

Forfeiture Law

- a. How did the USA Patriot Act and its amendments change the law of forfeiture?
- i. By allowing for the forfeiture of funds in U.S. interbank accounts.¹
 - ii. Definitions:
 1. Correspondent account: An account (often called a nostro or vostro account) established by a domestic banking institution to receive deposits from, make payments on behalf of, or handle other financial transactions for a foreign financial institution. This allows foreign banks to conduct business and provide services to their clients without the expense of a physical presence.²
 2. Interbank account: An account held by one financial institution at another financial institution primarily for the purpose of facilitating customer transactions.³
 - iii. In General: The government has additional civil forfeiture rights under 18 U.S.C. § 981(k)⁴ with respect to funds deposited into an account at a foreign bank if that bank has an interbank account in the U.S. with a covered financial institution. The funds in the foreign bank account are deemed to have been deposited into the interbank account in the U.S. and any restraining order, seizure warrant, or arrest warrant regarding such funds may be served on the covered financial institution, for an amount equal to the value of the funds deposited in the account at the foreign bank.⁵ Such funds may be restrained or seized.⁶
 - iv. No Requirement for U.S. Government to Trace Funds:⁷ The government is not required to establish that the funds are directly traceable to funds that

¹ See Duke, *supra* note 1, at 29.

² Wikipedia: Correspondent Account, http://en.wikipedia.org/wiki/Correspondent_account, last visited: Nov. 2, 2010.

³ § 984(c)(2)(B).

⁴ USA Patriot Act, § 319(a).

⁵ See Duke, *supra* note 1, at 29.

⁶ *Id.*

⁷ *Id.*

were deposited into a foreign bank nor is the government required to rely on the application of 18 U.S.C. § 984.⁸

- v. Authority to Suspend:⁹ The Attorney General may suspend or terminate such a forfeiture if he/she determines that a conflict of law exists with respect to liabilities arising from the restraint or seizure of such funds and that such action would not be in the interest of justice or would harm national interests.
- vi. Defense Against Forfeiture:¹⁰ The owner of the funds deposited into a foreign account may contest the forfeiture by making a claim under 18 U.S.C. § 983.

⁸ 18 U.S.C. § 981(k)(2).

⁹ See Duke, *supra* note 1, at 29.

¹⁰ *Id.*