

**DRAFT PROCEEDS OF CRIME (DESIGNATED COUNTRIES
AND TERRITORIES) (JERSEY) REGULATIONS 199**

**Lodged au Greffe on 7th September 1999
by the Finance and Economics Committee**



STATES OF JERSEY

STATES GREFFE

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Explanatory Note

The effect of these Regulations, which would be made under the Proceeds of Crime (Jersey) Law 1999, is as follows:

- (a) They designate overseas countries and territories whose confiscation orders in respect of the proceeds of criminal conduct will be recognized in Jersey.
- (b) They apply the Law, with modifications, so as to enable the enforcement of such orders in Jersey on behalf of the overseas authorities concerned.
- (c) They provide for the reduction of the amount owing under a confiscation order made in the Island, to the extent that it is recovered in an overseas country or territory at the request of the Attorney General of Jersey.

The Regulations also contain incidental provisions relating to evidence.

If made, they will come into force on the day following their promulgation.

Proceeds of Crime (Jersey) Law 1999

PROCEEDS OF CRIME (DESIGNATED COUNTRIES AND
TERRITORIES) (JERSEY) REGULATIONS 1999

(Promulgated on the day of 1999)

STATES OF JERSEY

The day of 1999

THE STATES, in pursuance of Article 38 of the Proceeds of Crime (Jersey) Law 1999¹ (hereinafter referred to as “the Law”), have made the following Regulations -

Interpretation

1.-(1) In these Regulations, unless the context otherwise requires -

“appropriate authority”, when used in relation to a designated country or territory, means -

- (a) the authority specified opposite that country or territory in the First Schedule to these Regulations; or
- (b) where no authority is so specified, the authority appearing to the Royal Court to be the appropriate authority of that country or territory for the purposes of these Regulations;

“court” -

¹ Recueil des Lois, Volume 1999, page 183.

- (a) when used to refer to a court of a designated country, includes a court of any state or territory of that designated country; and
- (b) when used to refer to a court of a designated territory, includes a court of any state or territory of or within that designated territory;

“designated”, when used to refer to a country or territory, means designated under Regulation 2 of these Regulations;

“the modified Law” means the Law as modified by -

- (a) paragraph (1) of Regulation 3 of these Regulations; and
- (b) the Second Schedule to these Regulations;

“the unmodified Law” means the Law read as if it had not been modified by these Regulations.

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

Designation of countries and territories overseas

2. Each of the countries and territories specified in the First Schedule to these Regulations is a designated country or territory, as the case may be, for the purposes of these Regulations and the modified Law.

Application of the Law in relation to designated countries and territories

3.-(1) In relation to a designated country or territory the Law shall apply, subject to the modifications specified in the Second Schedule to these Regulations, to -

- (a) external confiscation orders; and

- (b) proceedings that have been or are to be instituted in that country or territory and may result in an external confiscation order being made there.

(2) The full text of the modified Law is set out in the Third Schedule to these Regulations.

Proof of overseas court orders

4.-(1) For the purposes of these Regulations and the modified Law -

- (a) an order made by a court in a designated country or territory, purporting to bear the seal of that court or to be signed by any person in his 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 designated country or territory, shall be taken without further proof to be a true copy.

(2) A document is duly authenticated for the purpose of subparagraph (b) of paragraph (1) of this Regulation if it purports to be certified by any person in his capacity as a judge, magistrate or officer of the court in question or by or on behalf of the appropriate authority of the designated country or territory.

Evidence of proceedings overseas

5.-(1) For the purposes of these Regulations and the modified Law, a certificate purporting to be issued by or on behalf of the appropriate authority of a designated country or territory, and stating -

- (a) that proceedings have been instituted and have not been concluded there, or that proceedings are to be instituted there;

- (b) (where no steps have been specified in relation to that country or territory in the right-hand column of the Second Schedule to the modified Law) that the defendant has been notified, in the manner specified in sub-paragraph (b) of paragraph (3) of Article 1 of the modified Law, that the competent authorities of that country or territory have begun proceedings against him in respect of an offence;
- (c) that an external confiscation order is in force and is not subject to appeal;
- (d) that all or a certain amount of the sum payable under an external confiscation order remains unpaid in 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 designated country or territory,

shall be admissible as evidence of any fact contained in that statement.

(3) A document is duly authenticated for the purposes of paragraph (2) of this Regulation if it purports to be certified -

- (a) by any person in his capacity as a judge, magistrate or officer of the court in the designated country or territory; 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.

Evidence as to appropriate overseas authorities

6. Where no appropriate authority is specified in the First Schedule to these Regulations in relation to a designated country or territory, a certificate by the Attorney General stating that an authority specified in that certificate is the appropriate authority of that country or territory for the purposes of these Regulations shall be sufficient evidence of that fact.

Representation of overseas governments in Royal Court

7.-(1) In any proceedings in the Royal Court under the modified Law, the government of a designated country or territory 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 designated country or territory shall, unless the contrary is shown,

constitute the authority of the government of that country or territory for the Attorney General to act on its behalf.

Satisfaction of the Island's confiscation orders overseas

8.-(1) Where -

- (a) a confiscation order has been made under Article 3 of the unmodified Law;²
- (b) a request has been sent by the Attorney General to the appropriate authority of a designated country or territory 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 designated country or territory 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 unmodified Law in the Royal Court, be admissible as evidence of the facts so stated.

Conversion of currency

9.-(1) Where the value of property recovered in the circumstances described in paragraph (1) of Regulation 8 of these

² Recueil des Lois, Volume 1999, page 127.

Regulations is expressed in a currency other than that of the Island, 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 designated country or territory concerned.

(2) Where an amount of money payable or remaining to be paid under an external confiscation order registered in the Royal Court under paragraph (1) of Article 39 of the modified Law is expressed in a currency other than that of the Island, the amount shall for the purposes of any action taken under the modified Law in relation to that order be converted into the currency of the Island 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 his capacity as an officer of any bank in the Island; and
- (b) stating the exchange rate prevailing on a specified date,

shall be admissible as evidence of the facts so stated.

Citation and commencement

10. These Regulations may be cited as the Proceeds of Crime (Designated Countries and Territories) (Jersey) Regulations 1999 and shall come into force on the day following promulgation.

FIRST SCHEDULE

(Regulations 1(1), 2 and 6)

DESIGNATED COUNTRIES AND TERRITORIES

<i>Designated country or territory</i>	<i>Appropriate authority</i>
Antigua and Barbuda	The Attorney General
Australia	The Attorney General's Department
Austria	
Belgium	
Bulgaria	
Canada	The Minister of Justice or officials designated by that Minister
Colombia	The Fiscalía General de la Nación and the Ministerio de Justicia del Derecho
Cyprus	
Czech Republic	
Denmark	
Federal Republic of Germany	
Guernsey	Her Majesty's Attorney General for the Bailiwick of Guernsey
Finland	
France	
Hong Kong Special Administrative Region	The Department of Justice
Iceland	
India	The Ministry of Home Affairs
Ireland	
Isle of Man	Her Majesty's Attorney General for the Isle of Man
Italy	The Ministry of Justice
Lithuania	
Netherlands	Afdeling Internationale Rechtshulp
Nigeria	The Attorney General of the Federation of the Republic of Nigeria
Norway	
Portugal	

Romania	The Ministry of the Interior and the Ministry of Justice
Slovenia	
Spain	The Ministerio de Justicia, Madrid
Sweden	The Ministry for Foreign Affairs
Switzerland	Office fédéral de la police
Thailand	The Attorney General or a person designated by him
Trinidad and Tobago	The Attorney General or a person designated by him
Ukraine	The Office of the General Prosecutor and the Ministry of Justice
United Kingdom -	
England and Wales	The Attorney General
Scotland	The Lord Advocate
Northern Ireland	The Home Office
United Mexican States	The Office of the Attorney General of the Republic
United States of America	The Attorney General of the United States of America

*SECOND SCHEDULE***(Regulations 1(1) and 3(1))**

MODIFICATION OF THE PROCEEDS OF CRIME
(JERSEY) LAW 1999³

1.(1) In paragraph (1) of Article 1, the definitions of “to benefit from relevant criminal conduct”, “to benefit from an offence”, “to benefit from criminal conduct”, “competent authority”, “confiscation order”, “exported”, “financial services business”, “investigation”, “items subject to legal privilege”, “modifications”, “money laundering”, “proceeds of criminal conduct” and “relevant criminal conduct” shall be omitted.

(2) In paragraph (1) of Article (1) -

(a) for the definition of “criminal conduct” there shall be substituted the following definition -

“ ‘criminal conduct’ means conduct corresponding to an offence specified in the First Schedule;”;

(b) 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 designated country or territory that may result in an external confiscation order being made;”;

(c) in sub-paragraph (a) of the definition of “external confiscation order”, for the words “conduct corresponding to an offence specified in the First Schedule” there shall be substituted the words “criminal conduct”;

³ Recueil des Lois, Volume 1999, page 111.

- (d) for the definitions of “gift caught by Part II” and “gift caught by this Part” there shall be substituted the following definition -

“ ‘gift caught by this Law’ has the meaning given in paragraph (9) of Article 2;”.

- (3) In paragraph (1) of Article 1, there shall be inserted in their appropriate alphabetical order the following definitions -

“ ‘designated’, when used to refer to a country or territory, means designated under Regulation 2 of the Designated Countries Regulations;

‘Designated Countries Regulations’ means the Proceeds of Crime (Designated Countries and Territories) (Jersey) Regulations 1999;

‘the unmodified Law’ means the Proceeds of Crime (Jersey) Law 1999, read as if the Designated Countries Regulations had not been made;”.

- (4) In paragraph (2) of Article 1 -

- (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 Designated Countries 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 paragraphs (3), (4), (5) and (6) of Article 1 there shall be substituted the following paragraphs -

“(3) For the purposes of this Law, proceedings are instituted in a designated country or territory when -

- (a) under the law of the designated country or territory concerned, one of the steps specified in relation to that country or territory in the right-hand column of the Second Schedule has been taken there in respect of alleged criminal conduct by the defendant;
- (b) where no steps have been specified in relation to that country or territory, the defendant has been notified in writing in accordance with its laws that the competent authorities of that country or territory have begun proceedings against him in respect of an offence; or
- (c) 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 earliest 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 paragraph (7) of Article 1 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 paragraph (8) of Article 1 -

(a) for the words “Part II” 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.(1) For paragraphs (1), (2) and (3) of Article 2 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, as defined in paragraph (1) of Article 1 of the unmodified Law;

- (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 II”, wherever they appear in paragraphs (4), (5) and (7) of Article 2, there shall be substituted the words “this Law”.

(3) For paragraph (9) of Article 2 there shall be substituted the following paragraph -

“(9) A gift (including a gift made before the commencement of the Designated Countries 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 II” in paragraph (10) of Article 2 there shall be substituted the words “this Law”.

3. For the heading to Part II there shall be substituted the following heading -

“EXTERNAL CONFISCATION ORDERS”.

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

5. For Article 15 there shall be substituted the following Article -

“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 designated country or territory 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 designated country or territory, 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 sub-paragraph (b) of paragraph (1) of this Article, the Court shall discharge the order if the proceedings have not been instituted within such time as the Court considers reasonable.”.

6.(1) For the words “an application made by or on behalf of the Attorney General” in paragraph (1) of Article 16 there shall be substituted the words “an application made by or on behalf of the government of a designated country or territory”.

(2) For sub-paragraph (b) of paragraph (6) of Article 16 there shall be substituted the following sub-paragraph -

“(b) shall be discharged when the proceedings in relation to which it was made are concluded.”.

7. In paragraph (1) of Article 17 -

(a) for sub-paragraphs (a), (b) and (c) there shall be substituted the following sub-paragraph -

“(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 shall be omitted.

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

10. Article 21 shall be omitted.

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

12.(1) For sub-paragraph (a) of paragraph (2) of Article 24 there shall be substituted the following sub-paragraph -

“(a) recovered under or in satisfaction of a confiscation order (as defined in paragraph (1) of Article 1 of the unmodified Law) or an external confiscation order; or”.

(2) After paragraph (8) of Article 24 there shall be inserted the following paragraph -

“(9) In this Article, ‘criminal conduct’ includes criminal conduct as defined in paragraph (1) of Article 1 of the unmodified Law.”.

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

14. Part III shall be omitted.

15. For the heading to Part IV there shall be substituted the following heading -

“REGISTRATION OF EXTERNAL CONFISCATION
ORDERS”.

16. Article 38 shall be omitted.

17. Articles 40, 41, 42, 43 and 44 shall be omitted.

18.-(1) In the heading to Article 45 the words “**and commencement**” shall be omitted.

(2) In Article 45 the words “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” shall be omitted.

19. In the First Schedule -

(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. For the Second Schedule, there shall be substituted the following Schedule -

“SECOND SCHEDULE

(Article 1(3))

Institution of proceedings

<i>Designated country or territory</i>	<i>Point at which proceedings are instituted</i>
Antigua and Barbuda	when a person has been charged with a scheduled offence
Australia	when an information or a complaint has been laid before a justice of the peace or a magistrate, or a person has been charged with an offence, or an indictment or a presentment has been preferred
Colombia	when a preliminary investigation or a formal process has begun and, in either case, a Resolution has been issued for a freezing or seizure order
India	<p>(a) when an information relating to commission of any crime is received by any law enforcement agency empowered to investigate such crime under the law for the time being in force and laid before a court of law;</p> <p>(b) when any allegation is made orally or in writing to a court of law that a person has committed an offence;</p> <p>(c) when a person is charged with an offence;</p> <p>(d) when any investigation or inquiry into the commission of any offence is directed by a court of law</p>

Isle of Man

- (a) where a justice of the peace issues a summons under section 4 of the Summary Jurisdiction Act 1989, when the complaint in relation to the offence is made to him;
- (b) where a justice of the peace issues a warrant for the arrest of any person under that section, when the complaint in relation to the offence is made to him;
- (c) where a person is charged with the offence after being taken into custody without a warrant, when he is taken into custody;
- (d) where an information is preferred by the Attorney General in a case where there have been no committal proceedings, when the information is lodged in the General Registry in accordance with section 4(1) of the Criminal Code Amendment Act 1917

Italy

- (a) when a person is notified, in accordance with article 369 of the Italian Code of Criminal Procedure, that a prosecution against him is in progress;
- (b) when a proposal for the application of a preventative measure is laid before a court

Netherlands

- (a) when a pre-trial financial investigation has been initiated;
- (b) when the provisional measure has been ordered by an investigating magistrate;
- (c) when a public prosecutor has requested a pre-trial criminal investigation by an investigating magistrate to be instituted;
- (d) when a public prosecutor has laid an indictment

Romania

- (a) when the start of a penal pursuit is ordered;
- (b) when penal proceedings start in respect of an offender

Sweden	when a public prosecutor has established that there are reasonable grounds to suspect that a person has committed an offence and accordingly the prosecutor is obliged under the Code of Judicial Procedure to notify the person of the suspicion
Switzerland	when proceedings for an offence are brought before an examining magistrate
Thailand	when a court or the Asset Examination Committee issues a restraint order
Trinidad and Tobago	(a) when an information or complaint is laid before the magistrate; (b) when a person is charged with an offence; (c) when a bill of indictment is preferred; (d) when a warrant of arrest is executed against a person
Ukraine	when a criminal case is brought
United Mexican States	when the Ministerio Publico has established that there is probable cause to suspect that a person has committed an offence
United States of America	when an indictment, information or complaint has been filed against a person in respect of an offence”.

THIRD SCHEDULE

(Regulation 3(2))

THE PROCEEDS OF CRIME (JERSEY) LAW 1999
*(as applied in relation to designated countries and territories for the purposes of
the enforcement of overseas confiscation orders in the Island)*

ARRANGEMENT OF ARTICLES

PART I

INTRODUCTORY

1. Interpretation
2. Meanings of expressions relating to realisable property

PART II

EXTERNAL CONFISCATION ORDERS

3.	*	*	*	*	*	*	*
4.	*	*	*	*	*	*	*
5.	*	*	*	*	*	*	*
6.	*	*	*	*	*	*	*
7.	*	*	*	*	*	*	*
8.	*	*	*	*	*	*	*
9.	*	*	*	*	*	*	*
10.	*	*	*	*	*	*	*

11.	*	*	*	*	*	*	*
12.	*	*	*	*	*	*	*
13.	*	*	*	*	*	*	*
14.	*	*	*	*	*	*	*
15.	Cases in which “saisies judiciaires” may be made						
16.	“Saisies judiciaires”						
17.	Realisation of property						
18.	*	*	*	*	*	*	*
19.	*	*	*	*	*	*	*
20.	Application of proceeds of realisation and other sums						
21.	*	*	*	*	*	*	*
22.	Bankruptcy of defendant						
23.	Limitation of liability of Viscount						
24.	Criminal Offences Confiscations Fund						
25.	*	*	*	*	*	*	*
26.	*	*	*	*	*	*	*
27.	*	*	*	*	*	*	*
28.	*	*	*	*	*	*	*

PART III

	*	*	*	*	*	*	*
29.	*	*	*	*	*	*	*

30.	*	*	*	*	*	*	*
31.	*	*	*	*	*	*	*
32.	*	*	*	*	*	*	*
33.	*	*	*	*	*	*	*
34.	*	*	*	*	*	*	*
35.	*	*	*	*	*	*	*
36.	*	*	*	*	*	*	*
37.	*	*	*	*	*	*	*

PART IV

REGISTRATION OF EXTERNAL CONFISCATION ORDERS

38.	*	*	*	*	*	*	*
39.	Registration of external confiscation orders						

PART V

MISCELLANEOUS

40.	*	*	*	*	*	*	*
41.	*	*	*	*	*	*	*
42.	*	*	*	*	*	*	*
43.	*	*	*	*	*	*	*
44.	*	*	*	*	*	*	*
45.	Short title						

SCHEDULES

FIRST SCHEDULE - Offences that are relevant to the definition of
"criminal conduct"

SECOND SCHEDULE - Institution of proceedings

PROCEEDS OF CRIME (JERSEY) LAW 1999

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

10th day of MARCH 1999

(Registered on the 9th day of April 1999)

STATES OF JERSEY

The 15th day of December 1998

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

PART I

INTRODUCTORY

ARTICLE I

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;

“Committee” means the Finance and Economics Committee;

* * *

* * *

“the Court” means the Royal Court;

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

“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 designated country or territory that may result in an external confiscation order being made;

“designated” when used to refer to a country or territory, means designated under Regulation 2 of the Designated Countries Regulations;

“Designated Countries Regulations” means the Proceeds of Crime (Designated Countries and Territories) (Jersey) Regulations 1999;

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

* * *

“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 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;

* * *

* * *

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

* * *

* * *

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

* * *

“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 the Island or elsewhere;

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

* * *

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

“the unmodified Law” means the Proceeds of Crime (Jersey) Law 1999, read as if the Designated Countries Regulations had not been made;

“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 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 Designated Countries Regulations); and
- (b) where a person derives a pecuniary advantage as a result of or in connection with criminal conduct, he is to be treated as if he 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 designated country or territory when -

- (a) under the law of the designated country or territory concerned, one of the steps specified in relation to that country or territory in the right-hand column of the Second Schedule has been taken there in respect of alleged criminal conduct by the defendant;
- (b) where no steps have been specified in relation to that country or territory, the defendant has been notified in writing in accordance with its laws that the competent authorities of that country or territory have begun proceedings against him in respect of an offence; or
- (c) 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 earliest 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.

(5) * * * * *

(6) * * * * *

(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.

(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.

ARTICLE 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, as defined in paragraph (1) of Article 1 of the unmodified Law;
 - (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.

(3) * * * * *

(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 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 -
- (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 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 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 the Designated Countries 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 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

EXTERNAL CONFISCATION ORDERS

ARTICLE 3

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ARTICLE 4

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ARTICLE 5

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ARTICLE 6

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ARTICLE 7

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ARTICLE 8

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ARTICLE 12

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ARTICLE 13

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ARTICLE 14

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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 designated country or territory 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 designated country or territory, 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 sub-paragraph (b) of paragraph (1) of this Article, the Court

shall discharge the order if the proceedings have not been instituted within such time as the Court considers reasonable.

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 government of a designated country or territory.

(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 subparagraph (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 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 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) an external confiscation order has been registered under Article 39; and

(b) * * * * *

(c) * * * * *

(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 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

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ARTICLE 19

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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

(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 his 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.

ARTICLE 21

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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 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.

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 (as defined in paragraph (1) of Article 1 of the unmodified Law) or external confiscation order; or

(b) received under an assets-sharing arrangement,

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.

(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; 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 the Island's obligations under assets-sharing arrangements; and

- (c) meeting the expenses incurred by the Committee in administering the Fund.

(5) Before promoting or supporting any measure under sub-paragraph (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.

(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 arrangement” means -

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

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.

(9) In this Article, “criminal conduct” includes criminal conduct as defined in paragraph (1) of Article 1 of the unmodified Law.

ARTICLE 25

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ARTICLE 26

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ARTICLE 27

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ARTICLE 28

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PART III

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ARTICLE 29

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ARTICLE 30

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ARTICLE 31

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ARTICLE 32

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ARTICLE 33

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ARTICLE 34

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ARTICLE 35

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ARTICLE 36

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ARTICLE 37

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PART IV

REGISTRATION OF EXTERNAL CONFISCATION ORDERS

ARTICLE 38

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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.

(4) 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 V

MISCELLANEOUS

ARTICLE 40

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ARTICLE 41

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ARTICLE 42

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ARTICLE 43

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ARTICLE 44

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ARTICLE 45

Short title

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

G.H.C. COPPOCK

Greffier of the States.

FIRST SCHEDULE

(Article 1(1))

Offences that are relevant to the definition of “criminal conduct”

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 1996.

SECOND SCHEDULE

(Article 1(3))

Institution of proceedings

<i>Designated country or territory</i>	<i>Point at which proceedings are instituted</i>
Antigua and Barbuda	when a person has been charged with a scheduled offence
Australia	when an information or a complaint has been laid before a justice of the peace or a magistrate, or a person has been charged with an offence, or an indictment or a presentment has been preferred
Colombia	when a preliminary investigation or a formal process has begun and, in either case, a Resolution has been issued for a freezing or seizure order
India	<p>(a) when an information relating to commission of any crime is received by any law enforcement agency empowered to investigate such crime under the law for the time being in force and laid before a court of law;</p> <p>(b) when any allegation is made orally or in writing to a court of law that a person has committed an offence;</p> <p>(c) when a person is charged with an offence;</p> <p>(d) when any investigation or inquiry into the commission of any offence is directed by a court of law</p>
Isle of Man	<p>(a) where a justice of the peace issues a summons under section 4 of the Summary Jurisdiction Act 1989, when the complaint in relation to the offence is made to him;</p> <p>(b) where a justice of the peace issues a warrant for the arrest of any person under that section, when the complaint in relation to the offence</p>

- is made to him;
- (c) where a person is charged with the offence after being taken into custody without a warrant, when he is taken into custody;
 - (d) where an information is preferred by the Attorney General in a case where there have been no committal proceedings, when the information is lodged in the General Registry in accordance with section 4(1) of the Criminal Code Amendment Act 1917
- Italy
- (a) when a person is notified, in accordance with article 369 of the Italian Code of Criminal Procedure, that a prosecution against him is in progress;
 - (b) when a proposal for the application of a preventative measure is laid before a court
- Netherlands
- (a) when a pre-trial financial investigation has been initiated;
 - (b) when the provisional measure has been ordered by an investigating magistrate;
 - (c) when a public prosecutor has requested a pre-trial criminal investigation by an investigating magistrate to be instituted;
 - (d) when a public prosecutor has laid an indictment
- Romania
- (a) when the start of a penal pursuit is ordered;
 - (b) when penal proceedings start in respect of an offender
- Sweden
- when a public prosecutor has established that there are reasonable grounds to suspect that a person has committed an offence and accordingly the prosecutor is obliged under the Code of Judicial Procedure to notify the person of the suspicion

Switzerland	when proceedings for an offence are brought before an examining magistrate
Thailand	when a court or the Asset Examination Committee issues a restraint order
Trinidad and Tobago	(a) when an information or complaint is laid before the magistrate; (b) when a person is charged with an offence; (c) when a bill of indictment is preferred; (d) when a warrant of arrest is executed against a person
Ukraine	when a criminal case is brought
United Mexican States	when the Ministerio Publico has established that there is probable cause to suspect that a person has committed an offence
United States of America	when an indictment, information or complaint has been filed against a person in respect of an offence