

CAYMAN ISLANDS



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**A BILL FOR A LAW TO REPEAL AND REPLACE THE PROCEEDS OF
CRIMINAL CONDUCT LAW (2007 REVISION); TO CONSOLIDATE
THE LAW RELATING TO THE CONFISCATION OF THE PROCEEDS
OF CRIME AND THE LAW RELATING TO MUTUAL LEGAL
ASSISTANCE IN CRIMINAL MATTERS; AND FOR INCIDENTAL AND
CONNECTED PURPOSES**

THE PROCEEDS OF CRIME BILL, 2008

MEMORANDUM OF OBJECTS AND REASONS

This Bill seeks to repeal and replace the Proceeds of Criminal Conduct Law (2007 Revision) and to generally consolidate provisions relating to external requests for assistance, restraint orders, confiscation orders and similar orders which are provided for under other laws such as the Misuse of Drugs Law (2000 Revision).

The main precedent for this Bill is the UK Proceeds of Crime Act. Thus this memorandum of objects and reasons also closely follows the explanatory memorandum relating to that Act. Further, the amendments introduced by the Serious Organised Crimes and Police Act, 2005 have also, to a large degree, been incorporated.

PART I

INTRODUCTORY

Clause 1 provides the short title and commencement.

Clause 2 is the interpretation clause.

PART II

THE FINANCIAL REPORTING AUTHORITY

This Part deals with the powers, duties and functions of the Financial Reporting Authority and the Anti-Money Laundering Steering Group.

Clause 3 provides for the continuation of the financial intelligence unit called the Financial Reporting Authority and established under the Proceeds of Criminal Conduct Law (2007 Revision) (hereinafter referred to as “the prior Law”). The Authority consists of a Director, an attorney-at-law, an accountant, and other personnel.

Clause 4 prescribes the powers, functions and duties of the Financial Reporting Authority, and these include -

- (a) receiving various disclosures of information which concern proceeds or suspected proceeds of crime;

- (b) in specified circumstances, ordering a person to refrain from dealing with a person's account for a period not exceeding twenty-one days in accordance with a court order;
- (c) requiring the provision by any person of information (excluding information that need not be disclosed under Part V) for the purpose of clarifying or amplifying a disclosure made to the Financial Reporting Authority or responding to requests by overseas intelligence units; and
- (d) compiling statistical information relating to disclosures made to, or by, the Financial Reporting Authority concerning proceeds of criminal conduct, suspected proceeds of criminal conduct, money laundering, suspected money laundering or the financing of terrorism.

Clause 5 provides for the continuation of the Anti-Money Laundering Steering Group which was established under the prior Law. The Steering Group consists of -

- (a) the Attorney-General;
- (b) the Financial Secretary;
- (c) the Commissioner of Police;
- (d) the Collector of Customs;
- (e) the Managing Director of the Cayman Islands Monetary Authority; and
- (f) the Solicitor General.

The Steering Group is responsible for -

- (a) the general oversight of the anti-money laundering policy of the Government;
- (b) determining the general administration of the business of the Financial Reporting Authority;
- (c) overseeing and inspecting the work of the Financial Reporting Authority;
- (d) reviewing annual reports submitted by the Director under clause 11 (b);
- (e) promoting effective collaboration between regulators and law enforcement agencies; and
- (f) monitoring interaction and co-operation with overseas financial intelligence units.

Clause 6 enables the Governor, after consultation with the Steering Group, to issue policy directions to the Financial Reporting Authority in matters concerning the public interest.

Clause 7 protects the Financial Reporting Authority and the Steering Group from having to disclose information except in accordance with the provisions of the Law or if so required by the Grand Court.

Clause 8 protects the Financial Reporting Authority from liability in damages for anything done or omitted in the discharge or purported discharge of its functions unless it is shown that the act or omission was in bad faith or constituted wilful misconduct or negligence.

Clause 9 protects persons who disclose to the Financial Reporting Authority information concerning proceeds of criminal conduct, suspected proceeds of criminal conduct, money laundering, suspected money laundering or the financing of terrorism.

Clause 10 contains confidentiality provisions.

Clause 11 requires the Director of the Financial Reporting Authority to submit to the Steering Group an annual report reviewing the work of the Authority.

Clause 12 enables the Financial Reporting Authority, with the approval of the Steering Group, to issue guidelines.

Clause 13 requires the Director and other persons with investigation or prosecution powers to co-operate with each other in the exercise of their functions under the Law.

Clause 14 provides that the Director of the Authority shall give the Governor advice and assistance in relation to matters connected with the operation of the legislation and which are designed to help reduce crime.

PART III CONFISCATION

Part III deals with confiscation orders.

Clause 15 sets out the circumstances in which confiscation orders under Part III of the legislation can be made. Confiscation orders may be made in the Grand Court or summary court. Under the legislation, a confiscation order may be made following any conviction in the Grand Court or the summary court. The confiscation procedures are mandatory: the Grand Court must proceed with them where asked to do so by the Attorney-General.

Clause 15 specifies the nature of a confiscation order under the legislation. It is an order to a convicted defendant to pay a sum of money representing the defendant's benefit from crime. The approach of the legislation to confiscation therefore reflects that adopted by the existing legislation.

The clause also makes it clear that Part III provides for confiscation of the defendant's benefit from either his "general criminal conduct" or his "particular criminal conduct". General criminal conduct means any criminal conduct of the defendant's, whenever the conduct occurred and whether or not it has ever formed the subject of any criminal prosecution. Particular criminal conduct means the offences of which the defendant has been convicted in the current proceedings, together with any taken into consideration by the court in passing sentence. Thus general criminal conduct includes particular criminal conduct.

Confiscation is by reference to the defendant's benefit from his general criminal conduct where he is identified by the court on conviction as having a criminal lifestyle. This is determined by reference to the nature of the offence or offences of which he has been convicted in the current proceedings or certain previous proceedings. The offences in question are specified in clause 68, read in conjunction with Schedule 1. If the court decides that the defendant does not have a criminal lifestyle, confiscation is by reference to his benefit from his particular criminal conduct.

Clause 16 specifies how the amount recoverable under a confiscation order is to be calculated. The method of calculation is much the same as in the existing confiscation statutes. The amount is the amount of the defendant's benefit from either his general criminal conduct or his particular criminal conduct (as the case may be), unless the amount available for confiscation is considered by the court and found to be less than the benefit in question, in which case the order must be made in that lesser amount. The amount available for confiscation is described as the available amount (equivalent to the term "the amount that might be realised" in the earlier confiscation legislation) and the amount actually ordered to be confiscated as the recoverable amount (equivalent to "the amount to be recovered" in the earlier confiscation legislation). Subclause (2) affirms a line of case law to the effect that the burden is on the defendant to show that the available amount is less than the benefit and to show the extent of the available amount. Where the court decides the available amount (and it will only do so at the defendant's request), subclause (4) requires it to include a statement of the matters it took into account in deciding the available amount. This is intended to assist enforcement by alerting the enforcing authorities to the property available for confiscation.

Clause 17 describes how the court must work out whether the defendant has benefited from criminal conduct and what the value of that benefit is. Subclause

(2) explains that the court must regard the defendant as having benefited by the value of any property obtained by him from criminal conduct up to the time the court makes its decision. Subclauses (3) to (4) deal with the situation where the court is holding a confiscation proceeding in respect of the defendant's general criminal conduct, and a previous confiscation order or orders has been made against the defendant in respect of such conduct. General criminal conduct means all the defendant's criminal conduct at any time, so a court making a general criminal conduct confiscation order could confiscate the same benefit twice, unless the legislation prevented it. Clause 17 prevents double counting of the same benefit by providing that, once the court has calculated the defendant's benefit from his general criminal conduct, it must deduct the amount ordered to be paid under the last general criminal conduct confiscation order previously made against the defendant. Subclause (4) ensures that a calculation of benefit once made in relation to an offence will apply for the purposes of any subsequent calculation of benefit in respect of general criminal conduct. The provision is not required for particular criminal conduct because the same offences cannot be subject to a second conviction, or taken into consideration for sentencing purposes twice, and therefore there is no risk of confiscating the same benefit from particular criminal conduct twice.

Clause 18 explains how the available amount is to be calculated. It is calculated in the same way as "the amount that might be realised" in the earlier confiscation legislation. The available amount is the value of all the defendant's property, minus certain prior obligations of the defendant's such as earlier fines, plus the value of all tainted gifts made by the defendant. Tainted gifts are described in clause 70.

Clause 19 applies where the court has decided that the defendant has a criminal lifestyle and it is, accordingly, considering the defendant's benefit from general criminal conduct. The clause requires the court to make certain specified assumptions to establish whether the defendant has benefited from general criminal conduct, and, if so, by how much. The court is not, however, permitted to make an assumption in relation to particular property or expenditure if it is shown to be incorrect or there would be a serious risk of injustice if it were made. Where for any reason the court does not make any of the assumptions specified in the legislation, it must nevertheless proceed to decide whether the defendant has benefited from general criminal conduct and decide the recoverable amount, albeit without the assistance of the assumptions.

The clause creates a single scheme under which the assumptions are mandatory in all cases where a person has a criminal lifestyle.

Clause 20 indicates how long the court may allow the defendant to pay the amount due under the confiscation order. At present, there is no limit on the time

that may be allowed. Clause 20 provides that the amount is to be paid immediately, unless the defendant can demonstrate to the court that he needs more time to pay. The Attorney- General will have the right to be heard at any application by the defendant for time to pay, or an extension of time to pay. If the court is satisfied that time to pay is required, it may allow up to six months to pay, and up to a further six months on a later occasion if there are exceptional reasons justifying the extension. In no case, however, will more than 12 months be granted from the day on which the confiscation order is made.

Clause 21 provides that the defendant must pay interest on a confiscation order that is not paid in full by the time allowed.

Clause 22 requires the court to have regard to the confiscation order before imposing a fine or other order involving payment on the defendant, except for a compensation order, but otherwise to leave the confiscation order out of account in sentencing the defendant. It reproduces the effect of existing legislation.

Clause 23 enables the court to postpone the confiscation proceedings on one or more occasions for up to a total of two years from the defendant's conviction, or three months from the date on which any appeal against conviction is disposed of, if the three months ends more than two years after the date of conviction. There is no limit to the period of postponement where there are exceptional circumstances. Where the court does not postpone confiscation proceedings, it must make a confiscation order before it sentences the defendant.

Clause 23 also allows proceedings to be postponed for any reason. This enables a postponement to be made if it is required, for example, because a judge is ill. Under earlier confiscation legislation, a postponement can only be made so that the court can obtain further information about the defendant's benefit or the realisable property.

Clause 23 (6) provides that if an application for extension is made before the end of the period of postponement, it does not matter if the court makes a decision on the application after the end of the period of postponement. This deals with the situation where an application is made in time but, because of listing difficulties, the court cannot hear and make a decision on the application before the existing period of postponement expires.

Clause 23 (9) prevents a confiscation order from being quashed, merely because there has been some procedural irregularity in the operation of the postponement procedures. But subclause (10) disapplies the provision if the court imposes a fine or other specified order, and then attempts to make a confiscation order subsequently.

Clause 24 provides that the court may sentence the defendant at any time during the period of postponement. The purpose of the provision is to avoid the sentence being delayed while confiscation is considered. The court is not allowed to impose a fine or ancillary order (such as a forfeiture order) when it sentences the defendant in the postponement period because it needs to know the amount of the confiscation order before it does this. However, it may vary the sentence within 28 days of the end of the postponement period by making one or more of these disposals, by which time any confiscation order will have been made. This will, in particular, enable the forfeiture and destruction of drugs to be ordered in a drug trafficking case.

Clause 25 provides that where the Attorney-General requires the court to hold a confiscation hearing, the Attorney-General is required to give the court a statement detailing the defendant's benefit from criminal conduct. The nature of the information in the statement will depend on whether the Attorney-General believes the defendant has a criminal lifestyle. If the Attorney-General does believe that the defendant has a criminal lifestyle, under subclause (4) the statement must include information relevant to the making of the assumptions and for the purpose of enabling the court to decide if it should not make an assumption. The statement will therefore include information about matters known to the prosecutor which could cause the court to decide that making an assumption would give rise to a serious risk of injustice.

Clause 25 also provides that where the court holds a confiscation hearing of its own volition, it may require the Attorney-General to present a statement.

Clause 26 provides for the defendant's response to the statement of information. The statement of information procedure is designed to provide a quick and effective method of identifying the extent of the defendant's benefit, where there is agreement between defendant and Attorney-General, and of identifying areas of dispute, where there is not. Where the Attorney-General serves a statement of information on the defendant, the court may require the defendant to respond separately to every allegation in the statement, and to indicate to what extent each allegation is accepted. Where an allegation is accepted by the defendant, the court may treat the acceptance as conclusive as far as any matters to which it relates are concerned.

Where an allegation is disputed, the defendant must provide particulars (i.e. full details) of any matters relied on. The purpose of the procedure is to identify areas of dispute for the confiscation hearing, where evidence may be brought in relation to the disputed points by the Attorney General or the defendant. Under subclause (3), if the defendant fails to respond to an allegation, the defendant may be treated as having accepted it. Thus, if the defendant fails to respond to a statement of fact, the fact may be deemed to be true. If, for example, the fact in

question is that the defendant spent x sum on y date, and the defendant fails to respond to that, that fact is deemed to be true. However, the defendant is not to be treated as accepting any allegation that he has benefited from general or particular criminal conduct because it is not thought appropriate that the defendant's silence should be conclusive of these matters.

Subclause (6) provides that, where the defendant accepts an allegation that he has benefited from conduct, the acceptance is not admissible in any proceedings for an offence. The exemption is intended to encourage defendants to be more forthcoming by preventing the admissions made from being used in a future prosecution against them or anybody else. Defendants might otherwise be reluctant to admit benefit from criminal conduct which has not been the subject of a prosecution.

Clause 27 empowers the court, at any stage in the confiscation proceedings, to order the defendant to provide any information it needs to enable it to carry out its confiscation functions. The court might use the provision where, for example, the defendant has proposed to rely on certain matters in responding to the statement of information, and the court considers that it requires more information from the defendant in deciding the point at issue.

Where the defendant fails to comply with the court's order without reasonable excuse, subclause (4) allows the court to draw any inference it believes appropriate. However, subclause (5) provides that the power does not detract from any other power the court has to deal with the defendant, notably its power to punish the defendant for contempt of court in refusing to comply with the order.

Subclause (9) contains a provision protecting the defendant from incriminating himself and others. However, it does not prevent the authorities from prosecuting the defendant or another person using other evidence which may come to light following such an admission.

Clauses 28 and 29 enable a confiscation order to be made where none was made in the original proceedings. Clause 30 enables a confiscation order which has already been made to be increased. In all cases, application must be made to the Grand Court within six years of the original conviction. Clause 28 applies where no confiscation hearing was held after the original conviction. Clause 29 applies where a hearing was held, the court decided that the defendant had a criminal lifestyle but had not benefited from his general criminal conduct or that he did not have a criminal lifestyle and had not benefited from his particular criminal conduct. Clause 30 applies where a confiscation order has already been made. It may be used to increase the amount payable under a confiscation order on one or more occasions.

The principle underlying these clauses is that a reconsideration should only be applied for where new evidence comes to light. It is not appropriate for an authority to have evidence at the time of the earlier proceedings, not to apply for a confiscation order on that occasion but to apply for a reconsideration at a later date. Provision is included to reflect this principle.

Some technical provisions are new. Firstly, the earlier legislation requires the court to take into account any fine imposed on the defendant at the original proceedings (to avoid double recovery, since a fine might have been used as a confiscatory measure). The legislation now requires the court also to take into account certain orders made against the defendant in the original proceedings - see clause 28 (7) (c) and (d), 29 (7) (c), and 30 (8) (b). These mainly include forfeiture orders. They have been added because the court might not have made them in the original proceedings if it had made a confiscation order. However, these orders are not to be taken into account if they have already been taken into account by the court in deciding what is free property for the purposes of the revaluation proceedings. This is to prevent the defendant from being allowed a reduction twice in respect of the same property.

Secondly, clauses 28 (8) and 29 (8) put it beyond doubt that, where a compensation order was made post-trial, but not a confiscation order, the court cannot order payment of the compensation out of a confiscation order made at a revaluation hearing under clauses 28 or 29. There is no provision for the revaluation of a compensation order, which has to be settled at the sentencing stage. Therefore, the payment of any compensation should only be ordered out of confiscated monies under clause 22 (2) where a confiscation order is also made in the original proceedings.

Thirdly, clause 30 (9) deals with the situation where both a compensation order and a confiscation order have been made in the original proceedings and the court has directed under clause 22 (2) that the compensation order be paid out of the proceeds of the confiscation order. In this case, the court cannot take the compensation order into account in reconsidering the defendant's benefit. This is because the defendant would then be able to offset the impact of the compensation order twice.

Clause 31 applies where the court made a confiscation order in an amount lower than the defendant's assessed benefit because there was insufficient realisable property to satisfy an order in the full amount. The Attorney General, or a receiver appointed in the case may apply to the Grand Court for the court to recalculate the available amount.

Any number of applications may be made and there is no limitation to the time when an application may be made (in contrast to clauses 28 to 30, under which application must be made within six years of the defendant's conviction). If the court calculates that the available amount has increased, it may vary the amount payable under the confiscation order but may not increase it beyond the defendant's assessed benefit (meaning either the benefit assessed when the confiscation order was originally made or when it was increased on a revaluation under clause 30). Clause 31 (3) requires the court to have regard to any fine, ancillary order or compensation order imposed on the defendant following the original conviction because these may affect the amount the offender is able to pay. However, subclause (3) contains similar technical provision to clause 30 (9) to prevent allowance being made twice in the defendant's favour for the same compensation order.

Where a confiscation order has been made, there is a procedure in the earlier confiscation legislation for the defendant or a receiver appointed in the case to apply to the Grand Court for a "certificate of inadequacy" on demonstrating that the realisable property is insufficient to satisfy the confiscation order. Where the Grand Court issues a certificate of inadequacy, the certificate may be presented to the Grand Court and the amount of the confiscation order must then be reduced.

It has been argued that this certificate of inadequacy procedure is cumbersome and expensive. Clause 32 provides instead for application to be made directly to the Grand Court by the defendant or a receiver appointed in the case.

Under earlier confiscation legislation, there is no provision for writing off a confiscation order. In principle it should not be necessary, as an order cannot be made in a sum greater than the value of the property available to satisfy it and the certificate of inadequacy procedure, as now implemented by clause 32, is available to defendants. The absence of any provision for write-offs has, however, led on occasion to unnecessary practical difficulties, for example, where a court makes a confiscation order based on an assessment of realisable property in the form of foreign currency seized at an airport, and a shortfall in payment of the order arises later due entirely to a change in the value of the currency concerned in the period between the order being made and payment.

Clause 33 therefore provides that where-

- (a) a court has made a confiscation order,
- (b) the Clerk of the Court applies to the court for the discharge of the order; and
- (c) the amount remaining to be paid under the order is less than \$1,000,

the Grand Court may write the order off if the outstanding sum is under \$1,000 and the reason for the shortfall is a fluctuation in exchange rates or some other factor specified in secondary legislation, or some combination of the two. The sum of \$1,000 is variable by order.

Clause 34 also applies only where the Clerk of the Court is enforcing a confiscation order. It deals with the situation where a confiscation order has been satisfied almost in its entirety, but a sum of \$50 or less is outstanding. Under these circumstances, the Clerk of the Court may apply to the Grand Court for the confiscation order to be written off. Like clause 33, this clause introduces an exception to the general principle that a confiscation order may not be written off, but this is made subject to judicial oversight, and applies only where a small amount is outstanding. In such circumstances, the recovery of the sum in question would not justify the expense required to recover it. The sum of \$50 is variable by subordinate legislation.

Clause 35 contains provision ancillary to clauses 28 to 30. Its purpose is to make it clear that clause 25 and 26 on statements of information and clause 27 on the provision of information by the defendant apply to reconsideration proceedings as they apply to confiscation proceedings immediately following a conviction.

Clause 36 is the first of a number of clauses dealing with confiscation orders against absconders. The legislation empowers the Grand Court to make a confiscation order against an absconder convicted of, or charged with, any crime.

This clause deals with the situation where a defendant is convicted either in the Grand Court or in a summary court, and then absconds. In the case of a conviction in the summary court, the defendant must have been committed to the Grand Court for sentence or confiscation (and sentence) before absconding. The Attorney-General may apply to the Grand Court for a confiscation order to be made under this clause.

Subclause (2) (e) provides that clauses 28 to 30 (reconsideration) are to apply where a person is still an absconder following conviction. Thus they do all apply where a convicted absconder returns.

Clause 37 deals with absconders who abscond prior to conviction. A confiscation order may only be made against such an absconder if two years have elapsed from the time he absconded. Under the legislation, application is made to the Grand Court by the Attorney-General.

That clause also sets out how clauses 28 to 30 (reconsideration) are to apply where the defendant absconds before he has been convicted. Clauses 28 and 29

do not apply and clause 30 does not apply whilst the offender is an absconder. It is not appropriate for clauses 28 and 29 to apply because they deal with the situation where decisions have been taken after a conviction. Subclause (4) provides that when a court has made a confiscation order in this situation it cannot go on to make another confiscation order if the defendant returns and is convicted.

Clause 38 applies where the Grand Court has made a confiscation order in absentia against an absconder who absconded after proceedings were instituted, but had not been convicted when the confiscation order was made. Where the absconder returns and is convicted of one or more of the charges, the confiscation order made in absentia stands. A new confiscation order is not made. However, the absconder may apply within 28 days of the conviction for a variation of the order made in absentia.

Clause 39 applies where the Grand Court has made a confiscation order in absentia and the absconder returns and is acquitted on all counts or is not proceeded against. On application by the absconder, where he has been acquitted the confiscation order must be discharged. Where the Attorney-General does not intend to proceed or there is undue delay in proceeding, the court has a discretion to discharge the order.

Clause 40 gives the Attorney General new power to appeal against any confiscation order made by the Grand Court, and against any decision of the Grand Court not to make a confiscation order. The appeal lies on any ground because the legislation does not specify the kind of appeal involved. However, only an appeal on a point of law or fact will be possible under these provisions. The reason for this is that the post-conviction confiscation procedures are mandatory and therefore it is not possible for there to be an appeal on the merits in such a case. The appeal will be available where, for example, the Attorney-General believes that the court has failed to take account of property which should be taken account of, or has made some miscalculation concerning the amount of the order.

The Attorney-General cannot appeal against a decision of the Grand Court under clauses 28 and 29 (reconsideration), or under clauses 36 and 37 (convicted and unconvicted absconders). These clauses all grant the Grand Court a wide degree of discretion and it would be possible to give the Attorney-General an appeal on the merits in such a case. The target of his appeal rights in this legislation, however, is not the court's exercise of a discretion but its application of the mandatory confiscation procedures.

Clause 41 provides the Grand Court and Court of Appeal with broad powers. The Grand Court or Court of Appeal may confirm, quash or vary a confiscation order and, where the Grand Court or Court of Appeal decides not to make a confiscation order, it may either go through the confiscation procedures itself or direct the Grand Court or summary court to proceed afresh.

Where the Grand Court or Court of Appeal makes or varies a confiscation order or directs the Grand Court or summary court to go through the confiscation procedures afresh and the Grand Court or summary court has in the meantime imposed a fine or ancillary order such as a forfeiture order on the defendant as part of the sentencing process, subclause (3) requires the court to have regard to the fine or order. However, the court is not required to take account of an order if it has already taken account of the order in working out what the free property held by the defendant is.

Under subclause (6), where a compensation order has been made against the defendant, the Grand Court or summary court proceeding afresh must have regard to it but may not order its payment out of confiscated monies. This is to prevent different treatment on appeal from in the substantive proceedings.

Clause 42 provides inter alia that where the court orders a defendant to pay an amount under this legislation sections 28 and 30 of the Penal Code (2007 Revision) shall have effect as if that amount were a fine imposed on the defendant by the court. A term of imprisonment in default must be served consecutively to the substantive term imposed for the offence and the service of a default term does not prevent the sum due under the confiscation order from being collected subsequently by other means.

Clause 43 provides that where -

- (a) a court varies a confiscation order under clause 30, 31, 32, 38 or 41;
- (b) the effect of the variation is to vary the maximum period of imprisonment applicable in relation to the order; and
- (c) the result is that the maximum period is less or more than the term of imprisonment or detention fixed in respect of the order under section 30 of the Penal Code (2007 Revision);

the court shall fix a reduced or an increased term of imprisonment or detention in respect of the confiscation order in place of the term previously fixed.

Clause 44 sets out the circumstances under which a restraint order, as provided for in the ensuing clauses, may be made. A restraint order has the effect of

freezing property that may be liable to confiscation following the trial and the making of a confiscation order.

Under the earlier confiscation legislation, a restraint or charging order could be made by the Grand Court where proceedings had been instituted or the defendant was to be charged, or an application in respect of further confiscation proceedings has been made or was to be made (for example, for a reconsideration of the defendant's benefit). The legislation makes two fundamental changes to this scheme.

Firstly, the power of the Grand Court to make a charging order is abolished as unnecessary. Secondly, the point at which a restraint order may be made is brought forward in the legislation to any time after an investigation has been started (at present, although a restraint order may be made at the investigative stage, it is only possible to do so where charges are anticipated).

Clause 45 explains the nature and effect of a restraint order. It is an order prohibiting a specified person from dealing with any realisable property held by him. Thus it may be made both against the defendant or person under investigation, and any other person holding realisable property. Subclause (3) provides for exceptions to be made for reasonable living and legal expenses and for carrying on any trade, business, profession or occupation. Subclause (4) prevents funds under restraint from being released to the defendant or the recipient of a tainted gift for legal expenses incurred in relation to the offences in respect of which the restraint order is made.

Subclause (5) gives the court the power to make such order as it believes is appropriate for the purpose of ensuring that a restraint order is effective. These will include, for example, the power to order a person to disclose his assets. Failure to comply with a restraint order or an order provided for in subclause (5) will fall to be treated as contempt of the Grand Court. Subclause (6) provides that a restraint order cannot be made in relation to any property subject to a charging order under any of the earlier confiscation legislation, reflecting the principle that a restraint order and a charging order should not be made in relation to the same property.

Clause 46 lays down who may apply for a restraint order under the legislation, and sets out criteria like those in the earlier confiscation legislation for the variation or discharge of restraint orders.

In clause 47 it is important to note that there is no right of appeal against the Grand Court's decision to make a restraint order. The appeal lies only against the Grand Court's decision to vary or discharge an order (or not to vary or discharge

it). A person dissatisfied with a restraint order must first apply to the Grand Court for its variation or discharge before any appeal to the Court of Appeal is possible. This is because most restraint orders are likely to be made *ex parte* so the Grand Court will not have had the opportunity of hearing the defendant unless he applies to vary the restraint order.

Clause 48 allows a constable or a customs officer to seize any property subject to a restraint order to prevent its removal from the Islands.

Clause 49 allows the admission of hearsay evidence for certain purposes while clause 50 contains safeguards in relation to such evidence.

Clause 51 contains ancillary provision relating to restraint orders. It re-enacts provision from earlier confiscation legislation. The main purpose of the clause is to ensure that where a restraint order affecting land is applied for, its effect may be reinforced by taking action at the Land Registry to prevent the disposal of the land in question.

Receivers perform two quite different functions under the legislation. They manage property pending the defendant's conviction (and sometimes afterwards) and they dispose of it to satisfy the confiscation order. These receivers are known in practice as "management" and "enforcement" receivers respectively. The legislation seeks to deal separately with the two types of receivers' functions.

Clause 52 (1) enables a management receivership or enforcement receivership to be appointed where a restraint order has been made.

Clause 52 (2) sets out the powers that the court can confer when ordering a receivership. They are based on the powers that receivers use in practice under the earlier legislation to manage property pending conviction and confiscation. Subclause (7) prevents the powers from being exercised in relation to property subject to a charging order under earlier confiscation legislation.

Clause 53 deals with the application of proceeds of enforcement.

Clause 54 provides that where a receiver is appointed from the private sector and there are no assets or insufficient assets from which his fees can be paid, such reasonable fees as he may charge or as may remain unpaid after the application of the assets shall be paid by the government.

Clause 55 prevents certain actions from being taken against property subject to a restraint order without the leave of the Grand Court. It also gives any court

dealing with property proceedings the power to stay them, or allow them to continue, if it learns that a restraint order has been applied for or made.

Clause 56 protects receivers from liability for anything done by them to property which is not realisable property, unless they are negligent. It replicates earlier legislation and protects the receiver if he inadvertently deals with the property of third parties.

Clause 57 relates to receivers appointed under clause 52. The clause enables such receivers to apply to the Grand Court for directions as to the exercise of their powers. It also enables any person affected by any action taken or to be taken by such receivers to challenge the action in the Grand Court. The person affected may be the defendant, the recipient of a tainted gift from the defendant or some other person.

Clause 58 explains who may apply for the variation or discharge of a receivership order. It also indicates when the court has to discharge a management receivership order.

Clause 59 results from the new formal distinction in the legislation between management and enforcement receivers. Its purpose is to ensure that any property in the hands of a management receiver is handed over to an enforcement receiver when appointed (except property realised for the management receiver's remuneration and expenses).

Clause 60 provides rights of appeal to the Court of Appeal against decisions of the Grand Court relating to receivership matters.

Clause 61 provides the summary court with a new power to order any realisable property in the form of money in a bank or building society account to be paid to the Clerk of the court in satisfaction of a confiscation order. The power is only available where a confiscation order has been made, time to pay has expired, the confiscation order is being enforced by the court and the money is subject to a restraint order.

The summary court may order a bank or building society which fails to comply with one of the new orders to pay a sum of up to \$5,000. It also provides that this sum is to be treated as if it were adjudged to be paid by a conviction of the court.

Clause 62 makes provision about how the Grand Court and receivers appointed under the legislation are to exercise their powers. It emphasises that the satisfaction of a confiscation order takes precedence over any other obligations of the defendant or the recipient of a tainted gift from the defendant.

Where a confiscation order has not yet been made, the legislation requires the powers to be exercised with a view to maintaining the value of the amount available for confiscation. This will enable management receivers to dispose of depreciating assets. Subclause (4), however, enables the defendant or the recipient of a tainted gift to challenge the management receiver's decision to dispose of a particular asset on the grounds that the asset is irreplaceable. The provision has regard to the fact that the defendant has not been convicted at this stage and should not, therefore, be obliged to lose irreplaceable assets. It does not apply to enforcement receivers because at the enforcement stage, any realisable property can be used to satisfy a confiscation order.

Clause 63 needs to be read in conjunction with clause 15 (2) (a) (ii). Its effect is that a person may be committed to the Grand Court for confiscation proceedings following a conviction of any offence, indictable or summary, in the summary court. Where the Attorney-General asks the summary court to do so, the court must commit the defendant to the Grand Court under this clause.

Where the defendant is convicted of an either-way offence, subclause (5) requires the summary court to state whether it would have committed the defendant to the Grand Court for sentence anyway. This subclause is required because, under clause 64, the Grand Court's sentencing powers following a committal for confiscation are normally limited to the sentencing powers the summary court would have had in the same case.

Clause 64 provides that, where a person is committed to the Grand Court for confiscation proceedings, the Grand Court will also assume responsibility for the sentencing process.

Clause 65 provides for compensation to be paid to a person whose property has been affected by the enforcement of the confiscation legislation. Compensation is only payable where an investigation is started but proceedings are never brought, or the defendant is not convicted of an offence, or his conviction is quashed, or he is pardoned. In all cases, there must have been a serious default on the part of a person concerned in the investigation or prosecution of the offence concerned. The restriction to serious default cases is based on the principle that the restraint and realisation of property is ancillary to a criminal trial in the same way as the detention of a person pending trial. In neither case is compensation paid on acquittal as a matter of course.

This clause is largely based on earlier legislation except that the provisions have been extended to cover the situation where an investigation is started but proceedings are never brought. Under the legislation, it will be possible for a restraint order to be made as soon as a criminal investigation has been started (at

present, this is only possible where proceedings have been started or are about to be). Therefore, compensation will in future be payable, subject to criteria including the serious default test, from the beginning of an investigation, not only where proceedings have been started.

Clause 66 allows compensation to be paid where a person absconds before trial, has a confiscation order made against him, and subsequently secures a variation or discharge of the order by the Grand Court. The provision is not limited to serious default (as in clause 65) because it is considered that the court should be able to exercise a more flexible approach in circumstances where a confiscation order has been made without the defendant having been tried.

Clause 67 sets out the conditions under which requests for assistance in the freezing and realisation of property may be made by the Attorney-General to other jurisdictions outside the Islands.

All outgoing requests must only be made with the authority of the Governor. Requests may be made for a prohibition on dealing with property or additionally, where a confiscation order has been made, the realisation of property. It will be noted that under subclause (1)(a), a request may be made where any of the conditions in clause 44 is satisfied. This will enable the Attorney-General to request an asset freeze abroad before any restraint order has yet been made in the Islands, as long as the conditions for making a restraint order are satisfied at the time.

Clause 68 must be read in conjunction with clause 15 and Schedule 1. As explained in the note on clause 15, the question of whether a person has a criminal lifestyle is central to the operation of Part III of the legislation, because it determines whether the defendant is subject to the confiscation of benefit from his particular criminal conduct or his general criminal conduct. Clause 68 sets out in detail the criteria that govern whether or not a person has a criminal lifestyle.

The criminal lifestyle regime is based on the principle that an offender who gives reasonable grounds to believe that he is living off crime should be required to account for his assets, and should have them confiscated to the extent that he is unable to account for their lawful origin. The criminal lifestyle tests, therefore, are designed to identify offenders who may be regarded as normally living off crime. Under clause 68, a person has a criminal lifestyle if he satisfies one or more of the tests set out in that clause.

The first test is that he is convicted of an offence specified in Schedule 1. Subclause (7) enables the Governor in Cabinet to amend Schedule 1 by order. The second test is that the defendant is convicted of an offence of any

description, provided it was committed over a period of at least six months and he obtained not less than \$5,000 from that offence or any others taken into consideration by the court on the same occasion. The third test is that the defendant is convicted of a combination of offences amounting to "a course of criminal activity".

The third test is more complicated than the other two. The defendant satisfies it if he has -

- (a) been convicted in the current proceedings of three or more offences of any description from which he has benefited; or
- (b) he has been convicted in the current proceedings of any one such offence and has other convictions for any such offences on at least two separate occasions in the last six years.

In addition, the total benefit from the offences and/or any others taken into consideration by the court on the same occasion (or, in the case of (b), occasions) must be less than \$5,000.

Clause 69 defines criminal conduct as any conduct constituting an offence in the Islands or which (if it took place abroad) would constitute an offence in the Islands. There is no more restriction on the type of offence. Under the legislation, the Grand Court will only need to consider whether the defendant has benefited from any conduct which is, or would be, contrary to the criminal law of the Islands. Clause 69 also defines "general criminal conduct" and "particular criminal conduct".

Clause 69 also provides that a person benefits from criminal conduct if he obtains property as a result of or in connection with the conduct. This unites in one new provision two similar but not identical definitions in the earlier confiscation legislation relating to drug trafficking, and that relating to other offences. Under the earlier drug trafficking legislation a person benefits from drug trafficking if he receives any payment or reward in connection with drug trafficking carried on by him or another person. Under the earlier legislation relating to other offences, a person benefits from an offence if he obtains any property as a result of or in connection with its commission.

Clause 70 is another clause which aligns two similar but slightly different provisions in the earlier drug and non-drug confiscation legislation (where a tainted gift is referred to as a "gift caught by this Law"). Like this legislation, the earlier legislation enables gifts made by the defendant to other persons to be recovered in satisfaction of the confiscation order, and makes ancillary provision (for example, to enable assets of the recipient of a gift to be placed under restraint).

The new scheme provides that, where the court has decided that the defendant has a criminal lifestyle, any gift made by the defendant to any person in the period beginning six years before the commencement of proceedings is caught, together with any gift made at any time out of the proceeds of crime. This is relevant both at the confiscation hearing and for the purposes of enforcement. If the court decides that the defendant does not have a criminal lifestyle, only gifts made since the beginning of the earliest of the offences committed are caught. Again, this is relevant at the confiscation hearing and for the purposes of enforcement.

However, in relation to a time before the court has decided whether the defendant has a criminal lifestyle, for example, at a pre-trial restraint hearing, the wider definition of tainted gifts applies. When making a restraint order, the court must exercise its discretion as to how much property to restrain by reference to the size of the confiscation order that may eventually be made. So, although a court can technically apply the wider definition of tainted gifts at the restraint stage, if it is clear at that time that the defendant does not have a criminal lifestyle and that therefore the narrower definition will apply at the confiscation hearing, the court will have to take this into account when making the restraint order.

Clause 71 makes it clear that a gift includes a transaction for a consideration which is significantly less than the value of the gift at the time of the transfer; for example, if the defendant sells a car worth \$10,000 at the time of the transfer for \$2,000. This is a departure from the earlier legislation, where an undervalue transaction is defined as the difference between the value of the property when the defendant received it and its value at the time of the transfer. The old definition could cause injustice when the property transferred at an undervalue has depreciated in value between its receipt by the defendant and its transfer.

Clauses 72 to 74 set out how the court is to work out the value of property held by a person, the value of property obtained from criminal conduct and the value of a tainted gift. These clauses broadly reproduce the property valuation principles set out in the earlier legislation.

Clause 75 introduces the new concept of free property as any property that is not subject to certain kinds of forfeiture and deprivation orders. The underlying principle is that property already subject to one of these orders made in earlier proceedings should not be included in the calculation of the amount available for confiscation because it is already accounted for. In addition, property is not free if it is subject to certain orders under Part IV of the legislation on civil recovery.

Clause 76 defines realisable property by reference to the free property of the defendant and the recipient of a tainted gift.

Schedule 1 should be read in conjunction with clauses 16 and 68. It lists offences which are always criminal lifestyle offences. An offender convicted of one instance of any of these offences has a criminal lifestyle under the legislation.

These offences include certain drug trafficking offences such as the offence of allowing premises to be used for drug related activities; money laundering offences; offences associated with professional criminals, organised crime and racketeering (for example, counterfeiting, intellectual property offences) and which in some cases are also of major public concern (for example, arms trafficking, trafficking for the purposes of sexual exploitation).

PART IV

CIVIL RECOVERY OF THE PROCEEDS, ETC., OF UNLAWFUL CONDUCT

Clause 77 (1) explains that this Part of the legislation has two purposes. One is to enable the Attorney-General to bring civil proceedings in the Grand Court to recover property that is or represents property obtained through unlawful conduct (civil recovery). This is an entirely new right of action.

The second purpose of Part IV is to enable cash which is or represents property obtained through unlawful conduct, or is intended to be used in such conduct, to be forfeited in civil proceedings before a summary court.

The main components introduced in this clause are individually explained in later clauses. The meaning of “property” is explained in clause 132 (4); “unlawful conduct” at clause 78; “property obtained through unlawful conduct” in clause 79; and 'recoverable property' at clauses 123 to 129.

Subclause (2) makes it clear that civil recovery and cash forfeiture proceedings may be brought whether or not proceedings have been brought for an offence in connection with the property. Cases where criminal proceedings have not been brought would include cases where there are insufficient grounds for prosecution, or where the person suspected of the offence is outside the jurisdiction or has died. Cases where criminal proceedings have been brought may include cases where a defendant has been acquitted, or where a conviction did not result in a confiscation order. However, clause 127 makes clear that property is not recoverable if it has been taken into account in deciding the amount to be paid under a confiscation order.

Clause 78 defines conduct occurring in the Islands as unlawful if it is unlawful under the criminal law of the Islands.

Subclause (2) extends the definition of 'unlawful conduct' to include conduct which occurs outside the Islands and is unlawful under the criminal law of that country, and would be unlawful if it occurred in the Islands. The effect of this provision is to enable property which has been obtained through conduct abroad to be recovered, or cash which has been so obtained to be forfeited, if the conduct was unlawful where it took place and would be unlawful in the Islands and to enable cash which is intended for use abroad to be forfeited if the conduct for which it is intended would be unlawful both in the Islands and in the country where it was intended to occur.

Subclause (3) makes it clear that the test the court must use in determining whether matters alleged to constitute unlawful conduct have occurred or whether any person intended to use cash for unlawful conduct is the balance of probabilities. That is the normal standard of proof applicable in civil proceedings. The criminal standard of proof, under which matters must be proved beyond reasonable doubt, does not therefore apply in civil recovery or cash forfeiture proceedings.

Clause 79 (1) explains what it means to obtain property through unlawful conduct. A person will obtain property through unlawful conduct if he obtains it -

- (a) by the conduct - for example by stealing it, or by obtaining it by means of dealing in illicit drugs; or
- (b) in return for the conduct - for example by being paid to commit murder or arson, or taking a bribe to give false evidence or corruptly award a contract.

The purpose of subclause (2)(a) is to ensure that property counts as having been obtained through unlawful conduct regardless of any investment in that conduct. So if a person buys illicit drugs with honestly come by money, and sells them at a profit, the whole of the proceeds of the sale will count as having been obtained through unlawful conduct, and not just the profit.

Subclause (2)(b) provides that it is not necessary to show that property was obtained through a particular kind of unlawful conduct, so long as it can be shown to have been obtained through unlawful conduct of one kind or another. So it will not matter, for example, that it cannot be established whether certain funds are attributable to drug dealing, money laundering, brothel-keeping or other unlawful activities, provided it can be shown that they are attributable to one or other of these in the alternative, or perhaps some combination.

Clause 80 explains where court proceedings for civil recovery are to take place and how they are to be initiated.

Under subclause (1) the Attorney-General may take proceedings against any person whom he thinks holds recoverable property. Civil recovery proceedings are to take place in the High Court.

The Grand Court shall issue a claim form in respect of the property at the request of the Attorney General. Under subclause (2), the Attorney-General must serve the claim form on the person whom he thinks holds the recoverable property (the respondent) and, unless the court dispenses with service, on any person who holds associated property which the Attorney-General wishes to be subject to a recovery action. Holding property includes holding an interest in property. Associated property is defined in clause 81 and the circumstances in which it may be the subject of a recovery order are set out in clauses 99 to 101. Under subclause (3) the claim form must either specify the property to which it relates or describe it in general terms, and state whether it is alleged to be recoverable property or associated property.

Sometimes only part of a property may be recoverable, or there may be several interests in a property, some of which are not recoverable. The non-recoverable part of or interest in the property is described as “associated property”.

Clause 81 (1) defines “associated property”. In paragraph (a) the associated property might be a tenancy in a recoverable freehold. In paragraph (b), where a lease in a freehold block of flats had been purchased with recoverable property, another lease in the same block bought with legitimate money would be associated property. In paragraphs (c) where two people buy a car together, one with recoverable cash and one with legitimate cash, the share of the person who bought with legitimate cash is the associated property. In paragraph (d), where a painting is recoverable property but it had been framed using legitimate money, the frame would be associated property.

Associated property may be held by a third party or by the respondent, for example where the respondent mixes recoverable property with his own legitimate property.

Clauses 82 to 85 provide for freezing orders.

Clause 82 (1) provides that wherever in the Law the Attorney-General may take proceedings for a recovery order in the Grand Court, he may apply to the court for a property freezing order (whether before or after starting the proceedings). Subclause (2) explains that a property freezing order is an order that -

- (a) specifies or describes the property to which it applies; and

- (b) subject to any exclusions (see clause 84 (1) (b) and (2)), prohibits any person to whose property the order applies from in any way dealing with the property.

Under subclause (3), an application for a property freezing order may be made ex parte if the circumstances are such that notice of the application would prejudice any right of the Attorney-General to obtain a recovery order in respect of any property. The court may, under subclause (4), make a property freezing order on an application if it is satisfied -

- (a) that there is a good arguable case -
 - (i) that the property to which the application for the order relates is or includes recoverable property; and
 - (ii) that, if any of it is not recoverable property, it is associated property; and
- (b) that -
 - (i) the property to which the application for the order relates includes property alleged to be associated property; and
 - (ii) the Attorney-General has not established the identity of the person who holds it and the Attorney-General has taken all reasonable steps to do so.

Clause 83 (1) provides that the court may at any time vary or set aside a property freezing order and (as per subclause (2)), if the court makes an interim receiving order that applies to all of the property to which a property freezing order applies, it shall set aside the property freezing order. If the court makes an interim receiving order that applies to some but not all of the property to which a property freezing order applies, it shall vary the property freezing order so as to exclude any property to which the interim receiving order applies (subclause (3)).

If the court decides that any property to which a property freezing order applies is neither recoverable property nor associated property, it shall vary the order so as to exclude the property (subclause (4)).

Under subclause (5), before exercising power under that Part to vary or set aside a property freezing order, the court shall (as well as giving the parties to the proceedings an opportunity to be heard) give such an opportunity to any person who may be affected by its decision; but this does not apply where the court is acting as required by subclause (2) or (3).

Clause 84 (1) prescribes that the power to vary a property freezing order includes (in particular) power to make exclusions as follows -

- (a) power to exclude property from the order; and

- (b) power, otherwise than by excluding property from the order, to make exclusions from the prohibition on dealing with the property to which the order applies.

For convenience, subclause (2) provides that exclusions from the prohibition on dealing with the property to which the order applies (other than exclusions of property from the order) may also be made when the order is made.

Subclause (3) provides that an exclusion may, in particular, make provision for the purpose of enabling any person: (a) to meet his reasonable living expenses; or (b) to carry on any trade, business, profession or occupation. An exclusion may be made subject to conditions (subclause (4)). It further provided in that regard under subclause (5) that if excluded property is not specified in the order it shall be described in the order in general terms.

Under subclause (7), the power to make exclusions shall, subject to subclause (5), be exercised with a view to ensuring, so far as practicable, that the satisfaction of any right of the Attorney-General to recover the property obtained through unlawful conduct is not unduly prejudiced. However, under subclause (8), subclause (7) does not apply where the court is acting as required by clause 83 (3) or (4).

Clause 85 (1) provides that where a property freezing order has effect -

- (a) the court may stay any action, execution or other legal process in respect of the property to which the order applies; and
- (b) no distress may be levied against the property to which the order applies except with the leave of the court and subject to any terms the court may impose.

Under subclause (2), if a court (whether the Grand Court or any other court) in which proceedings are pending in respect of any property is satisfied that a property freezing order has been applied for or made in respect of the property, it may either stay the proceedings or allow them to continue on any terms it thinks fit.

If a property freezing order applies to a tenancy of any premises, no landlord or other person to whom rent is payable may exercise the right of forfeiture by peaceable re-entry in relation to the premises in respect of any failure by the tenant to comply with any term or condition of the tenancy, except with the leave of the court and subject to any terms the court may impose (subclause (3)).

Before exercising any power conferred by this clause, the court shall (as well as giving the parties to any of the proceedings concerned an opportunity to be heard)

give such an opportunity to any person who may be affected by the court's decision (subclause (4)).

Clause 86 (1) provides that in exercise of the powers contained in the Public Service Management Law, 2005 but subject to subclause (2), there shall be appointed in the Portfolio of Economics and Finance an Official Receiver who shall perform such functions as may be specified under this Law but otherwise be governed by that Law. Under subclause (2), before making the appointment referred to in subclause (1) the appointing officer is required to consult the Chief Secretary, Attorney-General and Financial Secretary in relation to the identity of the person to be appointed.

Subclause (3) further provides that wherever under the Law reference is made to a receivership ordered by a court, such receivership shall be read and construed as a receivership to be performed by the Official Receiver but where, in the opinion of the Official Receiver, it is inexpedient for the Official Receiver to perform that role in a particular case or class of cases, the Official Receiver shall notify the court and the court may appoint a receiver from the private sector.

By virtue of subclause (4), where a receiver from the private sector is so appointed, he shall have all the powers, duties and obligations of the Official Receiver as are set out in this Law and which are consistent with his private-sector status.

Clauses 87 to 95 make provision for “interim receiving orders”. Under clause 87 (1) interim receivership procedure may - but need not always - form the preliminary stage of civil recovery procedure.

An “interim receiving order” is, as subclause (2) explains, a court order for -

- (a) the detention, custody or preservation of property which is claimed to be recoverable property or associated property; and
- (b) the appointment of an interim receiver in respect of that property.

The first step in the procedure is for the Attorney-General to make an application to the Grand Court for an interim receiving order. The Attorney-General may do this even though he has not yet issued the claim form. And he may do so without putting any interested party on notice that he is doing so, if giving notice would prejudice his right to recover the property (subclause(3)). It may be necessary to act swiftly and without alerting potential parties, for example, to prevent property from being concealed or disposed of.

The court may make an interim receiving order only if the conditions set out in subclauses (5) are satisfied. The Attorney-General must satisfy the court that -

- (a) there is a “good arguable case” that the property in question is either recoverable or associated property (the “good arguable case” test is already used by the civil courts for applications for injunctions to freeze disputed property during litigation so that ultimate enforcement of judgment cannot be frustrated. (Freezing injunctions were formerly known as “Mareva” injunctions); and
- (b) if the property in relation to which the order is sought includes associated property, he has either identified or has taken all reasonable steps to establish the identities of the person(s) holding that property (if the interim receiving order is made or the proceedings otherwise go ahead, the Attorney-General will have to put these persons immediately on notice under clause 80 (2)).

The characteristics of an interim receiving order are spelled out more fully at clauses 88 to 100.

The detailed functions of an interim receiver will be conferred by the Grand Court's order itself. The Court's discretion to confer whatever powers it considers appropriate to the circumstances of an individual case are at large, provided always they are for the purposes set out at clause 88 (1) and (2), i.e. the detention, custody or preservation of the property or establishing whether it is recoverable or associated property or whether other property is recoverable property in relation to the same unlawful conduct.

Clause 88 (1)(a) introduces Schedule 2, which makes explicit mention of some of the more significant powers that the court may choose to confer on an interim receiver. An explanatory note about Schedule 2 is included below.

Although the Grand Court has a wide discretion over the powers and functions that may be conferred on an interim receiver, there are some duties under which he must always be placed. Subclause (2) sets these out. He will always be required to take the necessary steps to establish -

- (a) whether in his view the property is to any extent recoverable or associated property; and
- (b) whether there is any other property which is recoverable in relation to the same unlawful conduct and if so who holds it.

Until the interim receiving order or the issuing of the claim form (whichever comes first), the Attorney-General has access to the civil investigation powers set out in Part VI. Thereafter, the Attorney-General ceases to have access to these powers and the duty of taking whatever further steps are needed to establish the facts about the property is placed upon the interim receiver acting under the court's direction.

Subclause (3) provides legal protection for the interim receiver if he mistakenly, but honestly and reasonably, deals with property that is not the property specified in the order. He will have immunity from any legal claims in respect of loss or damage caused by such dealing, unless it can be shown that it was caused by his negligence.

Schedule 2 makes explicit mention of some of the more significant powers which the Grand Court may choose to confer on an interim receiver or interim administrator. These include powers to seize the relevant property (paragraph 1), and to obtain information about it and require persons to answer questions, irrespective of any restrictions on the disclosure of information which would otherwise apply (paragraph 2). Self-incrimination is therefore to be no answer to the requirement to answer questions, but evidence so obtained cannot be used in any prosecution of the person who provided it (other than in certain restricted circumstances, for example, a prosecution for perjury). Use of the evidence against that person is, however, permissible in civil recovery proceedings.

The interim receiver may be given specified powers of entry, search and seizure (paragraph 3) and powers to oblige persons to assist him in the exercise of those powers (paragraph 4)). Paragraph 4 also provides that an order made under paragraphs 2 and 3 must make provision in respect of legal professional privilege. Under paragraph 5 an interim receiver may also be given powers to manage property which include -

- (a) selling perishable or depreciating property;
- (b) where the property in question comprises a trade or business, carrying on that trade or business; and
- (c) incurring capital expenditure in respect of the property.

The main purpose of clause 89 is to ensure that where an interim receiving order affecting land is applied for, its effect may be reinforced by taking action at the Land Registry to prevent the disposal of the land in question.

Clause 90 provides for certain duties to be placed on a person whose property is subject to an interim receiving order. The order may require the person to bring the property, or any documents relating to the property, to a place specified by the interim receiver or to the custody of the receiver. This could also apply where the property or documents are located outside the part of the Islands where the order is made. The order may require the person to do anything the interim receiver reasonably requires him to do for the preservation of the property.

Clause 91 provides that an interim receiver, a respondent, any party to the proceedings and anyone else affected by the receiver's actions (this includes the Attorney-General) will be able to ask the court to clarify the receiver's powers.

All parties and any persons who may be interested will be able to put their views to the court before it acts. There is also power for the court to vary or set aside the interim receiving order. For example, the court may be asked by the interim receiver to extend the interim receiving order to additional property in respect of which evidence has come to light. Here too, the court must give an opportunity to be heard to the parties and any persons who may be affected by the court's decision.

Clause 92 (1) provides that the interim receiving order must prevent any dealing with the property to which it applies, subject to any exclusions which may be made under the rest of the clause. This is to prevent the property being dissipated pending a resolution of the civil recovery case. "Dealing" is explained in clause 132 (10) as including disposing of the property, taking possession of it or removing it from the Islands. A person who has notice of the order and contravenes it will be liable to be proceeded against for contempt of court.

Subclause (2) states that exclusions may be made either when the order is made or, later, by variation. Subclause (3) provides that an exclusion may in particular provide for property to be used for meeting any person's reasonable living expenses or to carry on a trade, business, profession or occupation. Living expenses would be likely to include the living expenses of dependants. But the court's discretion to release property is limited by subclauses (4) (no release of property to meet legal expenses arising from civil recovery) and (6) (the court must ensure that the Attorney-General's "right to recover" the property (defined in clause 132 (10)) is not be unduly prejudiced).

Clause 93 enables the existence of an interim receiving order to have an effect on collateral legal proceedings affecting the property in question. Subclause (1) allows the court which has made the order to stay any other legal process, including court proceedings, in respect of the property to which the order applies; and specifies that no distress may be levied against that property other than with the leave of the court.

Subclause (2) allows any court in which proceedings are pending in respect of the property to stay them, or impose terms on their continuation. Under subclause (3), a landlord may not exercise a right of forfeiture by peaceable re-entry on a property to which an order applies, other than with the leave of the court that made the interim receiving order. Before exercising any of these powers, the court must give an opportunity to be heard to the interim receiver (if appointed), the parties to the proceedings and any person who may be affected by the court's decision (subclause (4)).

The court has the power to vary an interim receiving order at any time (clause 91 (3)). Clause 94 makes specific provision for variations of interim receiving orders to have the effect of excluding property from the proceedings altogether. The court may decide before the final trial of the action, for example on an application by an interested person or a report by an interim receiver (see clause 95), that some of the property to which the order applies is neither recoverable nor associated property. The court must in that event exclude this property from the terms of the interim receiving order. The court may also release associated property if satisfied that it may be excluded without materially affecting the right of the Attorney-General to recover in respect of the remainder. If so, it may vary the order accordingly and the excluded property will be released, with or without conditions.

Under clause 95 an interim receiving order must require an interim receiver to take a number of steps to keep the Attorney-General and the court informed. He must report as soon as practicable if he forms the opinion that -

- (a) any property to which the order applies which is claimed to be recoverable property is not in fact recoverable; or
- (b) any property to which the order applies which is claimed to be associated property is not in fact associated property; or
- (c) any property not subject to the order is in fact recoverable by virtue of the same unlawful conduct or is associated property;
- (d) any property to which the order applies is held by someone different to the person identified on the claim form; or
- (e) there has been any material change of circumstances.

The interim receiver must also make a formal report of his findings to the court, and serve copies of it on all those who may be affected by it. This report may comprise a comprehensive account of the nature and origins of, and interests in, the property in question. It will be capable of being used as a basis to establish agreed facts and to identify disputed matters that will fall to be resolved at the final hearing.

Clause 96 sets out what the court must do if it finds any property to be recoverable. Under subclause (1), if the court finds, on the trial of a civil recovery action that any property is recoverable, it must order its recovery. Under subclause (2) a recovery order vests the recovered property in the trustee for civil recovery, whose appointment and functions are set out at clause 97. The making of the order is subject to the limitations set out in the clause and to clauses 97 to 101. There are also certain exemptions set out in clauses 106 and 107.

The recovery order may sever the recoverable element of the property from the remainder if recoverable property and associated property subsist in the same

property, for example, where property is mixed. The order may also impose conditions on how the trustee may deal with the property.

Where it makes a recovery order, or a consent order under clause 102, the court must appoint a trustee for civil recovery.

Schedule 3, which is introduced by clause 97, sets out the principal and ancillary powers of the trustee for civil recovery.

Clause 98 (1) establishes that a recovery order will override any provisions that would otherwise prevent, penalise or restrict the vesting of the property in the trustee for civil recovery. Under subclause (2), rights relating to the property such as those specified here do not automatically come into effect or become exercisable as a result of the vesting of the property. However, under subclause (3), following a recovery order, any such rights will continue to have effect when the property is vested as if no transfer of property has taken place. This applies to any interests created by the recovery order as well as any interests transferred by the order.

A person who has the first right to buy property when it changes hands will not be able to exercise his right to prevent the vesting of recoverable property in the trustee by the recovery order. A person will have first right to buy the property when the trustee, or other person in whom the recovery order vests it, comes to sell it on (paragraph 1 of Schedule 3 gives the trustee the power of sale).

Under subclause (5), the protections provided for any of the rights referred to in subclauses (2) and (3) do not apply if the right itself is the subject of a recovery order.

If a person holding such rights suffers loss as a result of property vesting in the trustee, he may apply to the court for compensation under clause 108 and the court may require compensation to be paid under that clause.

Clause 99 introduces clauses 100 and 101 which explain how associated property and joint property are to be dealt with when a recovery order is made.

Clause 99 (1) provide that clauses 100 and 101 apply where the property to which the proceedings relate includes both recoverable property and associated property where the associated property is specified in the claim form and the form has been served on the person who holds the associated property (if different from the respondent) - or the court has dispensed with service.

Clause 99 (2) and clauses 100 and 101 also apply where the property belongs to joint tenants, and one of the tenants is an 'excepted joint owner', as defined in subclause (2). Specific provision is needed for joint tenants because joint tenants are treated as though they were a single owner of the property at issue. Joint tenancies may arise, for example, where two people have a joint account or own real property jointly. But it might be the case that one of the joint tenants has acquired his joint tenancy with recoverable property and the other has acquired his with non-recoverable property. If so, the second would be an "excepted joint owner" whose interest would not be recoverable (4)).

Clause 100 (1) provides for the situation where a person who holds associated property, or an excepted joint owner, comes to an agreement with the Attorney-General to make a payment to the trustee in lieu of the recoverable property. Where an agreement is reached, the recovery order may then require the person to make the payment to the trustee, rather than vesting the property in the trustee. The order may reflect the agreement by including provision for vesting, creating or extinguishing an interest in the property (subclause (2)). For example, title to the recoverable property may be transferred to the owner of the associated property or the excepted joint owner in exchange for a payment; in effect, he buys out the enforcement authority's interest.

Provisions relating to the amount to be paid are at subclause (3). Subclause (4) provides that where the Attorney-General has agreed that a person has suffered loss as a result of an interim receiving order applying to the property, the payment may take account of the loss and any other relevant circumstances. Subclause (5) establishes that where there is more than one item of associated property or excepted joint owner, the payment to be made is to be agreed between all of them and the enforcement authority. The recovery order must provide that the property concerned ceases to be recoverable (subclause (6)).

Clause 101 applies where no agreement can be reached under clause 100, but the court thinks it would be just and equitable to make provision concerning associated property or joint property. In such cases, the recovery order may provide for the associated property to vest in the trustee; for an excepted joint owner's interest in the property to be extinguished; or for an excepted joint owner's interest to be severed from the recoverable property (subclause (1)).

Where the associated property vests in the trustee or the excepted joint owner's interest is extinguished, the order may provide for the trustee to make a payment in lieu, or for there to be conditions attached to the property in favour of the persons concerned (subclause (2)). There is also provision for the court to create interests in favour of the person with the joint interest or associated property interest. So, for example, the court might order that a joint owner's interest in a house be extinguished, but might at the same time create a right for him to live in

the house for his lifetime (as well, perhaps, as ordering that he be paid compensation).

In deciding what provision to make, the court must have regard to the rights of the persons and the value to them of the property, as well as the interest of the Attorney-General (subclause (3)). Where a person who holds associated property or is an excepted joint owner has suffered loss as a result of an interim receiving order applying to the property, the recovery order may require the Attorney-General to pay compensation of an amount which the court thinks reasonable, having regard to the person's loss and any other relevant circumstances (subclauses (4) and (5)).

Clause 105 gives the parties to civil recovery proceedings the power to settle the proceedings at any time after the claim form has been issued and served. Under subclause (1), the court will have the power to make an order to stay the proceedings on terms agreed by all the parties concerned.

Such an order may provide for the property to which it applies to cease to be recoverable, or make any further provision which the court thinks appropriate (subclause (2)).

Clause 103 provides for limits on recovery under this Part of the legislation. Subject to certain safeguards described elsewhere (e.g., for bona fide purchasers), property is recoverable if -

- (a) it was obtained through unlawful conduct; or
- (b) it 'represents' property obtained through unlawful conduct.

Under clause 124, property may come to "represent" the original property where a person has disposed of the original property and has obtained other property in place of it. Moreover, property obtained in place of representative property may itself become representative property.

Clause 103 (2) provides that items of original and representative property are to be treated as "related" property. If property is recoverable, it may remain recoverable after passing through several hands in a series of transactions. The right of the Attorney-General to trace its claim over the recoverable property is analogous to similar tracing rights in civil law proprietary litigation. Either original or representative property may be traced in this way.

However, there is potential for a large family of related property to grow up as a result of such a series of transactions, comprising the original property and several items of representative property. Each of these items will potentially be recoverable. But if the Attorney-General were to recover the entire family of

recoverable property, that would be disproportionate to its primary right to recover the original property.

Clause 103 also addresses this situation by providing a series of rules designed to ensure that if the Attorney- General seeks to recover items of related property, rather than confining itself to the original property, the court is able to limit its recovery order to what it thinks is necessary to satisfy the Attorney- General's right to recover the original property.

Clause 104 gives examples of circumstances in which the Attorney- General's right to recover property would be satisfied, for the purposes of clause 103.

Clause 105 applies to -

- (a) sums which represent the realised proceeds of property which was vested in the trustee for civil recovery by a recovery order or which he obtained in pursuance of a recovery order; and
- (b) sums vested in the trustee by a recovery order or obtained by him in pursuance of a recovery order.

The trustee must first make any payment required to be made by him following an order made under clause 101. Secondly, he must pay expenses incurred by a person acting as an insolvency practitioner.

Property which has been stolen (or is the result of some other unlawful conduct comprising the deprivation of a true owner of his property) is property obtained through unlawful conduct, and therefore potentially recoverable by the enforcement authority. However clause 106 gives the claims of a true owner precedence over those of the Attorney-General.

Where civil recovery court proceedings have begun in respect of property, a true owner is entitled to request a declaration from the court that he has a valid claim to it because he was deprived of it (or of property which it 'represents') by unlawful conduct. This need not be the unlawful conduct on which the Attorney-General relies. So if, for example, a drug trafficker steals money from a person and invests it in drug trafficking, the Attorney-General may bring proceedings in respect of the property that the drug trafficker has obtained through the drug trafficking. The victim would still be able to claim that part of the property belonged to him, even though the Attorney-General was relying on the drug trafficking, rather than the theft. The effect of such a declaration is that the property ceases to be recoverable by the Attorney- General.

Subclause (2) makes it clear that this exception only applies to the original true owner of property. It would not benefit someone who has for example stolen

property from its original owner, but who in turn has had that property stolen from him. The property would have become recoverable when it was stolen from the original owner; the original owner will be able to request a declaration even if it is stolen again, whereas the person who first stole the property will not.

Clause 107 provides that proceedings for civil recovery may not be taken in respect of certain people in prescribed circumstances.

Regulations by the Governor in Cabinet may exempt a person from having civil recovery proceedings brought against them. The power can be exercised by reference to any sort of description of the person and by reference to specified circumstances.

Civil recovery proceedings may not be taken in respect of cash unless they are simultaneously taking proceedings against other property held by the same person. Proceedings involving cash only may be brought under the summary proceedings provisions.

Recovery proceedings may also not be taken in relation to assets which are intended as security for financial markets or against a person acting as an insolvency practitioner from proceedings in respect of recoverable property he holds or has held in connection with his role as a practitioner.

Clause 108 deals with the case where any property has been made subject to an interim receiving order, but has not in the end been held to be recoverable or associated property, either because the court has so determined or because the claim or the application has been withdrawn. Subjection to the interim receiving order may, despite the duties of the interim receiver to preserve its value, have resulted in losses to the owners of the property.

Under subclause (1), the person whose property it is may apply to the court for compensation for such losses; under subclause (5), the court may order the Attorney-General to pay compensation. Under subclause (2), no application for compensation may be made if the right of the victim has defeated that of the Attorney-General by virtue of clause 106, or if an order has been made following an agreement by virtue of clause 102.

An application must be made within three months of the date on which the court makes a decision the effect of which is that a recovery order cannot be made. If an application is made for leave to appeal, the three months is to run from the date the appeal proceedings are finally concluded; or the date the application for leave to appeal is withdrawn or refused. If the proceedings are discontinued, an

application must be made within three months of the date on which they were discontinued.

Subclauses (6) to (8) provide for compensation in respect of rights of pre-emption, etc., which have become inoperable when the property to which they relate vests under a recovery order.

Subclause (9) provides for the measure of compensation to be at the court's discretion, having regard to the losses suffered and to all other circumstances. If therefore the claimant has himself contributed to the losses through delays, for example, that may be taken into account here.

Clause 109 (1) provides that the Attorney- General may not take proceedings for a recovery order unless he reasonably believes that the total value of the recoverable property is not less than an amount to be specified in an order made by the Governor in Cabinet. The threshold applies only at the time the Attorney-General starts proceedings, or applies for an interim receiving order. As long as the threshold is observed at the start of the proceedings, it will not matter if for example the Attorney-General subsequently discontinues proceedings in respect of certain property and the value of the remaining property is less than the amount specified in the order. The proceedings will be able to continue.

RECOVERY OF CASH IN SUMMARY PROCEEDINGS

Clause 110 is necessary in order to support the powers to seize cash that is the proceeds of unlawful conduct or intended for use in such conduct (clause 114).

The search powers will only be exercisable on private premises where the constable or customs officer has lawful authority to be present. In respect of a constable, this would be where he is exercising his powers of entry under the Police Law and the Criminal Procedure Law and in respect of a customs officer where he is exercising such powers under the Customs Law or other enactment. An officer could also be lawfully present on private premises, if he is there at the invitation of the owner.

By virtue of clause 113 (3), the search powers include the powers to search a person. However, this power does not extend to requiring a person to undergo an intimate or strip search.

Clause 111 provides the safeguard that the search powers in clause 110 may only be exercised where prior judicial authority has been obtained or, if that is not practicable, with the approval of a senior officer. Subclause (1) also recognises that there may be circumstances where it may not even be possible for a constable

or a customs officer to obtain the approval of a judicial officer, in which case approval of a senior officer shall be necessary. If judicial approval is not obtained prior to a search, and cash is either not seized or is released before the matter comes before a court, the constable or customs officer concerned must prepare a written report and submit it to an independent person appointed by the Governor. This report will detail why the constable or customs officer considered that he had the power to carry out the search and why it was not practicable to obtain judicial approval of the search.

Clause 112 provides that the person to whom the reports are submitted is under an obligation to submit an annual report to the Governor in Cabinet. This report will be laid before the Legislative Assembly and be published.

In recognition of the sensitivity of search powers, clause 113 requires the Governor in Cabinet to publish a code of practice setting out how the powers in clause 113 are to be exercised by a constable or customs officer.

This Part of the legislation also deals with the seizure and forfeiture of cash related to unlawful conduct which is being imported into or exported from the Islands. This scheme also provides for the seizure of such cash inland. Clause 120 enables a customs officer or a constable to seize cash at the borders or inland if he has reasonable grounds for suspecting that the cash is recoverable property or intended for use in unlawful conduct. Subclause (2) allows for the seizure of indivisible cash only part of which is under suspicion. An example of this is a single cheque of \$50,000 where the cash under suspicion is only \$25,000. Clause 116 (2) provides that when such cash can be divided on payment into an interest bearing account, the part not under suspicion must be released.

Clause 110 (6) and (7) respectively define cash for the purposes of this Part and enable the Governor in Cabinet to prescribe by order other monetary instruments. Such monetary instruments must be of a kind that can be paid into an interest bearing account, so as to comply with the requirements of clause 116.

The effect of clause 116 is that cash may not be detained for more than 48 hours except by order of a magistrate. A magistrate may make such an order if satisfied that there are reasonable grounds for the officer's suspicion and that the continued detention is justified for the purposes of investigating its origin or intended use. The magistrate may also make an order for continued detention if consideration is being given to the bringing of criminal proceedings, or if such proceedings have been commenced and not concluded. Monies detained would in most cases be paid into an interest bearing account as provided in clause 116 pending the outcome of proceedings.

Clause 117 envisages two situations in which cash or any part of the cash may be released to the person from whom it was seized. Firstly, the summary court may do so in response to an application by the person from whom the cash was seized on the grounds that it is not recoverable property and is not intended for use in unlawful conduct. The fact that only the person from whom the money is seized may apply to the court is intended to prevent the summary court from becoming embroiled in a dispute between the person from whom the cash was seized and the rightful owner of the cash. Secondly, a customs officer or a constable may release cash or any part of it after notifying the summary court if satisfied that the detention can no longer be justified.

Clause 118 enables the summary court to order the forfeiture of cash or any part of it if satisfied that it is recoverable property or is intended for use in unlawful conduct. The balance of probabilities is the evidential standard that applies to the proceedings, this being the normal civil standard of proof.

Where the cash is recoverable property belonging to joint tenants, one of whom falls within the definition in clause 99 (2), the court must not forfeit the cash that it thinks attributable to the "innocent" partner's share. An example of this might be a joint account into which drug trafficking proceeds (dirty money) has been paid by one signatory and clean money by the other. If the former withdraws all the cash and it is subsequently seized, the court must then distinguish between the clean and dirty money. The court may then return to the "innocent" partner his share of the money.

Clause 118 (4) provides that cash cannot be released under any circumstance once an application for the forfeiture of that cash is made, until such time as forfeiture proceedings have concluded.

Clause 119 provides that any party to proceedings in which an order is made under clause 118 for the forfeiture of cash who is aggrieved by the order may appeal to the Grand Court.

Clause 120 provides that cash forfeited under this Part and any accrued interest on it shall be paid into the revenues of the Islands but it shall not to be paid in -

- (a) before the end of the period within which an appeal under clause 119 may be made; or
- (b) if a person appeals under that clause before the appeal is determined or otherwise disposed of.

Clause 121 allows the true owner of detained cash to apply for its release. Two cases are provided for. Subclause (3) relates to a person who claims that some or all of the cash rightfully belongs to him, and he was deprived of it through

unlawful conduct. An example of this would be a person who claims that the cash was stolen from him. If the court is satisfied, it may order the applicant's cash to be released to him.

Subclause (4) relates to the case of any other true owner who is not the person from whom the cash was seized. Here, if the court is satisfied, the cash may be released - but only if the person from whom it was seized does not object. That proviso is intended to prevent the court from becoming involved in a complicated ownership dispute between the person from whom the cash was seized and the rightful owner of the cash. Unlike subclause (3) the court will have to be satisfied that the cash is not recoverable property or intended for use in unlawful conduct before it can release to a claimed owner.

Clause 122 provides that where no forfeiture is made following the detention of cash the person from whom it was seized, or the person to whom the cash belongs, may apply to the court for compensation. In most cases, it is thought that the interest that will have accrued from the deposit of the cash into an interest-bearing account as provided in clause 116 will suffice. If, after 48 hours, cash has not been paid into such an account, then by virtue of subclauses (2) and (3), the court may order the payment of compensation to the value of the lost interest. Subclauses (4) and (5) also give the court further discretion to order the payment of reasonable compensation where loss has occurred as a result of the detention of the cash (even taking into account interest and compensation otherwise payable) and where the circumstances are exceptional. This clause only applies to compensation for loss incurred as a result of the detention of the cash; if an individual has suffered loss for any other reason, this must be pursued elsewhere.

This clause provides that the minimum amount of cash which may be seized should be specified by order of the Governor in Cabinet.

Clauses 123 to 132 apply to both civil recovery and cash forfeiture. Clause 123 defines when property is recoverable, and how the original property may be followed when it is disposed of by the person who originally obtained it or a person who subsequently obtained it. Under subclause (1), property that is obtained through unlawful conduct is recoverable property; as such, it may be recovered by the Attorney-General. However the Attorney-General will not always be able to recover the property from the person who obtained the property through unlawful conduct. The property may, for example, have been sold; or the person may be untraceable or dead. Subclauses (2) and (3) therefore provide that where the property has been disposed of or passed to someone else, it may be 'followed' by the Attorney-General and recovered from that person. If the person to whom the property has been passed then in turn passes it on the Attorney-General will be able to follow the property along the chain of transactions.

The ability to “follow” property is, however, limited in several ways. Recovery depends on the original property continuing to be identifiable as such. And if any of the transactions in question is of the sort set out at clause 127, the chain will be broken and the Attorney-General will no longer be able to follow and recover the property.

Clauses 124 and 125 allow the Attorney-General to recover property which has not itself been obtained through unlawful conduct but which 'represents' such property.

Clause 124 establishes the principle of tracing the original recoverable property if it is disposed of. Under subclause (1), property which represents property which is or has been recoverable, is also recoverable.

Under subclause (2), where a person disposes of either the original recoverable property or representative property, and receives property in return, the property he receives in return becomes representative property and will also be recoverable. For example, if a stolen car is sold, the proceeds of sale will 'represent' the original property and the Attorney-General will be able to 'trace' into those proceeds and recover them. If the proceeds of drug dealing are spent on jewellery, the jewellery itself will represent the original proceeds, and the Attorney-General will be able to recover it.

Like “following” under clause 123, “tracing” is capable of being pursued along a chain of transactions. Under clause 103 (3), where representative property is disposed of, it may be followed into the hands of the person who obtains it; it continues to represent the original property, and is therefore recoverable.

Tracing and following may multiply indefinitely the items of property that are rendered potentially recoverable. However, the Attorney-General will not be able to multiply its total recovery accordingly; limitations on total recovery are placed by clause 103.

Property which was not itself obtained through unlawful conduct at any stage can come to “represent” such property, and therefore be potentially recoverable, not only by being traceable by the Attorney-General under clause 125 but also by having become mixed with recoverable property. Because the ability to follow property under clause 123 is dependent on the property retaining its identity, it may become impossible to follow property when it is mixed into other property.

Subclause (3) gives some illustration of this problem. If cash which is the proceeds of drug dealing is paid into a account which is in credit through deposits of honest earnings, it becomes impossible to identify any individual withdrawals

which may be made from that account as being the “dirty” money rather than the clean.

Clause 126 provides that the property that is recoverable under clauses 123 to 125 is to be taken to include accrued profits; the profits are to be treated as representative property. So, for example, if the Attorney-General can recover money paid into an account, the Attorney-General can recover it with any interest accrued.

Clause 127 constitutes a limitation on the Attorney-General’s ability to follow and trace property; the exceptions set out here also apply to the forfeiture provisions in this Part of the legislation. Clause 127 provides that where, for example, someone is given a yacht in return for a contract killing, and then sells the yacht, the Attorney-General may follow the yacht into the hands of the purchaser and recover it from him. Under subclause (1) if the purchaser paid full value for the yacht, and was unaware of its unlawful provenance, the Attorney-General is not entitled to recover it from him or from anyone else who may subsequently acquire it. The fact that the yacht has ceased to be recoverable property, however, does not prevent the proceeds of the sale of the yacht representing property obtained through unlawful conduct, and themselves being recoverable

Clause 127 (2) ensures that property ceases to be recoverable following successful civil recovery or cash forfeiture proceedings or following disposal in accordance with Part IV powers. For example, if property is sold by an interim receiver in the exercise of his powers, although it may still be 'property obtained through unlawful conduct', or representative of such property, it will not be recoverable in the hands of the recipient and may be recycled in the market in the ordinary way.

Clause 127 sets out other circumstances in which property will cease to be recoverable: for example, where a payment is made following a compensation or restitution order under the Penal Code (2007 Revision) and the sum or property received would otherwise be recoverable; where a claimant obtains property from a defendant in civil proceedings which are based on the defendant's unlawful conduct, and the property would otherwise be recoverable.

Where property is already the subject of a restraint order, or has been taken into account in making a criminal confiscation order it will be excluded from civil recovery.

Clause 128 provides that certain property is not recoverable or associated property if it is prescribed by order or is disposed of in pursuance of a prescribed

enactment. Subclause (2) provides that where property is disposed of in pursuance of a prescribed enactment, it is to be treated for the purposes of clause 103 as though it had been disposed of under a recovery order.

Clause 129 makes some detailed provision about the granting of interests in property. Take, for example, the case of someone who obtains a freehold house through the proceeds of unlawful conduct, and then grants a tenancy of it. At the time the house was 'obtained', the tenancy had no existence. The tenancy, therefore, cannot be described as having been obtained through unlawful conduct, either by the landlord or by the tenant but it is intended to be as recoverable as the property obtained by the same unlawful conduct.

Clause 130 sets out the interrelationship between civil recovery and insolvency proceedings. Broadly, a civil recovery claim will be treated in the same way that any other civil proprietary claim is treated in insolvency proceedings. This means that in most circumstances the Attorney-General will have to apply for leave from the court dealing with the insolvency proceedings to bring or continue civil recovery proceedings.

The clause also covers the interrelationship between cash forfeiture and insolvency proceedings. Under subclause (1), civil recovery proceedings may not be initiated or continued in respect of property which is subject to insolvency proceedings without the leave of the court which is dealing with the insolvency. Under subclause (2), an application for the further detention of cash under the cash forfeiture provisions, where the cash forms part of the insolvency proceedings listed in subclause (3), may not be made without the leave of the insolvency court. An application to the insolvency court may be made without notice, to prevent a potential civil recovery respondent finding out about the Attorney General's intention to bring proceedings but notice must still be given where required to the insolvency practitioner or to the official receiver.

Clauses 131 and 132 provide interpretation provisions for the purposes of this Part. "Disposing" of property is a key feature of the provisions at clause 123 and 124, which deal with following and tracing property. Disposal of property may take place, for instance, -

- (a) where the property is dealt with to some extent only (including where an interest in the property is created - for example where a tenancy is granted out of freehold real property); a disposal might also consist of the grant of an interest in a part;
- (b) where a person makes a payment, in cash or any other kind of property, to another; or
- (c) where property changes hands on death.

Clause 131 (4) is relevant to the protection provided at clause 127(1) for persons who obtain property “for value”. It provides that a person obtains property 'for value' only when he has given executed consideration for it. That means that if someone obtains property in return for a promise to pay for it or to perform some service in exchange, that will not count as having 'obtained for value' until the payment is actually made or the service performed.

PART V

MONEY LAUNDERING AND OTHER CRIMINAL CONDUCT

Clause 133 creates one of three principal money laundering offences. The other two offences are to be found in clauses 134 and 135. As a result of the definition of criminal property at clause 144, all three principal money laundering offences now apply to the laundering of an offender's own proceeds of crime as well as those of someone else.

Along with clauses 134 and 135, clause 133 replaces the parallel drug and non-drug crime money laundering offences with single offences that do not distinguish between the proceeds of drug trafficking and the proceeds of other crimes.

The clause 133 offence would be committed where a person concealed, disguised, converted, transferred or removed from the jurisdiction criminal property. Criminal property is defined at clause 144 (3) as being property which the alleged offender knows or suspects constitutes or represents benefit from any criminal conduct as defined in clause 144 (2).

The general penalties for money laundering and related offences are found in clause 141. Under subclause (1), a person who is guilty of an offence under clause 133, 134 or 135 is liable -

- (a) on summary conviction, to a fine of five thousand dollars or imprisonment for a term of two years, or to both; or
- (b) on conviction on indictment, to imprisonment for a term of 14 years or to a fine or to both.

And under subclause (2), a person who is guilty of an offence under clause 136, 137, or 139 is liable -

- (a) on summary conviction, to a fine of imprisonment for a term of two years or to a fine of \$5000 or to both; or
- (b) on conviction on indictment, to imprisonment for a term of 5 years or to a fine or to both.

A person who is guilty of an offence created under clause 143 is liable to the penalties that may be prescribed in an order made under that clause.

To establish an offence under clause 134, the Attorney- General would need to establish that a person entered into or became concerned in an arrangement which he knew or suspected would make it easier for another person to acquire, retain, use or control criminal property and that the person concerned also knew or suspected that the property constituted or represented benefit from criminal conduct. Clause 134 includes the same defences against committing the offence, as are included in clause 133.

Clause 135 deals with the acquisition, use and possession of criminal property. As in clauses 133 and 134, by reason of clause 144, this offence is only committed where a person knows or suspects that the property which is acquired etc constitutes or represents his own or another's benefit from criminal conduct.

Clause 136 sets out the obligation to report suspicions of money laundering to the authorities. Subclause (1)(b) introduces a negligence test which means that the failure to disclose offence would also be committed where a person has reasonable grounds for knowing or suspecting that another person is engaged in money laundering, even if they did not actually know or suspect.

The duty to report under clause 136 is, however, restricted to those persons who receive information in the course of a business in the regulated sector, as defined in Schedule 4 to the legislation. The clause reflects the fact that persons who are carrying out activities in the regulated sector should be expected to exercise a higher level of diligence in handling transactions than those employed in other businesses. Where a business carries out some activities which are listed in Schedule 4 and some which are not, then only employees carrying out the listed activities will be caught by the offence.

The scope of clause 136 extends to inchoate offences such as conspiracy by reason of the definition of money laundering in clause 144 (9).

Clause 137 creates an offence where a nominated officer who receives a report under clause 136 (the failure to disclose offence) which causes him to know or suspect or gives reasonable grounds for knowledge or suspicion, that money laundering is taking place, does not disclose that report as soon as practicable after the information comes to him.

Clause 138 empowers the Financial Reporting Authority to disclose to an overseas financial intelligence unit, information received under this Law.

Clause 139 sets out the offence of making a disclosure likely to prejudice a money laundering investigation being undertaken or which may be undertaken by law enforcement authorities.

There is protection under the legislation from the offence for law enforcement officers who may need to make a prohibited disclosure in the course of their official duties, and there is an additional defence if a person did not know or suspect that the disclosure would prejudice an investigation. As for clause 136, clause 139 also extends to inchoate offences, for the same reason.

Clause 140 provides protection for whistleblowers.

Clause 142 makes provision for vicarious criminal liability.

Clause 143 relates to the form and manner of disclosures.

Clause 144 contains interpretations of various expressions that are directly or indirectly related to money laundering.

Clause 145 provides that the Governor in Cabinet may make regulations prescribing measures to be taken to prevent the use of the financial system for the purposes of money laundering.

Schedule 4 defines a business in the regulated sector for the purpose of clause 136.

PART VI

INVESTIGATIONS

Clause 146 defines the types of investigations in respect of which the powers set out in Part VI may be variously exercised. These are -

- (a) an investigation into whether a person has benefited from criminal conduct and the extent or whereabouts of his benefit (a confiscation investigation);
- (b) an investigation into whether property is recoverable property or associated property, who holds the property and its extent or whereabouts (a civil recovery investigation); and
- (c) an investigation into whether a person has committed a money laundering offence (a money laundering investigation).

Subclause (2) precludes the use of the powers for the purposes of a civil recovery investigation if civil recovery proceedings have been started under clause 80 an

interim receiving order applies to the property as provided under clause 87 or cash is seized and detained by virtue of clauses 114 and 115. Apart from in the context of money laundering investigations, none of the powers under Part VI is available for use in investigations into criminal offences.

Clause 147 makes it an offence to prejudice an investigation or prospective investigation by making a disclosure about it or by tampering with evidence relevant to the investigation.

Clause 148 specifies that applications in respect of civil recovery investigations must be made to a Grand Court judge.

Clause 149 provides that a judge of the Grand Court may make a production order in the three types of investigations specified in clause 146.

Clause 150 sets out the requirements for the making of a production order.

Clause 151 deals with orders to grant entry. Such an order may be granted where the judge makes a production order. Such an order authorises access to material. This power might be used, for example, to enable an appropriate officer to be granted entry to a building in circumstances where a production order had been made in respect of material in a particular office in that building.

Clause 152 sets out further provisions relating to production orders. Such an order shall not for instance require a person to produce or give access to privileged or excluded material.

Clause 153 applies to computer material to which a production order relates.

Clause 154 extends the scope of a production order to cover material held by a government entity.

Clause 155 provides supplementary provisions relating to a production order and an order to grant entry.

Clause 156 deals with search and seizure warrants. A search and seizure warrant is a warrant authorising an appropriate person -

- (a) to enter and search the premises specified in the application for the warrant; and
- (b) to seize and retain any material found there which is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the application is made.

Subclause (4) provides for a constable or customs officer to execute the warrant if it is sought in relation to a confiscation, money laundering or civil recovery investigation. A warrant may be issued if either a production order has been made and has not been complied with and there are reasonable grounds for believing that the material specified in the warrant is on the premises, or the requirements of clause 157 are met.

Clause 157 provides that where there is no production order a court may issue a search and seizure warrant if two sets of conditions for issuing a warrant in the absence of a production order and are met. The first set of conditions might be satisfied, for example, where the person who owns the material is abroad and therefore it is not possible to communicate with that person. In such circumstances, it is clear that a production order in respect of that person would have no effect. The second set of conditions might be satisfied where it is impossible to describe the material (for the purposes of a production order) and access will not be gained without a warrant (e.g., to the residence of the suspect).

Clause 158 provides that a search and seizure warrant does not confer the right to seize privileged or excluded material.

Clause 159 makes provision sets out provisions regarding when and how a warrant issued by the Grand Court for the purposes of a civil recovery investigation may be exercised.

Clause 160 provides for disclosure orders. It is available in respect of a confiscation and a civil recovery investigation but not a money laundering investigation. Once a disclosure order has been made, the Attorney-General may use the extensive powers set out in subclause (2) throughout the investigation. Thus, unlike the other orders covered by this Part which have to be applied for separately on each occasion, a disclosure order gives the Attorney-General continuing powers for the purposes of the investigation. A person may require that evidence of the authority to exercise disclosure powers be provided. Where this happens, it is envisaged that a copy of the disclosure order will be given to the person.

Clause 161 sets out the requirements for the making of a disclosure order. Because of their intrusive nature, it is not anticipated that disclosure orders will be sought unless other powers, such as production orders, have already been sought or would demonstrably not suffice to enable the required information to be obtained.

Clause 162 deals with offences related to a disclosure order. As the disclosure order obliges persons to comply with certain requirements, sanctions to compel such compliance are required.

Clause 163 prevents a statement obtained under compulsion from a person from being used to incriminate him (subject to exceptions).

Clauses 164 and 165 contain supplementary provisions relating to disclosure orders.

Clause 166 deals with customer information orders. A customer information order requires all (or a targeted sample of) banks and other financial institutions to provide details of any accounts held by the person who is the subject of a confiscation or money laundering investigation. The order can also apply to persons who appear to hold property that is subject to a civil recovery investigation. Clause 172 (6) requires the prior authorisation of a senior appropriate officer before an appropriate officer can make an initial or variation application for a customer information order. An appropriate officer who is also a senior appropriate officer can apply for the order and variations himself without requiring further and separate authorisation.

Clause 167 sets out the definition of "customer information" for individuals and for companies and partnerships. Subclauses (2) (f) and (3) (i) require financial institutions to produce evidence of identity obtained in compliance with the relevant existing legislation.

Clause 168 sets out the requirements for the making of a customer information order. For example a court may make a customer information order if it is satisfied that in the case of a confiscation investigation, there are reasonable grounds for suspecting that the person specified in the application for the order has benefited from his criminal conduct.

Clause 169 sets out the offences related to a customer information order. As with the disclosure order, there are two offences connected with customer information orders. As the sanctions are directed at non-compliant institutions rather than an individual they are solely financial.

Clause 170 sets out the standard conditions on the use of such information to prevent information obtained under compulsion from being used against the financial institution in criminal proceedings against it (subject to certain limited exceptions).

Clause 171 provides that a customer information order has effect notwithstanding any restriction on the disclosure of information however imposed.

Clause 172 contains supplementary provisions relating to the customer information orders.

Clause 173 deals with account monitoring orders. This clause has the effect of requiring a financial institution to provide specified information in relation to an account (for example, details of all transactions passing through the account) during a specified period up to a maximum of 90 days. The information would normally be provided in the form of a bank statement. An account monitoring order may be obtained in respect of all three types of investigation specified in clause 146.

Clause 174 sets out the requirements for the making of an account monitoring order. As part of his consideration of the proportionality test that a court should apply a judge might want to satisfy himself that an order of this type lasting over a period of time (rather than a one-off production order) is necessary for the purposes of the investigation.

Clause 175 deals with statements relating to an account monitoring order. As with the disclosure and customer information orders, an account monitoring order compels an institution to divulge information. Similar to provisions for disclosure orders and customer information orders, this clause sets out the standard conditions on the use of such information to prevent self-incriminatory information being used as evidence in criminal proceedings against the financial institutions (subject to certain limited exceptions).

Clause 176 provides that an account monitoring order may be made *ex parte* to a judge in chambers.

Clause 177 provides that an account monitoring order has effect notwithstanding any restriction on the disclosure of information however imposed.

Clause 178 allows the account monitoring order itself to be varied.

Clause 179 enables the Attorney-General to request evidence from overseas for use in confiscation investigations.

Clause 180 provides that the Governor in Cabinet may issue a code of practice as to how powers in respect of confiscation, money laundering and civil recovery investigations are to be operated in the Islands.

Also, a breach of the code will not render a person liable to criminal or civil proceedings but the code will be admissible as evidence in criminal and civil proceedings.

Clause 182 contains other interpretative provisions.

PART VII

INSOLVENCY, ETC.

Clauses 183, 184 and 185 explain what happens when the same property is subject both to criminal confiscation legislation and to insolvency legislation.

Clause 186 defines the term "insolvency practitioner".

PART VIII

CO-OPERATION

Clause 187 (as read with Schedule 5) provide for external confiscation orders

External investigations are defined at clause 195 (3) as the overseas equivalents to domestic confiscation, money laundering and civil recovery investigations. Subclause (3) provides that disclosure orders will not be available for external money laundering investigations. Subclause (2) allows for investigation powers corresponding to those in Part VI to be applied, with any necessary modifications, for use in response to a request from an overseas authority.

Clause 194 provides that the Rules Committee shall make rules of court to give effect to an order made under this Part.

Clause 195 makes an external order, which is made in relation to the recovery of the proceeds of crime, enforceable in the Islands regardless of the form it takes. It could be an order made against a person (an "in personam" order) or an order made against property (an "in rem" order, as in civil forfeiture proceedings in the USA). It could be a forfeiture order (an order changing the title of property), an order to a person to pay a sum of money or some other kind of order.

The external order must have been made by an overseas court (as defined by subclause (5)). It is immaterial what kind of court proceedings the external order is made in. It could be made in criminal proceedings, civil proceedings or some other court proceedings. However, non-court orders such as "administrative"

confiscation orders made by police officers and similar authorities are excluded from this scheme.

An external order is defined as being for the recovery of specified property or a specified sum of money (subclause (2) (b)). This will enable external orders to be enforced, whether they are orders for the recovery of particular tainted property or orders for specified sums of money that may be satisfied out of any property, legally or illegally obtained.

Subclause (6) defines "overseas authority". This clause refers to "overseas authority" rather than "overseas government" because it will not always be the government of a country which has responsibility for the functions outlined at subclause (6) (a) to (c).

PART IX

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Clause 196 provides for extradition.

Clause 197 provides that once property has been forfeited under the Law, no third party claims shall be entertained.

Clause 198 makes certain provisions relating to costs.

Clause 199 makes provision in relation to companies created for criminal purposes.

Clause 200 makes certain amendments to the Terrorism Law, No. 14 of 2003, to ensure more comprehensive coverage of possession offences in relation to terrorism.

Clause 201 gives the Governor in Cabinet power to make regulations to give effect to the legislation.

Clause 202 provides for the repeal of the Proceeds of Criminal Conduct Law (2007 Revision) and the Misuse of Drugs Law (2000 Revision).

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Schedule 1 specifies lifestyle offences.

Schedule 2 sets out the powers of the Official Receiver.

Schedule 3 sets out the powers of the trustee for civil recovery.

Schedule 4 defines businesses which are considered to be part of the regulated sector.

Schedule 5 provides for modifications to various Laws.

PROCEEDS OF CRIME BILL, 2008

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CAYMAN ISLANDS

**A BILL FOR A LAW TO REPEAL AND REPLACE THE PROCEEDS OF
CRIMINAL CONDUCT LAW (2007 REVISION); TO CONSOLIDATE
THE LAW RELATING TO THE CONFISCATION OF THE PROCEEDS
OF CRIME AND THE LAW RELATING TO MUTUAL LEGAL
ASSISTANCE IN CRIMINAL MATTERS; AND FOR INCIDENTAL AND
CONNECTED PURPOSES**

Enacted by the Legislature of the Cayman Islands.

PART I

INTRODUCTORY

1. (1) This Law may be cited as the Proceeds of Crime Law, 2008. Short title and
commencement

(2) This Law shall come into force on such date as may be appointed by order made by the Governor in Cabinet and different dates may be appointed for different provisions of this Law and in relation to different cases.

2. (1) In this Law unless the context otherwise requires - Interpretation

“Clerk of the Court” means the person appointed as such under section 7 of the Grand Court Law (2006 Revision); (2006 Revision)

- (2007 Revision) “constable” includes a person appointed to be an officer of Customs under section 6 (1) of the Customs Law (2007 Revision);
- “court” means the Grand Court;
- “court of a foreign country” includes a court of any state or territory of a foreign country;
- “criminal property” has the meaning assigned thereto by section 144 (3);
- “Director” means the Director of the Financial Reporting Authority appointed pursuant to section 3 (1) (a);
- “financial intelligence unit” means a central, public body, responsible for receiving (and, as permitted, requesting), analysing and disseminating disclosures of financial information
- (a) concerning proceeds of criminal conduct or suspected proceeds of criminal conduct; or
 - (b) required by any law in order to counter money laundering;
- and includes a law enforcement agency;
- “Financial Reporting Authority” means the Financial Reporting Authority existing pursuant to section 3 (1);
- “information” in relation to the reporting of matters to the Financial Reporting Authority means information of financial transactions, including information on the predicate offence from which the proceeds are, may be or will be derived or any suspicion of the same and also an inchoate offence;
- “interest”, in relation to property, includes right;
- “modifications” includes additions, alterations and omissions;
- (2004 Revision) “Monetary Authority” means the Cayman Islands Monetary Authority established under section 5 (1) of the Monetary Authority Law (2004 Revision) and includes any employee of the Monetary Authority acting under the Monetary Authority’s authorisation;
- “nominated officer” means a person nominated by the business concerned for the purpose of receiving (under Part V) reports relating to criminal conduct;
- “overseas financial intelligence unit” means a financial intelligence unit in a country other than the Islands;
- (2007 Revision) “prior Law” mean the Proceeds of Criminal Conduct Law (2007 Revision) or any other Law or provision that made provisions relating to money laundering, and

the regulations made thereunder, as in effect on the day immediately prior to the date of commencement of this Law;

“property” includes money and all other property, real or personal, including things in action and other intangible or incorporeal property, and when used in relation to terrorism means, in addition, property likely to be used for the purposes of terrorism, proceeds from the commission of acts of terrorism or which has been used or is reasonably suspected to have been used, directly or indirectly, in the commission of an act of terrorism;

“Steering Group” means the Anti-Money Laundering Steering Group appointed pursuant to section 5;

“terrorism” has the meaning assigned thereto in section 2 of the Terrorism Law, 2003. (Law 14 of 2003)

(2) This Law applies to property wherever situated.

(3) Nothing in this Law confers any power on any court in connection with offences whose commission was completed before the 23rd December, 1996 or proceedings against a person for an offence instituted before 23rd December 1996 but -

- (a) where an offence was committed in whole or in part before the commencement of this Law, the law and procedures applying before such commencement shall apply;
- (b) where all the offences of which the defendant is convicted were committed on or after the date of commencement of this Law, the procedures instituted by or under this Law shall apply.

(4) References in this Law to property obtained, or to a pecuniary advantage derived, in connection with the commission of an offence include a reference to property obtained or to a pecuniary advantage derived both in that connection and in some other connection.

(5) Subsections (6) to (11) shall have effect for the interpretation of this Law.

(6) Property is held by any person if he holds any interest in it.

(7) References to property held by a person include a reference to property vested in him in bankruptcy or as liquidator.

(8) References to an interest held by a person beneficially in property include a reference to an interest which would be held by him beneficially if the property were not so vested.

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

(10) Any provision in this Law which refers to criminal property, criminal conduct, money laundering or the financing of terrorism shall be read as referring also to suspicion of the same whether or not the property concerned is thought to be in the Islands, outside the islands or at whereabouts unknown, or is known to be in existence at the time the alleged act was committed.

(Law 14 of 2003) (11) Terrorist property shall, without prejudice to the provisions of the Terrorism Law, 2003, be subject to all orders that may be made under this Law.

PART II

THE FINANCIAL REPORTING AUTHORITY

Financial Reporting
Authority

3. (1) There shall continue to be established a financial intelligence unit called the Financial Reporting Authority, consisting of the following persons -

- (a) the Director of the Financial Reporting Authority;
- (b) an attorney-at-law;
- (c) an accountant; and
- (d) such other persons, having suitable qualifications and experience, as may be necessary to provide services to the Financial Reporting Authority.

(2) The persons specified in paragraphs (a), (b), (c) and (d) of subsection (1) shall each be appointed in writing by the Governor acting in his discretion, after consultation with the Steering Group, and shall hold office for such period of time and subject to such terms and conditions as he may see fit.

(3) The Governor in Cabinet may make regulations to give effect to the provisions of subsections (1) and (2) and sections 4 to 12.

Powers, functions and
duties of Financial
Reporting Authority

4. (1) The Financial Reporting Authority shall be responsible for receiving (and, as permitted, requesting), analysing and disseminating disclosures of information -

- (a) concerning proceeds of criminal conduct or suspected proceeds of criminal conduct; or
- (b) required by any law in order to counter money laundering.

(2) Without limiting subsection (1) and notwithstanding any other Law to the contrary, the Financial Reporting Authority -

- (a) shall receive all disclosures of information (including information from any overseas financial intelligence unit) which -
 - (i) concern proceeds of criminal conduct, suspected proceeds of criminal conduct, money laundering, suspected money laundering, or the financing of terrorism;
 - (ii) are relevant to its responsibilities as a financial intelligence unit;
- (b) may, subject to subsection (3) -
 - (i) where information is disclosed to the Financial Reporting Authority under this Law; or
 - (ii) upon receipt of a request from an overseas financial intelligence unit;
order any person to refrain from dealing with a person's account for a period not exceeding twenty-one days if satisfied that there is reasonable cause to believe that the information or the request, as the case may be, relates to proceeds or suspected proceeds of criminal conduct;
- (c) may, in its discretion, in writing, require the provision, within a period not exceeding seventy-two hours, by any person of information (excluding information that need not be disclosed under Part V) for the purpose of -
 - (i) clarifying or amplifying information disclosed to the Financial Reporting Authority under this Law; or
 - (ii) responding to a request by an overseas intelligence unit;
and,
in exercising its discretion, the Financial Reporting Authority shall consider whether there is reasonable cause to believe that the information or the request, as the case may be, relates to proceeds or suspected proceeds of criminal conduct;
- (d) shall retain a record for a minimum of five years of -
 - (i) all information received or disseminated by the Financial Reporting Authority;
 - (ii) any agreement entered into under subparagraph (e); and
 - (iii) any consent or direction given by the Attorney-General under this Law;
- (e) may, with the consent of the Steering Group, enter into any agreement or arrangement, in writing, with an overseas financial intelligence unit which the Financial Reporting Authority considers necessary or desirable for the discharge or performance of its responsibilities and functions;

- (f) shall collect, compile and annually publish, in such manner as the Financial Reporting Authority shall determine, statistical information relating to -
 - (i) disclosures made to the Financial Reporting Authority under this Law; and
 - (ii) any onward disclosures of such financial information by the Financial Reporting Authority; and
- (g) shall have, exercise and perform such other responsibilities, powers, functions and duties as may be assigned to the Financial Reporting Authority by this or any other Law.

(3) The power conferred by subsection (2) (b) is not exercisable unless the court, upon application by the Financial Reporting Authority, makes an order under this subsection permitting the exercise of that power.

(4) Any person who without reasonable excuse fails or refuses to provide such information as is required by subsection (2) (c) commits an offence and is liable on summary conviction to a fine of fifty thousand dollars or to imprisonment for a term of two years or to both.

(5) An aggrieved person may, upon notice to the Attorney-General, apply to a judge in chambers to discharge an order made by the court under subsection (3), but such order shall remain in force until -

- (a) the judge in chambers determines otherwise; or
- (b) the expiration of the period during which a person is required, by an order made under subsection (2) (b), to refrain from dealing with another person's account;

whichever is sooner.

(6) The Financial Reporting Authority shall perform its functions through the Director who shall have charge of the day-to-day management and operation of the Financial Reporting Authority.

(7) If the Director is for any reason unable to perform the functions of his post, the Director may appoint any person mentioned in paragraph (b), (c) or (d) of section 3 (1), to act as Director.

(8) Statistical information published pursuant to subsection (2) (f), shall without charge be made available by the Financial Reporting Authority for inspection at its office.

(9) The Governor in Cabinet may assign to the Financial Reporting Authority the responsibility of monitoring compliance with money laundering regulations made under this Law in relation to persons conducting "relevant

financial business”, as defined in those regulations, who are not otherwise subject to such monitoring by the Cayman Islands Monetary Authority.

5. (1) There shall continue to be established a body called the Anti-Money Laundering Steering Group appointed by the Governor in Cabinet and consisting of -

Anti-Money Laundering
Steering Group

- (a) the Attorney-General, who shall be the chairman;
- (b) the Financial Secretary, who is the deputy chairman;
- (c) the Commissioner of Police;
- (d) the Collector of Customs;
- (e) the Managing Director of the Monetary Authority established under section 5 of the Monetary Authority Law (2004 Revision);and
- (f) the Solicitor General.

(2004 Revision)

(2) The Steering Group is responsible for -

- (a) the general oversight of the anti-money laundering policy of the Government;
- (b) determining the general administration of the business of the Financial Reporting Authority;
- (c) overseeing and inspecting the work of the Financial Reporting Authority;
- (d) reviewing annual reports submitted by the Director under section 11(b);
- (e) promoting effective collaboration between regulators and law enforcement agencies; and
- (f) monitoring interaction and co-operation with overseas financial intelligence units.

(3) The Steering Group may regulate its own procedure.

(4) The validity of any proceedings of the Steering Group shall not be affected by any vacancy among the members or by any defect in the appointment of a member.

6. The Governor in Cabinet in his discretion may, after consultation with the Steering Group, give to the Financial Reporting Authority directions of a general character as to the policy to be followed in the exercise and performance of its functions in relation to matters appearing to the Governor in Cabinet to concern the public interest, and the Financial Reporting Authority shall give effect to any such directions.

Issue of policy
directions to Financial
Reporting Authority

7. Notwithstanding the provisions of any other Law -

Financial Reporting
Authority restricted from
providing information

- (a) the Financial Reporting Authority;
- (b) the Director, officers and other personnel of the Financial Reporting Authority;
- (c) the Steering Group; and
- (d) the members of the Steering Group;

shall not be required to provide any information, documents or evidence except in accordance with the provisions of this Law or in compliance with an order made by the Grand Court.

Immunity of Financial Reporting Authority

8. Neither the Financial Reporting Authority, the Director, nor any officer, employee or agent of the Financial Reporting Authority, shall be liable in damages for anything done or omitted in the discharge or purported discharge of their respective functions under this Law unless it is shown that the act or omission was in bad faith or constituted wilful misconduct or negligence.

Protection upon disclosure of information to Financial Reporting Authority

9. (1) Without prejudice to any other provision of this Law, where a person discloses to a nominated officer of the Financial Reporting Authority information concerning proceeds of criminal conduct, suspected proceeds of criminal conduct, money laundering, suspected money laundering, terrorism or the financing of terrorism, the disclosure shall not be treated as a breach of any restriction upon the disclosure of information by any enactment or otherwise and the fact of such disclosure shall not give rise to any criminal or civil liability.

(2) For the purposes of this subsection having possession of any property shall be taken to be doing an act in relation to it.

Unauthorised disclosure by employees of Financial Reporting Authority

10. (1) A person who, being an employee or agent of the Financial Reporting Authority, obtains information in any form as a result of his connection with the Financial Reporting Authority or the Steering Group, shall not disclose that information to any person except so far as it is required or permitted under this or any other Law or by an order of the Grand Court.

(2) Any person who communicates any information in breach of subsection (1) commits an offence and is liable on summary conviction to a fine of twenty-five thousand dollars or to a term of imprisonment of five years or to both such fine and imprisonment.

Annual report of Financial Reporting Authority

11. The Director shall -

- (a) advise the Steering Group on the work of the Financial Reporting Authority and in particular on matters that could affect public policy or the priorities to be set by the Financial Reporting Authority; and

- (b) prepare and submit to the Steering Group on or before 30 September in each year an annual report reviewing the work of the Financial Reporting Authority and containing such other information as the Steering Group in its discretion shall require.

12. (1) The Financial Reporting Authority may, with the approval of the Steering Group, issue guidelines setting out - Guidelines

- (a) any features of a transaction that may give rise to a suspicion that the transaction is or may be relevant to the enforcement of this Law;
- (b) the forms and procedures for making a report of any such transaction; and
- (c) the Authority's operational procedures in connection with disclosures made to it under this Law.

(2) The Financial Reporting Authority -

- (a) shall from time to time review any guidelines issued under subsection (1); and
- (b) may, with the approval of the Steering Group, issue an amendment or revocation of the guidelines.

(3) The Financial Reporting Authority shall, without charge, make available for inspection at its office all guidelines issued under subsection (1), and all amendments to and revocations of the guidelines.

13. (1) Persons who have functions relating to the investigation or prosecution of offences shall co-operate with the Director in the exercise of his functions; and the Director shall co-operate with those persons in the exercise of functions they have under this Law. Co-operation

(2) Without limiting the generality of subsection (1), Schedule 1 shall apply.

14. The Director shall give the Governor in Cabinet advice and assistance which he reasonably requires and which - Advice and assistance

- (a) relate to matters connected with the operation of this Law; and
- (b) are designed to help the Governor in Cabinet to exercise his functions so as to reduce crime.

PART III

CONFISCATION

Confiscation orders

Conditions for making
of order

15. (1) The court or summary court shall have power, in addition to dealing with an offender in any other way, to make an order under this section requiring the offender to pay such sum as the court thinks fit.

(2) The court or summary court shall make an order under this section if-

- (a) a defendant is convicted of an offence or offences in proceedings before the court;
- (b) the Attorney-General asks the court to proceed under this section;
- or
- (c) the court believes it is appropriate for it to do so.

(3) Where the conditions specified in subsection (2) are satisfied the court or summary court -

- (a) shall decide whether the defendant has a criminal lifestyle;
- (b) where it decides that the defendant has a criminal lifestyle, shall decide whether he has benefited from his general criminal conduct; and
- (c) where it decides that the defendant does not have a criminal lifestyle, shall decide whether he has benefited from his particular criminal conduct.

(4) Where the court or summary court decides under subsection (3) (b) or (c) that the defendant has benefited from the conduct referred to it shall decide the recoverable amount and make a confiscation order requiring him to pay the amount.

(5) When considering whether to make a confiscation order the court or summary court may take into account any information that has been placed before it showing that a victim of an offence to which the proceedings relate has instituted, or intends to institute, civil proceedings against the defendant in respect of loss, injury or damage sustained in connection with the offence.

(6) The court or summary court shall decide any questions arising under subsection (4) or (5) on a balance of probabilities.

(7) Subject to section 37, subsection (2) (a) does not apply if the defendant absconds but nothing in this Law shall prejudice the operation of any provision in the Criminal Procedure Code (2006 Revision) allowing proceedings to take place in the absence of a defendant. (2006 Revision)

(8) References in this Part to the offence or offences concerned are to the offence or offences mentioned in subsection (2) (a).

(9) Without prejudice to any rights of a third party against the person from whom property is to be confiscated under this Law, no action or other proceeding shall lie against the Government of the Islands in respect of that property.

16. (1) The recoverable amount for the purposes of section 15 is an amount equal to the defendant's benefit from the conduct concerned. Recoverable amount

(2) Notwithstanding subsection (1) -

- (a) where the defendant shows that the available amount is less than the benefit referred to in subsection (1) the recoverable amount is the available amount or a nominal amount, if the available amount is nil; or
- (b) where the court or summary court makes an order notwithstanding that any victim of the conduct has started or intends to start proceedings against the defendant in respect of loss, injury or damage sustained in connection with the conduct the recoverable amount is such amount as the court believes is just, but does not exceed the amount found under subsection (1) or paragraph (a), as the case may be.

(3) In calculating the defendant's benefit from the conduct concerned for the purposes of subsection (1), any property in respect of which -

- (a) a recovery order is in force under section 96;
- (b) a forfeiture order is in force under section 118;

shall not be taken into account.

(4) Where the court or summary court decides the available amount, it shall include in the confiscation order a statement of the matters it took into account in deciding the available amount.

17. (1) Where the court or summary court is proceeding under section 15 this section applies for the purpose of deciding whether the defendant has benefited from conduct and for deciding his benefit from the conduct. Defendant's benefit

(2) The court or summary court shall take account of conduct occurring up to the time it makes its decision and shall take account of property obtained up to that time.

(3) Where the conduct concerned is general criminal conduct the court or summary court shall, if there has been no previous deduction on an earlier occasion, deduct the aggregate of the following amounts -

- (a) the amount ordered to be paid under each confiscation order previously made against the defendant; and
- (b) the amount ordered to be paid under each confiscation order previously made against him under the Misuse of Drugs Law (2000 Revision) or the prior Law.

(2000 Revision)

(4) Subsection (3) does not apply to an amount which has been taken into account for the purposes of a deduction under that subsection on any earlier occasion.

(5) The reference to general criminal conduct in the case of a confiscation order made under the Misuse of Drugs Law (2000 Revision) or the prior Law is a reference to conduct in respect of which a court is required or entitled to make one or more assumptions for the purpose of assessing a person's benefit from the conduct.

(2000 Revision)

Available amount

18. (1) For the purposes of deciding the recoverable amount, the available amount is the aggregate of -

- (a) the total of the values (at the time the confiscation order is made) of all the free property then held by the defendant minus the total amount payable in pursuance of obligations which then have priority; and
- (b) the total of the values (at the time) of all tainted gifts.

(2) An obligation has priority if it is an obligation of the defendant -

- (a) to pay an amount due in respect of a fine or other order of a court which was imposed or made on conviction of an offence and at any time before the time the confiscation order is made; or
- (b) to pay a sum which would be included among the preferential debts if a defendant's bankruptcy had commenced on the date of the confiscation order or his winding up had been ordered on that date.

(3) "Preferential debts" has the meaning given by section 135 of the Bankruptcy Law (1997 Revision).

(1997 Revision)

19. (1) Where the court or summary court decides under section 15 that the defendant has a criminal lifestyle it shall make the following four assumptions specified in subsections (2) to (5) for the purpose of -
- Assumptions to be made
in case of criminal
lifestyle
- (a) deciding whether he has benefited from his general criminal conduct; and
 - (b) deciding his benefit from the conduct.
- (2) The first assumption is that any property transferred to the defendant at any time after the relevant day was obtained by him as a result of his general criminal conduct and at the earliest time he appears to have held it.
- (3) The second assumption is that any property transferred to the defendant at any time after the date of conviction was obtained by him as a result of his general criminal conduct, and at the earliest time he appears to have held it.
- (4) The third assumption is that any expenditure incurred by the defendant at any time after the relevant day was met from property obtained by him as a result of his general criminal conduct.
- (5) The fourth assumption is that, for the purpose of valuing a property obtained (or assumed to have been obtained) by the defendant, he obtained it free of any other interests in it.
- (6) The court or summary court shall not make a required assumption in relation to particular property or expenditure if the assumption is shown to be incorrect, or there would be a serious risk of injustice if the assumption were made.
- (7) Where the court or summary court does not make one or more of the required assumptions it shall state its reasons.
- (8) The relevant day is the first day of the period of six years ending with -
- (a) the day when proceedings for the offence concerned were started against the defendant; or
 - (b) if there are two or more offences and proceedings for them were started on different days, the earliest of those days.
- (9) Where a prior confiscation has been made against the defendant at any time during the period mentioned in subsection (8) -
- (a) the relevant day is the day when the defendant's benefit was calculated for the purposes of the last such confiscation order; and

- (b) the second assumption does not apply to any property, which was held by him on or before the relevant day.

(10) The date of conviction is -

- (a) the date on which the defendant was convicted of the offence concerned; or
- (b) if there are two or more offences and the convictions were on different dates, the date of the latest.

Time for payment

20. (1) Subject to this section, the amount ordered to be paid under a confiscation order shall be paid on the date the order is made.

(2) Where the defendant shows that he needs time to pay the amount ordered to be paid, the court making the confiscation order may make an order allowing payment to be made within a specified period.

(3) The specified period shall start with the day on which the confiscation order is made, and shall not exceed six months.

(4) If within the specified period the defendant applies to the court or summary court for the period to be extended and the court or summary court believes that there are exceptional circumstances, it may make an order extending the period.

(5) The extended period shall start with the day on which the confiscation order is made and shall not exceed 12 months.

(6) An order under subsection (4) may be made after the end of the specified period but shall not be made after the end of the period of 12 months starting with the day on which the confiscation order is made.

(7) The court or summary court shall not make an order under subsection (2) or (4) unless it gives the Attorney-General an opportunity to make representations.

Interest on unpaid sums

21. (1) Where the amount required to be paid by a person under a confiscation order is not paid when it is required to be paid, he shall pay interest on the amount for the period for which it remains unpaid.

(2) The rate of interest under subsection (1) is that for the time being applying to a civil judgement debt.

(3) For the purposes of this section a person is not required to pay any amount under a confiscation order if -

- (a) an application has been made under section 20 (4);
- (b) the application has not been determined by the court; and
- (c) the period of 12 months starting with the day on which the confiscation order was made has not ended.

(4) In applying this Part the amount of the interest shall be treated as part of amount to be paid under the confiscation order.

22. (1) Where the court or summary court makes a confiscation order against a defendant in any proceedings, it shall be the duty of the court, in respect of any offence of which he is convicted in those proceedings, to take account of the order before -

Effect of order on court's other powers

- (a) imposing any fine on him;
- (b) making any order involving any payment by him, other than an order under section 33 of the Penal Code (2007 Revision) (compensation orders); (2007 Revision)
- (c) making any order under section 30 of the Misuse of Drugs Law (2000 Revision); or (2000 Revision)
- (d) making an order under section 28 of the Terrorism Law 2003 (forfeiture orders); (Law 14 of 2003)

but, subject to that, shall leave the order out of account in determining the appropriate sentence or other manner of dealing with him.

(2) Where -

- (a) the court or summary court makes both a confiscation order and an order under section 33 of the Penal Code (2007 Revision) against the same person in the same proceedings; and (2007 Revision)
- (b) the court believes he will not have sufficient means to satisfy both the orders in full;

the court shall direct that so much of the compensation as it specifies is to be paid out of any sums recovered under the confiscation order; and the amount it specifies shall be the amount it believes will not be recoverable because of the insufficiency of the person's means.

Procedural matters

23. (1) The court or summary court may proceed under section 15 before it sentences the defendant for the offence or any of the offences concerned or postpone proceedings under section 15 for a specified period. Postponement

(2) The court or summary court may extend a period of postponement but, except in exceptional circumstances, a period of postponement including one as extended shall not end after the permitted period ends.

(3) The permitted period is the period of two years starting with the date of conviction.

(4) Where -

- (a) the defendant appeals against his conviction for the offence or any of the offences concerned; and
- (b) the period of three months (starting with the day when the appeal is determined or otherwise disposed of) ends after the period found under subsection (3);

the permitted period is that period of three months.

(5) A postponement or extension may be made -

- (a) on application by the defendant;
- (b) on application by the Attorney-General; or
- (c) by the court or summary court of its own motion.

(6) If proceedings are postponed for a period and an application to extend the period is made before it ends, the application may be granted even after the period ends.

(7) The date of conviction is -

- (a) the date on which the defendant was convicted of the offence concerned; or
- (b) if there are two or more offences and the convictions were on different dates, the date of the latest.

(8) References to appealing include references to appealing by way of case stated.

(9) A confiscation order shall not be quashed only on the ground that there was a defect or omission in the procedure connected with the application for or the granting of a postponement.

(10) Subsection (9) shall not apply if before it made the confiscation order the court imposed a fine on the defendant or made an order falling within section 23 (1).

24. (1) Where the court or summary court postpones proceedings under section 15 it may proceed to sentence the defendant for the offence or any of the offences concerned. Effect of postponement

(2) In sentencing the defendant for the offence or any of the offences concerned in the postponement period the court or summary court shall not impose a fine on him or make an order falling within section 22 (1).

(3) Where the court or summary court sentences the defendant for the offence or any of the offences concerned in the postponement period, after that period ends it may vary the sentence by imposing a fine on him or by making an order falling within section 22 (1).

(4) The court or summary court may only proceed under subsection (3) within the period of 28 days, which starts with the last day of the postponement period.

(5) For the purposes the time limits for notice of appeal or of application for leave to appeal, a sentence shall be regarded as imposed or made on the day on which it is varied under subsection (3).

(6) Where the court or summary court proceeds to sentence the defendant under subsection (1), section 15 has effect as if the defendant's particular criminal conduct included conduct which constitutes offences which the court has taken into consideration in deciding his sentence for the offence or offences concerned.

(7) The postponement period is the period for which proceedings under section 15 are postponed.

25. (1) Where the court or summary court is proceeding under section 15 the Attorney-General shall give the court a statement of information or, where the court is proceeding because it is appropriate to do so, it shall order the Attorney-General to give the court a statement of information within a period specified by the court. Statement of information

(2) Where the Attorney-General believes the defendant has a criminal lifestyle the statement of information is a statement of matters the Attorney-General believes are relevant in connection with deciding -

- (a) whether the defendant has a criminal lifestyle;
- (b) whether he has benefited from his general criminal conduct; and
- (c) his benefit from the conduct.

(3) A statement under subsection (2) shall include information the Attorney-General believes is relevant -

- (a) in connection with the making by the court of a required assumption under section 19; and
- (b) for the purpose of enabling the court to decide if the circumstances are such that it shall not make such as assumption.

(4) Where the Attorney-General does not believe the defendant has a criminal lifestyle the statement of information is a statement of matters the Attorney-General believes are relevant in connection with deciding whether the defendant has benefited from his particular criminal conduct and the defendant's benefit from the conduct.

(5) Where the Attorney-General gives the court or summary court a statement of information -

- (a) he may at any time give the court a further statement of information; and
- (b) he shall give the court a further statement of information if the court orders him to do so, and he shall give it within the period the court orders.

(6) The court or summary court may vary an order made under this section at any time.

Defendant's response to statement of information

26. (1) Where the Attorney-General gives the court or summary court a statement of information and a copy is served on the defendant, the court may order the defendant -

- (a) to indicate, within the period it orders, the extent to which he accepts each allegation in the statement; and
- (b) so far as he does not accept such an allegation, to give particulars of any matters he proposes to rely on.

(2) Where the defendant accepts to any extent an allegation in a statement of information the court or summary court may treat his acceptance as conclusive of the matters to which it relates for the purpose of deciding the issues referred to in section 25 (2) or (4) as the case may be.

(3) Where the defendant fails in any respect to comply with an order under subsection (1) he may be treated for the purposes of subsection (2) as accepting every allegation in the statement of information apart from -

- (a) any allegation in respect of which he has complied with the requirement; and

(b) any allegation that he has benefited from his general or particular criminal conduct.

(4) For the purposes of this section an allegation may be accepted or particulars may be given in a manner ordered by the court.

(5) The court or summary court may vary an order made under this section at any time.

(6) An acceptance under this section that the defendant has benefited from conduct shall not be admissible in evidence in proceedings for an offence.

27. (1) This section applies if -

Provision of information
by defendant

(a) the court is proceeding under section 15 in a case where section 15 (2) (a) applies; or

(b) it is proceeding under section 15 in a case where section 15 (2) (b) applies or it is considering whether to proceed.

(2) For the purpose of obtaining information to help it in carrying out its functions the court may at any time order the defendant to give it information specified in the order.

(3) An order under this section may require all or a specified part of the information to be given in a specified manner and before a specified date.

(4) Where the defendant fails without reasonable excuse to comply with an order under this section the court or summary court may draw such inference as it believes is appropriate.

(5) Subsection (4) does not affect any power of the court to deal with the defendant in respect of a failure to comply with an order under this section.

(6) Where the Attorney-General accepts to any extent an allegation made by the defendant -

(a) in giving information required by an order under this section; or

(b) in any other statement given to the court in relation to any matter relevant to deciding the available amount under section 18;

the court may treat the acceptance as conclusive of the matter to which it relates.

(7) For the purposes of this section an allegation may be accepted in a manner ordered by the court.

(8) The court may vary an order made under this section at any time.

(9) Information given under this section which amounts to an admission by the defendant that he has benefited from criminal conduct is not admissible in evidence in proceedings for an offence.

Reconsideration

No order made:
reconsideration of case

28. (1) This section applies if -

- (a) the condition in section 15 (2) (a) (i) is satisfied but a court has not proceeded under that section;
- (b) there is evidence which was not available to the Attorney-General on the relevant date;
- (c) before the end of the period of six years starting with the date of conviction the Attorney-General applies to a court to consider the evidence; and
- (d) after considering the evidence the court believes it is appropriate for it to proceed under section 15.

(2) Where this section applies the court shall proceed under section 15, and subsections (3) to (8) of this section shall apply.

(3) Where a court has already sentenced the defendant for the offence or any of the offences concerned, section 15 has effect as if the defendant's particular criminal conduct included conduct which constitutes offences which the court has taken into consideration in deciding his sentence for the offence or offences concerned.

(4) Where this section applies, section 17 (2) shall not apply and the court shall instead -

- (a) take account of conduct occurring before the relevant date;
- (b) take account of property obtained before that date; and
- (c) take account of property obtained on or after that date if it was obtained as a result of or in connection with conduct occurring before that date.

(5) For the purposes of this section, none of the assumptions stated in section 19 apply in reconsideration cases.

(6) The recoverable amount for the purposes of section 15 is such amount as the court believes is just, but shall not exceed the amount found under section 16.

(7) In arriving at the just amount the court shall have regard in particular to -

- (a) the amount found under section 16;
- (b) any fine imposed on the defendant in respect of the offence (or any of the offences) concerned;
- (c) any order which falls within section 22 (1) and has been made against the defendant in respect of the offence or any of the offences concerned and has not already been taken into account by the court in deciding what is the free property held by defendant for the purposes of section 18; and
- (d) an order, which has been made against him in respect of the offence (or any of the offences), concerned under section 33 of the Penal Code (2007 Revision). (2007 Revision)

(8) Where an order for the payment of compensation under section 33 of the Penal Code (2007 Revision) has been made against the defendant in respect of the offence or offences concerned, section 22 (2) does not apply. (2007 Revision)

- (9) For the purposes of this section the relevant date is -
- (a) if the court made a decision not to proceed under section 16, the date of the decision; or
 - (b) if the court did not make such a decision, the date of conviction.

- (10) For the purposes of this section the date of conviction is -
- (a) the date on which the defendant was convicted of the offence concerned; or
 - (b) if there are two or more offences and the convictions were on different dates, the date of the latest.

29. (1) Where -

- (a) in any proceeding under section 15 a court has decided that -
 - (i) the defendant has a criminal lifestyle but has not benefited from his general criminal conduct; or
 - (ii) the defendant does not have a criminal lifestyle and has not benefited from his particular criminal conduct; and
- (b) a court proceeded under section 15 because the Attorney-General asked it to or because it believed it was appropriate for it to do so and -
 - (i) there is evidence which was not available to the Attorney-General when the court decided that the defendant had not benefited from his general or particular criminal conduct;
 - (ii) before the end of the period of six years starting with the date of conviction the Attorney-General applies to the Grand Court to consider the evidence; and
 - (iii) after considering the evidence the court concludes that it would have decided that the defendant had benefited from

No order made:
reconsideration of
benefit

his general or particular criminal conduct (as the case may be) if the evidence had been available to it;

the court -

- (a) shall make a new decision under section 15 (3) (b) or (c) whether the defendant has benefited from his general or particular criminal conduct (as the case may be); or
- (b) may make a confiscation order under that section.

(2) Subsections (3) to (7) apply if the court proceeds under section 15 in pursuance of this section.

(3) Where a court has already sentenced the defendant for the offence (or any of the offences) concerned, section 15 has effect as if his particular criminal conduct included conduct which constitutes offences which the court has taken into consideration in deciding his sentence for the offence or offences concerned.

(4) Where this section applies section 17 (2) does not apply and the court shall instead -

- (a) take account of conduct occurring before the date of the original decision that the defendant had not benefited from his general or particular criminal conduct;
- (b) take account of property obtained before that date; and
- (c) take account of property obtained on or after that date if it was obtained as a result of or in connection with conduct occurring before that date.

(5) For the purposes of this section, none of the assumptions stated in section 19 apply in reconsideration cases.

(6) The recoverable amount for the purposes of section 16 is such amount as the court believes is just, but such amount shall not exceed the amount found under section 16.

(7) In arriving at the just amount the court shall have regard in particular to -

- (a) the amount found under section 16;
- (b) any fine imposed on the defendant in respect of the offence (or any of the offences) concerned; and
- (c) any order which falls within section 22 (1) and which has been made against the defendant in respect of the offence (or any of the offences) concerned and has not already been taken into

account by the court in deciding what is the free property held by him for the purposes of section 18.

(8) Where an order for the payment of compensation under section 33 of the Penal Code (2007 Revision) has been made against the defendant in respect of the offence or offences concerned section 22 (2) shall not apply. (2007 Revision)

(9) For the purposes of this section the date of conviction is the date found by applying section 28 (10).

30. (1) Where -

Order made:
reconsideration of
benefit

- (a) a court has made a confiscation order;
- (b) there is evidence which was not available to the Attorney-General at the relevant time;
- (c) the Attorney-General believes that if the court were to find the amount of the defendant's benefit in pursuance of this section it would exceed the relevant amount;
- (d) before the end of the period of six years starting with the date of conviction the Attorney-General applies to the Grand Court to consider the evidence; and
- (e) after considering the evidence the court believes it is appropriate for it to proceed under this section;

the court shall make a new calculation of the defendant's benefit from the conduct concerned and when it does so subsections (2) to (5) shall apply.

(2) Where a court has already sentenced the defendant for the offence (or any of the offences) concerned section 15 has effect as if his particular criminal conduct included conduct which constitutes offences which the court has taken into consideration in deciding his sentence for the offence or offences concerned.

(3) Where this section applies section 17 (2) shall not apply, and the court shall instead -

- (a) take account of the defendant's conduct occurring up to the time it decided the defendant's benefit for the purposes of the confiscation order;
- (b) take account of property obtained up to that time; and
- (c) take account of property obtained after that time if the property was obtained as a result of or in connection with conduct occurring before that time.

(4) In applying section 17 (5) the court shall not take into account a confiscation order.

(5) For the purposes of this section, none of the assumptions stated in section 19 apply in reconsideration cases.

(6) Where the amount found under the new calculation of the defendant's benefit exceeds the relevant amount the court -

- (a) shall make a new calculation of the recoverable amount for the purposes of section 15; and
- (b) if it exceeds the amount required to be paid under the confiscation order, may vary the order by substituting for the amount required to be paid such amount as it believes is just.

(7) In applying subsection (6) (a) the court shall -

- (a) take the new calculation of the defendant's benefit; and
- (b) apply section 18 as if references to the time the confiscation order is made were to the time of the new calculation of the recoverable amount and as if references to the date of the confiscation order were to the date of that new calculation.

(8) In applying subsection (6) (b) the court shall have regard in particular to -

- (a) any fine imposed on the defendant for the offence (or any of the offences) concerned; and
- (b) any order which falls within section 22 (1) and has been made against him in respect of the offence (or any of the offences) concerned and has not already been taken into account by the court in deciding what is the free property held by him for the purposes of section 18.

(9) In applying subsection (6) (b) the court shall not have regard to an order falling within subsection (8) (b) if a court has made a direction under section 22 (2).

(10) In deciding under this section whether one amount exceeds another, the court shall take account of any change in the value of money.

(11) For the purposes of this section the relevant time is -

- (a) when the court calculated the defendant's benefit for the purposes of the confiscation order, if this section has not applied previously; or
- (b) when the court last calculated the defendant's benefit in pursuance of this section, if this section has applied previously.

(12) For the purposes of this section the relevant amount is -

- (a) the amount found as the defendant's benefit for the purposes of the confiscation order, if this section has not applied previously; or
- (b) the amount last found as the defendant's benefit in pursuance of this section, if this section has applied previously.

(13) For the purposes of this section the date of conviction is the date found by applying section 18(10).

31. (1) Where -

Order made:
reconsideration of
available amount

- (a) a court has made a confiscation order;
- (b) the amount required to be paid was the amount found under section 16 (2); and
- (c) the Attorney-General or a receiver appointed under section 52 applies to the court to make a new calculation of the available amount;

the court shall make the new calculation, and in doing so it shall apply section 18 as if references to the time the confiscation order is made were to the time of the new calculation and as if references to the date of the confiscation order were to the date of the new calculation.

(2) Where the amount found under the new calculation exceeds the relevant amount the court may vary the order by substituting for the amount required to be paid such amount as it believes is just but shall exceed the amount found as the defendant's benefit from the conduct concerned.

(3) The court in deciding what is just for the purposes of subsection (2) -

- (a) shall have regard in particular to-
 - (i) any fine imposed on the defendant for the offence or any of the offences concerned; and
 - (ii) any order which falls within section 23 (1) and which has been made against him in respect of the offence (or any of the offences) concerned and has not already been taken into account by the court in deciding what is the free property held by him for the purposes of section 19; and
- (b) shall not have regard to an order falling within paragraph (a) (ii) if a court has made a direction under section 23 (2).

(4) In deciding under this section whether one amount exceeds another, the court shall take account of any change in the value of money.

(5) For the purposes of this section the relevant amount is -

- (a) the amount found as the available amount for the purposes of the confiscation order, if this section has not applied previously; or
- (b) the amount last found as the available amount in pursuance of this section, if this section had applied previously.

(6) The amount found as the defendant's benefit from the conduct concerned is -

- (a) the amount so found when the confiscation order was made; or
- (b) if one or more new calculations of the defendant's benefit have been made under section 31 the amount found on the occasion of the last such calculation.

Inadequacy of available amount: variation of order

32. (1) Where -

- (a) a court has made a confiscation order; and
- (b) the defendant, or a receiver appointed under section 51 or 53; applies to the court to vary the order under this section;

the court shall calculate the available amount, and in doing so it shall apply section 19 as if references to the time the confiscation order is made were to the time of the calculation and as if references to the date of the confiscation order were to the date of the calculation.

(2) Where the court finds that the available amount calculated in accordance with subsection (1) is inadequate for the payment of any amount remaining to be paid under the confiscation order it may vary the order by substituting for the amount required to be paid such smaller amount as the court believes is just.

(3) Where -

- (a) a person has been adjudged bankrupt;
- (b) a person's estate has been sequestrated; or
- (c) an order for the winding up of a company has been made;

the court shall take into account the extent to which realisable property held by that person or that company may be distributed among creditors.

(4) The court may disregard any inadequacy which it believes is attributable wholly or partly to anything done by the defendant for the purpose of preserving property held by the recipient of a tainted gift from any risk of realisation under this Part.

(6) In subsection (3) "company" means any company which may be wound up under the Bankruptcy Law (1997 Revision).

33. (1) Where -

- (a) a court has made a confiscation order,
- (b) the Clerk of the Court applies to the court for the discharge of the order; and
- (c) the amount remaining to be paid under the order is less than one thousand dollars;

Inadequacy of available amount: discharge of order

the court shall calculate the available amount, and in doing so it shall apply section 18 as if references to the time the confiscation order is made were to the time of the calculation and as if references to the date of the confiscation order were to the date of the calculation.

(2) Where the court -

- (a) finds that the available amount calculated in accordance with subsection (1) is inadequate to meet the amount remaining to be paid; and
- (b) is satisfied that the inadequacy is due wholly to a specified reason or a combination of specified reasons;

it may discharge the confiscation order.

(3) The specified reasons referred to in subsection (2) are -

- (a) in a case where any of the realisable property consists of money in a currency other than Cayman Islands dollars, that fluctuations in currency exchange rates have occurred; and
- (b) any reason specified by the Governor in Cabinet by order.

(4) The Governor in Cabinet may by order vary the amount for the time being specified in subsection (1)(c).

34. (1) Where -

- (a) a court has made a confiscation order;
- (b) the Clerk of the Court applies to the court for the discharge of the order; and
- (c) the amount remaining to be paid under the order is fifty dollars or less;

Small amount outstanding: discharge of order

the court may discharge the order.

(2) The Governor in Cabinet may by order vary the amount for the time being specified in subsection (1) (c).

35. Where -

Information

- (a) the court proceeds under section 15 in pursuance of section 28 or 29; or
- (b) the Attorney-General applies under section 30;

then -

- (i) the Attorney-General shall give the court a statement of information within a period the court orders;
- (ii) section 25 applies accordingly (with appropriate modifications where the Attorney-General applies under section 29);
- (iii) section 28 applies accordingly; and
- (iv) section 27 applies as it applies in the circumstances mentioned in section 27 (1).

Defendant convicted or committed

36. (1) Where -

- (a) a defendant absconds after -
 - (i) he is convicted of an offence or offences in proceedings before the court; or
 - (ii) he is committed to the court in respect of an offence or offences under section 63; and
- (b) the Attorney-General applies to the Grand Court to proceed under this section and the court believes it is appropriate for it to do so;

the court shall, subject to subsection (2), proceed under section 15 in the same way as it would proceed if the two conditions set out in section 15 (2) (a) and (b) are satisfied.

(2) Where the court proceeds under section 15 as applied by this section, this Part has effect with these modifications -

- (a) any person the court believes is likely to be affected by an order under section 15 is entitled to appear before the court and make representations;
- (b) the court shall not make an order under section 16 unless the Attorney-General has taken reasonable steps to contact the defendant;
- (c) section 15 (7) applies as if the reference to subsection (2) (a) were to subsection (1) (a) of this section;
- (d) sections 29, 25(4), 26 and 27 shall not be taken into account; and
- (e) sections 28, 29 and 30 shall not be taken into account while the defendant is still an absconder.

(3) Where the defendant ceases to be an absconder section 28 has effect as if subsection (1) (a) of that section read -

“(a) at a time when the first condition in section 36 was satisfied the court did not proceed under section 15,”.

(4) Where the court does not believe it is appropriate for it to proceed under this section once the defendant ceases to be an absconder, section 28 has effect as if subsection (1)(b) thereof read -

“(b) there is evidence which was not available to the Attorney-General on the relevant date,”.

37. (1) Where-

Defendant neither
convicted nor committed

- (a) proceedings for an offence or offences are started against a defendant but are not concluded;
- (b) the defendant absconds;
- (c) the period of two years (starting with the day the court believes he absconded) has ended; and
- (d) the Attorney-General applies to the Grand Court to proceed under this section and the court believes it is appropriate for it to do so;

the court shall proceed under section 15 in the same way as it would proceed if the two conditions mentioned in section 15 (2) (a) and (b) are satisfied.

(2) Where the court proceeds under section 15 as applied by this section, this Part has effect with the following modifications -

- (a) any person the court believes it likely to be affected by an order under section 15 is entitled to appear before the court and make representations;
- (b) the court shall not make an order under section 15 unless the Attorney-General has taken reasonable steps to contact the defendant;
- (c) section 15 (7) applies as if the reference to subsection (2) (a) were to subsection (1) of this section;
- (d) sections 20, 25 (4) and 26 to 29 shall not be taken into account; and
- (e) section 27 shall not be taken into account while the defendant is still an absconder.

(3) Where the defendant has ceased to be an absconder section 30 has effect as if reference to the date of conviction were to -

- (a) the day when proceedings for the offence concerned were started against the defendant; or
- (b) if there are two or more offences and proceedings for them were started on different days, the earliest of those days.

(4) Where -

- (a) the court makes an order under section 15 as applied by this section; and
- (b) the defendant is later convicted in proceedings before the court of the offence (or any of the offences) concerned;

section 16 does not apply so far as that conviction is concerned.

Variation of order

38. (1) Where -

- (a) the court makes a confiscation order under section 16 as applied by section 37;
- (b) the defendant ceases to be an absconder;
- (c) he is convicted of an offence (or any of the offences) mentioned in section 37(1)(a);
- (d) he believes that the amount required to be paid was too large (taking the circumstances prevailing when the amount was found for the purposes of the order);
- (e) before the end of the relevant period he applies to the court to consider the evidence on which his belief is based; and
- (f) the court after considering the evidence concludes that the defendant's belief is well founded;

the court shall calculate the amount which should have been the amount required to be paid (taking the circumstances prevailing when the amount was found for the purposes of the order) and may vary the order by substituting for the amount required to be paid such amount as it believes is just.

(2) For the purposes of this section the relevant period is a period of 28 days starting with -

- (a) the date on which the defendant was convicted of the offence mentioned in section 37 (1) (a); or
- (b) if there are two or more offences and the convictions were on different dates, the date of the latest.

(3) In a case where section 37 (1) (a) applies to more than one offence the court shall make an order under this section unless it is satisfied that there is no possibility of any further proceedings being taken or continued in relation to any such offences in respect of which the defendant has not been convicted.

Discharge of order

39. (1) The court shall discharge an order where -

- (a) the court makes a confiscation order under section 15 as applied by section 37;

- (b) the defendant is later tried for the offence or offences concerned and acquitted on all counts; and
- (c) he applies to the court to discharge the order.

(2) Where -

- (a) the court makes a confiscation order under section 15 as applied by section 37;
- (b) the defendant ceases to be an absconder;
- (c) subsection (1)(b) does not apply; and
- (d) the defendant applies to the court to discharge the order;

the court may discharge the order if it finds that -

- (i) there has been undue delay in continuing the proceedings mentioned in section 36 (1); or
- (ii) the Attorney-General does not intend to proceed with the prosecution.

(3) Where the court discharges a confiscation order under this section it may make such consequential or incidental order as it believes is appropriate.

40. (1) Subject to subsection (2), where a court makes a confiscation order or it decides not to make a confiscation order the Attorney-General may appeal to the Grand Court or Court of Appeal in respect of the order or against the decision.

Appeal by the Attorney-General

(2) Subsection (1) does not apply to an order or decision made by virtue of section 28, 29, 36 or 37.

(3) An appeal to the Grand Court or Court of Appeal under this Part lies only with the leave of that Court.

(4) The Rules Committee shall make rules of court for the purposes of this Part.

41. (1) On an appeal under section 40 (1)-

Court's powers on appeal

- (a) the Grand Court or Court of Appeal may confirm, quash or vary the confiscation order; or
- (b) the Court of Appeal may confirm the decision, or if it believes the decision was wrong it may -
 - (i) itself proceed under section 15 (ignoring subsection (1) to (3) thereof); or
 - (ii) direct the Grand Court or summary court to proceed afresh under section 15.

(2) In proceeding afresh in pursuance of this section the Grand Court or summary court shall comply with any directions the Grand Court or Court of Appeal may make.

(3) Where a court makes or varies a confiscation order under this section or in pursuance of a direction under this section it shall -

- (a) have regard to any fine imposed on the defendant in respect of the offence (or any of the offences) concerned; and
- (b) have regard to any order which falls within section 22 (1) and has been made against the defendant in respect of the offence (or any of the offences) concerned, unless the order has already been taken into account by a court in deciding what is the free property held by the defendant for the purposes of section 18.

(4) Where the Court of Appeal proceeds under section 15 or the Grand Court or summary court proceeds afresh under that section in pursuance of a direction under this section subsections (5) to (8) apply.

(5) Where a court or summary court has already sentenced the defendant for the offence or any of the offences concerned, section 16 has effect as if the defendant's particular criminal conduct included conduct which constitutes the offence or offences concerned.

(2007 Revision)

(6) Where an order has been made against the defendant in respect of the offence or any of the offences under section 33 of the Penal Code (2007 Revision) the court or summary court shall have regard to such compensation order and section 22 (2) shall not apply.

(7) Where this section applies, section 17 (2) shall not apply, and the court or summary court shall instead -

- (a) take account of conduct occurring before the relevant date;
- (b) take account of property obtained before that date; and
- (c) take account of property obtained on or after that date if it was obtained as a result of or in connection with conduct occurring before that date.

(8) For the purposes of this section, none of the assumptions stated in section 19 apply in reconsideration cases.

(9) Where this section applies section 35 also applies as it applies in the circumstances mentioned in subsection (1) of that section.

(10) For the purposes of this section the relevant date is the date on which the Grand Court or summary court decided not to make a confiscation order.

Enforcement as fines, etc.

42. (1) Where the court or summary court orders a defendant to pay an amount under this Law, sections 28 and 30 of the Penal Code (2007 Revision) shall have effect as if that amount were a fine imposed on the defendant by the court or summary court.

Application of procedure
for enforcing fines
(2007 Revision)

(2) Where -

- (a) the court or summary court has directed that, in default of payment of an amount ordered to be paid under this Law in respect of an offence, the defendant shall serve a term of imprisonment; and
- (b) at the time the direction is made, the defendant is liable to serve a term of imprisonment in respect of the offence;

the term of imprisonment to be served in default of payment of the amount shall not begin to run until after the term mentioned in paragraph (b).

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

- (a) consecutive terms of imprisonment and terms of imprisonment which are wholly or partly concurrent shall be treated as a single term; and
- (b) any sentence suspended under section 24 of the Penal Code (2007 Revision) which has not taken effect at the time the defendant has defaulted as specified in the direction shall be disregarded.

(2007 Revision)

(4) Where the defendant serves a term of imprisonment or detention in default of paying any amount due under a confiscation order, his serving that term does not prevent the confiscation order from continuing to have effect so far as any other method of enforcement is concerned.

43. (1) Where -

- (a) a court varies a confiscation order under section 30, 31, 32, 38 or 41;
- (b) the effect of the variation is to vary the maximum period of imprisonment applicable in relation to the order; and
- (c) the result is that the maximum period is less than the term of imprisonment or detention fixed in respect of the order under section 30 of the Penal Code (2007 Revision);

Reconsideration, etc:
variation of prison term

the court shall fix a reduced term of imprisonment or detention in respect of the confiscation order in place of the term previously fixed.

(2007 Revision)

(2) Where subsection (1) (a) and (b) apply but not (c) the court may amend the term of imprisonment or detention fixed in respect of the confiscation order under section 30 of the Penal Code (2007 Revision).

(3) Where the amount due under the confiscation order is increased by interest payable under section 21, the Attorney- General may apply to the court to increase the term of imprisonment or detention in default.

Restraint orders

Conditions for exercise of powers

44. (1) The court may grant a restraint order in accordance with section 45 if any one of the following conditions is satisfied -

- (a) a criminal investigation has been started in the Islands with regard to an offence and there is reasonable cause to believe that the alleged offender has benefited from his criminal conduct;
- (b) proceedings for an offence have been started in the Islands and not concluded and there is reasonable cause to believe that the defendant has benefited from his criminal conduct;
- (c) either -
 - (i) an application by the Attorney-General has been made under section 28, 29, 36 or 37 and not concluded; or
 - (ii) the court believes that such an application is to be made;and there is reasonable cause to believe that the defendant has benefited from his criminal conduct;
- (d) either -
 - (i) an application by the Attorney-General has been made under section 30 and not concluded, or
 - (ii) the court believes that such an application is to be made;and there is reasonable cause to believe that the court will decide under that section that the amount found under the new calculation of the defendant's benefit exceeds the relevant amount (as defined in that section); or
- (e) either -
 - (i) an application by the Attorney-General has been made under section 31 and not concluded; or
 - (ii) the court believes that such an application is to be made;

and there is reasonable cause to believe that the court will decide under that section that the amount found under the new calculation of the available amount exceeds the relevant amount (as defined in section 31).

(2) The condition in subsection (1) (b) is not satisfied if the Attorney-General does not intend to proceed.

(3) Where subsection (1) (a) applies -

- (a) references in this Part to the defendant are to the alleged offender; and
- (b) section 70 (5) has effect as if proceedings for the offence had been started against the defendant when the investigation was started.

45. (1) Where any of the conditions set out in section 44 is satisfied the court may make a restraint order prohibiting any specified person from dealing with any realisable property held by him subject to such conditions and exceptions as may be specified in the order.

Restraint orders

(2) A restraint order may provide that it applies -

- (a) to all realisable property held by the specified person whether or not the property is described in the order; or
- (b) to realisable property transferred to the specified person after the order is made.

(3) Without prejudice to subsection (1), a restraint order may -

- (a) make provision for reasonable living expenses and reasonable legal expenses; or
- (b) make provision for the purpose of enabling any person to carry on any trade, business, profession or occupation.

(4) An exception to a restraint order shall not provide for any legal expenses of the defendant or the recipient of a tainted gift where such expenses are incurred in relation to the offences in respect of which the restraint order is made.

(5) Where the court makes a restraint order the court may, upon the application of the Attorney-General, make such other order as it believes is appropriate for the purpose of ensuring that the restraint order is effective.

(6) A restraint order does not affect property for the time being subject to a charge under section 11 of the prior Law.

(7) For the purposes of this section “dealing with property” includes removing it from the Islands.

Application, discharge
and variation

46. (1) A restraint order -
- (a) may be made only on an application by the Attorney-General;
 - (b) may be made on an ex parte application to a judge in chambers;
 - (c) shall provide for notice to be given to persons affected by the order;
 - (d) may be discharged or varied in relation to any property; and
 - (e) shall be discharged when proceedings for the offence are concluded.

(2) An application for the discharge or variation of a restraint order may be made by any person affected by it and, for the purpose of clarification, it is declared that once proceedings are concluded, the order shall stand discharged but without prejudice to the effect of the decision made upon the conclusion of the matter.

(3) Where the condition in section 44, which was satisfied, was that proceedings were started or an application was made, the court shall discharge the order on the conclusion of the proceedings or of the application, as the case may be.

(4) Where the condition in section 44 which was satisfied was that an investigation was started or an application was to be made, the court shall discharge the order if within a reasonable time proceedings for the offence are not started or the application is not made, as the case may be.

Appeal to Court of
Appeal

47. (1) Where on an application for a restraint order the court decided not to make one, the Attorney-General may appeal to the Court of Appeal against the decision.

(2) Where an application is made under section 46 (2) in relation to a restraint order or an order under section 45 (2) the Attorney-General or any person affected by the order may appeal to the Court of Appeal in respect of the court’s decision on the application.

(3) On an appeal under subsection (1) or (2) the Court of Appeal may either confirm the decision or make such order as it believes is appropriate.

Seizure

48. (1) Where a restraint order is in force a constable or a customs officer may seize any realisable property to which it applies to prevent its removal from the Islands.

(2) Property seized under subsection (1) shall be dealt with in accordance with the court's directions.

49. (1) Evidence must not be excluded in restraint proceedings on the ground that it is hearsay (of whatever degree). Hearsay evidence

(2) Section 50 apply in relation to restraint proceedings.

(3) Restraint proceedings are proceedings -

- (a) for a restraint order;
- (b) for the discharge or variation of a restraint order; or
- (c) on an appeal under section 47.

(4) Hearsay is a statement which is made otherwise than by a person while giving oral evidence in the proceedings and which is tendered as evidence of the matters stated.

(5) Nothing in this section affects the admissibility of evidence which is admissible apart from this section.

50. (1) In estimating the weight (if any) to be given to hearsay evidence in civil proceedings the court shall have regard to any circumstances from which any inference can reasonably be drawn as to the reliability or otherwise of the evidence. Considerations relevant to weighing of hearsay evidence

(2) Regard may be had, in particular, to the following -

- (a) whether it would have been reasonable and practicable for the party by whom the evidence was adduced to have produced the maker of the original statement as a witness;
- (b) whether the original statement was made contemporaneously with the occurrence or existence of the matters stated;
- (c) whether the evidence involves multiple hearsay;
- (d) whether any person involved had any motive to conceal or misrepresent matters;
- (e) whether the original statement was an edited account, or was made in collaboration with another or for a particular purpose;
- (f) whether the circumstances in which the evidence is adduced as hearsay are such as to suggest an attempt to prevent proper evaluation of its weight.

51. In the case of a restraint order made in respect of land -

Supplementary: restraint orders

- (a) the restraint order shall inhibit for a specified period of time, until the occurrence of a specified event or generally until further

order, the registration of any dealing with any land, lease or charge;

(2004 Revision)

- (b) a copy of the restraint order under the seal of the court, with the particulars of the land, lease or charge thereby affected shall be sent to the Registrar of Lands who shall register it in the Land Register maintained under section 9 of the Registered Land Law (2004 Revision) in respect of the land in question, and no restraint order shall bind or affect the land, lease or charge until it has been registered; and
- (c) so long as the restraint order remains registered, no instrument which is inconsistent with it shall be registered.

Receivers

Management receivership and enforcement receivership

52. (1) The court, upon the application of the Attorney-General, may order a management receivership (to be performed by the Official Receiver) in respect of any realisable property to which a restraint order applies or an enforcement receivership (also to be performed by the Official Receiver) in respect of realisable property, if the confiscation order was made, is not satisfied and is not subject to appeal.

(2) The court may empower the Official Receiver -

- (a) to take possession of the property;
- (b) to manage or otherwise deal with the property;
- (c) to start, carry on or defend any legal proceedings in respect of the property;
- (d) to realise so much of the property as is necessary to meet the receiver's remuneration and expenses; or
- (e) in the case of an enforcement receiver to realise the property in such manner as the court may specify.

(3) The court may by order confer on the receiver power to enter any premises in the Islands and to do any of the following-

- (a) search for or inspect anything authorised by the court;
- (b) make or obtain a copy, photograph or other record of anything so authorised; and
- (c) remove anything which the receiver is required or authorised to take possession of in pursuance of an order of the court.

(4) The court may by order authorise the receiver to do any of the following for the purpose of the exercise of his functions-

- (a) hold property;
- (b) enter into contracts;

- (c) sue and be sued;
- (d) employ agents;
- (e) execute powers of attorney, deeds or other instruments; or
- (f) take any other steps the court thinks appropriate.

(5) The court may order any person who has possession of realisable property to which a restraint order applies to give possession of it to the receiver.

(6) The court-

- (a) may order a person holding an interest in realisable property to which the restraint order applies to make to the receiver such payment as the court specifies in respect of a beneficial interest held by the defendant or the recipient of a tainted gift; or
- (b) may, on the payment being made, by order transfer, grant or extinguish any interest in the property.

(7) Subsections (2), (5) and (6) do not apply to property for the time being subject to a charge under section 11 of the prior Law.

(8) The court shall not -

- (a) confer the power mentioned in subsection (2)(b) or (d) in respect of property, or
- (b) exercise the power conferred on it by subsection (6) in respect of property;

unless it gives persons holding interests in the property a reasonable opportunity to make representations to the court.

(9) The court may order that a power conferred by an order under this section is subject to such conditions and exceptions as it specifies.

(10) Managing or otherwise dealing with property includes -

- (a) selling the property or any part of it or interest in it,
- (b) carrying on or arranging for another person to carry on any trade or business the assets of which are or are part of the property; and
- (c) incurring capital expenditure in respect of the property.

Application of sums

53. (1) Such of -

Application of proceeds
of enforcement

- (a) the proceeds of the enforcement of any charge imposed under section 11 of the prior Law;

- (b) the proceeds of the realisation, other than by the enforcement of such a charge, of any property under section 52; or
- (c) any other sums, being property held by the defendant;

as may be in the hands of the Official Receiver appointed under this Law after such payments, if any, as the court may direct have been made out of those sums, shall be applied on the defendant's behalf towards the satisfaction of the confiscation order.

(2) If, after the amount payable under the confiscation order has been fully paid, any sums remain in the hands of the Official Receiver, the Official Receiver shall distribute them among such of those persons who held property which has been realised under this Law and in such proportions as the court may direct after giving a reasonable opportunity for such persons to make representations to the court.

(3) The receipt of any sum by the Accountant-General on account of an amount payable under a confiscation order shall reduce the amount so payable, but he shall apply the money received for such of the purposes specified in this section as may be specified in the confiscation order and in the order so specified.

(4) Where the money was paid to the Accountant-General by the Official Receiver under this Law or in pursuance of a charging order, the Accountant-General shall first pay the Official Receiver's expenses.

(5) The Accountant-General shall finally pay any compensation directed to be paid out of any sums recovered under the confiscation order under section 33.

(6) Any money remaining in the hands of the Accountant-General after he has made all payments required by subsections (1) to (5) shall be treated as if it were a fine imposed by the court.

(7) Where, under subsection (3), a sum falls to be applied in payment both of compensation and of other outgoings -

- (a) the person entitled to the compensation shall be liable to pay to the revenues of the Islands such an amount as bears to the remuneration or expenses the same proportion as the amount payable in accordance with the direction under section 33 bears to the total amount payable under the confiscation order;
- (b) the Accountant-General shall deduct from the amount falling to be applied in payment of the compensation an amount equal to the amount of any liability arising by virtue of paragraph (a);

- (c) notwithstanding the deduction under paragraph (b), the person entitled to the compensation shall be treated as having received the whole amount which falls to be applied in payment of it; and
- (d) the amount deducted shall be treated as if it were a fine imposed by the court.

54. Where a receiver is appointed from the private sector and there are no assets or insufficient assets from which his fees can be paid, such reasonable fees as he may charge or as may remain unpaid after the application of the assets shall be paid by the government.

Payment of receiver's fees where no assets

Restrictions

55. (1) Where a court makes a restraint order or an order under section 52 appointing an enforcement receiver in respect of realisable property -

Effect of restraint order

- (a) no distress may be levied against any realisable property to which the order applies except with the leave of the court and subject to any terms the court may impose;
- (b) if the order applies to a tenancy of any premises, no landlord or other person to whom rent is payable may exercise a right within paragraph (c) except with the leave of the court and subject to any terms the court may impose;
- (c) a right is within this paragraph if it is a right of forfeiture by peaceable re-entry in relation to the premises in respect of any failure by the tenant to comply with any term or condition of the tenancy; and
- (d) if a court in which proceedings are pending in respect of any property is satisfied that a restraint order has been applied for or made in respect of the property, the court may either stay the proceedings or allow them to continue on any terms it thinks fit.

(2) The court, before exercising any power conferred by subsection (1) (d), shall give the Attorney-General and any receiver appointed under previous sections an opportunity to be heard.

Receivers: further provisions

56. Where a receiver appointed under sections 52 -

Protection

- (a) takes action in relation to property which is not realisable property;
- (b) would be entitled to take the action if it were realisable property; and

- (c) believes on reasonable grounds that he is entitled to take the action;

he is not liable to any person in respect of any loss or damage resulting from the action, except so far as the loss or damage is caused by his negligence.

Further applications

57. (1) This section applies to a receiver appointed under section 52.

(2) The receiver may apply to the court for an order giving directions as to the exercise of his powers.

(3) Any person affected by action taken by the receiver or any person who may be affected by any action the receiver proposes to take may apply to the Grand Court.

(4) On an application under this section the court may make such order as it believes is appropriate.

Discharge and variation

58. (1) A receiver, the Attorney-General and any person affected by an order made under section 52 may apply to the court to vary or discharge the order.

(2) On an application under this section the court may discharge or vary the order.

(3) In the case of an order under section 52 -

- (a) if the condition in section 44 which was satisfied was that proceedings were started or an application was made, the court shall discharge the order on the conclusion of the proceedings or of the application; and
- (b) if the condition which was satisfied was that an investigation was started or an application was to be made, the court shall discharge the order if within a reasonable time proceedings for the offence are not started or the application is not made.

Management receivers:
discharge

59. (1) Where -

- (a) a management receiver stands appointed under section 52 in respect of realisable property; and
- (b) the court appoints an enforcement receiver;

the court shall order the management receiver to transfer to the other receiver all property held by the management receiver by virtue of the powers conferred on him by section 52.

(2) Subsection (1) shall not apply to property which the management receiver holds by virtue of the exercise by him of his power under section 52 (2) (d).

(3) Where the management receiver complies with an order under subsection (2) he is discharged -

- (a) from his appointment under section 52; and
- (b) from any obligation under this Law arising from his appointment.

(4) Where this section applies the court may make such consequential or incidental order as it believes is appropriate.

60. (1) Where on an application for an order under any provision of section 52 the court decides not to make an order, the person who applied for the order may appeal to the Court of Appeal against the decision.

Appeal to Court of
Appeal

(2) If the court makes an order under section 52 the person who applied for the order or any person affected by the order may appeal to the Court of Appeal in respect of the court's decision.

(3) Where on an application for an order under section 57 the court decides not to make an order, the person who applied for the order may appeal to the Court of Appeal against the decision.

(4) Where the court makes an order under section 58, the following persons may appeal to the Court of Appeal in respect of the court's decision-

- (a) the person who applied for the order;
- (b) any person affected by the order; or
- (c) the receiver.

(5) The following persons may appeal to the Court of Appeal against a decision of the court on an application under section 58 -

- (a) the person who applied for the order in respect of which the application was made;
- (b) any person affected by the court's decision; or
- (c) the receiver.

(6) On an appeal under this section the Court of Appeal may confirm the decision of the court or make such order as it believes is appropriate.

Seized money

Seized money

61. (1) Where money is held by a person and is held in an account maintained by him with a bank or a building society and -

- (a) a restraint order has effect in relation to money to which this section applies;
- (b) a confiscation order is made against the person by whom the money is held;
- (c) a receiver has not been appointed under section 52 in relation to the money; and
- (d) any period allowed under section 20 for payment of the amount ordered to be paid under the confiscation order has ended;

a summary court may order the bank or building society to pay the money to the Clerk of the Court for the court, on account of the amount payable under the confiscation order.

(2) Where a bank or building society fails to comply with an order under subsection (2) -

- (a) the summary court may order it to pay an amount of five thousand dollars; and
- (b) for the purposes of the Summary Jurisdiction Law (2006 Revision) the sum is to be treated as adjudged to be paid by a conviction of the summary court.

(3) In order to take account of changes in the value of money the Governor in Cabinet may by order substitute another sum for the sum for the time being specified in subsection (2)(a).

(4) For the purposes of this section -

(2007 Revision)

(a) a bank is a deposit-taking business within the meaning of the Banks and Trust Companies Law (2007 Revision); and

(2001 Revision)

(b) "building society" has the same meaning assigned by the Building Societies Law (2001 Revision).

Exercise of powers

Powers of court and receiver

62. (1) This section applies to -

- (a) the powers conferred on a court by sections 45 to 56 and sections 57 to 61; and
- (b) the powers of a receiver appointed under section 52.

(2) Subject to subsection (3), the powers referred to in subsection (1) -

- (a) shall be exercised with a view to the value for the time being of realisable property being made available (by the property's realisation) for satisfying any confiscation order that has been or may be made against the defendant;
 - (b) shall be exercised, in a case where a confiscation order has not been made, with a view to securing that there is no diminution in the value of realisable property;
 - (c) shall be exercised without taking account of any obligation of the defendant or a recipient of a tainted gift if the obligation conflicts with the object of satisfying any confiscation order that has been or may be made against the defendant; and
 - (d) may be exercised in respect of a debt owed by the Crown.
- (3) Subsection (2) has effect subject to the following -
- (a) the powers shall be exercised with a view to allowing a person other than the defendant or a recipient of a tainted gift to retain or recover the value of any interest held by him;
 - (b) in the case of realisable property held by a recipient of a tainted gift, the powers shall be exercised with a view to realising no more than the value for the time being of the gift; and
 - (c) in a case where a confiscation order has not been made against the defendant, property shall not be sold if the court so orders under subsection (4).
- (4) Where on an application by the defendant or by the recipient of a tainted gift, the court decides that property cannot be replaced it may order that it shall not be sold.
- (5) An order under subsection (4) may be revoked or varied.

Committal

63. (1) Where -

Committal by summary court

- (a) a defendant is convicted of an offence by a summary court; and
- (b) the Attorney-General asks the court to commit the defendant to the Grand Court with a view to a confiscation order being considered under section 15;

the summary court -

- (i) shall commit the defendant to the Grand Court in respect of the offence; and
- (ii) may commit the defendant to the Grand Court in respect of any other offence falling within subsection (2).

- (2) An offence falls within this subsection if -
 - (a) the defendant has been convicted of it by the summary court or any other court; and
 - (b) the summary court has power to deal with him in respect of it.

(3) Where a committal is made under this section in respect of an offence or offences -

- (a) section 15 applies accordingly; and
- (b) the committal operates as a committal of the defendant to be dealt with by the Grand Court in accordance with section 64.

(4) Where a committal is made under this section in respect of an offence triable either way for which (apart from this section) the summary court could have committed the defendant for sentence under section 7 of the Criminal Procedure Code (2006 Revision), the court shall state whether it would have done so.

(2006 Revision)

(5) A committal under this section may be in custody or on bail.

Sentencing by Grand Court

64. (1) Where a defendant is committed to the Grand Court under section 63 in respect of an offence or offences, this section applies, whether or not the court proceeds under section 15.

(2) In the case of an offence in respect of which the summary court has stated under section 63 (4) that it would have committed the defendant for sentence, the Grand Court -

- (a) shall inquire into the circumstances of the case; and
- (b) may deal with the defendant in any way in which it could deal with him if he had just been convicted of the offence on indictment before it.

(3) In the case of any other offence other than an offence triable either way the Grand Court shall inquire into the circumstances of the case, and may deal with the defendant in any way in which the summary court could deal with him if it had just convicted him of the offence.

Compensation

Serious default

65. (1) Where -

- (a) a criminal investigation has been started with regard to an offence and proceedings are not started for the offence and-
 - (i) in the criminal investigation there has been a serious default by a person mentioned in subsection (2); and

- (ii) the investigation would not have continued if the default had not occurred; or
- (b) proceedings for an offence are started against a person and -
 - (i) they do not result in his conviction for the offence; or
 - (ii) he is convicted of the offence but the conviction is quashed or he is pardoned in respect of it; and
 - (iii) in the criminal investigation with regard to the offence or in its prosecution there has been a serious default by a person who is mentioned in subsection (2); and
 - (iv) the proceedings would not have been started or continued if the default had not occurred; and
- (c) an application is made under this section by a person who held realisable property and has suffered loss in consequence of anything done in relation to it by or in pursuance of an order under this Part,

the court may order the payment of such compensation as it believes is just.

(2) Compensation under this section is payable to the applicant out of the revenues of the Islands if the person in default was a person concerned in the investigation or prosecution of the offence concerned.

66. (1) Where -

Order varied or discharged

- (a) the court varies a confiscation order under section 38 or discharges one under section 39; and
- (b) an application is made to the court by a person who held realisable property and has suffered loss as a result of the making of the order;

the court may order the payment of such compensation as it believes is just.

(2) Compensation under this section is payable out of the revenue of the Islands.

Enforcement abroad

67. (1) This section applies if -

Enforcement abroad

- (a) any of the conditions in section 44 is satisfied;
- (b) the Attorney-General believes that realisable property is situated in a country or territory outside the Islands (the receiving country); and
- (c) the Attorney-General sends a request for assistance to the Governor with a view to it being forwarded under this section.

(2) Where no confiscation order has been made, a request for assistance is a request to the government of the receiving country to secure that any person is prohibited from dealing with realisable property.

(3) Where a confiscation order has been made and has not been satisfied, discharged or quashed, a request for assistance is a request to the government of the receiving country to secure that -

- (a) any person is prohibited from dealing with realisable property; and
- (b) realisable property is realised and the proceeds are applied in accordance with the law of the receiving country.

(4) A request for assistance may be not made for the purposes of this section in a case where a confiscation order has been made and has been satisfied, discharged or quashed.

(5) Where the Governor believes it is appropriate to do so he may forward the request for assistance to the government of the receiving country.

(6) Where property is realised in pursuance of a request under subsection (3) the amount ordered to be paid under the confiscation order shall be taken to be reduced by an amount equal to the proceeds of realisation.

(7) A certificate purporting to be issued by or on behalf of the requested government is admissible as evidence of the facts it states if it states -

- (a) that property has been realised in pursuance of a request under subsection (3);
- (b) the date of realisation; and
- (c) the proceeds of realisation.

(8) If the proceeds of realisation made in pursuance of a request under subsection (3) are expressed in a currency other than Cayman Islands dollars, they shall be taken to be the Cayman Islands dollar equivalent calculated in accordance with the rate of exchange prevailing at the end of the day of realisation.

Interpretation

Criminal lifestyle

68. (1) A defendant has a criminal lifestyle only if the offence or any of the offences taken into account by the court satisfies any of these tests -

- (a) it is specified in Schedule 1;
- (b) it constitutes conduct forming part of a course of criminal activity; or

- (c) it is an offence committed over a period of at least six months and the defendant has benefited from the conduct which constitutes the offence.
- (2) Conduct forms part of a course of criminal activity if the defendant has benefited from the conduct and -
 - (a) in the proceedings in which he was convicted he was convicted of three or more other offences, each of three or more of them constituting conduct from which he has benefited; or
 - (b) in the period of six years ending with the day when those proceedings were started (or, if there is more than one such day, the earliest day) he was convicted on at least two separate occasions of an offence constituting conduct from which he has benefited.
- (3) An offence does not satisfy the test in subsection (1)(b) or (c) unless the defendant obtains relevant benefit of not less than five thousand dollars.
- (4) "Relevant benefit" for the purposes of subsection (1) (b) is -
 - (a) benefit from conduct which constitutes the offence;
 - (b) benefit from any other conduct which forms part of the course of criminal activity and which constitutes an offence of which the defendant has been convicted; or
 - (c) benefit from conduct which constitutes an offence which has been or will be taken into consideration by the court in sentencing the defendant for an offence mentioned in paragraph (a) or (b).
- (5) "Relevant benefit" for the purposes of subsection (1)(c) is -
 - (a) benefit from conduct which constitutes the offence; or
 - (b) benefit from conduct which constitutes an offence which has been or will be taken into consideration by the court in sentencing the defendant for the offence mentioned in paragraph (a).
- (6) The Governor in Cabinet may by order amend Schedule 1 and vary the amount for the time being specified in subsection (3).

69. (1) Criminal conduct is conduct which -

Conduct and benefit

- (a) constitutes an offence in the Islands; or
 - (b) would constitute such an offence if it occurred in the Islands.
- (2) General criminal conduct of the defendant is all of his criminal conduct, and it is immaterial-

- (a) whether conduct occurred before or after the commencement of this Law; and
 - (b) whether property constituting a benefit from conduct was obtained before or after the passing of this Law.
- (3) Particular criminal conduct of the defendant is all of his criminal conduct which falls within the following paragraphs -
- (a) conduct which constitutes the offence or offences concerned;
 - (b) conduct which constitutes offences of which he was convicted in the same proceedings as those in which he was convicted of the offence or offences concerned; or
 - (c) conduct which constitutes offences which the court will be taking into consideration in deciding his sentence for the offence or offences concerned.
- (4) A person benefits from conduct if he obtains property as a result of or in connection with the conduct.
- (5) Where a person obtains a pecuniary advantage as a result of or in connection with conduct, he is to be taken to obtain as a result of or in connection with the conduct a sum of money equal to the value of the pecuniary advantage.
- (6) References to property or a pecuniary advantage obtained in connection with conduct include references to property or a pecuniary advantage obtained both in that connection and some other connection.
- (7) Where a person benefits from conduct his benefit is the value of the property obtained.

Tainted gifts

70. (1) Whether or not a court has made a decision that a defendant has a criminal lifestyle a gift is tainted if -
- (a) it was made by the defendant at any time after the relevant day; or
 - (b) if it was made by the defendant at any time and was of property-
 - (i) which was obtained by the defendant as a result of or in connection with his general criminal conduct; or
 - (ii) which, in whole or part and whether directly or indirectly, represented in the defendant's hands property obtained by him as a result of or in connection with his general criminal conduct.
- (2) Where a court has decided that the defendant does not have a criminal lifestyle a gift is considered to be tainted if it was made by the defendant at any time after -

- (a) the date on which the offence concerned was committed; or
 - (b) if his particular criminal conduct consists of two or more offences and they were committed on different dates, the date of the earliest.
- (3) For the purposes of subsection (2) -
- (a) an offence which is a continuing offence is committed on the first occasion when it began to be committed; and
 - (b) the defendant's particular criminal conduct includes any conduct which constitutes offences which the court has taken into consideration in deciding his sentence for the offence or offences concerned.
- (4) A gift may be a tainted gift whether it was made before or after the commencement of this Law.
- (5) The relevant day is the first day of the period of six years ending with -
- (a) the day when proceedings for the offence concerned were started against the defendant; or
 - (b) if there are two or more offences and proceedings for them were started on different days, the earliest of those days.

71. (1) Where the defendant transfers property to another person for a consideration whose value is significantly less than the value of the property at the time of the transfer, the defendant shall be treated as making a gift.

Gifts and their recipients

- (2) Where subsection (1) applies the property given is to be treated as such share in the property transferred as is represented by the fraction -
- (a) whose numerator is the difference between the two values mentioned in subsection (1); and
 - (b) whose denominator is the value of the property at the time of the transfer.
- (3) References to a recipient of a tainted gift are to a person to whom the defendant has made the gift.

72. Subject to sections 73 and 74, for the purposes of this Law the value of property (other than cash) in relation to any person holding the property -

Value: the basic rule

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

- (ii) the amount required to discharge any encumbrance (other than a charging order under section 11 of the prior Law on that interest; and
- (b) in any other case, its market value.

Value of property
obtained from conduct

73. (1) This section applies for the purpose of deciding the value of property obtained by a person as a result of or in connection with his criminal conduct; and the material time is the time the court makes its decision.

- (2) The value of the property at the material time is the greater of -
 - (a) the value of the property at the time the person obtained it adjusted to take account of later changes in the value of money;
 - (b) the value at the material time of the property found under subsection (3).
- (3) The property found under this subsection is as follows -
 - (a) if the person holds the property obtained, the property found under this subsection is that property;
 - (b) if he holds no part of the property obtained, the property found under this subsection is any property which directly or indirectly represents such property in his hands; or
 - (c) if he holds part of the property obtained, the property found under this subsection is that part and any property which directly or indirectly represents the other part in his hands.

(4) The references in subsection (2) (a) and (b) to the value are to the value found in accordance with section 72.

Value of tainted gifts

74. (1) The value at any time (“the material time”) of a tainted gift is the greater of the following -

- (a) the value at the time of the gift of the property given, adjusted to take account of later changes in the value of money; and
- (b) where subsection (2) applies, the value (at the material time) of the property there mentioned.

- (2) The property referred to under subsection (1) is as follows -
 - (a) the property which the recipient received (not being cash); or
 - (b) property which, in whole or in part, directly or indirectly represents in the recipient’s hands the property which he received.

(3) The references in subsection (1) (a) and (b) to the value are to the value found in accordance with section 72.

75. For the purposes of this Law property is free unless an order is in force in respect of it under -
- (a) section 29 of the Misuse of Drugs Law (2000 Revision);
 - (b) section 28 of the Terrorism Law 2003 (forfeiture orders); and
 - (c) section 87, 96, 96 (2) or 118 (2) of this Law.
76. (1) For the purposes of this Law, realisable property is any free property held by the defendant and any free property held by the recipient of a tainted gift.
- (2) Property is all property wherever situated and includes -
 - (a) money;
 - (b) all forms of real or personal property;
 - (c) things in action and other intangible or incorporeal property.
 - (3) The following rules apply in relation to property -
 - (a) property is held by a person if he holds an interest in it;
 - (b) property is obtained by a person if he obtains an interest in it;
 - (c) property is transferred by one person to another if the first one transfers or grants an interest in it to the second;
 - (d) references to property held by a person include references to property vested in his in bankruptcy, permanent or interim, or as liquidator;
 - (e) references to an interest held by a person beneficially in property include references to an interest which would be held by him beneficially if the property were not so vested;
 - (f) references to an interest, in relation to land in the Islands, are to any legal estate or equitable interest or power; and
 - (g) references to an interest, in relation to property other than land, include references to a right (including a right to possession).

PART IV

CIVIL RECOVERY OF THE PROCEEDS, ETC., OF UNLAWFUL CONDUCT

INTRODUCTORY

77. (1) This Part has effect for the purposes of -
- (a) enabling the Attorney-General to recover, in civil proceedings before the court, property which is, or represents, property obtained through unlawful conduct; and
 - (b) enabling cash which is, or represents, property obtained through unlawful conduct, or which is intended to be used in unlawful

conduct, to be forfeited in civil proceedings before a summary court.

(2) The powers conferred by this Part are exercisable in relation to any property (including cash) whether or not any proceedings have been brought for an offence in connection with the property.

"Unlawful conduct"

78. (1) Conduct occurring in any part of the Islands is unlawful conduct if it is unlawful under the criminal laws of the Islands.

(2) Conduct which -

- (a) occurs in a country outside the Islands and is unlawful under the criminal law of that country; and
- (b) if it occurred in the Islands, would be unlawful under the criminal law of the Islands;

is also unlawful conduct.

(3) The court shall decide on a balance of probabilities whether it is proved -

- (a) that any matters alleged to constitute unlawful conduct have occurred; or
- (b) that any person intended to use any cash in unlawful conduct.

"Property obtained through unlawful conduct"

79. (1) A person obtains property through unlawful conduct whether his own conduct or another's if he obtains property by or in return for the conduct.

(2) In deciding whether any property was obtained through unlawful conduct -

- (a) it is immaterial whether or not any money, goods or services were provided in order to put the person in question in a position to carry out the conduct; and
- (b) it is not necessary to show that the conduct was of a particular kind if it is shown that the property was obtained through conduct of one of a number of kinds, each of which would have been unlawful conduct.

Proceedings for recovery orders

Proceedings for recovery orders in the Islands

80. (1) Proceedings for a recovery order may be taken by the Attorney-General in the Grand Court against any person whom the Attorney-General thinks holds recoverable property, being property defined in sections 123 to 129.

(2) The Attorney-General shall serve the application -

- (a) on the respondent; and
- (b) unless the court dispenses with service, on any other person whom the Attorney-General thinks holds any associated property which the Attorney-General wishes to be subject to a recovery order;

wherever domiciled, resident or present in the Islands.

(3) Where any property which the Attorney-General wishes to be subject to a recovery order is not specified in the application it shall be described in the application in general terms and the application shall state whether it is alleged to be recoverable property or associated property.

(4) The references in this section to the application include the particulars of claim, where they are served subsequently.

81. (1) For the purposes of this Law, "associated property" means property of any of the following descriptions, including property held by the respondent, which is not itself the recoverable property -

"Associated property"

- (a) any interest in the recoverable property;
- (b) any other interest in the property in which the recoverable property subsists;
- (c) if the recoverable property is a tenancy in common, the tenancy of the other tenant; and
- (d) if the recoverable property is part of a larger property, but not a separate part, the remainder of that property.

(2) References to property being associated with recoverable property are to be read accordingly.

Property freezing orders

82. (1) Where the Attorney-General may take proceedings for a recovery order in the Grand Court, he may apply to the court for a property freezing order (whether before or after starting the proceedings).

Application for property freezing order

- (2) A property freezing order is an order that -
- (a) specifies or describes the property to which it applies; and
 - (b) subject to any exclusions (see section 84 (1) (b) and (2)), prohibits any person to whose property the order applies from in any way dealing with the property.

(3) An application for a property freezing order may be made ex parte if the circumstances are such that notice of the application would prejudice any

right of the Attorney-General to obtain a recovery order in respect of any property.

(4) The court may make a property freezing order on an application if it is satisfied -

- (a) that there is a good arguable case -
 - (i) that the property to which the application for the order relates is or includes recoverable property; and
 - (ii) that, if any of it is not recoverable property, it is associated property; and
- (b) that -
 - (i) the property to which the application for the order relates includes property alleged to be associated property; and
 - (ii) the Attorney-General has not established the identity of the person who holds it and the Attorney-General has taken all reasonable steps to do so.

Variation and setting
aside of order

83. (1) The court may at any time vary or set aside a property freezing order.

(2) If the court makes an interim receiving order that applies to all of the property to which a property freezing order applies, it shall set aside the property freezing order.

(3) If the court makes an interim receiving order that applies to some but not all of the property to which a property freezing order applies, it shall vary the property freezing order so as to exclude any property to which the interim receiving order applies.

(4) If the court decides that any property to which a property freezing order applies is neither recoverable property nor associated property, it shall vary the order so as to exclude the property.

(5) Before exercising power under this Part to vary or set aside a property freezing order, the court shall (as well as giving the parties to the proceedings an opportunity to be heard) give such an opportunity to any person who may be affected by its decision.

(6) Subsection (5) does not apply where the court is acting as required by subsection (2) or (3).

Exclusions

84. (1) The power to vary a property freezing order includes (in particular) power to make exclusions as follows -

- (a) power to exclude property from the order; and

(b) power, otherwise than by excluding property from the order, to make exclusions from the prohibition on dealing with the property to which the order applies.

(2) Exclusions from the prohibition on dealing with the property to which the order applies (other than exclusions of property from the order) may also be made when the order is made.

(3) An exclusion may, in particular, make provision for the purpose of enabling any person -

- (a) to meet his reasonable living expenses; or
- (b) to carry on any trade, business, profession or occupation.

(4) An exclusion may be made subject to conditions.

(5) If excluded property is not specified in the order it shall be described in the order in general terms.

(6) The power to make exclusions shall, subject to subsection (5), be exercised with a view to ensuring, so far as practicable, that the satisfaction of any right of the Attorney-General to recover the property obtained through unlawful conduct is not unduly prejudiced.

(7) Subsection (6) does not apply where the court is acting as required by section 83 (3) or (4).

85. (1) While a property freezing order has effect -

- (a) the court may stay any action, execution or other legal process in respect of the property to which the order applies; and
- (b) no distress may be levied against the property to which the order applies except with the leave of the court and subject to any terms the court may impose.

Restriction on
proceedings and
remedies

(2) If a court (whether the Grand Court or any other court) in which proceedings are pending in respect of any property is satisfied that a property freezing order has been applied for or made in respect of the property, it may either stay the proceedings or allow them to continue on any terms it thinks fit.

(3) If a property freezing order applies to a tenancy of any premises, no landlord or other person to whom rent is payable may exercise the right of forfeiture by peaceable re-entry in relation to the premises in respect of any failure by the tenant to comply with any term or condition of the tenancy, except with the leave of the court and subject to any terms the court may impose.

(4) Before exercising any power conferred by this section, the court shall (as well as giving the parties to any of the proceedings concerned an opportunity to be heard) give such an opportunity to any person who may be affected by the court's decision.

Official Receiver

Official Receiver
(Law 27 of 2005)

86. (1) In exercise of the powers contained in the Public Service Management Law, 2005 but subject to subsection (2), there shall be appointed in the Portfolio of Economics and Finance an Official Receiver who shall perform such functions as may be specified under this Law but otherwise be governed by that Law.

(2) Before making the appointment referred to in subsection (1) the appointing officer shall consult the Chief Secretary, Attorney-General and Financial Secretary in relation to the identity of the person to be appointed.

(3) Wherever under this Law reference is made to a receivership ordered by a court, such receivership shall be read and construed as a receivership to be performed by the Official Receiver but where, in the opinion of the Official Receiver, it is inexpedient for the Official Receiver to perform that role in a particular case or class of cases, the Official Receiver shall notify the court and the court may appoint a receiver from the private sector.

(4) Where a receiver from the private sector is so appointed, he shall have all the powers, duties and obligations of the Official Receiver as are set out in this Law and which are consistent with his private-sector status.

Interim receiving orders

Application for interim
receiving order

87. (1) Where the Attorney-General intends to take proceedings for a recovery order in the Grand Court, the Attorney-General may apply to the court for an interim receiving order, whether before or after starting the proceedings.

(2) An interim receiving order is an order for -

- (a) the detention, custody or preservation of property; and
- (b) its placing under the Official Receiver on an interim basis.

(3) An application for an interim receiving order may be made *ex parte* if the circumstances are such that notice of the application would prejudice any right of the Attorney-General to obtain a recovery order in respect of any property.

(4) The court may make an interim receiving order on the application by the Attorney-General if it is satisfied that the following conditions in paragraph (a) and, where applicable, (b) are met -

- (a) there is a good arguable case -
 - (i) that the property to which the application for the order relates is or includes recoverable property; and
 - (ii) that, if any of it is not recoverable property, it is associated property; and
 - (b) if -
 - (i) the property to which the application for the order relates includes property alleged to be associated property; and
 - (ii) the Attorney-General has not established the identity of the person who holds it;
- the Attorney-General has taken all reasonable steps to do so.

(5) The extent of the power to make an interim receiving order is not limited by sections 88 to 94.

88. (1) An interim receiving order may authorise or require the Official Receiver -

Functions of Official Receiver during an interim receiving order

- (a) to exercise any of the powers mentioned in Schedule 2; or
- (b) to take any other steps the court thinks appropriate;

for the purpose of securing the detention, custody or preservation of the property to which the order applies or of taking any steps under subsection (2).

(2) An interim receiving order shall require the Official Receiver to take any steps which the court thinks necessary to establish -

- (a) whether or not the property to which the order applies is recoverable property or associated property; and
- (b) whether or not any other property is recoverable property, in relation to the same unlawful conduct, and, if it is, who holds it.

(3) Where -

- (a) the Official Receiver deals with any property which is not property to which the order applies; and
- (b) at the time he deals with the property he believes on reasonable grounds that he is entitled to do so in pursuance of the order;

the Official Receiver is not liable to any person in respect of any loss or damage resulting from his dealing with the property except so far as the loss or damage is caused by his negligence.

- Registration
(2004 Revision)
89. The Registered Land Law (2004 Revision) -
- (a) applies in relation to interim receiving orders as it applies in relation to orders which affect land and are made by the court for the purpose of enforcing judgments or recognizances; and
 - (b) applies in relation to applications for interim receiving orders as it applies in relation to other pending land actions.
- Duties of respondent, etc
90. (1) An interim receiving order may require any person to whose property the order applies -
- (a) to bring the property to a place in the Islands specified by the Official Receiver or to place it in the custody of the Official Receiver (if, in either case, he is able to do so); and
 - (b) to do anything he is reasonably required to do by the Official Receiver for the preservation of the property.
- (2) An interim receiving order may require any person to whose property the order applies to bring any documents relating to the property which are in his possession or control to a place in the Islands specified by the Official Receiver or to place them in the custody of the Official Receiver.
- (3) "Document" means anything in which information of any description is recorded.
- Supervision of Official Receiver and variation of order
91. (1) The Official Receiver, any party to the proceedings and any person affected by any action taken by the Official Receiver, or who may be affected by any action proposed to be taken by him, may at any time apply to the court for directions as to the exercise of the Official Receiver's functions.
- (2) Before giving any directions under subsection (1), the court shall (as well as giving the parties to the proceedings an opportunity to be heard) give such an opportunity to the Official Receiver and to any person who may be interested in the application.
- (3) The court may at any time vary or set aside an interim receiving order.
- Restrictions on dealing, etc., with property
92. (1) An interim receiving order shall, subject to any exclusions made in accordance with this section, prohibit any person to whose property the order applies from dealing with the property.
- (2) Exclusions may be made when the interim receiving order is made or on an application to vary the order and before exercising any power under this Part to vary or set aside an interim receiving order; the court shall (as well as giving the parties to the proceedings an opportunity to be heard) give such an

opportunity to the Official Receiver and to any person who may be affected by the court's decision.

(3) An exclusion may, in particular, make provision for the purpose of enabling any person to meet his reasonable living expenses or to carry on any trade, business, profession or occupation and may be made subject to conditions.

(4) An exclusion may not be made for the purpose of enabling any person to meet any legal expenses in respect of proceedings under this Part.

(5) Where the excluded property is not specified in the order it shall be described in the order in general terms.

(6) The power to make exclusions shall be exercised with a view to ensuring, so far as practicable, that the satisfaction of any right of the Attorney-General to recover the property obtained through unlawful conduct is not unduly prejudiced.

93. (1) While an interim receiving order has effect -

- (a) the court may stay any action, execution or other legal process in respect of the property to which the order applies; and
- (b) no distress may be levied against the property to which the order applies except with the leave of the court and subject to any terms the court may impose.

Restriction on proceedings and remedies

(2) Where a court (whether the Grand Court or any other court) in which proceedings are pending in respect of any property is satisfied that an interim receiving order has been applied for or made in respect of the property, the court may either stay the proceedings or allow them to continue on any terms it thinks fit.

(3) Where the interim receiving order applies to a tenancy of any premises, no landlord or other person to whom rent is payable may exercise any right of forfeiture by peaceable re-entry in relation to the premises in respect of any failure by the tenant to comply with any term or condition of the tenancy, except with the leave of the court and subject to any terms the court may impose.

(4) Before exercising any power conferred by this section, the court shall (as well as giving the parties to any of the proceedings in question an opportunity to be heard) give such an opportunity to the Official Receiver (if appointed) and any person who may be affected by the court's decision.

Exclusion of property which is not recoverable, etc. 94. (1) Where the court decides that any property to which an interim receiving order applies is neither recoverable property nor associated property, it shall vary the order so as to exclude it.

(2) The court may vary an interim receiving order so as to exclude from the property to which the order applies any property which is alleged to be associated property if the court thinks that the satisfaction of any right of the Attorney-General to recover the property obtained through unlawful conduct will not be prejudiced.

(3) The court may exclude any property within subsection (2) on any terms or conditions applying while the interim receiving order has effect, which the court thinks necessary.

Reporting 95. (1) An interim receiving order shall require the Official Receiver to inform the Attorney-General and the court as soon as reasonably practicable if he thinks that -

- (a) any property to which the order applies by virtue of a claim that it is recoverable property is not recoverable property;
- (b) any property to which the order applies by virtue of a claim that it is associated property is not associated property;
- (c) any property to which the order does not apply is recoverable property (in relation to the same unlawful conduct) or associated property;
- (d) any property to which the order applies is held by a person who is different from the person it is claimed holds it; or
- (e) there has been any material change of circumstances.

(2) An interim receiving order shall require the Official Receiver -

- (a) to report his findings to the court; and
- (b) to serve copies of his report on the Attorney- General and on any person who holds any property to which the order applies or who may otherwise be affected by the report.

Vesting and realisation of recoverable property

Recovery orders 96. (1) Where in proceedings under this Part the court is satisfied that any property is recoverable, the court shall make a recovery order.

(2) The recovery order shall vest the recoverable property in the trustee for civil recovery.

(3) The court may not make in a recovery order any provision in respect of any recoverable property if each of the conditions in subsection (4) is met and it would not be just and equitable to do so.

(4) The conditions referred to in subsection (3) are that -

- (a) the respondent obtained the recoverable property in good faith;
- (b) he took steps after obtaining the property which he would not have taken if he had not obtained it or he took steps before obtaining the property which he would not have taken if he had not believed he was going to obtain it;
- (c) when he took the steps, he had no notice that the property was recoverable; and
- (d) if a recovery order were made in respect of the property, it would, by reason of the steps, be detrimental to him.

(5) In deciding whether it would be just and equitable to make the provision in the recovery order where the conditions in subsection (4) are met, the court shall have regard to -

- (a) the degree of detriment that would be suffered by the respondent if the provision were made; and
- (b) the Attorney- General's interest in receiving the realised proceeds of the recoverable property.

(6) A recovery order may sever any property and may impose conditions as to the manner in which the for civil recovery may deal with any property vested by the order for the purpose of realising it.

(7) This section is subject to sections 99 to 103.

97. (1) The trustee for civil recovery shall be the Official Receiver appointed under this Law.

Functions of the trustee
for civil recovery

(2) The functions of the trustee are -

- (a) to secure the detention, custody or preservation of any property vested in him by the recovery order;
- (b) in the case of property other than money, to realise the value of the property for the benefit of the Accountant-General; and
- (c) to perform any other functions conferred on him by virtue of this Part.

(3) In performing his functions, the trustee acts on behalf of the Accountant General and shall comply with any directions given by the Accountant-General.

(4) The trustee shall realise the value of property vested in him by the recovery order, so far as practicable, in the manner best calculated to maximise the amount payable to the Accountant-General.

(5) The trustee has the powers mentioned in Schedule 3.

(6) References in this section to a recovery order include an order under section 102 and references to property vested in the trustee by a recovery order include property vested in him in pursuance of an order under section 102.

Rights of pre-emption,
etc.

98. (1) A recovery order shall have effect in relation to any property despite any provision (of whatever nature) which would otherwise prevent, penalise or restrict the vesting of the property.

(2) A right of pre-emption, right of return or other similar right does not operate or become exercisable as a result of the vesting of any property under a recovery order.

(3) A right of return means any right under a provision for the return or reversion of property in specified circumstances.

(4) Where property is vested under a recovery order, any such right shall have effect as if the person in whom the property is vested were the same person in law as the person who held the property and as if no transfer of the property had taken place.

(5) References to rights in subsections (2) and (3) do not include any rights in respect of which the recovery order was made.

(6) This section applies in relation to the creation of interests, or the doing of anything else, by a recovery order as it applies in relation to the vesting of property.

Associated and joint
property

99. (1) Sections 100 and 101 apply if the court makes a recovery order in respect of any recoverable property in a case where -

- (a) the property to which the proceedings relate includes property which is associated with the recoverable property and is specified or described in the application; and
- (b) if the associated property is not the respondent's property, the claim form or application has been served on the person whose property it is or the court has dispensed with service; or
- (c) the recoverable property belongs to joint tenants and one of the tenants is an excepted joint owner.

(2) An excepted joint owner is a person who obtained the property in circumstances in which it would not be recoverable as against him; and references to the excepted joint owner's share of the recoverable property are to so much of the recoverable property as would have been his if the joint tenancy had been severed.

Agreements about
associated and joint
property

100. (1) Where this section applies, and the Attorney-General and the person who holds the associated property or who is the excepted joint owner agree, the recovery order may, instead of vesting the recoverable property in the trustee for civil recovery, require the person who holds the associated property or who is the excepted joint owner to make a payment to the trustee.

(2) A recovery order which makes any requirement under subsection (1) may, so far as required for giving effect to the agreement, include provision for vesting, creating or extinguishing any interest in the property.

(3) The amount of the payment shall be the amount which the Attorney-General and that person agree represents -

- (a) in a case within section 99 (a) and (b), the value of the recoverable property;
 - (b) in a case within section 99 (c), the value of the recoverable property less the value of the excepted joint owner's share.
- (4) Notwithstanding subsection (3), if -
- (a) an interim receiving order applied at any time to the associated property or joint tenancy; and
 - (b) the Attorney-General agrees that the person has suffered loss as a result of the interim receiving order;

the amount of the payment may be reduced by any amount the Attorney-General and that person agree is reasonable, having regard to that loss and to any other relevant circumstances.

(5) Where there is more than one such item of associated property or excepted joint owner, the total amount to be paid to the trustee, and the part of that amount which is to be provided by each person who holds any such associated property or who is an excepted joint owner, shall be agreed between both (or all) of them and the Attorney-General.

(6) A recovery order which makes any requirement under subsection (1) shall make provision for any recoverable property to cease to be recoverable.

Associated and joint
property: default of
agreement

101. (1) Where there is no agreement under section 100 and the court thinks it is equitable and just to do so it may make a recovery order which provides -

- (a) for the associated property to vest in the trustee for civil recovery or (as the case may be) for the excepted joint owner's interest to be extinguished; or
- (b) in the case of an excepted joint owner, for the severance of his interest.

(2) A recovery order making any provision by virtue of subsection (1)(a) may provide -

- (a) for the trustee to pay an amount to the person who holds the associated property or who is an excepted joint owner; or
- (b) for the creation of interests in favour of that person, or the imposition of liabilities or conditions, in relation to the property vested in the trustee;

or for both.

(3) In making any provision in a recovery order by virtue of subsection (1) or (2), the court shall have regard to -

- (a) the rights of any person who holds the associated property or who is an excepted joint owner and the value to him of that property or, as the case may be, of his share (including any value which cannot be assessed in terms of money); and
- (b) the Attorney General's interest in receiving the realised proceeds of the recoverable property.

(4) Where -

- (a) an interim receiving order applied at any time to the associated property or joint tenancy; and
- (b) the court is satisfied that the person who holds the associated property or who is an excepted joint owner has suffered loss as a result of the interim receiving order;

a recovery order making any provision by virtue of subsection (1) or (2) may require the Attorney-General to pay compensation to that person.

(5) The amount of compensation to be paid under subsection (4) is the amount the court thinks reasonable, having regard to the person's loss and to any other relevant circumstances.

Consent orders

102. (1) The court may make an order staying any proceedings for a recovery order on terms agreed by the parties for the disposal of the proceedings if each

person to whose property the proceedings or the agreement relates is a party both to the proceedings and the agreement.

(2) An order under subsection (1) may, as well as staying the proceedings on terms -

- (a) make provision for any property which may be recoverable property to cease to be recoverable; and
- (b) make any further provision which the court thinks appropriate.

103. (1) Where the Attorney-General seeks a recovery order of any kind, the court shall not make a recovery order if it thinks that the Attorney-General's right to recover property which is the original property or represents such property has been fully satisfied by a previous recovery order or order under section 102.

Limit on recovery

(2) Where that right has not been fully satisfied the court may, to the extent required, make a recovery order in respect of -

- (a) only some of the related items of property; or
- (b) only a part of the related items of property.

104. (1) Where -

Section 103:
supplementary

- (a) there is a disposal, other than a part disposal, of the original property; and
- (b) other property (the representative property) is obtained in its place;

the Attorney-General's right to recover the original property is satisfied by the making of a recovery order in respect of either the original property or the representative property.

(2) Where -

- (a) there is a part disposal of the original property; and
- (b) other property ("the representative property") is obtained in place of the property disposed of;

the Attorney-General's right to recover the original property is satisfied by the making of a recovery order in respect of the remainder of the original property together with either the representative property or the property disposed of.

(3) In this section -

- (a) a part disposal means a disposal to which section 132 (1) applies; and
- (b) the original property has the same meaning as in section 106.

Applying realised
proceeds

105. (1) This section applies to -
- (a) sums which represent the realised proceeds of property which was vested in the trustee for civil recovery by a recovery order or which he obtained in pursuance of a recovery order; and
 - (b) sums vested in the trustee by a recovery order or obtained by him in pursuance of a recovery order.
- (2) The trustee shall, out of the sums referred to under subsection (1) -
- (a) firstly, make any payment required to be made by him by virtue of section 100; and
 - (b) secondly, pay any expenses incurred by a person acting as an insolvency practitioner which are payable in accordance with this Law;

and any sum which remains shall be paid to the Accountant-General for the revenue of the Islands.

(3) This section applies to property vested in the trustee for civil recovery, or money paid to him, in pursuance of the agreement as it applies to property vested in him by a recovery order or money paid under section 100.

Exemptions, etc.

Victims of theft, etc.

106. (1) In proceedings for a recovery order, a person who claims that any property alleged to be recoverable property, or any part of the property, belongs to him may apply for a declaration under this section.

- (2) Where the court finds that -
- (a) the person was deprived of the property he claims, or of property which it represents, by unlawful conduct;
 - (b) the property he was deprived of was not recoverable property immediately before he was deprived of it; and
 - (c) the property he claims belongs to him;

the court may make a declaration under this section.

(3) Property to which a declaration under this section applies is not recoverable property.

Other exemptions

107. Proceedings for a recovery order may not be taken -
- (a) against any person in circumstances of a description prescribed by regulations; and the circumstances may relate to the person himself or to the property or to any other matter;

- (b) in respect of cash found at any place in the Islands unless the proceedings are also taken in respect of property other than cash which is property of the same person;
- (c) in respect of any property which are the assets intended as security for financial markets; or
- (d) against any person in respect of any recoverable property which that person holds by reason of his acting, or having acted, as an insolvency practitioner.

Miscellaneous

108. (1) Where, in the case of any property to which an interim receiving order has at any time applied, the court does not in the course of the proceedings decide that the property is recoverable property or associated property, the person whose property it is may make an application to the court for compensation. Compensation

(2) Subsection (1) does not apply if the court -

- (a) has made a declaration in respect of the property by virtue of section 106; or
- (b) makes an order under section 102.

(3) Where the court has made a decision by reason of which no recovery order could be made in respect of the property, the application for compensation shall be made within the period of three months beginning with the date of the decision or, if any application is made for leave to appeal, within the date on which the application is withdrawn or refused or (if the application is granted) the date on which any proceedings on appeal are finally concluded.

(4) If the proceedings in respect of the property have been discontinued, the application for compensation shall be made within the period of three months beginning with the discontinuance.

(5) Where the court is satisfied that the applicant has suffered loss as a result of the interim receiving order, it may require the Attorney-General to pay compensation to him.

(6) Where, but for section 98 (2), any right mentioned there would have operated in favour of, or become exercisable by, any person, he may make an application to the court for compensation.

(7) The application for compensation under subsection (6) shall be made within the period of three months beginning with the vesting referred to in section 98 (2).

(8) Where the court is satisfied that, in consequence of the operation of section 98, the right in question cannot subsequently operate in favour of the applicant or (as the case may be) become exercisable by him, it may require the Attorney-General to pay compensation to him.

(9) The amount of compensation to be paid under this section is the amount the court thinks reasonable, having regard to the loss suffered and any other relevant circumstances.

Financial threshold

109. (1) Subject to subsection (2), at any time when an order specifying an amount for the purposes of this section has effect, the Attorney-General may not start proceedings for a recovery order unless he reasonably believes that the aggregate value of the recoverable property which he wishes to be subject to a recovery order is not less than the specified amount.

(2) The power to make an order under subsection (1) is exercisable by Governor in Cabinet but before that power is exercised, the threshold amount shall be ten thousand dollars.

(3) If the Attorney-General applies for an interim receiving order before starting the proceedings, subsection (1) applies to the application instead of to the start of the proceedings.

(4) This section does not affect the continuation of proceedings for a recovery order which have been properly started or the making or continuing effect of an interim receiving order which has been properly applied for.

RECOVERY OF CASH IN SUMMARY PROCEEDINGS

Searches

Searches

110. (1) Where a customs officer or a constable who is lawfully on any premises has reasonable grounds for suspecting that there is on the premises cash -

- (a) which is recoverable property or is intended by any person for use in unlawful conduct; and
- (b) the amount of which is not less than the minimum amount;

he may search for the cash there.

(2) Where a customs officer or a constable has reasonable grounds for suspecting that a person (the suspect) is carrying cash -

- (a) which is recoverable property or is intended by any person for use in unlawful conduct; and
- (b) the amount of which is not less than the minimum amount;

he may exercise the following powers.

(3) The officer or constable may, so far as he thinks it necessary or expedient, require the suspect to permit a search of any article he has with him, or to permit a search of his person.

(4) An officer or constable exercising powers by virtue of subsection (3) may detain the suspect for so long as is necessary for their exercise.

(5) The powers conferred by this section -

- (a) are exercisable only so far as reasonably required for the purpose of finding cash.; and
- (b) are exercisable by a customs officer only if he has reasonable grounds for suspecting that the unlawful conduct in question relates to a matter arising under the Customs Law (2007 Revision).

(2007 Revision)

(6) Cash means -

- (a) notes and coins in any currency;
- (b) postal orders;
- (c) cheques of any kind, including travellers' cheques;
- (d) bankers' drafts;
- (e) bearer bonds and bearer shares;

found at any place in the Islands.

(7) For the purposes of this section "cash" also includes any kind of monetary instrument which is found at any place in the Islands, but the Governor in Cabinet by an order exclude any monetary instrument from the application of this section.

(8) This section does not require a person to submit to an intimate search or to a strip search.

111. (1) The powers conferred by section 110 may be exercised only with the approval of a judicial officer unless, in the circumstances, it is not practicable to obtain that approval before exercising the power, in which case the approval of a senior officer shall be necessary.

Prior approval

(2) A judicial officer means a justice of the peace or a magistrate,

- (3) A senior officer means -
- (a) in relation to the exercise of the power by a constable, a constable of at least the rank of superintendent;
 - (b) in relation to the exercise of the powers by a customs officer, a customs officer of a rank designated by the Chief Customs Officer equivalent to that of a police officer of at least the rank of superintendent.

(4) Where the powers are exercised without the approval of a judicial officer in a case where no cash is seized by virtue of section 114, or any cash so seized is not detained for more than 48 hours, the senior officer who exercised the powers shall give a written report to the Commissioner of Police or the Collector of Customs.

(5) The report shall give particulars of the circumstances which led the officer or the constable to believe that the powers were exercisable, and it was not practicable to obtain the approval of a judicial officer.

(6) In this section and section 112, the appointed person means a person appointed by the Governor in Cabinet.

(7) The appointed person shall not be a public officer employed under or for the purposes of a government department.

Report on exercise of powers

112. (1) As soon as possible after the end of each financial year, the appointed person shall prepare a report for that year.

- (2) For the purposes of this section, "financial year" means -
- (a) the period beginning with the day on which this section comes into force and ending with the next 30th June (which is the first financial year); and
 - (b) each subsequent period of twelve months beginning with 1st July.

(3) In the report the appointed person shall give his opinion as to the circumstances and manner in which the powers conferred by section 110 are being exercised in cases where the officer or constable who exercised them is required to give a report under section 111 (7); and he may make any recommendations he considers appropriate.

(4) The appointed person shall send a copy of his report to the Governor in Cabinet and it shall thereafter be published in such manner as the Governor in Cabinet determines.

(5) The Governor shall lay a copy of any report he receives under this section before the Legislative Assembly.

113. (1) The Governor in Cabinet shall, upon the recommendation of the Commissioner of Police and the Collector of Customs, issue a code of practice in connection with the exercise by customs officers and constables of the powers conferred by virtue of section 110. Code of practice

(2) Where he proposes to issue a code of practice the Governor in Cabinet shall -

- (a) publish a draft;
- (b) consider any representations made to him about the draft by any other person; and
- (c) if he thinks it appropriate, modify the draft in the light of any such representations.

(3) The Governor shall cause to be laid before the Legislative Assembly the draft of the code.

(4) After the Governor has laid a draft of the code before Legislative Assembly he may bring it into operation by order.

(5) The Governor may revise the whole or any part of the code issued by him and issue the code as revised; and subsections (2) to (4) apply to such a revised code as they apply to the original code.

(6) A failure by a customs officer or a constable to comply with a provision of the code does not of itself make him liable to criminal or civil proceedings.

(7) The code is admissible in evidence in criminal or civil proceedings and shall to be taken into account by a court or tribunal in any case in which it appears to the court or tribunal to be relevant.

Seizure and detention

114. (1) A customs officer or a constable may seize any cash if he has reasonable grounds for suspecting that it is recoverable property or intended by any person for use in unlawful conduct. Seizure of cash

(2) A customs officer or a constable may also seize cash part of which he has reasonable grounds for suspecting to be recoverable property or intended by

any person for use in unlawful conduct if it is not reasonably practicable to seize only that part.

Detention of seized cash

115. (1) While the customs officer or constable continues to have reasonable grounds for his suspicion, cash seized under section 114 may be detained initially for a period of 48 hours.

(2) The period for which the cash or any part of it may be detained may be extended by an order made by a summary court but the order may not authorise the detention of any of the cash -

- (a) beyond the end of the period of three months beginning with the date of the order; and
- (b) in the case of any further order under this section, beyond the end of the period of two years beginning with the date of the first order.

(3) An application for an order under subsection (2) may be made by the Collector of Customs or by a constable and the summary court may make the order if satisfied, in relation to any cash to be further detained, that -

- (a) there are reasonable grounds for suspecting that the cash is recoverable property and that either -
 - (i) its continued detention is justified while its derivation is further investigated or consideration is given to bringing (in the Islands or elsewhere) proceedings against any person for an offence with which the cash is connected; or
 - (ii) proceedings against any person for an offence with which the cash is connected have been started and have not been concluded; or
- (b) there are reasonable grounds for suspecting that the cash is intended to be used in criminal conduct and that either -
 - (i) its continued detention is justified while its intended use is further investigated or consideration is given to bringing (in the Islands or elsewhere) proceedings against any person for an offence with which the cash is connected; or
 - (ii) proceedings against any person for an offence with which the cash is connected have been started and have not been concluded;

and the summary court may order that cash to be detained where the Attorney-General has applied to the court for the cash to be detained while consideration is being given to the institution of proceedings for civil recovery under section 118.

(4) An application for an order under subsection (2) may also be made in respect of any cash seized under section 114 (2), and the summary court may make the order if satisfied that -

- (a) the condition in subsection (3) (a) or (b) is met in respect of part of the cash; and
- (b) it is not reasonably practicable to detain only that part.

(5) An order under subsection (2) shall provide for notice to be given to persons affected by it.

116. (1) Where cash is detained under section 115 for more than 48 hours, it shall be paid at the first opportunity into an interest-bearing account and held there; and the interest accruing on it shall be added to it on its forfeiture or release. Interest

(2) In the case of cash detained under section 115 which was seized under section 114 (2), the customs officer or constable shall, on paying it into the account, release the part of the cash to which the suspicion does not relate.

(3) Subsection (1) does not apply if the cash or, as the case may be, the part to which the suspicion relates is required as evidence of an offence or evidence in proceedings under this Part.

117. (1) While any cash is detained under section 115 a summary court may direct the release of the whole or any part of the cash if the court is satisfied, on an application by the person from whom the cash was seized, that the conditions in section 118 for the detention of the cash are no longer met in relation to the cash to be released. Release of detained cash

(2) A constable or a customs officer may, after notifying the summary court under whose order cash is being detained, release the whole or any part of it if satisfied that the detention of the cash to be released is no longer justified.

Forfeiture

118. (1) While cash is detained under section 115, an application for the forfeiture of the whole or any part of it may be made to a summary court by the Attorney-General. Forfeiture

(2) The court may order the forfeiture of the cash or any part of it if satisfied that the cash or part is recoverable property or that it is intended by any person for use in unlawful conduct.

(3) In the case of recoverable property which belongs to joint tenants, one of whom is an excepted joint owner, the order may not apply to such part of it as the court thinks is attributable to the excepted joint owner's share.

(4) Where an application for the forfeiture of any cash is made under this section, the cash shall to be detained and may not be released under any power conferred by this Part until any proceedings in pursuance of the application, including any proceedings on appeal, are concluded.

Appeal against forfeiture 119. (1) Any party to proceedings in which an order is made under section 118 for the forfeiture of cash who is aggrieved by the order may appeal to the Grand Court.

(2) An appeal under subsection (1) shall be made within the period of 30 days beginning with the date on which the order is made and the appeal shall be by way of a rehearing.

(3) The Grand Court may make any order it thinks appropriate and if the court upholds the appeal it may order the release of the cash.

Application of forfeited cash 120. Cash forfeited under this Part and any accrued interest on it shall be paid into the revenues of the Islands but it shall not to be paid in -

- (a) before the end of the period within which an appeal under section 119 may be made; or
- (b) before the appeal is determined or otherwise disposed of, if a person appeals under that section.

Supplementary

Victims and other owners 121. (1) A person who claims that any cash detained under this Part, or any part of it, belongs to him may apply to a summary court for the cash or part of it to be released to him.

(2) The application may be made in the course of proceedings under section 115 or 118 or at any other time.

(3) Where it appears to the court that -

- (a) the applicant was deprived of the cash to which the application relates, or of property which it represents, by unlawful conduct;
- (b) the property he was deprived of was not, immediately before he was deprived of it, recoverable property; and
- (c) that cash belongs to him;

the court may order the cash to which the application relates to be released to the applicant.

- (4) Where -
- (a) the applicant is not the person from whom the cash to which the application relates was seized;
 - (b) it appears to the court that that cash belongs to the applicant;
 - (c) the court is satisfied that the conditions in section 115 for the detention of that cash are no longer met or, if an application has been made under section 118, the court decides not to make an order under that section in relation to that cash; and
 - (d) no objection to the making of an order under this subsection has been made by the person from whom that cash was seized;

the court may order the cash to which the application relates to be released to the applicant or to the person from whom it was seized.

122. (1) Where no forfeiture order is made in respect of any cash detained under this Part, the person to whom the cash belongs or from whom it was seized may make an application to the summary court for compensation. Compensation

(2) Where, for any period beginning with the first opportunity to place the cash in an interest-bearing account after the initial detention of the cash for 48 hours, the cash was not held in an interest-bearing account while detained, the court may order compensation to be paid to the applicant.

(3) The amount of compensation to be paid under subsection (2) shall be the amount the court thinks would have been earned in interest in the period in question if the cash had been held in an interest-bearing account.

(4) If the court is satisfied that, taking account of any interest to be paid under section 116 or any amount to be paid under subsection (2), the applicant has suffered loss as a result of the detention of the cash and that the circumstances are exceptional, the court may order compensation (or additional compensation) to be paid to him.

(5) The amount of compensation (or additional compensation) to be paid under subsection (4) shall be the amount the court thinks reasonable, having regard to the loss suffered and any other relevant circumstances.

(6) The compensation shall be paid out of the revenues of the Islands.

(7) If a forfeiture order is made in respect only of a part of any cash detained under this Part, this section has effect in relation to the other part.

GENERAL

Recoverable property

Property obtained through unlawful conduct

123. (1) Property obtained through unlawful conduct is recoverable property.

(2) Where property obtained through unlawful conduct has been disposed of (since it was so obtained), it is recoverable property only if it is held by a person into whose hands it may be followed.

(3) Recoverable property obtained through unlawful conduct may be followed into the hands of a person obtaining it on a disposal by -

- (a) the person who through the conduct obtained the property; or
- (b) a person into whose hands it may, by virtue of this subsection, be followed.

Tracing property, etc.

124. (1) Where property obtained through unlawful conduct ("the original property") is or has been recoverable, property which represents the original property is also recoverable property.

(2) Where a person enters into a transaction by which -

- (a) he disposes of recoverable property, whether the original property or property which (by virtue of this Part) represents the original property; and
- (b) he obtains other property in place of it;

the other property represents the original property.

(3) If a person disposes of recoverable property which represents the original property, the property may be followed into the hands of the person who obtains it and such property continues to represent the original property.

Mixing property

125. (1) Where a person's recoverable property is mixed with other property, whether his property or another person's property, the portion of the mixed property which is attributable to the recoverable property represents the property obtained through unlawful conduct.

(2) Recoverable property is mixed with other property if, among other things, it is used -

- (a) to increase funds held in an account;

- (b) in part payment for the acquisition of an asset;
- (c) for the restoration or improvement of land; or
- (d) by a person holding a leasehold interest in the property to acquire the freehold.

126. Where a person who has recoverable property obtains further property consisting of profits accruing in respect of the recoverable property the further property shall be considered as representing the property obtained through unlawful conduct.

Recoverable property:
accruing profits

127. (1) Where -

General exceptions

- (a) a person disposes of recoverable property; and
- (b) the person who obtains it on the disposal does so in good faith, for value and without notice that it was recoverable property;

the property may not be followed into that person's hands and, accordingly, it ceases to be recoverable.

(2) Where recoverable property is vested, forfeited or otherwise disposed of in pursuance of powers conferred by virtue of this Part, it ceases to be recoverable.

(3) Where -

- (a) in pursuance of a judgment in civil proceedings (whether in the Islands or elsewhere), the defendant makes a payment to the claimant or the claimant otherwise obtains property from the defendant;
- (b) the claimant's claim is based on the defendant's unlawful conduct; and
- (c) apart from this subsection, the sum received, or the property obtained, by the claimant would be recoverable property;

the property ceases to be recoverable.

(4) Where -

- (a) a payment is made to a person in pursuance of a compensation order under section 33 of the Penal Code (2007 Revision); and
- (b) apart from this subsection, the sum received would be recoverable property;

(2007 Revision)

the property ceases to be recoverable.

(5) Where -

- (2007 Revision)
- (a) a payment is made to a person in pursuance of a restitution order under section 264 of the Penal Code (2007 Revision) or a person otherwise obtains any property in pursuance of such an order, and
 - (b) apart from this subsection, the sum received, or the property obtained, would be recoverable property;

the property ceases to be recoverable.

(6) Property is not recoverable while a restraint order is in force in relation to such property under -

- (2000 Revision)
- (a) this Law;
 - (b) the prior Law; or
 - (c) the Misuse of Drugs Law (2000 Revision).

(7) Property is not recoverable property if it has been taken into account in deciding the amount of a person's benefit from criminal conduct for the purpose of making a confiscation order under -

- (2000 Revision)
- (a) this Law;
 - (b) the prior Law; or
 - (c) the Misuse of Drugs Law (2000 Revision);

and, in relation to an order mentioned in paragraph (b) and (c), the reference to the amount of a person's benefit from criminal conduct shall be read as a reference to the corresponding amount under the enactment in question.

(8) Where -

- (a) a person enters into a transaction to which section 124 (2) applies; and
- (b) the disposal is one to which subsection (1) or (2) applies;

this section does not affect the recoverability (by virtue of section 124 (2)) of any property obtained on the transaction in place of the property disposed of.

Other exemptions

128. (1) An order may provide that property is not recoverable or (as the case may be) associated property if -

- (a) it is prescribed property, or
- (b) it is disposed of in pursuance of a prescribed enactment or an enactment of a prescribed description.

(2) An order may provide that if property is disposed of in pursuance of a prescribed enactment or an enactment of a prescribed description, it shall be treated for the purposes of section 103 as if it had been disposed of in pursuance of a recovery order.

(3) An order under this section may be made so as to apply to property, or a disposal of property, only in prescribed circumstances; and the circumstances may relate to the property or disposal itself or to a person who holds or has held the property or to any other matter.

(4) In this section, an order means an order made by the Governor in Cabinet and prescribed means prescribed by the order.

Granting interests

129. (1) Where a person grants an interest in his recoverable property, the question whether the interest is also recoverable is to be determined in the same manner as it is on any other disposal of recoverable property.

(2) Pursuant to subsection (1), on a person's granting an interest in the property ("the property in question") -

- (a) where the property in question is property obtained through unlawful conduct, the interest is also to be treated as obtained through that conduct; and
- (b) where the property in question represents in the person's hands property obtained through unlawful conduct, the interest is also to be treated as representing in his hands the property so obtained.

Insolvency

130. (1) Proceedings for a recovery order may not be taken or continued in respect of property to which subsection (3) applies unless the appropriate court gives leave and the proceedings are taken or (as the case may be) continued in accordance with any terms imposed by that court.

Insolvency

(2) An application for an order for the further detention of any cash to which subsection (3) applies may not be made under section 115 unless the appropriate court gives leave.

(3) This subsection applies to recoverable property, or property associated with it, if -

- (a) it is an asset of a company being wound up in pursuance of a resolution for voluntary winding up;
- (b) it is an asset of a company and a voluntary arrangement has effect in relation to the company;
- (c) an order relating to interim receivership or interim trusteeship has effect in relation to the property;

- (d) it is an asset comprised in the estate of an individual who has been adjudged bankrupt of a person whose estate has been sequestrated; or
- (e) it is an asset of an individual and a voluntary arrangement has effect in relation to him.

(4) An application under this section for leave to take proceedings for a recovery order may be made without notice to any person.

(5) Subsection (4) does not affect any requirement for notice of an application to be given to any person acting as an insolvency practitioner or to the Official Receiver (whether or not acting as an insolvency practitioner).

(6) In this section -

- (a) the appropriate court means the court which, in relation to the resolution, arrangement, order or trust deed mentioned in subsection (3), is the court for the purposes of the applicable enactment; and
- (b) acting as an insolvency practitioner has the same meaning as in section 186.

Interpretation

Obtaining and disposing
of property

131. (1) References in this Law to a person disposing of his property include a reference to his disposing of a part of it or to his granting an interest in it or to both; and references to the property disposed of are to any property obtained on the disposal.

(2) A person who makes a payment to another shall be considered as making a disposal of his property to the other, whatever form the payment takes.

(3) Where a person's property passes to another under a will or intestacy or by operation of law, it shall be treated as disposed of by him to the other.

(4) A person shall only be considered as having obtained his property for value in a case where he gave unexecuted consideration if the consideration has become executed consideration.

General interpretation

132. (1) In this Part references to a person disposing of his property include a reference -

- (a) to his disposing of a part of it; or
- (b) to his granting an interest in it;

(or to both); and references to the property disposed of are to any property obtained on the disposal.

(2) A person who makes a payment to another shall be considered as making a disposal of his property to the other, whatever form the payment takes.

(3) Where a person's property passes to another under a will or intestacy or by operation of law, it shall be considered as disposed of by him to the other.

(4) A person is considered as having obtained his property for value in a case where he gave unexecuted consideration if the consideration has become executed consideration.

(5) For the purpose of deciding whether or not property was recoverable at any time (including times before commencement), it is to be assumed that this Part was in force at that and any other relevant time.

(6) Any reference to a person's property (whether expressed as a reference to the property he holds or otherwise) is to be construed as set out in the following subsections.

(7) In relation to land, it is a reference to any interest which he holds in the land.

(8) In relation to property other than land, it is a reference -

- (a) to the property (if it belongs to him); or
- (b) to any other interest which he holds in the property.

(9) References to the satisfaction of the Attorney-General's right to recover property obtained through unlawful conduct are to be read in accordance with section 110.

(10) In this Part -

- (a) "dealing" with property includes disposing of it, taking possession of it or removing it from the Islands;
- (b) "right to recover" shall be construed in accordance with the meaning of recoverable property in this Law.

PART V

MONEY LAUNDERING AND OTHER CRIMINAL CONDUCT

Offences

Concealing, etc

133. (1) A person commits an offence if he -

- (a) conceals criminal property;
- (b) disguises criminal property;
- (c) converts criminal property;
- (d) transfers criminal property; or
- (e) removes criminal property from the Islands.

(2) A person does not commit an offence under subsection (1) if -

- (a) he makes a disclosure to the Financial Reporting Authority or a nominated officer, but this does not apply to the person who committed or was a party to the act from which the property derives;
- (b) he intended to make a disclosure to the Financial Reporting Authority or a nominated officer under paragraph (a) but had a reasonable excuse for not doing so; or
- (c) the act he does is done in carrying out a function he has relating to the enforcement of any provision of this Law or of any other enactment relating to criminal conduct or benefit from criminal conduct.

(3) Nor does he commit an offence under subsection (1) if -

- (a) he knows, or believes on reasonable grounds, that the relevant criminal conduct occurred in a particular country or territory outside the Islands; and
- (b) the relevant criminal conduct -
 - (i) was not, at the time it occurred, unlawful under the criminal law then applying in that country or territory; and
 - (ii) is not of a description prescribed by an order made by the Attorney-General.

(4) Nor does he commit an offence if he is a professional legal adviser and does not disclose information or other matter which came to him in privileged circumstances.

(5) But subsection (4) does not apply to information or other matter which is communicated or given with the intention of furthering a criminal purpose.

(6) In subsection (3) “relevant criminal conduct” is the conduct by reference to which the property concerned is criminal property.

(7) Concealing or disguising criminal property includes concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it.

134. (1) A person commits an offence if he enters into or becomes concerned in an arrangement which he knows or suspects facilitates (by whatever means) the acquisition, retention, use or control of criminal property by or on behalf of another person. Arrangements

(2) A person does not commit an offence under subsection (1) if -

- (a) he makes a disclosure to the Financial Reporting Authority or a nominated officer;
- (b) he intended to make such a disclosure but had a reasonable excuse for not doing so;
- (c) he is a professional legal adviser and does not disclose information or other matter which came to him in privileged circumstances; or
- (d) the act he does is done in carrying out a function he has relating to the enforcement of any provision of this Law or of any other enactment relating to a criminal conduct or benefit from a criminal conduct.

(3) But subsection (2) (c) does not apply to information or other matter which is communicated or given with the intention of furthering a criminal purpose.

(4) Nor does a person commit an offence under subsection (1) if -

- (a) he knows, or believes on reasonable grounds, that the relevant criminal conduct occurred in a particular country or territory outside the Islands; and
- (b) the relevant criminal conduct -
 - (i) was not, at the time it occurred, unlawful under the criminal law then applying in that country or territory; and
 - (ii) is not of a description prescribed by an order made by the Attorney-General.

(5) In subsection (4) “the relevant criminal conduct” is the criminal conduct by reference to which the property concerned is criminal property.

135. (1) A person commits an offence if he -

Acquisition, use and possession

- (a) acquires criminal property;
- (b) uses criminal property; or
- (c) has possession of criminal property.

(2) A person does not commit an offence under subsection (1) if -

- (a) he makes a disclosure to the Financial Reporting Authority or to a nominated officer of the entity in which he works or is

- employed, but this does not apply to the person who committed or is a party to the act from which the property derives;
- (b) he intended to make such a disclosure to the Financial Reporting Authority or a nominated officer but had a reasonable excuse for not doing so;
 - (c) he is a professional legal adviser and does not disclose information or other matter which came to him in privileged circumstances;
 - (d) he acquired or used or had possession of the property for adequate consideration; or
 - (e) the act he does is done in carrying out a function he has relating to the enforcement of any provision of this Law or of any other enactment relating to a criminal conduct or benefit from a criminal conduct.
- (3) For the purposes of this section -
- (a) a person acquires property for inadequate consideration if the value of the consideration is significantly less than the value of the property;
 - (b) a person uses or has possession of property for inadequate consideration if the value of the consideration is significantly less than the value of the use or possession; and
 - (c) the provision by a person of goods or services which he knows or suspects may help another to carry out criminal conduct is not consideration.
- (4) Nor does a person commit an offence under subsection (1) if -
- (a) he knows, or believes on reasonable grounds, that the relevant criminal conduct occurred in a particular country or territory outside the Islands; and
 - (b) the relevant criminal conduct -
 - (i) was not, at the time it occurred, unlawful under the criminal law then applying in that country or territory; and
 - (ii) is not of a description prescribed by an order made by the Attorney-General.
- (5) Nor does he commit an offence if he is a professional legal adviser and does not disclose information or other matter which came to him in privileged circumstances.
- (6) But subsection (5) does not apply to information or other matter which is communicated or given with the intention of furthering a criminal purpose.

(7) In subsection (4) “the relevant criminal conduct” is the criminal conduct by reference to which the property concerned is criminal property.

136. (1) A person commits an offence if -

Failure to disclose:
regulated sector

- (a) he knows of suspects or has reasonable grounds for knowing or suspecting that another person is engaged in criminal conduct;
- (b) the information or other matter on which his knowledge or suspicion is based, or which gives reasonable grounds for such knowledge or suspicion, came to him in the course of a business in the regulated sector;
- (c) he does not make the required disclosure to a nominated officer, or the Financial Reporting Authority, as soon as is practicable after the information or other matter mentioned in paragraph (b) comes to him; and
- (d) the required disclosure is a disclosure of -
 - (i) the identity of the person who may be involved in money laundering, if he knows it;
 - (ii) information or other matter in the form and manner prescribed by regulations to this Law or the prior Law;
 - (iii) the whereabouts of the property with respect to which the criminal conduct is committed, so far as he knows it; and
 - (iv) the information or other matter mentioned in paragraph (b), or prescribed under section 201 for purposes of this section.

(2) But he does not commit an offence under this section if -

- (a) he has a reasonable excuse for not making the required disclosure;
- (b) he is a professional legal adviser or other relevant professional adviser and the information or other matter came to him in privileged circumstances; and
- (c) he does not know or suspect that another person is engaged in money laundering and he has not been provided by his employer with such training as is specified in guidelines issued by the Monetary Authority and published in the Gazette for the purposes of this section.

(3) Nor does a person commit an offence under this section if -

- (a) he knows, or believes on reasonable grounds, that the criminal conduct is occurring in a particular country or territory outside the Islands; and
- (b) the criminal conduct -
 - (i) is not unlawful under the criminal law applying in that country or territory; and

(ii) is not of a description prescribed in an order made by the Attorney-General.

(4) Subsection (2) applies to a person if -

- (a) he is a trainee, paralegal, legal secretary or any other person who is employed by, or is in partnership with, a professional legal adviser or a relevant professional adviser to provide the adviser with assistance or support;
- (b) the information or other matter mentioned in subsection (1) (a) and (b) comes to the person in connection with the provision or such assistance or support; and
- (c) the information or other matter came to the adviser in privileged circumstances.

(5) In deciding whether a person committed an offence under this section the court shall consider whether the person followed any relevant guidance which was at the time concerned -

- (a) issued by the Monetary Authority; and
- (b) published in a manner approved by the Governor in Cabinet as appropriate in its opinion to bring the guidance to the attention of persons likely to be affected by it.

(6) A disclosure to a nominated officer is a disclosure which -

- (a) is made to a person nominated by the alleged offender's employer to receive disclosures under this section; and
- (b) is made in the course of the alleged offender's employment.

(7) But a disclosure which satisfies paragraphs (a) and (b) of subsection (6) is not to be taken as a disclosure to a nominated officer if the person making the disclosure -

- (a) is a professional legal adviser or other relevant professional adviser;
- (b) makes it for the purpose of obtaining advice about making a disclosure under this section; and
- (c) does not intend it to be a disclosure under this section.

(8) Information or other matter comes to a professional legal adviser or other relevant professional adviser in privileged circumstances if it is communicated or given to him -

- (a) by (or by a representative of) a client of his in connection with the giving by the adviser of legal advice to the client;
- (b) by (or by a representative of) a person seeking legal advice from the adviser; or

(c) by a person in connection with legal proceedings or contemplated legal proceedings.

(9) But subsection (8) does not apply to information or other matter which is communicated or given with the intention of furthering a criminal purpose.

(10) Schedule 4 has effect for the purpose of determining a business in the regulated sector.

(11) A relevant professional adviser is an accountant, auditor or tax adviser who is a member of a professional body which is established for accountants, auditors or tax advisers (as the case may be) and which makes provision for -

- (a) testing the competence of those seeking admission to membership of such a body as a condition for such admission; and
- (b) imposing and maintaining professional and ethical standards for its members, as well as imposing sanctions for non-compliance with those standards.

137. (1) A nominated officer commits an offence if -

Failure to disclose:
nominated officers in the
regulated sector

- (a) he knows or suspects or has reasonable grounds for knowing or suspecting that another person is engaged in a criminal conduct;
- (b) the information or other matter on which his knowledge or suspicion is based, or which gives reasonable grounds for such knowledge or suspicion, came to him either in the course of business in the regulated sector or in consequence of a disclosure made under section 136;
- (c) he does not make the required disclosure to the Financial Reporting Authority as soon as is practicable after the information or other matter mentioned in paragraph (b) comes to him; and
- (d) the required disclosure is a disclosure of -
 - (i) the identity of the other person mentioned in paragraph (a) if he knows it;
 - (ii) the whereabouts of the property with respect to which the criminal conduct was committed, so far as he knows it; and
 - (iii) the information or other matter mentioned in paragraph (b), or prescribed under section 201 for purposes of this section.

(2) But he does not commit an offence under this section if -

- (a) he has a reasonable excuse for not making the required disclosure;

- (b) he falls within the exception (relating to professional grounds) set out in section 136;
 - (c) he has not been provided by his employer with such training as is specified by the Governor in Cabinet by order for the purposes of this section.
- (3) Nor does a person commit an offence under this section if -
- (a) he knows, or believes on reasonable grounds, that the criminal conduct is occurring in a particular country or territory outside the Islands, and
 - (b) the criminal conduct -
 - (i) is not unlawful under the criminal law applying in that country or territory, and
 - (ii) is not of a description prescribed in an order made by the Attorney-General.
- (4) In deciding whether a person committed an offence under this section the court shall consider whether he followed any relevant guidance which was at the material time -
- (a) issued by the Monetary Authority or any other appropriate body; and
 - (b) published in a manner approved by the Monetary Authority as appropriate in its opinion to bring the guidance to the attention of persons likely to be affected by it.
- (5) An appropriate body is a body which regulates or is representative of a trade, profession, business or employment.

Disclosure by the
Financial Reporting
Authority

138. (1) The Financial Reporting Authority -
- (a) shall, where it has cause to suspect that criminal conduct has been committed, disclose, without obtaining the consent of the Attorney-General, any information received under this Law to any law enforcement agency in the Islands;
 - (b) may, where it has cause to suspect that criminal conduct has been committed, disclose, without having to obtain the consent of the Attorney-General, any information received under this Law to the Cayman Islands Monetary Authority established by section 5 of the Monetary Authority Law (2004 Revision), or to such other institutions or persons in the Islands as may be designated in writing by the Steering Group; and
 - (c) may, where it has cause to suspect that a criminal conduct has been committed, but subject to subsection (2), disclose any information received under this Law to any overseas financial intelligence unit;

(2004 Revision)

in order to -

- (i) report the possible commission of an offence;
- (ii) initiate a criminal investigation respecting the matter disclosed;
- (iii) assist with any investigation or criminal proceedings respecting the matter disclosed;
- (iv) facilitate the effective regulation of the financial services industry; or
- (v) generally give effect to the purposes of this or any other law.

(2) Where information is disclosed to the Financial Reporting Authority under this Law, the Financial Reporting Authority shall not further disclose the information without the consent of the Attorney-General who, when considering whether to give his consent, shall take into account -

- (a) the purpose for which the further disclosure is to be made; and
- (b) the interests of third parties;

and the Attorney-General may impose such conditions on the further disclosure as he may think fit.

139. (1) A person commits an offence if -

Tipping off

- (a) he knows or suspects that an activity in relation to which a disclosure is required to be made under this Law is about to take place, is taking place or has taken place (whether or not a disclosure has been or is likely to be made in relation thereto); and
- (b) he makes a disclosure which is likely to prejudice any investigation which might be conducted following the disclosure referred to in paragraph (a).

(2) A person does not commit an offence under subsection (1) if -

- (a) he did not know or suspect that the disclosure was likely to be prejudicial as mentioned in subsection (1);
- (b) the disclosure is made in carrying out a function he has relating to the enforcement of any provision of this Law or of any other enactment relating to a criminal conduct or benefit from a criminal conduct ; and
- (c) he is a professional legal adviser and the disclosure falls within subsection (3).

(3) A disclosure falls within this subsection if it is a disclosure -

- (a) to (or to a representative of) a client of the professional legal adviser in connection with the giving by the adviser of legal advice to the client; or
- (b) to any person in connection with legal proceedings or contemplated legal proceedings.

(4) A disclosure does not fall within subsection (3) if it is made with the intention of furthering a criminal purpose.

Whistleblowers

140. No person may be subject to any legal, administrative or employment-related sanction, regardless of any breach of a legal or employment-related obligation, for releasing information relating to a contravention of this Part.

Penalties

141. (1) A person guilty of an offence under section 133, 134 or 135 is liable -

- (a) on summary conviction, to a fine of five thousand dollars or imprisonment for a term of two years, or to both; or
- (b) on conviction on indictment, to imprisonment for a term of fourteen years or to a fine or to both.

(2) A person guilty of an offence under section 136, 137, or 139 is liable -

- (a) on summary conviction, to a fine of imprisonment for a term of two years or to a fine of five thousand dollars or to both; or
- (b) on conviction on indictment, for a term of five years or to a fine or to both.

(3) A person guilty of an offence created under section 143 is liable to the penalties that may be prescribed in an order made under that section.

Vicarious criminal liability

142. (1) Where an offence under this Part is proved to have been committed with the consent or connivance of, or to be attributable to, any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate or a person who was purporting to act in any such capacity (however designated), the person committing the offence, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by the members, subsection (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of a body corporate.

(3) Where an offence under this Part is committed by a partnership, or by an unincorporated association other than a partnership, is proved to have been committed with the consent or connivance of, or is attributable to any neglect on

the part of a partner in the partnership or a person concerned in the management or control of the association, he, as well as the partnership or association, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(4) This section applies to all entities in the regulated sector registered in the Islands and to entities that are not in the regulated sector (whether or not the nominated officer is based in the Islands).

143. The Governor in Cabinet may by Order prescribe the form and manner of disclosure under sections 136, 137 and 142 and may in that regard create offences and prescribe penalties not exceeding those specified in section 141. Form and manner of disclosures

Interpretation: money laundering

144. (1) This section applies for the purposes of this Part. Interpretation

(2) Criminal conduct is conduct which -

- (a) constitutes an offence in any part of the Islands; or
- (b) would constitute an offence in any part of the Islands if it occurred there.

(3) Property is criminal property if -

- (a) it constitutes a person's benefit from a criminal conduct or it represents such a benefit (in whole or part and whether directly or indirectly); and
- (b) the alleged offender knows or suspects that it constitutes or represents such a benefit;

and includes terrorist property.

(4) It is immaterial who carried out the criminal conduct, who benefited from it and whether the conduct occurred before or after the commencement of this Law.

(5) A person benefits from criminal conduct if he obtains property as a result of or in connection with the conduct.

(6) If a person obtains a pecuniary advantage as a result of or in connection with a criminal conduct, he shall be considered to obtain as a result of or in connection with the criminal conduct a sum of money equal to the value of the pecuniary advantage.

(7) References to property or a pecuniary advantage obtained in connection with a criminal conduct include references to property or a pecuniary advantage obtained in both that connection and some other.

(8) If a person benefits from conduct his benefit is the property obtained as a result of or in connection with the act.

(9) The following rules apply in relation to property -

- (a) property is obtained by a person if he obtains an interest in it;
- (b) references to an interest, in relation to land in the Islands, are to any legal estate or equitable interest or power;
- (c) references to an interest, in relation to property other than land, include references to a right (including a right to possession).

(10) Money laundering is an act which -

- (a) constitutes an offence under section 133, 134 or 135;
- (b) constitutes an attempt, conspiracy or incitement to commit an offence specified in paragraph (a);
- (c) constitutes aiding, abetting, counselling or procuring the commission of an offence specified in paragraph (a); or
- (d) would constitute an offence specified in paragraph (a), (b) or (c) if done in the Islands.

(11) For the purposes of a disclosure to a nominated officer -

- (a) references to a person's employer include any body, association or organisation (including a voluntary organisation) in connection with whose activities the person exercises a function (whether or not for gain or reward); and
- (b) references to employment shall be construed accordingly.

Regulations

145. (1) The Governor in Cabinet may, upon the recommendation of the Monetary Authority and the Financial Reporting Authority, make regulations prescribing measures to be taken to prevent the use of the financial system for the purposes of criminal conduct.

(2) Regulations made under subsection (1) may -

- (a) make different provisions for different circumstances or cases and may contain incidental, supplementary and transitional provisions; and
- (b) provide that the contravention of any provision of those regulations constitutes an offence and may prescribe penalties for any such offence -

- (i) on conviction on indictment, consisting of a fine and imprisonment for two years; or
- (ii) on summary conviction, consisting of a fine of six thousand dollars.

PART VI

INVESTIGATIONS

Introduction

146. (1) For the purposes of this Part -

Investigations

- (a) a confiscation investigation is an investigation into -
 - (i) whether a person has benefited from his criminal conduct; or
 - (ii) the extent or whereabouts of his benefit from his criminal conduct ; and
- (b) a civil recovery investigation is an investigation into -
 - (i) whether property is recoverable property or associated property;
 - (ii) who holds the property; or
 - (iii) its extent or whereabouts.

(2) An investigation is not a civil recovery investigation if -

- (a) proceedings for a recovery order have been started in respect of the property in question under section 80;
- (b) an interim receiving order applies to the property in question under section 87; or
- (c) the property in question is detained under section 114 and 115.

(3) For the purposes of this Part a money laundering investigation is an investigation into whether a person has committed a money laundering offence.

147. (1) This section applies if a person knows or suspects that an appropriate officer is acting (or proposing to act) in connection with a confiscation investigation, civil recovery investigation or money laundering investigation which is being or is about to be conducted.

Offences of prejudicing investigation

(2) A person commits an offence if -

- (a) he makes a disclosure which is likely to prejudice the investigation; or

- (b) he falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of, documents which are relevant to the investigation.
- (3) A person does not commit an offence under subsection (2) (a) where -
 - (a) he does not know or suspect that the disclosure is likely to prejudice the investigation;
 - (b) the disclosure is made in the exercise of a function under this Law or any other enactment relating to money laundering or benefit from money laundering or in compliance with a requirement imposed under or by virtue of this Law; or
 - (c) he is a professional legal adviser and the disclosure falls within subsection (4).
- (4) A disclosure falls within this subsection if it is a disclosure -
 - (a) to (or to a representative of) a client of the professional legal adviser in connection with the giving by the adviser of legal advice to the client; or
 - (b) to any person in connection with legal proceedings or contemplated legal proceedings.
- (5) A disclosure does not fall within subsection (4) if it is made with the intention of furthering a criminal purpose.
- (6) A person does not commit an offence under subsection (2) (b) where -
 - (a) he does not know or suspect that the documents are relevant to the investigation; or
 - (b) he does not intend to conceal any facts disclosed by the documents from any appropriate officer or proper person carrying out the investigation.
- (7) A person guilty of an offence under subsection (2) is liable -
 - (a) on summary conviction, to imprisonment for a term of six months or to a fine of four thousand dollars or to both; or
 - (b) on conviction on indictment, to imprisonment for a term of five years or to a fine or to both.

Judges and courts

Judges

148. In relation to an application for the purposes of -
- (a) a confiscation investigation;
 - (b) an investigation relating to money laundering; or
 - (c) a civil recovery investigation;

reference to the court is to the Grand Court and to a judge is a judge of the Grand Court.

Production orders

149. (1) A judge may, on an application made to him by a constable, make a production order if he is satisfied that each of the requirements for the making of the order is fulfilled. Production orders

- (2) A production order is an order either -
 - (a) requiring the person whom the application for the order specifies as appearing to be in possession or control of material to produce the material to an appropriate officer for him to take away; or
 - (b) requiring that person to give an appropriate officer access to the material;

within the period stated in the order.

- (3) The application for a production order shall state that -
 - (a) a person specified in the application is subject to a confiscation investigation or a money laundering investigation; or
 - (b) property specified in the application is subject to a civil recovery investigation; and
 - (c) the order is sought for the purposes of the investigation; and
 - (d) the order is sought in relation to material, or material of a description, specified in the application; and
 - (e) a person specified in the application appears to be in possession or control of the material.

(4) The period stated in a production order shall be a period of seven days beginning with the day on which the order is made, unless it appears to the judge by whom the order is made that a longer or shorter period would be appropriate in the particular circumstances.

(5) Where a judge makes a production order under this section, the order need not be served on the person who is under investigation.

150. (1) A judge, in order to grant a production order, shall be satisfied that- Requirements for making of production order

- (a) there are reasonable grounds for suspecting that -
 - (i) in the case of a confiscation investigation, the person whom the application for the order specifies as being subject to the investigation has benefited from his criminal conduct;

- (ii) in the case of a civil recovery investigation, the property which the application for the order specifies as being subject to the investigation is recoverable property or associated property; and
 - (iii) in the case of a money laundering investigation, the person whom the application for the order specifies as being subject to the investigation has committed a money laundering offence;
- (b) there are reasonable grounds for believing that the person whom the application specifies as appearing to be in possession or control of the material so specified is in possession or control of it;
 - (c) there are reasonable grounds for believing that the material is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the order is sought; and
 - (d) there are reasonable grounds for believing that it is in the public interest for the material to be produced or for access to it to be given, having regard to -
 - (i) the benefit likely to accrue to the investigation if the material is obtained; and
 - (ii) the circumstances under which the person whom the application specifies as appearing to be in possession or control of the material holds it.

Order to grant entry

151. (1) Where a judge makes a production order requiring a person to give an appropriate officer access to material on any premises the judge may, on an application made to him by an appropriate officer and specifying the premises, make an order to grant entry in relation to the premises.

(2) An order to grant entry is an order requiring any person who appears to an appropriate officer to be entitled to grant entry to the premises to allow him to enter the premises to obtain access to the material.

Further provisions

152. (1) A production order shall -

- (a) not require a person to produce, or give access to, privileged material;
- (b) not require a person to produce, or give access to, excluded material; and
- (c) have effect in spite of any restriction on the disclosure of information however imposed.

(2) Privileged material is any material which the person would be entitled to refuse to produce on grounds of legal professional privilege in proceedings in the Grand Court.

(3) An appropriate officer may take copies of any material which is produced, or to which access is given, in compliance with a production order and such material may be retained for so long as it is necessary to retain it (in its original form) in connection with the investigation for the purposes of which the order was made.

(4) Notwithstanding subsection (3), where an appropriate officer has reasonable grounds for believing that -

- (a) the material may need to be produced for the purposes of any legal proceedings; and
- (b) it might otherwise be unavailable for those purposes;

it may be retained until the proceedings are concluded.

153. (1) This section applies if any of the material specified in an application for a production order consists of information contained in a computer. Computer information

(2) Where a production order is an order -

- (a) requiring a person to produce the material to an appropriate officer for him to take away, it has effect as an order to produce the material in a form in which it can be taken away by him and in which it is visible and legible; and
- (b) requiring a person to give an appropriate officer access to the material, it has effect as an order to give him access to the material in a form in which it is visible and legible.

154. (1) A production order may be made in relation to material in the possession or control of a government entity. Government entities

(2) An order made in accordance with subsection (1) may require any officer of the entity (whether named in the order or not) who may for the time being be in possession or control of the material to comply with it and such order shall be served as if the proceedings were civil proceedings against the entity.

(3) Where an order contains such a requirement -

- (a) the person on whom it is served shall take all reasonable steps to bring it to the attention of the officer concerned; and
- (b) any other officer of the entity who is in receipt of the order shall also take all reasonable steps to bring it to the attention of the officer concerned.

(4) Where the order is not brought to the attention of the officer concerned within the period stated in the order (in pursuance of section 149 (4)) the person on whom it is served shall report the reasons for the failure to a judge.

(5) For the purposes of this Law “government entity” includes a ministry, portfolio, statutory authority and government company.

Supplementary:
production orders and
orders to grant entry

155. (1) An application for a production order or an order to grant entry may be made ex parte to a judge in chambers.

(2) The Rules Committee of the Grand Court may make rules providing for the practice and procedure to be followed in connection with proceedings relating to production orders and orders to grant entry.

(3) An application to discharge or vary a production order or an order to grant entry may be made to the court by the person who applied for the order or any person affected by the order.

(4) The court may discharge or vary a production order or an order to grant entry.

(5) Where a constable or a customs officer applies for a production order or an order to grant entry, an application to discharge or vary the order need not be by the same constable or customs officer.

(6) References to a person who applied for a production order or an order to grant entry shall be construed accordingly.

Search and seizure warrants

Search and seizure
warrants

156. (1) A judge may, on an application made to him by a constable, issue a search and seizure warrant if he is satisfied that either of the requirements for the issuing of the warrant set out in subsection (3) is fulfilled.

(2) A search and seizure warrant is a warrant authorising an appropriate person -

- (a) to enter and search the premises specified in the application for the warrant; and
- (b) to seize and retain any material found there which is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the application is made.

(3) An application for a search and seizure warrant shall state that -

- (a) a person specified in the application is subject to a confiscation investigation or a money laundering investigation or the property specified in the application is subject to a civil recovery investigation; or
- (b) the warrant is sought for the purposes of the investigation and -
 - (i) the warrant is sought in relation to the premises specified in the application; and
 - (ii) the warrant is sought in relation to material specified in the application, or that there are reasonable grounds for believing that there is material falling within section 157 (2), (3) or (4) on the premises.

(4) An appropriate person is a constable or a customs officer or a person employed in the Financial Reporting Authority for the purpose of receiving reports under this Law.

- (5) The requirements for the issue of a search and seizure warrant are -
 - (a) that a production order made in relation to material has not been complied with and there are reasonable grounds for believing that the material is on the premises specified in the application for the warrant; or
 - (b) that section 157 is satisfied in relation to the warrant.

157. (1) Where there is no production order a court may for the reasons stated in subsection (2) issue a search and seizure warrant if the conditions set out in section 150 are satisfied.

Requirements where production order not available

- (2) The reasons are -
 - (a) that it is not practicable to communicate with any person against whom the production order could be made;
 - (b) that it is not practicable to communicate with any person who would be required to comply with an order to grant entry to the premises; or
 - (c) that the investigation might be seriously prejudiced unless an appropriate person is able to secure immediate access to the material.

(3) In the case of a confiscation investigation, material falls within this subsection if it cannot be identified at the time of the application but it -

- (a) relates to the person specified in the application, the question whether he has benefited from his criminal conduct or any question as to the extent or whereabouts of his benefit from his criminal conduct; and

(b) is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the warrant is sought.

(4) In the case of a civil recovery investigation, material falls within this subsection if it cannot be identified at the time of the application but it -

- (a) relates to the property specified in the application or to -
 - (i) the question whether it is recoverable property or associated property;
 - (ii) the question as to who holds any such property;
 - (iii) any question as to whether the person who appears to hold any such property holds other property which is recoverable property; or
 - (iv) any question as to the extent or whereabouts of any property mentioned in this paragraph; and
- (b) is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the warrant is sought.

(5) In the case of a money laundering investigation, material falls within this subsection if it cannot be identified at the time of the application but it -

- (a) relates to the person specified in the application or the question whether he has committed a money laundering offence; and
- (b) is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the warrant is sought.

(6) For the purposes of this section an appropriate person is a constable or a customs officer or a person employed by the Financial Reporting Authority for the purpose of receiving reports under this Law.

Further provisions:
general

158. (1) A search and seizure warrant does not confer the right to seize privileged or excluded material.

(2) Privileged material is any material which a person would be entitled to refuse to produce on grounds of legal professional privilege in proceedings in the Grand Court.

Further provisions: civil
recovery

159. (1) An application for a search and seizure warrant sought for the purposes of civil recovery investigations may be made ex parte to a judge in chambers and such warrant may be issued subject to conditions.

(2) A warrant -

- (a) shall continue in force until the end of the period of one month starting with the day on which it is issued; and

- (b) authorises the person it names to require any information which is held in a computer and is accessible from the premises specified in the application for the warrant, and which the named person believes relates to any matter relevant to the investigation, to be produced in a form in which it can be taken away and in which it is visible and legible.

(3) Where the Commissioner of Police gives written authority for a constable to accompany the person a warrant names when executing it and a warrant is issued the authorised officers have the same powers under the warrant as the named person.

(4) A warrant may include provision authorising a person who is exercising powers under it to do other things which are not specified in the warrant, and need to be done in order to give effect to it.

(5) Copies may be taken of any material seized under a warrant.

(6) Material seized under a warrant may be retained in its original form for so long as it is necessary to retain it in connection with the investigation for the purposes of which the warrant was issued.

(7) Notwithstanding subsection (6), if the Commissioner of Police has reasonable grounds for believing that the material seized may have to be produced for the purposes of any legal proceedings, and the material might otherwise be unavailable for those purposes, it may be retained until the proceedings are concluded.

Disclosure orders

160. (1) A judge may, on an application made to him by the Attorney-General, make a disclosure order if he is satisfied that each of the requirements set out in section 161 for the making of the order is fulfilled.

Disclosure orders

(2) A disclosure order is an order authorising the Attorney-General to give to any person the Attorney-General considers has relevant information notice in writing requiring him to do, with respect to any matter relevant to the investigation for the purposes of which the order is sought, any or all of the following -

- (a) answer questions, either at a time specified in the notice or at once, at a place so specified;
- (b) provide information specified in the notice, by a time and in a manner so specified; or

- (c) produce documents, or documents of a description, specified in the notice, either at or by a time so specified or at once, and in a manner so specified.
- (3) An application for a disclosure order shall not be made in relation to a money laundering investigation.
- (4) The application for a disclosure order shall state that -
 - (a) a person specified in the application is subject to a confiscation investigation and the order is sought for the purposes of the investigation; or
 - (b) property specified in the application is subject to a civil recovery investigation and the order is sought for the purposes of the investigation.
- (5) Relevant information is information (whether or not contained in a document) which the Attorney-General considers to be relevant to the investigation.
- (6) A person is not bound to comply with a requirement imposed by a notice given under a disclosure order unless evidence of authority to give the notice is produced to him.
- (7) Where a judge makes a disclosure order under this section, the order need not be served on the person who is under investigation.

Requirements for the making of disclosure order

161. A court may make a disclosure order if -

- (a) there are reasonable grounds for suspecting that -
 - (i) in the case of a confiscation investigation, the person specified in the application for the order has benefited from his criminal conduct; or
 - (ii) in the case of a civil recovery investigation, the property specified in the application for the order is recoverable property or associated property;
- (b) there are reasonable grounds for believing that information which may be provided in compliance with a requirement imposed under the order is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the order is sought; and
- (c) there are reasonable grounds for believing that it is in the public interest for the information to be provided, having regard to the benefit likely to accrue to the investigation if the information is obtained.

162. (1) A person commits an offence if without reasonable excuse he fails to comply with a requirement imposed on him under a disclosure order.

Offences: failure to comply with disclosure order

(2) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine of four thousand dollars or imprisonment for a term of six months, or to both.

(3) A person commits an offence if, in purported compliance with a requirement imposed on him under a disclosure order, he -

- (a) makes a statement which he knows to be false or misleading in a material particular; or
- (b) recklessly makes a statement which is false or misleading in a material particular.

(4) A person guilty of an offence under subsection (3) is liable -

- (a) on summary conviction to a fine of four thousand dollars or to imprisonment for a term of six months, or to both; or
- (b) on conviction on indictment, to imprisonment for a term of two years, to a fine or to both.

163. (1) A statement made by a person in response to a requirement imposed on him under a disclosure order may not be used in evidence against him in criminal proceedings.

Statements: disclosure orders

(2) Subsection (1) does not apply -

- (a) in the case of proceedings under Part III;
- (b) on a prosecution for an offence under section 162 (1) or (3);
- (c) on a prosecution for an offence of perjury or making false statements; or
- (d) on a prosecution for some other offence where, in giving evidence, the person makes a statement inconsistent with the statement mentioned in subsection (1).

(3) A statement may not be used by virtue of subsection (2)(d) against a person unless the evidence relating to it is adduced or a question relating to it is asked by that person or on his behalf in the proceedings arising out of the prosecution.

164. (1) A disclosure order shall not confer the right to require a person to answer any privileged question, provide any privileged information or produce any privileged document, except that a legal practitioner may be required to provide the name and address of a client of his.

Further provisions: disclosure orders

(2) A privileged question is a question which the person would be entitled to refuse to answer on grounds of legal professional privilege in proceedings in the Grand Court.

(3) Privileged information is any information which the person would be entitled to refuse to provide on grounds of legal professional privilege in proceedings in the Grand Court.

(4) A disclosure order shall not confer the right to require a person to produce excluded material and has effect notwithstanding any restriction on the disclosure of information however imposed.

(5) A constable of or above the rank of Inspector may take copies of any documents produced in compliance with a requirement to produce them which is imposed under a disclosure order and documents so produced may be retained in their original form for so long as it is necessary to retain them in connection with the investigation for the purposes of which the order was made.

(6) Notwithstanding subsection (5), where the Commissioner of Police has reasonable grounds for believing that the documents may have to be produced for the purposes of any legal proceedings, and they might otherwise be unavailable for those purposes they may be retained until the proceedings are concluded.

(7) "Excluded material" means -

- (a) personal records which a person has acquired or created in the course of any trade, business, profession or other occupation or for the purposes of any paid or unpaid office and which he holds in confidence;
- (b) human tissue or tissue fluid which has been taken for the purposes of diagnosis or medical treatment and which a person holds in confidence; or
- (c) journalistic material which a person holds in confidence and which consists of documents and of records other than documents.

Supplementary:
applications for
disclosure orders

165. (1) An application for a disclosure order may be made ex parte to a judge in chambers.

(2) The Rules Committee may make rules of court providing for the practice and procedure to be followed in proceedings relating to disclosure orders.

(3) An application to discharge or vary a disclosure order may be made to the court by the Attorney-General or any person affected by the order.

(4) The court may discharge or vary a disclosure order.

(5) Subsections (2) to (4) do not apply to orders made for the purposes of a civil recovery investigation.

Customer information orders

166. (1) A judge may, on an application made to him by an appropriate officer, make a customer information order if he is satisfied that each of the requirements set out in subsection (3) for the making of the order is fulfilled.

Customer information orders

(2) A customer information order is an order that a financial institution covered by the application for the order shall, on being required to do so by notice in writing given by an appropriate officer, provide any such customer information as it has relating to the person specified in the application.

(3) The application for a customer information order shall state that -

- (a) a person specified in the application is subject to a confiscation investigation or a money laundering investigation; or
- (b) property specified in the application is subject to a civil recovery investigation and a person specified in the application appears to hold the property;
- (c) the order is sought for the purposes of the investigation; and
- (d) the order is sought against the financial institution or financial institutions specified in the application.

(4) An application for a customer information order may specify -

- (a) all financial institutions;
- (b) a particular description, or particular descriptions, of financial institutions; or
- (c) a particular financial institution or particular financial institutions.

(5) A financial institution which is required to provide information under a customer information order shall provide the information to an appropriate officer in such manner, and at or by such time, as an appropriate officer requires.

(6) Where a financial institution on which a requirement is imposed by a notice given under a customer information order requires the production of

evidence of authority to give the notice, it is not bound to comply with the requirement unless evidence of the authority has been produced to it.

(7) Where a judge makes a customer information order under this section, the order need not be served on the person who is under investigation.

Meaning of customer information

167. (1) "Customer information", in relation to a person and a financial institution, is information whether the person holds, or has held, an account or accounts at the financial institution whether solely or jointly with another and information as to -

- (a) the matters specified in subsection (2) if the person is an individual; and
 - (b) the matters specified in subsection (3) if the person is a company or limited liability partnership or a similar body incorporated or otherwise established outside the Islands.
- (2) The matters referred to in subsection (1) (a) are -
- (a) the account number or numbers;
 - (b) the person's full name;
 - (c) his date of birth;
 - (d) his most recent address and any previous addresses;
 - (e) the date or dates on which he began to hold the account or accounts and, if he has ceased to hold the account or any of the accounts, the date or dates on which he did so;
 - (f) such evidence of his identity as was obtained by the financial institution under or for the purposes of any legislation relating to proceeds of crime;
 - (g) the full name, date of birth and most recent address, and any previous addresses, of any person who holds, or has held, an account at the financial institution jointly with him; and
 - (h) the account number or numbers of any other account or accounts held at the financial institution to which he is a signatory and details of the person holding the other account or accounts.
- (3) The matters referred to in subsection (1)(b) are -
- (a) the account number or numbers;
 - (b) the person's full name;
 - (c) a description of any business which the person carries on;
 - (d) the country or territory in which the person is incorporated or otherwise established and any number assigned to it under section 26 of the Companies Law (2007 Revision) or corresponding legislation of any country or territory outside the Islands;

- (e) the person's registered office, and any previous registered offices, under the Companies Law (2007 Revision) or anything similar under corresponding legislation of any country or territory outside the Islands;
- (f) the person's registered office, and any previous registered offices, under the Partnerships Law (2002 Revision) or anything similar under corresponding legislation of any country or territory outside the Islands;
- (g) the date or dates on which the person began to hold the account or accounts and, if it has ceased to hold the account or any of the accounts, the date or dates on which it did so;
- (h) such evidence of the person's identity as was obtained by the financial institution under or for the purposes of any legislation relating to a proceeds of crime;
- (i) the full name, date of birth and most recent address and any previous addresses of any person who is a signatory to the account or any of the accounts.

(4) The Governor in Cabinet may by order provide for information of a description specified in the order to be customer information or no longer to be customer information.

(5) Money laundering is an act which -

- (a) constitutes an offence under section 133, 134 or 135 of this Law or any other offence similar or connected to the offences referred to in this paragraph; or
- (b) would constitute an offence specified or a type referred to in paragraph (a) if done in the Islands.

168. A court may make a customer information order if it is satisfied that -

- (a) in the case of a confiscation investigation, there are reasonable grounds for suspecting that the person specified in the application for the order has benefited from his criminal conduct;
- (b) in the case of a civil recovery investigation, there are reasonable grounds for suspecting that-
 - (i) the property specified in the application for the order is recoverable property or associated property; and
 - (ii) the person specified in the application holds all or some of the property;
- (c) in the case of a money laundering investigation, there are reasonable grounds for suspecting that the person specified in the application for the order has committed a money laundering offence;

Requirements for
making of customer
information order

- (d) in the case of any investigation, there are reasonable grounds for believing that customer information which may be provided in compliance with the order is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the order is sought; and
- (e) in the case of any investigation, there are reasonable grounds for believing that it is in the public interest for the customer information to be provided, having regard to the benefit likely to accrue to the investigation if the information is obtained.

Offences: failure to comply with customer information order

169. (1) A financial institution commits an offence if, without reasonable excuse, it fails to comply with a requirement imposed on it under a customer information order.

(2) A financial institution guilty of an offence under subsection (1) is liable on summary conviction to a fine of ten thousand dollars.

(3) A financial institution commits an offence if, in purported compliance with a customer information order, it makes a statement which it knows to be false or misleading in a material particular.

(4) A financial institution guilty of an offence under subsection (3) is liable on summary conviction, to a fine of fifteen thousand dollars or on conviction on indictment, to a fine.

Statements: customer information orders

170. (1) A statement made by a financial institution in response to a customer information order may not be used in evidence against it in criminal proceedings.

(2) Subsection (1) does not apply -

- (a) in the case of proceedings under Part III;
- (b) on a prosecution for an offence under section 169 (1) or (3); or
- (c) on a prosecution for some other offence where, in giving evidence, the financial institution makes a statement inconsistent with the statement mentioned in subsection (1).

(3) A statement may not be used by virtue of subsection (2)(c) against a financial institution unless evidence relating to it is adduced or a question relating to it is asked by or on behalf of the financial institution in the proceedings arising out of the prosecution.

Disclosure of information

171. A customer information order has effect notwithstanding any restriction on the disclosure of information however imposed.

172. (1) An application for a customer information order may be made ex parte to a judge in chambers.

Supplementary:
applications for
customer information
orders

(2) The Rules Committee may make rules of court providing for the practice and procedure to be followed in proceedings relating to customer information orders.

(3) An application to discharge or to vary a customer information order may be made to the court by the person who applied for the order or any person affected by the order.

(4) Upon the hearing of an application the court may discharge or vary the order.

(5) Where a constable or a customs officer applies for a customer information order, an application to discharge or vary the order does not have to be made by the same officer, constable or customs officer; and references to a person who applied for a customer information order shall be construed accordingly.

(6) A constable or a customs officer may not make an application for a customer information order or an application to vary such an order unless he is a senior appropriate officer or he is authorised to do so by a senior appropriate officer.

Account monitoring orders

173. (1) A judge may, on an application made to him by an appropriate officer, make an account monitoring order if he is satisfied that each of the requirements set out in subsection (3) for the making of the order is fulfilled.

Account monitoring
orders

(2) An account monitoring order is an order that the financial institution specified in the application for the order shall, for the period stated in the order, provide account information of the description specified in the order to an appropriate officer in the manner, and at or by the time or times, stated in the order.

- (3) An application for an account monitoring order shall state that -
- (a) a person specified in the application is subject to a confiscation investigation or a money laundering investigation; or
 - (b) property specified in the application is subject to a civil recovery investigation and a person specified in the application appears to hold the property; and

- (c) the order is sought for the purposes of the investigation; and
- (d) the order is sought against the financial institution specified in the application in relation to account information of the description so specified.

(4) Account information is information relating to an account or accounts held at the financial institution specified in the application by the person so specified whether held solely or jointly with another.

(5) An application for an account monitoring order may specify information relating to -

- (a) all accounts held by the person specified in the application for the order at the financial institution so specified;
- (b) a particular description, or particular descriptions, of accounts so held, or
- (c) a particular account, or particular accounts, so held.

(6) The period stated in an account monitoring order shall not exceed the period of ninety days beginning with the day on which the order is made.

Requirements for making of account monitoring order

174. A court may make an account monitoring order if it is satisfied that -

- (a) in the case of a confiscation investigation, there are reasonable grounds for suspecting that the person specified in the application for the order has benefited from his criminal conduct;
- (b) in the case of a civil recovery investigation, there are reasonable grounds for suspecting that -
 - (i) the property specified in the application for the order is recoverable property or associated property; and
 - (ii) the person specified in the application holds all or some of the property;
- (c) in the case of a money laundering investigation, there are reasonable grounds for suspecting that the person specified in the application for the order has committed a money laundering offence;
- (d) in the case of any investigation, there are reasonable grounds for believing that account information which may be provided in compliance with the order is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the order is sought; or
- (e) in the case of any investigation, there are reasonable grounds for believing that it is in the public interest for the account information to be provided, having regard to the benefit likely to accrue to the investigation if the information is obtained.

175. (1) A statement made by a financial institution in response to an account monitoring order may not be used in evidence against it in criminal proceedings. Statements: account monitoring orders

(2) Subsection (1) does not apply -

- (a) in the case of proceedings under Part III;
- (b) in the case of proceedings for contempt of court; or
- (c) on a prosecution for an offence where, in giving evidence, the financial institution makes a statement inconsistent with the statement mentioned in subsection (1).

(3) A statement may not be used by virtue of subsection (2)(c) against a financial institution unless evidence relating to it is adduced or a question relating to it is asked by or on behalf of the financial institution in the proceedings arising out of the prosecution.

176. An application for an account monitoring order may be made ex parte to a judge in chambers. Applications

177. An account monitoring order has effect notwithstanding any restriction on the disclosure of information however imposed. Disclosure of information

178. (1) The Rules Committee may make rules of court providing for the practice and procedure to be followed in connection with proceedings relating to account monitoring orders. Supplementary: account monitoring orders

(2) An application to discharge or vary an account monitoring order may be made to the court by the person who applied for the order or any person affected by the order.

(3) The court may vary or discharge an account monitoring order.

(4) Where a constable or a customs officer applies for an account monitoring order, an application to discharge or vary the order does not have to be made by the same officer of the Financial Reporting Authority, constable or customs officer; and references to a person who applied for an account monitoring order shall be construed accordingly.

Evidence overseas

179. (1) This section applies where there is an investigation touching a matter arising under this Law. Evidence overseas

(2) A judge on the application of the Attorney-General or a person subject to the investigation may issue a letter of request if he thinks that there is evidence in a country or territory outside the Islands of the commission of a criminal offence, criminal conduct or unlawful conduct and that such person has benefited from his criminal conduct or there is evidence of the extent or whereabouts of that person's benefit from his criminal offence, criminal conduct or unlawful conduct.

(3) A letter of request is a letter requesting assistance in obtaining outside the Islands such evidence as is specified in the letter for use in the investigation.

(4) If the Governor believes it is appropriate to do so he may forward a letter received under subsection (4) -

- (a) to a court or tribunal which is specified in the letter and which exercises jurisdiction in the place where the evidence is to be obtained, or
- (b) to an authority recognised by the government of the country or territory concerned as the appropriate authority for receiving letters of request;

but in a case of urgency the person issuing the letter of request may send it directly to the court or tribunal mentioned in paragraph (a).

(5) Evidence obtained in pursuance of a letter of request shall not be used by any person other than the Attorney-General or a person subject to the investigation or for any purpose other than that for which it is obtained.

(6) Subsection (5) does not apply if the authority mentioned in subsection (4)(b) consents to the use.

(7) For the purposes of this section, evidence includes documents and other articles.

(8) The Rules Committee may make rules of court providing for the practice and procedure to be followed in connection with proceedings relating to the issue of letters of request by a judge under this section.

Code of practice

Code of practice

180. (1) The Governor in Cabinet shall, upon the recommendation of the Commissioner of Police and the Collector of Customs, prepare a code of practice as to the exercise by the Director, officers of the Authority, constables and customs officers of functions under this Part.

(2) After preparing a draft of the code the Governor in Cabinet shall publish the draft and consider any representations made to him about the draft; and it may thereafter amend the draft accordingly.

(3) The Governor in Cabinet shall bring the code into operation on such day as it may appoint by order.

(4) A person specified in subsection (1) shall comply with a code of practice which is in operation under this section in the exercise of any function he has under this Part; and where such a person fails to comply with any provision of such a code of practice he is not by reason only of that failure liable in any criminal or civil proceedings.

(5) Notwithstanding subsection (4), the code of practice is admissible in evidence in criminal or civil proceedings and a court may take account of any failure to comply with its provisions in determining any question in the proceedings.

(6) The Governor in Cabinet may from time to time revise a code previously brought into operation under this section; and the preceding provisions of this section apply to a revised code as they apply to the code as first prepared.

Interpretation

181. For the purposes of confiscation or a money laundering investigation, each of the following is an offence relating to a money laundering - Money laundering offences

- (a) an attempt, conspiracy or incitement to commit an offence specified in section 133, 134 or 135;
- (b) aiding, abetting, counselling or procuring the commission of an offence specified in section 133, 134 or 135.

182. (1) In this Law, "financial institution" means a person carrying on a business in the regulated sector. Other interpretative provisions

(2) A person who ceases to carry on a business in the regulated sector (whether by virtue of paragraph 2 of Schedule 5 or otherwise) shall continue to be treated as a financial institution for the purposes of any requirement under a customer information order or an account monitoring order, to provide information which relates to a time when the person was a financial institution.

(3) References to a business in the regulated sector shall be construed in accordance with Schedule 4.

(4) References to notice in writing include references to notice given by electronic means.

PART VII

INSOLVENCY, ETC.

Bankruptcy of
defendant, etc.

183. (1) Where any order for bankruptcy is made against a person who holds realisable property -

- (a) any property for the time being subject to a restraint order made before the order for bankruptcy; and
- (b) any proceeds of property realised by virtue of this Law for the time being in the hands of a receiver appointed under section 52;

(1997 Revision)

is excluded from the property of the bankrupt for the purposes of the Bankruptcy Law (1997 Revision).

(2) Where any order for bankruptcy is made against a person, the powers conferred on the Grand Court to make restraint orders or to apply the proceeds of realisation and other sums or on a receiver by such order appointed shall not be exercised in relation to -

- (a) property for the time being comprised in the property of the bankrupt for the purposes of the Bankruptcy Law (1997 Revision); or
- (b) property which is to be applied for the benefit of creditors of the bankrupt by virtue of a condition imposed under section 68 of that law.

(1997 Revision)

(3) Nothing in the Bankruptcy Law (1997 Revision) shall be taken as restricting, or enabling the restriction of, the exercise of the powers conferred on a receiver or on the Grand Court to make restraint orders or to apply the proceeds of realisation and such other sums.

(4) Subsection (2) does not affect the enforcement of a charging order under the prior Law -

- (a) made before the order for bankruptcy was made; or
- (b) on property which was subject to a restraint order when the order for bankruptcy was made.

(5) Where, in the case of a debtor -

(1997 Revision)

- (a) the Trustee in Bankruptcy constituted by section 12 of the Bankruptcy Law (1997 Revision) has been ordered to become the receiver or manager of the property or business of the debtor; and

- (b) any property of the debtor is subject to a restraint order;

the powers conferred on the Trustee by virtue of that law do not apply to property for the time being subject to the restraint order.

(6) Where any order for bankruptcy is made against a person who has directly or indirectly made a gift caught by this Law, sections 104 to 109 of the Bankruptcy Law (1997 Revision) shall not apply -

(1997 Revision)

- (a) in respect of the making of the gift at any time when proceedings for an offence to which this Law applies have been instituted against him and have not been concluded; or
- (b) when property of the person to whom the gift was made is subject to a restraint order or charging order.

184. (1) Where realisable property is held by a company and an order for the winding up of the company has been made or a resolution has been passed by the company for the voluntary winding up, the functions of the liquidator (or any provisional liquidator) shall not be exercisable in relation to -

Winding up of company holding realisable property

- (a) property for the time being subject to a restraint order made before the relevant time; and
- (b) any proceeds of property realised by virtue of this Law for the time being in the hands of a receiver appointed under section 52.

(2) Where, in the case of a company, such an order has been made or such a resolution has been passed, the powers conferred on the Grand Court under this Law to make restraint orders or to order the realisation of property on a receiver appointed by the order shall not be exercised in relation to any realisable property held by the company in relation to which the functions of the liquidator are exercisable -

- (a) so as to inhibit him from exercising those functions for the purpose of distributing any property held by the company to the company's creditors; or
- (b) so as to prevent the payment out of any property of any expenses (including the remuneration of the liquidator or any provisional liquidator) properly incurred in the winding up in respect of the property.

(3) Subsection (2) does not affect the enforcement of a charging order made under the prior Law and made before the relevant time or on property which was subject to a restraint order at the relevant time.

- (4) In this section "relevant time" means -

- (a) where no order for the winding up of the company has been made, the time of the passing of the resolution for voluntary winding up;
- (b) where such an order has been made and, before the presentation of the petition for the winding up of the company by the court, such a resolution had been passed by the company, the time of the passing of the resolution; and
- (c) in any other case where such an order has been made, the time of the making of the order.

Property subject to interim order, restraint order or disposal dealt with by trustee

185. (1) Without prejudice to the generality of any provision of any other enactment, where -

- (a) a trustee in bankruptcy, seizes or disposes of any property in relation to which his functions are not exercisable because it is subject to an interim order, a restraint order or a civil forfeiture order, and
- (b) at the time of the seizure or disposal he believes, and has reasonable grounds for believing, that he is entitled (whether in pursuance of an order of a court or otherwise) to seize or dispose of that property;

he shall not be liable to any person in respect of any loss or damage resulting from the seizure or disposal except in so far as the loss or damage is caused by his negligence in so acting, and he shall have a lien on the property, or the proceeds of its sale, for such of his expenses as were incurred in connection with the bankruptcy or other proceedings in relation to which the seizure or disposal purported to take place and for so much of his remuneration as may reasonably be assigned for his acting in connection with those proceedings.

(2) Where the a trustee appointed as aforesaid incurs expenses in respect of such property as is mentioned in subsection (1) (a) and in so doing does not know and has no reasonable grounds to believe that the property is for the time being subject to an order under this Law, he shall be entitled (whether or not he has seized or disposed of that property so as to have a lien) to payment of those expenses.

Meaning of insolvency practitioner

186. The expression "person acting as an insolvency practitioner" includes the trustee in bankruptcy and the Official Receiver acting as receiver or manager of the property concerned.

PART VIII

CO-OPERATION

187. Schedule 5 shall apply to external confiscation orders and to any proceedings which have been, or are to be, instituted and which may result in external confiscation orders being made in foreign countries.

External requests and orders

188. (1) On an application made by the Attorney-General on behalf of the Government of a foreign country, the Grand Court may, subject to subsection (3), register an external confiscation order made there if -

Registration of external confiscation orders

- (a) the amount payable under the external confiscation order is at least thirty thousand dollars, except that the court may register an order where the amount payable is less if the Attorney-General certifies that it is in the public interest to register the order;
- (b) it is satisfied that, at the time of registration, the order is in force and not subject to appeal;
- (c) it is satisfied, where the person against whom the order so made did not appear in the proceedings, that he received notice of the proceedings in sufficient time to enable him to defend them; and
- (d) it is of the opinion that enforcing the order in the Islands would not be contrary to the interests of justice.

(2) In subsection (1) “appeal” includes -

- (a) any proceedings by way of discharging or setting aside a judgment; and
- (b) an application for a new trial or stay of execution.

(3) The Grand Court shall not register an external confiscation order made in a foreign country -

- (a) where the Attorney-General has issued a certificate to the effect that the application to register the order is contrary to the public interest of the Islands; or
- (b) where the facts described in the statement made under paragraph (a) of section 191 or in the affidavit made under paragraph 8 of Schedule 5 do not amount to criminal conduct.

(4) The Grand Court shall cancel the registration of an external confiscation order if it appears to the court that the order has been satisfied by payment of the amount due under it, by the person against whom it was made serving imprisonment in default of payment or by any other means.

Proof of orders and judgments of courts of a foreign country

189. (1) For the purposes of external confiscation -

- (a) any order made or judgment given by a court of a foreign country purporting to bear the seal of that court or to be signed by any person in his capacity as a judge, magistrate or officer of the court, shall be deemed without further proof to have been duly sealed or, as the case may be, to have been signed by that person; and
- (b) a document, duly authenticated, which purports to be a copy of any order made or judgment given by a court of a foreign country shall be deemed without further proof to be a true copy.

(2) A document purporting to be a copy of any order made or judgment given by a court of a foreign country is duly authenticated for the purpose of paragraph (b) of subsection (1) if it purports to be certified by any person in his capacity as a judge, magistrate or officer of the court in question or by or on behalf of the appropriate authority of the foreign country.

Evidence in relation to proceedings and orders in a foreign country

190. (1) For the purposes of external confiscation, a certificate purporting to be issued by or on behalf of the appropriate authority of a foreign country stating -

- (a) that proceedings have been instituted and have not been concluded, or that proceedings are to be instituted, in that foreign country;
- (b) that an external confiscation order is in force and is not subject to appeal;
- (c) that all or a certain amount payable under an external confiscation order remains unpaid in the foreign country, or that other property recoverable under an external confiscation order remains unrecovered there;
- (d) that any person has been notified of any proceedings in accordance with the law of the foreign country; or
- (e) that an order (however described) made by a court of the foreign country has the purpose -
 - (i) of recovering property obtained as result of or in connection with conduct to which this Law applies or the value of property so obtained; or
 - (ii) of depriving a person of a pecuniary advantage so obtained;

shall, in any proceedings in the Grand Court, be admissible as evidence of the facts so stated.

(2) In any such proceedings a statement contained in a document, duly authenticated, which purports to have been received in evidence or to be a copy of a document so received, or to set out or summarise evidence given in

proceedings in a court of a foreign country, shall be admissible as evidence of any fact stated therein.

(3) A document is duly authenticated for the purposes of subsection (2) if it purports to be certified by any person in his capacity as a judge, magistrate or officer of the court of the foreign country, or by or on behalf of the appropriate authority of the foreign country, to have been received in evidence or to be a copy of a document so received, or, as the case may be, to be the original document containing or summarising the evidence or a true copy of that document.

(4) Nothing in this section shall prejudice the admission of any evidence, whether contained in any document or otherwise, which is admissible apart from this section.

191. A request for assistance sent to the Attorney-General by the appropriate authority of a foreign country shall -

Representation of government of a foreign country

- (a) be accompanied by a statement of the facts, either alleged or proved, in respect of which proceedings have been, or are about to be, instituted which have resulted, or may result, in an external confiscation order being made; and
- (b) unless the contrary is shown, be deemed to constitute the authority of the government of that country for the Attorney-General to act on its behalf in any proceedings in the Grand Court under this Law.

192. (1) Where -

Satisfaction of confiscation order in a foreign country

- (a) a confiscation order has been made under this Law;
- (b) a request has been sent by the Attorney-General to the appropriate authority of a foreign country for assistance in enforcing that order; and
- (c) in execution of that request, property is recovered in that country;

the amount payable under the confiscation order shall be treated as reduced by the value of the property so recovered.

(2) For the purposes of subsection (1), and without prejudice to the admissibility of any evidence which may be admissible apart from this subsection, a certificate purporting to be issued by or on behalf of the appropriate authority of a foreign country stating that property has been recovered there in execution of a request by the Attorney-General, stating the value of the property so recovered and the date on which it was recovered shall, in any proceedings in a court in the Islands, be admissible as evidence of the facts so stated.

Currency conversion

193. (1) Where the value of property recovered as described in section 192 (1) is expressed in a currency other than that of the Islands, the extent to which the amount payable under the confiscation order is to be reduced under that paragraph shall be calculated on the basis of the exchange rate prevailing on the date on which the property was recovered in the foreign country concerned.

(2) Where an amount of money payable or remaining to be paid under an external confiscation order registered in the Grand Court under Part VIII is expressed in a currency other than that of the Islands, for the purpose of any action taken in relation to that order under this Law as applied by this Law the amount shall be converted into the currency of the Islands on the basis of the exchange rate prevailing on the date of the registration of the order.

(3) For the purposes of this section, a written certificate purporting to be signed by any person acting in his capacity as an officer of any bank holding a current valid class "A" licence, within the meaning of the Banks and Trust Companies Law (2007 Revision), and stating the exchange rate prevailing on a specified date shall be admissible as evidence of the facts so stated.

(2007 Revision)

Rules of court

194. The Rules Committee shall make rules of court for the purpose of external confiscation orders.

Interpretation

195. (1) A request, when used in relation to an external confiscation order or the seeking of it is a request by an overseas authority to prohibit dealing with relevant property which is identified in the request.

(2) An external confiscation order is an order which -

- (a) is made by an overseas court where property is found or believed to have been obtained as a result of or in connection with , and
- (b) is for the recovery of specified property or a specified sum of money.

(3) An external investigation is an investigation by an overseas authority into -

- (a) whether property has been obtained as a result of or in connection with criminal conduct; or
- (b) whether a money laundering offence has been committed.

(4) Property is relevant property if there are reasonable grounds to believe that it may be needed to satisfy an external order which has been or which may be made.

(5) An overseas court is a court of a country or territory outside the Islands.

(6) An overseas authority is an authority which has responsibility in a country or territory outside the Islands -

- (a) for making a request to an authority in another country or territory (including the Islands) to prohibit dealing with relevant property;
- (b) for carrying out an investigation into whether property has been obtained as a result of or in connection with criminal conduct; and
- (c) for carrying out an investigation into whether a money laundering offence has been committed.

PART IX

MISCELLANEOUS AND GENERAL

196. The offences to which an Order in Council under sections 32 and 34 (3) of the Extradition Act 1989 of the United Kingdom and section 2 of the Extradition Act of 1870 also of the United Kingdom can apply shall include -

Extradition where Schedule 1 to the Extradition Act 1989 applies

- (a) offences under this Law;
- (b) any conspiracy to commit such an offence; and
- (c) any attempt to commit an offence under this Law.

197. Where property is lawfully confiscated or forfeited under this Law and all proceedings or appeal processes have been exhausted or are time-barred, no third party shall be entitled to make a claim to that property and no such claim shall be entertained by a court of law or any other person or authority.

No third party claims on confiscated or forfeited property

198. Notwithstanding any other law or rule of court, costs shall not be awarded against the Attorney-General -

Costs

- (a) where, under this Law or any other law-
 - (i) the Attorney-General has applied by written notice to the Grand Court for the grant or enforcement of a confiscation order;
 - (ii) the Attorney-General has made an application for a restraint order or related order;
 - (iii) the Attorney-General has made an application for an order under Part IV;
 - (vi) the Attorney-General, on behalf of the government of a foreign country, has made an application for an order under this Law;

and the Grand Court determines that it will not make the order concerned; or

- (b) where the Grand Court has varied or discharged an order made under this Law;

unless it is shown to the satisfaction of the Grand Court that the Attorney-General's application in relation to the order concerned was made in bad faith or was frivolous or vexatious.

Companies and other business entities formed for criminal purposes

199. Any person involved in the formation or operation of a company or other business entity (at whatever level) that is formed for a criminal purpose shall be deemed to fall within the provisions of this Law unless he can show on a balance of probabilities that he did not know or cannot be expected to have known that the company or business entity concerned was formed for a criminal purpose.

Amendment of Terrorism Law

200. (1) Section 20 of the Terrorism Law is amended by repealing subsection (2) and substituting the following -

(Law 14 of 2003)

“(2) A person commits an offence if -

- (a) he uses property for the purpose of terrorism;
- (b) he possesses property and intends that it should be used, or has reasonable cause to suspect that it may be used, for the purpose of terrorism;
- (c) he possesses or acquires property which he knows or has reasonable cause to suspect has been used, directly or indirectly, in the commission of an act of terrorism; or
- (d) acquires property as a result of or in connection with acts of terrorism.”.

(2) Schedule 2, paragraph 5 (1) (a), of the Terrorism Law is amended by deleting the words “sections 19 to 22” and substituting the words “sections 19 to 22 and section 200 of the Proceeds of Crime Law, 2008”.

Regulations

201. (1) The Governor in Cabinet may make regulations for giving effect to this Law and such regulations may -

- (a) make different provision for different purposes;
- (b) provide for the making of immediate and interim short-term restraint orders not exceeding seventy-two hours;
- (c) prescribe that confiscation orders be applied for only by such person as the regulations may specify;
- (d) specifying the need or otherwise for a prosecuting attorney where an application is made for a production order, it being understood

that in the absence of such regulations, prosecuting attorney need not be present;

- (e) limiting, in exceptional circumstances, the recovery of costs of complying with orders of the Grand Court, subject only to section 198; and
- (f) make supplementary, incidental, saving or transitional provisions.

(2) Without limiting the generality of subsection (1) the Governor may by order make such provision as he considers appropriate for or in connection with -

- (a) enabling confiscation orders under this Law but such order may not enable a confiscation order to be made by any summary court in respect of an amount exceeding one hundred thousand dollars;
- (b) the appointment of an Official Receiver of property that may be confiscated or restrained under this Law, and such Official Receiver shall also be Trustee for Civil Recovery for purposes of this Law, and, in the Governor's discretion, may undertake this work exclusively or simultaneously with any other position he may hold in government).

202. The following are repealed -

Repeals

- (a) the Proceeds of Criminal Conduct Law (2007 Revision); and (2007 Revision)
- (b) sections 31 to 42 and 46 to 48 of the Misuse of Drugs Law (2000 Revision). (2000 Revision)

203. Notwithstanding section 202 -

Savings

- (a) proceedings in respect of a criminal offence or a suspected criminal offence or relating to any matter provided for under the Proceeds of Criminal Conduct Law (2007 Revision) or the (Misuse of Drugs Law (2000 Revision) which had commenced before the date of the commencement of this Law shall proceed and be determined as if the Proceeds of Criminal Conduct Law (2007 Revision) or the repealed provisions of the Misuse of Drugs Law (2000 Revision) continue to have effect; (2007 Revision) (2000 Revision)
- (b) proceedings in respect of a criminal offence or a suspected criminal offence or relating to any matter provided for under the Criminal Justice (International Co-operation) Law (2004 Revision) which had commenced before the date of the commencement of this Law shall proceed and be determined as if the Proceeds of Criminal Conduct Law (2007 Revision) continues to have effect, but this paragraph shall not be read so as to restrict the general operation of the Criminal Justice International Co-operation Law (2004 Revision) in relation to matters not falling within the scope of this Law; and (2004 Revision)

- (c) the Misuse of Drugs (Drug Trafficking Offences) (Designated Countries) Order, 1991 and any regulations made thereunder and in force at the commencement of this Law shall, to the extent that they are not inconsistent with this Law, continue to be valid as if made under this Law;
- (d) regulations made under the Proceeds of Criminal Conduct Law (2007 Revision) and which are in force at the commencement of this Law shall be deemed to have been made under this Law so long as they are not inconsistent with this Law;
- (e) guidance notes made under regulations referred to in paragraph (d) which are in force at the commencement of this Law shall be deemed to have been made under the regulations saved by that paragraph so long as the notes are not inconsistent with the regulations or this Law.

SCHEDULE 1

LIFESTYLE OFFENCES

(Section 68)

Drug trafficking

- (2000 Revision) 1. (1) An offence under any of the following provisions of the Misuse of Drugs Law (2000 Revision) -
- (a) section 3(1) (a) to (k) and (m) and section 3(2);
 - (b) section 4;
 - (c) section 11; and
 - (d) section 19.
- (2007 Revision) (2) An offence under section 53 or 56 of the Customs Law (2007 Revision).

Money laundering

2. An offence under either of the following provisions of this Law -
- (a) section 133 (concealing, etc., criminal property);
 - (b) section 134 (assisting another to retain criminal property).

Directing terrorism

- (Law 14 of 2003) 3. An offence under section 14 of the Terrorism Law, 2003.

People trafficking

4. An offence under section 78 (2) of the Immigration Law (2007 Revision) (2007 Revision) (assisting illegal entry, etc).

Arms trafficking

5. (1) An offence under section 53 or 54 of the Customs Law (2007 Revision) (2007 Revision) if it is committed in connection with a firearm or ammunition.

- (2) An offence under section 3(1), 8(3) or 8 (5) of the Firearms Law (2006 Revision) (2006 Revision) (importing or exporting or dealing unlawfully in firearms or ammunition).

- (3) In this paragraph "firearm" has the same meanings as in section 2 of the Firearms Law (2006 Revision). (2006 Revision)

Counterfeiting and forgery

6. An offence under section 295, 301 and 303 of the Penal Code (2007 Revision). (2007 Revision)

Intellectual property

7. (1) Any of the following offences of the copyright legislation relating to the Islands -

- (a) making or dealing in an article which infringes copyright;
- (b) making or possessing an article designed or adapted for making a copy of a copyright work;
- (c) making or dealing in an illicit recording; or
- (d) making or dealing in unauthorised decoders.

- (2) An offence under section 317 of the Penal Code (2007 Revision). (2007 Revision)

Pimps and brothels

8. (1) An offence under any of the following provisions of the Penal Code (2007 Revision) - (2007 Revision)

- (a) section 134;
- (b) section 136;
- (c) section 137; and
- (d) section 138.

Blackmail

- (2007 Revision) 9. An offence under section 259 of the Penal Code (2007 Revision) (blackmail).

Inchoate offences

10. (1) An offence of attempting, conspiring or inciting the commission of an offence specified in this Schedule.

(2) An offence of aiding, abetting, counselling or procuring the commission of such an offence.

SCHEDULE 2

POWERS OF OFFICIAL RECEIVER DURING AN INTERIM RECEIVING ORDER

(Section 88)

Seizure

1. Power to seize property to which the order applies.

Information

2. (1) Power to obtain information or to require a person to answer any question.

(2) A requirement imposed in the exercise of the power has effect in spite of any restriction on the disclosure of information (however imposed).

(3) An answer given by a person in pursuance of such a requirement may not be used in evidence against him in criminal proceedings.

(4) Sub-paragraph (3) does not apply -

- (a) on a prosecution for an offence under section 101 of the Penal Code (2007 Revision) (perjury); or
- (b) on a prosecution for some other offence where, in giving evidence, he makes a statement inconsistent with it.

(5) An answer may not be used by virtue of sub-paragraph (4)(b) against a person unless -

- (a) evidence relating to it is adduced; or
- (b) a question relating to it is asked;

by him or on his behalf in the proceedings arising out of the prosecution.

Entry, search, etc.

- 3 (1) Power to -
- (a) enter any premises in the Islands to which the interim order applies; and
 - (b) take any of the following steps -
 - (i) to carry out a search for or inspection of anything described in the order;
 - (ii) to make or obtain a copy, photograph or other record of anything so described; or
 - (iii) to remove anything which he is required to take possession of in pursuance of the order or which may be required as evidence in the proceedings under Part IV relating to the civil recovery orders in the Grand Court.
- (3) The order may describe anything generally, whether by reference to a class or otherwise.

Supplementary

- 4 (1) An order making any provision under paragraph 2 or 3 shall make provision in respect of legal professional privilege.
- (2) An order making any provision under paragraph 3 may require any person -
- (a) to give the Official Receiver access to any premises which he may enter in pursuance of paragraph 3;
 - (b) to give the Official Receiver any assistance he may require for taking the steps mentioned in that paragraph.

Management

- 5 (1) Power to manage any property to which the order applies.
- (2) Managing property includes -
- (a) selling or otherwise disposing of assets comprised in the property which are perishable or which ought to be disposed of before their value diminishes;

- (b) where the property comprises assets of a trade or business, carrying on, or arranging for another to carry on, the trade or business; and
- (c) incurring capital expenditure in respect of the property.

SCHEDULE 3

POWERS OF TRUSTEE FOR CIVIL RECOVERY

(Section 97)

Sale

- 1 Power to sell the property or any part of it or interest in it.

Expenditure

- 2 Power to incur expenditure for the purpose of -
 - (a) acquiring any part of the property, or any interest in it, which is not vested in him;
 - (b) discharging any liabilities, or extinguishing any rights, to which the property is subject.

Management

- 3 (1) Power to manage property.
(2) Managing property includes doing anything mentioned in paragraph 5(2) of Schedule 2.

Legal proceedings

- 4 Power to start, carry on or defend any legal proceedings in respect of the property.

Compromise

- 5 Power to make any compromise or other arrangement in connection with any claim relating to the property.

Supplementary

6. (1) For the purposes of, or in connection with, the exercise of any of his powers -
- (a) power by his official name to do any of the following -
 - (i) holding property;
 - (ii) entering into contracts;
 - (iii) suing and being sued;
 - (iv) employing agents;
 - (v) executing a power of attorney, deed or other instrument;and
 - (b) power to do any other act which is necessary.

SCHEDULE 4

REGULATED SECTOR

(Sections 136 and 181)

Business in the regulated sector

1. For the purposes of this Law “regulated sector” means that part of the business community in the Islands which is regulated by any one or more of the Laws listed below in this paragraph or any person who carries on any one or more of the activities regulated thereby or any person who carries on such relevant financial business as is referred to in paragraph 2 or may be prescribed under paragraph 3 of this Schedule -

- (a) Banks and Trust Companies Law (2007 Revision);
- (b) Building Societies Law (2001 Revision);
- (c) Companies Management Law (2003 Revision);
- (d) Cooperative Societies Law (2001 Revision);
- (e) Insurance Law (2007 Revision);
- (f) Money Services Law (2003 Revision);
- (g) Mutual Funds Law (2007 Revision);
- (h) Securities Investment Business Law (2004 Revision); and
- (i) the activity of dealing in good of any description by way of business (including dealing as an auctioneer) whenever a transaction involves accepting a total cash payment of fifteen thousand dollars or more; and

- (j) any other laws that may be prescribed by the Governor by regulations made under section 46 of the Monetary Authority Law (2004 Revision).
- 2. For the purposes of paragraph 1, “relevant financial business” has the meaning assigned in regulation 4 of the Money Laundering Regulations (2006 Revision).
- 3. The Governor in Cabinet may by Order amend this Schedule.

SCHEDULE 5

MODIFICATIONS TO THE LAW WHEN APPLIED TO EXTERNAL CONFISCATION ORDERS AND RELATED PROCEEDINGS

(Section 187)

Introductory

1. This Schedule shall apply to external confiscation orders registered under this Law and to any proceedings which have been or are to be instituted and which may result in such external confiscation orders being made and, to the extent that it is at variance with this Law in relation to the administration and enforcement of external confiscation orders and proceedings which may result in external confiscation orders, the terms of this Schedule shall prevail.

General interpretation

2. In this Schedule -

(1) The expressions listed in the left-hand column below are respectively defined or (as the case may be) fall to be construed in accordance with the provisions of this Schedule listed in the right-hand column in relation to those expressions.

Expression	Relevant Expression
Dealing with property	paragraph 6(9)
Defendant	paragraph 3(1)(b)
Gift caught by this Schedule	paragraph 3(4)
Conduct to which this Schedule applies	paragraph 3(1)(a)
Realisable property	paragraph 3(2)
Restraint order	paragraph 6(1)

(2) Proceedings are instituted in a particular country when -

- (a) under the law of the foreign country concerned, one of the steps specified in relation to that country in an order made under this Law has been taken there in respect of alleged conduct by the defendant to which this Law applies; or
- (b) an application has been made to a court in a foreign country for a confiscation order,

and where the application of this paragraph would result in there being more than one time for the institution of proceedings, they shall be taken to have been instituted at the earliest of those times.

- (3) Proceedings are concluded -
 - (a) when (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an external confiscation order being made in the proceedings; or
 - (b) on the satisfaction of an external confiscation order made in the proceedings (whether by the recovery of all property liable to be recovered, or the payment of any amount due, or otherwise).

Definition of principal terms used

- 3. (1) In this Schedule -
 - (a) references to conduct to which this Schedule applies are references to conduct which constitutes an offence to which this Law applies or would constitute such an offence if it had occurred in the Islands; and
 - (b) a person against whom an external confiscation order has been made, or a person against whom proceedings which may result in an external confiscation order being made have been, or are to be, instituted in a court of a foreign country, is referred to as “the defendant”.
- (2) In this Schedule “realisable property”, subject to subparagraph (3), means -
 - (a) in relation to an external confiscation order in respect of specified property, the property which is specified in the order; and
 - (b) in any other case -
 - (i) any property held by the defendant; and
 - (ii) any property held by a person to whom the defendant has directly or indirectly made a gift caught by this Law.
- (3) Property is not realisable property if an order under section 30 of the Misuse of Drugs Law (2000 Revision) is in force in respect of the property.

(2000 Revision)

(4) A gift (including a gift made before the 23rd December, 1996) is caught by this Schedule if -

- (a) it was made by the defendant at any time after the conduct to which the external confiscation order relates; and
- (b) the court considers it appropriate in all the circumstances to take the gift into account.

Pecuniary advantage - equivalence

4. Where a person derives a pecuniary advantage as a result of or in connection with conduct to which this Schedule applies, he is to be treated for the purposes of this Schedule as if he had obtained, as a result of or in connection with the conduct, a sum of money equal to the value of the pecuniary advantage.

Cases in which restraint orders may be made

5. (1) The powers conferred on the Grand Court by paragraphs 6(1) are exercisable where -

- (a) proceedings have been instituted against the defendant in a foreign country;
- (b) the proceedings have not been concluded; and
- (c) either an external confiscation order has been made in the proceedings or it appears to the Grand Court that there are reasonable grounds for thinking that such an order may be made in them of at least the minimum amount.

(2) Those powers are also exercisable where the Grand Court is satisfied that proceedings will be instituted against the defendant in a foreign country.

(3) Where the court has made an order under paragraph 6 (1) by virtue of subparagraph (2) -

- (a) the Attorney-General shall notify the court immediately if proceedings have not been instituted; and
- (b) the court shall discharge the order if the proposed proceedings are not instituted.

Restraint orders

6. (1) The Grand Court may, by order (referred to in this Schedule as a "restraint order") prohibit any person from dealing with any realisable property, subject to such conditions and exceptions as may be specified in the order.

(2) Without prejudice to subparagraph (1), a restraint order shall be subject to section 45.

(3) A restraint order may apply -

- (a) where an application under subparagraph (5) relates to an external confiscation order made in respect of specified property, to property which is specified in that order; and
- (b) in any other case -
 - (i) to all realisable property held by a specified person, whether the property is described in the restraint order or not; and
 - (ii) to realisable property held by a specified person, being property transferred to him after the making of the restraint order.

(4) A restraint order -

- (a) may be made only on an application by the Attorney-General on behalf of the government of a foreign country or, in a case where an external confiscation order has been registered under section 187, by a receiver appointed under paragraph 9;
- (b) may be made on an *ex parte* application to a judge in chambers; and
- (c) notwithstanding anything in Order 11 of the Grand Court Rules, 1995, may provide for service on, or the provision of notice to, persons affected by the order in such manner as the Grand Court may direct.

(5) A restraint order -

- (a) may be discharged or varied in relation to any property; and
- (b) shall be discharged when the proceedings in relation to which the order was made are concluded.

(6) An application for the discharge or variation of a restraint order may be made by any person affected by it.

(7) Where the Grand Court has made a restraint order, it may, at any time, appoint a receiver -

- (a) to take possession of any realisable property; and
- (b) in accordance with the court's directions, to manage or otherwise deal with any property in respect of which he is appointed;

subject to such exceptions and conditions as may be specified by the court; and may require any person having possession of property in respect of which a receiver is appointed under this section to give possession of it to the receiver.

(8) For the purposes of this paragraph, dealing with any property held by any person includes -

- (a) where a debt is owed to that person, making a payment to any person in reduction of the amount of the debt; and
- (b) removing the property from the Islands.

(9) Where the Grand Court has made a restraint order, a constable may, for the purpose of preventing any realisable property being removed from the Islands, seize the property.

(10) Property seized under subparagraph (10) shall be dealt with in accordance with the court's directions.

(11) In the case of a restraint order made in respect of land -

- (a) the restraint order shall inhibit for a specified period of time or until the occurrence of a specified event, or generally until further order, the registration of any dealing with any land, lease or charge; and
- (b) a copy of the restraint order under the seal of the court, with the particulars of the land, lease or charge thereby affected shall be sent to the Registrar of Lands who shall register it in the Land Register maintained under section 9 of the Registered Land Law (2004 Revision) in respect of the land in question and no restraint order shall bind or affect the land, lease or charge until it has been registered; and
- (c) so long as the restraint order remains registered no instrument which is inconsistent with it shall be registered.

Applications for restraint and orders

7. An application under paragraph 6(5) shall be accompanied by an affidavit, a declaration or any other written statement by the appropriate authority of the foreign country deposing to or specifying -

- (a) where proceedings have been instituted, the conduct in which the defendant is alleged to have engaged (exhibiting a copy of the indictment, information or charge), and the grounds for believing that the defendant engaged in that conduct;
- (b) where proceedings will be instituted, the conduct in which the defendant will be alleged to have engaged, and the grounds for believing that the defendant engaged in that conduct;
- (c) where an external confiscation order has been made, the amount payable under the confiscation order;

- (d) where an external confiscation order has not been made -
 - (i) the grounds for the belief that the defendant derived a benefit of a stated amount as a result of the conduct;
 - (ii) the grounds for the belief that the amount that might be realised is at least the stated amount;
 - (iii) where the defendant proceedings have been instituted, the grounds for believing that an external confiscation order may be made and the amount likely to be payable under such a confiscation order; or
 - (iv) where proceedings are to be instituted, the grounds for believing that an external confiscation order is likely to be made and the amount likely to be payable under such a confiscation order;
- (e) a description of the property in respect of which the order is sought;
- (f) the grounds for the belief that the property is realisable property;
- (g) the name and address of the person who is believed to be in the possession of the property; and
- (h) the names and addresses of any parties who may have an interest in that property, and the nature of their interest.

Realisation of property

8. Where an external confiscation order has been registered in the Grand Court under section 188, the Grand Court may, on the application of the Attorney-General, exercise the following powers -

- (a) in respect of any sum of money payable under the external confiscation order, make a garnishee order as if the sum were due to the Crown in pursuance of a judgment or order of the Grand Court, but any such order shall direct that the sum payable be paid to the Grand Court;
- (b) appoint a receiver in respect of realisable property;
- (c) empower a receiver appointed under subparagraph (b), under paragraph 6 in relation to any realisable property other than property for the time being subject to a charge under paragraph 9, to take possession of the property subject to such conditions or exceptions as may be specified by the court;
- (d) order any person having possession of the property to give possession of it to any such receiver;
- (e) empower any such receiver to realise any realisable property in such manner as the court may direct; and

- (f) order any person holding an interest in realisable property to make such payment to the receiver in respect of any beneficial interest held by the defendant or, as the case may be, the recipient of a gift caught by this Schedule as the court may direct and the court may, on the payment being made, by order transfer, grant or extinguish any interest in the property.

Application of proceeds of realisation and other sums

9. Subject to subparagraph (2), such of any sums, being property of the defendant, as may be in the hands of the Official Receiver shall, after such payments, if any, as the Grand Court may direct have been made out of those sums, be paid to the Grand Court and applied for the purposes specified in subparagraphs (3) and (4) and in the order so specified.(2) Where a fixed amount is payable under the external confiscation order and, after that amount has been fully paid, any such sums remain in the hands of a receiver, the receiver shall distribute them -

- (a) among such of those persons who held property which has been realised under this Schedule; and
- (b) in such proportions;

as the Grand Court may direct after giving a reasonable opportunity for such persons to make representations to the court.

Exercise of powers of Grand Court or receiver

10. (1) This paragraph applies to the powers conferred on the Grand Court by paragraphs 6, 8 and 9 on the Official Receiver.

(2) Subject to subparagraphs (3) to (6), the powers shall be exercised with a view to recovering property which is liable to be recovered under an external confiscation order registered in the Grand Court or, as the case may be, with a view to making available for recovery property which may become liable to be recovered under any external confiscation order which may be made in the defendant's case.

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

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

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

(6) Subject to paragraph 3(2), in exercising those powers no account shall be taken of any obligations of the defendant or of the recipient of any such gift which conflict with the obligation to satisfy the external confiscation order.

Bankruptcy of defendant, etc.

11. (1) Where any order for bankruptcy is made against a person who holds realisable property -

- (a) any property subject for the time being to a restraint order made before the order for bankruptcy; and
- (b) any proceeds of property realised by virtue of paragraph 6(8), or 8 (e) or (f) for the time being in the hands of a receiver appointed under paragraph 6 or 8;

is excluded from the property of the bankrupt for the purposes of the Bankruptcy Law (1997 Revision). (1997 Revision)

(2) Where any order for bankruptcy is made against a person, the powers conferred on the Grand Court by paragraphs 6, 8 and 9 or on a receiver appointed by such order shall not be exercised in relation to -

- (a) property for the time being comprised in the property of the bankrupt for the purposes of the Bankruptcy Law (1997 Revision);
- (b) property which is to be applied for the benefit of creditors of the bankrupt by virtue of a condition imposed under section 70 of that law.

(3) Nothing in the Bankruptcy Law (1997 Revision) shall be taken as restricting, or enabling the restriction of, the exercise of the enabling powers conferred on the Grand Court by paragraphs 6, 7, 9 and 10 or on a receiver.

(4) Where in the case of a debtor -

- (a) the Trustee in Bankruptcy constituted by section 12 of the Bankruptcy Law (1997 Revision) has been ordered to become the receiver or manager of the property or business of the debtor; and
- (b) any property of the debtor is subject to a restraint order;

the powers conferred on the Trustee by virtue of that law do not apply to property for the time being subject to the restraint order.

(6) Where any order for bankruptcy is made against a person who has directly or indirectly made a gift caught by this Schedule, sections 107 to 112 of the Bankruptcy Law (1997 Revision) shall not apply when property of the person to whom the gift was made is subject to a restraint order.

Winding up of company holding realisable property

12. (1) Where realisable property is held by a company and an order for the winding up of the company has been made or a resolution has been passed by the company for the voluntary winding up, the functions of the liquidator (or any provisional liquidator) shall not be exercisable in relation to -

- (a) property for the time being subject to a restraint order made before the relevant time; and
- (b) any proceeds of property realised by virtue of paragraph 6 (8), or 8 (e) or (f) for the time being in the hands of a receiver appointed under paragraph 6 or 8.

(2) Where, in the case of a company, such an order has been made or such a resolution has been passed, the powers conferred on the Grand Court by paragraphs 6, and 8 or on a receiver appointed by the order shall not be exercised in relation to any realisable property held by the company in relation to which the functions of the liquidator are exercisable -

- (a) so as to inhibit him from exercising those functions for the purpose of distributing any property held by the company to the company's creditors; or
- (b) so as to prevent the payment out of any property of any expenses (including the remuneration of the liquidator or any provisional liquidator) properly incurred in the winding up in respect of the property.

(3) In this paragraph "relevant time" means -

- (a) where no order for the winding up of the company has been made, the time of the passing of the resolution for voluntary winding up;
- (b) where such an order has been made and, before the presentation of the petition for the winding up of the company by the court, such a resolution had been passed by the company, the time of the passing of the resolution; and(c) in any other case where such an order has been made, the time of the making of the order.

Receivers: supplementary provisions

13. (1) Where the Official Receiver takes any action -
- (a) in relation to any property which is not realisable property, being action which he would be entitled to take if it were such property;
 - (b) believing, and having reasonable grounds for believing, that he is entitled to take that action in relation to that property;

he shall not be liable to any person in respect of any loss or damage resulting from his action except insofar as the loss or damage is caused by his negligence.

(2) Any amount due in respect of the remuneration and expenses of a receiver so appointed shall, if no sum is available to be supplied in payment of it under paragraph 9 (3), be paid by the person on whose application the receiver was appointed.

Application of procedure for enforcing fines

14. (1) Where the Grand Court orders the defendant to pay an amount under this Schedule, sections 28 and 30 of the Penal Code (2007 Revision) shall have effect as if that amount were a fine imposed on him by the Grand Court. (2007 Revision)

(2) Where -

- (a) the court has directed that, in default of payment of an amount ordered to be paid under this Schedule in respect of an offence, the defendant shall serve a term of imprisonment; and
- (b) at the time the direction is made, the defendant is liable to serve a term of imprisonment in respect of the offence;

the term of imprisonment to be served in default of payment of the amount shall not begin to run until after the term mentioned in subparagraph (b).

(3) For the purposes of subparagraph (2) -

- (a) consecutive terms of imprisonment and terms of imprisonment which are wholly or partly concurrent shall be treated as a single term; and
- (b) there shall be disregarded any sentence suspended under section 24 of the Penal Code (2007 Revision) which has not taken effect at the time the defendant has defaulted as specified in the direction. (2007 Revision)

Passed by the Legislative Assembly the day of 2008.

Speaker.

Clerk of the Legislative Assembly.