

ST HELENA



PROCEEDS OF CRIME ORDINANCE 2026

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ST HELENA



A BILL FOR AN ORDINANCE

To repeal and replace the Money Laundering Ordinance, 2008 with the intent of updating the law concerning the criminalisation of money laundering, to enable the confiscation of property that represents the proceeds of crime, the civil recovery of property which is, or represents, the proceeds of unlawful conduct or is intended to be used in unlawful conduct, restrain and prohibit the dealing with property, to make provision about money laundering, to make provision about investigations relating to benefit from criminal conduct or to property which is or represents property obtained through unlawful conduct or to money laundering, to make provision to give effect to overseas requests and orders made where property is found or believed to be obtained through criminal conduct; and for connected and incidental purposes.

Enacted by the Governor of St Helena with the advice and consent of the Legislative Council of St Helena.

PART 1 PRELIMINARY

1. Short title and commencement

This Ordinance may be cited as the Proceeds of Crime Ordinance, 2026 and comes into force on [date].

2. Interpretation

(1) In this Ordinance—

“AML/CFT obligation”, in relation to a service provider, means an obligation of the service provider under this Ordinance, the Anti-money Laundering and Terrorist Financing Regulations, the Directive or any other law relating to money laundering or terrorist financing, and includes an obligation imposed by a direction given under section 166;

“Anti-money Laundering and Terrorist Financing Regulations” means the Regulations made under section 188(1);

“Anti-terrorist Financing Order” means the Anti-terrorism (Financial and Other Measures) (Overseas Territories) Order 2002, or any Order or other law that replaces that Order;

“associated property” has the meaning given by section 91;

“available amount” has the meaning given by section 35;

“cash” includes—

- (a) notes and coins in any currency,
- (b) postal orders,
- (c) cheques of any kind, including travellers’ cheques,
- (d) bankers’ drafts,
- (e) bearer bonds and bearer shares, and
- (f) any other monetary instrument that is prescribed as cash;

“Civil Recovery Authority” means the Attorney General;

“civil recovery investigation” means, subject to subsection (2), an investigation into—

- (a) whether property is recoverable property or associated property,
- (b) who holds the property, or
- (c) the extent or whereabouts of the property;

“commencement date” means the date on which this Ordinance comes into force;

“company” means a company which may be wound up under or in accordance with the Companies Ordinance, 2004;

“conduct” includes omissions;

“confiscation investigation” means an investigation into—

- (a) whether a person has benefited from the person’s criminal conduct,
- (b) the extent or whereabouts of the person’s benefit from the criminal conduct, or
- (c) in respect of a confiscation order made against a person—
 - (i) the available amount for satisfying the order, and

- (ii) the extent or whereabouts of realisable property available to satisfy the order;

“confiscation order” means an order made under section 36;

“corporate body” means a body corporate, wherever incorporated, registered or formed and includes a foundation;

“country” includes a territory;

“Court” means the Supreme Court;

“criminal conduct” means conduct that—

- (a) constitutes an offence in St Helena, or
- (b) would constitute an offence in St Helena if it occurred there;

“criminal lifestyle”, in relation to a defendant, has the meaning given by section 33;

“Criminal Procedure Ordinance compensation order” means a compensation order made under section 125 of the Criminal Procedure Ordinance, 1975;

“customs officer” means a customs officer within the meaning of the Customs and Excise Ordinance, 1999;

“date of conviction” means—

- (a) in relation to an offence, the date on which the defendant was convicted of the offence concerned, or
- (b) if there are 2 or more offences, and the convictions were on different dates, the date of the latest;

“dealing” with property includes disposing of it, taking possession of it or removing it from St Helena;

“defendant” means, except in Part 4, a person against whom proceedings have been instituted for an offence, whether or not the person has been convicted;

“designated non-financial business and profession” or **“DNFBP”** has the meaning given by the Anti-money Laundering and Terrorist Financing Regulations;

“Directive” means the Directive issued under section 189;

“director”, in relation to a legal person, means a person appointed to direct the affairs of the legal person and includes—

- (a) a person who is a member of the board of the legal person, and
- (b) a person who, in relation to the legal person, occupies the position of director, by whatever name called;

“Director of Police” means the person appointed as Director of Police under the Police Service Ordinance, 1975;

“document” means a document in any form and includes—

- (a) any writing or printing on any material,
- (b) any record of information or data, however compiled, and whether stored in paper, electronic, magnetic or any non-paper based form,
- (c) any storage medium, including discs and tapes,
- (d) books and drawings, and
- (e) a photograph, film, tape, negative or other medium in which one or more visual images are embodied so as to be capable (with or without the aid of equipment) of being reproduced;

“drug trafficking offence” means—

- (a) an offence under section 5(3), 7(2) or (3), 8(3), 14 or 22 of the Drugs (Prevention of Misuse) Ordinance, 2003,
- (b) an attempt, conspiracy or incitement to commit an offence specified in paragraph (a), or
- (c) aiding, abetting, counselling or procuring the commission of an offence specified in paragraph (a);

“enforcement receiver” means a receiver appointed under section 67;

“FATF” means the international body known as the Financial Action Task Force or any international body that succeeds it;

“financial offence” means—

- (a) an offence under any Ordinance prescribed as a financial sector Ordinance, or
- (b) an offence relating to money laundering, the financing of terrorism or the breach of any international or domestic sanction prescribed by or under any enactment;

“forfeiture order” means an order for the forfeiture of cash under section 132;

“general criminal conduct” has the meaning given by section 31(1);

“gift” has the meaning given by section 28;

“interim receiving order” means an order made by the Court under section 101;

“law enforcement agency” means the St Helena Police Service, His Majesty’s Customs or any other agency or body in St Helena that is prescribed;

“legal person” means a company or other body corporate created by operation of law with a separate legal personality and—

- (a) includes—
 - (i) a company incorporated under the laws of St Helena;
 - (ii) a body corporate constituted under the laws of a country outside St Helena;
- (b) does not include—
 - (i) a corporation sole;

- (ii) a partnership that, whether or not a legal person, is not regarded as a body corporate under the law by which it is governed;
- (iii) a trust;

“Magistrates’ Court” means the Magistrates’ Court established under section 3 of the Magistrates’ Court Ordinance, 2011;

“management receiver” means a receiver appointed under section 66;

“money laundering” means an act which—

- (a) constitutes a money laundering offence, or
- (b) would constitute a money laundering offence if done in St Helena;

“money laundering investigation” means an investigation into whether a person has committed a money laundering offence;

“money laundering offence” means—

- (a) an offence under section 14, 15, 16 or 17, or
- (b) aiding, abetting, counselling or procuring the commission of an offence under section 14, 15 or 16;

“money laundering reporting officer” means the person appointed as money laundering reporting officer by a service provider under and in accordance with the Anti-money Laundering and Terrorist Financing Regulations;

“National Forfeiture Fund” means the National Forfeiture Fund established under section 185;

“non-profit organisation” or **“NPO”** means an organisation that primarily engages in raising or disbursing funds for charitable, religious, cultural, educational, social or fraternal purposes, or for other similar purposes for the benefit of the public or a section of the public;

“Non-Profit Organisation Directive” means a directive issued under section 162;

“Non-Profit Organisation Regulations” means the regulations made under section 162;

“NPO Supervisor” means the person or body specified as the supervisory authority for non-profit organisations in the Non-Profit Organisation Regulations;

“organisation” means a body of persons (whether incorporated or unincorporated), any legal entity and any equivalent or similar structure or arrangement and includes persons acting as trustees of a trust;

“Oversight Committee” means the Reporting Unit Oversight Committee established under section 154(3);

“particular criminal conduct” has the meaning given by section 31(2);

“police officer” means a person who is a member of, or seconded to, the police service, and includes a special constable and a constable under probation, but excludes a police cadet within the meaning of the Police Service Ordinance, 1975;

“premises” includes—

- (a) any place,
- (b) any vehicle, vessel, aircraft or hovercraft,
- (c) any offshore installation, and
- (d) any tent or movable structure;

“prescribed” means prescribed by Regulations made under section 188;

“privileged material” has the meaning given by section 137;

“property” has the meaning given by section 4;

“property freezing order” means an order made under section 94;

“realisable property” has the meaning given by section 25;

“recoverable amount” has the meaning given by section 34;

“recoverable property” has the meaning given by section 84;

“recovery order” means an order made under section 110;

“regulated service provider” has the meaning given by the Anti-money Laundering and Terrorist Financing Regulations;

“Regulations” means Regulations made under section 188;

“Regulatory Authority” means the Financial Services Regulatory Authority established under the Financial Services Ordinance, 2008;

“relevant business” means a business which, if carried on by a person, would result in that person being a service provider;

“Reporting Unit” means the Unit maintained under section 154;

“restraint order” means an order made under section 62;

“senior manager” in relation to an organisation, means a person who plays a significant role in—

- (a) the making of decisions about how the whole or a substantial part of the organisation’s activities are to be managed or organised, or
- (b) the actual managing or organising of the whole or a substantial part of those activities.

“senior customs officer” means the Collector of Customs and Excise or a customs officer designated in writing by the Collector for the purposes of this Ordinance;

“senior officer” means a police officer of the rank of inspector or above;

“sentencing” is to be read in accordance with subsection (3)(a);

“service provider” has the meaning given by the Anti-money Laundering and Terrorist Financing Regulations;

“supervisory authority” means, with respect to a service provider, the supervisory authority responsible for the service provider under section 155;

“tainted gift” has the meaning given by section 29;

“tainted property” has the meaning given by section 81;

“taken into consideration” is to be read in accordance with subsection (3)(b);

“terrorism” has the meaning given by section 3(1);

“terrorist” has the meaning given by section 3(6);

“terrorist financing” has the meaning given by section 3(8);

“terrorist financing laws” means the Anti-terrorist Financing Order and any other law in force in St Helena relating to the financing of terrorism;

“terrorist organisation” has the meaning given by section 3(7);

“trustee” means the trustee for civil recovery appointed by the Court under section 110;

“value” means, except in Part 4, the value of the property determined in accordance with sections 26, 27 and 30;

“winding up” includes liquidation;

“working day” means a day other than a Saturday, a Sunday or a public holiday.

(2) An investigation is not a civil recovery investigation within the meaning of subsection (1) if—

- (a) proceedings for a recovery order have been instituted in respect of the property in question,
- (b) an interim receiving order applies to the property in question, or
- (c) the property in question is detained under section 129.

(3) A reference in this Ordinance—

- (a) to sentencing a defendant for an offence includes a reference to otherwise dealing with the defendant in respect of the offence, and
- (b) to an offence that has been, or will be, “taken into consideration”, means an offence that has been, or will be, taken into consideration under the Criminal Procedure Ordinance, 1975.

- (4) Except in relation to a fine imposed by the Court or the Magistrates' Court, a reference in this Ordinance to an amount expressed in £ includes a reference to an equivalent amount in any other currency.

3. Meaning of “terrorism” and related expressions

- (1) In this Ordinance, “**terrorism**” means the use or threat of action where—
- (a) the action falls within subsection (2),
 - (b) the use or threat is designed to influence the government or an international governmental organisation or to intimidate the public or a section of the public, and
 - (c) the use or threat is made for the purpose of advancing a political, religious, racial or ideological cause.
- (2) Action falls within this subsection if it—
- (a) involves serious violence against a person,
 - (b) involves serious damage to property,
 - (c) endangers a person's life, other than that of the person committing the action,
 - (d) creates a serious risk to the health or safety of the public or a section of the public, or
 - (e) is designed seriously to interfere with or seriously to disrupt an electronic system.
- (3) The use or threat of action falling within subsection (2) which involves the use of firearms or explosives is terrorism whether or not subsection (1)(b) is satisfied.
- (4) In this section—
- (a) “**action**” includes action outside St Helena,
 - (b) a reference to any person or to property is a reference to any person, or to property, wherever situated,
 - (c) a reference to the public includes a reference to the public of a country other than St Helena, and
 - (d) “**the government**” means the government of St Helena or of a country other than St Helena.
- (5) A reference in this Ordinance to an act of terrorism is a reference to the use or threat of action that constitutes terrorism.
- (6) “**Terrorist**” means a person who—
- (a) commits, or attempts to commit, an act of terrorism,
 - (b) participates as an accomplice in an act of terrorism,
 - (c) organises or directs others to commit an act of terrorism, or
 - (d) intentionally contributes to the commission of an act of terrorism by a group of persons acting with a common purpose, with the aim of furthering the act or knowing of the group's intention to commit it.

- (7) **“Terrorist organisation”** means a group of persons that—
- (a) commits, or attempts to commit, acts of terrorism,
 - (b) participates as an accomplice in acts of terrorism,
 - (c) organises or directs others to commit acts of terrorism, or
 - (d) intentionally contributes to the commission of acts of terrorism by another group of persons acting with a common purpose, with the aim of furthering the acts or knowing of that group’s intention to commit them.
- (8) **“Terrorist financing”** means the unlawful provision or collection of funds or other property, by any means, directly or indirectly, with the intention that the funds or property should be used, or knowing that they are to be used, in whole or in part—
- (a) to carry out an act of terrorism,
 - (b) by a terrorist,
 - (c) by a terrorist organisation, or
 - (d) to finance the travel of a person to a country other than the person’s country of residence or nationality for the purpose of the perpetration, planning or preparation of, or participation in, an act of terrorism or the providing or receiving of training for terrorism.
- (9) For the purposes of subsection (8)(b) and (c), it is immaterial whether the funds or property are intended for, or linked to, a particular act of terrorism.

4. **Meaning of “property”**

- (1) **“Property”** means property of every kind, whether situated in St Helena or elsewhere, and includes—
- (a) money,
 - (b) all forms of real or personal property, and
 - (c) things in action and other intangible or incorporeal property.
- (2) The following provisions apply in relation to property for the purposes of this Ordinance—
- (a) a person who holds an interest in property is taken to hold the property,
 - (b) a person who obtains an interest in property is taken to obtain the property,
 - (c) property is transferred by one person to another if the first person transfers or grants to the other person an interest in the property,
 - (d) a reference to property held by a person includes a reference to property vested in the person’s trustee in bankruptcy or, in the case of a corporate body, its liquidator, and
 - (e) a reference to an interest held by a person beneficially in property includes a reference to an interest that would be held by that person beneficially if the property were not vested in the person’s trustee in bankruptcy or, in the case of a corporate body, its liquidator.
- (3) **“Interest”**, in relation to property, includes—
- (a) a right, including a right to possession of the property,

- (b) any legal interest or estate, and
- (c) any equitable interest or power.

5. Benefit from conduct and pecuniary advantage

- (1) For the purposes of this Ordinance—
 - (a) a person benefits from conduct if the person obtains property as a result of or in connection with the conduct,
 - (b) if a person benefits from conduct, the benefit is, except in Part 2, the value of the property obtained as a result of or in connection with the conduct, and
 - (c) if a person derives a pecuniary advantage as a result of or in connection with conduct, the person is to be taken to obtain, as a result of or in connection with the conduct, a sum of money equal to the value of the pecuniary advantage.
- (2) References to property obtained or a pecuniary advantage derived in connection with conduct include references to property obtained or a pecuniary advantage derived both in that connection and in some other connection.

6. Institution and conclusion of proceedings

- (1) Institution of criminal proceedings for an offence in St Helena has the same meaning as in section 56 of the Criminal Procedure Ordinance, 1975.
- (2) If the application of subsection (1) would result in there being more than one time for the institution of proceedings, the proceedings are to be taken to have been instituted at the earliest of those times.
- (3) Proceedings for an offence are concluded—
 - (a) when the defendant is acquitted on all counts or every charge against the defendant is dismissed,
 - (b) if the defendant is convicted in the proceedings and the conviction is set aside or the defendant is pardoned before a confiscation order is made, when the conviction is set aside or the defendant is pardoned,
 - (c) if a confiscation order is made against the defendant in the proceedings, when the order is satisfied or discharged or when the order is set aside and the decision to set aside the order is no longer subject to appeal,
 - (d) if the defendant is convicted on one or more counts or charges but the Court decides not to make a confiscation order against the defendant, when the Court's decision is no longer subject to appeal by the prosecutor, or
 - (e) if the defendant is sentenced without the Court having considered whether or not to proceed under section 36, when the defendant is sentenced.
- (4) An application under section 47, 48, 49, 50, 55 or 56 is concluded—
 - (a) if the Court decides not to make or vary, as the case may be, any order against the defendant on that application, when it makes that decision,

- (b) if an order against the defendant is made or varied on that application, when the order is satisfied or discharged or, if the order is set aside, when the decision to set aside the order is no longer subject to appeal, or
 - (c) if the application is withdrawn, when the prosecutor notifies the Court of the withdrawal.
- (5) For the purposes of this section—
 - (a) a confiscation order is satisfied when no amount is due under it, and
 - (b) an order is subject to appeal until, disregarding any power of the Court to grant leave to appeal out of time, there is no further possibility of an appeal on which the order could be varied or set aside.

PART 2 MONEY LAUNDERING

Preliminary

7. Interpretation for this Part

In this Part—

“appropriate consent” has the meaning given by section 9;

“authorised disclosure” has the meaning given by section 12;

“criminal property” has the meaning given by section 8;

“moratorium period” has the meaning given by section 9(3)(b);

“notice period” has the meaning given by section 9(3)(a);

“prohibited act” means an act specified in section 14, 15 or 16;

“protected disclosure” has the meaning given by section 13;

“relevant money laundering reporting officer”, in relation to the making by a person of a disclosure, means the money laundering reporting officer appointed by the person’s employer.

8. Criminal property

- (1) For the purposes of this Part, property is “criminal property” if—
 - (a) the property—
 - (i) constitutes a person’s benefit from criminal conduct, or
 - (ii) represents such benefit, whether in whole or in part and whether directly or indirectly, and
 - (b) the alleged offender knows or suspects the property constitutes or represents a person’s benefit from criminal conduct.

- (2) For the purposes of subsection (1), it is immaterial—
 - (a) who carried out the conduct,
 - (b) who benefited from the conduct, and
 - (c) whether the conduct occurred before or after the commencement date.
- (3) Despite section 5(1)(b), for the purposes of this Part, if a person benefits from conduct, the person's benefit is the property obtained as a result of or in connection with the conduct.

9. Appropriate consent

- (1) The appropriate consent is—
 - (a) where a person makes an authorised disclosure to the relevant money laundering reporting officer, the consent of the relevant money laundering reporting officer to do the prohibited act, or
 - (b) where a person makes an authorised disclosure to the Reporting Unit, the consent of the Reporting Unit to do the prohibited act.
- (2) A person is to be treated as having the appropriate consent if—
 - (a) the person makes an authorised disclosure to the Reporting Unit, and
 - (b) either—
 - (i) the Reporting Unit does not, on or before the last day of the notice period, notify the person that consent to the doing of the prohibited act is refused, or
 - (ii) on or before the last day of the notice period the person receives notice from the Reporting Unit that consent to the doing of the prohibited act is refused and the ensuing moratorium period has expired.
- (3) For the purposes of this section, in relation to a disclosure to the Reporting Unit that property is criminal property—
 - (a) the notice period is the period of seven working days commencing with the first working day after the disclosure is made, and
 - (b) the moratorium period is the period of 30 days commencing with the day on which the person who made the disclosure receives notice from the Reporting Unit that consent to the doing of the prohibited act is refused, subject to any extension under section 10.
- (4) A money laundering reporting officer must not consent to the doing of a prohibited act unless one of the conditions specified in subsection (5), (6) or (7) is satisfied.
- (5) The first condition is that—
 - (a) the money laundering reporting officer has made a disclosure to the Reporting Unit that property is criminal property, and
 - (b) the Reporting Unit has given its consent to the doing of the prohibited act.
- (6) The second condition is that—

- (a) the money laundering reporting officer has made a disclosure to the Reporting Unit that property is criminal property, and
 - (b) the Reporting Unit does not, on or before the last day of the notice period, notify the money laundering reporting officer that consent to the doing of the prohibited act is refused.
- (7) The third condition is that—
 - (a) the money laundering reporting officer has made a disclosure to the Reporting Unit that property is criminal property,
 - (b) on or before the last day of the notice period the money laundering reporting officer receives notice from the Reporting Unit that consent to the doing of the prohibited act is refused, and
 - (c) the ensuing moratorium period has expired.

10. Extension of moratorium period

- (1) The Court may, on the application of the Reporting Unit, by order extend a moratorium period.
- (2) The application must be made before the end of the moratorium period.
- (3) The Court may make the order only if satisfied that—
 - (a) an investigation is being conducted in relation to the disclosure to which the moratorium period relates but has not been completed,
 - (b) the investigation is being conducted diligently and expeditiously,
 - (c) further time is needed for conducting the investigation, and
 - (d) it is reasonable in all the circumstances for the moratorium period to be extended.
- (4) An order under this section may extend the moratorium period by no more than 31 days.
- (5) More than one order may be made under this section in relation to the same moratorium period.
- (6) A moratorium period must not be extended under this section by more than 186 days in total.

11. Extension applications: procedure

- (1) The Court must determine an application under section 10 as soon as reasonably practicable.
- (2) Before determining the application, the Court must give an opportunity to be heard to—
 - (a) the person who made the disclosure to which the moratorium period relates, and
 - (b) any other person who appears to the Court to have an interest in the property to which the disclosure relates.

- (3) If the application is not determined before the end of the moratorium period, the period is extended until the application is determined or otherwise disposed of.
- (4) A period of extension under subsection (3)—
 - (a) must not exceed 31 days, and
 - (b) counts towards the 186 days mentioned in section 10(6).
- (5) The Court may exclude from any part of the hearing a person entitled to be heard under subsection (2) and any person representing that person.
- (6) On the application of the Reporting Unit, the Court may order that information on which the Reporting Unit relies is to be withheld from a person entitled to be heard under subsection (2) and any person representing that person.
- (7) The Court may make an order under subsection (6) only if satisfied that there are reasonable grounds to believe that disclosure of the information would—
 - (a) prejudice the investigation to which the application relates or any proceedings resulting from the investigation,
 - (b) put any person in danger, or
 - (c) put national security at risk.

12. Authorised disclosure

- (1) A disclosure by a person is an authorised disclosure if—
 - (a) it is a disclosure that property is criminal property made to—
 - (i) the Reporting Unit, or
 - (ii) the relevant money laundering reporting officer, in accordance with the procedures established by the person’s employer for the purpose, and
 - (b) one of the conditions specified in subsection (2), (3) or (4) is satisfied.
- (2) The first condition is that the disclosure is made before the person does the prohibited act.
- (3) The second condition is that—
 - (a) the disclosure is made while the person is doing the prohibited act,
 - (b) the person began to do the act at a time when, because the person did not know or suspect that the property constituted or represented a person’s benefit from criminal conduct, the act was not a prohibited act, and
 - (c) the disclosure is made on the person’s own initiative and as soon as is practicable after the person first knows or suspects that the property constitutes or represents a person’s benefit from criminal conduct.
- (4) The third condition is that—
 - (a) the disclosure is made after the person does the prohibited act,
 - (b) the person has a reasonable excuse for the failure to make the disclosure before the person did the prohibited act, and

- (c) the disclosure is made on the person's own initiative and as soon as it is practicable for the person to make it.

13. Protection with respect to protected and authorised disclosures

- (1) A disclosure is a protected disclosure if—
 - (a) the information or other matter disclosed came to the person making the disclosure (“the discloser”) in the course of the person's trade, profession, business or employment,
 - (b) the information or other matter disclosed causes the discloser to know or suspect, or gives the discloser reasonable grounds for knowing or suspecting, that another person is engaged in money laundering, and
 - (c) the disclosure is made to the Reporting Unit or the relevant money laundering reporting officer, as soon as is reasonably practicable after the information or other matter comes to the discloser.
- (2) Where a person makes a protected disclosure or an authorised disclosure, the disclosure—
 - (a) must not be treated as a breach of any law, rule of law or agreement restricting the disclosure of information, and
 - (b) no criminal or civil proceedings may be taken against the person by reason of the disclosure.
- (3) Where a director, officer or employee of a service provider makes a protected disclosure or an authorised disclosure—
 - (a) the director, officer or employee of the service provider must not be treated as having breached any law, rule of law or agreement restricting the disclosure of information, and
 - (b) no criminal or civil proceedings may be taken against the director, officer or employee of the service provider, or against the service provider, by reason of the disclosure.

Offences

14. Concealing, disguising, converting, transferring and removing criminal property

- (1) It is an offence to—
 - (a) conceal criminal property,
 - (b) disguise criminal property,
 - (c) convert criminal property,
 - (d) transfer criminal property, or
 - (e) remove criminal property from St Helena.
- (2) Concealing or disguising criminal property includes concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it.

- (3) A person does not commit an offence under subsection (1) if—
- (a) the person makes an authorised disclosure and, if the disclosure is made before the person does the act specified in subsection (1), the person has the appropriate consent,
 - (b) the person intended to make such a disclosure but had a reasonable excuse for not doing so, or
 - (c) the act the person does is done in carrying out a function the person has relating to the enforcement of any provision of this Ordinance or of any other law relating to criminal conduct or benefit from criminal conduct.

Penalty: A fine of £250,000 or imprisonment for a period of 15 years, or both.

15. Arrangements

- (1) It is an offence to enter into or become concerned in an arrangement knowing or suspecting that the arrangement 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 an offence under subsection (1) if—
- (a) the person makes an authorised disclosure and, if the disclosure is made before doing the act specified in subsection (1), the person has the appropriate consent,
 - (b) the person intended to make such a disclosure but had a reasonable excuse for not doing so, or
 - (c) the person does the act in carrying out a function the person has relating to the enforcement of any provision of this Ordinance or of any other law relating to criminal conduct or benefit from criminal conduct.

Penalty: A fine of £250,000 or imprisonment for a period of 15 years, or both.

16. Acquisition, use and possession

- (1) It is an offence to—
- (a) acquire criminal property,
 - (b) use criminal property, or
 - (c) have possession of criminal property.
- (2) A person does not commit an offence under subsection (1) if—
- (a) the person makes an authorised disclosure and, if the disclosure is made before the person does the act specified in subsection (1), the person has the appropriate consent,
 - (b) the person intended to make such a disclosure but had a reasonable excuse for not doing so,
 - (c) the person acquired or used or had possession of the property—
 - (i) for adequate consideration, and
 - (ii) without knowing or suspecting that the property was criminal property, or

- (d) the act is done in carrying out a function the person has relating to the enforcement of any provision of this Ordinance or of any other law relating to criminal conduct or benefit from criminal conduct.
- (3) For the purposes of this section—
 - (a) a person acquires property for adequate consideration if the value of the consideration is not significantly less than the value of the property,
 - (b) a person uses or has possession of property for adequate consideration if the value of the consideration is not significantly less than the value of the use or possession of the property, and
 - (c) the provision by a person of goods or services which the person knows or suspects may help another person to carry out criminal conduct is not consideration.

Penalty: A fine of £250,000 or imprisonment for a period of 15 years, or both.

17. Attempting, conspiring and inciting

It is an offence to attempt to commit, conspire with another person to commit or incite another person to commit an offence under section 14, 15 or 16.

Penalty: A fine of £250,000 or imprisonment for a period of 15 years, or both.

18. Failure to disclose knowledge or suspicion of money laundering

- (1) A person commits an offence if the conditions in subsections (2) to (4) are satisfied.
- (2) The first condition is that the person knows or suspects, or has reasonable grounds for knowing or suspecting, that another person is engaged in money laundering.
- (3) The second condition is that the information or other matter on which the person's knowledge or suspicion is based, or which gives reasonable grounds for such knowledge or suspicion, came to the person in the course of a relevant business.
- (4) The third condition is that the person does not, as soon as reasonably practicable after the information or matter comes to the person, make the required disclosure to—
 - (a) the relevant money laundering reporting officer in accordance with the procedures established by the person's employer for the purpose, or
 - (b) the Reporting Unit.
- (5) The required disclosure is a disclosure of—
 - (a) the identity of the other person mentioned in subsection (2), if the person knows it,
 - (b) the whereabouts of the property forming the subject-matter of the money laundering, so far as the person knows it, and
 - (c) the information or other matter mentioned in subsection (3).
- (6) A person does not commit an offence under this section if the person—
 - (a) has a reasonable excuse for not disclosing the information or other matter,

- (b) is a professional legal adviser and the information or other matter came to the person in privileged circumstances, or
 - (c) is a trainee, paralegal, legal secretary or any other person who is employed by, or is in partnership with, a professional legal adviser to provide the adviser with assistance or support and the information or other matter—
 - (i) came to the person in connection with the provision of such assistance or support, and
 - (ii) came to the professional legal adviser in privileged circumstances.
- (7) Without limiting subsection (6)(a), a person has a reasonable excuse for not disclosing information or other matter under this section if—
 - (a) the person does not know or suspect that another person is engaged in money laundering, and
 - (b) the person's employer has not provided the person with anti-money laundering training as required by the Anti-money Laundering and Terrorist Financing Regulations.
- (8) Subject to subsection (9), for the purposes of this section, any information or other matter comes to a professional legal adviser in privileged circumstances if it is communicated or given—
 - (a) by, or by a representative of, a client of the adviser in connection with the giving by the adviser of legal advice to the client,
 - (b) by, or by a representative of, a person seeking legal advice from the adviser, or
 - (c) by a person in connection with legal proceedings or contemplated legal proceedings.
- (9) Subsection (8) does not apply to any information or other matter which is communicated or given with the intention of furthering a criminal purpose.

Penalty: A fine of £100,000 or imprisonment for a period of 5 years, or both.

19. Duty of money laundering reporting officer of service provider to disclose

- (1) A money laundering reporting officer commits an offence if the conditions in subsections (2), (3) and (4) are satisfied.
- (2) The first condition is that the money laundering reporting officer of a service provider knows or suspects, or has reasonable grounds for knowing or suspecting, that another person is engaged in money laundering.
- (3) The second condition is that the information or other matter on which the knowledge or suspicion of the money laundering reporting officer is based, or which gives reasonable grounds for such knowledge or suspicion, came to the money laundering reporting officer in consequence of a disclosure made under section 18

- (4) The third condition is that the money laundering reporting officer does not, as soon as reasonably practicable after receiving the information or matter, disclose the information or other matter to the Reporting Unit.
- (5) A disclosure under subsection (4) to the Reporting Unit must be in the form and manner (if any) specified by the Reporting Unit.

Penalty: A fine of £150,000 or imprisonment for a period of 7 years, or both.

20. Prejudicing an investigation

- (1) This section applies if a person knows or suspects that the Reporting Unit, a police officer, the Civil Recovery Authority or any other authorised person is acting, or is proposing to act, in connection with—
 - (a) a confiscation investigation,
 - (b) a civil recovery investigation, or
 - (c) a money laundering investigation.
- (2) If subsection (1) applies in relation to a person, subject to section 22, it is an offence for that person to—
 - (a) make a disclosure that is likely to prejudice that investigation, or proposed investigation, or
 - (b) falsify, conceal, destroy or otherwise dispose of, or cause or permit the falsification, concealment, destruction or disposal of, documents which are relevant to the investigation.

Penalty: A fine of £200,000 or imprisonment for a period of 15 years, or both.

21. Tipping off

- (1) For the purposes of this section, “**relevant disclosure**” means a disclosure (including an authorised disclosure or a protected disclosure) made by a person under or in accordance with this Part to—
 - (a) the Reporting Unit, or
 - (b) the person’s relevant money laundering reporting officer, and includes information related to the disclosure.
- (2) Subject to section 22, a person commits an offence if, knowing or suspecting that a relevant disclosure is being or has been made, whether by the person or another person—
 - (a) the person discloses the fact that a relevant disclosure is being or has been made,
 - (b) the disclosure is likely to prejudice any investigation that might be conducted following the relevant disclosure referred to in paragraph (a), and
 - (c) the information concerning the relevant disclosure came to the person in the course of a relevant business.
- (3) Subject to section 22, a person commits an offence if—

- (a) the person discloses that an investigation into allegations that a money laundering offence has been committed, is being contemplated or is being carried out,
- (b) the disclosure is likely to prejudice that investigation, and
- (c) the information on which the disclosure is based came to the person in the course of a relevant business.

Penalty: A fine of £200,000 or imprisonment for a period of 15 years, or both.

22. Circumstances in which an offence under section 20 or 21 is not committed

- (1) Nothing in section 20 makes it an offence for a person to make a disclosure to a professional legal adviser for the purposes of legal advice or for a professional legal adviser to make a disclosure—
 - (a) to, or to a representative of, a client of the adviser in connection with the giving by the legal adviser of legal advice to the client, or
 - (b) to any person—
 - (i) in contemplation of, or in connection with, legal proceedings, and
 - (ii) for the purpose of those proceedings.
- (2) Subsection (1) does not apply to a disclosure made with the intention of furthering a criminal purpose.
- (3) In proceedings against a person for an offence under section 20 or section 21, it is a defence to prove that the person did not know or suspect that the disclosure was likely to be prejudicial in the way specified in section 20(2)(a), 21(2)(b) or 21(3)(b), as the case may be.
- (4) A person does not commit an offence under section 20(2)(b) if the person—
 - (a) does not know or suspect that the documents are relevant to the investigation, or
 - (b) does not intend to conceal any facts disclosed by the documents from any person carrying out the investigation.
- (5) No officer of the Reporting Unit (within the meaning of Schedule 5), police officer or other person commits an offence under section 20 or section 21 in respect of anything done in the course of acting in connection with the enforcement, or intended enforcement, of any provision of this Ordinance or of any other law relating to criminal conduct or benefit from criminal conduct or in compliance with a requirement imposed under or by virtue of this Ordinance.

PART 3

CONFISCATION

23. Purpose of this Part

- (1) The purpose of this Part is to enable the Court to confiscate from a defendant who has been convicted of an offence the financial benefit that the defendant has obtained from the defendant's criminal conduct.
- (2) If the Court determines that a defendant has a criminal lifestyle, the Court must make certain assumptions for the purposes of determining—
 - (a) whether the defendant has benefited from the defendant's general criminal conduct, and
 - (b) the defendant's benefit from that conduct.

Definitions and principles applicable to this Part

24. Application of sections 25 to 35

Sections 25 to 35 apply for the purposes of this Part.

25. Realisable property

- (1) Subject to subsection (2), “**realisable property**” means—
 - (a) any property held by the defendant, or
 - (b) any property held by the recipient of a tainted gift.
- (2) Property is not realisable property if an order under any of the following provisions is in force in respect of that property—
 - (a) section 29 of the Drugs (Prevention of Misuse) Ordinance,
 - (b) sections 94, 101, 110, 129 or 132 of this Ordinance, or
 - (c) Article 15 or 16 of the Anti-terrorist Financing Order.

26. Value of property

Subject to sections 27 and 30, the value of property held by a person (person A) at any time is—

- (a) if at that time another person holds an interest in the property, the value of person A's interest in the property at that time, ignoring any charging order made against the interest under section 12 of the Drugs (Trafficking Offences) Ordinance, 2003;
- (b) in any other case, the market value of the property.

27. Value of property obtained from criminal conduct

- (1) The value of property obtained by a person as a result of or in connection with the person's criminal conduct at the time when the Court makes its decision (the material time) is the greater of the following—

- (a) the value of the property, at the time the person obtained it, adjusted to take account of later changes in the value of money, and
 - (b) the value, at the material time, of the property specified under subsection (2).
- (2) The property specified for the purposes of subsection (1) is as follows—
 - (a) if the person holds the property obtained, the property specified under this subsection is that property,
 - (b) if the person holds no part of the property obtained, the property specified under this subsection is any property which directly or indirectly represents it in the person's hands, and
 - (c) if the person holds part of the property obtained, the property specified under this subsection is that part and any property which directly or indirectly represents the other part in the person's hands.

28. Gifts

- (1) A defendant who transfers property to another person for no consideration or for a consideration the value of which is significantly less than the value of the property at the time of the transfer, is to be treated as making a gift.
- (2) If subsection (1) applies, the property given is to be treated as the share in the property transferred that is represented by the fraction—
 - (a) the numerator of which is the difference between the two values specified in subsection (1), and
 - (b) the denominator of which is the value of the property at the time of the transfer.

29. Tainted gifts

- (1) If the Court has determined that the defendant has a criminal lifestyle or if the Court has not yet made a determination whether the defendant has a criminal lifestyle, a gift is tainted—
 - (a) if it was made by the defendant at any time after the relevant date, or
 - (b) if it was made by the defendant at any time and was of property—
 - (i) which was obtained by the defendant as a result of or in connection with the defendant's general criminal conduct, or
 - (ii) which, in whole or part and whether directly or indirectly, represented property in the defendant's hands obtained by the defendant as a result of or in connection with the defendant's general criminal conduct.
- (2) For the purposes of subsection (1), the relevant date is the first day of the period of six years ending with—
 - (a) the day when proceedings for the offence concerned were instituted against the defendant, or
 - (b) if there are two or more offences and proceedings for them were instituted on different days, the earliest of those days.

- (3) If the Court has determined under section 36(2) that the defendant does not have a criminal lifestyle, a gift is tainted if it was made by the defendant at any time after—
 - (a) the date on which the offence concerned was committed, or
 - (b) if the defendant's particular criminal conduct consists of two or more offences and they were committed on different dates, the date of the earliest offence.
- (4) For the purposes of subsection (3)—
 - (a) an offence which is a continuing offence is committed on the first occasion when it is committed, and
 - (b) the defendant's particular criminal conduct includes any conduct which constitutes offences which the Court has taken into consideration in deciding the sentence for the offence or offences concerned.
- (5) A gift may be a tainted gift whether it was made before or after the commencement date.
- (6) References to the recipient of a tainted gift are to the person to whom the defendant has made the gift.

30. Value of tainted gifts

- (1) The value at any time (the material time) of a tainted gift is the greater of the following—
 - (a) the value (at the time of the gift) of the property given, adjusted to take account of later changes in the value of money, and
 - (b) the value (at the material time) of the property specified under subsection (2).
- (2) The property specified under this subsection is as follows—
 - (a) if the recipient holds the property given, the property specified under this subsection is that property,
 - (b) if the recipient holds no part of the property given, the property specified under this subsection is any property which directly or indirectly represents it in the recipient's hands, and
 - (c) if the recipient holds part of the property given, the property specified under this subsection is that part and any property which directly or indirectly represents the other part in the recipient's hands.

31. General and particular criminal conduct

- (1) General criminal conduct, with respect to a defendant, means all the defendant's criminal conduct and, for the purposes of this definition, it is immaterial—
 - (a) whether the conduct occurred before or after the commencement date, or
 - (b) whether property constituting a benefit from the defendant's conduct was obtained before or after the commencement date.
- (2) Particular criminal conduct, with respect to a defendant, means all the defendant's criminal conduct which constitutes—

- (a) the offence of which the defendant was convicted,
- (b) any other offence of which the defendant was convicted in the same proceedings, and
- (c) any offence which has been or will be taken into consideration by the Court in sentencing the defendant for the offence specified in paragraph (a).

32. Defendant's benefit

- (1) In determining, for the purposes of this Part, whether a defendant has benefited from conduct, and the benefit from that conduct, the Court must—
 - (a) take account of conduct occurring up to the time it makes its determination, and
 - (b) take account of property obtained up to that time.
- (2) Subsection (3) applies if—
 - (a) the conduct concerned is general criminal conduct,
 - (b) a confiscation order has previously been made against the defendant under this Ordinance or under the Drugs (Trafficking Offences) Ordinance, 2003, and
 - (c) the defendant's benefit for the purposes of that order was benefit from the defendant's general criminal conduct.
- (3) The defendant's benefit found at the time the last confiscation order mentioned in subsection (2)(c) was made against the defendant must be taken for the purposes of this section to be the defendant's benefit from general criminal conduct at that time.
- (4) If the conduct concerned is general criminal conduct, the Court must deduct the aggregate of the following amounts—
 - (a) the amount ordered to be paid under each confiscation order previously made against the defendant under this Ordinance, and
 - (b) the amount ordered to be paid under each confiscation order previously made against the defendant under the Drugs (Trafficking Offences) Ordinance, 2003.
- (5) Subsection (4) does not apply to an amount which has been taken into account for the purposes of a deduction under that subsection on any earlier occasion.
- (6) The reference to general criminal conduct in the case of a confiscation order made under the Drugs (Trafficking Offences) Ordinance, 2003 is a reference to conduct in respect of which the Court was required or entitled to make one or more assumptions for the purpose of assessing a person's benefit from the conduct.

33. Criminal lifestyle

- (1) A defendant has a criminal lifestyle if convicted of—
 - (a) a drug trafficking offence or a money laundering offence, or
 - (b) an offence that constitutes conduct forming part of a course of criminal activity within the meaning of subsection (2).
- (2) Conduct forms part of a course of criminal activity if the defendant has benefited from the conduct and the defendant—

- (a) was convicted of at least one other qualifying offence in the proceedings in which the defendant was convicted, or
 - (b) has been convicted on at least one previous occasion in the period of six years before the commencement of those proceedings of at least one qualifying offence.
- (3) Subsection (1)(b) does not apply to a defendant if the value of the relevant benefit obtained is less than £2,500.
- (4) In this section—
 - (a) **“relevant benefit”** means the total benefit from—
 - (i) all offences comprising the course of criminal activity, and
 - (ii) conduct which constitutes an offence which has been or will be taken into consideration by the Court in sentencing the defendant for an offence specified in section 31(2);
 - (b) **“qualifying offence”** means an offence which constitutes conduct from which the defendant has benefited.

34. Recoverable amount

- (1) The recoverable amount for the purposes of this Part is an amount equal to the defendant’s benefit from the conduct concerned.
- (2) If the defendant proves that the available amount is less than the value of the benefit under subsection (1), the recoverable amount is—
 - (a) the available amount, or
 - (b) a nominal amount, if the available amount is nil.
- (3) In calculating the defendant’s benefit from the conduct concerned for the purposes of subsection (1), any property in respect of which a recovery order or a forfeiture order is in force must be ignored.

35. Available amount

- (1) For the purposes of deciding the recoverable amount, the available amount is the aggregate of—
 - (a) the total of the values (at the time the confiscation order is made) of all the realisable property then held by the defendant less the total amount payable by the defendant under obligations which then have priority, and
 - (b) the total of the values, at the time the confiscation order is made, of all tainted gifts.
- (2) An obligation has priority if it is an obligation of the defendant—
 - (a) to pay an amount due in respect of a fine or other order of the Court or the Magistrates’ Court which was imposed or made on conviction of an offence at any time before the time the confiscation order is made, or

- (b) to pay a sum which would be included among the preferential debts of the defendant if the defendant's bankruptcy or, in the case of a corporate body, its liquidation had commenced on the date of the confiscation order.
- (3) In this section, “**Preferential debt**” means a debt that, in the bankruptcy of an individual or the liquidation of a corporate body, is payable in priority to the debts of other creditors.

Confiscation orders

36. Making of confiscation order

- (1) The Court must proceed under this section if—
 - (a) a defendant is—
 - (i) convicted by the Court of an offence or offences,
 - (ii) committed to the Court by the Magistrates’ Court for sentencing under section 19(2)(a) of the Magistrates’ Court Ordinance, 2011, or
 - (iii) committed to the Court by the Magistrates’ Court in respect of an offence or offences under section 76, and
 - (b) either—
 - (i) the prosecutor asks the Court to proceed under this section, or
 - (ii) the Court considers that it is appropriate for it to do so.
- (2) If this section applies, the Court must determine whether the defendant has a criminal lifestyle, and—
 - (a) if it determines that the defendant does have a criminal lifestyle, it must decide whether the defendant has benefited from the defendant’s general criminal conduct, or
 - (b) if it determines that the defendant does not have a criminal lifestyle, it must decide whether the defendant has benefited from the defendant’s particular criminal conduct.
- (3) If the Court determines, in accordance with subsection (2), that the defendant has benefited from the defendant’s general or particular criminal conduct, it must—
 - (a) determine the recoverable amount,
 - (b) make a confiscation order requiring the defendant to pay the recoverable amount, and
 - (c) direct that, subject to any payments or deductions properly made in accordance with this Part, all money recovered under the confiscation order must be paid into the National Forfeiture Fund.
- (4) If the Court is satisfied that any victim of the defendant’s criminal conduct has instituted, or intends to institute, civil proceedings against the defendant in respect of loss, injury or damage sustained in connection with the defendant’s conduct—
 - (a) it must treat the duty in subsection (3) as a power, and

- (b) the recoverable amount is the amount the Court considers just, but the recoverable amount must not exceed the amount that it would have been if this subsection did not apply.
- (5) The Court must determine any question arising under subsection (2) or (3) on a balance of probabilities.
- (6) Unless the Court postpones the proceedings for a confiscation order under section 42, it must proceed under this section before sentencing the defendant with respect to the offence or offences referred to in subsection (1).

37. Assumptions to be made in case of criminal lifestyle

- (1) Subject to subsection (3), if the Court determines under section 36 that the defendant has a criminal lifestyle, it must make the assumptions specified in subsection (2) for the purposes of—
 - (a) determining whether the defendant has benefited from the defendant's general criminal conduct, and
 - (b) determining the defendant's benefit from the conduct.
- (2) The assumptions referred to under subsection (1) are—
 - (a) that any property transferred to the defendant at any time after the relevant date was obtained by the defendant—
 - (i) as a result of the defendant's general criminal conduct, and
 - (ii) at the earliest time the defendant appears to have held it,
 - (b) that any property held by the defendant at any time after the date of conviction was obtained—
 - (i) as a result of the defendant's general criminal conduct, and
 - (ii) at the earliest time the defendant appears to have held it,
 - (c) that any expenditure incurred by the defendant at any time after the relevant date was met from property obtained as a result of the defendant's general criminal conduct, and
 - (d) that, for the purpose of valuing any property obtained, or assumed to have been obtained, by the defendant, the property was obtained free of any other interests in it.
- (3) The Court must not make an assumption under subsection (2) in relation to particular property or expenditure if—
 - (a) the assumption is shown to be incorrect, or
 - (b) there would be a serious risk of injustice if the assumption were made.
- (4) If the Court does not make one or more of the assumptions under subsection (2), it must state its reasons.
- (5) For the purposes of this section, the relevant date is the first day of the period of six years ending with—

- (a) the date when proceedings for the offence concerned were instituted against the defendant, or
 - (b) if there are two or more offences and proceedings for them were instituted on different days, the earliest of those days.
- (6) If a confiscation order has been made against the defendant under this Ordinance or under the Drugs (Trafficking Offences) Ordinance, 2003 at any time during the period referred to in subsection (5)—
 - (a) the relevant date is the date when the defendant's benefit was calculated for the purposes of the last such confiscation order, and
 - (b) the assumption specified in subsection (2)(b) does not apply to any property which was held by the defendant on or before the relevant date.

38. Determination of extent of defendant's interest in property

- (1) Subsection (2) applies if it appears to the Court when making a confiscation order that—
 - (a) there is property held by the defendant that is likely to be realised or otherwise used to satisfy the order, and
 - (b) a person other than the defendant holds, or may hold, an interest in the property.
- (2) The Court may, if it considers it appropriate to do so, determine the extent (at the time the confiscation order is made) of the defendant's interest in the property.
- (3) The Court must not exercise the power conferred by subsection (2) unless it gives to anyone who the Court considers is or may be a person holding an interest in the property a reasonable opportunity to make representations to it.
- (4) A determination under this section is conclusive in relation to any question as to the extent of the defendant's interest in the property that arises in connection with—
 - (a) the realisation of the property, or the transfer of an interest in the property, with a view to satisfying the confiscation order, or
 - (b) any action or proceedings taken for the purposes of any such realisation or transfer.
- (5) Subsection (4) does not apply in relation to a question that arises in proceedings before the Court of Appeal.
- (6) In this Part, the "extent" of the defendant's interest in property, means the proportion that the value of the defendant's interest in it bears to the value of the property itself.

39. Time for payment

- (1) Subject to subsection (2), the amount ordered to be paid under a confiscation order must be paid on the day on which the order is made.

- (2) If the Court, when making the confiscation order, is satisfied that the defendant is unable to pay the full amount on that day, it may make an order requiring whatever cannot be paid on that day to be paid—
 - (a) in a specified period, or
 - (b) in specified periods each of which relates to a specified amount.
- (3) If, on the application of the defendant, the Court is satisfied that there are exceptional circumstances, it may extend the period specified in subsection (2) so that it ends on a date no later than 12 months after the date of the confiscation order.
- (4) An order under subsection (3)—
 - (a) may be made after the end of the period originally given for payment, but
 - (b) must not be made after the end of the period of 12 months starting with the date on which the confiscation order is made.
- (5) The Court must not make an order under subsection (2) or (3) unless it gives the prosecutor an opportunity to make representations to the Court.

40. Interest on sums unpaid under confiscation order

- (1) If the amount required to be paid by a person under a confiscation order is not paid when it is required to be paid, the person must pay interest on the amount unpaid for the period for which it remains unpaid—
 - (a) at the rate for the time being applying to a civil judgment debt, or
 - (b) if no such rate is for the time being in force, at the rate prescribed by Regulations.
- (2) For the purposes of subsection (1), no amount is required to be paid under a confiscation order if—
 - (a) an application has been made under section 39(3),
 - (b) the application has not been determined by the Court, and
 - (c) the period of 12 months starting with the day on which the confiscation order was made has not ended.
- (3) The amount of interest payable under this section must be treated as part of the amount to be paid under the confiscation order.

41. Effect of confiscation order on Court's other powers

- (1) Where the Court makes a confiscation order against a defendant, it must, in respect of any offence of which the defendant is convicted in those proceedings, take account of the confiscation order before—
 - (a) imposing a fine,
 - (b) making any order involving any payment by the defendant, other than a Criminal Procedure Ordinance compensation order, or
 - (c) making any order under article 15 or 16 of the Anti-terrorist Financing Order or section 29 of the Drugs (Prevention of Misuse) Ordinance (forfeiture order).

- (2) Subject to subsection (1), the Court must leave the confiscation order out of account in deciding the appropriate sentence for the defendant.
- (3) The Court must make an order under subsection (4) if it—
 - (a) makes a confiscation order and a Criminal Procedure Ordinance compensation order against the same person in the same proceedings, and
 - (b) believes that the person concerned will not have sufficient means to satisfy both orders in full.
- (4) Where subsection (3) applies, the Court must order that the amount of the Criminal Procedure Ordinance compensation order that it believes will not be recoverable because of the insufficiency of the person's means, must be paid out of any sums recovered under the confiscation order.

Procedure

42. Postponement

- (1) If the Court considers it appropriate to do so, it may—
 - (a) postpone proceedings under section 36 for a specified period (the postponement period), and
 - (b) extend the postponement period for a specified period on one or more occasions.
- (2) Unless the Court is satisfied that there are exceptional circumstances, the postponement period, whether as originally ordered or as extended, must not exceed a period of two years from the date of the conviction of the defendant.
- (3) If the defendant appeals against a conviction, the Court may, on that account—
 - (a) postpone the proceedings for a specified period, or
 - (b) where it has already exercised its powers under this section to postpone, extend the postponement period.
- (4) Unless the Court is satisfied that there are exceptional circumstances, any postponement or extension under subsection (3), must not exceed a period of three months from the date on which the appeal is determined or otherwise disposed of.
- (5) A postponement or extension under subsection (1) or (3) may be made—
 - (a) on application by the defendant or the prosecutor, or
 - (b) by the Court of its own motion.
- (6) An application to extend the postponement period may be granted after the postponement period has ended, provided that the application is made before it ends.

43. Effect of postponement

- (1) Subject to subsection (2), where the Court exercises its power to postpone proceedings under section 42, it may nevertheless proceed to sentence the defendant in respect of the offence or any of the offences concerned.

- (2) In sentencing the defendant in respect of the offence, or any of the offences, concerned during the postponement period, the Court must not—
 - (a) impose a fine on the defendant,
 - (b) make any order involving any payment by the defendant, other than a Criminal Procedure Ordinance compensation order, or
 - (c) make an order referred to in section 41(1)(b) or (c).
- (3) Subject to subsection (4), where the Court has sentenced the defendant under subsection (1) during the postponement period, it may, after the end of that period, vary the sentence by—
 - (a) imposing a fine on the defendant,
 - (b) making any order involving any payment by the defendant, including a Criminal Procedure Ordinance compensation order, or
 - (c) making an order referred to in section 41(1)(b) or (c).
- (4) The Court may proceed under subsection (3) only within the period of 28 days starting with the last day of the postponement period.
- (5) If the Court proceeds to sentence the defendant under subsection (1), section 36 has effect as if the defendant's particular criminal conduct included conduct which constitutes offences which the Court has taken into consideration in deciding the defendant's sentence for the offence or offences concerned.

44. Statement of information

- (1) If the Court is proceeding under section 36, the prosecutor must give the Court a statement of information—
 - (a) in a case where section 36(1)(b)(i) applies, within the period ordered by the Court, and
 - (b) in a case where section 36(1)(b)(ii) applies, if the Court orders the prosecutor to give it a statement of information, within the period ordered by the Court.
- (2) If the prosecutor believes that the defendant has a criminal lifestyle, the statement of information is a statement of matters the prosecutor believes are relevant in connection with deciding—
 - (a) whether the defendant has a criminal lifestyle,
 - (b) whether the defendant has benefited from the defendant's general criminal conduct, and
 - (c) the defendant's benefit from the conduct.
- (3) A statement under subsection (2) must include information the prosecutor believes is relevant—
 - (a) in connection with the making by the Court of an assumption under section 37, and
 - (b) for the purpose of enabling the Court to determine if the circumstances are such that it must not make such an assumption.

- (4) If the prosecutor does not believe that the defendant has a criminal lifestyle, the statement of information is a statement of matters the prosecutor believes are relevant in connection with deciding—
 - (a) whether the defendant has benefited from the defendant’s particular criminal conduct, and
 - (b) the defendant’s benefit from the conduct.
- (5) If the prosecutor gives the Court a statement of information, the prosecutor—
 - (a) may at any time give the Court a further statement of information, and
 - (b) must give the Court a further statement of information if the Court so orders, within the period ordered by the Court.
- (6) The Court may, at any time, vary an order made under this section.

45. Defendant’s response to statement of information

- (1) If the prosecutor gives the Court a statement of information and a copy is served on the defendant, the Court may order the defendant—
 - (a) to indicate (within the period it orders) the extent to which the defendant accepts each allegation in the statement, and
 - (b) so far as the defendant does not accept such an allegation, to give particulars of any matters that the defendant proposes to rely on.
- (2) If the defendant accepts to any extent an allegation in a statement of information, the Court may treat the acceptance as conclusive of the matters to which it relates for the purpose of deciding the issues referred to in section 44(2) or (4), as the case may be.
- (3) If the defendant fails in any respect to comply with an order under subsection (1), the defendant may be treated for the purposes of subsection (2) as accepting every allegation in the statement of information apart from—
 - (a) any allegation in respect of which the defendant has complied with the requirement, and
 - (b) any allegation that the defendant has benefited from general or particular criminal conduct.
- (4) For the purposes of this section, an allegation may be accepted, or particulars may be given in a manner ordered by the Court.
- (5) The Court may, at any time, vary an order made under this section.
- (6) No acceptance under this section that the defendant has benefited from conduct is admissible in evidence in proceedings for an offence.

46. Provision of information by defendant

- (1) For the purpose of obtaining information to help it in carrying out its functions under this Part, the Court may at any time order the defendant to give it information specified in the order.

- (2) An order under this section may require all or a specified part of the information to be given in a specified manner and before a specified date.
- (3) If the defendant fails without reasonable excuse to comply with an order under this section, the Court may draw any inference it believes is appropriate.
- (4) Subsection (3) does not affect any power of the Court to deal with the defendant in respect of a failure to comply with an order under this section.
- (5) The Court may treat as conclusive of the matters to which it relates, any acceptance by the prosecutor of an allegation made by the defendant—
 - (a) in giving information required by an order under this section, or
 - (b) in any other statement given to the Court in relation to any matter relevant to determining the amount available to the defendant for the purposes of section 34(2).
- (6) For the purposes of this section, an allegation may be accepted in a manner ordered by the Court.
- (7) The Court may, at any time, vary an order made under this section.
- (8) No information given under this section which amounts to an admission by the defendant of benefit from criminal conduct is admissible in evidence in proceedings for an offence.

Reconsideration

47. Reconsideration of case where no confiscation order made

- (1) This section applies if—
 - (a) section 36(1)(a) applies in respect of a defendant, but the Court has not proceeded under that section,
 - (b) there is evidence which was not available to the prosecutor on the relevant date,
 - (c) before the end of the period of six years starting with the date of conviction, the prosecutor applies to the Court to consider the evidence, and
 - (d) after considering the evidence the Court believes it is appropriate for it to proceed under section 36.
- (2) Where subsection (1) applies, the Court must proceed under section 36 and subsections (3) to (8) apply for that purpose.
- (3) If the Court has already sentenced the defendant for the offence (or any of the offences) concerned, section 36 has effect as if the defendant's particular criminal conduct included conduct which constitutes offences which the Court has taken into consideration in deciding the defendant's sentence for the offence or offences concerned.

- (4) Instead of taking account of the matters specified in section 32(1)(a) and (b), the Court must take account of—
 - (a) conduct occurring before the relevant date,
 - (b) property obtained before the relevant date, and
 - (c) property obtained on or after the relevant date if it was obtained as a result of or in connection with conduct occurring before the relevant date.
- (5) For the purposes of this section—
 - (a) the assumptions specified in section 37(2)(a) and (b) do not apply with regard to property first held by the defendant on or after the relevant date,
 - (b) the assumption specified in section 37(2)(c) does not apply with regard to expenditure incurred by the defendant on or after the relevant date, and
 - (c) the assumption specified in section 37(2)(d) does not apply with regard to property obtained, or assumed to have been obtained, by the defendant on or after the relevant date.
- (6) The recoverable amount for the purposes of section 36 is the amount the Court considers just, but that amount must not exceed the amount determined in accordance with section 34.
- (7) In arriving at the just amount the Court must have regard in particular to—
 - (a) the recoverable amount determined in accordance with section 34,
 - (b) any fine imposed on the defendant in respect of the offence or any of the offences concerned,
 - (c) any order within section 41(1)(b) or (c) that has been made against the defendant in respect of the offence, or any of the offences, concerned and has not already been taken into account by the Court in determining what is the realisable property held by the defendant for the purposes of section 34, and
 - (d) any Criminal Procedure Ordinance compensation order that has been made against the defendant in respect of the offence, or any of the offences, concerned.
- (8) If a Criminal Procedure Ordinance compensation order has been made against the defendant in respect of the offence or offences concerned subsections (6) and (7) do not apply.
- (9) For the purposes of this section, the relevant date is—
 - (a) if the Court made a decision not to proceed under section 36, the date of the decision, or
 - (b) if the Court did not make such a decision, the date of conviction.

48. Reconsideration of benefit where no confiscation order made

- (1) This section applies if—
 - (a) in proceeding under section 36, the Court has determined that—
 - (i) the defendant has a criminal lifestyle but has not benefited from the defendant's general criminal conduct, or

- (ii) the defendant does not have a criminal lifestyle and has not benefited from the defendant's particular criminal conduct,
 - (b) there is evidence which was not available to the prosecutor when the Court determined that the defendant had not benefited from the defendant's general or particular criminal conduct,
 - (c) before the end of the period of six years starting with the date of conviction the prosecutor applies to the Court to consider the evidence, and
 - (d) after considering the evidence, the Court concludes that it would have determined that the defendant had benefited from the defendant's general or particular criminal conduct, as the case may be, if the evidence had been available to it.
- (2) If this section applies, the Court—
- (a) must make a fresh determination under section 36(2)(a) or (b) as to whether the defendant has benefited from the defendant's general or particular criminal conduct, as the case may be, and
 - (b) may make a confiscation order under section 36.
- (3) Subsections (4) to (8) apply if the Court proceeds under section 36 in accordance with this section.
- (4) If the Court has already sentenced the defendant for the offence, or any of the offences, concerned, section 36 has effect as if the defendant's particular criminal conduct included conduct which constitutes offences which the Court has taken into consideration in deciding the sentence for the offence or offences concerned.
- (5) Instead of taking account of the matters specified in section 32(1)(a) and (b), the Court must take account of—
- (a) conduct occurring before the date of the original decision that the defendant had not benefited from the defendant's general or particular criminal conduct,
 - (b) property obtained before that date, and
 - (c) property obtained on or after that date if it was obtained as a result of or in connection with conduct occurring before that date.
- (6) For the purposes of this section—
- (a) the assumptions specified in section 37(2)(a) and (b) do not apply with regard to property first held by the defendant on or after the date of the original decision that the defendant had not benefited from the defendant's general or particular criminal conduct,
 - (b) the assumption specified in section 37(2)(c) does not apply with regard to expenditure incurred by the defendant on or after that date, and
 - (c) the assumption specified in section 37(2)(d) does not apply with regard to property obtained, or assumed to have been obtained, by the defendant on or after that date.

- (7) The recoverable amount for the purposes of section 36 is the amount the Court considers just, but that amount must not exceed the amount that the recoverable amount would have been under section 34 if this subsection did not apply.
- (8) In arriving at the just amount the Court must have regard in particular to—
 - (a) the recoverable amount determined in accordance with section 34,
 - (b) any fine imposed on the defendant in respect of the offence, or any of the offences, concerned,
 - (c) any order within section 41(1)(b) or (c) that has been made against the defendant in respect of the offence (or any of the offences) concerned and has not already been taken into account by the Court in determining what is the realisable property held by the defendant for the purposes of section 34, and
 - (d) any Criminal Procedure Ordinance compensation order that has been made against the defendant.

49. Reconsideration of benefit where confiscation order made

- (1) This section applies if—
 - (a) the Court has made a confiscation order,
 - (b) there is evidence which was not available to the prosecutor at the relevant time,
 - (c) the prosecutor believes that if the Court were to determine the amount of the defendant's benefit under this section it would exceed the relevant amount,
 - (d) before the end of the period of six years starting with the date of conviction the prosecutor applies to the Court to consider the evidence, and
 - (e) after considering the evidence the Court believes it is appropriate for it to proceed under this section.
- (2) Where this section applies, the Court must make a new calculation of the defendant's benefit from the conduct concerned, and subsections (3) to (11) apply for this purpose.
- (3) If the Court has already sentenced the defendant for the offence, or any of the offences, concerned, section 36 has effect as if the defendant's particular criminal conduct included conduct which constitutes offences which the Court has taken into consideration in deciding the defendant's sentence for the offence or offences concerned.
- (4) Instead of taking account of the matters specified in section 32(1)(a) and (b), the Court must take account of—
 - (a) conduct occurring up to the time it determined the defendant's benefit for the purposes of the confiscation order,
 - (b) property obtained up to that time, and
 - (c) property obtained after that time if it was obtained as a result of or in connection with conduct occurring before that time.
- (5) In applying section 32(4)(b), the confiscation order must be ignored.
- (6) For the purposes of this section—

- (a) the assumptions specified in section 37(2)(a) and (b) do not apply with regard to property first held by the defendant after the time the Court determined the defendant's benefit for the purposes of the confiscation order,
 - (b) the assumption specified in section 37(2)(c) does not apply with regard to expenditure incurred by the defendant after that time, and
 - (c) the assumption specified in section 37(2)(d) does not apply with regard to property obtained (or assumed to have been obtained) by the defendant after that time.
- (7) If the amount determined under the new calculation of the defendant's benefit exceeds the relevant amount, the Court—
 - (a) must make a new calculation of the recoverable amount for the purposes of section 36, and
 - (b) if it exceeds the amount required to be paid under the confiscation order, may vary the order by substituting for the amount required to be paid the amount it believes is just.
- (8) In applying subsection (7)(a) the Court must—
 - (a) take the new calculation of the defendant's benefit, and
 - (b) apply section 34 as if references to the time the confiscation order is made were to the time of the new calculation of the recoverable amount and as if references to the date of the confiscation order were to the date of that new calculation.
- (9) In applying paragraph (7)(b) the Court—
 - (a) must have regard in particular to—
 - (i) any fine imposed on the defendant for the offence, or any of the offences, concerned,
 - (ii) any order within section 41(1)(b) or (c) that has been made against the defendant in respect of the offence, or any of the offences, concerned and has not already been taken into account by the Court in determining what is the realisable property held by the defendant for the purposes of section 34, and
 - (iii) any Criminal Procedure Ordinance compensation order that has been made against the defendant in respect of the offence, or any of the offences, concerned, but
 - (b) must not have regard to an order falling within paragraph (a)(iii) if an order has been made under section 41(4).
- (10) In determining for the purposes of this section whether one amount exceeds another, the Court must take account of any change in the value of money.
- (11) For the purposes of this section—
 - (a) the relevant time is—
 - (i) when the Court calculated the defendant's benefit for the purposes of the confiscation order, if this section has not applied previously, or

- (ii) when the Court last calculated the defendant's benefit under this section, if this section has applied previously, and
- (b) the relevant amount is—
 - (i) the amount determined as the defendant's benefit for the purposes of the confiscation order, if this section has not applied previously, or
 - (ii) the amount last determined as the defendant's benefit under this section, if this section has applied previously.

50. Reconsideration of amount available to defendant where confiscation order made

- (1) This section applies if—
 - (a) the Court has made a confiscation order,
 - (b) the amount required to be paid was the amount determined in accordance with section 34(2), and
 - (c) the prosecutor or an enforcement receiver applies to the Court to make a new calculation of the amount available to the defendant.
- (2) In a case where this section applies the Court must make the new calculation, and in doing so it must apply section 34 as if references to the time the confiscation order is made were to the time of the new calculation and as if references to the date of the confiscation order were to the date of the new calculation.
- (3) If the amount determined under the new calculation exceeds the relevant amount, the Court may vary the order by substituting for the amount required to be paid the amount the Court considers just, but that amount must not exceed the amount determined as the defendant's benefit from the conduct concerned.
- (4) In deciding what is just the Court—
 - (a) must have regard, in particular to—
 - (i) any fine imposed on the defendant for the offence, or any of the offences, concerned,
 - (ii) any order within section 41(1)(b) or (c) that has been made against the defendant in respect of the offence, or any of the offences, concerned and has not already been taken into account by the Court in determining what is the realisable property held by the defendant for the purposes of section 34, and
 - (iii) any Criminal Procedure Ordinance compensation order that has been made against the defendant in respect of the offence, or any of the offences, concerned, but
 - (b) must not have regard to an order falling within paragraph (a)(iii) if an order has been made under section 41(4).
- (5) In determining under this section whether one amount exceeds another, the Court must take account of any change in the value of money.
- (6) The relevant amount is—

- (a) the amount determined as the amount available to the defendant for the purposes of the confiscation order, if this section has not applied previously, or
 - (b) the amount last determined as the amount available to the defendant under this section, if this section has applied previously.
- (7) The amount determined as the defendant's benefit from the conduct concerned is—
 - (a) the amount determined when the confiscation order was made, or
 - (b) if one or more new calculations of the defendant's benefit have been made under section 49, the amount determined on the occasion of the last such calculation.

51. Variation of order where amount available to defendant is inadequate

- (1) This section applies if—
 - (a) the Court has made a confiscation order, and
 - (b) the defendant or an enforcement receiver applies to the Court to vary the order under this section.
- (2) Where this section applies, the Court must calculate the amount available to the defendant, and in doing so it must apply section 34 as if references to the time the confiscation order is made were to the time of the calculation and as if references to the date of the confiscation order were to the date of the calculation.
- (3) If the Court determines that the amount available to the defendant calculated in accordance with subsection (2) is inadequate for the payment of any amount remaining to be paid under the confiscation order, it may vary the order by substituting for the amount required to be paid the smaller amount the Court considers is just.
- (4) If a person has been adjudged bankrupt or the person's estate has been sequestrated, or if an order for the liquidation of a company has been made, the Court must take into account the extent to which realisable property held by that person or that company may be distributed among creditors.
- (5) The Court may disregard any inadequacy which it believes is attributable, wholly or partly, to anything done by the defendant for the purpose of preserving property held by the recipient of a tainted gift from any risk of realisation under this Ordinance.

52. Discharge of order for inadequacy of amount available to defendant

- (1) This section applies if—
 - (a) the Court has made a confiscation order,
 - (b) the Clerk of the Peace applies to the Court for the discharge of the order, and
 - (c) the amount remaining to be paid under the order is less than the sum prescribed.
- (2) Where this section applies, the Court must calculate the amount available to the defendant and, in doing so, it must apply section 34 as if references to the time the confiscation order is made were to the time of the calculation and as if references to the date of the confiscation order were to the date of the calculation.

- (3) If the Court—
 - (a) determines that the amount available to the defendant calculated in accordance with subsection (2) is inadequate to meet the amount remaining to be paid, and
 - (b) is satisfied that the inadequacy is due wholly to one or more of the reasons specified in subsection (4), it may discharge the confiscation order.
- (4) The reasons referred to in subsection (3) are—
 - (a) in a case where any of the realisable property consists of money in a currency other than £, that fluctuations in currency exchange rates have occurred, or
 - (b) the other reasons prescribed.

53. Discharge of order where small amount outstanding

The Court may discharge a confiscation order if—

- (a) the Clerk of the Peace applies to the Court for the discharge of the order, and
- (b) the amount remaining to be paid under the order is the prescribed sum or less.

54. Information

Where the Court proceeds under section 36 following applications under section 47 or 48, or the prosecutor applies under section 49—

- (a) the prosecutor must give the Court a statement of information within the period the Court orders,
- (b) section 44 applies, with appropriate modifications where the prosecutor applies under section 49, and
- (c) sections 45 and 46 apply.

Defendant absconds

55. Defendant convicted or committed

- (1) This section applies if—
 - (a) a defendant absconds after—
 - (i) being convicted of an offence or offences in proceedings before the Court,
 - (ii) being committed to the Court by the Magistrates' Court for sentencing in respect of an offence or offences under section 19(2)(a) of the Magistrates' Court Ordinance, 2011, or
 - (iii) being committed to the Court by the Magistrates' Court in respect of an offence or offences under section 76,
 - (b) the prosecutor applies to the Court to proceed under this section, and
 - (c) the Court considers it appropriate for it to do so.
- (2) If subsection (1) applies, the Court must proceed under section 36.
- (3) Where the Court proceeds under section 36 as applied by this section, this Part has effect with the following modifications—

- (a) any person the Court believes is likely to be affected by an order under section 36 is entitled to appear before the Court and make representations,
 - (b) the Court must not make an order under section 36 unless the prosecutor has taken reasonable steps to contact the defendant,
 - (c) sections 37, 44(3), 45 and 46 must be ignored, and
 - (d) sections 47, 48 and 49 must be ignored while the defendant is still an absconder.
- (4) Once the defendant ceases to be an absconder, section 47 applies as if subsection (1)(a) of that section provided—
 - “(a) at a time when section 55(1)(a) applies, the Court did not proceed under section 36”.

56. Defendant neither convicted nor acquitted

- (1) This section applies if—
 - (a) proceedings for an offence or offences are instituted against a defendant but are not concluded,
 - (b) the defendant absconds,
 - (c) the period of two years, starting with the day the Court believes the defendant absconded, has ended,
 - (d) the prosecutor applies to the Court to proceed under this section, and
 - (e) the Court considers it is appropriate for it to do so.
- (2) If subsection (1) applies, subject to subsection (3), the Court must proceed under section 36.
- (3) Where the Court proceeds under section 36 as applied by this section, this Part has effect with the following modifications—
 - (a) any person the Court believes is likely to be affected by an order under section 36 is entitled to appear before the Court and make representations,
 - (b) the Court must not make an order under section 36 unless the prosecutor has taken reasonable steps to contact the defendant,
 - (c) sections 37, 44(3), 45 to 48 must be ignored, and
 - (d) section 57 must be ignored while the defendant is still an absconder.
- (4) Once the defendant has ceased to be an absconder, section 57 has effect as if references to the date of conviction were to—
 - (a) the day when proceedings for the offence concerned were instituted against the defendant, or
 - (b) if there are two or more offences and proceedings for them were instituted on different days, the earliest of those days.
- (5) If the Court makes an order under section 36 as applied by this section, and the defendant is subsequently convicted in proceedings before the Court of the offence, or any of the offences, concerned, section 33 does not apply so far as that conviction is concerned.

57. Variation of order

- (1) This section applies if—
 - (a) the Court makes a confiscation order under section 36 as applied by section 56,
 - (b) the defendant ceases to be an absconder,
 - (c) the defendant is convicted of an offence, or of any of the offences, mentioned in section 56(1)(a),
 - (d) the defendant believes that the amount required to be paid was too large, taking into account the circumstances prevailing when the amount was determined for the purposes of the order, and
 - (e) before the end of the relevant period the defendant applies to the Court to consider the evidence on which the defendant's belief is based.
- (2) If, after considering the evidence, the Court concludes that the defendant's belief is well founded—
 - (a) it must determine the amount which should have been the amount required to be paid, taking into account the circumstances prevailing when the amount was determined for the purposes of the order, and
 - (b) it may vary the order by substituting for the amount required to be paid the amount it believes is just.
- (3) The relevant period is the period of 28 days starting with—
 - (a) the date on which the defendant was convicted of the offence mentioned in section 56(1)(a), or
 - (b) if there are two or more offences and the convictions were on different dates, the date of the latest conviction.
- (4) In a case where section 56(1)(a) applies to more than one offence, the Court must not make an order under this section unless it is satisfied that there is no possibility of any further proceedings being taken or continued in relation to any such offence in respect of which the defendant has not been convicted.

58. Discharge of order

- (1) Where the Court makes a confiscation order under section 36 as applied by section 56, it must discharge the order if the defendant—
 - (a) is subsequently tried for the offence or offences concerned and acquitted on all counts, and
 - (b) applies to the Court to discharge the order.
- (2) Subsection (3) applies if—
 - (a) the Court makes a confiscation order under section 36 as applied by section 56,
 - (b) the defendant ceases to be an absconder,
 - (c) subsection (1)(a) does not apply, and
 - (d) the defendant applies to the Court to discharge the order.

- (3) In the circumstances specified in subsection (2), the Court may discharge the order if it determines that—
 - (a) there has been undue delay in continuing the proceedings mentioned in section 56(1), or
 - (b) the prosecutor does not intend to proceed with the prosecution.
- (4) If the Court discharges a confiscation order under this section it may make any consequential or incidental order it considers appropriate.

Appeals

59. Appeal to Court of Appeal

- (1) If the Court makes a confiscation order, the prosecutor or the defendant may appeal to the Court of Appeal in respect of the order.
- (2) If the Court decides not to make a confiscation order, the prosecutor may appeal to the Court of Appeal against the decision.
- (3) Subsections (1) and (2) do not apply to an order or decision made by virtue of sections 47, 48, 55 or 56 unless the appellant is the defendant.

60. Court's powers on appeal

- (1) On an appeal under section 59(1) the Court of Appeal may confirm, set aside or vary the confiscation order.
- (2) On an appeal under section 59(2), the Court of Appeal may confirm the decision, or if it believes the decision was wrong it may—
 - (a) itself proceed under section 36, ignoring subsections (1) to (3), or
 - (b) direct the Court to proceed afresh under section 36.
- (3) In proceeding afresh under this section, the Court must comply with any directions the Court of Appeal makes.
- (4) If the Court of Appeal makes or varies a confiscation order under this section or the Court does so in accordance with a direction under this section it must have regard to—
 - (a) any fine imposed on the defendant in respect of the offence, or any of the offences, concerned, and
 - (b) any order within section 41(1)(b) or (c) that has been made against the defendant in respect of the offence, or any of the offences, concerned, unless the order has already been taken into account by the Court in determining what is the realisable property held by the defendant for the purposes of section 34(2).
- (5) If the Court of Appeal proceeds under section 36 or the Court proceeds afresh under that section in accordance with a direction under this section, subsections (6) to (11)

apply, and in those subsections, references to the Court are to be read as references to the Court of Appeal or the Supreme Court, as the case may be.

- (6) If the Supreme Court has already sentenced the defendant for the offence, or any of the offences, concerned, section 36 has effect as if the defendant's particular criminal conduct included conduct which constitutes offences which the Court has taken into consideration in deciding the defendant's sentence for the offence or offences concerned.
- (7) If a Criminal Procedure Ordinance compensation order has been made against the defendant in respect of the offence, or any offences, concerned—
 - (a) the Court must have regard to it, and
 - (b) section 41(3) and (4) do not apply.
- (8) Instead of taking account of the matters specified in section 32(1)(a) and (b), the Court must take account of—
 - (a) conduct occurring before the relevant date,
 - (b) property obtained before that date, and
 - (c) property obtained on or after that date if it was obtained as a result of or in connection with conduct occurring before that date.
- (9) For the purposes of this section—
 - (a) the assumptions specified in section 37(2)(a) and (b) do not apply with regard to property first held by the defendant on or after the relevant date,
 - (b) the assumption specified in section 37(2)(c) does not apply with regard to expenditure incurred by the defendant on or after that date, and
 - (c) the assumption specified in section 37(2)(d) does not apply with regard to property obtained, or assumed to have been obtained, by the defendant on or after that date.
- (10) Section 54 applies as it applies in the circumstances specified in that section.
- (11) The relevant date is the date on which the Supreme Court decided not to make a confiscation order.

Restraint orders

61. Conditions for exercise of power to make a restraint order

- (1) The Court may exercise the powers conferred by section 62 if—
 - (a) a criminal investigation has been started in St Helena with regard to an offence and there is reasonable cause to believe that the alleged offender has benefited from the alleged offender's criminal conduct,
 - (b) proceedings for an offence have been instituted in St Helena and not concluded and there is reasonable cause to believe that the defendant has benefited from the defendant's criminal conduct,

- (c) an application by the prosecutor has been made under sections 47, 48, 55 or 56 and not concluded, or the Court believes that such an application is to be made, and there is reasonable cause to believe that the defendant has benefited from the defendant's criminal conduct,
 - (d) an application by the prosecutor has been made under section 49 and not concluded, or the Court believes that such an application is to be made, and there is reasonable cause to believe that the Court will decide under that section that the amount determined under the new calculation of the defendant's benefit exceeds the relevant amount, as defined in that section, or
 - (e) an application by the prosecutor has been made under section 50 and not concluded, or the Court believes that such an application is to be made, and there is reasonable cause to believe that the Court will decide under that section that the amount determined under the new calculation of the amount available to the defendant exceeds the relevant amount, as defined in that section.
- (2) For the purposes of subsection (1), a criminal investigation is an investigation which police officers or other persons have a duty to conduct, with the objective of ascertaining whether a person should be charged with an offence.
 - (3) Subsection (1)(b) is not satisfied if the Court believes that—
 - (a) there has been undue delay in continuing the proceedings, or
 - (b) the prosecutor does not intend to proceed.
 - (4) If an application mentioned in subsection (1)(c), (d) or (e) has been made, the condition specified in the relevant paragraph is not satisfied if the Court believes that—
 - (a) there has been undue delay in continuing the application, or
 - (b) the prosecutor does not intend to proceed.
 - (5) If subsection (1)(a) is satisfied—
 - (a) references in this Part to the defendant are to the alleged offender,
 - (b) references in this Part to the prosecutor are to the person the Court believes is to have conduct of any proceedings for the offence, and
 - (c) section 29(2) has effect as if proceedings for the offence had been instituted against the defendant when the investigation was started.

62. Restraint order

- (1) If any paragraph in section 61(1) is satisfied, the Court may, on the application of the prosecutor, make a restraint order prohibiting any person specified in the order from dealing with any realisable property held by that person, subject to any conditions and exceptions specified in the order.
- (2) Without limiting subsection (1) and subject to subsections (3), (4) and (5), a restraint order may make any provision the Court considers appropriate for—
 - (a) reasonable living expenses and reasonable legal expenses, or

- (b) enabling any person to carry on any trade, business, profession or occupation.
- (3) Subject to subsection (4), provision must not be made under subsection (2)(a) for any legal expenses which—
 - (a) are incurred by the defendant or a recipient of a tainted gift, and
 - (b) relate to—
 - (i) an offence referred to in section 61(1)(a) or (b) if the conditions specified in section 61(1)(a) or (b) are satisfied, or
 - (ii) the offence, or any of the offences, concerned, if section 61(1)(c), (d) or (e) is satisfied
- (4) A restraint order must be made subject to an exception that enables the payment by an aided person of any contribution due under the Legal Aid, Assistance and Services Ordinance, 2017.
- (5) A restraint order may apply—
 - (a) to all realisable property held by the person specified in the order, whether the property is described in the order or not, and
 - (b) to realisable property transferred to the person specified in the order after the order is made.
- (6) On the application of the prosecutor, whether made as part of the application for the restraint order or subsequently, the Court may make any order it considers appropriate for ensuring the restraint order is effective.
- (7) A restraint order does not affect property for the time being subject to a charging order made under section 12 of the Drugs (Trafficking Offences) Ordinance, 2003.
- (8) Where the Court has made a restraint order, a police officer or customs officer may, for the purpose of preventing any property to which the order applies being removed from St Helena, seize the property.
- (9) Property seized under subsection (8) must be dealt with in accordance with the Court's directions.

63. Application, discharge and variation

- (1) A restraint order—
 - (a) may be made on an application made without notice to a judge in chambers, and
 - (b) must provide for notice to be given to persons affected by the order.
- (2) An application to discharge or vary a restraint order or an order made under section 62(6) may be made to the Court by the prosecutor or by any person affected by the order.
- (3) On an application under subsection (2), the Court may discharge or vary the restraint order.

- (4) If the application was made on the basis that proceedings were instituted or an application was made, the Court must discharge the restraint order on the conclusion of the proceedings or the application, as the case may be.
- (5) If the application was made on the basis that an investigation was started or an application was to be made, the Court must discharge the restraint order if within a reasonable period proceedings for the offence are not instituted or the application is not made, as the case may be.

64. Hearsay evidence

- (1) Evidence must not be excluded on the ground that it is hearsay, of whatever degree, in proceedings—
 - (a) for a restraint order,
 - (b) for an application to discharge or vary a restraint order, or
 - (c) on an appeal against a restraint order or an order discharging or varying a restraint order.
- (2) For the purposes of this section, “**hearsay**” means a statement, not made in oral evidence in the proceedings, that is relied on as evidence of a matter stated in it.
- (3) This section does not affect the admissibility of evidence which is admissible apart from this section.

65. Prosecutor may apply to Registrar of Lands for restriction

- (1) On application for a restraint order, the prosecutor—
 - (a) must be treated as a person interested in any registered land, lease or charge to which the application relates, or to which a restraint order made on the application relates, and
 - (b) may apply to the Registrar of Lands under section 132(1) of the Registered Land Ordinance, 1980 for a restriction prohibiting or restricting dealings with the registered land, lease or charge.
- (2) The Registrar of Lands may, on an application made under subsection (1), order a restriction to be entered.

66. Appointment of management receiver

- (1) If the Court makes a restraint order, it may, on the application of the prosecutor, whether as part of the application for the restraint order or at any time afterwards, appoint a management receiver in respect of any realisable property to which the restraint order applies.
- (2) The Court may, by order, give the management receiver the following powers, or any of them in relation to any realisable property to which the restraint order applies—
 - (a) power to take possession of the property,
 - (b) power to manage or otherwise deal with the property,

- (c) power to start, carry on or defend any legal proceedings in respect of the property,
 - (d) power to realise so much of the property as is necessary to meet the management receiver's remuneration and expenses, and
 - (e) power to exercise such other powers the Court considers it appropriate to confer for the purpose of exercising the management receiver's functions.
- (3) The Court may require any person having possession of property in respect of which a management receiver is appointed to give possession of it to the management receiver.
- (4) The Court—
 - (a) may order a person holding an interest in any realisable property to which the restraint order applies to make to the management receiver the payment the Court specifies in respect of a beneficial interest held by the defendant or the recipient of a tainted gift, and
 - (b) may, on the payment being made, by order transfer, grant or extinguish any interest in the property.
- (5) For the purposes of this section, managing or otherwise dealing with property includes—
 - (a) selling the property or any part or interest in it,
 - (b) carrying on or arranging for another person to carry on any trade or business the assets of which are or are part of the property, or
 - (c) incurring capital expenditure in respect of the property.
- (6) The Court must not in respect of any property give the receiver the powers specified in paragraphs (2)(b) or (d) or exercise the powers conferred by subsection (3) or (4) unless a reasonable opportunity has been given for persons holding any interest in the property to make representations to the Court.

67. Appointment of enforcement receiver

- (1) On the application of the prosecutor, the Court may appoint an enforcement receiver in respect of realisable property, except property subject to a charge specified in section 62(7), if—
 - (a) a confiscation order is made,
 - (b) the confiscation order is not satisfied, and
 - (c) the confiscation order is not subject to appeal.
- (2) Subject to any directions, exceptions and conditions specified by the Court, an enforcement receiver has the following powers in relation to the realisable property—
 - (a) to take possession of the property,
 - (b) to manage or otherwise deal with the property,
 - (c) to realise the property, in the manner the Court may specify,
 - (d) to start, carry on or defend any legal proceedings in respect of the property, and

- (e) to exercise any other powers the Court considers it appropriate to confer on the enforcement receiver for the purpose of exercising the functions for which the enforcement receiver was appointed.
- (3) The Court may require any person having possession of realisable property to give possession of it to the enforcement receiver.
- (4) The Court may—
 - (a) order a person holding an interest in realisable property to make to the enforcement receiver the payment the Court specifies in respect of a beneficial interest held by the defendant or the recipient of a tainted gift, and
 - (b) on the payment being made, by order transfer, grant or extinguish any interest in the property.
- (5) For the purposes of this section, managing or otherwise dealing with property includes—
 - (a) selling the property or any part or interest in it,
 - (b) carrying on or arranging for another person to carry on any trade or business the assets of which are or are part of the property, or
 - (c) incurring capital expenditure in respect of the property.
- (6) The Court must not in respect of any property exercise the powers conferred by subsection (3), (4) or (5) unless a reasonable opportunity has been given for persons holding any interest in the property to make representations to the Court.

68. Effect of restraint order

- (1) Where a restraint order is made, or an enforcement receiver is appointed, no distress may be levied against any realisable property to which the order applies except with the leave of the Court and subject to any terms the Court may impose.
- (2) If the restraint order applies to, or the enforcement receiver is appointed in respect of, a tenancy of any premises, no landlord or other person to whom rent is payable may exercise a right of forfeiture by peaceable re-entry in relation to the premises in respect of any failure by the tenant to comply with any term or condition of the tenancy, except with the leave of the Court and subject to any terms the Court may impose.
- (3) If proceedings are pending before the Court in respect of any property and the Court is satisfied that a restraint order, or an order for the appointment of an enforcement receiver, has been applied for or made in respect of the property, the Court may either stay the proceedings or allow them to continue on any terms it considers appropriate.
- (4) Before exercising any power conferred by subsection (3), the Court must give an opportunity to be heard to—
 - (a) the prosecutor, and
 - (b) the enforcement receiver or, in the case of a restraint order, any receiver appointed in respect of the property under this Part.

69. Application of proceeds of realisation and other sums

- (1) Subject to subsection (2), the following sums in the hands of an enforcement receiver must, after any payments directed by the Court have been made out of them, be applied on the defendant's behalf towards satisfaction of the confiscation order—
 - (a) the proceeds of the realisation of any property under section 67, and
 - (b) any other sums in which the defendant holds an interest.
- (2) If, after the amount payable under the confiscation order has been fully paid, any sums referred to in subsection (1) remain in the hands of the enforcement receiver, the receiver must distribute them—
 - (a) among the persons who held or hold property realised under this Ordinance as the Court directs, and
 - (b) in the proportions the Court directs.
- (3) Before giving a direction under subsection (2), the Court must give those persons a reasonable opportunity to make representations to it.
- (4) The receipt of any sum by the Registrar on account of an amount payable under a confiscation order must reduce the amount so payable, but the Registrar must apply the money received for the purposes specified in this section and in the order so specified.
- (5) The Registrar must first pay the receiver's remuneration and expenses if the money was paid to the Registrar by a receiver appointed under this Ordinance.
- (6) If the Court made an order under section 41(4), the Registrar must, after making any payment required by subsection (5), next apply any balance in the Registrar's hands in payment of any amount of the Criminal Procedure Ordinance compensation order as may be outstanding.
- (7) Any balance in the hands of the Registrar after making all payments required by this section must be treated as if it were a fine imposed by the Court.

70. Further provisions with respect to receivers

- (1) Subsection (2) applies if a management or enforcement receiver—
 - (a) takes action in relation to property which is not realisable property,
 - (b) would be entitled to take the action if the property were realisable property, and
 - (c) believes on reasonable grounds that the receiver is entitled to take the action.
- (2) The receiver is not liable to any person in respect of any loss or damage resulting from the action, except so far as the loss or damage is caused by the receiver's negligence.
- (3) Application may be made to the Court for an order giving directions as to the exercise of the powers of a management or enforcement receiver by—
 - (a) the receiver,
 - (b) any person affected by action taken by the receiver, or

- (c) any person who may be affected by action the receiver proposes to take.
- (4) On an application under this section, the Court may make any order it considers appropriate.

71. Discharge and variation

- (1) Application may be made to the Court to vary or discharge an order made under section 66 or 67 by—
 - (a) the receiver,
 - (b) the prosecutor, or
 - (c) any person affected by the order.
- (2) On an application under this section the Court may discharge or vary the order.
- (3) In the case of an order under section 66—
 - (a) if the condition in St Helena which was satisfied was that proceedings were instituted or an application was made, the Court must discharge the order on the conclusion of the proceedings or of the application, as the case may be, and
 - (b) if the condition which was satisfied was that an investigation was started or an application was to be made, the Court must discharge the order if within a reasonable time proceedings for the offence are not instituted or the application is not made, as the case may be.

72. Discharge of management receiver

- (1) Where a management receiver is appointed in respect of realisable property and the Court appoints an enforcement receiver, the Court must order the management receiver to transfer to the enforcement receiver all property that the management receiver holds by virtue of the exercise of the powers of management receiver.
- (2) Subsection (1) does not apply to property which the management receiver holds by virtue of the exercise of powers under section 66(2)(d).
- (3) On complying with an order under subsection (1), a management receiver is discharged—
 - (a) from the appointment as management receiver, and
 - (b) from any obligation under this Ordinance arising from the appointment.
- (4) Where this section applies, the Court may make any consequential or incidental order it considers appropriate.

73. Liquidation of company holding realisable property

- (1) Where realisable property is held by a company and an order for the liquidation of the company has been made or a special resolution has been passed by the shareholders for the voluntary liquidation of the company, the functions of the liquidator must not be exercised 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 for the time being in the hands of a receiver appointed under this Ordinance.
- (2) Subsection (3) applies to—
 - (a) the powers conferred on the Court by sections 62 to 72, and
 - (b) the powers of a receiver appointed under this Part.
- (3) Where, in the case of a company, an order or resolution referred to in subsection (1) has been made or passed, the powers must not be exercised in relation to any realisable property held by the company in respect of which the functions of the liquidator are exercisable—
 - (a) so as to inhibit the liquidator from exercising those functions for the purpose of distributing any property held by the company to the company’s creditors, or
 - (b) so as to prevent the payment out of any property of expenses (including the remuneration of the liquidator or any provisional liquidator) properly incurred in the winding up in respect of the property.
- (4) Subsection (3) 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.
- (5) In this section—

“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 submission of the application 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.

74. Exercise of powers by Court or receiver

- (1) This section applies to—
 - (a) the powers conferred on the Court by sections 62 to 69, and
 - (b) the powers of a receiver appointed under this Part.
- (2) Subject to this section, the powers—
 - (a) must be exercised with a view to the value for the time being of realisable property being made available, by the property’s realisation, for satisfying any confiscation order that has been, or may be, made against the defendant,
 - (b) must be exercised, in a case where a confiscation order has not been made, with a view to securing that there is no diminution in the value of realisable property,
 - (c) must be exercised without taking account of any obligation of the defendant or a recipient of a tainted gift if the obligation conflicts with the objective of

satisfying any confiscation order that has been made, or may be made, against the defendant, and

- (d) may be exercised in respect of a debt owed by the Crown.
- (3) Subsection (2) has effect subject to the following—
 - (a) the powers must be exercised with a view to allowing a person other than the defendant or a recipient of a tainted gift to retain or recover the value of any interest that the person holds,
 - (b) in the case of realisable property held by a recipient of a tainted gift, the powers must be exercised with a view to realising no more than the value for the time being of the gift, and
 - (c) in a case where a confiscation order has not been made against the defendant, property must not be sold if the Court so orders under subsection (4).
- (4) If on an application by the defendant, or by the recipient of a tainted gift, the Court decides that property cannot be replaced it may order that it must not be sold.
- (5) An order under subsection (4) may be revoked or varied.

Other matters

75. Compensation

- (1) Subsection (2) applies if proceedings are instituted against a person for an offence or offences and—
 - (a) the proceedings do not result in a conviction for any such offence, or
 - (b) the person is convicted of one or more such offences, and—
 - (i) the conviction or convictions concerned are quashed, or
 - (ii) the person is pardoned by the Governor in respect of the conviction or convictions concerned.
- (2) The Court may, subject to this section, on an application by a person who held property which was realisable property, order compensation to be paid to the applicant if, having regard to all the circumstances, it considers it appropriate to make the order
- (3) The Court must not order compensation to be paid in any case unless the Court is satisfied—
 - (a) that there has been some serious default on the part of a person concerned in the investigation or prosecution of the offence concerned, and
 - (b) that the applicant has suffered loss in consequence of anything done in relation to the property by or in accordance with an order under this Ordinance.
- (4) The Court must not order compensation to be paid in any case where it appears to the Court that the proceedings would have been instituted or continued even if the serious default had not occurred.

- (5) The amount of compensation to be paid under this section must be the amount the Court considers just in all the circumstances of the case.

76. Committal by Magistrates' Court

- (1) This section applies if—
- (a) a defendant is convicted of an offence by the Magistrates' Court, and
 - (b) the prosecutor asks the Magistrates' Court to commit the defendant to the Court with a view to a confiscation order being considered.
- (2) In such a case the Magistrates' Court—
- (a) must commit the defendant to the Court in respect of the offence, and
 - (b) may commit the defendant to the Court in respect of any other offence falling within subsection (3).
- (3) An offence falls within this subsection if—
- (a) the defendant has been convicted of it by the Magistrates' Court, and
 - (b) the Magistrates' Court has power to deal with the defendant in respect of the offence.
- (4) If a committal is made under this section in respect of an offence or offences—
- (a) section 36 applies accordingly, and
 - (b) the committal operates as a committal of the defendant to be dealt with by the Court in accordance with section 78.
- (5) A committal under this section may be in custody or on bail.

77. Confiscation orders by Magistrates' Court

- (1) Subject to subsection (2), the Regulations may provide for the making of a confiscation order under section 36 by the Magistrates' Court.
- (2) The Regulations must not enable the Magistrates' Court to make a confiscation order in respect of an amount exceeding £25,000.
- (3) The provisions of this Ordinance relating to confiscation orders must apply with respect to confiscation proceedings before, and confiscation orders made by, the Magistrates' Court, subject to any modifications provided for in the Regulations.

78. Sentencing by Court

If a defendant is committed to the Court under section 76 in respect of an offence or offences, the Court—

- (a) must inquire into the circumstances of the case, and
- (b) may deal with the defendant in any way in which the Magistrates' Court could deal with the defendant if it had just convicted the defendant of the offence.

79. Enforcement abroad

- (1) This section applies if—
 - (a) any of the conditions in section 61(1) is satisfied,
 - (b) the prosecutor believes that realisable property is situated in a country outside St Helena (the receiving country), and
 - (c) the prosecutor sends a request for assistance to the Attorney General with a view to it being forwarded under this section.
- (2) In a case where no confiscation order has been made, a request for assistance is a request to the government of the receiving country to secure that any person is prohibited from dealing with realisable property.
- (3) In a case where a confiscation order has been made and has not been satisfied, discharged or set aside, a request for assistance is a request to the government of the receiving country to secure that—
 - (a) any person is prohibited from dealing with realisable property, and
 - (b) realisable property is realised and the proceeds are applied in accordance with the law of the receiving country.
- (4) No request for assistance may be made for the purposes of this section in a case where a confiscation order has been made and has been satisfied, discharged or set aside.
- (5) If the Attorney General believes it is appropriate to do so the Attorney General may forward the request for assistance to the government of the receiving country.
- (6) If property is realised in accordance with a request under subsection (3) the amount ordered to be paid under the confiscation order must be taken to be reduced by an amount equal to the proceeds of realisation.
- (7) A certificate issued by or on behalf of the requested government is admissible as evidence of the facts it states if it states—
 - (a) that property has been realised in accordance with a request under subsection (3),
 - (b) the date of realisation, and
 - (c) the proceeds of realisation.
- (8) If the proceeds of realisation made in accordance with a request under subsection (3) are expressed in a currency other than St Helena pounds, they must be taken to be the St Helena pounds equivalent calculated in accordance with the rate of exchange prevailing at the end of the day of realisation.

PART 4 CIVIL RECOVERY

Preliminary

80. General

- (1) This Part has effect for the purposes of—
 - (a) enabling the Civil Recovery Authority to recover in civil proceedings before the Court, property which is, or represents—
 - (i) property obtained through unlawful conduct, or
 - (ii) property that has been used in, or in connection with, or is intended to be used in, or in connection with, unlawful conduct, and
 - (b) enabling cash which is, or represents, property obtained through unlawful conduct, or which is intended to be used in unlawful conduct, to be forfeited in civil proceedings before the Magistrates' Court.
- (2) The powers conferred by this Part are exercisable in relation to any property, including cash, whether or not any proceedings have been brought for an offence in connection with the property.

81. Interpretation

- (1) In this Part—

“Authority” means the Civil Recovery Authority;

“excepted joint owner” has the meaning given by section 113(4);

“property obtained through unlawful conduct” has the meaning given by section 83;

“respondent” means—

- (a) where proceedings are brought by the Authority under this Part, the person against whom the proceedings are brought, and
- (b) where no such proceedings have been brought but the Authority has applied for a property freezing order or an interim receiving order, the person against whom the Authority intends to bring such proceedings;

“tainted property” means, subject to subsection (3), property that—

- (a) has been used in, or in connection with, unlawful conduct, or
- (b) is intended to be used in, or in connection with, unlawful conduct;

“value” means market value.

- (2) For the purposes of this Part, proceedings against a person for an offence are concluded when—
 - (a) the person is convicted or acquitted,
 - (b) the prosecution is discontinued, or
 - (c) the jury is discharged without returning a verdict.

- (3) Property belonging to a person (“the owner”) is not tainted property if—
 - (a) the unlawful conduct concerned is not the unlawful conduct of the owner, and
 - (b) where paragraph (a) applies, the owner does not give consent, express or implied, to the property being used in, or in connection with, the unlawful conduct concerned.
- (4) For the purposes of subsection (3), the “unlawful conduct concerned” is the unlawful conduct that the property has been used in, or in connection with, or that the property is intended to be used in, or in connection with.

82. Meaning of “unlawful conduct”

- (1) “Unlawful conduct” is conduct which—
 - (a) if it occurs in St Helena, is unlawful under the criminal law of St Helena, or
 - (b) if it occurs in a country outside St Helena—
 - (i) is unlawful under the criminal law applying in that country, and
 - (ii) if it occurred in St Helena, would be unlawful under the criminal law of St Helena.
- (2) The Court, or in respect of proceedings for the recovery of cash, the Magistrates’ Court, must decide on a balance of probabilities whether it is proved that—
 - (a) any matters alleged to constitute unlawful conduct have occurred,
 - (b) any person intended to use any cash in unlawful conduct, or
 - (c) any person used, or intended to use, any property in, or in connection with, unlawful conduct.

83. Meaning of “property obtained through unlawful conduct”

- (1) A person obtains property through unlawful conduct, whether the person’s own conduct or another person’s conduct, if the person obtains property by or in return for the conduct.
- (2) In deciding whether any property was obtained through unlawful conduct—
 - (a) it is immaterial whether or not any money, goods or services were provided in order to put the person in question in a position to carry out the conduct, and
 - (b) it is not necessary to show that the conduct was of a particular kind, if it is shown that the property was obtained through conduct of one of a number of kinds, each of which would have been unlawful conduct.

Recoverable property and associated property

84. Recoverable property

- (1) Subject to subsection (2), property obtained through unlawful conduct and tainted property is recoverable property.
- (2) Property obtained through unlawful conduct that has been disposed of since it was obtained through unlawful conduct or tainted property that has been disposed of since

it became tainted property, is recoverable property if it is held by a person into whose hands it may be followed.

- (3) Recoverable property may be followed into the hands of a person obtaining it on a disposal by—
 - (a) in the case of property obtained through unlawful conduct, the person who obtained the property through the conduct,
 - (b) in the case of tainted property, any person who had possession of the property for the purpose, or with the intent, of using the property for unlawful conduct, or
 - (c) a person into whose hands it may, by virtue of this subsection, be followed.

85. Tracing property

- (1) Where property obtained through unlawful conduct or tainted property (“the original property”) is or has been recoverable property, property which represents the original property is also recoverable property.
- (2) If a person enters into a transaction by which the person disposes of recoverable property (whether the original property or property which, by virtue of this Part, represents the original property) and obtains other property in place of it, the other property represents the original property.
- (3) If a person disposes of recoverable property which represents the original property, the property may be followed into the hands of the person who obtains it, and it continues to represent the original property.

86. Mixing property

- (1) If a person’s recoverable property is mixed with other property, whether the property is the person’s property or another person’s property, the portion of the mixed property which is attributable to the recoverable property represents the property obtained through unlawful conduct or the tainted property, as the case may be.
- (2) Without limiting subsection (1), recoverable property is mixed with other property if it is used—
 - (a) to increase funds held in a bank account,
 - (b) in part payment for the acquisition of an asset,
 - (c) for the restoration or improvement of land, or
 - (d) by a person holding a leasehold interest in the property to acquire the freehold.

87. Recoverable property, accruing profits

- (1) This section applies where a person who has recoverable property obtains further property consisting of profits accruing in respect of the recoverable property.
- (2) The further property is to be treated as representing the property obtained through unlawful conduct or the tainted property, as the case may be.

88. Recoverable property, general exceptions

- (1) If a person disposes of recoverable property and the person who obtains it on the disposal does so in good faith, for value and without notice that it was recoverable property, the property may not be followed into that person's hands and, accordingly, it ceases to be recoverable.
- (2) Recoverable property ceases to be recoverable—
 - (a) if it is vested, forfeited or otherwise disposed of under powers conferred by this Part,
 - (b) if—
 - (i) under a judgment in civil proceedings, whether in St Helena or elsewhere, the defendant makes a payment to the plaintiff, or the plaintiff otherwise obtains property from the defendant,
 - (ii) the plaintiff's claim is based on the defendant's unlawful conduct, and
 - (iii) apart from this paragraph, the sum received, or the property obtained, by the plaintiff would be recoverable property, or
 - (c) if a payment is made to a person under a Criminal Procedure Ordinance compensation order and, apart from this paragraph, the sum received would be recoverable property.
- (3) Property is not recoverable—
 - (a) while it is subject to a restraint order under this Ordinance or a restraint order under the Drugs (Trafficking Offences) Ordinance, 2003, or
 - (b) if it has been taken into account in determining the amount of a person's benefit from criminal conduct for the purpose of making a confiscation order—
 - (i) under this Ordinance, or
 - (ii) under an equivalent provision in the Drugs (Trafficking Offences) Ordinance, 2003.
- (4) In relation to an order mentioned in subsection (3)(b)(ii), the reference to the amount of a person's benefit from criminal conduct is to be read as a reference to the corresponding amount under the Ordinance in question.
- (5) This section does not affect the recoverability, by virtue of section 85(2), of any property obtained on the transaction in place of the property disposed of, where—
 - (a) a person enters into a transaction to which section 85(2) applies, and
 - (b) the disposal is one to which subsection (1) or subsection (2)(a) applies.
- (6) For the purposes of subsection (2), “**plaintiff**” includes “**claimant**”.

89. Other exemptions

- (1) The Regulations may provide that property is not recoverable or, as the case may be, associated property if—
 - (a) it is property of a type or description specified in the Regulations, or

- (b) it is disposed of in accordance with an Ordinance specified in, or of a description specified in, the Regulations.
- (2) The Regulations may provide that if property is disposed of in accordance with an Ordinance specified in, or of a description specified in, the Regulations, it is to be treated for the purposes of section 117 as if it had been disposed of in accordance with a recovery order.
- (3) The Regulations may apply to property, or a disposal of property, only in circumstances specified in the Regulations and the circumstances may relate to the property or disposal itself or to a person who holds or has held the property or to any other matter.

90. Granting interests

- (1) If a person grants an interest in recoverable property, the question whether the interest is also recoverable is to be determined in the same manner as it is on any other disposal of recoverable property.
- (2) Accordingly, on the person granting an interest in the property (“the property in question”)—
 - (a) where the property in question is property obtained through unlawful conduct or is tainted property, the interest is also to be treated as obtained through that conduct or as tainted property, as the case may be, and
 - (b) where the property in question represents in the person’s hands property obtained through unlawful conduct or tainted property, the interest is also to be treated as representing in the person’s hands the property so obtained or the tainted property, as the case may be.

91. Meaning of “associated property”

- (1) “**Associated property**” means property of any of the following descriptions (including property held by the respondent) which is not itself the recoverable property—
 - (a) any interest in the recoverable property;
 - (b) any other interest in the property in which the recoverable property subsists;
 - (c) if the recoverable property is a proprietorship in common, the share of the other proprietor;
 - (d) if the recoverable property is part of a larger property, but not a separate part, the remainder of that property.
- (2) References to property being associated with recoverable property are to be read accordingly.

92. Obtaining and disposing of property

- (1) References to a person disposing of the person’s property include a reference—
 - (a) to disposing of a part of it,

- (b) to granting an interest in it, or
 - (c) to both.
- (2) Where a person grants an interest in the person's property, references to the property disposed of are to the interest granted.
- (3) A person who makes a payment to another person is to be treated as making a disposal of the person's property to the other person, whatever form the payment takes.
- (4) Where the property of a person ("the first person") passes to another person under a will or intestacy or by operation of law, it is to be treated as disposed by the first person to the other person.
- (5) A person is only to be treated as having obtained property for value in a case where the person gave unexecuted consideration if the consideration has become executed consideration.

Recovery orders and property freezing orders

93. Application for recovery order

- (1) The Authority may apply to the Court for a recovery order against any person who the Authority believes holds recoverable property.
- (2) The Authority must serve an application under subsection (1)—
 - (a) on the respondent, and
 - (b) unless the Court dispenses with service, on any other person who the Authority believes holds any associated property which the Authority wishes to be subject to the recovery order.
- (3) The Authority must, in the application—
 - (a) identify, by particularising or by a general description, the property in relation to which the Authority seeks a recovery order,
 - (b) state, in relation to each item or description of property identified in the application—
 - (i) whether it is alleged that the property is recoverable property or associated property, and
 - (ii) either who is alleged to hold the property or where the Authority is unable to identify who holds the property, the steps that have been taken to establish their identity, and
 - (c) nominate a suitably qualified person for appointment by the Court as the trustee for civil recovery.

94. Property freezing order

- (1) Where the Authority may take proceedings for a recovery order in the Court, the Authority may apply to the Court for a property freezing order, whether before or after instituting the proceedings.

- (2) A property freezing order is an order that, subject to any exclusions, prohibits any person whose property is specified or described in the order from in any way dealing with the property.
- (3) An application for a property freezing order may be made without notice if the circumstances are such that notice of the application would prejudice any right of the Authority to obtain a recovery order in respect of any property.
- (4) The Court may make a property freezing order if it is satisfied that—
 - (a) there is a good arguable case that—
 - (i) the property to which the application for the order relates is or includes recoverable property, and
 - (ii) if any of the property is not recoverable property, it is associated property, and
 - (b) if the property to which the application for the order relates includes property alleged to be associated property, and the Authority has not established the identity of the person who holds it, the Authority has taken all reasonable steps to do so.

95. Variation and setting aside of order

- (1) The Court may at any time vary or set aside a property freezing order.
- (2) If the Court makes an interim receiving order, it must vary or set aside the property freezing order to exclude any property subject to the interim receiving order.
- (3) If the Court decides that any property to which a property freezing order applies is neither recoverable property nor associated property, it must vary the order so as to exclude the property.
- (4) Unless acting in accordance with subsection (2), the Court must give the parties to the proceedings and any person who may be affected by its decision an opportunity to be heard before varying or setting aside a property freezing order.

96. Exclusions

- (1) The power to make or vary a property freezing order includes the power to—
 - (a) exclude specified property, or property described in the order, from the order, and
 - (b) otherwise make exclusions from the prohibition on dealing with the property to which the order applies.
- (2) An exclusion may be made subject to any conditions the Court considers appropriate and may, in particular, make provision for the purpose of enabling any person—
 - (a) to meet the person's reasonable living or reasonable legal expenses, or
 - (b) to carry on any trade, business, profession or occupation.

- (3) Where the Court exercises the power to make an exclusion for the purpose of enabling a person to meet legal expenses that the person has incurred, or may incur, in respect of proceedings under this Part, it must ensure that the exclusion—
 - (a) is limited to reasonable legal expenses that the person has reasonably incurred or reasonably incurs, and
 - (b) specifies the total amount that may be released for legal expenses under the exclusion.
- (4) Subject to subsection (2) or (3), the power to make exclusions must be exercised with a view to ensuring, so far as practicable, that the satisfaction of any right of the Authority to recover the property obtained through unlawful conduct or the tainted property is not unduly prejudiced.

97. Restriction on proceedings and remedies

- (1) While a property freezing order has effect—
 - (a) the Court may stay any action, execution or other legal process in respect of the property to which the order applies, and
 - (b) no distress may be levied against the property to which the order applies except with the leave of the Court and subject to any terms the Court may impose.
- (2) If a court in which proceedings are pending in respect of any property is satisfied that a property freezing order has been applied for or made in respect of the property, the court may either stay the proceedings or allow them to continue on any terms it considers appropriate.
- (3) If a property freezing order applies to a tenancy of any premises, no landlord or other person to whom rent is payable may exercise the right of forfeiture in relation to the premises in respect of any failure by the tenant to comply with any term or condition of the tenancy, except with the leave of the Court and subject to any terms the Court may impose.
- (4) Before exercising any power conferred by this section, the Court must give the parties to any of the proceedings concerned and any person who may be affected by the Court's decision an opportunity to be heard.

98. Receivers in connection with property freezing orders

- (1) The Court may appoint a receiver in respect of any property to which the property freezing order applies if—
 - (a) the Court makes a property freezing order on an application by the Authority, and
 - (b) the Authority applies to the Court for the appointment of a receiver, whether as part of the application for the property freezing order or at any time afterwards.

- (2) An application for an order under this section may be made without notice if the circumstances are such that notice of the application would prejudice any right of the Authority to obtain a recovery order in respect of any property.
- (3) In its application for an order under this section, the Authority must nominate a suitably qualified person for appointment as a receiver, who may be a member of staff of the Authority.
- (4) The Authority may apply a sum received by it under section 119(2) in making payment of the remuneration, if any, and expenses of a receiver appointed under this section.

99. Powers of receivers

- (1) If the Court appoints a receiver under section 98 on an application by the Authority, the Court may, on the application of the Authority, by order, authorise or require the receiver—
 - (a) to exercise any of the powers specified in Schedule 1 (management powers) in relation to any property in respect of which the receiver is appointed, and
 - (b) to take any other steps the Court considers appropriate in connection with the management of any such property, including securing the detention, custody or preservation of the property in order to manage it.
- (2) The Court may by order require any person in respect of whose property the receiver is appointed—
 - (a) to bring the property to a place specified by the receiver or to place it in the custody of the receiver, and
 - (b) to do anything the person is reasonably required to do by the receiver for the preservation of the property.
- (3) The Court may by order require any person in respect of whose property the receiver is appointed to bring any documents relating to the property which are in the person's possession or control to a place specified by the receiver or to place them in the custody of the receiver.
- (4) Any prohibition on dealing with property imposed by a property freezing order does not prevent a person from complying with any requirements imposed by virtue of this section.
- (5) Subsection (6) applies if—
 - (a) the receiver deals with any property which is not property covered by the appointment, and
 - (b) at the time of dealing with the property, the receiver believes on reasonable grounds that the appointment entitles the receiver to deal with the property.
- (6) The receiver is not liable to any person in respect of any loss or damage resulting from dealing with the property, except so far as the loss or damage is caused by the receiver's negligence.

100. Supervision of receiver and variations

- (1) Any of the following persons may at any time apply to the Court for directions as to the exercise of the functions of a receiver appointed under section 98—
 - (a) the receiver,
 - (b) any party to the proceedings for the appointment of the receiver or the property freezing order concerned,
 - (c) any person affected by any action taken by the receiver, and
 - (d) any person who may be affected by any action proposed to be taken by the receiver.
- (2) Before giving any directions under subsection (1), the Court must give an opportunity to be heard to—
 - (a) the receiver,
 - (b) the parties to the proceedings for the appointment of the receiver and for the property freezing order concerned, and
 - (c) any person who may be interested in the application under subsection (1).
- (3) The Court may at any time vary or set aside the appointment of a receiver under section 98, any order under section 99 or any directions under this section.
- (4) Before exercising any power under subsection (3), the Court must give an opportunity to be heard to—
 - (a) the receiver,
 - (b) the parties to the proceedings for the appointment of the receiver, for the order under section 99 or, as the case may be, for the directions under this section,
 - (c) the parties to the proceedings for the property freezing order concerned, and
 - (d) any person who may be affected by the Court's decision.

Interim receiving order

101. Interim receiving order

- (1) Where the Authority may take proceedings for a recovery order, the Authority may apply to the Court for an interim receiving order, whether before or after instituting the proceedings.
- (2) An interim receiving order is an order for—
 - (a) the detention, custody or preservation of property, and
 - (b) the appointment of an interim receiver.
- (3) An application for an interim receiving order may be made without notice if the circumstances are such that notice of the application would prejudice any right of the Authority to obtain a recovery order in respect of any property.
- (4) The Court may make an interim receiving order on the application—
 - (a) if it is satisfied there is a good arguable case—

- (i) that the property to which the application for the order relates is or includes recoverable property, and
 - (ii) that, if any of it is not recoverable property, it is associated property, and
 - (b) if the property to which the application for the order relates includes property alleged to be associated property, and the Authority has not established the identity of the person who holds it, the Authority has taken all reasonable steps to do so.
- (5) The Authority must, in its application for an interim receiving order, nominate a suitably qualified person for appointment as interim receiver.

102. Functions of interim receiver

- (1) An interim receiving order may authorise or require the interim receiver, for the purpose of securing the detention, custody or preservation of the property to which the order applies or of taking any steps under subsection (2)—
 - (a) to exercise any of the powers specified in Schedule 1, and
 - (b) to take any other steps the Court considers appropriate.
- (2) An interim receiving order must require the interim receiver to take any steps which the Court considers necessary to establish—
 - (a) whether or not the property to which the order applies is recoverable property or associated property,
 - (b) whether or not any other property is recoverable property, in relation to the same unlawful conduct and, if it is, who holds it, or
 - (c) whether or not any other property is tainted property, in relation to the same unlawful conduct and, if it is, who holds it.
- (3) Subsection (4) applies if—
 - (a) the interim receiver deals with any property which is not property to which the order applies, and
 - (b) at the time of dealing with the property, the interim receiver believes on reasonable grounds that the order entitles the interim receiver to deal with the property.
- (4) The interim receiver is not liable to any person in respect of any loss or damage resulting from the dealing with the property, except so far as the loss or damage is caused by the interim receiver's negligence.

103. Duties of respondent

An interim receiving order may require any person to whose property the order applies—

- (a) to bring the property to a place specified by the interim receiver or to place it in the custody of the interim receiver and to do anything reasonably required by the interim receiver for the preservation of the property, and

- (b) to bring any documents relating to the property which are in the person's possession or control to a place specified by the interim receiver or to place them in the custody of the interim receiver.

104. Supervision of interim receiver and variation of order

- (1) The interim receiver, any party to the proceedings and any person affected by any action taken by the interim receiver, or who may be affected by any action proposed to be taken by the interim receiver, may at any time apply to the Court for directions as to the exercise of the interim receiver's functions.
- (2) The Court may at any time vary or set aside an interim receiving order.
- (3) Before giving any directions under subsection (1) or exercising any power to vary or set aside an interim receiving order, the Court must give the following an opportunity to be heard—
 - (a) the parties to the proceedings,
 - (b) the interim receiver, and
 - (c) any person who may be interested in an application under subsection (1) or affected by the Court's decision under subsection (2), as the case may be.

105. Restrictions on dealing with property

- (1) Subject to subsections (2) and (3), an interim receiving order—
 - (a) must prohibit any person to whose property the order applies from dealing with the property, and
 - (b) may be made subject to any conditions the Court considers appropriate.
- (2) The Court may, when the interim receiving order is made or on an application to vary the order, make any exclusions from the order that it considers just, including making provision for the purpose of enabling any person—
 - (a) to meet the person's reasonable living expenses,
 - (b) to meet the person's reasonable legal expenses, or
 - (c) to carry on any trade, business, profession or occupation.
- (3) If the Court exercises the power to make an exclusion for the purpose of enabling a person to meet legal expenses that the person has incurred, or may incur, in respect of proceedings under this Part, it must ensure that the exclusion—
 - (a) is limited to reasonable legal expenses that the person has reasonably incurred or reasonably incurs, and
 - (b) specifies the total amount that may be released for legal expenses under the exclusion.
- (4) If the excluded property is not specified in the order, it must be described in the order in general terms.

- (5) The power to make exclusions must be exercised with a view to ensuring, so far as practicable, that the satisfaction of any right of the Authority to recover the property obtained through unlawful conduct or tainted property is not unduly prejudiced.

106. Restriction on proceedings and remedies

- (1) While an interim receiving order has effect—
 - (a) the Court may stay any action, execution or other legal process in respect of the property to which the order applies, and
 - (b) no distress may be levied against the property to which the order applies except with the leave of the Court and subject to any terms the Court may impose.
- (2) If a court in which proceedings are pending in respect of any property is satisfied that an interim receiving order has been applied for or made in respect of the property, the court may either stay the proceedings or allow them to continue on any terms it considers appropriate.
- (3) If the interim receiving order applies to a tenancy of any premises, no landlord or other person to whom rent is payable may exercise any right of forfeiture by peaceable re-entry in relation to the premises in respect of any failure by the tenant to comply with any term or condition of the tenancy, except with the leave of the Court and subject to any terms the Court may impose.
- (4) Before exercising any power conferred by this section, the Court must give the following the right to be heard—
 - (a) the parties to any of the proceedings in question,
 - (b) the interim receiver, if appointed, and
 - (c) any person who may be affected by the Court's decision.

107. Exclusion of property which is not recoverable

- (1) If the Court decides that any property to which an interim receiving order applies is neither recoverable property nor associated property, it must vary the order so as to exclude that property.
- (2) The Court may vary an interim receiving order so as to exclude from the property to which the order applies any property which is alleged to be associated property if the Court considers that the satisfaction of any right of the Authority to recover the property obtained through unlawful conduct or tainted property would not be prejudiced.
- (3) The Court may exclude any property within subsection (2) on any terms or conditions, applying while the interim receiving order has effect, that the Court considers necessary or expedient.

108. Reporting

- (1) An interim receiving order must require the interim receiver to inform the Authority and the Court as soon as reasonably practicable if the interim receiver considers that—
 - (a) any property to which the order applies by virtue of a claim that it is recoverable property is not recoverable property,
 - (b) any property to which the order applies by virtue of a claim that it is associated property is not associated property,
 - (c) any property to which the order does not apply is recoverable property, in relation to the same unlawful conduct, or associated property,
 - (d) any property to which the order applies is held by a person who is different from the person it is claimed holds the property, or
 - (e) there has been any other material change of circumstances.
- (2) An interim receiving order must require the interim receiver—
 - (a) to report the interim receiver’s findings to the Court, and
 - (b) to serve copies of the report on the Authority and on any person who holds any property to which the order applies or who may otherwise be affected by the report.

109. Authority may apply to Registrar of Lands for restriction

- (1) On application for a property freezing order or an interim receiving order, the Authority—
 - (a) must be treated as a person interested in any registered land, lease or charge to which the application relates, or to which a property freezing order or an interim receiving order made on the application relates, and
 - (b) may apply to the Registrar of Lands under section 132(1) of the Registered Land Ordinance, 1980 for a restriction prohibiting or restricting dealings with the registered land, lease or charge.
- (2) The Registrar of Lands may, on an application made under subsection (1), order a restriction to be entered.

Vesting and realisation of recoverable property

110. Recovery order

- (1) If in proceedings under this Part the Court is satisfied that any property is recoverable property, the Court must make a recovery order and must appoint a suitably qualified person as the trustee for civil recovery to give effect to the recovery order.
- (2) The official name of the trustee is “the trustee for civil recovery”.
- (3) Where a recovery order is made, the recoverable property vests in the person appointed by the Court to be trustee.

- (4) The Court must not, in a recovery order, make any provision in respect of any recoverable property if—
 - (a) each of the conditions in subsection (5) is met, and
 - (b) it would not be just and equitable to make the provision.
- (5) The conditions referred to in subsection (4)(a) are that—
 - (a) the respondent obtained the recoverable property in good faith;
 - (b) the respondent—
 - (i) took any action, or omitted to take any action, after obtaining the property which the respondent would not have taken, or omitted to take, if the respondent had not obtained the property, or
 - (ii) took any action, or omitted to take any action, before obtaining the property which the respondent would not have taken, or omitted to take, if the respondent had not believed that the respondent was going to obtain the property;
 - (c) when the respondent took, or omitted to take, the action referred to in paragraph (b), the respondent had no notice that the property was recoverable;
 - (d) if a recovery order were made in respect of the property, it would, by reason of the respondent's action or omission be detrimental to the respondent.
- (6) In deciding whether it would be just and equitable to make the provision in the recovery order where the conditions in subsection (5) are met, the Court must have regard to—
 - (a) the degree of detriment that would be suffered by the respondent if the provision were made;
 - (b) the Authority's interest in receiving the realised proceeds of the recoverable property.
- (7) A recovery order may sever any property.
- (8) A recovery order—
 - (a) may impose conditions as to the manner in which the trustee may deal with any property vested by the order for the purpose of realising it, and
 - (b) may provide for payment under section 119 of reasonable legal expenses that a person has reasonably incurred, or may reasonably incur, in respect of—
 - (i) the proceedings under this Part in which the order is made, or
 - (ii) any related proceedings under this Part.
- (9) This section is subject to sections 111 to 119.

111. Functions of the trustee

- (1) The functions of the trustee are—
 - (a) to secure the detention, custody or preservation of any property vested by the recovery order,

- (b) in the case of property other than money, to realise the value of the property for the benefit of the Authority,
 - (c) to otherwise give effect to the recovery order, and
 - (d) to perform any other functions conferred on the trustee under this Part.
- (2) In performing the functions of the trustee, the trustee acts on behalf of the Authority and must comply with any directions given by the Authority.
- (3) The trustee must realise the value of property vested by the recovery order, so far as practicable, in the manner best calculated to maximise the amount payable to the Authority.
- (4) The trustee has the powers specified in Schedule 2.
- (5) References in this section to a recovery order include a consent order made under section 116 and references to property vested in the trustee by a recovery order include property vested in the trustee under a consent order.

112. Rights of pre-emption

- (1) A recovery order is to have effect in relation to any property despite any provision, of whatever nature, which would otherwise prevent, penalise or restrict the vesting of the property.
- (2) A right of pre-emption, right of return or other similar right does not operate or become exercisable as a result of the vesting of any property under a recovery order.
- (3) A right of return means any right under a provision for the return or reversion of property in specified circumstances.
- (4) Where property is vested under a recovery order, any such right is to have effect as if the person in whom the property is vested were the same person in law as the person who held the property and as if no transfer of the property had taken place.
- (5) References to rights in subsections (2), (3) and (4) do not include any rights in respect of which the recovery order was made.
- (6) This section applies in relation to the creation of interests, or the doing of anything else, by a recovery order as it applies in relation to the vesting of property.

113. Associated and joint property

- (1) Sections 112 and 113 apply if the Court makes a recovery order in respect of any recoverable property and subsection (2) or (3) applies.
- (2) This subsection applies—
 - (a) the property to which the proceedings relate includes property which is associated with the recoverable property and is specified or described in the application, and

- (b) if the associated property is not the respondent's property, the application for the recovery order has been served on the person whose property it is or the Court has dispensed with service.
- (3) This subsection applies if—
 - (a) the recoverable property belongs to joint proprietors, and
 - (b) one of the proprietors is an excepted joint owner.
- (4) An excepted joint owner is a person who obtained the property in circumstances in which it would not be recoverable as against the person as joint owner and references to the excepted joint owner's share of the recoverable property are to so much of the recoverable property as would have been the joint owner's property if the joint proprietorship had been severed.

114. Agreements about associated and joint property

- (1) When making a recovery order, the Court may, instead of vesting the recoverable property in the trustee, require the person who holds the associated property or who is the excepted joint owner to make a payment to the trustee if—
 - (a) this section applies, and
 - (b) the Authority (on the one hand) and the person who holds the associated property or who is the excepted joint owner (on the other) agree.
- (2) A recovery order which makes any requirement under subsection (1) may, so far as required for giving effect to the agreement, include provision for vesting, creating or extinguishing any interest in property.
- (3) The amount of the payment must be the amount which the Authority and that person agree represents—
 - (a) where section 113(2) applies, the value of the recoverable property, or
 - (b) where section 113(3) applies, the value of the recoverable property less the value of the excepted joint owner's share.
- (4) The amount of the payment may be reduced by any amount the Authority and the person mentioned in subsection (1) agree is reasonable, having regard to the loss mentioned in paragraph (b) and to any other relevant circumstances, if—
 - (a) a property freezing order or an interim receiving order applied at any time to the associated property or joint proprietorship, and
 - (b) the Authority agrees that the person has suffered loss as a result of the order.
- (5) If there is more than one such item of associated property or excepted joint owner, the total amount to be paid to the trustee, and the part of that amount which is to be provided by each person who holds any such associated property or who is an excepted joint owner, is to be agreed between both, or all, of them and the Authority.
- (6) A recovery order which makes any requirement under subsection (1) must make provision for any recoverable property to cease to be recoverable.

115. No agreement made with respect to associated and joint property

- (1) Where this section applies, the Court may make the following provision if—
 - (a) there is no agreement under section 114, and
 - (b) the Court considers it just and equitable to do so.
- (2) The recovery order may provide—
 - (a) for the associated property to vest in the trustee or, as the case may be, for the excepted joint owner's interest to be extinguished, or
 - (b) in the case of an excepted joint owner, for the severance of the joint owner's interest.
- (3) A recovery order making any provision by virtue of subsection (2)(a) may provide for either or both of the following:
 - (a) for the trustee to pay an amount to the person who holds the associated property or who is an excepted joint owner,
 - (b) for the creation of interests in favour of that person, or the imposition of liabilities or conditions, in relation to the property vested in the trustee.
- (4) In making any provision in a recovery order by virtue of subsection (2) or (3), the Court must have regard to—
 - (a) the rights of any person who holds the associated property or who is an excepted joint owner and the value to that person of that property or, as the case may be, of the person's share, including any value which cannot be assessed in terms of money, and
 - (b) the Authority's interest in receiving the realised proceeds of the recoverable property.
- (5) A recovery order making any provision by virtue of subsection (2) or (3) may require the Authority to pay compensation to the person who holds the associated property or who is an excepted joint owner if—
 - (a) a property freezing order or an interim receiving order applied at any time to the associated property or joint proprietorship, and
 - (b) the Court is satisfied that the person has suffered loss as a result of the order.
- (6) The amount of compensation to be paid under subsection (5) is the amount the Court considers reasonable, having regard to the person's loss and to any other relevant circumstances.

116. Consent orders

- (1) The Court may make an order staying any proceedings for a recovery order on terms agreed by the parties for the disposal of the proceedings if each person to whose property the proceedings, or the agreement, relates is a party both to the proceedings and the agreement.
- (2) An order under subsection (1) may, as well as staying the proceedings—

- (a) make provision for any property which may be recoverable property to cease to be recoverable, and
 - (b) make any further provision which the Court considers appropriate.
- (3) Section 119 applies to property vested in the trustee, or money paid to the trustee, under the agreement as it applies to property vested in the trustee by a recovery order or money paid under section 114.

117. Limit on recovery

- (1) This section applies if the Authority seeks a recovery order—
 - (a) in respect of property which is or represents property obtained through unlawful conduct, or tainted property, and related property, or
 - (b) in respect of property which is or represents property obtained through unlawful conduct, or tainted property, where such an order, or an order under section 98, has previously been made in respect of related property.
- (2) For the purposes of this section—
 - (a) the original property means the property obtained through unlawful conduct or the tainted property, as the case may be, and
 - (b) the original property, and any items of property which represent the original property, are to be treated as related to each other.
- (3) The Court is not to make a recovery order if it considers that the Authority’s right to recover the original property has been satisfied by a previous recovery order or an order under section 116.
- (4) Subject to subsection (3), the Court may act under subsection (5) if it considers that—
 - (a) a recovery order may be made in respect of 2 or more related items of recoverable property, but
 - (b) the making of a recovery order in respect of the related items is not required in order to satisfy the Authority’s right to recover the original property.
- (5) The Court may, in order to satisfy that right to the extent required, make a recovery order in respect of either or both of the following—
 - (a) only some of the related items of property, or
 - (b) only a part of any of the related items of property.
- (6) Where the Court may make a recovery order in respect of any property, this section does not prevent the recovery of any profits which have accrued in respect of the property.
- (7) An order for forfeiture under section 132 is to be treated for the purposes of this section as if it were a recovery order obtained by the Authority in respect of the forfeited property if the Authority subsequently seeks a recovery order in respect of related property.

- (8) A judgment in civil proceedings (whether in St Helena or elsewhere) under which the plaintiff obtained property from the defendant (“the judgment property”) is to be treated for the purposes of this section as if it were a recovery order obtained by the Authority in respect of the judgment property if—
 - (a) the claim was based on the defendant’s having obtained the judgment property or related property through unlawful conduct, and
 - (b) the Authority subsequently seeks a recovery order in respect of property which is related to the judgment property.
- (9) For the purposes of subsection (8), “**plaintiff**” includes “claimant”.
- (10) If property has been taken into account in determining the amount of a person’s benefit from criminal conduct for the purpose of making a confiscation order and the Authority subsequently seeks a recovery order in respect of related property, the confiscation order is to be treated for the purposes of this section as if it were a recovery order obtained by the Authority in respect of the property taken into account.
- (11) In subsection (10), “**confiscation order**” includes an order under a corresponding provision of the Drugs (Trafficking Offences) Ordinance, 2003.
- (12) In relation to a confiscation order under a corresponding provision of the Drugs (Trafficking Offences) Ordinance, 2003, the reference to the amount of a person’s benefit from criminal conduct is to be read as a reference to the corresponding amount under that Ordinance.

118. Limits on recovery, supplementary

- (1) Subsections (2) and (3) give examples of the satisfaction of the Authority’s right to recover the original property.
- (2) The Authority’s right to recover the original property is satisfied by the making of a recovery order in respect of either the original property or the representative property if—
 - (a) there is a disposal, other than a part disposal, of the original property, and
 - (b) other property (“the representative property”) is obtained in its place.
- (3) The Authority’s right to recover the original property is satisfied by the making of a recovery order in respect of the remainder of the original property together with either the representative property or the property disposed of, if—
 - (a) there is a part disposal of the original property, and
 - (b) other property (“the representative property”) is obtained in place of the property disposed of.
- (4) In this section—
 - (a) a part disposal means a disposal to which section 92(1) applies, and
 - (b) “**the original property**” has the meaning given by section 117(2)(a).

119. Applying realised proceeds

- (1) This section applies to—
 - (a) sums which represent the realised proceeds of property which was vested in the trustee by a recovery order or which the trustee obtained under a recovery order, and
 - (b) sums vested in the trustee by a recovery order or obtained by the trustee under a recovery order
- (2) The trustee is to make out of the sums—
 - (a) first, in making any payment required to be made by virtue of section 115,
 - (b) next, in making any payment of legal expenses which are payable under this subsection by virtue of a provision under section 110(8)(b) contained in the recovery order,
 - (c) next, in paying any fees payable to a liquidator, appointed by or supervised by the Court, of a company, and
 - (d) then, in paying any sum which remains to the Authority.
- (3) The Authority may apply a sum received by it under subsection (2) in making payment of the remuneration and expenses of—
 - (a) the trustee, or
 - (b) any interim receiver appointed in, or in anticipation of, the proceedings for the recovery order.

Exemptions etc.

120. Victims of theft, etc.

- (1) In proceedings for a recovery order, a person who claims that any property alleged to be recoverable property, or any part of the property, belongs to the person may apply for a declaration to that effect under this section.
- (2) The Court may make a declaration under subsection (1) if it appears to the Court that—
 - (a) the applicant was deprived, by unlawful conduct, of the property claimed, or of property which it represents,
 - (b) the property the applicant was deprived of was not recoverable property immediately before the applicant was deprived of it, and
 - (c) the property claimed belongs to the applicant.
- (3) Property to which a declaration under this section applies is not recoverable property.

121. Other exemptions

The Regulations may provide that proceedings for a recovery order may not be taken—

- (a) against any person in circumstances of a description specified in the Regulations and the circumstances may relate to the person, to the property or to any other matter,
- (b) in respect of cash found at any place in St Helena unless the proceedings are also taken in respect of property other than cash which is property of the same person,
- (c) against the Regulatory Authority in respect of any recoverable property held by the Regulatory Authority, or
- (d) against any person in respect of any recoverable property which the person holds by reason of acting, or having acted, as trustee in bankruptcy or as liquidator, appointed by or supervised by the Court, of a company.

Miscellaneous

122. Compensation

- (1) If, in the case of any property to which a property freezing order or an interim receiving order has at any time applied, the Court does not in the course of the proceedings decide that the property is recoverable property or associated property, the person whose property it is may make an application to the Court for compensation.
- (2) Subsection (1) does not apply if the Court—
 - (a) has made a declaration in respect of the property by virtue of section 120, or
 - (b) makes a consent order under section 116.
- (3) If the Court has made a decision by reason of which no recovery order could be made in respect of the property, the application for compensation must be made within the period of three months beginning with the date of the decision or, if any application is made for leave to appeal, with the date on which the application is withdrawn or refused or, if the application is granted, with the date on which any proceedings on appeal are finally concluded.
- (4) If the proceedings in respect of the property have been discontinued, the application for compensation must be made within the period of three months beginning with the discontinuance.
- (5) If the Court is satisfied that the applicant has suffered loss as a result of the property freezing order or the interim receiving order, it may require the Authority to pay compensation to the applicant.
- (6) If, but for section 112(2), any right mentioned there would have operated in favour of, or become exercisable by, any person, the person may make an application to the Court for compensation.
- (7) The application for compensation under subsection (6) must be made within the period of three months beginning with the vesting referred to in section 112(2).

- (8) If the Court is satisfied that, in consequence of the operation of section 112, the right in question cannot subsequently operate in favour of the applicant or, as the case may be, become exercisable by the applicant, it may require the Authority to pay compensation to the applicant.
- (9) The amount of compensation to be paid under this section is the amount the Court considers reasonable, having regard to the loss suffered and any other relevant circumstances.

123. Financial threshold

- (1) If the Regulations prescribe a minimum threshold for the purposes of this section, the Authority may not start proceedings for a recovery order unless the Authority reasonably believes that the aggregate value of the recoverable property which the Authority wishes to be subject to a recovery order is equal to or greater than the prescribed threshold.
- (2) If the Authority applies for a property freezing order or an interim receiving order before starting the proceedings, subsection (1) applies to the application for the property freezing order or interim receiving order instead of to the start of the proceedings.
- (3) This section does not affect the continuation of proceedings for a recovery order which have been properly started or the making or continuing effect of a property freezing order or an interim receiving order which has been properly applied for.

124. Limitation

- (1) Proceedings must not be brought for a recovery order in respect of any recoverable property after the end of the period of six years beginning with—
 - (a) in the case of proceedings for a recovery order in respect of property obtained through unlawful conduct, when the property was so obtained,
 - (b) in the case of proceedings for a recovery order in respect of tainted property, when the property became tainted property, or
 - (c) in the case of proceedings for a recovery order in respect of any other recoverable property, when the property obtained through unlawful conduct which it represents is so obtained.
- (2) For the purposes of subsection (1), proceedings for a recovery order are brought when—
 - (a) an application is filed with the Court under section 93, or
 - (b) an application is made for an interim receiving order or a property freezing order.

125. Property acquired before commencement date

For the purposes of determining whether property was recoverable at any time, this Part is to be treated as having been in force at that time and at any other relevant time.

Recovery of cash in summary proceedings

126. Interpretation

- (1) For the purposes of sections 127 to 136—

“minimum amount” means the amount prescribed as the minimum amount;

“recoverable cash” means cash—

- (a) which is recoverable property or is intended by any person for use in unlawful conduct, and
 - (b) the amount of which is not less than the minimum amount.
- (2) The amount of cash held in a currency other than St Helena pounds is its equivalent in St Helena pounds at the prevailing rate of exchange.
- (3) Sections 127 to 136 apply only to cash found anywhere in St Helena.

127. Searches

- (1) A police officer or customs officer who is lawfully on any premises and who has reasonable grounds for suspecting that there is recoverable cash on the premises, may search for the cash there.
- (2) A police officer or customs officer who has reasonable grounds for suspecting that a person (the suspect) is carrying recoverable cash, may—
 - (a) so far as the officer considers it necessary or expedient, require the suspect—
 - (i) to permit a search of any article with the suspect, and
 - (ii) to permit a search of the suspect’s person, and
 - (b) for the purposes of exercising the power under paragraph (a)(ii), detain the suspect for so long as is necessary for the exercise of that power.
- (3) The powers conferred by this section are exercisable only so far as reasonably required for the purpose of finding cash and this section does not require a person to submit to an intimate search.
- (4) The powers conferred under this section may be exercised only with the prior approval of a senior officer or, where the power is exercised by a customs officer, a senior customs officer unless, in the circumstances, it is not practicable to obtain that approval before exercising the power.
- (5) Where the powers conferred under this section are exercised without prior approval as required by subsection (4), the police officer or customs officer exercising the

power must make a written report to a senior officer or, where the power was exercised by a customs officer, a senior customs officer as soon as is reasonably practicable.

- (6) The written report made under subsection (5) must include particulars of the circumstances that led the officer to believe—
 - (a) where no cash is seized or any cash seized is not detained for more than 48 hours, that the powers were exercisable, and
 - (b) that it was not practicable to obtain the prior approval of a senior officer or senior customs officer, as the case requires.
- (7) The powers conferred by this section are exercisable by a customs officer only if the customs officer has reasonable grounds for suspecting that the unlawful conduct in question relates to a matter in relation to which customs officers have functions under the Customs and Excise Ordinance, 1999.

128. Seizure of cash

- (1) A police officer or customs officer may seize cash if the officer has reasonable grounds for suspecting that—
 - (a) it is recoverable cash, or
 - (b) part of the cash is recoverable cash, and it is not reasonably practicable to seize only that part.
- (2) After a seizure is made by a police officer or customs officer under subsection (1), the officer must promptly and, in any event, within 24 hours of the seizure, report the seizure to the Reporting Unit.

129. Detention of seized cash

- (1) 128 continues to have reasonable grounds for the suspicion, the cash seized under that section may be detained initially for a period of 72 hours, excluding public holidays and weekends.
- (2) The period for which the cash or any part of it may be detained may be extended by an order made by the 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) An application for an order under subsection (2) may be made by a senior officer or senior customs officer, and the Magistrates' Court may make the order if satisfied, in relation to any cash to be further detained, that—
 - (a) there are reasonable grounds for suspecting that the cash is recoverable cash and that either—

- (i) its continued detention is justified while its derivation is further investigated or consideration is given to bringing proceedings, whether in or outside St Helena, against any person for an offence with which the cash is connected, or
 - (ii) proceedings against any person for an offence with which the cash is connected have been started and have not been concluded, or
- (b) there are reasonable grounds for suspecting that the cash is intended to be used in unlawful conduct and that either—
 - (i) its continued detention is justified while its intended use is further investigated or consideration is given to bringing proceedings, whether in or outside St Helena, against any person for an offence with which the cash is connected, or
 - (ii) proceedings against any person for an offence with which the cash is connected have been started and have not been concluded.
- (4) An application for an order under subsection (2) may also be made in respect of any cash seized under section 128(1)(b), and the Magistrates' Court may make the order if satisfied that—
 - (a) either subsection (3)(a) or (b) applies in respect of part of the cash, and
 - (b) it is not reasonably practicable to detain only that part.
- (5) An order under subsection (2) must provide for notice to be given to any persons affected by it.

130. Interest

- (1) If cash is detained under section 129 for more than 48 hours, it must, at the first opportunity, be paid into an interest-bearing account 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 129 which was seized under 128(1)(b), the police officer or customs officer must, as soon as reasonably practicable after paying the cash seized into an interest-bearing 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 relating to the seized cash under this Part.

131. Release of detained cash

- (1) While any cash is detained under section 129, the Magistrates' Court may direct the release of the whole or any part of the cash if the Magistrates' Court is satisfied, on an application by the person from whom the cash was seized, that the grounds for the

detention of the cash specified in section 129(3) or (4) are no longer met in relation to the cash to be released.

- (2) A police officer or customs officer 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.

132. Forfeiture

- (1) While cash is detained under section 129, an application for the forfeiture of the whole or any part of it may be made to the Magistrates' Court by a police officer or customs officer.
- (2) The Magistrates' Court may order the forfeiture of the cash, or any part of it, if satisfied that the cash or part is recoverable cash.
- (3) In the case of recoverable cash which belongs to joint proprietors, one of whom is an excepted joint owner, the order may not apply to so much of it as the Magistrates' Court considers is attributable to the excepted joint owner's share.
- (4) Where an application for the forfeiture of any cash is made under this section, the cash is to be detained and may not be released under any power conferred by this Part, until any proceedings on the application, including any proceedings on appeal, are concluded.

133. Appeal against forfeiture

- (1) Any party to proceedings in which a forfeiture order is made who is aggrieved by the order may appeal to the 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) An appeal under subsection (1) is to be by way of a rehearing by the Court, which may make any order that it considers appropriate.
- (4) If the Court upholds the appeal, it may order the release of the cash.

134. Application of forfeited cash

After the period within which an appeal under section 133 may be made or, if a person appeals under that section, after the appeal has been determined or disposed of, cash forfeited under section 132, and any accrued interest on it, must be paid into the National Forfeiture Fund.

135. Victims and other owners

- (1) A person (the applicant) who claims that any cash, or any part of it, that is detained under this Part belongs to the applicant, may apply to the Magistrates' Court for the cash or part to be released to the applicant.
- (2) An application under subsection (1) may be made in the course of detention or forfeiture proceedings or at any other time.
- (3) The Magistrates' Court may order cash to be released to the applicant if, on an application under subsection (1), it appears to the Magistrates' Court that—
 - (a) the applicant was deprived of the cash to which the application relates, or of property which it represents, by unlawful conduct,
 - (b) the property the applicant was deprived of was not, immediately before the applicant was deprived of it, recoverable property, and
 - (c) that cash belongs to the applicant.
- (4) The Magistrates' 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 if—
 - (a) an applicant under subsection (1) is not the person from whom the cash to which the application relates was seized,
 - (b) it appears to the Magistrates' Court that that cash belongs to the applicant,
 - (c) the Magistrates' Court is satisfied that the grounds specified in section 129(3) or (4) for the detention of the cash are no longer met or, if an application has been made under section 132, the Magistrates' 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.

136. Compensation

- (1) If no forfeiture order is made in respect of any cash detained under this Part, the person to whom the cash belongs or from whom it was seized may make an application to the 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 Magistrates' Court may order an amount of compensation to be paid to the applicant.
- (3) The amount of compensation to be paid under subsection (2) is the amount the Magistrates' Court considers would have been earned in interest in the period in question if the cash had been held in an interest-bearing account.
- (4) If the Magistrates' Court is satisfied that, taking account of any interest to be paid under section 130 or any amount to be paid under subsection (2), the applicant has suffered loss as a result of the detention of the cash and that the circumstances are

exceptional, the Magistrates' Court may order compensation (or additional compensation) to be paid to the applicant.

- (5) The amount of compensation to be paid under subsection (4) is the amount the Magistrates' Court considers reasonable, having regard to the loss suffered and any other relevant circumstances.
- (6) Compensation is to be paid from the National Forfeiture Fund.
- (7) If a forfeiture order is made in respect only of a part of any cash detained under this Part, this section has effect in relation to the other part.

PART 5 INVESTIGATIONS

Privileged material

137. Meaning of “privileged material”

- (1) **“Privileged material”** means the following, when in the possession of a person who is entitled to possession of the material—
 - (a) communications between a professional legal adviser and the adviser's client or any person representing the adviser's client, made in connection with the giving of legal advice to the client,
 - (b) communications between a professional legal adviser and the adviser's client or any person representing the adviser's client, or between such an adviser or the adviser's client or any such representative and any other person, made in connection with or in contemplation of legal proceedings and for the purposes of such proceedings, and
 - (c) material enclosed with or referred to in such communications and made—
 - (i) in connection with the giving of legal advice, or
 - (ii) in connection with or in contemplation of legal proceedings and for the purposes of such proceedings.
- (2) Material held with the intention of furthering a criminal purpose is not privileged material.

Production orders

138. Application for production order

- (1) Application may be made to a judge for a production order under section 139 by—
 - (a) a senior officer, or
 - (b) a police officer who is authorised in writing to make the particular application by a senior officer.
- (2) An application for a production order must state that—

- (a) a person specified in the application is subject to a confiscation investigation or a money laundering investigation, or that property specified in the application is subject to a civil recovery investigation,
- (b) the order is sought for the purposes of the investigation,
- (c) the order is sought in relation to material, or material of a description, specified in the application, and
- (d) a person specified in the application appears to be in possession or control of the material.

139. Production order

- (1) On an application made under section 138, a judge may make a production order if satisfied that—
 - (a) there are reasonable grounds for suspecting that—
 - (i) in the case of a confiscation investigation, the person specified in the application as being subject to the investigation has benefited from the person's criminal conduct,
 - (ii) in the case of a civil recovery investigation, the property specified in the application as being subject to the investigation is recoverable property or associated property,
 - (iii) in the case of a money laundering investigation, the person specified in the application as being subject to the investigation has committed a money laundering offence,
 - (b) there are reasonable grounds for believing that—
 - (i) the person specified in the application as appearing to be in possession or control of the specified material is in possession or control of it, and
 - (ii) the material is likely to be of substantial value, whether by itself or together with other material, to the investigation for the purposes of which the order is sought, and
 - (c) there are reasonable grounds for believing that it is in the public interest for the material to be produced or for access to be given to it having regard to—
 - (i) the benefit likely to accrue to the investigation if the material is obtained, and
 - (ii) the circumstances under which the person the application specifies as appearing to be in possession or control of the material holds it.
- (2) A production order is an order requiring the person specified in the order as appearing to be in possession or control of material, within the period stated in the order, to—
 - (a) produce it to a senior officer, or the applicant for the order, to take away, or
 - (b) give a senior officer, or the applicant for the order, access to it.
- (3) The period stated in a production order must be seven days beginning with the date on which the order is made, unless it appears to the judge that a longer or shorter period would be appropriate in the particular circumstances.

- (4) A production order does not require a person to produce, or give access to, privileged material.

140. Order to grant entry

- (1) This section applies where a judge makes a production order in relation to material on any premises.
- (2) The judge may, on the application of a senior officer or a police officer who is authorised in writing to make the particular application by a senior officer, make an order to grant entry in relation to the premises.
- (3) An order to grant entry is an order requiring any person who appears to a senior officer, or the applicant for the order, to be entitled to grant entry to the premises to allow that officer or applicant to enter the premises to obtain access to the material.

141. Further provisions relating to production orders

- (1) Where any material specified in an application for a production order consists of information contained in a computer—
 - (a) an order under section 139(2)(a) has effect as an order to produce the material in a form in which it can be taken away and in which it is visible and legible, and
 - (b) an order under section 139(2)(b) has effect as an order to give access to the material in a form in which it is visible and legible.
- (2) A senior officer, or the applicant for the order, may take copies of any material which is produced, or to which access is given, in compliance with a production order.
- (3) Material produced in compliance with a production order may be retained for so long as it is necessary to retain it (as opposed to copies of it) in connection with the investigation for the purposes of which the order was made.
- (4) Material produced under a production order may be retained until legal proceedings are concluded if a senior officer, or the applicant for the order, has reasonable grounds for believing that—
 - (a) the material may need to be produced for the purposes of the legal proceedings, and
 - (b) it might otherwise be unavailable for those purposes.

Search and seizure warrants

142. Application for search and seizure warrant

- (1) Application may be made to a judge for a search and seizure warrant under section 143 by—
 - (a) a senior officer, or

- (b) a police officer who is authorised in writing to make the particular application by a senior officer.
- (2) An application for a search and seizure warrant must state that—
 - (a) a person specified in the application is subject to a confiscation investigation or a money laundering investigation, or that property specified in the application is subject to a civil recovery investigation,
 - (b) the warrant is sought for the purposes of the investigation,
 - (c) the warrant is sought in relation to the premises specified in the application, and
 - (d) the warrant is sought in relation to material specified in the application, or there are reasonable grounds for believing that there is material falling within section 143(5), (6) or (7) on the premises.
- (3) A search and seizure warrant is a warrant authorising a senior officer, or the applicant for the warrant—
 - (a) to enter and search the premises specified in the application for the warrant, and
 - (b) to seize and retain any material found there which is likely to be of substantial value, whether by itself or together with other material, to the investigation for the purposes of which the application is made.

143. Search and seizure warrant

- (1) On an application made under section 142, a judge may issue a search and seizure warrant if satisfied that—
 - (a) a production order in relation to material has not been complied with and there are reasonable grounds for believing that the material is on the premises specified in the application for the warrant, or
 - (b) subsection (2) applies and either—
 - (i) the conditions specified in subsection (3) are fulfilled, or
 - (ii) the conditions specified in subsection (4) are fulfilled.
- (2) This subsection applies for the purposes of subsection (1)(b) if there are reasonable grounds for suspecting that—
 - (a) in the case of a confiscation investigation, the person specified in the application for the warrant has benefited from the person's criminal conduct,
 - (b) in the case of a civil recovery investigation, the property specified in the application for the warrant is recoverable property or associated property, or
 - (c) in the case of a money laundering investigation, the person specified in the application for the warrant has committed a money laundering offence.
- (3) The conditions referred to in subsection (1)(b)(i) are that—
 - (a) there are reasonable grounds for believing that—
 - (i) any material on the premises specified in the application for the warrant is likely to be of substantial value, whether by itself or together with other material, to the investigation for the purposes of which the warrant is sought, and

- (ii) it is in the public interest for the material to be obtained, having regard to the benefit likely to accrue to the investigation if the material is obtained, and
- (b) one of the following applies—
 - (i) it is not practicable to communicate with any person against whom the production order could be made,
 - (ii) it is not practicable to communicate with any person who would be required to comply with an order to grant entry to the premises, or
 - (iii) the investigation might be seriously prejudiced unless a police officer is able to secure immediate access to the material.
- (4) The conditions referred to in subsection (1)(b)(ii) are that—
 - (a) there are reasonable grounds for believing that there is material on the premises specified in the application for the warrant and that—
 - (i) in the case of a confiscation investigation, the material falls within subsection (5),
 - (ii) in the case of a civil recovery investigation, the material falls within subsection (6), or
 - (iii) in the case of a money laundering investigation, the material falls within subsection (7),
 - (b) there are reasonable grounds for believing that it is in the public interest for the material to be obtained, having regard to the benefit likely to accrue to the investigation if the material is obtained, and
 - (c) one of the following applies—
 - (i) it is not practicable to communicate with any person entitled to grant entry to the premises,
 - (ii) entry to the premises will not be granted unless a warrant is produced, or
 - (iii) the investigation might be seriously prejudiced unless a police officer arriving at the premises is able to secure immediate entry to them.
- (5) In the case of a confiscation investigation, material falls within this subsection if it cannot be identified at the time of the application, but it—
 - (a) relates to the person specified in the application, the question whether the person has benefited from the person's criminal conduct or any question as to the extent or whereabouts of the person's benefit from the criminal conduct, and
 - (b) is likely to be of substantial value, whether by itself or together with other material, to the investigation for the purposes of which the warrant is sought.
- (6) In the case of a civil recovery investigation, material falls within this subsection if it cannot be identified at the time of the application, but it—
 - (a) relates to the property specified in the application, the question whether it is recoverable property or associated property, the question as to who holds any such property, any question as to whether the person who appears to hold any such property holds other property which is recoverable property, or any

- question as to the extent or whereabouts of any property mentioned in this paragraph, and
- (b) is likely to be of substantial value, whether by itself or together with other material, to the investigation for the purposes of which the warrant is sought.
- (7) In the case of a money laundering investigation, material falls within this subsection if it cannot be identified at the time of the application, but it—
- (a) relates to the person specified in the application or the question whether the person has committed a money laundering offence, and
 - (b) is likely to be of substantial value, whether by itself or together with other material, to the investigation for the purposes of which the warrant is sought.
- (8) A search and seizure warrant does not confer the right to seize privileged material.

Customer information orders

144. Customer information

In sections 145 and 146, “**customer information**” means information of a type or category specified in the Regulations.

145. Application for customer information order

- (1) Application may be made to a judge for a customer information order under section 146 against one or more regulated service providers by—
 - (a) a senior officer, or
 - (b) a police officer who is authorised in writing to make the particular application by a senior officer.
- (2) An application for a customer information order must state that—
 - (a) a person specified in the application is subject to a confiscation investigation or a money laundering investigation, or that property specified in the application is subject to a civil recovery investigation and a person specified in the application appears to hold the property,
 - (b) the order is sought for the purposes of the investigation, and
 - (c) the order is sought against the regulated service provider or regulated service providers specified in the application.
- (3) An application for a customer information order may specify—
 - (a) all regulated service providers,
 - (b) a particular description, or particular descriptions, of regulated service providers, or
 - (c) a particular regulated service provider or particular regulated service providers.

146. Customer information order

- (1) On an application made under section 145, a judge may make a customer information order if satisfied that—
 - (a) there are reasonable grounds for suspecting that—
 - (i) in the case of a confiscation investigation, the person specified in the application has benefited from the person's criminal conduct,
 - (ii) in the case of a civil recovery investigation, the property specified in the application is recoverable property or associated property and the person specified in the application holds all or some of the property, or
 - (iii) in the case of a money laundering investigation, the person specified in the application has committed a money laundering offence,
 - (b) there are reasonable grounds for believing that customer information which may be provided in compliance with the order is likely to be of substantial value, whether by itself or together with other information, to the investigation for the purposes of which the order is sought, and
 - (c) there are reasonable grounds for believing that it is in the public interest for the customer information to be provided, having regard to the benefit likely to accrue to the investigation if the information is obtained.
- (2) A customer information order is an order that a regulated service provider covered by the application for the order must, on being required to do so by notice in writing given by a senior officer, or the applicant for the order, provide any customer information that it has relating to the person specified in the application.
- (3) A regulated service provider that is required to provide information under a customer information order must provide the information to the person who gave the notice, in the manner, and at or by the time, specified in the notice.
- (4) If a regulated service provider on which a requirement is imposed by a notice given under a customer information order requires the production of evidence of authority to give the notice, it is not bound to comply with the requirement unless evidence of the authority has been produced to it.

147. Offences

A regulated service provider commits an offence if—

- (a) without reasonable excuse, it fails to comply with a requirement imposed on it under a customer information order, or
- (b) in purported compliance with a customer information order, it—
 - (i) makes a statement which it knows to be false or misleading in a material particular, or
 - (ii) recklessly makes a statement which is false or misleading in a material particular.

Penalty: A fine of £100,000 or imprisonment for a period of 5 years, or both.

148. Protection of statements

- (1) Subject to subsection (2), a statement made by a regulated service provider in response to a customer information order may not be used in evidence against it in criminal proceedings.
- (2) Subsection (1) does not apply—
 - (a) in the case of proceedings under Part 3,
 - (b) on a prosecution for an offence under section 147, or
 - (c) on a prosecution for some other offence where, in giving evidence, the regulated service provider makes a statement inconsistent with the statement mentioned in subsection (1).
- (3) A statement may not be used by virtue of subsection (2)(c) against a regulated service provider unless evidence relating to it is adduced or a question relating to it is asked by or on behalf of the regulated service provider in the proceedings arising out of the prosecution.

Account monitoring orders

149. Application for account monitoring order

- (1) Application may be made to a judge for an account monitoring order under section 150 against one or more regulated service providers by—
 - (a) a senior officer, or
 - (b) a police officer who is authorised in writing to make the particular application by a senior officer.
- (2) An 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 that property specified in the application is subject to a civil recovery investigation and a person specified in the application appears to hold the property,
 - (b) the order is sought for the purposes of the investigation, and
 - (c) the order is sought against the regulated service provider specified in the application in relation to account information of the description specified.
- (3) An application for an account monitoring order may specify information relating to—
 - (a) all accounts held by the person specified in the application at the regulated service provider,
 - (b) a particular description, or particular descriptions, of accounts so held, or
 - (c) a particular account or particular accounts so held.

150. Account monitoring order

- (1) On an application made under section 149, a judge may make an account monitoring order if satisfied that—
 - (a) in the case of a confiscation investigation, there are reasonable grounds for suspecting that the person specified in the application for the order has benefited from the person’s criminal conduct,
 - (b) in the case of a civil recovery investigation, there are reasonable grounds for suspecting that—
 - (i) the property specified in the application for the order is recoverable property or associated property, and
 - (ii) the person specified in the application holds all or some of the property, or
 - (c) in the case of a money laundering investigation, there are reasonable grounds for suspecting that the person specified in the application for the order has committed a money laundering offence.
- (2) In the case of any investigation, the judge must not make an account monitoring order unless satisfied that—
 - (a) there are reasonable grounds for believing that account information which may be provided in compliance with the order is likely to be of substantial value, whether by itself or together with other information, to the investigation for the purposes of which the order is sought, and
 - (b) there are reasonable grounds for believing that it is in the public interest for the account information to be provided, having regard to the benefit likely to accrue to the investigation if the information is obtained.
- (3) An account monitoring order is an order that the regulated service provider specified in the application must, for the period stated in the order (which must not exceed 90 days), provide account information of the description stated in the order to a senior officer, or to the applicant for the order, in the manner, and at or by the time or times, stated in the order.
- (4) In this section, “**account information**” means information relating to an account or accounts held at the regulated service provider specified in the order by the person specified in the order, whether solely or jointly with one or more other persons.
- (5) An order under subsection (3) may specify account information relating to—
 - (a) all accounts held by the person at the regulated service provider specified in the order,
 - (b) a particular description, or particular descriptions, of accounts held, or
 - (c) a particular account, or particular accounts, held.

151. Statements

- (1) Subject to subsection (2), a statement made by a regulated service provider 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 under Part 3,
 - (b) in the case of proceedings for contempt of court, or
 - (c) on a prosecution for some other offence where, in giving evidence, the regulated service provider makes a statement inconsistent with the statement mentioned in subsection (1).
- (3) A statement may not be used by virtue of subsection (2)(c) against a regulated service provider unless evidence relating to it is adduced or a question relating to it is asked by or on behalf of the regulated service provider in the proceedings arising out of the prosecution.

152. Disclosure of information

A production order, a customer information order and an account monitoring order each has effect in spite of any restriction on the disclosure of information, however imposed.

General

153. Procedure

- (1) An application for a production order, an order to grant entry, a search and seizure warrant, a customer information order or an account monitoring order may be made, without notice, to a judge in chambers.
- (2) Rules of court may make provision as to—
 - (a) the practice and procedure in connection with proceedings relating to production orders, orders to grant entry under section 140, customer information orders and account monitoring orders, and
 - (b) applications for the discharge and variation of such orders and proceedings relating to such applications.
- (3) An order of a judge under this Part has effect as if it were an order of the Court.

PART 6
REPORTING UNIT, OVERSIGHT COMMITTEE, SUPERVISION
AND ENFORCEMENT

Reporting Unit and Oversight Committee

154. The Reporting Unit and the Oversight Committee

- (1) The Director of Police must make arrangements for the maintenance, within the St Helena Police Service established under the Police Service Ordinance, 1975, of a unit to be known as the Reporting Unit.
- (2) The Reporting Unit has the functions conferred on it by Schedule 5 and by any other provision of this Ordinance or of any other enactment.
- (3) There is to be a committee, to be known as the Reporting Unit Oversight Committee, to keep the exercise of the functions of the Reporting Unit under review.
- (4) Schedule 5 makes further provision about the Reporting Unit, including provision about its officers and the use and disclosure of information obtained by it, and about the Oversight Committee.

Supervision of service providers

155. Supervisory authorities

- (1) The Regulatory Authority is the supervisory authority for regulated service providers.
- (2) The Anti-money Laundering and Terrorist Financing Regulations must specify—
 - (a) a person or body, which may be the Regulatory Authority, as the sole supervisory authority for all DNFBPs, or
 - (b) different persons or bodies, which may include the Regulatory Authority, as the supervisory authority for different types of DNFBPs.

156. Objective, functions and powers of the supervisory authorities

- (1) The objective of a supervisory authority is to supervise those service providers for which it is responsible in relation to their AML/CFT obligations and to enforce compliance with those obligations.
- (2) The functions of a supervisory authority are—
 - (a) to monitor the compliance of service providers with their AML/CFT obligations,
 - (b) to take appropriate enforcement action against service providers for breaches of, or non-compliance with, their AML/CFT obligations,
 - (c) in the case of a supervisory authority for DNFBPs, to—
 - (i) determine applications for registration in accordance with the Anti-money Laundering and Terrorist Financing Regulations, and

- (ii) take appropriate action against service providers who carry on relevant business without being registered in accordance with the Anti-money Laundering and Terrorist Financing Regulations, and
- (d) to perform any other functions, and exercise any other powers, that—
 - (i) are assigned to the supervisory authority by or under this Ordinance or any other law, or
 - (ii) are ancillary to its objective.
- (3) In pursuing its objective, a supervisory authority has—
 - (a) in the case of the Regulatory Authority when acting as the supervisory authority for regulated service providers, the information gathering, enforcement and other powers provided for in the Financial Services Ordinance, 2008, and
 - (b) in the case of a supervisory authority for DNFBPs, the information gathering, enforcement and other powers provided for in Schedule 4.
- (4) In determining the enforcement action to be taken against a service provider for a breach of, or failure to comply with, its AML/CFT obligations, a supervisory authority must have regard to the need to ensure that enforcement action taken is effective, proportionate and dissuasive.
- (5) Where a breach of a service provider's AML/CFT obligations constitutes an offence, the taking of enforcement action by a supervisory authority does not prevent the service provider being also prosecuted for the offence.

157. Duty to co-operate

- (1) A supervisory authority must take the steps it considers appropriate to co-operate with—
 - (a) the Reporting Unit,
 - (b) law enforcement agencies, and
 - (c) any other supervisory authorities.
- (2) Co-operation may include the sharing of documents and information which the supervisory authority is not prevented by this Ordinance or any other law from disclosing.

158. Limitation of liability of supervisory authorities

- (1) No person or body to which this section applies is liable in damages for anything done or omitted to be done in the discharge or purported discharge of any function under, or authorised by or under, this Ordinance unless it is proved that the act or omission was in bad faith.
- (2) This section applies to—
 - (a) each supervisory authority, and
 - (b) any member of a supervisory authority or any person who is, or is acting as, a board member, director, officer, employee or agent of the supervisory authority

or who is performing any duty or exercising any power on behalf of the supervisory authority.

159. Prohibition on carrying on business as a DNFBP if not registered

- (1) A person must not carry on any type of business as a DNFBP in or from within St Helena unless that person has been registered for that type of business by the relevant supervisory authority in accordance with the Anti-money Laundering and Terrorist Financing Regulations.
- (2) A person who contravenes subsection (1) commits an offence.

Penalty: A fine of £100,000 or imprisonment for a period of 5 years, or both.

160. Regulation of DNFBPs

- (1) The Anti-money Laundering and Terrorist Financing Regulations must provide for—
 - (a) the registration of DNFBPs,
 - (b) the de-registration of DNFBPs,
 - (c) the imposition by the relevant supervisory authority of administrative penalties—
 - (i) in an amount not exceeding £50,000 against DNFBPs for any contravention of their AML/CFT obligations, and
 - (ii) in an amount not exceeding £25,000 against the directors or senior managers of a DNFBP where the DNFBP contravenes its AML/CFT obligations and where the contravention is committed with the consent or connivance of a director or senior manager,
 - (d) the payment of fees to the relevant supervisory authority by DNFBPs, including the categories of fee payable, the basis for assessing the amount of those fees and the imposition of late-payment penalties where fees are not paid on time, and
 - (e) any other matters relating to DNFBPs that this Ordinance requires or permits.
- (2) For the purposes of subsection (1), a person is to be treated as a director of a corporate body if the person—
 - (a) occupies, in relation to that corporate body, the position of director by whatever name called, or
 - (b) is a person in accordance with whose directions or instructions (other than directions or instructions given solely in the person's professional capacity) the directors of the corporate body are accustomed to act.
- (3) Without limiting subsection (1), the Anti-money Laundering and Terrorist Financing Regulations may provide for—
 - (a) types or levels of registration,
 - (b) applications for registration,
 - (c) the criteria for determining applications for registration,
 - (d) the grant or refusal of an application for registration, and

- (e) any other matters the Governor on the advice of the Executive Council considers appropriate generally for giving effect to this Part or to Schedule 4.
- (4) The Anti-money Laundering and Terrorist Financing Regulations may—
 - (a) make different provision in relation to different persons, circumstances or cases, and
 - (b) provide for offences against the Regulations, punishable with a fine not exceeding £100,000, imprisonment for a period not exceeding 2 years, or both.
- (5) Fees and penalties paid to a relevant supervisory authority under the Anti-money Laundering and Terrorist Financing Regulations must be used by the supervisory authority for the purposes of undertaking its functions.

Non-profit organisations

161. Supervisory authority for non-profit organisations

The Non-Profit Organisation Regulations must specify a person or body as the supervisory authority for non-profit organisations.

162. Non-Profit Organisation Regulations

- (1) The Governor on the advice of the Executive Council must make Non-Profit Organisation Regulations providing for—
 - (a) the registration of non-profit organisations,
 - (b) the functions, duties and powers of the NPO Supervisor, including with respect to supervision, the gathering of information and the disclosure of information to the Reporting Unit and law enforcement agencies,
 - (c) the issue by the NPO Supervisor of a Non-Profit Organisation Directive, if the NPO Supervisor considers it necessary or appropriate, setting out measures, not inconsistent with this Ordinance, the Non-Profit Organisation Regulations or any law relating to terrorist financing, for the prevention and detection of terrorist financing,
 - (d) enforcement actions that may be taken by the NPO Supervisor for failure to comply with the Non-Profit Organisation Regulations and the Non-Profit Organisation Directive, if issued, including the imposition of administrative penalties in an amount not exceeding £25,000, the basis for fixing those penalties and the manner in which those penalties may be paid,
 - (e) the maintenance of records by non-profit organisations,
 - (f) the monitoring by the NPO Supervisor of the compliance of non-profit organisations with the Non-Profit Organisation Regulations and the Non-Profit Organisation Directive, if issued,
 - (g) the circumstances in which the NPO Supervisor may conduct, or employ an examiner to conduct, an investigation of an NPO,
 - (h) the entry and inspection of premises, including the issue of warrants by a Justice of the Peace,

- (i) the payment of fees to the NPO Supervisor by non-profit organisations, including the categories of fee payable and the basis for assessment of the amount of those fees, and the imposition of late-payment penalties where fees are not paid on time, and
 - (j) any other matters relating to non-profit organisations that this Ordinance requires or permits.
- (2) Without limiting subsection (1), the Non-Profit Organisation Regulations may provide for—
 - (a) types or levels of registration,
 - (b) applications for registration,
 - (c) the criteria for determining applications for registration,
 - (d) the grant or refusal of an application for registration, and
 - (e) any other matters the Governor on the advice of the Executive Council considers appropriate generally for giving effect to this Part.
- (3) The Non-Profit Organisation Regulations may—
 - (a) make different provision in relation to different persons, circumstances or cases, and
 - (b) provide for offences against the Non-Profit Organisation Regulations, punishable with a fine not exceeding £100,000, imprisonment for a period not exceeding 2 years, or both.
- (4) Fees and penalties paid to the NPO Supervisor under the Non-Profit Organisation Regulations must be used by the NPO Supervisor for the purposes of undertaking its functions.

163. NPO fund-restraint order

- (1) The Court may, on the application of the NPO Supervisor, make an NPO fund-restraint order if it is satisfied that—
 - (a) there are reasonable grounds to suspect that a non-profit organisation is involved in, or is being or has been exploited for, terrorist financing, and
 - (b) the order is necessary pending the investigation or determination of the matter.
- (2) An NPO fund-restraint order is an order that, subject to any exclusions under subsection (4), prohibits any person whose holding of funds or other property of, or for, the non-profit organisation is specified or described in the order from in any way dealing with the funds or property.
- (3) An application for an NPO fund-restraint order may be made without notice if the circumstances are such that notice of the application would prejudice the purpose of the order.
- (4) An NPO fund-restraint order may, on its making or on variation, provide for exclusions for the purpose of enabling reasonable operational expenses and reasonable legal expenses to be met.

- (5) An NPO fund-restraint order has effect for the period, not exceeding 6 months, specified in it, and the Court may, on the application of the NPO Supervisor, extend the period if it remains satisfied of the matters in subsection (1).
- (6) The Court may vary or discharge an NPO fund-restraint order on the application of—
 - (a) the NPO Supervisor,
 - (b) the non-profit organisation, or
 - (c) any other person affected by the order.
- (7) Section 122 applies in relation to an NPO fund-restraint order as it applies in relation to a property freezing order, with the necessary modifications.

Appeals

164. Appeals

- (1) Subject to subsection (2), a person who is aggrieved by a decision of a supervisory authority or the NPO Supervisor may apply to the Court for leave to appeal against the decision before the end of the period of 28 days beginning with the day on which the decision is made, or within any further period the Court allows.
- (2) The Court may allow a further period under subsection (1) only if the application for leave to appeal is made before the end of the period of three months beginning with—
 - (a) the day on which the decision is made, or
 - (b) if the person did not become aware, and could not reasonably have become aware, of the decision until a later day, that later day.
- (3) Unless the Court otherwise determines, an application for leave to appeal, an appeal or an application for judicial review does not operate as a stay of the decision of the supervisory authority or the NPO Supervisor in relation to which the application or appeal is made.
- (4) On hearing an appeal, the Court may—
 - (a) dismiss the appeal, or
 - (b) allow the appeal and remit the matter to the relevant supervisory authority, or the NPO Supervisor, for reconsideration in accordance with any directions the Court considers appropriate.
- (5) Where the Court allows an appeal, the decision appealed against remains in force until the relevant supervisory authority or the NPO Supervisor determines the matter on the reconsideration, unless the Court orders otherwise (whether by quashing or suspending the decision, in whole or in part).
- (6) On a reconsideration under subsection (4)(b), the relevant supervisory authority or the NPO Supervisor may confirm, vary or revoke the decision.

PART 7 DIRECTIONS

165. Interpretation for this Part

(1) In this Part—

“biological weapon” means—

- (a) any biological agent or toxin of a type and in a quantity that has no justification for prophylactic, protective or other peaceful purposes, or
- (b) any weapon, equipment or means of delivery designed to use biological agents or toxins for hostile purposes or in armed conflict;

“business relationship” has the meaning given by the Anti-money Laundering and Terrorist Financing Regulations;

“chemical weapon” means, subject to subsection (2)—

- (a) toxic chemicals and their precursors,
- (b) munitions and other devices designed to cause death or harm through the toxic properties of toxic chemicals released by them, and
- (c) equipment designed for use in connection with munitions and devices falling within paragraph (b);

“customer due diligence measures” has the meaning given by the Anti-money Laundering and Terrorist Financing Regulations;

“designated person”, in relation to a direction, means a person in relation to whom the direction is given;

“directed service provider” means a regulated service provider to whom a direction is given;

“direction” means a direction given under section 166;

“enhanced customer due diligence measures” has the meaning given by the Anti-money Laundering and Terrorist Financing Regulations, and includes assessing the risk of a designated person being involved in a relevant activity;

“general direction” means a direction given to—

- (a) all regulated service providers, or
- (b) all regulated service providers of the description specified in the direction;

“general exemption” means an exemption under section 167(3) granted to—

- (a) all regulated service providers, or
- (b) all regulated service providers of the description specified in the exemption;

“nuclear weapon” includes a nuclear explosive device that is not intended for use as a weapon;

“ongoing monitoring” has the meaning given by the Anti-money Laundering and Terrorist Financing Regulations;

“radiological weapon” means a device designed to cause destruction, damage or injury by means of the radiation produced by the decay of radioactive material;

“relevant activity” means—

- (a) money laundering,
 - (b) terrorist financing, or
 - (c) the development or production of nuclear, radiological, biological or chemical weapons or their systems of delivery, or the doing of anything that facilitates that development or production.
- (2) An item is not a chemical weapon if its intended use is only for one or more of the following purposes—
- (a) peaceful purposes;
 - (b) purposes related to protection against toxic chemicals;
 - (c) legitimate military purposes;
 - (d) purposes of enforcing the law.

166. Regulatory Authority may give directions

- (1) The Regulatory Authority may give a direction of a type specified in section 167 to a regulated service provider, regulated service providers of a specified description or all regulated service providers, in relation to transactions or business relationships with—
- (a) the government of a country in relation to which one or more of the conditions specified in subsection (2) applies, or
 - (b) a person or its subsidiary carrying on business in, or resident, incorporated, constituted or formed in, a country referred to in paragraph (a).
- (2) The conditions referred to in subsection (1) are that—
- (a) the FATF has advised that measures should be taken in relation to the country because of the risk that terrorist financing or money laundering is being carried on—
 - (i) in the country,
 - (ii) by the government of the country, or
 - (iii) by persons resident in the country;
 - (b) the Regulatory Authority reasonably believes that a significant risk to the interests of St Helena is posed by the risk that terrorist financing or money laundering is being carried on—
 - (i) in the country,
 - (ii) by the government of the country, or
 - (iii) by persons resident in the country;
 - (c) the Regulatory Authority reasonably believes that a significant risk to the interests of St Helena is posed by—

- (i) the development or production of nuclear, radiological, biological or chemical weapons or their systems of delivery in the country, or
 - (ii) the doing in the country of anything that facilitates that development or production.
 - (3) A direction—
 - (a) must be given in the manner specified in section 168,
 - (b) must be proportionate having regard to the advice given by the FATF or, as the case may be, the risk referred to in subsection (2)(b) or (c) to the interests of St Helena, and
 - (c) may make different provision in relation to different regulated service providers, designated persons, circumstances or cases.
 - (4) The Regulatory Authority must take appropriate measures to monitor the compliance of regulated service providers with the requirements of any directions given.
 - (5) A directed service provider that fails to comply with a requirement imposed by a direction commits an offence.
- Penalty:** A fine of £100,000 or imprisonment for a period of 5 years, or both.
- (6) No offence is committed under subsection (5) if the service provider took all reasonable steps and exercised all due diligence to ensure that the requirement would be complied with.

167. Types of directions that may be given

- (1) A direction may require the directed service provider—
 - (a) to undertake enhanced customer due diligence measures—
 - (i) before entering into a transaction or business relationship with a designated person, and
 - (ii) during a business relationship with such a person,
 - (b) to undertake enhanced ongoing monitoring of any business relationship with a designated person,
 - (c) to provide the information and documents specified in the direction relating to transactions and business relationships with designated persons, or
 - (d) not to enter into or continue to participate in—
 - (i) a specified transaction or business relationship with a designated person, or
 - (ii) any transaction or business relationship with a designated person.
- (2) A direction under subsection (1)(c)—
 - (a) must specify how the direction is to be complied with, including—
 - (i) the person to whom the information and documents are to be provided, and
 - (ii) the period within which, or intervals at which, information and documents are to be provided, and

- (b) may not require the provision of information, or the production of documents, that constitute privileged material.
- (3) Where a direction includes a requirement of a kind specified in subsection (1)(c) or (d), the Regulatory Authority may, either in the direction or by separate notice in writing, exempt acts specified in the direction or notice from the requirement.
- (4) An exemption under subsection (3) may—
 - (a) be a general exemption or apply to a particular regulated service provider,
 - (b) be subject to conditions,
 - (c) have effect for the duration of the direction or be subject to an expiry date, and
 - (d) be varied or revoked by the Regulatory Authority at any time.

168. Procedures for giving directions and granting exemptions

- (1) Where the Regulatory Authority gives a general direction or grants a general exemption, the Regulatory Authority must publicise the direction or exemption in the manner it considers appropriate.
- (2) Where a general direction or a general exemption is varied or ceases to have effect, whether on revocation or otherwise, the Regulatory Authority must publicise that fact in the manner it considers appropriate.
- (3) Where the Regulatory Authority gives a direction or grants an exemption under section 167(3) to a particular regulated service provider, the Regulatory Authority must give written notice of the direction or the exemption to that service provider.
- (4) Where a direction or exemption referred to in subsection (3) is varied or ceases to have effect, whether on revocation or otherwise, the Regulatory Authority must give notice of that fact to that service provider.
- (5) A direction, whether a general direction or a direction to a particular regulated service provider—
 - (a) may be varied or revoked by the Regulatory Authority at any time, and
 - (b) if not previously revoked, ceases to have effect at the end of the period of one year beginning with the date on which it was first given.

169. Power to require information or documents

- (1) Where reasonably required by the Regulatory Authority for the discharge of its functions under this Part, the Regulatory Authority may, by notice in writing given to a directed service provider, require the service provider—
 - (a) to provide specified information or information of a specified description, or
 - (b) to produce specified documents or documents of a specified description.
- (2) A notice given under subsection (1)—
 - (a) may require that the information is to be provided, or the documents are to be produced, to the person specified in the notice, and

- (b) must specify—
 - (i) the place where, and the period within which, the information or documents must be provided or produced, and
 - (ii) the reasons why the Regulatory Authority requires the information to be provided or the documents produced.
- (3) The Regulatory Authority may require—
 - (a) any information provided under this section to be provided in the form it may reasonably specify, and
 - (b) any information provided or document produced under this section to be verified or authenticated in the manner it may reasonably specify.
- (4) In relation to a document in electronic form, the power to require the production of the document includes a power to require the production of a copy of the document in legible form or in a form from which it can readily be produced in visible and legible form.
- (5) The Regulatory Authority may take copies of, or make extracts from, any document produced under this section.
- (6) Where a person claims a lien on a document, its production under this section is without prejudice to the lien.
- (7) A person who, without reasonable excuse, fails to comply with a requirement imposed under this section commits an offence.

Penalty: A fine of £100,000 or imprisonment for a period of 5 years, or both.

- (8) A person commits an offence if, in purported compliance with a requirement imposed under this section, the person provides information that is false or misleading in a material particular—
 - (a) knowing that it is false or misleading, or
 - (b) reckless as to whether it is false or misleading.

Penalty: A fine of £100,000 or imprisonment for a period of 5 years, or both.

- (9) Subject to subsection (10), a statement made by a person in response to a requirement imposed under this section may not be used in evidence against the person in criminal proceedings.
- (10) Subsection (9) does not apply—
 - (a) in the case of proceedings for an offence under subsection (8),
 - (b) in the case of proceedings for contempt of court, or
 - (c) on a prosecution for some other offence where, in giving evidence, the person makes a statement inconsistent with the statement mentioned in subsection (9).

- (11) A statement may not be used by virtue of subsection (10)(c) against a person unless evidence relating to it is adduced, or a question relating to it is asked, by or on behalf of the person in the proceedings arising out of the prosecution.

170. Entry and inspection without a warrant

- (1) Where the Regulatory Authority has reasonable cause to believe that any premises are being used by a directed service provider in connection with the service provider's business activities, an officer of the Regulatory Authority may, on producing evidence of authority, at any reasonable time—
- (a) enter the premises,
 - (b) inspect the premises,
 - (c) observe the carrying on of business activities by the service provider,
 - (d) inspect any document found on the premises, and
 - (e) require any person on the premises to provide an explanation of any document or to state where it may be found.
- (2) The Regulatory Authority may take copies of, or make extracts from, any document found on the premises.
- (3) The Regulatory Authority may exercise powers under this section only if the information or document sought to be obtained as a result is reasonably required in connection with the exercise by the Regulatory Authority of its functions under this Part.
- (4) In this section, “**premises**” means any premises other than premises used only as a dwelling.

171. Search warrant

- (1) A Justice of the Peace may issue a search warrant under this section if satisfied on information on oath or affirmation by an officer of the Regulatory Authority that there are reasonable grounds for believing that the conditions specified in subsection (2) or (3) have been satisfied.
- (2) The first set of conditions referred to in subsection (1) is that one or more of the following applies—
- (a) that there is on the premises specified in the warrant a document in relation to which a requirement could be imposed under section 169 and that if such a requirement were to be imposed—
 - (i) it would not be complied with, or
 - (ii) the document to which it relates would be removed, tampered with or destroyed;
 - (b) that a person on whom a requirement has been imposed under section 169 has failed (wholly or in part) to comply with it and that there is on the premises specified in the warrant a document that has been required to be produced;

- (c) that an officer of the Regulatory Authority has been obstructed in the exercise of a power under section 169 and that there is on the premises specified in the warrant a document that could be inspected under section 169.
- (3) The second set of conditions referred to in subsection (1) is—
 - (a) an offence under this Part has been, is being or is about to be committed by a directed service provider, and
 - (b) there is on the premises specified in the warrant a document relevant to whether that offence has been, is being or is about to be committed.
- (4) A warrant issued under this section must authorise the officer of the Regulatory Authority named in the warrant—
 - (a) to enter the premises specified in the warrant,
 - (b) to search the premises and take possession of anything appearing to be a document specified in the warrant or to take, in relation to any such document, any other steps which may appear to be necessary for preserving it or preventing interference with it,
 - (c) to take copies of, or extracts from, any document specified in the warrant,
 - (d) to require any person on the premises to provide an explanation of any document appearing to be of the kind specified in the warrant or to state where it may be found, and
 - (e) to use the force reasonably necessary.

172. Privileged material or information

- (1) The powers conferred by sections 169, 170 and 171 are not exercisable in relation to privileged information or privileged material.
- (2) In this section, “**privileged information**” means information that, if it was material, would be privileged material.

173. Appeals

- (1) A person to whom a direction is given may appeal to the Court against a decision of the Regulatory Authority—
 - (a) to give or vary the direction, or
 - (b) to refuse to grant an exemption to the person, to grant it subject to conditions, or to vary or revoke an exemption granted to the person.
- (2) An appeal must be made before the end of the period of 28 days beginning with—
 - (a) in the case of a general direction or a general exemption, the date on which the direction, exemption or variation is publicised under section 168, or
 - (b) in any other case, the date on which written notice of the decision is given to the person.
- (3) The Court may extend the period in subsection (2) if satisfied that there is good reason to do so.

- (4) Unless the Court orders otherwise, the decision appealed against continues to have effect pending the determination of the appeal.
- (5) On an appeal, the Court may—
 - (a) confirm the decision, or
 - (b) remit the matter to the Regulatory Authority for reconsideration in accordance with any order of the Court.

PART 8

TERRORISM, TERRORIST FINANCING AND PROLIFERATION SANCTIONS

174. Interpretation for this Part

- (1) In this Part—

“Foreign, Commonwealth and Development Office” means the department of the Government of the United Kingdom responsible for foreign and Commonwealth affairs;

“Governor” means the Governor acting in the Governor’s discretion;

“involved in terrorist activity” is to be read in accordance with the UK Counter Terrorism Sanctions Regulations;

“Treasury” has the meaning given by Schedule 1 to the Interpretation Act 1978 of the United Kingdom;

“UK Afghanistan Sanctions Regulations” means the Afghanistan (Sanctions) (EU Exit) Regulations 2020 of the United Kingdom, as modified and applied to St Helena, Ascension and Tristan da Cunha by the Afghanistan (Sanctions) (Overseas Territories) Order 2020 or any Order or other law that replaces that Order;

“UK Counter Terrorism International Sanctions Regulations” means the Counter-Terrorism (International Sanctions) (EU Exit) Regulations 2019 of the United Kingdom, as modified and applied to St Helena, Ascension and Tristan da Cunha by the Counter-Terrorism (International Sanctions) (Overseas Territories) Order 2020 or any Order or other law that replaces that Order;

“UK Counter Terrorism Sanctions Regulations” means the Counter-Terrorism (Sanctions) (EU Exit) Regulations 2019 of the United Kingdom, as modified and applied to St Helena, Ascension and Tristan da Cunha by the Counter-Terrorism (Sanctions) (Overseas Territories) Order 2020 or any Order or other law that replaces that Order;

“UK DPRK Sanctions Regulations” means the Democratic People’s Republic of Korea (Sanctions) (EU Exit) Regulations 2019 of the United Kingdom, as modified and applied to St Helena, Ascension and Tristan da Cunha by the Democratic People’s

Republic of Korea (Sanctions) (Overseas Territories) Order 2020 or any Order or other law that replaces that Order;

“UK Iran Nuclear Sanctions Regulations” means the Iran (Sanctions) (Nuclear) (EU Exit) Regulations 2019 of the United Kingdom, as modified and applied to St Helena, Ascension and Tristan da Cunha by the Iran (Sanctions) (Nuclear) (Overseas Territories) Order 2020 or any Order or other law that replaces that Order;

“UK ISIL/Al Qaida Sanctions Regulations” means the ISIL (Da’esh) and Al-Qaida (United Nations Sanctions) (EU Exit) Regulations 2019 of the United Kingdom, as modified and applied to St Helena, Ascension and Tristan da Cunha by the ISIL (Da’esh) and Al-Qaida (United Nations Sanctions) (Overseas Territories) Order 2020 or any Order or other law that replaces that Order;

“UK Sanctions Regulations” means—

- (a) the UK Afghanistan Sanctions Regulations;
- (b) the UK Counter Terrorism International Sanctions Regulations;
- (c) the UK Counter Terrorism Sanctions Regulations;
- (d) the UK DPRK Sanctions Regulations;
- (e) the UK Iran Nuclear Sanctions Regulations;
- (f) the UK ISIL/Al Qaida Sanctions Regulations;

“UN Sanctions Committee” means—

- (a) the UNSC 1267/1989 Committee, or
- (b) the UNSC 1988 Committee;

“UNSC 1267/1989 Committee” means the Committee of the Security Council established by resolution 1267 (1999) of the Security Council on 15 October 1999;

“UNSC 1988 Committee” means the Committee of the Security Council established by resolution 1988 (2011) of the Security Council on 17 June 2011.

- (2) A word or phrase defined in any of the UK Sanctions Regulations has, unless the context otherwise requires, the same meaning in this Part.

175. Delegation by Governor

- (1) Except as otherwise provided in this Part, the Governor may, to the extent and subject to such restrictions and conditions the Governor may consider proper, delegate, or authorise the delegation of, any of the Governor’s powers under this Part to any person, or class or description of persons, as the Governor may specify, and any references in this Part to the Governor are to be read accordingly.
- (2) In the exercise of any power conferred on the Governor by this Part, the Governor is to act in the Governor’s discretion.

176. Proposal by Governor for listing of persons as designated persons

- (1) The Governor is the competent authority for proposing persons involved in terrorist activity for designation to—
 - (a) the UNSC 1267/1989 Committee, and
 - (b) the UNSC 1988 Committee.
- (2) The Governor may, after consulting the Secretary of State, propose that a person be listed as a designated person by one or both of the Committees specified in subsection (1).
- (3) A proposal by the Governor under this section must be made through the Foreign, Commonwealth and Development Office.
- (4) The Governor may propose that a person be listed as a designated person under this section without informing the person of the proposal.
- (5) Section 175 does not apply to the Governor's power to propose a person for designation by a UN Sanctions Committee under this section.

177. Criteria for proposal under section 176

- (1) The Governor must not propose a person for designation under section 176 unless the Governor has reasonable grounds to suspect that the person is or has been involved in terrorist activity.
- (2) In considering whether to propose a person for designation under section 176, the Governor must have regard to any designation criteria or procedures established by the United Nations Security Council or any Committee of the Security Council.
- (3) The Governor may propose a person for listing as a designated person under section 176 whether or not the person is subject to criminal proceedings with respect to the terrorist activity which constitutes the grounds for the proposal.

178. Designation under UK Counter Terrorism Sanctions Regulations

- (1) The Governor may collect or solicit information to identify persons who meet—
 - (a) the criteria for designation in regulation 6 of the UK Counter Terrorism Sanctions Regulations, or
 - (b) any designation criteria established by the United Nations Security Council or any Committee of the Security Council.
- (2) The Governor may, if the Governor considers it appropriate, designate a person under, and in accordance with, regulation 5 of the UK Counter Terrorism Sanctions Regulations on the request of a country other than St Helena, Ascension and Tristan da Cunha.
- (3) The Governor may request another country to give effect to the designation of a person by the Governor under regulation 5 of the UK Counter Terrorism Sanctions

Regulations and any actions initiated by St Helena, Ascension and Tristan da Cunha with respect to the designation.

- (4) A request to another country under this section must be made through the Foreign, Commonwealth and Development Office.

179. Protection of persons acting in good faith

- (1) For the purposes of this section, “**designated person**” means a person—
 - (a) designated by the Governor under regulation 5 of the UK Counter Terrorism Sanctions Regulations,
 - (b) listed as a designated person by, or designated under a resolution of, the Security Council or any Committee of the Security Council, or
 - (c) designated by the Treasury or the Secretary of State in accordance with the applicable laws in the United Kingdom.
- (2) A person (“the first person”) who, in good faith, freezes the funds or economic resources of a designated person or refuses to make those funds or economic resources available to a designated person in accordance with any relevant UK Sanctions Regulations, is not liable to any action for freezing the funds or economic resources or refusing to make the funds or economic resources available unless it is proved that the funds or economic resources were frozen or withheld as a result of the negligence of the first person.
- (3) A person (“the first person”) who, in good faith, does not freeze the funds or economic resources of a designated person is not liable to any action if the first person did not know or had no reasonable cause to suspect that the first person’s actions would be in contravention of the obligation to freeze the funds or economic resources.

180. Reporting of frozen assets and attempted transactions

- (1) A service provider must, as soon as practicable, report to the Reporting Unit—
 - (a) any funds or economic resources the service provider has frozen, or has refused to make available, in compliance with any of the UK Sanctions Regulations,
 - (b) any other action the service provider has taken in compliance with a prohibition or requirement in any of the UK Sanctions Regulations, and
 - (c) any attempted transaction involving a designated person or the funds or economic resources of a designated person.
- (2) The Reporting Unit must, without delay, provide to the Governor any report received under subsection (1).
- (3) In this section—
 - (a) “**attempted transaction**” means a transaction that was proposed, initiated or attempted but not completed, and
 - (b) “**designated person**” has the meaning given by section 179(1).

- (4) A service provider who, without reasonable excuse, fails to comply with subsection (1) commits an offence.

Penalty: A fine of £100,000 or imprisonment for a period of 2 years, or both.

181. Governor may establish procedures

The Governor may establish procedures for giving effect to and implementing the UK Sanctions Regulations and this Part.

PART 9 MISCELLANEOUS

182. Interpretation for this Part and Schedule 3

In this Part and Schedule 3—

- (a) an **external order** is an order which—
 - (i) is made by an overseas court where property is found or believed to have been obtained as a result of or in connection with criminal conduct, and
 - (ii) is for the recovery of specified property or a specified sum of money,
- (b) an **external request** is a request by an overseas authority to prohibit dealing with relevant property which is identified in the request,
- (c) property is **relevant property** if there are reasonable grounds to believe that it may be needed to satisfy an external order which has been or which may be made,
- (d) an **overseas court** is a court of a country outside St Helena, and
- (e) an **overseas authority** is an authority which has responsibility in a country outside St Helena for making a request to an authority in another country (including St Helena) to prohibit dealing with relevant property.

183. External requests and orders

Schedule 3 applies to external requests and the enforcement of external orders.

184. Application of procedure for enforcing payment under this Ordinance

- (1) Where the Court makes a confiscation order, the order has effect as if the amount required to be paid under it were a fine imposed on the defendant by the Court.
- (2) Where the whole or any part of the amount required to be paid under a confiscation order is not paid when required by the Court, the Court may in respect of a sum in default set out in Column 1 below, impose a term of imprisonment not exceeding the maximum period set out opposite that amount in Column 2—

Column 1 Sum in default	Column 2 Maximum period
£10,000 or less	6 months
More than £10,000 but not more than £50,000	12 months
More than £50,000 but not more than £200,000	2 years
More than £200,000 but not more than £500,000	3 years
More than £500,000 but not more than £1,000,000	5 years
More than £1,000,000	10 years

- (3) In relation to an amount to which this section applies—
- section 225(2A) of, and Schedule 2 to, the Criminal Procedure Ordinance, 1975 do not apply, and the maximum periods of imprisonment in default are those set out in the table in subsection (2),
 - the power of the Magistrates' Court under section 227(2)(a) of the Criminal Procedure Ordinance, 1975 to remit an outstanding payment or any part of it is not exercisable, and
 - a term of imprisonment imposed under subsection (2) is not to be increased by reason only of interest accruing under section 40 after the term is imposed.
- (4) If, under a power granted by this Ordinance, the Court varies a confiscation order and the effect is to reduce the maximum period of imprisonment specified in this section—
- if, as a result, the maximum period of imprisonment is less than the term of imprisonment imposed by the Court, the Court must impose a reduced term of imprisonment, or
 - if paragraph (a) does not apply, the Court may amend the term of imprisonment imposed.
- (5) If, under a power granted by this Ordinance, the Court varies a confiscation order and the effect is to increase the maximum period of imprisonment specified in this section, the Court may on the application of the prosecutor, amend the term of imprisonment imposed.
- (6) Where the defendant serves a term of imprisonment in default of paying any amount due under a confiscation order, serving that term does not prevent the confiscation order from continuing to have effect, so far as any other method of enforcement is concerned.
- (7) This section applies in relation to confiscation orders made by the Court of Appeal, in its appellate jurisdiction, as it applies in relation to confiscation orders made by the Court and the reference in subsection (1) to the Court is construed accordingly.

185. National Forfeiture Fund

- (1) There is established, as a Special Fund for the purposes of the Public Finance Ordinance, 2010, a fund to be known as the National Forfeiture Fund.
- (2) The following must be paid into the National Forfeiture Fund—
 - (a) all money recovered under a confiscation order,
 - (b) all money received by the Government in consequence of a recovery order, after deducting any amounts payable in respect of the remuneration and expenses of the trustee for civil recovery,
 - (c) all cash forfeited under section 132,
 - (d) all money received by the Government from the government of a country outside St Helena—
 - (i) under an agreement or arrangement (however described, and whenever made) for the sharing of the proceeds of confiscation, forfeiture or recovery, or
 - (ii) otherwise in recognition of, or in connection with, assistance given by St Helena in the investigation of crime or the identification, freezing, confiscation, forfeiture or recovery of property, and
 - (e) all other money required by or under this Ordinance to be paid into the National Forfeiture Fund.
- (3) The Financial Secretary may, on the recommendation of the Oversight Committee, make payments out of the National Forfeiture Fund—
 - (a) for purposes relating to—
 - (i) law enforcement including, in particular, the investigation of money laundering and other financial crime, terrorist financing and drug trafficking,
 - (ii) training and public awareness with respect to money laundering, terrorist financing and drug trafficking,
 - (iii) training and public awareness with respect to drug addiction and the treatment and rehabilitation of persons with a drug addiction,
 - (iv) the rehabilitation of offenders, and
 - (v) the administration of the National Forfeiture Fund,
 - (b) to meet the costs and expenses of the Reporting Unit,
 - (c) to make payments to the government of a country outside St Helena—
 - (i) under an agreement or arrangement (however described, and whenever made) for the sharing of the proceeds of confiscation, forfeiture or recovery, or
 - (ii) otherwise in recognition of, or in connection with, assistance given by that country in the investigation of crime or the identification, freezing, confiscation, forfeiture or recovery of property,
 - (d) to meet the costs and expenses of a receiver appointed under this Ordinance,
 - (e) to meet the costs of special investigations into the misuse of the financial system for money laundering or other financial crime or terrorist financing, and

- (f) to pay compensation or costs awarded under this Ordinance.

186. Administration of the National Forfeiture Fund

- (1) The National Forfeiture Fund is to be administered by the Financial Secretary in accordance with the Public Finance Ordinance, 2010 and any Financial Regulations made under it.
- (2) Despite section 6(3) of that Ordinance, any interest or dividend received or accrued from the investment of money in the National Forfeiture Fund forms part of the National Forfeiture Fund.
- (3) Despite section 4(4) of that Ordinance, the National Forfeiture Fund may not be closed or wound up except by Ordinance.

187. Annual report

- (1) The Financial Secretary must, within three months after the end of each financial year, prepare a report on the operation of the National Forfeiture Fund during that year, including the money paid into and out of the National Forfeiture Fund and the purposes for which payments were made.
- (2) The Financial Secretary must lay the report before the Legislative Council.

188. Regulations

- (1) The Governor on the advice of the Executive Council must make Anti-money Laundering and Terrorist Financing Regulations in relation to the prevention of the use of the financial system for money laundering and terrorist financing.
- (2) The Governor on the advice of the Executive Council may make the other Regulations the Governor on the advice of the Executive Council considers appropriate generally for giving effect to this Ordinance and specifically in respect of anything required or permitted to be prescribed by this Ordinance.
- (3) The Anti-money Laundering and Terrorist Financing Regulations may—
 - (a) make different provision in relation to different persons, circumstances or cases, and
 - (b) prescribe offences against the Regulations punishable with a fine not exceeding £100,000, imprisonment for a period not exceeding 2 years, or both, in respect of any one offence.
- (4) In deciding whether a person has committed an offence under the Anti-money Laundering and Terrorist Financing Regulations, the court trying the offence must consider whether the person followed any guidance issued by the Regulatory Authority under section 189(7).

189. Issuance of the Directive and guidance

- (1) Subject to subsection (4), the Regulatory Authority must, by publication in the Gazette, issue a Directive setting out measures, not inconsistent with this Ordinance, the Anti-money Laundering and Terrorist Financing Regulations and the terrorist financing laws, for the prevention and detection of money laundering and terrorist financing.
- (2) The Directive may—
 - (a) make different provision in relation to different persons, circumstances or cases, and
 - (b) include the transitional provisions the Regulatory Authority considers necessary or expedient.
- (3) Subject to subsection (4), the Regulatory Authority may, by publication in the Gazette, issue a notice of amendment of the Directive.
- (4) Before issuing the Directive, or a notice of amendment of the Directive, the Regulatory Authority must—
 - (a) publish a draft of the Directive, or proposed amendment to the Directive, in the manner the Regulatory Authority considers appropriate for bringing it to the notice of service providers and other persons who will be affected by it, and
 - (b) consider the written representations it receives.
- (5) The Directive issued under this section—
 - (a) is subsidiary legislation and has full legislative effect, and
 - (b) comes into force on the date or dates specified in it.
- (6) An amendment to the Directive comes into force on the date specified in the notice of amendment which, provided that it does not take effect before the commencement of the Directive, may be retroactive.
- (7) The Regulatory Authority may issue guidance concerning compliance with the requirements of this Ordinance, the Anti-money Laundering and Terrorist Financing Regulations and the Directive and concerning the other matters it considers relevant to its functions.

190. Amendment of Schedules

The Schedules to this Ordinance may be amended by Regulations.

191. Liability of directors and senior managers for offences by a corporate body

- (1) This subsection applies where an offence under this Ordinance, or under any regulations made under this Ordinance, is committed by a corporate body and is proved to have been committed with the consent or connivance of—
 - (a) a director or senior manager of the corporate body, or
 - (b) a person purporting to act in either of those capacities.

- (2) Where subsection (1) applies, the person also commits the offence and is liable in the same manner as the corporate body to the penalty provided for that offence.
- (3) Where the affairs of a corporate body are managed by its members, subsection (1) applies in relation to acts and defaults of a member in connection with the functions of management as if the member were a director of the corporate body.
- (4) For the purposes of this section, a person is to be treated as a director of a corporate body if the person—
 - (a) occupies, in relation to that corporate body, the position of director by whatever name called, or
 - (b) is a person in accordance with whose directions or instructions (other than directions or instructions given solely in the person's professional capacity) the directors of the corporate body are accustomed to act.

192. Transitional provisions and savings

- (1) The transitional provisions and savings in Schedule 6 have effect.
- (2) The Governor on the advice of the Executive Council may, by Regulations under section 188(2), specify transitional provisions not inconsistent with Schedule 6.

193. Repeals and revocations

- (1) The Money Laundering Ordinance, 2008 is repealed.
- (2) The following directives are revoked—
 - (a) the Directive on Anti-Money Laundering, Counter-Terrorist Financing and Financial Sanctions Compliance issued by the Money Laundering Regulatory Authority under section 10 of the Money Laundering Ordinance, 2008, and
 - (b) the Directive on Anti-Money Laundering, Counter-Terrorist Financing and Financial Sanctions Compliance issued by the Regulatory Authority.

SCHEDULE 1

(Sections 99(1)(a) and 102(1)(a))

POWERS OF RECEIVER AND INTERIM RECEIVER

1. Seizure

A receiver and an interim receiver have the power to seize property to which the order applies.

2. Information

- (1) A receiver and an interim receiver have the power to obtain information or to require a person to answer any question.
- (2) A requirement imposed in the exercise of the power specified in subparagraph (1) has effect despite any restriction on the disclosure of information, however imposed.
- (3) An answer given by a person in compliance with a requirement mentioned in subparagraph (2) may not be used in evidence against the person in criminal proceedings.
- (4) Subparagraph (3) does not apply—
 - (a) on a prosecution for an offence under any law in force in St Helena of making a statement or representation that is false or misleading, where the statement or representation concerned is, or is contained in, the answer, or
 - (b) on a prosecution for another offence where, in giving evidence, the person makes a statement inconsistent with the answer.
- (5) An answer may not be used by virtue of subparagraph (4)(b) against a person unless evidence relating to the answer is adduced, or a question relating to the answer is asked, by the person or on the person's behalf in the proceedings arising out of the prosecution.

3. Entry, search, etc.

- (1) A receiver and an interim receiver have the power to enter any premises in St Helena to which the order applies, and to—
 - (a) carry out a search for or inspection of anything described in the order,
 - (b) make or obtain a copy, photograph or other record of anything so described, and
 - (c) remove anything which the receiver or interim receiver is required or authorised to take possession of under the order or which may be required as evidence in the proceedings.
- (2) The order may describe anything generally, whether by reference to a class or otherwise.

4. Supplementary

- (1) An order making any provision under paragraph 2 or 3 must make provision in respect of legal professional privilege.
- (2) An order making any provision under paragraph 3 may require any person—
 - (a) to give the receiver or interim receiver access to any premises which the receiver or interim receiver may enter under paragraph 3, and
 - (b) to give the receiver or interim receiver any assistance the receiver or interim receiver may require for taking the steps mentioned in that paragraph.

5. Management

- (1) A receiver and an interim receiver have the power to manage any property to which the order applies.
- (2) Managing property includes—
 - (a) selling or otherwise disposing of assets comprised in the property which are perishable or which ought to be disposed of before their value diminishes,
 - (b) where the property comprises assets of a trade or business, carrying on, or arranging for another person to carry on, the trade or business, and
 - (c) incurring capital expenditure in respect of the property.

SCHEDULE 2

(Section 111(4))

POWERS OF TRUSTEE

1. Sale

The trustee has the power to sell the property or any part of it or interest in it.

2. Expenditure

The trustee has the power to incur expenditure for the purpose of—

- (a) acquiring any part of the property, or any interest in it, which is not vested in the trustee, or
- (b) discharging any liabilities, or extinguishing any rights, to which the property is subject.

3. Management

- (1) The trustee has the power to manage property.
- (2) Managing property includes—
 - (a) selling or otherwise disposing of assets comprised in the property which are perishable or which ought to be disposed of before their value diminishes,
 - (b) where the property comprises assets of a trade or business, carrying on, or arranging for another person to carry on, the trade or business, and
 - (c) incurring capital expenditure in respect of the property.

4. Legal proceedings

The trustee has the power to start, carry on or defend any legal proceedings in respect of the property.

5. Compromise

The trustee has the power to make any compromise or other arrangement in connection with any claim relating to the property.

6. Supplementary

For the purposes of, or in connection with, the exercise of any of the trustee's powers, the trustee has the power—

- (a) by the trustee's official name, to—
 - (i) hold property,
 - (ii) enter into contracts,
 - (iii) sue and be sued,
 - (iv) employ agents, and
 - (v) execute a power of attorney, deed or other instrument, and

(b) to do any other act which is necessary or expedient.

SCHEDULE 3

(Section 183)

EXTERNAL REQUESTS AND ORDERS

Restraint Orders

1. External requests

An external request is to be dealt with under this Schedule only if made to the Attorney General.

2. Conditions for making restraint order

- (1) The Court may make a restraint order under paragraph 3 in respect of relevant property in St Helena identified in an external request only if one of the conditions in subparagraph (2) or (3) is met.
- (2) The first condition is that—
 - (a) a criminal investigation has been started in the country from which the external request was made, and
 - (b) there are reasonable grounds to suspect that the defendant named in the request has benefited from the defendant's criminal conduct.
- (3) The second condition is that—
 - (a) proceedings for an offence have been commenced in the country from which the external request was made and have not been concluded, and
 - (b) there are reasonable grounds to believe that the defendant named in the request has benefited from the defendant's criminal conduct.
- (4) An application for a restraint order may be made to a judge in chambers without notice.

3. Restraint order

- (1) If one of the conditions in paragraph 2(2) or (3) is met, the Court may, on the application of the Attorney General on behalf of an overseas authority, make a restraint order prohibiting any specified person from dealing with the relevant property identified in the external request and specified in the order.
- (2) A restraint order—
 - (a) may make provision—
 - (i) for reasonable living expenses and reasonable legal expenses in connection with the proceedings seeking a restraint order or the registration of an external order, and
 - (ii) for the purpose of enabling any person to carry on any trade, business, profession or occupation, and

- (b) may be made subject to the conditions the Court considers appropriate.
- (3) Where the Court makes a restraint order it may, on the application of the Attorney General (whether as part of the application for the restraint order or at any time afterwards) make the order it believes is appropriate for the purpose of ensuring that the restraint order is effective.
- (4) For the purposes of this paragraph, dealing with property includes removing it from St Helena.

4. Discharge and variation of restraint order

- (1) An application to discharge or vary a restraint order or an order under paragraph 3(3) may be made to the Court by—
 - (a) the Attorney General, or
 - (b) any person affected by the order.
- (2) On an application made under subparagraph (1), the Court may—
 - (a) discharge the order, or
 - (b) vary the order.
- (3) The Court must discharge the restraint order if—
 - (a) where the order was made in reliance on paragraph 2(2), proceedings for the offence are not commenced within a reasonable time,
 - (b) at the conclusion of the proceedings for an offence with respect to which the order was made, no external order has been made, or
 - (c) within a reasonable time an external order has not been registered under paragraph 12.

5. Appeal to Court of Appeal concerning restraint orders

- (1) If on an application for a restraint order the Court decides not to make one, the Attorney General may appeal to the Court of Appeal against the decision.
- (2) If an application is made under paragraph 4(1) in relation to a restraint order or an order under paragraph 3(3), the Attorney General or any person affected by the order may appeal to the Court of Appeal in respect of the Court's decision on the application.
- (3) On an appeal under subparagraph (1) or (2), the Court of Appeal may—
 - (a) confirm the decision, or
 - (b) make the order it believes is appropriate.

6. Seizure of property subject to restraint order

- (1) If a restraint order is in force, a police officer or customs officer may seize any property which is specified in it to prevent its removal from St Helena.
- (2) Property seized under subparagraph (1) must be dealt with in accordance with the directions of the Court which made the order.

7. Hearsay evidence in restraint proceedings

- (1) Evidence must not be excluded in restraint proceedings on the ground that it is hearsay (of whatever degree).
- (2) For the purposes of subparagraph (1), restraint proceedings are proceedings—
 - (a) for a restraint order,
 - (b) for the discharge or variation of a restraint order, or
 - (c) on an appeal under paragraph 5.
- (3) Nothing in this paragraph affects the admissibility of evidence which is admissible apart from this paragraph.

8. Appointment of receiver

- (1) If the Court makes a restraint order, it may, on the application of the Attorney General (whether made as part of the application for the restraint order or at any time afterwards), by order appoint a receiver in respect of any property which is specified in the restraint order.
- (2) On the application of the Attorney General, the Court may, by order confer on a receiver appointed under subparagraph (1), any of the following powers in relation to any property which is specified in the restraint order—
 - (a) power to take possession of the property,
 - (b) power to manage or otherwise deal with the property,
 - (c) power to start, carry on or defend any legal proceedings in respect of the property, and
 - (d) power to realise so much of the property as is necessary to pay the receiver's remuneration and expenses.
- (3) The Court may by order confer on the receiver power to enter any premises in St Helena and to do any of the following—
 - (a) search for or inspect anything authorised by the Court,
 - (b) make or obtain a copy, photograph or other record of anything so authorised, and
 - (c) remove anything which the receiver is required or authorised to take possession of under an order of the Court.
- (4) The Court may by order authorise the receiver to do any one or more of the following in the exercise of the receiver's functions—
 - (a) hold property;
 - (b) enter into contracts;
 - (c) sue and be sued;
 - (d) employ agents;
 - (e) execute powers of attorney, deeds or other instruments;
 - (f) take the other steps the Court thinks appropriate.

- (5) The Court may order any person who has possession of property which is specified in the restraint order to give possession of it to the receiver.
- (6) The Court—
 - (a) may order a person holding an interest in property which is specified in the restraint order to make to the receiver the payment the Court specifies in respect of a beneficial interest held by the defendant or the recipient of a tainted gift;
 - (b) may (on the payment being made) by order transfer, grant or extinguish any interest in the property.
- (7) Unless the Court gives persons holding interests in property a reasonable opportunity to make representations to it, the Court must not—
 - (a) confer the power mentioned in subparagraph (2)(b) or (d) in respect of the property, or
 - (b) exercise the power conferred on it by subparagraph (6) in respect of the property.
- (8) The Court may order that a power conferred by an order under this paragraph is subject to the conditions and exceptions it specifies.

9. Restrictions relating to restraint orders

- (1) If the Court makes a restraint order—
 - (a) no execution, distress or other process may be levied or enforced against any property which is specified in the order except with the leave of the Court and subject to any terms the Court may impose, and
 - (b) if the order applies to a tenancy of any premises, no landlord or other person to whom rent is payable may exercise a right of forfeiture by peaceable re-entry in relation to the premises in respect of any failure by the tenant to comply with any term or condition of the tenancy, except with the leave of the Court and subject to any terms the Court may impose.
- (2) If a court in which proceedings are pending in respect of any property is satisfied that a restraint order has been applied for or made in respect of the property, the court may either stay the proceedings or allow them to continue on any terms it considers appropriate.
- (3) Before exercising any power conferred by subparagraph (2), the court must give an opportunity to be heard to—
 - (a) the Attorney General, and
 - (b) any receiver appointed in respect of the property under this Schedule.

External Orders

10. Applications to give effect to external orders

- (1) The Attorney General may apply to the Court, on behalf of an overseas authority, to give effect to an external order in St Helena.
- (2) No application to give effect to such an order may be made otherwise than under subparagraph (1).
- (3) An application under subparagraph (1) may be made to a judge in chambers without notice.

11. Conditions for Court to give effect to external orders

- (1) The Court must give effect to an external order by registering it where it is satisfied that—
 - (a) the external order—
 - (i) was made consequent on the conviction of the person named in the order, and no appeal is outstanding in respect of that conviction, or
 - (ii) was made by a court of a country outside St Helena in proceedings, however described, for the recovery of property obtained through criminal conduct, whether or not proceedings for an offence have been brought against any person,
 - (b) the external order is in force and no appeal is outstanding in respect of it, and
 - (c) in the case of an external order for the recovery of specified property, the property is not subject to a charge under section 12 of the Drugs (Trafficking Offences) Ordinance, 2003.
- (2) In subparagraph (1) “**appeal**” includes—
 - (a) any proceedings by way of discharging or setting aside the order, and
 - (b) an application for a new trial or stay of execution.

12. Registration of external orders

- (1) Where the Court decides to give effect to an external order, it must—
 - (a) register the order in the Court, and
 - (b) provide for notice of the registration to be given to any person affected by it.
- (2) Only an external order registered by the Court may be enforced under this Schedule.
- (3) The Court may cancel the registration of the external order, or vary the property to which it applies, on an application by the Attorney General or any person affected by it if, or to the extent that, the Court is of the opinion that any of the conditions in paragraph 11 is not satisfied.
- (4) The Court must cancel the registration of the external order, on an application by the Attorney General or any person affected by it, if it appears to the Court that the order has been satisfied—

- (a) in the case of an order for the recovery of a sum of money specified in it, by payment of the amount due under it,
 - (b) in the case of an order for the recovery of specified property, by the surrender of the property, or
 - (c) by any other means.
- (5) Where the registration of an external order is cancelled or varied under subparagraph (3) or (4), the Court must provide for notice of this to be given to the Attorney General and any person affected by it.

13. Appeal to Court of Appeal concerning external orders

- (1) If on an application for the Court to give effect to an external order by registering it, the Court decides not to do so, the Attorney General may appeal to the Court of Appeal against the decision.
- (2) If an application is made under paragraph 12(3) or (4) in relation to the registration of an external order, the Attorney General or any person affected by the registration may appeal to the Court of Appeal in respect of the Court's decision on the application.
- (3) On an appeal under subparagraph (1) or (2), the Court of Appeal may—
 - (a) confirm the decision, or
 - (b) direct the Court to register the external order, or so much of it as relates to property other than that to which paragraph 11(1)(c) applies.

14. Sums in currency other than St Helena pounds

- (1) This paragraph applies where the external order which is registered under paragraph 12 specifies a sum of money.
- (2) If the sum of money which is specified is expressed in a currency other than St Helena pounds, the sum of money to be recovered is to be taken to be the St Helena pound equivalent calculated in accordance with the rate of exchange prevailing at the end of the working day immediately preceding the day when the Court registered the external order under paragraph 12.
- (3) The St Helena pound equivalent must be calculated by the Attorney General.
- (4) A notice under paragraph 12(1)(b), and a notice under paragraph 12(5) of a variation of the registration, must set out the amount in St Helena pounds which remains to be paid.

15. Time for payment

- (1) This paragraph applies where the external order is for the recovery of a specified sum of money.

- (2) Subject to subparagraphs (4) to (7), the amount ordered to be paid must be paid on the date on which the notice under paragraph 12(1)(b) is delivered to the person affected by the order.
- (3) The amount ordered to be paid is—
 - (a) the amount payable under the external order as registered under paragraph 12, or
 - (b) where paragraph 14(2) applies, the amount set out in the notice under paragraph 12(1)(b).
- (4) Where there is an appeal under paragraph 13 and a sum falls to be paid when the appeal has been determined or withdrawn, the duty to pay is delayed until the day on which the appeal is determined or withdrawn.
- (5) If the person affected by an external order which has been registered shows that the person needs time to pay the amount ordered to be paid, the Court may make an order allowing payment to be made within a specified period, which—
 - (a) must start with the day on which the notice under paragraph 12(1)(b) was delivered to the person affected by the order or the day referred to in subparagraph (4), as the case may be, and
 - (b) must not exceed six months.
- (6) If within the specified period the person affected by an external order applies to the Court for the period to be extended and the Court believes that there are exceptional circumstances, it may make an order extending the period.
- (7) The extended period—
 - (a) must start with the day on which the notice under paragraph 12(1)(b) was delivered to the person affected by it or the day referred to in subparagraph (4), as the case may be, and
 - (b) must not exceed 12 months.
- (8) An order under subparagraph (6)—
 - (a) may be made after the end of the specified period, but
 - (b) must not be made after the end of the extended period.
- (9) The Court must not make an order under subparagraph (6) unless it gives the Attorney General an opportunity to make representations.
- (10) If the amount ordered to be paid is not paid when it is required to be paid under this paragraph, the person affected by the order must also pay interest on the amount for the period for which it remains unpaid, at the rate for the time being applying for the purposes of section 40(1)(b).
- (11) The interest is to be treated, for the purposes of paragraphs 16 to 21, as part of the amount ordered to be paid.

16. Appointment of receivers

If an external order is registered, is not satisfied, and, in the case of an external order for the recovery of a specified sum of money, the amount ordered to be paid has not been paid when required (and, if a period has been specified by order under paragraph 15, that period has expired), the Court, on the application of the Attorney General, may appoint a receiver in respect of—

- (a) where the external order is for the recovery of a specified sum of money, realisable property, or
- (b) where the external order is for the recovery of specified property, that property.

17. Powers of receivers in respect of monetary external orders

- (1) If the Court appoints a receiver under paragraph 16 in respect of an external order for the recovery of a specified sum of money, it may, on the application of the Attorney General, by order confer on the receiver the following powers in relation to any realisable property—
 - (a) power to take possession of the property,
 - (b) power to manage or otherwise deal with the property,
 - (c) power to realise the property, in the manner the Court may specify, and
 - (d) power to start, carry on or defend any legal proceedings in respect of the property.
- (2) The Court may by order confer on the receiver power to enter any premises in St Helena and to do any of the following—
 - (a) search for or inspect anything authorised by the Court,
 - (b) make or obtain a copy, photograph or other record, of anything so authorised, and
 - (c) remove anything which the receiver is required or authorised to take possession of under an order of the Court.
- (3) The Court may by order authorise the receiver to do any of the following in the exercise of the receiver's functions—
 - (a) hold property,
 - (b) enter into contracts,
 - (c) sue and be sued,
 - (d) employ agents,
 - (e) execute powers of attorney, deeds or other instruments, and
 - (f) take any other steps as the Court thinks appropriate.
- (4) The Court may order any person who has possession of realisable property to give possession of it to the receiver.
- (5) The Court—

- (a) may order a person holding an interest in realisable property to make to the receiver the payment the Court specifies in respect of a beneficial interest held by the defendant or the recipient of a tainted gift, and
 - (b) may (on payment being made) by order transfer, grant or extinguish any interest in the property.
- (6) Subparagraphs (2), (4) and (5) do not apply to property for the time being subject to a charge under section 12 of the Drugs (Trafficking Offences) Ordinance, 2003.
- (7) The Court must not—
 - (a) confer the power mentioned in subparagraph (2)(b) or (c) in respect of property, or
 - (b) exercise the power conferred on it by subparagraph (5) in respect of property, unless it gives persons holding interests in the property a reasonable opportunity to make representations to it.
- (8) The Court may order that a power conferred by an order under this paragraph is subject to the conditions and exceptions it specifies.

18. Powers of receivers in respect of external orders for the recovery of specified property

- (1) If the Court appoints a receiver under paragraph 16, it may act under this paragraph on the application of the Attorney General where the external order is for the recovery of property specified in the order.
- (2) The Court may by order confer on the receiver the following powers in relation to the specified property—
 - (a) power to take possession of the property,
 - (b) power to manage or otherwise deal with the property,
 - (c) power to realise the property, in the manner the Court may specify, and
 - (d) power to start, carry on or defend any legal proceedings in respect of the property.
- (3) The Court may by order confer on the receiver power to enter any premises in St Helena and to do any of the following—
 - (a) search for or inspect anything authorised by the Court,
 - (b) make or obtain a copy, photograph or other record of anything so authorised, and
 - (c) remove anything which the receiver is required or authorised to take possession of under an order of the Court.
- (4) The Court may by order authorise the receiver to do any of the following for the purposes of the exercise of the receiver's functions—
 - (a) hold property,
 - (b) enter into contracts,
 - (c) sue and be sued,

- (d) employ agents,
 - (e) execute powers of attorney, deeds or other instruments, and
 - (f) take any other steps as the Court thinks appropriate.
- (5) The Court may order any person who has possession of the specified property to give possession of it to the receiver.
- (6) The Court—
 - (a) may order a person holding an interest in the specified property to make to the receiver the payment the Court specifies in respect of a beneficial interest held by the defendant or the recipient of a tainted gift, and
 - (b) may (on the payment being made) by order transfer, grant or extinguish any interest in the property.
- (7) Unless it gives persons holding interests in property a reasonable opportunity to make representations to it, the Court must not—
 - (a) confer the power mentioned in subparagraph (2)(b) or (c) in respect of the property, or
 - (b) exercise the power conferred on it by subparagraph (6) in respect of the property.
- (8) The Court may order that a power conferred by an order under this paragraph is subject to the conditions and exceptions it specifies.

19. Meaning of “managing or otherwise dealing with property”

For the purposes of paragraphs 8, 17 and 18, managing or otherwise dealing with property includes—

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

20. Application of sums by receiver

- (1) This paragraph applies to sums which are in the hands of a receiver appointed under paragraph 16 if they are—
 - (a) the proceeds of the realisation of property under paragraph 17 or 18, and
 - (b) where paragraph 17 applies, sums (other than those mentioned in subparagraph (a)) in which the defendant holds an interest.
- (2) The sums must be applied as follows—
 - (a) first, they must be applied in making any payments directed by the Court, and
 - (b) second, they must be applied on the defendant’s behalf towards satisfaction of the external order.
- (3) If the amount payable under the external order has been fully paid and any sums remain in the receiver’s hands the receiver must distribute them—

- (a) among such persons who held (or hold) interests in the property concerned as the Court directs, and
 - (b) in the proportions it directs.
- (4) Before making a direction under subparagraph (3) the Court must give persons who held (or hold) interests in the property concerned a reasonable opportunity to make representations to it.
- (5) For the purposes of subparagraphs (3) and (4), the property concerned is—
 - (a) the property represented by the proceeds mentioned in subparagraph (1)(a), or
 - (b) the sums mentioned in subparagraph (1)(b), as the case may be.
- (6) The receiver applies sums as mentioned in subparagraph (2)(b) by paying them to the Attorney General on account of the amount payable under the order.

21. Sums received by Attorney General

- (1) Where the Attorney General receives sums on account of the amount payable under a registered external order or the value of the property specified in the order, the receipt of the sums reduces the amount payable under the order, but the Attorney General must apply the sums received as follows—
 - (a) first, in payment of the remuneration and expenses of a receiver appointed under paragraph 8 to the extent that they have not been met by virtue of the exercise by that receiver of a power conferred under paragraph 8(2)(d), and
 - (b) second, in payment of the remuneration and expenses of the receiver appointed under paragraph 16.
- (2) Any sums which remain after the Attorney General has made any payments required by the preceding provisions of this paragraph must be paid into the National Forfeiture Fund.

22. Satisfaction of external order

- (1) A registered external order is satisfied when no amount is due under it.
- (2) Where such an order authorises the recovery of property specified in it, no further amount is due under the order when all of the specified property has been recovered, surrendered or sold.

23. Restrictions relating to receivers

- (1) Where the Court makes an order under paragraph 16 appointing a receiver in respect of any realisable property or specified property—
 - (a) no execution, distress or other process may be levied or enforced against the property except with the leave of the Court and subject to any terms the Court may impose, and
 - (b) if the receiver is appointed in respect of a tenancy of any premises, no landlord or other person to whom rent is payable may exercise a right of forfeiture by

peaceable re-entry in relation to the premises in respect of any failure by the tenant to comply with any term or condition of the tenancy, except with the leave of the Court and subject to any terms the Court may impose.

- (2) If a court in which proceedings are pending in respect of any property is satisfied that an order under paragraph 16 appointing a receiver in respect of the property has been applied for or made, the court may either stay the proceedings or allow them to continue on any terms it considers appropriate.
- (3) Before exercising any power conferred by subparagraph (2), the court must give an opportunity to be heard to—
 - (a) the Attorney General, and
 - (b) the receiver, if the order under paragraph 16 has been made.

24. Protection of receiver appointed under paragraph 8 or 16

- (1) This paragraph applies if a receiver appointed under paragraph 8 or 16—
 - (a) takes action in relation to property which is not realisable property or, as the case may be, the specified property,
 - (b) would be entitled to take the action if it were, and
 - (c) believes on reasonable grounds that the receiver is entitled to take the action.
- (2) The receiver is not liable to any person in respect of any loss or damage resulting from the action, except so far as the loss or damage is caused by the receiver's negligence.

25. Further applications by receivers

- (1) A receiver appointed under paragraph 8 or 16 may apply to the Court for an order giving directions as to the exercise of the receiver's powers.
- (2) The following persons may apply to the Court—
 - (a) any person affected by action taken by a receiver appointed under paragraph 8 or 16, or
 - (b) any person who may be affected by action such a receiver proposes to take.
- (3) On an application under this paragraph the Court may make the order it believes is appropriate.

26. Discharge and variation of receiver orders

- (1) The following persons may apply to the Court to vary or discharge an order made under paragraph 8 or paragraphs 16 to 18—
 - (a) the receiver,
 - (b) the Attorney General, or
 - (c) any person affected by the order.
- (2) On an application under this paragraph, the Court—
 - (a) may discharge the order, or
 - (b) may vary the order.

27. Discharge of receivers appointed under paragraph 8

- (1) If a receiver is appointed under paragraph 8 in respect of property which is identified in the restraint order (“the first receiver”), and the Court appoints a receiver under paragraph 16 (“the second receiver”), the Court must order the first receiver to transfer to the second receiver all property held by the receiver by virtue of the powers conferred by paragraph 8.
- (2) Subparagraph (1) does not apply to property which the first receiver holds by virtue of the exercise by the first receiver of the power under paragraph 8(2)(d).
- (3) The first receiver, on complying with an order under subparagraph (1), is discharged—
 - (a) from the appointment as receiver under paragraph 8, and
 - (b) from any obligation under this Schedule arising from the appointment.
- (4) If this paragraph applies the Court may make the consequential or incidental order it believes is appropriate.

28. Appeal to Court of Appeal concerning receivers

- (1) If on an application for an order under any of paragraphs 8 and 16 to 18 the Court decides not to make one, the person who applied for the order may appeal to the Court of Appeal against the decision.
- (2) If the Court makes an order under any of paragraphs 8 and 16 to 18, the following persons may appeal to the Court of Appeal in respect of the Court’s decision—
 - (a) the person who applied for the order, and
 - (b) any person affected by the order.
- (3) If on an application for an order under paragraph 25 the Court decides not to make one, the person who applied for the order may appeal to the Court of Appeal against the decision.
- (4) If the Court makes an order under paragraph 25, the following persons may appeal to the Court of Appeal in respect of the Court’s decision—
 - (a) the person who applied for the order,
 - (b) any person affected by the order, and
 - (c) the receiver.
- (5) The following persons may appeal to the Court of Appeal against a decision of the Court on an application under paragraph 26—
 - (a) the person who applied for the order in respect of which the application was made,
 - (b) any person affected by the Court’s decision, and
 - (c) the receiver.
- (6) On an appeal under this paragraph the Court of Appeal may—
 - (a) confirm the decision, or

- (b) make the order it believes is appropriate.

Interpretation for this Schedule

29. Tainted gifts

- (1) For the purposes of this Schedule, a gift is tainted if it was made by the defendant at any time after—
 - (a) the date on which the offence to which the external order or external request relates was committed, or
 - (b) if the defendant’s criminal conduct consists of two or more such offences and they were committed on different dates, the date of the earliest.
- (2) For the purposes of subparagraph (1), an offence which is a continuing offence is committed on the first occasion when it is committed.

30. Interpretation

In this Schedule—

“criminal conduct” means conduct which—

- (a) constitutes an offence in St Helena, or
- (b) would constitute an offence in St Helena if it occurred there;

“defendant” means the person named in the external request as the person under investigation or subject to proceedings, or the person named in the external order;

“realisable property” means—

- (a) property held by the defendant, and
- (b) property held by the recipient of a tainted gift;

“specified property” means property specified in an external order, other than an order that specifies a sum of money.

SCHEDULE 4

(Section 156(3)(b))

POWERS AND DUTIES OF SUPERVISORY AUTHORITIES IN RELATION TO DNFBPS

1. Scope of this Schedule

This Schedule—

- (a) sets out the powers and duties of the supervisory authority, or if more than one, each supervisory authority, of DNFBPs, and
- (b) has no application to the Regulatory Authority as the supervisory authority for regulated service providers.

2. Interpretation

In this Schedule—

“affiliate”, in relation to a legal person, means another legal person that is in the same group as the first legal person;

“former relevant DNFBP” means a person who at any time has been a relevant DNFBP, but who has ceased to be a relevant DNFBP;

“group” has the meaning given by the Anti-money Laundering and Terrorist Financing Regulations;

“parent” has the meaning given by the Anti-money Laundering and Terrorist Financing Regulations;

“relevant DNFBP”, in relation to a supervisory authority, means a DNFBP that the supervisory authority is responsible for supervising in accordance with section 155;

“subsidiary” has the meaning given by the Anti-money Laundering and Terrorist Financing Regulations;

3. Power to require information and production of documents

- (1) Where reasonably required for the discharge of its functions under this Ordinance, the Anti-money Laundering and Terrorist Financing Regulations or the Directive issued under this Ordinance, a supervisory authority may, by written notice given to a person specified in subparagraph (2)(a), require the person—
 - (a) to provide specified information or information of a specified description, or
 - (b) to produce specified documents or documents of a specified description.
- (2) A notice under subparagraph (1)—
 - (a) may be issued to—
 - (i) a relevant DNFBP,

- (ii) a former relevant DNFBP,
 - (iii) an affiliate of a relevant DNFBP or a former relevant DNFBP,
 - (iv) a director of a relevant DNFBP or a former relevant DNFBP that is a legal person,
 - (v) a partner of a relevant DNFBP or a former relevant DNFBP that is a partnership,
 - (vi) a senior employee of a person specified in subparagraph (i), (ii), (iii), (iv) or (v), or
 - (vii) in the case of a notice requiring the production of documents, any person who the supervisory authority reasonably believes is in possession, or has control, of the documents,
 - (b) may require that the information is to be provided to, or the documents are to be produced to, the person specified in the notice, and
 - (c) must specify the place where, and the period within which, the information or documents must be provided or produced.
- (3) A supervisory authority may—
- (a) require—
 - (i) any information provided or documents produced under this paragraph to be provided or produced in the form it may specify,
 - (ii) any information provided or document produced under this paragraph to be verified or authenticated in the manner it may reasonably specify, and
 - (b) take copies or extracts of any document produced under this paragraph.
- (4) Where a person claims a lien on a document, its production under this paragraph is without prejudice to the lien.

4. Search warrant

- (1) A Justice of the Peace may issue a search warrant under this paragraph if satisfied on information on oath or affirmation given on behalf of a supervisory authority that there are reasonable grounds for believing that one or more of the conditions specified in subparagraph (2) are met.
- (2) The conditions referred to in subparagraph (1) are—
- (a) that a person has failed to fully comply with a notice of a supervisory authority issued under paragraph 3(1) within the time period specified in the notice and that on the premises specified in the warrant—
 - (i) there are documents that have been required to be produced, or
 - (ii) there is information that has been required to be provided,
 - (b) that—
 - (i) a notice could be issued by a supervisory authority under paragraph 3(1) against a person,
 - (ii) there are documents, or there is information, on the premises specified in the warrant in respect of which a notice under paragraph 3(1) could be issued, and

- (iii) if a notice under paragraph 3(1) were to be issued, it would not be fully complied with or the documents or information to which the notice related would be removed, tampered with or destroyed, or
 - (c) that—
 - (i) an offence under this Ordinance, any other law relating to money laundering or terrorist financing or the Anti-money Laundering and Terrorist Financing Regulations has been, is being or is likely to be committed by a person,
 - (ii) there are documents, or there is information, on the premises specified in the warrant that evidence the commission of the offence, and
 - (iii) if a notice under paragraph 3(1) were to be issued, it would not be fully complied with or the documents or information to which the notice related would be removed, tampered with or destroyed.
- (3) A warrant issued under this paragraph authorises a named representative of the supervisory authority, accompanied by a police officer and any other person named in the warrant—
 - (a) to enter the premises specified in the warrant at any time within the period of one week beginning with the date of the warrant,
 - (b) to search the premises and take possession of any documents or information appearing to be documents or information of a type in respect of which the warrant was issued or to take, in relation to such documents or information, any other steps which appear to be necessary for preserving or preventing interference with them,
 - (c) to take copies of, or extracts from, any documents or information appearing to be documents or information of a type in respect of which the warrant was issued,
 - (d) to require any person on the premises to provide an explanation of any document or information appearing to be documents or information of a type in respect of which the warrant was issued or to state where such documents or information may be found, and
 - (e) to use the force reasonably necessary to execute the warrant.
- (4) Unless the Justice of the Peace, on the application of a supervisory authority, otherwise orders, any document of which possession is taken under this paragraph may be retained—
 - (a) for a period of three months, or
 - (b) if, within a period of three months, proceedings for a criminal offence to which the document is relevant are commenced against any person, until the conclusion of those proceedings.

5. Compliance visits

- (1) A supervisory authority may, for the purposes of monitoring, assessing and enforcing compliance by a relevant DNFBP with its AML/CFT obligations—

- (a) enter and inspect any premises, whether in or outside St Helena, owned, occupied or used by the DNFBP or any subsidiary or parent of the DNFBP,
 - (b) review and inspect the business and activities of the DNFBP, including its policies, procedures, systems and controls,
 - (c) examine and make copies of documents belonging to or in the possession or control of the DNFBP, or any subsidiary or parent of the DNFBP, that, in the opinion of the supervisory authority, are relevant to the DNFBP's business or to its AML/CFT obligations, and
 - (d) seek information and explanations from the officers, employees, agents and representatives of the DNFBP, whether orally or in writing, and whether in preparation for, during or after a compliance visit.
- (2) Subject to subparagraph (3), a supervisory authority must give reasonable notice to a relevant DNFBP of its intention to exercise its powers under subparagraph (1).
 - (3) Where it appears to a supervisory authority that the circumstances so justify, the supervisory authority may exercise its powers under subparagraph (1) without giving notice of its intention to do so.
 - (4) A relevant DNFBP and its subsidiaries and parents must permit any employee of a supervisory authority, or person appointed by the supervisory authority for the purpose, to have access during reasonable business hours to any premises specified in subparagraph (1)(a) to enable that person to undertake a compliance visit.
 - (5) A person who contravenes subparagraph (4) commits an offence.

Penalty: A fine of £50,000 or imprisonment for a period of 2 years, or both.

6. Privileged information

- (1) A person is not required to disclose information or produce, or permit the inspection of, a document under this Schedule if the information or document is privileged material.
- (2) Despite subparagraph (1), a professional legal adviser may be required, under a power under this Schedule, to provide the name and address of a client of the adviser.

7. Admissibility of statements

- (1) Subject to subparagraph (2), a statement made by a person in compliance with a requirement imposed by a supervisory authority under paragraph 3 is admissible in evidence in any proceedings.
- (2) A statement made by a person in compliance with a requirement imposed under this Schedule may only be used in evidence against the person in criminal proceedings if—
 - (a) that person has introduced the statement in evidence, or
 - (b) the prosecution of that person relates to—

- (i) a failure or refusal by that person to produce documents or give assistance in accordance with this Ordinance,
- (ii) an omission by that person to disclose material which should have been disclosed or the provision by that person of false or misleading information, or
- (iii) an untruthful statement by that person.

8. Protection for disclosure

A person, including a director, officer or employee of a relevant DNFBP, who discloses information or produces documents to a supervisory authority, as permitted or required by this Schedule, is to be treated as not contravening any law, rule of law, agreement or professional code of conduct to which the person is subject, and no civil, criminal or disciplinary proceedings may be brought in respect of the disclosure or production against the person or, where the person is a director, officer or employee of a DNFBP, against the DNFBP.

9. Offences relating to a notice issued under paragraph 3

- (1) A person who, without reasonable excuse, fails to comply with a notice issued under paragraph 3(1) commits an offence.

Penalty: A fine of £100,000 or imprisonment for a period of 2 years, or both.

- (2) A person commits an offence if, in purported compliance with a notice issued by a supervisory authority under paragraph 3(1), the person—
 - (a) provides information which the person knows to be false or misleading in a material respect, or
 - (b) recklessly provides information which is false or misleading in a material respect.

Penalty: A fine of £100,000 or imprisonment for a period of 2 years, or both.

- (3) A person who destroys, mutilates, defaces, hides or removes a document for the purpose of obstructing or frustrating compliance with a notice issued by a supervisory authority under paragraph 3(1) commits an offence.

Penalty: A fine of £100,000 or imprisonment for a period of 2 years, or both.

10. Enforcement action

A supervisory authority is entitled to take enforcement action under this Schedule against a relevant DNFBP or a former relevant DNFBP if, in the opinion of the supervisory authority, the person—

- (a) has contravened or is in contravention of any of its AML/CFT obligations,
- (b) has failed to comply with a direction given to it by the supervisory authority under paragraph 11,
- (c) is in breach of any term or condition of its registration,

- (d) has provided the supervisory authority with any false, inaccurate or misleading information, whether on making application for registration or subsequent to its registration,
- (e) has refused or failed to co-operate with the supervisory authority on a compliance visit under paragraph 5,
- (f) has refused or failed to co-operate with an investigator appointed under paragraph 12, or
- (g) is carrying on a type of business as a DNFBP for which it is not registered under the Anti-money Laundering and Terrorist Financing Regulations.

11. Directions

- (1) Where a supervisory authority is entitled to take enforcement action against a relevant DNFBP or a former relevant DNFBP, it may by written notice issue the directions to the person it considers appropriate.
- (2) Without limiting subparagraph (1), a direction may—
 - (a) require the person to take, or not to take, the action or measures the supervisory authority considers appropriate,
 - (b) impose a prohibition, restriction or limitation on the business or activities of the person,
 - (c) require that any director, key employee or person having functions in relation to the person be removed and replaced by another person acceptable to the supervisory authority, or
 - (d) require that any individual—
 - (i) not perform a specified function or functions for the person,
 - (ii) not engage in specified employment by the person, or
 - (iii) not hold a specified position in the business of the person.
- (3) A direction issued under this paragraph may be of unlimited duration or of a duration specified in the notice of the direction.
- (4) The power to issue a direction under this paragraph includes the power, whether on the application of the person to whom the direction is issued or on the supervisory authority's own initiative, to vary or withdraw any direction.
- (5) A notice of a direction must—
 - (a) specify the reasons for giving the direction, and
 - (b) specify when the direction is to take effect.
- (6) Where a direction under subparagraph (2)(d) applies to an individual, the supervisory authority must give the individual notice of the direction, and the individual must comply with it.
- (7) A person who fails to comply with a direction issued under this paragraph that applies to the person commits an offence.

Penalty: A fine of £25,000 or imprisonment for a period of 1 year, or both.

12. Appointment of investigator

- (1) A supervisory authority may appoint one or more competent persons as investigators to conduct an investigation on its behalf—
 - (a) with respect to a relevant DNFBP—
 - (i) if it appears to the supervisory authority on reasonable grounds that there are, or may be, grounds for taking enforcement action, or
 - (ii) if the supervisory authority is of the opinion that it is desirable to appoint an investigator to undertake a money laundering and terrorist financing risk assessment in relation to the DNFBP, or
 - (b) with respect to a former relevant DNFBP, if the supervisory authority would have been entitled to appoint an investigator under subparagraph (1)(a), but for the person ceasing to be a relevant DNFBP.
- (2) An investigator appointed under subparagraph (1) is appointed to investigate one or more of the following in respect of the person being investigated—
 - (a) the current or past compliance of the person with its AML/CFT obligations;
 - (b) the money laundering and terrorist financing risks to which the person is exposed;
 - (c) the capacity and willingness of the person to identify, mitigate and manage the money laundering and terrorist financing risks to which the person is exposed;
 - (d) whether there are grounds for the taking of enforcement action against the person.
- (3) Subject to subparagraph (4) and as far as reasonably required to conduct the investigation, an investigator appointed under this paragraph has the powers of the supervisory authority—
 - (a) to require the provision of information or documents under paragraph 3,
 - (b) to apply to a Justice of the Peace under paragraph 4 for a search warrant, and
 - (c) to exercise the powers under paragraph 5(1)(a) to (d).
- (4) A supervisory authority may give directions to the investigator—
 - (a) limiting the powers of the investigator, and
 - (b) concerning any one or more of the following—
 - (i) the scope of the investigation,
 - (ii) the period for the conduct of the investigation, and
 - (iii) the manner in which the investigator is to report to the supervisory authority.
- (5) An investigator appointed under subparagraph (1) may, if the investigator considers it necessary for the purposes of the investigation, on giving written notice to the person concerned, also investigate the business of any person who is, or at any relevant time has been—
 - (a) an affiliate of the person under investigation, or

- (b) a partnership of which the person under investigation is a member.
- (6) An investigator must submit a report of the investigation to the supervisory authority that appointed the investigator.
- (7) A supervisory authority may direct that the DNFBP pay the costs, or the part of the costs it may specify, of an investigation conducted under this paragraph.
- (8) The Anti-money Laundering and Terrorist Financing Regulations may provide for—
 - (a) the notice to be given to a person to be investigated under this paragraph,
 - (b) the conduct of an investigation, and
 - (c) the payment of remuneration to the investigator.
- (9) A person who fails to provide assistance reasonably required by an investigator appointed under this paragraph commits an offence.

Penalty: A fine of £50,000 or imprisonment for a period of 2 years, or both.

13. Public statements

- (1) Subject to subparagraph (5), a supervisory authority may issue a public statement in the manner it considers appropriate setting out enforcement action that the supervisory authority intends to take, or has taken, against a relevant DNFBP or a former relevant DNFBP.
- (2) A public statement issued under subparagraph (1) may include the information the supervisory authority considers appropriate, including—
 - (a) the reasons for the enforcement action taken or to be taken, and
 - (b) the nature of the enforcement action taken or to be taken.
- (3) Where it considers it in the public interest to do so, a supervisory authority may issue a public statement in the manner it considers appropriate with respect to—
 - (a) any person who the supervisory authority has reasonable grounds to believe is carrying on, has carried on, intends to carry on or is likely to carry on a type of relevant business for which the person is not registered under the Anti-money Laundering and Terrorist Financing Regulations, and
 - (b) any matter relating to the risks of money laundering or terrorist financing.
- (4) Subject to subparagraph (5), where a public statement is to be issued under this paragraph in relation to a relevant DNFBP or a former relevant DNFBP, the supervisory authority must give the DNFBP seven days' written notice of its intention to issue the public statement and the reasons for the issue of the statement.
- (5) If the supervisory authority is of the opinion that it is in the public interest that subparagraph (4) should not have effect or that the period referred to in that subparagraph should be reduced, the supervisory authority may issue the public statement without notice to the relevant DNFBP or a former relevant DNFBP or on the shorter notice it considers appropriate.

14. Restrictions on disclosure of information

- (1) For the purposes of this paragraph, “**protected information**” means information which—
 - (a) relates to the business or other affairs of any person, and
 - (b) is acquired by a person falling within subparagraph (2), for the purposes of, or in the discharge of, the person’s functions under this Ordinance, the Regulations, the Anti-money Laundering and Terrorist Financing Regulations or the Directive.
- (2) The persons referred to in subparagraph (1)(b) are—
 - (a) a supervisory authority,
 - (b) an officer or employee of a supervisory authority,
 - (c) any person acting under the authority of a supervisory authority, and
 - (d) an officer or employee of a person specified in subparagraph (2)(c).
- (3) Information is not protected information—
 - (a) if the information is or has been available to the public from any other source, or
 - (b) if the information is disclosed in a summary or in statistics expressed in a manner that does not enable the identity of particular persons to whom the information relates to be determined.
- (4) Subject to paragraph 15, protected information must not be disclosed by a recipient of that information, whether the recipient of the information is a person specified in subparagraph (2) or a person who has directly or indirectly received the protected information from a person specified in subparagraph (2), without the consent of—
 - (a) the person from whom the information was obtained, and
 - (b) if different, the person to whom it relates.
- (5) It is an offence to contravene subparagraph (4).

Penalty: A fine of £75,000 or imprisonment for a period of 3 years, or both.

15. Gateways for the disclosure of information

Paragraph 14 does not apply to a disclosure—

- (a) by any person where the disclosure is—
 - (i) required or permitted by, and made in accordance with, an order of any court of competent jurisdiction in St Helena,
 - (ii) required or permitted by this Ordinance or any other law,
 - (iii) made to the Attorney General,
 - (iv) made to the Reporting Unit,
 - (v) made to a law enforcement agency,
 - (vi) made to the Regulatory Authority as the supervisory authority for regulated service providers,
 - (vii) made to another supervisory authority, or

- (viii) in the case of a disclosure that relates to a DNFBP, made to—
 - (A) a professional body or association, whether in or outside St Helena, of which the DNFBP is a member, or
 - (B) a supervisor or self-regulatory organisation, whether in or outside St Helena, that has responsibility for the supervision of the DNFBP,
- (b) by a person specified in paragraph 14(2), where the disclosure is made to any person for the purpose of discharging any function or exercising any power under this Ordinance or an enactment prescribed for the purposes of this paragraph, in either case, whether the function or power is of the person disclosing the information or of the supervisory authority, or
- (c) by a person, other than a supervisory authority, where the disclosure—
 - (i) is made with the written consent of the supervisory authority, and
 - (ii) could lawfully have been made by the supervisory authority.

SCHEDULE 5

(Section 154)

THE REPORTING UNIT AND THE OVERSIGHT COMMITTEE

PART 1 — THE REPORTING UNIT

1. Officers of the Reporting Unit

In this Schedule, “**officer of the Reporting Unit**” means a police officer for the time being assigned to the Reporting Unit under the arrangements under section 154(1).

2. Arrangements for the Unit

- (1) The arrangements under section 154(1) must, in particular, provide for—
 - (a) the assignment of police officers to the Reporting Unit,
 - (b) the designation of an officer assigned to the Reporting Unit as the head of the Reporting Unit, and
 - (c) the manner in which decisions whether to give or refuse consent under section 9, and whether to apply for an order under section 10, are to be taken on behalf of the Reporting Unit.
- (2) The arrangements may provide for an officer of the Reporting Unit to perform other functions as a police officer, subject to paragraph 6.

3. Functions of the Unit

- (1) The functions of the Reporting Unit are—
 - (a) to receive disclosures made under Part 2 and any other information relating to money laundering or terrorist financing,
 - (b) to analyse the disclosures and information it receives,
 - (c) to disseminate the results of its analysis, and any information it receives, in accordance with subparagraph (2),
 - (d) to give or refuse consent under section 9 and to make applications under section 10,
 - (e) to co-operate, and exchange information, with an authority in another jurisdiction exercising functions corresponding to those of the Reporting Unit, in accordance with subparagraph (4), and
 - (f) any other function conferred on it by or under this Ordinance or any other enactment.
- (2) Subject to subparagraph (3), the Reporting Unit may disseminate the results of its analysis, or information it receives, to—
 - (a) a law enforcement agency,
 - (b) the Attorney General,

- (c) a supervisory authority for any service provider, or
 - (d) the Regulatory Authority.
- (3) The Reporting Unit may disseminate material under subparagraph (2) only if it considers the material relevant to—
 - (a) the investigation or prosecution of an offence of money laundering or terrorist financing or any other financial offence, or
 - (b) the exercise by the recipient of functions under this Ordinance or any other enactment.
- (4) The Reporting Unit may exchange information under subparagraph (1)(e) only—
 - (a) subject to conditions as to the use and onward disclosure of the information corresponding to those that apply to the Reporting Unit, and
 - (b) where doing so would not prejudice an investigation or prosecution in St Helena.

4. Form and manner of disclosures

A disclosure made to the Reporting Unit under Part 2 must be made in the form and manner (if any) specified by the Reporting Unit.

5. Further information

- (1) Where a disclosure has been made to the Reporting Unit under Part 2, the Reporting Unit may, by notice in writing, require the person who made the disclosure to provide the further information in that person's possession the Reporting Unit reasonably requires in connection with its analysis of the disclosure.
- (2) A notice under subparagraph (1) must specify the period within which, and the form and manner in which, the information is to be provided.
- (3) Nothing in this paragraph requires the provision of privileged material.
- (4) A person who, without reasonable excuse, fails to comply with a requirement under this paragraph commits an offence.

Penalty: A fine of £100,000 or imprisonment for a period of 2 years, or both.

6. Use and disclosure of information

- (1) Information obtained by the Reporting Unit in the exercise of its functions may be used or disclosed only in the exercise of a function of the Reporting Unit.
- (2) In particular, an officer of the Reporting Unit must not use or disclose such information in the performance of any other function as a police officer, except so far as the information has been disseminated under paragraph 3(2).
- (3) Nothing in this paragraph prevents the use or disclosure of information—
 - (a) with the consent of the person to whom the information relates,

- (b) for the purposes of proceedings arising out of the exercise of a function of the Reporting Unit, or
 - (c) so far as required by any other enactment or by an order of a court.
- (4) A person who uses or discloses information in contravention of this paragraph commits an offence.

Penalty: A fine of £75,000 or imprisonment for a period of 3 years, or both.

PART 2 — THE OVERSIGHT COMMITTEE

7. Membership

- (1) The Oversight Committee consists of not fewer than three members appointed by the Governor.
- (2) The Governor must designate one of the members as chairperson.
- (3) A person is not eligible for appointment if the person is—
 - (a) a police officer or customs officer,
 - (b) a public officer, or
 - (c) a member of the Legislative Council.
- (4) A member holds and vacates office in accordance with the terms of the member's appointment, but—
 - (a) an appointment must not be for a period exceeding three years (though a member may be reappointed), and
 - (b) a member may resign by notice in writing to the Governor.

8. Functions of the Committee

- (1) The Oversight Committee must—
 - (a) keep under review the arrangements under section 154(1) and the exercise by the Reporting Unit of its functions, and
 - (b) report to the Governor on its findings at least once in every period of 12 months.
- (2) The Committee may at any time make recommendations to the Governor or the Director of Police about the Reporting Unit.

9. Information

- (1) The Director of Police must provide the Oversight Committee with the information it reasonably requires for the performance of its functions.
- (2) Subparagraph (1) does not require the provision of information—
 - (a) that identifies, or enables the identification of, a person who has made a disclosure under Part 2, or
 - (b) the provision of which would prejudice an ongoing investigation or prosecution.

- (3) Information provided to the Committee under this paragraph may be used or disclosed by the Committee, and by its members, only for the performance of the Committee's functions.
- (4) A member of the Oversight Committee who uses or discloses information in contravention of subparagraph (3) commits an offence.

Penalty: A fine of £75,000 or imprisonment for a period of 3 years, or both.

10. Procedure

- (1) The Oversight Committee may regulate its own procedure.
- (2) The validity of anything done by the Committee is not affected by a vacancy among its members or a defect in the appointment of a member.

SCHEDULE 6

(Section 192)

TRANSITIONAL PROVISIONS AND SAVINGS

1. Interpretation

In this Schedule, “**repealed Ordinance**” means the Money Laundering Ordinance, 2008.

2. Money Laundering Regulatory Authority

- (1) The records of the Money Laundering Regulatory Authority relating to disclosures made under the repealed Ordinance are transferred to the Reporting Unit and are to be treated as records of the Reporting Unit.
- (2) Any other property, rights and liabilities of the Money Laundering Regulatory Authority vest in the Government of St Helena, and any money vesting under this subparagraph must be paid into the Consolidated Fund.

3. General saving

- (1) Anything done under a provision of the repealed Ordinance that has a corresponding provision in this Ordinance is, if and so far as necessary for continuing its effect, treated on and after the commencement date as done under the corresponding provision.
- (2) Without limiting subparagraph (1)—
 - (a) an authorised disclosure made under section 6 of the repealed Ordinance before the commencement date is treated as the corresponding authorised disclosure under this Ordinance, and
 - (b) a consent given following such a disclosure and in effect immediately before the commencement date is treated as the appropriate consent under this Ordinance.
- (3) This paragraph supplements, and does not limit, section 9 of the Interpretation Ordinance, 1968.

4. Pending investigations and proceedings

- (1) An investigation or proceeding begun under the repealed Ordinance and not concluded before the commencement date (including the detention of cash under section 15 of the repealed Ordinance and any account monitoring order under section 23 of that Ordinance) may be continued as if the repealed Ordinance had not been repealed.
- (2) Nothing in this paragraph limits section 125.

5. Provisions dependent on instruments not yet in force

- (1) A provision of this Ordinance that operates by reference to the Anti-money Laundering and Terrorist Financing Regulations does not apply until those Regulations come into force.
- (2) A provision of this Ordinance or of those Regulations that operates by reference to the Directive does not apply until the Directive is issued under section 189.

6. Registration of existing DNFBPs

A person who, immediately before the commencement date, is carrying on relevant business is not required to be registered under the Anti-money Laundering and Terrorist Financing Regulations until—

- (a) the end of the period of 6 months beginning with the commencement date, or
- (b) if the person applies for registration within that period, the determination of the application.

7. Supervision and enforcement of regulated service providers

- (1) Until the relevant date, Schedule 4 and the provisions of regulations made under section 160(1)(c) providing for administrative penalties apply in relation to a regulated service provider as they apply in relation to a DNFBP, with the modifications that—
 - (a) a reference to a DNFBP, however expressed, is to be read as a reference to a regulated service provider,
 - (b) a reference to the supervisory authority is to be read as a reference to the Regulatory Authority, and
 - (c) provisions relating to registration do not apply.
- (2) The relevant date is the date on which provisions of another Ordinance conferring on the Regulatory Authority supervision and enforcement powers in relation to regulated service providers, corresponding to those applied by subparagraph (1), come into force.

8. National risk assessment

- (1) A provision of the Anti-money Laundering and Terrorist Financing Regulations or of the Directive that operates by reference to a national risk assessment does not apply until the first national risk assessment is published.
- (2) A national risk assessment continues in effect until replaced by a subsequent national risk assessment.