

CHAPTER 9

Money Laundering and Proceeds of Crime

Editor's note: Former chapter 9 of this title on Major Crimes (§§ 901-951) was repealed in its entirety by PL 11-72 § 1. This new chapter 9 was enacted by PL 11-72 § 84 and is part of the Revised Criminal Code Act.

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SUBCHAPTER I

General Provisions

§ 901. Purpose.

The purpose of this chapter is to provide for the confiscation of the proceeds of crime and property used in the commission of serious crime, and to prevent the use of the financial system to launder the proceeds of serious crime.

Source: PL 11-72 § 86.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the Congress of the Federated States of Micronesia are found in title 3 of this code. The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

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§ 902. Jurisdiction and application.

The provisions of this chapter shall extend and apply throughout all of the Federated States of Micronesia, including the land and waters and the airspace above such land and waters with respect to which the Federated States of Micronesia has legislative jurisdiction.

Source: PL 11-72 § 87.

§ 903. Definition.

Under this chapter, unless the context otherwise requires:

(1) "Account" means any facility or arrangement by which a financial institution or cash dealer does any one or more of the following:

- (a) accepts deposits of currency;
- (b) allows withdrawals of currency or transfers into or out of the account;
- (c) pays checks or payment orders drawn on a financial institution or cash dealer or collects checks or payment orders, made by or on behalf of a person; or
- (d) supplies a facility or arrangement for a safety deposit box.

(2) "Appeal" includes proceedings by way of discharging or setting aside a judgment, and an application for a new trial or for a stay of execution.

(3) "Authorized officer" means a person or class of persons designated or authorized by the Secretary pursuant to applicable law as an authorized officer or officers for the purposes of enforcing or implementing the provisions of this chapter and related laws.

(4) "Cash dealer" means:

- (a) a person who carries on a business of an insurer, an insurance intermediary, a securities dealer or a futures broker;
- (b) a person who carries on a business of dealing in bullion, of issuing, selling or redeeming travelers checks, money orders or similar instruments, or of collecting, holding and delivering cash as part of a business providing payroll services;
- (c) an operator of a gambling house, bingo parlor, casino or lottery; or
- (d) a trustee, or manager of a unit trust.

(5) "Covered property" means:

- (a) any property held by a defendant;
- (b) any property in which a defendant has an interest; or
- (c) any property held by a person to whom a defendant has directly or indirectly made a gift caught by this act.

(6) "Currency" means the coin and paper money of the Federated States of Micronesia or of a foreign country that is designated as legal tender and which is customarily used and accepted as a medium of exchange in the country of issue.

(7) "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 957 of this title, a person who is about to be charged with a serious offense.

(8) "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:

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

(9) "Financial institution" means any person or entity which carries on a business of:

- (a) acceptance of deposits and other repayable funds from the public;
- (b) lending, including consumer credit, mortgage credit, factoring (with or without recourse) and financing of commercial transactions;
- (c) financial leasing;
- (d) money transmission services;
- (e) issuing and administering means of payment (such as credit cards, travelers checks and bankers drafts);
- (f) guarantees and commitments;
- (g) trading for their own account or for account of customers in money market instruments (such as checks, bills, certificates of deposit), foreign exchange, financial futures and options, exchange and interest rate instruments, and transferable securities;
- (h) underwriting share issues and participation in such issues;
- (i) advice to undertakings on capital structure, industrial strategy and related questions, and advice and services relating to mergers and the purchase of undertakings;
- (j) money-brokering;

- (k) portfolio management and advice;
 - (l) safekeeping and administration of securities;
 - (m) credit reference services; or
 - (n) safe custody services.
- (10) "Gift" includes any transfer of property by a person to another person directly or indirectly:
- (a) after the commission of a serious crime by the first person;
 - (b) for a consideration the value of which is significantly less than the value of the property transferred; and
 - (c) to the extent of the difference between the market value of the property transferred and the consideration provided by the transferee.
- (11) "Interest", in relation to property, means:
- (a) a legal or equitable estate or interest in the property; or
 - (b) a right, power or privilege in connection with the property.
- (12) "Money laundering" means:
- (a) engaging, directly or indirectly, in a transaction that involves property which is a proceeds of crime;
 - (b) receiving, possessing, concealing, disguising, transferring, converting, disposing of, removing from or bringing into the country any property which is a proceeds of crime;
 - (c) knowing, or having reasonable grounds for suspecting that the property is derived or realized, directly or indirectly, from some form of unlawful activity;
 - (d) where the conduct is conduct of a natural person, without reasonable excuse, failing to take reasonable steps to ascertain whether or not the property is derived or realized directly or indirectly, from some form of unlawful activity; or
 - (e) where the conduct is a conduct of a financial institution, failing to implement or apply procedures and control to prevent or combat money laundering.
- (13) "Person" means any natural or legal person.
- (14) "Proceeding" or "proceedings" means any procedure conducted by or under the supervision of a judge or judicial officer, however described, in relation to any alleged or proven offense, or property derived from such offense, and includes an inquiry, investigation, or preliminary or final determination of facts.
- (15) "Proceeds of crime" means fruits of a crime, or any property derived or realized directly or indirectly from a serious offense and includes, on a proportional basis, property into which any property derived or realized directly from the offense was later successively converted, transformed or intermingled, as well as income, capital or other economic gains derived or realized from such property at any time since the offense.
- (16) "Property" means currency and all other real or personal property of every description, whether situated in the Federated States of Micronesia or elsewhere and whether tangible or intangible, and includes an interest in any

such property.

(17) "Property of or in the possession or control of any person" includes any gift made by that person.

(18) "Realizable", with respect to "covered property" as defined by subsection (6) of this section, means:

(a) capable of being acquired, obtained, taken, seized, confiscated, or procured, and is either cash or is capable of being liquidated and converted into cash; or

(b) capable of being detected, located, found, discovered, and converted into cash through payment of the amount or value of the defendant's interest therein.

(19) "Secretary" means and is synonymous with the Secretary of the Department of Justice' of the Federated States of Micronesia, or with the chief law enforcement officer of the Federated States of Micronesia, whatever the title of such position is or in the future becomes.

(20) "Serious offense" means a violation of:

(a) any law of the Federated States of Micronesia or any of its States or political subdivisions, which is a criminal offense punishable by imprisonment for a term of more than one year; or

(b) a law of a foreign state, in relation to acts or omissions, which, had they occurred in the Federated States of Micronesia or any of its States or political subdivisions, would have constituted a criminal offense punishable by imprisonment for a term of more than one year.

(21) "Supreme Court" means the Supreme Court of the Federated States of Micronesia, and all its divisions, wherever or whenever constituted.

(22) "Tainted property" means:

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

(b) proceeds of crime, as defined in subsection (16) of this section.

(23) "Unit trust" means any arrangement made for the purpose or having the effect of providing for a person to have the funds available for investment; facilitates for the participation by a person as a beneficiary under a trust, or in any profits or income arising from the acquisition, holding, management or disposal of any property pursuant to the trust.

(24) A reference in this chapter to the law of:

(a) the Federated States of Micronesia;

(b) any State of the Federated States of Micronesia; or

(c) any foreign state, includes a reference to a written or unwritten law of, or in force in, any part of the Federated States of Micronesia (including its States and political subdivisions); any part of that State of the Federated States of Micronesia, or any part of that foreign state, as the case may be.

Source: PL 11-72 § 88.

Cross-reference: The statutory provisions on the Executive and the President are found in title 2 (Executive) of this code. The statutory

provisions on the Judiciary and the FSM Supreme Court are found in title 4 (Judicial) of this code.

§ 904. Charge in relation to a serious offense.

Any reference in this chapter to a person being charged, or about to be charged, with a serious offense is a reference to a procedure, however described, in the Federated States of Micronesia or elsewhere, by which criminal proceedings may be commenced.

Source: PL 11-72 § 89.

§ 905. Conviction in relation to a serious offense.

- (1) For the purposes of this chapter, a person shall be taken to be convicted of a serious offense if:
 - (a) the person is convicted, whether upon a plea of guilty or no contest, or after trial, of the offense;
 - (b) the person is charged with, and found guilty of the offense but is discharged without any conviction being recorded; and
 - (c) the Supreme Court, with the consent of the convicted person, takes the offense, of which the person has not been found guilty, into account in passing sentence on the person for another serious offense.
- (2) For the purposes of subsection (1) of this section, judgment or sentence need not have been imposed.

Source: PL 11-72 § 90.

Cross-reference: The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 (Judicial) of this code.

§ 906. Quashing of convictions.

For the purposes of this chapter, a person's conviction for a serious offense shall be taken to be quashed in any case:

- (1) where section 905(1)(a) of this chapter applies, if the conviction is reversed or set aside;
- (2) where section 905(1)(b) of this chapter applies, if the finding of guilt is reversed or set aside; or
- (3) where section 905(1)(c) of this chapter applies, if either:
 - (a) the person's conviction for the other offense referred to in that section is reversed or set aside; or
 - (b) the decision of Supreme Court to take the offense into account in passing sentence for the other offense is reversed or set aside.

Source: PL 11-72 § 91.

§ 907. Value of property.

(1) Subject to subsection (2) of this section, for the purposes of this chapter, the value of property (other than cash) in relation to any person holding the property is:

- (a) its market value; or
- (b) where an innocent third party holds an interest in the property:
 - (i) the market value of the property, less the interest of the innocent third party; and
 - (ii) less the amount required to discharge any valid liens or encumbrances.

(2) References in this chapter to the value of a gift, or the value of any payment or reward, means the value of the gift, payment or reward to the recipient when it was received, adjusted to account for any subsequent changes in the value of money.

Source: PL 11-72 § 92; PL 11-76 § 7.

§ 908. Dealing with property.

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

- (1) where the property is a debt owed to that person, making a payment to any person in reduction or full settlement of the amount of the debt;
- (2) making or receiving a gift of the property; or
- (3) removing the property from the Federated States of Micronesia.

Source: PL 11-72 § 93.

§ 909. Gift caught by this Act.

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

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

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

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

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

(2) For purposes of this Act:

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

(b) in those circumstances, the court shall apply the provisions of section 907 of this title, taking into account the difference between the value of the gift and the consideration, if any, provided to the defendant by the recipient.

Source: PL 11-72 § 94.

Cross-reference: The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 (Judicial) of this code.

§ 910. Deriving a benefit.

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

Source: PL 11-72 § 95.

§ 911. Benefitting from the proceeds of a serious offense.

For the purposes of this Act:

(1) A person has benefitted from an offense if that person has at any time (whether before or after the commencement of this act) received any payment or other reward in connection with, or derived any pecuniary advantage from, the commission of a serious offense, whether committed by that person or someone else.

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

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

(b) any pecuniary advantage derived by the person at any time from the commission of an offense.

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

Source: PL 11-72 § 96.

SUBCHAPTER II

Money Laundering

§ 912. Department of Justice to have authority over money laundering offenses.

The Federated States of Micronesia Department of Justice shall have primary enforcement authority with respect to the provisions of this chapter, and:

(1) shall receive and investigate reports of suspicious transactions issued by financial institutions and cash dealers pursuant to subsection 915(1) of this chapter;

(2) may enter the premises of any financial institution or cash dealer during ordinary business hours to inspect any records kept, pursuant to subsection 914(1) of this chapter, and ask any question relating to such records, make notes and take copies of the whole or any part of the records;

(3) may instruct any financial institution or cash dealer to take such steps as may be appropriate to facilitate any investigation;

(4) may compile statistics and records, disseminate information within the Federated States of Micronesia or elsewhere, make recommendations arising out of any information received, promulgate regulations to be followed by financial institutions and cash dealers, and advise the President;

(5) may provide lists of training facilities for any financial institution in respect of transaction record-keeping and reporting obligations provided for in subsections 914(1) and 915(1) of this chapter;

(6) may consult with any relevant person, institution or organization for the purpose of exercising its powers or duties; and

(7) may enter into joint law agreements with the States of the Federated States of Micronesia with respect to the enforcement and implementation of the provisions of this chapter, as deemed appropriate.

Source: PL 11-72 § 98.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the Congress of the Federated States of Micronesia are found in title 3 of this code. The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

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§ 913. Financial institutions and cash dealers to verify customer's identity.

(1) A financial institution or cash dealer shall take reasonable measures to satisfy itself as to the true identity of any applicant seeking to enter into a business relationship with it, or to carry out a transaction or series of transactions with it, by requiring the applicant to produce an official record reasonably capable of establishing the true identity of the applicant, such as a birth certificate, passport or other official means of identification, and in the case of a corporation, a certificate of incorporation together with its latest tax return filed with the Government of the Federated States of Micronesia.

(2) Where an applicant requests a financial institution or cash dealer to enter into a continuing business relationship, or in the absence of such a relationship, any transaction, then the institution or cash dealer shall take reasonable measures to establish whether the person is acting on behalf of another person.

(3) If it appears to a financial institution or cash dealer that an applicant requesting to enter into any transaction, whether or not in the course of a continuing business relationship, is acting on behalf of another person, then the institution or cash dealer shall take reasonable measures to establish the true identity of any person on whose behalf, or for whose ultimate benefit, the applicant may be acting in the proposed transaction, whether as trustee, nominee, agent or otherwise.

(4) In determining what constitutes reasonable measures, for the purposes of subsections (1) or (3) of this section, regard shall be given to all circumstances of the case, and in particular:

(a) to whether the applicant is based or incorporated in a country in which applicable provisions are in force to prevent the use of the financial system for the purpose of money laundering; and

(b) to custom and practice, as may from time to time be current, in the relevant field of business.

(5) Nothing in this section shall require the production of any evidence of identity where:

(a) the applicant is itself a financial institution or a cash dealer to which this act applies; or

(b) there is a transaction or a series of transactions taking place in the course of a business relationship, in respect of which the applicant has already produced satisfactory evidence of identity.

Source: PL 11-72 § 99.

§ 914. Financial institutions and cash dealers to establish and maintain customer records.

(1) A financial institution or cash dealer shall establish and maintain:

(a) records of all transactions exceeding \$10,000, or its equivalent in foreign currency, carried out by it, in accordance with the requirements of subsection (3) of this section; and

(b) where evidence of a person's identity is obtained in accordance with section 913 of this chapter, a record that indicates the nature of the evidence obtained, and which comprises either a copy of the evidence or such information as would enable a copy of it to be obtained.

(2) Customer accounts of a financial institution or cash dealer shall be kept in the true name of the account holder.

(3) Records required under subsection (1)(a) of this section shall contain particulars sufficient to identify the:

(a) name, address and occupation (or where appropriate, business or principal activity) of each person conducting the transaction, or if known, on whose behalf the transaction is being conducted, as well as the method used by the financial institution or cash dealer to verify the identity of each such person;

(b) nature and date of the transaction;

(c) type and amount of currency involved;

(d) the type and identifying number of any account with the financial institution or cash dealer involved in the transaction;

(e) if the transaction involves a negotiable instrument other than currency, the name of the drawer of the instrument, the name of the institution on which it was drawn, the name of the payee (if any), the amount and date of the instrument, the number (if any) of the instrument and details of any endorsements appearing on the instrument; and

(f) the name and address of the financial institution or cash dealer, and of the officer, employee or agent of the financial institution or cash dealer who prepared the report.

(4) Records required under subsection (1) of this section shall be kept by the financial institution for a period of at least five years from the date the relevant business or transaction was completed.

Source: PL 11-72 § 100.

§ 915. Financial institutions and cash dealers to report suspicious transactions.

(1) Whenever a financial institution or cash dealer is a party to a transaction and has reasonable grounds to suspect that the information it has concerning the transaction may be relevant to an investigation or prosecution of a person for a serious offense, it shall as soon as possible, but no later than three working days after forming that suspicion, and wherever possible before the transaction is carried out:

(a) take reasonable measures to ascertain the purpose of the transaction, the origin and ultimate destination of the funds involved, and the identity and address of any ultimate beneficiary;

(b) prepare a report of the transaction in accordance with subsection (2) of this section; and

(c) communicate the information contained therein to the Department of Justice in writing.

(2) A report required by subsection (1) of this section shall:

(a) contain particulars of the matters specified in subsection (1)(a) of this section, and in section 913(1) of this chapter;

(b) contain a statement of the grounds on which the financial institution or cash dealer holds the suspicion; and

(c) be signed or otherwise authenticated by the financial institution or cash dealer.

(3) A financial institution or a cash dealer which has reported a suspicious transaction in accordance with this subchapter shall, if requested to do so by the Department of Justice, give such further information as it has in relation to the transaction.

Source: PL 11-72 § 101.

§ 916. Financial institutions and cash dealers to establish and maintain internal reporting procedures.

A financial institution or cash dealer shall establish and maintain internal reporting procedures to:

(1) identify persons to whom an employee is to report any information which comes to the employee's attention in the course of employment, and which gives rise to knowledge or suspicion by the employee that another person is engaged in money laundering, and enables any person so identified to have reasonable access to any information relevant to determine if a sufficient basis exists to report the matter pursuant to subsection 915(1) of this chapter; and

(2) require the identified person to report the matter pursuant to subsection 915(1) of this chapter, in the event that he or she determines that sufficient basis exists.

Source: PL 11-72 § 102.

§ 917. Further preventive measures by financial institutions and cash dealers.

A financial institution or cash dealer shall establish and maintain internal reporting procedures to:

(1) take appropriate measures for the purpose of making employees aware of domestic laws relating to money laundering, and the procedures and related policies established and maintained by it pursuant to this act;

(2) provide its employees with appropriate training in the recognition and handling of money laundering transactions.

Source: PL 11-72 § 103.

§ 918. Money laundering offenses.

(1) A person commits the offense of money laundering if the person:

(a) acquires, possesses or uses property, knowing, or having reason to believe, that it is derived directly or indirectly from acts or omissions that would constitute a serious offense;

(b) renders assistance to another person for:

(i) the conversion or transfer of property derived directly or indirectly from the acts or omissions referred to in subsection (1)(a) of this section, with the intention of concealing or disguising the illicit origin of that property, or of aiding any person involved in the commission of the offense to evade the legal consequences thereof; or

(ii) concealing or disguising the true nature, origin, location, disposition, movement or ownership of the property derived directly or indirectly from the acts or omissions referred to in subsection (1)(a) of this section.

(2) The offense of money laundering, established under subsection (1) of this section, is a felony offense, punishable by imprisonment for a maximum term of ten years or a maximum fine of \$100,000, or both; PROVIDED, however, in the case of a corporation, company, commercial enterprise, commercial entity or other legal person, the maximum fine shall be increased to \$500,000.

Source: PL 11-72 § 104.

§ 919. Related offenses.

(1) A person who knowingly opens or operates an account with a financial institution or a cash dealer under a false name commits a felony offense, punishable by imprisonment for a maximum of five years or a maximum fine of \$50,000, or both; PROVIDED, however, in the case of a corporation, company, commercial enterprise, commercial entity or other legal person, the maximum fine shall be increased to \$250,000.

(2) A financial institution or cash dealer who fails to comply with any requirement of this subchapter for which no penalty is specified commits a felony offense, punishable by imprisonment for a maximum of five years or a maximum fine of \$50,000, or both; PROVIDED, however, in the case of a corporation, company, commercial enterprise, commercial entity or other legal person that is not also a natural person, the maximum fine shall be increased to \$250,000.

(3) In determining whether a person, or a financial institution or cash dealer has complied with or failed to comply with any requirement of this subchapter, the Supreme Court shall have regard to all the circumstances of the case, including such custom and practice as may, from time to time, be current in the relevant trade, business profession or employment, and may take into account any relevant regulations adopted and/or approved by a public authority, exercising public interest supervisory functions in relation to the financial institution or cash dealer, or any other body that regulates or is representative of any trade, business, profession or employment carried on by that person.

(4) Any person who knows or suspects that a report under subsection 915(1) of this chapter is being prepared or has been sent to the Department of Justice and discloses to another person information or other matters which are likely to prejudice any investigation of an offense, or possible offense of money laundering under section 918 of this chapter, commits a felony offense; such offense is punishable by imprisonment for a maximum of five years or a maximum fine of \$50,000, or both; PROVIDED, however, in the case of a corporation, company, commercial enterprise, commercial entity or other legal person, the maximum fine shall be increased to \$250,000.

(5) In proceedings for an offense against subsection (4) of this section, it is an affirmative defense that the person did not know, or have reasonable grounds to suspect, that the disclosure was likely to prejudice any investigation of an offense or possible offense of money laundering under section 918 of this chapter.

Source: PL 11-72 § 105.

§ 920. Seizure and detention of suspicious imports or exports of currency.

(1) An authorized officer may seize and, in accordance with this section, detain any currency which is being imported into or exported from the Federated States of Micronesia if the authorized officer has probable cause to believe that it was derived from a serious offense, or is intended by any person for use in the commission of a serious offense.

(2) Currency detained under subsection (1) of this section shall not be detained for more than 24 hours after seizure, unless a justice of the Supreme Court grants an order of continued detention for a period not exceeding three months from the date of seizure, upon being satisfied that:

(a) there is probable cause to believe that it was derived from a serious offense or is intended by any person for use in the commission of a serious offense; and

(b) its continued detention is justified while:

(i) its origin or derivation is further investigated; or

(ii) consideration is given to the institution in the Federated States of Micronesia or elsewhere of criminal proceedings against any person for an offense with which the currency is connected; PROVIDED, however, upon request by the person from whom the currency was seized and detained, the court shall grant a hearing before entering an order of continued detention.

(3) A justice of the Supreme Court may subsequently order, after hearing, with notice to all parties concerned, the continued detention of the currency if satisfied of the matters mentioned in subsection (2) of this section, but the total period of detention shall not exceed two years from the date of the order.

(4) Subject to subsection (5) of this section, currency detained under this section may be released in whole or in part to the person on whose behalf it was imported or exported:

(a) by order of a justice of the Supreme Court that its continued detention is no longer justified, upon application by or on behalf of that person and after considering any views of the Secretary to the contrary; or

(b) by an authorized officer, if satisfied that its continued detention is no longer justified.

(5) No currency detained under this section shall be released where:

(a) an application is made under subchapter III of this chapter for the purpose of:

(i) the confiscation of the whole or any part of the currency; or

(ii) its restraint pending determination of its liability to confiscation; or

(b) proceedings are instituted in the Federated States of Micronesia or elsewhere against any person for an offense with which the currency is connected, unless and until the proceedings relating to the relevant application or the proceedings for the offense as the case may be have been concluded.

Source: PL 11-72 § 106.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the Congress of the Federated States of Micronesia are found in title 3 of this code. The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

§ 921. Power to obtain search warrant.

(1) The Department of Justice may apply to the Supreme Court for a warrant, under this section or title 12 of this code, to enter any premises belonging to or in the possession or control of a financial institution, cash dealer, or any officer or employee thereof, and to search the premises and remove any document, material or other thing therein for the purposes of the Department of Justice as ordered by the Supreme Court and specified in the warrant.

(2) The Supreme Court shall grant an application for a search warrant made pursuant to this act if it is satisfied that there is probable cause to believe that:

(a) the financial institution or cash dealer has failed to keep a transaction record, or report a suspicious transaction, as required by this act; or

(b) an officer or employee of a financial institution or cash dealer is committing, has committed or is about to commit an offense of money laundering or other violation of this Act.

Source: PL 11-72 § 107.

Cross-reference: The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 (Judicial) of this code. Title 12 of this code is on Criminal Procedure.

§ 922. Property tracking and monitoring orders.

For the purpose of determining whether any property belongs to, or is in the possession or under the control of any person, the Department of Justice may, upon application to the Supreme Court, obtain an order:

(1) that any document relevant to:

(a) identifying, locating or quantifying any such property; or

(b) identifying or locating any document necessary for the transfer of any such property, belonging to, or in the possession or control of that person; be delivered forthwith to the Department of Justice; or

(2) that the financial institution or cash dealer forthwith produce to the Department of Justice all information obtained about any transaction conducted by or for that person during such period before or after the order as the Supreme Court directs.

Source: PL 11-72 § 108.

Cross-reference: The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 (Judicial) of this code.

§ 923. Orders to enforce compliance with obligations under this subchapter.

(1) The Department of Justice may, upon application to the Supreme Court, after satisfying the Court by a preponderance of the evidence, that a financial institution or cash dealer has failed to comply with any obligation provided for under sections 913, 914, 915, 916, or 917 of this chapter, obtain an order against all or any officers or employees of the institution or dealer in such terms as the Supreme Court deems necessary, in order to enforce compliance with such obligation.

(2) In granting the order pursuant to subsection (1) of this section, the Supreme Court may order that should the financial institution or cash dealer fail, without reasonable excuse, to comply with all or any provisions of the order, such institution, dealer, officer or employee shall pay a financial penalty in the sum and in the manner directed by the Supreme Court.

(3) Nothing in this section shall preclude the Department of Justice from instituting criminal charges and seeking other orders, warrants, remedies or penalties; and notwithstanding any other penalty which may be imposed under this Act, the Department of Justice may apply for an order directing compliance with any requirement of this Act or regulations.

Source: PL 11-72 § 109.

Cross-reference: The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 (Judicial) of this code. The statutory provisions the Executive and the President are found in title 2 (Executive) of this code.

§ 924. Secrecy and confidentiality obligations overridden.

The provisions of this Act shall have effect notwithstanding any obligation as to secrecy, confidentiality, or other restriction on the disclosure of information imposed by law and regulations, including the policies, practices and regulations of any financial institution, cash dealer or other commercial entity or person, with respect to secrecy and confidentiality of banking matters, in the Federated States of Micronesia.

Source: PL 11-72 § 110.

§ 925. Immunity where suspicious transaction reported.

No action, suit or other proceedings shall lie against any financial institution or cash dealer, or any officer, employee or other representative of the institution acting in the ordinary course of the person's employment or representation, in relation to any action taken in good faith by that institution or person pursuant to section 915(1) of this chapter.

Source: PL 11-72 § 111.

§ 926. Immunity where official powers or functions exercised in good faith.

No suit, prosecution or other legal proceedings shall lie against the Government of the Federated States of Micronesia, 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.

Source: PL 11-72 § 112.

§ 927. Restitution of restrained property.

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

- (1) the person is not charged in the Federated States of Micronesia with the serious offense;
- (2) the person is charged with a serious offense in the Federated States of Micronesia, but not convicted of that offense; or
- (3) a conviction for that serious offense in the Federated States of Micronesia is quashed or reversed and no subsequent complaint is filed within a reasonable time thereafter; the Supreme Court shall order restitution of the restrained property together with the interest, if any, which has actually accrued, if such property is held in a financial institution.

Source: PL 11-72 § 113.

§ 928. Damages.

Nothing in this Act affects the right of a person, whose property has been restrained, to seek redress for due process or civil rights violations pursuant to the laws of the Federated States of Micronesia.

Source: PL 11-72 § 114.

Cross-reference: The statutory provisions on Civil Rights are found in chapter 7 of this title.

SUBCHAPTER III

Confiscation

PART 1: Application for Confiscation and Pecuniary Penalty Orders

§ 929. Application for confiscation order or pecuniary penalty order.

(1) Where a defendant is convicted of a serious offense, the Secretary may apply to the Supreme Court for one or both of the following orders:

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

(b) a pecuniary penalty order against the defendant in respect of benefits derived by the defendant from the commission of the offense; provided, however, such application must be made within one year of the date the defendant was convicted for the serious offense.

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

(3) Where an application under this section is finally determined, no further application for a confiscation order or a pecuniary penalty order may be made in respect of the offense for which the defendant was convicted without the leave of the Supreme Court. The Supreme Court shall not give such leave unless it is satisfied that:

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

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

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

Source: PL 11-72 § 117.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the Congress of the Federated States of Micronesia are found in title 3 of this code. The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

§ 930. Notice of application.

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

- (a) the Secretary must give no less than 14 days written notice of the application to the defendant and to any other person who the Secretary has reason to believe may have an interest in the property;
 - (b) the defendant and any other person who claims an interest in the property may appear and adduce evidence at the hearing of the application; and
 - (c) the Supreme Court may, at any time before the final determination of the application, direct the Secretary to:
 - (i) give notice of the application to any person who, in the opinion of the Supreme Court, appears to have an interest in the property; and
 - (ii) announce on public radio, post a notice at the main Post Office and all branch offices, and at the National Government headquarters in Palikir, and publish in a newspaper published and circulating in the Federated States of Micronesia, a notice of the application.
- (2) Where the Secretary applies for a pecuniary penalty order against a defendant:
- (a) the Secretary shall give the defendant no less than 14 days' notice of the application; and
 - (b) the defendant may appear and adduce evidence at the hearing of the application.

Source: PL 11-72 § 118.

Cross-reference: The statutory provisions on the Executive and the President are found in title 2 (Executive) of this code. The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 (Judicial) of this code.

§ 931. Amendment of application.

- (1) The Supreme Court, upon hearing the application under subsection 929(1) of this chapter, may, before the final determination of the application, and on the application of the Secretary, amend the application to include any other property or benefit, as the case may be, upon being satisfied that:
- (a) the property or benefit was not reasonably capable of identification when the application was made; or
 - (b) necessary evidence became available only after the application was originally made.
- (2) Where the Secretary applies to amend an application for a confiscation order and the amendment would have the effect of including additional property in the application for confiscation, the Secretary must give no less than 14 days written notice of the application to amend, to any person who the Secretary has a reason to believe may have an interest in the property to be included in the application for a confiscation order.
- (3) Any person who claims an interest in the property to be included in the application of a confiscation order may appear and adduce evidence at the hearing of the application to amend.
- (4) Where the Secretary applies to amend an application for a pecuniary penalty order against a defendant and the effect of the amendment would be to include an additional benefit in the application, the Secretary must give the defendant no less than 14 days written notice of the application to amend.

Source: PL 11-72 § 119.

Cross-reference: The statutory provisions on the Executive and the President are found in title 2 (Executive) of this code. The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 (Judicial) of this code.

§ 932. Procedure on application.

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

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

Source: PL 11-72 § 120.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

PART 2: Confiscation Orders

§ 933. Procedure for *in rem* confiscation order where a person dies or absconds.

(1) Where an information or a complaint has been filed alleging the commission of a serious offense by a person and a warrant for the arrest of the person has been issued in relation to that information or complaint, the Secretary may apply to the Supreme Court for a confiscation order in respect of any tainted property if the defendant has died or absconded.

(2) For the purposes of subsection (1) of this section and section 934 of this chapter, the person is deemed to have absconded if reasonable attempts to arrest the person pursuant to the warrant have been unsuccessful during a period of six months commencing on the day the warrant was issued, and the person shall be deemed to have so absconded on the last day of that period.

(3) Where the Secretary applies under this section for a confiscation order against any tainted property, the Supreme Court shall, before hearing the application:

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

(b) direct that notice of the application be announced on public radio, posted at the main Post Office and all branch offices, and at the National Government headquarters in Palikir, and published in a newspaper published and circulating in the Federated States of Micronesia, containing such particulars and for so long as the Supreme Court may require.

Source: PL 11-72 § 122.

Cross-reference: The statutory provisions on the Executive and the President are found in title 2 (Executive) of this code. The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 (Judicial) of this code.

§ 934. Confiscation where a person dies or absconds.

(1) Subject to section 933(3) of this chapter, where an application is made to the Supreme Court under section 933(1) of this title, for a confiscation order against any tainted property by reason of a person having died, or absconded in connection with a serious offense, and the Court is satisfied that:

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

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

(c) the accused charged with the offense referred to in subsection (1)(b) of this section has died or absconded; the Supreme Court may order that the property or such property as is specified by the Supreme Court in the order be confiscated.

(2) The provisions of section 933(2), 935, 936, 937 and 938 of this chapter shall apply with such modifications as are necessary to give effect to this section.

Source: PL 11-72 § 123.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

§ 935. Confiscation order on conviction.

(1) Where, upon application by the Secretary, the Supreme Court is satisfied that property is tainted property in respect of a serious offense of which a person has been convicted, the Supreme Court may order that specified property be confiscated.

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

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

convicted; and/or

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

(3) Where the Supreme Court orders that property, other than money, be confiscated, the Supreme Court shall specify in the order the amount that it considers to be the value of the property at the time when the order is made, taking account of how such value is to be determined under section 907 of this act.

(4) In considering whether a confiscation order should be made under subsection (1) of this section the Supreme Court shall have regard to:

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

(b) the gravity of the offense concerned;

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

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

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

Source: PL 11-72 § 124.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

§ 936. Effect of confiscation order.

(1) Subject to subsection (2) of this section, where a Court makes a confiscation order against any property, the property vests absolutely in the Federated States of Micronesia by virtue of the order, except with respect to real property, where any legislation then in force in any State of the Federated States of Micronesia prohibits the Federated States of Micronesia from taking title to such real property, in which case a lien shall be immediately attached to the property in favor of the Federated States of Micronesia, in the amount of the value of the property less any prior recorded encumbrances. In the case of such real property, the Secretary shall be authorized to make application to the Supreme Court, and the Supreme Court may grant an order forcing the sale of such property (unless the sale of such property is prohibited by legislation then in force in the State), with proceeds to be paid to the Federated States of Micronesia after sale, less prior recorded encumbrances.

(2) Where property ordered to be confiscated is recordable property, and where not prohibited under the laws of a State of the Federated States of Micronesia:

(a) the property vests in the Federated States of Micronesia in equity but does not vest in the Federated States of Micronesia at law until the applicable recordation requirements have been complied with;

(b) the Federated States of Micronesia is entitled to be recorded as owner of the property; and

(c) the Secretary has power, on behalf of the Federated States of Micronesia, to do or authorize the doing of anything necessary or convenient to obtain the recordation of the Federated States of Micronesia as owner, including the execution of any instrument to be executed by a person transferring an interest in property of that kind.

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

(a) the property shall not, except with the leave of the Supreme Court, and in accordance with any directions of the Supreme Court, be disposed of, or otherwise dealt with, by or on behalf of the Federated States of Micronesia before the relevant appeal date; and

(b) if, after the relevant appeal date, the order has not been discharged, the property may be disposed of and the proceeds applied or otherwise dealt with in accordance with the direction of the Secretary.

(4) In this section:

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

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

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

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

Source: PL 11-72 § 125.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the Congress of the Federated States of Micronesia are found in title 3 of this code. The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

The website of the FSM National Government contains announcements, press releases, news, forms, and other information on the National Government at <http://fsmgov.org>.

The FSM Supreme Court website contains court decisions, rules, calendar, and other information of the court, the Constitution, the code of the Federated States of Micronesia, and other legal resource information at <http://www.fsmsupremecourt.org/>.

The official website of the Congress of the Federated States of Micronesia contains the public laws enacted by the Congress, sessions, committee hearings, rules, and other Congressional information at <http://www.fsmcongress.fm/>.

§ 937. Voidable transfers.

The Supreme Court may, before making a confiscation order and in the case of property in respect of which a restraining order was made, where the order was served in accordance with section 960 of this title, set aside any conveyance or transfer of the property that occurred after the seizure of the property, or the service of the restraining order, unless the conveyance or transfer was made for valuable consideration to a person acting in good faith and without notice.

Source: PL 11-72 § 126.

§ 938. Protection of third parties.

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

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

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

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

(i) for sufficient consideration; and

(ii) without knowing, and in circumstances such as not to arouse a reasonable suspicion, that the property was, at the time he or she acquired it, tainted property; the Supreme Court shall make an order declaring the nature, extent and value (at the time the order is made) of the person's interest.

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

(4) A person who:

(a) had knowledge of the application for the confiscation order before the order was made; or

(b) appeared at the hearing of that application; shall not be permitted to make an application under subsection (3) of this section, except with leave of the Supreme Court.

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

(6) An applicant or the Secretary may, in accordance with the rules of court, appeal the Court's order made under subsection (2) of this section.

(7) Any person appointed by the Supreme Court under section 968 of this chapter shall, on application by any person who has obtained an order under subsection (2) of this section, and where the period allowed by the rules of court with respect to the making of a claim has expired and any appeal from that order has been determined:

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

the applicant; or

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

Source: PL 11-72 § 127.

Cross-reference: The statutory provisions on the Executive and the President are found in title 2 (Executive) of this code. The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 (Judicial) of this code.

§ 939. Discharge of confiscation order on quashing or reversal of conviction.

(1) Where the Supreme Court makes a confiscation order against property in reliance on a person's conviction of a serious offense and the conviction is subsequently reversed by a court of final jurisdiction, the reversal of the conviction discharges the order. However, upon notice of intent by the Department of Justice to recharge the matter, the court may order continued detention of the property pursuant to section 935 of this chapter.

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

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

(a) if the interest is vested in the Federated States of Micronesia, give directions that the property or part thereof to which the interest of the applicant relates, be transferred to the person; or

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

Source: PL 11-72 § 128.

§ 940. Payment instead of a confiscation order.

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

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

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

(3) is located outside the Federated States of Micronesia;

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

(5) has been commingled with other property that cannot be divided without difficulty; the Supreme Court may, instead of ordering the property or part thereof or interest therein to be confiscated, order the person to pay to the Federated States of Micronesia an amount equal to the value of the property, part or interest, taking into account section 907 of this chapter.

Source: PL 11-72 § 129; PL 11-76 § 8.

Cross-reference: The statutory provisions on the Executive and the President are found in title 2 (Executive) of this code. The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 (Judicial) of this code.

§ 941. Application of procedure for enforcing fines.

Where the Supreme Court orders a person to pay an amount under section 940 of this chapter, that amount shall be treated as if it were a fine imposed upon him or her in respect of a conviction for a serious offense, and the Supreme Court shall:

(1) notwithstanding anything contained in any other Act, or law, including the Code of the Federated States of Micronesia, impose, for contumacious default of the payment of that amount, a term of imprisonment:

- (a) of not more than 30 days, where the amount does not exceed \$1,000;
- (b) of not more than one year, where the amount does not exceed \$5,000;
- (c) of not more than five years, where the amount does not exceed \$50,000 dollars; or
- (d) of not more than ten years, where the amount exceeds \$50,000;

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

(3) direct that other provisions of this code regarding the disposition of offenders serving a term of imprisonment, shall not apply in relation to a term of imprisonment, imposed on a person pursuant to subsection (1) of this section.

Source: PL 11-72 § 130.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

PART 3: Pecuniary Penalty Orders

§ 942. Pecuniary penalty order on conviction.

(1) Subject to this section, where the Secretary applies to the Supreme Court for a pecuniary penalty order against a defendant in respect of the defendant's conviction for a serious offense, the Court shall, if it is satisfied that the defendant has benefitted from that offense, order the defendant to pay to the Federated States of Micronesia an amount equal to the value of the defendant's benefit from the offense, or such lesser amount as the Court determines in accordance with section 945 of this chapter, to be the amount that might be recovered at the time the pecuniary penalty order is made.

(2) The Supreme Court shall assess the value of the benefits derived by a person from the commission of an offense in accordance with sections 943, 944, 945, and 946 of this chapter.

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

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

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

Source: PL 11-72 § 132.

Cross-reference: The statutory provisions on the Executive and the President are found in title 2 (Executive) of this code. The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 (Judicial) of this code.

§ 943. Determination of benefit and assessment of value.

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

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

(3) The Supreme Court, in determining whether a person has benefitted from the commission of a serious offense or from that offense taken together with other serious offenses shall, unless the contrary is proved by the defendant by satisfactory evidence, presume:

(a) all property appearing to the Supreme Court to be held by the person:

(i) on the day on which the application is made;

(ii) at any time within the period between the day the serious offense, or the earliest serious offense, was committed and the day on which the application is made; or

(iii) within the period of six years immediately before the day on which the application is

made; whichever is the longer, to be property that came into the possession or under the control of the person by reason of the commission of that serious offense or those serious offenses for which the defendant was convicted;

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

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

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

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

(6) If, after evidence of the kind referred to in subsection (5) of this section is given, the defendant proves to the Supreme Court by satisfactory evidence that the whole or part of the excess was due to causes unrelated to the commission of the serious offense, subsection (5) of this section does not apply to the excess or, as the case may be, that part.

Source: PL 11-72 § 133.

Cross-reference: The statutory provisions on the Executive and the President are found in title 2 (Executive) of this code. The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 (Judicial) of this code.

§ 944. Statements relating to benefits from the commission of serious offenses.

(1) Where:

(a) a defendant has been convicted of a serious offense and the Secretary tenders to the Supreme Court a statement as to any matters relevant to:

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

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

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

(2) Where:

(a) a statement is tendered under subsection (1)(a) of this section; and

(b) the Court is satisfied that a copy of that statement has been served on the defendant; the Supreme Court may require the defendant to indicate to what extent the defendant admits each allegation in the statement and, so far as the defendant does not admit any allegation, to indicate any matters the defendant proposes to deny or reply on.

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

(4) Where:

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

(b) the Secretary admits to any extent any allegation in the statement; the Supreme Court may, for the purposes of that determination, treat the admission of the Secretary as conclusive of the matters to which it relates.

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

(a) orally before the Supreme Court; or

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

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

Source: PL 11-72 § 134.

Cross-reference: The statutory provisions on the Executive and the President are found in title 2 (Executive) of this code. The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 (Judicial) of this code.

§ 945. Amount recovered under pecuniary penalty order.

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

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

Source: PL 11-72 § 135.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

§ 946. Variation of pecuniary penalty order.

Where:

- (1) the Supreme Court makes a pecuniary penalty order against a defendant in relation to a serious offense;
- (2) in calculating the amount of the pecuniary penalty order, the Court took into account a confiscation order of property or a proposed confiscation order in respect of property; and
- (3) an appeal against confiscation or a confiscation order is allowed, or the proceedings from the proposed confiscation order terminate without the proposed confiscation order being made; the Secretary may apply to the Supreme Court for a variation of the pecuniary penalty order to increase the amount of the order by the value of the property not so confiscated and the Supreme Court may, if it considers it appropriate to do so, vary the order accordingly.

Source: PL 11-72 § 136.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

§ 947. Lifting the Corporate Veil.

- (1) In assessing the value of benefits derived by a defendant from the commission of a serious offense, the Supreme Court may treat as property of the defendant, any property that, in the opinion of the Supreme Court, is subject to the effective control of the defendant, whether or not the defendant has:
 - (a) any legal or equitable interest in the property; or
 - (b) any right, power or privilege in connection with the property.
- (2) Without prejudice to the generality of subsection (1) of this section, the Supreme Court may take into consideration:
 - (a) shareholdings in, debentures over or directorships in any company, corporation or commercial enterprise that has an interest, whether direct or indirect, in the property, and for this purpose the Supreme Court may order the investigation and inspection of the books and records of any named company, corporation or commercial enterprise;
 - (b) any trust that has any relationship to the property; or
 - (c) any relationship whatsoever between the persons having an interest in the property or in

companies of the kind referred to in subsection (2)(a) of this section or trust of the kind referred to in subsection (2)(b) of this section, and any other persons.

(3) Where the Supreme Court, for the purposes of making a pecuniary penalty order against a defendant, treats particular property as the defendant's property pursuant to subsection (1) of this section, the Supreme Court may, on application by the Secretary, make an order declaring that the property is available to satisfy the order.

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

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

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

(5) Where the Secretary makes an application for an order under subsection (3) of this section, that property is available to satisfy a pecuniary penalty order against a defendant:

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

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

Source: PL 11-72 § 137.

Cross-reference: The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 (Judicial) of this code.

§ 948. Enforcement of pecuniary penalty orders.

Where the Supreme Court orders a defendant to pay an amount under a pecuniary penalty order, the provisions of section 941 shall apply with such modifications as the Supreme Court may determine for the purpose of empowering the Supreme Court to impose a term of imprisonment on a defendant in contumacious default of compliance by the defendant with a pecuniary penalty order.

Source: PL 11-72 § 138.

Cross-reference: The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 of this code.

§ 949. Discharge of pecuniary penalty orders.

A pecuniary penalty order is discharged:

(1) if the conviction of the serious offense or offenses in reliance on which the order was made is reversed

and no conviction for the offense or offenses is substituted;

- (2) if the order is rescinded; or
- (3) on the satisfaction of the order by payment of the amount due under the order.

Source: PL 11-72 § 139.

Cross-reference: The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 of this code.

PART 4: Control of Property

§ 950. Powers to search for and seize tainted property.

- (1) In addition to any powers granted under title 12 of this code and other applicable laws, a police officer may:
- (a) search a person for tainted property;
 - (b) enter upon land or upon or into premises and search the land or premises for tainted property; and
 - (c) in either case, seize any property found in the course of the search that the police officer believes, on reasonable grounds to be tainted property, provided that the search or seizure is made:
 - (i) with the consent of the person or the occupier of the land or premises as the case may be;
 - (ii) under a warrant issued under section 951 of this chapter; or
 - (iii) under section 953 of this chapter.
- (2) Where a police officer may search a person under this Act, the officer may also search:
- (a) the clothing that is being worn by the person; and
 - (b) any property in, or apparently in, the person's immediate control.

Source: PL 11-72 § 141.

Cross-reference: The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 of this code. Title 12 of this code is on Criminal Procedure.

§ 951. Search warrants in relation to tainted property.

- (1) Where a police officer has probable cause to believe that there is, or may be within the next 72 hours, tainted property of a particular kind:
 - (a) on a person;
 - (b) in the clothing that is being worn by a person;
 - (c) otherwise in a person's immediate control; or
 - (d) upon land or upon or in any premises; the police officer may lay before a justice, a sworn affidavit setting out those grounds and apply for the issuance of a warrant under this act or under title 12 of this code, to search the person, the land or the premises as the case may be, for tainted property of that kind.
- (2) Where an application is made under subsection (1) of this section for a warrant to search a person, land or premises, the justice may, subject to subsection (4) of this section issue a warrant authorizing a police officer (whether or not named in the warrant) with such assistance and by such force as is necessary and reasonable:
 - (a) to search the person for tainted property of that kind;
 - (b) to enter upon the land or in or upon any premises and to search the land or premises for tainted property of that kind; and
 - (c) to seize property found in the course of the search that the police officer has probable cause to believe to be tainted property of that kind.
- (3) A warrant may be issued under subsection (2) of this section in relation to tainted property, whether or not information or a complaint has been filed in respect of the relevant offense.
- (4) A justice shall not issue a warrant under subsection (2) of this section unless, where information or a complaint has not been filed in respect of the relevant offense at the time when the application for the warrant is made, the justice is satisfied that there is probable cause to believe a crime has been or is about to be committed and that tainted property or evidence of such crime is located at the place or on the person or thing to be searched.
- (5) A warrant issued under this section shall state:
 - (a) the purpose for which it is issued, including a reference to the nature of the relevant offense;
 - (b) a description of the kind of property authorized to be seized;
 - (c) a time at which the warrant ceases to be in force; and
 - (d) whether entry is authorized to be made at any time of the day or night or during specified hours.
- (6) If, during the course of searching under a warrant issued under this section, a police officer finds:
 - (a) property that the police officer has probable cause to believe to be tainted property either of a type not specified in the warrant or tainted property in relation to another serious offense; or
 - (b) anything the police officer has probable cause to believe will afford evidence as to the commission of a serious offense (whether or not such offense is the same as that described in the warrant); the police officer may seize that property or thing and the warrant shall be deemed to authorize such seizure.

Source: PL 11-72 § 142.

Cross-reference: The statutory provisions on the Executive and the President are found in title 2 of this code. The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 of this code.

§ 952. Application for search warrants by telephone or other means of communication.

(1) Where by reason of urgency, a police officer considers it necessary to do so, the officer may make application for a search warrant under section 951 of this chapter by telephone, radio communication, facsimile or other means of communication by which identity of the requesting officer can be identified.

(2) A justice, to whom an application for the issuance of a warrant is made by telephone or other means of communication, may sign a warrant if the justice is satisfied that there is probable cause to do so, and shall inform the police officer of the terms of the warrant so signed.

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

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

Source: PL 11-72 § 143.

Cross-reference: The statutory provisions on the Executive and the President are found in title 2 of this code. The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 of this code.

§ 953. Searches in emergencies.

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

(a) particular property is tainted property;

(b) it is necessary to exercise the power of search and seizure in order to prevent the concealment, loss or destruction of the property; and

(c) the circumstances are so urgent that they require immediate exercise of the power without the authority of a warrant or the order of a court; the police officer may:

(i) search a person;

(ii) enter upon land, or upon or into premises and search for the property; and

(iii) if property is found, seize the property.

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

(a) property that the police officer has probable cause to believe to be tainted property; or

(b) any thing the police officer has probable cause to believe will afford evidence as to the commission of a serious offense; the police officer may seize that property or thing.

Source: PL 11-72 § 144.

Cross-reference: The statutory provisions on the Executive and the President are found in title 2 of this code. The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 of this code.

§ 954. Record of property seized.

A police officer who seizes property under section 951 or section 953 of this chapter, shall retain the property seized, make a written record thereof, and take reasonable care to ensure that the property is preserved.

Source: PL 11-72 § 145.

§ 955. Return of seized property.

(1) Where property has been seized under section 951 or section 953 of this chapter, (otherwise than because it may afford evidence of the commission of an offense), a person who claims an interest in the property may apply to the Supreme Court for an order that the property be returned to the person.

(2) Where a person makes an application under subsection (1) of this section and the Supreme Court is satisfied that:

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

(b) the property is not tainted property; and

(c) the defendant has no interest in the property; the Supreme Court shall order the return of the property to the person making the application.

Source: PL 11-72 § 146.

Cross-reference: The statutory provisions on the Executive and the President are found in title 2 of this code. The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 of this code.

§ 956. Search for and seizure of tainted property in relation to foreign offenses.

Where a foreign state requests assistance with the location or seizure of property suspected to be tainted property in respect of an offense within its jurisdiction, the provisions of sections 951, 952 and 953 of this chapter apply, with the necessary changes in points of detail, provided that the Secretary has, pursuant to applicable law, authorized the giving of assistance to the foreign state.

Source: PL 11-72 § 147.

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Cross-reference: The statutory provisions on the Executive and the President are found in title 2 (Executive) of this code. The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 (Judicial) of this code.

PART 5: Restraining Orders

§ 957. Application for restraining order.

(1) The Secretary may apply to the Supreme Court for a restraining order against any covered property whether held by a defendant or held by a person other than a defendant.

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

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

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

(d) the name and address of the person who is believed to be in possession of the property;

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

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

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

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

Source: PL 11-72 § 149.

Cross-reference: The statutory provisions on the Executive and the President are found in title 2 (Executive) of this code. The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 (Judicial) of this code.

§ 958. Restraining orders.

(1) Subject to this section, where the Secretary applies to the Supreme Court for a restraining order against property and the Supreme Court is satisfied that:

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

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

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

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

(e) there are reasonable grounds for believing that a confiscation order or a pecuniary penalty order is likely to be made under this subchapter in respect of the property; the Supreme Court may make an order prohibiting the defendant or any person from disposing of, or otherwise dealing with, the property or such part thereof or interest therein as is specified in the order, except in such manner as may be specified in the order and at the request of the Secretary, or upon its own motion, where the Supreme Court is satisfied that the circumstances so require:

(i) the court is authorized to appoint a receiver or fiduciary to take custody of the property or such part thereof as is specified in the order, and to manage or otherwise deal with all or any part of the property in accordance with the directions of the Supreme Court; and

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

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

(3) In determining whether there are reasonable grounds for believing that the property is subject to the effective control of the defendant, the Supreme Court may take into account the matters referred to in section 947 of this chapter.

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

(5) An application under section 957 of this chapter, shall be served on all persons interested in the application or such of them as the Court deems expedient and all such persons shall have the right to appear at the hearing and be heard.

(6) When the application is made under section 957 of this chapter on the basis that a person is about to be charged, any order made by the Supreme Court shall lapse if the person is not charged:

(a) where the offense is an offense against the law of the Federated States of Micronesia, within five working days; and

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

Source: PL 11-72 § 150.

Cross-reference: The statutory provisions on the Executive and the President are found in title 2 (Executive) of this code. The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 (Judicial) of this code.

§ 959. Notice of application for restraining order.

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

Source: PL 11-72 § 151.

Cross-reference: The statutory provisions on the Executive and the President are found in title 2 of this code. The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 of this code.

§ 960. Service of restraining order.

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

Source: PL 11-72 § 152.

Cross-reference: The statutory provisions on the Executive and the President are found in title 2 of this code. The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 of this code.

§ 961. Recording of restraining order.

(1) A copy of a restraining order which affects land in the Federated States of Micronesia shall be recorded

with the relevant state authority in the state where the land is situated.

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

(3) Where particulars of a restraining order are recorded under the applicable state law, a person who subsequently deals with the property shall, for the purposes of section 962 of this chapter, be deemed to have notice of the order at the time of the dealing.

Source: PL 11-72 § 153.

§ 962. Violation of restraining order.

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

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

(3) Where the Secretary makes an application under subsection (2) of this section in relation to a disposition or dealing, the Supreme Court may:

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

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

Source: PL 11-72 § 154.

Cross-reference: The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 (Judicial) of this code.

§ 963. Duration of restraining order.

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

(1) it is discharged, revoked or varied;

(2) the period of six months from the date on which it is made or such later time as the Supreme Court may determine; or

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

Source: PL 11-72 § 155.

Cross-reference: The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 (Judicial) of this code.

§ 964. Review of restraining orders.

(1) A person, other than the defendant, who has an interest in property in respect of which a restraining order was entered may, at any time, apply to the Supreme Court for an order under subsection (4) of this section.

(2) An application made under subsection (1) of this section shall not be heard by the Supreme Court unless the applicant has given the Secretary at least five working days' notice in writing of the application.

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

(4) On an application under subsection (1) of this section the Supreme Court may revoke or vary the order or make the order subject to such conditions as the Supreme Court deems appropriate. For the purposes of this subsection the Supreme Court may:

(a) impose conditions on the applicant; or

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

(5) An order under subsection (4) of this section may only be made if the Supreme Court is satisfied that the:

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

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

Source: PL 11-72 § 156.

Cross-reference: The statutory provisions on the Executive and the President are found in title 2 (Executive) of this code. The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 (Judicial) of this code.

§ 965. Extension of restraining orders.

(1) The Secretary may apply to the judge of the Supreme Court that entered a restraining order for an extension of the period of the operation of the order.

(2) Where the Secretary makes an application under subsection (1) of this section, the Supreme Court may extend the operation of a restraining order for a specified period, if it is satisfied that a confiscation order may be made in respect of the property or part thereof or that a pecuniary penalty order may be made against the person.

Source: PL 11-72 § 157.

Cross-reference: The statutory provisions on the Executive and the President are found in title 2 of this code. The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 of this code.

PART 6: Realization of Covered Property

§ 966. Realization of covered property.

(1) Where:

(a) a pecuniary penalty order is made;

(b) all conditions of the order have been met; and

(c) the order is not discharged; the Supreme Court may, on an application by the Secretary, exercise the powers conferred upon the Supreme Court by this section with respect to covered property (as defined by section 903(1)(f) of this chapter.

(2) The Supreme Court may appoint a receiver in respect of covered property.

(3) The Supreme Court may empower a receiver appointed under subsection (2) of this section to take possession of any covered property subject to such conditions or exceptions as may be specified by the Supreme Court.

(4) The Supreme Court may order any person having possession of covered property to give possession of it to any such receiver.

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

(6) The Supreme Court may order any person holding an interest in covered property to make such payment to the receiver in respect of any interest held by the defendant or, as the case may be, the recipient of a gift caught by this Act as the Supreme Court may direct, and the Supreme Court may, on the payment being made by order, transfer, grant or extinguish any interest in the property.

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

Source: PL 11-72 § 159.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the Congress of the Federated States of Micronesia are found in title 3 of this code. The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

The website of the FSM National Government contains announcements, press releases, news, forms, and other information on the National Government at <http://fsmgov.org>.

The FSM Supreme Court website contains court decisions, rules, calendar, and other information of the court, the Constitution, the code of the Federated States of Micronesia, and other legal resource information at <http://www.fsmsupremecourt.org/>.

The official website of the Congress of the Federated States of Micronesia contains the public laws enacted by the Congress, sessions, committee hearings, rules, and other Congressional information at <http://www.fsmcongress.fm/>.

§ 967. Application of proceeds of realization and other sums.

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

(a) the proceeds of the realization of any property under section 966 of this chapter; and

(b) any other sums, being property held by the defendant; shall, after such payments, if any, as the Supreme Court may direct have been made out of those sums, be payable to the Clerk of the Supreme Court and be applied on the defendant's behalf towards the satisfaction of the pecuniary penalty order in the manner provided by subsection (3) of this section.

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

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

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

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

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

(b) the balance shall be paid or, as the case may be, transferred, to the General Fund of the Federated States of Micronesia, until such time that a Federated States of Micronesia Fund For Drug Abuse Prevention And Control is established pursuant to law, at which time, any balance then accrued, shall be paid, or as the case may be, transferred, to said Fund.

Source: PL 11-72 § 160.

Cross-reference: The statutory provisions on the Executive and the President are found in title 2 (Executive) of this code. The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 (Judicial) of this code.

§ 968. Exercise of powers of receiver or fiduciary.

(1) The following provisions of this section apply to the powers conferred on the Supreme Court by sections 958, 964, 965 and 966 of this chapter, or on a receiver or fiduciary appointed under subsection 958(1)(e) or subsection 966(2) of this chapter.

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

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

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

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

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

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

Source: PL 11-72 § 161.

§ 969. Supremacy of this subchapter in bankruptcy or winding up.

(1) Where a person who holds covered property is adjudged bankrupt in any proceeding wherever held, the Federated States of Micronesia shall stand as first lienholder to the extent of any amount owed by the bankrupt person in the Federated States of Micronesia as a pecuniary penalty or under a confiscation order; and

(a) property located in the Federated States of Micronesia which is subject to a restraining order made before the order adjudging the person bankrupt; and

(b) any proceeds of property confiscated under this act, or recovered by virtue of subsections 966(5) or (6) of this chapter, and held by a person appointed under subsection 958(1)(e) or 966(2) of this chapter; shall not be considered as property of the bankrupt person or the estate for the purposes of the applicable bankruptcy Act or any civil attachment proceedings.

(2) Subject to subsection (1) of this section, where a person has been adjudged bankrupt, the powers

conferred on the Supreme Court by sections 958 and 966 of this chapter, or on a person appointed under subsection 958(1)(g) or 966(2) of this chapter, shall not be exercised in relation to property comprised as property of the bankrupt person for the purposes of the applicable bankruptcy Act.

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

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

(a) no order shall be made under the applicable bankruptcy act relating to such gift where:

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

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

(b) any order made under the applicable bankruptcy Act, shall take into account any recovery under this act of property held by the person to whom the gift was made.

Source: PL 11-72 § 162.

Cross-reference: The statutory provisions on the Executive and the President are found in title 2 (Executive) of this code. The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 (Judicial) of this code.

§ 970. Winding up of corporation, company, or other commercial enterprise or entity holding covered property.

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

(a) property subject to a restraining order or confiscation order made before such winding up; or

(b) any proceeds of property recovered by virtue of subsections 966(5) or (6) of this chapter, and in the hands of a person appointed under subsection 958(1)(e) or 966(2) of this chapter; but there shall be payable out of such property any expenses (including the remuneration of the liquidator or receiver) properly incurred in the winding up of the corporation, company, or other commercial enterprise or entity.

(2) Where, in the case of a corporation, company, or other commercial enterprise or entity, an order for winding up has been made or a resolution for winding up has been passed, the powers conferred on the Supreme Court by section 958 or 966 of this chapter shall not be exercised in relation to any covered property held by the corporation, company, or other commercial enterprise or entity:

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

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

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

(4) Nothing in other laws of the Federated States of Micronesia or its states relating to corporations, companies, or other commercial enterprises or entities shall be taken as restricting, or enabling the restriction of, the exercise of the powers conferred on the Supreme Court by section 958 or 966 of this chapter, and in case of conflict, this Act shall take precedence.

Source: PL 11-72 § 163.

Cross-reference: The statutory provisions on the Executive and the President are found in title 2 (Executive) of this code. The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 (Judicial) of this code.

PART 7: Production Orders and Other Information Gathering Powers

§ 971. Production orders.

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

(a) a document relevant to identifying, locating or quantifying property of the defendant, or to identifying or locating a document necessary for the transfer of property of the defendant; or

(b) a document relevant to identifying, locating or quantifying tainted property in relation to the offense, or to identifying or locating a document necessary for the transfer of tainted property in relation to the offense; the police officer may apply, *ex parte* and in writing, to a justice for an order against the person suspected of having possession or control of a document of the kind referred. The application shall be supported by an affidavit.

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

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

(a) inspect the documents;

(b) make copies of the documents; or

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

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

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

Source: PL 11-72 § 165.

Cross-reference: The statutory provisions on the Executive and the President are found in title 2 of this code. The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 of this code.

§ 972. Evidential value of information.

(1) Where a person produces a document pursuant to an order issued under this Act, the production of the document, or any information, document, or thing obtained as a direct or indirect consequence of the production of the document, is not admissible against that person in any criminal proceedings except proceedings under section 973 of this chapter.

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

Source: PL 11-72 § 166.

Cross-reference: The statutory provisions on the Executive and the President are found in title 2 of this code. The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 of this code.

§ 973. Failure to comply with a production order.

(1) Where a person is required by a production order issued under this Act, to produce a document to a police officer, the person is guilty of a felony offense if the person knowingly:

(a) violates the order without reasonable cause; or

(b) in purported compliance with the order, produces or makes available a document known to the person to be false or misleading in a material way, and does not so indicate to the police officer and provide to the police officer any correct information of which the person is in possession.

(2) The offense established by subsection (1) of this section is a felony offense, punishable by imprisonment for a maximum of five years or a maximum fine of \$50,000, or both; provided, however, in the case of a corporation, company, commercial enterprise, commercial entity or other legal person, the maximum fine shall be increased to \$250,000.

Source: PL 11-72 § 167.

Cross-reference: The statutory provisions on the Executive and the President are found in title 2 of this code. The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 of this code.

§ 974. Production orders in relation to foreign offenses.

Where a foreign state requests assistance to locate or seize property suspected to be tainted property in respect of an offense within its jurisdiction, the provisions of section 971 of this chapter apply, with the necessary changes in points of detail, provided that the Secretary has, pursuant to applicable law, authorized the giving of assistance to the foreign state.

Source: PL 11-72 § 168.

Cross-reference: The statutory provisions on the Executive and the President are found in title 2 (Executive) of this code.

§ 975. Power to search for and seize documents relevant to locating property.

A police officer may:

- (1) enter upon land or upon or into premises;
 - (2) search the land or premises for any document of the type described in subsection 971(1) of this chapter;
- and
- (3) seize any document found in the course of that search that the police officer has probable cause to believe to be a relevant document in relation to a serious offense, provided that the entry, search and seizure is made:
 - (a) with the consent of the occupier of the land or the premises; or
 - (b) under a warrant issued under section 976 or 951 of this chapter, or under title 12 of this code.

Source: PL 11-72 § 169.

Cross-reference: The statutory provisions on the Executive and the President are found in title 2 (Executive) of this code. The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 (Judicial) of this code. Title 12 of this code is on Criminal Procedure.

§ 976. Search warrant for location of documents relevant to locating property.

- (1) Where:
 - (a) a defendant has been charged or convicted of a serious offense; or
 - (b) the police officer has probable cause to believe that there is, or may be within the next 72 hours, upon any land or upon or in any premises, a document of the type described in subsection 971(1) of this chapter in relation to the offense; the police officer may make application supported by sworn affidavit to a justice for a search warrant in respect of that land or those premises.
- (2) Where an application is made under subsection (1) of this section for a warrant to search land or premises, the justice may, subject to subsection (4) of this section issue a warrant authorizing a police officer (whether or not named in the warrant), with such assistance and by such force as is necessary and reasonable:
 - (a) to enter upon the land or in or upon any premises and to search the land or premises for property of that kind; and
 - (b) to seize property found in the course of the search that the police officer has probable cause to believe to be property of that kind.
- (3) A justice shall not issue a warrant under subsection (2) of this section unless the justice is satisfied that:
 - (a) a production order has been issued in respect of the document and has not been complied with;
 - (b) a production order in respect of the document would be unlikely to be effective;
 - (c) the investigation for the purposes of which the search warrant is being sought might be seriously prejudiced if the police officer does not gain immediate access to the document without any notice to any person; or
 - (d) the document involved cannot be identified or described with sufficient particularity to enable a production order to be obtained.
- (4) A warrant issued under this section shall state:
 - (a) the purpose for which it is issued, including a reference to the nature of the relevant offense;
 - (b) a description of the kind of documents authorized to be seized;
 - (c) a time at which the warrant ceases to be in force; and
 - (d) whether entry is authorized to be made at any time of the day or night or during specified hours.
- (5) If during the course of searching under a warrant issued under this section, a police officer finds:
 - (a) a document of the type described in subsection 971(1) of this chapter, that the police officer believes on probable cause to relate to the relevant offense, or to another serious offense; or
 - (b) any thing the police officer believes on probable cause will afford evidence as to the commission of a serious offense; the police officer may seize that property or thing and the warrant shall be deemed to authorize such seizure.

Source: PL 11-72 § 170.

Cross-reference: The statutory provisions on the Executive and the President are found in title 2 of this code. The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 of this code.

§ 977. Search warrants in relation to foreign offenses.

Where a foreign state requests assistance to locate or seize documents of a type described in subsection 971(1) of this chapter relating to an offense within its jurisdiction, the provisions of section 976 of this chapter apply, with the necessary changes in points in detail, provided that the Secretary has, pursuant to applicable law, authorized the giving of assistance to the foreign state.

Source: PL 11-72 § 171.

§ 978. Monitoring orders.

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

(2) A monitoring order:

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

(b) shall not have retrospective effect; and

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

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

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

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

(4) A monitoring order shall specify:

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

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

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

(a) violates the order; or

(b) provides false or misleading information in purported compliance with the order; the institution commits a felony offense, punishable by imprisonment for a maximum of five years or a maximum fine of

\$50,000, or both; provided, however, in the case of a corporation, company, commercial enterprise, commercial entity or other legal person, the maximum fine shall be increased to \$250,000.

Source: PL 11-72 § 172.

§ 979. Monitoring orders not to be disclosed.

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

- (a) an officer or agent of the institution for the purpose of ensuring compliance with the order;
- (b) a legal adviser for the purpose of obtaining legal advice or representation in respect of the order;

or

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

(2) A person described in subsections (1)(a), (b) or (c) of this section shall not knowingly disclose the existence or operation of a monitoring order except to another such person, and may do so only for the purposes of the performance of the person's duties or functions.

(3) Violation of this section is a felony offense, punishable by imprisonment for a maximum of five years or a maximum fine of \$50,000, or both; provided, however, in the case of a corporation, company, commercial enterprise, commercial entity or other legal person, the maximum fine shall be increased to \$250,000.

(4) Nothing in this section prevents the disclosure of information concerning a monitoring order for the purposes of, or in connection with, legal proceedings or in the course of proceedings before a court, provided that nothing in this section shall be construed as requiring a legal adviser to disclose to any court the existence or operation of a monitoring order.

Source: PL 11-72 § 173.

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Cross-reference: The statutory provisions on the Executive and the President are found in title 2 of this code. The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 of this code.

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