

SINGAPORE

TERRORISM (SUPPRESSION OF FINANCING) ACT, (29/1/2003)

PART IV

SEIZURE, FREEZING AND CONFISCATION OF TERRORIST PROPERTY

Application for warrant for seizure and order for restraint of property

11. (1) A Judge may, on an ex parte application by the Attorney-General, after examining the application in private and if satisfied that there is in any building, receptacle or place any property in respect of which an order of forfeiture may be made under section 24, issue:

(a) if the property is situated in Singapore, a warrant authorising any police officer, or person named in the warrant;

- (i) to search the building, receptacle or place for that property; and
- (ii) to seize that property and any other property which that police officer or person believes, on reasonable grounds, that an order of forfeiture may be made under section 24; or

(b) whether the property is situated in or outside Singapore, a restraint order prohibiting any person from disposing of, or otherwise dealing with any interest in, that property, other than as may be specified in the order.

(2) For the purpose of subsection (1) (b), dealing with any interest in any property held by any person includes (without prejudice to the generality of the expression):

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

(b) removing the property from Singapore.

(3) A restraint order issued under subsection (1) (b) may be subject to such conditions as the Judge thinks fit.

(4) A copy of a restraint order issued under subsection (1) (b) shall be served on the person to whom the order is addressed in such manner as the Judge directs or as provided in the Rules of Court.

Contents of application for warrant or order

12. An affidavit in support of an application by the Attorney-General under section 11 may be sworn or affirmed on information and belief.

Undertakings for warrant or order

13. Before issuing a warrant under section 11 (1) (a) or an order under section 11 (1) (b), the Judge may require the Attorney-General to give such undertakings as the Judge

considers appropriate with respect to the payment of damages or costs, or both, in relation to the issuance and execution of the warrant or the making and execution of the restraint order.

Contravention of order

14. Any person on whom an order issued under section 11 (1) (b) is served under section 11 (4) who, while the order is in force, contravenes the order shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 5 years or to both.

Appointment of manager, etc.

15. (1) On an application under section 11, at the request of the Attorney-General, if a Judge is of the opinion that the circumstances so require, the Judge may by order:

- (a) appoint a person to take control of, and manage or otherwise deal with, all or part of the property in accordance with the directions of the Judge; and
- (b) require any person having possession of that property to give possession of the property to the person appointed under paragraph (a).

(2) When the Attorney-General so requests, a Judge appointing a person under subsection (1) shall appoint the Public Trustee.

Power to manage

16. (1) The power to manage or otherwise deal with property under section 15 includes:

- (a) in the case of perishable or rapidly depreciating property, the power to sell that property; and
- (b) in the case of property that has little or no value, the power to destroy that property.

(2) Before a person appointed under section 15 destroys property referred to in subsection (1) (b), he shall apply to a Judge for a destruction order.

(3) Before making a destruction order in relation to any property, a Judge shall require notice in accordance with subsection (4) to be given to, and may hear, any person who, in the opinion of the Judge, appears to have a valid interest in the property.

(4) A notice under subsection (3) shall be given in the manner that the Judge directs or as provided in the Rules of Court.

(5) A Judge may order that property be destroyed if he is satisfied that the property has little or no financial or other value.

Cessation of order or appointment

17. An order issued under section 11 (1) (b) or 15(1) remains in effect until:

- (a) it is revoked or varied under section 18 or 19;
- (b) it ceases to be in force under section 20; or
- (c) the property that is the subject of the order is returned to an applicant in accordance with the law or forfeited to the Government.

Application by Attorney-General to revoke or vary warrant or order

18. The Attorney-General may at any time apply to a Judge to revoke or vary a warrant or order issued or made under this Part, other than an appointment made under section 15 (2).

Application by interested person to revoke or vary warrant or order

19. (1) Any person who has an interest in the property that was seized under a warrant issued under section 11 (1) (a) or in respect of which a restraint order was issued under section 11 (1) (b) may, at any time, apply to a Judge:

- (a) for an order under subsection (4); or
- (b) for permission to examine the property.

(2) Where an application is made under subsection (1) (a):

- (a) the application shall not, without the consent of the Attorney-General, be heard by a Judge unless the applicant has given to the Attorney-General at least 2 clear days notice in writing of the application; and
- (b) the Judge may require notice of the application to be given to and may hear any person who, in the opinion of the Judge, appears to have a valid interest in the property.

(3) A Judge may, on an application made to the Judge under subsection (1) (b), order that the applicant be permitted to examine the property subject to such terms as appear to the Judge to be necessary or desirable to ensure that the property is safeguarded and preserved for any purpose for which it may subsequently be required.

(4) On an application made to a Judge under subsection (1) (a) in respect of any property and after hearing the applicant and the Attorney-General and any other person to whom notice was given under subsection (2) (b), the Judge may order that the property or part thereof be returned to the applicant or, in the case of a restraint order issued under section 11 (1) (b), revoke the order, vary the order to exclude the property or any interest in the property or part thereof from the application of the order or make the order subject to such reasonable conditions as the Judge thinks fit:

- (a) if the applicant enters into a recognizance before the Judge, with or without sureties, in such amount and with such conditions, if any, as the Judge directs and where the Judge considers it appropriate, deposits with the Judge such sum of money or other valuable security as the Judge directs;
- (b) if the condition referred to in subsection (6) is satisfied; or
- (c) for the purpose of:

(i) meeting the reasonable living expenses of the person who was in possession of the property at the time the warrant was executed or the order was made or any person who, in the opinion of the Judge, has a valid interest in the property and of the dependants of that person; or
(ii) meeting the reasonable business and legal expenses of a person referred to in sub-paragraph (i),
if the Judge is satisfied that the applicant has no other assets or means available for the purposes set out in this paragraph and that no other person appears to be the lawful owner of or lawfully entitled to possession of the property.

(5) For the purpose of determining the reasonableness of expenses referred to in subsection (4) (c), the Attorney-General may, at the hearing of the application, make representations as to what would constitute the reasonableness of the expenses.

(6) An order under subsection (4) (b) in respect of property may be made by a Judge if the Judge is satisfied:

(a) where the application is made by:

- (i) a person charged with a terrorism financing offence; or
- (ii) any person who acquired title to or a right of possession of that property from a person referred to in sub-paragraph (i) under circumstances that give rise to a reasonable inference that the title or right was transferred from that person for the purpose of avoiding the forfeiture of the property, that a warrant should not have been issued under section 11 (1) (a) or a restraint order should not have been issued under section 11 (1) (b) in respect of the property; or

(b) in any other case, that the applicant is the lawful owner of or lawfully entitled to possession of the property and appears innocent of any complicity in any terrorism financing offence or of any collusion in relation to such an offence, and that no other person appears to be the lawful owner of or lawfully entitled to possession of the property, and that the property will no longer be required for the purpose of any investigation or as evidence in any proceedings.

Expiration of warrants and restraint orders

20. (1) Subject to this section, where property has been seized under a warrant issued under section 11 (1) (a) or is the subject of a restraint order issued under section 11 (1) (b), the property may be detained or the order may continue in force, as the case may be, for a period not exceeding 6 months from the seizure or the issuing of the order, as the case may be.

(2) The property may continue to be detained, or the order may continue in force, for a period exceeding 6 months if proceedings are instituted in respect of which the property detained may be forfeited.

(3) The property may continue to be detained or the order may continue in force for a period or periods exceeding 6 months if the continuation is, on application made by the Attorney-General, ordered by a Judge, where the Judge is satisfied that the property is required, after the expiration of the period or periods, for the purpose of this Act or any other Act respecting forfeiture or for the purpose of any investigation or as evidence in any proceedings.

Application for forfeiture of property

21. The Attorney-General may make an application to a Judge for an order of forfeiture in respect of:

- (a) property owned or controlled by or on behalf of any terrorist or terrorist entity;
or
- (b) property that has been or will be used, in whole or in part, to facilitate or carry out a terrorist act.

Contents of application for forfeiture of property

22. An affidavit in support of an application by the Attorney-General under section 21 may be sworn or affirmed on information and belief.

Respondents and notice

23. (1) The Attorney-General is required to name as a respondent to an application under section 21 only those persons who are known to own or control the property that is the subject of the application.

(2) The Attorney-General shall give notice of an application under section 21 to named respondents in such a manner as the Judge directs or as provided in the Rules of Court.

(3) On an application under section 21, a Judge may require notice to be given to any person who, in the opinion of the Judge, appears to have an interest in the property, and any such person shall be entitled to be added as a respondent to the application.

Order for forfeiture of property

24. (1) If a Judge is satisfied on a balance of probabilities that property is property referred to in section 21(a) or (b), the Judge shall order that the property be forfeited to the Government.

(2) For the purposes of subsection (1), where the property owned or controlled by any terrorist or terrorist entity has been mixed with other property (whether the property of the terrorist or terrorist entity), the order of forfeiture shall relate to the portion of the mixed property which represents the property owned or controlled by the terrorist or terrorist entity.

Implementation of forfeiture orders

25. (1) Where any property is ordered to be forfeited to the Government under section

24, the Judge may make such other provision as appears to the Judge to be necessary for giving effect to the order, and, in particular, may:

- (a) require any of the forfeited property to be paid or handed over to the proper officer;
- (b) direct any of the forfeited property (other than money) or land to be sold or otherwise disposed of in such manner as the Judge may direct and the proceeds, if any, to be paid to the proper officer;
- (c) appoint a receiver to take possession, subject to such conditions and exceptions as may be specified by the Judge, of any of the forfeited property, to realise it in such manner as the Judge may direct and to pay the proceeds to the proper officer.

(2) For the purposes of subsection (1):

- (a) a reference to the proceeds of the sale, disposal or realisation of property is a reference to the proceeds after deduction of the costs of sale, disposal or realisation; and
- (b) “proper officer” means any person authorised by the Minister to receive the relevant property.

Order refusing forfeiture of property

26. (1) Where a Judge refuses an application under section 21 in respect of any property, the Judge shall make an order that describes the property and declares that it is not property referred to in that section.

(2) If a Judge is satisfied that any respondent referred to in section 23 has an interest in any property that is subject to an application, has exercised reasonable care to ensure that the property would not be used to facilitate or carry out a terrorist act, and is not a member of a terrorist entity, the Judge shall:

- (a) order that the interest is not affected by the forfeiture; and
- (b) declare the nature and extent of the interest referred to in paragraph (a).

Application to set aside order of forfeiture

27. (1) A person who claims an interest in any property that was forfeited and who did not receive notice under section 23 (3) may apply to a Judge to vary or set aside an order made under section 24 (1) not later than 60 days after the day on which the forfeiture order was made.

(2) A Judge shall not extend the period set out in subsection (1).

Interim preservation rights

28. Pending any appeal of an order made under section 24:

- (a) any property seized under a warrant issued under section 11 (1) (a) shall continue to be detained;
- (b) any property restrained under an order issued under section 11 (1) (b) shall continue to be restrained; and
- (c) any person appointed to control, manage or otherwise deal with that property under section 15 shall continue in that capacity.

Voidable transfers

29. A Judge may:

- (a) prior to ordering any property to be forfeited under section 24; and
- (b) in the case of any property in respect of which a restraint order was issued under section 11 (1) (b), where the order was served in accordance with section 11 (4), set aside any conveyance or transfer of the property that occurred after the seizure of the property or the service of the order under section 11 (4), unless the conveyance or transfer was for valuable consideration to a person acting in good faith.

Other forfeiture provisions unaffected

30. This Part shall not affect the operation of any other Act respecting the forfeiture of property.