



ST. HELENA

(Chapter No. not allocated yet)

MONEY LAUNDERING ORDINANCE

Non-authoritative Consolidated Text

This is not an authoritative 'revised edition' for the purposes of the Revised Edition of the Laws Ordinance; it has been prepared under the supervision of the Attorney General for the purpose of enabling ready access to the current law, and specifically for the purpose of being made accessible via the internet.

Whilst it is intended that this version accurately reflects the current law, users should refer to the authoritative texts in case of doubt. Enquiries may be addressed to the Attorney General at Essex House, Jamestown [Telephone (+290) 2270; Fax (+290) 2454; email pa.lawofficers@legalandlands.gov.sh]¹

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This version contains a consolidation of the following laws—

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Ordinance 12 of 2008 ... in force on ... 3 November 2008

Amended by Ord. 14 of 2017

¹ These contact details may change during 2011 or early in 2012. In case of difficulty, email shgwebsite@sainthelena.gov.sh or telephone (+290) 2470.

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MONEY LAUNDERING ORDINANCE

(Ordinances 12 of 2008 and 14 of 2017)

AN ORDINANCE TO PREVENT THE LAUNDERING OF MONEY WHICH IS THE PROCEEDS OF CRIME OR IS INTENDED TO FINANCE CRIMINAL ACTIVITY

Commencement

[3 November 2008]

Short title and commencement

1. (1) The Ordinance may be cited as the Money Laundering Ordinance, 2008 and

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shall come into force on such day or days as the Governor may appoint by Order published in the *Gazette*.

(2) Orders made under subsection (1) may prescribe different commencement dates for different provisions, or for different purposes, and may contain such transitional provisions (if any) as appear to the Governor to be necessary or expedient.

Interpretation

2. (1) In this Ordinance, unless the context otherwise requires—
- “body corporate”** means a body of persons having a legal personality distinct from that of its members;
- “Court”** means a court in St Helena or elsewhere;
- “criminal conduct”** is conduct which—
- (a) constitutes an offence in St Helena; or
 - (b) would constitute an offence in St Helena if it occurred there;
- “criminal property”** is property which—
- (a) constitutes a person’s benefit from criminal conduct or represents such a benefit (in whole or part and whether directly or indirectly); and
 - (b) is in the possession or under the control of a person who knows or suspects that it constitutes or represents such a benefit;
- and it is immaterial—
- (a) who carried out the criminal conduct;
 - (b) who benefited from it; or
 - (c) whether the conduct occurred before or after the passing of this Ordinance;
- “freeze”** means to temporarily prohibit the transfer, conversion, deposition or movement of property or to temporarily assume custody or control of property;
- “money laundering”** is an act which constitutes—
- (a) an offence under section 3, 4 or 5, of this Ordinance;
 - (b) an attempt, conspiracy or incitement to commit an offence specified in paragraph (a); or
 - (c) aiding, abetting, counseling or procuring the commission of an offence specified in paragraph (a);
- “person”** includes a body of persons, whether a body corporate or not;
- “property”** means all property wherever situated and includes (without prejudice to the generality)—
- (a) money;
 - (b) all forms of real or personal property; and
 - (c) things in action and other intangible or incorporeal property;
- and the following rules apply in relation to property—
- (a) property is held by a person if he holds an interest in it;
 - (b) property is obtained by a person if he obtains an interest in it;
 - (c) property is transferred by one person to another if the first one transfers or grants an interest in it to the second;
 - (d) references to property held by a person include references to property vested in his trustee in bankruptcy or liquidator;
 - (e) references to an interest are to any legal estate or equitable interest or power;
 - (f) references to an interest, in relation to property other than land, include references to a right (including a right to possession).
- “Regulatory Authority”** means the body established under Section 9 and includes (where the context so admits) an individual member of that authority or a person authorised by it to

act on its behalf;

(2) For the purposes of the definition of “criminal property”, in subsection (1), a person benefits from conduct if he obtains property as a result of or in connection with the conduct.

Concealing etc

3. (1) Subject to subsection (2), a person commits an offence if he—

- (a) conceals criminal property;
- (b) disguises criminal property;
- (c) converts criminal property;
- (d) transfers criminal property; or
- (e) removes criminal property from St Helena; or
- (f) imports criminal property to St Helena.

(2) A person does not commit such an offence if—

- (a) he makes an authorised disclosure under section 6 and (if the disclosure is made before he does the act mentioned in subsection (1)) he has the appropriate consent;
- (b) he intended to make such a disclosure but had a reasonable excuse for not doing so; or
- (c) the act he does is done in carrying out a function he has relating to the enforcement of any provision of this Ordinance or of any other enactment relating to criminal conduct or benefit from criminal conduct.

(3) Concealing or disguising criminal property includes 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 against subsection (1) is liable-

- (a) on summary conviction to imprisonment for 12 months, or to a fine of £5000, or both;
- (b) on conviction on indictment to imprisonment for five years, or to a fine, or both;

and, in either case, the court may make such order as to the disposal of the criminal property as the court considers appropriate, and (without prejudice to the generality) such order may provide for property-

- (a) to be restored to its lawful owner; or
- (b) to be forfeit to Her Majesty.

Arrangements

4. (1) Subject to subsection (2), person commits an offence if he enters into or becomes concerned in an arrangement which a reasonable person would know or suspect facilitates (by whatever means) the acquisition, retention, use or control of criminal property by or on behalf of another person.

(2) A person does not commit such an offence if—

- (a) he makes an authorised disclosure under section 6 and (if the disclosure is made before he does the act mentioned in subsection (1)) he has the appropriate consent;
- (b) he intended to make such a disclosure but had a reasonable excuse for not doing so; or
- (c) the act he does is done in carrying out a function he has relating to the enforcement of any provision of this Ordinance or of any other enactment relating to criminal conduct or benefit from criminal conduct.

(3) A person who commits an offence against subsection (1) is liable-

- (a) on summary conviction to imprisonment for 12 months, or to a fine of £2500, or both;
- (b) on conviction on indictment to imprisonment for three years, or to a fine of £10,000,

or both.

Acquisition, use and possession

- 5. (1)** Subject to subsection (2), person commits an offence if he—
- (a) acquires criminal property;
 - (b) uses criminal property; or
 - (c) has possession of criminal property.
- (2)** A person does not commit such an offence if—
- (a) he makes an authorised disclosure under section 6 and (if the disclosure is made before he does the act mentioned in subsection (1)) he has the appropriate consent;
 - (b) he intended to make such a disclosure but had a reasonable excuse for not doing so;
 - (c) he acquired or used or had possession of the property for adequate consideration and did not know or could not reasonably be expected to know that it was criminal property;
 - (d) the act he does is done in carrying out a function he has relating to the enforcement of any provision of this Ordinance or of any other enactment relating to criminal conduct or benefit from criminal conduct.
- (3)** For the purposes of this section—
- (a) a person acquires property for inadequate consideration if the value of the consideration is significantly less than the value of the property;
 - (b) a person uses or has possession of property for inadequate consideration if the value of the consideration is significantly less than the value of the use or possession;
 - (c) the provision by a person of goods or services which he knows or suspects may help another to carry out criminal conduct is not consideration.
- (4)** A person who commits an offence against subsection (1) is liable—
- (a) on summary conviction to imprisonment for 12 months, or to a fine of £5000, or both;
 - (b) on conviction on indictment to imprisonment for five years, or to a fine, or both;
- and, in either case, the court may make such order as to the disposal of the criminal property as the court considers appropriate, and (without prejudice to the generality) such order may provide for property—
- (a) to be restored to its lawful owner; or
 - (b) to be forfeit to Her Majesty.

Authorised disclosures

- 6. (1)** A disclosure is authorised if—
- (a) it is a disclosure to a constable, a customs officer or a member of the Regulatory Authority, by the alleged offender, that property is criminal property; and
 - (b) the first or second condition set out below is satisfied.
- (2)** The first condition is that the disclosure is made before the alleged offender does the prohibited act.
- (3)** The second condition is that—
- (a) the disclosure is made after the alleged offender does the prohibited act;
 - (b) there is a good reason for his failure to make the disclosure before he did the act; and
 - (c) the disclosure is made on his own initiative and as soon as it is practicable for him to make it.
- (4)** An authorised disclosure is not to be taken to breach any restriction on the

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disclosure of information (however imposed).

(5) References to the prohibited act are to an act mentioned in section 3(1), 4(1) or 5(1) (as the case may be).

Supplementary provisions concerning offences

7. Knowledge, intent or purpose, as required as an element of any of the offences in sections 4, 5, and 6, may be inferred from objective factual circumstances; money laundering shall be regarded as such even where the activities which generated the property laundered or to be laundered were perpetrated in a place outside St. Helena;

Tipping off

8. (1) Subject to subsection (2), a person commits an offence if—
- (a) he knows or suspects that a disclosure falling within section 6 has been made; and
 - (b) he makes a disclosure to a third party which is likely to prejudice any investigation which might be conducted following the disclosure referred to in paragraph (a).
- (2) A person does not commit an offence under subsection (1) if—
- (a) he did not know or suspect that the disclosure was likely to be prejudicial as mentioned in subsection (1);
 - (b) the disclosure is made in carrying out a function he has relating to the enforcement of any provision of this Ordinance or of any other enactment relating to criminal conduct or benefit from criminal conduct; or
 - (c) he is a professional legal adviser and the disclosure falls within subsection (3).
- (3) A disclosure falls within this subsection if it is a disclosure—
- (a) to (or to a representative of) a client of the professional legal adviser in connection with the giving by the adviser of legal advice to the client; or
 - (b) to any person in connection with legal proceedings or contemplated legal proceedings.
- (4) But a disclosure does not fall within subsection (3) if it is made with the intention of furthering a criminal purpose.

Appointment of the Money Laundering Reporting Authority

9. (1) There is hereby established a body corporate with juristic personality, to be known as the “Money Laundering Reporting Authority”, with the power to hold property, to enter into contracts, to institute and defend suits and other legal proceedings in its own name and to do all things necessary to carry out its functions under this Ordinance.

(2) The members of the Regulatory Authority shall be the Financial Services Supervisor (who shall be the Chairman) and such other persons as the Governor may appoint by notice in the *Gazette*; but the Members appointed by the Governor shall include:

- (a) a representative of the Police Force;
- (b) a representative of the Customs Service;
- (c) a representative of the Legal and Lands Department;
- (d) a representative of the Finance Department;.

(3) The Regulatory Authority shall perform such functions as are conferred upon it by this or any other Ordinance, and such other functions (if any) as the Governor may consider appropriate in relation to the operation of this Ordinance.

(4) The members appointed under subsection (2) shall be appointed for such period as the Governor may determine, and shall be entitled to receive such remuneration and allowances

(if any) as the Governor may from time to time approve.

(5) The operating and other costs of the of the Regulatory Authority shall be met out of the Consolidated Fund and the Regulatory Authority shall -

- (a) keep proper accounts of its income and expenditure; and;
- (b) make an annual report to the Governor upon its activities, and include therein its accounts for the year reported upon.

(6) The functions of the Regulatory Authority, other than its powers to issue Directives, may be exercised by its Chairman acting alone, and whether or not he is present in St. Helena.

(7) Acts of the Regulatory Authority can be authenticated under the hand of any one of the members.

Powers and Duties of the Regulatory Authority

10. (1) In this section, 'relevant activity' has the meaning given to it in the Schedule to this Ordinance.

(2) The Regulatory Authority may issue such Directives as it shall consider appropriate as to procedures to be followed by persons engaged in relevant activities, for the prevention and detection of money laundering.

(3) The Regulatory Authority may—

- (a) enter any premises where a relevant activity is carried on, during normal working hours, and inspect any transaction record kept by that business;
- (b) ask questions relevant to a transaction record inspected under paragraph (a);
- (c) instruct a person engaged in a relevant activity to take such steps as may be appropriate to facilitate an investigation by the Regulatory Authority.

(4) The disclosure of information in good faith to the Regulatory Authority by a person engaged in a relevant activity of the information relating to money laundering shall not constitute a breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, and shall not involve the person in liability of any kind.

(5) The disclosure in good faith by the Regulatory Authority, to the authorities responsible for combating money laundering in a place outside St. Helena, shall not constitute a breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, and shall not involve the Regulatory Authority, its officers or employees in liability of any kind.

Civil Proceedings for Confiscation or Freezing of Property

11. (1) A court may, upon being satisfied on the balance of probabilities (on application by the Regulatory Authority or a police or customs officer) that any property is criminal property, order that the property be confiscated; and such power may be exercised whether or not any person has been proceeded against for any criminal offence.

(2) A court may, upon being satisfied by evidence on oath (which may be given by affidavit) that the Regulatory Authority has identified property which it believes to be criminal property, make an order (a 'freezing Order') that no person in whose possession or under whose control the property is found, or upon whom a copy of the order is served, shall do anything to effect or facilitate any dealing, transfer or disposal of such property (except as may be authorised under subsection (4), until further order of the court.

(3) A third party who has an interest (legal or equitable) in property which is the subject of confiscation or freezing under this section may make an application to the court; and

the court shall order the restoration of the third party's interest if it is satisfied that—

- (a) the claimant has a legitimate claim in relation to the property;
- (b) no participation, collusion or involvement with respect to criminal activity which is the subject of the proceedings can be imputed to the claimant;
- (c) the claimant lacked knowledge, and was not intentionally ignorant, of the illegal use of the property;
- (d) the claimant did not acquire any right in the property from a person proceeded against under circumstances that give rise to a reasonable inference that any right was transferred for the purpose of evading the confiscation or freezing of the property; and
- (e) the claimant did all that could reasonably be expected to prevent illegal use of the property.

(4) Where a court makes a forfeiture order or a freezing order under this section, the order may contain such incidental provision as appears to it to be necessary for giving effect to the order; and, without prejudice to that generality, it may—

- (a) require the forfeited property to be paid or handed over to an appropriate public officer;
- (b) appoint a receiver to take possession of any of the forfeited property, to realise it in such a manner as the court may direct, and to pay the proceeds to an appropriate public officer.

(5) (a) A receiver appointed under subsection (4) shall be entitled to be paid his remuneration and expenses (as determined by or pursuant to the order appointing him) out of the proceeds of the property realised by the receiver.

(b) If and so far as those proceeds are insufficient, the receiver shall be entitled to be paid his remuneration and expenses out of the Consolidated Fund, without further appropriation than this subsection.

(c) A receiver appointed under subsection (4) shall not be liable to any person in respect of any loss or damage resulting from action—

- (i) which he takes in relation to the property which is not forfeited property but which he reasonably believes is forfeited property;
- (ii) which he would be entitled to take if the property were forfeited property; and
- (iii) which he reasonably believes that he is entitled to take because of his belief that it is forfeited property;

(d) Paragraph (c) does not apply in so far as the loss or damage is caused by the receiver's negligence.

(6) A court shall have the power to declare void (on such terms and conditions as to the court appear just) any contract entered into by parties who, or any of whom, knew that the subject matter of the contract, or any part or parts thereof, was criminal property.

(7) A person is guilty of an offence if, being aware of the existence of a forfeiture or freezing order, he knowingly acts in contravention thereof or does an act with the intention of defeating the purpose of the order.

(8) A person who is guilty of an offence contrary to subsection (7) is liable

- (a) on summary conviction to imprisonment for 12 months, or to a fine of £2500, or both;
- (b) on conviction on indictment to imprisonment for three years, or to a fine of £10,000, or both.

Provided that nothing in this section prevents the court which made the order from punishing a breach of the order summarily as contempt of court.

Seizure or Recovery of Cash

Searches

12. (1) Subject to section 13, if a customs officer or constable who is lawfully on any premises has reasonable grounds for suspecting that there is on the premises cash—

- (a) which is criminal property or is intended by any person for use in criminal conduct; and
- (b) the amount of which is not less than £100,

he may search for the cash on those premises.

(2) If a customs officer or constable has reasonable grounds for suspecting that a person (the suspect) is carrying cash—

- (a) which is criminal property or is intended by any person for use in criminal conduct; and
- (b) the amount of which is not less than £100,

he may exercise the powers set out in subsection (3), subject to subsections (4) and (5).

(3) The officer or constable may, so far as he thinks it necessary or expedient, require the suspect—

- (a) to permit a search of any article he has with him;
- (b) to permit a search of his person.

(4) An officer or constable exercising powers by virtue of subsection (3) may detain the suspect for so long as is necessary for their exercise.

(5) The powers conferred by this section are exercisable only so far as reasonably required for the purpose of finding cash,

(6) In this Part, ‘cash’ means—

- (a) notes and coins in any currency;
- (b) postal orders;
- (c) cheques of any kind, including travellers' cheques;
- (d) bankers' drafts; and
- (e) bearer bonds and bearer shares.

(7) Nothing in this section requires a person to submit to a search which involves the removal of clothing other than an outer coat or jacket.

Prior approval to search

13. (1) The powers conferred by section 12 may be exercised only with the appropriate approval, as defined in this unless, in the circumstances, it is not practicable to obtain that approval before exercising the power.

(2) The appropriate approval means the approval of a justice of the peace or (if that is not practicable in any case) the approval of a senior officer.

(3) In subsection (2), ‘senior officer’ means—

- (a) in relation to the exercise of the power by a customs officer, a customs officer of a rank designated by the Collector of Customs as equivalent to that of a senior police officer;
- (b) in relation to the exercise of the power by a constable, a senior police officer, that is to say a police officer of at least the rank of inspector.

(4) If the powers are exercised without the approval of a justice of the peace in a case where—

- (a) no cash is seized by virtue of section 14; or
- (b) any cash so seized is not detained for more than 48 hours,

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the customs officer or constable who exercised the powers must give a written report to the Attorney General; and such report shall include such particulars as may be prescribed.

Seizure of cash

14. (1) A customs officer or constable may seize any cash if he has reasonable grounds for suspecting that it is—

- (a) criminal property; or
- (b) intended by any person for use in criminal conduct.

(2) A customs officer or constable may also seize cash part of which he has reasonable grounds for suspecting to be—

- (a) criminal property; or
- (b) intended by any person for use in criminal conduct,

if it is not reasonably practicable to seize only that part.

(3) This section does not authorise the seizure of an amount of cash if it or, as the case may be, the part to which his suspicion relates, is less than £100.

Detention of seized cash

15.² (1) While the customs officer or constable continues to have reasonable grounds for his suspicion, cash seized under section 14 may be detained initially for a period of 48 hours.

(2) The period for which the cash or any part of it may be detained may be extended by an order made by a magistrates' court; but the order may not authorise the detention of any of the cash—

- (a) beyond the end of the period of three months beginning with the date of the order; or
- (b) in the case of any further order under this section, beyond the end of the period of two years beginning with the date of the first order.

(3) A justice of the peace may also exercise the power of a magistrates' court to make the first order under subsection (2) extending the period.

(4) An application for an order under subsection (2) may be made by the a customs officer or a constable, and the court may make the order if satisfied, in relation to any cash to be further detained, that either of the conditions in subsections (5) and (6) is met.

(5) The first condition is that there are reasonable grounds for suspecting that the cash is criminal property and that either—

- (a) its continued detention is justified while its derivation is further investigated or consideration is given to bringing (in St Helena or elsewhere) proceedings against any person for an offence with which the cash is connected; or
- (b) proceedings against any person for an offence with which the cash is connected have been started and have not been concluded.

(6) The second condition is that there are reasonable grounds for suspecting that the cash is intended to be used in criminal conduct and that either—

- (a) its continued detention is justified while its intended use is further investigated or consideration is given to bringing (in St Helena or elsewhere) proceedings against any person for an offence with which the cash is connected; or
- (b) proceedings against any person for an offence with which the cash is connected have been started and have not been concluded.

² Section 15 amended by Ord. 14 of 2017

(7) An application for an order under subsection (2) may also be made in respect of any cash seized under section 13(2), and the court may make the order if satisfied that—

- (a) the condition in subsection (5) or (6) is met in respect of part of the cash; and
- (b) it is not reasonably practicable to detain only that part.

(8) Notice of an order made under subsection (2) must be given to persons affected by it.

Interest

16. (1) If cash is detained under section 15 for more than 48 hours, it is at the first opportunity to be paid into an interest-bearing account in St Helena and held there; and the interest accruing on it is to be added to it on its forfeiture or release.

(2) In the case of cash detained under section 15 which was seized under section 13(2), the customs officer or constable must, on paying it into the account, release the part of the cash to which the suspicion does not relate.

(3) Subsection (1) does not apply if the cash or, as the case may be, the part to which the suspicion relates is required as evidence of an offence or evidence in proceedings under this Ordinance.

Release of detained cash

17. (1) This section applies while any cash is detained under section 15.

(2) A magistrates' court may direct the release of the whole or any part of the cash if the court is satisfied, on an application by the person from whom the cash was seized, that the conditions in section 15 for the detention of the cash are no longer met in relation to the cash to be released.

(3) A customs officer or a constable may, after notifying the magistrates' court, under whose order cash is being detained, release the whole or any part of it if satisfied that the detention of the cash to be released is no longer justified.

Forfeiture of detained cash

18. (1) While cash is detained under section 15, an application for the forfeiture of the whole or any part of it may be made to the Magistrates' Court under section 11(1).

(2) The court may order the forfeiture of the cash or any part of it if satisfied on the balance of probabilities that the cash or part—

- (a) is criminal property; or
- (b) is intended by any person for use in criminal conduct.

(3) Where an application for the forfeiture of any cash is made under this section, the cash is to be detained (and may not be released under any power conferred by this Ordinance) until any proceedings in pursuance of the application (including any proceedings on appeal) are concluded.

Appeal against forfeiture

19. (1) Any party to proceedings in which an order is made under section 18 for the forfeiture of cash who is aggrieved by the order may appeal to the Supreme Court.

(2) An appeal under subsection (1) must be made within the period of 30 days beginning with the date on which the order is made.

(3) The appeal is to be by way of a rehearing.

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- (4) The court hearing the appeal may make any order it thinks appropriate.
- (5) If the court upholds the appeal, it may order the release of the cash.

Application of forfeited cash

20. (1) Cash forfeited under this Ordinance, and any accrued interest on it shall be paid into the Consolidated Fund.

(2) But it is not to be paid in—

- (a) before the end of the period within which an appeal under section 19 may be made; or
- (b) if a person appeals under that section, before the appeal is determined or otherwise disposed of.

Victims and other owners

21. (1) A person who claims that any cash detained under this Ordinance, or any part of it, belongs to him may apply to a magistrates' court for the cash or part to be released to him.

(2) The application may be made in the course of proceedings under section 15 or 18 or at any other time.

(3) If it appears to the court concerned that—

- (a) the applicant was deprived of the cash to which the application relates, or of property which it represents, by unlawful conduct;
- (b) the property he was deprived of was not, immediately before he was deprived of it, criminal property; and
- (c) that cash belongs to him,

the court may order the cash to which the application relates to be released to the applicant.

(4) If—

- (a) the applicant is not the person from whom the cash to which the application relates was seized;
- (b) it appears to the court that that cash belongs to the applicant;
- (c) the court is satisfied that the conditions in section 15 for the detention of that cash are no longer met or, if an application has been made under section 18, the court decides not to make an order under that section in relation to that cash; and
- (d) no objection to the making of an order under this subsection has been made by the person from whom that cash was seized,

the court may order the cash to which the application relates to be released to the applicant or to the person from whom it was seized.

Compensation

22. (1) If no forfeiture order is made in respect of any cash detained under this Ordinance, the person to whom the cash belongs or from whom it was seized may make an application to the magistrates' court for compensation.

(2) If, for any period beginning with the first opportunity to place the cash in an interest-bearing account after the initial detention of the cash for 48 hours, the cash was not held in an interest-bearing account while detained, the court may order an amount of compensation to be paid to the applicant.

Account monitoring orders

23. (1) A judge may, on an application made to him by a police or customs officer or a member of the Regulatory Authority, make an account monitoring order if he is satisfied that each of the requirements for the making of the order is fulfilled.

(2) The application for an account monitoring order must state that—

(a) a person specified in the application is subject to a confiscation investigation or a money laundering investigation; or

(b) property specified in the application is subject to a civil recovery investigation and a person specified in the application appears to hold the property.

(3) The application must also state that—

(a) the order is sought for the purposes of the investigation;

(b) the order is sought against the financial institution specified in the application in relation to account information of the description so specified.

(4) Account information is information relating to an account or accounts held at the financial institution specified in the application by the person so specified (whether solely or jointly with another).

(5) The application for an account monitoring order may specify information relating to—

(a) all accounts held by the person specified in the application for the order at the financial institution so specified;

(b) a particular description, or particular descriptions, of accounts so held; or

(c) a particular account, or particular accounts, so held.

(6) An account monitoring order is an order that the financial institution specified in the application for the order must, for the period stated in the order, provide account information of the description specified in the order to an appropriate officer in the manner, and at or by the time or times, stated in the order.

(7) The period stated in an account monitoring order must not exceed the period of 90 days beginning with the day on which the order is made.

Requirements for making of account monitoring order

24. (1) In the case of a confiscation investigation, there must be reasonable grounds for suspecting that the person specified in the application for the order has benefited from his criminal conduct.

(2) In the case of a civil recovery investigation, there must be reasonable grounds for suspecting that—

(a) the property specified in the application for the order is recoverable property or associated property;

(b) the person specified in the application holds all or some of the property.

(3) In the case of a money laundering investigation, there must be reasonable grounds for suspecting that the person specified in the application for the order has committed a money laundering offence.

(4) In the case of any investigation, there must be reasonable grounds for believing that account information which may be provided in compliance with the order is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the order is sought.

(5) In the case of any investigation, there must be reasonable grounds for believing that it is in the public interest for the account information to be provided, having regard to the benefit likely to accrue to the investigation if the information is obtained.

Statements

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25. (1) Subject to subsections (2) and (3), a statement made by a financial institution in response to an account monitoring order may not be used in evidence against it in criminal proceedings.

(2) Subsection (1) does not apply—

- (a)* in the case of proceedings for contempt of court; or
- (b)* on a prosecution for an offence where, in giving evidence, the financial institution makes a statement inconsistent with the statement mentioned in subsection (1).

(3) A statement may not be used by virtue of subsection (2)(b) against a financial institution unless—

- (a)* evidence relating to it is adduced; or
- (b)* a question relating to it is asked,

by or on behalf of the financial institution in the proceedings arising out of the prosecution.

Disclosure of information

26. An account monitoring order has effect in spite of any restriction on the disclosure of information (however imposed).

Supplementary

27. (1) Rules of court may make provision as to the practice and procedure to be followed in connection with proceedings relating to account monitoring orders.

(2) An application to discharge or vary an account monitoring order may be made to the court by—

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

External requests and orders

28. (1) The Governor in Council may, by Order, make provision for—

- (a)* a prohibition on dealing with property which is the subject of an external request;
- (b)* the realisation of property for the purpose of giving effect to an external order.

(2) An Order under this section may include provision which (subject to any specified modifications) corresponds to any provision of Sections 4 and 5 of this Ordinance.

(3) An Order under this section may include provisions—

- (a)* about the registration of external orders;
- (b)* about the authentication of any judgment or order of an overseas court, and of any other document connected with such a judgment or order or any proceedings relating to it;
- (c)* about evidence (including evidence required to establish whether proceedings have been started or are likely to be started in an overseas court);
- (d)* to secure that any person affected by the implementation of an external request or the enforcement of an external order has an opportunity to make representations to a court in St Helena.

Offences involving bodies corporate

29. (1) For the purposes of this Ordinance conduct engaged in on behalf of a body corporate—

- (a) by a director, servant or agent of that body corporate within the scope of the director, servant or agent's authority; or
- (b) by a person at the direction or with the consent or agreement whether express or implied of a director, servant or agent of that body corporate where the giving of the direction, consent or agreement is within the scope of the authority of the director, servant or agent,

shall, in addition to the person concerned, be deemed to have been engaged in by the body corporate.

(2) Conduct engaged in on behalf of a person other than a body corporate—

- (a) by a servant or agent of that person reasonably within the scope of that person's authority ; or
- (b) another person at the direction or with the consent or agreement whether express or implied of a servant or agent of that person, where the giving of the direction, consent or agreement is reasonably within the authority,

shall, in addition to the person concerned, be deemed to be engaged in by that person.

General offences

30. (1) A person who—

- (a) contravenes or fails to comply with any of the provisions of this Ordinance for which no other penalty is provided;
- (b) contravenes or fails to comply with any of the provisions of any directives issued under section 10;
- (c) fails to comply with any lawful order or requirement of the Regulatory Authority; or
- (d) without reasonable excuse alters, suppresses, conceals, destroys or refuses to produce any document which he is lawfully required to produce by any person under this Ordinance,

is guilty of an offence and is liable-

- (a) on summary conviction to a fine of £5000 or to imprisonment for 12 months, or both; or
- (b) on conviction on indictment to a fine of £100,000 or to imprisonment for five years, or both.

(2) (a) The Governor in Council may by regulations provide for administrative penalties which may be imposed by the Regulatory Authority without recourse to a court hearing:

Provided that the Regulatory Authority may not impose a financial penalty exceeding £5000.

(b) Regulations made under paragraph (a) shall provide for an appeal from any decisions of the Regulatory Authority to impose an administrative penalty.

Section 10(1)

Schedule Meaning of "relevant activity"

In section 10, "relevant activity" means—

- (a) the regulated activity of—
 - (i) accepting deposits;

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- (ii) effecting or carrying out contracts of long-term insurance when carried on by a person authorised under the Banking and Financial Services Ordinance 2008;
- (iii) dealing in investments as principal or as agent;
- (iv) arranging deals in investments;
- (v) managing investments;
- (vi) safeguarding and administering investments;
- (vii) sending dematerialised instructions;
- (viii) establishing (and taking other steps in relation to) collective investment schemes;
- (ix) advising on investments; or
- (x) issuing electronic money;
- (b) transmitting money (or any representation of monetary value) by way of a business by any means or cashing cheques which are made payable to customers;
- (c) estate agency work;
- (d) the provision by way of business of advice about the tax affairs of another person by a body corporate or unincorporate or, in the case of a sole practitioner, by an individual;
- (e) the provision by way of business of accountancy services by a body corporate or unincorporate or, in the case of a sole practitioner, by an individual;
- (f) the provision by way of business of audit services by a person who is eligible for appointment as a company auditor;
- (g) the provision by way of business of legal services by a body corporate or unincorporate or, in the case of a sole practitioner, by an individual and which involves participation in a financial or real property transaction (whether by assisting in the planning or execution of any such transaction or otherwise by acting for, or on behalf of, a client in any such transaction);
- (h) the provision by way of business of services in relation to the formation, operation or management of a company or a trust; or
- (i) the activity of dealing in goods of any description by way of business (including dealing as an auctioneer) whenever a transaction involves accepting a total cash payment of £10,000 or more.