

# **STATES OF JERSEY**



## **DRAFT PROCEEDS OF CRIME (ENFORCEMENT OF CONFISCATION ORDERS) (JERSEY) REGULATIONS 200**

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**Lodged au Greffe on 29th May 2008  
by the Minister for Treasury and Resources**

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**STATES GREFFE**





Jersey

## DRAFT PROCEEDS OF CRIME (ENFORCEMENT OF CONFISCATION ORDERS) (JERSEY) REGULATIONS 200

### REPORT

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1. In October and November of this year the Island's framework to counter money laundering and terrorist financing is to be the subject of a review by the International Monetary Fund. Jersey will be assessed against the international standards set by the Financial Action Task Force on Money Laundering ("FATF"). In order to implement a number of criteria set out in the 40 Recommendations and 9 Special Recommendations of the FATF, against which Jersey will be assessed, a number of amendments were proposed and passed by the States of Jersey last year in respect of the Proceeds of Crime (Jersey) Law 1999, ("POCL") the Drug Trafficking Offences (Jersey) Law 1988 ("DTOL"), the Terrorism (Jersey) Law 2002 ("TL") and the Criminal Justice (International Co-operation) (Jersey) Law 2001 ("CJICL"). These amendments are now in force.
  2. One of the amendments passed in respect of each of the laws referred to above sought to implement Recommendation 38, which requires countries to have appropriate laws and procedures in place to provide an effective and timely response to mutual legal assistance. Mutual legal assistance is the formal way in which countries request and provide assistance in obtaining evidence located in one country to assist in criminal investigations or proceedings in another country.
  3. Prior to the amendment of the POCL, DTOL, TL and CJICL the provision of assistance to another jurisdiction to enable the enforcement of an external confiscation order under the POCL and DTOL, or an external restraint or forfeiture order under the TL, or the enforcement of an overseas forfeiture order under the CJICL was dependant on that jurisdiction being listed as a designated country or territory to whom assistance could be given. There was concern that Jersey would be criticised for not providing "*effective*" mutual legal assistance because the list of designated countries had not been kept up to date in recent years. Instead of updating the list of countries and territories (contained in Regulations issued under the various Laws), the better solution was considered to be that the list of countries and territories should be abandoned and that assistance should be offered on a case by case basis. This was the approach adopted in the amendments to the various Laws, which are now in force.
  4. An "external confiscation order" was defined by Article 1 of the POCL, prior to amendment, as meaning 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 Schedule 1;
    - (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;
  5. Article 39 POCL previously provided that 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 was satisfied that at the time of registration the order was in force and was not subject to appeal;
    - (b) it was satisfied, where the person against whom the order is made did not appear in the proceedings, that the person received notice of the proceedings in sufficient time to enable the person to defend them; and

- (c) it was of the opinion that enforcing the order in Jersey would not be contrary to the interests of justice.
6. The definition of external confiscation order in Article 1 of the POCL has now been amended so that it means an order made by a court in a country or territory outside Jersey –
    - (a) for the purpose of recovering property obtained as a result of or in connection with conduct corresponding to an offence specified in Schedule 1;
    - (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;
  7. Article 39 has also been amended to remove the reference to a designated country or territory.
  8. As explained, the amendments mean that external confiscation orders from any jurisdiction are now capable of being registered by the Royal Court and that the enforcement in Jersey of external confiscation orders under the POCL is no longer conditional on countries or territories being designated. However, the designated countries and territories remain listed in the Regulations made under the POCL. Instead of amending the existing Regulations, it has been decided, in the interests of clarity, that the current Regulations should be repealed and replaced.
  9. These draft Regulations would replace the current Proceeds of Crime (Designated Countries and Territories) (Jersey) Regulations 1999 with provisions which are substantially the same as those contained in the current Regulations except that: (i) the references to designated countries and territories are removed and (ii) references to any provisions which have been repealed or amended as a result of the changes to the primary legislation have been altered.

#### **Financial/Manpower Implications**

These Regulations have no financial or manpower resource implications for the States.

## Explanatory Note

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These Regulations would replace the Proceeds of Crime (Designated Countries and Territories) (Jersey) Regulations 1999. The principal change made in them is to enable the Royal Court to register confiscation orders made in any country or territory outside Jersey, rather than only those orders made in countries or territories designated in Regulations. A “confiscation order” is an order for the recovery of an amount of money which represents the benefits that an offender has gained from an offence of a kind specified in the Proceeds of Crime (Jersey) Law 1999 (the “principal Law”). An “external confiscation order” is one made by a country or territory outside Jersey.

### *Interpretation*

*Regulation 1* defines expressions.

### *Enforcement in Jersey of external confiscation orders*

*Regulation 2* applies the principal Law to external confiscation orders, and proceedings which may result in such an order being made, with modifications that are set out in Schedule 1. It also gives effect to Schedule 2, in which the principal Law, as modified, is reproduced.

*Regulation 3* describes the proof required to establish the authenticity of an order or judgment of a country or territory outside Jersey, or a copy.

*Regulation 4* describes the information that may be admissible in evidence in proceedings in Jersey if contained in a certificate purporting to be issued by the appropriate authority of a country or territory outside Jersey. It is for the Royal Court to determine who is the appropriate authority in any case.

*Regulation 5* describes information that may be admissible in evidence in proceedings in Jersey if contained in a certificate made by the Attorney General.

*Regulation 6* provides that an application for registration of an external confiscation order is made by the Attorney General, representing the country or territory outside Jersey.

### *Enforcement outside Jersey of confiscation order made in Jersey*

*Regulation 7* provides that the amount due on a confiscation order made in Jersey shall be reduced by the value of any property recovered in another country or territory, following a request for assistance by the Attorney General. It also makes provision as to the admissibility of evidence regarding property recovered in another country or territory.

### *Miscellaneous and closing*

*Regulation 8* applies to confiscation orders made in Jersey and to external confiscation orders. It makes provision as to the exchange rate to be used when determining the value of recovered property which is expressed in a value other than sterling.

*Regulation 9* revokes the Proceeds of Crime (Designated Countries and Territories) (Jersey) Regulations 1999.

*Regulation 10* provides for the citation and commencement of the Regulations.





Jersey

# DRAFT PROCEEDS OF CRIME (ENFORCEMENT OF CONFISCATION ORDERS) (JERSEY) REGULATIONS 200

## Arrangement

### Regulation

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		<i>Interpretation</i>
<u>1</u>	<u>Interpretation</u>	
		<i>Enforcement in Jersey of external confiscation orders</i>
<u>2</u>	<u>Application of the Law in relation to countries and territories outside Jersey</u>	
<u>3</u>	<u>Proof of orders of a court in a country or territory outside Jersey</u>	
<u>4</u>	<u>Evidence of proceedings and orders in a country or territory outside Jersey</u>	
<u>5</u>	<u>Evidence as to appropriate authority of a country or territory outside Jersey</u>	
<u>6</u>	<u>Representation of overseas governments in Royal Court</u>	
		<i>Enforcement outside Jersey of confiscation order made in Jersey</i>
<u>7</u>	<u>Satisfaction of confiscation orders in a country or territory outside Jersey</u>	
		<i>Miscellaneous and closing</i>
<u>8</u>	<u>Conversion of currency</u>	
<u>9</u>	<u>Revocation</u>	
<u>10</u>	<u>Citation</u>	

### SCHEDULE 1

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#### MODIFICATION OF THE PROCEEDS OF CRIME (JERSEY) LAW 1999

<u>1</u>	<u>Article 1 amended</u>
<u>2</u>	<u>Article 2 amended</u>
<u>3</u>	<u>Heading to Part 2 substituted</u>
<u>4</u>	<u>Articles 3 to 14 omitted</u>
<u>5</u>	<u>Article 15 substituted</u>
<u>6</u>	<u>Article 16 amended</u>
<u>7</u>	<u>Article 17 amended</u>
<u>8</u>	<u>Articles 18 and 19 omitted</u>
<u>9</u>	<u>Article 20 amended</u>
<u>10</u>	<u>Article 21 omitted</u>
<u>11</u>	<u>Article 22 amended</u>
<u>12</u>	<u>Article 24 amended</u>
<u>13</u>	<u>Articles 25 to 28A omitted</u>
<u>14</u>	<u>Part 3 omitted</u>
<u>15</u>	<u>Heading to Part 4 substituted</u>
<u>16</u>	<u>Article 38 omitted</u>
<u>17</u>	<u>Articles 40 to 43 omitted</u>
<u>18</u>	<u>Article 44 amended</u>

<u>19</u>	<u>Schedule 1 amended</u>
<u>20</u>	<u>Schedules 2 and 3 omitted</u>

## **SCHEDULE 2**

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THE PROCEEDS OF CRIME (JERSEY) LAW 1999, AS MODIFIED BY SCHEDULE 1







Jersey

# **DRAFT PROCEEDS OF CRIME (ENFORCEMENT OF CONFISCATION ORDERS) (JERSEY) REGULATIONS 200**

*Made*

*[date to be inserted]*

*Coming into force*

*[date to be inserted]*

**THE STATES**, in pursuance of Articles 28A and 38 of the Proceeds of Crime (Jersey) Law 1999<sup>[1]</sup>, have made the following Regulations –

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## *Interpretation*

### **1 Interpretation**

In these Regulations, unless the context otherwise requires –

“appropriate authority” means, when used in relation to a country or territory outside Jersey, the authority appearing to the Royal Court to be the appropriate authority of that country or territory for the purposes of these Regulations;

“court”, when used to refer to a court of a country or territory outside Jersey, includes a court of any state or territory within that country or territory;

“Law” means the Proceeds of Crime (Jersey) Law 1999<sup>[2]</sup> and, in Regulations 3, 4, 6 and 8(2), that Law as modified by these Regulations.

- (2) In these Regulations, a reference to an order of a court of a country or territory outside Jersey includes a reference to a judgment of a court.

## *Enforcement in Jersey of external confiscation orders*

### **2 Application of the Law in relation to countries and territories outside Jersey**

- (1) The Law shall apply to –
- (a) external confiscation orders; and
  - (b) proceedings that have been or are to be instituted in a country or territory outside Jersey and may result in an external confiscation order being made there,
- with the modifications specified in Schedule 1.
- (2) Schedule 2 has effect to reproduce the Law as modified by Schedule 1.

### **3 Proof of orders of a court in a country or territory outside Jersey**

- (1) For the purposes of these Regulations and the Law –

- (a) an order made by a court in a country or territory outside Jersey, purporting to bear the seal of that court or to be signed by any person in the person's capacity as a judge, magistrate or officer of the court, shall be taken without further proof to have been duly sealed or (as the case may be) to have been signed by that person; and
  - (b) a duly authenticated document, purporting to be a copy of any order made by a court in a country or territory outside Jersey, shall be taken without further proof to be a true copy.
- (2) A document is duly authenticated for the purpose of paragraph (1)(b) if it purports to be certified—
- (a) by any person in the person's capacity as a judge, magistrate or officer of the court in question; or
  - (b) by or on behalf of the appropriate authority of the country or territory outside Jersey.

#### **4 Evidence of proceedings and orders in a country or territory outside Jersey**

- (1) For the purposes of these Regulations and the Law, a certificate purporting to be issued by or on behalf of the appropriate authority of a country or territory outside Jersey and stating —
- (a) that proceedings have been instituted and have not been concluded there, or that proceedings are to be instituted there;
  - (b) that the defendant has been notified, in accordance with the laws of the country or territory, that proceedings have begun there against the person in respect of an offence;
  - (c) that an external confiscation order is in force there and is not subject to appeal;
  - (d) that all or a certain amount of the sum payable under an external confiscation order remains unpaid in that country or territory, or that other property recoverable under an external confiscation order remains unrecovered there;
  - (e) that any person has been notified of any proceedings in accordance with the law of that country or territory;
  - (f) that an order (however described) made or to be made by a court of that country or territory has the purpose or (as the case may be) will have the purpose of recovering property obtained as a result of or in connection with criminal conduct or the value of property so obtained; or
  - (g) that an order (however described) made or to be made by a court of that country or territory has the purpose or (as the case may be) will have the purpose of depriving a person of a pecuniary advantage obtained as a result of or in connection with criminal conduct,
- shall, in any proceedings in the Royal Court, be admissible as evidence of the facts so stated.
- (2) In any such proceedings in the Royal Court, a statement contained in a duly authenticated document that purports —
- (a) to have been received in evidence;
  - (b) to be a copy of a document so received; or
  - (c) to set out or summarize evidence given in proceedings in a court in a country or territory outside Jersey,
- shall be admissible as evidence of any fact contained in that statement.
- (3) A document is duly authenticated for the purposes of paragraph (2) if it purports to be certified—
- (a) by any person in the person's capacity as a judge, magistrate or officer of the court in the country or territory outside Jersey; or
  - (b) by or on behalf of the appropriate authority of that country or territory,
- as having been received in evidence or as being a copy of a document so received, or (as the case may be) as being the original document containing or summarizing the evidence or as being a true copy of that document.
- (4) Nothing in this Regulation shall prejudice the admission of any evidence, whether contained in any

document or in any other form, that is admissible apart from this Regulation.

## **5 Evidence as to appropriate authority of a country or territory outside Jersey**

A certificate by the Attorney General stating that an authority specified in that certificate is the appropriate authority of a country or territory outside Jersey for the purposes of these Regulations shall be sufficient evidence of that fact.

## **6 Representation of overseas governments in Royal Court**

- (1) In any proceedings in the Royal Court under the Law, the government of a country or territory outside Jersey shall be represented by the Attorney General.
- (2) In any such proceedings in the Royal Court a request for assistance sent to the Attorney General by the appropriate authority of a country or territory outside Jersey shall, unless the contrary is shown, constitute the authority of the government of that country or territory for the Attorney General to act on the government's behalf.

### *Enforcement outside Jersey of confiscation order made in Jersey*

## **7 Satisfaction of confiscation orders in a country or territory outside Jersey**

- (1) Where –
  - (a) a confiscation order has been made under Article 3 of the Law;
  - (b) a request has been sent by the Attorney General to the appropriate authority of a country or territory outside Jersey for assistance in enforcing that order; and
  - (c) in execution of that request, property is recovered in that country or territory,the amount payable under the confiscation order shall be treated as reduced by the value of the property so recovered.
- (2) For the purposes of this Regulation, and without prejudice to the admissibility of any evidence otherwise than under this paragraph, a certificate purporting to be issued by or on behalf of the appropriate authority of a country or territory outside Jersey and stating –
  - (a) that property has been recovered there in execution of a request by the Attorney General;
  - (b) the value of the property so recovered; and
  - (c) the date on which it was recovered,shall, in any proceedings under the Law in the Royal Court, be admissible as evidence of the facts so stated.

### *Miscellaneous and closing*

## **8 Conversion of currency**

- (1) Where the value of property recovered in the circumstances described in Regulation 7(1) is expressed in a currency other than that of Jersey, the extent to which the amount payable under the confiscation order is to be reduced under that paragraph shall be calculated on the basis of the exchange rate prevailing on the date on which the property was recovered in the country or territory outside Jersey concerned.
- (2) Where an amount of money payable or remaining to be paid under an external confiscation order registered in the Royal Court under Article 39(1) of the Law is expressed in a currency other than that of Jersey, the amount shall for the purposes of any action taken under the Law in relation to that

order be converted into the currency of Jersey on the basis of the exchange rate prevailing on the date of registration of the order.

- (3) For the purposes of this Regulation, a written certificate –
- (a) purporting to be signed by a person acting in the person's capacity as an officer of any bank in Jersey; and
  - (b) stating the exchange rate prevailing on a specified date,
- shall be admissible as evidence of the facts so stated.

## **9 Revocation**

The Proceeds of Crime (Designated Countries and Territories) (Jersey) Regulations 1999 shall be revoked.

## **10 Citation**

These Regulations may be cited as the Proceeds of Crime Enforcement of Confiscation Orders) (Jersey) Regulations 200- and shall come into force 7 days after they are made.

## SCHEDULE 1

(Regulation 2(1))

### MODIFICATION OF THE PROCEEDS OF CRIME (JERSEY) LAW 1999

**DRAFTSMAN'S NOTE THESE MODIFICATIONS REQUIRE REVIEW ONCE THE IMF AMENDMENTS TO THE LAW HAVE BEEN ADOPTED**

#### 1 Article 1 amended

- (1) In Article 1(1), the following definitions shall be omitted—
  - “to benefit from relevant criminal conduct”,
  - “to benefit from an offence”,
  - “to benefit from criminal conduct”,
  - “exported”,
  - “financial services business”,
  - “investigation”,
  - “items subject to legal privilege”,
  - “legal privilege”,
  - “modifications”,
  - “money laundering”,
  - “proceeds of criminal conduct”,
  - “relevant criminal conduct”.
- (2) In Article (1)(1)—
  - (a) at the end of the definition of “confiscation order” there shall be added the words “of this Law disregarding any modification made by the Enforcement Regulations”;
  - (b) for the definition of “criminal conduct” there shall be substituted the following definition —
    - “‘criminal conduct’ means conduct corresponding to an offence specified in Schedule 1;”;
  - (c) for the definition of “defendant” there shall be substituted the following definition —
    - “‘defendant’ means —
    - (a) a person against whom an external confiscation order has been made; or
    - (b) a person against whom proceedings have been or are to be instituted in a court in a country or territory outside Jersey that may result in an external confiscation order being made;”;
  - (d) in sub-paragraph (a) of the definition of “external confiscation order”, for the words “conduct corresponding to an offence specified in Schedule 1” there shall be substituted the words “criminal conduct”;
  - (e) for the definitions of “gift caught by Part 2” and “gift caught by this Part” there shall be substituted the following definition —
    - “‘gift caught by this Law’ has the meaning given in Article 2(9);”.
- (3) In Article 1(1), there shall be inserted in its appropriate alphabetical order the following definition—
  - “‘Enforcement Regulations’ means the Proceeds of Crime (Enforcement of Confiscation Orders) (Jersey) Regulations 200;”.
- (4) In Article 1(2)—

- (a) in sub-paragraph (a)–
    - (i) the words “with the commission of an offence or” shall be deleted,
    - (ii) after the words “and in some other connection” there shall be inserted the words “(whether received before or after the commencement of the Enforcement Regulations)”;
  - (b) in sub-paragraph (b)–
    - (i) the words “with the commission of an offence or” shall be deleted,
    - (ii) the words “the commission of that offence, or” shall be deleted.
- (5) For Article 1(3), (4), (5) and (6) there shall be substituted the following paragraphs–
- “(3) For the purposes of this Law, proceedings are instituted in a country or territory outside Jersey when –
    - (a) the defendant has been notified in writing in accordance with the laws of that country or territory proceedings have begun there against the defendant in respect of an offence; or
    - (b) an application has been made to a court in that country or territory for an external confiscation order,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 earlier of those times.
  - (4) Proceedings for an offence are concluded –
    - (a) when (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an external confiscation order being made in the proceedings; or
    - (b) on the satisfaction of an external confiscation order made in the proceedings, whether by the recovery of all property liable to be recovered or the payment of any amount due.”.
- (6) For Article 1(7) there shall be substituted the following paragraph–
- “(7) For the purposes of this Law, an external confiscation order is satisfied when no property remains liable to be recovered under it, or no amount is due under it.”.
- (7) In Article 1(8)–
- (a) for the words “Part 2” there shall be substituted the words “this Law”;
  - (b) for the words “an order” there shall be substituted the words “an external confiscation order”.

## **2 Article 2 amended**

- (1) For Article 2(1), (2) and (3) there shall be substituted the following paragraphs–
- “(1) In this Law, “realisable property” means –
    - (a) in relation to an external confiscation order in respect of specified property, the property that is specified in the order; and
    - (b) in any other case –
      - (i) any property held by the defendant,
      - (ii) any property held by a person to whom the defendant has directly or indirectly made a gift caught by this Law, and
      - (iii) any property to which the defendant is beneficially entitled.
  - (2) However, property is not realisable property if –
    - (a) a confiscation order;

- (bb) an order under Article 9 of the Proceeds of Crime (Cash Seizure) (Jersey) Law 2008;
  - (b) an order under Article 16C of the Drug Trafficking Offences (Jersey) Law 1988 or
  - (c) an order under Article 29 of the Misuse of Drugs (Jersey) Law 1978 is in force in respect of the property.”.
- (2) For the words “Part 2”, wherever they appear in Article 2(4), (5) and (7), there shall be substituted the words “this Law”.
- (3) For Article 2(9) there shall be substituted the following paragraph–
  - “(9) A gift (including a gift made before the commencement of the Enforcement Regulations) is caught by this Law if –
    - (a) it was made by the defendant at any time after the conduct to which the external confiscation order relates; and
    - (b) the Court considers it appropriate in all the circumstances to take the gift into account.”.
- (4) For the words “Part 2” in Article 2(10) there shall be substituted the words “this Law”.

### **3 Heading to Part 2 substituted**

For the heading to Part 2 there shall be substituted the following heading –

“EXTERNAL CONFISCATION ORDERS”.

### **4 Articles 3 to 14 omitted**

Articles 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14 shall be omitted.

### **5 Article 15 substituted**

For Article 15 there shall be substituted the following Article–

#### **“15 Cases in which saisies judiciaires may be made**

- (1) The powers conferred on the Court by Article 16 are exercisable where–
  - (a) proceedings have been instituted against the defendant in a country or territory outside Jersey and –
    - (i) the proceedings have not been concluded, and
    - (ii) either an external confiscation order has been made in the proceedings, or it appears to the Court that there are reasonable grounds for believing that such an order may be made in the proceedings; or
  - (b) it appears to the Court that proceedings are to be instituted against the defendant in a country or territory outside Jersey, and that there are reasonable grounds for believing that an external confiscation order may be made in those proceedings.
- (2) Where the Court has made an order under Article 16 by virtue of paragraph (1)(b), the Court shall discharge the order if the proceedings have not been instituted within such time as the Court considers reasonable.”.



**6 Article 16 amended**

- (1) For the words “an application made by or on behalf of the Attorney General” in Article 16(1) there shall be substituted the words “an application made on behalf of the government of a country or territory outside Jersey”.
- (2) For Article 16(6)(b) there shall be substituted the following subparagraph –
  - “(b) shall be discharged when the proceedings in relation to which it was made are concluded.”.

**7 Article 17 amended**

In Article 17(1)–

- (a) for sub-paragraphs (a), (b) and (c) there shall be substituted the following subparagraph –
  - “(a) an external confiscation order has been registered under Article 39; and”;
- (b) after the words “the Court may” there shall be inserted the words “on an application by the Attorney General”.

**8 Articles 18 and 19 omitted**

Articles 18 and 19 shall be omitted.

**9 Article 20 amended**

For the words “confiscation order”, wherever they appear in Article 20(1), (2) and (3), there shall be substituted the words “external confiscation order”.

**10 Article 21 omitted**

Article 21 shall be omitted.

**11 Article 22 amended**

In Article 22(2), the numbers “, 18, 19” shall be omitted.

**12 Article 24 amended**

- (1) For Article 24(2)(a) there shall be substituted the following subparagraph –
  - “(a) recovered under or in satisfaction of an external confiscation order; or”.
- (2) After Article 24(8) there shall be inserted the following paragraph–
  - “(9) In this Article, ‘criminal conduct’ includes criminal conduct as defined in this Law, disregarding any modification made by the Enforcement Regulations.”.

**13 Articles 25 to 28A omitted**

Articles 25, 26, 27, 28 and 28A shall be omitted.

**14 Part 3 omitted**

Part 3 shall be omitted.

**15 Heading to Part 4 substituted**

For the heading to Part 4 there shall be substituted the following heading –

“REGISTRATION OF EXTERNAL CONFISCATION ORDERS”

**16 Article 38 omitted**

Article 38 shall be omitted.

**17 Articles 40 to 43 omitted**

Articles 40, 41, 41A, 42 and 43 shall be omitted.

**18 Article 44 amended**

In Article 44, all of the words following the words “the purposes of this Law” shall be deleted.

**19 Schedule 1 amended**

In Schedule 1 –

- (a) for the words “(Articles 1(1), 3(1), (6), (9), 5(2)(a), (5)(a)(ii), (5)(b), 9(1), (3), 12(1), 15(1)(b), (c)(i) (2)(b), (3), 25(1), 34(1), (2) and 35(8))” there shall be substituted the words “(Article 1(1))”;
- (b) for the words “Offences for which confiscation orders may be made” there shall be substituted the words “Offences that are relevant to the definition of “criminal conduct” ”.

**20 Schedules 2 and 3 omitted**

Schedules 2 and 3 shall be omitted.

## **SCHEDULE 2**

(Regulation 2(2))

### **THE PROCEEDS OF CRIME (JERSEY) LAW 1999 AS MODIFIED BY SCHEDULE 1**

## **PART 1**

### **INTRODUCTORY**

#### **1 Interpretation**

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

“Commission” and “Financial Services Commission” mean the Jersey Financial Services Commission established by Article 2 of the Financial Services Commission (Jersey) Law 1998

“competent authority” means a competent authority for the purposes of Article 3(3) of the Investigation of Fraud (Jersey) Law 1991;

“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, 12 or 13 of this Law disregarding any modification made by the Enforcement Regulations;

“Court” means the Royal Court;

“criminal conduct” means conduct corresponding to an offence specified in Schedule 1;

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

“defendant” means –

- (a) a person against whom an external confiscation order has been made; or
- (b) a person against whom proceedings have been or are to be instituted in a court in a country or territory outside Jersey that may result in an external confiscation order being made;

“drug trafficking offence” has the meaning given in Article 1(1) of the Drug Trafficking Offences (Jersey) Law 1988

“Enforcement Regulations” means the Proceeds of Crime (Enforcement of Confiscation Orders) (Jersey) Regulations 2000;

“external confiscation order” means an order made by a court in a country or territory outside Jersey –

- (a) for the purpose of recovering property obtained as a result of or in connection with criminal conduct;
- (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;

“gift caught by this Law” has the meaning given in Article 2(9);

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

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

“Minister” means the Minister for Treasury and Resources;

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

“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;

“property” means all property, whether movable or immovable, or vested or contingent, and whether situated in Jersey or elsewhere;

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

“*saisie judiciaire*” means an order to which Article 16(1) refers;

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

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

- (2) For the purposes of this Law –
- (a) references to property obtained, or to a pecuniary advantage derived, in connection with criminal conduct include a reference to property obtained or to a pecuniary advantage derived both in that connection and in some other connection (whether received before or after the commencement of the Enforcement Regulations); and
  - (b) where a person derives a pecuniary advantage as a result of or in connection with criminal conduct, the person is to be treated as if the person had obtained as a result of or in connection with that conduct, a sum of money equal to the value of the pecuniary advantage.
- (3) For the purposes of this Law, proceedings are instituted in a country or territory outside Jersey when –
- (a) the defendant has been notified in writing in accordance with the laws of that country or territory that proceedings have begun there against the defendant in respect of an offence; or
  - (b) an application has been made to a court in that country or territory for an external confiscation order,
- 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 earlier of those times.
- (4) Proceedings for an offence are concluded –
- (a) when (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an external confiscation order being made in the proceedings; or
  - (b) on the satisfaction of an external confiscation order made in the proceedings, whether by the recovery of all property liable to be recovered or the payment of any amount due.
- (7) For the purposes of this Law, an external confiscation order is satisfied when no property remains liable to be recovered under it, or no amount is due under it.
- (8) For the purposes of this Law, an external confiscation 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.

## **2 Meanings of expressions relating to realisable property**

- (1) In this Law, “realisable property” means –
- (a) in relation to an external confiscation order in respect of specified property, the property that is specified in the order; and
  - (b) in any other case –
    - (i) any property held by the defendant,
    - (ii) any property held by a person to whom the defendant has directly or indirectly made a gift caught by this Law, and
    - (iii) any property to which the defendant is beneficially entitled.
- (2) However, property is not realisable property if –
- (a) a confiscation order;
  - (bb) an order under Article 9 of the Proceeds of Crime (Cash Seizure) (Jersey) Law 2008;

- (b) an order under Article 16C of the Drug Trafficking Offences (Jersey) Law 1988 or
  - (c) an order under Article 29 of the Misuse of Drugs (Jersey) Law 1978
- is in force in respect of the property.

- (4) Subject to the following provisions of this Article, for the purposes of this Law 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 this Law 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 the person when the person 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 the person holds –
  - (a) the property that the person obtained (not being cash); or
  - (b) property that, in whole or in part, directly or indirectly represents in the person’s hands the property that the person obtained,the value referred to in paragraph (5)(b) is the value to the person 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 the person obtained.
- (7) Subject to paragraph (10), references in this Law to the value at any time (referred to in paragraph (8) as the “material time”) of a gift caught by this Law are references to –
  - (a) the value of the gift to the recipient when he or she 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 the person holds –
  - (a) the property that he or she received (not being cash); or
  - (b) property that, in whole or in part, directly or indirectly represents in his or her hands the property that he or she received,the value referred to in paragraph (7)(b) is the value to him or her 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 or she received.
- (9) A gift (including a gift made before the commencement of the Enforcement Regulations) is caught by this Law if –
  - (a) it was made by the defendant at any time after the conduct to which the external confiscation order relates; and
  - (b) the Court considers it appropriate in all the circumstances to take the gift into account.
- (10) For the purposes of this Law –
  - (a) the circumstances in which the defendant is to be treated as making a gift include those where the defendant 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 2

### EXTERNAL CONFISCATION ORDERS

#### 15 Cases in which saisies judiciaires may be made

- (1) The powers conferred on the Court by Article 16 are exercisable where—
  - (a) proceedings have been instituted against the defendant in a country or territory outside Jersey and —
    - (i) the proceedings have not been concluded, and
    - (ii) either an external confiscation order has been made in the proceedings, or it appears to the Court that there are reasonable grounds for believing that such an order may be made in the proceedings; or
  - (b) it appears to the Court that proceedings are to be instituted against the defendant in a country or territory outside Jersey, and that there are reasonable grounds for believing that an external confiscation order may be made in those proceedings.
- (2) Where the Court has made an order under Article 16 by virtue of paragraph (1)(b), the Court shall discharge the order if the proceedings have not been instituted within such time as the Court considers reasonable.

#### 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 on behalf of the government of a country or territory outside Jersey.
- (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 Jersey 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 the person 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 paragraph (4)(a) 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 when the proceedings in relation to which it was made are concluded.
- (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 the Bailiff's 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 Jersey, 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 Jersey.
- (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 Jersey, seize the property.
- (11) Property seized under paragraph (10) shall be dealt with in accordance with the Court’s directions.

## **17 Realisation of property**

- (1) Where –
  - (a) an external confiscation order has been registered under Article 39; and
  - (d) the Court has made a *saisie judiciaire*,the Court may on an application by the Attorney General empower the Viscount to realise, in such manner as it may direct, any realisable property that has vested in the Viscount or come into the Viscount’s 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.

## **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 the Viscount or come into the Viscount’s possession pursuant to Article 16; and
  - (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 external confiscation order.
- (2) The amount applied by the Viscount towards the satisfaction of the external confiscation order shall be paid into the Criminal Offences Confiscations Fund.
- (3) If, after payment of the Viscount’s fees and expenses and of the amount payable under the external 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.

## **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 the person bankrupt; and
  - (b) no proceeds of property realised by virtue of Article 16(4) or 17 for the time being in the hand of the Viscount,

shall form part of the person's estate for the relevant bankruptcy proceedings.

- (2) Where a person has become bankrupt, the powers conferred on the Court by Articles 16, 17 and 20 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 (*adjudé 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 the person became bankrupt.

### **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 the Viscount would be entitled to take if it were such property; and
- (b) believes and has reasonable grounds for believing that the Viscount is entitled to take that action in relation to that property,

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

### **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 Minister.
- (2) All amounts –
  - (a) recovered under or in satisfaction of an external confiscation order; or
  - (b) received under an asset 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.
- (3A) The Fund shall be a special fund for the purposes of the Public Finances (Jersey) Law 2005.
- (4) Subject to paragraph (5), monies in the Fund shall be applied by the Minister for the following purposes, that is to say –
  - (a) in promoting or supporting measures that, in the opinion of the Minister, may assist –
    - (i) in preventing, suppressing or otherwise dealing with criminal conduct,
    - (ii) in dealing with the consequences of criminal conduct, or
    - (iii) without prejudice to the generality of clauses (i) and (ii), in facilitating the enforcement of any enactment dealing with criminal conduct;
  - (b) discharging Jersey's obligations under asset sharing agreements; and
  - (c) meeting the expenses incurred by the Minister in administering the Fund.
- (5) Before promoting or supporting any measure under paragraph (4)(a), the Minister shall consult the Attorney General and other persons or bodies (including other Ministers) as the Minister 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 States, in a current or deposit account with one or more banks selected by the Minister,

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

- (7) Monies held in any account by virtue of paragraph (6)(b) may be withdrawn on the signature of the Treasurer of the States.
- (8) In this Article, “asset sharing agreement” means any agreement or arrangement made by or on behalf of Jersey with a country or territory outside Jersey for the sharing of the proceeds of criminal conduct that, as a result of mutual assistance, have been confiscated or forfeited either in Jersey or elsewhere.
- (9) In this Article, “criminal conduct” includes criminal conduct as defined in this Law, disregarding any modification made by the Enforcement Regulations.

## **PART 4**

### REGISTRATION OF EXTERNAL CONFISCATION ORDERS

#### **39 Registration of external confiscation orders**

- (1) On the application of the Attorney General, the Court may register an external confiscation order 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 the person received notice of the proceedings in sufficient time to enable the person to defend them; and
  - (c) it is of the opinion that enforcing the order in Jersey 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 against whom it was made serving imprisonment in default of payment or by any other means.

## **PART 5**

### MISCELLANEOUS

#### **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 1948 includes a power to make Rules for the purposes of this Law.

#### **45 Citation**

This Law may be cited as the Proceeds of Crime (Jersey) Law 1999.

## **SCHEDULE 1**

(Article 1(1))

### **OFFENCES THAT ARE RELEVANT TO THE DEFINITION OF “CRIMINAL CONDUCT”**

Any offence in Jersey for which a person is liable on conviction to imprisonment for a term of one or more years (whether or not the person is also liable to any other penalty), but not being a drug trafficking offence

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[1]

*chapter 08.780*

[2]

*chapter 08.780*