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PROCEEDS OF CRIMINAL CONDUCT LAW

(2007 Revision)

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Consolidated and revised this 19th day of June, 2007.

Note (not forming part of the Law): This revision replaces the 2005 Revision which, subject to the note on pages 61 and 62, may now be discarded.

PROCEEDS OF CRIMINAL CONDUCT LAW

(2007 Revision)

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PROCEEDS OF CRIMINAL CONDUCT LAW

(2007 Revision)

PART I - Introductory

1. This Law may be cited as the Proceeds of Criminal Conduct Law (2007 Revision). Short title

2. (1) In this Law- Definitions and interpretation

“appropriate authority of a designated country” means an authority specified as such in an order made under section 42;

“Code of Practice” means the code of practice issued under section 22 following consultation with such bodies as appear to the Attorney-General to be representative of the relevant professions;

“constable” includes a person appointed to be an officer of the Customs under section 6(1) of the Customs Law (2007 Revision); 2007 Revision

“court of a designated country” includes a court of any state or territory of a designated country;

“designated country” means a country designated as such under section 42;

“Director” means the Director of the Reporting Authority appointed under section 22(2)(a);

“external confiscation order” means an order made by a court in a designated country for the purpose-

- (a) of recovering-
 - (i) property obtained as a result of or in connection with conduct corresponding to an offence to which this Law applies; or
 - (ii) the value of property so obtained; or
- (b) of depriving a person of a pecuniary advantage so obtained,

and the reference in this definition to an order includes any order, decree, direction or judgment or any part thereof, however described.

“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” or “Reporting Authority” means the Financial Reporting Authority established under section 22(2);

“interest”, in relation to property, includes right;

“modifications” includes additions, alterations and omissions;

“overseas financial intelligence unit” means a financial intelligence unit in a country other than the Islands;

“property” includes money and all other property, real or personal, including things in action and other intangible or incorporeal property; and

“Steering Group” means the Anti-Money Laundering Steering Group appointed under section 24.

(2) The expressions listed in the left-hand column below are defined or (as the case may be) fall to be construed in accordance with the provisions of this Law listed in the right-hand column in relation to those expressions.

Expressions	Relevant provision
Benefiting from an offence	section 6(3)
Charging order	section 12(2)
Confiscation order	section 6(7)(a)
Criminal conduct	section 32(10)
Dealing with property	section 11(9)
Defendant	section 6(7)(d)
Drug trafficking offence	section 6(7)(b)
Gift caught by this Law	section 3(10)
Making a gift	section 3(12)
Offence to which this Law applies	section 6(7)(c)
Realisable property	section 3(1)
Restraint order	section 11(1)
Value of gift	section 3(7) and (8)
Value of property	section 3(4) to (6)

(3) This Law applies to property wherever situated.

(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 (12) 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 his trustee in bankruptcy or 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) Proceedings for an offence are instituted-

- (a) where a complaint is made in respect of that offence; or
- (b) if earlier, when a person is charged with the offence after being taken into custody without a warrant.

(11) 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 a confiscation order being made in the proceedings; or
- (b) on the satisfaction of a confiscation order made in the proceedings (whether by payment of the amount due under the order or by the defendant serving imprisonment in default).

(12) An order is subject to appeal until (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an appeal on which the order could be varied or set aside.

3. (1) In this Law-

Definition of principal terms used

“realisable property”, subject to subsection (2), means-

- (a) any property held by the defendant; and
- (b) any property held by a person to whom the defendant has directly or indirectly made a gift caught by this Law.

(2) 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.

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(3) For the purposes of this Law, the amount that may be realised under a confiscation order is-

- (a) the total of the values at the time of realisation of all the realisable property held by the defendant; less

- (b) where there are obligations having priority at the date of realisation, the total amounts payable at that date in pursuance of such obligations,

together with the total of the values at that time of all gifts caught by this Law.

(4) Subject to subsections (5) to (12), for the purposes of this Law the value of property (other than cash) in relation to any person holding the property-

- (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 incumbrance (other than a charging order) on that interest; and
- (b) in any other case, its market value.

(5) References in this Law to the value at any time (referred to in subsection (6) as "the material time") of any property obtained by a person as a result of or in connection with the commission of an offence are references to -

- (a) the value of the property to him when he obtained it, adjusted to take account of subsequent changes in the value of money; or
- (b) where subsection (6) applies, the value there mentioned,

whichever is the greater.

(6) If, at the material time, he holds -

- (a) the property which he obtained (not being cash); or
- (b) property which, in whole or in part, directly or indirectly represents in his hands the property which he obtained,

the value referred to in paragraph (b) of subsection (5) is the value to him at the material time of the property mentioned in paragraph (a) of this subsection or, as the case may be, of the property mentioned in paragraph (b) of this subsection, so far as it represents the property which he obtained, but disregarding any charging order.

(7) Subject to subsection (12), references in this Law to the value at any time (referred to in subsection (8) as "the material time") of a gift caught by this Law are references to -

- (a) the value of the gift to the recipient when he received it adjusted to take account of subsequent changes in the value of money; or
- (b) where subsection (8) applies, the value there mentioned,

whichever is the greater.

(8) Subject to subsection (12), if at the material time he holds -

- (a) the property which he received (not being cash); or
- (b) property which, in whole or in part, directly or indirectly represents in his hands the property which he received,

the value referred to in subsection (7) is the value to him at the material time of the property mentioned in paragraph (a) or, as the case may be, of the property mentioned in paragraph (b) so far as it represents the property which he received, but disregarding any charging order.

(9) For the purposes of subsection (3), an obligation has priority at any time if it is an obligation of the defendant to pay an amount due in respect of a fine, or other order of a court, imposed or made on conviction of an offence, where the fine was imposed or order made before the confiscation order.

(10) A gift (including a gift made before 23rd December, 1996) is caught by this Law if -

- (a) it was made by the defendant at any time after the commission of the offence or, if more than one, the earliest of the offences to which the proceedings for the time being relate; and
- (b) the court considers it appropriate in all the circumstances to take the gift into account.

(11) The reference in subsection (10) to an offence to which the proceedings for the time being relate includes, where the proceedings have resulted in the conviction of the defendant, a reference to any offence which the court takes into consideration when determining his sentence.

(12) For the purposes of this Law-

- (a) the circumstances in which the defendant is to be treated as making a gift include those where he transfers property to another person directly or indirectly for a consideration the value of which is significantly less than the value of the consideration provided by the defendant; and
- (b) in those circumstances, subsections (1) to (11) shall apply as if the defendant has made a gift of such share in the property as bears to the whole property the same proportion as the difference between the values referred to in paragraph (a) bears to the value of the consideration provided by the defendant.

4. (1) In this Law -

Definition of terrorism

“terrorism” means the use or threat of action where -

- (a) the action falls within subsection (2);
- (b) the use or threat is designed to influence the government or to intimidate the public or a section of the public; and

- (c) the use or threat is made for the purpose of advancing a political, religious or ideological cause.
- (2) Action falls within this subsection if it -
 - (d) involves serious violence against a person;
 - (e) involves serious damage to property;
 - (f) endangers a person's life, other than that of the person committing the action;
 - (g) creates a serious risk to the health or safety of the public or a section of the public; or
 - (h) is designed seriously to interfere with or seriously to disrupt an electronic system.
- (3) The use or threat of action falling within subsection (2) which involves the use of firearms or explosives is terrorism whether or not subsection (1)(b) is satisfied.
- (4) In subsections (1), (2) and (3) -
 - (i) "action" includes action outside the Islands;
 - (j) a reference to any person or to property is a reference to any person, or to property, wherever situated;
 - (k) a reference to the public includes a reference to the public of a territory or country other than the Islands; and
 - (l) "government" means the government of the Islands, or of a territory or country other than the Islands.

PART II - Cayman Islands Offences and Orders

Application of this Part

- 5. This Part applies to-
 - (a) confiscation, restraint and charging orders made by the Grand Court in relation to offences committed in the Islands; and
 - (b) money laundering and other offences as described in sections 32 to 35 committed in the Islands.

Confiscation, restraint and charging orders and their administration and enforcement

Confiscation orders

- 6. (1) The Grand Court shall have power, in addition to dealing with an offender in any other way, to make an order under this section requiring him to pay such sum as the court thinks fit.
- (2) The Grand Court may make such an order against an offender where -
 - (a) he is found guilty of any offence to which this Law applies; and

- (b) it is satisfied that-
 - (i) he has benefited from that offence or from that offence taken together with some other offence of which he is convicted in the same proceedings, or which the court takes into consideration in determining his sentence, and which is not a drug trafficking offence; and
 - (ii) his benefit is at least the minimum amount.

(3) For the purposes of this Law, a person benefits from an offence if he obtains property as a result of or in connection with its commission and his benefit is the value of the property so obtained.

(4) Where a person derives a pecuniary advantage as a result of or in connection with the commission of an offence, he is to be treated for the purposes of this Law as if he has obtained as a result of or in connection with the commission of the offence a sum of money equal to the value of the pecuniary advantage.

(5) The sum which an order made by a court under this section requires an offender to pay shall not exceed-

- (a) the benefit in respect of which it is made; or
- (b) the amount appearing to the court to be the amount that might be realised at the time the order is made,

whichever is the less.

(6) The standard of proof required to determine any question arising under this Law as to-

- (a) whether a person has benefited as mentioned in paragraph (b)(i); of subsection (2); or
- (b) the amount to be recovered in his case by virtue of section 7,

shall be that applicable in civil proceedings.

(7) In this Law-

- (a) “confiscation order” is an order made by a court under this section;
- (b) “drug trafficking offence” has the same meaning as in the Misuse of Drugs Law (2000 Revision);
- (c) references to an offence to which this Law applies are references to all indictable offences, other than drug trafficking offences; and
- (d) “defendant” is a person against whom proceedings have been instituted for an offence to which this Law applies (whether or not he has been convicted).

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Making of confiscation orders

7. (1) A court shall not make a confiscation order unless the Attorney-General has given written notice to the court to the effect that it appears to him that, were the court to consider that it ought to make such an order, it would be able to make an order requiring the offender to pay at least the minimum amount.

(2) If the Attorney-General gives the court such a notice, the court shall determine whether it ought to make a confiscation order.

(3) When considering whether to make a confiscation order the 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.

(4) If the court determines that it ought to make such an order, the court shall, before sentencing or otherwise dealing with the defendant in respect of the offence or, as the case may be, any of the offences concerned, determine the amount to be recovered in his case by virtue of this section and make a confiscation order for that amount specifying the offence or offences.

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

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

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

(6) No enactment restricting the power of a court dealing with an offender in a particular way from dealing with him also in any other way shall, by reason only of the making of a confiscation order, restrict the court from dealing with an offender in any way it considers appropriate in respect of an offence to which this Law applies.

(7) Where -

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- (a) a court makes both a confiscation order and an order for the payment of compensation under section 28 of the Penal Code (2007 Revision) against the same person in the same proceedings; and

- (b) it appears to the court that he will not have sufficient means to satisfy both the orders in full,

it shall direct that so much of the compensation as will not in its opinion be recoverable because of the insufficiency of his means shall be paid out of any sums recovered under the confiscation order.

8. (1) Where a court is acting under section 6 but considers that it requires further information before determining -

Postponed
determinations

- (a) whether the defendant has benefited as mentioned in paragraph (b)(i) of section 6(2);
- (b) whether his benefit is at least the minimum amount; or
- (c) the amount to be recovered in his case by virtue of section 7,

it may, for the purpose of enabling that information to be obtained, postpone making that determination for such period as it may specify.

(2) More than one postponement may be made under subsection (1) in relation to the same case.

(3) Unless it is satisfied that there are exceptional circumstances, the court shall not specify a period under subsection (1) which-

- (a) by itself; or
- (b) where there have been one or more previous postponements under subsection (1) or (4), when taken together with the earlier specified period or periods,

exceeds six months beginning with the date of conviction.

(4) Where the defendant appeals against his conviction, the court may, on that account-

- (a) postpone making any of the determinations mentioned in subsection (1) for such period as it may specify; or
- (b) where it has already exercised its powers under this section to postpone, extend the specified period.

(5) A postponement or extension under subsection (1) or (4) may be made-

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

(6) Unless the court is satisfied that there are exceptional circumstances, any postponement or extension under subsection (4) shall not exceed the period ending three months after the date on which the appeal is determined or otherwise disposed of.

(7) Where the court exercises its power under subsection (1) or (4) it may nevertheless proceed to sentence, or otherwise deal with, the defendant in respect of the offence or any of the offences concerned.

(8) Where the court has so proceeded, section 7 shall have effect as if-

- (a) in subsection (4), the words from “before sentencing” to “offences concerned” were omitted; and
- (b) in subsection (5), after “determining” there were inserted “in relation to any offence in respect of which he has not been sentenced or otherwise dealt with”.

(9) In sentencing, or otherwise dealing with, the defendant in respect of the offence, or any of the offences, concerned at any time during the specified period, the court shall not-

- (a) impose any fine on him; or
- (b) make any such order as is mentioned in paragraph (b) or (c) of section 7(5).

(10) In this section-

“date of conviction” means-

- (a) the date on which the defendant was convicted of the offence concerned; or
- (b) where he was convicted in the same proceedings, but on different dates, of two or more offences which may be taken together for the purposes of section 6(2), the date of the latest of those convictions.

Statements, etc., relevant
to making confiscation
orders

9. (1) Where -

- (a) a defendant has been convicted of an offence to which this Law applies and the Attorney-General tenders to the court a written statement as to any matters relevant-
 - (i) to determining whether the defendant has benefited from the offence or from any other offence to which this Law applies of which he is convicted in the same proceedings or which is taken into consideration in determining his sentence; or
 - (ii) to an assessment of the value of the defendant’s benefit from the offence or any other offence to which this Law applies of which he is convicted or which is so taken into consideration; and
- (b) the defendant accepts to any extent any allegation in the statement,

the court may, for the purposes of so determining or making such an assessment, treat his acceptance as conclusive of the matters to which it relates.

(2) Where-

- (a) a statement is tendered under paragraph (a) of subsection (1); and
- (b) the court is satisfied that a copy of that statement has been served on the defendant,

the court may require the defendant to indicate to what extent he accepts each allegation in the statement and, so far as he does not accept any such allegation, to indicate any matters he proposes to rely on.

(3) If the defendant fails in any respect to comply with a requirement under subsection (2), he may be treated for the purposes of this section as accepting every allegation in the statement apart from-

- (a) any allegation in respect of which he has complied with the requirement; and
- (b) any allegation that he has benefited from an offence or that any property was obtained by him as a result of or in connection with the commission of an offence.

(4) Where-

- (a) there is tendered to the court by the defendant a statement as to any matters relevant to determining the amount that might be realised at the time the confiscation order is made; and
- (b) the Attorney-General accepts to any extent any allegation in the statement,

the court may, for the purposes of that determination, treat the acceptance by the Attorney-General as conclusive of the matters to which it relates.

(5) If the court is satisfied as to any matter relevant for determining the amount that might be realised at the time the confiscation order is made (whether by an acceptance under this section or otherwise), the court may issue a ruling as to the matters concerned and shall do so if satisfied that the amount that might be realised at the time the confiscation order is made is less than the amount the court assesses to be the value of the defendant's benefit from the offence or, if more than one, all the offences in respect of which the order may be made.

10. (1) The powers conferred on the Grand Court by sections 11(1) and 12(1) are exercisable where-

- (a) proceedings have been instituted against the defendant for an offence to which this Law applies;
- (b) the proceedings have not been concluded; and
- (c) either a confiscation order has been made or it appears to the court that there are reasonable grounds for thinking that a confiscation order may be made in them.

Cases in which restraint orders and charging orders may be made

- (2) Those powers are also exercisable where-
 - (a) the court is satisfied that proceedings will be instituted against a person within twenty-one days of the granting of an order under section 11(1) or 12(1) or such longer period as the court may grant (in this section referred to as “the permitted period”); and
 - (b) it appears to the court that a confiscation order may be made in proceedings for the offence.
- (3) For the purposes of sections 11 and 12, at any time when those powers are exercisable before proceedings have been instituted-
 - (a) references in this Law to the defendant shall be construed as references to the person referred to in paragraph (a) of subsection (2); and
 - (b) references in this Law to realisable property shall be construed as if, immediately before that time, proceedings had been instituted against the person referred to in paragraph (a) of subsection (2) for an offence to which this Law applies.
- (4) Where the court has made an order under section 11(1) or 12(1) by virtue of subsection (2)-
 - (a) the Attorney-General shall notify the court immediately if proceedings have not been instituted within the permitted period; and
 - (b) the court shall discharge the order if proceedings in respect of the offence are not instituted within the permitted period.

Restraint orders

11. (1) The Grand Court may by order (referred to in this Law 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 subsection (1), a restraint order may make such provision as the court thinks fit for the living expenses and legal expenses of the defendant.
- (3) A restraint order may apply-
 - (a) to all realisable property held by a specified person, whether the property is described in the order or not; and
 - (b) to realisable property held by a specified person, being property transferred to him after the making of the order.
- (4) This section shall not have effect in relation to any property for the time being subject to a charge under section 12.
- (5) 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; and
- (c) shall provide for notice to be given to persons affected by the order.

(6) A restraint order-

- (a) may be discharged or varied in relation to any property; and
- (b) shall be discharged when proceedings for the offence are concluded.

(7) An application for the discharge or variation of a restraint order may be made by any person affected by it.

(8) 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.

(9) For the purposes of this section, dealing with any property held by any person includes (without prejudice to the generality of the expression)-

- (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.

(10) 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.

(11) Property seized under subsection (10) shall be dealt with in accordance with the court's directions.

(12) In the case of a restraint order made in respect of land-

- (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;
- (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

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- 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.
- Charging orders
12. (1) The Grand Court may make a charging order on realisable property for securing the payment to the revenues of the Islands-
- (a) where a confiscation order has not been made, of an amount equal to the value from time to time of the property charged; and
- (b) in any other case, of an amount not exceeding the amount payable under the confiscation order.
- (2) For the purposes of this Law, a charging order is an order made under this section imposing, on any such realisable property as may be specified in the order, a charge for securing the payment of money to the revenue of the Islands.
- (3) A charging order-
- (a) may be made only on the application of 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; and
- (d) may be made subject to such conditions as the court thinks fit and, without prejudice to the generality of this paragraph, such conditions as it thinks fit as to the time when the charge is to become effective.
- (4) Subject to subsection (6), a charge may be imposed by a charging order only on-
- (a) any interest in realisable property, being an interest held beneficially by the defendant or by a person to whom the defendant has directly or indirectly made a gift caught by this Law-
- (i) in any asset of a kind mentioned in subsection (5); or
- (ii) under any trust; or
- (b) any interest in realisable property held by a person as trustee of a trust if the interest is in such an asset or is an interest under another trust, and a charge may, by virtue of paragraph (a), be imposed by a charging order on the whole beneficial interest under the first-mentioned trust.
- (5) The assets referred to in subsection (4) are-
- (a) land in the Islands; or

- (b) securities of any of the following kinds-
 - (i) any description of security issued by or on behalf of the Government;
 - (ii) stock of any body incorporated within the Islands;
 - (iii) equity interest in any regulated mutual funds as defined by the Mutual Funds Law (2003 Revision); or 2003 Revision
 - (iv) funds in court.

(6) In any case where a charge is imposed by a charging order on any interest in an asset of a kind mentioned in paragraph (b) of subsection (5) the court may provide for the charge to extend to any interest or dividend payable in respect of the asset.

(7) The court may make an order discharging or varying the charging order and shall make an order discharging the charging order if the proceedings for the offence are concluded or the amount, payment of which is secured by the charge, is paid into court.

(8) An application for the discharge or variation of a charging order may be made by any person affected by it.

(9) A charge imposed by a charging order made in relation to any interest in land shall be in the prescribed form and shall be registered in the encumbrances section of the relevant land register.

(10) Subject to any provision made under section 13 or by rules of court, a charge imposed by a charging order shall have the like effect and shall be enforceable in the same manner as an equitable charge created by the person holding the beneficial interest or, as the case may be, the trustees by writing under their hand.

(11) In this section-

“dividend” and “stock” have the same meaning as in the Third Schedule to the Judicature Law (2007 Revision). 2007 Revision

13. (1) Where-

- (a) a confiscation order is made;
- (b) the order is not subject to appeal; and
- (c) the proceedings in which it was made have not been concluded,

the Grand Court may, on an application by the Attorney-General, exercise the powers conferred by subsections (2) to (6). Realisation of property

(2) The court may appoint a receiver in respect of realisable property.

(3) The court may empower a receiver appointed under subsection (2), under section 11 or under a charging order-

- (a) to enforce any charge imposed under section 12 on realisable property or on interest or dividends payable in respect of such property; and
- (b) in relation to any realisable property other than property for the time being subject to a charge under section 12, to take possession of the property subject to such conditions or exceptions as may be specified by the court.

(4) The court may order any person having possession of realisable property to give possession of it to any such receiver.

(5) The court may empower any such receiver to realise any realisable property in such manner as the court may direct.

(6) The court may 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 Law, 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.

(7) Subsections (4) to (6) do not apply to property for the time being subject to a charge under section 12.

(8) The court shall not, in respect of any property, exercise the powers conferred by paragraph (a) of subsection (3), subsection (5) or subsection (6) unless a reasonable opportunity has been given for persons holding an interest in the property to make representations to the court.

Application of proceeds
of realisation and other
sums

14. (1) Such of-

- (a) the proceeds of the enforcement of any charge imposed under section 12;
- (b) the proceeds of the realisation, other than by the enforcement of such a charge, of any property under section 11 or 13; or
- (c) any other sums, being property held by the defendant,

as may be in the hands of a receiver appointed under this Law or in pursuance of a charging order shall, after such payments, if any, as the Grand Court may direct have been made out of those sums, 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 such sums remain in the hands of such a receiver, the receiver shall distribute them-

- (a) among such of those persons who held property which has been realised under this Law; 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.

(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) If the money was paid to the Accountant-General by a receiver appointed under this Law or in pursuance of a charging order, he shall first pay the receiver's remuneration and expenses.

(5) After making any payment required by subsection (4), the Accountant-General shall reimburse any amount paid under section 19(2).

(6) The Accountant-General shall finally pay any compensation directed to be paid out of any sums recovered under the confiscation order under section 7(7).

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

(8) 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 7(7) 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.

Exercise of powers by
the Grand Court or
receiver

15. (1) This section applies to the powers conferred on the Grand Court by sections 11 to 14, or on a receiver appointed under this Law or in pursuance of a charging order.

(2) Subject to subsections (3) to (6), the powers shall be exercised with a view to making available for satisfying the confiscation order, or as the case may be, any confiscation order that may be made in the defendant's case the value for the time being of realisable property held by any person by the realisation of that property.

(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 Law, 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 owed by the Crown.

(6) Subject to section 3(1) and (3), 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 confiscation order.

Variation of confiscation
orders

16. (1) If, on an application by any person affected by a confiscation order, including the defendant, the Grand Court is satisfied that the realisable property is inadequate for the payment of any amount remaining to be recovered under the order the court shall issue a certificate to that effect, giving the court's reasons.

(2) For the purposes of subsection (1)-

- (a) in the case of realisable property held by a person against whom an absolute order for bankruptcy has been made, the court shall take into account the extent to which any property held by him may be distributed among creditors; and
- (b) the court may disregard any inadequacy in the realisable property which appears to the court to be attributable wholly or partly to anything done by the defendant for the purpose of preserving any property held by a person to whom the defendant had directly or indirectly made a gift from any risk of realisation under this Law.

(3) The Grand Court may, on an application under this section-

- (a) substitute for the amount to be recovered under the order such lesser amount as the court thinks just in all the circumstances of the case; and
 - (b) substitute for the term of imprisonment fixed under sections 28 and 30 of the Penal Code (2007 Revision) in respect of the amount to be recovered under the order a shorter term determined in accordance with those sections in respect of the lesser amount.
- 2007 Revision

17. (1) Where any order for bankruptcy is made against a person who holds realisable property-

Bankruptcy of defendant, etc.

- (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 section 11(8), 13(5) or (6) for the time being in the hands of a receiver appointed under section 11 or 13,

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 sections 11 to 14 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 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 powers conferred on the Grand Court by sections 11 to 14 or on a receiver.

(4) Subsection (2) does not affect the enforcement of a charging order-

- (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-

- (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,
- 1997 Revision

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 107 to 112 of the Bankruptcy Law (1997 Revision) shall not apply-

- (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.

Winding up of company holding realisable property

18. (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 section 11(8) or 13(5) or (6) for the time being in the hands of a receiver appointed under section 11 or 13.

(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 sections 11 to 13 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) Subsection (2) does not affect the enforcement of a charging order 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.

19. (1) Where a receiver appointed under this Law or in pursuance of a charging order takes any action-

Receivers;
supplementary
provisions

- (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; and
- (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 section 14(4), be paid out of the revenues of the Islands or, in a case where proceedings for an offence to which this Law applies are not instituted, by the person on whose application the receiver was appointed.

20. (1) If proceedings are instituted against a person for an offence or offences to which this Law applies, and either-

Compensation

- (a) the proceedings do not result in his conviction for any such offence; or
- (b) where he is convicted of one or more such offences-
 - (i) the conviction or convictions concerned are quashed; or
 - (ii) Her Majesty has granted pardon in respect of the conviction or conditions concerned,

the Grand Court may, on an application by a person who held property which was realisable property, order compensation to be paid by the Government to the applicant if, having regard to all the circumstances, it considers it appropriate to make such an order.

(2) The Grand Court shall not order compensation to be paid in any case unless the court is satisfied-

- (a) that there has been some serious default on the part of a person concerned in the investigation or prosecution of the offence concerned; and
- (b) that the applicant has suffered substantial loss in consequence of anything done in relation to the property by or in pursuance of an order under this Law.

(3) The Grand Court shall not order compensation to be paid in any case where it appears to the court that the proceedings would have been instituted or continued even if the serious default had not occurred.

(4) The amount of compensation to be paid under this section shall be such as the Grand Court thinks just in all the circumstances of the case.

Money laundering and other offences

Regulations

21. (1) 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.

(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.

Code of Practice and Reporting Authority

22. (1) The Governor in Cabinet may issue a Code of Practice for the purpose of giving practical guidance with respect to any of the requirements of this Law.

(2) There is established a financial intelligence unit to be 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 Reporting Authority.

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

(4) The Governor in Cabinet may make regulations to give effect to subsections (2) and (3) and sections 23 to 31.

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

Powers, functions and duties of Reporting Authority

- (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 the foregoing and notwithstanding any other law to the contrary, the 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, terrorism or the financing of terrorism; and
 - (ii) are relevant to its responsibilities as a financial intelligence unit;
- (b) may, subject to subsection (3) –
 - (i) where information is disclosed to the Reporting Authority under section 32(3) or 33(5); or
 - (ii) upon receipt of a request from an overseas financial intelligence unit,

order any person to refrain from dealing with a person's bank 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 of criminal conduct, suspected proceeds of criminal conduct, money laundering, suspected money laundering, terrorism or the financing of terrorism;

- (c) may, in writing, require the provision by any person of information (excluding information coming to a professional legal adviser in privileged circumstances) for the purpose of clarifying or amplifying information disclosed to the Reporting Authority under section 32(3) or 33(5);
- (d) shall retain a record for a minimum of five years of -
 - (i) all information received or disseminated by the Authority;

- (ii) any agreement entered into under paragraph (e); and
- (iii) any consent given by the Attorney-General under section 32 or 33;
- (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 Director considers necessary or desirable for the discharge or performance of the responsibilities and functions of the Reporting Authority;
- (f) shall collect, compile and annually publish, in such manner as the Reporting Authority shall determine, statistical information relating to -
 - (i) disclosures made to the Reporting Authority concerning proceeds of criminal conduct, suspected proceeds of criminal conduct, money laundering, suspected money laundering, terrorism or the financing of terrorism; and
 - (ii) any onward disclosures of such financial information by the Reporting Authority; and
- (g) shall have, exercise and perform such other responsibilities, powers, functions and duties as may be assigned to the Reporting Authority by this or any other law.

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

(4) Whoever, without reasonable excuse, fails or refuses to provide such information as is required by paragraph (c) of subsection (2) is guilty of an offence and liable on summary conviction to a fine of fifty thousand dollars and to imprisonment for two years.

(5) An aggrieved person may, upon notice to the Attorney-General, apply to a judge in chambers to discharge an order made by the Grand Court under subsection (3), but such order shall remain in full force and effect 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 paragraph (b) of subsection (2), to refrain from dealing with another person's bank account,

whichever is sooner.

(6) For the purposes of paragraph (c) of subsection (2), any information comes to a professional legal 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 any person -
 - (i) in contemplation of, or in connection with, legal proceedings; and
 - (ii) for the purpose of those proceedings.

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

(8) 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 22(2), to act as Director.

(9) Statistical information published under paragraph (f) of subsection (2), shall, without charge, be made available by the Reporting Authority for inspection at its office.

(10) In this section -

“money laundering” means doing any act -

- (a) which constitutes an offence under section 32, 33 or 34 of this Law or section 47 or 48 of the Misuse of Drugs Law (2000 Revision); or
- (b) in the case of an act done otherwise than in the Islands, which would constitute such an offence as is referred to in paragraph (a) if done within the Islands,

and for the purposes of this subsection, having possession of any property shall be taken to be doing an act in relation to it.

24. (1) The Governor in Cabinet shall appoint a body to be called the Anti-Money Laundering Steering Group, consisting of -

- (a) the Attorney-General, who shall be the chairman;
- (b) the Financial Secretary, who shall be 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.

(2) The Steering Group shall be 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 Reporting Authority;
- (c) overseeing and inspecting the work of the Reporting Authority;
- (d) reviewing annual reports submitted by the Director under paragraph (b) of section 30;
- (e) promoting effective collaboration between regulators and law enforcement agencies; and
- (f) monitoring interaction and co-operation with overseas financial intelligence units.

(3) The Director shall normally be present at meetings of the Steering Group, but at the discretion of the Steering Group; and the Director shall not take part in the proceedings unless specifically invited by the chairman so to do.

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

(5) 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.

Issue of policy directions to Reporting Authority

25. The Governor in his discretion may, after consultation with the Steering Group, give to the 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 to concern the public interest, and the Reporting Authority shall give general effect to any such directions.

Reporting Authority restricted from providing information

26. Notwithstanding any other law -
(a) the Reporting Authority;
(b) the Director, officers and personnel of the 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 this Law or in compliance with an order made by the Grand Court.

Immunity of Reporting Authority

27. Neither the Reporting Authority, the Director, nor any officer, employee or agent of the 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.

28. (1) Without prejudice to any other provision of this Law, where a person discloses to the Reporting Authority information concerning proceeds of criminal conduct,

Protection upon disclosure of information to Reporting Authority

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 shall not give rise to any civil liability.

(2) In subsection (1) -

“money laundering” means doing any act -

- (a) which constitutes an offence under section 32, 33 or 34 of this Law or section 47 or 48 of the Misuse of Drugs Law (2000 Revision); or
- (b) in the case of an act done otherwise than in the Islands, which would constitute such an offence as is referred to in paragraph (a) if done within the Islands,

and for the purposes of this subsection, having possession of any property shall be taken to be doing an act in relation to it.

29. (1) A person who, being an employee or agent of the Reporting Authority, obtains information in any form as a result of his connection with the 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.

Confidentiality of employees of Reporting Authority

(2) Whoever communicates any information in breach of subsection (1) is guilty of an offence and liable on summary conviction to a fine of twenty-five thousand dollars and to imprisonment for five years.

30. The Director shall -

Annual report of Reporting Authority

- (a) advise the Steering Group on the work of the Reporting Authority and in particular on matters that could affect public policy or the priorities to be set by the Reporting Authority; and
- (b) prepare and submit to the Steering Group on or before the 30th September in each year an annual report reviewing the work of the Reporting Authority and containing such other information as the Steering Group in its discretion shall require.

31. (1) The 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 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 to, or revocation of, the guidelines.

(3) The 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.

Assisting another to retain the benefit of criminal conduct

32. (1) Subject to subsection (3), whoever enters into or is otherwise concerned in an arrangement whereby-

(a) the retention or control by or on behalf of another (A) of property which is the proceeds of A's criminal conduct is facilitated (whether by concealment, removal from the jurisdiction, transfer to nominees or otherwise); or

(b) property which is the proceeds of A's criminal conduct-

(i) are used to secure that funds are placed at A's disposal; or

(ii) is used for A's benefit to acquire property by way of investment,

knowing or suspecting that A is a person who is or has been engaged in criminal conduct or has benefited from criminal conduct, is guilty of an offence.

(2) In this section, references to any person's proceeds of criminal conduct include property which, in whole or in part, directly or indirectly represents in his hands his proceeds of criminal conduct.

(3) Where a person discloses to the Reporting Authority a suspicion or belief that any funds or investments are derived from or used in connection with criminal conduct, or discloses to such Reporting Authority any matter on which such a suspicion or belief is based-

(a) the disclosure shall not be treated as a breach of any restriction upon the disclosure of information by any enactment or otherwise and shall not give rise to any civil liability; and

(b) if he does any act in contravention of subsection (1) and the disclosure relates to the arrangement concerned, he does not commit an offence under this section if-

(i) the disclosure is made before he does the act concerned; or

- (ii) the disclosure is made after he does the act, but is made on his initiative and as soon as it is reasonable for him to make it.

(4) In proceedings against a person for an offence under this section it is a defence to prove that-

- (a) he did not know or suspect that the arrangement related to any person's proceeds of criminal conduct;
- (b) that he did not know or suspect that by the arrangement the retention or control by or on behalf of A of any property was facilitated or, as the case may be, that by the arrangement any property was used, as mentioned in subsection (1); or
- (c) that-
 - (i) he intended to disclose to the Reporting Authority such a suspicion, belief or matter as is mentioned in subsection (3) in relation to the arrangement; but
 - (ii) there is reasonable excuse for his failure to make disclosure in accordance with paragraph (b) of that subsection.

(5) In the case of a person who was in employment at the relevant time, subsections (3) and (4) shall have effect in relation to disclosures, and intended disclosures, to the appropriate person in accordance with the procedure established by his employer for the making of such disclosures as they have effect in relation to disclosures, and intended disclosures, to the Reporting Authority.

(6) Where information is disclosed to the Reporting Authority under subsection (3), the 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.

(7) Subsection (6) does not apply to information received by the Reporting Authority which it discloses to any institution or person in the Islands.

(8) The Reporting Authority -

- (a) without having to obtain the consent of the Attorney-General, shall disclose to any law enforcement agency in the Islands any information received under this section, where there is *prima facie* evidence of criminal conduct or where the Reporting Authority has cause to suspect criminal conduct;

2004 Revision

- (b) without having to obtain the consent of the Attorney-General, may disclose any information received under this section in relation to criminal conduct 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) subject to subsection (6), may disclose any information received under this section in relation to conduct defined in paragraph 3(1)(b) of the Schedule, to any overseas financial intelligence unit,

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 Law.
- (9) Whoever is guilty of an offence under subsection (1) is liable-
- (a) on summary conviction, to a fine of five thousand dollars and to imprisonment for two years; or
 - (b) on conviction on indictment, to a fine and to imprisonment for fourteen years.

(10) In this Law-

“criminal conduct” means conduct which constitutes an offence to which this Law applies or would constitute such an offence if it had occurred in the Islands.

(11) No prosecution shall be instituted under this section without the consent of the Attorney-General.

Acquisition, possession
or use of property
representing proceeds of
criminal conduct

33. (1) Whoever, knowing that any property is, or in whole or in part directly or indirectly represents, another person’s proceeds of criminal conduct, acquires or uses that property or has possession of it, is guilty of an offence.

(2) It is a defence to a charge of committing an offence under subsection (1) that the person charged acquired or used the property or had possession of it for adequate consideration.

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

- (a) a person acquires property for inadequate consideration if the value of the consideration is significantly less than the value of the property; and
- (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 his use or possession of the property.

(4) The provision for any person of services or goods which are of assistance to him in criminal conduct shall not be treated as consideration for the purposes of subsection (2).

(5) Where a person discloses to the Reporting Authority a suspicion or belief that any property is, or in whole or in part directly or indirectly represents, another person's proceeds of criminal conduct or discloses to such Reporting Authority any matter on which such a suspicion or belief is based -

- (a) the disclosure shall not be treated as a breach of any restriction upon disclosure of information by any enactment or otherwise and shall not give rise to any civil liability; and
- (b) if he does any act in relation to that property in contravention of subsection (1), he does not commit an offence under this section if-
 - (i) the disclosure is made before he does the act concerned; or
 - (ii) the disclosure is made after he does the act, but is made on his initiative and as soon as it is reasonable for him to make it.

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

(7) Where information is disclosed to the Reporting Authority under section 32(3), the 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.

(8) Subsection (7) shall not apply to information received by the Reporting Authority respecting a matter which it requires to disclose to any institution or person in the Islands.

(9) The Reporting Authority -

2004 Revision

- (a) without having to obtain the consent of the Attorney-General, shall disclose to any law enforcement agency in the Islands any information received under this section, where there is *prima facie* evidence of criminal conduct or where the Reporting Authority has cause to suspect criminal conduct;
- (b) without having to obtain the consent of the Attorney-General, may disclose any information received under this section in relation to criminal conduct 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) subject to subsection (7), may disclose any information received under this section in relation to conduct defined in paragraph 3(1)(b) of the Schedule, to any overseas financial intelligence unit,

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 Law.

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

(11) In proceedings against a person for an offence under this section, it is a defence to prove that-

- (a) he intended to disclose to the Reporting Authority such a suspicion, belief or matter as is mentioned in subsection (5); but
- (b) there is reasonable excuse for his failure to make the disclosure in accordance with paragraph (b) of that subsection.

(12) In the case of a person who was in employment at the relevant time, subsections (5) and (8) shall have effect in relation to disclosures, and intended disclosures, to the appropriate person in accordance with the procedure established by his employer for the making of such disclosures as they have effect in relation to disclosures, and intended disclosures, to the Reporting Authority.

(13) Whoever is guilty of an offence under this section is liable-

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

(14) No member of the Reporting Authority or other person is guilty of an offence under this section in respect of anything done by him in the course of acting in connection with the enforcement, or intended enforcement, of any provision of this Law or of any other enactment relating to criminal conduct or the proceeds of such conduct.

(15) No prosecution shall be instituted under this section without the consent of the Attorney-General.

34. (1) Whoever-

- (a) conceals or disguises property which is, or in whole or in part directly or indirectly represents, his proceeds of criminal conduct; or
- (b) converts or transfers that property or removes it from the jurisdiction,

Concealing or transferring proceeds of criminal conduct

for the purpose of avoiding prosecution for an offence or of avoiding the making or enforcement of a confiscation order is guilty of an offence.

(2) Whoever, knowing or having reasonable grounds to suspect that any property is, or in whole or in part directly or indirectly represents, another person's proceeds of criminal conduct-

- (a) conceals or disguises that property; or
- (b) converts or transfers that property or removes it from the jurisdiction,

with intent to assist any person to avoid prosecution for an offence or to avoid the making or enforcement of a confiscation order is guilty of an offence.

(3) In subsection (1), the references to concealing or disguising any property include references to concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it.

(4) Whoever is guilty of an offence under this section is liable-

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

(5) No prosecution shall be instituted for an offence under this section without the consent of the Attorney-General.

Tipping-off

35. (1) Whoever-

- (a) knows or has reasonable grounds for suspecting that any member of the Reporting Authority or other person is acting, or is proposing to act, in connection with an investigation which is being, or is about to be, conducted into money laundering; and
- (b) discloses to any other person information or any other matter which is likely to prejudice that investigation, or proposed investigation,

is guilty of an offence.

(2) Whoever -

- (a) knows or has reasonable grounds for suspecting that a disclosure (“the disclosure”) has been made to the Reporting Authority under section 32 or 33; and
- (b) discloses to any other person information or any other matter which is likely to prejudice any investigation which might be conducted following the disclosure,

is guilty of an offence.

(3) Whoever-

- (a) knows or suspects that a disclosure of a kind mentioned in section 32(3) or 33(5) (“the disclosure”) has been made; and
- (b) discloses to any person information or other matter which is likely to prejudice any investigation which might be conducted following the disclosure,

is guilty of an offence.

(4) Nothing in subsections (1) to (3) makes it an offence for a person to disclose information or any other matter to a professional legal adviser for the purposes of legal advice or for a professional legal adviser to disclose any information or other matter-

- (a) to, or to a representative of, a client of his in connection with the giving by the legal adviser of legal advice to the client; or
- (b) to any person-
 - (i) in contemplation of, or in connection with, legal proceedings; and
 - (ii) for the purpose of those proceedings.

(5) Subsection (4) does not apply in relation to any information or other matter which is disclosed with a view to furthering any criminal purpose.

(6) In this section-

“money laundering” means doing any act which constitutes an offence under section 32, 33 or 34 or, in the case of an act done otherwise than in the Islands, would constitute such an offence if done in the Islands.

(7) For the purposes of subsection (6), having possession of any property shall be taken to be doing an act in relation to it.

(8) Whoever is guilty of an offence under this section is liable-

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

(9) No prosecution shall be instituted under this section without the consent of the Attorney-General.

(10) No member of the Reporting Authority or any other person shall be guilty of an offence under this section in respect of anything done by him in the course of acting in connection with the enforcement, or intended enforcement, of any provision of this Law or of any other enactment relating to an offence to which this Law applies.

Supplementary

36. (1) Where the Grand 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 him by the Grand Court.

Application of procedure
for enforcing fines
2007 Revision

(2) Where-

- (a) the 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)-

- 2007 Revision
- (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.

Failure to disclose knowledge or suspicion of money laundering

37. (1) A person is guilty of an offence if-
- (a) he knows or suspects that another person is engaged in money laundering;
 - (b) the information, or other matter, on which that knowledge or suspicion is based came to his attention in the course of his trade, profession, business or employment; and
 - (c) he does not disclose the information or other matter to the Reporting Authority as soon as is reasonably practicable after it comes to his attention.

(2) Subsection (1) does not make it an offence for a professional legal adviser not to disclose any information or other matter which has come to him in privileged circumstances.

(3) It is a defence to a charge of committing an offence under this section that the person charged had a reasonable excuse for not disclosing the information or other matter in question.

- (4) Where a person discloses to the Reporting Authority -
- (a) his suspicion or belief that another person is engaged in money laundering; or
 - (b) any information or other matter on which that suspicion or belief is based,

the disclosure shall not be treated as a breach of any restriction imposed by statute or otherwise.

(5) Without prejudice to subsection (3) or (4), in the case of a person who was in employment at the time in question, it is a defence to a charge of committing an offence under this section that he disclosed the information or other matter in question to the appropriate person in accordance with the procedure established by his employer for the making of such disclosures.

(6) A disclosure to which subsection (5) applies shall not be treated as a breach of any restriction imposed by statute or otherwise.

- (7) In this section, and in section 21-

“money laundering” means doing any act-

- (a) which constitutes an offence under section 32, 33 or 34 of this Law, section 19, 20, 21 or 22 of the Terrorism Law, 2003 or section 47 or 48 of the Misuse of Drugs Law (2000 Revision); or
- (b) in the case of an act done otherwise than in the Islands, which would constitute such an offence as is referred to in paragraph (a) if done within the Islands,

Law 14 of 2003
2000 Revision

and for the purposes of this subsection, having possession of any property shall be taken to be doing an act in relation to it.

(8) For the purposes of this section, any information or other matter comes to a professional legal 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 any person -
 - (i) in contemplation of, or in connection with, legal proceedings; and
 - (ii) for the purpose of those proceedings.

(9) No information or other matter shall be treated as coming to a professional legal adviser in privileged circumstances if it is communicated or given with a view to furthering any criminal purpose.

(10) Whoever is guilty of an offence under this section is liable-

- (a) on summary conviction, to a fine of fifty thousand dollars; or
- (b) on conviction on indictment, to a fine and to imprisonment for two years.

(11) No prosecution shall be instituted under this section without the consent of the Attorney-General.

38. A constable may arrest without warrant a person who has committed, or whom he reasonably suspects to have committed, an offence to which this Law applies.

Powers of arrest

39. (1) A constable may, for the purpose of an investigation into an offence to which this Law applies, apply to the Grand Court for an order under subsection (2) in relation to particular material or to material of a particular description.

Order to make material available

(2) If, on such an application, the court is satisfied that the conditions in subsection (4) are fulfilled, it may make an order that the person who appears to it to be in possession of the material to which the application relates shall-

- (a) produce it to a constable to take away; or
- (b) give a constable access to it,

within such period as the order may specify.

(3) The period to be specified in an order under subsection (2) shall be seven days, unless it appears to the court that a longer or shorter period would be appropriate in the particular circumstances of the application.

(4) The conditions referred to in subsection (2) are that-

- (a) there are reasonable grounds for suspecting that a specified person has carried on or has benefited from an offence to which this Law applies;
- (b) there are reasonable grounds for suspecting that the material to which the application relates-
 - (i) is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the application is made; and
 - (ii) does not consist of or include items subject to legal privilege; and
- (c) there are reasonable grounds for believing that it is in the public interest, 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 in possession of the material holds it, that the material should be produced or that access to it should be given.

(5) Where the court makes an order under paragraph (b) of subsection (2) in relation to material on any premises it may, on the application of a constable, order any person who appears to it to be entitled to grant entry to the premises to allow a constable to enter the premises to obtain access to the material.

(6) The Chief Justice may make rules governing the procedure in relation to-

- (a) applications for the discharge and variation of orders under this section; and
- (b) proceedings relating to such orders.

(7) Where the material to which an application under this section relates consists of information contained in a computer-

- (a) an order under paragraph (a) of subsection (2) shall have effect as an order to produce the material in a form in which it can be taken away and in which it is visible and legible; and
- (b) an order under paragraph (b) of subsection (2) shall have effect as an order to give access to the material in a form in which it is visible and legible.

(8) An order under subsection (2)-

- (a) shall not confer any right to production of, or access to, items subject to legal privilege;
- (b) shall have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information whether imposed by the Confidential Relationships (Preservation) Law (1995 Revision) or any other law or by the common law; and
- (c) may be made in relation to material in the possession of the Government.

1995 Revision

(9) Where, in relation to an investigation into an offence to which this Law applies, an order under subsection (2) has been made or has been applied for and has not been refused or a warrant under section 40 has been issued, whoever, knowing or suspecting that the investigation is taking place, makes any disclosure which is likely to prejudice the investigation is guilty of an offence.

(10) In proceedings against a person for an offence under this section, it is a defence to prove-

- (a) that he did not know or suspect that the disclosure was likely to prejudice the investigation; or
- (b) that he had lawful authority or reasonable excuse for making the disclosure.

(11) Whoever is guilty of an offence under subsection (9) is liable-

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

40. (1) A constable may, for the purpose of an investigation into an offence to which this Law applies, apply to the Grand Court for a warrant under this section in relation to specified premises.

Authority for search

(2) On such application the court may issue a warrant authorising a constable to enter and search the premises if it is satisfied that-

- (a) an order made under section 39(2) in relation to material on the premises has not been complied with;

- (b) the conditions in subsection (3) are fulfilled; or
 - (c) the conditions in subsection (4) are fulfilled.
- (3) The conditions referred to in paragraph (b) of subsection (2) are that-
- (a) there are reasonable grounds for suspecting that a specified person has carried on or has benefited from an offence to which this Law applies;
 - (b) the conditions in paragraphs (b) and (c) of section 39(4) are fulfilled in relation to any material on the premises; and
 - (c) it would not be appropriate to make an order under section 39 in relation to the material because-
 - (i) it is not practicable to communicate with any person entitled to produce the material;
 - (ii) it is not practicable to communicate with any person entitled to grant access to the material or entitled to grant entry to the premises on which the material is situated; or
 - (iii) the investigation for the purposes of which the application is made might be seriously prejudiced unless a constable could secure immediate access to the material.
- (4) The conditions referred to in paragraph (c) of subsection (2) are that-
- (a) there are reasonable grounds for suspecting that a specified person has carried on or has benefited from an offence to which this Law applies;
 - (b) there are reasonable grounds for suspecting that there is on the premises material relating to the specified person or to the offence which is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the application is made, but that the material cannot at the time of the application be particularised; and
 - (c)
 - (i) it is not practicable to communicate with any person entitled to grant entry to the premises;
 - (ii) entry to the premises will not be granted unless a warrant is produced; or
 - (iii) the investigation for the purpose of which the application is made might be seriously prejudiced unless a constable arriving at the premises could secure immediate entry to them.
- (5) Where a constable has entered premises in the execution of a warrant issued under this section, he may seize and retain any material, other than items subject to legal privilege, which is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the warrant was issued.

41. 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, a charging order or a related order; or
 - (iii) the Attorney-General, on behalf of the government of a designated country, has made an application for a restraint order, a charging order or a related order,and the Grand Court determines that it will not make the confiscation order, restraint order, charging order or related order; or
- (b) where the Grand Court has varied or discharged a restraint order or a charging 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 confiscation order, restraint order, charging order or related order, was made in bad faith or was frivolous or vexatious.

PART III - Enforcement of External Orders

42. (1) The Governor in Cabinet may, by order- Enforcement of external
confiscation orders and
proceedings

- (a) designate countries and territories outside the Islands to whose external confiscation orders and proceedings this Law shall, subject to subsection (2), apply;
- (b) specify appropriate authorities within designated countries that are to give effect to the provisions of this Law in relation to external confiscation orders and to related proceedings; and
- (c) specify, in respect of designated countries, the steps (apart from an application to a court for an external confiscation order) that need to be taken there to amount to an institution of proceedings.

(2) The Schedule 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 designated countries.

43. (1) On an application made by the Attorney-General on behalf of the Government of a designated 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 designated 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 46 or in the affidavit made under paragraph 8 of the Schedule 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 designated country

44. (1) For the purposes of sections 42 and 43, and of the other provisions of this Law as applied under section 42(2)-

- (a) any order made or judgment given by a court of a designated 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 designated 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 designated 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 designated country.

45. (1) For the purposes of sections 42 and 43, and of the other provisions of this Law as applied by section 42(2), a certificate purporting to be issued by or on behalf of the appropriate authority of a designated country stating-

Evidence in relation to proceedings and orders in a designated country

- (a) that proceedings have been instituted and have not been concluded, or that proceedings are to be instituted, in that designated 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 designated 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 designated country; or
- (e) that an order (however described) made by a court of the designated 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 designated 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 designated country, or by or on behalf of the appropriate authority of the designated 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.

Representation of government of a designated country

46. A request for assistance sent to the Attorney-General by the appropriate authority of a designated country shall-

- (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 section 43 or any other provision of this Law as applied by section 42(2).

Satisfaction of confiscation order in a designated country

47. (1) Where-

- (a) a confiscation order has been made under section 6;
- (b) a request has been sent by the Attorney-General to the appropriate authority of a designated 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 designated 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

48. (1) Where the value of property recovered as described in section 47(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 designated 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 section 43 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 section 42(2)

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

49. The Rules Committee of the Grand Court shall make rules of court for the purposes of this Law. Rules of court

SCHEDULE

section 42

**MODIFICATIONS TO THE LAW WHEN APPLIED TO EXTERNAL
CONFISCATION ORDERS AND RELATED PROCEEDINGS**

Introductory 1. This Schedule shall apply to external confiscation orders registered under section 43 and to any proceedings which have been or are to be instituted and which may result in such external confiscation orders being made in designated countries, and, to the extent that it is at variance with the preceding sections of 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
Charging order	paragraph 7(2)
Dealing with property	paragraph 6(9)
Defendant	paragraph 3(1)(c)
Gift caught by this Schedule	paragraph 3(4)
Conduct to which this Schedule applies	paragraph 3(1)(b)
Realisable property	paragraph 3(2)
Restraint order	paragraph 6(1)

- (2) Proceedings are instituted in a designated country when-
- (a) under the law of the designated country concerned, one of the steps specified in relation to that country in an order made under section 42 has been taken there in respect of alleged conduct by the defendant to which this Schedule applies; or
 - (b) an application has been made to a court in a designated country for an external 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).

3. (1) In this Schedule-

Definition of principal terms used
2000 Revision

- (a) “drug trafficking offence” has the same meaning as in the Misuse of Drugs Law (2000 Revision);
- (b) 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, other than drug trafficking offences; and
- (c) 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 designated 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.

(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.

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.

Pecuniary advantage -
equivalence

- Cases in which restraint orders and charging orders may be made
5. (1) The powers conferred on the Grand Court by paragraphs 6(1) and 7(1) are exercisable where-
- (a) proceedings have been instituted against the defendant in a designated 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 designated country within twenty-one days of the granting of an order under paragraph 6(1) or 7(1) or such longer period as the court may grant (in this Schedule referred to as “the permitted period”).
- (3) Where the court has made an order under paragraph 6(1) or 7(1) by virtue of subparagraph (2)-
- (a) the Attorney-General shall notify the court immediately if proceedings have not been instituted within the permitted period; and
 - (b) the court shall discharge the order if the proposed proceedings are not instituted the permitted period.
- 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 may make such provision as the court thinks fit for the living and legal expenses of the defendant.
- (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) This paragraph shall not have effect in relation to any property for the time being subject to a charge under paragraph 7.

(5) A restraint order-

- (a) may be made only on an application by the Attorney-General on behalf of the government of a designated country or, in a case where an external confiscation order has been registered under section 43, 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.

(6) 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.

(7) An application for the discharge or variation of a restraint order may be made by any person affected by it.

(8) 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.

(9) 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.

(10) 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.

(11) Property seized under subparagraph (10) shall be dealt with in accordance with the court's directions.

(12) In the case of a restraint order made in respect of land-

2004 Revision

- (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.

Charging orders

7. (1) The Grand Court may make a charging order on realisable property for securing the payment to the revenues of the Islands-

- (a) where a fixed amount is payable under an external confiscation order, of an amount not exceeding the amount so payable; and
- (b) in any other case, of an amount equal to the value from time to time of the property charged.

(2) For the purposes of this Schedule, a charging order is an order made under this paragraph imposing, on any such realisable property as may be specified in the order, a charge for securing the payment of money to the revenues of the Islands.

(3) A charging order-

- (a) may be made only on an application by the Attorney-General on behalf of the government of a designated country or, in a case where an external confiscation order has been registered under section 43, 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.

(4) Subject to subparagraph (6), a charge may be imposed by a charging order only on-

- (a) any interest in realisable property, being an interest held beneficially by the defendant or by a person to whom the defendant has directly or indirectly made a gift caught by this Law-

- (i) in any asset of a kind mentioned in subparagraph (5); or
- (ii) under any trust; or
- (b) any interest in realisable property held by a person as trustee of a trust if the interest is in such an asset or is an interest under another trust, and a charge may, by virtue of subsubparagraph (a), be imposed by a charging order on the whole beneficial interest under the first-mentioned trust.

(5) The assets referred to in subparagraph (4) are-

- (a) land in the Islands; or
- (b) securities of any of the following kinds-
 - (i) any description of security issued by or on behalf of the Government of the Islands;
 - (ii) stock of any other body incorporated within the Islands;
 - (iii) equity interest in any regulated mutual funds within the meaning of the Mutual Funds Law (2003 Revision); or
 - (iv) funds in court.

2003 Revision

(6) In any case where a charge is imposed by a charging order on any interest in an asset of a kind mentioned in subparagraph (5)(b), the court may provide for the charge to extend to any interest or dividend payable in respect of the asset.

(7) The court may make an order discharging or varying the charging order if the proceedings against the defendant in the designated country are concluded or the amount, payment of which is secured by the charge, is paid into court.

(8) An application for the discharge or variation of a charging order may be made by any person affected by it.

(9) A charge imposed by a charging order made in relation to any interest in land shall be in the prescribed form and shall be registered in the encumbrances register of the relevant land register.

(10) Subject to any provision made under paragraph 9 or by rules of court, a charge imposed by a charging order shall have the like effect and shall be enforceable in the same manner as an equitable charge created by the person holding the beneficial interest or, as the case may be, the trustees by writing under their hand.

(11) In this paragraph-

“dividend” and “stock” have the same meaning as in the Third Schedule to the Judicature Law (2007 Revision).

2007 Revision

Applications for restraint
and charging orders

8. An application under paragraph 6(5) or 7(3) shall be accompanied by an affidavit, a declaration or any other written statement by the appropriate authority of the designated 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 within the permitted period, 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 within the permitted period, 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

9. (1) Where an external confiscation order has been registered in the Grand Court under section 43, 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 or in pursuance of a charging order-
 - (i) to enforce any charge imposed under paragraph 10 on realisable property or on interest or dividends payable in respect of such property; and
 - (ii) in relation to any realisable property other than property for the time being subject to a charge under paragraph 10, 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.

(2) Subparagraph (1)(d), (e) and (f) does not apply to property for the time being subject to a charge under paragraph 7.

10. (1) Subject to subparagraph (2), such of-

- (a) the proceeds of the enforcement of any charge imposed under paragraph 7;
- (b) the proceeds of the realisation, other than by the enforcement of such a charge, of any property under paragraph 6 or 9; or
- (c) any other sums, being property held by the defendant,

Application of proceeds
of realisation and other
sums

as may be in the hands of a receiver appointed under this Law or in pursuance of a charging order 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.

(3) If the money was paid to the Grand Court by a receiver appointed under paragraph 6 or 9, or in pursuance of a charging order, the receiver's remuneration and expenses shall next be paid.

(4) After there has been made any payment required by subparagraph (3), any amount paid under paragraph 14(2) shall be reimbursed.

(5) Any sums remaining after all the payments required to be made under subparagraphs (1) to (4) have been made shall be paid into the revenues of the Islands.

Exercise of powers of
Grand Court or receiver

11. (1) This paragraph applies to the powers conferred on the Grand Court by paragraphs 6, 7, 9 and 10 on a receiver being appointed under this Schedule or in pursuance of a charging order.

(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 under section 43 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.

12. (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 9(e) or (f) for the time being in the hands of a receiver appointed under paragraph 6 or 9,

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, 7, 9 and 10 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) Subparagraph (2) does not affect the enforcement of a charging order-

- (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-

- (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 or charging order.

13. (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 paragraph 6(8), or 9(e) or (f) for the time being in the hands of a receiver appointed under paragraph 6 or 9.

(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, 7 and 9 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) Subparagraph (2) does not affect the enforcement of a charging order made before the relevant time or on property which was subject to a restraint order at the relevant time.

(4) 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

14. (1) Where a receiver appointed under this Schedule or in pursuance of a charging order 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 10(3), be paid by the person on whose application the receiver was appointed.

15. (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.

Application of procedure
for enforcing fines
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.

Publication in consolidated and revised form authorised by the Governor in Cabinet this 19th day of June, 2007.

Carmena Watler
Clerk of Cabinet

Note: By virtue of section 8 of the Proceeds of Criminal Conduct (Amendment) Law, 2003 (Law 17 of 2003) the following savings and transitional provisions apply -

1. *On the 12th January, 2004, all property, rights and liabilities to which the former Reporting Authority was entitled shall vest in the Financial Reporting Authority.*

2. *Every request for the disclosure of financial information concerning proceeds of criminal conduct, suspected proceeds of criminal conduct, money laundering, suspected money laundering, terrorism or the financing of terrorism, made before the 12th January, 2004 and wholly or partly heard by the former Reporting Authority on the 12th January, 2004, is to be continued and dealt with in all under the Proceeds of Criminal Conduct Law (2001 Revision).*

3. *Every request for the disclosure of financial information concerning proceeds of criminal conduct, suspected proceeds of criminal conduct, money laundering, suspected money laundering, terrorism or the financing of terrorism, made before the 12th January, 2004 and not wholly or partly heard by the former Reporting Authority on the 12th January, 2004, is to be taken to be a request made on or after the 12th January, 2004 and the provisions of this 2004 Revision of the Law are to apply accordingly.*

4. *In this note -*

“Financial Reporting Authority” means the Financial Reporting Authority established under section 22(2) of this 2004 Revision of the Law;

“former Reporting Authority” means the Reporting Authority appointed under section 21(2) of the Proceeds of Criminal Conduct Law (2001 Revision).

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