

DRAFT PROCEEDS OF CRIME (JERSEY) LAW 199

**Lodged au Greffe on 3rd November 1998
by the Finance and Economics Committee**



STATES OF JERSEY

STATES GREFFE

Report

“Money laundering” means dealing with the proceeds of crime in order to disguise their unlawful origins.

It is an activity that enables illegal profits to be used again for criminal purposes, and it may also subvert legitimate economic enterprise. For these reasons the suppression of money laundering is important, internationally, in the enforcement of criminal law.

The Drug Trafficking Offences (Jersey) Law 1988, which was adopted by the States on 23rd August in that year, provided for the confiscation from offenders of the proceeds of drug trafficking, and created new offences relating to the laundering of drug profits. In 1996, the Law was amended to introduce more effective remedies. The States also adopted the Prevention of Terrorism (Jersey) Law 1996, which made similar provision for terrorist funds.

These measures followed steps that had already been taken in the United Kingdom and elsewhere. It was widely recognized, however, that there was a need to extend them to the proceeds of other serious crimes. In 1990 the Financial Action Task Force on Money Laundering - FATF, the leading world agency in the field, to which the United Kingdom and all other member States of the European Union belong, as well as the United States, Canada and several other countries - drew up forty Recommendations. These were revised in 1996 to take account of the experience gained in the previous six years, and in particular to include the money laundering of the proceeds of serious crime generally, and not just of drug trafficking. By July of 1998, the member States of the European Union (except Austria) had also implemented the Union's Money Laundering Directive (Council Directive No. 91/308/EEC), and that Directive was itself under review with the objective of extending it to all serious crimes.

In the interests of Jersey's good name, and its high standing as a financial centre, it is essential that the Island should itself continue to pursue effective remedies to forestall money laundering. The purpose of the draft Law is therefore to follow, in respect of the proceeds of serious crime, the measures that the States have already implemented in relation to drug trafficking and terrorism.

The effect of the draft Law is explained in detail in the Explanatory Note to this proposition. Its broad scheme, in outline, is as follows -

(a) *Confiscation:*

The most direct method of preventing the misuse of the proceeds of crime is to confiscate them, wherever possible.

The draft Law therefore empowers the Royal Court to do so in cases of serious crime committed in the Island. This is defined as meaning any offence for which the maximum penalty is one or more years imprisonment. It does not include drug trafficking or terrorism offences because these are already governed by their own legislation.

The confiscatory provisions are based partly on those in the Drug Trafficking Offences (Jersey) Law 1988, but incorporate concepts from the United Kingdom Criminal Justice Act 1998, as amended, (the British “all crimes” legislation). That Act reflects some differences in approach between drug trafficking and other crimes. In general, the drug trafficking measures are stricter. For example, in both cases the courts have power to make assumptions that a defendant's wealth is derived from his previous criminal conduct. However, while these assumptions may be drawn on a wide basis in drugs cases, a *pattern* of relevant criminal conduct must be established in the case of other crimes. The draft Law follows the latter approach.

The Law will also allow the States, by Regulations, to provide for the recognition of confiscation orders made abroad and their enforcement by the Royal Court in Jersey. It does so by empowering the States to apply the Law (with or without modifications) to overseas confiscation orders made by designated countries. Again, this follows the principle established by the Laws concerning drug trafficking and terrorism.

It also provides for a Criminal Offences Confiscations Fund, into which confiscated money will be paid. The Fund will be maintained by the Finance and Economics Committee. One of its features is that criminal profits thus seized can then be turned against criminal activities (and used to ameliorate their

consequences), both in the Island and in cooperation with authorities elsewhere.

(b) *Money laundering:*

The draft Law creates new money laundering offences. These correspond to the offences in the British "all crimes" legislation, which has been followed by all of the British Overseas Territories and Crown Dependencies. They are very similar to the existing offences enacted in respect of drug trafficking and terrorist activities. The creating of these new offences will therefore serve to complete the pattern of money laundering offences as required in order to comply with the FATF recommendations.

(c) *Institutional procedures to forestall money laundering:*

The other major purpose of the draft Law is to introduce, by Order to be made by the Finance and Economics Committee, requirements for persons engaged in financial services businesses to establish and apply standing procedures for the deterrence, recognition and reporting of all money laundering activities (in other words, including those relating to drug trafficking and terrorism as well as other serious crimes). These provisions are new, and are based on those in the Money Laundering Directive.

The new requirements relate to the identification of customers, the keeping of adequate records of transactions, internal reporting (and onward reporting to the appropriate authorities) and the training of staff in anti-laundering procedures. They are therefore intended to impose obligations on financial institutions, and to enlist their assistance, for the purposes of preventing criminal money from entering the financial system and identifying such funds when they do so.

An Order to this effect would be made by the Committee, after the enactment of the Law, so as to come into force with it simultaneously. As part of its functions, the Jersey Financial Services Commission would then monitor compliance with that Order by regulated financial services businesses.

Although it is not possible at present to quantify the cost, the enactment of these measures will create a need for additional law enforcement resources for the Police, the Agent of the Impôts, the Law Officers' Department and the Jersey Financial Services Commission. The provision of such resources is, in the opinion of the Committee, essential so that the Island can play a full part in national and international initiatives in the fight against crime.

Explanatory Note

Introduction:

This draft Law would have four main effects -

- (a) It enables the Royal Court to confiscate the proceeds of any criminal offence committed in the Island for which a person is liable to imprisonment for one year or more.
- (b) It allows for the enforcement in the Island, by the Royal Court, of confiscation orders made abroad in respect of corresponding conduct overseas.
- (c) It creates new offences of "money laundering", in the Island, in respect of the proceeds of crime.
- (d) It provides for the making of Orders by the Finance and Economics Committee, after consultation with the Jersey Financial Services Commission, to require persons who provide financial services in the Island to maintain procedures to forestall and prevent money laundering. These relate to the identification of customers, the keeping of records, internal reporting and the training of staff.

The measures in (a), (b) and (c) follow closely those that have already been enacted in respect of drug trafficking and terrorism offences. Accordingly, they do not extend to those offences.

However the measures in (d) are new, and apply to all money laundering offences.

Sources:

The draft Law is based on the following sources -

- (a) the Drug Trafficking Offences (Jersey) Law 1988, as amended by the Drug Trafficking (Miscellaneous Provisions) (Jersey) Law 1996;

- (b) the Drug Trafficking Act 1994 (United Kingdom);
- (c) the Criminal Justice Act 1988 (United Kingdom), as amended by the Criminal Justice Act 1993, the Criminal Justice and Public Order Act 1994 and the Proceeds of Crime Act 1995 (collectively, "the 'All Crimes' Act"); and
- (d) the Money Laundering Regulations 1993 (United Kingdom).

Scheme:

The scheme of the draft Law is as follows.

PART I

INTRODUCTORY

Articles 1 and 2 contain provisions for the interpretation of the Law.

The main definitions relate to the following matters -

- (a) *Offences that are specified in the First Schedule:*

Confiscation orders under Part II may be made only in respect of the proceeds of offences specified in the First Schedule, which is also relevant to the control of money laundering under Part III and the enforcement of overseas confiscation orders under Part IV.

As drafted, this Schedule specifies offences for which a person is liable to imprisonment for one or more years. It does not include drug trafficking offences or offences under any of Articles 8, 9 and 10 of the Prevention of Terrorism (Jersey) Law 1996. Subject to those exclusions, the States may amend the First Schedule by Regulations.

(b) "*Relevant criminal conduct*":

This refers to criminal conduct that is relevant for the purposes of considering a confiscation order under Part II. It means the offence of which a person is convicted, taken together with any other offences specified in the First Schedule of which he is also convicted in the same proceedings, and with any other offences which the Court will take into consideration when sentencing him.

For these purposes, offences of which the person is convicted in the proceedings are relevant only if committed after Article 3 (*q.v.*) comes into force. However, other offences that will be taken into consideration are relevant whether they are committed before or after the commencement of that Article.

This concept is taken from the "All Crimes" Act.

(c) "*Benefit from relevant criminal conduct*", "*benefit from an offence*" and "*benefit from criminal conduct*":

These terms are relevant in determining the amount of a confiscation order under Part II, and also to the concept of money laundering in Part III (*see* (f)). A person benefits from criminal conduct if he obtains property in consequence of it. His benefit is the value of the property obtained.

The concept of benefiting from unlawful conduct is also taken from the "All Crimes" Act.

(d) "*Realisable property*":

This is the property to which recourse may be had to satisfy a confiscation order. It includes any property held by a defendant, and any property to which he is entitled beneficially. It also includes any property held by any other person to whom the defendant has made a gift that is caught by Part II.

(e) "*Criminal conduct*":

This expression is relevant to the concept of money laundering. It means any offence specified in the First Schedule, and it also means any conduct outside the Island that would amount to such an offence if occurring in the Island. It includes conduct before the commencement of Article 3 that would constitute an offence if that Article had then been in force.

The money laundering offences created by Part III (which are not retrospective) prohibit dealings with the proceeds of criminal conduct, and assistance to persons who have obtained such proceeds.

(f) "*Money laundering*":

This expression means any of the following activities that occur after the Articles in this Law creating such offences come into force -

- (i) conduct that is an offence under Article 32, 33 or 34 of the Law - these relate to assisting a person to retain the benefit of criminal conduct and to the acquisition, possession, use, concealment or transfer of the proceeds of criminal conduct;
- (ii) conduct that is an offence under Article 16A, 17 or 17A of the Drug Trafficking Offences (Jersey) Law 1988 - these are the corresponding offences under that Law;
- (iii) conduct that is an offence under Article 8, 9 or 10 of the Prevention of Terrorism (Jersey) Law 1996 - these are corresponding offences under that Law; and
- (iv) conduct outside the Island that would be an offence described in (i), (ii) or (iii), if occurring in the Island.

The definition is relevant in Article 37 (*q.v.*), under which the Finance and Economics Committee must make Orders requiring persons who carry on financial services business to maintain procedures to forestall and prevent money laundering.

(g) “*Financial services business*”:

This means any business described in the Second Schedule. The States may amend the Schedule by Regulations.

PART II

CONFISCATION ORDERS

Article 3 provides that where a person appears for sentence for one or more offences specified in the First Schedule, the Court may first determine whether he has benefited from relevant criminal conduct. If it finds that he has, it may then (before sentencing him) decide the amount of the benefit to be recovered, and make a confiscation order.

These powers may not be exercised, however, if any of the offences of which he has been convicted in the proceedings occurred before Article 3 came into force.

In deciding whether a person has benefited from an offence, and the amount to be recovered from him, the Court is to apply the civil standard of proof.

If the Court also makes a compensation order under Article 2 of the Criminal Justice (Compensation Orders) (Jersey) Law 1994, and the defendant has insufficient means to pay both orders, the Court must order that the deficiency under the compensation order shall be paid from the proceeds of realisation under the confiscation order.

Article 4 provides that a confiscation order shall be made for the value of the benefit obtained, or for the amount that appears to the Court to be realisable, whichever is less. However, if the Court is satisfied that any victim has instituted or intends to institute civil proceedings for compensation, it may make the order for a lesser amount.

Under *Article 5*, if the defendant has been convicted in the proceedings of two offences (each being an offence specified in the First Schedule), or if within six years before the instituting of the proceedings he has been convicted of any offence specified in the First Schedule, and if the offences are otherwise qualifying offences within the meaning of the Article, the Court may draw certain assumptions. An offence can only be a qualifying offence for the purposes of this Article if it is committed after the Article comes into force.

In summary, these assumptions are that property acquired by him and expenditure by him during the period represent his benefit from offences specified in the First Schedule, and that he received such a benefit free of other interests. The confiscation order may then be made on that basis.

However, the assumptions may not be drawn if they are shown to be incorrect, if there has been a previous confiscation order, or if they would result in serious injustice.

This Article is based on the “All Crimes” Act (which limits its application to cases in which there is a pattern of criminal conduct) instead of the Drug Trafficking Act (which is not limited in that way).

Article 6 empowers the Court to postpone a determination if it needs more information whether a person has benefited from relevant criminal conduct, or as to the amount to be recovered from him. Unless there are exceptional circumstances, it may not do so for longer than six months after the date of conviction or, if there is an appeal, for longer than three months after it is decided. Where a determination is postponed, the Court may proceed to sentence the defendant (except by way of monetary penalty) and may, within 28 days after the determination is made, then vary the sentence by including a monetary penalty.

Articles 7 and 8 shift to the defendant, in certain circumstances, an onus to provide information.

Under *Article 7*, the Attorney General may tender a statement to the Court. If the Court is proceeding of its own motion under *Article 3*, it may require him to do so. He must also do so if he is making an application under any of *Articles 9, 12, 13 and 14 (q.v.)*. The statement

may contain allegations that the defendant has benefited from an offence or as to the value of his benefit. The Court may then require the defendant to indicate which allegations he accepts. If he does not accept an allegation, it may require him to give particulars of the matters on which he proposes to rely. If he fails to do so, then except in the case of an allegation that he has benefited from or obtained property in connection with an offence, the Court may treat him as having accepted the allegation. Admissions under this Article will not be admissible, however, in any prosecution for an offence.

Under Article 8, the Court may require a defendant to provide information. If he fails to do so without reasonable excuse, the Court may then draw whatever inference it considers appropriate.

Articles 9 and 10 deal with defendants who die or abscond after conviction, and defendants who abscond after proceedings have started but before they are finished.

If a defendant dies or absconds after conviction, the Court may nevertheless make a confiscation order on the application of the Attorney General.

If, on the application of the Attorney General in a case that has not been completed, the Court is satisfied that the defendant has absconded, it may also make a confiscation order. However it may only do so if he absconded at least two years before the application was made, and the Court is satisfied that the Attorney General has taken reasonable steps to contact him.

Before making a confiscation order under these provisions, the Court must give persons who may be affected an opportunity to be heard.

These provisions are based on the Drug Trafficking Act. They do not appear in the "All Crimes" Act.

Article 11 empowers the Court (without prejudice to any other mode of recovery) to imprison a defendant for non-payment of a confiscation order, for such fixed term as it stipulates, not being longer than ten years. It may do so regardless of the term to which the defendant is liable for the offence itself. Imprisonment in default of payment will

itself begin to run only after he has completed his sentence for the offence.

If he pays part of the amount due, the term will be reduced proportionally. On payment of the whole amount, the defendant will cease to be liable to serve the remainder of the term imposed in default of payment.

Articles 12, 13 and 14 empower the Court to reconsider the imposition of a confiscation order -

- (a) if it was not considered on sentencing;
- (b) if it has been refused; or
- (c) if, although an order was made, the real value of the defendant's benefit from offences is higher than the value at which it was assessed.

Under Article 12, where the Court has not considered a confiscation order on sentencing, the Attorney General may nevertheless apply to the Court afterwards for an order if he has evidence that was not available to him at the time of sentencing.

Under Article 13, where the Court has refused to make a confiscation order on sentencing, the Attorney General may re-apply to the Court afterwards for such an order if he has evidence that was not in fact considered by the Court on the earlier application.

Under Article 14, where the Court has made a confiscation order, the Attorney General may apply to the Court to increase the amount assessed if he is of the opinion that the real value of the defendant's benefit is in fact higher. If the Court is satisfied that the real value is higher, it must make a fresh determination. If, on that new determination, it assesses a higher amount, it may then increase the term of imprisonment for non-payment.

In each of these cases, the Attorney General must believe that the evidence is likely to lead the Court to make the order sought, and the application must in any event be made within six years of conviction.

These Articles are based on the Drug Trafficking Act, but also incorporate features of the “All Crimes” Act in respect of the assumptions that may be drawn under Article 5.

Articles 15, 16, 17 and 18 deal with the enforcement of confiscation orders.

Under Articles 15 and 16, the Court may make a “saisie judiciaire” on the application of the Attorney General, for the seizure of the property of a defendant by the Viscount. It may do so where a confiscation order has been made, or in anticipation of such an order. The application may be made without prior notice to the defendant. However, notice of the “saisie judiciaire” must be given to him and to any other person affected, and the Court may on a subsequent application set aside or vary any “saisie judiciaire”. In particular, it must do so if there is undue delay in proceedings against a defendant.

A “saisie judiciaire” may be made against any realisable property of a defendant.

On the satisfaction of a confiscation order, the “saisie judiciaire” must be discharged.

Under Article 17, the Court may empower the Viscount to realise property taken under a “saisie judiciaire”.

Article 18 provides for the recovery of interest on money paid under a confiscation order. It also empowers the Court, on the application of the Attorney General, to increase the term of imprisonment imposed under Article 11 for non-payment of a confiscation order, if interest has accrued.

Article 19 provides that if the Court has determined in accordance with Article 4 that the amount to be recovered under a confiscation order is to be less than the assessed amount of a defendant’s benefit from relevant criminal conduct, and on a subsequent application by the Attorney General or the Viscount the Court is satisfied that the amount that can be realised is in fact greater than that specified in the confiscation order, it may increase the amount of the order. In that event, it may also increase the term of imprisonment for non-payment.

Article 20 provides that the Viscount is to apply the proceeds of a “saisie judiciaire” first in payment of such sums as the Court may direct, secondly in payment of his own fees and expenses and thirdly by payment into the Criminal Offences Confiscations Fund (*q.v.*) towards the satisfaction of the confiscation order.

Any remaining proceeds are then to be applied, as the Court directs, amongst the persons who held the property realised. Before giving directions, the Court is to give those persons an opportunity to be heard.

Under *Article 21*, a defendant or the Viscount may ask the Court to certify that the realisable property of the defendant is inadequate to satisfy a confiscation order. If the Court so certifies, it may on a further application reduce the amount owing under the confiscation order and the term of imprisonment for non-payment.

Article 22 provides that property held or realised under a “saisie judiciaire” shall not be part of a defendant’s estate in his subsequent bankruptcy. It also provides that where a defendant has already become bankrupt, a “saisie judiciaire” may not be made in respect of property that *is* part of his estate in bankruptcy.

Article 23 limits the liability of the Viscount, except for negligence.

Article 24 establishes a Criminal Offences Confiscations Fund, which will be administered by the Finance and Economics Committee. The proceeds of confiscation orders will be paid into the Fund, as will money received by the States under “assets-sharing agreements”. This expression refers to any agreements made between the United Kingdom (on behalf of Jersey) and any other State, or between the Attorney General and the appropriate authorities in other countries or territories, to share the proceeds of criminal conduct that have been confiscated here or elsewhere as a result of mutual assistance. The Fund will be applied, in consultation with the Attorney General and other interested bodies, towards the objectives of the Law in respect of criminal conduct - in particular, preventing, suppressing and dealing with such offences and dealing with their consequences.

Article 25 provides for the payment of compensation to a person who had held realisable property, if proceedings for an offence specified in

the First Schedule do not result in a conviction that is sustained. However, no compensation will be payable under this Article unless -

- (a) there has been serious default on the part of an investigator or prosecutor; and
- (b) the Court does not consider that the proceedings would have taken place in any event; and
- (c) the claimant has suffered loss relating to something done under a "saisie judiciaire".

Article 26 provides for the cancellation of a confiscation order, and the payment of compensation to any person who had held realisable property, when an absconding defendant against whom such an order has been made by virtue of Article 9 is subsequently tried and acquitted. The restrictions on compensation in Article 25 will not apply in this case.

This provision, and Articles 27 and 28, are based on the Drug Trafficking Act. There is no equivalent provision in the "All Crimes" Act.

Article 27 enables a defendant against whom a confiscation order has been made by virtue of Article 9 to apply to the Court to cancel the order if he ceases to be an absconder, even though he has not been tried or acquitted. The Court may do so if satisfied that there has been undue delay in prosecuting the offence, or that it is not intended to pursue it. The Court may also award compensation to any person who had held realisable property. Compensation under this Article is not subject to the restrictions in Article 25.

Under *Article 28*, if a confiscation order has been made by virtue of Article 9 against an absconding defendant, and he has ceased to be an absconder, the Court may on his application review and vary the order. It may also award compensation to any person who had held realisable property, and again the restrictions in Article 25 will not apply in that event.

PART III

MONEY LAUNDERING

Article 29 restricts the disclosure to other persons (i.e. "onward disclosure") of any information received by a police officer under Article 32 or Article 33 of the Law or under any Order made under Article 37 of the Law from a person who knows of or suspects money laundering.

Onward disclosure will be an offence unless it is permitted by Article 30 or Article 31.

No prosecution may be brought under this Article without the Attorney General's consent.

Article 30 permits onward disclosure in the Island for the purposes of investigating crime in the Island, or of criminal proceedings in the Island.

It also permits disclosure, for purposes within the Island -

- (a) to the Attorney General;
- (b) to the Finance and Economics Committee or to the Financial Services Commission;
- (c) to a police officer; or
- (d) to any other person who is authorised by the Attorney General to obtain the information.

Article 31 permits the disclosure of information, with the consent of the Attorney General, for the purpose of investigating crime or of criminal proceedings outside the Island, or to a competent authority (as defined in Article 3 of the Investigation of Fraud (Jersey) Law 1991) outside the Island.

The Attorney General may give his consent generally or specifically, and conditionally or unconditionally.

He may also withdraw his consent.

Under *Article 32*, it will be an offence for any person to assist any other person to retain the proceeds of criminal conduct if the first person knows or suspects that the other person is or has engaged in criminal conduct or has benefited from it. Because of the definition “criminal conduct”, this includes conduct within and beyond the Island (whenever it has occurred) provided that it would constitute an offence specified in the First Schedule if occurring in the Island.

Provision is also made to enable a person to disclose his suspicions or belief to the police, and for defences to a charge under this Article. These include the case in which he continues to deal with the other person, with the consent of the police.

Under *Article 33*, it will be an offence for a person knowingly to acquire, possess or use property that represents directly or indirectly any other person’s proceeds of criminal conduct, unless the first person can prove that he made adequate payment for it. Provision is also made in this Article for disclosure to the police, and for dealings with the consent of the police.

Under *Article 34*, it will be an offence for a person to conceal, disguise, convert, transfer or remove from the jurisdiction his proceeds of criminal conduct or to assist another to do so, for the purpose (in either case) of avoiding a prosecution for an offence specified in the First Schedule or the making of a confiscation order.

Offences under Article 32, 33 or 34 will carry a maximum penalty of 14 years’ imprisonment and an unlimited fine, but no prosecution may be brought without the consent of the Attorney General.

Under *Article 35*, it will be an offence to tip off any person about a money laundering investigation. The maximum penalty will be five years imprisonment and an unlimited fine. Prosecutions under this Article also require the consent of the Attorney General.

Article 36 provides that business of any kind described in the Second Schedule is financial services business for the purposes of the Law.

The States may from time to time amend the Second Schedule by Regulations.

Article 37 requires the Finance and Economics Committee, by Order, to prescribe identification, record-keeping, internal reporting and training procedures to be maintained by persons who carry on financial services business.

These procedures are to be maintained for the purposes of forestalling and preventing money laundering.

PART IV

EXTERNAL CONFISCATION ORDERS

Article 38 enables the States, by Regulations, to provide that the Law shall apply to designated countries and territories, for the purposes of enforcing overseas confiscation orders in the Island. In doing so, the States may modify any provisions of the Law.

These powers relate only to confiscation of the proceeds of activities abroad that correspond to offences specified in the First Schedule.

Article 39 provides for the registration of an external confiscation order in the Royal Court on the application of the Attorney General.

PART V

MISCELLANEOUS

Article 40 enables a police officer, with the consent of the Attorney General or a Crown Advocate, to apply to the Royal Court for an order to allow material to be obtained for the purposes of investigating whether a person has benefited from criminal conduct, or the extent or location of proceeds of criminal conduct.

Article 41 enables a police officer, with the consent of the Attorney General or a Crown Advocate, to apply to the Royal Court for a search warrant for those purposes.

Article 42 provides for the criminal liability of persons who aid, abet counsel or procure offences against the Law.

Article 43 provides that the Committee shall consult the Financial Services Commission before making any Order under the Law. It also provides that the Subordinate Legislation (Jersey) Law 1960 shall apply to Orders made under this Law.

Article 44 provides for the making of Rules of Court.

Article 45 specifies the short title by which the Law may be cited, and provides that the Law shall come into force on such day or days as the States may by Act appoint.

Where the Law prescribes a penalty by way of a fine not exceeding a specified level "on the standard scale", this is a reference to the scale set out in the Criminal Justice (Standard Scale of Fines) (Jersey) Law 1993. The maximum penalties for each level on that scale, currently, are -

Level 1	-	£50
Level 2	-	£500
Level 3	-	£2,000
Level 4	-	£5,000

Where the Law prescribes a fine but does not specify a level, the maximum fine that may be imposed is unlimited.

PROCEEDS OF CRIME (JERSEY) LAW 199

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PROCEEDS OF CRIME (JERSEY) LAW 199

A LAW to provide for the confiscation and forfeiture of the proceeds of crime, to establish new offences of money laundering and new procedures to forestall and prevent money laundering, and to enable the enforcement in the Island of overseas confiscation orders, and for connected purposes; sanctioned by Order of Her Majesty in Council of the

(Registered on the _____ day of _____ 199)

STATES OF JERSEY

The _____ day of _____ 199

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law -

PART I

INTRODUCTORY

ARTICLE 1

Interpretation

(1) In this Law, unless the context otherwise requires -

“to benefit from relevant criminal conduct”, “to benefit from an offence” and “to benefit from criminal conduct” mean to obtain property as a result of or in connection with that conduct or the commission of that offence, and the benefit is the amount of the property so obtained;

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“Commission” and “Financial Services Commission” mean the Jersey Financial Services Commission established by Article 2 of the Financial Services Commission (Jersey) Law 1998¹;

“Committee” means the Finance and Economics Committee;

“competent authority” means a competent authority for the purposes of paragraph (3) of Article 3 of the Investigation of Fraud (Jersey) Law 1991²;

“confiscation order” means an order made under Article 3, and also means any order under that Article that is made by virtue of Article 9, Article 12 or Article 13;

“the Court” means the Royal Court;

“criminal conduct” means conduct, whether occurring before or after Article 3 comes into force, that -

- (a) constitutes an offence specified in the First Schedule; or
- (b) if it occurs or has occurred outside the Island, would have constituted such an offence if occurring in the Island;

“Criminal Offences Confiscations Fund” and “Fund” mean the Criminal Offences Confiscations Fund established under Article 24;

“defendant” means a person against whom proceedings have been instituted for an offence specified in the First Schedule (whether or not he has been convicted);

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“drug trafficking offence” has the meaning given in paragraph (1) of Article 1 of the Drug Trafficking Offences (Jersey) Law 1988³;

“exported”, in relation to any money, includes its being brought to any place in the Island for the purpose of being exported;

“external confiscation order” means an order made by a court in a designated country or territory -

- (a) for the purpose of recovering property obtained as a result of or in connection with conduct corresponding to an offence specified in the First Schedule;
- (b) for the purpose of recovering the value of the property so obtained; or
- (c) for the purpose of depriving a person of a pecuniary advantage so obtained;

“financial services business” has the meaning given in paragraph (1) of Article 36;

“gift caught by Part II” and “gift caught by this Part” have the meaning given in paragraph (9) of Article 2;

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

“investigation”, in relation to crime, includes the prevention of crime and also includes the detection of crime;

“items subject to legal privilege” means, in Articles 40 and 41 -

¹ Volume 1998-199, page 234.

² Volume 1990-1991, page 422, and Volume 1996-1997, page 664.

³ Volume 1988-1989, page 259, and Volume 1996-1997, page 431.

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- (a) communications between a professional legal adviser and his client or any person representing his client, and made in connection with the giving of legal advice to the client; and
- (b) communications between a professional legal adviser and his client or any person representing his client, or between such an adviser or his client or any such representative and any other person, and made in connection with or in contemplation of legal proceedings and for the purposes of such proceedings; and
- (c) items 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,

when they are in the possession of a person who is entitled to their possession,

but items held with the intention of furthering a criminal purpose are not items subject to legal privilege;

“making a gift” has the meaning given in paragraph (10) of Article 2;

“modifications” includes additions, alterations and omissions;

“money” means cash (that is to say, coins or notes in any currency) or any negotiable instrument;

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“money laundering” means -

- (a) conduct that is an offence -
 - (i) under Article 32, Article 33 or Article 34 of this Law;
 - (ii) under Article 16A, Article 17 or Article 17A of the Drug Trafficking Offences (Jersey) Law 1988⁴; or
 - (iii) under Article 8, Article 9 or Article 10 of the Prevention of Terrorism (Jersey) Law 1996⁵; or
- (b) conduct outside the Island that, if occurring in the Island, would be an offence specified in paragraph (a);

“police officer” means a member of the Honorary Police, a member of the States of Jersey Police Force, the Agent of the Impôts or any other officer of the Impôts;

“proceeds of criminal conduct”, in relation to any person who has benefited from criminal conduct, means that benefit;

“property” means all property, whether movable or immovable, or vested or contingent, and whether situated in the Island or elsewhere.

“realisable property” has the meaning given in paragraphs (1) and (2) of Article 2;

“relevant criminal conduct”, in relation to a defendant, means the offence of which he is convicted, taken together with -

⁴ Volume 1988-1989, pages 283 and 285, and Volume 1996-1997, pages 461 and 467.

⁵ Volume 1996-1997, pages 187, 189 and 190.

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- (a) other offences of which he is also convicted in the proceedings; and
- (b) offences (whether committed before or after Article 3 comes into force) that the Court will be taking into consideration in determining his sentence for the offence in question,

being in each case an offence specified in the First Schedule;

“ ‘saisie judiciaire’ ” means an order to which paragraph (1) of Article 16 refers;

“value of a gift” has the meaning given in paragraphs (7) and (8) of Article 2;

“value of property” has the meaning given in paragraphs (4), (5) and (6) of Article 2.

(2) For the purposes of this Law -

- (a) references to property obtained, or to a pecuniary advantage derived, in connection with the commission of an offence or with criminal conduct include a reference to property obtained or to a pecuniary advantage derived both in that connection and in some other connection; and
- (b) where a person derives a pecuniary advantage as a result of or in connection with the commission of an offence or with criminal conduct, he is to be treated as if he had obtained as a result of or in connection with the commission of that offence, or that conduct, a sum of money equal to the value of the pecuniary advantage.

(3) For the purposes of Part II, proceedings for an offence are instituted in the Island -

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- (a) when the Bailiff issues a warrant in respect of the offence for the arrest of a person who is out of the Island;
- (b) when a person is arrested and charged with the offence;
- (c) when a summons in respect of the offence is served on a person at the instance of the Attorney General; or
- (d) when a summons in respect of the offence is served on a person in accordance with Article 8 of the Police Court (Miscellaneous Provisions) (Jersey) Law 1949⁶,

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

(4) For the purposes of Part II, proceedings in the Island for an offence are concluded -

- (a) when the defendant is acquitted of that offence and of all other counts (if any) on which he is also tried at the same time;
 - (b) if he is convicted on one or more counts but the Court decides not to make a confiscation order against him, when it makes that decision; or
 - (c) if a confiscation order is made against him in those proceedings, when the order is satisfied.
- (5) An application under Article 9, Article 12 or Article 13 is concluded -
- (a) if the Court decides not to make a confiscation order against the defendant, when it makes that decision; or

⁶ Tome VII, page 548, Volume 1979-1981, page 205 and Volume 1996-1997, page 489.

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- (b) if a confiscation order is made against him as a result of that application, when the order is satisfied.
- (6) An application under Article 14 or Article 19 is concluded -
- (a) if the Court decides not to vary the confiscation order in question, when it makes that decision; or
- (b) if it varies the confiscation order as a result of the application, when the order is satisfied.
- (7) For the purposes of Part II, a confiscation order is satisfied when no amount is due under it.
- (8) For the purposes of Part II, an order is subject to appeal until (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an appeal on which the order could be varied or set aside.
- (9) Where in this Law there is a reference to an Article or Schedule by number only and without further identification, the reference is a reference to the Article or Schedule of that number contained in this Law.
- (10) Where in any Article or Schedule of this Law there is a reference to a paragraph, sub-paragraph or clause by number or letter only and without further identification, the reference is a reference to the paragraph, sub-paragraph or clause of that number or letter contained in the Article or Schedule of this Law in which such reference occurs.
- (11) Unless the context otherwise requires, where this Law refers to any enactment, the reference is a reference to that enactment as amended, and includes a reference to that enactment as extended or applied by or under any other enactment, including any other provision of that enactment.

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ARTICLE 2

Meanings of expressions relating to realisable property

- (1) In Part II, "realisable property" means -
- (a) any property held by the defendant;
- (b) any property held by a person to whom the defendant has directly or indirectly made a gift caught by Part II; and
- (c) any property to which the defendant is beneficially entitled.
- (2) However, property is not realisable property if an order under Article 16C of the Drug Trafficking Offences (Jersey) Law 1988⁷ or Article 29 of the Misuse of Drugs (Jersey) Law 1978⁸ is in force in respect of the property.
- (3) For the purposes of Part II, the amount that might be realised at the time a confiscation order is made is the total of the values at that time of all the realisable property, including -
- (a) the total value of any property to which the defendant is beneficially entitled, less -
- (i) any amount due in respect of a fine or other order of the Court or the Court of Appeal or the Magistrate's Court or the Youth Court, imposed or made on conviction for an offence, where the fine was imposed or the order was made before the making of the confiscation order;
- (ii) any sum in respect of which the person to whom it is due would, if the defendant had become bankrupt before the making of the confiscation order, be

⁷ Volume 1988-1989, page 283, and Volume 1996-1997, page 461.

⁸ Volume 1975-1978, page 468.

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entitled to claim preference (“préférence”) or privilege (“privilège”), as the case may be;

(iii) any sum the payment of which is secured on all or any of the realisable property by a simple conventional hypothec or a judicial hypothec created in accordance with the “Loi (1880) sur la Propriété Foncière”⁹ before the making of the confiscation order; and

(iv) any sum the payment of which is secured on all or any of the realisable property by a security interest created in accordance with the Security Interests (Jersey) Law 1983¹⁰, before the making of the confiscation order; and

(b) the total of the values at that time of all gifts caught by Part II.

(4) Subject to the following provisions of this Article, for the purposes of Part II the value of property (other than cash) in relation to any person holding the property means the market value of the property.

(5) References in Part II to the value at any time (referred to in paragraph (6) as “the material time”) of any property obtained by a person as a result of or in connection with an offence are references to -

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

(b) where paragraph (6) applies, the value there mentioned,

whichever is greater.

(6) If at the material time he holds -

⁹ *Tomes I-III*, page 386, Volume 1990-1991, pages 89 and 90, Volume 1992-1993, page 265, and Volume 1996-1997, pages 335 to 337.

¹⁰ Volume 1982-1983, page 103, and Volume 1984-1985, pages 195 and 196.

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(a) the property that he obtained (not being cash); or

(b) property that, in whole or in part, directly or indirectly represents in his hands the property that he obtained,

the value referred to in sub-paragraph (b) of paragraph (5) is the value to him at the material time of the property mentioned in sub-paragraph (a) of this paragraph or (as the case may be) the property mentioned in sub-paragraph (b) of this paragraph so far as it so represents the property that he obtained.

(7) Subject to paragraph (10), references in Part II to the value at any time (referred to in paragraph (8) as “the material time”) of a gift caught by Part II are references to -

(a) the value of the gift to the recipient when he received it, adjusted to take account of subsequent changes in the value of money; or

(b) where paragraph (8) applies, the value there mentioned,

whichever is greater.

(8) Subject to paragraph (10), if at the material time he holds -

(a) the property that he received (not being cash); or

(b) property that, in whole or in part, directly or indirectly represents in his hands the property that he received,

the value referred to in sub-paragraph (b) of paragraph (7) is the value to him at the material time of the property mentioned in sub-paragraph (a) of this paragraph or (as the case may be) sub-paragraph (b) of this paragraph so far as it so represents the property that he received.

(9) A gift (including a gift made before the commencement of this Article) is caught by Part II if -

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

and for the purposes of this paragraph an offence to which the proceedings for the time being relate includes, where the proceedings have resulted in the conviction of the defendant, a reference to any offence that the court takes into consideration when determining his sentence.

(10) For the purposes of Part II -

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

PART II

CONFISCATION ORDERS

ARTICLE 3

Confiscation orders

(1) Where a defendant appears before the Court to be sentenced in respect of one or more offences specified in the First

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Schedule, and he has not previously been sentenced or otherwise dealt with in respect of his conviction for the offence or (as the case may be) any of the offences concerned -

- (a) if the Attorney General asks the Court to proceed under this Article; or
- (b) if the Court considers that, even though the Attorney General has not asked it to do so, it is appropriate for it to proceed under this Article,

the Court may act in accordance with this Article.

(2) However, this Article shall not apply in the case of any proceedings against any defendant where he is convicted in those proceedings of an offence that was committed before this Article comes into force.

(3) Where the Court is proceeding under this Article, it may first determine whether he has benefited from any relevant criminal conduct.

(4) If the Court determines that he has so benefited it may, before sentencing or otherwise dealing with him in respect of the offence or (as the case may be) any of the offences concerned -

- (a) determine in accordance with Article 4 the amount to be recovered in his case by virtue of this Article; and
 - (b) make a confiscation order, to the effect that he pay that amount.
- (5) Where the Court makes a confiscation order -
- (a) it shall take account of the order before -
 - (i) imposing any fine on him; or
 - (ii) making any order involving any payment by him; or

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(iii) making any forfeiture order under Article 16C of the Drug Trafficking Offences (Jersey) Law 1988¹¹ or Article 29 of the Misuse of Drugs (Jersey) Law 1978¹²; and

(b) subject to sub-paragraph (a), it shall leave the order out of account in determining the appropriate sentence or other manner of dealing with the defendant in the proceedings.

(6) No enactment restricting the power of a court dealing with an offender in a particular way from dealing with him also in any other way shall by reason only of the making of an order under this Article restrict the Court from dealing with an offender in any way that the Court considers appropriate in respect of an offence specified in the First Schedule.

(7) Where -

(a) the Court makes both a confiscation order and an order for the payment of compensation under Article 2 of the Criminal Justice (Compensation Orders) (Jersey) Law 1994¹³ against the same person in the same proceedings; and

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

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

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

(a) whether a person has benefited from any offence; or

¹¹ Volume 1988-1989, page 283, and Volume 1996-1997, page 461.

¹² Volume 1975-1978, page 468.

¹³ Volume 1994-1995, page 16.

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(b) the amount to be recovered in his case by virtue of this Article,

shall be that applicable in civil proceedings.

(9) The States may amend the First Schedule by Regulations, by adding, deleting or substituting any offence (not being a drug trafficking offence or an offence under Article 8, Article 9 or Article 10 of the Prevention of Terrorism (Jersey) Law 1996¹⁴).

ARTICLE 4

Amount to be recovered under confiscation order

(1) The sum that a confiscation order requires a defendant to pay shall be equal to -

(a) the benefit in respect of which it is made; or

(b) the amount appearing to the Court to be the amount that might be realised at the time when the order is made,

whichever is less.

(2) However, if the Court is satisfied that a victim of any relevant criminal conduct has instituted or intends to institute civil proceedings against the defendant in respect of loss, injury or damage sustained in connection with that conduct, the sum that the confiscation order requires the defendant to pay may be of such lesser amount as the Court thinks fit.

ARTICLE 5

Confiscation order relating to a course of relevant criminal conduct

(1) This Article applies for the purposes of Article 3 where a defendant appears before the Court to be sentenced in respect of one or more qualifying offences -

¹⁴ Volume 1996-1997, pages 187, 189 and 190.

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- (a) if the Attorney General asks the Court to apply it for the purposes of that Article; or
- (b) if the Court considers that, even though the Attorney General has not asked it to do so, it is appropriate for it to do so,

and either the defendant is convicted in the proceedings of at least two qualifying offences (including the offence in question) or the defendant has been convicted of a qualifying offence on at least one previous occasion during the relevant period.

(2) An offence is a qualifying offence for the purposes of this Part if it is an offence in respect of which all of the following conditions are satisfied, namely -

- (a) it is an offence specified in the First Schedule;
- (b) it is an offence committed after this Article comes into force; and
- (c) the Court is satisfied that it is an offence from which the defendant has benefited.

(3) The relevant period for the purposes of this Article, in relation to a defendant, is the period of six years ending when the proceedings in which this Article applies were instituted against the defendant.

(4) When this Article applies for the purposes of Article 3, the Court may if it thinks fit (but subject to paragraph (6) of this Article) make the assumptions in paragraph (5) of this Article for the purpose -

- (a) of determining whether the defendant has benefited from relevant criminal conduct; and
- (b) if he has, of assessing the value of his benefit from such conduct.

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- (5) Those assumptions are -
 - (a) that any property appearing to the Court to be held by the defendant at any time since the date of his conviction, or appearing to the Court to have been transferred to him at any time since the beginning of the relevant period -
 - (i) was received by him at the earliest time when he appears to the Court to have held it; and
 - (ii) was received by him as a result of or in connection with the commission of offences specified in the First Schedule;
 - (b) that any of his expenditure since the beginning of the relevant period was met out of payments received by him as a result of or in connection with the commission of offences specified in the First Schedule; and
 - (c) for the purposes of valuing any benefit that he had or is assumed to have had at any time, that he received the benefit free of any other interests in it.
- (6) The Court shall not make an assumption in paragraph (5) in respect of any particular property or expenditure -
 - (a) if the assumption, so far as it relates to that property or expenditure, is shown to be incorrect;
 - (b) if the assumption, so far as it relates to that property or expenditure, is shown to be correct in respect of an offence from which the defendant's benefit has been the subject of a previous confiscation order; or
 - (c) if the Court is satisfied that, for any other reason, there would be a serious risk of injustice if the assumption were made in respect of that property or expenditure.

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(7) Where the assumptions in paragraph (5) are made the offences from which, in accordance with those assumptions, the defendant is found to have benefited shall be treated as if they were comprised, for the purposes of this Part, in the conduct that is to be treated as relevant criminal conduct by the defendant.

(8) In this Article, "the date of his conviction" means -

- (a) in a case not falling within sub-paragraph (b), the date on which the defendant is convicted of the offence in question; and
- (b) where he is convicted of that offence and one or more other offences in the proceedings in question, and those convictions are not all on the same date, the date of the latest of those convictions.

ARTICLE 6

Postponed determinations

(1) Where the Court is acting under Article 3 but considers that it requires further information before -

- (a) determining whether the defendant has benefited from any relevant criminal conduct; or
- (b) determining the amount to be recovered in his case by virtue of Article 3,

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

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

(3) Unless it is satisfied that there are exceptional circumstances, the Court shall not specify a period that -

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

exceeds six months beginning with the date of conviction.

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

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

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

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

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

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

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(8) Where the Court has so proceeded, it may determine in accordance with Article 4 the amount to be recovered in the case of the defendant by virtue of Article 3 and make a confiscation order under Article 3, notwithstanding that he has been sentenced or otherwise dealt with already.

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

- (a) impose any fine on him; or
- (b) make any order mentioned in sub-paragraph (a) of paragraph (5) of Article 3.

(10) Where the Court has sentenced the defendant under paragraph (7) of this Article during the specified period it may, after the end of that period, vary the sentence by imposing a fine or making any order mentioned in sub-paragraph (a) of paragraph (5) of Article 3, so long as it does so within 28 days after the specified period.

(11) In this Article “the date of conviction” means -

- (a) in a case not falling within sub-paragraph (b), the date on which the defendant was convicted; or
- (b) where he was convicted, in the same proceedings but on different dates, of two or more offences that are comprised in relevant criminal conduct, the date of the latest of those convictions.

ARTICLE 7

Statements relating to criminal offences

(1) Subject to paragraphs (3) and (4), the Attorney General -

- (a) may at any time give to the Court a statement of matters that he considers relevant for the purpose -

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- (i) of determining whether the defendant has benefited from any relevant criminal conduct; or
 - (ii) of assessing the value of the defendant’s benefit from that conduct; and
- (b) shall give to the Court such a statement, setting out all information available to him that is relevant for the purposes of paragraphs (5) and (6) of Article 5, if the case is one in which he has asked the Court to apply that Article for the purposes of Article 3.

(2) In this Article, such a statement is referred to as “an Attorney General’s statement”.

(3) Where the Court proceeds under Article 3 without being asked by the Attorney General to do so, it may require him to give an Attorney General’s statement within such period as it may determine.

(4) Where the Attorney General applies to the Court under any of Articles 9, 12, 13 and 14 he shall give to the Court, within such time as it may direct, an Attorney General’s statement.

(5) Where the Attorney General has given an Attorney General’s statement -

- (a) he may at any time give the Court a further Attorney General’s statement; and
- (b) the Court may at any time require him to give it a further Attorney General’s statement, within such further period as it may direct.

(6) Where any Attorney General’s statement has been given and the Court is satisfied that a copy of the statement has been served on the defendant, it may require the defendant -

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- (a) to indicate to it, within such period as it may direct, the extent to which he accepts each allegation in the statement; and
- (b) so far as he does not accept any such allegation, to give particulars of any matters on which he proposes to rely.

(7) Where the Court has given a direction under this Article, it may at any time vary it by a further direction.

(8) Where the defendant accepts to any extent any allegation in any Attorney General's statement, the Court may, for the purposes of -

- (a) determining whether the defendant has benefited from relevant criminal conduct; or
- (b) assessing the value of the defendant's benefit from relevant criminal conduct,

treat his acceptance as conclusive of the matters to which it relates.

(9) If the defendant fails in any respect to comply with a requirement under paragraph (6), he may be treated for the purposes of this Article as accepting every allegation in the Attorney General's statement in question, apart from -

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

(10) Where -

- (a) there is tendered to the Court by the defendant a statement as to any matters relevant for the purpose of determining

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the amount that might be realised at the time the confiscation order is made; and

- (b) the Attorney General accepts to any extent any allegation in the statement,

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

(11) An allegation may be accepted and particulars of any matter may be given, for the purposes of this Article, in such manner as may be provided for by Rules of Court or as the Court may direct.

(12) No acceptance by the defendant under this Article that he has benefited from an offence or that any property was obtained by him as a result of or in connection with an offence shall be admissible in evidence in any proceedings for an offence.

ARTICLE 8

Provision of information by defendant

(1) This Article applies where -

- (a) the Attorney General has asked the Court to proceed under Article 3 or has applied to the Court under Article 12, Article 13 or Article 14; or
- (b) no such request or application has been made but the Court is nevertheless proceeding, or considering whether to proceed, under Article 3.

(2) For the purpose of obtaining information to assist it in carrying out its functions, the Court may at any time order the defendant to give it such information as may be specified in the order.

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(3) An order under paragraph (2) may require all or any specified part of the required information to be given to the Court in such manner, and before such date, as may be specified in the order.

(4) Rules of Court may make provision as to the maximum or minimum period that may be allowed under paragraph (3).

(5) If the defendant fails, without reasonable excuse, to comply with any order under this Article, the Court may draw such inference from that failure as it considers appropriate.

(6) Where the Attorney General accepts to any extent any allegation made by the defendant in giving to the Court information required by an order under this Article, the Court may treat that acceptance as conclusive of the matters to which it relates.

(7) For the purposes of this Article, an allegation may be accepted in such manner as may be provided for by Rules of Court or as the Court may direct.

ARTICLE 9

Powers of the Court where defendant has died or absconded

(1) Paragraph (2) applies where a person has been convicted of one or more offences specified in the First Schedule.

(2) If the Attorney General asks it to proceed under this paragraph, the Court may exercise its powers under this Part to make a confiscation order against the defendant, if satisfied that the defendant has died or absconded.

(3) Paragraph (4) applies where proceedings for one or more offences specified in the First Schedule have been instituted against a person but have not been concluded.

(4) If the Attorney General asks it to proceed under this paragraph, the Court may exercise its powers under this Part to make a

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confiscation order against the defendant, if satisfied that the defendant has absconded.

(5) The power conferred by paragraph (4) may not be exercised at any time before the end of the period of two years beginning with the date that is, in the opinion of the Court, the date on which the defendant absconded.

(6) In any proceedings on an application under this Article -

(a) Article 5 and paragraphs (6), (8) and (9) of Article 7 shall not apply;

(b) the Court shall not make a confiscation order against a person who has absconded unless it is satisfied that the Attorney General has taken reasonable steps to contact him; and

(c) any person appearing to the Court to be likely to be affected by the making of a confiscation order by the Court shall be entitled to appear before the Court and make representations.

ARTICLE 10

Effect of confiscation order on sentencing of absconder

(1) Where in the case of any defendant the Court has made a confiscation order by virtue of Article 9 it shall, in respect of the offence or (as the case may be) any of the offences concerned -

(a) take account of the order before -

(i) imposing any fine on the defendant;

(ii) making any order involving any payment by him; or

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(iii) making any forfeiture order under Article 16C of the Drug Trafficking Offences (Jersey) Law 1988¹⁵ or Article 29 of the Misuse of Drugs (Jersey) Law 1978¹⁶; and

(b) subject to sub-paragraph (a), leave the order out of account in determining the appropriate sentence or other manner of dealing with the defendant.

(2) Where the Court has made a confiscation order by virtue of Article 9, and the defendant subsequently appears before the Court to be sentenced in respect of one or more of the offences concerned, paragraph (1) of Article 3 shall not apply so far as his appearance is in respect of that offence or those offences.

ARTICLE 11

Enforcement of confiscation orders

(1) Where the Court orders the defendant to pay any amount under Article 3 the Court may order the defendant to be imprisoned, for a fixed term to be specified in the order, in default of payment of the amount.

(2) The term of imprisonment to be so specified shall not exceed ten years.

(3) The effect of an order of imprisonment under paragraph (1) shall be as follows -

(a) in default of payment of the amount to which the order relates, the defendant shall serve the term of imprisonment specified in the order;

(b) if payment is made of any part of the amount due, the term of imprisonment shall be reduced by such number of

¹⁵ Volume 1988-1989, page 283, and Volume 1996-1997, page 461.

¹⁶ Volume 1975-1978, page 468.

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days as bears, to the total number of days of the term of imprisonment, the same proportion as the amount so paid bears to as much of the amount as was due at the time when the confiscation order was made; and

(c) if the whole of the amount due is paid before the defendant has served the term of imprisonment specified in the order, he shall not be liable to serve any remaining portion of that term.

(4) The term of imprisonment imposed under paragraph (1) in default of payment shall not, in the case of a defendant who is liable to serve a term of imprisonment in respect of the offence or offences, begin to run until after he has served the term of imprisonment for the offence or offences.

(5) The reference in paragraph (4) to the term of imprisonment that the defendant is liable to serve in respect of the offence or offences is a reference to the term of imprisonment, or detention in a young offender institution, that he is liable to serve in respect of the offence or offences, and for the purposes of this paragraph consecutive terms and terms that are wholly or partly concurrent shall be treated as a single term.

(6) This Article applies to confiscation orders made by the Court of Appeal as it applies to confiscation orders made by the Royal Court, and references in this Article to the Court shall be construed accordingly.

(7) Where the defendant serves a term of imprisonment or detention in default of payment of any amount due under a confiscation order, his serving of that term does not prevent the confiscation order from continuing to have effect, so far as any other method of enforcement is concerned.

ARTICLE 12

Reconsideration of case where Court has not considered a confiscation order

(1) This Article applies where the defendant has appeared before the Court to be sentenced in respect of one or more offences specified in the First Schedule, but the Court has not proceeded under Article 3.

(2) If the Attorney General has evidence -

(a) that was not available to him when the defendant appeared to be sentenced (and accordingly was not considered by the Court); and

(b) that the Attorney General believes would have led the Court to determine that the defendant had benefited from relevant criminal conduct if -

(i) the Attorney General had asked the Court to proceed under Article 3; and

(ii) the evidence had been considered by the Court,

he may apply to the Court for it to consider the evidence.

(3) The Court may then proceed under Article 3 if, having considered the evidence, it is satisfied that it is appropriate to do so.

(4) In considering whether it is appropriate to proceed under Article 3 by virtue of this Article, the Court shall have regard to all the circumstances of the case.

(5) Where, having decided to proceed under Article 3 by virtue of this Article, the Court proposes to make a confiscation order against the defendant, it shall order the payment of such amount as it thinks just in all the circumstances of the case.

(6) In considering the circumstances of any case the Court shall have regard, in particular, to the amount of -

(a) any fine imposed on the defendant in respect of any relevant criminal conduct; and

(b) any order made in connection with such conduct under Article 2 of the Criminal Justice (Compensation Orders) (Jersey) Law 1994¹⁷.

(7) Where the Court is proceeding under Article 3 by virtue of this Article, the requirement in paragraph (4) of Article 3 that the Court shall not have sentenced or otherwise dealt with the defendant already, in the case in question, shall not apply.

(8) The Court may take into account any payment or other reward received by the defendant on or after the date of conviction, but only if the Attorney General shows that it represents the defendant's benefit from any relevant criminal conduct.

(9) On an application made under Article 3 by virtue of this Article -

(a) if the Attorney General asks the Court to apply Article 5; or

(b) if the Court considers that, even though the Attorney General has not asked it to do so, it is appropriate for it to do so,

and the other requirements of paragraph (1) of Article 5 are fulfilled, that Article shall apply notwithstanding that the defendant has been sentenced or otherwise dealt with already, in the case in question, but in that event no assumption may be made under paragraph (4) of that Article in respect of any property unless it was held by or transferred to the defendant before he was sentenced or otherwise dealt with.

¹⁷ Volume 1994-1995, page 16.

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(10) No application shall be entertained by the Court under this Article if it is made after the end of the period of six years beginning with the date of conviction.

(11) In this Article "the date of conviction" means -

- (a) in a case not falling within sub-paragraph (b), the date on which the defendant was convicted, or
- (b) where he appeared to be sentenced in respect of more than one conviction, and those convictions were not all on the same date, the date of the latest of those convictions.

ARTICLE 13

Reconsideration of determination that defendant has not benefited

(1) This Article applies where the Court has made a determination ("the original determination") under paragraph (3) of Article 3 that the defendant has not benefited from any relevant criminal conduct.

(2) If the Attorney General has evidence -

- (a) that was not considered by the Court in making the original determination; and
- (b) that the Attorney General believes would have led the Court to determine that the defendant had benefited from that relevant criminal conduct if it had been considered by the Court,

he may apply to the Court for it to consider that evidence.

(3) If, having considered the evidence, the Court is satisfied that it would have determined that the defendant had benefited from relevant criminal conduct if that evidence had been available to it, the Court -

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- (a) shall make a fresh determination under paragraph (3) of Article 3; and
- (b) shall make a determination under paragraph (4) of that Article of the amount to be recovered by virtue of that Article; and
- (c) may make a confiscation order.

(4) Where the Court is proceeding under Article 3 by virtue of this Article, the requirement in paragraph (4) of Article 3 that the Court shall not have sentenced or otherwise dealt with the defendant already, in the case in question, shall not apply.

(5) The Court may take into account any payment or other reward received by the defendant on or after the date of the original determination, but only if the Attorney General shows that it represents the defendant's benefit from any relevant criminal conduct.

(6) On an application made under Article 3 by virtue of this Article in a case to which Article 5 does not otherwise apply -

- (a) if the Attorney General asks the Court to apply Article 5; or
- (b) if the Court considers that, even though the Attorney General has not asked it to do so, it is appropriate for it to do so,

and the other requirements of paragraph (1) of Article 5 are fulfilled, that Article shall apply notwithstanding that the defendant has been sentenced or otherwise dealt with already, in the case in question, but in that event no assumption may be made under paragraph (4) of that Article in respect of any property unless it was held by or transferred to the defendant before he was sentenced or otherwise dealt with.

(7) Where the Court -

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- (a) has been asked to proceed under Article 9 in relation to a defendant who has absconded, and;
- (b) has decided not to make a confiscation order against him,

this Article shall not apply at any time while he remains an absconder.

(8) No application shall be entertained by the Court under this Article if it is made after the end of the period of six years beginning -

- (a) in a case not falling within sub-paragraph (b), with the date on which the defendant was convicted; or
- (b) where he appeared to be sentenced in respect of more than one conviction, and those convictions were not all on the same date, with the date of the latest of those convictions.

ARTICLE 14

Revised assessment of benefit already determined

(1) This Article applies where the Court has made a determination under paragraph (4) of Article 3 of the amount to be recovered in a particular case by virtue of that paragraph ("the current determination").

(2) Where the Attorney General is of the opinion that the value of the defendant's benefit from any relevant criminal conduct was greater than the value at which that benefit was assessed by the court on the current determination, the Attorney General may apply to the Court for the evidence on which he has formed his opinion to be considered by the Court.

(3) If, having considered the evidence, the Court is satisfied that the real value of the defendant's benefit from relevant criminal conduct is greater than its assessed value (whether because the real value was higher at the time of the current determination than was

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thought or because the value of the benefit in question has subsequently increased), the Court shall make a fresh determination under paragraph (4) of Article 3 of the amount to be recovered by virtue of that Article.

(4) Where the Court is proceeding under Article 3 by virtue of this Article, the requirement in paragraph (4) of Article 3 that the Court shall not have sentenced or otherwise dealt with the defendant already, in the case in question, shall not apply.

(5) Any determination under paragraph (4) of Article 3 by virtue of this Article shall be by reference to the amount that might be realised at the time when that determination is made.

(6) For the purposes of any determination under paragraph (4) of Article 3 by virtue of this Article, the restriction in paragraph (6) of Article 5 (by reason of sub-paragraph (b) of that paragraph of Article 5) on the Court's power to make assumptions shall not apply in relation to any of the defendant's benefit from relevant criminal conduct taken into account in respect of the current determination.

(7) In relation to any determination under paragraph (4) of Article 3 by virtue of this Article, paragraph (3) of Article 2, Article 4 and paragraph (10) of Article 7 shall have effect as if it were a confiscation order.

(8) The Court may take into account any payment or other reward received by the defendant on or after the current determination, but only if the Attorney General shows that it represents the defendant's benefit from relevant criminal conduct.

(9) Where -

- (a) the Court is, by virtue of paragraph (3) of this Article, to make a fresh determination; and
- (b) the case is one to which Article 5 applies,

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no assumption may be made under paragraph (4) of that Article in respect of any property unless it was held by or transferred to the defendant before the time when he was sentenced or otherwise dealt with in the case in question.

(10) If, as a result of the making of the fresh determination required by paragraph (3), the amount to be recovered exceeds the amount of the current determination, the Court may substitute for the amount to be recovered under the confiscation order that was made by reference to the current determination such greater amount as it thinks just in all the circumstances of the case.

(11) Subject to Article 11, where the Court varies a confiscation order under paragraph (10), it may substitute for any term of imprisonment imposed under paragraph (1) of Article 11 a longer term in respect of the greater amount substituted under paragraph (10) of this Article.

(12) Where a confiscation order has been made in relation to any defendant by virtue of Article 9, this Article shall not apply at any time while he is an absconder.

(13) No application shall be entertained by the Court under this Article if it is made after the end of the period of six years beginning -

- (a) in a case not falling within sub-paragraph (b), with the date on which the defendant was convicted; or
- (b) where he appeared to be sentenced in respect of more than one conviction, and those convictions were not all on the same date, with the date of the latest of those convictions.

ARTICLE 15

Cases in which "saisies judiciaires" may be made

(1) The powers conferred on the Court by Article 16 are exercisable where -

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- (a) the Court has made a confiscation order;
- (b) proceedings have been instituted in the Island against the defendant for an offence specified in the First Schedule or an application has been made by the Attorney General in respect of the defendant under any of Articles 9, 12, 13, 14 and 19 and -
 - (i) the proceedings have not, or the application has not, been concluded; and
 - (ii) the Court is satisfied that there is reasonable cause to believe -
 - (A) in the case of an application under Article 14 or Article 19, that the Court will be satisfied as mentioned in paragraph (3) of Article 14 or (as the case may be) paragraph (2) of Article 19; or
 - (B) in any other case, that the defendant has benefited from the offence; or
- (c) the Court is satisfied -
 - (i) that proceedings are to be instituted in the Island against a person for an offence specified in the First Schedule, or that an application of a kind mentioned in sub-paragraph (b) of this paragraph is to be made against the defendant; and
 - (ii) as to the matters mentioned in clause (ii) of that sub-paragraph.

(2) For the purposes of Article 16, at any time when those powers are exercisable before proceedings have been instituted -

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- (a) references in this Part to the defendant shall be construed as references to the person to whom sub-paragraph (c) of paragraph (1) of this Article refers;
- (b) references in this Part to realisable property shall be construed as if, immediately before that time, proceedings had been instituted against the person to whom sub-paragraph (c) of paragraph (1) of this Article refers for an offence specified in the First Schedule.

(3) Where the Court has made an order under Article 16 in virtue of sub-paragraph (c) of paragraph (1) of this Article, in relation to proposed proceedings for an offence specified in the First Schedule, the Court shall discharge the order if the proceedings have not been instituted within such time as the Court considers reasonable.

(4) Where the Court has made an order under Article 16 in relation to a proposed application by virtue of sub-paragraph (c) of paragraph (1) of this Article, the Court shall discharge the order if the application is not made within such time as the Court considers reasonable.

(5) The Court shall not exercise its powers under Article 16, by virtue of sub-paragraph (a) or sub-paragraph (b) of paragraph (1) of this Article, if it is satisfied that -

- (a) there has been undue delay in continuing the proceedings or application in question; or
- (b) the Attorney General does not intend to proceed.

ARTICLE 16

“Saisies judiciaires”

(1) The Court may, subject to such conditions and exceptions as may be specified in it, make an order (in this Part referred to as a “saisie judiciaire”) on an application made by or on behalf of the Attorney General.

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(2) An application for a “saisie judiciaire” may be made *ex parte* to the Bailiff in chambers.

(3) A “saisie judiciaire” shall provide for notice to be given to any person affected by the order.

(4) Subject to paragraph (5), on the making of a “saisie judiciaire” -

- (a) all the realisable property held by the defendant in the Island shall vest in the Viscount;
- (b) any specified person may be prohibited from dealing with any realisable property held by that person whether the property is described in the order or not;
- (c) any specified person may be prohibited from dealing with any realisable property transferred to him after the making of the order,

and the Viscount shall have the duty to take possession of and, in accordance with the Court’s directions, to manage or otherwise deal with any such realisable property; and any specified person having possession of any realisable property may be required to give possession of it to the Viscount.

(5) Any property vesting in the Viscount pursuant to sub-paragraph (a) of paragraph (4) shall so vest subject to all hypothecs and security interests with which such property was burdened prior to the vesting.

(6) A “saisie judiciaire” -

- (a) may be discharged or varied in relation to any property; and
- (b) shall be discharged on satisfaction of the confiscation order.

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(7) An application for the discharge or variation of a “saisie judiciaire” may be made to the Bailiff in chambers by any person affected by it and the Bailiff may rule upon the application or may, at his discretion, refer it to the Court for adjudication.

(8) Where it appears to the Court that any order made by it under this Article may affect immovable property situate in the Island, it shall order the registration of the order in the Public Registry.

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

- (a) where a debt is owed to that person, making a payment to any person in reduction of the amount of the debt; and
- (b) removing the property from the Island.

(10) Where the Court has made a “saisie judiciaire” a police officer may, for the purpose of preventing the removal of any realisable property from the Island, seize the property.

(11) Property seized under paragraph (10) shall be dealt with in accordance with the Court’s directions.

ARTICLE 17

Realisation of property

- (1) Where -
 - (a) in proceedings that have been instituted for an offence, a confiscation order is made or an order is varied under Article 14 or Article 19;
 - (b) the order is not subject to appeal;

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(c) the proceedings relating to the order have not been concluded; and

(d) the Court has made a “saisie judiciaire”,

the Court may empower the Viscount to realise, in such manner as it may direct, any realisable property that has vested in him or come into his possession pursuant to Article 16.

(2) The Court shall not in respect of any property exercise its power under paragraph (1) unless a reasonable opportunity has been given for persons holding any interest in the property to make representations to the Court.

ARTICLE 18

Interest on sums unpaid under confiscation orders

(1) If any sum required to be paid by a person under a confiscation order is not paid when it is required to be paid, that person shall be liable to pay interest on that sum for the period for which it remains unpaid, and the amount of the interest shall for the purposes of enforcement be treated as part of the amount to be recovered under the confiscation order.

(2) When paragraph (1) of this Article applies and interest has accrued, the Court may on the application of the Attorney General increase (subject to Article 11) any term of imprisonment imposed under paragraph (1) of that Article.

(3) The rate of interest under paragraph (1) shall be such rate as the Royal Court shall from time to time by Rules of Court prescribe.

ARTICLE 19

Increase in realisable property

(1) This Article applies where, by virtue of Article 4, the amount which a person is ordered to pay by a confiscation order is less

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than the amount assessed to be the value of his benefit from relevant criminal conduct.

(2) If, on an application made in accordance with paragraph (3), the Court is satisfied that the amount that might be realised in the case of the person in question is greater than the amount taken into account in making the confiscation order (whether it was greater than was thought when the order was made, or it has subsequently increased) the Court shall issue a certificate to that effect, giving the Court's reasons.

(3) An application under paragraph (2) may be made by the Attorney General or by the Viscount in relation to the realisable property of the person in question.

(4) Where a certificate has been issued under paragraph (2) the Attorney General may apply to the Court for an increase in the amount to be recovered under the confiscation order, and on that application the Court may -

- (a) substitute for that amount such amount (not exceeding the assessed value to which paragraph (1) refers) as appears to the Court to be appropriate having regard to the amount now shown to be realisable; and
- (b) subject to Article 11, increase any term of imprisonment imposed under paragraph (1) of that Article.

ARTICLE 20

Application of proceeds of realisation and other sums

(1) The following sums in the hands of the Viscount, that is to say -

- (a) money that has vested in him or come into his possession pursuant to Article 16; and

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- (b) the proceeds of the realisation of any property under Article 17,

shall, after such payments (if any) as the Court may direct have been made out of those sums and then after payment of the Viscount's fees and expenses, be applied on the defendant's behalf towards the satisfaction of the confiscation order.

(2) The amount applied by the Viscount towards the satisfaction of the confiscation order shall be paid into the Criminal Offences Confiscations Fund.

(3) If, after payment of his fees and expenses and of the amount payable under the confiscation order, any sums remain in the hands of the Viscount, the Viscount shall distribute those sums -

- (a) among such of those persons who held the property that has been realised under this Part; and
- (b) in such proportions,

as the Court may direct after giving them a reasonable opportunity to make representations to the Court.

ARTICLE 21

Variation of confiscation order where realisable property is inadequate

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

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

- (a) in the case of realisable property held by a person who has become bankrupt, the Court shall take into account the

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extent to which he has been deprived of his property for the benefit of his creditors; and

- (b) the Court may disregard any inadequacy in the realisable property that appears to the Court to be attributable wholly or partly to anything done by the defendant for the purpose of preserving any property held by a person to whom the defendant had directly or indirectly made a gift caught by this Part from any risk of realisation under this Part.
- (3) Where a certificate has been issued under paragraph (1), the person who applied for it may apply to the Court for the amount to be recovered under the order to be reduced.
- (4) The Court may, on an application under paragraph (3) -
 - (a) substitute for the amount to be recovered under the order such lesser amount as the Court thinks just in all the circumstances of the case; and
 - (b) subject to Article 11, substitute for any term of imprisonment imposed under paragraph (1) of that Article a shorter term in respect of the lesser amount substituted under sub-paragraph (a) of this paragraph.
- (5) Rules of Court may make provision -
 - (a) for the giving of notice of any application under this Article; and
 - (b) for any person appearing to the Court to be affected by the exercise of its powers under this Article to be given a reasonable opportunity to make representations to the Court.

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ARTICLE 22

Bankruptcy of defendant

- (1) Where a person who holds realisable property becomes bankrupt -
 - (a) no property for the time being subject to a "saisie judiciaire" made before the order adjudging him bankrupt; and
 - (b) no proceeds of property realised by virtue of paragraph (4) of Article 16 or Article 17 for the time being in the hands of the Viscount,
 shall form part of his estate for the relevant bankruptcy proceedings.
- (2) Where a person has become bankrupt, the powers conferred on the Court by Articles 16, 17, 18, 19 and 20 or on the Viscount shall not be exercised in relation to -
 - (a) property which the bankrupt has placed under the control of the Court ("a remis entre les mains de la Justice");
 - (b) property which has been declared "en désastre";
 - (c) property of which the bankrupt has made a general cession ("a fait cession générale"); or
 - (d) property which has been adjudged renounced ("adjudgé renoncé").
- (3) Paragraph (2) does not affect the enforcement of a "saisie judiciaire" -
 - (a) made before the person becomes bankrupt; or
 - (b) on property that was subject to a "saisie judiciaire" when he became bankrupt.

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ARTICLE 23

Limitation of liability of Viscount

Where the Viscount -

- (a) takes any action in relation to property that is not realisable property, being action that he would be entitled to take if it were such property; and
- (b) believes and has reasonable grounds for believing that he is entitled to take that action in relation to that property,

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

ARTICLE 24

Criminal Offences Confiscations Fund

(1) There shall be established a Fund to be called the Criminal Offences Confiscations Fund which, subject to this Article, shall be managed and controlled by the Committee.

- (2) All amounts -
 - (a) recovered under or in satisfaction of a confiscation order; or
 - (b) received under an assets-sharing agreement,

shall be included in the monies which are paid into the Fund.

(3) Monies paid into the Fund shall not form part of the annual income of the States.

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(4) Subject to paragraph (5), monies in the Fund shall be applied by the Committee for the following purposes, that is to say -

- (a) in promoting or supporting measures that, in the opinion of the Committee, may assist -
 - (i) in preventing, suppressing or otherwise dealing with criminal conduct;
 - (ii) in dealing with the consequences of criminal conduct;
 - (iii) without prejudice to the generality of clauses (i) and (ii), in facilitating the enforcement of any enactment dealing with criminal conduct;
- (b) discharging the Island's obligations under assets-sharing agreements; and
- (c) meeting the expenses incurred by the Committee in administering the Fund.

(5) Before promoting or supporting any measure under subparagraph (a) of paragraph (4), the Committee shall consult the Attorney General and such other persons or bodies (including other Committees of the States) as it considers appropriate.

(6) Monies paid into the Fund, while not applied for any of the purposes mentioned in paragraph (4), may be -

- (a) held in the custody of the Treasurer of the States at the States Treasury; or
- (b) placed, in the name of the Committee, in a current or deposit account with one or more banks selected by the Committee,

and any interest earned on such monies while held in such an account shall be paid by the Committee into the Fund.

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(7) Monies held in any account by virtue of sub-paragraph (b) of paragraph (6) may be withdrawn on the signature of the Treasurer of the States.

(8) In this Article, "assets-sharing agreement" means an agreement entered into -

- (a) between the United Kingdom, on behalf of the Island, and any other State; or
- (b) between the Attorney General and the appropriate authority of a country or territory outside the Island,

whereby arrangements are made for the sharing of the proceeds of criminal conduct that, as a result of mutual assistance, have been confiscated either in the Island or elsewhere.

ARTICLE 25

Compensation where defendant not convicted

(1) If proceedings are instituted against a person for an offence or offences specified in the First Schedule, and either -

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

the Court may, on an application by a person who held property that was realisable property, order compensation to be paid to the applicant if,

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having regard to all the circumstances, it considers it appropriate to make such an order.

(2) The Court shall not order compensation to be paid in any case unless it 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 or offences concerned; and
- (b) that the applicant has suffered loss in consequence of anything done in relation to the property by or in pursuance of a "saisie judiciaire".

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

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

(5) Compensation payable under this Article shall be payable out of the annual income of the States.

ARTICLE 26

Cancellation of order, and compensation, where absconder acquitted

- (1) Where -
 - (a) the Court has made a confiscation order by virtue of paragraph (4) of Article 9 in relation to a defendant who is an absconder; and
 - (b) the defendant is subsequently tried for the offence or offences concerned and acquitted on all counts,

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the Court shall cancel the confiscation order.

(2) The Court may, on the application of a person who held property that was realisable property, order compensation to be paid to the applicant if it is satisfied that the applicant has suffered loss as a result of the making of the confiscation order.

(3) The amount of compensation to be paid under this Article shall be such as the Court considers just in all the circumstances of the case.

(4) Provision may be made by Rules of Court for -

- (a) giving notice of any application under this Article; and
- (b) any person appearing to the Court to be likely to be affected by any exercise of its powers under this Article to be given a reasonable opportunity to make representations to the Court.

(5) Compensation payable under this Article shall be paid out of the annual income of the States.

(6) Where the Court cancels a confiscation order under this Article, it may make such consequential or incidental order as it considers appropriate in connection with the cancellation.

ARTICLE 27

Cancellation of confiscation order, and compensation, where absconder returns

(1) This Article applies where -

- (a) the Court has made a confiscation order by virtue of paragraph (4) of Article 9 in relation to a defendant who is an absconder;
- (b) the defendant has ceased to be an absconder; and

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(c) Article 26 does not apply.

(2) The Court may, on the application of the defendant, cancel the confiscation order if it is satisfied that -

- (a) there has been undue delay in continuing the proceedings in respect of which the power under paragraph (4) of Article 9 was exercised; or
- (b) the Attorney General does not intend to proceed with the prosecution.

(3) Where the Court cancels a confiscation order under this Article it may, on the application of a person who held property which was realisable property, order compensation to be paid to the applicant if it is satisfied that the applicant has suffered loss as a result of the making of the confiscation order.

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

(5) Provision may be made by Rules of Court for -

- (a) the giving of notice of any application under this Article; and
- (b) any person appearing to the Court to be likely to be affected by any exercise of its powers under this Article to be given a reasonable opportunity to make representations to the Court.

(6) Compensation payable under this Article shall be paid out of the annual income of the States.

(7) Where the Court cancels a confiscation order under this Article, it may make such consequential or incidental order as it considers appropriate in connection with the cancellation.

ARTICLE 28

Variation of confiscation order, and compensation, where absconder returns

- (1) This Article applies where -
- (a) the Court has made a confiscation order by virtue of paragraph (4) of Article 9 in relation to a defendant who is an absconder; and
 - (b) the defendant has ceased to be an absconder.
- (2) If the defendant alleges that -
- (a) the value of his benefit from any relevant criminal conduct in the period by reference to which the determination in question was made (the "original value"); or
 - (b) the amount that might have been realised at the time the confiscation order was made,

was less than the amount ordered to be paid under the confiscation order, he may apply to the Court for it to consider his evidence.

(3) If, having considered that evidence, the Court is satisfied that the defendant's allegation is correct, it -

- (a) shall make a fresh determination under paragraph (4) of Article 3; and
- (b) may, if it considers it just in all the circumstances, vary the amount to be recovered under the confiscation order.

(4) For the purposes of any determination under paragraph (4) of Article 3 by virtue of this Article, the restriction in paragraph (6) of Article 5 (by reason of sub-paragraph (b) of that

paragraph of Article 5) on the Court's power to make assumptions shall not apply in relation to any of the defendant's benefit from relevant criminal conduct taken into account in determining the original value.

(5) Where the Court varies a confiscation order under this Article -

- (a) it may (subject to Article 11) substitute for any term of imprisonment imposed under paragraph (1) of that Article a shorter term in respect of the lesser amount substituted under sub-paragraph (b) of paragraph (3) of this Article by way of variation of the confiscation order; and
- (b) on the application of a person who held property that was realisable property, it may order compensation to be paid to the applicant if -
 - (i) it is satisfied that the applicant has suffered loss as a result of the making of the confiscation order; and
 - (ii) having regard to all the circumstances of the case, the Court considers it to be appropriate.

(6) The amount of compensation to be paid under this Article shall be such as the Court considers just in all the circumstances of the case.

(7) Provision may be made by Rules of Court for -

- (a) the giving of notice of any application under this Article; and
- (b) any person appearing to the Court to be likely to be affected by any exercise of its powers under this Article to be given a reasonable opportunity to make representations to the Court.

(8) Compensation payable under this Article shall be paid out of the annual income of the States.

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(9) No application shall be entertained by the Court under this Article if it is made after the end of the period of six years beginning with the date on which the confiscation order was made.

PART III

MONEY LAUNDERING

ARTICLE 29

Restrictions on disclosure under this Part

- (1) Information that is disclosed to a police officer -
- (a) under Article 32;
 - (b) under Article 33; or
 - (c) under any Order made under Article 37,

shall not be disclosed by that police officer, or by any person who obtains the information directly or indirectly from him, unless its disclosure is permitted under Article 30 or Article 31.

(2) A person who contravenes paragraph (1) shall be guilty of an offence and liable to imprisonment for a term not exceeding six months or to a fine not exceeding level 4 on the standard scale or to both.

(3) In proceedings against a person for an offence under this Article, it shall be a defence to prove that he took all reasonable steps and exercised due diligence to avoid committing the offence.

(4) No prosecution shall be instituted for an offence under this Article without the consent of the Attorney General.

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ARTICLE 30

Disclosure for purposes within the Island

(1) Article 29 does not prohibit the disclosure of information to a person in the Island for the purposes of the investigation of crime in the Island or of criminal proceedings in the Island.

(2) Article 29 does not prohibit the disclosure of information, for other purposes in the Island, to -

- (a) the Attorney General;
- (b) the Financial Services Commission;
- (c) a police officer; or
- (d) any other person who is for the time being authorised in writing by the Attorney General to obtain that information.

ARTICLE 31

Disclosure for purposes outside the Island

(1) Article 29 does not prohibit the disclosure of information if -

- (a) the Attorney General has consented to the disclosure and has not withdrawn that consent; and
- (b) the information is disclosed -
 - (i) for the purposes of the investigation of crime outside the Island or of criminal proceedings outside the Island; or
 - (ii) to a competent authority outside the Island.

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(2) The Attorney General may give his consent -

- (a) generally or specifically; and
- (b) unconditionally or subject to such conditions as he may stipulate.

(3) Without prejudice to the generality of paragraph (2), the Attorney General's consent may be given in terms that permit the disclosure from time to time (as the occasion requires) of such a class of information as is specified in the consent to such a person or authority or class of persons or authorities as is so specified.

(4) Without prejudice to the generality of paragraph (2), a condition -

- (a) may be expressed generally or in respect of any specified information;
- (b) may provide that information may only be disclosed in specified circumstances or for a specified purpose; or
- (c) may provide that any person or authority to whom information is disclosed shall not himself or itself disclose it to any other person or body without the prior consent of the Attorney General.

ARTICLE 32

Assisting another to retain the benefit of criminal conduct

(1) Subject to paragraph (3), if a person enters into or is otherwise concerned in an arrangement whereby -

- (a) the retention or control by or on behalf of another (in this Article referred to as "A") of A's proceeds of criminal conduct is facilitated (whether by concealment, removal from the jurisdiction, transfer to nominees or otherwise); or

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(b) A's proceeds of criminal conduct -

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

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

(2) In this Article, references to any person's proceeds of criminal conduct include a reference to any property that in whole or in part directly or indirectly represented in his hands his proceeds of criminal conduct.

(3) Where a person discloses to a police officer a suspicion or belief that any property is derived from or used in connection with criminal conduct, or discloses to a police officer any matter on which such a suspicion or belief is based -

- (a) the disclosure shall not be treated as a breach of any restriction upon disclosure imposed by any statute or contract or otherwise, and shall not involve the person making it in liability of any kind; and
- (b) if he does any act in contravention of paragraph (1) and the disclosure relates to the arrangement concerned, he does not commit an offence under this Article if -
 - (i) the disclosure is made before he does the act concerned and the act is done with the consent of a police officer; or
 - (ii) the disclosure is made after he does the act, but is made on his initiative and as soon as it is reasonable for him to make it.

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

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

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

(6) A person who is guilty of an offence under this Article shall be liable to imprisonment for a term not exceeding fourteen years or to a fine or to both.

(7) No prosecution shall be instituted for an offence under this Article without the consent of the Attorney General.

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ARTICLE 33

Acquisition, possession or use of proceeds of criminal conduct

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

(2) In proceedings against a person for an offence under this Article, it is a defence to prove that he acquired or used the property or had possession of it for adequate consideration.

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

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

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

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

- (a) the disclosure shall not be treated as a breach of any restriction upon disclosure imposed by any statute *or* contract or otherwise, and shall not involve the person making it in liability of any kind;

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- (b) if he does any act in relation to that property in contravention of paragraph (1), he does not commit an offence under this Article if -
- (i) the disclosure is made before he does the act concerned and the act is done with the consent of a police officer; or
 - (ii) the disclosure is made after he does the act, but is made on his initiative and as soon as it is reasonable for him to make it.
- (6) For the purposes of this Article, having possession of any property shall be taken to be doing an act in relation to it.
- (7) In proceedings against a person for an offence under this Article, it is a defence to prove -
- (a) that he intended to disclose to a police officer such a suspicion, belief or matter as is mentioned in paragraph (5); and
 - (b) there is reasonable excuse for his failure to make the disclosure in accordance with sub-paragraph (b) of that paragraph.
- (8) In the case of a person who was in employment at the relevant time, paragraphs (5) and (7) shall have effect in relation to the disclosures, and intended disclosures, to the appropriate person in accordance with the procedure established by his employer for the making of such disclosures as they have effect in relation to disclosures, and intended disclosures, to a police officer.
- (9) A person who is guilty of an offence under this Article is liable to imprisonment for a term not exceeding fourteen years or to a fine or to both.
- (10) No person shall be guilty of an offence under this Article in respect of anything done by him in the course of acting in connection

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with the enforcement, or intended enforcement, of any provision of this Law or of any enactment relating to criminal conduct or the proceeds of such conduct.

(11) No prosecution shall be instituted for an offence under this Article without the consent of the Attorney General.

ARTICLE 34

Concealing or transferring proceeds of criminal conduct

- (1) A person is guilty of an offence if he -
- (a) conceals or disguises any property that is or in whole or in part represents his proceeds of criminal conduct; or
 - (b) converts or transfers that property or removes it from the jurisdiction,

for the purpose of avoiding prosecution for an offence specified in the First Schedule or the making or enforcement in his case of a confiscation order.

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

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

for the purpose of assisting any person to avoid prosecution for an offence specified in the First Schedule or the making or enforcement in his case of a confiscation order.

(3) In paragraphs (1) and (2), the references to concealing or disguising any property include references to concealing or disguising

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its nature, source, location, disposition, movement or ownership or any rights with respect to it.

(4) A person guilty of an offence under this Article is liable to imprisonment for a term not exceeding fourteen years or to a fine or to both.

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

ARTICLE 35

Tipping-off

- (1) A person is guilty of an offence if -
- (a) he knows or suspects that the Attorney General or any police officer is acting or is proposing to act in connection with an investigation that is being or is about to be conducted into money laundering (other than drug money laundering, as defined in paragraph (7) of Article 18A of the Drug Trafficking Offences (Jersey) Law 1988¹⁸); and
 - (b) he discloses to any other person information or any other matter that is likely to prejudice that investigation or proposed investigation.
- (2) A person is guilty of an offence if -
- (a) he knows or suspects that a disclosure ("the disclosure") has been made to a police officer under Article 32 or 33; and
 - (b) he discloses to any other person information or any other matter that is likely to prejudice any investigation that might be conducted following the disclosure.

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- (3) A person is guilty of an offence if -
- (a) he knows or suspects that a disclosure of a kind mentioned in paragraph (5) of Article 32 or paragraph (8) of Article 33 ("the disclosure") has been made; and
 - (b) he discloses to any person information or any other matter that is likely to prejudice any investigation that might be conducted following the disclosure.
- (4) Nothing in paragraph (1), paragraph (2) or paragraph (3) makes it an offence for a professional legal adviser to disclose any information or other matter -
- (a) to or to a representative of a client of his in connection with the giving by the adviser of legal advice to the client; or
 - (b) to any person -
 - (i) in contemplation of or in connection with legal proceedings; and
 - (ii) for the purpose of those proceedings.
- (5) Paragraph (4) does not apply in relation to any information or other matter that is disclosed with a view to furthering a criminal purpose.
- (6) In proceedings against a person for an offence under paragraph (1), paragraph (2) or paragraph (3) of this Article, it is a defence to prove that he did not know or suspect that the disclosure was likely to be prejudicial in the way mentioned in that paragraph.
- (7) A person who is guilty of an offence under this Article is liable to imprisonment for a term not exceeding five years or to a fine or to both.

¹⁸ Volume 1988-1989, page 287, and Volume 1996-1997, page 469.

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(8) No person shall be guilty of an offence under this Article in respect of anything done by him in the course of acting in connection with the enforcement, or intended enforcement, of any provision of this Law or of any other enactment relating to an offence specified in the First Schedule.

(9) No prosecution shall be instituted for an offence under this Article without the consent of the Attorney General.

ARTICLE 36

Financial services business

(1) For the purposes of this Law, "financial services business" means a business described in the Second Schedule.

(2) The States may amend the Second Schedule by Regulations, by adding, deleting, substituting or varying the description of any business.

ARTICLE 37

Procedures to forestall and prevent money laundering

(1) The Committee shall, by Order, prescribe -

- (a) identification procedures;
- (b) record-keeping procedures;
- (c) internal reporting procedures; and
- (d) training procedures,

to be maintained, by persons who carry on financial services business, for the purposes of forestalling and preventing money laundering.

(2) An Order made under this Article -

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- (a) may make different provision for different classes of business;
- (b) may specify supervisory authorities for the purposes of the Order;
- (c) may authorize or require any person who acquires information in the course of the application of any procedure under any such Order, or in the course of carrying out any function under any such Order, or under any other enactment to which the Order refers, to disclose that information to a police officer or to the Commission; and
- (d) may make such other provision as is reasonably necessary for or incidental to the purposes of the Order.

(3) No disclosure made to a police officer or to the Commission, under any Order made under this Article, shall be treated as a breach of any restriction on disclosure imposed by any statute or contract or otherwise, or involve the person making it in liability of any kind.

(4) If a person carrying on a financial services business contravenes or fails to comply with a requirement that is contained in any Order made under this Article and applies to that business, he shall be guilty of an offence.

(5) Where an offence under paragraph (4) by a body corporate is proved -

- (a) to have been committed with the consent or connivance of; or
- (b) to be attributable to any neglect on the part of,

a director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity

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he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(6) Where an offence under paragraph (4) by an unincorporated association is proved -

- (a) to have been committed with the consent or connivance of; or
- (b) to be attributable to any neglect on the part of,

a person concerned in the management or control of the association, he, as well as the association, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(7) Any person who is guilty of an offence under this Article is liable -

- (a) if the person is a body corporate, to a fine; or
- (b) if the person is not a body corporate, to imprisonment for a term not exceeding two years or to a fine or to both.

(8) In determining whether a person has complied with a requirement that is contained in any Order made under this Article, a court -

- (a) shall take account of any relevant guidance that applies to him and is issued, adopted or approved by the Commission; or
- (b) if no such guidance applies to him, may take account of any other relevant guidance issued by a body that regulates or is representative of any financial services business carried on by that person.

(9) Guidance is not relevant for the purposes of paragraph (8) if it is inconsistent with any other provision of this Law.

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(10) In proceedings against a person for an offence under this Article, it is a defence to prove that he took all reasonable steps and exercised due diligence to avoid committing the offence.

PART IV

EXTERNAL CONFISCATION ORDERS

ARTICLE 38

Recognition of external confiscation orders

- (1) The States may by Regulations -
 - (a) direct in relation to a country or territory outside the Island designated by the Regulations that, subject to such modifications as may be specified, this Law shall apply to external confiscation orders and to proceedings that have been or are to be instituted in the designated country or territory and may result in an external confiscation order being made there;
 - (b) make provision in respect of the following matters -
 - (i) the taking of action in the designated country or territory with a view to satisfying a confiscation order;
 - (ii) evidence or proof of any matter for the purposes of this Article and Article 39; and
 - (iii) such incidental, consequential and transitional provisions as it thinks fit for those purposes; and
 - (c) without prejudice to the generality of this paragraph, direct that in such circumstances as may be specified, proceeds that arise out of action taken in the designated country or territory with a view to satisfying a confiscation order shall be treated as reducing the amount

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payable under the order to such extent as may be specified.

(2) Regulations under this Article may make different provision for different cases or classes of case.

(3) The power to make Regulations under this Article includes a power to modify this Law in such a way as to confer power on a person to exercise a discretion.

ARTICLE 39

Registration of external confiscation orders

(1) On the application of the Attorney General, the Court may register an external confiscation order made in a designated country or territory if -

- (a) the Court is satisfied that at the time of registration the order is in force and is not subject to appeal;
- (b) it is satisfied, where the person against whom the order is made did not appear in the proceedings, that he received notice of the proceedings in sufficient time to enable him to defend them; and
- (c) it is of the opinion that enforcing the order in the Island would not be contrary to the interests of justice.

(2) In paragraph (1), "appeal" includes -

- (a) any proceedings by way of discharging or setting aside a judgment; and
- (b) an application for a new trial or a stay of execution.

(3) The Court shall cancel the registration of an external confiscation order if it appears to the Court that the order has been satisfied by the payment of the amount due under it or by the person

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against whom it was made serving imprisonment in default of payment or by any other means.

PART V

MISCELLANEOUS

ARTICLE 40

Investigations relating to proceeds of criminal conduct

(1) A police officer may, for the purposes of an investigation into whether any person has benefited from any criminal conduct or into the extent or whereabouts of the proceeds of any criminal conduct, apply to the Bailiff for an order under paragraph (2) in relation to particular material or material of a particular description.

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

- (a) produce it to a police officer for him to take away; or
- (b) give a police officer access to it and, if so required by the police officer, permit him to make copies of it,

within such period as the order may specify.

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

(4) The conditions to which paragraph (2) refers are -

- (a) that there are reasonable grounds for suspecting that a specified person has benefited from any criminal conduct;

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- (b) that there are reasonable grounds for suspecting that the material to which the application relates -
- (i) is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purposes of which the application is made; and
 - (ii) does not consist of or include items subject to legal privilege;
- and
- (c) that there are reasonable grounds for believing that it is in the public interest that the material should be produced or that access to it should be given, having regard -
- (i) to the benefit likely to accrue to the investigation if the material is obtained; and
 - (ii) to the circumstances under which the person in possession of the material holds it.

(5) Where the Bailiff makes an order under paragraph (2) giving a police officer access to material on any premises the Bailiff may, on the application of a police officer, order any person who appears to the Bailiff to be entitled to grant entry to the premises to allow a police officer to enter the premises to obtain access to the material.

(6) An application under paragraph (1) or paragraph (5) may be made *ex parte* to the Bailiff in chambers.

(7) An application for the discharge or variation of an order under this Article may be made to the Bailiff in chambers, and the Bailiff may rule upon the application or may, at his discretion, refer it to the Court for adjudication.

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- (8) Where the material to which an application under paragraph (1) relates consists of information contained in a computer -
- (a) an order under paragraph (2) to produce material to a police officer for him to take away shall have effect as an order to produce the material in a form in which it can be taken away and in which it is visible and legible; and
 - (b) an order under paragraph (2) giving a police officer access to material shall have effect as an order to give access to the material in a form in which it is visible and legible.
- (9) An order under paragraph (2) -
- (a) shall not confer any right to production of, or access to, items subject to legal privilege;
 - (b) shall have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by any statute or contract or otherwise; and
 - (c) may be made in relation to material in the possession of a States department.
- (10) No application may be made under this Article without the consent of the Attorney General or a Crown Advocate.
- (11) Provision may be made by Rules of Court for the manner in which applications may be made under this Article.
- (12) A person who, without reasonable excuse -
- (a) fails to comply with an order under this Article; or
 - (b) obstructs a police officer who is acting or attempting to act in pursuance of such an order,

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is guilty of an offence and liable to imprisonment for a term not exceeding two years or to a fine or to both.

(13) If a person -

- (a) knows or suspects that an investigation to which paragraph (1) refers is being or is likely to be carried out; and
- (b) falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of material that he knows or suspects is or would be relevant to such an investigation,

he shall be guilty of an offence and liable to imprisonment for seven years or to a fine or to both, unless he proves that his act or omission was inadvertent.

ARTICLE 41

Authority for search

(1) A police officer may, for the purposes of an investigation into whether any person has benefited from any criminal conduct or into the extent or whereabouts of the proceeds of any criminal conduct, apply to the Bailiff for a warrant under this Article in relation to specified premises.

(2) On such an application, the Bailiff may issue a warrant authorising a police officer to enter and search the premises if the Bailiff is satisfied -

- (a) that an order made under Article 40 in relation to material on the premises has not been complied with;
- (b) that the conditions in paragraph (3) are fulfilled; or
- (c) that the conditions in paragraph (4) are fulfilled.

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(3) The conditions to which sub-paragraph (b) of paragraph (2) refers are -

- (a) that there are reasonable grounds for suspecting that a specified person has benefited from criminal conduct;
- (b) that the conditions in sub-paragraphs (b) and (c) of paragraph (4) of Article 40 are fulfilled in relation to any material on the premises; and
- (c) that it would not be appropriate to make an order under Article 40 in relation to the material because -
 - (i) it is not practicable to communicate with any person entitled to produce the material;
 - (ii) it is not practicable to communicate with any person entitled to grant access to the material or entitled to grant entry to the premises on which the material is situated; or
 - (iii) the investigation for the purposes of which the application is made might be seriously prejudiced unless a police officer could secure immediate access to the material.

(4) The conditions to which sub-paragraph (c) of paragraph (2) refers are -

- (a) that there are reasonable grounds for suspecting that a specified person has benefited from any criminal conduct;
- (b) that there are reasonable grounds for suspecting that there is on the premises any such material relating -
 - (i) to the specified person; or
 - (ii) to the question whether that person has benefited from any criminal conduct or to any question as to

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the extent or whereabouts of the proceeds of any criminal conduct,

as 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, but that the material cannot at the time of the application be particularised; and

(c) that -

- (i) it is not practicable to communicate with any person entitled to grant entry to the premises;
- (ii) entry to the premises will not be granted unless a warrant is produced; or
- (iii) the investigation for the purposes of which the application is made might be seriously prejudiced unless a police officer arriving at the premises could secure immediate entry to them.

(5) Where a police officer has entered premises in the execution of a warrant issued under this Article, he may seize and retain any material, other than items subject to legal privilege, that 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 was issued.

(6) No application may be made under this Article without the consent of the Attorney General or a Crown Advocate.

(7) A person who, without reasonable excuse, obstructs a police officer who is executing or attempting to execute a warrant issued under this Article is guilty of an offence and liable to imprisonment for a term not exceeding two years or to a fine or to both.

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ARTICLE 4

Criminal liability of accessories

A person who aids, abets, counsels or procures the commission of an offence under this Law shall be liable to be dealt with, tried and punished as a principal offender.

ARTICLE 43

Orders

(1) The Committee shall consult the Commission before making any Order under this Law.

(2) The Subordinate Legislation (Jersey) Law 1960¹⁹ shall apply to Orders made under this Law.

ARTICLE 44

Rules of Court

The power of the Superior Number of the Royal Court to make Rules of Court under the Royal Court (Jersey) Law 1948²⁰ includes a power to make Rules for the purposes of this Law and, in particular, for the purposes of paragraph (11) of Article 7, paragraphs (4) and (7) of Article 8, paragraph (3) of Article 18, paragraph (5) of Article 21, paragraph (4) of Article 26, paragraph (5) of Article 27, paragraph (11) of Article 28 and paragraph (11) of Article 40.

¹⁹ Tome VIII, page 849.

²⁰ Tome VII, page 502, Volume 1979-1981, page 195, Volume 1984-1985, pages 175 and 178, Volume 1990-1991, page 113, Volume 1992-1993, page 461, and Volume 1996-1997, pages 147, 148 and 665.

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ARTICLE 45

Short title and commencement

This Law may be cited as the Proceeds of Crime (Jersey) Law 199 and shall come into force on such day as the States may by Act appoint and different days may be appointed for different provisions or different purposes of this Law.

*Proceeds of Crime (Jersey) Law 199**FIRST SCHEDULE*

(Articles 1(1), 3(1), (6), (9), 5(2)(a), (5)(a)(ii), (5)(b), 9(1), (3), 12(1), 15(1)(b), (c)(ii), (2)(b), (3), 25(1), 34(1), (2), 35(8))

Offences for which confiscation orders may be made

1. Any offence in the Island for which a person is liable on conviction to imprisonment for a term of one or more years (whether or not he is also liable to any other penalty), but not being -

- (a) a drug trafficking offence; or
- (b) an offence under Article 8, Article 9 or Article 10 of the Prevention of Terrorism (Jersey) Law 1996²¹.

²¹ Volume 1996-1997, pages 187, 189 and 190.

*Proceeds of Crime (Jersey) Law 199**SECOND SCHEDULE*

(Articles 1(1), 36(1), 36(2))

Financial services business

1. Any deposit-taking business, as defined in Article 1(1) of the Banking Business (Jersey) Law 1991²².
2. Any insurance business to which Article 4 of the Insurance Business (Jersey) Law 1996²³ applies.
3. The business of being a functionary of a collective investment fund, as defined in Article 1(1) of the Collective Investment Funds (Jersey) Law 1988²⁴.
4. Any investment business, as defined in Article 1(1) of the Investment Business (Jersey) Law 199²⁵.
5. The business of providing trusteeship services (not being services as a trustee of an occupational pension scheme).
6. The business of company formation.
7. The business of company administration.
8. The business of a bureau de change.
9. The business of providing cheque cashing services.
10. The business of transmitting or receiving funds by wire or other electronic means.

²² Volume 1990-1991, page 481, Volume 1992-1993, pages 93 and 94, and Volume 1998-1999, page 265.

²³ Volume 1996-1997, page 89, and Volume 1998-1999, page 275.

²⁴ Volume 1988-1989, page 135, and Volume 1998-1999, pages 261 and 262.

²⁵ This Law currently awaiting Privy Council sanction (was P.59/98).

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11. The business of engaging in any of the following activities within the meaning of the Annex to the Second Banking Coordination Directive (No. 89/646/EEC) (not being a business specified in any of paragraphs 1 to 10 (inclusive)):

- (a) the acceptance of deposits and other repayable funds from the public;
- (b) lending;
- (c) financial leasing;
- (d) money transmission services;
- (e) the issuing and administering means of payment (such as credit cards, travellers' cheques and bankers' drafts);
- (f) guarantees and commitments;
- (g) trading for one's own account or for the account of customers in -
 - (i) money market instruments (such as cheques, bills and CDs);
 - (ii) foreign exchange;
 - (iii) financial futures and options;
 - (iv) exchange and interest rate instruments; or
 - (v) transferable securities;
- (h) participation in securities issues and the provision of services related to such issues;
- (i) advice to undertakings on capital structure, industrial strategy and related questions and advice and services relating to mergers and the purchase of undertakings;

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- (j) money broking;
- (k) portfolio management and advice;
- (l) the safekeeping and administration of securities;
- (m) credit reference services; and
- (n) safe custody services.