

SIXTH PARLIAMENT OF SINGAPORE

Second Session

**REPORT OF THE SELECT COMMITTEE ON THE
CORRUPTION (CONFISCATION OF BENEFITS) BILL**

[BILL NO. 7/88]

Parl. 6 of 1988

**Presented to Parliament on
16th August, 1988**

The Corruption (Confiscation of Benefits) Bill (Bill No. 7 of 1988) was committed to the Select Committee by resolution of Parliament on 30th March, 1988. The Committee consisted of -

Mr Deputy Speaker (Mr Tan Soo Khoon) (Chairman)

Mr Abdullah Tarmugi

Mr E.W. Barker (Minister for Law)

Mr Bernard Chen

Mr Chua Sian Chin

Mr Heng Chiang Meng

Prof. S. Jayakumar (Minister for Home Affairs and Second Minister for Law)

Dr Wang Kai Yuen

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**REPORT OF THE SELECT COMMITTEE ON THE
CORRUPTION (CONFISCATION OF BENEFITS) BILL**

[BILL NO. 7/88]

The Select Committee to whom the Corruption (Confiscation of Benefits) Bill [Bill No. 7/88] was committed has agreed to the following Report:-

1. In accordance with Standing Order No. 75 (*Advertisement when Bill committed to a Select Committee*), an advertisement inviting written representations on the Corruption (Confiscation of Benefits) Bill was published in the *Berita Harian*, *Lianhe Zaobao*, *Tamil Murasu* and *The Straits Times* of 6th April, 1988. Publicity was also given to the invitation by two press releases, the first on 6th April, 1988 and the second on 27th April, 1988. Written representations could be submitted in Malay, Chinese, Tamil or English and the closing date was 6th May, 1988.

2. Three written representations were received and two are reproduced as Papers 1 and 2 at Appendix II. They were from -

- (1) Mr K. Shanker Kumar (Paper 1); and
- (2) The Law Society of Singapore (Paper 2).

3. Oral evidence was heard from -

- (1) Mr K. Shanker Kumar;
- (2) Mr N. Ganesan (Council Member) and Mr Denis Tan (Member Legislative Committee (Criminal), representatives of the Law Society of Singapore.

The Minutes of Evidence taken are annexed to this Report as Appendix III.

4. Mr Koh Eng Tian, the Solicitor-General was invited to attend meetings during the hearing of oral evidence to assist the Committee.

5. The Committee held 3 meetings.

6. The amendments to the Corruption (Confiscation of Benefits) Bill which the Committee recommends are incorporated in the reprint of the Bill which is annexed to this Report as Appendix I.

Reprint of the Corruption (Confiscation of Benefits) Bill

[Bill No. 7/88] as amended by the Select Committee.

THE CORRUPTION (CONFISCATION OF BENEFITS) ACT 1988

(No. of 1988)

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY

Section

1. Short title and commencement.
2. Interpretation.
3. Application.

PART II

CONFISCATION OF BENEFITS OF CORRUPTION

4. Confiscation orders.
5. Assessing the benefits of corruption.
6. Statements relating to corruption.
7. Amount to be recovered under confiscation order.
8. Definition of principal terms used.

PART III

ENFORCEMENT, ETC., OF CONFISCATION ORDERS

9. Application of procedure for enforcing fines.
10. Cases in which restraint orders and charging orders may be made.
11. Restraint orders.
12. Charging orders in respect of land, securities, etc.
13. Charging orders: supplementary provisions.
14. Realisation of property.
15. Application of proceeds of realisation and other sums.
16. Exercise of powers by High Court or receiver.
17. Variation of confiscation orders.
18. Bankruptcy of defendant, etc.
19. Winding up of company holding realisable property.
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PART IV

APPLICATION TO ABSCONDED PERSONS

Section

21. Absconded persons.
22. Confiscation order where person has absconded.
23. Effect of death on proceedings.
24. Service of documents on absconders.

A BILL

i n t i t u l e d

An Act to provide for the confiscation of benefits derived from corruption and for purposes connected therewith.

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

PART I

PRELIMINARY

- 5 1. This Act may be cited as the Corruption (Confiscation of Benefits) Act 1988 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.
- Short title and commencement.

Interpre- tation.	2.-(1) In this Act, unless the context otherwise requires -	
Cap. 241.	"corruption offence" means an offence under the Pre- vention of Corruption Act or under section 161,	
Cap. 224.	162, 163, 164 or 165 of the Penal Code or any conspiracy to commit, any attempt to commit or any abetment of such an offence;	5
	"charging order" means an order made under section 12 (1);	
	"confiscation order" means an order made under sec- tion 4;	10
	"dealing with property" is to be construed in accord- ance with section 11 (7);	
	"defendant" means a person against whom proceedings have been instituted for a corruption offence or offences whether or not he has been convicted thereof;	15
	"gift caught by this Act" is to be construed in accord- ance with section 8 (8);	
	"interest", in relation to property, includes right;	20
	"making a gift" is to be construed in accordance with section 8 (9);	
	"officer of the Corrupt Practices Investigation Bureau" means the Director of the Bureau appointed under section 3 (1) of the Prevention of Corruption Act, the Deputy Director and any assistant director and special investigator of the Bureau appointed under section 3 (2) of that Act;	25
	"property" means money and all other property, mov- able or immovable, including things in action and other intangible or incorporeal property;	30
	"realisable property" has the meaning given by section 8 (1);	
	"restraint order" means an order made under section 11 (1);	35
	"value of gift" is to be construed in accordance with section 8;	
	value of property" is to be construed in accordance with section 8 (4).	

(2) For the purposes of this Act -

(a) property is held by any person if he holds any interest in it;

5 (b) references to property held by a person include a reference to property vested in his trustee in bankruptcy or liquidator;

10 (c) references to an interest held by a person beneficially in property include a reference to an interest which would be held by him beneficially if the property were not so vested in his trustee in bankruptcy or liquidator; and

(d) property is transferred by one person to another if the first person transfers or grants to the other any interest in the property.

15 (3) For the purposes of this Act -

(a) proceedings for an offence are instituted in Singapore when a person is produced and charged in court with the offence;

20 (b) proceedings in Singapore for a corruption offence are concluded on the occurrence of one of the following events:

(i) the discontinuance of the proceedings;

(ii) the acquittal of the defendant;

25 (iii) the quashing of his conviction for the offence;

(iv) the grant of the President's pardon in respect of his conviction for the offence;

30 (v) the court sentencing or otherwise dealing with him in respect of his conviction for the offence without having made a confiscation order; and

35 (vi) the satisfaction of a confiscation order made in the proceedings (whether by payment of the amount due under the order or by the defendant serving imprisonment in default).

40 (4) For the purposes of this Act, an order is subject to appeal so long as an appeal or further appeal is pending against the order or (if it was made on a conviction) against

the conviction; and for this purpose an appeal or further appeal shall be treated as pending (where one is competent but has not been brought) until the expiration of the time for bringing the appeal.

Application. 3.-(1) This Act shall apply to any corruption offence 5
committed before the commencement of this Act except
that nothing in this Act imposes any duty or confers any
power on any court in or in connection with proceedings
against a person for a corruption offence in respect of which 10
he has been convicted by a court before the commencement
of this Act.

(2) This Act shall apply to any property, whether it is
situated in Singapore or elsewhere.

PART II

CONFISCATION OF BENEFITS OF CORRUPTION 15

Confiscation 4.-(1) Subject to section 22, where a defendant is 15
orders. convicted of one or more corruption offences, the court
shall, on the application of the Public Prosecutor, make a
confiscation order against the defendant in respect of
benefits derived by him from corruption if the court is 20
satisfied that such benefits have been so derived.

(2) If the court is satisfied that benefits have been derived
by the defendant from corruption, the court shall, before
sentencing or otherwise dealing with him in respect of the 25
offence or, as the case may be, any of the offences con-
cerned, determine in accordance with section 7 the amount
to be recovered in his case by virtue of this section.

(3) The court shall then, in respect of the offence or
offences concerned -

(a) take account of the confiscation order before 30
imposing any fine on him; and

(b) subject to paragraph (a), leave the confiscation
order out of account in determining the appropriate
sentence or other manner of dealing with 35
the defendant.

(4) Subject to section 23, for the purposes of this Act, a
person who holds or has at any time (whether before or
after the commencement of this Act) held any property or
any interest therein disproportionate to his known sources

of income, the holding of which cannot be explained to the satisfaction of the court, shall be deemed to have derived benefits from corruption.

5 **5.-(1)** Subject to section 23, for the purposes of this Act -

Assessing the benefits of corruption.

(a) the benefits derived by any person from corruption shall be -

10 (i) any property or interest therein held by the person at any time, whether before or after the commencement of this Act, being property or interest disproportionate to his known sources of income and the holding of which cannot be explained to the satisfaction of the court, less

15 (ii) any such property or interest which the court will be taking into account in determining the amount to be recovered under an order under section 13 of the Prevention of Corruption Act made against that person; and

Cap. 241.

20 (b) the value of the benefits derived by him from corruption shall be the aggregate of the values of the properties and interests therein referred to in paragraph (a).

25 **(2)** For the purpose of assessing the value of the benefits derived by the defendant from corruption in a case where a confiscation order, or an order under section 13 of the Prevention of Corruption Act, has previously been made against him, the court shall leave out of account any such

30 benefits of corruption that are shown to the court to have been taken into account in determining the amount to be recovered under that order.

35 **6.-(1)** Where -

Statements relating to corruption.

(a) there is tendered to the court by the, prosecution a statement as to any matters relevant to the determination whether benefits have been derived by the defendant from corruption or to the assessment of the value of those benefits; and

40

- (b) the defendant accepts to any extent any allegation in the statement,

the court may, for the purposes of that determination and assessment, treat his acceptance as conclusive of the matters to which it relates.

5

- (2) Where -

- (a) a statement is tendered under subsection (1) (a);
and

- (b) the court is satisfied that a copy of that statement has been served on the defendant,

10

the court may require the defendant to indicate to what extent he accepts each allegation in the statement and, so far as he does not accept any such allegation, to indicate any matters he proposes to rely on.

- (3) If the defendant fails in any respect to comply with a requirement under subsection (2), he may be treated for the purposes of this section as accepting every allegation in the statement apart from any allegation in respect of which he has complied with the requirement.

15

- (4) Where -

20

- (a) there is tendered to the court by the defendant a statement as to any matters relevant to determining the amount that might be realised at the time the confiscation order is made; and

- (b) the prosecution accepts to any extent any allegation in the statement,

25

the court may, for the purposes of that determination, treat the acceptance by the prosecution as conclusive of the matters to which it relates.

- (5) An allegation may be accepted or a matter indicated for the purposes of this section either -

30

- (a) orally before the court; or
- (b) in writing.

- (6) No acceptance by the defendant under this section that benefits have been derived by him from corruption shall be admissible in evidence in any proceedings for an offence.

35

7.-(1) Subject to subsection (3), the amount to be recovered from the defendant under the confiscation order shall be the amount the court assesses to be the value of the benefits derived by the defendant from corruption.

Amount to be recovered under confiscation order.

5 (2) If the court is satisfied as to any matter relevant for determining the amount that might be realised at the time the confiscation order is made (whether by an acceptance under section 6 or otherwise), the court may issue a certificate giving its opinion as to the matters concerned and
10 shall do so if satisfied as mentioned in subsection (3).

(3) If the court is satisfied that the amount that might be realised at the time the confiscation order is made is less than the amount the court assesses to be the value of the benefits derived by the defendant from corruption, the
15 amount to be recovered from the defendant under the confiscation order shall be the amount appearing to the court to be the amount that might be so realised.

8.-(1) In this Act, "realisable property" means -

Definition of principal terms used.

(a) any property held by the defendant; and
20 (b) any property held by a person to whom the defendant has, directly or indirectly, made a gift caught by this Act.

(2) For the purposes of sections 6 and 7, the amount that might be realised at the time a confiscation order is made
25 against the defendant shall be -

(a) the total of the values at that time of all the realisable property held by the defendant, less
(b) where there are obligations having priority at that time, the total amounts payable in pursuance of
30 such obligations,
together with the total of the values at that time of all gifts caught by this Act.

(3) Subject to subsections (4) to (9), for the purposes of this Act, the value of property (other than cash) in relation
35 to any person holding the property -

(a) where any other person holds an interest in the property, shall be -
(i) the market value of the first-mentioned person's beneficial interest in the
40 property, less

- (ii) the amount required to discharge any incumbrance (other than a charging order) on that interest; and
 - (b) in any other case, shall be its market value.
- (4) Subject to subsection (9), references in this Act to the value at any time (referred to in subsection (5) as the material time) of a gift caught by this Act are references to -
 - (a) the value of the gift to the recipient when he received it adjusted to take account of subsequent changes in the value of money; or
 - (b) where subsection (5) applies, the value mentioned therein,
 whichever is the greater.
- (5) Subject to subsection (9), if at the material time the recipient holds -
 - (a) the property which he received (not being cash); or
 - (b) property which, in whole or in part, directly or indirectly, represents in his hands the property which he received,
 the value referred to in subsection (4) (b) shall be the value to him at the material time of the property mentioned in paragraph (a) or, as the case may be, of the property mentioned in paragraph (b) so far as it so represents the property which he received, but disregarding in either case any charging order.
- (6) For the purposes of subsection (2), an obligation has priority at any time if it is an obligation of the defendant to -
 - (a) pay an amount due in respect of a fine, or other order of a court, imposed or made on conviction of an offence, where the fine was imposed or order made before the confiscation order; or
 - (b) pay any sum which would be included among the preferential debts in the defendant's bankruptcy commencing on the date of the confiscation order or winding up under an order of the court made on that date.
- (7) For the purposes of subsection (6) (b), "preferential debts" -
 - (a) in relation to bankruptcy, means the debts to be paid in priority under section 43 of the

Bankruptcy Act (assuming the date of the con- Cap. 20.
fiscation order to be the date of the receiving
order); and

5 (b) in relation to winding up, means the debts to be
paid in priority in accordance with section 328 of
the Companies Act (assuming the date of the Cap. 50.
confiscation order to be the commencement
date of the winding up).

(8) A gift (including a gift made before the commence-
10 ment of this Act) is caught by this Act if -

(a) it was made by the defendant at any time since the
beginning of the period of 6 years ending when
the proceedings for a corruption offence were
15 instituted against him or, where no such pro-
ceedings have been instituted, when an applica-
tion under section 4 for a confiscation order is
made against him; or

(b) it was made by the defendant at any time and was a
20 gift of property which is or is part of the benefits
derived by the defendant from corruption.

(9) For the purposes of this Act -

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

(b) in those circumstances, this section shall apply as if
30 the defendant had made a gift of such share in
the property as bears to the whole property the
same proportion as the difference between the
values referred to in paragraph (a) bears to the
value of the consideration provided by the
defendant.

35

PART III

ENFORCEMENT, ETC., OF CONFISCATION ORDERS

9.-(1) Where a court orders the defendant to pay any
amount under section 4, section 224 of the Criminal
Procedure Code shall have effect as if -

40 (a) that amount were a fine imposed on him by the
court; and

Application
of procedure
for enforcing
fines.
Cap. 68.

	(b) the term for which the court directs the defendant to be imprisoned in default of payment of any amount under section 4 shall be as follows:	
	(i) if the amount does not exceed \$20,000, imprisonment for a term not exceeding 2 years;	5
	(ii) if the amount exceeds \$20,000 but does not exceed \$50,000, imprisonment for a term not exceeding 5 years;	
	(iii) if the amount exceeds \$50,000 but does not exceed \$100,000, imprisonment for a term not exceeding 7 years;	10
	(iv) if the amount exceeds \$100,000, imprisonment for a term not exceeding 10 years.	
	(2) Where -	15
	(a) a warrant to commit the defendant to prison is issued for a default in payment of an amount ordered to be paid under section 4 in respect of an offence or offences; and	
	(b) at the time the warrant is issued, the defendant is liable to serve any term of imprisonment in respect of the offence or offences and any penalty imposed under section 13 of the Prevention of Corruption Act,	20
Cap. 241.	the term of imprisonment to be served in default of payment of the amount shall not begin to run until after the term mentioned in paragraph (b).	25
	(3) A District Court may, notwithstanding the provisions of any other written law, impose the maximum term of imprisonment on the defendant in default of the payment of any amount ordered to be paid under section 4.	30
Cases in which restraint orders and charging orders may be made.	10.-(1) The powers conferred on the High Court by section 11 (1) to make a restraint order and by section 12 (1) to make a charging order are exercisable where -	
	(a) proceedings have been instituted against the defendant for a corruption offence;	35
	(b) the proceedings have not been concluded; and	
	(c) the Court is satisfied that there is reasonable cause to believe that benefits have been derived by the defendant from corruption.	40

(2) Those powers are also exercisable where the High Court is satisfied -

5 (a) (i) in the case of an offence under the Prevention of Corruption Act, that the consent of the Public Prosecutor has been obtained under section 31 of that Act for the prosecution of a person; or

10 (ii) in the case of any other corruption offence, that a person has been officially informed pursuant to section 122 (6) of the Criminal Procedure Code that he may be prosecuted for the offence; or

15 (b) that investigation for a corruption offence having been commenced against a person, he dies or cannot be found or is outside the jurisdiction,

and that there is reasonable cause to believe that benefits have been derived by that person from corruption.

20 (3) For the purposes of sections 11 and 12, at any time when those powers are exercisable before proceedings have been instituted -

(a) references in this Act to the defendant shall be construed as references to the person referred to in subsection (2); and

25 (b) references in this Act to realisable property shall be construed as if, immediately before that time, proceedings had been instituted against the person referred to in subsection (2) for a corruption offence.

30 (4) Where the High Court has made an order under section 11 (1) or 12 (1) by virtue of subsection (2), the Court shall discharge the order if the proposed proceedings are not instituted within such time as the Court considers reasonable which shall not in any event exceed a period of 3 months.

35 **11.-(1)** The High Court may make a restraint order to prohibit any person from dealing with any realisable property, subject to such conditions and exceptions as may be specified in the order. Restraint orders.

- (2) A restraint order may apply -
- (a) to all realisable property held by a specified person, whether the property is described in the order or not; and
 - (b) to realisable property held by a specified person, being property transferred to him after the making of the order. 5
- (3) This section shall not have effect in relation to any property for the time being subject to a charge under section 12. 10
- (4) A restraint order -
- (a) may be made only on an application by the Public Prosecutor;
 - (b) may be made on an ex parte application to a Judge in chambers; and 15
 - (c) shall provide for notice to be given to persons affected by the order.
- (5) A restraint order -
- (a) may be discharged or varied in relation to any property; and 20
 - (b) shall be discharged when proceedings for the offences are concluded.
- (6) Where the High Court has made a restraint order, the Court may at any time appoint the Public Trustee as receiver - 25
- (a) to take possession of any realisable property; and
 - (b) in accordance with the directions of the Court, to manage or otherwise deal with any property in respect of which he is appointed,
- subject to such exceptions and conditions as may be specified by the Court; and may require any person having possession of property in respect of which the receiver is appointed under this section to give possession of it to the Public Trustee. 30
- (7) For the purposes of this section, dealing with property held by any person includes (without prejudice to the generality of the expression) - 35
- (a) where a debt is owed to that person, making a payment to any person in reduction of the amount of the debt; and 40
 - (b) removing the property from Singapore.

(8) Where the High Court has made a restraint order, an officer of the Corrupt Practices Investigation Bureau or a police officer may, for the purpose of preventing any realisable property being removed from Singapore, seize
5 the property.

(9) Property seized under subsection (8) shall be dealt with in accordance with the directions of the High Court.

12.-(1) The High Court may make a charging order on realisable property for securing the payment to the Govern-
10 ment -

Charging
orders in
respect of
land,
securities,
etc.

- (a) where a confiscation order has not been made, of an amount equal to the value from time to time of the property charged; and
- (b) in any other case, of an amount not exceeding the
15 amount payable under the confiscation order.

(2) For the purposes of this Act, a charging order is an order made under this section imposing on any such realisable property as may be specified in the order a charge for securing the payment of money to the Government.

20 (3) A charging order may be made -

- (a) only on an application by the Public Prosecutor; and
- (b) on an ex parte application to a Judge in chambers.

(4) Subject to subsection (6), a charge may be imposed
25 by a charging order only on -

- (a) any interest in realisable property, being an interest held beneficially by the defendant or by a person to whom the defendant has, directly or indirectly, made a gift caught by this Act -
30
 - (i) in any asset of a kind mentioned in subsection (5); or
 - (ii) under any trust; or
- (b) any interest in realisable property held by a person as trustee of a trust if the interest is in such an
35 asset or is an interest under another trust and a charge may by virtue of paragraph (a) be imposed by a charging order on the whole beneficial interest under the first-mentioned trust.

- (5) The assets referred to in subsection (4) are -
- (a) immovable property in Singapore; or
 - (b) securities of any of the following kinds:
 - (i) securities of the Government or of any public authority; 5
 - (ii) stock of any body incorporated in Singapore;
 - (iii) stock of any body incorporated outside Singapore or of any country or territory outside Singapore, being stock registered in a register kept at any place within Singapore; and 10
 - (iv) units of any unit trust in respect of which a register of the unit holders is kept at any place within Singapore. 15

(6) In any case where a charge is imposed by a charging order on any interest in an asset of a kind mentioned in subsection (5) (b), the Court may provide for the charge to extend to any interest or dividend payable in respect of the asset. 20

(7) Where the High Court has made a charging order, the High Court may give such directions to the Public Trustee as the High Court thinks fit to safeguard the assets under the charging order.

(8) The Court may make an order discharging or varying the charging order and shall make an order discharging the charging order if the proceedings for the offence are concluded or the amount, payment of which is secured by the charge, is paid into Court. 25

Charging orders: supplementary provisions. **13.-(1)** A charging order may be made either absolutely or subject to conditions as to notifying any person holding any interest in the property to which the order relates or as to the time when the charge is to become enforceable, or as to other matters. 30

Cap. 157. Cap. 269. (2) A caveat may be lodged under the Land Titles Act or an entry may be made under the Registration of Deeds Act, as the case may be, in respect of a charging order made under section 12. 35

(3) Subject to any provision made under section 14 or by rules of court, a charge imposed by a charging order shall have the like effect and shall be enforceable in the same manner as an equitable charge created by the person
5 holding the beneficial interest or, as the case may be, the trustees by writing under their hand.

(4) Where a charging order has been protected by a caveat lodged under the Land Titles Act and or by an entry registered under the Registration of Deeds Act, an order
10 under section 12(8) discharging the charging order may direct that the caveat be removed or the entry be cancelled.

Cap. 157.
Cap. 269.

14.-(1) Where -

Realisation
of property.

(a) in proceedings instituted for a corruption offence, a confiscation order is made;
15 (b) the order is not subject to appeal; and
(c) the proceedings have not been concluded,
the High Court may, on an application by the Public Prosecutor, exercise the powers conferred by subsections (3) to (7).

20 (2) The High Court may, on the application of the Public Prosecutor, also exercise the powers conferred by subsections (3) to (7) where -

(a) a confiscation order is made against a person who is, by reason of section 21, taken to be convicted
25 of a corruption offence;
(b) the order is not subject to appeal; and
(c) the order has not been satisfied, whether by payment of the amount due under the order or by the defendant serving imprisonment by default.

30 (3) The Court may appoint the Public Trustee as receiver in respect of realisable property.

(4) The Court may empower the Public Trustee appointed under subsection (3) or section 11 or in pursuance of a charging order -

35 (a) to enforce any charge imposed under section 12 on realisable property or on interest or dividends payable in respect of such property; and
(b) in relation to any realisable property other than property for the time being subject to a charge

under section 12, to take possession of the property subject to such conditions or exceptions as may be specified by the Court.

(5) The Court may order any person having possession of realisable property to give possession of it to the Public Trustee. 5

(6) The Court may empower the Public Trustee to realise any realisable property in such manner as the Court may direct.

(7) The Court may order any person holding an interest in realisable property to make such payment to the Public Trustee in respect of any beneficial interest held by the defendant or, as the case may be, the recipient of a gift caught by this Act as the Court may direct and the Court may, on the payment being made, by order transfer, grant or extinguish any interest in the property. 10 15

(8) Subsections (5) to (7) shall not apply to property for the time being subject to a charge under section 12.

(9) The Court shall not in respect of any property exercise the powers conferred by subsection (4) (a), (6) or (7) unless a reasonable opportunity has been given for persons holding any interest in the property to make representations to the Court. 20

Application
of proceeds
of realisation
and other
sums.

15.-(1) Subject to subsection (2), the following sums in the hands of the Public Trustee pursuant to section 11 or 14 or in pursuance of a charging order, that is - 25

- (a) the proceeds of the enforcement of any charge imposed under section 12;
- (b) the proceeds of the realisation, other than by the enforcement of such a charge, of any property under section 11 or 14; and 30
- (c) any other sums, being property held by the defendant,

shall, after such payments (if any) as the High Court may direct have been made out of those sums, be applied on the defendant's behalf towards the satisfaction of the confiscation order. 35

(2) If, after the amount payable under the confiscation order has been fully paid, any such sums remain in the

hands of the Public Trustee, he shall distribute those sums -

- (a) among such of those who held property which has been realised under this Act; and
- 5 (b) in such proportions, as the High Court may direct after giving a reasonable opportunity for such persons to make representations to the Court.

10 **16.-(1)** This section shall apply to the powers conferred on the High Court by sections 11 to 15 or on the Public Trustee pursuant to section 11 or 14 or in pursuance of a charging order.

Exercise of powers by High Court or receiver.

(2) Subject to subsections (3) to (6), the powers shall be exercised with a view to making available for satisfying the
15 confiscation order or, as the case may be, any confiscation order that may be made in the defendant's case the value for the time being of realisable property held by any person by the realisation of such property.

(3) In the case of realisable property held by a person to
20 whom the defendant has, directly or indirectly, made a gift caught by this Act, the powers shall be exercised with a view to realising no more than the value for the time being of the gift.

(4) The powers shall be exercised with a view to allowing
25 any person other than the defendant or the recipient of any such gift to retain or recover the value of any property held by him.

(5) An order may be made or other action taken in respect of a debt owed by the Government.

30 (6) In exercising those powers, 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 confiscation order.

17.-(1) If, on an application by the defendant in respect
35 of a confiscation order, the High Court is satisfied that the realisable property is inadequate for the payment of any amount remaining to be recovered under the order, the Court shall issue a certificate to that effect, giving the Court's reason.

Variation of confiscation orders.

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

(a) in the case of realisable property held by a person who has been adjudged bankrupt or whose estate has been sequestrated, the High Court shall take into account the extent to which any property held by him may be distributed among creditors; and 5

(b) the High Court may disregard any inadequacy in the realisable property which appears to the Court to be attributable, wholly or partly, to anything done by the defendant for the purpose of preserving any property held by a person to whom the defendant had, directly or indirectly, made a gift caught by this Act from any risk of realisation under this Act. 10 15

(3) Where a certificate has been issued under subsection (1), the defendant may apply to the court which made the confiscation order for the amount to be recovered under the order to be reduced.

(4) The court which made the confiscation order shall, on an application under subsection (3) - 20

(a) substitute for the amount to be recovered under the order such lesser amount as the court thinks just in all the circumstances of the case; and

(b) substitute for the term of imprisonment fixed under section 224 of the Criminal Procedure Code in respect of the amount to be recovered under the order a shorter term determined in accordance with that section (as it has effect by virtue of section 9) in respect of the lesser amount. 25 30

Cap. 68.

Bankruptcy
of defendant,
etc.

18.-(1) Where a person who holds realisable property is adjudged bankrupt -

(a) property for the time being subject to a restraint order made before the order adjudging him bankrupt; and 35

(b) any proceeds of property realised by virtue of section 11 (6) or 14 (6) or (7) for the time being in the hands of the Public Trustee pursuant to section 11 or 14,

shall be excluded from the bankrupt's estate for the purposes of the Bankruptcy Act. 40

Cap. 20.

(2) Where a person has been adjudged bankrupt, the powers conferred on the High Court by sections 11 to 15 or on the Public Trustee shall not be exercised in relation to -

5 (a) property for the time being comprised in the bankrupt's estate for the purposes of the Bankruptcy Act; Cap. 20.

(b) property which is not comprised in the bankrupt's estate by virtue of section 47 (1) (a) of that Act; and

10 (c) property which is to be applied for the benefit of creditors of the bankrupt by virtue of a condition imposed under section 33 (3) of that Act.

(3) Nothing in the Bankruptcy Act shall be taken as restricting, or enabling the restriction of, the exercise of those powers referred to in subsection (2).

(4) Subsection (2) shall not affect the enforcement of a charging order -

(a) made before the order adjudging the person bankrupt; or

20 (b) on property which was subject to a restraint order when the order adjudging him bankrupt was made.

(5) Where, in the case of a debtor, an interim receiver stands appointed under section 10 of the Bankruptcy Act and any property of the debtor is subject to a restraint order -

(a) the powers conferred on the receiver by virtue of that Act shall not apply to property for the time being subject to the restraint order; and

30 (b) any such property in the hands of the receiver shall, subject to a lien for any expenses (including his remuneration) properly incurred in respect of the property, be dealt with in such manner as the High Court may direct.

35 (6) For the purposes of section 35 (1) of the Bankruptcy Act, amounts payable under confiscation orders shall constitute debts due to the Government.

19.-(1) Where realisable property is held by a company and an order for the winding up of the company has been made or a resolution has been passed by the company for the voluntary winding up, the functions of the liquidator (or

Winding up
of company
holding
realisable
property.

any provisional liquidator) shall not be exercisable in relation to -

(a) property for the time being subject to a restraint order made before the relevant time; and

(b) any proceeds of property realised by virtue of section 11 (6) or 14 (6) or (7) for the time being in the hands of the Public Trustee pursuant to section 11 or 14, 5

but there shall be payable out of such property any expenses (including the remuneration of the liquidator or provisional liquidator) properly incurred in the winding up in respect of the property. 10

(2) Where, in the case of a company, such an order has been made or such a resolution has been passed, the powers conferred on the High Court by sections 11 to 15 or on a receiver so appointed shall not be exercised in relation to any realisable property held by the company in relation to which the functions of the liquidator are exercisable - 15

(a) so as to inhibit him from exercising those functions for the purpose of distributing any property held by the company to the company's creditors; or 20

(b) so as to prevent the payment out of any property of expenses (including the remuneration of the liquidator or any provisional liquidator) properly incurred in the winding up in respect of the property. 25

Cap. 50. (3) Nothing in the Companies Act shall be taken as restricting, or enabling the restriction of the exercise of those powers referred to in subsection (2).

(4) Subsection (2) shall not affect the enforcement of a charging order made before the relevant time or on property which was subject to a restraint order at the relevant time. 30

(5) In this section -
"company" means any company which may be wound up under the Companies Act; 35

"the relevant time" means -

(a) where no order for the winding up of the company has been made, the time of the passing of the resolution for voluntary winding up; 40

- (b) where such an order has been made and, before the presentation of the petition for the winding up of the company by the court, such a resolution had been passed by the company, the time of the passing of the resolution; and
- (c) in any other case where such an order has been made, the time of the making of the order.

10 **20.** Where the Public Trustee appointed under section 11
or 14 or in pursuance of a charging order takes any action in
relation to property which is not realisable property, being
action which he would be entitled to take if it were such
property, believing, and having reasonable grounds for
15 believing, that he is entitled to take that action in relation to
that property, he shall not be liable to any person in respect
of any loss or damage resulting from his action except in so
far as the loss or damage is caused by his negligence.

Receivers:
supple
mentary
provisions.

PART IV

20 APPLICATION TO ABSCONDED PERSONS

21.-(1) For the purposes of this Act, a person shall be
taken to be convicted of a corruption offence if the person
absconds in connection with the corruption offence and any
reference in Part II to the defendant shall include reference
25 to such a person.

Absconded
persons.

(2) For the purposes of subsection (1), a person shall be
taken to abscond in connection with a corruption offence if
whether before or after the commencement of this Act -

- (a) investigations for a corruption offence have been
30 commenced against the person; and
- (b) (i) the person dies before proceedings in respect of
the offence were instituted, or if such pro
ceedings were instituted, the person dies
before he is convicted; or
- 35 (ii) at the end of the period of 6 months from the
date on which investigations referred to in
paragraph (a) were commenced against him,
the person cannot be found or he is not
amenable to extradition proceedings.

Confiscation
order where
person has
absconded.

22. Where a person is, by reason of section 21, to be taken to have been convicted of a corruption offence, a court shall not make a confiscation order in reliance on the person's conviction of the offence unless the court is satisfied -

- (a) on the evidence adduced before it that, on the balance of probabilities, the person has absconded; and
- (b) having regard to all the evidence before the court, that such evidence if unrebutted would warrant his conviction for the offence.

Effect of
death on
proceedings.

23.-(1) Proceedings under this Act shall be instituted or continued against the personal representatives of a deceased defendant or, if there are no personal representatives, such beneficiary or beneficiaries of the estate of the deceased defendant as may be specified by the court upon the application of the Public Prosecutor.

(2) Where the power conferred by this Act to make a confiscation order is to be exercised in relation to a deceased defendant, the order shall be made against the estate of the deceased defendant except that nothing in this Act shall subject any personal representative of the estate of the deceased defendant, or any beneficiary thereof, to any imprisonment under section 9 if the property of the estate is inadequate for the payment of any amount to be recovered under the confiscation order.

(3) Sections 4 (4) and 5 shall not apply to any deceased defendant.

(4) For the purposes of Part II, the following provisions shall apply in determining whether a deceased defendant had derived benefits from corruption or in determining those benefits or the value of those benefits:

- (a) a deceased defendant shall be deemed to have derived benefits from corruption if he had, at any time (whether before or after the commencement of this Act) since the beginning of the period of 6 years ending at the date of his death, held any property or interest therein disproportionate to his known sources of income, the holding of which cannot be explained to the satisfaction of the court;

- 5 (b) the benefits derived by a deceased defendant from corruption shall be any property or interest therein held by him during the period mentioned in paragraph (a), being property or interest therein disproportionate to his known sources of income, and the holding of which cannot be explained to the satisfaction of the court; and
- 10 (c) the value of the benefits derived by a deceased defendant from corruption shall be the aggregate of the values of those properties and interests therein less the value of any such benefits that are shown to have been taken into account by any court in determining the amount to be recovered under any confiscation order or order under section 13 of the Prevention of Corruption Act previously made against the deceased defendant. Cap. 241.
- 15 (5) In this section, "deceased defendant" means a person who dies -
- 20 (a) after investigations for a corruption offence have been commenced against him; and
- (b) (i) before proceedings in respect of the offence have been instituted against him; or
- 25 (ii) if such proceedings have been instituted, before he is convicted of the offence.

24. Where any document is required under this, Act to be served on a person who cannot be found or who is outside Singapore and cannot be compelled to attend before a court in respect of proceedings under this Act, the court may dispense with service of the document upon him and the proceedings may be continued to their final conclusion in his absence. Service of documents on absconders.

WRITTEN REPRESENTATIONS

<i>Paper No.</i>	<i>Representor</i>					<i>Pages</i>
1	Mr K. Shanker Kumar	...	...	...	...	A 1-5
2	The Law Society of Singapore	...	...	...	...	A 6-7

Paper 1

From: K. Shanker Kumar,
250 North Bridge Road #38-00,
Raffles City Tower,
Singapore 0617.

Dated: 22nd April 1988.

Re: THE CORRUPTION (CONFISCATION OF BENEFITS) BILL

The processes of corruption are necessarily secretive. It is indeed difficult to detect the scarlet thread of bribery in the upper echelons of society as the principal actors are among the most intelligent and respectable members of the community. As graft money is ultimately paid for by unsuspecting citizens in the form of higher prices for homes, goods and services, the insidious perpetrators of these so-called victimless crimes do not seem to suffer from a bad conscience.

Bill Can Be Circumvented

Whilst I strongly support the Government's commitment to combat corruption, I must painfully submit that the proposed Bill will not diminish the buccaneering tendencies of the high and mighty.

The grand intention of Parliament can be easily circumvented by a shrewd official who siphons off all his ill-gotten gains periodically to some foreign haven well before the commencement of any investigation against him. He may choose to retain in Singapore what he can account for as legitimate income. Even an honest but prudent person may do the same as any ill-advised investigation resulting in a restraint order may permanently destroy his reputation and the market value of his properties in Singapore. The ensuing flight of Singaporean-owned capital from Singapore will no doubt adversely affect investments and business confidence in Singapore.

A Brief Comparison

Several provisions of the Bill have been selectively borrowed from the United Kingdom's Drug Trafficking Offences Act 1986 (hereinafter called "the UK Act") and Australia's Proceeds of Crime Act 1987 (hereinafter called "the Australian Act"). However, the sweeping nature of the Bill is not characterised by the UK Act and the Australian Act. Under the UK Act, a confiscation order can be made only in respect of a person actually convicted of a drug trafficking offence: please see section 1. Under the Australian Act, a confiscation order cannot be issued against a person who dies before his conviction and property subject to a confiscation order must be property used in connection with the commission of the offence or the proceeds of the offence in respect of which the defendant admits guilt: section 5 read with sections 6 and 17.

Legal Objections

It is possible to mount a legal challenge against the Bill on the following grounds:

- (1) Clause 3 (1) of the Bill states that the "Act shall apply to any corruption offence committed before the commencement of this Act". This is in clear contravention of Article 11 (1) of the Constitution of the Republic of Singapore (hereinafter called "the Constitution") as the Bill provides for greater punishments than were prescribed by law at the time the corruption offence was committed - if the defendant defaults in making payment pursuant to a confiscation order, he is liable to a prison term that shall run *consecutively* to any prison term he is to serve for the corruption offence and penalty imposed under section 13 of the Prevention of Corruption Act: clause 4 read with clause 9.
- (2) All persons, dead or alive, are equal before the law and entitled to the protection of the law. This principle is enshrined in Article 12 of the Constitution. The Bill is inconsistent with Article 12 in that it unreasonably discriminates against a person who dies before proceedings against him are instituted by deeming him to be convicted of a corruption offence pursuant to clause 21 of the Bill. It is needless to say that a person who suffers a final and fatal act cannot return to defend himself.
- (3) Under clause 6 of the Bill, the prosecution may tender to the court a statement setting out matters relevant to the determination and assessment of benefits derived by the defendant from corruption. A copy of that statement has to be served on the defendant. If the defendant has died, cannot be found or is outside the jurisdiction, a copy of the statement cannot be served on any other person including his estate in view of the definition of the word "defendant" in clause 2 (1) of the Bill. Clause 6 of the Bill is therefore inoperative in respect of defendants who have died or who are not physically in Singapore.
- (4) The Bill is untenable as clauses 4, 5, 21 and 22 read together enable the State, armed only with prima facie evidence, to deem any person, who has died of natural causes and who had no knowledge or clue whatsoever at the time of his death that he was under investigation for a corruption offence, to be convicted of that offence and to deem any property he had not derived from his lifetime earnings which may include legitimate gifts, sweepstake wins and inheritances to be benefits from corruption and to order their confiscation. In these circumstances, it is unreasonable to expect an uninformed beneficiary or next-of-kin to prove that the deceased defendant had acquired his property legitimately.

- (5) There is also no provision in the Bill for a person with a legal or equitable interest in the property to be informed of or represented at the hearing of the Public Prosecutor's application for a restraint, charging, confiscation or receivership order.

Essential Safeguards

Should the Government, however, decide to proceed with the Bill, it is recommended that the following safeguards and improvements be incorporated in the Bill:

- (1) If it is the intention of Parliament to introduce greater punishments for corruption offences, a Bill to amend the Prevention of Corruption Act may be tabled. Such additional penalties should not apply to any corruption offence committed before the commencement of the amendment Act.
- (2) Any reference to the death of persons under investigation for corruption should be confined only to persons committing suicide. In deaths by natural or accidental causes, no inference of guilt can be easily made.
- (3) An investigation of an offence under the Prevention of Corruption Act or any other corruption offence should be deemed to have commenced only after the defendant has been served with a notice in writing duly informing him of such fact.
- (4) The court should not exercise its powers to issue restraint, charging or confiscation orders before the defendant has been served with a notice in writing duly informing him that he is being investigated for corruption.
- (5) Under clause 6 (2) of the Bill, the court *shall* (not "may") require the defendant to indicate to what extent he accepts each allegation in the statement tendered by the prosecution.
- (6) Clause 6 (3) of the Bill should be amended to read as:
"If the defendant has committed suicide, cannot be found or is outside the jurisdiction after investigations for a corruption offence have commenced against him or the defendant fails in any respect to comply with the requirement under subsection (2), he may be treated for the purposes of this section as accepting every allegation in the statement apart from any allegation in respect of which he has complied with the requirement."
- (7) Under clause 8 of the Bill, it is not in the public interest to recognise only "priority obligations" which are equated with preferential debts as set out in section 43 of the Bankruptcy Act and section 328 of the Companies Act. As all realisable property are to vest in the Public Trustee, he is clearly qualified to determine and recognise all provable debts.

- (8) If the defendant is found to be not guilty of corruption and if the Court is satisfied that there was some serious default on the part of the investigator or prosecutor, the Court should have the discretion to order compensation to be paid to the defendant.

Additional Measures

As it is difficult to detect and prove corruption, it is impossible to deter corrupt officials by introducing tough laws with stiffer penalties. This must be coupled with increased vigilance at all levels by ensuring that officials take to the observance of the law with an uncompromising attitude. Only then, with the checks and balances firmly in place, can corruption be reasonably managed.

If corruption means acquiring money, advantage or position by unauthorised or illicit means, may I respectfully recommend these additional measures:

- (1) Whenever there is an administrative irregularity, evidence of corruption or maladministration is not too far away. For a start therefore, violation of a departmental regulation resulting in an unauthorised or illegal expenditure of money or in a wrongful appointment to an office should be made a criminal offence. In this way, unauthorised payments made to third parties, illegal loans given to staff and unmeritorious appointments can be curtailed. Any person who knows or has reason to know and fails to report an infraction of such departmental regulation should also be guilty of an offence.
- (2) Every expenditure exceeding a minimum stipulated sum and any administrative decision resulting in the alienation of land or the issuance, suspension or revocation of a licence to operate a trade, vocation or business should be scrutinized by lawyers employed by the various Ministries and statutory boards. Acquiescent civil servants cannot be expected to assert themselves or to expose the transgressions of their superiors. Auditors untrained in the law do not have the technical skills to confidently cite irregularities. With the professional scepticism of lawyers, the management of public funds can be effectively monitored and misdeeds quietly averted at the earliest instance, thereby boosting public confidence in our institutions. However, measures need to be established to protect the appointments and career development of such professionals as it is indeed rare to find chief executives and top officials who take kindly to the efforts of professionals enforcing the law.
- (3) In a young, modern, highly urbanised society such as ours, where material success is highly adulated, the compelling and easy way to quick riches is through illegitimate means. In a likely scenario of corruption and patronage taking new and sophisticated forms, it is important for the Corrupt Practices Investigation Bureau to take on a multi-disciplinary approach in its work by recruiting into its ranks

lawyers, accountants, financial analysts, sociologists, computer specialists and other relevant professionals. CPIB officers must always demonstrate a sound understanding of their legal powers so that their investigative skills are beyond reproach.

It is no wonder that the cross-fertilization between the business and public worlds yields the richest spoils. Singapore, being a small city-state, cannot withstand the corruption that is endemic in larger nations. We must therefore be prepared to pay the price for tougher laws and increased vigilance to overcome the mammoth evil that is corruption. The Bill deserves the most earnest review. I would be pleased to appear before the Select Committee if invited to do so.

K. SHANKER KUMAR.

Paper 2

From: The Law Society of Singapore,
1 Colombo Court, #08-29/30,
Singapore 0617.

Dated: 4th May 1988.

THE CORRUPTION (CONFISCATION OF BENEFITS) BILL

I am directed to forward ten (10) copies of a Memorandum prepared by the Law Society of Singapore relating to the Corruption (Confiscation of Benefits) Bill.

If any clarification of its Recommendations is required, the Law Society would be prepared to send its representatives to appear before the Select Committee.

Kindly acknowledge receipt.

PATRICK NATHAN,
Executive Secretary.

MEMORANDUM ON THE CORRUPTION (CONFISCATION OF BENEFITS) BILL

The Law Society is in general agreement with the fundamental concept that a criminal should not be allowed to retain the benefits of his corruption.

Only two matters call for observations, viz:

(a) The Retrospective effect of the Bill

The Law Society is in principle against any form of retrospective legislation. It accepts that Parliament may pass retrospective legislation but that is a power which should, in its view, be exercised sparingly. In the instant case, it does not think there are compelling reasons for the exercise of this power. The Law Society, therefore, recommends against it. It has been noted that, in moving this Bill, the Minister for law has stated that it is not retrospective in scope or effect. The words used in clause 3 clearly indicate that it is so. In this connexion, the Law Society has taken note that the relevant Australian Law, Proceeds of Crime Act, 1987, is not retrospective and that the English Law is limited in its retrospective application. See section 38 (4) of the Drugs Trafficking Offences Act, 1986.

The confiscation or forfeiture, as the case may be, of the assets and property of a person deemed to have been derived from corruption is a

form of punishment. *Article 11 (1) of the Constitution of the Republic of Singapore* provides that "... No person shall suffer greater punishment for an offence than was prescribed by law at the time it was committed.". The Law Society does not, however, think this Article of the Constitution has been infringed. See, also, *section 13 of the Prevention of Corruption Act, Chapter 241*.

(b) *Presumptions*

The Law Society does not agree with the presumption of conviction of corruption if a person absconds in connexion with a corruption offence. The Law Society does not, also, agree that a person should be deemed to have absconded and therefore convicted if investigations have been commenced against him and he dies before proceedings, in respect of the corruption offence were instituted or if proceedings were instituted he dies before he is convicted or at the end of six (6) months from the date of commencement of investigations, he cannot be found or he is not amenable to extradition proceedings.

The Law Society takes the view that this is contrary to the fundamental principles of law that a person is presumed to be innocent until proven guilty and that a person may not be tried *in absentia*.

It is well known that investigations into alleged corrupt offences are usually discreet and not open. The former speaks for itself. Furthermore, the issue when an investigation is deemed in law to have begun can be a moot point. Quite apart from that, if a person does not know that an investigation has been commenced against him and dies of, say, natural causes or upon the shock of an accusation of corruption against him, is he or his estate to be punished? He might well be acquitted and discharged of the charge of corruption against him, if the trial had proceeded or he might be exonerated on appeal. A similar case may be made in the case of a person who is away from Singapore for six (6) or more months, e.g. he could be on an extended business cum pleasure trip overseas blissfully unaware that he has been convicted of corruption.

The fact that a deceased person or rather his estate may be represented by counsel is not germane to this particular discussion. The only person capable of giving any or adequate instructions to counsel as to whether or not any assets or property were acquired from corrupt activities is, probably, the deceased himself.

It follows from the above that the Law Society does not accept clause 22 of the Bill.

Apart from the above observations, the other provisions, which are of a procedural nature do not call for comments.

MINUTES OF EVIDENCE

<i>Representors</i>	<i>Pages</i>	<i>Columns</i>
<i>Representing the Law Society of Singapore:</i>		
Mr N. Ganesan, Council Member Mr Denis Tan, Member of the Legislation Committee (Criminal)	B 1-6	1-12
Mr K. Shanker Kumar		13-8

MINUTES OF EVIDENCE

MONDAY, 4TH JULY 1988

PRESENT:

Mr Deputy Speaker (*in the Chair*)

Mr Abdullah Tarmugi	:	Mr Heng Chiang Meng
Mr E.W. Barker	:	Prof. S. Jayakumar
Mr Bernard Chen	:	Dr Wang Kai Yuen

ABSENT:

Mr Chua Sian Chin

Mr Koh Eng Tian, Solicitor-General, was in attendance.

The following representatives of the Law Society of Singapore, 1 Colombo Court, #08-29/30, Singapore 0617, were examined:

Mr N. Ganesan, Council Member.

Mr Denis Tan, Member of the Legislation Committee (Criminal).

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4 JULY 1988

2

Chairman

1. Please be seated. For the record, could you give us your full names, your addresses and the offices that you hold in the Law Society? - (*Mr N. Ganesan*) My name is N. Ganesan.

2. Your address? - (*Mr Ganesan*) #04-22, Central Building, No. 1 Magazine Road. I am Council Member of the Law Society. (*Mr Denis Tan*) I am Denis Tan. My address is 57 Meyer Road, #17-03. I am a member of the Legisla-

tion Committee (Criminal) of the Law Society.

3. The Committee has carefully considered the views of the Law Society contained in their memorandum of 4th May 1988. Is there anything you wish to add to this submission? - (*Mr Ganesan*) Sir, before we begin, we want to make it clear to the Committee that we want to disassociate ourselves, the Society and us, from statements made by some lawyers to the press. We want to say that first. May I be permitted to make some

Mr Ganesan (cont.)

comments on our memorandum? In our memorandum, we have stated that we are in full agreement with the concept that a criminal should not be allowed to retain the benefits of his corruption. We are also aware of the Drug Trafficking Offences Act, 1986, of the UK, and the Proceeds of Crime Act, 1987, of Australia. However, we note, subject to correction, that in these two Acts, the Australian and the United Kingdom Acts, there are definitely retrospective provisions. So we were wrong in saying in our memorandum that:

The words used in clause 3 clearly indicate that it is so. In this connexion, the Law Society has taken note that the relevant Australian Law, Proceeds of Crime Act, 1987, is not retrospective and that the English Law is limited in its retrospective application.'

What we are saying is the Australian and the English law is retrospective but limited in its application. That is our main concern in presenting this memorandum and making comment on the retrospective nature of this proposed Act.

Mr Barker

4. Have you finished? - (*Mr Ganesan*) I can elaborate, Sir, if need be, but I thought at this moment we would just say that we are concerned about the retrospective nature of the Bill.

5. Thank you for your clarification. Can I just take you, firstly, to one point - whether or not this Bill is ultra vires any provision of the Constitution? - (*Mr Ganesan*) Sir, in our opinion, it is not.

6. Can I just distribute this paper?
[Copies of document distributed to

Members and witnesses.] I photostated Article 11 of the Constitution. It is before you. It reads:

'(1) No person shall be punished for an act or omission which was not punishable by law when it was done or made, and no person shall suffer greater punishment for an offence than was prescribed by law at the time it was committed.'

Under this Bill we are not creating a new offence. The offence is already provided for. But what about the second part "no person shall suffer greater punishment for an offence than was prescribed by law at the time it was committed"? - (*Mr Ganesan*) Sir, that is on the second part of our submission, the second paragraph, where we have mentioned Article 11 of the Constitution. We are, of course, concerned with the proposed section 9 of the Act where added punishment is being given when the confiscation -

7. Have you got the Bill? - (*Mr Ganesan*) Yes, Sir. The default punishment where the confiscation order is made. This section 9 seems to be in conflict with Article 11 (1) of the Constitution. But we have seen the UK and Australian Acts and they have similar provisions in them. So we were thinking of that when we said, "The Law Society does not, however, think this Article of the Constitution has been infringed." But it appears that it has been infringed. We decided to make this representation nevertheless to the Committee because at the time when a person commits an offence our law is codified. He knows the consequences or he should know the consequences. He faces the music when it comes. But after he has committed an offence, if a new punishment is provided, as it seems this Bill will provide, that

seems to be harsh. So we want to make this submission that the Government or the Legislature rethinks about it and find some other alternative to this punishment clause, section 9.

8. Thank you? - (*Mr Denis Tan*) Mr Chairman, perhaps if I may just add this to elaborate why we have reservations on the introduction of this new section 9. Under the existing law, ie, under the present Prevention of Corruption Act, section 13 (1) provides the possibility where the court can order a convicted person to pay up whatever he has taken as a result of corruption. But there is no default clause as such. What are the avenues then upon which the court or the prosecution can recover a penalty if an accused person does not pay up when he is ordered to do so? We are of the view that under the present section 13 the only remedy available is where the prosecution takes the person to a civil court to recover the moneys. But under the new provision to be introduced, there are specific terms of imprisonment to be meted out if the amount stipulated down there is not paid up. In fact, it becomes an additional punishment, as we view it. It would amount to that and, that being the case, it would appear to infringe Article 11 (1) of the Constitution. This is our only reservation. But, of course, because of the fact that section 13 has not really been decided, the court may order default punishment, but whether it can do so or not has not actually been settled as yet. No case law has come up on this particular point. So it was because of that, which is why we did not in our representation take a very firm position as to whether this new section 9 would infringe the Constitution. (*Mr Ganesan*)

Also, Sir, may I add? Going back to our arguments against the retrospective nature of it, assuming a person has committed an offence in 1985. If he is arrested or proceeded upon under this new legislation, ie under the new Bill, this additional punishment will be meted to him. Whereas if it is not retrospective, but effective from today onwards or from the date this Bill becomes an Act, then it will be fair. That is our contention when we say we are against the retrospective nature of this provision vis-a-vis section 9. Otherwise, the confiscation, as with all the procedures which are explained here, we have no objections whatsoever even if they are retrospective. But the punishment provision in section 9 is what we are concerned about.

Prof. Jayakumar

9. Let me ask you this so that I can understand your point clearly. There are, of course, two aspects. One is the legal aspect and the other is an opinion as to whether it is a bit harsh. Do I understand that your view on section 9 is that it may be harsh or that it is in conflict with Article 11 (1) of the Constitution? - (*Mr Ganesan*) Sir, reading Article 11 (1), it appears to be in conflict.

10. But how is it that your written representation says, "The Law Society does not think this Article of the Constitution has been infringed."? - (*Mr Ganesan*) We both have reservations on that paragraph. We did not draft this.

11. Are you here to defend this representation or - ? - (*Mr Ganesan*) We were trying to decide whether we

Mr Ganesan (cont.)

should agree to this statement "The Law Society does not, however, think this Article of the Constitution has been infringed."

Prof. Jayakumar (cont.)

12. Maybe we should be clear in our minds. You are here as representatives of the Law Society? - *(Mr Ganesan)* Yes, Sir.

13. To explain this memorandum or to give your own separate views? - *(Mr Ganesan)* Sir, we belong to the committee. We agree with this memorandum. Personally, we both feel Article 11 is infringed.

14. But I want to get a clear idea of what is the Law Society's position? - *(Mr Ganesan)* The Society's position is as appearing in the memorandum.

15. Because either the Minister or myself will have to present our Report to Parliament. We will have to explain what is the Law Society's position. We want to know whether the Law Society's position is as stated here or you are telling us it has changed? - *(Mr Ganesan)* It is as stated there, Sir.

16. Right. So the official position and the considered position of the Law Society is that it is not in conflict with the Constitution? - *(Mr Ganesan)* Yes.

17. But in your individual capacity, both of you feel there is - ? - *(Mr Ganesan)* We have a bit of doubt.

18. Thank you. On section 9 which you cited as an example to demonstrate your reservation that this could have retrospective effect, you would agree with me that how section 9 will come into play is, first, there must be a court conviction. Second, there is failure on the person's part to pay the amount of the fine or the confiscation order, and then only section 9 comes into play. Would you agree with me? - *(Mr Ganesan)* But there are the other presumption sections, Sir.

19. Yes. Apart from absconders and persons who have died, there is no problem with section 9? - *(Mr Ganesan)* Yes, after the conviction.

20. Thank you. So your reservations are about absconders and persons who have died? - *(Mr Ganesan)* Yes.

Mr Barker

21. Can I take you up on that one? Your Society gave an example of a person who is unaware that an investigation for corruption has commenced against him, and then he goes on an extended business or pleasure trip overseas for more than six months. You say that in such a case he could be blissfully unaware that he is convicted of corruption. This, I think, is a mis-reading of section 21 (2) (b), if you can look at section 21 (2) (b). To begin with, the onus is on the prosecution, wishing to apply for a confiscation order, to show that the person cannot be found after investigation has commenced against him at least six months ago. If this person has gone on an extended trip, either for business or pleasure, it is inconceivable that his whereabouts will not be known to

anybody in Singapore. And to satisfy the court that the person cannot be found, there must be evidence that reasonable efforts have been made to find him or to trace him. You have section 21 (2) (b) (ii):

'at the end of the period of 6 months from the date on which investigations referred to in paragraph (a) were commenced against him, the person cannot be found or he is not amenable to extradition proceedings.'

Does that not take care of your worry? - (*Mr Ganesan*) Sir, may I comment on it? What was thought of was this section 21 (2) (a). This is, I think, the worrying thing for us. Section 21 (2) (a) reads:

'For the purposes of subsection (1), a person shall be taken to abscond in connection with a corruption offence if whether before or after the commencement of this Act -

(a) investigations for a corruption offence have been commenced against the person;'

This is where the worry is -that we do not know whether the person knows that investigations have commenced. (*Mr Denis Tan*) The position can also be like this as a follow-up. Taking an example, let us assume that four months ago investigation has commenced against an individual. Now this could have been done on a discreet basis, as it is known that it can be done, so the individual may not be aware that he is being investigated. And five months have passed and he blissfully, as we say, goes on an extended trip for a month or two, by which time when he is away he would be caught by this section - that within the six-month period investigations have already commenced. So he has no knowledge of the fact that he is being investigated. So therefore he may not have any reason to inform his whereabouts to his people in Singapore. Under this provision, that would appear to act

unfairly against him. We would feel that perhaps a fairer approach would be unless he is being made aware of the investigation and the six months run from that date and then he subsequently takes steps to leave Singapore, and then you apply the presumption against him. That would be a more justifiable approach than saying "from the date of investigation", because the nature of investigations, as we are now told, can be discreet, without the person being investigated knowing about it. So it is in relation to such a situation that we have reservation in applying the presumption of this nature. That is why we say he may be blissfully unaware that he is being investigated.

Mr Barker] Thank you.

Chairman) Are there any other questions?

Prof. Jayakumar

22. Can I just draw your attention - since you made a correction - to your first page, sub-paragraph (a) where you say it is not retrospective. You are, in fact, correcting it to say "it is retrospective", isn't it? - (*Mr Ganesan*) Sir, we will word it this way. From "In this connexion, the Law Society has taken note that the relevant Australian Law, Proceeds of Crime Act, 1987, and the English Law is limited in its retrospective application." "Limited in its retrospective application". So we won't say "it is not retrospective."

23. Before you leave, can I draw your attention to a few lines above that quotation:

Prof Jayakumar (cont.)

'It has been noted that, in moving this Bill, the Minister for Law has stated that it is not retrospective in scope or effect.'

I would like to state for the record and for your benefit that, first of all, it was the Second Minister for Law who introduced the Bill. The Minister for Law did not introduce the Bill. But more significant, the Second Minister for Law never stated in Parliament or in any other place that "it is not retrospective in scope or effect." What the Second Minister for Law said in Parliament is with regard to the argument made by some that the Bill violated the Constitution. So I think you might wish to note that? - *(Mr Ganesan)* I see. We were under the misapprehension. This must be from some reports.

(The witnesses withdrew.)

Mr Barker

24. We have finished with you. Thank you for coming. But if you have anything to add, please do it now? - *(Mr Ganesan)* No.

Chairman

25. Gentlemen, thank you for coming. In a few days' time you will receive the transcript of the proceedings for your perusal. Kindly look through it and return it to the Chief Reporter and Editor as soon as possible. You can make corrections to the grammar or the style but not to the substance. Thank you very much for coming? - *(Mr Ganesan)* Thank you very much.

Mr K. Shanker Kumar of 250 North Bridge Road #38-00, Raffles City Tower, Singapore 0617, was examined.

Chairman

26. Good afternoon. For the record, can you give us your full name, your address and occupation? - My name is Shanker Kumar. My office address is 250 North Bridge Road #38-00, Raffles City Tower, Singapore 0617. I am an Assistant Director (Legal) in the Singapore Tourist Promotion Board.

27. The Committee would like to thank you for the views you have stated on the 22nd April 1988 and we have given it careful consideration. Is there anything you wish to add to your written submission? - Nothing in particular, Sir, unless you have got any questions for me.

Chairman] All right. Mr Barker.

Mr Barker

28. Are you qualified as a lawyer? - Yes, Sir. I graduated in Law in 1980. I am a Law graduate from Singapore University, graduated in 1980, called to the Bar in 1981.

29. But you are not practising? - I am not practising as a lawyer. I am not in private practice. I am working as a Legal Officer in Singapore Tourist Promotion Board.

30. You have never practised? - I have practised for a year, sometime between 1983/1984.

31. And then you joined STPB? - That's right.

Mr Barker] Thank you.

Prof. Jayakumar

32. Mr Shanker Kumar, it is not our intention to take you through all the points that you have made. We obviously will be giving it consideration. The Select Committee will not, however, be able to consider some of your points. For example, towards the end of your representation, you have made suggestions for amendment to the Prevention of Corruption Act which is really outside the purview of this Select Committee. I will just go through a few points. On page 1 of your paper, you have expressed considerable concern over the effects of this Bill and you thought that it would even lead to the "flight of Singaporean-owned capital from Singapore" will affect investments and business, and that persons may retain in Singapore only what they need to do for legitimate purposes. We wonder whether you could have mis-read some of the provisions. Because the thrust of this Bill is not to provide for physical confiscation of the assets but for a sum to be determined which is equivalent to the total value of the ill-gotten gains. Are you aware of that? - Yes, I understand that.

33. So, that together with the fact that the Bill does provide for a sentence of imprisonment in default, would it not ensure that the defendant will repatriate some of his funds or sell off his overseas assets to pay up and meet the confiscation order? - That could very well be a result. It is an option open to him. However, Sir, what really troubled me was the restraint order, which is actually

Mr Shanker Kumar (cont.)

a preemptive move by the authorities. When a restraint order is slapped on the person concerned, what I fear is the publicity. If word gets out that a restraint order has been slapped on him, then the value of his properties may diminish. That is my fear, Sir. As you would understand, a restraint order could well precede a confiscation order.

Prof. Jayakumar (cont.)

34. But for the effectiveness of the Bill, such restraint orders will be necessary? - Certainly. I agree with you totally.

35. May I turn to another point which is under your heading "Legal Objections"? - Yes.

36. You seem to be of the view that Article 11 of the Constitution has been contravened by this Bill. We have just heard the representatives of the Law Society. They have told us that in the view of the Society, which has studied the Bill, that it does not contravene Article 11. So we will be interested to have your elaboration or argument as to which part of Article 11 (1) has been contravened? - Very well, Sir. Paragraph 1 of Article 11 consists of two limbs. I am referring to the second limb. I feel that both limbs are independent of each other, in a sense. The Bill offends the second limb of paragraph 1 of Article 11. As far as authorities go, I have not been able to do extensive research. But I have referred to the Constitutional Law of India by D.D. Basu, Second Edition, page 64, and there he has cited a case, *State of W.B. versus S.K. Ghose*, A.1963 S.C. 255. At

page 64, Basu cited a case which says that the forfeiture of property under section 53 of the Indian Penal Code ordered by a court trying an offence is a penalty for the purposes of this article. And here it was deemed to be ultra vires the second limb of Article 11 (1). I believe that here we are providing for enhanced penalties, not so much of a new offence as such but enhanced penalties, greater punishment. So in that sense, yes.

37. Perhaps you could send us a copy of that extract? - Sure, I will, Sir. Shall I also send you a copy of the case report?

38. I think the citation will be sufficient? - Fine.

39. The legal aspect is one thing. The policy aspect is another? - Yes.

40. If the Bill did not have the approach which it contains now, then we will have a result where persons or the estate of people may retain proceeds from corrupt acts, would you agree? - Yes.

41. So that is the reason for the approach taken in this Bill. Because if we took the approach which avoided the application of confiscation orders to proceeds from corruption prior to the conviction, then it must mean that all those proceeds from corruption prior to that conviction are immune from the operation of the Act? - Yes.

42. So would you agree that if we take the approach of limiting it prospectively, then a person will be entitled to retain his ill-gotten gains? - Yes. At the same time, Sir, can I add that there is

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provision in the Prevention of Corruption Act that, by way of civil suit, you can recover properties that were gained through corruption. There is provision for that.

43. But you are aware of the explanation given in Parliament as to why that is not a suitable avenue? - Yes, I understand.

Prof. Jayakumar] I do not have any other questions.

Mr Barker

44. I just want to thank you for coming. Thank you for your representation. Before you go, if you have anything to add, this is the opportunity? - Yes. Can I just briefly look through this paper?

45. Yes? - Sir, all I would like to add at this point is that it is just an

extension of a point I made at page 2 on the possible contravention of Article 12 of the Constitution. What I would also like to add is that it would affect the property rights and reputation of people alive, ie, persons related to the deceased. So it is not just the person who dies that is of concern but also persons who are left behind, their property rights and so on.

46. That is all? - That is all, Sir.

Chairman

47. Mr Kumar, thank you for coming. In a few days' time, you will receive a transcript of the proceedings. Kindly check through it and return it to the Chief Reporter & Editor as soon as possible. You can make alterations to the grammar or style but not the substance? - Yes, I understand.

48. Thank you for coming? - It has been my privilege, Sir. Thank you very much.

(The witness withdrew.)

MINUTES OF PROCEEDINGS

1st Meeting

MONDAY, 20TH JUNE, 1988

3.00 p.m.

PRESENT:

Mr Deputy Speaker (Mr Tan Soo Khoon) (*in the Chair*)

Mr Abdullah Tarmugi

Mr E.W. Barker

Mr Bernard Chen

Mr Heng Chiang Meng

Prof. S. Jayakumar

ABSENT:

Mr Chua Sian Chin (*on leave of absence*)

Dr Wang Kai Yuen (*with apologies*).

-
1. The Committee deliberated.
 2. Written representations received were considered.
 3. Agreed that oral evidence be heard from the representors in Papers 1 and 2, on Monday 4th July, 1988.

Adjourned till 3.00 p.m. on
Monday, 4th July, 1988.

2nd Meeting

MONDAY, 4TH JULY, 1988

3.00 p.m.

PRESENT:

Mr Deputy Speaker (Mr Tan Soo Khoon) (*in the Chair*)

Mr Abdullah Tarmugi

Mr E.W. Barker

Mr Bernard Chen

Mr Heng Chiang Meng

Prof S. Jayakumar

Dr Wang Kai Yuen

ABSENT:

Mr Chua Sian Chin.

1. The Committee deliberated.

Agreed that the written representations contained in Papers 1 and 2 be published with the Committee's Report.

2. Mr N. Ganesan (member of the Council) and Mr Denis Tan (member of the Legislation Committee (Criminal)) of the Law Society of Singapore (Paper 2) were examined.

3. Mr. N. Shanker Kumar (Paper 1) was examined.

Adjourned to a date to be fixed.

3rd Meeting

MONDAY, 15TH AUGUST, 1988

2.45 p.m.

PRESENT:

Mr Deputy Speaker (Mr Tan Soo Khoon) (*in the Chair*)

Mr Abdullah Tarmugi

Mr E.W. Barker

Mr Bernard Chen

Mr Chua Sian Chin

Prof. S. Jayakumar

Dr Wang Kai Yuen

ABSENT:

Mr Heng Chiang Meng

1. The Committee deliberated.

2. Bill considered clause by clause.

Clauses 1 and 2 agreed to. Clause 3:

Amendment made in page 4, line 6 by leaving out "sentenced", and inserting "convicted". - (Mr E.W. Barker).

Clause 3, as amended, agreed to.

Clause 4:

Amendments made -

- (1) in page 4, line 12 by leaving out "Where", and inserting "Subject to section 22, where"; and
- (2) in page 4, line 32 by leaving out "For", and inserting "Subject to section 23, for". - (Mr E.W. Barker).

Clause 4, as amended, agreed to.

Clause 5:

Amendments made -

- (1) in page 5, line 1 by leaving out "For", and inserting "Subject to section 23, for"; and

(2) in page 5, by leaving out lines 2 to 9, and inserting -

"(a) the benefits derived by any person from corruption shall be -

(i) any property or interest therein held by the person at any time, whether before or after the commencement of this Act, being property or interest disproportionate to his known sources of income and the holding of which cannot be explained to the satisfaction of the court, less

(ii) any such property or interest which the court will be taking into account in determining the amount to be recovered under an order under section 13 of the Prevention of Corruption Act made against that person; and"; and

Cap. 241.

(3) in page 5, line 16 after "order", by inserting ", or an order under section 13 of the Prevention of Corruption Act,". - (Mr E.W. Barker).

Clause 5, as amended, agreed to.

Clauses 6 and 7 agreed to.

Clause 8:

Amendments made -

(1) in page 8, line 38 after "proceedings", by inserting "for a corruption offence"; and

(2) in page 8, line 38 after "him", by inserting "or, where no such proceedings have been instituted, when an application under section 4 for a confiscation order is made against him". - (Mr E.W. Barker).

Clause 8, as amended, agreed to.

Clause 9 agreed to.

Clause 10:

Amendment made in page 10, line 35, after "he", by inserting "dies or". - (Mr E.W. Barker).

Clause 10, as amended, agreed to.

Clauses 11 to 13 inclusive agreed to.

Clause 14:

Amendment made in page 15, after line 3 by inserting -

"(2) The High Court may, on the application of the Public Prosecutor, also exercise the powers conferred by subsections (3) to (7) where -

(a) a confiscation order is made against a person who is, by reason of section 21, taken to be convicted of a corruption offence;

2nd Meeting

MONDAY, 4TH JULY, 1988

3.00 p.m.

PRESENT:

Mr Deputy Speaker (Mr Tan Soo Khoon) (*in the Chair*)

Mr Abdullah Tarmugi

Mr E.W. Barker

Mr Bernard Chen

Mr Heng Chiang Meng

Prof S. Jayakumar

Dr Wang Kai Yuen

ABSENT:

Mr Chua Sian Chin.

1. The Committee deliberated.

Agreed that the written representations contained in Papers 1 and 2 be published with the Committee's Report.

2. Mr N. Ganesan (member of the Council) and Mr Denis Tan (member of the Legislation Committee (Criminal)) of the Law Society of Singapore (Paper 2) were examined.

3. Mr. N. Shanker Kumar (Paper 1) was examined.

Adjourned to a date to be fixed.

New clause (A) after clause 22:

New clause (A) brought up and read the first time -

"Effect of
death on
proceedings.

(1) Proceedings under this Act shall be instituted or continued against the personal representatives of a deceased defendant or, if there are no personal representatives, such beneficiary or beneficiaries of the estate of the deceased defendant as may be specified by the court upon the application of the Public Prosecutor.

(2) Where the power conferred by this Act to make a confiscation order is to be exercised in relation to a deceased defendant, the order shall be made against the estate of the deceased defendant except that nothing in this Act shall subject any personal representative of the estate of the deceased defendant, or any beneficiary thereof, to any imprisonment under section 9 if the property of the estate is inadequate for the payment of any amount to be recovered under the confiscation order.

(3) Sections 4 (4) and 5 shall not apply to any deceased defendant.

(4) For the purposes of Part II, the following provisions shall apply in determining whether a deceased defendant had derived benefits from corruption or in determining those benefits or the value of those benefits:

- (a) a deceased defendant shall be deemed to have derived benefits from corruption if he has, at any time (whether before or after the commencement of this Act) since the beginning of the period of 6 years ending at the date of his death, held any property or interest therein disproportionate to his known sources of income, the holding of which cannot be explained to the satisfaction of the court;
- (b) the benefits derived by a deceased defendant from corruption shall be any property or interest therein held by him during the period mentioned in paragraph (a), being property or interest therein disproportionate to his known sources of income, and the holding of which cannot be explained to the satisfaction of the court; and
- (c) the value of the benefits derived by a deceased defendant from corruption shall be the aggregate of the values of those properties and interests therein less the value of any such benefits that are shown to have been taken into account by any court in determining the amount to be recovered under any confiscation order or order under section 13 of the Prevention of Corruption Act previously made against the deceased defendant.

Cap. 241.

(5) In this section, "deceased defendant" means a person who dies -

- (a) after investigations for a corruption offence have been commenced against him; and
- (b) (i) before proceedings in respect of the offence have been instituted against him; or
- (ii) if such proceedings have been instituted, before he is convicted of the offence." - (Prof. S. Jayakumar).

New clause read a second time and added to the Bill. New

clause (B) after new clause (A):

New clause (B) brought up and read the first time -

Service of
documents
on
absconders.

Where any document is required under this Act to be served on a person who cannot be found or who is outside Singapore and cannot be compelled to attend before a court in respect of proceedings under this Act, the court may dispense with service of the document upon him and the proceedings may be continued to their final conclusion in his absence." - (Prof. S. Jayakumar).

New clause read a second time and added to the Bill.

Consequential amendments made to the numbering of new clause (A) as clause 23 and new clause (B) as clause 24.

Bill to be reported.

Report

3. The Chairman's draft report brought up and read the first time.

4. Resolved, "That the Chairman's report be read a second time paragraph by paragraph.".

Paragraphs 1 to 6 inclusive read and agreed to.

5. Resolved, "That this Report be the Report of the Select Committee to Parliament.".

6. Agreed that the Chairman do present the Report to Parliament upon an office copy thereof being made available in the Parliament Library for the inspection of Members.

Adjourned Sine die

CONSIDERATION OF THE BILL (CLAUSE BY CLAUSE)

MONDAY, 15TH AUGUST, 1988

CONTENTS

Clauses 1 and 2 agreed to

Clauses 3 to 5 inclusive, as amended, agreed to

Clauses 6 and 7 agreed to

Clause 8, as amended, agreed to

Clause 9 agreed to

Clause 10, as amended, agreed to

Clauses 11 to 13 inclusive agreed to

Clause 14, as amended, agreed to

Clauses 15 to 17 inclusive agreed to

Clauses 18 and 19, as amended, agreed to

Clause 20 agreed to

Clauses 21 and 22, as amended, agreed to

New Clauses (A) and (B) agreed to

Bill to be reported

Report agreed to

Consideration of the Bill (clause by clause)

(3rd Meeting)

Monday, 15th August, 1988

The Committee met at 2.45 pm

Present:

Mr Deputy Speaker (Mr Tan Soo Khoon)(Alexandra).
Mr Abdullah Tarmugi (Siglap).
Mr E.W. Barker (Tanglin), Minister for Law.
Mr Bernard Chen (Clementi).
Mr Chua Sian Chin (MacPherson).
Prof. S. Jayakumar (Bedok), Minister for Home Affairs and
Second Minister for Law.
Dr Wang Kai Yuen (Bukit Timah).

Absent:

Mr Heng Chiang Meng (Jalan Kayu).

In attendance:

Attorney-General's Chambers:

Mr Goh Phai Cheng, Deputy Parliamentary Counsel.
Mrs Owi Beng Ki, State Counsel.

[Mr Deputy Speaker in the Chair]

The Chairman: The first item on the agenda is to consider the Bill clause by clause.

The notice of amendments by the Minister for Law has been circularized to Members.

Clauses 1 and 2 agreed to stand part of the Bill.

Clause 3 - (Application.)

Mr Barker: Sir, I beg to move,

In page 4, line 6, to leave out "sentenced", and insert "convicted".

The amendment to subsection (1) can be considered to be of a drafting nature. By substituting the word "sentenced" for "convicted" the subsection would be more in line with clause 4 as well as clauses 21 and 22 where the word "convicted" is used. The amendment will also make clear beyond any doubt that a case like that of the late Teh Cheang Wan, who died before the commencement of the new law and would be deemed to have been convicted, is outside the scope of the Bill since his death took place before such commencement.

Amendment agreed to.

Clause 3, as amended, agreed to stand part of the Bill.

Clause 4 - (Confiscation orders.)

Mr Barker: Sir, I beg to move,

In page 4, line 12, to leave out "Where", and insert "Subject to section 22, where".

The amendment to subsection (1) is purely a drafting amendment.

Amendment agreed to.

Mr Barker: Sir, I beg to move,

In page 4, line 32, to leave out "For", and insert "Subject to section 23, for".

The amendment to subsection (4) is consequential on the insertion of new clause A.

Amendment agreed to.

Clause 4, as amended, agreed to stand part of the Bill.

Clause 5 - (Assessing the benefits of corruption.)

Mr Barker: Sir, I beg to move,

In page 5, line 1, to leave out "For", and insert "Subject to section 23, for".

In page 5, to leave out lines 2 to 9, and insert -

"(a) the benefits derived by any person from corruption shall be -

- (i) any property or interest therein held by the person at any time, whether before or after the commencement of this Act, being property or interest disproportionate to his known sources of income and the holding of which cannot be explained to the satisfaction of the court, less
- (ii) any such property or interest which the court will be taking into account in determining the amount to be recovered under an order under section 13 of the Prevention of Corruption Act made against that person; and".

Cap.241.

In page 5, line 16, after "order", to insert ", or an order under section 13 of the Prevention of Corruption Act,".

The amendments to subsections (1)(a) and (2) are to ensure that in computing the value of the benefits derived by a defendant from corruption, no account would be taken of any benefits which will be or have been included in an order made under section 13 of the Prevention of Corruption Act. Under section 13 of that Act, the court is required to make an order requiring a person convicted of corruption to pay the value of whatever gratification he has received in connection with the offence for which he has been convicted.

Amendments agreed to.

Clause 5, as amended, agreed to stand part of the Bill.

Clauses 6 and 7 agreed to stand part of the Bill.

Clause 8 - (Definition of principal terms used.)

Mr Barker: Sir, I beg to move,

In page 8, line 38, after "proceedings", to insert "for a corruption offence".

In page 8, line 38, after "him", to insert "or, where no such proceedings have been instituted, when an application under section 4 for a confiscation order is made against him".

Clause 8(8) defines the meaning of the term "gift caught by this Act". The amendment is to make it clear that in computing the period of 6 years for the purpose of a gift caught by the Act the period will end, in the case of an absconder or deceased defendant, on the date an application for a confiscation order is made and not

on the date he is charged in court since that would be inapplicable in his case.

Amendments agreed to.

Clause 8, as amended, agreed to stand part of the Bill.

Clause 9 agreed to stand part of the Bill.

Clause 10 - (Cases in which restraint orders and charging orders may be made.)

Mr Barker: Sir, I beg to move,

In page 10, line 35, after "he", to insert "dies or".

The amendment to clause 10(2)(b) seeks to empower the High Court to make a restraint or charging order against the property of a deceased person who has been the subject of investigation for a corruption offence.

Amendment agreed to.

Clause 10, as amended, agreed to stand part of the Bill.

Clause 11 to 13 inclusive agreed to stand part of the Bill.

Clause 14 - (Realisation of property.)

Prof. Jayakumar: Sir, I beg to move,

In page 15, after line 3, to insert -

"(2) The High Court may, on the application of the Public Prosecutor, also exercise the powers conferred by subsections (3) to (7) where -

- (a) a confiscation order is made against a person who is, by reason of section 21, taken to be convicted of a corruption offence;
- (b) the order is not subject to appeal; and
- (c) the order has not been satisfied, whether by payment of the amount due under the order or by the defendant serving imprisonment by default."

The amendment is to insert a new subsection (2) in the clause to empower the High Court to give directions for the enforcement of restraint and charging orders made against absconders.

Amendment agreed to.

The Chairman: There are consequential amendments:

(1) In page 15, to renumber existing subsections (2) to (8) as subsections (3) to (9), respectively.

(2) In page 15, line 3, to leave out "(2) to (6)", and insert "(3) to (7)".

(3) In page 15, line 7, to leave out "(2)", and insert "(3)".

(4) In page 15, line 30, to leave out "(4) to (6)", and insert "(5) to (7)".

(5) In page 15, lines 33 and 34, to leave out "(3)(a), (5) or (6)", and insert "(4)(a), (6) or (7)".

These will be done.

Clause 14, as amended, agreed to stand part of the Bill.

Clauses 15 to 17 inclusive agreed to stand part of the Bill.

Clause 18 - (Bankruptcy of defendant, etc.)

Prof. Jayakumar: Sir, I beg to move,

In page 18, line 7, to leave out "14(5) or (6)", and insert "14(6) or (7)".

Sir, this is purely consequential renumbering as a result of the amendment to clause 14.

Amendment agreed to.

Prof. Jayakumar: Sir, I beg to move,

In page 19, after line 5, to insert -

Cap.20. "(6) For the purposes- of section 35(1) of the Bankruptcy Act, amounts payable under confiscation orders shall constitute debts due to the Government."

Sir, the insertion of subsection (6) is in line with section 39(1) of the U.K. Drug Trafficking Offences Act 1986.

Amendment agreed to.

Clause 18, as amended, agreed to stand part of the Bill.

Clause 19 - (Winding up of company holding realisable property.)

Amendment made:

In page 19, line 15, to leave out "14(5) or (6)", and insert "14(6) or (7)". - (Prof. Jayakumar).

Clause 19, as amended, agreed to stand part of the Bill.

Clause 20 agreed to stand part of the Bill.

Clause 21 - (Absconded persons.)

Prof. Jayakumar: Sir, I beg to move,

In page 20, line 33, after "offence", to insert "and any reference in Part II to the defendant shall include reference to such a person".

Sir, this is a drafting amendment to make it clear that in Part II of the Bill the term "defendant" would include an absconder.

Amendment agreed to.

Clause 21, as amended, agreed to stand part of the Bill.

Clause 22 - (Confiscation order where person has absconded.)

Prof. Jayakumar: Sir, I beg to move,

In page 21, line 15, after "(a)", to insert "on the evidence adduced before it that,".

In page 21, line 15, to leave out "that".

Sir, this is also a drafting amendment to make it explicit that, apart from the presumption under section 21, the court before making a confiscation order must be satisfied that there is evidence, on the balance of probabilities, that the person against whom the confiscation order is to be made has absconded. This requirement is a separate requirement from clause 22(b) which also

requires the court to be satisfied that there is evidence which, if unrebutted, would warrant the conviction of the person who is deemed to have absconded.

Amendments agreed to.

Clause 22, as amended, agreed to stand part of the Bill.

New Clauses -

New Clause (A) -

"Effect of death on proceedings. .-(1) Proceedings under this Act shall be instituted or continued against the personal representatives of a deceased defendant or, if there are no personal representatives, such beneficiary or beneficiaries of the estate of the deceased defendant as may be specified by the court upon the application of the Public Prosecutor.

(2) Where the power conferred by this Act to make a confiscation order is to be exercised in relation to a deceased defendant, the order shall be made against the estate of the deceased defendant except that nothing in this Act shall subject any personal representative of the estate of the deceased defendant, or any beneficiary thereof, to any imprisonment under section 9 if the property of the estate is inadequate for the payment of any amount to be recovered under the confiscation order.

(3) Sections 4(4) and 5 shall not apply to any deceased defendant.

(4) For the purposes of Part II, the following provisions shall apply in determining whether a deceased defendant had derived benefits from corruption or in determining those benefits or the value of those benefits:

- (a) a deceased defendant shall be deemed to have derived benefits from corruption if he has, at any time (whether before or after the commencement of this Act) since the beginning of the period of 6 years ending at the date of his death, held any property or interest therein disproportionate to his known sources of income, the holding of which cannot be explained to the satisfaction of the court;

- (b) the benefits derived by a deceased defendant from corruption shall be any property or interest therein held by him during the period mentioned in paragraph (a), being property or interest therein disproportionate to his known sources of income, and the holding of which cannot be explained to the satisfaction of the court; and
- (c) the value of the benefits derived by a deceased defendant from corruption shall be the aggregate of the values of those properties and interests therein less the value of any such benefits that are shown to have been taken into account by any court in determining the amount to be recovered under any confiscation order or order under section 13 of the Prevention of Corruption Act previously made against the deceased defendant.
- Cap. 241.

(5) In this section, "deceased defendant" means a person who dies -

- (a) after investigations for a corruption offence have been commenced against him; and
- (b)(i) before proceedings in respect of the offence have been instituted against him; or
- (ii) if such proceedings have been instituted, before he is convicted of the offence".
- [Prof. Jayakumar].

Brought up. and read the First time.

Prof. Jayakumar: Sir, I beg to move, "That the clause be read a Second time."

Sir, the main purpose of this clause is to clarify how proceedings for confiscation are to be instituted against a deceased defendant. It is proposed to insert this new Clause (A) to make clear that in the case of a deceased defendant, proceedings for confiscation will be instituted against the personal representative or, if there are none, against such beneficiary or beneficiaries of his estate as the court may appoint.