

## VIRGIN ISLANDS

### STATUTORY INSTRUMENT 1999 NO. 49

#### PROCEEDS OF CRIMINAL CONDUCT ACT (No. 5 of 1997)

#### Proceeds of Criminal Conduct (Designated Countries and Territories) Order, 1999

[Gazetted 14<sup>th</sup> October, 1999]

The Governor in Council, in exercise of the powers conferred by section 32 of the Proceeds of Criminal Conduct Act, 1997 (No. 5 of 1997), makes the following Order:

- Short title. **1.** This Order may be cited as the Proceeds of Criminal Conduct (Designated Countries and Territories) Order, 1999.
- Interpretation. **2.** In this Order, unless the context otherwise requires,  
“the Act” means the Proceeds of Criminal Conduct Act, 1997;  
“designated country” means a country or territory designated under section 3 (1);  
“appropriate authority of a designated country” means
- Schedule 1 (a) the authority specified opposite that country in Schedule 1; or  
(b) where no authority is so specified the authority appearing to the court to be the appropriate authority of that country for the purposes of sections 32 and 33 of the Act, and of the other provisions of the Act as applied under section 3 (2);
- “Court” means the High Court;
- “court of a designated country” includes a court of any state or territory of a designated country;
- Designation of, and application of the Act to, countries and territories. **3.** (1) The countries and territories specified in Schedule 1 are designated for the purposes of sections 32 and 33 of the Act.  
(2) In relation to a designated country, the Act shall apply, subject to the modifications specified in Schedule 2, to external confiscation orders and to proceedings which have been or are to be instituted in the designated country and

may result in an external confiscation order being made there, and in relation to those orders and proceedings, the Act shall have effect as set out in Schedule 3.

Schedule 3

**4.** (1) For the purposes of sections 32 and 33 of the Act, and of the other provisions of the Act as applied under section 3 (2),

Proof of order and judgement of a court of a designated country.

- (a) any order made or judgement given by a court of a designated country purporting to bear the seal of that court or to be signed by a 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 judgement given by a court of a designated country shall be deemed without further proof to be a true copy.

(2) A document which purports to be a copy of any order made or judgement given by a court of a designated country is duly authenticated for the purpose of subsection (1) (b) if it purports to be certified by a 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.

**5.** (1) For the purposes of sections 32 and 33 of the Act, and of the other provisions of the Act as applied under section 3 (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 there,
- (b) in a case to which section 2 (5) (f) (ii) of the Act, as modified by Schedule 2, applies, that the defendant has been notified as specified in that section,
- (c) that an external confiscation order is in force and is not subject to appeal,
- (d) that all or a certain amount of the sum 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,

Schedule 2

- (e) that any person has been notified of any proceedings in accordance with the law of the designated country, or
- (f) that an order (however described) made by a court of the designated country has the purpose of recovering payments or other reward received in connection with criminal conduct or their value,

shall, in any proceedings in the Court, be admissible as evidence of the facts so stated.

(2) In 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 in a designated country, shall be admissible as evidence of the facts stated therein.

(3) A document is duly authenticated for the purposes of subsection (2) if it purports to be certified by a person in his capacity as a judge, magistrate or officer of the court in a 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 a document or otherwise, which is admissible apart from this section.

Certificate as  
to appropriate  
authority of a  
designated  
country.  
Schedule 1

Representation  
of government  
of a designated  
country.

**6.** Where in relation to a designated country no authority is specified in Schedule 1, a certificate made by the Governor to the effect that the authority specified therein is the appropriate authority for the purpose of sections 32 and 33 of the Act, and of the other provisions of the Act as applied by section 3 (2), shall be sufficient evidence of that fact.

**7.** A request for assistance sent to the Governor by the appropriate authority of a designated country shall, unless the contrary is shown, be deemed to constitute the designated authority of the government of that country for the Attorney General to act on its behalf in proceedings in the Court under section 33 of the Act or any other provision of the Act as applied by section 3 (2).

**8.** (1) The amount payable under the confiscation order shall be treated as reduced by the value of the property so recovered, where

- (a) a confiscation order has been made under section 6 of the Act;
- (b) a request as been sent by the Governor 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.

(2) For the purpose of this section, 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 Governor 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 Territory, be admissible as evidence of the facts so stated.

**9.** (1) Where the value of property recovered as described in section 8(1) is expressed in a currency other than the currency of the United States of America, the extent to which the amount payable under the confiscation order is to be reduced under section 8 (1) 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 Court under section 33 of the Act is expressed in a currency other than the currency of the United States of America for the purpose of an action taken in relation to that order under the Act as applied under section 3 (2), the amount shall be converted into the currency of the United States of America on the basis of the exchange rate prevailing on the date of registration of the order.

Satisfaction of  
confiscation  
order in a  
designated  
country.

Currency  
conversion

(3) For the purposes of this section, a written certificate purporting to be signed by a person acting in his capacity as an officer of a bank in the Territory and stating the exchange rate prevailing on a specified date shall be admissible as evidence of the facts so stated.

## SCHEDULE 1

[ Section 3 (1) ]

### Designated Countries

Designated Country	Appropriate Authority
Belgium	
Cyprus	
Denmark	
Germany	
Iceland	
Italy	
Netherlands	The Ministry of Justice Afdeling International Rechtshulp
Norway	
Portugal	
Spain	
Sweden	The Ministerio de Justicia, Madrid
United Kingdom	The Home Office

## SCHEDULE 2

[Section 3 (2)]

### Modifications of the Proceeds of Criminal Conduct Act, 1997

1. Section 1 shall be omitted.
2. In section 2,
  - (a) in subsection (1)
    - (i) for the words “confiscation order” there shall be substituted the words “external confiscation order”;

- (ii) in the definition of “defendant”, the words “for an offence to which this Act applies,” shall be deleted and the words “for the recovery of proceeds of criminal conduct,” substituted therefor;
  - (iii) the definition of “drug trafficking offence” shall be deleted.
- (b) subsection (3) shall be deleted and the following subsection substituted therefor:

“(3) This Act applies to all property whether received before or after the commencement of this Act, and whether received in connection with

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criminal conduct carried on by the recipient or some other person.”;

- (c) for subsection (5) (f), there shall be substituted the following:

“(f) proceedings are instituted in a designated country when

(i) under the law of the designated country concerned any step specified in relation to that country in Column 2 of the Appendix to this Act has been taken there in respect of alleged criminal conduct by the defendant,

(ii) where no steps have been specified in relation thereto as mentioned in sub-paragraph (i) or the specified procedures have since changed, the defendant has been notified in writing in accordance with the laws of the designated country that the competent authorities of that country have begun proceedings against him in respect of an offence; or

(iii) an application has been made to a court in a designated country for an external confiscation order, and where the application of this subsection 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.”;

- (d) subsection (5) (h) shall be deleted;

- (e) in subsection (6) the words beginning from “the

defendant” to the end of the sentence shall be deleted and the words “all the property liable to be recovered has been recovered and all the money due to be paid has been paid.”.

**3.** In section 3,

- (a) for subsection (1) there shall be substituted the following subsection:

“(1) In this Act, “realizable property” means, subject to subsection (2),

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(a) in relation to an external confiscation order made 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 Act.”.

- (b) subsection (2) shall be deleted and the following subsection substituted therefor:

“(2) Property is not realisable property if an order under section 29 of the Drugs (Prevention of Misuse) Act is in force in relation to that property.”.

- (c) subsections (3) and (4) shall be omitted.

**4.** In section 4 (1) for the words “this Act” there shall be substituted the words “Proceeds of Criminal Conduct (Designated Countries and Territories) Order, 1999”.

**5.** For section 6 there shall be substituted the following section:

designated country for the purpose of recovering payments or other rewards received in connection with criminal conduct or their value is referred to in this Act as an “external confiscation order.

(2) In subsection (1) the reference to an order includes any order, decree, direction or judgement, or any part thereof, however described.

(3) A person against whom an external confiscation order had 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 in a designated country, is referred to in this Act as “the defendant”.

**6.** Sections 7 to 14 shall be omitted.

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**7.** For section 15 there shall be substituted the following section:

“Interest on sums unpaid under a confiscation order.

**15.** (1) If any sum required to be paid by a person under an external confiscation order, whether forthwith or within a specified period, is not paid, that person is liable to pay interest on the sum for the period for which it remains unpaid, provided that the law of the designated country from which the order emanated requires the payment of such interest and it is specified in the order.

(2) The amount of the interest referred to in subsection (1) shall be treated as part of the amount to be recovered from the person liable to pay interest under the external confiscation order and the rate of interest shall be that specified in the order.

(3) (Omitted).

**8.** In section 16,

(a) for subsection 1 (a) there shall be substituted the following:

- “(a) proceedings have been instituted against the defendant in a designated country.”;
- (b) subsection 1 (b) shall be omitted and the following substituted therefor:
  - “(b) the proceedings have not been concluded.”;
- (c) for subsection (1) (c) there shall be substituted the following:
  - “(c) either an external confiscation order has been made in the proceedings or it appears to the High Court that there are reasonable grounds for believing that an external confiscation order may be made in them.”;
- (d) for subsection (2) there shall be substituted the following subsection:
  - “(2) The powers conferred on the High Court by sections 17 and 18 are also exercisable where it

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- appears to the Court that proceedings are to be instituted against the defendant in a designated country and that there are reasonable grounds for believing that an external confiscation order may be made in them.”;
- (e) subsection (3) shall be omitted; and
- (f) subsection (4) shall be omitted and the following subsection substituted therefor:
  - “(4) Where, for the purposes of sections 17 and 18, an order is made in anticipation of proceedings being instituted and the proceedings are not instituted within such time as the High Court considers reasonable, the order shall be discharged.”;
- (g) subsection (5) shall be omitted.

**9.** In section 17,

- (a) for subsection (3) there shall be substituted the following:
  - “(3) A restraint order may apply,

- (a) where an application under subsection (4) 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.”;
- (b) in subsection (4) (a) for the words “by a prosecutor” there shall be substituted the words “on behalf of the Government of a designated country or, in a case registered under section 33, by a receiver appointed under subsection (7) or section 19, or a prosecutor”;
- (c) for subsection (4) (c) there shall be substituted the following:

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- “(c) shall, notwithstanding anything in Order 11 of the Rules of the Supreme Court, 1970, provide for service on, or the provision of notice to, persons affected by the order in a manner the High Court may direct”;
- (d) for subsection (5) (b) there shall be substituted the following:
  - “(b) shall be discharged when the proceedings in relation to which the order was made are concluded.”.

**10.** In section 18,

- (a) for subsection (1) (a) and (b) there shall be substituted the following:
  - “(a) where a fixed amount is payable under an external confiscation order, of an amount not exceeding the amount payable; and
  - (b) in any other case, of an amount equal to the value from time to time of the property charged.”;

- (b) in subsection (2) (a) for the words “by a prosecutor” there shall be substituted the words “on behalf of the Government of a designated country or, in a case where an external confiscation order has been registered under section 33, by a receiver appointed under section 17 or 19, or a prosecutor”;
- (c) for subsection (2) (c) there shall be substituted the following:
  - “(c) shall, notwithstanding anything in Order 11 of the Rules of the Supreme Court 1970, provide for service on, or the provision of notice to, persons affected by the order in a manner the Court may direct;”.

**11.** After section 18 there shall be inserted the following section:

“Applications  
for restraint  
and charging  
orders.

**18A.** An application under section 17 (4) or 18 (2) shall be supported by an affidavit which shall

- (a) state, where applicable, the grounds for believing that an

external confiscation order may be made in the proceedings instituted or to be instituted in the designated country concerned,

- (b) to the best of the deponent’s ability, give particulars of the realisable property in respect of which the order is sought and specify the person or persons holding that property, and
- (c) in a case to which section 16 (2) applies, indicate when it is intended that proceedings should be instituted in the designated country concerned,

and the affidavit may, unless the court otherwise directs, contain statements of information or belief with the sources and grounds thereof.”.

**12.** In section 19, for subsection (1) there shall be substituted the following:

“(1) Where an external confiscation order has been registered in the High Court under section 33, the Court may, on the application of the Attorney General or a person authorised in that behalf by the Attorney General, exercise the powers conferred by subsections (1A) to (6).

(1A) In respect of any sum of money payable under the external confiscation order, the Court may make a garnishee order as if the sum were due to the Crown in pursuance of a judgement or order of the Court, but any such order shall direct that the sum payable be paid to the Court.”.

**13.** In section 20,

- (a) in subsection (1), for the words from “sums”, in the last place where it occurs, to the end of the subsection, there shall be substituted the words “be paid to the Court and applied for the purposes specified in this section and in the order so specified.”;
- (b) in subsection (2), for the words “If, after the amount payable under the confiscation order”, there shall be substituted the words “Where a fixed amount is

payable under the external confiscation order and after that amount.”;

- (c) subsection (3) shall be omitted;
- (d) in subsection (5) the reference to “(4)” and “(5)” in paragraphs (a) and (b) shall be respectively substituted by “(2)” and “(4)” and the reference to “section 26(2)” shall be substituted by “section 25 (2)”;
- (e) subsection (6) shall be omitted;
- (f) subsection (8) shall be omitted.

**14.** In section 21,

- (a) in subsection (2), for the words from “making available” to the end of the subsection, there shall be substituted the

words “recovering property which is liable to be recovered under an external confiscation order registered in the Court under section 33 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.”; and

- (b) in subsection (6), after the word “the” in the fourth place where it occurs, there shall be inserted the word “external”.

**15.** Section 22 shall be omitted.

**16.** In section 23 (6) (a), the words “for an offence to which this Act Applies” shall be omitted.

**17.** In subsection (2) of section 25 the words “out of the revenues of the Territory or, in a case where proceedings for an offence to which this Act applies are not instituted,” shall be omitted.

**18.** Section 26 shall be omitted.

**19.** For section 27 there shall be substituted the following:

“Reporting Authority.

**27.** The Reporting Authority established under the Reporting Authority (Constitution and Procedure) Order, 1998 shall exercise the powers and perform the duties conferred or imposed on it under this Act”.

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1998

**20.** Section 32 shall be omitted.

**21.** Sections 34 to 37 shall be omitted.

**22.** Sections 40 and 41 shall be omitted.

**23.** After section 41 there shall be inserted the following Appendix:

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**APPENDIX**  
[Section 2 (5) (f) (i)]  
**INSTITUTION OF PROCEEDINGS**

Designated Country	Point at which proceedings are instituted
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Belgium	
Cyprus	
Denmark	
Germany	when a person is notified that he is accused of an offence and will be brought before a court
Iceland	
Italy	<ul style="list-style-type: none"> <li>(a) when a person is notified, in accordance with article 369 of the Italian Code of Criminal Procedure, that a prosecution against him is in progress;</li> <li>(b) when a proposal for the application of a preventative measure (“<i>misura di prevenzione</i>”) is laid before a court</li> </ul>
Netherlands	<ul style="list-style-type: none"> <li>(a) when a pre-trial financial investigation has been initiated;</li> <li>(b) when the provisional order has been ordered by an investigating magistrate;</li> <li>(c) when a public prosecutor has requested a pre-trial criminal investigation by an investigating magistrate to be instituted;</li> <li>(d) when a public prosecutor has laid an indictment</li> </ul>
Norway	
Portugal	
Spain	when by virtue of a judicial resolution it is decided to proceed against a person for an offence
Sweden	when a public prosecutor has established that there are reasonable grounds to suspect that a person has committed an offence and accordingly is obliged under the Code of Judicial Procedure to notify the person of the suspicion
United Kingdom	<ul style="list-style-type: none"> <li>(a) when an information is laid before a justice of the peace;</li> <li>(b) when a person is charged with an offence;</li> <li>(c) when a bill of indictment is preferred;</li> <li>(d) when a petition warrant is granted</li> </ul>

## SCHEDULE 3

[Section 3 (2)]

### The Proceeds of Criminal Conduct Act, 1997 as modified

#### PRELIMINARY

**1.** (Omitted).

Interpretation. **2.** (1) In this Act, unless the context otherwise requires,

**"charging order"** means an order made under section 18 imposing on such realizable property as may be specified in the order a charge for securing the payment of money to the revenue of the Territory;

**"criminal conduct"** means conduct which constitutes an offence to which this Act applies or would constitute such an offence if it had occurred in the Territory;

**"defendant"** means a person against whom proceedings have been instituted for the recovery of proceeds of criminal conduct, whether or not he has been convicted;

**"external confiscation order"** means an order made by a court under section 6;

**"interest"**, in relation to property, includes right;

Cap. 104 **"police officer"** includes a person who qualifies as a customs officer or officer within the meaning of the Customs Ordinance;

**"proceeds of criminal conduct"**, in relation to any person who has benefitted from criminal conduct, means that benefit;

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

**"Registrar"** means the Registrar of the High Court;

**"restraint order"** means an order made by the High Court under section 17.

(2) The expressions listed in the left-hand column below fall to be construed in accordance with the provisions of this Act listed in the right-hand column in relation to those expressions:

<b>Relevant provision</b>	<b>Expressions</b>
Section 17 (11)	Dealing with property
Section 4 (1)	Gift caught by this Act
Section 4 (3)	Making a gift
Section 3 (8)	Value of gift
Section 3 (3)	Value of property

(3) This Act applies to all property whether received before or after the commencement of this Act, and whether received in connection with criminal conduct carried on by the recipient or some other person.

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1997

(4) References in this Act 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) For the purposes of this Act,

- (a) property is held by a person if he holds an interest in it;
- (b) references to property held by a person include a reference to property vested in his trustee in bankruptcy or liquidator;
- (c) 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;
- (d) references to an offence to which this Act applies are references to all indictable offences other than drug trafficking offences;
- (e) property is transferred by one person to another if the first person transfers or grants to the other an interest in the property;
- (f) proceedings are instituted in a designated country when
  - (i) under the law of the designated country concerned any step specified in relation to that country in Column 2 of the Appendix to this Act has been taken there in respect of the alleged criminal conduct by the defendant;

- (ii) where no steps have been specified in relation thereto as mentioned in sub-paragraph (i) or the specified procedures have since changed, the defendant has been notified in writing in accordance with the laws of the designated country that the competent authorities of that country have begun proceedings against him in respect of an offence; or
- (iii) an application has been made to a court in a designated country for an external confiscation order,

and where the application of this subsection would result in there being more than one time for institution of proceedings, they shall be taken to have been instituted at the earliest of those times."; and

- (g) proceedings for an offence are concluded
  - (i) when the defendant is acquitted on all counts or, as the case may be, every charge against him is dismissed;
  - (ii) if he is convicted on one or more counts but the court decides not to make a confiscation order against him, when the court makes that decision;
  - (iii) if he is sentenced without the court having considered whether or not to proceed under section 6 in his case, when he is sentenced; or
  - (iv) if a confiscation order is made against him in those proceedings, when the order is satisfied;

(h) (Omitted).

- (i) a confiscation order is satisfied when no amount is due under it; and
- (j) 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.

(6) For the purpose of section 23, a confiscation order shall be treated as satisfied when all the property liable to be recovered has been recovered and all the money due to be paid has been paid.

**3.** (1) In this Act, "realisable property" means, subject to subsection (2),

- (a) in relation to an external confiscation order made 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 Act.

(2) Property is not realisable property if an order under section 29 of the Drugs (Prevention of Misuse) Act is in force in respect of the property.

(3) (Omitted).

(4) (Omitted).

(5) Subject to the provisions of this section, for the purposes of this Act the value of property (other than cash), in relation to any person holding the property is,

- (a) where any other person holds an interest in the property,
  - (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.

(6) References in this Act to the value at any time (referred to in subsection (7) 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

- (a) to the value of the property to him when he obtained it adjusted to take account of subsequent changes in the value of money, or

Realisable  
property  
and its  
value.

- (b) to, where subsection (7) applies, the value mentioned in that subsection,

whichever is the greater.

(7) If at the material time the person holds

- (a) the property (not being cash) which he obtained, 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 subsection (6) (b) 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 obtained, but disregarding any charging order.

(8) Subject to section 4 (3), references in this Act to the value at any time (referred to in subsection (9) as "the material time") of a gift caught by this Act are references

- (a) to 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) to, where subsection (9) applies, the value mentioned in that subsection,

whichever is greater.

(9) Subject to section 4 (3), if at the material time the person holds

- (a) the property (not being cash) which he received, 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 (8) 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.

**4.** (1) A gift, including a gift made before the coming into force of the Proceeds of Criminal Conduct (Designated Countries and Territories) Order, 1999, is caught by this Act if

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- (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 relate; and
- (b) the court considers it appropriate in all the circumstances to take the gift into account.

(2) The reference in subsection (1) to an offence to which the proceedings relate include, where the proceedings have resulted in the conviction of the defendant, a reference to an offence which the court takes into consideration when determining sentence.

(3) For the purposes of this Act,

- (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 the circumstances mentioned in paragraph (a), the provisions of subsections (1) and (2) and section 3 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.

**5.** This Act applies to property wherever situated.

Application.

## MAKING OF CONFISCATION ORDERS

**6.** (1) An order made by a court in a designated country for the purpose of recovering payments or other rewards received in connection with criminal conduct or their value is referred to in this Act as an "external confiscation order".

External  
confiscation  
orders.

(2) In subsection (1) the reference to an order includes any order, decree, direction or a judgement, or any part thereof, however described.

(3) 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 in a designated country, is referred to in this Act as "the defendant".

(Sections 7 to 14 omitted).

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## ENFORCEMENT, ETC., OF CONFISCATION ORDERS

Interest on sums unpaid under a confiscation order.

**15.** (1) If any sum required to be paid by a person under an external confiscation order, whether forthwith or within a specified period, is not paid, that person is liable to pay interest on the sum for the period for which it remains unpaid, provided that the law of the designated country from which the order emanated requires the payment of such interest and it is specified in the order.

(2) The amount of the interest referred to in subsection (1) shall be treated as part of the amount to be recovered from the person liable to pay interest under the external confiscation order and the rate of interest shall be that specified in the order.

(3) (Omitted).

Cases in which restraint and charging orders may be made.

**16.** (1) The powers conferred on the High Court by sections 17 (1) and 18 (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 High Court that there are reasonable grounds for believing that an external confiscation order may be made in them.

(2) The powers conferred on the High Court by sections 17 and 18 are also exercisable where it appears to the Court that proceedings are to be instituted against the defendant in a designated country and that there are reasonable grounds for believing that an external confiscation order may be made in them.

(3) (Omitted).

(4) Where, for the purposes of sections 17 and 18, an order is made in anticipation of proceedings being instituted and the proceedings are not in fact instituted within such time as the High Court considers reasonable, the order shall be discharged.

(5) (Omitted).

**17.** (1) The High Court may make a restraint order prohibiting a person from dealing with any realisable

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property, subject to such conditions and exceptions as may be specified in the order.

(2) Without prejudice to the generality of subsection (1), the Court may, in making a restraint order, include such provision as it thinks fit for living and legal expenses.

(3) A restraint order may apply,

(a) where an application under subsection (4) relates to an external confiscation order made in respect of specified property, to property which is specified in that order; and

(b) in any other case,

(i) to all realisable property held by a specified person, whether the property is described in the restraint order or not; and

(ii) to realisable property held by a specified person, being property transferred to him after the making of the restraint order.”;

(4) A restraint order

(a) may be made only on an application on behalf of the Government of a designated country or, in a case registered under section 33, by a receiver appointed under subsection (7) or section 19, or a prosecutor”;

(b) may be made on an *ex parte* application to a judge in Chambers; and

(c) shall, notwithstanding anything in Order 11 of the Rules of the Supreme Court, 1970, provide for service on, or the provision of notice to, persons affected by the order in a manner the High Court may direct.

(5) A restraint order

(a) may be discharged or varied in relation to any property; and

(b) shall be discharged when the proceedings in relation to which the order was made are concluded.

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

(7) Where the High 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 conditions and exceptions 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 subsection to give possession of the property to the receiver.

(8) Where the High Court has made a restraint order, a police officer may, for the purpose of preventing any realisable property being removed from the Territory, seize the property.

(9) Property seized under subsection (8) shall be dealt with in accordance with the Court's directions.

(10) This section shall not have effect in relation to a property that is subject to a charge under section 18.

(11) For the purposes of this section, dealing with any property held by a 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 Territory.

(12) The Registered Land Ordinance shall apply in relation to

- (a) restraint orders, as it applies in relation to orders affecting land made by the court for the purpose of enforcing judgments; and
- (b) applications for restraint orders, as it applies in relation to other pending land actions.

**18.** (1) The High Court may make a charging order on realisable property for securing the payment to the Crown,

- (a) where a fixed amount is payable under an external confiscation order, of an amount not exceeding the amount payable; and

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- (b) in any other case, of an amount equal in the value from time to time of the property charged.

(2) A charging order

- (a) may be made only on an application on behalf of the Government of a designated country or in a case where an external confiscation order has been registered under section 33, by a receiver appointed under section 17 or 19, or a prosecutor.

- (b) may be made on an *ex parte* application to a judge in chambers;

- (c) shall, notwithstanding anything in Order 11 of the Rules of the Supreme Court, 1970, provide for service on, or the provision of notice to, persons affected by the order in a manner the Court may direct; and

- (d) may be made subject to such conditions as the court thinks fit, including the time when the charge is to become effective.

(3) Subject to subsection (5), a charge may be imposed by a charging order only on an interest in realisable property,

- (a) 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 Act

- (i) in any asset of a kind mentioned in subsection (4); or
- (ii) under any trust; or

- (b) 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.

(4) The assets referred to in subsection (3) are

- (a) land in the Territory; or

- (b) securities of any of the following kinds:

- (i) any description of security issued by or on behalf of the Government of the Territory;

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- (ii) the stock of any body corporate incorporated within the Territory;

- (iii) shares in any mutual fund registered under the Mutual Funds Act, 1996.

(5) In any case where a charge is imposed by a charging order on an interest in an asset of a kind mentioned in subsection (4) (b), the Court may provide for the charge to extend to any interest or dividend payable in respect of the asset.

(6) In relation to a charging order, the court

- (a) may at any time make an order discharging or varying it; and

- (b) shall make an order discharging it on

- (i) the conclusion of the proceedings or application in question, or

- (ii) the payment into court of the amount payment of which is secured by the charge,

whichever occurs first.

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

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(8) The Registered Land Ordinance shall apply in relation to charging orders as it applies in relation to orders or writs issued or made for the purpose of enforcing judgments.

(9) Subject to any provision made under section 19 or by rules of court, a charge imposed by a charging order shall have the like effect and 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 trustee by writing under their hand.

Applications  
for supported  
restraint and  
charging  
Orders.

**18A.** An application under section 17 (4) or 18 (2) shall be by an affidavit which shall

- (a) state, where applicable, the grounds for believing that an external confiscation order may be made in the proceedings instituted or to be instituted in the designated

country concerned,

- (b) to the best of the deponent's ability, give particulars of the realisable property in respect of which the

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order is sought and specify the person or persons holding that property, and

- (c) in a case to which section 16 (2) applies, indicate when it is intended that proceedings should be instituted in the designated country concerned,

and the affidavit may, unless the court otherwise directs, contain statements of information or belief with the sources and grounds thereof.

**19.** (1) Where an external confiscation order has been registered in the High Court under section 33, the Court may, on the application of the Attorney General or a person authorised in that behalf by the Attorney General, exercise the powers conferred by subsections (1A) to (6).

Realisation  
of property.

(1A) In respect of any sum of money payable under the external confiscation order, the Court may make a garnishee order as if the sum were due to the Crown in pursuance of a judgment or order of the Court, but any such order shall direct that the sum payable be paid to the Court.

(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 17 or in pursuance of a charging order,

- (a) to enforce any charge imposed under section 18 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 subject to a charge under section 18, to take possession of the property subject to such conditions or exceptions as may be specified by the Court.

(4) The Court may

- (a) order any person having possession of realisable property to give possession of it to any such receiver;

- (b) empower any such receiver to realise any realisable property in such manner as the Court may direct; and

- (c) 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

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defendant or, as the case may be, the recipient of a gift caught by this Act, as the Court may direct and the Court may, on payment being made, by order transfer, grant or extinguish any interest in the property.

(5) Subsection (4) does not apply to property which is subject to a charge under section 18.

(6) The Court shall not, in respect of any property, exercise the powers conferred by subsections (3)(a) and (4)(b) and (c), 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.

**20.** (1) Subject to subsection (2),

- (a) the proceeds of the enforcement of any charge imposed under section 18,
- (b) the proceeds of the realisation, other than by the enforcement of a charge, of any property under section 17 or 19, and
- (c) any other sums, being property held by the defendant,

which are in the hands of a receiver appointed under this Act or in pursuance of a charging order shall, after such payments (if any) as the High Court may direct have been made out of those sums, be paid to the Court and applied for the purposes specified in this section 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 sums remain in the hands of the receiver, he shall distribute the sums among those persons who held property which has been realised under this Act, and in such proportions as the High Court may direct after giving a reasonable opportunity for such persons to make representations to the Court.

(3) (Omitted).

(4) If the money was paid to the Registrar by a receiver appointed under this Act or in pursuance of a charging order, the Registrar shall next pay the receiver's remuneration and expenses.

(5) After making

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- (a) any payment required by subsection (2), and
- (b) in a case to which subsection (4) applies, any payment required by that subsection,

the Registrar shall reimburse any amount paid under section 25 (2).

(6) (Omitted).

(7) Any balance in the hands of the Registrar after he has made all payments required by this section shall be treated as if it were a fine imposed by the court.

(8) (Omitted).

**21.** (1) This section applies to the powers conferred on the High Court by sections 17 to 20, or on a receiver appointed under this Act or in pursuance of a charging order.

Exercise of  
powers by  
High Court or  
receiver.

(2) Subject to the provisions of this section, the power referred to in subsection (1) shall be exercised with a view to recovering property which is liable to be recovered under an external confiscation order registered in the Court under section 33 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 Act, the powers shall be exercised with a view to realising 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) 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.

**22.** (Omitted).

- |                               |  |
|-------------------------------|--|
| Bankruptcy of defendant, etc. | <p><b>23.</b> (1) Where an order for bankruptcy is made against a person who holds realisable property,</p> <ul style="list-style-type: none"> <li>(a) any property for the time being subject to a restraint order made before the order for bankruptcy, and</li> <li>(b) any proceeds of property realised by virtue of section 17 (7) or 19 (4) (b) or (c) for the time being in the hands of a receiver appointed under section 17 or 19,</li> </ul> <p>is excluded from the property of the bankrupt for the purposes of the Bankruptcy Act.</p> <p>(2) Where an order for bankruptcy is made against a person, the powers conferred on the High Court by sections 17 to 20 or on a receiver so appointed shall not be exercised in relation</p> <ul style="list-style-type: none"> <li>(a) to property comprised in the property of the bankrupt for the purposes of the Bankruptcy Act; and</li> <li>(b) to property of which is to be applied for the benefit of creditors of the bankrupt under the Bankruptcy Act.</li> </ul> <p>(3) Subject to subsection (2), nothing in the Bankruptcy Act shall be taken as restricting, or enabling the restriction of, the exercise of the powers conferred on the High Court by sections 17 to 20 or on a receiver so appointed.</p> <p>(4) Subsection (2) does not affect the enforcement of a charging order</p> <ul style="list-style-type: none"> <li>(a) made before the order for bankruptcy was made; or</li> <li>(b) on property which was subject to a restraint order when the order for bankruptcy was made.</li> </ul> <p>(5) Where, in the case of a debtor,</p> <ul style="list-style-type: none"> <li>(a) the trustee in bankruptcy constituted under Part V of the Bankruptcy Act has been ordered to become the receiver or manager of the property or business of the debtor, and</li> <li>(b) any property of the debtor is subject to a restraint order,</li> </ul> |
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the powers conferred on the trustee by virtue of the Bankruptcy Act do not apply to property subject to the restraint order.

(6) Where an order for bankruptcy is made against a person who has directly or indirectly made a gift caught by this Act, the provisions of the Bankruptcy Act shall not apply

- (a) in respect of the making of the gift at any time when proceedings 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.

**24.** (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

Winding up  
of company  
holding  
realisable  
property.

- (a) to property subject to a restraint order made before the relevant time; and
- (b) to any proceeds of property realised by virtue of section 17(7) or 19(4)(b) or (c) for the time being in the hands of a receiver appointed under section 17 or 19.

(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 High Court by sections 17 to 19 or on a receiver so appointed shall not be exercised in relation to which the functions of the liquidator are exercisable so as to

- (a) inhibit him from exercising those functions for the purpose of distributing any property held by the company to the company's creditors; or
- (b) prevent the payment out of any property of 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) For the purposes of 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;

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- (b) where an order for the winding up of the company has been made and, before the presentation of the petition for the winding up of the company by the court, the resolution for voluntary winding up had been passed by the company, the time of the passing of the resolution; and
- (c) in any other case where an order for the winding up of the company has been made, the time of the making of the order.

Supple-mentary  
provisions  
relating to  
receivers.

**25.** (1) Where a receiver appointed under this Act or in pursuance of a charging order takes any action

- (a) in relation to 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 in so far 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 applied in payment of it under section 20 (5), be paid out of the revenues of the Territory or, in a case where proceedings to which this Act applies are not instituted, by the person on whose application the receiver was appointed.

**26.** (Omitted).

## MONEY LAUNDERING AND OTHER OFFENCES

Reporting  
Authority. S.I.  
No. 11 of 1998

Assisting  
another to retain  
the benefit of  
criminal  
conduct

**27.** The Reporting Authority established under the Reporting Authority (Constitution and Procedure) Order, 1998 shall exercise the powers and perform the duties conferred or imposed on it under this Act.

**28.** (1) Subject to subsection (3), a person commits an offence if he enters into or is otherwise concerned in an arrangement whereby

- (a) the retention or control by or on behalf of another person of that other person's proceeds of criminal conduct is facilitated, whether by concealment, removal from the Territory, transfer to nominees or otherwise, or

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- (b) the proceeds of criminal conduct of that other person mentioned in paragraph (a) are used

- (i) to secure that funds are placed at that other person's disposal, or
- (ii) for that other person's benefit to acquire property by way of investment,

knowing or suspecting that other person is a person who is or has been engaged in criminal conduct or has benefitted from criminal conduct.

(2) 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 the 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 imposed by statute 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.

(3) 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 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 the other person mentioned in subsection (1) 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

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- (c) that he intended to disclose to the Reporting Authority such a suspicion, belief or matter as is mentioned in subsection (2) in relation to the arrangement, but there was reasonable excuse for this failure to make disclosure in accordance with subsection (2) (b).

(4) In the case of a person who was in employment at the relevant time, subsections (2) and (3) 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.

(5) Where information is disclosed to the Reporting Authority under subsection (2), the 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.

(6) Subsection (5) does not apply to information received by the Reporting Authority which it discloses to any institution or person in the Territory.

(7) Subject to subsections (5) and (6), the Reporting Authority may disclose any information received under this section in relation to criminal conduct,

- (a) to any law enforcement agency in the Territory, or  
(b) to any law enforcement agency in any other country, in order  
(i) to report the possible commission of an offence;  
(ii) to initiate a criminal investigation respecting the matter disclosed;  
(iii) to assist with any investigation or criminal proceedings respecting the matter disclosed; or

(iv) to generally give effect to the purposes of this Act.

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(8) A person who commits an offence under this section is liable

- (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding three thousand dollars, or both, or
- (b) on conviction on indictment, to imprisonment for a term not exceeding fourteen years or to a fine not exceeding twenty thousand dollars, or both.

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

**29.**(1) A person commits an offence if, knowing that any property is, or in whole or in part directly or indirectly represents, another person's proceeds of criminal conduct, he acquires or uses that property or has possession of it.

Acquisition,  
possession or  
use of proceeds  
of criminal  
conduct.

(2) It is a defence to a charge of committing an offence under this section 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 of 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 the 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

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

(6) Where information is disclosed to the Reporting Authority under section 28 (2), the 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 respecting a matter which it requires to disclose to any institution or person in the Territory.

(8) Subject to subsections (6) and (7), the Reporting Authority may disclose any information received under this section in relation to a criminal conduct,

- (a) to any law enforcement agency in the Territory,
- (b) to any law enforcement agency in any other country in order
  - (i) to report the possible commission of an offence;
  - (ii) to initiate a criminal investigation respecting the matter disclosed;
  - (iii) to assist with any investigation respecting the matter disclosed; or

(iv) to generally give effect to the purposes of this Act.

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(9) In proceedings against a person for an offence under this section, it is a defence to prove that he intended to disclose to the Reporting Authority such a suspicion, belief or matter as is mentioned in subsection (5), but there was reasonable excuse for his failure to make the disclosure in accordance with paragraph (b) of that subsection.

(10) In the case of a person who was in employment at the relevant time, subsections (5) and (9) 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.

(11) A person who commits an offence under this section is liable

(a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding three thousand dollars, or both; or

(b) on conviction on indictment, to imprisonment for a term not exceeding fourteen years or to a fine not exceeding twenty thousand dollars, or both.

(12) No member of the Reporting Authority or other person commits 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 criminal conduct or the proceeds of such conduct.

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

**30.** (1) A person commits an offence if he

(a) conceals or disguises any 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 Territory,

Concealing  
or  
transferring  
proceeds of  
criminal  
conduct.

for the purpose of avoiding prosecution for an offence to which this Act applies or the making or enforcement in his case of a confiscation order.

(2) A person commits an offence if, knowing or having reasonable grounds to suspect that any property is, or

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in whole or in part directly or indirectly represents, another person's proceeds of criminal conduct, he

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

for the purpose of assisting any person to avoid prosecution for an offence to which this Act applies or the making or enforcement in his case of a confiscation order.

(3) In subsections (1) and (2), 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) A person who commits an offence under this section is liable

- (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding three thousand dollars, or both; or
- (b) on conviction on indictment, to imprisonment for a term not exceeding fourteen years or to a fine not exceeding twenty thousand dollars, or both.

Tipping-off. **31.** (1) A person commits an offence if

- (a) he knows or suspects 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) he discloses to any other person information or any other matter which is likely to prejudice that investigation, or proposed investigation.

(2) A person commits an offence if

- (a) he knows or suspects that a disclosure ("the disclosure") has been made to the Reporting

Authority under section 28 or 29; and

- (b) he discloses to any other person information or any other matter which is likely to prejudice any investigation which might be conducted following the disclosure.

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(3) A person commits an offence if

(a) he knows or suspects that a disclosure (“the disclosure”) of a kind mentioned in section 28 (2) or 29 (5) has been made; and

(b) he discloses to any person information or any other matter which is likely to prejudice any investigation which might be conducted following the disclosure.

(4) Nothing in subsections (1) to (3) makes it an offence 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 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 proceedings against a person for an offence under subsection (1), (2) or (3), it is a defence to prove that he did not know or suspect that the disclosure was likely to be prejudicial in the way mentioned in that subsection.

(7) In this section “money laundering” means doing any act which constitutes an offence under section 28, 29 or 30 or, in the case of an act done otherwise than in the Territory, would constitute such an offence if done in the Territory.

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

(9) A person who commits an offence under this section is liable

(a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding three thousand dollars, or both; or

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(b) on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine not exceeding ten thousand dollars, or both.

(10) No member of the Reporting Authority or other person shall be convicted 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 Act or of any other enactment relating to an offence to which this Act applies.

## **ENFORCEMENT OF EXTERNAL ORDERS**

**32.**(Omitted).

Registration of  
external  
confiscation  
orders.

**33.(1)** On an application made by the Attorney General on behalf of the Government of a designated country, the High Court may register an external confiscation order made there if

- (a) it is satisfied that at the time of registration the order is in force and not subject to appeal;
- (b) 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
- (c) it is of the opinion that enforcing the order in the Territory would not be contrary to the interests of justice.

(2) The High Court shall not register an external confiscation order made in a designated country 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 Territory.

(3) The High 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 or by the person against whom it was made serving imprisonment in default of payment or by any other means.

(4) For the purposes of subsection (1), “appeal” includes

- (a) any proceedings by way of discharging or setting aside a

judgement; and

(b) an application for a new trial or a stay of execution.

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## MISCELLANEOUS

**34.** (Omitted).

**35.** (Omitted).

**36.** (Omitted).

**37.** (Omitted).

**38.** No action shall be brought against any police officer or \_\_\_\_\_ of the Reporting Authority for anything done by him, in good faith, in exercise of the powers conferred on him by this Act.      Immunity from suit.

**39.** No prosecution for an offence under section 28, 29, 30 or 31 shall be instituted without the consent of the Attorney General.      Consent of Attorney General required for prosecution of certain offences.

**40.** (Omitted).

**41.** (Omitted).

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**APPENDIX**  
[ Section 2 (5) (f) (i) ]  
**INSTITUTION OF PROCEEDINGS**

Designated Country	Point at which proceedings are instituted

Belgium	
Cyprus	
Denmark	
Germany	when a person is notified that he is accused of an offence and will be brought before a court
Iceland	
Italy	<ul style="list-style-type: none"> <li>(a) when a person is notified, in accordance with article 369 of the Italian Code of Criminal Procedure, that a prosecution against him is in progress;</li> <li>(b) when a proposal for the application of a preventative measure (“<i>misura di prevenzione</i>”) is laid before a court</li> </ul>
Netherlands	<ul style="list-style-type: none"> <li>(a) when a pre-trial financial investigation has been initiated;</li> <li>(b) when the provisional order has been ordered by an investigating magistrate;</li> <li>(c) when a public prosecutor has requested a pre-trial criminal investigation by an investigating magistrate to be instituted;</li> <li>(d) when a public prosecutor has laid an indictment</li> </ul>
Norway	
Portugal	
Spain	when by virtue of a judicial resolution it is decided to proceed against a person for an offence
Sweden	when a public prosecutor has established that there are reasonable grounds to suspect that a person has committed an offence and accordingly is obliged under the Code of Judicial Procedure to notify the person of the suspicion
United Kingdom	<ul style="list-style-type: none"> <li>(a) when an information is laid before a justice of the peace;</li> <li>(b) when a person is charged with an offence;</li> <li>(c) when a bill of indictment is preferred;</li> <li>(d) when a petition warrant is granted</li> </ul>

Made by the Governor in Council this 29<sup>th</sup> day of September, 1999.

ERICA SMITH-PENN,  
Ag. Clerk of the Executive Council.