

I assent

[L.S.]

J. I. ULUIVUDA
President

[29th June 2005]

AN ACT

TO AMEND THE PROCEEDS OF CRIME ACT

ENACTED by the Parliament of the Fiji Islands:

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Short title, etc

1. (1) This Act may be cited as the Proceeds of Crime (Amendment) Act 2004.
- (2) This Act comes into force on a date appointed by the Minister by notice in the *Gazette*.
- (3) In this Act, "principal Act" means the Proceeds of Crime Act 1997.

Section 3 amended

2. Section 3 of the principal Act is amended:

- (a) by repealing the definitions of "bank", "confiscation order" and "foreign confiscation order";
- (b) in the definition of "account" after "withdrawals" by inserting "or funds transfers";
- (c) by repealing the definition of "document" and substituting the following definition:

"document" means any record of information and includes:

- (a) anything on which there is writing;
- (b) anything on which there are marks, figures, symbols or perforations having meaning for persons qualified to interpret them;
- (c) anything from which sounds, images, data or writings can be produced, with or without the aid of anything else;
- (d) a map, plan, drawing, photograph or similar thing;
- (e) an electronic document;";

(d) by adding the following definitions:

"financial institution" has the same meaning as in the Financial Transactions Reporting Act 2004;

"foreign pecuniary penalty order" has the same meaning as in the Mutual Assistance In Criminal Matters Act 1997;

"Forfeited Assets Fund" means the Forfeited Assets Fund established by section 71A;

"pecuniary penalty order" means an order made by the Court under section 20(1);

"terrorist act" has the same meaning as in the Financial Transactions Reporting Act 2004;

"terrorist group" has the same meaning as in the Financial Transactions Reporting Act 2004;

"terrorist property" has the same meaning as in by the Financial Transactions Reporting Act 2004;";

(e) by repealing the definition of "proceeds of crime" and substituting the following definition:

"proceeds of crime" falls to be constructed in accordance with section 4(1A);

(f) in the definition of "property" after "incorporeal property" by inserting "whether located in Fiji or elsewhere";

(g) in the definition of "property-tracking document" in paragraph (b) after "tainted property" (wherever occurring) by inserting "or terrorist property";

(h) in the definition of "serious offence" by deleting "12 months" and substituting "6 months or a fine of not less than \$500"; and

(i) by repealing the definition of "tainted property" and substituting the following definition:

"tainted property in relation to a serious offence or a foreign serious offence means:

(a) property used in, or in connection with, the commission of the offence;

(b) property intended to be used in, or in connection with, the commission of the offence;

(c) proceeds of crime;".

Section 4 amended

3. Section 4 of the principal Act is amended:

(a) after subsection (1) by inserting the following subsection:

"(1A) In this Act, in relation to a serious offence or a foreign offence, proceeds of crime means property or benefit that is:

(a) wholly or partly derived or realized directly or indirectly by any person from the commission of a serious offence or a foreign serious offence;

(b) wholly or partly derived or realized from a disposal or other dealing with proceeds of a serious offence or a foreign serious offence; or

(c) wholly or partly acquired proceeds of a serious offence or a foreign serious offence,

and includes, on a proportional basis, property into which any property derived or realized directly from the serious offence or foreign serious offence is later converted, transformed or intermingled, and any income, capital or other economic gains derived or realized from the property at any time after the offence."; and

(b) by deleting subsection (3) and substituting the following subsection:

"(3) In this Act, realisable property means, subject to subsections (4) and (5):

(a) any property held by a person in respect of which a pecuniary penalty order may be made;

(b) any property effectively controlled by that person; and

(c) any property held by another person to whom that person has made a gift.".

Section 5 amended

4. Section 5 of the principal Act is amended:

(a) in subsection (2) after "conviction" by inserting "unless the Director of Public Prosecutions can show good reason why the Court should entertain an application in the particular circumstances"; and

(b) after subsection (2) by inserting the following subsection:

"(2A) Any application under subsection (2) is to be made by way of notice of motion and affidavit.".

Section 8 amended

5. Section 8(1) of the principal Act is amended:

- (a) by deleting the full stop at the end of paragraph (b) and substituting "; or";
- (b) after paragraph (b) by inserting the following paragraph:

"(c) the property or benefit was acquired after the application was originally made."

Section 10 amended

6. Section 10(2) of the principal Act is amended:

- (a) by deleting the comma at the end of paragraph (c) and substituting "; or";
- (b) after paragraph (c) by inserting the following paragraph:

"(d) the person dies after the warrant is issued or an investigation into the offence has commenced,";

- (c) after "6 months" by inserting "or, where the person has died, on the date of death".

Section 11 amended

7. Section 11 of the principal Act is amended:

- (a) in subsection (1) by deleting "in respect of a persons conviction of an offence and the Court is satisfied that the property is tainted property in respect of the offence" and substituting "and the court is satisfied that the property is tainted property or terrorist property";
- (b) in subsection (2) after paragraph (a) by inserting the following paragraph:

"(b) where the evidence establishes that the property was under the effective control of the person at the time of, or immediately after, the commission of the offence of which the person was convicted - that the property was derived, obtained or realised as a result of the commission by the person of the offence of which the person was convicted and for purposes of this paragraph effective control shall have the same meaning as in section 25 of this Act;"

- (c) in subsection (2):

- (i) by renumbering paragraph (b) as paragraph (c); and
- (ii) by renumbering paragraph (c) as paragraph (d).

Section 12 amended

8. Section 12 of the principal Act is amended after subsection (1) by adding the following subsection:

"(1A) Money forfeited to the State under a forfeiture order must be paid into the Forfeited Assets Fund."

Section 13 amended

9. Section 13 of the principal Act is amended by deleting subsection (2) and inserting the following subsection:

"(2) If a person applies to the Court for an order under this subsection in respect of the persons interest in property and the Court is satisfied that:

- (a) the applicant has an interest in the property;
- (b) the applicant was not in any way involved in the commission of the offence in respect of which the forfeiture of the property is sought or the forfeiture order against the property was made; and

(c) the applicant:

- (i) had the interest before the serious offence occurred; or
- (ii) acquired the interest during or after the commission of the offence, *bona fide* and for fair value, and did not know or could not reasonably have known at the time of the acquisition that the property was tainted property,

the Court may make an order declaring the nature, extent and value (as at the time when the order is made) of the applicants interest."

Section 16 amended

10. Section 16 of the principal Act is amended:

- (a) at the end of paragraph (d) by inserting "or";
- (b) after paragraph (d) by inserting the following paragraph:

"(e) has been transferred to a *bona fide* third party purchaser for fair value without notice,".

Insertion of Divisions 2A & 2B in Part II

11. Part II of the principal Act is amended by inserting after Division 2 the following Divisions:

"Division 2A: Civil forfeiture orders

Application for a restraining order for tainted property or terrorist property

19A. (1) Where there are reasonable grounds to suspect that any property is property in respect of which a forfeiture order may be made under section 19E or 19H, the Director of Public Prosecutions may apply to the Court for a restraining order under subsection (2) against that property.

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

- (a) a description of the property in respect of which the restraining order is sought;
- (b) the location of the property; and
- (c) the grounds for the belief that the property is tainted property or terrorist property for which a forfeiture order may be made under section 19E or 19H.

Restraining orders

19B. (1) Subject to this section, where the Director of Public Prosecutions applies to the Court for a restraining order against property and the Court is satisfied that there are reasonable grounds for suspecting that the property is tainted property or terrorist property for which a forfeiture order may be made under section 19E or 19H, the Court may make an order:

- (a) prohibiting any person from disposing of, or dealing with, the property or such part thereof or interest except in the manner specified in the order; and
- (b) at the request of the Director of Public Prosecutions, where the Court is satisfied that the circumstances so require, that the Attorney-General take custody of the property or such part thereof and manage or otherwise deal with all or any part of the property in accordance with the directions of the Court.

(2) For the avoidance of doubt, the Court may make an order under subsection (1) in respect of money or other property located in Fiji or elsewhere.

(3) Where the Attorney-General is given a direction under subsection (1)(b), the Attorney-General may do anything that is reasonably necessary for preserving the property and for this purpose may exercise any power that the owner of the property could exercise and do so to the exclusion of the owner.

(4) Where the Director of Public Prosecutions applies to the Court for an order under subsection (1), a witness shall not be required to answer a question or to produce a document if the Court is satisfied that answering the question or producing the document may prejudice the investigation of, or prosecution of a person for, an offence.

Application for a non-conviction based forfeiture order for tainted property

19C. The Director of Public Prosecutions may apply to a Court for an order forfeiting to the State all or any of the property that is tainted property.

Notice of application

19D. Where the Director of Public Prosecutions applies under section 19C for a forfeiture order:

(Error! Bookmark not defined.) the Director of Public Prosecutions must give no less than 30 days written notice of the application to any person who is known to have an interest in the tainted property in respect of which the application is being made;

(Error! Bookmark not defined.) any person who claims an interest in the property may appear and produce evidence at the hearing of the application; and

(Error! Bookmark not defined.) the Court may, at any time before the final determination of the application, direct the Director of Public Prosecutions to:

(Error! Bookmark not defined.) give notice of the application to any person who, in the opinion of the Court, appears to have an interest in the property;

(Error! Bookmark not defined.) publish in the *Gazette* or a newspaper published and circulating in Fiji, a notice of the application.

Non-conviction based forfeiture order for tainted property

19E.(1) Subject to subsection (2), where the Director of Public Prosecutions applies to the Court for an order under this section and the Court is satisfied on a balance of probabilities that the property is tainted property, the Court may order that the property, or such of the property as is specified by the Court in the order, be forfeited to the State.

(2) Where a person claiming an interest in property to which an application relates satisfies the Court that the person:

(Error! Bookmark not defined.) has an interest in the property;

(Error! Bookmark not defined.) did not acquire the interest in the property as a result of any serious offence carried out by the person and:

(i) had the interest before any serious offence occurred; or

(ii) acquired the interest for fair value after the serious offence occurred and did not know or could not reasonably have known at the time of the acquisition that the property was tainted property,

the Court shall order that the interest shall not be affected by the forfeiture order, and the Court shall declare the nature and extent of the interest in question.

(3) The Court may, when it makes a forfeiture order or at any time thereafter, make any other orders that it considers appropriate, including orders for and with respect to facilitating the transfer of property.

(4) The validity of an order under subsection (1) is not affected by the outcome of criminal proceedings, or of an investigation with a view to institute such proceedings, in respect of an offence with which the property concerned is in some way associated.

(5) Sections 7, 8, 11(2), (3), (4) and (5), 12, 13, 16 and 17 shall apply with the appropriate modifications as are necessary to an application for a forfeiture order under this section.

Division 2B: Forfeiture orders for terrorist property

Application for forfeiture order for terrorist property

19F. The Director of Public Prosecutions may apply to the Court for an order forfeiting to the State all or any of the property that is terrorist property.

Notice of application

19G. Where the Director of Public Prosecutions applies under section 19F for a forfeiture order:

(Error! Bookmark not defined.) the Director of Public Prosecutions must give no less than 30 days written notice of the application to any person who is known to have an interest in the terrorist property in respect of which the application is being made;

(Error! Bookmark not defined.) any person who claims an interest in the property may appear and produce evidence at the hearing of the application; and

(Error! Bookmark not defined.) the Court may, at any time before the final determination of the application, direct the Director of Public Prosecutions to:

(Error! Bookmark not defined.) give notice of the application to any person who, in the opinion of the Court, appears to have an interest in the property;

(Error! Bookmark not defined.) publish in the *Gazette* or a newspaper published and circulating in Fiji, a notice of the application.

Forfeiture order for terrorist property

19H. (1) Subject to subsection (2), where, upon application by the Director of Public Prosecutions, the Court is satisfied, on a balance of probabilities, that property to which the application relates is terrorist property, the Court shall order that the property, or such of the property as is specified by the Court in the order, be forfeited.

(2) Where a person claiming an interest in property to which an application relates satisfies the Court that the person:

(Error! Bookmark not defined.) has an interest in the property;

(Error! Bookmark not defined.) has, in the circumstances, exercised reasonable care to ensure that the property is not terrorist property; and

(Error! Bookmark not defined.) is not a member of a terrorist group,

the Court shall order that the interest shall not be affected by the forfeiture order, and the Court shall declare the nature and extent of the interest in question.

(3) If a person obtains an interest in property after it becomes terrorist property, no order shall be made under subsection (2) in respect of that interest unless the person is a *bona fide* purchaser for value, without reason to suspect that the property is terrorist property.

(4) Sections 7, 8, 11(3), 11(4)(b), 11(4)(c), 11(4)(d), 11(5), 12, 16 and 17 shall apply with the appropriate modifications as are necessary to an application for a forfeiture order under this section."

Insertion of Division 4 in Part II

12. Part II of the principal Act is amended by inserting after Division 3 the following Division:

"Division 4 Miscellaneous

Voiding of contract

27A. A court may, before making a forfeiture order or pecuniary penalty order, set aside any conveyance or transfer of money or other property or interest therein that occurred in circumstances that give rise to a reasonable inference that the money, property or interest was conveyed or transferred for the purpose of avoiding the forfeiture order or pecuniary penalty order unless the conveyance or transfer was to a third party acting in good faith and without notice.

Proceedings civil, not criminal

27B. (1) Proceeding on an application for a restraining order, forfeiture order or pecuniary penalty order are not criminal proceedings.

(2) Except in relation to an offence under this Act:

- (a) the rules of construction applicable only in relation to the criminal law do not apply in the interpretation of this Act; and
- (b) the rules of evidence applicable in civil proceedings apply, and those applicable only in criminal proceedings do not apply, to proceedings under this Act.

Onus of proof

27C. The applicant in any proceedings under this Act bears the onus of proving the matters necessary to establish the grounds for making the order applied for."

Section 28 amended

13. Section 28 of the principal Act is amended:

- (a) in subsection (1) after "tainted property" by inserting "or terrorist property or property suspected of being tainted property or terrorist property";
- (b) after subsection (1), by inserting the following subsection:

"(1A) If the circumstances are such that an application on oath is not reasonably practicable, an application initially made:

- (a) orally, including by telephone; or
- (b) by electronic transmission;

and followed within 48 hours by the application made on oath, is deemed to be an application under subsection (1)."

Section 30 amended

14. Section 30(a) of the principal Act is amended after "tainted property" by inserting "or terrorist property".

Section 31 amended

15. Section 31 of the principal Act is amended:

- (a) in subsection (2)(b) after "tainted property" by inserting "or terrorist property";
- (b) in subsection (6):
 - (i) after "any other offence" by inserting "or that property is tainted property or terrorist property";
 - (ii) after "that offence" by inserting "or is required to satisfy the forfeiture order".

Section 33 amended

16. Section 33 of the principal Act is amended:

- (a) in subsection (1) after "in relation to" by inserting "to terrorist property and";
- (b) in subsection (2) after "under section 28, for" by inserting "terrorist property or".

Section 34 substituted

17. Section 34 of the principal Act is repealed and substituted by the following section:

"Application for restraining order

34. (1) Where there are reasonable grounds to suspect that any property is property in respect of which a forfeiture order may be made under sections 11 or 19, the Director of Public Prosecutions may apply to the Court for a restraining order under subsection (3) against that property.

(2) Where there are reasonable grounds to suspect that a pecuniary penalty order may be issued under section 20 the Director of Public Prosecutions may apply to the Court for a restraining order under subsection (5) against any realisable property held by the person.

(3) An application for a restraining order may be made *ex parte* and shall be in writing.

(4) An application under subsection (1) shall be accompanied by an affidavit stating:

- (a) a description of the property in respect of which the restraining order is sought;
- (b) the location of the property; and
- (c) the grounds for the belief that the property is tainted property or terrorist property for which a forfeiture order may be made under sections 11 and 19.

(5) An application under subsection (2) shall be accompanied by an affidavit stating:

- (a) a description of the property in respect of which the restraining order is sought;
- (b) the location of the property;
- (c) the grounds for the belief that the person who is suspected of having committed a serious offence has obtained a benefit directly or indirectly from the commission of the offence; and
- (d) where the application seeks a restraining order against property of a person other than the person who is suspected of having committed a serious offence: the grounds for the belief that the property is subject to the effective control of that person."

Section 35 amended

18. Section 35 of the principal Act is amended:

(a) by repealing subsection (1) and inserting the following subsections:

"(1) Subject to this section, where the Director of Public Prosecutions applies to the Court for a restraining order against property under section 34(1) and the Court is satisfied that there are reasonable grounds for suspecting that the property is tainted property or terrorist property, the Court may make an order under subsection (1B).

(1A) Where the Director of Public Prosecutions applies to the Court for a restraining order against property under section 34(2) and the Court is satisfied that:

- (a) there are reasonable grounds for suspecting that the person suspected of having committed a serious offence has derived a benefit directly or indirectly from the commission of the offence; and
- (b) the property is the realisable property of that person,

the Court may make an order under subsection (1B).

(1B) Where satisfied under subsection (1) or (1A), the Court may make an order:

- (a) prohibiting the defendant or any person from disposing of, or dealing with, the property or such part thereof or interest except in the manner specified in the order; and
- (b) at the request of the Director of Public Prosecutions, where the Court is satisfied that the circumstances so require - that the Attorney-General take custody of the property or such part thereof and manage or otherwise deal with all of any part of the property in accordance with the directions of the Court.

(1C) For the avoidance of doubt, the Court may make an order under subsection (1B) in respect of money or other property located in Fiji or elsewhere.";

(b) by adding after subsection (5) the following subsection:

"(6) The Court may make a restraining order whether or not there are reasonable grounds for believing that there is an immediate risk of the property being disposed of or otherwise dealt with.

(7) The Court hearing an application for an order under subsection (1) may, before final determination of the application, and on the application of the Director of Public Prosecutions, amend the application to include any other property upon being satisfied that the property was acquired after the application was originally made."

Section 39 amended

19. In section 39(3)(b)(ii) of the principal Act, after "tainted property" insert "or that the property was a benefit obtained from or in connection with the commission of a serious offence".

Section 40 amended

20. Section 40(1) of the principal Act is amended by deleting "Consolidated Fund" and substituting "Forfeited Assets Fund".

Section 50 amended

21. Section 50 of the principal Act is amended:

(a) by repealing subsection (1) and substituting the following subsection:

"(1) Where a police officer has reasonable grounds for suspecting that a person has possession or control of a property-tracking document the police officer may apply to a Judge in Chambers in accordance with subsection (2) for an order under subsection (5) against the person suspected of having possession or control of the document.";

(b) in subsection (3) by deleting "in respect of an offence";

(c) by repealing subsection (6).

Section 56 amended

22. Section 56 of the principal Act is amended:

(a) by repealing subsection (1) and inserting the following subsection:

"(1) Where under the Mutual Assistance In Criminal Matters Act 1997:

(a) a police officer is authorised to apply to a Judge or magistrate for a search warrant under this Act in relation to a property-tracking document in respect of a foreign serious offence, the police officer may apply for the warrant accordingly;

(b) the Director of Public Prosecutions may apply to a Judge for a production order under this Act in respect of a foreign serious offence, the Director of Public Prosecutions may apply for the order accordingly,

and this Division applies to the application and to any warrant or order issued as a result of the application and to any warrant or order issued as a result of the application as if a reference in this Division to a serious offence were a reference to a foreign serious offence.";

(b) in subsection (2) by deleting "production order made, or a warrant issued, in respect of a foreign serious offence, the police officer" and substituting "warrant issued, or the Director of Public Prosecutions takes possession of a document under a production order made, in respect of a foreign serious offence, the police officer or the Director of Public Prosecutions".

Section 57 amended

23. Section 57 of the principal Act is amended:

- (a) in subsection (1) by deleting "A police officer" and substituting "The Director of Public Prosecutions";
- (b) by deleting subsection (5) and substituting the following subsection:

"(5) A Judge shall not make a monitoring order unless the Judge is satisfied that there are reasonable grounds for suspecting that:

- (a) the person in respect of whose account the information is sought:
 - (i) has committed or is about to commit, a serious offence or a foreign serious offence;
 - (ii) was involved in the commission, or is about to be involved in the commission, of a serious offence or a foreign serious offence;
 - (iii) has benefited directly or indirectly, or is about to benefit directly or indirectly, from the commission of a serious offence or a foreign serious offence; or
- (b) the account is related to or is being used for the purposes of the commission of a serious offence or a foreign serious offence."

Sections 59, 61, 62 & 63 repealed

24. The principal Act is amended by repealing sections 59, 61, 62 and 63.

Section 69 amended

25. Section 69 of the principal Act is amended:

- (a) in subsection (3)(b) by deleting "disposes of or brings into Fiji any money, or other property, that is proceeds of crime," and substituting "uses, disposes of or brings into Fiji any money or other property that are proceeds of crime, or";
- (b) after subsection (3)(b) by inserting the following paragraphs:

- "(c) the person converts or transfers money or other property derived directly or indirectly from a serious offence or a foreign serious offence, with the aim of concealing or disguising the illicit origin of that money or other property, or of aiding any person involved in the commission of the offence to evade the legal consequences thereof, or
- (d) the person conceals or disguises the true nature, origin, location, disposition, movement or ownership of the money or other property derived directly or indirectly from a serious offence or a foreign serious offence, or
- (e) the person renders assistance to a person falling within paragraph (a), (b), (c), or (d),";

- (c) by inserting after subsection (3) the following subsection:

"(4) The offence of money laundering is not predicated on proof of the commission of a serious offence or foreign serious offence."

Section 70 amended

26. Section 70 of the principal Act is amended after subsection (2) by adding the following subsection:

"(3) The offence under subsection (1) is not predicated on proof of the commission of a serious offence or foreign serious offence."

Section 70A inserted

27. The principal Act is amended by adding after section 70 the following section:

"Financing of terrorism

70A. (1) A person who provides, collects or makes available by any means, directly or indirectly, any property, intending, knowing or having reasonable grounds to believe, that the

property will be used in full or in part to carry out a terrorist act commits an offence and shall be liable on conviction to:

- (a) if the offender is a natural person: a fine not exceeding \$120,000 or imprisonment for a term not exceeding 20 years, or both;
- (b) if the offender is a body corporate: a fine not exceeding \$600,000.

(2) A person who, directly or indirectly, provides or makes available financial or other related services:

- (a) intending that they be used in full or in part for the purpose of committing, or facilitating the commission of, a terrorist act, or for the purpose of benefiting any person who is committing, or facilitating the commission of, a terrorist act; or
- (b) knowing that in full or in part they will be used by, or will benefit, a terrorist group,

commits an offence and shall be liable on conviction to:

- (c) if the offender is a natural person: a fine not exceeding \$120,000 or imprisonment for a term not exceeding 20 years, or both;
- (d) if the offender is a body corporate: a fine not exceeding \$600,000."

New Part inserted

28. The principal Act is amended by inserting after Part V the following Part:

"Part VAFORFEITED ASSETS FUND

Establishment of Forfeited Assets Fund

71A. This section establishes the Forfeited Assets Fund for the purposes of receiving credits in accordance with section 71B and making payments in accordance with section 71 D and the administration and use of the Fund are subject to the Financial Management Act 2004 and the Finance Instructions.

Credits to the Fund

71B. There must be credited to the Forfeited Assets Fund amounts equal to:

- (a) proceeds of forfeiture orders;
- (b) proceeds of pecuniary penalty orders;
- (c) money paid under section 16;
- (d) money paid to the Republic of the Fiji Islands by a foreign country, under a treaty or arrangement or otherwise, for providing for mutual assistance in criminal matters; and
- (e) money, other than money referred to in paragraph (d), paid to the Republic of the Fiji Islands by a foreign country in connection with assistance provided by the Republic in relation to the recovery by that country of the proceeds of unlawful activity or the investigation or prosecution of unlawful activity.

Shared confiscated property with foreign countries to be credited to Fund

71C. (1) The Attorney-General may enter into an arrangement with the competent authorities of a foreign country for the reciprocal sharing with that country of such part of any property realised:

- (a) in the foreign country as the result of action taken by the Attorney-General pursuant to a forfeiture or pecuniary penalty order; or
- (b) in Fiji, as the result of action taken in Fiji pursuant to a forfeiture or pecuniary penalty order,

as the Attorney-General thinks fit.

(2) Proceeds or benefits of crime:

- (a) forfeited or confiscated in a foreign country pursuant to a request by Fiji;
- (b) forfeited or confiscated in Fiji pursuant to a request by a foreign country,

to the extent available under any sharing of confiscated property arrangement or otherwise, are to be credited to the Forfeited Assets Fund.

Payments from the Fund

71D. (1) The purposes of the Fund are:

- (a) to make such payments to foreign countries as the Minister, with the approval of the Minister of Finance, considers appropriate under an approved programme;
- (b) to make payments under a programme approved by the Minister under section 71E and approved by the Minister of Finance;
- (c) to make such payments as the Minister considers necessary to satisfy the Fiji Islands obligation in respect of:
 - (i) a registered foreign forfeiture order; or
 - (ii) a registered foreign pecuniary penalty order,

with the approval of the Minister of Finance;

- (d) to make payments, as directed, under section 15;
- (e) to make payments for the purposes of the administration of the Fund.

(2) Any payment out of the Fund is deemed to be an appropriation by law.

Programmes for expenditure on enforcement etc.

71E. (1) The Minister may, with the approval of the Minister of Finance, in writing, approve a programme for the expenditure in a particular financial year of money standing to the credit of the Forfeited Assets Fund.

(2) The expenditure is to be approved for one or more of the following purposes:

- (a) measures for the enforcement of this Act, the Mutual Assistance In Criminal Matters Act 1997 and the Financial Transactions Reporting Act 2004;
- (b) assets and the provision of services to strengthen law enforcement measures relevant to the Acts referred to in paragraph (a);
- (c) related crime prevention measures."

Section 72 amended

29. Section 72 of the principal Act is amended after "this Act" by inserting ", other than in proceedings under Part V,".

Consequential amendments

30. (1) The principal Act is amended by deleting "confiscation" and substituting "pecuniary penalty" wherever it appears in the principal Act.

(2) A confiscation order duly made under the principal Act and current immediately before the commencement of the Proceeds of Crime (Amendment) Act 2004 is deemed to be a pecuniary penalty order.

Passed by the House of Representatives this 19th day of April 2005.

Passed by the Senate this 23rd day of June 2005.

FIJI ISLANDS GOVERNMENT GAZETTE SUPPLEMENT

No. 24

FRIDAY 26th August

2005

[LEGAL NOTICE NO. 44]

PROCEEDS OF CRIME (AMENDMENT) ACT 2005
(ACT NO. 7 OF 2005)

COMMENCEMENT NOTICE

IN exercise of the powers conferred on me by Section 1 of the Proceeds of Crime (Amendment) Act 2005, I appoint 1st September 2005 as the date on which all the provisions of the Act, except Sections 24 and 27, come into force.

Made this 18th day of August 2005.

Q. B. BALE
Attorney General and Minister for Justice