

Serious Crimes and Counter-Terrorism (Miscellaneous Amendments) Bill

Bill No. 43/2018.

Read the first time on 1 October 2018.

A BILL

i n t i t u l e d

An Act to amend the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Chapter 65A of the 2000 Revised Edition) and the Terrorism (Suppression of Financing) Act (Chapter 325 of the 2003 Revised Edition) to enhance the legal framework for preventing money laundering and combating terrorism financing.

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

Short title and commencement

1. This Act is the Serious Crimes and Counter-Terrorism (Miscellaneous Amendments) Act 2018 and comes into operation on a date that the Minister appoints by notification in the *Gazette*.

PART 1

AMENDMENTS TO CORRUPTION, DRUG TRAFFICKING AND OTHER SERIOUS CRIMES (CONFISCATION OF BENEFITS) ACT

Amendment of section 4

2. Section 4 of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap. 65A) (called in this Part the CDS Act) is amended by inserting, immediately after subsection (5), the following subsection:

“(5A) To avoid doubt, a District Court or Magistrate’s Court may make a confiscation order under subsection (1) in respect of the full amount determined in accordance with section 10 to be the value of the benefits derived by the defendant from drug dealing.”.

Amendment of section 5

3. Section 5 of the CDS Act is amended by inserting, immediately after subsection (8), the following subsection:

“(9) To avoid doubt, a District Court or Magistrate’s Court may make a confiscation order under subsection (1) in respect of the full amount determined in accordance with section 10 to be the value of the benefits derived by the defendant from criminal conduct.”.

Amendment of section 17

4. Section 17 of the CDS Act is amended —

(a) by deleting paragraph (b) of subsection (5) and substituting the following paragraph:

“(b) any capital markets products.”;

(b) by inserting, immediately after subsection (8), the following subsection:

“(9) In this section, “capital markets products” has the meaning given by section 2(1) of the Securities and Futures Act (Cap. 289).”; and

(c) by deleting the word “securities” in the section heading and substituting the words “capital markets products”.

Amendment of section 39

5. Section 39 of the CDS Act is amended by deleting subsection (2) and substituting the following subsection:

“(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction —

(a) if the person is an individual, to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding 3 years or to both; or

(b) if the person is not an individual, to a fine not exceeding \$500,000.”.

Amendment of section 41

6. Section 41 of the CDS Act is amended —

(a) by inserting, immediately after the word “arrangement” in subsection (2)(a), the words “, or an international arrangement,”;

(b) by deleting paragraph (b) of subsection (2) and substituting the following paragraph:

“(b) the Suspicious Transaction Reporting Officer is satisfied —

(i) in any case where there exists an international arrangement mentioned in paragraph (a), that the corresponding authority has given appropriate undertakings under or in

accordance with the international arrangement —

5 (A) for protecting the confidentiality of any thing communicated to the corresponding authority; and

10 (B) for controlling the use that will be made of that thing, including an undertaking that the thing will not be used as evidence in any proceedings; or

(ii) in any other case, that the corresponding authority has given appropriate undertakings —

15 (A) for protecting the confidentiality of any thing communicated to the corresponding authority; and

20 (B) for controlling the use that will be made of that thing, including an undertaking that the thing will not be used as evidence in any proceedings;” and

25 (c) by inserting, immediately after the definition of “corresponding authority” in subsection (3), the following definition:

30 ““international arrangement” means an arrangement for cooperation in accordance with the rules or by-laws of, or any principles or guidelines issued by, any prescribed international organisation, and to which the Suspicious Transaction Reporting Office mentioned in section 3A and the corresponding authority of a foreign country are parties.”.

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Amendment of section 43

7. Section 43(5) of the CDS Act is amended by deleting paragraph (b) and substituting the following paragraph:

“(b) if the person is not an individual, to a fine not exceeding \$1 million or twice the value of the benefits of drug dealing in respect of which the offence was committed, whichever is higher.”.

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Amendment of section 44

8. Section 44 of the CDS Act is amended —

(a) by deleting the words “benefits of criminal conduct” in subsection (1)(a) and substituting the words “benefits from criminal conduct”; and

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(b) by deleting paragraph (b) of subsection (5) and substituting the following paragraph:

“(b) if the person is not an individual, to a fine not exceeding \$1 million or twice the value of the benefits from criminal conduct in respect of which the offence was committed, whichever is higher.”.

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Amendment of section 46

9. Section 46(6) of the CDS Act is amended by deleting paragraph (b) and substituting the following paragraph:

“(b) if the person is not an individual, to a fine not exceeding \$1 million or twice the value of the property in respect of which the offence was committed, whichever is higher.”.

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Amendment of section 47

10. Section 47 of the CDS Act is amended —

(a) by deleting paragraph (b) of subsection (6) and substituting the following paragraph:

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“(b) if the person is not an individual, to a fine not exceeding \$1 million or twice the value of the property in respect of which the offence was committed, whichever is higher.”; and

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(b) by deleting the word “of” in the section heading and substituting the word “from”.

New section 47AA

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11. The CDS Act is amended by inserting, immediately after section 47, the following section:

“Possessing or using property reasonably suspected to be benefits from drug dealing, etc.

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47AA.—(1) Any person who possesses or uses any property that may be reasonably suspected of being, or of in whole or in part, directly or indirectly, representing, any benefits of drug dealing or benefits from criminal conduct shall, if the person fails to account satisfactorily how the person came by the property, be guilty of an offence.

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(2) Any person who commits an offence under subsection (1) shall be liable on conviction —

(a) if the person is an individual, to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 3 years or to both; or

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(b) if the person is not an individual, to a fine not exceeding \$300,000.”.

Amendment of section 47A

12. Section 47A of the CDS Act is amended by inserting, immediately after subsection (2), the following subsections:

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“(3) For the purpose of proving under this Part whether doing or being concerned in any act in a foreign country constitutes drug dealing or criminal conduct —

(a) where the prosecution adduces, to the satisfaction of the court, some evidence that doing or being concerned in the act satisfies every element of a foreign drug dealing offence or foreign serious offence, it is presumed, until the contrary is proved, that the act constitutes that foreign drug dealing offence or foreign serious offence, as the case may be; and

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(b) without affecting section 59(1)(b) of the Evidence Act, the court may take judicial notice of any Act passed by the legislature of that foreign country.

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(4) Section 59(2) and (3) of the Evidence Act applies to the taking of judicial notice under subsection (3)(b).”.

Amendment of section 48

13. Section 48 of the CDS Act is amended by deleting “\$30,000” in subsections (1) and (2) and substituting in each case “\$250,000”.

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Amendment of section 48A

14. Section 48A of the CDS Act is amended by inserting, immediately after the words “serious offences”, the words “, and to allow the confiscation of any physical currency or bearer negotiable instrument moved, attempted to be moved, or received, in contravention of the requirements under this Part”.

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New section 48FA

15. The CDS Act is amended by inserting, immediately after section 48F, the following section:

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“Confiscation orders for offences under section 48C or 48E

48FA. Where a defendant is convicted of an offence under section 48C(2) or 48E(2), the court may, on the application of the Public Prosecutor, make a confiscation order against the defendant in respect of any part of the cash, in relation to which the offence was committed, that exceeds the prescribed amount (or its equivalent in a foreign currency).”.

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Amendment of section 60

16. Section 60 of the CDS Act is amended by deleting subsection (1) and substituting the following subsection:

5 “(1) The Minister, or any person authorised by the Minister in writing, may compound any offence under this Act, or under any regulations made under this Act, that is prescribed as a compoundable offence by collecting from a person reasonably suspected of having committed the offence a sum not exceeding —

10 (a) in the case of any offence under section 48C(2) or 48E(2), \$20,000; or

(b) in the case of any other offence, \$5,000.”.

PART 2

AMENDMENTS TO TERRORISM (SUPPRESSION OF FINANCING) ACT

Amendment of section 3

17. The Terrorism (Suppression of Financing) Act (Cap. 325) (called in this Part the TSOF Act) is amended by renumbering section 3 as subsection (1) of that section, and by inserting immediately thereafter the following subsection:

“(2) Any person who acts reasonably in taking, or omitting to take, measures to avoid committing an offence under subsection (1) shall not be liable in any civil proceedings arising from taking or omitting to take those measures.”.

Amendment of section 4

18. The TSOF Act is amended by renumbering section 4 as subsection (1) of that section, and by inserting immediately thereafter the following subsections:

30 “(2) Any person who acts reasonably in taking, or omitting to take, measures to avoid committing an offence under subsection (1) shall not be liable in any civil proceedings arising from taking or omitting to take those measures.

(3) In this section, a reference to facilitating or carrying out any terrorist act includes a reference to financing the travel of an individual to any place other than the state of which the individual is a citizen or in which the individual resides, in order for the individual to provide or receive any training in facilitating or carrying out any terrorist act.”. 5

Amendment of section 5

19. The TSOF Act is amended by renumbering section 5 as subsection (1) of that section, and by inserting immediately thereafter the following subsection: 10

“(2) Any person who acts reasonably in taking, or omitting to take, measures to avoid committing an offence under subsection (1) shall not be liable in any civil proceedings arising from taking or omitting to take those measures.”.

Amendment of section 6A

20. Section 6A of the TSOF Act is amended by deleting paragraph (b) and substituting the following paragraph: 15

“(b) in any other case, to a fine not exceeding the higher of —

(i) \$1 million; or 20

(ii) twice the value of the property (including funds derived or generated from the property), financial services or other related services, or financial transaction (as the case may be) in respect of which the offence was committed.”. 25

New section 6B

21. The TSOF Act is amended by inserting, immediately after section 6A, the following section:

“Abetment, etc., of offence under section 3, 4, 5 or 6

6B. A person who commits an act or omission that would constitute an abetment of, or a conspiracy or an attempt to commit, an offence under section 3, 4, 5 or 6 shall be guilty of an 30

offence and shall be liable on conviction to the same punishment as for the offence under section 3, 4, 5 or 6, as the case may be.”.

Amendment of section 8

22. Section 8 of the TSOF Act is amended —

5 (a) by inserting, immediately after the words “think fit” in subsection (2), the words “, and the person must comply with the requirement”; and

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

10 “(3) Any person who contravenes subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction —

15 (a) if the person is an individual, and the property mentioned in subsection (1)(a) came into the person’s possession, custody or control, or the information or particulars mentioned in subsection (1)(b) or (2) came to the person’s attention, in the course of the person’s trade, profession, business or employment — to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding 5 years or to both;

20 (b) if the person is an individual, but paragraph (a) does not apply — to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 5 years or to both; or

25 (c) if the person is not an individual, to a fine not exceeding —

30 (i) where subsection (1) was contravened, the higher of —

(A) \$1 million; or

(B) twice the value of the property mentioned in subsection (1)(a) or (b), as the case may be; or

(ii) where subsection (2) was contravened, \$1 million.”.

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Amendment of section 10

23. Section 10 of the TSOF Act is amended —

(a) by deleting the words “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” in subsection (1); and

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(b) by inserting, immediately after subsection (1), the following subsection:

“(1A) Any person who commits an offence under subsection (1) shall be liable on conviction —

(a) if the person is an individual, and the information came to the person’s attention in the course of the person’s trade, profession, business or employment — to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding 5 years or to both;

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(b) if the person is an individual, but paragraph (a) does not apply — to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 5 years or to both; or

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(c) if the person is not an individual, to a fine not exceeding —

(i) where a terrorism financing offence was committed, the higher of —

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(A) \$1 million; or

(B) twice the value of the property (including funds derived or generated from the property), financial services or other related services, or financial transaction (as the case may be) in respect of which the terrorism financing offence was committed; or

(ii) where no terrorism financing offence was committed, \$1 million.”.

Amendment of section 10B

24. Section 10B of the TSOF Act is amended by deleting the words “\$30,000 or to imprisonment for a term not exceeding 3 years” in subsections (1) and (2) and substituting in each case the words “\$250,000 or to imprisonment for a term not exceeding 5 years”.

EXPLANATORY STATEMENT

This Bill seeks to amend 2 Acts and is to that end divided into 2 Parts.

Part 1 consists of amendments to the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap. 65A) (CDS Act) for the following purposes:

- (a) to enhance the framework for preventing money laundering;
- (b) to raise the maximum penalties for certain offences under the CDS Act.

Part 2 consists of amendments to the Terrorism (Suppression of Financing) Act (Cap. 325) (TSOF Act) for the following purposes:

- (a) to give effect to Resolution 2178 (2014) of the Security Council of the United Nations, which requires member states to, among other things, prevent the financing of individuals who travel to a state other than their state of residence or nationality to receive terrorist training;
- (b) to enhance the framework for combating terrorism financing.

Clause 1 relates to the short title and commencement.

PART 1

AMENDMENTS TO CORRUPTION, DRUG
TRAFFICKING AND OTHER SERIOUS CRIMES
(CONFISCATION OF BENEFITS) ACT

Clause 2 amends section 4 of the CDS Act to clarify that a District Court or Magistrate's Court may make a confiscation order in respect of the full amount of the value of the benefits derived by the defendant from drug dealing.

Clause 3 amends section 5 of the CDS Act to clarify that a District Court or Magistrate's Court may make a confiscation order in respect of the full amount of the value of the benefits derived by the defendant from criminal conduct.

Clause 4 amends section 17 of the CDS Act to replace a reference to certain specified securities with a reference to any capital markets products as defined in section 2(1) of the Securities and Futures Act (Cap. 289), and thereby extend the classes of assets in relation to which a charge may be imposed by a charging order.

Clause 5 amends section 39 of the CDS Act to raise the maximum penalty for an offence under section 39(2) —

- (a) if the offender is an individual, to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding 3 years or to both; or
- (b) if the offender is not an individual, to a fine not exceeding \$500,000.

Clause 6 amends section 41 of the CDS Act to add new conditions under which a Suspicious Transaction Reporting Officer (STRO) may communicate to a corresponding authority of a foreign country information given to the STRO. The conditions are that —

- (a) there exists an international arrangement; and
- (b) the corresponding authority must give, to the STRO's satisfaction, appropriate undertakings under or in accordance with the international arrangement to protect the confidentiality, and control the use that will be made, of any thing communicated to the corresponding authority.

An international arrangement is an arrangement for cooperation in accordance with the rules or by-laws of, or any principles or guidelines issued by, any prescribed international organisation, and to which the Suspicious Transaction Reporting Office and the corresponding authority of the foreign country are parties.

Clause 7 amends section 43(5) of the CDS Act to raise the maximum penalty for an offence under that section committed by a person who is not an individual to the higher of \$1 million or twice the value of the benefits of drug dealing in respect of which the offence was committed.

Clause 8 amends section 44(5) of the CDS Act to raise the maximum penalty for an offence under that section committed by a person who is not an individual to the higher of \$1 million or twice the value of the benefits from criminal conduct in respect of which the offence was committed. The clause also makes an editorial change to section 44(1)(a).

Clause 9 amends section 46(6) of the CDS Act to raise the maximum penalty for an offence under that section committed by a person who is not an individual to the higher of \$1 million or twice the value of the property in respect of which the offence was committed.

Clause 10 amends section 47(6) of the CDS Act to raise the maximum penalty for an offence under that section committed by a person who is not an individual to the higher of \$1 million or twice the value of the property in respect of which the offence was committed. The clause also makes an editorial change to the section heading.

Clause 11 inserts a new section 47AA into the CDS Act to make it an offence for a person to possess or use any property that may be reasonably suspected of being or representing any benefits of drug dealing or benefits from criminal conduct, if the person fails to account satisfactorily how the person came by the property. The maximum penalty on conviction is —

- (a) if the person is an individual, a fine not exceeding \$150,000 or imprisonment for a term not exceeding 3 years or both; or
- (b) if the person is not an individual, a fine not exceeding \$300,000.

Clause 12 amends section 47A of the CDS Act to provide that for the purpose of proving under Part VI of that Act whether doing or being concerned in any act in a foreign country constitutes drug dealing or criminal conduct —

- (a) if the prosecution adduces, to the court's satisfaction, some evidence that doing or being concerned in the act satisfies every element of a foreign drug dealing offence or foreign serious offence, it is presumed, until the contrary is proved, that the act constitutes that foreign drug dealing offence or foreign serious offence; and
- (b) the court may take judicial notice of any Act passed by the legislature of that foreign country (whether or not that foreign country is a country within the Commonwealth).

Clause 13 amends section 48 of the CDS Act to raise the maximum fine for an offence under section 48(1) or (2) to \$250,000.

Clause 14 amends section 48A of the CDS Act to expand the object of Part VIA of that Act to allow the confiscation of any physical currency or bearer negotiable instrument moved, attempted to be moved, or received, in contravention of the requirements under that Part.

Clause 15 inserts a new section 48FA into the CDS Act to empower the court to make a confiscation order against a defendant convicted of an offence under section 48C(2) or 48E(2) of that Act in respect of any part of the cash, in relation to which the offence was committed, that exceeds the prescribed amount of \$20,000 (or its equivalent in a foreign currency). For example, if a defendant is convicted of moving \$25,000 cash into Singapore without giving a report in respect of the movement, the court may confiscate an amount up to \$5,000.

Clause 16 amends section 60(1) of the CDS Act to raise the maximum composition amount for an offence under section 48C(2) or 48E(2) to \$20,000.

PART 2

AMENDMENTS TO TERRORISM (SUPPRESSION OF FINANCING) ACT

Clauses 17, 18 and 19 amend sections 3, 4 and 5, respectively, of the TSOF Act to protect a person who acts reasonably in taking, or omitting to take, measures to avoid committing any offence under the respective sections from being liable in any civil proceedings arising from taking or omitting to take those measures. The taking or omission to take such measures includes the breaching of a contract or the omission to perform a contract, if the performance of the contract would result in the commission of an offence under section 3, 4 or 5 of the TSOF Act.

Clause 18 also amends section 4 of the TSOF Act to expand the existing reference to “facilitating or carrying out any terrorist act” to include a reference to financing the travel of an individual to any place (other than the state of which that individual is a citizen or resident) in order for that individual to provide or receive any training in facilitating or carrying out any terrorist act. This is to give effect to Resolution 2178 (2014) of the Security Council of the United Nations.

Clause 20 amends section 6A of the TSOF Act to raise the maximum penalty for an offence under section 3, 4, 5 or 6 of that Act that is committed by a person who is not an individual to the higher of \$1 million or twice the value of the property (including funds derived or generated from the property), financial services or other related services, or financial transaction (as the case may be) in respect of which the offence was committed.

Clause 21 inserts a new section 6B into the TSOF Act to make a person who abets or conspires or attempts to commit an offence under section 3, 4, 5 or 6 of that Act liable to the same punishment as if the person had committed the offence under the applicable section.

Clause 22 amends section 8 of the TSOF Act to raise the maximum penalty for an offence under that section. The new maximum penalties are as follows:

- (a) if the offender is an individual, and the property mentioned in section 8(1)(a) came into the offender's possession, custody or control, or the information or particulars mentioned in section 8(1)(b) or (2) came to the offender's attention, in the course of the offender's trade, profession, business or employment — a fine not exceeding \$250,000 or imprisonment for a term not exceeding 5 years or both;
- (b) if the offender is an individual, but paragraph (a) does not apply — a fine not exceeding \$50,000 or imprisonment for a term not exceeding 5 years or both;
- (c) if the offender is not an individual —
 - (i) where section 8(1) was contravened, a fine not exceeding the higher of \$1 million or twice the value of the property mentioned in section 8(1)(a) or (b), as the case may be; or
 - (ii) where section 8(2) was contravened, a fine not exceeding \$1 million.

Clause 22 also makes a technical amendment to section 8(2).

Clause 23 amends section 10 of the TSOF Act to raise the maximum penalty for an offence under that section. The new maximum penalties are as follows:

- (a) if the offender is an individual, and the information mentioned in section 10(1) came to the offender's attention in the course of the offender's trade, profession, business or employment — a fine not exceeding \$250,000 or imprisonment for a term not exceeding 5 years or both;
- (b) if the offender is an individual, but paragraph (a) does not apply — a fine not exceeding \$50,000 or imprisonment for a term not exceeding 5 years or both;
- (c) if the offender is not an individual —
 - (i) where a terrorism financing offence was committed, a fine not exceeding the higher of \$1 million or twice the value of the property (including funds derived or generated from the property), financial services or other related services, or financial transaction (as the case may be) in respect of which the terrorism financing offence was committed; or
 - (ii) where no terrorism financing offence was committed, a fine not exceeding \$1 million.

Clause 24 amends section 10B of the TSOF Act to raise the maximum penalty for offences under section 10B(1) and (2) to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding 5 years or to both.

EXPENDITURE OF PUBLIC MONEY

This Bill will not involve the Government in any extra financial expenditure.
