

A BILL

*i n t i t u l e d*

An Act to amend the Criminal Procedure Code and the Criminal Procedure Code (Amendment) (No. 2) Act 2012.

[ ]

**ENACTED** by the Parliament of Malaysia as follows:

PART I

PRELIMINARY

**Short title and commencement**

**1.** (1) This Act may be cited as the Criminal Procedure Code (Amendment) Act 2015.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette* and the Minister may appoint different dates for the coming into operation of different provisions of this Act.

PART II

AMENDMENTS TO THE CRIMINAL PROCEDURE CODE

**Amendment of section 2**

**2.** The Criminal Procedure Code [*Act 593*], which is referred to as the “Code” in this Part, is amended in section 2 by inserting after subsection (4) the following subsection:

“(5) Notwithstanding the definition of “seizable offence” in subsection (1), an offence under the Penal Code is a seizable offence if it is expressly provided in any written law that the offence is a seizable offence.”.

### **Amendment of section 13**

3. Subsection 13(1) of the Code is amended by substituting for paragraph (a) the following paragraph:

“(a) of the commission of or the intention of any other person to commit any offence punishable under the Penal Code or any other written law; or”.

### **Amendment of section 98**

4. Section 98 of the Code is amended by inserting after subsection (5) the following subsection:

“(6) The Public Prosecutor may appear in any application made under this section.”.

### **Amendment of section 117**

5. Section 117 of the Code is amended by inserting after subsection (1) the following subsection:

“(1A) The Public Prosecutor may appear in any application made under this section.”.

### **Amendment of section 173A**

6. Section 173A of the Code is amended by inserting after subsection (7) the following subsection:

“(8) This section shall not apply—

(a) if the offender is charged with a serious offence;  
or

(b) if the offender is charged with the commission of an act of domestic violence as defined under section 2 of the Domestic Violence Act 1994 [*Act 521*].”.

**New sections 265A, 265B and 265C**

7. The Code is amended by inserting after section 265 the following sections:

**“Special provisions relating to protected witness**

**265A.** (1) Notwithstanding section 264, where at any time during any trial, any of the witnesses for the prosecution refuses to have his identity disclosed and wishes to give evidence in such a manner that he would not be seen or heard by both the accused and his counsel, the Public Prosecutor may make an oral application to the Court for the procedures in this section to apply.

(2) For the purpose of satisfying itself as to the need to protect the identity of the witness, the Court shall hold an inquiry *in camera* by questioning the witnesses concerned or any other witness in the absence of the accused and his counsel.

(3) If after such inquiry the Court is satisfied as to the need to protect the identity of the witness, the evidence of such witness shall be given in such a manner that the witness would not be visible to the accused and his counsel and further if the witness fears that his voice may be recognized, his evidence shall be given in such manner that he would not be heard by the accused and his counsel.

(4) The evidence given by the witness under subsection (3) shall be given to the accused and his counsel provided that the Court shall cause the evidence leading to the identity of the witness to be concealed.

(5) The Court shall disallow any question by the accused or his counsel to any other witness that would lead to the identification of the witness who has given his evidence under this section.

(6) Where a witness gives evidence in accordance with this section, he shall for the purposes of this Code and the Evidence Act 1950 be deemed to be giving evidence in the presence of the Court, the accused person and his counsel.

(7) The Court shall seal all records that may lead to the identification of the witness who has given evidence under this section.

**Identification by witness where evidence is taken *in camera***

**265B.** If in the course of taking evidence under section 265A the accused or any other person is required to be identified by the witness who gives evidence in the manner provided in that section, such identification may be made by the witness through an interpreter or other officer of the Court.

**Protection of identity of witness**

**265C.** Notwithstanding any written law to the contrary, any report through any means on a protected witness shall not reveal or contain—

- (a) the name;
- (b) the address;
- (c) the picture of the protected witness or any other person, place or thing which may lead to the identification of the protected witness; or
- (d) any evidence or any other thing likely to lead to the identification of the protected witness.”.

**Amendment of section 282**

**8.** Section 282 of the Code is amended—

- (a) in paragraph (d), by substituting for the full stop at the end of the paragraph a semi-colon; and
- (b) by inserting after paragraph (d) the following paragraph:
  - “(e) when a person is convicted at one trial of any two or more offences, the Court shall not order the sentences of imprisonment to run concurrently.”.

**Amendment of section 294**

9. Section 294 of the Code is amended by inserting after subsection (5) the following subsection:

“(6) This section shall not apply—

- (a) if the offender is charged with a serious offence;  
or
- (b) if the offender is charged with the commission of an act of domestic violence as defined under section 2 of the Domestic Violence Act 1994.”.

**New section 399B**

10. The Code is amended by inserting after section 399A the following section:

**“Evidence or report by an expert on matters relating to organized criminal group**

**399B.** (1) Notwithstanding any other written law, where evidence or report is given by an expert on the activities, structure, ritual, ceremonies, hand sign, insignia, characteristic of an organized criminal group or any other matters relating to an organized criminal group the Court shall admit the evidence as conclusive proof of the facts.

(2) If evidence is proved that the accused—

- (a) is involved in any of the activities, ritual or ceremonies of an organized criminal group;
- (b) is part of, or within the structure of an organized criminal group;
- (c) exhibits any hand sign, insignia or characteristics of an organized criminal group; or
- (d) can be linked to any other matters relating to an organized criminal group,

the Court shall presume that the accused is a member of an organized criminal group.”.

**Amendment of section 402B**

11. Section 402B of the Code is amended by inserting after subsection (1) the following subsection:

“(1A) Nothing in subsection (1) shall require the prosecution to obtain the consent of the accused before tendering any statement in evidence.”.

**New section 407B**

12. The Code is amended by inserting after section 407A the following section:

**“Penalty if property has been disposed or cannot be traced**

**407B.** Where an offence is proved against an accused and the property which is the subject matter of an offence has been disposed of, or cannot be traced, the Court shall order the accused to pay as a penalty a sum of which is equivalent to, in the opinion of the Court, the value of the property, and any such penalty shall be recoverable as a fine.”.

**Amendment of section 414**

13. Section 414 of the Code is amended—

(a) in subsection (1), by substituting for the words “Chief Police Officer” the words “Officer in charge of a Police District”; and

(b) in subsection (2), by substituting for the words “Government of the State in which that property was seized” the words “Federal Government”.

**Substitution of section 415**

14. The Code is amended by substituting for section 415 the following section:

**“Procedure where property is perishable or of small value**

**415.** (1) Any property detained in police custody on the order of a Magistrate made under subsection 413(3) may

be sold by public auction or in such manner as may be practicable if—

- (a) it is subject to speedy decay or deterioration;
- (b) it cannot be maintained without difficulty, or it is not practicable to maintain;
- (c) in the opinion of the police officer that the value of such property is less than ten thousand ringgit; or
- (d) its custody involves unreasonable expense and inconvenience.

(2) The proceeds of the sale shall be then passed to and become vested in the Federal Government after deducting the cost and expenses of the maintenance and sale of the property.”.

## **New Chapter XLIA**

**15.** The Code is amended by inserting after Chapter XLI the following Chapter:

### “CHAPTER XLIA

#### PROVISIONS RELATING TO ORGANIZED CRIME

### **Application of this Chapter**

**416A.** (1) The provisions and procedures provided under this Chapter shall be in addition to and not in derogation of other provisions under the Code.

(2) In any proceedings under this Chapter the provisions of this Chapter shall be construed and interpreted so as to give effect to the purposes of this Chapter without regard to ambiguities, or infirmities of language, or other defects or deficiencies therein, or to objections which are trivial in nature or which do not affect the merits or substance of the issues before the Court.

**Interpretation**

**416B.** For the purpose of this Chapter—

(a) “dealing” includes—

- (i) a purchase, sale, loan, charge, mortgage, lien, pledge, caveat, transfer, delivery, assignment, subrogation, transmission, gift, donation, trust, settlement, deposit, withdrawal, transfer between accounts, extension of credit;
- (ii) any purchase or sale of any securities, monetary instrument or other instrument whatsoever by whatever means effected;
- (iii) any agency or grant of power of attorney; and
- (iv) any other disposition or dealing in whatever form, or of whatever description or nature, howsoever styled, which results in any right, interest, title or privilege, whether present or future or whether vested or contingent, in the whole or part of any property being conferred on any person;

(b) “financial institution” means—

- (i) a licensed bank, licensed insurer and investment bank under the Financial Services Act 2013 [*Act 758*];
- (ii) a licensed international Islamic bank, licensed international takaful operator, licensed Islamic bank and licensed takaful operator under the Islamic Financial Services Act 2013 [*Act 759*];
- (iii) a prescribed institution under the Development Financial Institutions Act 2002 [*Act 618*];
- (iv) a licensee under the Money Services Business Act 2011 [*Act 731*];
- (v) a person licensed or registered under the Capital Markets and Services Act 2007 [*Act 671*];



- (vi) the central depository established under the Securities Industry (Central Depositories) Act 1991 [*Act 453*];
  - (vii) a bank licensee, an insurance licensee, a securities licensee and any entity licensed or registered under the Labuan Financial Services and Securities Act 2010 [*Act 704*]; and
  - (viii) an Islamic bank licensee, a takaful licensee, an Islamic securities licensee and any entity licensed or registered under the Labuan Islamic Financial Services and Securities Act 2010 [*Act 705*];
- (c) “illegal property” means any property, whether within or outside Malaysia—
- (i) which is the subject matter of any offence, or being used in the commission of any offence by any member of an organized criminal group;
  - (ii) which is wholly or partly derived or obtained from the commission of any offence or any activity which is of such a nature, or occurs in such circumstances that it may be reasonably believed that it may result in or lead to the commission of any offence, by any member of an organized criminal group;
  - (iii) which is the income, earnings or asset wholly or partly derived or obtained from or by means of any property referred to in paragraph (ii);
  - (iv) which is wholly or partly derived or obtained from or by means of any property referred to in paragraph (ii) or (iii);
  - (v) which is wholly or partly traceable or attributable to any property referred to in paragraph (ii), (iii) or (iv), or to any income, earnings or assets of any such property;
  - (vi) which is or was used to assist or facilitate the commission of any offence by any member of an organized criminal group; or

- (vii) which, due to any circumstance such as, but not limited to, its nature, value, location or place of discovery, or the time, manner or place of its acquisition, or the person from whom it was acquired, or its proximity to other property referred to in the foregoing subparagraphs, can be reasonably believed to be property falling within the scope of any of the foregoing subparagraphs;
- (d) “police officer” means a police officer of the rank of Inspector or above;
- (e) “property” means any movable or immovable property, and includes—
  - (i) any right, interest, title, claim, chose in action, power, privilege, whether present or future and whether vested or contingent, in relation to any property, or which is otherwise of value;
  - (ii) any conveyance executed for conveying, assigning, appointing, surrendering, or otherwise transferring or disposing of immovable property whereof the person executing the conveyance is a proprietor or possessor or wherein he is entitled to a contingent right, either for his whole interest or for any less interest;
  - (iii) any monetary instrument;
  - (iv) any other instrument or securities;
  - (v) any business; and
  - (vi) any other tangible or intangible property;
- (f) “purchaser in good faith for valuable consideration” means any transferee, assignee, chargee, mortgagee, pledgee, holder of a lien, or lessee, of any property where the transfer, assignment, charge, mortgage, pledge, lien, or lease was obtained by him for adequate valuable consideration in money or money’s worth, without notice—
  - (i) that the property is illegal property; or

- (ii) of any circumstances from which, if reasonable inquiries had been made, it might have been discovered that the property is illegal property.

### **Special powers of investigation**

**416c.** (1) Notwithstanding the provisions of any other written law, the Public Prosecutor, if satisfied that it is necessary for the purpose of any investigation into an offence relating to an organized criminal group may by order in writing authorize any senior police officer named in the order to make an investigation in the matter in such manner or mode as may be specified in the order.

(2) Without prejudice to the generality of subsection (1), the order may authorize the investigation, inspection, and taking of copies, of any banker's book or bank account, or any share account or purchase account, expense account or any other account, or the inspection of any safe deposit box, in any bank, financial institution, company, firm, association, society, or other body whatsoever, and shall be sufficient authority for the disclosure or production by any person of all or any information or accounts or documents or articles as may be required by the officer so authorized.

(3) Where any person discloses any such information or produces any such accounts or documents or articles, to the person so authorized, neither the first mentioned person nor any other person on whose behalf or direction, or as whose agent or employee, the first mentioned person may be acting, shall, on account of such disclosure or production, be liable to any prosecution for any offence under or by virtue of any law, or to any proceeding or claim in any form or of any description by any person under or by virtue of any law, or under or by virtue of any contract, agreement or arrangement, whether express or implied, or otherwise howsoever.

### **Public Prosecutor's powers to obtain information**

**416d.** (1) Notwithstanding the provisions of any other written law, for the purpose of any investigation into an offence

relating to an organized criminal group, the Public Prosecutor may, by written notice—

- (a) require any such person to furnish a sworn statement in writing—
  - (i) identifying each item of movable or immovable property, whether within or outside Malaysia, belonging to or possessed by such person, or by his relatives or associates, and specifying the date on which each of the properties so identified was acquired and the manner in which it was acquired, whether by way of any dealing, bequest, inheritance, or otherwise howsoever;
  - (ii) identifying each property sent out of Malaysia by him or by his relatives or associates during such period as may be specified in the notice;
  - (iii) setting out the estimated value and location of each of the properties identified under subparagraphs (i) and (ii), and if any of such properties cannot be located, the reason therefor;
  - (iv) stating in respect of each of the properties identified under subparagraphs (i) and (ii) whether the property is held by himself or by any other person on his behalf, whether it has been transferred, sold to, or kept with any other person, whether it has been diminished in value since its acquisition by him, and whether it has been commingled with other property which cannot be separated or divided without difficulty;
  - (v) setting out all other information relating to his properties, business, travel, or other activities whatsoever, or to the properties, business, travel or other activities whatsoever, of his relatives or associates, as may be specified in the notice; and
  - (vi) setting out all his sources of income, earnings or assets;

- (b) require any relative or associate of such person, or any other person in respect of whom the Public Prosecutor has reasonable grounds to believe that the information from him will assist in the investigation, to furnish a sworn statement in writing—
- (i) identifying each movable or immovable property, whether within or outside Malaysia, belonging to or possessed by him, and specifying the date on which each of the properties identified was acquired, and the manner in which it was acquired, whether by way of any dealing, bequest, inheritance, or otherwise howsoever;
  - (ii) identifying each property sent out of Malaysia by him during such period as may be specified in the notice;
  - (iii) setting out the estimated value and location of each of the properties identified under subparagraphs (i) and (ii), and if any of such properties cannot be located, the reason therefor;
  - (iv) stating in respect of each of the properties identified under subparagraphs (i) and (ii) whether the property is held by himself or any other person on his behalf, whether it has been transferred, sold to, or kept with any other person, whether it has been diminished in value since its acquisition by him, and whether it has been commingled with other property which cannot be separated or divided without difficulty;
  - (v) setting all other information relating to his properties, business, travel, or other activities whatsoever, as may be specified in the notice; and
  - (vi) setting out all his sources of income, earnings or assets;
- (c) require any public officer to produce or furnish any document, or a certified copy of any document, which is in his possession or under his control; and

(d) require any officer or employee of any bank or financial institution, or any person who is in any manner or to any extent responsible for the management and control of the affairs of any bank or any financial institution, to furnish copies of any or all accounts, documents and records relating to any person to whom a notice can be or has been issued under paragraph (a) or (b).

(2) Where any person discloses any such information or produces any such accounts or documents or articles, to the person so authorized, neither the first mentioned person nor any other person on whose behalf or direction or as whose agent or employee, the first mentioned person may be acting, shall, on account of such disclosure or production, be liable to any prosecution for any offence under or by virtue of any law, or to any proceeding or claim in any form or of any description by any person under or by virtue of agreement or arrangement, whether express or implied, or otherwise howsoever.

### **Service of notices or orders**

**416E.** (1) A letter containing a notice, order or other document to be served by a police officer under this Chapter shall be deemed to be addressed to the proper place if it is addressed to the last-known address of the addressee.

(2) Any notice or order issued or made under this Chapter shall, where it is required to be served on a natural person, be served by—

- (a) delivering it personally to the person for whom it is intended;
- (b) delivering it to an adult person at the last-known place of residence, occupation or business of the person for whom it is intended; or
- (c) sending it by registered post to the person for whom it is intended.

(3) If the police officer effecting any notice or order under subsection (2) is satisfied, for reasons to be recorded by him

in writing, that the notice or order cannot be served in the manner provided in paragraph (2)(a), (b) or (c), the notice or order shall be served by—

- (a) affixing the notice or order on a conspicuous place at the immovable property, if any, in relation to which the notice or order is issued or made, or on a conspicuous part of the premises in which the person for whom the notice or order is intended is known to have last resided, to have been last employed or to have last carried on business; and
- (b) publishing the notice or order in one newspaper circulating in the area in which the person for whom the notice or order is intended is known to have last resided, to have been last employed or to have last carried on business.

(4) Any notice or order issued or made under this Chapter on any company or body, whether corporate or unincorporate, shall be served by delivering the notice or order at its place of business to a servant, agent or officer of such company or body, or, where the officer effecting the notice or order is satisfied, for reasons to be recorded by him in writing, that the notice or order cannot be so delivered, by affixing the notice or order on a conspicuous part of the premises at the last-known place of business of the company or body for whom the notice or order is intended, and by publishing the notice or order in one newspaper circulating in the area in which the last-known place of business is situated.

### **Seizure of property relating to organized crime**

**416F.** Where a police officer reasonably suspects that any property is illegal property, such property shall be liable to seizure.

### **Seizure of movable property**

**416G.** (1) Whenever any movable property is seized under this Chapter the police officer effecting the seizure shall as soon as practicable serve a notice in writing of such seizure

and the grounds thereof on the owner of such property, if such owner and his whereabouts are known.

(2) The notice under subsection (1) shall not be required to be served if the seizure is made in the presence of the owner of such property or his agent, or in the case of a ship or an aircraft, in the presence of the master or pilot, as the case may be.

(3) Section 416F shall not apply to any ship of more than one hundred tons burden, or to any train or to any aircraft, belonging to any person carrying on a regular lawful passenger or freight service within Malaysia or to and from Malaysia, except where prosecution for an offence involving an organized criminal group is to be instituted, or any proceedings under this Chapter are to be taken, against the owner of such ship, train or aircraft.

### **Further provisions relating to seizure of movable property**

**416H.** (1) Where any movable property is seized under this Chapter, the seizure shall be effected by removing the movable property from the possession of the person from whom it is seized and placing it under the custody of such person or authority and at such place as the police officer who effected the seizure may determine.

(2) Where it is not practicable, or it is otherwise not desirable, to remove any property seized under subsection (1), the police officer who effected the seizure may leave it at the premises in which it is seized under the custody of such person as he may determine for the purpose.

(3) Notwithstanding subsection (1), when any movable property, including any movable property referred to in section 416I, has been seized under this Chapter, a senior police officer superior in rank to the police officer who effected the seizure may—

- (a) temporarily return the movable property to its owner, or to the person from whose possession, custody or control it was seized, or to such person as the senior police officer may consider entitled thereto, subject to such terms and conditions as the senior



police officer may impose, and, subject, in any case, to sufficient security being furnished to the satisfaction of the senior police officer that the movable property shall be surrendered to the senior police officer on demand being made by him and that the said terms and conditions, if any, shall be complied with; or

- (b) return the movable property to the owner, or to the person from whose possession, custody or control it was seized, or to such person as the senior police officer may consider entitled thereto, with liberty for the person to whom the movable property is so returned to dispose of the movable property, such return being subject to security being furnished to the satisfaction of the senior police officer in an amount not less than an amount which, in the opinion of the senior police officer, represents the open market value of such property on the date on which it is so returned subject to the condition that if the property is forfeited under this Chapter, the security shall be forfeited under subsection (4) in lieu of the property.

(4) Where any person to whom the movable property is temporarily returned under paragraph 3(a) fails to surrender the movable property on demand or comply with any term or condition imposed under that paragraph, the security furnished in respect of such movable property shall be forfeited.

(5) Where an order of forfeiture is made by the Court in respect of movable property returned under paragraph 3(b), such forfeiture shall be effected by forfeiting the security furnished by the person to whom the property was returned.

### **Special provision relating to seizure of movable property in financial institution**

**416i.** (1) Where the Public Prosecutor is satisfied on information given to him by an investigating officer that any movable property or any accretion to it, is in the possession, custody or control of a financial institution, he may, notwithstanding

any other written law, by order direct that such movable property or any accretion to it in the financial institution be seized by the investigating officer or by order direct the financial institution not to part with, deal in, or otherwise dispose of such movable property or any accretion to it, in whole or in part, until the order is revoked or varied.

(2) The investigating officer effecting seizure under this section shall forthwith notify the Central Bank of Malaysia, the Securities Commission or the Labuan Financial Services Authority, as the case may be, of any order made under subsection (1).

(3) A financial institution or any agent or employee of a financial institution shall not, on account of complying with an order of the Public Prosecutor under subsection (1), be liable to any prosecution under any law or to any proceedings or claim by any person under any law or under any contract, agreement, or arrangement, or otherwise.

### **Special provision relating to seizure of a business**

**416j.** (1) Where a police officer reasonably suspects that any business—

- (a) is being carried on by or on behalf of any person against whom prosecution for an offence under Chapter VI B of the Penal Code is intended to be commenced;
- (b) is being carried on by a relative or an associate, on behalf of such person;
- (c) is a business in which such person, or a relative or associate of his has an interest which amounts to or carries a right to not less than thirty per centum of the entire business; or
- (d) is a business over which such person, his relative or associate has management or effective control, either individually or together,

such police officer may do any or all of the following things:

- (aa) seize the business in the manner provided under this section; or
- (bb) by an order in writing—
  - (i) direct the extent and manner in which the business may be carried on;
  - (ii) specify a public officer or officers by name or office to supervise, direct or control the business, including its accounts, or to carry on the business or such part of it as may be specified;
  - (iii) direct that all or any proportion of the proceeds or profits of the business be paid to the Public Trustee and retained by him pending further directions in respect thereof by the police officer;
  - (iv) prohibit any director, officer or employee from being in any manner involved in the business with effect from the date of the letter of prohibition; or
  - (v) direct that the premises where the business was carried on to be closed and, if necessary or expedient, placed under guard or custody.

(2) Where the public officer in respect of whom an order intended to be made under subsection (1) is other than a police officer, such order shall not be made in relation to him except, in the case of a member of the public service, with the consent of the Secretary General of the Ministry in which the public officer is serving, and in the case of any other public officer, with the consent of the executive head of the authority, body or organization in which he is employed.

(3) Where an order is made by a police officer under paragraph (1)(bb), he may include in the order, or give subsequently thereto either in writing or orally, any direction

of an ancillary or consequential nature, or which may be necessary, for giving effect to, or for the carrying out of, the order.

(4) An order under paragraph (1)(bb) may at any time be varied or revoked by the police officer and where he so varies or revokes it, he may give any direction of an ancillary or consequential nature, or which may be necessary, for giving effect to, or for the carrying out of, such variation or revocation.

(5) Save as otherwise provided in subsection (6), neither the Government nor any public officer shall, in consequence of any order under subsection (1) be responsible for the payment of any moneys, dues, debts, liabilities or charges whatsoever payable to any person in respect of the business, or in respect of any movable or immovable property owned, possessed, occupied or used, by any person in relation to the business.

(6) Where a public officer or officers are carrying on any activities of the business in pursuance of an order under subparagraph (1)(bb)(ii), they shall be responsible for the payment of the wages of such employees of the business as are engaged in performing any work in relation to those activities for the period during which such public officer or officers carry on those activities, and such wages shall be paid out of the profits derived from such activities, or, if there are no such profits or if such profits are insufficient, from the proceeds derived from such activities, or if there are no such proceeds or if such proceeds are insufficient, from the assets and properties of the business.

(7) In this section—

(a) “wages” means the wages payable under the contract of employment between the employee and the business;

(b) “business” means any activity carried on for the purpose of gain or profit and includes all property derived from or used in or for the purpose of carrying on such activity, and all rights and liabilities arising from such activity.

**Seizure of immovable property**

**416K.** (1) Where any immovable property is seized under this Chapter, the seizure shall be effected—

- (a) by the issue of a notice of seizure by the Public Prosecutor setting out the particulars of the immovable property which is seized insofar as such particulars are within his knowledge, and prohibiting all dealings in such immovable property;
- (b) by posting, where practicable, a copy of the notice in a conspicuous position on the immovable property; and
- (c) by serving a copy of the notice on the Land Administrator or the Registrar of Titles, as the case may be, in Peninsular Malaysia, or on the Registrar of Titles or Collector of Land Revenue, as the case may be, in Sabah, or on the Registrar of Titles or Director of Lands and Surveys, as the case may be, in Sarawak, of the area in which the immovable property is situated.

(2) The Land Administrator, the Collector of Land Revenue, the Director of Lands and Surveys, or the Registrar of Titles, as the case may be, referred to in subsection (1) shall immediately thereupon endorse the terms of the notice of seizure on the document of title in respect of the immovable property in the Register at his office.

(3) Where an endorsement of a notice of seizure has been made under subsection (2), the notice shall have the effect of prohibiting all dealings in respect of the immovable property, and, accordingly, after such endorsement has been made no dealing in respect of the immovable property shall be registered, regardless whether it was effected before or after the issue of the notice or the making of such endorsement.

(4) Subsection (3) shall not apply to a dealing affected under this Chapter or by virtue of this Chapter by a public officer in his capacity as such officer, or otherwise by or on behalf of the Government of Malaysia, or the Government of a State, or a local authority or other statutory body.

**Dealings with seized property after seizure to be void**

**416L.** (1) After seizure of any property has been effected under this Chapter, and so long as such seizure remains in force, any dealing, contract, or other thing whatsoever, effected, done, or entered into by any person or between any persons in respect of such property, except any dealing effected under this Chapter or by virtue of this Chapter by a public officer in his capacity as such officer, or otherwise by or on behalf of the Government of Malaysia, or the Government of a State, or a local authority, or other statutory body, shall be null and void, and shall not be registered or otherwise howsoever given effect to by any person or authority.

(2) Subsection (1) shall be in addition to and not in derogation of subsections 416K(3) and (4).

(3) For so long as a seizure of any property under this Chapter remains in force, no action, suit or other proceeding of a civil nature shall be instituted, or if it is pending immediately before such seizure, be maintained or continued, in any court or before any other authority in respect of the property which has been so seized, and no attachment, execution or other similar process shall be commenced, or if any such process is pending immediately before such seizure, be maintained or continued, in respect of such property on account of any claim, judgment or decree, regardless whether such claim was made, or such judgment or decree was given, before or after such seizure was effected, except at the instance of the Government of Malaysia or the Government of a State, or at the instance of a local authority or other statutory body, or except with the prior consent in writing of the Public Prosecutor.

**Validity of seizure, or sale in consequence thereof, not to be affected by certain objections**

**416M.** Where seizure of any property has been effected under this Chapter, the validity of such seizure, or of any sale or other form of disposal of such property, or of any destruction thereof in accordance with the provisions of this Chapter, in consequence of such seizure, shall not be affected by any objection thereto relating to the manner in which the

seizure or sale was effected, or the place at which it was effected, or the person from whom it was effected, or the person to whom any notice of the seizure or sale was given, or omitted to be given, or any failure to conform to any procedural provision of this Chapter or of any other written law in effecting the seizure or sale.

### **Release of seized property**

**416n.** (1) Where property has been seized under this Chapter, the Public Prosecutor, may at any time thereafter before it is forfeited under this Chapter release such property to such person as he determines to be lawfully entitled to the property if he is satisfied that such property is not liable to forfeiture under this Chapter, and is not otherwise required for the purpose of any proceedings under this Chapter, or the purpose of any prosecution under any other law, and in such event neither the Government nor any person acting on behalf of the Government, shall be liable to any proceedings by any person if the seizure thereof and the release thereof had been effected in good faith.

(2) A record in writing shall be made by the Public Prosecutor effecting any release of any property under subsection (1) in respect of such release specifying therein in detail the circumstances of, and the reason for, such release, and he shall send a copy of such record to the Inspector-General of Police within seven days of the release.

### **Forfeiture of seized property**

**416o.** (1) Where any property has been seized under this Chapter, and no claim in writing is made by any person that he is lawfully entitled to such property and that it is not liable to forfeiture, within three months from the date of its seizure, the property become forfeited immediately upon the expiration of the said period of three months.

(2) Where within three months from the date of the seizure of any property under this section, a claim in writing is made thereto by any person that he is lawfully entitled to such property and that it is not liable to forfeiture, the Public

Prosecutor shall within fourteen days after the expiry of the said period of three months, refer the claim to a Sessions Court for its decision.

(3) The Sessions Court to which a claim is referred under subsection (2) shall issue a summons requiring the person claiming that he is lawfully entitled to the property, and the person from whom it was seized, if he and his whereabouts are known, to appear before the court and upon such appearance or in default of such appearance, upon due service of such summons being proved, the Sessions Court shall proceed to the examination of the matter and if satisfied that no offence has been committed in respect of the property claimed and that such property was not used in the commission of any offence relating to an organized criminal group, shall order the same to be released to the person claiming the same upon proof that he is lawfully entitled thereto, and shall, in any other case, order the property to be forfeited.

(4) The provisions of this section shall be without prejudice to the power of Public Prosecutor to release from seizure any property under section 416N.

(5) Where any property has been forfeited under this section, it shall not be a bar to any prosecution for an offence under any law being instituted in respect of such property at any time thereafter.

### **Vesting of forfeited property in the Government**

**416P.** (1) Where any property is forfeited under this Chapter, the property shall vest in the Government free from any right, interest or encumbrance of any person except a right, interest or encumbrance which is held by a purchaser in good faith for valuable consideration.

(2) Where any person who holds any encumbrance to which the property is subject claims that he holds the encumbrance as a purchaser in good faith for valuable consideration, and the Government disputes such claim, the Public Prosecutor may apply to the High Court to determine the question and



the High Court shall determine the same after giving an opportunity to be heard to the person holding the encumbrance and hearing the reply of the Public Prosecutor to any representations which may be made before that High Court by the person holding the encumbrance.

(3) Where any property is vested in the Government under subsection (1), the vesting shall take effect without any transfer, conveyance, deed or other instrument whatsoever and where any registration of such vesting is required under any law, the authority empowered to effect the registration shall do so in the name of such public officer or such authority, person or body as the Public Prosecutor may specify.

(4) Where the property vested in the Government under subsection (1) is immovable property, the vesting shall upon production to the Registrar of Titles or the Land Administrator, as the case may be, in Peninsular Malaysia, or to the Registrar of Titles or the Collector of Land Revenue, as the case may be, in Sabah, or to the Registrar of Titles or the Director of Lands and Surveys, as the case may be, in Sarawak, of the order of the Court forfeiting the immovable property, or in the case of property forfeited under subsection 416o(1), of a Certificate of the Public Prosecutor certifying that it has been forfeited thereunder, be registered in the name of the Federal Lands Commissioner.

### **Purchaser in good faith for valuable consideration**

**416Q.** (1) Where any person claims to be a purchaser in good faith for valuable consideration to the illegal property seized under this Chapter the Sessions Court shall proceed to consider such claim.

(2) The Sessions Court shall order that such properties be forfeited, if the Court is satisfied that such person is not a purchaser in good faith for valuable consideration, after giving an opportunity to the Public Prosecutor to rebut such claim.

(3) The Sessions Court shall return the property to the person making a claim under subsection (1) when it is satisfied that—

- (a) such person has a legitimate legal interest in the property;
- (b) no participation, collusion or involvement with respect to the offence relating to an organized criminal group can be imputed to such person;
- (c) such person lacked knowledge and was not intentionally ignorant of the illegal use of the property, or if he had knowledge, did not freely consent to its illegal use;
- (d) such person did not acquire any right in the property from a person proceeded against under the circumstances that give rise to a reasonable inference that any right was transferred for the purpose of avoiding the eventual subsequent forfeiture of the property; and
- (e) such person did all that could reasonably be expected to prevent the illegal use of the property.

### **Presumption as to illegal property**

**416R.** Where any property is seized under this Chapter, the Court shall presume such property to be illegal property unless the person whose property was seized proves to the contrary by admissible evidence and where he adduces any such evidence, the Public Prosecutor shall have the right to rebut the same.

### **Admissibility of documentary and other evidence obtained in the course of a seizure under this Chapter**

**416s.** Where the Public Prosecutor or a police officer has obtained any document or other evidence in the course of a seizure under this Chapter, such document or copy of the document or other evidence, as the case may be, shall be admissible in evidence in any proceedings under this Chapter, notwithstanding anything to the contrary in any written law.

**Proceedings not to abate upon death of person affected**

**416r.** Proceedings under this Chapter shall not abate upon the death of the person affected but shall be continued to their final conclusion, regardless whether or not such death results from the execution of a sentence of death for any offence under any written law, and where proceedings under this Chapter are instituted against a person who is under a sentence of death, such proceedings shall not impede, delay or in any manner or for any reason affect the process for the execution of such sentence.

**Notice or order not to be invalid for error in description**

**416u.** (1) No notice, notification or other process, issued, served or published, and no order, decision or judgment made, given, issued, served or published, under this Chapter shall be deemed to be invalid by reason of any error or omission in the description of the property or person mentioned therein if such property or person is identifiable from the description so mentioned.

(2) Without prejudice to subsection (1), where any order has been made, or a decision or judgment given, by any court in any proceedings under this Chapter, any error or omission in the order, decision or judgment relating to any description of any property or person may at any time be rectified by the court on its own motion or on the application of any party or any person affected by the order, decision or judgment.”.

**New section 425A**

**16.** The Code is amended by inserting after section 425 the following section:

**“Trial in absence of an accused**

**425A.** (1) Notwithstanding any other provision of this Code, if an accused after being charged absconds before or during the course of his trial, the accused shall be deemed to have waived his right to be present at the trial.

(2) A Court may proceed or continue with the trial and pronounce judgment in the absence of the accused provided that the Court shall not pass any of the following sentences in the absence of the accused:

- (a) death;
- (b) imprisonment for life; and
- (c) imprisonment for natural life.

(3) If a warrant of arrest has been issued—

- (a) the Court may adjourn the trial and await the appearance of the accused or await the execution of the warrant; or
- (b) if the Court is satisfied that it is no longer in the interest of justice to await the appearance of the accused or to await the execution of the warrant, the Court may, at any time, proceed or continue with the trial.

(4) If the Court proceeds or continues with the trial pursuant to subsection (2), the Court may draw an inference adverse to the accused from the fact that he has absconded.

(5) If an accused reappears at his trial, he is not entitled to have any part of the proceedings that was conducted in his absence re-opened unless the Court is satisfied that because of exceptional circumstances it is in the interest of justice to re-open the proceedings.

(6) Where an accused has absconded and the Court proceeds or continues with his trial, counsel for the accused may continue to act for the accused in the trial.

(7) For the purpose of this section, “judgment” includes conviction, acquittal and sentence.”.

### **Amendment of section 430**

**17.** Section 430 of the Code is amended—

- (a) by substituting for the words “any Court” the words “the Minister”;

- (b) by substituting for the words “such Court” the words “the Minister”; and
- (c) by substituting for the words “not exceeding one hundred ringgit” the words “not less than one thousand ringgit and not more than ten thousand ringgit”.

### Amendment of First Schedule

#### 18. The First Schedule to the Code is amended—

- (a) by inserting after the item relating to section 124 of the Penal Code, the following items under the respective columns:

1 Penal Code Section	2 Offence	3 Whether the police may ordinarily arrest without warrant	4 Whether a warrant or a summons shall ordinarily issue in the first instance	5 Whether bailable or not	6 Whether compoundable or not	7 Maximum punishment under the Penal Code
“124B	Activity detrimental to parliamentary democracy	do.	do.	do.	do.	Imprisonment which may extend to twenty years
124C	Attempt to commit activity detrimental to parliamentary democracy	do.	do.	do.	do.	Imprisonment which may extend to fifteen years
124D	Printing, sale, <i>etc.</i> , of documents and publication detrimental to parliamentary democracy	do.	do.	do.	do.	Imprisonment which may extend to fifteen years
124E	Possession of documents and publication detrimental to parliamentary democracy	do.	do.	do.	do.	Imprisonment which may extend to ten years

1 Penal Code Section	2 Offence	3 Whether the police may ordinarily arrest without warrant	4 Whether a warrant or a summons shall ordinarily issue in the first instance	5 Whether bailable or not	6 Whether compoundable or not	7 Maximum punishment under the Penal Code
124F	Importation of document and publication detrimental to parliamentary democracy	do.	do.	do.	do.	Imprisonment which may extend to five years
124G	Posting of placards, <i>etc.</i>	do.	do.	do.	do.	Imprisonment which may extend to five years
124H	Dissemination of information	do.	do.	do.	do.	Imprisonment which may extend to five years
124I	Dissemination of false reports	do.	do.	do.	do.	Imprisonment which may extend to five years
124J	Receipt of document and publication detrimental to parliamentary democracy	do.	do.	do.	do.	Imprisonment which may extend to ten years
124K	Sabotage	do.	do.	do.	do.	Imprisonment for life
124L	Attempt to commit sabotage	do.	do.	do.	do.	Imprisonment which may extend to fifteen years
124M	Espionage	do.	do.	do.	do.	Imprisonment for life
124N	Attempt to commit espionage	do.	do.	do.	do.	Imprisonment which may extend to fifteen years”;

(b) by inserting after the item relating to section 130F of the Penal Code, the following items under the respective columns:

1 Penal Code Section	2 Offence	3 Whether the police may ordinarily arrest without warrant or not	4 Whether a warrant or a summons shall ordinarily issue in the first instance	5 Whether bailable or not	6 Whether compoundable or not	7 Maximum punishment under the Penal Code
“130FA	Receiving training and instruction from terrorist groups and persons committing terrorist acts	do.	do.	do.	do.	Imprisonment for thirty years, and fine
130FB	Attendance at place used for terrorist training	do.	do.	do.	do.	Imprisonment for ten years, or with fine”;

(c) by inserting after the item relating to section 130J of the Penal Code, the following items under the respective columns:

1 Penal Code Section	2 Offence	3 Whether the police may ordinarily arrest without warrant or not	4 Whether a warrant or a summons shall ordinarily issue in the first instance	5 Whether bailable or not	6 Whether compoundable or not	7 Maximum punishment under the Penal Code
“130JA	Travelling to, through or from Malaysia for the commission of terrorist acts in foreign country	do.	do.	do.	do.	Imprisonment for thirty years, and fine
130JB	Possession, <i>etc.</i> , of items associated with terrorist groups or terrorist acts	do.	do.	do.	do.	Imprisonment for seven years, and fine, and forfeiture of certain property

1 Penal Code Section	2 Offence	3 Whether the police may ordinarily arrest without warrant or not	4 Whether a warrant or a summons shall ordinarily issue in the first instance	5 Whether bailable or not	6 Whether compoundable or not	7 Maximum punishment under the Penal Code
130Jc	Offence to build, <i>etc.</i> , conveyance for use in terrorist acts	do.	do.	do.	do.	Imprisonment for thirty years, and fine, and forfeiture of conveyance
130Jd	Preparation of terrorist acts	do.	do.	do.	do.	Imprisonment for seven years, and fine”;

(d) by inserting after the item relating to section 130K of the Penal Code, the following items under the respective columns:

1 Penal Code Section	2 Offence	3 Whether the police may ordinarily arrest without warrant or not	4 Whether a warrant or a summons shall ordinarily issue in the first instance	5 Whether bailable or not	6 Whether compoundable or not	7 Maximum punishment under the Penal Code
“130KA	Member of a terrorist group	do.	do.	do.	do.	Imprisonment which may extend to imprisonment for life, and fine”;

(e) by inserting after the item relating to section 130Q of the Penal Code, the following items under the respective columns:



1 Penal Code Section	2 Offence	3 Whether the police may ordinarily arrest without warrant or not	4 Whether a warrant or a summons shall ordinarily issue in the first instance	5 Whether bailable or not	6 Whether compoundable or not	7 Maximum punishment under the Penal Code
"130QA	Accepting gratification to facilitate or enable terrorist acts	do.	do.	do.	do.	If the act results in death, with death, in any other case, imprisonment for not less than seven years but not exceeding thirty years, and fine";

(f) by inserting after the item relating to section 130s of the Penal Code, the following items under the respective columns:

1 Penal Code Section	2 Offence	3 Whether the police may ordinarily arrest without warrant or not	4 Whether a warrant or a summons shall ordinarily issue in the first instance	5 Whether bailable or not	6 Whether compoundable or not	7 Maximum punishment under the Penal Code
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“CHAPTER VI B – ORGANIZED CRIME

130v	Member of an organized criminal group	May arrest without warrant	Warrant	Not bailable	Not compoundable	Imprisonment for not less than five years and not more than twenty years
130w	Assisting in an organized criminal group	do.	do.	do.	do.	Imprisonment which may extend to ten years

1 Penal Code Section	2 Offence	3 Whether the police may ordinarily arrest without warrant or not	4 Whether a warrant or a summons shall ordinarily issue in the first instance	5 Whether bailable or not	6 Whether compoundable or not	7 Maximum punishment under the Penal Code
130x	Harbouring a member of an organized criminal group	do.	do.	do.	do.	Imprisonment which may extend to five years, and fine
130y	Consorting with an organized criminal group	do.	do.	do.	do.	Imprisonment for not less than five years and not more than twenty years
130z	Recruiting persons to be members of an organized criminal group	do.	do.	do.	do.	Imprisonment which may extend to ten years, and fine
130ZA	Participation in an organized criminal group	do.	do.	do.	do.	Imprisonment which may extend to ten years, and fine
130ZB	Accepting gratification to facilitate or enable organized criminal activity	do.	do.	do.	do.	If the act results in death, with death, in any other case, with imprisonment not less than seven years but not exceeding thirty years, and fine”;

(g) by inserting after the item relating to section 176 of the Penal Code, the following items under the respective columns:

1 Penal Code Section	2 Offence	3 Whether the police may ordinarily arrest without warrant or not	4 Whether a warrant or a summons shall ordinarily issue in the first instance	5 Whether bailable or not	6 Whether compoundable or not	7 Maximum punishment under the Penal Code
"176	If the notice of information required respects the commission of offences under Chapter VIb	do.	do.	do.	do.	Imprisonment for seven years, or fine, or both";

(h) by inserting after the item relating to section 203 of the Penal Code, the following items under the respective columns:

1 Penal Code Section	2 Offence	3 Whether the police may ordinarily arrest without warrant or not	4 Whether a warrant or a summons shall ordinarily issue in the first instance	5 Whether bailable or not	6 Whether compoundable or not	7 Maximum punishment under the Penal Code
"203A	Disclosure of information	do.	do.	do.	do.	Fine not more than one million ringgit, or imprisonment which may extend to one year, or both";

(i) in the item relating to section 324 of the Penal Code—

- (i) in column 4, by substituting for the word “do.” the word “Warrant”;
- (ii) in column 5, by substituting for the word “do.” the words “Not bailable”; and
- (iii) in column 7, by substituting for the word “three” the word “ten”;

(j) in the item relating to section 325 of the Penal Code—

(i) in column 4, by substituting for the word “do.” the word “Summons”; and

(ii) in column 5, by substituting for the word “do.” the word “Bailable”;

(k) in the item relating to section 326 of the Penal Code, in column 4, by substituting for the word “do.” the word “Warrant”;

(l) by inserting after the item relating to section 326 of the Penal Code, the following items under the respective columns:

1 Penal Code Section	2 Offence	3 Whether the police may ordinarily arrest without warrant or not	4 Whether a warrant or a summons shall ordinarily issue in the first instance	5 Whether bailable or not	6 Whether compoundable or not	7 Maximum punishment under the Penal Code
“326A	Causing hurt by spouse	do.	do.	do.	do.	Imprisonment for a term twice as long as the maximum term for which he would have been liable on conviction for that offence under the relevant section”;

(m) by inserting after the item relating to section 352 of the Penal Code, the following items under the respective columns:

1 Penal Code Section	2 Offence	3 Whether the police may ordinarily arrest without warrant or not	4 Whether a warrant or a summons shall ordinarily issue in the first instance	5 Whether bailable or not	6 Whether compoundable or not	7 Maximum punishment under the Penal Code
"352A	Using criminal force by spouse	do.	do.	do.	do.	Imprisonment which may extend to six months, or fine which may extend to two thousand ringgit, or both";

(n) by inserting after the item relating to section 375A of the Penal Code, the following items under the respective columns:

1 Penal Code Section	2 Offence	3 Whether the police may ordinarily arrest without warrant or not	4 Whether a warrant or a summons shall ordinarily issue in the first instance	5 Whether bailable or not	6 Whether compoundable or not	7 Maximum punishment under the Penal Code
"375B	Gang rape	do.	do.	do.	do.	Imprisonment for not less than ten years, and not more than thirty years";

(o) in the item relating to subsection 376(2) of the Penal Code, in column 7, by substituting for the word "five" the word "ten";

(p) in the item relating to section 376B of the Penal Code, in column 7, by substituting for the words "not less than six years and not more than twenty years" the words "not less than ten years and not more than thirty years";

- (q) in the item relating to section 377CA of the Penal Code, in column 7, by substituting for the words “twenty years” the words “not less than five years and not more than thirty years”;
- (r) in the item relating to section 377E of the Penal Code, in column 7, by substituting for the words “five years” the words “not less than three years and not more than fifteen years”;
- (s) by inserting after the item relating to section 411 of the Penal Code, the following items under the respective columns:

1 Penal Code Section	2 Offence	3 Whether the police may ordinarily arrest without warrant or not	4 Whether a warrant or a summons shall ordinarily issue in the first instance	5 Whether bailable or not	6 Whether compoundable or not	7 Maximum punishment under the Penal Code
“411A	Receiving benefit derived from criminal activities of organized criminal group	do.	do.	do.	do.	Imprisonment which may extend to six years”;

- (t) in the item relating to subsection 426 of the Penal Code—
- (i) in column 3, by substituting for the words “Shall not arrest without warrant” the words “May arrest without warrant”;
- (ii) in column 4, by substituting for the word “Summons” the word “Warrant”;
- (iii) in column 5, by substituting for the word “Bailable” the words “Not bailable”; and
- (iv) in column 7, by substituting for the words “three months” the words “five years”;

- (u) in the item relating to section 427 of the Penal Code—
  - (i) in column 3, by substituting for the words “Shall not arrest without warrant” the words “May arrest without warrant”;
  - (ii) in column 5, by substituting for the word “Bailable” the words “Not bailable”; and
  - (iii) in column 7, by substituting for the words “two years” the words “not less than one year and not more than five years”;
- (v) in the item relating to section 428 of the Penal Code—
  - (i) in column 3, by substituting for the words “May arrest without warrant” the word “do.”;
  - (ii) in column 5, by substituting for the word “do.” the word “Bailable”; and
  - (iii) in column 7, by substituting for the word “do.” the words “Imprisonment which may extend to three years, or with fine, or both”;
- (w) by deleting the items relating to section 429 of the Penal Code;
- (x) in the item relating to section 430 of the Penal Code—
  - (i) in column 5, by substituting for the word “do.” the words “Not bailable”; and
  - (ii) in column 7, by substituting for the word “do.” the words “Imprisonment for not less than five years and not more than thirty years”;
- (y) in the item relating to section 430A of the Penal Code, in column 5, by substituting for the word “do.” the word “Bailable”; and
- (z) in the item relating to section 435 of the Penal Code, in column 7, by substituting for the word “seven” the word “fourteen”.

## PART III

AMENDMENTS TO THE CRIMINAL PROCEDURE CODE  
(AMENDMENT) (NO. 2) ACT 2012**Substitution of section 7**

**19.** The Criminal Procedure Code (Amendment) (No. 2) Act 2012 [*Act A1431*], which is referred to as the “principal Act” in this Part, is amended by substituting for section 7 the following section:

**“New section 388A**

**7.** The Code is amended by inserting after section 388 the following section:

**“Electronic monitoring requirement for person released on bail**

**388A.** (1) Where a Court has decided to release a person on bail under section 387 or 388, the Court may, on its own discretion, order for an electronic monitoring device to be attached to the person.

(2) The Court may, with due regard to the nature of the offence and the circumstances of the case as being sufficient to secure the person’s attendance at his trial, order for an electronic monitoring device to be attached to the person in lieu of the execution of a bond.

(3) The Court shall, before ordering a person to be attached with an electronic monitoring device under subsection (1), give the person and the Public Prosecutor an opportunity to be heard.

(4) The Court shall not make an order for a person to be attached with an electronic monitoring device under subsection (1) if there is a person (other than the person to be monitored) without whose co-operation it will not be practicable to secure the monitoring.



(5) Notwithstanding subsection (1), the Public Prosecutor may apply to the Court for any person to be so released on bail to be attached with an electronic monitoring device.

(6) Where the Public Prosecutor has made an application under subsection (5), the Court shall, with due regard to the nature of the offence and the circumstances of the case, order for the person to be so attached with an electronic monitoring device in lieu of the execution of a bond.

(7) Any person ordered to be attached with an electronic monitoring device under subsection (6) shall sign Form 55 of the Second Schedule and deposit the Form with the Court.”.

### **Amendment of section 8**

**20.** Section 8 of the principal Act is amended by substituting for the new section 390A the following section:

#### **“Electronic monitoring requirement to be explained**

**390A.** (1) A Court shall, before making an order for compliance with an electronic monitoring requirement, explain to the person to be so ordered—

- (a) the terms and conditions as stated in Form 55 of the Second Schedule;
- (b) the consequences which may follow any failure by the person to comply with the electronic monitoring requirement; and
- (c) any other conditions as may be imposed by the Court which includes the payment for the maintenance of the device and the time period for the person to be monitored electronically.

(2) A Court shall revoke the bail of any person who willfully fails to comply with the electronic monitoring requirement under subsection (1).”.

**New section 10**

**21.** The principal Act is amended by inserting after section 9 the following section:

**“Amendment of Second Schedule**

**10.** The Second Schedule to the Code is amended by inserting after Form 54 the following Form:

“FORM 55

[Section 388A]

ELECTRONIC MONITORING DEVICE

IN THE ... COURT AT ..... IN THE STATE OF .....

1. Name: .....
2. Case No.: .....
3. Identity Card No.: .....
4. Address: .....
5. Telephone No.: .....
6. Family members to be contacted: .....
- .....
7. Period to be attached with electronic monitoring device (“device”): .....
8. Terms and conditions:
  - (a) to report to the nearest police station at/for every .....
  - (b) understands that all movements will be tracked and retained as an official record;
  - (c) agrees to be required to report for device equipment checks if necessary;
  - (d) to notify the police officer if there is any change of address;
  - (e) to allow inspections of the device by the police officer;
  - (f) to report to the nearest police station for removal of the device;
  - (g) to return all the device equipment to the police officer;
  - (h) to submit to procedures required by the police officer;
  - (i) to maintain the device as instructed by the police officer;

- (j) to comply with any directions of the police officer;
- (k) to comply with any other conditions as the court may determine.

9. Failure to comply with the terms and conditions is an offence under the Penal Code.

I hereby agree to and shall comply with the terms and conditions as stated in this Form.

.....  
( ..... )”.

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EXPLANATORY STATEMENT

This Bill seeks to amend the Criminal Procedure Code (“Act 593”) and the Criminal Procedure Code (Amendment) (No. 2) Act 2012 (“Act A1431”).

PART I

PRELIMINARY

2. *Clause 1* contains the short title and provision on the commencement of the proposed Act.

PART II

AMENDMENT TO ACT 593

3. *Clause 2* seeks to amend section 2 of Act 593 by inserting a new subsection (5) which provides that an offence under the Penal Code is a seizable offence if it is expressly provided under any other written law that the offence is a seizable offence.

4. *Clause 3* seeks to amend section 13 of Act 593 to allow the public to give information to the police about the commission or the intention of any other person to commit any offence punishable under the Penal Code or under any written law in a move to curb the rampant rise of crimes.

5. *Clause 4* seeks to amend section 98 of Act 593 by inserting a new subsection (6) to empower the Public Prosecutor to appear in any application made under section 98.

6. *Clause 5* seeks to amend section 117 of Act 593 by inserting a new subsection (1A) to empower the Public Prosecutor to appear in any remand application made under section 117.

7. *Clause 6* seeks to amend section 173A of Act 593 by inserting a new subsection (8) to exclude a person who is charged with a serious offence or who is charged with the commission of an act of domestic violence from being discharged either conditionally or unconditionally.

8. *Clause 7* seeks to introduce new sections 265A, 265B And 265C into Act 593. The new sections provide for the evidence of a protected witness to be taken through a special procedure. These amendments are proposed to address the issue of a witness who is refusing to give testimony in Court because of the fear that his safety may be compromised if his identity is disclosed.

9. *Clause 8* seeks to amend section 282 of Act 593 by inserting a new paragraph (e) which requires the Court to impose a consecutive sentence if a Person is convicted at one trial for any two or more offences.

10. *Clause 9* seeks to amend section 294 of Act 593 by inserting a new subsection (6) to exclude an offender who is charged with a serious offence or who is charged with the commission of an act of domestic violence from being released on a bond of good behaviour.

11. *Clause 10* seeks to introduce a new section 399B into Act 593. The new section 399B provides that any evidence or report given by an expert on the activities, structure, ritual, ceremonies, hand sign, insignia, characteristic or any other matters relating to an organized criminal group is to be admitted as evidence.

12. *Clause 11* seeks to amend section 402B of Act 593 to provide that notwithstanding subsection 402B(1) the prosecution shall not be required to obtain the consent of the accused before tendering any statement in evidence.

13. *Clause 12* seeks to introduce a new section 407B into Act 593. The new section 407B requires an accused person to pay a penalty where impounded property has been disposed of or cannot be traced.

14. *Clause 13* seeks to amend section 414 of Act 593. *Subclause 13(a)* seeks to amend subsection (1) to empower the Officer in charge of a Police District to order the sale of seized property which previously was under the purview of the Chief Police Officer. *Subclause 13(b)* seeks to amend subsection (2) to vest the ownership or the proceeds of the sale of an unclaimed seized property in the Federal Government. Prior to this proposed amendment, the ownership or the proceeds were vested in the State Government of the State in which the property was seized.

15. *Clause 14* seeks to substitute section 415 of Act 593 to allow for the sale of property detained on the order of a Magistrate made under subsection 413(3) to be done through a public auction subject to the pre-conditions specified under paragraphs 415(1)(a), (b), (c) and (d).

16. *Clause 15* seeks to introduce a new Chapter XLI A into Act 593 to provide for seizure and forfeiture of property and its derivatives belonging to a member of an organized criminal group which were obtained in the commission of an offence or which will lead to the commission of an offence. The police officer

may seize movable and immovable property which he reasonably suspects to be illegal property.

Through this proposed amendment, where any property is seized under this Chapter, the Court shall presume such property to be illegal property unless the person whose property was seized proves to the contrary by admissible evidence and where he adduces any such evidence, the Public Prosecutor shall have the right to rebut the same.

The right of a purchaser in good faith for valuable consideration relating to the seized and forfeited property is also protected whereby the Court is compelled to return the property to such person if it is satisfied that the person has legitimate legal interest over the property, he has no involvement with the organized criminal group, he has no knowledge of such illegal use of the property, his acquisition of the property was not for the purpose of avoiding the eventual subsequent forfeiture of the property, and he has done everything that is reasonably expected to prevent the illegal use of the property.

17. *Clause 16* seeks to insert a new section 425A into Act 593. The new section 425A provides the procedure in instances where an accused absconds before or during his trial after he has been charged. Under this proposed amendment, the Court may proceed with the trial and dispose of the case in the absence of the accused who absconds. The Court may pronounce judgment in the absence of the accused. However the Court shall not pass any sentences of death, imprisonment for life, and imprisonment for natural life in the absence of the accused.

18. *Clause 17* seeks to amend section 430 of Act 593 to empower the Minister instead of the Court to reward a private person who has shown unusual courage, diligence or exertion in the apprehension of a person involved with a crime. The amendment also increases the reward from a sum not exceeding one hundred ringgit to a sum of not less than one thousand ringgit and not more than ten thousand ringgit.

19. *Clause 18* seeks to amend the First Schedule to Act 593 consequential to the introduction of new offences into the Penal Code.

### PART III

#### AMENDMENT TO ACT A1431

20. *Clause 19* seeks to substitute section 7 of Act A1431. With this amendment, a new subsection (7) is introduced into the proposed section 388A to provide for a prescribed form to be used in relation to the attachment of the electronic monitoring device.

21. *Clause 20* seeks to amend section 8 of Act A1431. With this amendment, the new section 390A is substituted with a section that includes the use of the prescribed form for the attachment of the electronic monitoring device and removes the offence of tampering with or destroying an electronic monitoring device.

22. Other amendments not specifically dealt with in this Statement are minor or consequential in nature.

*FINANCIAL IMPLICATIONS*

This Bill will involve the Government in extra financial expenditure the amount of which cannot at present be ascertained.

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