendant  
6 any property that, in the opinion of the High Court, is subject to the effective control of  
7 the defendant, whether or not the defendant has:

- 8                    (a)            any legal or equitable interest in the property; or
- 9                    (b)            any right, power or privilege in connection with the property.

10            (2)    Without prejudice to the generality of subsection (1), the High Court may  
11 take into consideration:

- 12                    (a)            shareholdings in, debentures over or directorships in any company,  
13 corporation or commercial enterprise that has an interest, whether direct or  
14 indirect, in the property, and for this purpose the High Court may order the  
15 investigation and inspection of the books and records of any named company,  
16 corporation or commercial enterprise;

- 17                    (b)            any trust that has any relationship to the property;

- 18                    (c)            any relationship whatsoever between the persons having an interest  
19 in the property or in companies of the kind referred to in subsection (2)(a) or trust  
20 of the kind referred to in subsection (2)(b), and any other persons.

21            (3)    Where the Court, for the purposes of making a pecuniary penalty order

1 against a defendant, treats particular property as the defendant's property pursuant to  
2 subsection (1), the High Court may, on application by the Attorney General, make an  
3 order declaring that the property is available to satisfy the order.

4 (4) Where the High Court declares that property is available to satisfy a  
5 pecuniary penalty order:

6 (a) the order may be enforced against the property as if the property  
7 were the property of the defendant against whom the order is made; and

8 (b) a restraining order may be made in respect of the property as if the  
9 property were property of the defendant against whom the order is made.

10 (5) Where the Attorney General makes an application for an order under  
11 subsection (3) that property is available to satisfy a pecuniary penalty order against a  
12 defendant:

13 (a) the Attorney General shall give written notice of the application to  
14 the defendant and to any person who the Attorney General has reason to believe  
15 may have an interest in the property; and

16 (b) the defendant and any person who claims an interest in the  
17 property may appear and adduce evidence at the hearing.

18 **Section 35. Enforcement of pecuniary penalty orders.**

19 Where the High Court orders a defendant to pay an amount under a pecuniary  
20 penalty order, the provisions of section 28 shall apply with such modifications as the  
21 High Court may determine for the purpose of empowering the High Court to impose a  
22 term of imprisonment on a defendant in contumacious default of compliance by the  
23 defendant with a pecuniary penalty order.

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1 Section 36.    **Discharge of pecuniary penalty orders.**

2            A pecuniary penalty order is discharged:

3            (1)        if the conviction of the serious offense or offenses in reliance on which the  
4            order was made is reversed and no conviction for the offense or offenses is substituted;

5            (2)        if the order is rescinded; or

6            (4)        on the satisfaction of the order by payment of the amount due under the  
7            order.

8            **Division 4** - *Restraining Orders*

9            Section 37    **Application for restraining order.**

10           (1)        The Attorney General may apply to the High Court for a restraining order  
11           against any covered property whether held by a defendant or held by a person other than  
12           a defendant.

13           (2)        An application for a restraining order may be made *ex parte* and shall be  
14           in writing and be accompanied by an affidavit stating:

15                    (a)        where a defendant has been convicted of a serious offense, the  
16                    serious offense for which the defendant was convicted, the date of the conviction,  
17                    the court before which the conviction was obtained and whether an appeal has  
18                    been lodged against the conviction;

19                    (b)        where a defendant has not been convicted of a serious offense, the  
20                    serious offense with which the defendant is charged or about to be charged and the  
21                    grounds for believing that the defendant committed the offense;

22                    (c)        a description of the property sought to be restrained;

23                    (d)        the name and address of the person who is believed to be in

1 possession of the property;

2 (e) the grounds for the belief that the property is tainted property in  
3 relation to the offense;

4 (f) the grounds for the belief that the defendant derived a benefit  
5 directly or indirectly from the commission of the offense;

6 (g) where the application seeks a restraining order against property of  
7 a person other than the defendant, the grounds for the belief that the property is  
8 tainted property in relation to the offense and is subject to the effective control of  
9 the defendant; and

10 (h) the grounds for the belief that a confiscation order or a pecuniary  
11 penalty order may be or is likely to be made under this subchapter in respect of the  
12 property.

13 Section 38. **Restraining orders.**

14 (1) Subject to this section, where the Attorney General applies to the High  
15 Court for a restraining order against property and the High Court is satisfied that:

16 (a) the defendant has been convicted of a serious offense, or has been  
17 charged or is about to be charged with a serious offense; or

18 (b) where the defendant has not been convicted of a serious offense,  
19 there are reasonable grounds for believing that the defendant committed the  
20 offense; or

21 (c) there is reasonable cause to believe that the property is tainted  
22 property in relation to an offense, or that the defendant derived a benefit directly  
23 or indirectly from the commission of the offense; or

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1 (d) where the application seeks a restraining order against property of  
2 a person other than the defendant, there are reasonable grounds for believing that  
3 the property is tainted property in relation to an offense, and that the property is  
4 subject to the effective control of the defendant; and

5 (e) there are reasonable grounds for believing that a confiscation order  
6 or a pecuniary penalty order is likely to be made under this Division in respect of  
7 the property;

8 the High Court may make an order:

9 (f) prohibiting the defendant or any person from disposing of, or  
10 otherwise dealing with, the property or such part thereof or interest therein as is  
11 specified in the order, except in such manner as may be specified in the order; and

12 (g) at the request of the Attorney General or upon its own motion,  
13 where the High Court is satisfied that the circumstances so require the court may:

14 (i) appoint a receiver or fiduciary to take custody of the  
15 property or such part thereof as is specified in the order and to manage or  
16 otherwise deal with all or any part of the property in accordance with the  
17 directions of the High Court; and

18 (ii) require any person having possession of the property to  
19 give possession thereof to the receiver or fiduciary.

20 (2) In extreme cases, where undue hardship to innocent parties would  
21 otherwise occur, an order under subsection (1) may be made subject to such conditions  
22 as the High Court thinks fit providing for meeting out of the property or a specified part  
23 of the property the reasonable living expenses of defendant's immediate family.

1           (3)     In determining whether there are reasonable grounds for believing  
2 property is subject to the effective control of the defendant, the Court may take into  
3 account the matters referred to in section 34.

4           (4)     Where the court appointed receiver or fiduciary is given a direction in  
5 relation to any property, he or she may apply to the High Court for directions or any  
6 question respecting the management or preservation of the property under his or her  
7 control.

8           (5)     An application under section 37 shall be served on all persons interested in  
9 the application or such of them as the Court thinks expedient and all such persons shall  
10 have the right to appear at the hearing and be heard.

11          (6)     When the application is made under section 37 on the basis that a person is  
12 about to be charged, any order made by the High Court shall lapse if the person is not  
13 charged:

14                 (a)     where the offense is an offense against the law of the Republic of  
15 the Marshall Islands, within five working days; and

16                 (b)     where the offense is an offense against the law of a foreign State,  
17 within 150 working days.

18 **Section 39.    Notice of application for restraining order.**

19           Before entering a restraining order the High Court may require notice to be given  
20 to, and may hear, any person who, in the opinion of the High Court, appears to have an  
21 interest in the property, unless the Court is of the opinion that giving such notice before  
22 making the order would result in the disappearance, dissipation or reduction in value of  
23 the property.

1 Section 40.    **Service of restraining order.**

2            A copy of a restraining order shall be served on a person affected by the order in  
3 such manner as the High Court directs or as may be prescribed by rules of court.

4 Section 41.    **Recording of restraining order.**

5            (1)    A copy of a restraining order which affects land in the Republic of the  
6 Marshall Islands shall be recorded with the land registration authority.

7            (2)    A restraining order is of no effect with respect to recorded land unless it is  
8 recorded as an encumbrance under the applicable land registration law.

9            (3)    Where particulars of a restraining order are recorded under the applicable  
10 land registration law, a person who subsequently deals with the property shall, for the  
11 purposes of section 63, be deemed to have notice of the order at the time of the dealing.

12 Section 42.    **Violation of restraining order.**

13            (1)    A person who knowingly violates a restraining order by disposing of or  
14 otherwise dealing with property that is subject to the restraining order commits an  
15 offense, punishable upon conviction by imprisonment for a maximum of five years or a  
16 maximum fine of \$50,000, or both, provided, however, in the case of a corporation,  
17 company, commercial enterprise, commercial entity or other legal person, the maximum  
18 fine shall be increased to \$250,000.

19            (2)    Where a restraining order is entered against property and the property is  
20 disposed of, or otherwise dealt with, in violation of the restraining order, and the  
21 disposition or dealing was not for sufficient consideration or not in favor of a person who  
22 acted in good faith and without notice, the Attorney General may apply to the High Court  
23 that entered the restraining order for an order that the disposition or dealing be set aside.

1 (4) Where the Attorney General makes an application under subsection (2) in  
2 relation to a disposition or dealing, the High Court may:

3 (a) set aside the disposition or dealing as from the day on which the  
4 disposition or dealing took place; or

5 (c) set aside the disposition or dealing as from the day of the order  
6 under this section and declare the respective rights of any persons who acquired  
7 interests in the property on, or after the day on which the disposition or dealing  
8 took place, and before the day of the order under this section.

9 **Section 43. Duration of restraining order.**

10 A restraining order issued under this Act remains in force until:

11 (1) it is discharged, revoked or modified;

12 (2) the period of 6 months from the date on which it is made or such later time  
13 as the High Court may determine; or

14 (3) a confiscation order or a pecuniary penalty order, as the case may be, is  
15 made in respect of property which is the subject of the order.

16 **Section 44. Review of restraining orders.**

17 (1) A person, other than the defendant, who has an interest in property in  
18 respect of which a restraining order was issued may, at any time, apply to the High Court  
19 for an order under subsection (4).

20 (2) An application made under subsection (1) shall not be heard by the High  
21 Court unless the applicant has given the Attorney General at least 5 working days notice  
22 in writing of the application.

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1           (3)     The High Court may require notice of the application to be given to, and  
2 may hear, any person who in the opinion of the High Court appears to have an interest in  
3 the property.

4           (4)     On an application under subsection (1) the High Court may revoke or  
5 modify the order or make the order subject to such conditions as the High Court thinks  
6 fit. For the purposes of this subsection the High Court may:

7                   (a)     impose conditions on the applicant;

8                   (b)     modify the order to permit the payment of reasonable living  
9 expenses of the applicant, including his or her dependents, if any, and reasonable  
10 legal or business expenses of the applicant.

11          (5)     An order under subsection (4) may only be made if the Court is satisfied  
12 that the:

13                   (a)     applicant is the lawful owner of the property or is entitled to lawful  
14 possession thereof, and appears to be innocent of any complicity in the  
15 commission of a serious offense or of any collusion in relation to such offense; and

16                   (b)     that the property will no longer be required for the purposes of any  
17 investigation or as evidence in any proceedings.

18 Section 45.    **Extension of restraining orders.**

19          (1)     The Attorney General may apply to the judge of the High Court that  
20 entered a restraining order for an extension of the period of the operation of the order.

21          (2)     Where the Attorney General makes an application under subsection (1),

1 the High Court may extend the operation of a restraining order for a specified period, if it  
2 is satisfied that a confiscation order may be made in respect of the property or part  
3 thereof or that a pecuniary penalty order may be made against the person.

### 4 **Part III** Realization of Property

#### 5 Section 46. **Realization of covered property.**

6 (1) Where:

- 7 (a) a pecuniary penalty order is made;
- 8 (b) all conditions of the order have been met; and
- 9 (c) the order is not discharged,

10 the High Court may, on an application by the Attorney General, exercise the powers  
11 conferred upon the High Court by this section with respect to covered.

12 (2) The High Court may appoint a receiver in respect of the covered property,  
13 to take possession of the property subject to such conditions or exceptions as may be  
14 specified by the High Court.

15 (3) The High Court may order any person having possession of covered  
16 property to give possession of it to any such receiver.

17 (4) The High Court may empower any such receiver to realize (liquidate and  
18 convert into cash and/or obtain payment of the value of defendant's interest) any covered  
19 property in such manner as the High Court may direct.

20 (5) The High Court may order any person holding an interest in covered  
21 property to make such payment to the receiver in respect of any interest held by the  
22 defendant or, as the case may be, the recipient of a gift caught by this Act as the High

1 Court may direct, and the High Court may, on the payment being made, by order transfer,  
2 grant or extinguish any interest in the property.

3 (6) The High Court shall not, in respect of any property, exercise the powers  
4 conferred by subsections (2), (3), (4) or (5), unless a reasonable opportunity has been  
5 given for persons holding any interest in the property to make representations to the High  
6 Court.

7 Section 47. **Application of proceeds of realization and other sums.**

8 (1) Subject to subsection (2), the following property in the hands of a receiver  
9 appointed under this Act, being:

10 (a) the proceeds of the realization of any property under section 46;

11 and

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

13 shall, after such payments, if any, as the High Court may direct have been made out of  
14 those sums, be payable to the Clerk of the High Court and be applied on the defendant's  
15 behalf towards the satisfaction of the pecuniary penalty order in the manner provided by  
16 subsection (3).

17 (2) If, after the amount payable under a confiscation order has been fully  
18 paid, any such sums remain in the hands of such a receiver, the receiver shall distribute  
19 those sums:

20 (a) among such of those innocent third persons who held covered  
21 property which has been recovered under this Division (either through seizure and  
22 liquidation or by payment of defendant's interest therein by the holder) who have  
23 come forward and made application to the Court for return of the property; and

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1 (b) in such proportions,  
2 as the High Court may direct, after giving a reasonable opportunity for those persons to  
3 make representations to the High Court.

4 (3) Property received by the Clerk of the High Court on account of an amount  
5 payable under a confiscation order shall be applied as follows:

6 (a) if received by the Clerk from a receiver under subsection (1), it  
7 shall first be applied in payment of the receiver's remuneration and expenses; and

8 (b) the balance shall be paid or, as the case may be, transferred, to the  
9 Republic of the Marshall Islands General Fund.

10 Section 48. **Exercise of powers of receiver or fiduciary.**

11 (1) The provisions of this section shall apply to the powers conferred on the  
12 High Court by sections 38, 44, 45, and 46, or to a receiver or fiduciary appointed under  
13 paragraph 38(1)(g) or section 46.

14 (2) The position of receiver or fiduciary shall be one of confidence and trust,  
15 and the powers of a receiver or fiduciary shall be exercised by him or her with the highest  
16 degree of competence, honesty, good faith and fair dealing.

17 (3) Subject to the following provisions of this section, the powers of a  
18 receiver or fiduciary shall be exercised so as to satisfy any pecuniary penalty order,  
19 which order shall be satisfied first from the present value of covered property of the  
20 defendant.

21 (4) In the case of covered property held by a person to whom the defendant  
22 has directly or indirectly made a gift caught by this Act, the receiver or fiduciary shall  
23 endeavor to realize the present value of the gift.

1 (5) The powers shall be exercised with a view to allowing any innocent  
2 person or the innocent recipient of any such gift to retain or recover the value of any  
3 property held by him or her.

4 (6) An order may be made or other action taken in respect of costs arising  
5 from the case.

6 (7). In exercising the powers granted under this section, no account shall be  
7 taken of any obligations of the defendant or of the recipient of any such gift which  
8 conflict with the obligation to satisfy the pecuniary penalty order or any confiscation  
9 order issued in the case.

10 **Section 49. Supremacy of this Part in bankruptcy or winding up.**

11 (1) Where a person who holds covered property is adjudged bankrupt in any  
12 proceeding wherever held, the Republic of the Marshall Islands shall stand as first  
13 lienholder to the extent of any amount owed by the bankrupt person in the Republic of  
14 the Marshall Islands as a pecuniary penalty or under a confiscation order; and,

15 (a) property located in the Republic of the Marshall Islands which is  
16 subject to a restraining order made before the order adjudging the person bankrupt;  
17 and

18 (b) any proceeds of property confiscated under this Act, or recovered  
19 by virtue of subsection 46(5) or 46 (6), and held by a person appointed under  
20 paragraph 38 (1)(g) or subsection 46(2),

21 shall not be considered as property of the bankrupt person or the estate for the purposes  
22 of the applicable Bankruptcy Act or any civil attachment proceedings.

23 (2) Subject to subsection (1), where a person has been adjudged bankrupt, the

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1 powers conferred on the High Court by sections 59 and 67 or on a person appointed  
2 under paragraph 38 (1)(g) or subsection 46(2) shall not be exercised in relation to  
3 property comprised as property of the bankrupt person for the purposes of the applicable  
4 Bankruptcy Act.

5 (3) Where a receiver stands appointed under an applicable Bankruptcy Act,  
6 and  
7 property of the debtor is subject to a restraining order under or for the purposes of the  
8 bankruptcy act, the powers conferred on the receiver by virtue of the Bankruptcy Act do  
9 not apply to tainted property or proceeds of crime which are subject to forfeiture or  
10 confiscation under this Act until such time as the period of time for bringing an action for  
11 forfeiture or confiscation under this Act is exhausted.

12 (4) Where a person is adjudged bankrupt and has directly or indirectly made a  
13 gift caught by this Act:

14 (a) no order shall be made under the applicable Bankruptcy Act  
15 relating to such gift where:

16 (i) the bankrupt person has been charged with a serious  
17 offense and the proceedings have not been concluded, either by the  
18 acquittal of the defendant or final dismissal of the proceedings; or where

19 (ii) property of the person to whom the gift was made is subject  
20 to a restraining order or confiscation order under this Act; and

21 (b) any order made under the applicable Bankruptcy Act, shall take  
22 into account any realization under this Act of property held by the person to  
23 whom the gift was made.

1 **Section 50. Winding up of corporation, company, or other commercial enterprise**  
2 **or entity holding covered property.**

3 (1) Where covered property is held by a corporation, company, or other  
4 commercial enterprise or entity and an order for the winding up has been made or a  
5 resolution has been passed by the corporation, company, or other commercial enterprise  
6 or entity for its voluntary winding up, the functions of the liquidator or receiver appointed  
7 for the winding up shall not be exercisable in relation to:

8 (a) property subject to a restraining order or confiscation order made  
9 before such winding up, or

10 (b) any proceeds of property confiscated under this Act, or recovered by  
11 virtue of subsection 46(5) or 46 (6), and held by a person appointed under  
12 paragraph 38 (1)(g) or subsection 46(2),

13 but there shall be payable out of such property any expenses (including the remuneration  
14 of the liquidator or receiver) properly incurred in the winding up of the corporation,  
15 company, or other commercial enterprise or entity.

16 (2) Where, in the case of a corporation, company, or other commercial  
17 enterprise or entity, an order for winding up has been made or a resolution for winding up  
18 has been passed, the powers conferred on the High Court by section 38 or 46 shall not be  
19 exercised in relation to any covered property held by the corporation, company, or other  
20 commercial enterprise or entity:

21 (a) which will unfairly inhibit the liquidator or receiver from  
22 exercising his or her proper functions for the purpose of distributing any property  
23 held by the company to the company's legitimate creditors; or

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1 (b) which will prevent the payment out of any property the  
2 corporation, company, or other commercial enterprise or entity, of expenses  
3 (including the remuneration of the liquidator or receiver) properly incurred in the  
4 winding up.

5 (3) Subsection (2) does not affect the enforcement of a restraining order or  
6 confiscation order made before the order or resolution for winding up.

7 (4) Nothing in any other law of the Republic of the Marshall Islands relating  
8 to corporations, companies, or other commercial enterprises or entities shall be taken as  
9 restricting, or enabling the restriction of, the exercise of the powers conferred on the High  
10 Court by section 38 or 46, and in case of conflict, this Act shall take precedence.

11 **Part IV** Control of Property

12 Section 51. **Powers to search for and seize tainted property.**

13 (1) In addition to his powers under any other law, a police officer may:

14 (a) search a person for tainted property;

15 (b) enter upon land or upon or into premises and search the land or  
16 premises for tainted property; and

17 (c) in either case, seize any property found in the course of the search  
18 that the police officer believes, on reasonable grounds to be tainted property,  
19 provided that the search or seizure is made:

20 (d) with the consent of the person or the occupier of the land or  
21 premises as the case may be;

22 (e) under a warrant issued under section 52; or

23 (f) under section 54.

1 (2) Where a police officer may search a person under this Act, the officer may  
2 also search:

3 (a) the clothing that is being worn by the person; and

4 (b) any property in, or apparently in, the person's immediate control.

5 **Section 52. Search warrants in relation to tainted property.**

6 (1) Where a police officer has probable cause to believe that there is, or may  
7 be within the next 72 hours, tainted property of a particular kind:

8 (a) on a person;

9 (b) in the clothing that is being worn by a person;

10 (c) otherwise in a person's immediate control;

11 (d) upon land or upon or in any premises,

12 the police officer may lay before a judge, a sworn affidavit setting out those grounds and  
13 apply for the issuance of a warrant under this section, to search the person, the land or the  
14 premises of the person as the case may be, for tainted property of that kind.

15 (2) Where an application is made under subsection (1) for a warrant to search  
16 a person, land or premises, the judge may, subject to subsection (4) issue a warrant  
17 authorizing a police officer (whether or not named in the warrant) with such assistance  
18 and by such force as is necessary and reasonable:

19 (a) to search the person for tainted property of that kind;

20 (b) to enter upon the land or in or upon any premises and to search the  
21 land or premises for tainted property of that kind; and

22 (c) to seize property found in the course of the search that the police  
23 officer has probable cause to believe to be tainted property of that kind.

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1           (3)    A warrant may be issued under subsection (2) in relation to tainted  
2 property, whether or not an information or complaint has been filed in respect of the  
3 relevant offense.

4           (4)    A judge shall not issue a warrant under subsection (2), where information  
5 or complaint has not been filed in respect of the relevant offense at the time when  
6 the application for the warrant is made, unless the judge is satisfied that there is  
7 probable cause to believe a crime has been or is about to be committed and that  
8 tainted property or evidence of such crime is located at the place or on the person  
9 or thing to be searched.

10          (5)    A warrant issued under this section shall state:

11           (a)       the purpose for which it is issued, including a reference to the  
12 nature of the relevant offense;

13           (b)       a description of the kind of property authorized to be seized;

14           (c)       a time at which the warrant ceases to be in force; and

15           (d)       whether entry is authorized to be made at any time of the day or  
16 night or during specified hours.

17          (6)    If during the course of searching under a warrant issued under this section,  
18 a police officer finds:

19           (a)       property that the police officer has probable cause to believe to be  
20 tainted property either of a type not specified in the warrant or tainted property in  
21 relation to another serious offense; or

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1           (b) any thing the police officer has probable cause to believe will  
2           afford evidence of the commission of a serious offense (whether or not such  
3           offense is the same as that described in the warrant);  
4           the police officer may seize that property or thing and the warrant shall be deemed to  
5           authorize such seizure.

6   Section 53.    **Application for search warrants by telephone or other means of**  
7                   **communication.**

8           (1)    Where by reason of urgency a police officer considers it necessary to do  
9           so, the officer may make application for a search warrant under section 52 by telephone,  
10          radio communication, facsimile or other means of communication by which identity of  
11          the requesting officer can be identified.

12          (2)    A judge, to whom an application for the issuance of a warrant is made by  
13          telephone or other means of communication, may sign a warrant if the judge is satisfied  
14          that it is necessary to do so, and shall inform the police officer of the terms of the warrant  
15          so signed.

16          (3)    The police officer executing the warrant shall inform any person subject  
17          to and present at the time of the search of the terms of the warrant.

18          (4)    The police officer to whom a warrant is granted by telephone or other  
19          means of communication shall, not later than three working days following issuance of  
20          the warrant, provide the judge with a duly sworn application for a warrant completed by  
21          the officer, together with the officer's sworn affidavit in support of the warrant.

22   Section 54.    **Searches in emergencies.**

23          (1)    Where a police officer has probable cause to believe that:

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1 than because it may afford evidence of the commission of an offense), a person who  
 2 claims an interest in the property may apply to the High Court for an order that the  
 3 property be returned to the person.

4 (2) Where a person makes an application under subsection (1) and the High  
 5 Court is satisfied that:

6 (a) the person making the application is entitled to possession of the  
 7 property;

8 (b) the property is not tainted property; and

9 (c) the defendant has no interest in the property, the High Court shall  
 10 order the return of the property to the person making the application.

11 **Section 57. Search for and seizure of tainted property in relation to foreign**  
 12 **offenses.**

13 Where a foreign country requests assistance with the location or seizure of  
 14 property suspected to be tainted property in respect of an offense within its jurisdiction,  
 15 the provisions of sections 52, 53, and 54 apply, with the necessary changes in points of  
 16 detail, provided that the Attorney General has, under section 8 of the Mutual Assistance  
 17 In Criminal Matters Act, 2002, authorized the giving of assistance to the foreign country.

18 **Part V Production Orders and Other Information Gathering Powers**

19 **Section 58. Production orders.**

20 (1) Where a defendant has been charged with or convicted of a serious offense  
 21 and a police officer has probable cause to believe that any person has possession or  
 22 control of:

23 (a) a document relevant to identifying, locating or quantifying

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- 1 (a) particular property is tainted property;
- 2 (b) it is necessary to exercise the power of search and seizure in order
- 3 to prevent the concealment, loss or destruction of the property; and
- 4 (c) the circumstances are so urgent that they require immediate
- 5 exercise of the power without the authority of a warrant or the order of a court,
- 6 the police officer may:
- 7 (i) search a person;
- 8 (ii) enter upon land, or upon or into premises and search for the
- 9 property; and
- 10 (iii) if property is found, seize the property.

11 (2) If during the course of a search conducted under this section, a police

12 officer finds:

- 13 (a) property that the police officer has probable cause to believe to be
- 14 tainted property; or
- 15 (b) any thing the police officer has probable cause to believe will
- 16 afford evidence as to the commission of a serious offense,
- 17 the police officer may seize that property or thing.

18 Section 55. **Record of property seized.**

19 A police officer who seizes property under section 52 or section 54 shall retain the

20 property seized, make a written record thereof, and take reasonable care to ensure that the

21 property is preserved.

22 Section 56. **Return of seized property.**

23 (1) Where property has been seized under section 52 or section 54 (otherwise

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1 property of the defendant, or to identifying or locating a document necessary for  
2 the transfer of property of the defendant; or

3 (b) a document relevant to identifying, locating or quantifying tainted  
4 property in relation to the offense, or to identifying or locating a document  
5 necessary for the transfer of tainted property in relation to the offense,

6 the police officer may apply ex parte and in writing to a judge for an order against the  
7 person suspected of having possession or control of a document of the kind referred. The  
8 application shall be supported by an affidavit.

9 (2) The judge may, if he or she considers there is probable cause for so doing,  
10 make an order under this Act, that the person produce to a police officer, at a time and  
11 place specified in the order, any documents of the kind referred to in subsection (1).

12 (3) A police officer to whom documents are produced may:

13 (a) inspect the documents;

14 (b) make copies of the documents; or

15 (c) retain the documents for so long as is reasonably necessary for the  
16 purposes of this Act.

17 (4) Where a police officer retains the documents produced, the officer shall  
18 make a copy of the documents available to the person who produced them.

19 (7) A person is not entitled to refuse to produce documents ordered to be  
20 produced under this section on the ground that the document might tend to incriminate  
21 that person or make such person liable to a penalty.

22 Section 59. Evidential value of information.

23 (1) Where a person produces a document pursuant to an order issued under

1 this Act, the production of the document, or any information, document, or thing obtained  
2 as a direct or indirect consequence of the production of the document, is not admissible  
3 against that person in any criminal proceedings except proceedings under section 60.

4 (2) For the purposes of subsection (1), proceedings on an application for a  
5 restraining order, a confiscation order or a pecuniary penalty order are not criminal  
6 proceedings.

7 **Section 60. Failure to comply with a production order.**

8 Where a person is required by a production order issued under this Act, to produce  
9 a document to a police officer, and the person knowingly:

10 (1) violates the order without reasonable cause; or

11 (2) in purported compliance with the order, produces or makes

12 available a document known to the person to be false or misleading in a material way,  
13 and does not so indicate to the police officer and provide to the police officer any correct  
14 information of which the person is in possession,

15 the person is guilty of an offense punishable by imprisonment for a maximum of five  
16 years or a maximum fine of \$50,000, or both, provided, however, in the case of a  
17 corporation, company, commercial enterprise, commercial entity or other legal person,  
18 the maximum fine shall be increased to \$250,000.

19 **Section 61. Production orders in relation to foreign offenses.**

20 Where a foreign country requests assistance to locate or seize property suspected  
21 to be tainted property in respect of an offense within its jurisdiction, and the Attorney  
22 General has, under section 8 of the Mutual Assistance In Criminal Matters Act, 2002,

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1 authorized the giving of assistance to the foreign country, the provisions of section 58  
 2 shall apply to the request, with necessary changes in points of detail.

3 Section 62. **Power to search for and seize documents relevant to locating**  
 4 **property.**

5 A police officer may:

6 (1) enter upon land or upon or into premises;

7 (2) search the land or premises for any document of the type described in  
 8 subsection 58(1); and

9 (3) seize any document found in the course of that search that the police  
 10 officer has probable cause to believe to be a relevant document in relation to a serious  
 11 offense,

12 provided that the entry, search and seizure is made:

13 (4) with the consent of the occupier of the land or the premises; or

14 (5) under a warrant issued under section 63 or 52 of this Act.

15 Section 63. **Search warrant for location of documents relevant to locating**  
 16 **property.**

17 (1) Where:

18 (a) a defendant has been charged or convicted of a serious offense; or

19 (b) the police officer has probable cause to believe that there is, or  
 20 may be within the next 72 hours, upon any land or upon or in any premises, a  
 21 document of the type described in subsection 58(1) in relation to the offense,

22 the police officer may make application supported by sworn affidavit to a judge for a  
 23 search warrant in respect of that land or those premises.

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1           (2)     Where an application is made under subsection (1) for a warrant to search  
2 land or premises, the judge may, subject to subsection (4) issue a warrant authorizing a  
3 police officer (whether or not named in the warrant), with such assistance and by such  
4 force as is necessary and reasonable:

5                   (a)     to enter upon the land or in or upon any premises and to search the  
6 land or premises for property of that kind; and

7                   (b)     to seize property found in the course of the search that the police  
8 officer has probable cause to believe to be property of that kind.

9           (3)     A judge shall not issue a warrant under subsection (2) unless the judge is  
10 satisfied that:

11                   (a)     a production order has been issued in respect of the document and  
12 has not been complied with;

13                   (b)     a production order in respect of the document would be unlikely to  
14 be effective;

15                   (c)     the investigation for the purposes of which the search warrant is  
16 being sought might be seriously prejudiced if the police officer does not gain  
17 immediate access to the document without any notice to any person; or

18                   (d)     the document involved cannot be identified or described with  
19 sufficient particularity to enable a production order to be obtained.

20           (4)     A warrant issued under this section shall state:

21                   (a)     the purpose for which it is issued, including a reference to the  
22 nature of the relevant offense;

23                   (b)     a description of the kind of documents authorized to be seized;

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1 (c) a time at which the warrant ceases to be in force; and

2 (e) whether entry is authorized to be made at any time of the day or  
 3 night or during specified hours.

4 (5) If during the course of searching under a warrant issued under this section,  
 5 a police officer finds:

6 (a) a document of the type described in section 58(1) that the police  
 7 officer believes on probable cause, to relate to the relevant offense, or to another  
 8 serious offense; or

9 (b) any thing the police officer believes on probable cause will afford  
 10 evidence as to the commission of a serious offense

11 the police officer may seize that property or thing and the warrant shall be deemed to  
 12 authorize such seizure.

13 **Section 64. Search warrants in relation to foreign offenses.**

14 Where a foreign country requests assistance to locate or seize documents of a type  
 15 described in subsection 58(1) relating to an offense within its jurisdiction, and the  
 16 Attorney General has, under section 8 of the Mutual Assistance In Criminal Matters Act,  
 17 2002, authorized the giving of assistance to the foreign country, the provisions of section  
 18 63 shall apply to the request, with necessary changes in points of detail.

19 **Section 65. Monitoring orders.**

20 (1) A police officer may apply, ex parte and in writing to a judge for a  
 21 monitoring order directing a financial institution to give information to a police officer.  
 22 An application under this section shall be supported by an affidavit.

23 (2) A monitoring order:

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1 (a) may direct the financial institution to disclose information obtained  
2 by the institution about transactions conducted through an account held by a  
3 particular person with the institution;

4 (b) shall not have retrospective effect; and

5 (c) shall only apply for a period of a maximum of 3 months from the  
6 date of making.

7 (3) A judge shall not issue a monitoring order unless the judge is satisfied that  
8 there is probable cause to believe that the person in respect of whose account the order is  
9 sought:

10 (a) has committed or was involved in the commission, or is about to  
11 commit or be involved in the commission of a serious offense; or

12 (b) has benefited directly or indirectly, or is about to benefit directly or  
13 indirectly from the commission of a serious offense.

14 (4) A monitoring order shall specify:

15 (a) the name or names in which the account is believed to be held; and

16 (b) the type of information that the institution is required to give.

17 (5) Where a financial institution, which has been given notice of a monitoring  
18 order, knowingly:

19 (a) violates the order; or

20 (b) provides false or misleading information in purported compliance with  
21 the order;

22 the institution commits an offense, punishable by a maximum of up to \$250,000.

23 Section 66. **Monitoring orders not to be disclosed.**

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1           (1)     A financial institution that is, or has been subject to a monitoring order  
2 shall not knowingly disclose the existence or operation of the order to any person except:

3                   (a)     an officer or agent of the institution for the purpose of ensuring  
4 compliance with the order;

5                   (b)     a legal adviser for the purpose of obtaining legal advice or  
6 representation in respect of the order; or

7                   (c)     a police officer authorized in writing to receive the information.

8           (2)     A person described in paragraphs (1)(a), (b) or (c) shall not disclose the  
9 existence or operation of a monitoring order except to another such person, for the  
10 purposes of the performance of the person's duties or functions.

11           (3) A person who contravenes subsection (1) or (2) commits an offense and is  
12 liable upon conviction, to

13                   (a)     if the person is a natural person, a fine not exceeding \$50,000 or  
14 imprisonment for a term not five years, or both; or

15                   (b)     if the person is a corporation, company, commercial enterprise,  
16 commercial entity or other legal person, the maximum fine shall be increased to  
17 \$250,000.

18           (4)     Nothing in this section shall prevent the disclosure of information  
19 concerning a monitoring order for the purposes of, or in connection with legal  
20 proceedings; or in the course of proceedings before a court, and nothing in this section  
21 shall be construed as compelling a police officer to disclose to any court the existence or  
22 operation of a monitoring order.

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**Part VI**      Miscellaneous**Section 67. Immunity where official powers or functions exercised in good faith.**

No suit, prosecution or other legal proceedings shall lie against the government of the Republic of the Marshall Islands, or any officer or other person in respect of anything done by or on behalf of that person, with due diligence and in good faith, in the exercise of any power or the performance of any function under this Act or any regulation or order made pursuant to this Act.

**Section 68. Repeal and saving provisions**

(1) Subject to subsection (2), any Act, rules, regulations or provisions of any Act, rules or regulations on identifying, freezing, seizing and confiscating proceeds of crime in the RMI which contravenes the provisions of this Act is hereby repealed to the extent of its inconsistencies;

(2) Nothing in this Act shall be construed as to affect the rights, duties and responsibilities of the RMI under the Compact of Free Association with the United States of America; or under any other laws.

**Section 69. Regulations**

The Minister of Justice may prescribe such rules and regulations he may deem necessary to carry out the provisions of this Act.

**CERTIFICATE**

I hereby certify;

(1) that the above Nitijela Bill No. 105 N.D. was passed by the Nitijela of the Marshall Islands on the 11<sup>th</sup> day of October 2002; and

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(2). that I am satisfied that Nitijela Bill No. 105 N.D.1 was passed in accordance with

the Constitution of the Republic of the Marshall Islands and the Rules of Procedures of the Nitijela.

I hereby place my signature before the Clerk of the Nitijela on this 11<sup>th</sup> day of November 2002.

Attest:

  
\_\_\_\_\_  
Ltokwa Tomeing  
Speaker  
Nitijela of the Marshall Islands

  
\_\_\_\_\_  
Joe E Riklon  
Clerk,  
Nitijela of the Marshall Islands