



DRUG TRAFFICKING OFFENCES ACT **Statutory Instruments**

Revised Edition
showing the law as at 30 June 2013

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Law Revision Act 2014.

This edition contains a consolidation of the following laws—

	Page
DRUG TRAFFICKING OFFENCES (DESIGNATED COUNTRIES AND TERRITORIES) ORDER	3
S.I. 65/1996 .. in force 24 January 1997	
Amended by Act 6 of 2010 .. in force 24 September 2010	



VIRGIN ISLANDS

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The Regional Law Revision Centre Inc.

For information contact—

Attorney General's Chambers
4th Floor, TTT Building
Wickhams Cay 1
P.O. Box 242
Road Town
Tortola, VG1110
British Virgin Islands

Tel: (284) 468 – 2960
Fax: (284) 468 – 2983
Email: agc@gov.vg

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**DRUG TRAFFICKING OFFENCES
(DESIGNATED COUNTRIES AND TERRITORIES) ORDER**

ARRANGEMENT OF SECTIONS

SECTION

1. Citation
 2. Interpretation
 3. Designation of and application of the Act to countries and territories
 4. Proof of orders and judgement of court in a designated country
 5. Evidence in relation to proceedings and orders in a designated country
 6. Certificate as to appropriate authority of a designated country
 7. Representation of government of a designated country
 8. Satisfaction of confiscation order in a designated country
 9. Currency conversion
- SCHEDULE 1: Designated Countries
- SCHEDULE 2: Drug Trafficking Act, 1992 as Modified

**DRUG TRAFFICKING OFFENCES
(DESIGNATED COUNTRIES AND TERRITORIES) ORDER – SECTION 24**
(*S.I. 65/1996 and Act 6 of 2010*)

Commencement

[24 January 1997]

Citation

1. This Order may be cited as the Drug Trafficking Offences (Designated Countries and Territories) Order.

Interpretation

2. In this Order, unless the context otherwise requires—

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

“appropriate authority of a designated country” means—

(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 24 and 25 of the Act, and of the other provisions of the Act as applied under section 3(2);

“designated country” means a country or territory designated under section 3(1); and

“the Act” means the Drug Trafficking Offences Act.

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 24 and 25 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.

Proof of orders and judgment of court in a designated country

4. (1) For the purposes of sections 24 and 25 of the Act, and of the other provisions of the Act as applied under section 3(2)—

(a) any order made or judgment given by a court in 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 in 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 judgment given by a court in a designated country is duly authenticated for the purpose of subsection 1(b) if it purports to be certified by a person in his or her 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.

Evidence in relation to proceedings and orders in a designated country

5. (1) For the purposes of section 24 and 25 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—

- (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(1)(e)(ii) of the Act, as modified by Schedule 2, applies, that the defendant has been notified as specified in section 2(1)(e)(ii);
- (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;
- (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 drug trafficking or their value,

shall, in any proceedings in the High 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 or her 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

6. Where, in relation to 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 24 and 25 of the Act, and of the other provisions of the Act as applied by section 3(2) shall be sufficient evidence of that fact.

Representation of government of a designated country

7. A request for assistance sent to the Governor by the appropriate authority of a designated country shall, unless 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 Crown Prosecution Service or the Commissioner of Customs to act on its behalf in proceedings in the High Court under section 25 of the Act or any other provision of the Act as applied by section 3(2). *(Amended by Act 6 of 2010)*

Satisfaction of confiscation order in a designated country

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 5 of the Act;
- (b) a request has 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.

Currency conversion

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 High Court under section 25 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.

(3) For the purposes of this section a written certificate purporting to be signed by a person acting in his or her 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.

SCHEDELE 1

(Section 3(1))

<i>Designated Country</i>	<i>Appropriate Authority</i>
Afghanistan	
Algeria	
Anguilla	the Attorney General of Anguilla
Antigua and Barbuda	
Argentina	
Armenia	
Australia	the Attorney General's Department
Azerbaijan	
The Bahamas	the Attorney General of the Bahamas
Bahrain	the Ministry of the Interior
Bangladesh	
Barbados	the Attorney General of Barbados
Belarus	
Bermuda	the Attorney General of Bermuda
Bhutan	
Bolivia	
Bosnia and Herzegovina	
Brazil	
Brunei	
Bulgaria	
Burkina Faso	
Burma	
Burundi	
Cameroon	
Canada	the Minister of Justice or officials designated by that Minister
The Cayman Islands	the Attorney General of the Cayman Islands
Chad	
Chile	
China	
Columbia	
Costa Rica	the Fiscalia General de la Nacion
Croatia	
Cyprus	
The Czech Republic	
Denmark	
Dominica	
Dominican Republic	
Ecuador	Consejo Nacional de Control de Sustancias Estupefacientes y Psicotropicas (CONSEP)
Egypt	

<i>Designated Country</i>	<i>Appropriate Authority</i>
El Salvador	
Ethiopia	
Fiji	
Finland	
France	
Germany	
Ghana	
Gibraltar	the Attorney General of Gibraltar
Greece	
Grenada	
Guatemala	
Guernsey	Her Majesty's Attorney General for the Bailiwick of Guernsey
Guinea	
Guyana	the Permanent Secretary, Ministry of Home Affairs
Honduras	
Hong Kong	the Attorney General of Hong Kong
India	the Ministry of Home Affairs
Iran	
Isle of Man	Her Majesty's Attorney General for the Isle of Man
Italy	the Ministry of Justice
Ivory Coast	
Japan	
Jersey	Her Majesty's Attorney General for the Bailiwick of Jersey
Jordan	
Kenya	
Kyrgyzstan	
Latvia	
Lesotho	
Luxembourg	
Macedonia	
Madagascar	
Malaysia	the Inspector General of Police, Malaysia
Mauritania	
Moldova	
Monaco	
Montserrat	the Attorney General of Montserrat
Morocco	
Myanmar	
Nepal	
Netherlands	Afdeling International Rechtshulp
Nicaragua	
Niger	

<i>Designated Country</i>	<i>Appropriate Authority</i>
Nigeria	the Attorney General of the Federation of the Republic of Nigeria
Norway	
Oman	
Pakistan	
Panama	the Ministry of Government and Justice
Paraguay	
Peru	
Poland	
Portugal	
Qatar	
Romania	
The Russian Federation	
St Kitts and Nevis	
St. Lucia	
St Vincent and the Grenadines	
Saudi Arabia	the Ministry of the Interior
Senegal	
Seychelles	
Sierra Leone	
Slovakia	
Slovenia	
South Africa	the Department of Foreign Affairs
Spain	the Ministerio de Justicia, Madrid
Sri Lanka	
Sudan	
Suriname	
Sweden	the Ministry for Foreign Affairs
Switzerland	Office federal de la police
Syria	
Togo	
Trinidad and Tobago	
Tunisia	
Turks and Caicos Islands	
Uganda	
Ukraine	
United Arab Emirates	
United Kingdom	the Home Office
United Mexican States	the Office of the Attorney General
United States of America	the Attorney General of the United States of America
Uruguay	the Ministry of Education and Culture
Uzbekistan	
Venezuela	
Yugoslavia	
Zambia	
Zimbabwe	

SCHEDULE 2

(Section 3(2))

DRUG TRAFFICKING OFFENCES ACT AS MODIFIED

1. (Omitted)

Interpretation

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

“corresponding law” has the meaning assigned thereto by section 3;

“Court” means the High Court;

“drug trafficking” means doing or being concerned in any of the following whether in the Territory or elsewhere—

(a) producing or supplying a controlled drug where the production or supply contravenes section 6(1) and (2) of the Drugs (Prevention of Misuse) Act, or a corresponding law;

(b) transporting or storing a controlled drug where possession of the drug contravenes section 7(1) of the Drugs (Prevention of Misuse) Act, or a corresponding law;

(c) importing or exporting a controlled drug where the importation or exportation is prohibited by section 5(1) of the Drugs (Prevention of Misuse) Act, or a corresponding law;

(d) entering into or being otherwise concerned in an arrangement whereby—

(i) the retention or control by or on behalf of another of the proceeds of drug trafficking by him or her is facilitated; or

(ii) the proceeds of drug trafficking by another are used to secure that funds are placed at his or her disposal or are used for his or her benefit to acquire property by way of investment;

(e) manufacturing or supplying a scheduled substance within the meaning of section 11 of the Criminal Justice (International Co-operation) Act where the manufacture or supply is an offence under this section.

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

“police officer” includes, in relation to drug trafficking or drug trafficking offences, the Director or an investigating officer of the Agency; (*Inserted by Act 2 of 2008*)

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

(2) The expressions listed in column one below are respectively defined or (as the case may be) fall to be construed in accordance with the provision of this Act listed in column two in relation to those expressions.

COLUMN ONE

COLUMN TWO

Charging order	Section 19(2)
External Confiscation Order.....	Section 5(3)
Dealing with property	Section 18(8)
Defendant	Section 5(3)
Gift caught by this Act	Section 4(8)
Making a gift	Section 4(9)
Realisable property	Section 4(1)
Restraint order	Section 18(1)
Value of gift, payment or reward	Section 4(5)
Value of proceeds of drug trafficking	Section 4(5)
Value of property	Section 4(4)

(3) This Act applies to property whether it is situated in the Territory or elsewhere.

(4) (*Omitted*)

(5) References in this Act to anything received in connection with drug trafficking include a reference to anything received both in that connection and in some other connection and whether received before or after the commencement of the Drug Trafficking Offences (Designated Countries and Territories) Order and whether received in connection with drug trafficking carried on by the recipient or some other person.

(6) The following provisions shall have effect for the interpretation of this Act—

- (a) property is held by any person if he or she holds any interest in it;
- (b) references to property held by a person include a reference to property vested in his or her 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 or her beneficially if the property were not so vested;
- (d) property is transferred by one person to another if the first person transfers or grants to the other any interest in the property;
- (e) proceedings are instituted in a designated country when—
 - (i) under the law of the designated country concerned one of the steps specified in relation to that country in Column 2 of the Appendix hereto has been taken in respect of alleged drug trafficking by the defendant;
 - (ii) where no steps have been specified in relation thereto as mentioned in subparagraph (i), 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 section 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;

(f) proceedings for an offence are concluded—

- (i) 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;
- (ii) on the satisfaction of a 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).

(7) 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 would be varied or set aside.

(8) Without prejudice to the provisions of any other law, the powers exercisable by the Court are exercisable by the Court of Appeal on appeal from the Court.

Meaning of “corresponding law”

3. (1) In this Act the expression “corresponding law” means—

- (a) a law stated in a certificate purporting to be issued by or on behalf of the Government of a country outside the Territory to be a law providing for the control and regulation in that country of the production, supply, use, export and import of drugs and other substances in accordance with the provisions of the Single Convention on Narcotic Drugs signed at New York on 30 March 1961; or
- (b) a law providing for the control and regulation in that country of the production, supply, use, export and import of dangerous or otherwise harmful drugs in pursuance of any treaty, convention or other agreement or arrangement to which the Government of the country and the Government of the United Kingdom of Great Britain and Northern Ireland, including the Territory, are for the time being parties.

(2) A statement in any such certificate as aforesaid to the effect that any facts constitute an offence against the law mentioned in the certificate shall be conclusive evidence of the matters stated.

Provisions as to profit

4. (1) In this Act, “realisable property” means, subject to subsection (2)—

- (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 Act.

(2) Property is not realizable property if an order—

- (a) under section 29 of the Drugs (Prevention of Misuse) Act;
- (b) under section 37B of the Proceeds of Criminal Conduct Act;

- (c) under article 15 of the Anti-terrorism (Financial and Other Measures) (Overseas Territories) Order; or

- (d) made pursuant to any other enactment,

is in force in respect of the property.

(Substituted by Act 2 of 2008)

(3) *(Omitted)*

(4) Subject to the following 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—

- (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 an incumbrance “(other than a charging order under this Act, the Proceeds of Criminal Conduct Act or any other enactment) on that interest; and *(Amended by Act 2 of 2008)*
- (b) in any other case, its market value.

(5) Subject to subsection (9), references in this Act to the value at any time (referred to in subsection (6) as “the material time”) of a gift caught by this Act or of any payment or reward are references to—

- (a) the value of the gift, payment or reward to the recipient when he or she received 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) Subject to subsection (9), if, at the material time the recipient holds—

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

the value referred to in subsection (5)(b) is the value to him or her 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 or she received, but disregarding in either case any charging order.

(7) *(Omitted)*

(8) A gift (including a gift made before the coming into operation of the Drug Trafficking Offences (Designated Countries and Territories Order) is caught by this Order if—

- (a) it was made by the defendant at any time since the beginning of the period of 6 years ending when the proceedings were instituted against him or her; or
- (b) it was made by the defendant at any time and was a gift of property—

(i) received by the defendant in connection with drug trafficking carried on by him or her or another; or

(ii) which in whole or in part directly or indirectly represented in the defendant's hands property received by him or her in that connection.

(9) For the purposes of the Designated Countries and Territories Order—

- (a) the circumstances in which the defendant is to be treated as making a gift include those where he or she 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, the preceding provisions of this section shall apply as if the defendant had 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.

External Confiscation orders

5. (1) An order made by a court in a designated country for the purpose of recovering payments or other rewards received in connection with drug trafficking 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 judgment, 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.”

6. to 16. (Omitted)

Cases in which restraint orders and charging orders may be made

17. (1) The powers conferred on the court by sections 18 and 19 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 Court that there are reasonable grounds for believing that an external confiscation order may be made in them.

(2) The powers conferred on the court by sections 18 and 19 are also exercisable where—

- (a) the court is satisfied that, whether by the laying of an information or otherwise, a person is to be charged with a drug trafficking offence or that an application of a kind mentioned in subsection (1)(a) is to be made in respect of the defendant; and

- (b) the court is also satisfied as mentioned in subsection (1)(c).
(Substituted by Act 5 of 2000)

The powers conferred on the court by sections 18 and 19 are also exercisable where it appears to the court 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 the court has made an order under section 18 and 19 by virtue of subsection (2), the court shall discharge the order if the proposed proceedings are not instituted.

(5) Where the court has made an order under section 18(1) or 19(1) in relation to a proposed application by virtue of subsection (2) herein, the court shall discharge the order if the application is not made within such time as the court considers reasonable.
(Inserted by Act 5 of 2000)

(6) The court shall not exercise the powers under section 18(1) or 19(1) by virtue of subsection (1) herein, if it is satisfied that—

- (a) there has been undue delay in continuing the proceedings or application in question; or
(b) the prosecutor does not intend to proceed.
(Inserted by Act 5 of 2000)

Restraint orders

18. (1) The court may by order (in this Act referred to 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) 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 or her after making of the order.

(3) This section shall not have effect in relation to any property for the time being subject to a charge under section 19.

(4) A restraint order—

- (a) may be made only on an application by the prosecutor; *(Amended by Act 2 of 2008)*
(b) may be made on an *ex parte* application to a Judge or Magistrate in chambers; and *(Amended by Act 2 of 2008)*
(c) shall provide for notice to be given to persons affected by the order.

(5) A restraint order—

- (a) may be discharged or varied in relation to any property; and
(b) shall be discharged on the conclusion of the proceedings or of the application in question. *(Substituted by Act 5 of 2000)*

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

(7) Where the court has made a restraint order, the court 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 the property in respect of which he or she 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 section to give possession of the property to the receiver.

(8) For the purposes of this section, dealing with 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 property from the Territory.

(9) Where the 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.

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

(11) The Title by Registration Act and the Registered Land Ordinance, shall apply—

(a) in relation to restraint orders, as they apply in relation to orders affecting land made by the court for the purpose of enforcing judgments or recognisances; and

(b) in relation to applications for restraint orders, as they apply in relation to other pending land actions.

(12) The prosecutor shall be treated for the purposes of section 124 of the Registered Land Ordinance (inhibitions) as a person interested in relation to any registered land to which a restraint order or an application for such an order relates.

Charging orders in respect of land, securities, etc.

19. (1) The court may make a charging order on realisable property for securing the payment to the Crown—

(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 Act, a charging order is an order made under this section imposing on any such realisable property as may have been specified in the order a charge for securing the payment of money to the Crown.

(3) A charging order—

- (a) may be made only on an application by the prosecutor; (*Amended by Act 2 of 2008*)
- (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 Act in any asset of a kind mentioned in subsection (5); 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 Territory, or
- (b) securities of any of the following kinds—
 - (i) Government stock;
 - (ii) stock of any body (other than a building society) incorporated within the Territory;
 - (iii) stock of any body incorporated outside the Territory, being stock registered in a register kept within the Territory;
 - (iv) units of any unit trust in respect of which a register of the unit holders is kept within the Territory.

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

(7) In relation to a charging order, the court—

- (a) may make an order discharging or varying it; and
- (b) shall make an order discharging it—
 - (i) on the conclusion of the proceedings or of the application in question; or
 - (ii) on payment into court of the amount payment of which is secured by the charge.

(Substituted by Act 5 of 2000)

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

Charging orders: supplementary provisions

20. Subject to any provision made under section 21 or by rules of court, a charge imposed by a charging order shall have the like effect and shall be enforceable in the same courts and 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.

Realisation of property

21. (1) Where a confiscation order—

- (a) has been made under this Act;
- (b) is not satisfied; and
- (c) is not subject to appeal,

the court may, on application by the prosecutor, exercise the powers conferred by subsections (2) to (6).

(Substituted by Act 5 of 2000)

(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 18 or in pursuance of a charging order—

- (a) to enforce any charge imposed under section 19 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 19, 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 Act 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 19.

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

Application of proceeds of realisation and other sums

22. (1) Subject to subsection (2), the following sums in the hands of a receiver appointed under section 18 or 19 or in pursuance of a charging order, that is—

- (a) the proceeds of the enforcement of any charge imposed under section 19;
- (b) the proceeds of the realisation, other than by the enforcement of such a charge, of any property under section 18 or 21; and
- (c) any other sums, being property held by the defendant,

shall, first be applied in payment of such expenses incurred by a person acting as a receiver or a liquidator as are payable under section 27(2) and then shall after such payments (if any) as the 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) 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 such a receiver, the receiver shall distribute those sums—

- (a) amongst those who held property which has been realised under this Act; and
- (b) in such proportions,

as the court may direct after giving a reasonable opportunity for such persons to make representations to the court.

(3) The receipt of any sum by the Registrar of the court on account of an amount payable under a confiscation order shall reduce the amount so payable, but the Registrar of the court shall apply the money received for the purposes specified in this section and in the order so specified.

(4) The Registrar of the court shall first pay any expenses incurred by a person acting as a receiver or a liquidator and payable under section 27(2) but not already paid under subsection (1).

(5) If the money was paid to the Registrar of the court by a receiver appointed under section 18 or 21 or in pursuance of a charging order, the Registrar of the court shall next pay the receiver's remuneration and expenses.

(6) After making—

- (a) any payment required by subsection (4); and
- (b) in a case to which subsection (5) applies, any payment required by that subsection,

the Registrar of the court shall reimburse any amount paid under section 27(2).

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

(8) The receipt, payment or reimbursement by the Registrar of the court of any sums or expenses under this section shall, in relation to the Magistrate's Court, be construed to refer to the Magistrate or to such other person of his or her staff as may be appointed in that regard to assist the Magistrate. (*Inserted by Act 2 of 2008*)

Exercise of powers by court or receiver

23. (1) The following provisions apply to the powers conferred on the court by sections 18 to 22, or on a receiver appointed under section 18 or 21 or in pursuance of a charging order.

(2) Subject to the following provisions of this section, 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 such 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 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 or her.

(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 confiscation order.

24. (Omitted)

Bankruptcy of defendant, etc.

25. (1) Where a person who holds realisable property is adjudged bankrupt—

- (a) property for the time being subject to a restraint order made before the order adjudging him or her bankrupt; and
- (b) any proceeds of property realised by virtue of section 18(6) or 21(5) or (6) for the time being in the hands of a receiver appointed under section 18 or 21,

is excluded from the property of the bankrupt for the purposes of the Insolvency Act.
(Amended by Act 2 of 2008)

(2) Where a person has been adjudged bankrupt, the powers conferred on the Court by sections 11 to 22 or on a receiver so appointed shall not be exercised in relation to—

- (a) property of the bankrupt for the time being for the purposes of the Insolvency Act; and *(Amended by Act 2 of 2008)*
- (b) property which is to be applied for the benefit of creditors of the bankrupt by virtue of a condition imposed pursuant to the Insolvency Act. *(Amended by Act 2 of 2008)*

(3) Subsection (2) does not affect the enforcement of a charging order—

- (a) made before the order adjudging the person bankrupt; or
- (b) on property which was subject to a restraint order when the order adjudging him or her bankrupt was made.

(4) Where, in the case of a debtor, a receiver or liquidator is appointed in his or her case or in relation to him or her under the Insolvency Act and any property of the debtor is subject to a restraint order, the powers conferred on the receiver or liquidator by virtue of that Act shall not apply to property for the time being subject to the restraint order. (*Substituted by Act 2 of 2008*)

(5) Where a person is adjudged bankrupt and has directly or indirectly made a gift caught by this Act—

- (a) no order shall be made under the Insolvency Act in respect of the making of the gift at any time when—
 - (i) proceedings for a drug trafficking offence have been instituted against him or her and have not been concluded;
 - (ii) an application has been made in respect of the defendant under section 11, 13, 14 or 15 or section 13 of the Criminal Justice (International Co-operation) Act and has not been concluded; or
- (b) any order made under the Insolvency Act after the conclusion of the proceedings or of the application shall take into account any realisation under this Act of property held by the person to whom the gift was made.

(Amended by Acts 5 of 2000 and 2 of 2008)

Winding up of company holding realisable property

26. (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 18(6) or 21(5) or (6) for the time being in the hands of a receiver appointed under section 18 or 21.

(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 court by sections 18 to 22 or on a receiver so appointed 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 or her from exercising those functions for the purpose of distributing any property held by the company to the company creditors; or
- (b) so as to 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) In this section—

“company” means any company which may be wound up under the BVI Business Companies Act; and (*Amended by Act 2 of 2008*)

“the 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 and liquidators dealing with property subject to restraint order

27. (1) Without prejudice to the generality of any provisions contained in the Insolvency Act or any other enactment, where—

- (a) a person acting as a receiver or liquidator seizes or disposes of any property in relation to which his or her functions are not exercisable because it is for the time being subject to a restraint order; and
- (b) at the time of the seizure or disposal he or she believes, and has reasonable grounds for believing, that he or she is entitled (whether in pursuance of an order of the court or otherwise) to seize or dispose of that property,

he or she shall not be liable to any person in respect of any loss or damage resulting from the seizure or disposal except in so far as the loss or damage is caused by his or her negligence in so acting and a person so acting shall have a lien on the property, or the proceeds of its sale, for such of his or her expenses as were incurred in connection with the liquidation, bankruptcy or other proceedings in relation to which the seizure or disposal purported to take place and for so much of his or her remuneration as may reasonably be assigned for his or her acting in connection with those proceedings.

(Amended by Act 2 of 2008)

(2) Any person who, acting as a receiver or liquidator incurs expenses—

- (a) in respect of such property as is mentioned in subsection 1(a) and in so doing does not know, and has no reasonable grounds to believe that the property is for the time being subject to a restraint order; or
- (b) other than in respect of such property as is so mentioned, being expenses which but for the effect of a restraint order, might have been met by taking possession of and realising the property,

shall be entitled (whether or not he or she has seized or disposed of that property so as to have a lien under that subsection) to payment of those expenses under section 22.

(3) In this Act, the expression “acting as a receiver or liquidator” shall be construed in accordance with the provisions of the Insolvency Act, and the BVI Business Companies Act. (*Substituted by Act 2 of 2008*)

Receivers: supplementary provisions

28. (1) Where a receiver appointed under section 18 or 21 or in pursuance of a charging order takes any action—

- (a) in relation to property which is not realisable property, being action which he or she would be entitled to take if it were such property,
- (b) believing, and having reasonable grounds for believing, that he or she is entitled to take that action in relation to that property,

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

(2) Any amount due in respect of the remuneration and expenses of a receiver so appointed shall be paid by the prosecutor or, in a case where proceedings for a drug trafficking offence are not instituted, by the person on whose application the receiver was appointed.

29. to 38. (Omitted)

Registration of external confiscation orders

39. (1) On an application made by or on behalf of the Government of a designated country, the 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 is made did not appear in the proceedings, that he or she received notice of the proceedings in sufficient time to enable him or her 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) 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 a stay of execution.

(3) The 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. (*Amended by Act 5 of 2000*)

40. to 55. (Omitted)

APPENDIX

(Section 2(6)(e)(i))

INSTITUTION OF PROCEEDINGS

<i>Designated country</i>	<i>Point at which proceedings are instituted</i>
Anguilla	<ul style="list-style-type: none">(a) when a summons or warrant is issued in respect of an offence;(b) when a person is charged with an offence after being taken into custody without a warrant;(c) when a bill of indictment is preferred.
Argentina	when a judge has ordered that a person be detained for the purpose of testifying in connection with the commission of an offence.
Australia	<ul style="list-style-type: none">(a) when an information has been laid before a justice of the peace;(b) when a person is charged with an offence after having been taken into custody without a warrant;(c) when a bill of indictment is preferred.
The Bahamas	<ul style="list-style-type: none">(a) when an information has been laid before a justice of the peace;(b) when a person is charged with an offence after having been taken into custody without a warrant;(c) when a bill of indictment is preferred.
Bahrain	when a bill of indictment is lodged in court against any person for an offence.
Barbados	<ul style="list-style-type: none">(a) when an information has been laid before the magistrate;(b) when a person is charged with an offence;(c) when a bill of indictment is preferred
Bermuda	when information is laid charging a person with an offence.

Designated country	Point at which proceedings are instituted
The Cayman Islands	<ul style="list-style-type: none"> (a) when a charge has been signed under subsection (3) or (4) of section 13 of the Criminal Procedure Code in respect of the offence; (b) when a person is being charged with an offence after being arrested without a warrant under subsection (5) of that section.
Ecuador	when a writ is issued by a judge initiating criminal proceedings.
Germany	when a person is notified that he is accused of an offence and will be brought before a court.
Gibraltar	when a person is charged with an offence, whether by the laying of an information or otherwise.
Guernsey	when a person is charged with an offence.
Guyana	when a charge has been laid against a person for an offence.
Hong Kong	<ul style="list-style-type: none"> (a) when a magistrate issues a warrant or summons; (b) when a person is charged with an offence; (c) when an indictment is preferred.
India	<ul style="list-style-type: none"> (a) when information relating to commission of any crime is received by any law enforcement agency empowered to investigate such crime under the law for the time being in force and laid before a court of law; (b) when any allegation is made orally or in writing to a court of law that a person has committed an offence; (c) when a person is charged with an offence; (d) when any investigation or inquiry into the commission of any offence is directed by a court of law.

Designated country	Point at which proceedings are instituted
Isle of Man	<ul style="list-style-type: none"> (a) where a justice of the peace issues a summons under section 4 of the Summary Jurisdiction Act 1980, when the complaint in relation to the offence is made to him; (b) where a justice of the peace issues a warrant for the arrest of any person under that section, when the complaint in relation to the offence is made to him; (c) where a person is charged with the offence after being taken into custody without a warrant, when he is taken into custody; (d) where an information is preferred by the Attorney General in a case where there have been no committal proceedings, when the information is lodged in the General Registry in accordance with section 4(1) of the Criminal Code Amendment Act 1917.
Italy	<ul style="list-style-type: none"> (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; (b) when a proposal for the application of a preventative measure (“misura di prevenzione”) is laid before a court.
Jersey	<ul style="list-style-type: none"> (a) when the Bailiff issues a warrant in respect of an offence for the arrest of a person who is out of the island; (b) when a person is arrested and charged with an offence; (c) when a summons in respect of an offence is served on a person at the instance of the Attorney General; (d) when a summons in respect of the offence is served on a person in accordance with the provisions of Article 8 of the Police Court (Miscellaneous Provisions)(Jersey) Law, 1949

Designated country	Point at which proceedings are instituted
Malaysia	when a person is charged with an offence.
Montserrat	<ul style="list-style-type: none"> (a) when a judge issues a summons or warrant in respect of an offence; (b) when a person is charged with an offence after being taken into custody without a warrant.
Netherlands	<ul style="list-style-type: none"> (a) when a pre-trial financial investigation has been initiated; (b) when the provisional order has been ordered by an investigating magistrate; (c) when a public prosecutor has requested a pre-trial criminal investigation by an investigating magistrate to be instituted; (d) when a public prosecutor has laid an indictment.
Panama	when a person has been charged with an offence.
Saudi Arabia	when an information has been laid before a judicial authority.
South Africa	<ul style="list-style-type: none"> (a) when a summons is issued in respect of an offence; (b) when a person is charged with an offence; (c) when a bill of indictment is preferred.
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.
Switzerland	when proceedings for an offence are brought before an examining magistrate.

Designated country	Point at which proceedings are instituted
United Kingdom	(a) when an information is laid before a justice of the peace; (b) when a person is charged with an offence; (c) when a bill of indictment is preferred; (d) when a petition warrant is granted.
United Mexican	when criminal proceedings are instituted by a judicial authority.
United States of America	when an indictment, information or complaint has been filed against a person in respect of an offence.
Uruguay	when criminal proceedings are instituted by a judicial authority.