

**PROCEEDS AND INSTRUMENTS OF CRIME
(AMENDMENT) ACT, 2018**

No. 8



of 2018

ARRANGEMENT OF SECTIONS

SECTION

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2. Amendment of Act No. 14 of 2014
3. Amendment of section 20 of the Act
4. Amendment of section 21 of the Act
5. Amendment of section 35 of the Act
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An Act to amend the Proceeds and Instruments of Crime Act.

Date of Assent: 29.06.18

Date of Commencement: 29.06.18

ENACTED by the Parliament of Botswana

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| <p>1. This Act may be cited as the Proceeds and Instruments of Crime (Amendment) Act, 2018.</p> <p>2. The Proceeds and Instruments of Crime Act (hereinafter referred to as “the Act”) is amended in section 2 by —</p> <p style="padding-left: 2em;">(a) substituting for the definition of “serious offence” the following new definition —</p> <p style="padding-left: 4em;">““serious offence” means any offence for which the minimum penalty is a fine of P500 or imprisonment for a period of 6 months or to both;”;</p> <p style="padding-left: 2em;">(b) by inserting in the correct alphabetical order, the following new definition —</p> <p style="padding-left: 4em;">“funds” means assets of any kind, whether corporeal or incorporeal, tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in such assets;.</p> <p>3. The Act is amended in section 20 by substituting for that section, the following new section —</p> <p style="padding-left: 2em;">“Application for (1) Where —</p> <p style="padding-left: 4em;">property substitution declaration</p> <p style="padding-left: 4em;">(a) a person has been convicted of a confiscation offence;</p> <p style="padding-left: 4em;">(b) any order for forfeiture has been made; or</p> <p style="padding-left: 4em;">(c) any other order has been made under any of the provisions of this Act,</p> <p style="padding-left: 2em;">the Director of Public Prosecutions may apply to the court before which the person was convicted or where a forfeiture order was made or to the High Court for a property substitution declaration.</p> | <p>Short title</p> <p>Amendment of Act 14 of 2014</p> <p>Amendment of section 20 of the Act</p> |
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- (2) An application under subsection (1) shall —
- (a) specify the property that the person used or intended to use in or in connection with the commission of the confiscation offence of which the person was convicted;
 - (b) specify that property is a proceed of a confiscation offence or a serious crime related activity;
 - (c) specify property which is to be substituted for the property referred to in paragraph (a) that —
 - (i) is property in which the person had an interest at the time that the confiscation offence or a serious crime related activity was committed or an order under this Act was made; and
 - (ii) is of the same general nature or description as property referred to in paragraph (a) or (b).”.
4. Section 21 of the Act is amended by —
- (a) substituting for subsection (1), the following new subsection —

“(1) Subject to subsection (2), a court may make a property substitution declaration if it is satisfied as to the following matters that —

 - (a) the person convicted of the confiscation offence or the person who committed a serious crime related activity used or intended to use the property referred to in section 20 (2) (a) in or in connection with the commission of the confiscation offence or the commission of a serious crime related activity;
 - (b) it is not appropriate to make a forfeiture order in respect of the property referred to in section 20 (2) (a) because the person who was convicted of the confiscation offence or the person who committed a serious crime related activity has no interest in that property; and
 - (c) that the property which is to be substituted for the property referred to in section 20 (2) (a) —
 - (i) is property in which the person had an interest at the time that the confiscation offence or a serious crime related activity was committed; and
 - (ii) is of the same general nature or description as the property referred to in section 20 (2) (a).”;
 - (b) substituting for subsection (3), the following new subsection —

“(3) A court shall not make a property substitution declaration in respect of any property if at the time of the commission of the confiscation offence or a serious crime related activity the person did not have an interest in the property”;
 - (c) inserting immediately after subsection (4), the following new subsection —

“(5) A court may make a property substitution declaration whether or not the property referred to in section 20 (2) is situate within or outside Botswana”.

5. Section 35 of the Act is amended by inserting immediately after subsection (5), the following new subsections —

Amendment of
section 35 of
the Act

“(6) Where the court makes provision of a kind referred to in subsection (4) (b), the Director of Public Prosecutions or the Receiver may, at the hearing of an application for reasonable legal expenses, apply for an order that such legal expenses be taxed.

(7) Where an application referred to in subsection 4 (b) is made, the Receiver shall not take any steps for the purposes of meeting legal expenses unless —

(a) an order for the taxation of such legal expenses is complied with; or

(b) the application and any appeal arising therefrom is determined or otherwise disposed of, other than by the making of such order.

(8) Any law enforcement officer or the Receiver may seize or otherwise secure property where there is reasonable suspicion that the property is likely to be disposed of or removed and —

(a) the property is or is likely to be subject to confiscation order under this Act; or

(b) the disposal or removal would be prejudicial to a restraint or forfeiture order or any other order made under this Act in relation to such property.

(9) The court shall before making provision of a kind referred to in term of subsection (4), require the person to disclose under oath, other property not under restraint, he or she has an interest in.

(10) A disclosure referred to in subsection (9) applies to property located within Botswana and property located outside Botswana.

6. The Act is amended in section 39 (2) (a) by substituting for paragraph (a) the following new paragraph —

Amendment of
Section 39 of
the Act

“(a) that, where an application for a civil penalty order or a civil forfeiture order has not been made, such an application will be made within 120 days of the granting of the restraint order by the court.” ;

7. The Act is amended in section 43 by inserting immediately after subsection 4 the following new subsections —

Amendment of
section 43 of
the Act

(5) A restraint order or any other order made under this Act which is in force at the time any decision to discharge the order or vary it is made, shall remain valid for 14 days immediately following the order to discharge or vary it.

(6) Where an appeal is noted the restraint order or any other order shall remain in force pending the final determination of the appeal:

Provided where a further appeal lies to a higher court the provision shall equally apply.

8. The Act is amended by inserting immediately after section 43, the following new section 43A —

Insertion of
section 43A
to the Act

“Application of Act to deceased estates 43A. Any notice authorized or required under this Act to be served on a person shall, in the case of a deceased person, be sufficiently served if served on the executor or administrator of the deceased person estate.”.

Insertion of section 43B to the Act

9. The Act is amended by inserting immediately after section 43A, the following new section 43B —

“Effect of death of joint owner of property under restraint

43B. The following shall apply in the event of the death of a joint owner of property to which a restraint order relates —

- (a) the death shall not, while the order is in force, operate to vest the property in the surviving joint owner;
- (b) the restraint order shall continue to apply to the interest of the deceased joint owner as if the deceased joint owner is still alive; and
- (c) a forfeiture order made in respect of the interest of the deceased joint owner shall apply as if the order took effect in relation to the interest immediately before the death of the joint owner:

Provided that paragraph (a) shall not apply to an interest of the deceased joint owner in property where the restraint order ceases to apply without a forfeiture order having been made in respect to such interest.”.

Insertion of section 69A to the Act

10. The Act is amended by inserting immediately after section 69 the following new section 69A —

“Expedition of applications

69A.(1) In any application instituted under this Act, the Director of Public Prosecutions may file with the Registrar of the High Court or Court of Appeal a certificate stating that in his or her opinion the case is of general public importance and must be dealt with expeditiously.

(2) The Registrar shall furnish a copy of a certificate referred to under subsection (1) to the Chief Justice or the President of the Court of Appeal as the case may be, to enable immediate designation of a judge or justice of appeal to hear and determine the matter.”.

PASSED by the National Assembly this 11th day of June, 2018.

BARBARA N. DITHAPO,
Clerk of the National Assembly.