

**Frozen or Forfeited Drug Assets(Administration, Management, Maintenance and Disposal) Rules, 2010 Containing Proposed Amendments.**

SRO. (I)/2010. — In exercise of the powers conferred by section 77 of the Control of Narcotic Substances Act, 1997 (XXV of 1997), the Federal Government is pleased to make the following rules, namely.- -

CHAPTER-1 - - - PRELIMINARY

1. Short title and commencement.- - - (1)These rules may be called the Frozen or Forfeited Drug Assets (Administration, Management, Maintenance and Disposal) Rules, 2010.

(2) They shall come into force at once.

2. Definitions. - - - (1) In these rules unless there is anything repugnant in the subject or context;-

(a) "Act" means the Control of Narcotic Substances Act, 1997 (XXV of 1997);

(b) "Administrator" means any officer appointed by the Federal Government under sub-section (1) of section 44 of the Act;

(c) "Form" means form annexed to these rules;

(d) "Fund" means the national fund for Control of Drug Abuse constituted under sub-section (1) of section 54 of the Act; and

(e) "godown" means a godown for storage of assets frozen or forfeited to the Federal Government under the Act and received by the Administrator for management, maintenance and disposal.

(2) The words and expressions used but not defined herein shall have the same meaning as assigned to them in the Act.

CHAPTER-II. - - - ASSISTANCE TO THE ADMINISTRATORS

3. Assistance to the Administrator. — The Federal Government may, from time to time, provide such members of staff and other persons as it thinks fit to assist the Administrator in exercise of his powers and performance of duties under these rules.

CHAPTER-III.- - - DESIGNATION OF GODOWNS, RECEIPT AND MANAGEMENT OF PROPERTY

4. Designation of godown. — (1) Subject to the approval of the Federal Government, the Administrator shall designate as many godowns as may be necessary for the storage of assets frozen or forfeited to the Federal Government under the Act and received by him for management, maintenance and disposal.

(2) The Director-General or the Administrator shall select godowns, referred to in sub - rule (1), as per Government rules, keeping in view the security of the premises, storage capacity, nature of assets and other relevant factors.

(3) Each designated godown shall have a godown keeper and a godown-in-charge to assist the Administrator.

5. Proper accounting of properties .— The Administrator shall, at the time of receiving the assets, ensure proper identification of such assets with reference to its particulars mentioned in the freezing order or as the case may be, the forfeiture order made under the Act.

6. Godown register .— The Administrator shall cause to be maintained register in Form-I for recording entries in respect of assets, other than the assets, referred to in rule 7.

7. Godown register for valuables .— The Administrator shall cause to be maintained a register in Form II for recording entries in respect of asset, namely gold and gold jewellery, diamonds (including rough and uncut diamonds), precious and semi-precious stones other than diamonds and wrist watches (hereinafter called “valuables”).

8. Storage of Assets .— (1) The Administrator shall ensure that the packages containing valuables are kept in the godown in an iron safe and vault, under double lock system and one key shall remain with the godown keeper and the other to be retained by the godown Incharge.

(2) Valuables as mentioned in rule 7 shall preferably be kept in the State Bank of Pakistan or any nationalized bank. Their deposit or withdrawal should be allowed on joint signatures of two officers of gazetted rank.

(3) The packages referred to in sub-rules (1) and (2) shall be stored systematically, inquiry-wise, case-wise, serial-wise, year-wise and with proper identification marks to facilitate re-checking and inspection.

9. Management of property.— The Administrator may authorize any member of staff or other persons, provided to him by the Federal Government under rule 3, to take possession of vacant property in respect of which.—

(a) An order or orders of freezing of such property have been made under the Act; and

(b) An order or orders of forfeiture of such property have been made under the Act.

10. Occupation of property.— (1)Where any property is in possession of a lessee or a tenant or any management and against such property a freezing order under the Act has been made, the Administrator may, with the approval of the Federal

Government through the Director-General, allow the lessee or tenant management of property to continue to be in occupation of such property in accordance with such terms and conditions which existed on the date of passing a freezing order or orders under the Act.

(2) Where possession of any vacant property frozen under the Act is taken under rule 9 by the Administrator or any member of staff or other persons authorized by the Administrator, provided to him by the Federal Government under rule-3, the Administrator may, with the approval of the Federal Government through the Director-General rent out or give on lease or on contract or for Government official use on rent such property for agricultural or residential or commercial or any other appropriate purposes according to the nature of such property and in accordance with such terms and conditions to be reduced into writing subject to the approval by the Federal Government through the Director-General, till such property is declared not liable to be forfeited under the Act and ordered by the court to be returned to its owner or till disposal of such property under the rules after forfeiture of such property under the Act.

(3) Where any property is forfeited under the Act and possession of such property is taken by the Administrator or any member or staff or other persons authorized by the Administrator, provided to him by the Federal Government under rule 3, the Administrator may, with the approval of the Federal Government through the Director-General rent out or give on lease or on contract or for Government official use on rent to other Government Departments or handover to Ministry of Narcotics Control or the Anti Narcotics Force without rent such property for agricultural or residential or commercial or any other appropriate purposes according to the nature of such property and in accordance with such terms and conditions to be reduced into writing subject to the approval by the Federal Government through the Director-General, till disposal of such property under the rules.

(4) The income derived from such property or assets shall be kept in the National Bank of Pakistan in a PLS account as in the case of government money.

(5) Where any property or asset is declared not liable to be forfeited under the Act, the Administrator shall, within the time fixed by the court or in the absence of such fixation of time within reasonable time, return to the person such property or asset and the income derived there from after deducting such expenses, if any, which were incurred under his administrative control on the maintenance and management of the property or asset.

11. Record of property. — The Administrator shall maintain a record of landed property or building property, etc. in Form III.

12. Storage of assets other than valuables. — (1) Moveable assets other than valuables shall be stored in almirahs and racks.

(2) Each almirah and rack shall have a stock card indicating the case number and full description of the assets stored therein.

13. Placement of stock cards .— (1)The godown in charge shall ensure that the racks or almirahs or any other thing used for storage of assets, display stock card indicating the inquiry number or case number and full description of the assets stored.

14. Opening and re-sealing of the packages.— (1) Where any package is to be opened for any reason, the same shall be opened in the presence of the owner and the concerned godown-in-charge after obtaining the orders of the Director-General or the Administrator.

(2) The packages shall be re-sealed immediately after the purpose, for which such packages were opened, is served in the presence of the owner and the concerned godown-in-charge.

(3) At the time of re-sealing, the owner and the concerned godown-in-charge shall affix their seals.

15. Maintenance of frozen, forfeited or confiscated conveyances. — Conveyance such as aircrafts, vessels, motor vehicles and any other mode of conveyance shall be properly kept in godown.

#### CHAPTER-IV.— DISPOSAL OF ASSETS

16. Disposal of livestocks, perishables, etc .— Subject to the sale proceeds being credited to the Fund, save when the Director-General otherwise directs, the committee, to be nominated by Director-General in consultation with the Administrator, shall dispose of the livestock and assets which is perishable in nature or prone to decay in the manner as deemed fit.

17. Disposal of valuables .— Subject to the sale proceeds being credited to the Fund and subject to the approval of Director-General, the committee, to be nominated by Director-General in consultation with the Administrator, shall dispose of the valuables mentioned below in the following manner, namely:-

- (a) the valuables, such as gold, gold jewellery, silver and silver jewellery, shall be deposited in the Fund;
- (b) (i) rough and uncut diamonds shall be sold either by auction or tender to the import license holders against debit of their licences; and  
(ii) cut and polished diamonds shall be sold by auction or tender with the specific condition that such diamonds shall be exported;
- (c) (i) rough and uncut precious and semi-precious stones other than diamonds shall be sold by auction or tender to holder of import licences against debit of their licenses, in the internal market; and  
(ii) cut and polished precious and semi-precious stones, other than diamonds shall be sold internally, by auction or by tender.

18. Disposal of Currency. — Pakistan and foreign currency shall be deposited in State Bank of Pakistan or in any nationalized bank in a PLS account.

19. Disposal of other assets. — Assets other than those referred to in rules 16 to 18 shall be disposed of by public auction.

20. Disposal of property.—Subject to the relevant provisions of any law relating to the acquisition or disposal of immovable property and also subject to the sale proceeds being credited to the Fund under section 54 of the Act, the property shall be disposed of by public auction by the committee to be nominated by the Director-General in consultation with the Administrator:

Provided if such property could not be disposed of through public auction then it may be sold out to any Government department through negotiations by the committee to be nominated by the Director-General in consultation with the Administrator and such sale shall be subject to the approval of the Federal Government.

21. Disposal of conveyances .— Conveyances, such as aircrafts, vessels, vehicles and other mode of conveyance, shall be sold by public auction or by tender, by a committee to be nominated by Director-General in consultation with the Administrator.

22. Procedure for auction of property.— The disposal of property through public auction shall be made in the manner as provided in the succeeding rules.

23. Current value of forfeited property. — The Administrator shall get assessment of average value of which may be taken as final reserve price from the following, namely:-

- (a). Revenue Department;
- (b). Pakistan PWD;
- (c). Development Authority, Housing Society or by any other concerned authority controlling the Housing Scheme; and
- (d). three Property Dealers of the respective areas where the property is situated through ascertainment of prevailing market value.

24. Recommendations for auction of property .--The Administrator shall, forward case and recommendations for auction of properties required to be auctioned to the Assets Investigations Directorate Headquarters (HQs) Anti Narcotics Force (ANF) for approval of the Director-General for the following —

- (a) public auction of property ; and
- (b) Constitution of auction committee {Deputy Secretary (Policy-I) Ministry of Narcotics Control shall also be nominated as member of committee to be constituted}; and
- (c) notice to occupant or last owner (if other than accused or relative) to file any bona fide objection with lawful documents or proof and competent authority to listen any bona fide objection with lawful documents or proof filed by the occupant / last owner; and
- (d) inquiry and notice initiated with knowledge of present occupant in the property.

25. Duties of Auction Committee. — The Chairman of the Auction Committee, on receipt of clearance from Headquarters Anti Narcotics Force, shall ensure preparing of the following, namely: —

- (a) a detailed inventory schedule of each property and details of property offered to be auctioned; and
- (b) a list of properties to be auctioned indicating the following, namely:-
  - (i) description of property as per Municipal, Revenue or other relevant record; and
  - (ii) area of property or properties and details of property or properties to be auctioned; and
  - (iii) covered area, details of construction, i.e. nature of construction, size of accommodation, details of machinery, equipment, fixtures, installations or stores, its or their previous and present use and income derived or being derived from the property; and
  - (iv) status of properties i.e. residential, commercial, industrial, etc; and
  - (v) average market price; and
  - (vi) average reserve price; and
  - (vii) reserve price at which actually auctioned (reserve price at which the property to be auctioned will be the average price) (blank column) ; and
  - (viii) remarks (blank column) ; and
  - (ix) signature block of auction committee; and
  - (x) due notice to last owners of these properties at least fifteen days in advance of the date of auction.

26. Advertisement of public auction notice .—The public auction notice shall be advertised in at least three leading English language, one in Urdu language and one in local language newspapers preferably (local Sunday issue) at least fifteen days in advance for moveable property and thirty days in advance for immoveable property prior to the date of auction specifying

- (a) date, time and place of auction in block letters;
- (b) the general description of properties to be auctioned;

- (c) access to properties for inspection by interested parties, peoples and bidders at least seven days prior to date of auction; and
- (d) due notice to last owners of these properties at least fifteen days in advance of the date of auction.

27. Qualification for bidder. — A person, other than ANF personnel and convict, may participate in the auction by way of open bid if he —

- (a) holds a valid NIC and submits an attested photocopy thereof;
- (b) has not been disqualified by the authority (Director-General or the Federal Government) to participate in auction; and
- (c) abides by the terms and conditions.

28. Manner of auction. — (1) before the start of auction of bidding, the Chairman, Auction Committee shall announce the description and other details of property and reserve price of property.

(2) The auctioneer shall describe the procedure and conditions prior to the start of auction.

- (3) All auctions shall be on the principle of “as is, where is” basis.

The first bid shall not be less than 20% of the reserve price notified before, or at, the time of auction.

(4) The bid amounts and the names of the highest and second highest bidders shall be recorded in the file maintained for that particular Property. Attested photocopies of National Identity Card as well as National Taxation Number of the successful bidder shall be kept in file.

29. Earnest money. — Twenty five percent of the amount of the highest bid given at an auction shall be paid by the bidder in each case as earnest money in cash immediately after the fall of the hammer, failing which the bid will be cancelled and the property or the asset may be sold to the second highest bidder and in case he fails to pay the earnest money then re-auction may be done.

30. Payment of Balance amount. — The balance of the amount of bid shall be paid by the successful bidder in cash in favour of “National Fund for Control of Drug Abuse” within a period of fifteen days (excluding holidays) of the final acceptance of the bid, failing which the earnest money (that is twenty five percent) deposited by the bidder shall be forfeited and deposited in the “National Fund for Control of Drug Abuse” and

the property shall be sold in next scheduled auction. Expenditures incurred on next auction would also be borne by the successful bidder who failed to deposit the earnest money. Moreover expenditure of re-auction if it exceeds the earnest money will be recovered from the defaulter.

31. Transfer of possession order. —

(1) The Director General, on receipt of the whole amount of the bid, shall issue possession order along with physical possession of property containing the following information, namely:-

- (a). Name and National Identity Card of successful bidder;
- (b). description of property;
- (c) date and place of the auction;
- (d) price at which property to the successful bidder is sold.
- (e) the successful bidder shall present the possession order issued to him to the concerned custodian of property deputed for the purpose; and
- (f) the custodian shall hand over the possession of property with the approval of the Administrator.

(2). The Administrator shall ensure that all documents of ownership of property in the name of the Federal Government and other legal requirements are complete, prior to forwarding of case for auction. The Administrator or, as the case may be, Force Comd – Regional Directorate concerned shall execute the registration and transfer of proprietary rights of property auctioned in favour of the successful bidder through Sub-Registrar, Revenue Department, Development Authority, Excise and Taxation Department and other concerned Authorities; and

(3). All charges incurred on the execution of registration and transfer of proprietary rights in favour of the successful bidders shall be borne by the bidders.

32. Powers or authority to cancel auction .— Notwithstanding anything hereinbefore contained, the Director-General, with the approval of Federal Government, may cancel the whole proceedings of an auction after assigning reasons.

33. Disposal of frozen bank deposits .— In case of frozen bank deposits, the full amount shall be credited in Fund.

34. Furnishing reports and returns .— The Administrator shall furnish a quarterly statement to the Director-General for submission to the Federal Government



indicating the value of the assets received and disposed of and the closing balance of all assets kept in the godowns and banks.

#### CHAPTER-V - - -PERIODICAL RECORD AND INSPECTIONS

35. Periodical reports .— The godown in-charge shall submit, every month, a report to the Administrator of the assets received or disposed of during that period.

36. Periodical inspection .— The Director-General and the Administrator, with a view to ensuring safety, security, proper accounting and management of all assets in the godowns, may conduct physical inspection and verification with the help of such officers and experts as he thinks fit on six monthly basis.

37. Record of receipt and disposal .— The Administrator shall maintain a record of receipt and disposal of all assets received and disposed of under the rules and shall also maintain an account of all income received and expenditure incurred on receipt, management and disposal of such assets.

#### CHAPTER-VI - - - SHARING WITH FOREIGN STATE

38. Sharing forfeited property with foreign state .— (1) In pursuance to an agreement signed between the competent authorities of a foreign state and Government of Pakistan as provided in section 65 of the Act, the Director-General, after obtaining approval of Ministry of Foreign Affairs, Ministry of Finance and the Secretary, Ministry of Narcotics Control, shall be the competent authority on behalf of the Government of Pakistan to sign this agreement in order to regulate the reciprocal sharing of the following proceeds of disposition, namely:-

- (a). Property forfeited by the Federal Government of Pakistan in accordance with the provisions of the Act and the proceeds arising from disposition of property by the foreign state; and
- (b). amount paid or recovered on account of fines imposed in accordance with the provisions of the Act, in relation to proceedings commenced at the instance of the Government of Pakistan and amounts paid or recovered on account of fines imposed in lieu of forfeiture under the laws of that foreign state, where law enforcement agencies of that foreign state, or of Pakistan, as the case may be, have participated in the investigation of the offence or offences that led to the forfeiture of the property of the imposition of the fine.

39. Contribution of each State .— The Director-General shall determine a percentage representing the contribution of the Government of Pakistan, with prior approval of Ministry of Foreign Affairs and Ministry of Finance, to be determined in accordance with bilateral agreement between the two countries.

40. Determination of amount available for sharing .— The amount that is available for sharing shall include —

- (a) amount of net proceeds of a person's property that has been forfeited in connection with one or more offences committed by such persons; and
- (b) the amount of any fine ordered by the court to be paid by their persons in connection with the offence or offences committed by such persons.

(2) The following amounts may be subtracted from the above amount before sharing with foreign government or agencies, subject to the approval of Law and Finance Divisions, namely:- -

- (a) defraying expenses properly incurred in the prosecution and other processes and issues connected thereto; and
- (b) payments to any person on account of compensation or rewards by the Director-General.

#### CHAPTER-VII .— MISCELLANEOUS

41. Functions of the Director-General .— The Director General shall perform the following functions, namely: - -

- (a) provide consultative and other services to law enforcement agencies in relation to the seizure or forfeiture of any property under the Act.
- (b) subject to the Code of Criminal Procedure, 1898 (Act V of 1898), the Act and any other law for the time being in force, manage any property referred to in the rules in such manner as the Director-General considers appropriate, by advancing money to —
  - (i) maintain the ongoing operation of the property; **and**
  - (ii) satisfy the terms of any order concerning environmental, industrial labour or property standards to which the property is subject.
- (c) supervise the Fund and ensure that the funds are kept in a profit and loss sharing account in the National Bank of Pakistan;
- (d) supervise the work of committee headed by the Administrator as constituted by him;
- (e) on behalf of the Federal Government receive from Foreign Governments all money to be transferred to Pakistan pursuant to any agreement entered into under rule 38 and share the money in accordance with the rules.
- (f) hire the services of any person after due sanction of Federal Government; and

- (g) do any other thing that the Federal Government may consider to be incidental to, or necessary or expedient for, carrying out the purposes of these rules.

**“41A. Expenditures incurred on Administration, Management, Maintenance and Disposal of Frozen or Forfeited Drug Assets. ---(1) The expenditures of following natures for the administration, management, maintenance and disposal of frozen or forfeited drug assets in the possession or control of Administrator shall be incurred with the prior approval of the Director General ANF:-**

- (a) Utility / misc bills (electricity, water, gas and other allied charges).
- (b) Essential taxes including property tax.
- (c) Fee for the opinion of the technical expert to assess the equipment or any related matters including equipment maintenance/repair, auto/electric/mechanical equipment, appraisal fee for jewelry, gems, ornaments, valuables and other related matters where opinion of the technical expert may be required and is otherwise not specified in the rules.
- (d) Accountant/auditor’s fee and any unforeseen /incidental expenditures required to be incurred.
- (e) Annual maintenance /repair charges i.e. payment to labourers for whitewash distempering/painting, material required for construction /repair/ maintenance.
- (f) Salaries of staff / manpower required for security, administration/management of assets, other than officers / officials of ANF.
- (g) Installation of silent security equipment like walls, gates, barbed wires, security lights etc etc with recurring expenditures.
- (h) Expenditure incurred on transfer, transportation, repair and maintenance of moveable assets including purchase of any spare parts, denting /painting and labour charges etc.
- (i) Expenditure incurred for conducting auction proceedings.
- (j) Expenditure incurred on transfer of rights of forfeited properties in relevant official records in favour of Federal Government e.g Revenue Department, Development Authorities, Societies, Excise and Taxation Department, Registrars and other concerned authorities etc etc.
- (k) Godown rent.
- (l) Expenditure involved on account of ongoing operation of the property.
- (m) Expenditure incurred on the forementioned charges/heads shall be deducted from the income derived from such assets or

**the proceeds of auction. In case asset / property is of the nature that it does not generate any income or nor likely to be auctioned then such expenditures incurred on it shall be made from the income derived from other assets in possession or the forfeited cash/bank deposits held in the administrator's account.**

**(2) Shares of welfare/common pool, reward of officers/officials of Anti Narcotics Force and reward to informer under ANF Reward Rules, 2000 as amended shall be worked out after deduction of expenditures incurred on the administration, management, maintenance and disposal of property/asset under sub rule (1) of rule 41A, from the amount/income, realized from forfeited properties/assets.**

**(3) The remaining amount/income, realized from forfeited properties/assets, after adjustment of expenditures incurred under sub rule (1) of rule 41A and shares of welfare/common pool, reward of officers/officials of ANF and reward to informer as mentioned in sub rule (2) of rule 41A, shall be credited to the National Fund.**

**(4) The Administrator shall cause to be maintained register in Form-IV to record entries in respect of expenditures incurred under sub-rule (1) of rule 41A.”**

42. Rescission of rules. — (1) The Frozen or Forfeited Drug Assets (Administration, Management, Maintenance and Disposal) Rules, 2001, are hereby rescinded.

(2) Notwithstanding the rescission of rules referred in sub-rule (1) all pending proceedings shall be dealt with in accordance with aforesaid rules and the corresponding provisions of these rules.

FORM I  
(See rule 6)  
GODOWN REGISTER

1. Godown entry S.No.
2. Narcotic drugs and Psychotropic Substances Crime No.
3. Description of asset in the sealed packages or containers.
4. No. of packages or containers.
5. Quantity (packages or container wise)
6. Name(s) and address (es) of accused.
7. Name with official designation and address of freezing, seizing or depositing officer.
8. Facsimile of the seal put on the packages or containers by the freezing officer, seizing officer or depositing officer.
9. Date and time of deposit.
10. Particulars of exit and re-entry for exhibiting to competent authority or court.

11. Date and time of removal for disposal.
12. Disposal particulars.
13. Certificate of disposal including price payment particulars and credit to the Fund.
14. Remarks of the Inspecting Officer(s).

**FORM II**  
(See rule 7)  
**GODOWN REGISTER FOR VALUABLE**

1. Godown entry S. No.
2. Narcotics Drugs and Psychotropic Substances Crime No.
3. Description of the valuables in packages or containers.
4. No. of packages or containers (item-wise).
5. Condition of seal at the time of entry.
6. Quantity (package or container-wise).
7. Name(s) and address (es) of accused.
8. Name with official designation and address of freezing, seizing or depositing officer.
9. Facsimile of the seal put on the packages or containers by the freezing, seizing or depositing officer.
10. Date and time of deposit.
11. Particulars of exit and re-entry for exhibiting to Competent Authority or Court.
12. Date and time of removal for disposal.
13. Disposal particulars.
14. Certificate of disposal including price payment particulars and credit to the National Fund for Control of Drugs Abuse.
15. Remarks of the Inspecting Officer (s).

**FORM III**  
(See rule 11)  
**RECORD FOR LANDED AND BUILDING PROPERTY**

S.No.	Crime No.	Particulars of the last owner (s)	Location	Description as per Municipal revenue or other relevant records	Area in case of land	Value of	Monthly /Annual income	Remarks
1	2	3	4	5	6	7	8	9

(2) After Form III and before ASSETS SHARING MODEL AGREEMENT, new Form IV shall be added, namely:--

**FORM IV**  
(See rule 41A)  
**EXPENDITURES INCURRED ON ADMINISTRATION, MANAGEMENT, MAINTENANCE AND DISPOSAL OF FROZEN OR FORFEITED DRUG ASSETS REGISTER**

S.No.	Crime No.	Particulars of the last owner (s)	Location	Description of asset as per relevant records	Area in case of land	Date of possession of administrator	Monthly /Annual income derived	Value realized
1	2	3	4	5	6	7	8	9

Detail of expenditure incurred on asset/property.	Total Expenditure incurred on asset/property	Balance
10	11	12

ASSETS SHARING MODEL AGREEMENT

AGREEMENT BETWEEN

THE GOVERNMENT OF \_\_\_\_\_

AND

THE GOVERNMENT OF THE \_\_\_\_\_<sup>1</sup>

REGARDING THE SHARING OF FORFEITED OR CONFISCATED ASSETS AND EQUIVALENT FUNDS<sup>2</sup>

The Governments of \_\_\_\_\_ and of \_\_\_\_\_, hereinafter referred to as “the Parties”,

Considering the commitment of the Parties to co-operate on the basis of the Treaty On Mutual Legal Assistance in Criminal matters, which was signed on \_\_\_\_\_ and entered into force on \_\_\_\_\_, as well as the United Nations Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances of December 20, 1988;<sup>3</sup>

Desiring to improve the effectiveness of law enforcement in both countries in the investigation, prosecution and suppression of crime and in the tracing, freezing, seizure and forfeiture or confiscation of assets related to crime; and<sup>4</sup>

Desiring also to create a framework for sharing the proceeds of disposition of such assets;<sup>5</sup>

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<sup>1</sup> Full name of the relevant States.

<sup>2</sup>Some States impose a pecuniary penalty order, rather than a confiscation or forfeiture order. Some may impose a fine in lieu of confiscation/forfeiture where the assets are dissipated or relocated to a locale where confiscation/forfeiture is difficult or impossible. If a fine is imposed a mandatory term of incarceration could be imposed to compel the offender to pay the fine. In any event sharing of the confiscated/forfeited assets or the fine is the goal of the agreement.

<sup>3</sup>This preamble captures 1988 Drug Convention's specific recognition of the sharing concept (see Article 5, subparagraph (b) (ii) and any possible mutual legal assistance in criminal matters. The parties could also elect to add references to Recommendations 38 & 39 of the FATF's Forty Recommendations.

<sup>4</sup>This captures the essence of assets sharing. It recognised co-operation as a general goal rather than a specific case driven activity.

<sup>5</sup>This recognises the need to have a framework general agreement, rather than a case specific agreement. A general agreement is preferred since specific cases can be addressed through the channels of communication set out in paragraph 5.

Have agreed as follows:

1. Where one party (the Assisting Party) has participated in investigations or proceedings resulting in a confiscation or a forfeiture or the payment of funds equivalent to a forfeiture in the jurisdiction of the other Party (the Assisted Party), the Assisted Party may, consistent with its domestic laws, share with the Assisting Party the net proceeds realised.<sup>1</sup>

2. For the purposes of this Agreement, "forfeiture or the payment of funds equivalent to forfeiture" shall mean, for \_\_\_\_\_ an order of forfeiture of assets related to crime or the payment of funds equivalent to a forfeiture, either of which order is made on behalf of \_\_\_\_\_ and for \_\_\_\_\_. "confiscation" [or an analogous term in either State that requires a definition or a reference to specific provision in law] shall mean \_\_\_\_\_.<sup>2</sup>

3. Amount to be shared and the proportion of such amounts to be received by the Assisting Party shall be determined in accordance with the laws of the Assisted party.<sup>3</sup>

4. Sharing pursuant to this Agreement shall be between the Government of \_\_\_\_\_ and the Government of \_\_\_\_\_. The Assisted Party shall not place any conditions in respect of the use of amounts paid nor shall it make any payments conditional on the Assisting Party sharing them with any state, government, organization or individual.<sup>4</sup>

5. The Assisting party may bring any co-operation that led, or is expected to lead, to a confiscation, forfeiture or the payment of funds equivalent to forfeiture to the attention of the Assisted Party.

6. Shares payable pursuant to Article I shall be paid in the currency of the Assisted Party. In cases where Canada is the Assisting party, payments shall be made to the \_\_\_\_\_ and sent to the \_\_\_\_\_. In cases where \_\_\_\_\_ is the Assisting party, payments shall be made as designated by \_\_\_\_\_.<sup>5</sup>

7. The channels of communication for all matters concerning the implementation of this Agreement shall be, for \_\_\_\_\_, the \_\_\_\_\_ and, for \_\_\_\_\_ the \_\_\_\_\_.<sup>6</sup>

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<sup>1</sup>The State where the targeted assets are located applies its domestic laws to determine the amount available for sharing. This means that it protects innocent third parties, deducts its own costs (if any) to manage the asset and determines the net proceeds. Therefore the specific asset (e.g. a car, boat, plane or real property), other than cash, is assumed to have been sold and the proceeds of sale accumulated with any forfeited currency in order to arrive at a “net proceeds” amount that is available for sharing.

<sup>2</sup>Each country may define confiscation/forfeiture and fines in a different manner. They can each set out their differences in this paragraph.

<sup>3</sup>The country that has the “net proceeds” is responsible for determining how much it intends to share with the other country that assisted in the case that led to the forfeiture/confiscation of fine in lieu of forfeiture. This agreement covers a share of accumulated currency, rather than specific assets.

<sup>4</sup>Sharing is conducted at the State to State level. The country that sends the shared money is presumed to have shared with any other relevant State. It shares with another State, that is a party to this bilateral agreement, unconditionally. The recipient can determine, at its sole discretion, how it will use the shared money.

<sup>5</sup>This Paragraph allows both States to specify how the sharing cheque is endorsed and where the cheque is to be sent.

<sup>6</sup>This paragraph provides for effective channel of communication.

1. This Agreement shall enter into force upon signature.
2. Either Party may terminate this Agreement, at any time, by giving written notice to the other Party. Termination shall become effective six months after receipt of the notice.

Done at \_\_\_\_\_, \_\_\_\_\_day of \_\_\_\_\_, Two Thousand and \_\_\_\_\_, in the English and \_\_\_\_\_ languages, each text being equally authentic.

\_\_\_\_\_  
For the Government of \_\_\_\_\_ For the Government of \_\_\_\_\_

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[No.F.5-2/2008-Policy-1.]

Sd/  
Deputy Secretary,  
Government of Pakistan  
Narcotics Control Division  
Islamabad