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PROCEEDS OF CRIME ACT 1997

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PROCEEDS OF CRIME ACT 1997

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## **Proceeds of Crime (Management and Disposal of Property) Regulations 2012**

IN exercise of the powers conferred upon me by section 71A of the Proceeds of Crime Act 1997, I hereby make these Regulations—

### PART I—PRELIMINARY

#### *Short title and commencement*

1.—(1) These Regulations may be cited as the Proceeds of Crime (Management and Disposal of Property) Regulations 2012.

(2) These Regulations shall come into force on the date of its publication in the *Gazette*.

#### *Interpretation*

2. In these Regulations, unless the context otherwise requires—

"Act" means the Proceeds of Crime Act 1997;

"competent authority" means the Attorney-General or his or her representative;

"crime-used" includes all property that is used whilst the crime is being committed;

"crime-derived" includes all property that has been obtained as a direct or indirect effect of the crime committed;

"foreign competent authority" means a person who is authorised under the law of another country to exercise a restraining order;

"foreign restraining order" means an order made by a court of another country authorising a foreign competent authority of that country to restrain property;

"forfeiture offence" means a serious act;

"instrument" in relation to a dealing with land, shall have the same meaning as in the Land Transfer Act (Cap. 131);

"Minister" means the Minister responsible for Justice; and

"owner" shall have the same meaning given in the Property Law Act (Cap. 130).

### PART II—MANAGEMENT OF SEIZED, RESTRAINED AND FORFEITED PROPERTY

#### *Division 1—Control and management of property*

##### *Seized property*

3.—(1) Pursuant to section 30 of the Act, the Commissioner of Police has responsibility for the control and management of all property seized under a warrant.

(2) The Director of Public Prosecutions shall within 14 days from the date the property was seized under sub-regulation (1), make an application to the court for a restraining order for the seized property.

*Management of restrained or forfeited property*

4.—(1) Any property that has been restrained or forfeited to the State shall immediately become the responsibility of the Attorney-General.

(2) The Attorney-General has responsibility for the control and management of property that is subject to a restraining order.

(3) The Attorney-General has responsibility for the control and management of forfeited property until it is disposed of.

(4) The Attorney-General may appoint his or her representative to act on his or her behalf for the control and management of property under such terms and conditions that may be prescribed by the Attorney-General.

*Financial institutions to transfer restrained funds to the Forfeited Assets Fund*

5. A financial institution that is holding in an account funds that are restrained under the Act and these Regulations shall, on demand by the Attorney-General, transfer the restrained funds to be deposited in the Forfeited Assets Fund established under section 71A of the Act.

*Duties of responsible person*

6. The competent authority or the Commissioner of Police, who has responsibility for the control and management of property under the Act or an order under this regulation shall take reasonable steps to ensure that the property is appropriately stored or managed and that it is appropriately maintained, until one of the following occurs in accordance with these Regulations—

- (a) the property is returned to the person from whom it was seized or to a person who owns it;
- (b) another person becomes responsible for the control and management of the property;
- (c) the property is sold or destroyed; or
- (d) the property is otherwise disposed of.

*Division 2 – Disposal of deteriorating or undesirable property*

*Destruction of property on grounds of public interest*

7.—(1) The competent authority who has responsibility for the control and management of restrained or forfeited property may make an application in court that made the relevant order for an order under sub-regulation (2) that the property be destroyed.

(2) The court that is hearing an application under sub-regulation (1) may order that the property be destroyed if it is not in the public interest to preserve the property.

(3) The court may order that the property be destroyed in the manner that may be appropriate for that type of property.

*Sale of restrained deteriorating property*

8.—(1) The competent authority who has responsibility for the control and management

of restrained property may make an application in court that made the relevant restraining order for an order under sub-regulation (2) that the property be sold.

(2) The court that is hearing an application under sub-regulation (1) may order that the property be sold if it is more likely than not that —

- (a) the property is or shall be subject to substantial waste or loss of value if it is retained until it is dealt with under another provision of the Act or these Regulations; or
- (b) the cost of managing or protecting the property shall exceed the value of the property if it is retained until it is dealt with under regulation 13 of these Regulations.

(3) If the competent authority has the control and management of property that is restrained under this regulation to property that is not land, the competent authority may sell the property for and on behalf of the State in the circumstances referred to in sub-regulation (2) without obtaining a court order under that sub-regulation if the Minister approves the sale in the circumstances.

(4) Sub-regulations (2) and (3) also apply to property where, despite that the market value of the property may not be diminishing, interest charges of the like are resulting in or are likely to result in a diminishing realisable equity in the property.

(5) If restrained property is sold pursuant to an order made under sub-regulations (2) or (3), the proceeds of the sale shall be restrained property and shall be deposited into the Forfeited Assets Fund.

*Valuation and inventory of restrained property*

9. The competent authority who has control and management of restrained property under these Regulations—

- (a) may do either or both of the following—
  - (i) arrange for the property to be valued by an appropriately qualified person;
  - (ii) arrange for an inventory to be taken of any fittings, fixtures or moveable goods in, on or comprising the property; and
- (b) shall, if an inventory is taken under paragraph (a) (ii), arrange for a copy of the inventory to be served on each person on whom a copy of the restraining order was served under section 38 of the Act.

*Sale of forfeited property*

10. The sale of forfeited property under these Regulations shall be done in accordance with section 71A of the Act.

*Division 3 – Management of property by the Attorney-General*

*Managing foreign restrained property*

11.—(1) The competent authority may enter into an agreement for the control and management of property restrained under a registered foreign restraining order with the foreign competent authority who is required under that order to take control of the property.

(2) The competent authority may perform, in accordance with an agreement referred to

in sub-regulation (1), the same functions in relation to property restrained under a registered foreign restraining order as the person who is required under that order to take control of the property.

*Obstructing the competent authority*

12.—(1) A person shall not hinder or obstruct the competent authority, in the exercise of its functions under these Regulations.

(2) A person who contravenes sub-regulation (1) is guilty of an offence and is liable to a fine not exceeding \$50,000 and/or imprisonment for 5 years. If the offender is a body corporate, a fine of \$10,000 per day.

### PART III—INTERESTS IN REGISTRABLE PROPERTY

*Imputation of knowledge that property is restrained*

13.—(1) If an instrument relating to the making of a restraining order in relation to land has been registered, any person who deals with the land while the restraining order is in force is taken to have notice, for all purposes, that it is in force.

(2) If particulars of a restraining order for property other than land have been entered in an appropriate register, any person who deals with the property while the restraining order is in force is taken to have notice, for all purposes, that it is in force.

*Instruments lodged with Registrar of Titles*

14. An instrument lodged with the Registrar of Titles under or for the purposes of these Regulations shall be in a form approved by the Registrar of Titles.

### PART IV—GENERAL

*Certificates under Illicit Drugs Control Act 2004*

15. In any proceedings under these Regulations, a certificate signed by the Government Analyst referred to in section 36 of the Illicit Drugs Control Act 2004 is sufficient evidence of the facts stated in the certificate.

*Consent orders*

16. In any proceedings under these Regulations, a court may at any time, make an order that is agreed to by the parties.

*Forfeited Assets Fund*

17. Notwithstanding sections 71B and 71C of the Act, the following are to be paid into the Forfeited Assets Fund established under section 71A of the Act—

- (a) funds that are restrained under these Regulations and are transferred to the Forfeited Assets Fund in accordance with regulation 5;
- (b) income from a business or property managed by the competent authority in accordance with these Regulations;
- (c) the proceeds of sale under regulation 8 (3) for restrained property;
- (d) money that, under these Regulations, is paid to the State, recovered by the State or forfeited;
- (e) proceeds of the disposal of forfeited property;
- (f) income from forfeited property; and

(g) monies paid to the State under section 71M of the Act.

*Exemption from stamp duty*

18. An instrument by which property is transferred to or by the State or to a person responsible on behalf of the State for all orders made under the Act or these Regulations are exempt from stamp duty under the Stamp Duties Act (Cap. 205).

*Liability for carrying out functions under these Regulations*

19. A person on whom these Regulations confer a function is not personally liable in civil proceedings, and the State is not liable, for anything done or any default made by the person in good faith for the purpose of carrying these Regulations into effect.

*Proceedings against body corporate*

20.—(1) If a body corporate commits an offence against these Regulations and it is proved that the offence occurred with the knowledge and consent of an officer of the body corporate, or a person purporting to act as an officer of the body corporate, that person, as well as the body corporate, commits the offence.

(2) If the affairs of a body corporate are managed by its members, sub-regulation (1) applies in relation to the acts and defaults of a member in connection with the member's functions of management as if the member were an officer of the body corporate.

(3) If in proceedings under these Regulations it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show that—

- (a) the conduct was engaged in by an officer of the body corporate within the scope of his or her actual or apparent competent authority; and
- (b) the officer had that state of mind.

(4) If an officer of a body corporate engages in conduct on behalf of the body corporate within the scope of his or her actual authority, for the purposes of proceedings under these Regulations, the body corporate is taken also to have engaged in the conduct unless the body corporate establishes that it took reasonable precautions and exercised due diligence to avoid the conduct.

*Effect of person's death*

21.—(1) A reference in these Regulations to property of a person includes a reference to the property of a deceased person where the property was owned or effectively controlled by the person immediately before his or her death or given away by the person at any time before his or her death.

(2) An order may be applied for and made under these Regulations—

- (a) in respect of property that is or was owned or effectively controlled or given away by a person who died before the application or order is made; and
- (b) on the basis of the activities of a person who died before the application or order is made.

(3) If a person who owns property that is subject to a restraining order dies, these Regulations continue to apply to the property in all respects as if the person had not died, regardless of whether the administrator of the person's estate or any other person in whom

the property vests as a result of the death is an innocent party in relation to the property.

(4) Without limiting this regulation, if a person who is a joint tenant of property that is subject to a restraining order dies, the—

- (a) person's death does not operate to vest the property in the surviving joint tenant or tenants; and
- (b) restraining order continues to apply to the property as if the person had not died.

*Legal professional privilege*

22. For the avoidance of doubt, the common law rules (including the exceptions) relating to legal professional privilege apply in relation to proceedings under these Regulations.

Dated at Suva this 13th day of September 2012.

A. SAYED-KHAIYUM  
Attorney-General and Minister for Justice,  
Anti-Corruption, Public Enterprises, Communications,