



TURKS AND CAICOS ISLANDS

CHAPTER 3.15
PROCEEDS OF CRIME ORDINANCE
and Subsidiary Legislation

Revised Edition
showing the law as at 31 March 2021

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Revised Edition of the Laws Ordinance.

This edition contains a consolidation of the following laws—

	Page
PROCEEDS OF CRIME ORDINANCE	3
Ordinance 12 of 2007 .. in force 8 October 2007 (L.N. 28/2007)	
Amended by Ordinances: 16 of 2009 .. in force 8 October 2007	
19 of 2010 .. in force 24 May 2010	
12 of 2011 .. in force 10 July 2011	
28 of 2011 .. in force 1 December 2011	
29 of 2012 .. in force 12 October 2012	
2 of 2013 .. in force 1 April 2013 (L.N. 9/2013)	
13 of 2013 .. in force 2 December 2013 (L.N. 55/2013)	
12 of 2014 .. in force 17 October 2014 (L.N. 44/2014)	
1 of 2016 .. in force 1 April 2016 (L.N. 19/2016)	
14 of 2016 .. in force 1 June 2016 (L.N. 34/2016)	
15 of 2016 .. in force 1 June 2016 (L.N. 35/2016)	
19 of 2018 .. in force 15 August 2018 (L.N. 34/2019)	
22 of 2018 .. in force 15 August 2018 (L.N. 46/2018)	
14 of 2019 .. in force 5 April 2019 (L.N. 18/2019)	
25 of 2020 .. in force 19 October 2020 (L.N. 103/2020)	
ANTI-MONEY LAUNDERING AND PREVENTION OF TERRORIST FINANCING REGULATIONS – Section 180(2)	149
Legal Notice 14/2010	
Amended by Legal Notices: 36/2011 .. in force 1 December 2011	
11/2013 .. in force 1 April 2013	
57/2013 .. in force 2 December 2013	
38/2018 .. in force 15 August 2018	
58/2018 .. in force 20 September 2018	

ANTI-MONEY LAUNDERING AND PREVENTION OF TERRORIST FINANCING CODE – Section 118(1)	181
Legal Notice 13/2011 .. in force 6 May 2012	
Amended by Legal Notices: 54/2018 .. in force 15 August 2018	
57/2018 .. in force 18 September 2018	
NON-PROFIT ORGANISATIONS REGULATIONS – Sections 174 and 175	219
Legal Notice 12/2013 .. in force 1 April 2013	
50/2014 .. in force 21 November 2014	
Part V in force 1 July 2018	
Amended by Legal Notice: 40/2018 .. in force 15 August 2018	



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Page
3

Ordinance 12 of 2007 .. in force 8 October 2007 (L.N. 28/2007)	
Amended by Ordinances: 16 of 2009 .. in force 8 October 2007	
19 of 2010 .. in force 24 May 2010	
12 of 2011 .. in force 10 July 2011	
28 of 2011 .. in force 1 December 2011	
29 of 2012 .. in force 12 October 2012	
2 of 2013 .. in force 1 April 2013 (L.N. 9/2013)	
13 of 2013 .. in force 2 December 2013 (L.N. 55/2013)	
12 of 2014 .. in force 17 October 2014 (L.N. 44/2014)	
1 of 2016 .. in force 1 April 2016 (L.N. 19/2016)	
14 of 2016 .. in force 1 June 2016 (L.N. 34/2016)	
15 of 2016 .. in force 1 June 2016 (L.N. 35/2016)	
19 of 2018 .. in force 15 August 2018 (L.N. 34/2019)	
22 of 2018 .. in force 15 August 2018 (L.N. 46/2018)	
14 of 2019 .. in force 5 April 2019 (L.N. 18/2019)	
25 of 2020 .. in force 19 October 2020 (L.N. 103/2020)	

**ANTI-MONEY LAUNDERING AND PREVENTION OF
TERRORIST FINANCING REGULATIONS – Section 180(2)**

149

Legal Notice 14/2010

Amended by Legal Notices: 36/2011 .. in force 1 December 2011	
11/2013 .. in force 1 April 2013	
57/2013 .. in force 2 December 2013	
38/2018 .. in force 15 August 2018	
58/2018 .. in force 20 September 2018	

ANTI-MONEY LAUNDERING AND PREVENTION OF TERRORIST FINANCING CODE – Section 118(1)	181
Legal Notice 13/2011 .. in force 6 May 2012	
Amended by Legal Notices: 54/2018 .. in force 15 August 2018	
57/2018 .. in force 18 September 2018	
NON-PROFIT ORGANISATIONS REGULATIONS – Sections 174 and 175	219
Legal Notice 12/2013 .. in force 1 April 2013	
50/2014 .. in force 21 November 2014	
Part V in force 1 July 2018	
Amended by Legal Notice: 40/2018 .. in force 15 August 2018	

CHAPTER 3.15
PROCEEDS OF CRIME ORDINANCE
ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY PROVISIONS AND INTERPRETATION

SECTION

1. Short title
2. Interpretation
3. Definition of and provisions with respect to property
4. Institution of proceedings

PART II

CONFISCATION

Interpretation for this Part

5. Conduct, benefit and pecuniary advantage
6. Realisable property
7. The value of property
8. Value of property obtained from conduct
9. Tainted gifts
10. Gifts and their recipients
11. Value of tainted gifts
12. Further interpretive provisions.

Confiscation Order

13. Making confiscation order
14. Confiscation orders by Magistrate's Court
15. Application of this section
16. Recoverable amount
17. Defendant's benefit
18. Assumptions to be made where section 15 applies
19. Time for payment
20. Interest on unpaid sums
21. Effect of order on court's other powers

Procedure

22. Postponement
23. Effect of postponement

24. Statement of information
25. Defendant's response to statement of information
26. Provision of information by defendant

Reconsideration of Confiscation Order

27. Reconsideration of case where no confiscation order made
28. Reconsideration of benefit where no confiscation order made
29. Reconsideration of benefit where compensation order made
30. Reconsideration of amount available to defendant where order made
31. Variation of order where amount available to defendant is inadequate
32. Discharge of order for inadequacy of amount available to defendant
33. Discharge of order where small amount outstanding
34. Information

Defendant Absconds

35. Defendant convicted or committed
36. Defendant neither convicted nor acquitted
37. Variation of order
38. Discharge of order

Appeals

39. Appeal to Court of Appeal
40. Court's power on appeal

Restraint Order

41. Conditions for exercise of powers
42. Restraint orders
43. Application, discharge and variation
44. Hearsay evidence
45. Prosecutor may lodge caution
46. Appointment of management receiver
47. Appointment of enforcement receiver
48. Effect of restraint order
49. Application of proceeds of realisation and other sums
50. Further provisions with respect to receivers
51. Discharge and variation
52. Discharge of management receiver
53. Winding up of company holding realisable property
54. Exercise of powers by court or receiver

Other Matters

55. Compensation

- 56. Committal by Magistrate's Court
- 57. Sentencing by court
- 58. Enforcement abroad

PART III

CIVIL RECOVERY

Preliminary

- 59. General
- 60. Meaning of "unlawful conduct"
- 61. Meaning of "property obtained through unlawful conduct"

Recoverable Property and Associated Property

- 62. Recoverable property
- 63. Tracing property
- 64. Mixing property
- 65. Recoverable property, accruing profits
- 66. Recoverable property, general exceptions
- 67. Other exemptions
- 68. Granting interests
- 69. Meaning of "associated property"
- 70. Obtaining and disposing of property

Recovery Orders and Property Freezing Orders

- 71. Application for recovery order
- 72. Application for property freezing order
- 73. Variation and setting aside of order
- 74. Exclusions
- 75. Restriction on proceedings and remedies
- 76. Receivers in connection with property freezing orders
- 77. Powers of receivers appointed under section 76
- 78. Supervision of section 76 receivers and variations

Interim Receiving Order

- 79. Application for, and making of, interim receiving order
- 80. Functions of interim receiver
- 81. Authority may lodge caution
- 82. Duties of respondent
- 83. Supervision of interim and variation of order
- 84. Restrictions on dealing etc. with property
- 85. Restriction on proceedings and remedies
- 86. Exclusion of property which is not recoverable

87. Reporting
Vesting and Realisation of Recoverable Property
88. Recovery orders
89. Functions of the trustee
90. Rights of pre-emption
91. Associated and joint property
92. Agreements about associated and joint property
93. Associated and joint property: default of agreement
94. Consent orders
95. Limit on recovery
96. Limits on recovery, supplementary
97. Applying realised proceeds

Exemptions etc.

98. Victims of theft, etc.
99. Other exemptions

Miscellaneous

100. Compensation
101. Financial threshold
102. Limitation
103. Property acquired before commencement date

Recovery of Cash in Summary Proceedings

104. Interpretation for sections 105 to 114
105. Searches
106. Seizure of cash
107. Detention of seized cash
108. Interest
109. Release of detained cash
110. Forfeiture
111. Appeal against forfeiture
112. Application of forfeited cash
113. Victims and other owners
114. Compensation

PART IV

MONEY LAUNDERING

Anti-Money Laundering Committee

115. Anti-Money Laundering Committee
116. Functions of the Anti-Money Laundering Committee

- 117. Disclosure by Financial Intelligence Agency
- 118. Issuance of Codes and guidance
- 119. Immunity
- 120. Confidentiality of information disclosed
- 121. Annual report of Anti-Money Laundering Committee

Money Laundering Offences

- 122. Meaning of “criminal property” and “pecuniary advantage”
- 123. General provisions for sections 122 to 132
- 124. Concealing, disguising, converting, transferring and removing criminal property
- 125. Arrangements
- 126. Acquisition, use and possession
- 127. Duty to disclose knowledge or suspicion of money laundering
- 128. Duty to disclose Money Laundering Reporting Officer of a person carrying on relevant business
- 129. Prejudicing investigation and tipping off
- 130. Circumstances in which offence under section 129 not committed
- 131. Protection of disclosures

PART V

INVESTIGATIONS

General

- 132. Meaning of “privileged material”
- 133. Application of Part V

Production Orders

- 134. Application for production order
- 135. Production order
- 136. Order to grant entry
- 137. Further provisions relating to production orders

Search and Seizure Warrants

- 138. Application for search and seizure warrant
- 139. Search and seizure warrant

Customer Information Orders

- 140. Customer information to be specified in regulations
- 141. Application for customer information order
- 142. Customer information order
- 143. Offences

144. Protection of statements

Account Monitoring Orders

145. Application for account monitoring order
146. Account monitoring order
147. Statements
148. Disclosure of information

General

149. Procedure

PART VI

COOPERATION

150. Interpretation for this Part and Schedule 4
151. External requests and orders

PART VII

NATIONAL FORFEITURE FUND

152. National Forfeiture Fund
153. Administration of the Fund
154. Preparation of financial statements
155. Audit of financial statements and annual report

PART VIII

SUPERVISION AND ENFORCEMENT

Enforcement of Fines

156. Orders to pay has effect as fine
157. Imprisonment on non-payment
158. Custodial sentences to run consecutively
159. Effects of variation of confiscation order
160. Application of sections 156 to 159 on appeal
161. Supervision and enforcement of financial businesses
162. Limitation of liability of supervisory authorities
163. Registration of designated non-financial business and profession

Powers of DNFPB Supervisor

164. Compliance visits
165. Enforcement action

- 166. Directives
- 167. Cancellation of registration
- 168. Disciplinary action
- 169. Notice of intention to take disciplinary action
- 170. Disciplinary action
- 171. Recovery of administrative penalty
- 172. Power to require information and production of documents
- 173. Regulations

Non-profit Organisations

- 174. The NPO Supervisor
- 175. Regulations

Appeals

- 176. Appeals

PART IX

MISCELLANEOUS

- 177. Offences by body corporate
- 178. Secrecy obligations overridden
- 179. No criminal or civil liability information
- 180. Regulations
- 181. Amendment of Schedules
 - SCHEDULE 1: Offences
 - SCHEDULE 2: Powers of Interim Receiver
 - SCHEDULE 3: Powers of Trustee
 - SCHEDULE 4: External Requests and Orders

CHAPTER 3.15
PROCEEDS OF CRIME ORDINANCE

*(Ordinances 12 of 2007, 16 of 2009, 19 of 2010, 12 of 2011,
28 of 2011, 29 of 2012, 2 of 2013, 13 of 2013, 12 of 2014,
1 of 2016, 14 of 2016, 15 of 2016, 19 of 2018, 22 of 2018,
14 of 2019 and 25 of 2020)*

AN ORDINANCE TO REPLACE THE PROVISIONS OF THE CONTROL OF DRUGS (TRAFFICKING) ORDINANCE [CAP. 35] AND THE PROCEEDS OF CRIME ORDINANCE 1998, TO CONSOLIDATE AND UPDATE THE LAW RELATING TO CONFISCATION ORDERS IN RELATION TO PERSONS WHO BENEFIT FROM CRIMINAL CONDUCT, RESTRAINT ORDERS TO PROHIBIT DEALING WITH PROPERTY, MONEY LAUNDERING OFFENCES, COURT ORDERS TO ASSIST IN INVESTIGATIONS RELATING TO MONEY LAUNDERING OR A PERSON'S BENEFIT FROM CRIMINAL CONDUCT AND COOPERATION WITH OVERSEAS AUTHORITIES AND TO INTRODUCE NEW PROVISIONS ALLOWING FOR THE RECOVERY OF PROPERTY WHICH IS, OR REPRESENTS, PROPERTY OBTAINED THROUGH UNLAWFUL CONDUCT.

Commencement

[8 October 2007]

PART I

PRELIMINARY PROVISIONS AND INTERPRETATION

Short title

1. This Ordinance may be cited as the Proceeds of Crime Ordinance.

Interpretation.

2. (1) In this Ordinance—

“AML/CFT obligation”, in relation to a financial business, means an obligation of the financial business under this Ordinance, the Anti-Money Laundering and Prevention of Terrorist Financing Regulations, an applicable Code or such other enactment as may be prescribed; *(Inserted by Ord. 19 of 2010 and Amended by Ord. 28 of 2011)*

“Anti-Money Laundering Committee” means the Committee established under section 115; *(Substituted by Ord. 12 of 2014)*

“Anti-Money Laundering and Prevention of Terrorist Financing Regulations” means the regulations made under section 180(2); *(Substituted by Ord. 28 of 2011)*

“Anti-terrorist Financing Order” means the Anti-terrorism (Financial and Other Measures) (Overseas Territories) Order 2002, or such Order, Ordinance or enactment as may replace that Order; *(Inserted by Ord. 19 of 2010)*

“applicable Code”, in relation to a relevant business, means a Code that applies to the relevant business; *(Inserted by Ord. 19 of 2010)*

“arms trafficking offence” means—

- (a) an offence under section 27 of the Firearms Ordinance;
- (b) an offence under section 34 or 40 of the Customs Ordinance;
- (c) an attempt, conspiracy or incitement to commit an offence specified in paragraph (a) or (b); or
- (d) aiding, abetting, counselling or procuring the commission of an offence specified in paragraph (a) or (b); *(Inserted by Ord. 15 of 2016)*

“associated property” has the meaning specified in section 69;

“cash” includes—

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

“Civil Recovery Authority” means the Attorney General;

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

- (a) whether property is recoverable property or associated property;
- (b) who holds the property; or
- (c) the extent or whereabouts of the property; *(Amended by Ord. 19 of 2010)*

“Commission” means the Financial Services Commission established under the Financial Services Commission Ordinance 2001 and continued under the Financial Services Commission Ordinance, 2007;

“company” means a body corporate, wherever incorporated, registered or formed, and includes a foundation; *(Inserted by Ord. 19 of 2010)*

“conduct” includes omissions; *(Inserted by Ord. 19 of 2010)*

“confiscation order” means an order made under section 13(3);

“country” includes a territory;

“Court” means the Supreme Court;

“criminal conduct” has the meaning specified in section 5(1);

“criminal property” has the meaning specified in section 122; *(Amended by Ord. 19 of 2010)*

“criminal recovery investigation” means an investigation into whether a person has benefited from his criminal conduct or the extent or whereabouts of his benefit from his criminal conduct;

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

“defendant” means, except in Part III, a person against whom proceedings for an offence have been instituted, whether or not he has been convicted; (*Amended by Ord. 19 of 2010*)

“designated non-financial business and profession” means a financial business that is not a regulated financial business; (*Inserted by Ord. 13 of 2013*)

“DNFBP Supervisor” means the person or body prescribed as the supervisory authority for designated non-financial businesses and professions; (*Ord. 13 of 2013*)

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

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

and without limiting the generality of the foregoing, includes any court application, order and other legal process and any notice;

“drug trafficking offence” means—

- (a) an offence under section 5(2), 6(3), 7, 8 14, 15, 16 or 18 of the Control of Drugs Ordinance; (*Amended by Ord. 14 of 2016*)
- (b) an offence under section 34 or 40 of the Customs Ordinance;
- (c) an offence under section 12(1) or 17(2) of the Criminal Justice (International Co-operation) Ordinance;
- (d) an attempt, conspiracy or incitement to commit an offence specified in paragraph (a) or (b); or
- (e) aiding, abetting, counselling or procuring the commission of an offence specified in paragraph (a) or (b); (*Inserted by Ord. 19 of 2010*)

“enforcement receiver” means a receiver appointed under section 46(1); (*Inserted by Ord. 19 of 2010*)

“financial business” has the meaning specified in the Anti-Money Laundering and Prevention of Terrorist Financing Regulations; (*Inserted by Ord. 19 of 2010 and amended by Ord. 28 of 2011*)

“Financial Intelligence Agency” means the Agency established under the Financial Intelligence Agency Ordinance; *(Substituted by Ord. 12 of 2014)*

“financing of proliferation” means the act of providing funds or financial services which are used, in whole or in part, for the manufacture, acquisition, possession, development, export, trans-shipment, brokering, transport, transfer, stockpiling or use of nuclear, chemical or biological weapons and their means of delivery and related materials (including both technologies and dual use goods used for non-legitimate purposes), in contravention of any enactment, or where applicable, international obligations; *(Inserted by Ord. 12 of 2014)*

“forfeiture order” means an order for the forfeiture of cash under section 103; *(Amended by Ord. 19 of 2010)*

“Fund” means the National Forfeiture Fund established under section 152;

“general criminal conduct” has the meaning specified in section 5(2);

“gift” has the meaning specified in section 10; *(Inserted by Ord. 19 of 2010)*

“interim receiving order” means an order made by the court under section 79;

“Islands” means the Turks and Caicos Islands;

“management receiver” means a receiver appointed under section 46(1); *(Inserted by Ord. 19 of 2010)*

“money laundering” means an act which—

- (a) constitutes a money laundering offence; or
- (b) would constitute a money laundering offence if done in the Islands; *(Substituted by Ord. 19 of 2010)*

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

“money laundering offence” means—

- (a) an offence under section 124, 125 or 126;
- (b) an attempt, conspiracy or incitement to commit an offence specified in paragraph (a);
- (c) aiding, abetting, counselling or procuring the commission of an offence specified in paragraph (a); or *(Substituted by Ord. 19 of 2010)*
- (d) an act which constitutes an offence under sections 28 to 31 of the Proceeds of Crime Ordinance 1998; *(Amended by Ord. 12 of 2011)*

“Money Laundering Reporting Officer” means the person appointed as Money Laundering Reporting Officer by a financial business under and in accordance with the Anti-Money Laundering and Prevention of Terrorist Financing Regulations; *(Amended by Ord. 19 of 2010 and 28 of 2011)*

“non-profit organisation” means an organisation that—

- (a) is established solely or primarily for charitable, religious, cultural, educational, social or fraternal purposes or for the purpose of

benefiting the public or a section of the public or for any other purpose except profit, no part of the income of which is payable to, or is otherwise available for the personal benefit of, any proprietor, member or shareholder thereof; and

(b) which solicits contributions from the public or a section of the public within the Islands or elsewhere;
(*Substituted by Ord. 22 of 2018*)

“NPO Supervisor” means the person or body prescribed as the supervisory authority for non-profit organisations under section 174; (*Inserted by Ord. 19 of 2010*)

“offence” means an offence—

- (a) which is triable on indictment and includes any such offence notwithstanding that the Magistrate may also have the power to try the offence summarily; or
- (b) that may only be tried summarily and for which, if the offence were committed by an individual, the maximum penalty would be a term of imprisonment of one year or more; (*Inserted by Ord. 19 of 2010*)

“organisation” means a body of persons (whether incorporated or unincorporated), any legal entity and any equivalent or similar structure or arrangement and includes persons acting as trustees of a trust; (*Inserted by Ord. 19 of 2010*)

“particular criminal conduct” has the meaning specified in section 5(3);

“police officer” includes a customs officer employed in the Customs Department;

“premises” includes any place and, in particular, includes—

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

“prescribed” means prescribed by regulations made under section 180;

“privileged material” has the meaning specified in section 132; (*Amended by Ord. 19 of 2010*)

“property” has the meaning specified in section 3;

“property freezing order” means an order made under section 72; (*Inserted by Ord. 19 of 2010*)

“realisable property” has the meaning specified in section 6;

“recoverable amount” means the amount that the court, in accordance with section 13(3)(a), determines should be recovered from a defendant under a confiscation order;

- “recoverable property” shall be construed in accordance with sections 62 to 68;
- “recovery order” means an order made under section 88;
- “Registrar” means the Registrar of the Supreme Court;
- “regulated business” has the meaning specified in the Anti-Money Laundering and Prevention of Terrorist Financing Regulations; *(Inserted by Ord. 19 of 2010 and amended by Ord. 28 of 2011)*
- “regulated financial business” means a financial business that is a regulated person; *(Inserted by Ord. 19 of 2010)*
- “regulated person” has the meaning specified in the Anti-Money Laundering and Prevention of Terrorist Financing Regulations; *(Inserted by Ord. 19 of 2010 and amended by Ord. 28 of 2011)*
- “relevant business” has the meaning specified in the Anti-Money Laundering and Prevention of Terrorist Financing Regulations; *(Amended by Ords. 19 of 2010 and Ord. 28 of 2011)*
- “restraint order” means an order made under section 42(1);
- “senior police officer” means a police officer of the rank of inspector or above or, in relation to the exercise of a power by a customs officer, an officer of the rank of Assistant Collector or above;
- “specified offence” means—
- (a) an offence in any of the categories set out in Schedule 1 for which the constituent elements are provided for in any written law or under the common law; or
 - (b) any act committed outside of the Islands, which would constitute an offence referred to in paragraph (a) if committed in the Islands;
(Inserted by Ord. 22 of 2018)
- “supervisory authority” means—
- (a) in the case of a regulated financial business, the Commission;
(Amended by Ord. 2 of 2013)
 - (b) in the case of any other financial business, such person as is prescribed as the supervisory authority for designated non-financial businesses and professions; and *(Inserted by Ord. 19 of 2010 and amended by Ords. 2 and 13 of 2013)*
 - (c) in the case of a non-profit organisation, the NPO Supervisor;
(Inserted by Ord. 2 of 2013)
- “tainted gift” has the meaning specified in section 9;
- “terrorism” has the meaning specified in article 2 of the Terrorism (United Nations Measures) (Overseas Territories) Order 2001; *(Inserted by Ord. 19 of 2010)*

“terrorist financing” means—

- (a) conduct referred to in—
 - (i) articles 3, 4, 5(9) and 6 of the Terrorism (United Nations Measures) (Overseas Territories) Order 2001;
 - (ii) articles 7, 8(9) and 9 of the Al-Qa’ida and Taliban (United Nations Measures) (Overseas Territories) Order 2002; or
 - (iii) articles 6, 7, 8 and 9 of the Anti-terrorist Financing Order; or
 - (iv) sections 9 to 12 of the Prevention of Terrorism Ordinance;
(Inserted by Ord. 12 of 2014)
- (b) wilfully providing or collecting funds by any means, directly or indirectly, with the knowledge or intention that they are to be used or should be used in full or in part to facilitate the commission of terrorist acts, or to any persons or entities acting on behalf of, or at the direction of a person who finances terrorism; *(Inserted by Ord. 19 of 2010)*

“terrorist financing disclosure” has the meaning specified in the Anti-Money Laundering and Prevention of Terrorist Financing Regulations; *(Inserted by Ord. 19 of 2010 and amended by Ord. 28 of 2011)*

“terrorist financing legislation” means—

- (a) the Anti-terrorist Financing Order;
- (b) the Terrorism (United Nations Measures) (Overseas Territories) Order 2001;
- (c) the Al-Qa’ida and Taliban (United Nations Measures) (Overseas Territories) Order 2002; and
- (d) the Prevention of Terrorism Ordinance;
- (e) such other enactment as may be prescribed;
(Amended by Ord. 19 of 2010 and Ord. 12 of 2014)

“terrorist finance offence” has the meaning given to that expression under section 2 of the Prevention of Terrorism Ordinance; *(Inserted by Ord. 12 of 2014)*

“trustee” means the trustee for civil recovery appointed by the court under section 88(1);

“unlawful conduct” has the meaning specified in section 60; and

“value”, in relation to property, means the value of the property determined in accordance with sections 7, 8 and 11. *(Inserted by Ord. 19 of 2010)*

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

- (a) proceedings for a recovery order have been instituted in respect of the property in question;
- (b) an interim receiving order applies to the property in question; or

(c) the property in question is cash detained under section 100.
(*Inserted by Ord. 19 of 2010*)

(3) A reference in this Ordinance—

(a) to sentencing a defendant for an offence includes a reference to otherwise dealing with him in respect of the offence;

(b) to an amount expressed in dollars, includes a reference to an equivalent amount in any other currency, except in relation to a fine to be imposed by the court or to an administrative penalty; and

(c) to an offence that has been, or will be “taken into consideration”, means an offence that has been, or will be, taken into consideration.

(*Amended by Ord. 19 of 2010*)

(4) A reference to this Ordinance includes a reference to the Anti-Money Laundering and Prevention of Terrorist Financing Regulations. (*Amended by Ord. 28 of 2011*)

Definition of, and provisions with respect to, property

3. (1) In this Ordinance, property means property of every kind, whether situated in the Islands or elsewhere, and includes—

(a) money;

(b) all forms of real or personal and heritable or moveable property; and

(c) things in action and other intangible or incorporeal property.

(2) The following provisions apply with respect to property—

(a) property is held by a person if he holds an interest in it;

(b) property is obtained by a person if he obtains an interest in it;

(c) property is transferred by one person to another if the first person transfers or grants an interest in it to the other person;

(d) references to property held by a person include references to property vested in his trustee in bankruptcy or, in the case of a company, its liquidator and references to an interest held by a person beneficially in property include references to an interest which would be held by him beneficially if the property were not so vested;

(e) references to an interest, in relation to land in the Islands are to any legal estate or equitable interest or power; and

(f) references to an interest, in relation to property other than land, include references to a right, including a right to possession.

Institution of proceedings

4. (1) Proceedings for an offence are instituted in the Islands—

- (a) when the Magistrate issues a summons or warrant under the Magistrate's Court Ordinance in respect of the offence; or
- (b) when a person is charged with the offence after being taken into custody without a warrant.

(2) Where the application of subsection (1) 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.

PART II

CONFISCATION

Interpretation for this Part

Conduct, benefit and pecuniary advantage

5. (1) Criminal conduct is conduct which—

- (a) constitutes an offence in the Islands; or
- (b) would constitute an offence in the Islands if it had occurred in the Islands.

(2) General criminal conduct, with respect to a defendant, means all his criminal conduct and for the purposes of this definition, it is immaterial—

- (a) whether the conduct occurred before or after 8 October 2007; or
- (b) whether property constituting a benefit from his conduct was obtained before or after 8 October 2007.

(3) Particular criminal conduct, with respect to a defendant, means all his criminal conduct—

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

(4) A person benefits from conduct if he obtains property as a result of or in connection with the conduct and his benefit is the value of the property so obtained.

(5) If a person derives a pecuniary advantage as a result of or in connection with conduct, he is to be treated for the purposes of this Ordinance as

if he obtained, as a result of or in connection with the conduct, a sum of money equal to the value of the pecuniary advantage.

(6) References to property obtained or a pecuniary advantage derived in connection with conduct include references to property obtained or a pecuniary advantage derived both in that connection and in some other connection.

Realisable property

6. (1) Subject to subsection (2), realisable property is—

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

(2) Property is not realisable property if an order under any of the following provisions is in force in respect of that property—

- (a) section 7(5), 14 or 18 of the Control of Drugs Ordinance;
- (b) section 72, 79, 88, 107(2) or 110 of this Ordinance; or
- (c) article 15 or 16 of the Anti-terrorist Financing Order.
- (d) section 21 of the Prevention of Terrorism Ordinance.

(Amended by Ords. 19 of 2010, 12 of 2014 and 14 of 2016)

The value of property

7. (1) Subject to this section, the value of property held by a person at any time is—

- (a) if at that time another person holds an interest in the property, the market value of the first person's interest in the property at that time, ignoring any charging order made against the interest under—
 - (i) section 11 of the Control of Drugs (Trafficking) Ordinance; or
 - (ii) section 17 of the Proceeds of Crime Ordinance, 1998; or
- (b) in any other case, the market value of the property at that time.

(Amended by Ord. 19 of 2010)

(2) This section has effect subject to sections 8 and 11.

Value of property obtained from conduct

8. (1) The value of property obtained by a person as a result of or in connection with his criminal conduct at the time when the court makes its decision (the material time) is the greater of the following—

- (a) the value of the property, at the time the person obtained it, adjusted to take account of later changes in the value of money;
- (b) the value, at the material time, of the property specified under subsection (2).

- (2) The property specified under this subsection is as follows—
- (a) if the person holds the property obtained, the property specified under this subsection is that property;
 - (b) if the person holds no part of the property obtained, the property specified under this subsection is any property which directly or indirectly represents it in his hands;
 - (c) if he holds part of the property obtained, the property specified under this subsection is that part and any property which directly or indirectly represents the other part in his hands.

Tainted gifts

9. (1) Where the court has determined that section 15 applies to a defendant or where the court has not yet made a determination as to whether or not that section applies to a defendant, a gift is tainted—

- (a) if it was made by the defendant at any time after the relevant date;
or
- (b) if it was made by the defendant at any time and was of property—
 - (i) which was obtained by the defendant as a result of or in connection with his general criminal conduct, or
 - (ii) which, in whole or part and whether directly or indirectly, represented in the defendant's hands property obtained by him as a result of or in connection with his general criminal conduct.

(2) For the purposes of subsection (1), the relevant date is the first day of the period of six years ending with—

- (a) the day when proceedings for the offence concerned were instituted against the defendant, or
- (b) if there are two or more offences and proceedings for them were instituted on different days, the earliest of those days.

(3) In the case of a defendant with respect to whom the court has determined that section 15 does not apply, a gift is tainted if it was made by the defendant at any time after—

- (a) the date on which the offence concerned was committed, or
- (b) if his particular criminal conduct consists of two or more offences and they were committed on different dates, the date of the earliest offence.

(4) For the purposes of subsection (3)—

- (a) an offence which is a continuing offence is committed on the first occasion when it is committed; and

(b) the defendant's particular conduct includes any conduct which constitutes offences which the court has taken into consideration in deciding his sentence for the offence or offences concerned.

(5) A gift may be a tainted gift whether it was made before or after 8 October 2007.

Gifts and their recipients

10. (1) If the defendant transfers property to another person for no consideration or for a consideration the value of which is significantly less than the value of the property at the time of the transfer, he is to be treated as making a gift. (*Amended by Ord. 19 of 2010*)

(2) If subsection (1) applies, the property given is to be treated as such share in the property transferred as is represented by the fraction—

(a) whose numerator is the difference between the two values specified in subsection (1), and

(b) whose denominator is the value of the property at the time of the transfer.

(3) References to a recipient of a tainted gift are to a person to whom the defendant has made the gift.

Value of tainted gifts

11. (1) The value at any time (the material time) of a tainted gift is the greater of the following—

(a) the value (at the time of the gift) of the property given, adjusted to take account of later changes in the value of money;

(b) the value (at the material time) of the property specified under subsection (2).

(2) The property specified under this subsection is as follows—

(a) if the recipient holds the property given, the property specified under this subsection is that property;

(b) if the recipient holds no part of the property given, the property specified under this subsection is any property which directly or indirectly represents it in his hands;

(c) if the recipient holds part of the property given, the property specified under this subsection is that part and any property which directly or indirectly represents the other part in his hands.

Further interpretive provisions

12. (1) Proceedings for an offence are concluded—

(a) when the defendant is acquitted on all counts or, as the case may be, every charge against him is dismissed;

- (b) if the defendant is convicted in the proceedings and the conviction is set aside or the defendant is pardoned by the Governor before a confiscation order is made, when the conviction is set aside or the defendant is pardoned;
- (c) if a confiscation order is made against the defendant in those proceedings, when the order is satisfied or discharged or when the order is set aside and the decision to set aside the proceedings is no longer subject to appeal;
- (d) if the defendant is convicted on one or more counts or charges but the court decides not to make a confiscation order against him, when the court's decision is no longer subject to appeal by the prosecutor;
- (e) if the defendant is sentenced without the court having considered whether or not to proceed under section 22 in his case, when he is sentenced.

(Amended by Ord. 19 of 2010)

- (2) An application under section 27, 28, 29, 30, 35 or 36 is concluded—
 - (a) if the court decides not to make or, as the case may be, not to vary any order against the defendant on that application, when it makes that decision;
 - (b) if an order against the defendant is made or varied on that application, when the order is satisfied or discharged or, when the order is set aside, the application is no longer subject to appeal; and
 - (c) if the application is withdrawn, when the prosecutor notifies the withdrawal of the application to the court to which it was made;
- (3) A confiscation order is satisfied when no amount is due under it.
- (4) An order is subject to appeal until, disregarding any power of a court to grant leave to appeal out of time, there is no further possibility of an appeal on which the order could be varied or set aside.
- (5) Sections 5 to 11 and this section have effect for the purposes of this Part.

Confiscation Order

Making of confiscation order

- 13.** (1) This section applies if—
- (a) a defendant—
 - (i) is convicted by the court of an offence or offences, or
 - (ii) is committed to the court by the Magistrate's Court in respect of an offence or offences under section 56; and

- (b) either—
- (i) the prosecutor asks the court to proceed under this section, or
 - (ii) the court considers that it is appropriate for it to do so.
- (2) Where this section applies, the court shall determine whether section 15 applies in the defendant's case, and—
- (a) if it determines that section 15 does apply in his case, whether he has benefited from his general criminal conduct; or
 - (b) if it determines that section 15 does not apply in his case, whether he has benefited from his particular criminal conduct.
- (3) If the court determines in accordance with subsection (2) that the defendant has benefited from his general or particular criminal conduct, it shall—
- (a) determine the amount to be recovered from him (the “recoverable amount”) in accordance with section 16;
 - (b) make a confiscation order requiring him to pay that amount; and
 - (c) direct that, subject to any payments or deductions properly made in accordance with this Ordinance, all monies recovered under the confiscation order shall be paid into the Fund. (*Inserted By Ord. 19 of 2010*)
- (4) If the court is satisfied that any victim of the defendant's criminal conduct has instituted, or intends to institute, civil proceedings against the defendant in respect of loss, injury or damage sustained in connection with the defendant's conduct—
- (a) it shall treat the duty in subsection (3) as a power; and
 - (b) the recoverable amount is such amount as the court considers just, but the recoverable amount shall not exceed the amount that it would have been if this subsection did not apply. (*Amended by Ord. 19 of 2010*)
- (5) The court shall determine any question arising under subsection (2) or (3) on a balance of probabilities.
- (6) Unless the court postpones the proceedings for a confiscation order under section 22, it shall proceed under this section before sentencing the defendant with respect to the offence or offences referred to in subsection (1). (*Amended by Ord. 19 of 2010*)
- (7) In this Part, a reference to the offence or offences concerned is to the offence or offences referred to in subsection (1).

Confiscation orders by Magistrate's Court

14. (1) Subject to subsection (2), the regulations may provide for the making of a confiscation order under section 13 by the Magistrate's Court.

(2) The regulations shall not enable the Magistrate's Court to make a confiscation order in respect of an amount exceeding \$20,000.

(3) The provisions of this Ordinance relating to confiscation orders shall apply with respect to confiscation proceedings before, and confiscation orders made by, the Magistrate's Court, subject to such modifications as may be provided for in the regulations.

Application of this section

15. (1) For the purposes of this Part, this section applies to a defendant if he is convicted of—

- (a) a specified offence; (*Substituted by Ord. 22 of 2018*)
- (b) an offence that constitutes conduct forming part of a course of criminal activity within the meaning of subsection (2).

(2) For the purposes of subsection (1)(b), conduct forms part of a course of criminal activity if the defendant has benefited from the conduct and—

- (a) in the proceedings in which he was convicted, he was convicted of at least three other offences, each of which constitutes conduct which he has benefited from; or
- (b) he has been convicted on at least two separate occasions in the period of six years prior to the commencement of those proceedings of an offence constituting conduct which he has benefited from.

(3) Subsection (1)(b) does not apply to a defendant if the value of the relevant benefit obtained is less than \$10,000.

(4) For the purposes of subsection (3), "relevant benefit" means the total benefit from—

- (a) all offences comprising the course of criminal activity; and
- (b) conduct which constitutes an offence which has been or will be taken into consideration by the court in sentencing the defendant for an offence specified in paragraph (a).

Recoverable amount

16. (1) Subject to this section, the recoverable amount for the purposes of section 13(3)(a) is an amount equal to the defendant's benefit from the conduct concerned.

(2) Subsection (3) applies where the defendant proves that the value of the benefit under subsection (1) is greater than the amount available to him, being the aggregate of—

- (a) the total of the values, at the time the confiscation order is made, of all the realisable property then held by the defendant less the total amount payable pursuant to obligations which then have priority; and

- (b) the total of the values, at the time the confiscation order is made, of all tainted gifts.
- (3) In the circumstances referred to in subsection (2), the recoverable amount is—
- (a) the amount the defendant proves is available to him in accordance with that subsection; or
- (b) a nominal amount, if that amount is nil. (*Amended by Ord. 19 of 2010*)
- (4) For the purposes of subsection (2), an obligation has priority if it is an obligation of the defendant—
- (a) to pay an amount due in respect of a fine or other order of a court which was imposed or made on conviction of an offence and at any time before the time the confiscation order is made, or
- (b) to pay a sum which, if the defendant being a company, was being wound up, would be included among the preferential payments if the defendant's winding up had been ordered on that date.
- (5) "Preferential payments" has the meaning given by section 160 of the Companies Ordinance.
- (6) In calculating the defendant's benefit from the conduct concerned for the purposes of subsection (1), any property in respect of which a recovery order or a forfeiture order is in force shall be ignored.

Defendant's benefit

17. (1) In determining, for the purposes of section 13, whether a defendant has benefited from conduct, and his benefit from that conduct, the court shall—
- (a) take account of conduct occurring up to the time it makes its determination; and
- (b) take account of property obtained up to that time.
- (2) Subsections (3) to (6) apply where the conduct concerned (for the purposes of section 13) is the defendant's general criminal conduct.
- (3) Where a confiscation order has previously been made against the defendant under this Ordinance or any of the enactments listed in subsection (5) and his benefit for the purposes of that order was his benefit from his general criminal conduct—
- (a) his benefit determined at the time the last confiscation order was made against him shall be taken for the purposes of this section to be his benefit from his general criminal conduct at that time; and
- (b) the court shall deduct the aggregate of the following amounts—
- (i) the amount ordered to be paid under each confiscation order previously made against the defendant under this Ordinance, and

- (ii) the amount ordered to be paid under each confiscation order previously made against him under any of the enactments listed in subsection (5).

(4) Subsection (3)(b) does not apply to an amount which has been taken into account for the purposes of a deduction under that subsection on any earlier occasion.

(5) The enactments referred to in subsection (3) are—

- (a) the Control of Drugs (Trafficking) Ordinance; and
- (b) the Proceeds of Crime Ordinance, 1998.

(6) The reference to general criminal conduct in the case of a confiscation order made under any of the provisions listed in subsection (5) is a reference to conduct in respect of which a court is required or entitled to make one or more assumptions for the purpose of assessing a person's benefit from the conduct.

Assumptions to be made where section 15 applies

18. (1) Subject to subsection (3), if the court determines under section 13(2) that section 15 applies to the defendant, it shall make the assumptions specified in subsection (2) for the purposes of—

- (a) determining whether the defendant has benefited from his general criminal conduct; and
- (b) determining his benefit from the conduct.

(2) The assumptions referred to under subsection (1) are—

- (a) that any property transferred to the defendant at any time after the relevant date was obtained by him—
 - (i) as a result of his general criminal conduct; and
 - (ii) at the earliest time he appears to have held it;
- (b) that any property held by the defendant at any time after the date of conviction was obtained by him—
 - (i) as a result of his general criminal conduct; and
 - (ii) at the earliest time he appears to have held it;
- (c) that any expenditure incurred by the defendant at any time after the relevant date was met from property obtained by him as a result of his general criminal conduct; and
- (d) that, for the purpose of valuing any property obtained, or assumed to have been obtained, by the defendant, he obtained it free of any other interests in it.

(3) The court shall not make an assumption under subsection (1) in relation to particular property or expenditure if—

- (a) the assumption is shown to be incorrect; or

(b) there would be a serious risk of injustice if the assumption were made.

(4) If the court does not make one or more of the assumptions under subsection (1) it shall state its reasons.

(5) For the purposes of this section, the relevant date is the first day of the period of six years ending with—

(a) the date when proceedings for the offence concerned were instituted against the defendant; or

(b) if there are two or more offences and proceedings for them were instituted on different days, the earliest of those days.

(6) If a confiscation order has been made against the defendant under this Ordinance or an Ordinance specified in section 17(5) at any time during the period mentioned in subsection (5)—

(a) the relevant date is the date when the defendant's benefit was calculated for the purposes of the last such confiscation order;

(b) the assumption specified in subsection (2)(b) does not apply to any property which was held by him on or before the relevant date.

(7) For the purposes of this section, the date of conviction is—

(a) the date on which the defendant was convicted of the offence concerned; or

(b) if there are two or more offences and the convictions were on different dates, the date of the latest.

(Amended by Ord. 19 of 2010)

Time for payment

19. (1) The amount ordered to be paid under a confiscation order shall be paid on the making of the order; but this is subject to the provisions of this section.

(2) If the defendant shows that he needs time to pay the amount ordered to be paid, the court may make an order allowing payment to be made within a period not exceeding six months after the date of the confiscation order.

(3) If, on the application of the defendant, the court is satisfied that there are exceptional circumstances, it may extend the period specified in subsection (2) so that it ends on a date no later than twelve months after the date of the confiscation order.

(4) An order under subsection (3)—

(a) may be made after the end of the period originally given for payment, but

(b) shall not be made after the end of the period of twelve months starting with the date on which the confiscation order is made.

(5) The court shall not make an order under subsection (2) or (3) unless it gives the prosecutor an opportunity to make representations to the court.

Interest on unpaid sums

20. (1) If the amount required to be paid by a person under a confiscation order is not paid when it is required to be paid, he shall pay interest at the civil judgment rate on the amount unpaid for the period for which it remains unpaid.

(2) For the purposes of subsection (1), no amount is required to be paid under a confiscation order if—

- (a) an application has been made under section 19(3),
- (b) the application has not been determined by the court, and
- (c) the period of twelve months starting with the day on which the confiscation order was made has not ended.

(3) The amount of interest payable under this section shall be treated as part of the amount to be paid under the confiscation order.

Effect of order on court's other powers

21. (1) Where the court makes a confiscation order against a defendant, it shall, in respect of any offence of which he is convicted in those proceedings, take account of the confiscation order before—

- (a) it imposes a fine on the defendant;
- (b) it makes an order involving any payment by him; or
- (c) it makes any order under article 15 of the Anti-terrorist Financing Order or section 17 of the Control of Drugs Ordinance. (*Amended by Ord. 19 of 2010*)

(2) Subject to subsection (1), the court shall leave the confiscation order out of account in deciding the appropriate sentence for the defendant.

(3) No Ordinance restricting the power of a court dealing with an offender in a particular way from dealing with him also in any other way shall by reason only of the making of a confiscation order restrict the court from dealing with an offender in any way it considers appropriate in respect of an offence to which this Ordinance applies.

Procedure

Postponement

22. (1) If the court considers it appropriate to do so, it may—

- (a) postpone proceedings under section 13 for a specified period (the postponement period); and
- (b) extend the postponement period for a specified period on one or more occasions.

(2) Unless the court is satisfied that there are exceptional circumstances, the postponement period, whether as originally ordered or as extended, shall not exceed a period of two years from the date of the conviction of the defendant.

(3) Where the defendant appeals against his conviction, the court may, on that account—

- (a) postpone making any of the determinations mentioned in subsection (1) for such period as it may specify; or
- (b) where it has already exercised its powers under this section to postpone, extend the postponement period.

(4) Unless the court is satisfied that there are exceptional circumstances, any postponement or extension under subsection (3), shall not exceed a period of three months from the date on which the appeal is determined or otherwise disposed of.

(5) A postponement or extension under subsection (1) or (3) may be made—

- (a) on application by the defendant or the prosecutor; or
- (b) by the court of its own motion.

(6) An application to extend the postponement period may be granted after the postponement period has ended, provided that the application is made before it ends.

(7) In this section, “the date of conviction” means—

- (a) the date on which the defendant was convicted of the offence concerned; or
- (b) where he was convicted in the same proceedings, but on different dates, of two or more offences which are comprised in relevant criminal conduct, the date of the latest of those convictions.

Effect of postponement

23. (1) Where the court exercises its power to postpone proceedings under section 22, it may nevertheless proceed to sentence the defendant in respect of the offence or any of the offences concerned.

(2) In sentencing the defendant in respect of the offence, or any of the offences, concerned during the postponement period, the court shall not—

- (a) impose a fine on him; or
- (b) make an order referred to in section 21(1)(b) or (c).

(3) Where the court has sentenced the defendant under subsection (1) during the postponement period, it may, after the end of that period, vary the sentence by—

- (a) imposing a fine on him, or
- (b) making an order referred to in section 21(1)(b) or (c),

provided that it does so within a period of twenty-eight days after the last day of the postponement period.

(4) If the court proceeds to sentence the defendant under subsection (1), section 13 has effect as if the defendant's particular criminal conduct included conduct which constitutes offences which the court has taken into consideration in deciding his sentence for the offence or offences concerned.

Statement of information

24. (1) If the court is proceeding under section 13, the prosecutor shall give the court a statement of information—

- (a) in a case where section 13(1)(b)(i) applies, within the period ordered by the court; and
- (b) in a case where section 13(1)(b)(ii) applies, if the court orders him to give it a statement of information, within the period ordered by the court.

(2) If the prosecutor believes that section 15 applies with respect to the defendant, the statement of information is a statement of matters the prosecutor believes are relevant in connection with deciding—

- (a) whether section 15 applies to the defendant;
- (b) whether he has benefited from his general criminal conduct; and
- (c) his benefit from the conduct.

(3) A statement under subsection (2) shall include information the prosecutor believes is relevant—

- (a) in connection with the making by the court of a required assumption under section 18;
- (b) for the purpose of enabling the court to determine if the circumstances are such that it shall not make such an assumption.

(4) If the prosecutor does not believe that section 15 applies to the defendant, the statement of information is a statement of matters the prosecutor believes are relevant in connection with deciding—

- (a) whether the defendant has benefited from his particular criminal conduct; and
- (b) his benefit from the conduct.

(5) If the prosecutor gives the court a statement of information—

- (a) he may at any time give the court a further statement of information;
- (b) he shall give the court a further statement of information if it orders him to do so, within the period ordered by the court.

(6) The court may, at any time, vary an order made under this section.

Defendant's response to statement of information

25. (1) If the prosecutor gives the court a statement of information and a copy is served on the defendant, the court may order the defendant—

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

(2) If the defendant accepts to any extent an allegation in a statement of information, the court may treat his acceptance as conclusive of the matters to which it relates for the purpose of deciding the issues referred to in section 24(2) or (4), as the case may be.

(3) If the defendant fails in any respect to comply with an order under subsection (1), he may be treated for the purposes of subsection (2) as accepting every allegation in the statement of information apart from—

- (a) any allegation in respect of which he has complied with the requirement; and
- (b) any allegation that he has benefited from his general or particular criminal conduct.

(4) For the purposes of this section, an allegation may be accepted or particulars may be given in a manner ordered by the court.

(5) The court may, at any time, vary an order made under this section.

(6) No acceptance under this section that the defendant has benefited from conduct is admissible in evidence in proceedings for an offence.

Provision of information by defendant

26. (1) For the purpose of obtaining information to help it in carrying out its functions the court may at any time order the defendant to give it information specified in the order.

(2) An order under this section may require all or a specified part of the information to be given in a specified manner and before a specified date.

(3) If the defendant fails without reasonable excuse to comply with an order under this section the court may draw such inference as it believes is appropriate.

(4) Subsection (3) does not affect any power of the court to deal with the defendant in respect of a failure to comply with an order under this section.

(5) If the prosecutor accepts to any extent an allegation made by the defendant—

- (a) in giving information required by an order under this section, or
- (b) in any other statement given to the court in relation to any matter relevant to determining the amount available to him for the purposes of section 16(2),

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

(6) For the purposes of this section an allegation may be accepted in a manner ordered by the court.

(7) The court may, at any time, vary an order made under this section.

(8) No information given under this section which amounts to an admission by the defendant that he has benefited from criminal conduct is admissible in evidence in proceedings for an offence.

Reconsideration of Confiscation Order

Reconsideration of case where no confiscation order made

27. (1) This section applies if—

- (a) section 13(1)(a) applies in respect of a defendant, but the court has not proceeded under that section;
- (b) there is evidence which was not available to the prosecutor on the relevant date;
- (c) before the end of the period of six years starting with the date of conviction, the prosecutor applies to the court to consider the evidence; and
- (d) after considering the evidence the court believes it is appropriate for it to proceed under section 13.

(2) Where subsection (1) applies, the court must proceed under section 13, and subsections (3) to (8) apply for that purpose.

(3) If the court has already sentenced the defendant for the offence (or any of the offences) concerned, section 13 has effect as if his particular criminal conduct included conduct which constitutes offences which the court has taken into consideration in deciding his sentence for the offence or offences concerned.

(4) Instead of taking account of the matters specified in section 17(1)(a) and (b), the court shall—

- (a) take account of conduct occurring before the relevant date;
- (b) take account of property obtained before the relevant date; and
- (c) take account of property obtained on or after the relevant date if it was obtained as a result of or in connection with conduct occurring before the relevant date.

(5) For the purposes of this section—

- (a) the assumptions specified in section 18(2)(a) and (b) do not apply with regard to property first held by the defendant on or after the relevant date;

- (b) the assumption specified in section 18(2)(c) does not apply with regard to expenditure incurred by the defendant on or after the relevant date; and
- (c) the assumption specified in section 18 (2)(d) does not apply with regard to property obtained (or assumed to have been obtained) by the defendant on or after the relevant date.

(6) The recoverable amount for the purposes of section 13 is such amount, not exceeding the amount determined in accordance with section 16, as the court considers just.

(7) In arriving at the just amount the court shall have regard in particular to—

- (a) the recoverable amount determined in accordance with section 16;
- (b) any fine imposed on the defendant in respect of the offence (or any of the offences) concerned;
- (c) any order within section 21(1)(b) or (c) that has been made against him in respect of the offence (or any of the offences) concerned and has not already been taken into account by the court in determining what is the realisable property held by him for the purposes of section 16(2).

(8) For the purposes of this section—

- (a) the relevant date is—
 - (i) if the court made a decision not to proceed under section 13, the date of the decision; or
 - (ii) if the court did not make such a decision, the date of conviction; and
- (b) the date of conviction is—
 - (i) the date on which the defendant was convicted of the offence concerned; or
 - (ii) if there are two or more offences and the convictions were on different dates, the date of the latest conviction.

(Amended by Ord. 19 of 2010)

Reconsideration of benefit where no confiscation order made

28. (1) This section applies if—

- (a) in proceeding under section 13, the court has determined that—
 - (i) section 15 applies to the defendant but he has not benefited from his general criminal conduct; or
 - (ii) section 15 does not apply to the defendant and he has not benefited from his particular criminal conduct;

- (b) there is evidence which was not available to the prosecutor when the court determined that the defendant had not benefited from his general or particular criminal conduct,
 - (c) before the end of the period of six years starting with the date of conviction the prosecutor applies to the court to consider the evidence, and
 - (d) after considering the evidence, the court concludes that it would have determined that the defendant had benefited from his general or particular criminal conduct (as the case may be) if the evidence had been available to it.
- (2) If this section applies, the court—
 - (a) shall make a fresh determination under section 13(2)(a) or (b) as to whether the defendant has benefited from his general or particular criminal conduct (as the case may be); and
 - (b) may make a confiscation order under that section.
- (3) Subsections (4) to (9) apply if the court proceeds under section 13 pursuant to this section.
- (4) If the court has already sentenced the defendant for the offence (or any of the offences) concerned, section 13 has effect as if his particular criminal conduct included conduct which constitutes offences which the court has taken into consideration in deciding his sentence for the offence or offences concerned.
- (5) Instead of taking account of the matters specified in section 17(1)(a) and (b) the court shall—
 - (a) take account of conduct occurring before the date of the original decision that the defendant had not benefited from his general or particular criminal conduct;
 - (b) take account of property obtained before that date; and
 - (c) take account of property obtained on or after that date if it was obtained as a result of or in connection with conduct occurring before that date.
- (6) For the purposes of this section—
 - (a) the assumptions specified in section 18(2)(a) and (b) do not apply with regard to property first held by the defendant on or after the date of the original decision that the defendant had not benefited from his general or particular criminal conduct;
 - (b) the assumption specified in section 18(2)(c) does not apply with regard to expenditure incurred by him on or after that date; and
 - (c) the assumption specified in section 18(2)(d) does not apply with regard to property obtained (or assumed to have been obtained) by him on or after that date.
- (7) The recoverable amount for the purposes of section 13 is such amount as the court considers just, but that amount shall not exceed the amount that the

recoverable amount would have been under section 16 if this subsection did not apply.

(8) In arriving at the just amount the court shall have regard in particular to—

- (a) the recoverable amount determined in accordance with section 16;
- (b) any fine imposed on the defendant in respect of the offence (or any of the offences) concerned;
- (c) any order within section 21(1)(b) or (c) that has been made against him in respect of the offence (or any of the offences) concerned and has not already been taken into account by the court in determining what is the realisable property held by him for the purposes of section 16(2).

(9) For the purposes of this section, “date of conviction” has the meaning specified in section 27(8)(b).

(Amended by Ord. 19 of 2010)

Reconsideration of benefit where compensation order made

29. (1) This section applies if—

- (a) a court has made a confiscation order;
- (b) there is evidence which was not available to the prosecutor at the relevant time;
- (c) the prosecutor believes that if the court were to determine the amount of the defendant's benefit pursuant to this section it would exceed the relevant amount;
- (d) before the end of the period of six years starting with the date of conviction the prosecutor applies to the court to consider the evidence; and
- (e) after considering the evidence the court believes it is appropriate for it to proceed under this section.

(2) Where this section applies, the court shall make a new calculation of the defendant's benefit from the conduct concerned, and subsections (3) to (6) apply for this purpose.

(3) If the court has already sentenced the defendant for the offence (or any of the offences) concerned, section 13 has effect as if his particular criminal conduct included conduct which constitutes offences which the court has taken into consideration in deciding his sentence for the offence or offences concerned.

(4) Instead of taking account of the matters specified in section 17(1)(a) and (b), the court shall—

- (a) take account of conduct occurring up to the time it determined the defendant's benefit for the purposes of the confiscation order;
- (b) take account of property obtained up to that time; and

- (c) take account of property obtained after that time if it was obtained as a result of or in connection with conduct occurring before that time.
- (5) In applying section 17(3)(b) the confiscation order shall be ignored.
- (6) For the purposes of this section—
 - (a) the assumptions specified in section 18(2)(a) and (b) do not apply with regard to property first held by the defendant after the time the court determined his benefit for the purposes of the confiscation order;
 - (b) the assumption specified in section 18(2)(c) does not apply with regard to expenditure incurred by him after that time; and
 - (c) the assumption specified in section 18(2)(d) does not apply with regard to property obtained (or assumed to have been obtained) by him after that time.
- (7) If the amount determined under the new calculation of the defendant's benefit exceeds the relevant amount, the court—
 - (a) shall make a new calculation of the recoverable amount for the purposes of section 13; and
 - (b) if it exceeds the amount required to be paid under the confiscation order, may vary the order by substituting for the amount required to be paid such amount as it believes is just.
- (8) In applying subsection (7)(a) the court shall—
 - (a) take the new calculation of the defendant's benefit; and
 - (b) apply section 16 as if references to the time the confiscation order is made were to the time of the new calculation of the recoverable amount and as if references to the date of the confiscation order were to the date of that new calculation.
- (9) In applying subsection (7)(b) the court shall have regard in particular to—
 - (a) any fine imposed on the defendant for the offence (or any of the offences) concerned; and
 - (b) any order within section 21(1)(b) or (c) that has been made against him in respect of the offence (or any of the offences) concerned and has not already been taken into account by the court in determining what is the realisable property held by him for the purposes of section 16(2).
- (10) In determining under this section whether one amount exceeds another, the court shall take account of any change in the value of money.
- (11) For the purposes of this section,
 - (a) the relevant time is—

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

(12) For the purposes of this section, “date of conviction” has the meaning specified in section 27(8)(b).

(Amended by Ord. 19 of 2010)

Reconsideration of amount available to defendant where order made

30. (1) This section applies if—

- (a) a court has made a confiscation order;
- (b) the amount required to be paid was the amount determined in accordance with section 16(3); and
- (c) the prosecutor or a receiver appointed under section 46(1) applies to the court to make a new calculation of the amount available to the defendant.

(2) In a case where this section applies the court shall make the new calculation, and in doing so it shall apply section 16 as if references to the time the confiscation order is made were to the time of the new calculation and as if references to the date of the confiscation order were to the date of the new calculation.

(3) If the amount determined under the new calculation exceeds the relevant amount, the court may vary the order by substituting for the amount required to be paid such amount as the court considers just, but that amount shall not exceed the amount determined as the defendant’s benefit from the conduct concerned.

(4) In deciding what is just the court shall have regard, in particular to—

- (a) any fine imposed on the defendant for the offence (or any of the offences) concerned; and
- (b) any order within section 21(1)(b) or (c) that has been made against him in respect of the offence (or any of the offences) concerned and has not already been taken into account by the court in determining what is the realisable property held by him for the purposes of section 16(2).

(5) In determining under this section whether one amount exceeds another, the court shall take account of any change in the value of money.

(6) The relevant amount is—

(a) the amount determined as the amount available to the defendant for the purposes of the confiscation order, if this section has not applied previously;

(b) the amount last determined as the amount available to the defendant pursuant to this section, if this section has applied previously.

(7) The amount determined as the defendant's benefit from the conduct concerned is—

(a) the amount determined when the confiscation order was made; or

(b) if one or more new calculations of the defendant's benefit have been made under section 29 the amount determined on the occasion of the last such calculation.

Variation of order where amount available to defendant is inadequate

31. (1) This section applies if—

(a) a court has made a confiscation order; and

(b) the defendant, or a receiver appointed under section 46, applies to the court to vary the order under this section.

(2) Where this section applies, the court shall calculate the amount available to the defendant, and in doing so it shall apply section 16 as if references to the time the confiscation order is made were to the time of the calculation and as if references to the date of the confiscation order were to the date of the calculation.

(3) If the court determines that the amount available to the defendant calculated in accordance with subsection (2) is inadequate for the payment of any amount remaining to be paid under the confiscation order, it may vary the order by substituting for the amount required to be paid such smaller amount as the court considers is just.

(4) If a person has been adjudged bankrupt or his estate has been sequestrated, or if an order for the winding up of a company has been made, the court shall take into account the extent to which realisable property held by that person or that company may be distributed among creditors.

(5) The court may disregard any inadequacy which it believes is attributable (wholly or partly) to anything done by the defendant for the purpose of preserving property held by the recipient of a tainted gift from any risk of realisation under this Ordinance.

(6) In subsection (4) “company” means any company which may be wound up under the Companies Ordinance.

Discharge of order for inadequacy of amount available to defendant

32. (1) This section applies if—

- (a) a court has made a confiscation order;
- (b) a clerk of the Magistrate's Court applies to the court for the discharge of the order; and
- (c) the amount remaining to be paid under the order is less than such sum as shall be prescribed.

(2) Where this section applies, the court shall calculate the amount available to the defendant and, in doing so, it shall apply section 16 as if references to the time the confiscation order is made were to the time of the calculation and as if references to the date of the confiscation order were to the date of the calculation.

(3) If the court—

- (a) determines that the amount available to the defendant calculated in accordance with subsection (2) is inadequate to meet the amount remaining to be paid, and
- (b) is satisfied that the inadequacy is due wholly to a one or more of the reasons specified in subsection (4),

it may discharge the confiscation order.

(4) The reasons referred to in subsection (3) are—

- (a) in a case where any of the realisable property consists of money in a currency other than United States dollars, that fluctuations in currency exchange rates have occurred; and
- (b) such other reasons as may be prescribed.

Discharge of order where small amount outstanding

33. The court may discharge a confiscation order if—

- (a) a clerk of the Magistrate's Court applies to the court for the discharge of the order, and
- (b) the amount remaining to be paid under the order is the prescribed sum or less.

Information

34. Where the court proceeds under section 13 pursuant to section 27 or 28 or the prosecutor applies under section 29—

- (a) the prosecutor shall give the court a statement of information within such period as the court orders;
- (b) section 24 applies, with appropriate modifications where the prosecutor applies under section 29; and
- (c) section 25 and 26 apply.

Defendant Absconds

Defendant convicted or committed

35. (1) This section applies if—

(a) a defendant absconds after—

(i) he is convicted of an offence or offences in proceedings before the court; or

(ii) he is committed to the court in respect of an offence or offences under section 56;

(b) the prosecutor applies to the court to proceed under this section; and

(c) the court believes it is appropriate for it to do so.

(2) Where this section applies, subject to subsection (3), the court shall proceed under section 13.

(3) Where the court proceeds under section 13 as applied by this section, this Part has effect with the following modifications—

(a) any person the court believes is likely to be affected by an order under section 13 is entitled to appear before the court and make representations;

(b) the court shall not make an order under section 13 unless the prosecutor has taken reasonable steps to contact the defendant;

(c) sections 18, 24(3), 25 and 26 shall be ignored; and

(d) sections 27, 28 and 29 shall be ignored while the defendant is still an absconder.

(4) Once the defendant ceases to be an absconder, section 27 applies as if subsection (1)(a) provided—

“(a) at a time when section 35(1)(a) applies, the court did not proceed under section 13;”.

(5) If the court does not consider it is appropriate to proceed under this section, once the defendant ceases to be an absconder, section 27 applies as if subsection (1)(b) provided—

“(b) there is evidence which was not available to the prosecutor on the relevant date;”.

Defendant neither convicted nor acquitted

36. (1) This section applies if—

(a) proceedings for an offence or offences are instituted against a defendant but are not concluded;

(b) the defendant absconds;

- (c) the period of two years, starting with the day the court believes he absconded, has ended;
- (d) the prosecutor applies to the court to proceed under this section; and
- (e) the court believes it is appropriate for it to do so.

(2) If subsection (1) applies, subject to subsection (3), the court shall proceed under section 13.

(3) Where the court proceeds under section 13 as applied by this section, this Part has effect with the following modifications—

- (a) any person the court believes is likely to be affected by an order under section 13 is entitled to appear before the court and make representations;
- (b) the court shall not make an order under section 13 unless the prosecutor has taken reasonable steps to contact the defendant;
- (c) sections 18, 24(3) and sections 25 to 28 shall be ignored;
- (d) section 29 shall be ignored while the defendant is still an absconder.

(4) Once the defendant has ceased to be an absconder, section 29 has effect as if references to the date of conviction were to—

- (a) the day when proceedings for the offence concerned were instituted against the defendant; or
- (b) if there are two or more offences and proceedings for them were instituted on different days, the earliest of those days.

(5) If—

- (a) the court makes an order under section 13 as applied by this section, and
- (b) the defendant is later convicted in proceedings before the court of the offence (or any of the offences) concerned,

section 13 does not apply so far as that conviction is concerned. (*Amended by Ord. 19 of 2010*)

Variation of order

37. (1) This section applies if—

- (a) the court makes a confiscation order under section 13 as applied by section 36;
- (b) the defendant ceases to be an absconder;
- (c) the defendant is convicted of an offence (or any of the offences) mentioned in section 36(1)(a);

- (d) the defendant believes that the amount required to be paid was too large, taking into account the circumstances prevailing when the amount was determined for the purposes of the order; and
- (e) before the end of the relevant period the defendant applies to the court to consider the evidence on which his belief is based.

(2) If, after considering the evidence, the court concludes that the defendant's belief is well founded—

- (a) it shall determine the amount which should have been the amount required to be paid (taking into account the circumstances prevailing when the amount was determined for the purposes of the order); and
- (b) it may vary the order by substituting for the amount required to be paid such amount as it believes is just.

(3) The relevant period is the period of 28 days starting with—

- (a) the date on which the defendant was convicted of the offence mentioned in section 36(1)(a); or
- (b) if there are two or more offences and the convictions were on different dates, the date of the latest.

(4) But in a case where section 36(1)(a) applies to more than one offence, the court shall not make an order under this section unless it is satisfied that there is no possibility of any further proceedings being taken or continued in relation to any such offence in respect of which the defendant has not been convicted.
(Amended by Ord. 19 of 2010)

Discharge of order

38. (1) Where the court makes a confiscation order under section 13 as applied by section 36, it shall discharge the order if—

- (a) the defendant is later tried for the offence or offences concerned and acquitted on all counts; and
- (b) he applies to the court to discharge the order.

(2) Subsection (3) applies if—

- (a) the court makes a confiscation order under section 13 as applied by section 36;
- (b) the defendant ceases to be an absconder;
- (c) subsection (1)(a) does not apply; and
- (d) he applies to the court to discharge the order.

(3) In the circumstances specified in subsection (2), the court may discharge the order if it determines that—

- (a) there has been undue delay in continuing the proceedings mentioned in section 36(1); or

(b) the prosecutor does not intend to proceed with the prosecution.

(4) If the court discharges a confiscation order under this section it may make such a consequential or incidental order as it considers is appropriate.

Appeals

Appeal to Court of Appeal

39. (1) If the Court makes a confiscation order, the prosecutor or the defendant may appeal to the Court of Appeal in respect of the order.

(2) If the Court decides not to make a confiscation order, the prosecutor may appeal to the Court of Appeal against the decision.

(3) Subsections (1) and (2) do not apply to an order or decision made by virtue of section 27, 28, 35 or 36 unless the appellant is the defendant.

Court's powers on appeal

40. (1) On an appeal under section 39(1) the Court of Appeal may confirm, set aside or vary the confiscation order.

(2) On an appeal under section 39(2), the Court of Appeal may confirm the decision, or if it believes the decision was wrong it may—

(a) itself proceed under section 13 (ignoring subsections (1) to (3)),
or

(b) direct the Court to proceed afresh under section 13.

(3) In proceeding afresh pursuant to this section, the Court shall comply with any directions the Court of Appeal may make.

(4) If the Court of Appeal makes or varies a confiscation order under this section or the court does so pursuant to a direction under this section, it shall—

(a) have regard to any fine imposed on the defendant in respect of the offence (or any of the offences) concerned;

(b) have regard to any order within section 21(1)(b) or (c) that has been made against him in respect of the offence (or any of the offences) concerned, unless the order has already been taken into account by a court in determining what is the realisable property held by the defendant for the purposes of section 16(2).

(5) If the Court of Appeal proceeds under section 13 or the court proceeds afresh under that section pursuant to a direction under this section, subsections (6) to (10) apply and, in those subsections “court” means the Court of Appeal or the court, as the case may be.

(6) If the Court has already sentenced the defendant for the offence (or any of the offences) concerned, section 13 has effect as if his particular criminal conduct included conduct which constitutes offences which the court has taken into consideration in deciding his sentence for the offence or offences concerned.

(7) Instead of taking account of the matters specified in section 17(1)(a) and (b), the court shall—

- (a) take account of conduct occurring before the relevant date;
- (b) take account of property obtained before that date;
- (c) take account of property obtained on or after that date if it was obtained as a result of or in connection with conduct occurring before that date.

(8) For the purposes of this section—

- (a) the assumptions specified in section 18(2)(a) and (b) do not apply with regard to property first held by the defendant on or after the relevant date;
- (b) the assumption specified in section 18(2)(c) does not apply with regard to expenditure incurred by him on or after that date;
- (c) the assumption specified in section 18(2)(c) does not apply with regard to property obtained (or assumed to have been obtained) by him on or after that date.

(9) Section 34 applies as it applies in the circumstances specified in that section.

(10) The relevant date is the date on which the court decided not to make a confiscation order.

(Amended by Ord. 19 of 2010)

Restraint Orders

Conditions for exercise of powers

41. (1) The court may exercise the powers conferred by section 42 if—

- (a) a criminal investigation has been started in the Islands with regard to an offence and there is reasonable cause to believe that the alleged offender has benefited from his criminal conduct;
- (b) proceedings for an offence have been instituted in the Islands and not concluded and there is reasonable cause to believe that the defendant has benefited from his criminal conduct;
- (c) an application by the prosecutor has been made under section 27, 28, 35 or 36 and not concluded, or the court believes that such an application is to be made, and there is reasonable cause to believe that the defendant has benefited from his criminal conduct;
- (d) an application by the prosecutor has been made under section 29 and not concluded, or the court believes that such an application is to be made, and there is reasonable cause to believe that the court will decide under that section that the amount determined under the new calculation of the defendant's benefit exceeds the relevant amount, as defined in that section; or

- (e) an application by the prosecutor has been made under section 30 and not concluded, or the court believes that such an application is to be made, and there is reasonable cause to believe that the court will decide under that section that the amount determined under the new calculation of the amount available to the defendant exceeds the relevant amount (as defined in that section).
- (2) Subsection (1)(b) is not satisfied if the court believes that—
 - (a) there has been undue delay in continuing the proceedings; or
 - (b) the prosecutor does not intend to proceed.
- (3) If an application mentioned in subsection (1)(c), (d) or (e) has been made, the condition specified in the relevant paragraph is not satisfied if the court believes that—
 - (a) there has been undue delay in continuing the application; or
 - (b) the prosecutor does not intend to proceed.
- (4) If subsection (1)(a) is satisfied—
 - (a) references in this Part to the defendant are to the alleged offender;
 - (b) references in this Part to the prosecutor are to the person the court believes is to have conduct of any proceedings for the offence; and
 - (c) section 9(2) has effect as if proceedings for the offence had been instituted against the defendant when the investigation was started.

Restraint orders

42. (1) If any paragraph in section 41(1) is satisfied, the court may, on the application of the prosecutor, by order, prohibit any person specified in the order from dealing with any realisable property held by him, subject to such conditions and exceptions as may be specified in the order.

(2) Without prejudice to the generality of subsection (1), a restraint order may make such provision as the court thinks fit for—

- (a) reasonable living expenses and reasonable legal expenses; or
 - (b) enabling any person to carry on any trade, business, profession or occupation.
- (3) A restraint order shall not make provision for any legal expenses which—
- (a) relate to an offence mentioned in section 41(1)(a) or (b) if any of the conditions mentioned in subsection (1)(a) or (b) is satisfied; and
 - (b) are incurred by the defendant or by a recipient of a tainted gift.
(*Inserted by Ord. 22 of 2018*)

(4) A restraint order may apply—

- (a) to all realisable property held by the person specified in the order, whether the property is described in the order or not; and
- (b) to realisable property transferred to the person specified in the order after the order is made.

(5) On the application of the prosecutor, whether made as part of the application for the restraint order or subsequent thereto, the Court may make such order as it considers appropriate for ensuring the restraint order is effective.

(6) A restraint order does not affect property for the time being subject to a charging order under—

- (a) section 11 of the Control of Drugs (Trafficking) Ordinance; or
- (b) section 17 of the Proceeds of Crime Ordinance, 1998.

(7) Where the court has made a restraint order, a police officer may, for the purpose of preventing any property to which the order applies being removed from the Islands, seize the property.

(8) Property seized under subsection (6) shall be dealt with in accordance with the court's directions.

Application, discharge and variation

43. (1) A restraint order—

- (a) may be made on an *ex parte* application to a judge in chambers; and
- (b) shall provide for notice to be given to persons affected by the order.

(2) An application to discharge or vary a restraint order or an order made under section 42(4) may be made to the court by the prosecutor or by any person affected by the order.

(3) On an application under subsection (2), the court—

- (a) may discharge or vary the restraint order;
- (b) if the application was made on the basis that proceedings were instituted or an application was made, the court shall discharge the restraint order on the conclusion of the proceedings or the application, as the case may be;
- (c) if the application was made on the basis that an investigation was started or an application was to be made, the court shall discharge the restraint order if within a reasonable period proceedings for the offence are not instituted or the application is not made, as the case may be.

Hearsay evidence

44. (1) Evidence shall not be excluded on the ground that it is hearsay, of whatever degree, in proceedings—

- (a) for a restraint order;
- (b) for an application to discharge or vary a restraint order; or
- (c) on an appeal against a restraint order or an order discharging or varying a restraint order.

(2) For the purposes of this section, “hearsay” is a statement which is made otherwise than by a person while giving oral evidence in the proceedings and which is tendered as evidence of the matters stated.

(3) This section does not affect the admissibility of evidence which is admissible apart from this section. *(Inserted by Ord. 19 of 2010)*

Prosecutor may lodge caution

45. (1) Where the prosecutor has applied for a restraint order, he shall be treated for the purposes of section 127 of the Registered Land Ordinance (lodging of cautions) as a person who claims an unregistrable interest in relation to any land, lease or charge to which the application relates, or to which a restraint order made on the application relates, and he may lodge a caution in accordance with that section.

(2) Sections 127, 128 and 129 of the Registered Land Ordinance apply with respect to a caution lodged in accordance subsection (1). *(Inserted by Ord. 19 of 2010)*

Appointment of management receiver

46. (1) If the court makes a restraint order, on the application of the prosecutor, whether as part of the application for the restraint order or at any time afterwards, the court may appoint a management receiver in respect of any realisable property to which the restraint order applies.

(2) Subject to such directions, exceptions and conditions as may be specified by the court, a management receiver has the following powers in relation to any realisable property to which the restraint order applies—

- (a) to take possession of the property;
- (b) to manage or otherwise deal with the property;
- (c) to start, carry on or defend any legal proceedings in respect of the property;
- (d) to realise so much of the property as is necessary to meet his remuneration and expenses; and
- (e) to exercise such other powers as the court considers it appropriate to confer on him for the purpose of exercising his functions.

(3) The court may require any person having possession of property in respect of which a receiver is appointed under this section to give possession of it to the management receiver.

(4) The court—

(a) may order a person holding an interest in any realisable property to which the restraint order applies to make to the management receiver such payment as the court specifies in respect of a beneficial interest held by the defendant or the recipient of a tainted gift;

(b) may, on the payment being made, by order transfer, grant or extinguish any interest in the property.

(5) For the purposes of this section, managing or otherwise dealing with property includes—

(a) selling the property or any part or interest in it;

(b) carrying on or arranging for another person to carry on any trade or business the assets of which are or are part of the property;

(c) incurring capital expenditure in respect of the property.

(6) The court shall not in respect of any property exercise the powers conferred by subsection (3) or (4) unless a reasonable opportunity has been given for persons holding any interest in the property to make representations to the court.

Appointment of enforcement receiver

47. (1) On the application of the prosecutor, the court may appoint an enforcement receiver in respect of realisable property, except property subject to a charge specified in section 42(6), if—

(a) a confiscation order is made;

(b) the confiscation order is not satisfied; and

(c) the confiscation order is not subject to appeal.

(2) Subject to such directions, exceptions and conditions as may be specified by the court, an enforcement receiver has the following powers in relation to the realisable property—

(a) to take possession of the property;

(b) to manage or otherwise deal with the property;

(c) to realise the property, in such manner as the court may specify;

(d) to start, carry on or defend any legal proceedings in respect of the property; and

(e) to exercise such other powers as the court considers it appropriate to confer on him for the purpose of exercising his functions.

(3) The court may require any person having possession of realisable property to give possession of it to the enforcement receiver.

(4) The court—

(a) may order a person holding an interest in realisable property to make to the receiver such payment as the court specifies in respect of a beneficial interest held by the defendant or the recipient of a tainted gift; and

(b) may, on the payment being made, by order transfer, grant or extinguish any interest in the property.

(5) For the purposes of this section, managing or otherwise dealing with property includes—

(a) selling the property or any part or interest in it;

(b) carrying on or arranging for another person to carry on any trade or business the assets of which are or are part of the property; and

(c) incurring capital expenditure in respect of the property.

(6) The court shall not in respect of any property exercise the powers conferred by subsection (3), (4) or (5) unless a reasonable opportunity has been given for persons holding any interest in the property to make representations to the court.

Effect of restraint order

48. (1) Where a restraint order is made, or an enforcement receiver is appointed, no distress may be levied against any realisable property to which the order applies except with the leave of the court and subject to any terms the court may impose.

(2) If the restraint order applies to, or the enforcement receiver is appointed in respect of, a tenancy of any premises, no landlord or other person to whom rent is payable may exercise a right of forfeiture by peaceable re-entry in relation to the premises in respect of any failure by the tenant to comply with any term or condition of the tenancy, except with the leave of the court and subject to any terms the court may impose.

(3) If proceedings are pending before the court in respect of any property and the court is satisfied that a restraint order, or an order for the appointment of an enforcement receiver, has been applied for or made in respect of the property, the court may either stay the proceedings or allow them to continue on any terms it thinks fit.

(4) Before exercising any power conferred by subsection (3), the court shall give an opportunity to be heard to—

(a) the prosecutor; and

(b) the enforcement receiver or, in the case of a restraint order, any receiver appointed in respect of the property under this Part.

Application of proceeds of realisation and other sums

49. (1) Subject to subsection (2), the following sums in the hands of an enforcement receiver appointed under this Ordinance, that is—

- (a) the proceeds of the realisation of any property under section 47;
and
- (b) any other sums in which the defendant holds an interest,

shall, after such payments (if any) as the court may direct have been made out of those sums, be applied on the defendant's behalf towards the satisfaction of the confiscation order. (*Amended by Ord. 19 of 2010*)

(2) If, after the amount payable under the confiscation order has been fully paid, any such sums remain in the hands of such a receiver, the receiver shall distribute them—

- (a) among such of those who held property which has been realized under this Ordinance; and
- (b) in such proportions,

as the court may direct after giving a reasonable opportunity for such persons to make representations to the court.

(3) The receipt of any sum by the Registrar on account of an amount payable under a confiscation order shall reduce the amount so payable, but the Registrar shall apply the money received for the purposes specified in this section and in the order so specified.

(4) The Registrar shall first pay the receiver's remuneration and expenses if the money was paid to the Registrar by a receiver appointed under this Ordinance.

(5) Any balance in the hands of the Registrar after he has made all payments required by this section shall be treated as if it were a fine imposed by the court.

Further provisions with respect to receivers

50. (1) If a management or enforcement receiver—

- (a) takes action in relation to property which is not realisable property;
- (b) would be entitled to take the action if it were realisable property;
and
- (c) believes on reasonable grounds that he is entitled to take the action,

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

(2) Application may be made to the court for an order giving directions as to the exercise of the powers of a management or enforcement receiver by—

- (a) the receiver;

- (b) any person affected by action taken by the receiver; or
- (c) any person who may be affected by action the receiver proposes to take.

(3) On an application under this section, the court may make such order as it considers appropriate.

Discharge and variation

51. (1) Application may be made to the court to vary or discharge an order made under section 46 or 47 by—

- (a) the receiver;
- (b) the prosecutor; or
- (c) any person affected by the order.

(2) On an application under this section, the court may discharge or vary the order.

(3) In the case of an order under section 46—

- (a) if the condition in section 41 which was satisfied was that proceedings were instituted or an application was made, the court must discharge the order on the conclusion of the proceedings or of the application, as the case may be; and
- (b) if the condition which was satisfied was that an investigation was started or an application was to be made, the court must discharge the order if within a reasonable time proceedings for the offence are not instituted or the application is not made, as the case may be.

Discharge of management receiver

52. (1) Where a management receiver is appointed in respect of realisable property and the court appoints an enforcement receiver, the court shall order the management receiver to transfer to the enforcement receiver all property that he holds by virtue of the exercise of his powers.

(2) Subsection (1) does not apply to property which the management receiver holds by virtue of the exercise by him of his power under section 46(2)(d).

(3) If the management receiver complies with an order under subsection (1), he is discharged—

- (a) from his appointment under section 46; and
- (b) from any obligation under this Ordinance arising from his appointment.

(4) Where this section applies, the court may make such a consequential or incidental order as it considers appropriate.

Winding up of company holding realisable property

53. (1) Where realisable property is held by a company and an order for the winding up of the company has been made or a resolution has been passed by the company for the voluntary winding up, the functions of the liquidator (or any provisional liquidator) shall not be exercisable in relation to—

- (a) property for the time being subject to a restraint order made before the relevant time; and
- (b) any proceeds of property for the time being in the hands of a receiver appointed under this Ordinance.

(2) Where, in the case of a company, such an order has been made or such a resolution has been passed, the powers conferred on the court by sections 41 to 51 shall not be exercised in relation to any realisable property held by the company in relation to which the functions of the liquidator are exercisable—

- (a) so as to inhibit him from exercising those functions for the purpose of distributing any property held by the company to the company's creditors; or
- (b) so as to prevent the payment out of any property of expenses (including the remuneration of the liquidator or any provisional liquidator) properly incurred in the winding up in respect of the property.

(3) Subsection (2) does not affect the enforcement of a charging order made before the relevant time or on property which was subject to a restraint order at the relevant time.

(4) In this section—

“company” means any company which may be wound up under the Companies Ordinance; and

“the relevant time” means—

- (a) where no order for the winding up of the company has been made, the time of the passing of the resolution for voluntary winding up;
- (b) where such an order has been made and, before the presentation of the petition for the winding up of the company by the court, such a resolution had been passed by the company, the time of the passing of the resolution; and
- (c) in any other case where such an order has been made, the time of the making of the order.

Exercise of powers by court or receiver

54. (1) This section applies to—

- (a) the powers conferred on the court by sections 42 to 52; and
- (b) the powers of a receiver appointed under this Part.

- (2) Subject to this section, the powers—
- (a) shall be exercised with a view to the value for the time being of realisable property being made available, by the property's realisation, for satisfying any confiscation order that has been, or may be, made against the defendant;
 - (b) shall be exercised, in a case where a confiscation order has not been made, with a view to securing that there is no diminution in the value of realisable property;
 - (c) shall be exercised without taking account of any obligation of the defendant or a recipient of a tainted gift if the obligation conflicts with the objective of satisfying any confiscation order that has been made, or may be made, against the defendant; and
 - (d) may be exercised in respect of a debt owed by the Crown.
- (3) Subsection (2) has effect subject to the following—
- (a) the powers must be exercised with a view to allowing a person other than the defendant or a recipient of a tainted gift to retain or recover the value of any interest held by him;
 - (b) in the case of realisable property held by a recipient of a tainted gift, the powers must be exercised with a view to realising no more than the value for the time being of the gift; and
 - (c) in a case where a confiscation order has not been made against the defendant, property must not be sold if the court so orders under subsection (4).
- (4) If on an application by the defendant, or by the recipient of a tainted gift, the court decides that property cannot be replaced it may order that it must not be sold.
- (5) An order under subsection (4) may be revoked or varied.

Other Matters

Compensation

55. (1) If proceedings are instituted against a person for an offence or offences to which this Ordinance applies and either—

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

the court shall, subject to this section, on an application by a person who held property which was realisable property, order compensation to be paid to the applicant if, having regard to all the circumstances, it considers it appropriate to make such an order.

(2) The court shall not order compensation to be paid in any case unless the court is satisfied—

- (a) that there has been some serious default on the part of a person concerned in the investigation or prosecution of the offence concerned; and
- (b) that the applicant has suffered loss in consequence of anything done in relation to the property by or pursuant to an order under this Ordinance.

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

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

Committal by Magistrate's Court

56. (1) This section applies if—

- (a) a defendant is convicted of an offence by the Magistrate's Court; and
- (b) the prosecutor asks the Magistrate's Court to commit the defendant to the Supreme Court with a view to a confiscation order being considered.

(2) In such a case the Magistrate's Court—

- (a) shall commit the defendant to the Supreme Court in respect of the offence; and
- (b) may commit him to the Supreme Court in respect of any other offence falling within subsection (3).

(3) An offence falls within this subsection if—

- (a) the defendant has been convicted of it by the Magistrate's Court; and
- (b) the Magistrate's Court has power to deal with him in respect of it.

(4) If a committal is made under this section in respect of an offence or offences—

- (a) section 13 applies accordingly; and
- (b) the committal operates as a committal of the defendant to be dealt with by the court in accordance with section 57.

(5) A committal under this section may be in custody or on bail.

(Amended by Ord. 19 of 2010)

Sentencing by court

57. If a defendant is committed to the court under section 55 in respect of an offence or offences, the Supreme Court—

- (a) shall inquire into the circumstances of the case; and
- (b) may deal with the defendant in any way in which the Magistrate's Court could deal with him if it had just convicted him of the offence.

Enforcement abroad

58. (1) This section applies if—

- (a) any of the conditions in section 41(1) is satisfied;
- (b) the prosecutor believes that realisable property is situated in a country or territory outside the Islands (the receiving country); and
- (c) the prosecutor sends a request for assistance to the Attorney General with a view to it being forwarded under this section.

(2) In a case where no confiscation order has been made, a request for assistance is a request to the government of the receiving country to secure that any person is prohibited from dealing with realisable property.

(3) In a case where a confiscation order has been made and has not been satisfied, discharged or set aside, a request for assistance is a request to the government of the receiving country to secure that—

- (a) any person is prohibited from dealing with realisable property; and
- (b) realisable property is realised and the proceeds are applied in accordance with the law of the receiving country.

(4) No request for assistance may be made for the purposes of this section in a case where a confiscation order has been made and has been satisfied, discharged or set aside.

(5) If the Attorney General believes it is appropriate to do so, he may forward the request for assistance to the government of the receiving country.

(6) If property is realised pursuant to a request under subsection (3), the amount ordered to be paid under the confiscation order must be taken to be reduced by an amount equal to the proceeds of realisation.

(7) A certificate purporting to be issued by or on behalf of the requested government is admissible as evidence of the facts it states if it states—

- (a) that property has been realised pursuant to a request under subsection (3);
- (b) the date of realisation; and
- (c) the proceeds of realisation.

(8) If the proceeds of realisation made pursuant to a request under subsection (3) are expressed in a currency other than dollars, they must be taken to be the dollar equivalent calculated in accordance with the rate of exchange prevailing at the end of the day of realisation.

PART III

CIVIL RECOVERY

Preliminary

General

59. (1) This Part has effect for the purposes of—

- (a) enabling the Civil Recovery Authority to recover in civil proceedings before the court, property which is, or represents—
 - (i) property obtained through unlawful conduct; or
 - (ii) property that has been used in, or in connection with, or is intended to be used in, or in connection with, unlawful conduct; and
- (b) enabling cash which is, or represents, property obtained through unlawful conduct, or which is intended to be used in unlawful conduct, to be forfeited in civil proceedings before the Magistrate’s Court.

(2) The powers conferred by this Part are exercisable in relation to any property, including cash, whether or not any proceedings have been brought for an offence in connection with the property.

(3) In this Part—

“Authority” means the Civil Recovery Authority;

“excepted joint owner” has the meaning specified in section 91(2);

“property obtained through unlawful conduct” has the meaning specified in section 61;

“respondent” means—

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

“tainted property” means, subject to subsection (5), property that—

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

“value” means market value.

(4) For the purposes of this Part, proceedings against a person for an offence are concluded when—

- (a) the person is convicted or acquitted;
- (b) the prosecution is discontinued; or
- (c) the jury is discharged without a finding.

(5) Property belonging to a person (“the owner”) is not tainted property if—

- (a) the unlawful conduct concerned is not the unlawful conduct of the owner; and
- (b) where paragraph (a) applies, the owner does not give his consent, express or implied, to the property being used in, or in connection with, the unlawful conduct concerned.

(6) For the purposes of subsection (5), the “unlawful conduct concerned” is the unlawful conduct that the property has been used in, or in connection with, or that the property is intended to be used in, or in connection with.

(7) Sections 60 to 70 and this section have effect for the purposes of this Part.

Meaning of “unlawful conduct”

60. (1) “Unlawful conduct” is conduct which—

- (a) if it occurs in the Islands, is unlawful under the criminal law of the Islands; or
- (b) if it occurs in a country outside the Islands—
 - (i) is unlawful under the criminal law of that country, and
 - (ii) if it occurred in the Islands, would be unlawful under the criminal law of the Islands.

(2) The court, or in respect of proceedings for the recovery of cash, the Magistrate’s Court, shall decide on a balance of probabilities whether it is proved—

- (a) that any matters alleged to constitute unlawful conduct have occurred;
- (b) that any person intended to use any cash in unlawful conduct; or
- (c) that any person used, or intended to use, any property in, or in connection with, unlawful conduct.

(Amended by Ord. 19 of 2010)

Meaning of “property obtained through unlawful conduct”

61. (1) A person obtains property through unlawful conduct, whether his own conduct or another person’s conduct, if he obtains property by or in return for the conduct.

(2) In deciding whether any property was obtained through unlawful conduct—

- (a) it is immaterial whether or not any money, goods or services were provided in order to put the person in question in a position to carry out the conduct; and
- (b) it is not necessary to show that the conduct was of a particular kind if it is shown that the property was obtained through conduct of one of a number of kinds, each of which would have been unlawful conduct.

Recoverable Property and Associated Property

Recoverable property

62. (1) Subject to subsection (2), property obtained through unlawful conduct and tainted property is recoverable property.

(2) Property obtained through unlawful conduct that has been disposed of since it was obtained through unlawful conduct or tainted property that has been disposed of since it became tainted property, is recoverable property if it is held by a person into whose hands it may be followed.

(3) Recoverable property may be followed into the hands of a person obtaining it on a disposal by—

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

(Amended by Ord. 19 of 2010)

Tracing property

63. (1) Where property obtained through unlawful conduct or tainted property (“the original property”) is or has been recoverable property, property which represents the original property is also recoverable property. *(Amended by Ord. 19 of 2010)*

(2) If a person enters into a transaction by which—

(a) he disposes of recoverable property, whether the original property or property which, by virtue of this Part, represents the original property; and

(b) he obtains other property in place of it,

the other property represents the original property.

(3) If a person disposes of recoverable property which represents the original property, the property may be followed into the hands of the person who obtains it, and it continues to represent the original property.

Mixing property

64. (1) If a person's recoverable property is mixed with other property, whether the property is his property or another person's property, the portion of the mixed property which is attributable to the recoverable property represents the property obtained through unlawful conduct or the tainted property, as the case may be. (*Amended by Ord. 19 of 2010*)

(2) Recoverable property is mixed with other property if, for example, it is used—

(a) to increase funds held in a bank account;

(b) in part payment for the acquisition of an asset;

(c) for the restoration or improvement of land; or

(d) by a person holding a leasehold interest in the property to acquire the freehold.

Recoverable property, accruing profits

65. (1) This section applies where a person who has recoverable property obtains further property consisting of profits accruing in respect of the recoverable property.

(2) The further property is to be treated as representing the property obtained through unlawful conduct or the tainted property, as the case may be. (*Amended by Ord. 19 of 2010*)

Recoverable property, general exceptions

66. (1) If—

(a) a person disposes of recoverable property; and

(b) the person who obtains it on the disposal does so in good faith, for value and without notice that it was recoverable property,

the property may not be followed into that person's hands and, accordingly, it ceases to be recoverable.

- (2) Recoverable property ceases to be recoverable—
- (a) if it is vested, forfeited or otherwise disposed of pursuant to powers conferred by virtue of this Part; or
 - (b) if—
 - (i) pursuant to a judgment in civil proceedings, whether in the Islands or elsewhere, the defendant makes a payment to the plaintiff or the plaintiff otherwise obtains property from the defendant;
 - (ii) the plaintiff's claim is based on the defendant's unlawful conduct; and
 - (iii) apart from this subsection, the sum received, or the property obtained, by the plaintiff would be recoverable property.

- (3) Property is not recoverable—
- (a) while a restraint order applies to it, whether made under this Ordinance or under an equivalent provision in the Control of Drugs (Trafficking) Ordinance or the Proceeds of Crime Ordinance; or
 - (b) if it has been taken into account in determining the amount of a person's benefit from criminal conduct for the purpose of making a confiscation order
 - (i) under this Ordinance, or
 - (ii) under an equivalent provision in the Control of Drugs (Trafficking) Ordinance or the Proceeds of Crime Ordinance,

and, in relation to an order mentioned in paragraph (b)(ii), the reference to the amount of a person's benefit from criminal conduct is to be construed as a reference to the corresponding amount under the Ordinance in question.

- (4) Where—
- (a) a person enters into a transaction to which section 63(2) applies; and
 - (b) the disposal is one to which subsection (1) or (2)(a) applies;

this section does not affect the recoverability, by virtue of section 63(2), of any property obtained on the transaction in place of the property disposed of.

- (5) For the purposes of subsection (2), “plaintiff” includes “claimant”.
(Amended by Ord. 19 of 2010)

Other exemptions

67. (1) The regulations may provide that property is not recoverable or, as the case may be, associated property if—

- (a) it is prescribed property; or

(b) it is disposed of pursuant to a prescribed enactment or an enactment of a prescribed description.

(2) The regulations may provide that if property is disposed of pursuant to a prescribed enactment or an enactment of a prescribed description, it is to be treated for the purposes of section 95 as if it had been disposed of pursuant to a recovery order.

(3) Regulations made under this section may apply to property, or a disposal of property, only in prescribed circumstances and the circumstances may relate to the property or disposal itself or to a person who holds or has held the property or to any other matter.

Granting interests

68. (1) If a person grants an interest in his recoverable property, the question whether the interest is also recoverable is to be determined in the same manner as it is on any other disposal of recoverable property.

(2) Accordingly, on the person granting an interest in the property (“the property in question”)—

(a) where the property in question is property obtained through unlawful conduct or is tainted property, the interest is also to be treated as obtained through that conduct or as tainted property, as the case may be; and

(b) where the property in question represents in the person’s hands property obtained through unlawful conduct or tainted property, the interest is also to be treated as representing in his hands the property so obtained or the tainted property, as the case may be.
(Substituted by Ord. 19 of 2010)

Meaning of “associated property”

69. (1) “Associated property” means property of any of the following descriptions (including property held by the respondent) which is not itself the recoverable property—

(a) any interest in the recoverable property;

(b) any other interest in the property in which the recoverable property subsists;

(c) if the recoverable property is part of a larger property, but not a separate part, the remainder of that property.

(2) References to property being associated with recoverable property are to be construed accordingly.

Obtaining and disposing of property

70. (1) References to a person disposing of his property include a reference—

(a) to his disposing of a part of it;

(b) to his granting an interest in it; or

(c) to both,

and references to the property disposed of are to any property obtained on the disposal.

(2) A person who makes a payment to another person is to be treated as making a disposal of his property to the other person, whatever form the payment takes.

(3) Where a person's property passes to another person under a will or intestacy or by operation of law, it is to be treated as disposed of by him to the other person.

(4) A person is only to be treated as having obtained his property for value in a case where he gave unexecuted consideration if the consideration has become executed consideration.

Recovery Orders and Property Freezing Orders

Application for recovery order

71. (1) The Authority may apply to the court for a recovery order against any person who the Authority believes holds recoverable property.

(2) The Authority shall serve an application under subsection (1)—

(a) on the respondent; and

(b) unless the court dispenses with service, on any other person who the Authority believes holds any associated property which the Authority wishes to be subject to the recovery order.

(3) The Authority shall, in the application—

(a) identify, by particularising or by a general description, the property in relation to which the Authority seeks a recovery order,

(b) state, in relation to each item or description of property identified in the application—

(i) whether it is alleged that the property is recoverable property or associated property;

(ii) either who is alleged to hold the property or where the Authority is unable to identify who holds the property, the steps that have been taken to establish their identity; and

(c) nominate a suitably qualified person for appointment by the court as the trustee for civil recovery.

Application for property freezing order

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

(2) A property freezing order is an order that, subject to any exclusions, prohibits any person whose property is specified or described in the order, from in any way dealing with the property.

(3) An application for a property freezing order may be made without notice if the circumstances are such that notice of the application would prejudice any right of the Authority to obtain a recovery order in respect of any property.

(4) The court may make a property freezing order if it is satisfied that—

(a) there is a good arguable case that—

(i) the property to which the application for the order relates is or includes recoverable property; and

(ii) if any of the property is not recoverable property, it is associated property; and

(b) if the property to which the application for the order relates includes property alleged to be associated property, and the Authority has not established the identity of the person who holds it, the Authority has taken all reasonable steps to do so. (*Inserted by Ord. 19 of 2010*)

Variation and setting aside of order

73. (1) The court may at any time vary or set aside a property freezing order.

(2) If the court makes an interim receiving order, it must vary or set aside the property freezing order to exclude any property subject to the interim receiving order.

(3) If the court decides that any property to which a property freezing order applies is neither recoverable property nor associated property, it must vary the order so as to exclude the property.

(4) Unless acting in accordance with subsection (2), the court must give the parties to the proceedings and any person who may be affected by its decision an opportunity to be heard before varying or setting aside a property freezing order. (*Inserted by Ord. 19 of 2010*)

Exclusions

74. (1) The power to make or vary a property freezing order includes the power—

(a) to exclude specified property, or property described in the order, from the order; and

(b) otherwise to make exclusions from the prohibition on dealing with the property to which the order applies.

(2) An exclusion may be made subject to such conditions as the court considers appropriate and may, in particular, make provision for the purpose of enabling any person—

- (a) to meet his reasonable living or legal expenses; or
- (b) to carry on any trade, business, profession or occupation.

(3) Where the court exercises the power to make an exclusion for the purpose of enabling a person to meet legal expenses that he has incurred, or may incur, in respect of proceedings under this Part, it must ensure that the exclusion—

- (a) is limited to reasonable legal expenses that the person has reasonably incurred or that he reasonably incurs; and
- (b) specifies the total amount that may be released for legal expenses pursuant to the exclusion.

(4) Subject to subsection (2) or (3), the power to make exclusions must be exercised with a view to ensuring, so far as practicable, that the satisfaction of any right of the Authority to recover the property obtained through unlawful conduct or the tainted property is not unduly prejudiced. (*Inserted by Ord. 19 of 2010*)

Restriction on proceedings and remedies

75. (1) While a property freezing order has effect—

- (a) the court may stay any action, execution or other legal process in respect of the property to which the order applies; and
- (b) no distress may be levied against the property to which the order applies except with the leave of the court and subject to any terms the court may impose.

(2) If the court is satisfied that a property freezing order has been applied for or made in respect of any property in respect of which proceedings are pending, it may either stay the proceedings or allow them to continue on any terms it thinks fit.

(3) If a property freezing order applies to a tenancy of any premises, no landlord or other person to whom rent is payable may exercise the right of forfeiture in relation to the premises in respect of any failure by the tenant to comply with any term or condition of the tenancy, except with the leave of the court and subject to any terms the court may impose.

(4) Before exercising any power conferred by this section, the court must give the parties to any of the proceedings concerned and any person who may be affected by the court's decision an opportunity to be heard. (*Inserted by Ord. 19 of 2010*)

Receivers in connection with property freezing orders

76. (1) The court may appoint a receiver in respect of any property to which the property freezing order applies if—

- (a) the court makes a property freezing order on an application by the Authority; and
- (b) the Authority applies to the court for the appointment of a receiver, whether as part of the application for the property freezing order or at any time afterwards.

(2) An application for an order under this section may be made without notice if the circumstances are such that notice of the application would prejudice any right of the Authority to obtain a recovery order in respect of any property.

(3) In its application for an order under this section, the Authority must nominate a suitably qualified person for appointment as a receiver, who may be a member of staff of the Authority.

(4) The Authority may apply a sum received by it under section 97(3) in making payment of the remuneration, if any, and expenses of a receiver appointed under this section. *(Inserted by Ord. 19 of 2010)*

Powers of receivers appointed under section 76

77. (1) If the court appoints a receiver under section 76 on an application by the Authority, the court may, on the application of the Authority, by order, authorise or require the receiver—

- (a) to exercise any of the powers specified in Schedule 2 in relation to any property in respect of which the receiver is appointed; and
- (b) to take any other steps the court thinks appropriate in connection with the management of any such property, including securing the detention, custody or preservation of the property in order to manage it.

(2) The court may by order require any person in respect of whose property the receiver is appointed—

- (a) to bring the property to a place specified by the receiver or to place it in the custody of the receiver; and
- (b) to do anything he is reasonably required to do by the receiver for the preservation of the property.

(3) The court may by order require any person in respect of whose property the receiver is appointed to bring any documents relating to the property which are in his possession or control to a place specified by the receiver or to place them in the custody of the receiver.

(4) Any prohibition on dealing with property imposed by a property freezing order does not prevent a person from complying with any requirements imposed by virtue of this section.

(5) If—

- (a) the receiver deals with any property which is not property in respect of which he is appointed; and
- (b) at the time he deals with the property he believes on reasonable grounds that he is entitled to do so by virtue of his appointment, the receiver is not liable to any person in respect of any loss or damage resulting from his dealing with the property except so far as the loss or damage is caused by his negligence. (*Inserted by Ord. 19 of 2010*)

Supervision of section 76 receiver and variation

78. (1) Any of the following persons may at any time apply to the court for directions as to the exercise of the functions of a receiver appointed under section 76—

- (a) the receiver;
- (b) any party to the proceedings for the appointment of the receiver or the property freezing order concerned;
- (c) any person affected by any action taken by the receiver; and
- (d) any person who may be affected by any action proposed to be taken by the receiver.

(2) Before giving any directions under subsection (1), the court must give an opportunity to be heard to—

- (a) the receiver;
- (b) the parties to the proceedings for the appointment of the receiver and for the property freezing order concerned; and
- (c) any person who may be interested in the application under subsection (1).

(3) The court may at any time vary or set aside the appointment of a receiver under section 76, any order under section 77 or any directions under this section.

(4) Before exercising any power under subsection (3), the court must give an opportunity to be heard to—

- (a) the receiver;
- (b) the parties to the proceedings for the appointment of the receiver, for the order under section 77 or, as the case may be, for the directions under this section;
- (c) the parties to the proceedings for the property freezing order concerned; and
- (d) any person who may be affected by the court's decision. (*Inserted by Ord. 19 of 2010*)

*Interim Receiving Order***Application for, and making of, interim receiving order**

79. (1) Where the Authority may take proceedings for a recovery order, the Authority may apply to the court for an interim receiving order, whether before or after instituting the proceedings.

(2) An interim receiving order is an order for—

- (a) the detention, custody or preservation of property; and
- (b) the appointment of an interim receiver.

(3) An application for an interim receiving order may be made without notice if the circumstances are such that notice of the application would prejudice any right of the Authority to obtain a recovery order in respect of any property.

(4) The court may make an interim receiving order on the application—

- (a) if it is satisfied there is a good arguable case—
 - (i) that the property to which the application for the order relates is or includes recoverable property; and
 - (ii) that, if any of it is not recoverable property, it is associated property; and
- (b) if—
 - (i) the property to which the application for the order relates includes property alleged to be associated property; and
 - (ii) the Authority has not established the identity of the person who holds it, the Authority has taken all reasonable steps to do so.

(5) The Authority shall, in its application for an interim receiving order, nominate a suitably qualified person for appointment as interim receiver.

Functions of interim receiver

80. (1) An interim receiving order may authorise or require the interim receiver—

- (a) to exercise any of the powers specified in Schedule 2;
- (b) to take any other steps the court thinks appropriate,

for the purpose of securing the detention, custody or preservation of the property to which the order applies or of taking any steps under subsection (2).

(2) An interim receiving order shall require the interim receiver to take any steps which the court considers necessary to establish—

- (a) whether or not the property to which the order applies is recoverable property or associated property;

(b) whether or not any other property is recoverable property, in relation to the same unlawful conduct and, if it is, who holds it; and

(c) whether or not any other property is tainted property, in relation to the same unlawful conduct and, if it is, who holds it. (*Amended by Ord. 19 of 2010*)

(3) If—

(a) the interim receiver deals with any property which is not property to which the order applies; and

(b) at the time he deals with the property he believes on reasonable grounds that he is entitled to do so pursuant to the order,

the interim receiver is not liable to any person in respect of any loss or damage resulting from his dealing with the property except so far as the loss or damage is caused by his negligence.

Authority may lodge caution

81. (1) Where the Authority has applied for a property freezing order or an interim receiving order, he shall be treated for the purposes of section 127 of the Registered Land Ordinance (lodging of cautions) as a person who claims an unregistrable interest in relation to any land, lease or charge to which the application relates, or to which a property freezing order or an interim receiving order made on the application relates, and he may lodge a caution in accordance with that section.

(2) Sections 127, 128 and 129 of the Registered Land Ordinance apply with respect to a caution lodged in accordance subsection (1). (*Substituted by Ord. 19 of 2010*)

Duties of respondent

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

(a) to bring the property to such place as may be specified by the interim receiver or to place it in the custody of the interim receiver and to do anything he is reasonably required to do by the interim receiver for the preservation of the property; and

(b) to bring any documents relating to the property which are in his possession or control to such place as may be specified by the interim receiver or to place them in the custody of the interim receiver. (*Amended by Ord. 19 of 2010*)

Supervision of interim receiver and variation of order

83. (1) The interim receiver, any party to the proceedings and any person affected by any action taken by the interim receiver, or who may be affected by any action proposed to be taken by him, may at any time apply to the court for directions as to the exercise of the interim receiver's functions.

(2) The court may at any time vary or set aside an interim receiving order.

(3) Before giving any directions under subsection (1) or exercising any power to vary or set aside an interim receiving order, the court shall give the following an opportunity to be heard—

- (a) the parties to the proceedings;
- (b) the interim receiver; and
- (c) any person who may be interested in an application under subsection (1) or affected by the court's decision under subsection (2), as the case may be.

Restrictions on dealing etc. with property

84. (1) Subject to subsection (2), an interim receiving order shall prohibit any person to whose property the order applies from dealing with the property may be made subject to such conditions as the Court considers appropriate.

(2) The court may, when the interim receiving order is made or on an application to vary the order, make such exclusions from the order as it considers just.

(3) An exclusion may, in particular, make provision for the purpose of enabling any person—

- (a) to meet his reasonable living expenses;
- (b) to meet his reasonable legal expenses; or
- (c) to carry on any trade, business, profession or occupation,

and may be made subject to conditions.

(4) If the excluded property is not specified in the order, it shall be described in the order in general terms.

(5) The power to make exclusions shall be exercised with a view to ensuring, so far as practicable, that the satisfaction of any right of the Authority to recover the property obtained through unlawful conduct or the tainted property is not unduly prejudiced. (*Amended by Ord. 19 of 2010*)

Restriction on proceedings and remedies

85. (1) While an interim receiving order has effect—

- (a) the court may stay any action, execution or other legal process in respect of the property to which the order applies; and
- (b) no distress may be levied against the property to which the order applies except with the leave of the court and subject to any terms the court may impose.

(2) If any court in which proceedings are pending in respect of any property is satisfied that an interim receiving order has been applied for or made in respect of the property, the court may either stay the proceedings or allow them to continue on such terms that it thinks fit.

(3) If the interim receiving order applies to a tenancy of any premises, no landlord or other person to whom rent is payable may exercise any right of forfeiture by peaceable re-entry in relation to the premises in respect of any failure by the tenant to comply with any term or condition of the tenancy, except with the leave of the court and subject to any terms the court may impose.

(4) Before exercising any power conferred by this section, the court shall give the following the right to be heard—

- (a) the parties to any of the proceedings in question;
- (b) the interim receiver, if appointed; and
- (c) any person who may be affected by the court's decision.

Exclusion of property which is not recoverable

86. (1) If the court decides that any property to which an interim receiving order applies is neither recoverable property nor associated property, it shall vary the order so as to exclude that property.

(2) The court may vary an interim receiving order so as to exclude from the property to which the order applies any property which is alleged to be associated property if the court thinks that the satisfaction of any right of the Authority to recover the property obtained through unlawful conduct or the tainted property will not be prejudiced. (*Amended by Ord. 19 of 2010*)

(3) The court may exclude any property within subsection (2) on such terms or conditions, applying while the interim receiving order has effect, which the court thinks necessary or expedient.

Reporting

87. (1) An interim receiving order shall require the interim receiver to inform the Authority and the court as soon as reasonably practicable if he thinks that—

- (a) any property to which the order applies by virtue of a claim that it is recoverable property is not recoverable property;
- (b) any property to which the order applies by virtue of a claim that it is associated property is not associated property;
- (c) any property to which the order does not apply is recoverable property (in relation to the same unlawful conduct) or associated property;
- (d) any property to which the order applies is held by a person who is different from the person it is claimed holds it; or
- (e) there has been any other material change of circumstances.

(2) An interim receiving order shall require the interim receiver—

- (a) to report his findings to the court; and
- (b) to serve copies of his report on the Authority and on any person who holds any property to which the order applies or who may otherwise be affected by the report.

*Vesting and Realisation of Recoverable Property***Recovery orders**

88. (1) If in proceedings under this Part the court is satisfied that any property is recoverable property, the court shall make a recovery order and shall appoint a suitably qualified person as the trustee for civil recovery to give effect to the recovery order.

(2) Where a recovery order is made, the recoverable property vests in the person appointed by the court to be trustee.

(3) The court may not make in a recovery order any provision in respect of any recoverable property if—

- (a) each of the conditions in subsection (4) is met; and
- (b) it would not be just and equitable to do so.

(4) The conditions referred to in subsection (3)(a) are that—

- (a) the respondent obtained the recoverable property in good faith;
- (b) the respondent took any action, or omitted to take any action, after obtaining the property which he would not have taken, or omitted to take, if he had not obtained the property or he took any action, or omitted to take any action, before obtaining the property which he would not have taken, or omitted to take, if he had not believed he was going to obtain it;
- (c) when he took, or omitted to take, the action referred to in paragraph (b), he had no notice that the property was recoverable;
- (d) if a recovery order were made in respect of the property, it would, by reason of his action or omission be detrimental to him.

(5) In deciding whether it would be just and equitable to make the provision in the recovery order where the conditions in subsection (4) are met, the court shall have regard to the degree of detriment that would be suffered by the respondent if the provision were made and the Authority's interest in receiving the realised proceeds of the recoverable property.

(6) A recovery order may sever any property.

(7) A recovery order—

- (a) may impose conditions as to the manner in which the trustee may deal with any property vested by the order for the purpose of realising it; and
- (b) may provide for payment may provide for payment under section 97 of reasonable legal expenses that a person has reasonably incurred, or may reasonably incur, in respect of—
 - (i) the proceedings under this Part in which the order is made; or
 - (ii) any related proceedings under this Part.

(8) This section is subject to sections 91 to 95. (*Amended by Ord. 19 of 2010*)

Functions of the trustee

89. (1) The functions of the trustee are—

- (a) to secure the detention, custody or preservation of any property vested in him by the recovery order;
- (b) in the case of property other than money, to realise the value of the property for the benefit of the Authority;
- (c) to otherwise give effect to the recovery order; and
- (d) to perform any other functions conferred on him by virtue of this Part.

(2) In performing his functions, the trustee acts on behalf of the Authority and shall comply with any directions given to him by the Authority.

(3) The trustee shall realise the value of property vested in him by the recovery order, so far as practicable, in the manner best calculated to maximise the amount payable to the Authority.

(4) The trustee has the powers specified in Schedule 3.

(5) References in this section to a recovery order include a consent order made under section 94 and references to property vested in the trustee by a recovery order include property vested in him pursuant to such a consent order.

Rights of pre-emption

90. (1) A recovery order is to have effect in relation to any property despite any provision, of whatever nature, which would otherwise prevent, penalise or restrict the vesting of the property.

(2) A right of pre-emption, right of return or other similar right does not operate or become exercisable as a result of the vesting of any property under a recovery order.

(3) A right of return means any right under a provision for the return or reversion of property in specified circumstances.

(4) Where property is vested under a recovery order, any such right is to have effect as if the person in whom the property is vested were the same person in law as the person who held the property and as if no transfer of the property had taken place.

(5) References to rights in subsections (2), (3) and (4) do not include any rights in respect of which the recovery order was made.

(6) This section applies in relation to the creation of interests, or the doing of anything else, by a recovery order as it applies in relation to the vesting of property.

Associated and joint property

91. (1) Sections 92 and 93 apply if the court makes a recovery order in respect of any recoverable property, and—

(a) if—

- (i) the property to which the proceedings relate includes property which is associated with the recoverable property and is specified or described in the application; and
- (ii) if the associated property is not the respondent's property, the claim form or application has been served on the person whose property it is or the court has dispensed with service;
or

(b) if—

- (i) the recoverable property belongs to joint tenants; and
- (ii) one of the tenants is an excepted joint owner.

(2) An excepted joint owner is a person who obtained the property in circumstances in which it would not be recoverable as against him and references to the excepted joint owner's share of the recoverable property are to so much of the recoverable property as would have been his if the joint tenancy had been severed.

Agreements about associated and joint property

92. (1) Where—

- (a) this section applies; and
- (b) the Authority (on the one hand) and the person who holds the associated property or who is the excepted joint owner (on the other) agree,

the recovery order may, instead of vesting the recoverable property in the trustee, require the person who holds the associated property or who is the excepted joint owner to make a payment to the trustee.

(2) A recovery order which makes any requirement under subsection (1) may, so far as required for giving effect to the agreement, include provision for vesting, creating or extinguishing any interest in property.

(3) The amount of the payment shall be the amount which the Authority and that person agree represents—

- (a) in the circumstances specified in section 91(1)(a), the value of the recoverable property; or
- (b) in a case within section 91(1)(b), the value of the recoverable property less the value of the excepted joint owner's share.

(4) If—

- (a) a property freezing order or an interim receiving order applied at any time to the associated property or joint tenancy; and

(b) the Authority agrees that the person has suffered loss as a result of the property freezing order or interim receiving order,

the amount of the payment may be reduced by any amount the Authority and that person agree is reasonable, having regard to that loss and to any other relevant circumstances.

(5) If there is more than one such item of associated property or excepted joint owner, the total amount to be paid to the trustee, and the part of that amount which is to be provided by each person who holds any such associated property or who is an excepted joint owner, is to be agreed between both, or all, of them and the Authority.

(6) A recovery order which makes any requirement under subsection (1) shall make provision for any recoverable property to cease to be recoverable. *(Amended by Ord. 19 of 2010)*

Associated and joint property: default of agreement

93. (1) Where this section applies, the court may make the following provision if—

- (a) there is no agreement under section 92; and
- (b) the court thinks it just and equitable to do so.

(2) The recovery order may provide—

- (a) for the associated property to vest in the trustee or, as the case may be, for the excepted joint owner's interest to be extinguished; or
- (b) in the case of an excepted joint owner, for the severance of his interest.

(3) A recovery order making any provision by virtue of subsection (2)(a) may provide—

- (a) for the trustee to pay an amount to the person who holds the associated property or who is an excepted joint owner; or
- (b) for the creation of interests in favour of that person, or the imposition of liabilities or conditions, in relation to the property vested in the trustee,

or for both.

(4) In making any provision in a recovery order by virtue of subsection (2) or (3), the court shall have regard to—

- (a) the rights of any person who holds the associated property or who is an excepted joint owner and the value to him of that property or, as the case may be, of his share, including any value which cannot be assessed in terms of money; and
- (b) the Authority's interest in receiving the realised proceeds of the recoverable property.

(5) If—

- (a) a property freezing order or an interim receiving order applied at any time to the associated property or joint tenancy; and
- (b) the court is satisfied that the person who holds the associated property or who is an excepted joint owner has suffered loss as a result of the property freezing order or interim receiving order,

a recovery order making any provision by virtue of subsection (2) or (3) may require the Authority to pay compensation to that person. (*Amended by Ord. 19 of 2010*)

(6) The amount of compensation to be paid under subsection (5) is the amount the court thinks reasonable, having regard to the person's loss and to any other relevant circumstances.

Consent orders

94. (1) The court may make an order staying any proceedings for a recovery order on terms agreed by the parties for the disposal of the proceedings if each person to whose property the proceedings, or the agreement, relates is a party both to the proceedings and the agreement.

(2) An order under subsection (1) may, as well as staying the proceedings—

- (a) make provision for any property which may be recoverable property to cease to be recoverable; and
- (b) make any further provision which the court thinks appropriate.

(3) Section applies to property vested in the trustee, or money paid to him, pursuant to the agreement as it applies to property vested in him by a recovery order or money paid under section 92.

Limit on recovery

95. (1) This section applies if the Authority seeks a recovery order—

- (a) in respect of both property which is or represents property obtained through unlawful conduct, or tainted property, and related property; or
- (b) in respect of property which is or represents property obtained through unlawful conduct, or tainted property, where such an order, or an order under section 94, has previously been made in respect of related property.

(2) For the purposes of this section—

- (a) the original property means the property obtained through unlawful conduct or tainted property, as the case may be; and
- (b) the original property, and any items of property which represent the original property, are to be treated as related to each other.

(3) The court is not to make a recovery order if it thinks that the Authority's right to recover the original property has been satisfied by a previous recovery order or an order under section 94.

(4) Subject to subsection (3), the court may act under subsection (5) if it thinks that—

- (a) a recovery order may be made in respect of two or more related items of recoverable property; but
- (b) the making of a recovery order in respect of both or all of them is not required in order to satisfy the Authority's right to recover the original property.

(5) The court may in order to satisfy that right to the extent required make a recovery order in respect of—

- (a) only some of the related items of property; or
- (b) only a part of any of the related items of property,

or both.

(6) Where the court may make a recovery order in respect of any property, this section does not prevent the recovery of any profits which have accrued in respect of the property.

(7) If—

- (a) an order is made under section 110 for the forfeiture of recoverable property; and
- (b) the Authority subsequently seeks a recovery order in respect of related property,

the order under section 110 is to be treated for the purposes of this section as if it were a recovery order obtained by the Authority in respect of the forfeited property.

(8) If—

- (a) pursuant to a judgment in civil proceedings, whether in the Islands or elsewhere, the plaintiff has obtained property from the defendant (“the judgment property”);
- (b) the claim was based on the defendant's having obtained the judgment property or related property through unlawful conduct; and
- (c) the Authority subsequently seeks a recovery order in respect of property which is related to the judgment property,

the judgment is to be treated for the purposes of this section as if it were a recovery order obtained by the Authority in respect of the judgment property.

(9) For the purposes of subsection (8), “plaintiff” includes “claimant”.

(10) If—

- (a) property has been taken into account in determining the amount of a person's benefit from criminal conduct for the purpose of making a confiscation order; and
- (b) the Authority subsequently seeks a recovery order in respect of related property,

the confiscation order is to be treated for the purposes of this section as if it were a recovery order obtained by the Authority in respect of the property referred to in paragraph (a).

(11) In subsection (10), a confiscation order means—

- (a) an order under section 13; or
- (b) an order under a corresponding provision of the Control of Drugs (Trafficking) Ordinance or the Proceeds of Criminal Conduct Ordinance;

and, in relation to an order mentioned in paragraph (b), the reference to the amount of a person's benefit from criminal conduct is to be read as a reference to the corresponding amount under the Ordinance in question. (*Amended by Ord. 19 of 2010*)

Limits on recovery, supplementary

96. (1) Subsections (2) and (3) give examples of the satisfaction of the Authority's right to recover the original property.

(2) If—

- (a) there is a disposal, other than a part disposal, of the original property; and
- (b) other property ("the representative property") is obtained in its place,

the Authority's right to recover the original property is satisfied by the making of a recovery order in respect of either the original property or the representative property.

(3) If—

- (a) there is a part disposal of the original property; and
- (b) other property ("the representative property") is obtained in place of the property disposed of,

the Authority's right to recover the original property is satisfied by the making of a recovery order in respect of the remainder of the original property together with either the representative property or the property disposed of.

(4) In this section—

- (a) a part disposal means a disposal to which section 70(1) applies; and

(b) the original property has the same meaning as in section 95.

Applying realised proceeds

97. (1) This section applies to—

- (a) sums which represent the realised proceeds of property which was vested in the trustee by a recovery order or which he obtained pursuant to a recovery order;
- (b) sums vested in the trustee by a recovery order or obtained by him pursuant to a recovery order.

(2) The trustee is to pay out of the sums—

- (a) first, any payment required to be made by him by virtue of section 93;
- (b) next, any payment of legal expenses which are payable under this subsection in pursuance of a provision under section 88(7)(b) contained in the recovery order; and
- (c) next any fees payable to a liquidator of a company appointed by or supervised by the Court.

(3) Any sum which remains is to be paid to the Authority for payment into the Fund.

(4) The Authority may apply a sum received by it under subsection (3) in making payment of the remuneration and expenses of—

- (a) the trustee for civil forfeiture; or
- (b) any interim receiver appointed in, or in anticipation of, the proceedings for the civil forfeiture order.

(5) In this section, “company” means any company which may be wound up under the Companies Ordinance. (*Amended by Ord. 19 of 2010*)

Exemptions, etc.

Victims of theft, etc.

98. (1) In proceedings for a recovery order, a person who claims that any property alleged to be recoverable property, or any part of the property, belongs to him may apply for a declaration to that effect under this section.

(2) The court may make a declaration under subsection (1) if it appears to the court that—

- (a) the applicant was deprived of the property he claims, or of property which it represents, by unlawful conduct;
- (b) the property the applicant was deprived of was not recoverable property immediately before he was deprived of it; and
- (c) the property he claims belongs to him.

(3) Property to which a declaration under this section applies is not recoverable property.

Other exemptions

99. (1) The regulations may provide that proceedings for a recovery order may not be taken against any person in circumstances of a prescribed description and the circumstances may relate to the person himself, to the property or to any other matter.

(2) Proceedings for a recovery order may not be taken in respect of cash found at any place in the Islands unless the proceedings are also taken in respect of property other than cash which is property of the same person.

(3) Proceedings for a recovery order may not be taken against the Commission in respect of any recoverable property held by the Commission.

Miscellaneous

Compensation

100. (1) If, in the case of any property to which a property freezing order or an interim receiving order has at any time applied, the court does not in the course of the proceedings decide that the property is recoverable property or associated property, the person whose property it is may make an application to the court for compensation.

(2) Subsection (1) does not apply if the court—

(a) has made a declaration in respect of the property by virtue of section; or

(b) makes a consent order under section 94.

(3) If the court has made a decision by reason of which no recovery order could be made in respect of the property, the application for compensation shall be made within the period of three months beginning with the date of the decision or, if any application is made for leave to appeal, with the date on which the application is withdrawn or refused or, if the application is granted, on which any proceedings on appeal are finally concluded.

(4) If the proceedings in respect of the property have been discontinued, the application for compensation shall be made within the period of three months beginning with the discontinuance.

(5) If the court is satisfied that the applicant has suffered loss as a result of the property freezing order or the interim receiving order, it may require the Authority to pay compensation to him.

(6) If, but for section 90(2), any right mentioned there would have operated in favour of, or become exercisable by, any person, he may make an application to the court for compensation.

(7) The application for compensation under subsection (6) shall be made within the period of three months beginning with the vesting referred to in section 90(2).

(8) If the court is satisfied that, in consequence of the operation of section 90, the right in question cannot subsequently operate in favour of the applicant or, as the case may be, become exercisable by him, it may require the Authority to pay compensation to him.

(9) The amount of compensation to be paid under this section is the amount the court thinks reasonable, having regard to the loss suffered and any other relevant circumstances. *(Amended by Ord. 19 of 2010)*

Financial threshold

101. (1) If the regulations prescribe a minimum threshold for the purposes of this section, the Authority may not start proceedings for a recovery order unless the Authority reasonably believes that the aggregate value of the recoverable property which the Authority wishes to be subject to a recovery order is equal to or greater than the prescribed threshold.

(2) If the Authority applies for a property freezing order or an interim receiving order before starting the proceedings, subsection (1) applies to the application for a property freezing order or the interim receiving order instead of to the start of the proceedings.

(3) This section does not affect the continuation of proceedings for a recovery order which have been properly started or the making or continuing effect of a property freezing order or an interim receiving order which has been properly applied for. *(Amended by Ord. 19 of 2010)*

Limitation

102. (1) Proceedings shall not be brought for a recovery order in respect of any recoverable property after the expiration of twenty years from—

- (a) in the case of proceedings for a recovery order in respect of property obtained through unlawful conduct, when the property was so obtained;
- (b) in the case of proceedings for a recovery order in respect of tainted property, when the property became tainted property; or
- (c) in the case of proceedings for a recovery order in respect of any other recoverable property, when the property obtained through unlawful conduct which it represents is so obtained.

(Amended by Ord. 19 of 2010 and 14 of 2019)

(2) For the purposes of subsection (1), proceedings for a recovery order are brought when—

- (a) an application is filed with the court under section 71; or
- (b) an application is made for an interim receiving order.

Property acquired before commencement date

103. (1) For the purposes of determining whether property was recoverable at any time, including times before 8 October 2007, this Part is deemed to have been in force at that time and at any other relevant time.

(2) The twenty year limitation period in section 102(1) does not apply to causes of action barred by that section before 5 April 2019.

*Recovery of Cash in Summary Proceedings***Interpretation for sections 105 to 114**

104. (1) For the purposes of sections 105 to 114—

“minimum amount” means such amount as is prescribed as the minimum amount; and

“recoverable cash” means cash—

(a) which is recoverable property or is intended by any person for use in unlawful conduct; and

(b) the amount of the cash is not less than the minimum amount.

(2) The amount of cash held in a currency other than United States dollars shall be its equivalent in United States dollars at the prevailing rate of exchange.

(3) Sections 105 to 114 apply only to cash found anywhere in the Islands.

Searches

105. (1) A police officer who is lawfully on any premises, and who has reasonable grounds for suspecting that there is recoverable cash on the premises, may search for the cash there.

(2) If a police officer has reasonable grounds for suspecting that a person (the suspect) is carrying recoverable cash, he may—

(a) so far as he thinks it necessary or expedient, require the suspect—

(i) to permit a search of any article he has with him; and

(ii) to permit a search of his person; and

(b) for the purposes of exercising his power under subparagraph (a)(ii), detain the suspect for so long as is necessary for the exercise of that power.

(3) The powers conferred by this section are exercisable only so far as reasonably required for the purpose of finding cash and this section does not require a person to submit to an intimate search.

(4) The powers conferred under this section may be exercised only with the prior approval of a senior police officer unless, in the circumstances, it is not practicable to obtain the authority before exercising the power.

(5) Where the powers conferred under this section are exercised without prior approval as required by subsection (4), the police officer exercising the power shall make a written report to a senior officer as soon as is reasonably practicable.

(6) The written report made under subsection (5) shall include particulars of the circumstances that led the police officer to believe—

- (a) where no cash is seized or any cash seized is not detained for more than 48 hours, that the powers were exercisable; and
- (b) that it was not practicable to obtain the prior approval of a senior police officer.

(Amended by Ord. 19 of 2010)

Seizure of cash

106. (1) A police officer shall seize cash if he has reasonable grounds for suspecting that—

- (a) it is recoverable cash; or
- (b) part of the cash is recoverable cash and it is not reasonably practicable to seize only that part.

(2) After a seizure is made by a police officer under this section, the police, or in the case of a customs officer the Collector of Customs, shall promptly, and in any event within 24 hours of the seizure, report that seizure to the Financial Crime Unit.

(Substituted by Ord. 22 of 2018)

Detention of seized cash

107. (1) While a police officer who has seized cash under section 106(1) continues to have reasonable grounds for his suspicion, the cash seized under that section may be detained initially for a period of 72 hours, excluding public holidays and weekends. *(Amended by Ord. 22 of 2018)*

(2) The period for which the cash or any part of it may be detained may be extended by an order made by the Magistrate's Court, but the order may not authorise the detention of any of the cash—

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

(3) An application for an order under subsection (2) may be made by a senior police officer, and the Magistrate's Court may make the order if satisfied, in relation to any cash to be further detained, that—

- (a) there are reasonable grounds for suspecting that the cash is recoverable cash and that either—
 - (i) its continued detention is justified while its derivation is further investigated or consideration is given to bringing proceedings, whether in or outside the Islands, against any person for an offence with which the cash is connected; or
 - (ii) proceedings against any person for an offence with which the cash is connected have been started and have not been concluded; or
- (b) there are reasonable grounds for suspecting that the cash is intended to be used in unlawful conduct and that either—
 - (i) its continued detention is justified while its intended use is further investigated or consideration is given to bringing proceedings, whether in or outside the Islands, against any person for an offence with which the cash is connected; or
 - (ii) proceedings against any person for an offence with which the cash is connected have been started and have not been concluded.

(4) An application for an order under subsection (2) may also be made in respect of any cash seized under section 106(b), and the court may make the order if satisfied that—

- (a) either subsection (3)(a) or (b) applies in respect of part of the cash; and
- (b) it is not reasonably practicable to detain only that part.

(5) An order under subsection (2) shall provide for notice to be given to any persons affected by it. (*Amended by Ord. 19 of 2010*)

Interest

108. (1) If cash is detained under section 107 for more than 48 hours, it shall, at the first opportunity, be paid into an interest-bearing account and held there, and the interest accruing on it is to be added to it on its forfeiture or release.

(2) In the case of cash detained under section 107 which was seized under section 106(b), the police officer, shall as soon as practicable after paying the cash seized into an interest bearing account, release the part of the cash to which the suspicion does not relate.

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

Release of detained cash

109. (1) While any cash is detained under section 107, the Magistrate's Court may direct the release of the whole or any part of the cash if the Magistrate's Court is satisfied, on an application by the person from whom the cash was seized, that the grounds for the detention of the cash specified in section 107(3) or (4) or are no longer met in relation to the cash to be released. (*Amended by Ord. 19 of 2010*)

(2) A police officer may, after notifying the Magistrate's Court under whose order cash is being detained, release the whole or any part of it if satisfied that the detention of the cash to be released is no longer justified.

Forfeiture

110. (1) While cash is detained under section 107, an application for the forfeiture of the whole or any part of it may be made to the Magistrate's Court by a police officer,

(2) The Magistrate's Court may order the forfeiture of the cash, or any part of it, if satisfied that the cash or part—

(a) is recoverable cash; or

(b) is intended by any person for use in unlawful conduct.

(3) In the case of recoverable cash which belongs to joint tenants, one of whom is an excepted joint owner, the order may not apply to so much of it as the Magistrate's Court thinks is attributable to the excepted joint owner's share.

(4) Where an application for the forfeiture of any cash is made under this section, the cash is to be detained (and may not be released under any power conferred by this Part) until any proceedings pursuant to the application (including any proceedings on appeal) are concluded. (*Amended by Ord. 19 of 2010*)

Appeal against forfeiture

111. (1) Any party to proceedings in which a forfeiture order is made who is aggrieved by the order may appeal to the Supreme Court.

(2) An appeal under subsection (1) shall be made within the period of thirty days commencing on the date on which the order is made.

(3) An appeal under subsection (1) is to be by way of a rehearing by the court which may make any order that it considers appropriate.

(4) If the Supreme Court upholds the appeal, it may order the release of the cash.

Application of forfeited cash

112. After the period within which an appeal under section 111 may be made or, if a person appeals under section 111, after the appeal has been determined or disposed of, cash forfeited under section 110 and any accrued interest on it shall be paid into the Fund. (*Amended by Ord. 19 of 2010*)

Victims and other owners

113. (1) A person who claims that any cash, or any part of it, that is detained under this Part belongs to him, may apply to the Magistrate's Court for the cash or part to be released to him.

(2) An application under subsection (1) may be made in the course of detention or forfeiture proceedings or at any other time.

(3) If, on an application under subsection (1), it appears to the Magistrate's Court that—

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

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

(4) If—

- (a) an applicant under subsection (1) is not the person from whom the cash to which the application relates was seized;
- (b) it appears to the Magistrate's Court that that cash belongs to the applicant;
- (c) the Magistrate's Court is satisfied that the grounds specified in section 107 or for the detention of the cash are no longer met or, if an application has been made under section 110, the Court decides not to make an order under that section in relation to that cash; and
- (d) no objection to the making of an order under this subsection has been made by the person from whom that cash was seized,

the Magistrate's Court may order the cash to which the application relates to be released to the applicant or to the person from whom it was seized.

Compensation

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

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

(3) The amount of compensation to be paid under subsection (2) is the amount the Magistrate's Court thinks would have been earned in interest in the period in question if the cash had been held in an interest-bearing account.

(4) If the Magistrate's Court is satisfied that, taking account of any interest to be paid under section 108 or any amount to be paid under subsection (2), the applicant has suffered loss as a result of the detention of the cash and that the circumstances are exceptional, the Magistrate's Court may order compensation (or additional compensation) to be paid to him. (*Amended by Ord. 19 of 2010*)

(5) The amount of compensation to be paid under subsection (4) is the amount the Magistrate's Court thinks reasonable, having regard to the loss suffered and any other relevant circumstances.

(6) Compensation is to be paid from the Fund.

(7) If a forfeiture order is made in respect only of a part of any cash detained under this Act, this section has effect in relation to the other part.

PART IV

MONEY LAUNDERING

Anti-Money Laundering Committee

Anti-Money Laundering Committee

115. (1) There is established a body to be known as the Anti-Money Laundering Committee.

(2) The Anti-Money Laundering Committee shall comprise—

- (a) the Attorney General, who shall be Chairman;
- (b) the Managing Director of the Financial Services Commission, who shall be Deputy Chairman;
- (c) the Collector of Customs;
- (d) the Commissioner of Police;
- (e) the Director of the Financial Intelligence Agency;
- (f) the Director of Public Prosecutions;
- (g) the Managing Director of the Gaming Commission;
- (h) the Director of the Integrity Commission; and
- (i) the Director of Immigration.

(Substituted by Ord. 25 of 2020)

(3) The members of the Anti-Money Laundering Committee may agree to appoint persons to assist the Authority in the performance of its functions.

(4) A member of the Anti-Money Laundering Committee may appoint a member of his staff of suitable seniority to act as his alternate and to attend meetings of the Authority in his place.

(5) The members of the Anti-Money Laundering Committee may adopt procedures for the administration and proceedings of the Anti-Money Laundering Committee that are not inconsistent with this Ordinance.

(Amended by Ord. 19 of 2010)

(6) The Anti-Money Laundering Committee may engage the services of suitably qualified and experienced staff to assist in implementing such policies, strategies and plans as are approved for the purposes of discharging its functions under section 116.

(Inserted by Ord. 25 of 2020)

(7) The Anti-Money Laundering Committee may appoint committees for the purposes of implementing strategies and plans prepared for the purposes of discharging its functions under section 116, whose members shall consist of the suitable staff of suitable seniority and expertise from the members of the Anti-Money Laundering Committee and such other persons as the Anti-Money Laundering Committee deems appropriate.

(Inserted by Ord. 25 of 2020)

(8) In accordance with the directions of the Anti-Money Laundering Committee, a committee appointed pursuant to subsection (7) shall—

- (a) implement or cause the implementation of the policies, strategies and plans approved by the Anti-Money Laundering Committee;
- (b) ensure the compatibility of requirements for combating money laundering, terrorism financing and proliferation financing with the law protecting personal data and privacy and related matters in the Islands;
- (c) facilitate the coordination and cooperation between each statutory authority, department of Government or agency tasked with regulation and supervision for anti-money laundering, counter terrorist financing and counter proliferation financing purposes; and
- (d) assess the risks to the Turks and Caicos Islands related to money laundering, terrorism financing and proliferation financing.

(Inserted by Ord. 25 of 2020)

(9) The Governor, on the advice of the Cabinet, may give the Anti-Money Laundering Committee directions of a general character as to the policy to be followed in the exercise and performance of its functions in relation to matters appearing to the Governor, on the advice of the Cabinet, to concern the public interest, and the Anti-Money Laundering Committee shall give effect to any such directions.

(Inserted by Ord. 25 of 2020)

Functions of the Anti-Money Laundering Committee

116. The functions of the Anti-Money Laundering Committee are—

- (a) to take responsibility for the general oversight of the anti-money laundering, counter terrorist financing and counter proliferation financing policies, strategies and plans of the Government and to

- keep any such policies, strategies and plans under regular review, either directly or through a committee appointed under section 115(7);
- (b) to promote effective collaboration among competent authorities in a manner that ensures the compatibility of the requirements for combating money laundering, terrorist financing and proliferation financing including with the law protecting personal data, privacy and related matters in the Islands;
 - (c) to advise the Governor in relation to establishing policies, strategies and plans that guide routine operations and practices of competent authorities in the Islands on the detection and prevention of money laundering, terrorist financing and proliferation financing, and on the development of a national plan of action to include recommendations on effective mechanisms to enable the competent authorities in the Islands to coordinate and cooperate with each other concerning the development and implementation of policies and activities to combat money laundering, terrorist financing and the financing of proliferation;
 - (d) to advise the Governor as to the participation of the Islands in the international effort against money laundering, terrorist financing and proliferation financing;
 - (e) to advise the Governor in the development of policies to combat money laundering, terrorist financing and proliferation financing;
 - (f) to issue a code and guidance under this Ordinance;
 - (g) to advise for the authorisation of payment of funds to be made out of the Fund;
 - (h) to take action to coordinate the assessment of money laundering, terrorist financing and proliferation financing risks;
 - (i) to prepare and maintain national risk assessments on money laundering, terrorist financing and proliferation financing risks and develop policies to implement the findings of such assessments with the aim of implementing measures to mitigate the risks;
 - (j) to advise financial businesses, directly or indirectly, of concerns about weaknesses in the AML/CFT/CPF systems, including systems to prevent the financing of proliferation, of other countries and natural or legal persons (including financial institutions) who are the subject of FATF, UN or EU sanctions and countermeasures;
 - (k) where the Anti-Money Laundering Committee considers it necessary to do so, to issue written notices in the Gazette and on the Government website, designating jurisdictions as having measures for combating money laundering, the financing of terrorism and proliferation financing which are equivalent to that of the Islands;

- (l) to assist competent authorities to develop and implement policies and procedures that allow for coordinated, effective and structured management of parallel financial investigations between the different investigative agencies; and
- (m) such other functions as are necessary for the purposes of this Ordinance.

(Substituted by Ord. 25 of 2020)

Disclosure by Financial Intelligence Agency

117. (1) The Financial Intelligence Agency may disclose any information disclosed to it to any law enforcement agency in the Islands.

(2) The Financial Intelligence Agency, having regard to the purpose for which the disclosure is to be made and the interests of third parties, may, subject to such conditions as it may impose, including as to further disclosure, disclose to a foreign financial intelligence unit information disclosed to it, in order to—

- (a) report the possible commission of an offence;
- (b) initiate a criminal investigation respecting the matter disclosed;
- (c) assist with any investigation or criminal proceedings respecting the matter disclosed; or
- (d) generally, give effect to the purposes of this Ordinance.

(Amended by Ord. 12 of 2014)

Issuance of Code and guidance

118. (1) The Anti-Money Laundering Committee—

- (a) shall, by publication in the *Gazette*, issue one or more Codes setting out measures, not inconsistent with this Ordinance, the Anti-Money Laundering and Prevention of Terrorist Financing Regulations, any other regulations made under this Ordinance or the terrorist financing legislation; and
- (b) may, by publication in the *Gazette*, issue a notice of amendment of a Code.

(2) A Code may—

- (a) make different provision in relation to different persons, circumstances or cases; and
- (b) include such transitional provisions as the Anti-Money Laundering Committee considers necessary or expedient.

(3) The Anti-Money Laundering Committee may, after consulting with the Governor, by publication in the *Gazette*, issue a notice of amendment of a Code.

(4) Before issuing a Code, or a notice of amendment of a Code, the Anti-Money Laundering Committee shall—

- (a) publish a draft of the Code or proposed amendment to the Code, in such manner as the Anti-Money Laundering Committee considers appropriate for bringing it to the notice of financial businesses and other persons who will be affected by it; and
- (b) consider such written representations as it receives.

(5) A Code issued under this section—

- (a) is subsidiary legislation and has full legislative effect; and
- (b) comes into operation on such date or dates as are specified in the Code.

(6) An amendment to a Code comes into effect on the date specified in the notice which, provided that it does not take effect prior to the commencement of the Code being amended, may be retroactive.

(7) A Code, and any amendment to a Code, shall be subject to annulment by resolution of the House of Assembly.

(8) In the event that a Code or notice of amendment is annulled in accordance with subsection (7), the Code or notice of amendment shall be of no force or effect from the date on which the resolution annulling it is made, without prejudice to anything done or suffered under the Code or notice of amendment.

(9) The Anti-Money Laundering Committee may issue guidance concerning compliance with the requirements of this Ordinance, the Anti-Money Laundering and Prevention of Terrorist Financing Regulations and the Codes and concerning such other matters as it considers relevant to its functions. *(Substituted by Ord. 19 of 2010 and amended by Ord. 28 of 2011)*

Immunity

119. Neither the Anti-Money Laundering Committee, any member, alternate member, or agent of the Anti-Money Laundering Committee nor any person appointed to assist the Anti-Money Laundering Committee under section 115(3) shall be liable in damages for anything done or omitted to be done in the discharge or purported discharge of any function or duty or the exercise or purported exercise of any power under this Ordinance or any other enactment unless it is shown that the act or omission was in bad faith. *(Amended by Ord. 12 of 2014)*

Confidentiality of information disclosed

120. (1) No person, including a member, alternate member, or agent of the Anti-Money Laundering Committee and a person appointed to assist the Anti-Money Laundering Committee under section 115(3), shall disclose any information or matter that he acquires as a result of his connection with the Anti-Money Laundering Committee except as required or permitted— *(Amended by Ord. 12 of 2014)*

- (a) by this Ordinance or any other enactment; or
- (b) an Order of the Supreme Court.

(2) Subsection (1) does not apply to a person who discloses any information or matter with the authority of, and on behalf of, the Anti-Money Laundering Committee.

(3) A person who contravenes subsection (1) is guilty of an offence and is liable—

- (a) on summary conviction to imprisonment for a term of twelve months or a fine of \$10,000 or both; or
- (b) on conviction on indictment, to imprisonment for a term of two years or a fine of \$50,000 or to both. *(Amended by Ord. 19 of 2010)*

Annual report of Anti-Money Laundering Committee

121. The Anti-Money Laundering Committee shall, on or before 30 April of each year, prepare and submit to the Governor a report of the work of the Anti-Money Laundering Committee for the twelve month period ending on the previous 31 December. *(Amended by Ord. 19 of 2010)*

Money Laundering Offences

Meaning of “criminal property” and “pecuniary advantage”

122. (1) Property is criminal property if—

- (a) it constitutes a person's benefit from criminal conduct or it represents such a benefit, in whole or part and whether directly or indirectly; and
- (b) the alleged offender knows or suspects that it constitutes or represents such a benefit.

(2) For the purposes of subsection (1), it is immaterial—

- (a) who carried out the conduct;
- (b) who benefited from it; or
- (c) whether the conduct occurred before or after 8 October 2007.

(3) A person benefits from conduct if he obtains property as a result of or in connection with the conduct.

(4) If a person derives a pecuniary advantage as a result of or in connection with conduct, he is to be taken to obtain as a result of or in connection with the conduct a sum of money equal to the value of the pecuniary advantage.

(5) References to property obtained or a pecuniary advantage derived in connection with conduct include references to property obtained or a pecuniary advantage derived in both that connection and some other.

(6) If a person benefits from conduct his benefit is the property obtained as a result of or in connection with the conduct. (*Amended by Ord. 19 of 2010*)

General provisions for sections 122 to 132

123. (1) This section has effect for the purposes of sections 122 to 132.

(2) In the sections specified in subsection (1) -

(a) “prohibited act” means an act specified in section 124(1), 125(1) or 126(1);

(b) a reference to the making by a person of a disclosure to “the relevant Money Laundering Reporting Officer”, means the Money Laundering Reporting Officer appointed by that person’s employer;

(c) “protected disclosure” has the meaning specified in section 132; and

(d) a reference to a person’s employer includes any body, association or organisation in connection with whose activities that person exercises a function, whether or not for gain or reward.

(3) A disclosure by a person is an authorised disclosure if—

(a) it is a disclosure made to the Financial Intelligence Agency or to the relevant Money Laundering Reporting Officer that property is criminal property; (*Amended by Ord. 12 of 2014*)

(b) the disclosure—

(i) in the case of a disclosure to the Financial Intelligence Agency, is made in the form and manner, if any, that may be prescribed in the Anti-Money Laundering and Prevention of Terrorist Financing Regulations; or (*Amended by Ords. 28 of 2011 and 12 of 2014*)

(ii) in the case of a disclosure to the relevant Money Laundering Reporting Officer, is made in the course of his employment and in accordance with the procedures established by his employer for the purpose; and

(c) the disclosure—

(i) is made before the person does the prohibited act; or

(ii) is made after the person does the prohibited act, there is good reason for his failure to make the disclosure before he did the

prohibited act and the disclosure is made on his own initiative and as soon as it is practicable for him to make it.

- (4) The appropriate consent is—
- (a) where a person makes a disclosure to the relevant Money Laundering Reporting Officer, the consent of the relevant Money Laundering Reporting Officer to do the prohibited act; or
 - (b) where a person makes a disclosure to the Financial Intelligence Agency, the consent of the Financial Intelligence Agency to do the prohibited act. *(Amended by Ord. 12 of 2014)*
- (5) A person is deemed to have the appropriate consent if—
- (a) he makes an authorised disclosure to the Financial Intelligence Agency; *(Amended by Ord. 12 of 2014)*
 - (b) either—
 - (i) the Financial Intelligence Agency does not, on or before the last day of the notice period, notify the person that consent to doing the prohibited act is refused; or *(Amended by Ord. 12 of 2014)*
 - (ii) on or before the last day of the notice period he receives notice from the Financial Intelligence Agency that consent to the doing of the prohibited act is refused and the moratorium period has expired. *(Amended by Ord. 12 of 2014)*
- (6) For the purposes of subsection (5)—
- (a) the notice period is the period of 7 working days commencing with the first working day after the person makes the disclosure; and
 - (b) the moratorium period is the period of 30 days commencing with the day on which the person receives notice that consent to the doing of the prohibited act is refused.
- (7) A Money Laundering Reporting Officer shall not consent to the doing of a prohibited act unless—
- (a) he has made a disclosure that property is criminal property to the Financial Intelligence Agency; and *(Amended by Ord. 12 of 2014)*
 - (b) the Financial Intelligence Agency gives consent to the doing of the prohibited act. *(Amended by Ord. 12 of 2013)*
- (8) A person who is a Money Laundering Reporting Officer is guilty of an offence if—
- (a) he gives consent to the doing of a prohibited act where the Financial Intelligence Agency has not consented to the doing of the act; and *(Amended by Ord. 12 of 2014)*
 - (b) he knows or suspects that the act is a prohibited act.

(9) A Money Laundering Reporting Officer guilty of an offence under this section is liable—

- (a) on summary conviction, to imprisonment for a term of twelve months or to a fine of \$10,000 or to both;
- (b) on conviction on indictment, to imprisonment for a term of five years or to a fine of \$50,000 or to both.

(Amended by Ord. 19 of 2010)

Concealing, disguising, converting, transferring and removing criminal property

124. (1) Subject to subsection (2), a person is guilty of an offence if he—

- (a) conceals criminal property;
- (b) disguises criminal property;
- (c) converts criminal property;
- (d) transfers criminal property; or
- (e) removes criminal property from the Islands.

(2) A person is not guilty of an offence under subsection (1) if—

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

(3) Concealing or disguising criminal property includes concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it.

(4) A person guilty of an offence under this section is liable—

- (a) on summary conviction to imprisonment for a term of two years or a fine of \$200,000 or both; or
- (b) on conviction on indictment, to imprisonment for a term of fourteen years or a fine without limit or to both.

(Amended by Ord. 19 of 2010)

Arrangements

125. (1) Subject to subsection (2), a person is guilty of an offence if he enters into or becomes concerned in an arrangement which he knows or suspects facilitates, by whatever means, the acquisition, retention, use or control of criminal property by or on behalf of another person.

- (2) A person is not guilty of an offence under subsection (1) if—
- (a) he makes an authorised disclosure and, if the disclosure is made before he does the act specified in subsection (1), he has the appropriate consent;
 - (b) he intended to make such a disclosure but had a reasonable excuse for not doing so;
 - (c) the act he does is done in carrying out a function he has relating to the enforcement of any provision of this Ordinance or of any other enactment relating to criminal conduct or benefit from criminal conduct.
- (3) A person guilty of an offence under this section is liable -
- (a) on summary conviction to imprisonment for a term of two years or a fine of \$200,000 or both; or
 - (b) on conviction on indictment , to imprisonment for a term of fourteen years or a fine without limit or to both.
- (Amended by Ord. 19 of 2010)*

Acquisition, use and possession

- 126.** (1) Subject to subsection (2), a person is guilty of an offence if he—
- (a) acquires criminal property;
 - (b) uses criminal property; or
 - (c) has possession of criminal property.
- (2) A person is not guilty of an offence under subsection (1) if—
- (a) he makes an authorised disclosure and, if the disclosure is made before he does the act specified in subsection (1), he has the appropriate consent;
 - (b) he intended to make such a disclosure but had a reasonable excuse for not doing so;
 - (c) he acquired or used or had possession of the property—
 - (i) for adequate consideration; and
 - (ii) without knowing or suspecting that the property was criminal property; or
 - (d) the act he does is done in carrying out a function he has relating to the enforcement of any provision of this Ordinance or of any other enactment relating to criminal conduct or benefit from criminal conduct.
- (3) For the purposes of this section—
- (a) a person acquires property for inadequate consideration if the value of the consideration is significantly less than the value of the property;

- (b) a person uses or has possession of property for inadequate consideration if the value of the consideration is significantly less than the value of the use or possession of the property; and
 - (c) the provision by a person of goods or services which he knows or suspects may help another to carry out criminal conduct is not consideration.
- (4) A person guilty of an offence under this section is liable—
- (a) on summary conviction to imprisonment for a term of two years or a fine of \$200,000 or both; or
 - (b) on conviction on indictment, to imprisonment for a term of fourteen years or a fine without limit or to both.
- (Amended by Ord. 19 of 2010)*

Duty to disclose knowledge or suspicion of money laundering

127. (1) Where a person—

- (a) knows or suspects, or has reasonable grounds for knowing or suspecting, that another person is engaged in money laundering, terrorist financing or criminal activity; and *(Amended by Ord. 22 of 2018)*
- (b) the information or other matter on which his knowledge or suspicion is based, or which gives reasonable grounds for such knowledge or suspicion, came to him in the course of a relevant business,

he shall promptly disclose the information or other matter after it comes to him to the relevant Money Laundering Reporting Officer or to the Financial Intelligence Agency. *(Amended by Ords. 12 of 2014 and 22 of 2018)*

(2) A disclosure under subsection (1) to the Financial Intelligence Agency shall be in the form and manner, if any, that may be required by the Financial Intelligence Agency. *(Amended by Ord. 12 of 2014)*

(3) Subject to subsection (4), a person who does not disclose any information or other matter as required by subsection (1) is guilty of an offence.

(4) A person is not guilty of an offence under subsection (3) if—

- (a) he has a reasonable excuse for not disclosing the information or other matter;
- (b) he is a professional legal advisor and the information or other matter came to him in privileged circumstances; or
- (c) he is a trainee, paralegal, legal secretary or any other person who is employed by, or is in partnership with, a professional legal adviser to provide the adviser with assistance or support and the information or other matter—
 - (i) came to him in connection with the provision of such assistance or support; and

(ii) came to the professional legal adviser in privileged circumstances.

(5) Without limiting subsection (4)(a), a person has a reasonable excuse for not disclosing information or other matter under subsection (1) if—

(a) he does not know or suspect that another person is engaged in money laundering, terrorist financing or criminal activity; and
(Amended by Ord. 22 of 2018)

(b) he has not been provided by his employer with anti-money laundering training as required by the Anti-Money Laundering and Prevention of Terrorist Financing Regulations. (Amended by Ords. 28 of 2011 and 22 of 2018)

(6) Subject to subsection (7), for the purposes of this section, any information or other matter comes to a professional legal adviser in privileged circumstances if it is communicated or given to him—

(a) by, or by a representative of, a client of his in connection with the giving by the advisor of legal advice to the client;

(b) by, or by a representative of, a person seeking legal advice from the advisor; or

(c) by a person in connection with legal proceedings or contemplated legal proceedings.

(7) Subsection (6) does not apply to any information or other matter which is communicated or given with the intention of furthering a criminal purpose.

(8) For the purposes of subsection (1), a person makes a disclosure to the relevant Money Laundering Reporting Officer if he make the disclosure in the course of his employment and in accordance with the procedures established by his employer for the purpose.

(9) A person guilty of an offence under this section is liable—

(a) on summary conviction to imprisonment for a term of twelve months or a fine of \$100,000 or to both; or

(b) on conviction on indictment, to imprisonment for a term of five years or a fine without limit or to both.

(Amended by Ord. 19 of 2010)

Duty to disclose, Money Laundering Reporting Officer of financial business

128. (1) Where the Money Laundering Reporting Officer of financial business—

(a) knows or suspects, or has reasonable grounds for knowing or suspecting, that another person is engaged in money laundering; and

- (b) the information or other matter on which his knowledge or suspicion is based, or which gives reasonable grounds for such knowledge or suspicion, came to him in consequence of an authorised or protected disclosure or a disclosure made under section 127 that is not an authorised or protected disclosure,

he shall disclose the information or other matter as soon as is practicable after it comes to him to the Financial Intelligence Agency. *(Amended by Ord. 22 of 2018)*

(2) A disclosure under subsection (1) to the Financial Intelligence Agency shall be in the form and manner, if any, that may be prescribed in the Anti-Money Laundering and Prevention of Terrorist Financing Regulations or required by the Financial Intelligence Agency. *(Amended by Ord. 12 of 2014)*

(3) Subject to subsection (4), a person who does not disclose any information or other matter as required by subsection (1) is guilty of an offence.

(4) A person is not guilty of an offence under subsection (3) if he has a reasonable excuse for not disclosing the information or other matter.

(5) A person guilty of an offence under this section is liable -

(a) on summary conviction to imprisonment for a term of twelve months or a fine of \$50,000 or both; or

(b) on conviction on indictment, to imprisonment for a term of five years or a fine without limit or to both.

(Amended by Ords. 19 of 2010 and 28 of 2011)

Prejudicing investigation and tipping off

129. (1) Subject to section 130, a person is guilty of an offence if—

(a) he knows or suspects that the Financial Intelligence Agency, a police officer, the Civil Recovery Authority or any other authorised person is acting, or is proposing to act, in connection with—

(i) a criminal recovery investigation;

(ii) a civil recovery investigation; or

(iii) a money laundering investigation; and

(b) he—

(i) makes a disclosure that is likely to prejudice that investigation, or proposed investigation; or

(ii) falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of, documents which are relevant to the investigation.

(Amended by Ord. 12 of 2014)

(2) Subject to section 130, a person is guilty of an offence if he knows or suspects that a suspicious transaction report or related information is being filed

or has been filed or that an authorised or protected disclosure has been made and he discloses that fact or other information. (*Substituted by Ord. 22 of 2018*)

(3) A person guilty of an offence under this section shall be liable -

- (a) on summary conviction, to imprisonment for a term of twelve months or a fine of \$50,000 or to both; or
- (b) on conviction on indictment, to imprisonment for a term of five years or a fine without limit or to both.

(*Amended by Ord. 19 of 2010*)

Circumstances in which offence under section 129 not committed

130. (1) Nothing in section 129 makes it an offence for a person to make a disclosure to a professional legal adviser for the purposes of legal advice or for a professional legal adviser to make a disclosure—

- (a) to, or to a representative of, a client of his in connection with the giving by the legal adviser of legal advice to the client; or
- (b) to any person—
 - (i) in contemplation of, or in connection with, legal proceedings; and
 - (ii) for the purpose of those proceedings.

(2) Subsection (1) does not apply to a disclosure made with the intention of furthering any criminal purpose.

(3) In proceedings against a person for an offence under section 129, it is a defence to prove that he did not know or suspect that the disclosure was likely to be prejudicial in the way specified in section 129(1)(b)(i) or (2)(b) or, as the case may be.

(4) A person is not guilty of an offence under section 129(1)(b)(ii) if—

- (a) he does not know or suspect that the documents are relevant to the investigation; or
- (b) he does not intend to conceal any facts disclosed by the documents from any person carrying out the investigation.

(5) No member of the Financial Intelligence Agency, police officer or other person shall be guilty of an offence under section 127 in respect of anything done by him in the course of acting in connection with the enforcement, or intended enforcement, of any provision of this Ordinance or of any other enactment relating to criminal conduct or benefit from criminal conduct or in compliance with a requirement imposed under or by virtue of this Ordinance.

(*Amended by Ords. 19 of 2010 and 12 of 2010*)

Protection of disclosures

131. (1) A disclosure is a protected disclosure if—

- (a) the information or other matter disclosed came to the person making the disclosure in the course of his trade, profession, business or employment;
- (b) the information or other matter disclosed causes the person making the disclosure to know or suspect, or gives him reasonable grounds for knowing or suspecting, that another person is engaged in money laundering terrorist financing or criminal activity; and (*Inserted by Ord. 22 of 2018*)
- (c) the disclosure is made to the Financial Intelligence Agency, or to the relevant Money Laundering Reporting Officer in accordance with the procedures established by his employer for the purpose, as soon as is practicable after the information or other matter comes to the person making the disclosure. (*Amended by Ord. 12 of 2014*)

(2) A protected disclosure, which for these purposes includes an authorised disclosure, shall not be treated as a breach of any enactment, rule of law or agreement restricting the disclosure of information and shall not give rise to civil proceedings.

(Amended by Ords. 19 of 2010 and 22 of 2018)

PART V

INVESTIGATIONS

General

Meaning of “privileged material”

132. (1) For the purposes of this Part, “privileged material” means—

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

when they are in the possession of a person who is entitled to possession of them.

(2) Material held with the intention of furthering a criminal purpose is not privileged material.

Application of Part V

133. (1) This Part applies to investigation of criminal conduct whether the conduct occurred before 8 October 2007 or after and whenever the investigation was begun.

(2) This Part does not apply to any investigation that has been concluded by the conviction or acquittal of an accused person in criminal proceedings or by the determination by the Court of an application for a recovery order under section 71.

Production Orders

Application for production order

134. (1) Application may be made to a judge for a production order under section 135 by—

- (a) a senior police officer; or
- (b) a police officer who is authorised in writing to make the particular application by a senior police officer.

(2) An application for a production order shall state that—

- (a) a person specified in the application is subject to—
 - (i) a criminal recovery investigation;
 - (ii) a money laundering investigation; or
 - (iii) an investigation into criminal conduct as described in section 135(1)(a)(iv),

or the property specified in the application is subject to a civil recovery investigation;

- (b) the order is sought—
 - (i) for the purposes of the investigation; and
 - (ii) in relation to material, or material of a description, specified in the application; and
- (c) a person specified in the application appears to be in possession or control of the material.

(Amended by Ord. 19 of 2010 and inserted Ord. 12 of 2011)

Production order

135. (1) On an application made under section 134, a judge may make a production order if he is satisfied that—

- (a) there are reasonable grounds for suspecting that—
 - (i) in the case of a criminal recovery investigation, the person specified in the application as being subject to the investigation has benefited from his criminal conduct;
 - (ii) in the case of a civil recovery investigation, the property specified in the application as being subject to the investigation is recoverable property or associated property;
 - (iii) in the case of a money laundering investigation, the person specified in the application as being subject to the investigation has committed a money laundering offence;
 - (iv) in the case of an investigation into any criminal conduct, the person specified in the application as being subject to the investigation has benefited by obtaining property or pecuniary advantage as result of or in connection with that criminal conduct; (*Inserted by Ord. 12 of 2011*)
- (b) there are reasonable grounds for believing that—
 - (i) the person specified in the application as appearing to be in possession or control of the specified material is in possession or control of it; and
 - (ii) there are reasonable grounds for believing that the material is likely to be of substantial value, whether by itself or together with other material, to the investigation for the purposes of which the order is sought; and
- (c) there are reasonable grounds for believing that it is in the public interest for the material to be produced or for access to be given to it having regard to—
 - (i) the benefit likely to accrue to the investigation if the material is obtained; and
 - (ii) the circumstances under which the person the application specifies as appearing to be in possession or control of the material holds it.

(2) A production order is an order—

- (a) requiring the person specified in the order as appearing to be in possession or control of material to produce it to a senior police officer, or the applicant for the order for him to take away; or
- (b) requiring that person to give a senior police officer, or the applicant for the order access to it,

within the period stated in the order.

(3) The period specified in a production order shall be seven days commencing on the date that the order is made, unless it appears to the judge that a longer or shorter period would be appropriate in the particular circumstances.

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

(Amended by Ord. 19 of 2010)

Order to grant entry

136. Where the judge makes a production order in relation to material on any premises he may, on the application of a senior police officer, order any person who appears to a senior police officer or a police officer who is authorised in writing to make the particular application by a senior police officer to be entitled to grant entry to the premises to allow him to enter the premises to obtain access to the material. *(Amended by Ord. 19 of 2010)*

Further provisions relating to production orders

137. (1) Where any material specified in an application for a production order consists of information contained in a computer—

- (a) an order under section 128 shall have effect as an order to produce the material in a form in which it can be taken away and in which it is visible and legible; and
- (b) an order under section 128 shall have effect as an order to give access to the material in a form in which it is visible and legible.

(2) A senior police officer, or the applicant for the order may take copies of any material which is produced, or to which access is given, in compliance with a production order.

(3) Material produced in compliance with a production order may be retained for so long as it is necessary to retain it, as opposed to copies of it, in connection with the investigation for the purposes of which the order was made.

(4) If a senior police officer, or the applicant for the order has reasonable grounds for believing that—

- (a) the material may need to be produced for the purposes of any legal proceedings; and
- (b) it might otherwise be unavailable for those purposes, it may be retained until the proceedings are concluded.

(Amended by Ord. 19 of 2010)

Search and Seizure Warrants

Application for search and seizure warrant.

138. (1) Application may be made to a judge for a search and seizure warrant under section 139 by—

- (a) a senior police officer; or

- (b) a police officer who is authorised in writing to make the particular application by a senior police officer.
- (2) An application for a search and seizure warrant shall state that—
- (a) a person specified in the application is subject to—
- (i) a criminal recovery investigation;
 - (ii) a money laundering investigation; or
 - (iii) an investigation into criminal conduct as described in section 135(1)(a)(iv),
or the property specified in the application is subject to a civil recovery investigation; and
- (b) that the warrant is sought—
- (i) for the purposes of the investigation;
 - (ii) in relation to the premises specified in the application; and
 - (iii) in relation to material specified in the application, or that there are reasonable grounds for believing that there is material falling within section 132(5), (6) or (7) on the premises. *(Inserted by Ord. 12 of 2011)*
- (3) A search and seizure warrant is a warrant authorising a police officer or any person named or described in the warrant—
- (a) to enter and search the premises specified in the application for the warrant; and
- (b) to seize and retain any material found there which is likely to be of substantial value, whether by itself or together with other material, to the investigation for the purposes of which the application is made. *(Amended by Ord. 19 of 2010 and 12 of 2011)*

Search and seizure warrant

- 139.** (1) On an application made under section 138, a judge may issue a search and seizure warrant if he is satisfied that—
- (a) a production order in relation to material has not been complied with and there are reasonable grounds for believing that the material is on the premises specified in the application for the warrant; or
- (b) subsection (2) applies and either—
- (i) the conditions specified in subsection (3) are fulfilled; or
 - (ii) the conditions specified in subsection (4) are fulfilled.

- (2) This subsection applies for the purposes of paragraph (1)(b) if—
- (a) that there are reasonable grounds for suspecting that—
 - (i) in the case of a criminal recovery investigation, the person specified in the application for the warrant has benefited from his criminal conduct;
 - (ii) in the case of a civil recovery investigation, the property specified in the application for the warrant is recoverable property or associated property; or
 - (iii) in the case of a money laundering investigation, the person specified in the application for the warrant has committed a money laundering offence;
 - (iv) in the case of an investigation described in section 135(1)(a)(iv), the person specified in the application as being subject to the investigation has benefited by obtaining property or pecuniary advantage as result of or in connection with that criminal conduct. *(Amended by Ord. 19 of 2010 and Ord. 12 of 2011)*
- (3) The conditions referred to in subsection (1)(b)(i) are—
- (a) that there are reasonable grounds for believing that—
 - (i) any material on the premises specified in the application for the warrant is likely to be of substantial value, whether by itself or together with other material, to the investigation for the purposes of which the warrant is sought; and
 - (ii) it is in the public interest for the material to be obtained, having regard to the benefit likely to accrue to the investigation if the material is obtained; and
 - (b) that it would not be appropriate to make a production order—
 - (i) that it is not practicable to communicate with any person against whom the production order could be made;
 - (ii) that it is not practicable to communicate with any person who would be required to comply with an order to grant entry to the premises; or
 - (iii) that the investigation might be seriously prejudiced unless a police officer is able to secure immediate access to the material.
- (4) The conditions referred to in subsection (1)(b)(ii) are—
- (a) there are reasonable grounds for believing that there is material on the premises specified in the application for the warrant and that—
 - (i) in the case of a criminal recovery investigation, the material falls within subsection (5);

- (ii) in the case of a civil recovery investigation, the material falls within subsection (6);
 - (iii) in the case of a money laundering investigation, the material falls within subsection (7);
 - (iv) in the case of an investigation described in section 135(1)(a)(iv), the material falls within subsection (8); (*Inserted by Ord. 12 of 2011*)
- (b) there are reasonable grounds for believing that it is in the public interest for the material to be obtained, having regard to the benefit likely to accrue to the investigation if the material is obtained; and
- (c) one of the following apply—
- (i) it is not practicable to communicate with any person entitled to grant entry to the premises;
 - (ii) entry to the premises will not be granted unless a warrant is produced; or
 - (iii) the investigation might be seriously prejudiced unless a police officer arriving at the premises is able to secure immediate entry to them.
- (5) In the case of a criminal recovery investigation, material falls within this subsection if it cannot be identified at the time of the application but it—
- (a) relates to the person specified in the application, the question whether he has benefited from his criminal conduct or any question as to the extent or whereabouts of his benefit from his criminal conduct; and
 - (b) is likely to be of substantial value, whether by itself or together with other material, to the investigation for the purposes of which the warrant is sought.
- (6) In the case of a civil recovery investigation, material falls within this subsection if it cannot be identified at the time of the application but it—
- (a) relates to the property specified in the application, the question whether it is recoverable property or associated property, the question as to who holds any such property, any question as to whether the person who appears to hold any such property holds other property which is recoverable property, or any question as to the extent or whereabouts of any property mentioned in this paragraph; and
 - (b) is likely to be of substantial value, whether by itself or together with other material, to the investigation for the purposes of which the warrant is sought.

(7) In the case of a money laundering investigation, material falls within this subsection if it cannot be identified at the time of the application but it—

- (a) relates to the person specified in the application or the question whether he has committed a money laundering offence; and
- (b) is likely to be of substantial value, whether by itself or together with other material, to the investigation for the purposes of which the warrant is sought.

(8) In the case of an investigation described in section 135(1)(a)(iv), material falls within this subsection if it cannot be identified at the time of the application but it—

- (a) relates to the person specified in the application, the question whether he has benefited by obtaining property or pecuniary advantage as result of or in connection with his criminal conduct or any question as to the extent or whereabouts of his benefit from his criminal conduct; and
- (b) is likely to be of substantial value, whether by itself or together with other material, to the investigation for the purposes of which the warrant is sought. (*Inserted by Ord. 12 of 2011*)

(9) A search and seizure warrant does not confer the right to seize privileged material.

Customer Information Orders

Customer information to be specified in regulations

140. The regulations shall specify types or categories of information that are “customer information” for the purposes of sections 141 to 142.

Application for customer information order

141. (1) Application may be made to a judge for a customer information order under section 142 by—

- (a) a senior police officer; or
 - (b) a police officer who is authorised in writing to make the particular application by a senior police officer.
- (2) An application for a customer information order shall state that—
- (a) a person specified in the application is subject to—
 - (i) a criminal recovery investigation;
 - (ii) a money laundering investigation; or
 - (iii) an investigation into criminal conduct as described in section 135(1)(a)(iv),

- or the property specified in the application is subject to a civil recovery investigation; (*Inserted by Ord. 12 of 2011*)
- (b) the order is sought for the purposes of the investigation; and
 - (c) the order is sought against the regulated person or regulated persons specified in the application.
- (3) An application for a customer information order may specify—
- (a) all regulated persons;
 - (b) a particular description, or particular descriptions, of regulated persons; or
 - (c) a particular regulated person or particular regulated persons.
(*Amended by Ord. 19 of 2010*)

Customer information order

142. (1) On an application made under section 141, a judge may make a customer information order if he is satisfied that—

- (a) there are reasonable grounds for suspecting that—
 - (i) in the case of a criminal recovery investigation, the person specified in the application has benefited from his criminal conduct;
 - (ii) in the case of a civil recovery investigation, the property specified in the application is recoverable property or associated property and the person specified in the application holds all or some of the property; or
 - (iii) in the case of a money laundering investigation, the person specified in the application has committed a money laundering offence;
 - (iv) in the case of an investigation described in section 135(1)(a)(iv), the person specified in the application as being subject to the investigation has benefited by obtaining property or pecuniary advantage as result of or in connection with that criminal conduct; (*Inserted by Ord. 12 of 2011*)
 - (b) there are reasonable grounds for believing that customer information which may be provided in compliance with the order is likely to be of substantial value, whether by itself or together with other information, to the investigation for the purposes of which the order is sought; and
 - (c) there are reasonable grounds for believing that it is in the public interest for the customer information to be provided, having regard to the benefit likely to accrue to the investigation if the information is obtained.
- (2) A customer information order is an order that a regulated person covered by the application for the order shall, on being required to do so by

notice in writing given by an appropriate officer, provide any such customer information as it has relating to the person specified in the application.

(3) A regulated person which is required to provide information under a customer information order shall provide the information to an appropriate officer in such manner, and at or by such time, as an appropriate officer requires.

(4) If a regulated person on which a requirement is imposed by a notice given under a customer information order requires the production of evidence of authority to give the notice, it is not bound to comply with the requirement unless evidence of the authority has been produced to it.

(5) A customer information order shall have effect notwithstanding any obligation as to confidentiality or other restriction upon the disclosure of information imposed by any enactment, rule of law or otherwise.

(Amended by Ord. 19 of 2010)

Offences

143. (1) A regulated person is guilty of an offence if—

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

(2) A regulated person guilty of an offence under subsection (1)(a) is liable—

- (a) on summary conviction, to a fine of \$100,000; or
- (b) on conviction on indictment to a fine without limit.

(3) A regulated person guilty of an offence under subsection (1)(b) is liable—

- (a) on summary conviction, to a fine of \$100,000; or
- (b) on conviction on indictment to a fine without limit.

(Amended by Ord. 19 of 2010)

Protection of statements

144. (1) Subject to subsection (2), a statement made by a regulated person in response to a customer information order may not be used in evidence against it in criminal proceedings.

(2) Subsection (1) does not apply—

- (a) in the case of proceedings under Part II;
- (b) on a prosecution for an offence under section 145; or

(c) on a prosecution for some other offence where, in giving evidence, the regulated person makes a statement inconsistent with the statement mentioned in subsection (1).

(3) A statement may not be used by virtue of subsection (2)(c) against a regulated person unless—

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

by or on behalf of the regulated person in the proceedings arising out of the prosecution.

Account Monitoring Orders

Application for account monitoring order

145. (1) Application may be made to a judge for an account monitoring order under section 146 by—

- (a) a senior police officer; or
- (b) a police officer who is authorised in writing to make the particular application by a senior police officer.

(2) An application for an account monitoring order shall state that—

- (a) a person specified in the application is subject to—
 - (i) a criminal recovery investigation;
 - (ii) a money laundering investigation; or
 - (iii) an investigation into criminal conduct as described in section 135(1)(a)(iv),

or the property specified in the application is subject to a civil recovery investigation; (*Inserted by Ord. 12 of 2011*)

- (b) the order is sought for the purposes of the investigation; and
- (c) the order is sought against the regulated person specified in the application in relation to account information of the description specified.

(3) An application for an account monitoring order may specify information relating to—

- (a) all accounts held by the person specified in the application at the regulated person so specified;
- (b) a particular description, or particular descriptions, of accounts so held; or
- (c) a particular account or particular accounts so held.

(Amended by Ord. 19 of 2010)

Account monitoring order.

146. (1) On an application made under section 145, a judge may make an account monitoring order if he is satisfied that—

- (a) in the case of a confiscation investigation, there are reasonable grounds for suspecting that the person specified in the application for the order has benefited from his criminal conduct;
- (b) in the case of a civil recovery investigation, there are reasonable grounds for suspecting that—
 - (i) the property specified in the application for the order is recoverable property or associated property; and
 - (ii) the person specified in the application holds all or some of the property;
- (c) in the case of a money laundering investigation, there are reasonable grounds for suspecting that the person specified in the application for the order has committed a money laundering offence;
- (d) in the case of an investigation described in section 135(1)(a)(iv), the person specified in the application as being subject to the investigation has benefited by obtaining property or pecuniary advantage as result of or in connection with that criminal conduct.
(Inserted by Ord. 12 of 2011)

(2) In the case of any investigation, the a judge shall not make an account monitoring order unless he is satisfied that—

- (a) there are reasonable grounds for believing that account information which may be provided in compliance with the order is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the order is sought; and
- (b) there are reasonable grounds for believing that it is in the public interest for the account information to be provided, having regard to the benefit likely to accrue to the investigation if the information is obtained.

(3) If on an application under section 145, the judge is satisfied that the conditions specified in this section are fulfilled, he may make an order that the regulated person specified in the application shall, for the period stated in the order, which shall not exceed 90 days, provide account information of the description specified in the order to a senior police officer or the applicant for the order in the manner and at or by the time or times stated in the order.

(4) For the purposes of subsection (3), “account information” is information relating to an account or accounts held at the regulated person specified in the order by the person specified in the order, whether solely or jointly with one or more other persons.

(5) An order under subsection (3) may specify account information relating to—

- (a) all accounts held by the person and at the regulated person specified in the order;
- (b) a particular description, or particular descriptions, of accounts so held; or
- (c) a particular account, or particular accounts, so held.

(Amended by Ord. 19 of 2010)

Statements

147. (1) Subject to subsection (2), a statement made by a regulated person in response to an account monitoring order may not be used in evidence against it in criminal proceedings.

(2) Subsection (1) does not apply—

- (a) in the case of proceedings under Part II;
- (b) in the case of proceedings for contempt of court; or
- (c) on a prosecution for an offence where, in giving evidence, the regulated person makes a statement inconsistent with the statement mentioned in subsection (1).

(3) A statement may not be used by virtue of subsection (2)(c) against a regulated person unless—

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

by or on behalf of the regulated person in the proceedings arising out of the prosecution.

Disclosure of information

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

General

Procedure

149. (1) An application for a production order, a customer information order or an account monitoring order may be made *ex parte* to a judge in chambers.

(2) Rules of court may make provision as to—

- (a) the practice and procedure in connection with proceedings relating to production orders, orders to grant entry under section 92, customer information orders and account monitoring orders; and

(b) applications for the discharge and variation of such orders and proceedings relating to such applications.

(3) An order of a judge under this Part shall have effect as if it were an order of the Supreme Court.

(4) A production order, a customer information order and an account monitoring order shall have effect notwithstanding any obligation as to confidentiality or other restriction upon the disclosure of information imposed by any enactment, rule of law or otherwise.

PART VI

COOPERATION

Interpretation for this Part and Schedule 4

150. In this Part and Schedule 4—

- (a) an external order is an order which —
 - (i) is made by an overseas court where property is found or believed to have been obtained as a result of or in connection with criminal conduct; and
 - (ii) is for the recovery of specified property or a specified sum of money;
- (b) an external request is a request by an overseas authority to prohibit dealing with relevant property which is identified in the request;
- (c) an overseas money laundering offence is an act carried out in a country outside the Islands, which if carried out in the Islands, would—
 - (i) constitute an offence under section 124, 125 or 126;
 - (ii) constitute an attempt, conspiracy or incitement to commit an offence specified in subparagraph (i); or
 - (iii) constitute aiding, abetting, counselling or procuring the commission of an offence specified in subparagraph (i);
- (d) property is “relevant property” if there are reasonable grounds to believe that it may be needed to satisfy an external order which has been or which may be made;
- (e) an overseas court is a court of a country outside the Islands; and
- (f) an overseas authority is an authority which has responsibility in a country outside the Islands for making a request to an authority in another country (including the Islands) to prohibit dealing with relevant property.

(Amended by Ord. 16 of 2009)

External requests and orders

151. Schedule 4 applies to external requests and the enforcement of external orders.

PART VII

NATIONAL FORFEITURE FUND

National Forfeiture Fund

152. (1) There shall be established a fund to be known as the National Forfeiture Fund.

(2) There shall be paid into the Fund—

- (a) all money recovered under a confiscation order or under a forfeiture order made under the Anti-terrorist Financing Order or the Prevention of Terrorism Ordinance;
- (b) all money recovered under a recovery order;
- (c) all cash forfeited under section 110 or under the Anti-terrorist Financing Order or the Prevention of Terrorism Ordinance; and
- (d) all money paid to the Government by a foreign jurisdiction in respect of confiscated or forfeited assets.

(Amended by Ord. 12 of 2014)

(3) The Governor-in-Council may, on the recommendation of the Anti-Money Laundering Committee, authorise payments to be made out of the Fund—

(a) for purposes relating to—

- (i) law enforcement, including in particular, the investigation of money laundering and other financial crime, terrorist financing, drug trafficking and arms trafficking; *(Amended by Ord. 15 of 2016)*
 - (ii) training and public awareness with respect to money laundering, terrorist financing, drug trafficking and arms trafficking; *(Amended by Ord. 15 of 2016)*
 - (iii) training and public awareness with respect to drug addiction and the treatment and rehabilitation of persons with a drug addiction;
 - (iv) the rehabilitation of offenders; and
 - (v) the administration of the Fund;
- (b) to meet the costs and expenses of the Anti-Money Laundering Committee and the Financial Intelligence Agency;

- (c) to satisfy any obligation of the Government to a foreign Government or with respect to confiscated assets;
- (d) to meet the costs and expenses of a receiver appointed under this Ordinance or the Prevention of Terrorism Ordinance;
- (e) to meet the costs of special investigations into the misuse of the financial system for money laundering or other financial crime or terrorist financing; and
- (f) to pay compensation or costs awarded under this Ordinance or the Prevention of Terrorism Ordinance.

(Amended by Ord. 12 of 2014)

(4) If, at the end of the financial year, the monies standing to the credit of the Fund exceed \$2 million, the Anti-Money Laundering Committee shall, within 14 days of the end of the financial year, pay a sum equal to the excess into the Consolidated Fund:

Provided that monies paid into the Fund by virtue of a court order, and are held in trust or are subject of an appeal, shall not be computed into the \$2 million or the excess to be paid into the Consolidated Fund.

(Amended by Ord. 19 of 2010, Ord. 29 of 2012 and Ord. 12 of 2014)

Administration of the Fund

153. (1) The Fund shall be held and administered by the Anti-Money Laundering Committee.

(2) The Anti-Money Laundering Committee shall open and maintain an account with a bank in the Islands which holds a National Banking licence granted under the Banking Ordinance, into which all monies payable to the Fund shall be paid.

(3) The Anti-Money Laundering Committee may, with the approval of the Governor-in-Council, invest monies of the Fund that, at any time are not required to be paid out the Fund under section 152(3) or (4). *(Amended by Ord. 29 of 2012)*

(4) Income earned from investments made under subsection (3) shall be part of the Fund.

Preparation of financial statements

154. (1) The financial year of the Fund ends on March 31st in each year.

(2) The Anti-Money Laundering Committee shall—

- (a) keep proper records of the money paid into and out of the Fund and of investments made pursuant to section 153(3); and
- (b) ensure that—
 - (i) all money received is properly brought to account;
 - (ii) all payments are correctly made and properly authorised; and
 - (iii) adequate control is maintained over the assets of the Fund.

- (3) The financial records kept under subsection (2) shall—
- (a) be sufficient to show and explain all transactions relating to the Fund;
 - (b) enable the financial position of the Fund to be determined with reasonable accuracy at any time; and
 - (c) be sufficient to enable financial statements to be prepared and audited in accordance with this section.
- (4) Within two months after the end of each financial year, the Anti-Money Laundering Committee shall prepare—
- (a) financial statements containing—
 - (i) a statement of the assets of the Fund at the end of the financial year; and
 - (ii) a statement of the money received into the Fund and the payments made out of the Fund during the financial year;
 - (b) such other financial statements for the financial year as may be specified by the Governor; and
 - (c) proper and adequate explanatory notes to the financial statements prepared under paragraphs (a) and (b).

Audit of financial statements and annual report

155. (1) The Anti-Money Laundering Committee shall cause the financial statements prepared under section 154 to be audited and certified by an auditor to be appointed annually by the Governor after consultation with the Anti-Money Laundering Committee within three months after the end of the financial year.

(2) The auditor appointed under subsection (1) may be the Chief Auditor or such other suitably qualified person.

(3) The auditor shall prepare a report of his audit of the financial statements of the Fund which shall include statements as to whether, in his opinion—

- (a) he has obtained all the information and explanations necessary for the purposes of the audit; and
- (b) to the best of his information and according to the explanations given to him, the financial statements give a true and fair view of—
 - (i) the assets of the Fund as at the end of the financial year; and
 - (ii) the money received into the Fund and the payments made out of the Fund during the financial year.

(4) Within six months after the end of each financial year, the Anti-Money Laundering Committee shall prepare and submit to the Minister a copy of

the audited financial statements, which shall include the report of the auditor on the financial statements,

(5) The Minister shall, as soon as reasonably practicable after their receipt, lay a copy of the audited financial statements, together with the auditor's report, before the House of Assembly.

PART VIII

SUPERVISION AND ENFORCEMENT

Enforcement of Fines

Order to pay has effect as fine

156. (1) Where the court makes a confiscation order against a defendant, the order has effect as if the amount to be paid under the order was a fine imposed on the defendant.

(2) In subsections 157 to 160, "fine" includes any amount payable under a confiscation order. (*Inserted by Ord. 19 of 2010*)

Imprisonment on non-payment

157. Where the whole or any part of a fine imposed under this Ordinance is not paid when required by the court, the court may in respect of the amount of the unpaid fine set out in Column 1 below, impose a term of imprisonment not exceeding the maximum period set out opposite that amount in Column 2.

Column 1 Sum in Default	Column 2 Maximum Period
Exceeds \$100 but does not exceed \$30,000	18 months
Exceeds \$30,000 but does not exceed \$75,000	2 years
Exceeds \$75,000 but does not exceed \$150,000	3 years
Exceeds \$150,000 but does not exceed \$300,000	4 years
Exceeds \$300,000 but does not exceed \$500,000	5 years
Exceeds \$500,000 but does not exceed \$1 million	8 years
Exceeds \$1 million	10 years.

Custodial sentences to run consecutively

158. Where—

- (a) a warrant of commitment is issued for a default in payment of a fine to be paid under this Ordinance in respect of any offence or offences; and
- (b) at the time the warrant is issued, the defendant is liable to serve a term of custody in respect of the offence or offences,

the term of imprisonment to be served in default of payment of the fine does not begin to run until after the term mentioned in paragraph (b) has been served.
(*Inserted by Ord. 19 of 2010*)

Effect of variation of confiscation order

159. (1) If, under a power granted by this Ordinance, the court varies a confiscation order and the effect is to reduce the maximum period of imprisonment specified in this Part—

- (a) if, as a result, the maximum period of imprisonment is less than the term of imprisonment imposed by the court, the court must impose a reduced term of imprisonment; or
- (b) if paragraph (a) does not apply, the court may amend the term of imprisonment imposed.

(2) If, under a power granted by this Ordinance, the court varies a confiscation order and the effect is to increase the maximum period of imprisonment specified in this section, the court may on the application of the prosecutor, amend the term of imprisonment imposed.

(3) Where the defendant serves a term of imprisonment in default of paying any amount due under a confiscation order, his serving that term does not prevent the confiscation order from continuing to have effect, so far as any other method of enforcement is concerned. (*Inserted by Ord. 19 of 2010*)

Application of sections 156 to 159 on appeal

160. (1) Sections 156 to 159 apply in relation to confiscation orders made by the Court of Appeal, in its appellate jurisdiction, as it applies in relation to confiscation orders made by the court and any reference in this Part to the court shall be construed accordingly. (*Inserted by Ord. 19 of 2010*)

Supervisory Authorities

Supervision and enforcement of financial businesses

161. (1) The Commission is the supervisory authority for regulated financial businesses.

(2) The Governor shall prescribe one or two persons as the supervisory authority for designated non-financial businesses and professions, one of which may be the Commission. (*Substituted by Ord. 19 of 2018*)

- (3) A supervisory authority is responsible for—
- (a) monitoring compliance by those financial businesses for which the supervisory authority is responsible, with their AML/CFT obligations; and
 - (b) taking appropriate enforcement action against financial businesses for which it is responsible for breaches of their AML/CFT obligations.
- (4) In undertaking its functions, a supervisory authority has—
- (a) in the case of the Commission acting as the supervisory authority for regulated financial businesses, the information gathering and enforcement powers provided for in the Financial Services Commission Ordinance;
 - (b) in the case of the DNFBP Supervisor, the information gathering and enforcement powers provided for in sections 164 to 172.
- (5) In determining the enforcement action to be taken against a financial business for a breach of its AML/CFT obligations, a supervisory authority must have regard to the need to ensure that enforcement action taken is effective, proportionate and dissuasive.
- (6) Where a breach of the Anti-Money Laundering and Prevention of Terrorist Financing Regulations constitutes an offence, the taking of enforcement action by a supervisory authority does not prevent the financial business being also prosecuted for the offence.

*(Inserted by Ord. 19 of 2010 and amended
by Ords. 28 of 2011 and Ord. 13 of 2013)*

Limitation of liability of supervisory authorities

162. (1) No person or body to whom this section applies is liable in damages for anything done or omitted in the discharge or purported discharge of any function under, or authorized by or under, this Ordinance unless it is proved that the act or omission was in bad faith.

- (2) This section applies to—
- (a) a supervisory authority;
 - (b) any member of a supervisory authority or any person who is, or is acting as, an officer, employee or agent of a supervisory authority or who is performing any duty or exercising any power on behalf of a supervisory authority.

(Inserted by Ord. 19 of 2010)

Registration of designated non-financial businesses and profession

163. (1) A person, other than a regulated financial business, shall not carry on any type of relevant business in or from within the Islands unless that person is registered for that type of relevant business with the DNFBP Supervisor, in accordance with regulations made under section 173.

(2) A person who contravenes subsection (1) is guilty of an offence and is liable—

- (a) on summary conviction, to imprisonment for a term of twelve months or to a fine of \$20,000 or to both;
- (b) on conviction on indictment, to imprisonment for a term of 3 years or to a fine of \$75,000 or to both.

(Inserted by Ord. 19 of 2010 and amended by Ord. 13 of 2013)

Powers of DNFBP Supervisor

Compliance visits

164. The DNFBP Supervisor, for the purposes of carrying out its functions, at any reasonable time—

- (a) enter and inspect any premises occupied or used by a designated non-financial business and profession, whether in or outside the Islands;
- (b) review the business and activities of the designated non-financial business and profession and its policies, procedures, systems and controls;
- (c) examine and make copies of documents belonging to or in the possession or control of a designated non-financial business and profession that, in the opinion of the DNFBP Supervisor, are relevant to the its business or to its AML/CFT obligations; and
- (d) seek information and explanations from the officers, employees, agents and representatives of the designated non-financial business and profession, whether verbally or in writing, and whether in preparation for, during or after a compliance visit.

*(Inserted by Ord. 19 of 2010
and amended by Ord. 13 of 2013)*

Enforcement action

165. The DNFBP Supervisor is entitled to take enforcement action against a designated non-financial business and profession if, in the opinion of the DNFBP Supervisor—

- (a) the designated non-financial business and profession—
 - (i) has contravened or is in contravention of its AML/CFT obligations;
 - (ii) has failed to comply with a directive given to it by the DNFBP Supervisor;
 - (iii) is in breach of any term or condition of its registration;
 - (iv) has provided the DNFBP Supervisor with any false, inaccurate or misleading information, whether on making application for registration or subsequent to its registration; or

- (v) has refused or failed to co-operate with the DNFBP Supervisor on a compliance visit under section 164; or
- (b) any of the following do not satisfy the DNFBP Supervisor fit and proper criteria—
 - (i) the designated non-financial business and profession;
 - (ii) the designated non-financial business and profession anti-money laundering reporting officer or anti-money laundering compliance officer;
 - (iii) a director or officer of the designated non-financial business and profession; or
 - (iv) a person having a share or interest in the designated non-financial business and profession, whether equitable or legal.

(Inserted by Ord. 19 of 2010 and amended by Ord. 13 of 2013)

Directives

166. (1) Where the DNFBP Supervisor is entitled to take enforcement action against a designated non-financial business and profession, it may by written notice issue such directives to the financial business as it considers appropriate.

(2) Without limiting subparagraph (1), a directive may—

- (a) require the financial business to take, or not to take, such action or measures as the DNFBP Supervisor considers appropriate;
- (b) impose a prohibition, restriction or limitation on the business or activities of the financial business, including a prohibition that the financial business must cease to engage in any type of business or that it must not enter into any new contracts for any class or type of business;
- (c) require that any director, key employee or person having functions in relation to the financial business be removed and replaced by another person acceptable to the DNFBP Supervisor; or
- (d) require that any individual—
 - (i) not perform a specified function or functions for;
 - (ii) not engage in specified employment by;
 - (iii) not hold a specified position in the business of,
 the designated non-financial business and profession.

(3) A directive issued under this section may be of unlimited duration or of a duration specified in the notice of the direction.

(4) The power to issue a directive under this section includes the power, whether on the application of the designated non-financial business and profession or on the volition of the DNFBP Supervisor, to vary or withdraw any directive.

- (5) A notice of a directive must—
- (a) specify the reasons for giving the directive; and
 - (b) specify when the directive is to take effect.

(6) A designated non-financial business and profession who fails to comply with a directive issued under this section is guilty of an offence and is liable on summary conviction, to imprisonment for a term of twelve months or to a fine of \$50,000 or to both.

(Inserted by Ord. 19 of 2010 and amended by Ord. 13 of 2013)

Cancellation of registration

167. (1) The DNFBP Supervisor may, by written notice, cancel the registration of a designated non-financial business and profession—

- (a) at the request of the financial business; or
- (b) if it is entitled to take enforcement action against the financial business.

(2) Subject to subsection (3), the DNFBP Supervisor must give a designated non-financial business and profession not less than 14 days written notice of its intention to cancel the financial business's registration.

(3) If the DNFBP Supervisor is of the opinion that it is in the public interest to do so, it may cancel the registration of a designated non-financial business and profession with immediate effect.

(4) A notice given under subsection (2) must state the grounds on which the DNFBP Supervisor intends to cancel the registration and must state—

- (a) that unless the designated non-financial business and profession, by written notice given to the DNFBP Supervisor, shows good reason why its registration should not be cancelled, the registration will be cancelled on the date specified in the notice; or
- (b) where subsection (3) applies, that the registration is cancelled with effect from the date of the notice.

(Inserted by Ord. 19 of 2010 and amended by Ord. 13 of 2013)

Disciplinary action

168. (1) For the purposes of this section and sections 169 to 171—

- (a) “disciplinary violation” means a contravention of—
 - (i) a provision of the Anti-Money Laundering and Prevention of Terrorist Financing Regulations specified in those Regulations as a disciplinary violation; or
 - (ii) a provision of an Anti-Money Laundering and Terrorist Financing Code specified in the relevant Code as a disciplinary violation;

- (b) the imposition of an administrative penalty becomes final on the earliest of—
- (i) the payment by the designated non-financial business and profession of the penalty;
 - (ii) the date when, in accordance with section 170(5), the designated non-financial business and profession is considered to have committed the disciplinary violation; or
 - (iii) the dismissal of any appeal of the designated non-financial business and profession, provided that the time for any further appeal has expired.

(2) The DNFBP Supervisor may take disciplinary action against a designated non-financial business and profession if it is satisfied that the financial business has committed a disciplinary violation.

(3) The DNFBP Supervisor takes disciplinary action against a designated non-financial business and profession by imposing an administrative penalty on it.

(4) The administrative penalty imposed on a designated non-financial business and profession in respect of a disciplinary violation shall be a sum no greater than the maximum sum specified—

- (a) in the case of a contravention specified in subsection (1)(a)(i), in the Anti-Money Laundering and Prevention of Terrorist Financing Regulations;
- (b) in the case of a contravention specified in subsection (1)(a)(ii), in the relevant Anti-Money Laundering and Terrorist Financing Code.

(5) A violation that is committed or continued on more than one day constitutes a separate violation for each day on which it is committed or continued.

(6) The DNFBP Supervisor shall not take disciplinary action against a designated non-financial business and profession in respect of a disciplinary violation committed more than two years prior to the date upon which it sends a notice to the financial business under section 148N.

(7) If the conduct or omission that constitutes a disciplinary violation also constitutes an offence, the taking of disciplinary action against a designated non-financial business and profession does not prevent the designated non-financial business and profession being also prosecuted for the offence.

*(Inserted by Ord. 19 of 2010 and
amended by Ords. 28 of 2011 and 13 of 2013)*

Notice of intention to take disciplinary action

169. (1) If the DNFBP Supervisor intends to take disciplinary action against a designated non-financial business and profession, it shall send a notice of its intention to the designated non-financial business and profession which—

- (a) sets out the alleged disciplinary violation and the relevant facts surrounding the violation;
- (b) sets out the penalty it intends to impose for the violation; and
- (c) advises the designated non-financial business and profession of its right to make written representations to the DNFBP Supervisor in accordance with subsection (2).

(2) A designated non-financial business and profession that receives a notice under subsection (1) may, within 28 days of the date upon which he receives the notice, send written representations to the DNFBP Supervisor disputing the facts of the alleged disciplinary violation or the administrative penalty or both.

(Inserted by Ord. 19 of 2010 and amended by Ord. 13 of 2013)

Disciplinary action

170. (1) After the expiration of 28 days from the date that the DNFBP Supervisor sent a notice under section 169 to a designated non-financial business and profession, the DNFBP Supervisor may take disciplinary action against that designated non-financial business and profession by sending it a penalty notice stating—

- (a) the disciplinary violation in respect of which the notice is issued;
- (b) the date on which notice of intention to take disciplinary action in respect of that violation was sent to the financial business;
- (c) the amount of the administrative penalty for the violation;
- (d) a date, not less than 28 days after the date of the penalty notice, by which the designated non-financial business and profession shall pay the penalty to the DNFBP Supervisor; and
- (e) that if the designated non-financial business and profession does not pay the penalty or exercise its rights of appeal under section 176, it will be considered to have committed the violation and that it is liable for the penalty set out in the notice.

(2) Before taking disciplinary action against a designated non-financial business and profession under subsection (1), the DNFBP Supervisor shall consider any written representations that it has received from the designated non-financial business and profession and, where it receives such representations, it must provide reasons for the action that it takes.

(3) A designated non-financial business and profession that receives a penalty notice under subsection (1) shall pay the penalty stated to the DNFBP Supervisor on or before the date specified in the notice or appeal the notice under section 176.

(4) If the designated non-financial business and profession pays the administrative penalty, it is considered to have committed the violation and the disciplinary action is over.

(5) A designated non-financial business and profession that neither pays the administrative penalty nor appeals the notice within 28 days is considered to have committed the disciplinary violation and is liable for the penalty.

(6) If the DNFBP Supervisor imposes an administrative penalty on a designated non-financial business and profession, the DNFBP Supervisor shall, after the imposition of the penalty has become final, advertise the imposition of the penalty by publication in the *Gazette*. (Amended by Ord. 13 of 2013)

(7) The regulations may provide for—

(a) the procedures to be adopted by the DNFBP Supervisor when taking disciplinary action against a designated non-financial business and profession; and

(b) the determination of, or the method of determining, the amount of the administrative penalty for a disciplinary violation.

(Inserted by Ord. 19 of 2010 and amended by Ord. 13 of 2013)

Recovery of administrative penalty

171. (1) An administrative penalty constitutes a debt to the DNFBP Supervisor and may be recovered in the court.

(2) The DNFBP Supervisor may, after the imposition of a penalty has become final, issue a certificate certifying the unpaid amount of any debt referred to in subsection (1) and the registration of the certificate in the court has the same effect as a judgment of the court for a debt of the amount specified in the certificate together with the costs of registration.

(Inserted by Ord. 19 of 2010 and amended by Ord. 13 of 2013)

Power to require information and production of documents

172. (1) Where reasonably required for the discharge of its functions under this Ordinance, the Anti-Money Laundering and Prevention of Terrorist Financing Regulations or an applicable Code, the DNFBP Supervisor may, by notice in writing given to a person specified in subsection (2), require him—

(a) to provide specified information or information of a specified description; or

(b) to produce specified documents or documents of a specified description. (Amended by Ord. 28 of 2011)

(2) A notice under subparagraph (1)—

(a) may be issued to—

(i) a designated non-financial business and profession;

(ii) a person who at any time has been a designated non-financial business and profession, but who has ceased to be a designated non-financial business and profession; or

- (iii) a director, senior manager or key employee of a designated non-financial business and profession or former designated non-financial business and profession; and
 - (b) may require that the information is to be provided to, or the documents are to be produced to, such person as may be specified in the notice;
 - (c) must specify the place where, and the period within which, the information or documents must be provided or produced.
- (3) The DNFBP Supervisor may—
- (a) require—
 - (i) any information provided under this section to be provided in such form, and
 - (ii) any information provided or document produced under this section to be verified or authenticated in such manner, as it may reasonably specify; and
 - (b) take copies or extracts of any document produced under this section.
- (4) Where a person claims a lien on a document, its production under this section is without prejudice to his lien.
(Inserted by Ord. 19 of 2010 and amended by Ord. 13 of 2013)

Regulations

- 173.** (1) The Governor in Council—
- (a) shall make regulations providing for the registration of designated non-financial businesses and professions; and
 - (b) may make regulations providing for such other matters relating to designated non-financial businesses and professions and their supervision and enforcement by the DNFBP Supervisor as the Governor in Council considers appropriate.
- (2) Without limiting subsection (1), the Regulations made under this section may provide for—
- (a) types or levels of registration;
 - (b) applications for registration;
 - (c) the criteria for determining applications for registration;
 - (d) the grant or refusal of registration; and
 - (e) fees payable for registration.
- (Inserted by Ord. 19 of 2010 and amended by Ord. 13 of 2013)*

Non-profit Organisations

The NPO Supervisor

174. (1) The Governor in Council shall prescribe a person or body, that may be the Financial Services Commission, as the supervisory authority for non-profit organisations.

(2) The NPO Supervisor has such functions, duties and powers, including with respect to supervision and enforcement, the gathering of information and the disclosure of information to the Financial Intelligence Agency and law enforcement authorities in the Islands, as are prescribed. (*Inserted by Ord. 19 of 2010 and amended by Ord. 22 of 2018*)

Regulations

175. The Governor in Cabinet may make regulations providing for—

- (a) the registration of non-profit organisations;
- (b) the issuance by the NPO Supervisor of an Anti-money Laundering and Terrorist Financing Code applicable to non-profit organisations setting out measures, not inconsistent with this Ordinance, the Regulations made under this section or the terrorist financing legislation, for the prevention and detection of money laundering and terrorist financing;
- (c) enforcement actions that may be taken by the NPO Supervisor for failure to comply with the Regulations and the Anti-money Laundering and Terrorist Financing Code applicable to non-profit organisations;
- (d) the maintenance of records by non-profit organisations;
- (e) the monitoring by the NPO Supervisor of the compliance of non-profit organisations with the Regulations and Code made under this section;
- (f) the circumstances in which the NPO Supervisor may conduct, or employ an examiner to conduct, an investigation of a non-profit organisation; and
- (g) the payment of a registration fee by a non-profit organisation upon registration.

(Inserted by Ord. 2 of 2013)

Appeals

Appeals

176. (1) Subject to subsection (2), a person who is aggrieved by a decision of the DNFBP Supervisor or the NPO Supervisor made under this Ordinance, the regulations or a Code may, within 28 days of the date of the decision, apply to the court for leave to appeal against the decision.

(2) Unless the court otherwise determines, an application for leave to appeal, an appeal and an application for judicial review, does not operate as a stay of the decision of the relevant supervisory authority or the supervisory authority for non-profit organisations in respect of which the application or appeal is made.

(3) Upon hearing an appeal, the court may—

(a) dismiss the appeal; or

(b) remit the matter back to the relevant Supervisor, for further consideration with such directions as it considers fit.

(Inserted by Ord. 19 of 2010 and amended by Ord. 13 of 2013)

PART IX

MISCELLANEOUS

Offences by body corporate

177. (1) Where an offence under this Ordinance is committed by a limited liability partnership or body corporate and it is proved to have been committed with the consent or connivance of—

(a) a person who is a partner of the partnership, or a director, manager, secretary or other similar officer of the body corporate; or

(b) any person purporting to act in any such capacity,

the person shall also be guilty of the offence and liable in the same manner as the partnership or body corporate to the penalty provided for that offence.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) shall apply in relation to acts and defaults of a member in connection with his functions of management as if the member were a director of the body corporate.

(3) For the purposes of this section, a person is deemed to be a director of a body corporate if he occupies in relation to that body corporate, the position of a manager, by whatever name called, or is a person in accordance with whose directions or instructions (not being directions or instructions in a professional capacity only) the directors and the body corporate, or any of them, act.

(Inserted by Ord. 22 of 2018)

Secrecy obligations overridden

178. (1) This Ordinance shall have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by any law or otherwise.

(2) It shall be lawful for any person to make any disclosure in compliance with this Ordinance.

(Inserted by Ord. 22 of 2018)

No criminal or civil liability information

179. (1) No proceedings for breach of confidentiality may be instituted against any person or against any director, officer or employee of a financial institution who in good faith transmits or submits suspicious transactions reports or other reports to the Financial Intelligence Agency in accordance with this Ordinance.

(2) No civil or criminal liability action may be brought nor may any professional sanction be taken against any person or agent of any financial institution for breach of any restriction on disclosure who in good faith transmits information or submits reports to the Financial Intelligence Agency.

(Inserted by Ord. 22 of 2018)

Regulations

180. (1) The Governor may make regulations generally for giving effect to this Ordinance and specifically in respect of anything required or permitted to be prescribed by this Ordinance.

(2) Without limiting subsection (1), the Governor shall make regulations in relation to the prevention of the use of the financial system for money laundering and terrorist financing.

(3) Regulations made under this Ordinance may—

- (a) make different provision in relation to different persons, circumstances or cases; and
- (b) prescribe offences against the regulations and prescribe fines not exceeding \$50,000 in respect of any one offence.

(4) In this section, “Governor” means—

- (a) in relation to offshore financial services, the Governor acting in his discretion;
- (b) in relation to national banking and domestic financial services, the Governor in Council.

(5) In deciding whether a person has committed an offence under regulations made under this Ordinance, a court shall consider whether the person followed any guidance issued under section 118(9).

(Amended by Ord. 19 of 2010)

Amendment of Schedules

181. The Governor may, by order, amend the Schedules to this Ordinance in such manner as he considers necessary or appropriate.

SCHEDULE 1

(Sections 2 and 15)

SPECIFIED OFFENCES

1. A drug trafficking offence
2. A money laundering offence
3. A terrorist finance offence
4. Trafficking in persons
5. An arms trafficking offence
6. Sexual exploitation, including sexual exploitation of children
7. Prostitution
8. Illicit trafficking in stolen and other goods
9. Corruption and bribery
10. Fraud
11. Blackmail
11. Counterfeiting currency
12. Environmental crimes
13. Murder, grievous bodily injury
14. Kidnapping, abduction, false imprisonment and hostage-taking
15. Robbery or theft
16. Smuggling
17. Extortion
18. Forgery
19. Piracy
20. Fraudulent evasion of customs duties payable on goods
21. Defrauding the public revenue
22. Cheating the public revenue
23. Inchoate offences—
 - (a) an offence of attempting, conspiring or inciting the commission of an offence specified in this Schedule;
 - (b) an offence of adding, abetting, counselling or procuring the commission of such an offence.

(Substituted by Ord. 22 of 2018)

SCHEDULE 2*(Section 80)***POWERS OF INTERIM RECEIVER***Seizure.*

1. Power to seize property to which the order applies.

Information.

2. (1) Power to obtain information or to require a person to answer any question.
(2) A requirement imposed in the exercise of the power has effect in spite of any restriction on the disclosure of information (however imposed).
(3) An answer given by a person in pursuance of such a requirement may not be used in evidence against him in criminal proceedings, other than proceedings for an offence of perjury or any equivalent offence.

Entry, search, etc.

3. (1) Power to enter any premises in the Islands to which the interim order applies, and to—
 - (a) carry out a search for or inspection of anything described in the order;
 - (b) make or obtain a copy, photograph or other record of anything so described; and
 - (c) to remove anything which he is required to take possession of in pursuance of the order or which may be required as evidence in the proceedings under Part III.
(2) The order may describe anything generally, whether by reference to a class or otherwise.

Supplementary.

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

Management.

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

SCHEDULE 3*(Section 89(4))***POWERS OF TRUSTEE***Sale.*

1. Power to sell the property or any part of it or interest in it.

Expenditure.

2. Power to incur expenditure for the purpose of—
 - (a) acquiring any part of the property, or any interest in it, which is not vested in him; and
 - (b) discharging any liabilities, or extinguishing any rights, to which the property is subject.

Management.

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

Legal proceedings.

4. Power to start, carry on or defend any legal proceedings in respect of the property.

Compromise.

5. Power to make any compromise or other arrangement in connection with any claim relating to the property.

Supplementary.

6. (1) For the purposes of, or in connection with, the exercise of any of his powers—
 - (a) power, by his official name to—
 - (i) hold property;
 - (ii) enter into contracts;
 - (iii) sue and be sued;
 - (iv) employ agents; and
 - (v) execute a power of attorney, deed or other instrument; and

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

SCHEDULE 4

(Sections 150 and 151)

EXTERNAL REQUESTS AND ORDERS

Restraint Orders

External request to be made to Attorney General.

1. An external request shall be made to the Attorney General.

Application for restraint order.

2. (1) The court may, on the application the Attorney General on behalf of an overseas authority, make a restraint order under paragraph 3 where it is satisfied that—

- (a) relevant property in the Islands is identified in the external request;
- (b) proceedings for an offence have been commenced in the country from which the external request was made, and not concluded; and
- (c) there is reasonable cause to believe that the defendant named in the request has benefited from his criminal conduct.

- (2) An application for a restraint order may be made on an *ex parte* application to the judge in chambers.

Restraint order.

3. (1) Where the court is satisfied as to the matters set out in paragraph 2, it may make an order (a restraint order) prohibiting any specified person from dealing with relevant property which is identified in the external request and specified in the order.

- (2) A restraint order—

- (a) may make provision—
 - (i) for reasonable living expenses and reasonable legal expenses in connection with the proceedings seeking a restraint order or the registration of an external order; and
 - (ii) make provision for the purpose of enabling any person to carry on any trade, business, profession or occupation; and
- (b) may be made subject to such conditions as the court considers fit.

- (3) Where the court makes a restraint order it may, on the application of the Attorney General, (whether as part of the application for the restraint order or at any time afterwards) may make such order as it believes is appropriate for the purpose of ensuring that the restraint order is effective.

- (4) For the purposes of this section, dealing with property includes removing it from the Islands.

Discharge and variation of restraint order

4. (1) An application to discharge or vary a restraint order or an order under paragraph 3(3) may be made to the court by—
- (a) the Attorney General; or
 - (b) any person affected by the order.
- (2) On an application made under sub-paragraph (1), the court may—
- (a) discharge the order; or
 - (b) vary the order.
- (3) The court shall discharge the restraint order if—
- (a) at the conclusion of the proceedings for an offence with respect to which the order was made, no external order has been made; or
 - (b) within a reasonable time an external order has not been registered under paragraph 12.

Appeal.

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

Seizure of property subject to restraint order.

6. (1) If a restraint order is in force, a police officer or a customs officer may seize any property which is specified in it to prevent its removal from the Islands.
- (2) Property seized under sub-paragraph (1) shall be dealt with in accordance with the directions of the court which made the order.

Hearsay evidence in restraint proceedings.

7. (1) Evidence shall not be excluded in restraint proceedings on the ground that it is hearsay (of whatever degree).
- (2) For the purposes of sub-paragraph (1), restraint proceedings are proceedings—
- (a) for a restraint order;
 - (b) for the discharge or variation of a restraint order;
 - (c) on an appeal under paragraph 5.

(3) Nothing in this paragraph affects the admissibility of evidence which is admissible apart from this paragraph.

Appointment of receiver.

8. (1) If the court makes a restraint order, on the application of the Attorney General (whether made as part of the application for the restraint order or at any time afterwards), the court may by order appoint a receiver in respect of any property which is specified in the restraint order.

(2) On the application of the Attorney General, the court may, by order confer on a receiver appointed under sub-paragraph (1), any one or more of the following powers in relation to any property which is specified in the restraint order—

- (a) power to take possession of the property;
- (b) power to manage or otherwise deal with the property;
- (c) power to start, carry on or defend any legal proceedings in respect of the property;
- (d) power to realise so much of the property as is necessary to meet the receiver's remuneration and expenses.

(3) The court may by order confer on the receiver power to enter any premises in the Islands and to do any of the following—

- (a) search for or inspect anything authorised by the court;
- (b) make or obtain a copy, photograph or other record of anything so authorised;
- (c) remove anything which the receiver is required or authorised to take possession of pursuant to an order of the court.

(4) The court may by order authorise the receiver to do any one or more of the following for the purpose of the exercise of his functions—

- (a) hold property;
- (b) enter into contracts;
- (c) sue and be sued;
- (d) employ agents;
- (e) execute powers of attorney, deeds or other instruments;
- (f) take such other steps the court thinks appropriate.

(5) The court may order any person who has possession of property which is specified in the restraint order to give possession of it to the receiver.

(6) The court—

- (a) may order a person holding an interest in property which is specified in the restraint order to make to the receiver such payment as the court specifies in respect of a beneficial interest held by the defendant or the recipient of a tainted gift; and

(b) may (on the payment being made) by order transfer, grant or extinguish any interest in the property.

(7) The court shall not—

(a) confer the power mentioned in paragraph (2)(b) or (d) in respect of property; or

(b) exercise the power conferred on it by paragraph (6) in respect of property,

unless it gives persons holding interests in the property a reasonable opportunity to make representations to it.

(8) The court may order that a power conferred by an order under this paragraph is subject to such conditions and exceptions as it specifies.

Restrictions relating to restraint orders.

9. (1) Where the court makes a restraint order—

(a) no distress may be levied against any property which is specified in the order except with the leave of the court and subject to any terms the court may impose; and

(b) if the order applies to a tenancy of any premises, no landlord or other person to whom rent is payable may exercise a right of forfeiture by peaceable re-entry in relation to the premises in respect of any failure by the tenant to comply with any term or condition of the tenancy, except with the leave of the court and subject to any terms the court may impose.

(2) If proceedings are pending before the court in respect of any property and the court is satisfied that a restraint order has been applied for or made in respect of the property, the court may either stay the proceedings or allow them to continue on any terms it thinks fit.

(3) Before exercising any power conferred by sub-paragraph (3), the court shall give an opportunity to be heard to—

(a) the Attorney General; and

(b) any receiver appointed in respect of the property under this Schedule.

EXTERNAL ORDERS

Applications to give effect to external orders.

10. (1) The Attorney General may apply to the Court, on behalf of an overseas authority, to give effect to an external order in the Islands.

(2) No application to give effect to such an order may be made otherwise than under paragraph (1).

(3) An application under paragraph (1) may be made on an *ex parte* application to a judge in chambers.

Conditions for court to give effect to external orders.

11. (1) The court shall give effect to an external order by registering it where it is satisfied—

- (a) the external order was made consequent on the conviction of the person named in the order and no appeal is outstanding in respect of that conviction;
- (b) the external order is in force and no appeal is outstanding in respect of it;
- (c) in the case of an external order which authorises the confiscation of property other than money that is specified in the order, the specified property shall not be subject to a charge under any of the following provisions —
 - (i) section 11 of the Control of Drugs (Trafficking) Ordinance Cap.35; or
 - (ii) section 17 of the Proceeds of Crime Ordinance, 1998.

(2) In paragraph (1) “appeal” includes—

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

Registration of external orders.

12. (1) Where the court decides to give effect to an external order, it shall—

- (a) register the order in the court;
- (b) provide for notice of the registration to be given to any person affected by it; and
- (c) appoint the Attorney General as the enforcement authority for the order.

(2) Only an external order registered by the court may be implemented under this Schedule.

(3) The court may cancel the registration of the external order, or vary the property to which it applies, on an application by the Attorney General or any person affected by it if, or to the extent that, the court is of the opinion that any of the conditions in paragraph 11 is not satisfied.

(4) The court shall cancel the registration of the external order, on an application by the Attorney General or any person affected by it, if it appears to the court that the order has been satisfied—

- (a) in the case of an order for the recovery of a sum of money specified in it, by payment of the amount due under it;
- (b) in the case of an order for the recovery of specified property, by the surrender of the property; or
- (c) by any other means.

(5) Where the registration of an external order is cancelled or varied under subparagraph (3) or (4), the court shall provide for notice of this to be given to the Attorney General and any person affected by it.

Appeal to Court of Appeal concerning external orders.

13. (1) If on an application for the court to give effect to an external order by registering it, the court decides not to do so, the Attorney General may appeal to the Court of Appeal against the decision.

(2) If an application is made under paragraph 12(3) or (4) in relation to the registration of an external order, the Attorney General or any person affected by the registration may appeal to the Court of Appeal in respect of the court's decision on the application.

(3) On an appeal under sub-paragraph (1) or (2), the Court of Appeal may—

- (a) confirm or set aside the decision to register; or
- (b) direct the court to register the external order, or so much of it as relates to property other than to which paragraph 11(1)(c) applies.

Sums in currency other than dollars.

14. (1) This paragraph applies where the external order which is registered under paragraph 12 specifies a sum of money.

(2) If the sum of money which is specified is expressed in a currency other than dollars, the sum of money to be recovered is to be taken to be the dollar equivalent calculated in accordance with the rate of exchange prevailing at the end of the working day immediately preceding the day when the court registered the external order under paragraph 12.

(3) The dollar equivalent shall be calculated by the Attorney General.

(4) The notice referred to in paragraph 12(1)(b) and (5) shall set out the amount in dollars which is to be paid.

Time for payment

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

(2) Subject to sub-paragraphs (3) to (6), the amount ordered to be paid under—

- (a) an external order that has been registered under paragraph 12; or
- (b) where paragraph 14(2) applies, the notice under paragraph 12(1)(b);

shall be paid on the date on which the notice under paragraph 12(1)(b) is delivered to the person affected by it.

(3) Where there is an appeal under paragraph 13 and a sum falls to be paid when the appeal has been determined or withdrawn, the duty to pay is delayed until the day on which the appeal is determined or withdrawn.

(4) If the person affected by an external order which has been registered shows that he needs time to pay the amount ordered to be paid, the court may make an order allowing payment to be made in a specified period, which—

- (a) shall start with the day on which the notice under paragraph 12(1)(b) was delivered to the person affected by the order or the day referred to in sub-paragraph (3), as the case may be; and

(b) shall not exceed six months.

(5) If within the specified period the person affected by an external order applies to the court for the period to be extended and the court believes that there are exceptional circumstances, it may make an order extending the period.

(6) The extended period—

(a) shall start with the day on which the notice under paragraph 22(1)(b) was delivered to the person affected by it or the day referred to in paragraph (3), as the case may be and

(b) shall not exceed twelve months.

(7) An order under sub-paragraph (5)—

(a) may be made after the end of the specified period; but

(b) shall not be made after the end of the extended period.

(8) The court shall not make an order under sub-paragraph (5) or (7) unless it gives the Attorney General an opportunity to make representations.

Appointment of receivers.

16. If an external order is registered, is not satisfied, and, in the case of an external order for the recovery of a specified sum of money, any period specified by order under paragraph 15 has expired, the court, on the application of the Attorney General may appoint a receiver in respect of—

(a) where the external order is for the recovery of a specified sum of money, realisable property;

(b) where the external order is for the recovery of specified property, that property.

Powers of receivers in respect of monetary external orders

17. (1) If the court appoints a receiver under paragraph 16, it may, on the application of the Attorney General, where the external order is for the recovery of a specified sum of money by order confer on the receiver the following powers in relation to any realisable property—

(a) power to take possession of the property;

(b) power to manage or otherwise deal with the property;

(c) power to realise the property, in such manner as the court may specify;

(d) power to start, carry on or defend any legal proceedings in respect of the property.

(2) The court may by order confer on the receiver power to enter any premises in the Islands and to do any of the following—

(a) search for or inspect anything authorised by the court;

(b) make or obtain a copy, photograph or other record, of anything so authorised;

(c) remove anything which the receiver is required or authorised to take possession of pursuant to an order of the court.

(3) The court may by order authorise the receiver to do any of the following for the purposes of the exercise of his functions—

- (a) hold property;
- (b) enter into contracts;
- (c) sue and be sued;
- (d) employ agents;
- (e) execute powers of attorney, deeds or other instruments;
- (f) take any other steps the court thinks appropriate.

(5) The court may order any person who has possession of realisable property to give possession of it to the receiver.

(6) The court—

- (a) may order a person holding an interest in realisable property to make to the receiver such payment as the court specifies in respect of a beneficial interest held by the defendant or the recipient of a tainted gift;
- (b) may (on payment being made) by order transfer, grant or extinguish any interest in the property.

(7) Paragraphs (2), (5) and (6) do not apply to property for the time being subject to a charge under any of these provisions—

- (a) section 11 of the Control of Drugs (Trafficking) Ordinance; or
- (b) section 17 of the Proceeds of Crime Ordinance, 1998.

(8) The court shall not—

- (a) confer the power mentioned in paragraph (2)(b) or (c) in respect of property, or
- (b) exercise the power conferred on it by paragraph (6) in respect of property, unless it gives persons holding interests in the property a reasonable opportunity to make representations to it.

(9) The court may order that a power conferred by an order under this paragraph is subject to such conditions and exceptions as it specifies.

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

18. (1) If the court appoints a receiver under paragraph 17, it may act under this paragraph on the application of the Attorney General where the external order is for the recovery of property specified in the order (“the specified property”).

(2) The court may by order confer on the receiver the following powers in relation to the specified property—

- (a) power to take possession of the property;

- (b) power to manage or otherwise deal with the property;
- (c) power to realise the property, in such manner as the court may specify;
- (d) power to start, carry on or defend any legal proceedings in respect of the property.

(3) The court may by order confer on the receiver power to enter any premises in the Islands and to do any of the following—

- (a) search for or inspect anything authorised by the court;
- (b) make or obtain a copy, photograph or other record of anything so authorised;
- (c) remove anything which the receiver is required or authorised to take possession of pursuant to an order of the court.

(4) The court may by order authorise the receiver to do any of the following for the purposes of the exercise of his functions—

- (a) hold property;
- (b) enter into contracts;
- (c) sue and be sued;
- (d) employ agents;
- (e) execute powers of attorney, deeds or other instruments;
- (f) take any other steps the court thinks appropriate.

(5) The court may order any person who has possession of the specified property to give possession of it to the receiver.

(6) The court—

- (a) may order a person holding an interest in the specified property to make to the receiver such payment as the court specifies in respect of a beneficial interest held by the defendant or the recipient of a tainted gift;
- (b) may (on the payment being made) by order transfer, grant or extinguish any interest in the property.

(7) The court shall not—

- (a) confer the power mentioned in sub-paragraph (2)(b) or (c) in respect of property, or
- (b) exercise the power conferred on it by paragraph (6) in respect of property,

unless it gives persons holding interests in the property a reasonable opportunity to make representations to it.

(8) The court may order that a power conferred by an order under this paragraph is subject to such conditions and exceptions as it specifies.

Meaning of “managing or otherwise dealing with property”.

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

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

Application of sums by receiver.

20. (1) This paragraph applies to sums which are in the hands of a receiver appointed under paragraph 16 if they are—

- (a) the proceeds of the realisation of property under paragraph 17 or 18;
- (b) where paragraph 17 applies, sums (other than those mentioned in sub-paragraph (a)) in which the defendant holds an interest.

(2) The sums shall be applied as follows—

- (a) first, they shall be applied in making any payments directed by the court;
- (b) second, they shall be applied on the defendant’s behalf towards satisfaction of the external order.

(3) If the amount payable under the external order has been fully paid and any sums remain in the receiver's hands he shall distribute them—

- (a) among such persons who held (or hold) interests in the property concerned as the court directs; and
- (b) in such proportions as it directs.

(4) Before making a direction under sub-paragraph (3) the court shall give persons who held (or hold) interests in the property concerned a reasonable opportunity to make representations to it.

(5) For the purposes of sub-paragraphs (3) and (4) the property concerned is—

- (a) the property represented by the proceeds mentioned in sub-paragraph (1)(a);
- (b) the sums mentioned in sub-paragraph (1)(b).

(6) The receiver applies sums as mentioned in paragraph (2)(c) by paying them to the Attorney General on account of the amount payable under the order.

Sums received by Attorney General.

21. (1) Where the Attorney General receives sums on account of the amount payable under a registered external order or the value of the property specified in the order, his receipt of the sums reduces the amount payable under the order, but he shall apply the sums received as follows—

- (a) first, he shall apply them in payment of the remuneration and expenses of a receiver appointed under paragraph 8 to the extent that they have not been

met by virtue of the exercise by that receiver of a power conferred under paragraph 8(2)(d);

(b) second, in payment of the remuneration and expenses of the receiver appointed under paragraph 16.

(2) Any sums which remain after the Attorney General has made any payments required by the preceding provisions of this paragraph shall be paid into the National Forfeiture Fund.

Satisfaction of external order.

22. (1) A registered external order is satisfied when no amount is due under it.

(2) Where such an order authorises the recovery of property specified in it, no further amount is due under the order when all of the specified property has been sold.

Restrictions relating to receivers.

23. (1) Where the court makes an order under paragraph 16 appointing a receiver in respect of any realisable property or specified property—

(a) no distress may be levied against the property except with the leave of the court and subject to any terms the court may impose; and

(b) if the receiver is appointed order in respect of a tenancy of any premises, no landlord or other person to whom rent is payable may exercise a right of forfeiture by peaceable re-entry in relation to the premises in respect of any failure by the tenant to comply with any term or condition of the tenancy, except with the leave of the court and subject to any terms the court may impose.

(2) If proceedings are pending before the court in respect of any property and the court is satisfied that a restraint order has been applied for or made in respect of the property, the court may either stay the proceedings or allow them to continue on any terms it thinks fit.

(3) If the court is satisfied that an order under paragraph 16 appointing a receiver in respect of the property has been applied for or made, the court may either stay the proceedings or allow them to continue on any terms it thinks fit.

(4) Before exercising any power conferred by sub-paragraph (4), the court shall give an opportunity to be heard to—

(a) the Attorney General; and

(b) the receiver, if the order under paragraph 16 has been made.

Protection of receiver appointed under paragraphs 8 or 16.

24. If a receiver appointed under paragraphs 8 or 16—

(a) takes action in relation to property which is not realisable property or, as the case may be, the specified property;

(b) would be entitled to take the action if it were realisable property or, as the case may be, the specified property; and

(c) believes on reasonable grounds that he is entitled to take the action, he is not liable to any person in respect of any loss or damage resulting from the action, except so far as the loss or damage is caused by his negligence.

Further applications by receivers.

25. (1) A receiver appointed under paragraph 8 or 16 may apply to the court for an order giving directions as to the exercise of his powers.

(2) The following persons may apply to the court—

- (a) any person affected by action taken by a receiver appointed under paragraph 8 or 16;
- (b) any person who may be affected by action such a receiver proposes to take.

(3) On an application under this paragraph the court may make such order as it believes is appropriate.

Discharge and variation of receiver orders.

26. (1) The following persons may apply to the court to vary or discharge an order made under paragraph 8 or paragraphs 16 to 18—

- (a) the receiver;
- (b) the Attorney General; or
- (c) any person affected by the order.

(2) On an application under this paragraph, the court—

- (a) may discharge the order;
- (b) may vary the order.

Discharge of receivers appointed under paragraph 8.

27. (1) If a receiver is appointed under paragraph 8 in respect of property which is identified in the restraint order (the first receiver), and the court appoints a receiver under paragraph 16 (the second receiver), the court shall order the first receiver to transfer to the second receiver all property held by him by virtue of the powers conferred on him by paragraph 8.

(2) Sub-paragraph (1) does not apply to property which the first receiver holds by virtue of the exercise by him of his power under paragraph 8(2)(d).

(3) If the first receiver complies with an order under sub-paragraph (1) he is discharged—

- (a) from his appointment under paragraph 8;
- (b) from any obligation under this Schedule arising from his appointment.

(4) If this paragraph applies the court may make such a consequential or incidental order as it believes is appropriate.

Appeal to Court of Appeal about receivers.

28. (1) If on an application for an order under any of paragraphs 8 or 16 to 18 the court decides not to make one, the person who applied for the order may appeal to the Court of Appeal against the decision.

(2) If the court makes an order under any of paragraphs 8 or 16 to 18, the following persons may appeal to the Court of Appeal in respect of the court's decision—

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

(3) If on an application for an order under paragraph 25 the court decides not to make one, the person who applied for the order may appeal to the Court of Appeal against the decision.

(4) If the court makes an order under paragraph 25, the following persons may appeal to the Court of Appeal in respect of the court's decision—

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

(5) The following persons may appeal to the Court of Appeal against a decision of the court on an application under paragraph 26—

- (a) the person who applied for the order in respect of which the application was made;
- (b) any person affected by the court's decision;
- (c) the receiver.

(6) On an appeal under this paragraph the Court of Appeal may—

- (a) confirm the decision; or
- (b) make such order as it believes is appropriate.

Interpretation for this Schedule

Tainted gifts

29. (1) For the purposes of section 9, a gift is tainted if it was made by the defendant at any time after—

- (a) the date on which the offence to which the external order or external request relates was committed; or
- (b) if his criminal conduct consists of two or more such offences and they were committed on different dates, the date of the earliest.

(2) For the purposes of paragraph (1), an offence which is a continuing offence is committed on the first occasion when it is committed.

(3) A gift may be a tainted gift even if it was made before 8 October 2007.

Specified property.

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

**ANTI-MONEY LAUNDERING AND
PREVENTION OF TERRORIST FINANCING REGULATIONS**

ARRANGEMENT OF REGULATIONS

PART I

PRELIMINARY PROVISIONS AND INTERPRETATION

REGULATION

1. Citation
2. Interpretation
3. Meaning of “beneficial owner”
4. Meaning of “occasional transaction”
5. Meaning of “customer due diligence measures” and “ongoing monitoring”
6. Meaning of “politically exposed person”
7. Meaning of “shell bank” and “correspondent banking”
8. Meaning of “foreign regulated person”
9. Scope of Regulations
10. Application of Regulations outside the Islands

PART II

CUSTOMER DUE DILIGENCE

11. Application of customer due diligence measures and ongoing monitoring
12. Requirement to cease transaction or terminate relationship
13. Enhanced customer due diligence and ongoing monitoring
14. Reliance on introducers and intermediaries
15. Simplified due diligence requirements
16. Shell banks and anonymous numbered accounts

PART III

POLICIES, SYSTEMS AND CONTROLS, RECORD KEEPING AND TRAINING

17. Policies, systems and controls to prevent and detect money laundering and terrorist financing
18. Records required to be kept
19. Period for which records must be kept
20. Training

PART IV

COMPLIANCE AND DISCLOSURES

21. Money laundering compliance officer
22. Money laundering reporting officer

23. Risk-based approach to supervision and monitoring of financial business

PART V

DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSION

24. Designated supervisory authority
25. Supervision of DNFBPs
26. Register of designated non-financial businesses and professions
27. Application to register
28. Registration
29. Refusal of application
30. Disciplinary action

PART VI

MISCELLANEOUS

31. Directions where FATF applies counter-measures
32. Customer information
33. Prevention of control, participation, etc. of unsuitable person in directorship, operation, etc. of financial business
34. Prescribed amounts

SCHEDULE 1: Regulatory Licences

SCHEDULE 2: Financial Business

SCHEDULE 3: Disciplinary Action, Non-Regulated Financial Business

**ANTI-MONEY LAUNDERING AND PREVENTION OF
TERRORIST FINANCING REGULATIONS – SECTION 180(2)**

*(Legal Notices 14/2010, 36/2011, 11/2013,
57/2013, 38/2018 and 58/2018)*

Commencement

[29 July 2010]

PART I

PRELIMINARY PROVISIONS AND INTERPRETATION

Citation

1. These Regulations may be cited as the Anti-Money Laundering and Prevention of Terrorist Financing Regulations.

Interpretation

2. (1) In these Regulations—

“Anti-Money Laundering Committee” means the Anti-Money Laundering Committee under the Ordinance;

“bank” means a person that carries on banking business within the meaning of the Banking Ordinance, whether or not that business is carried on in, or from within, the Islands;

“beneficial owner” has the meaning specified in regulation 3;

“branch” includes a representative or contact office;

“business relationship” means a business, professional or commercial relationship between a financial business and a customer which is expected by the financial business, at the time when contact is established, to have an element of duration;

“cash” means—

- (a) notes and coins;
- (b) postal orders; or
- (c) travellers’ cheques,

in any currency;

“Code” means an Anti-Money Laundering and Prevention of Terrorist Financing Code issued under section 118 of the Ordinance and, in relation to a financial business, means a Code that applies to the financial business;

“Commission” means the Financial Services Commission established under the Financial Services Commission Ordinance 2001 and continued under the Financial Services Commission Ordinance 2007;

“correspondent banking relationship” has the meaning specified in regulation 7(1);

“customer due diligence measures” has the meaning specified in regulation 5;

“designated non-financial business and profession” means a financial business that is not a regulated financial business; *(Inserted by L.N. 57/2013)*

“DNFBP Register” means the register of non-regulated financial businesses established and kept under regulation 26;

“DNFBP Supervisor” means the person or body prescribed as the supervisory authority for designated non-financial businesses and professions; *(L.N. 57/2013)*

“enhanced customer due diligence measures” has the meaning specified in regulation 13(1);

“enhanced ongoing monitoring” has the meaning specified in regulation 13(1);

“FATF” means the international body known as the Financial Action Task Force on Money Laundering;

“FATF Recommendations” means—

- (a) the Forty Recommendations; and
- (b) the Nine Special Recommendations, the international standard for tackling money laundering, terrorist financing and the financing of proliferation issued by the FATF, incorporating the amendments made on 22 October 2004 February, 2012 and such other amendments as may from time-to-time be made; *(Substituted by L.N 38/2018)*

“financial business” means a natural person, body corporate, trust, partnership or unincorporated association specified in Schedule 2; *(Substituted by L.N. 38/2018)*

“Financial Intelligence Agency” means the Agency established under the Financial Intelligence Agency Ordinance; *(Inserted by L.N. 38/2018)*

“foreign regulated person” has the meaning specified in regulation 8;

“foreign regulatory authority”, means an authority in a jurisdiction outside the Islands which exercises in that jurisdiction supervisory functions substantially corresponding to those of the Commission or the supervisory authority for designated non-financial businesses and professions, with respect to enforcing compliance with the Ordinance, these Regulations and the Codes;

“high value dealer” means a business—

- (a) dealing in vehicles;
- (b) pawning; or
- (c) trading in goods, precious metals or precious stones, when it receives, in respect of any transaction, whether the transaction is executed in a single operation or in several linked operations, a payment or payments in cash or credit card, of—
 - (i) in the case of precious metals or precious stones, at least \$15,000, or the equivalent in another currency; or
 - (ii) in the case of goods or services of any description, at least \$15,000, or the equivalent in another currency.

(Substituted by L.N. 38/2018)

“identification information” has, in relation to a financial business, the meaning specified in the relevant Code;

“independent legal professional” means a firm or sole practitioner who, by way of business, provides legal or notarial services to other persons, when preparing for or carrying out transactions for a customer in relation to—

- (a) the buying and selling of real estate and business entities;
- (b) the managing of client money;
- (c) the opening or management of bank, savings or securities accounts;
- (d) the organisation of contributions necessary for the creation, operation or management of companies; or
- (e) the creation, operation or management of trusts, companies or similar structures, excluding any activity that requires a licence under the Trustees Licensing Ordinance or the Company Management (Licensing) Ordinance;

“intermediary” means a person who has or seeks to establish a business relationship or to carry out an occasional transaction on behalf of his customer with a financial business, so that the intermediary becomes a customer of the financial business;

“introducer” means a person who has a business relationship with a customer and who introduces that customer to a financial business with the intention that the customer will form a business relationship or conduct an occasional transaction with the financial business so that the introducer’s customer also becomes a customer of the financial business;

“money laundering compliance officer” means the person appointed by a financial business as its compliance officer under regulation 21;

“money laundering disclosure” means a disclosure under section 124, 125 or 126 of the Ordinance;

“Money Laundering Reporting Officer” or “MLRO” means the person appointed by a financial business under regulation 22;

“occasional transaction” has the meaning specified in regulation 4;

“ongoing monitoring” has the meaning specified in regulation 5(5);

“Ordinance” means the Proceeds of Crime Ordinance;

“politically exposed person” has the meaning specified in regulation 6;

“recognised exchange” has the meaning specified in subregulation (4);

“regulated business” means a business for which a regulatory licence is required;

“regulated person” means a person who holds a regulatory licence;

“regulatory licence” means a licence specified in Schedule 1;

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

“shell bank” has the meaning specified in regulation 7(3);

“sole trader” means an individual carrying on a relevant business who does not in the course of doing so—

- (a) employ any other person; or

- (b) act in association with any other person;

“supervisory authority” means—

- (a) in the case of a regulated financial business, the Commission; and
(b) in the case of a designated non-financial business and profession, the DNFBP Supervisor;

“Terrorism (UN) Order” means the Terrorism (United Nations Measures) (Overseas Territories) Order 2001;

“terrorist financing disclosure” means a disclosure under—

- (a) article 10 or Part 1 of Schedule 1 of the Anti-terrorist Financing Order;
(b) article 8 of the Terrorism (UN) Order; or
(c) article 10 of the Al-Qa’ida and Taliban (United Nations Measures) (Overseas Territories) Order 2002; and

“third party” means a person for whom a customer is acting.

(2) Words and expressions defined in the Ordinance have the same meaning in these Regulations.

(3) In these Regulations, unless the context otherwise requires, “customer” includes a prospective customer.

(4) Subject to subregulation (5), “recognised exchange” means—

- (a) an exchange that is a member of the World Federation of Exchanges; or
(b) such other exchange as may be recognised by the Commission by notice published in the *Gazette*.

(5) An exchange is not a recognised exchange within the meaning of subregulation (4) if it is situated in a country specified by the Commission, by notice published in the *Gazette*, as a country that does not implement, or does not effectively apply, the FATF Recommendations

Meaning of “beneficial owner”

3. (1) Subject to subregulation (3), each of the following is a beneficial owner of a legal person, a partnership or an arrangement—

- (a) an individual who is an ultimate beneficial owner of the legal person, partnership or arrangement, whether or not the individual is the only beneficial owner; and
(b) an individual who exercises ultimate control over the management of the legal person, partnership or arrangement, whether alone or jointly with any other person or persons.

(2) For the purposes of subregulation (1), it is immaterial whether an individual’s ultimate ownership or control of a legal person, partnership or arrangement is direct or indirect.

(3) An individual is deemed not be the beneficial owner of a body corporate, the securities of which are listed on a recognised exchange.

(4) In this regulation, an “arrangement” includes a trust.

Meaning of “occasional transaction”

4. (1) A transaction is an occasional transaction if the transaction is carried out otherwise than as part of a business relationship, and is carried out as—

- (a) a single transaction that amounts to the sum specified in subregulation (2), or more; or
 - (b) two or more linked transactions that, in total amount to the sum specified in subregulation (2), or more, where—
 - (i) it appears at the outset to any person handling any of the transactions that the transactions are linked; or
 - (ii) at any later stage it comes to the attention of any person handling any of those transactions that the transactions are linked.
- (2) The amount specified for the purposes of subregulation (1) is—
- (a) in the case of a wire transfer transaction, or linked transactions, \$1,000; or
(Amended by L.N. 36/2011)
 - (b) in the case of any other transaction, or linked transactions, \$15,000.

Meaning of “customer due diligence measures” and “ongoing monitoring”

5. (1) “Customer due diligence measures” are measures for—

- (a) identifying a customer;
 - (b) determining whether the customer is acting for a third party and, if so, identifying the third party;
 - (c) verifying the identity of the customer and any third party for whom the customer is acting;
 - (d) identifying the identity of each beneficial owner of the customer and third party, where either the customer or third party, or both, are not individuals;
 - (e) determining who are the natural persons that ultimately own or control the customer that is not an individual; *(Inserted by L.N. 36/2011)*
 - (f) taking reasonable measures, on a risk-sensitive basis, to verify the identity of each beneficial owner of the customer and third party so that the financial business is satisfied that it knows who each beneficial owner is including, in the case of a legal person, partnership, trust or similar arrangement, taking reasonable measures to understand the ownership and control structure of the legal person, partnership, trust or similar arrangement; and
 - (g) obtaining information on the purpose and intended nature of the business relationship or occasional transaction.
- (2) Customer due diligence measures include—
- (a) where the customer is not an individual, measures for verifying that any person purporting to act on behalf of the customer is authorised to do so, identifying that person and verifying the identity of that person; and

- (b) where the customer is not an individual, measures for determining who are the natural persons that ultimately own or control the customer; (*Inserted by L.N. 36/2011*)
- (c) where the financial business carries on insurance business, measures for identifying each beneficiary under any long term or investment linked policy issued or to be issued by the financial business and verifying the identity of each beneficiary.

(3) Customer due diligence measures do not fall within this regulation unless they provide for verifying the identity of persons whose identity is required to be verified, on the basis of documents, data or information obtained from a reliable and independent source.

(4) Where customer due diligence measures are required by this regulation to include measures for identifying and verifying the identity of the beneficial owners of a person, those measures are not required to provide for the identification and verification of any individual who holds shares in a company that is listed on a recognised exchange.

(5) “Ongoing monitoring” of a business relationship means—

- (a) scrutinising transactions undertaken throughout the course of the relationship, including where necessary the source of funds, to ensure that the transactions are consistent with the financial business’s knowledge of the customer and his business and risk profile; and
- (b) keeping the documents, data or information obtained for the purpose of applying customer due diligence measures up-to-date and relevant by undertaking reviews of existing records.

Meaning of “politically exposed person”

6. (1) “Politically exposed person” means a person who is—

- (a) an individual who is, or has been, entrusted with a prominent public function by—
 - (i) a country, including the Islands; or
 - (ii) an international body or organization;
- (b) an immediate family member of a person referred to in paragraph (a); or
- (c) a known close associate of a person referred to in paragraph (a).

(2) Without limiting subregulation (1)(a), the following are politically exposed persons within the meaning of that subregulation—

- (a) heads of state, heads of government and senior politicians;
- (b) senior government or judicial officials;
- (c) high-ranking officers in the armed forces;
- (d) members of courts of auditors or of the boards of central banks;
- (e) ambassadors and chargés d'affaires;
- (f) senior executives of state-owned corporations; and
- (g) important political party officials.

(3) Without limiting subregulation (1)(b), the following are immediate family members of a person specified in subregulation (1)(a)—

- (a) a spouse;
- (b) a partner, that is an individual considered by his or her national law as equivalent to a spouse;
- (c) children and their spouses or partners, as defined in paragraph (b);
- (d) parents;
- (e) grandparents and grandchildren; and
- (f) siblings.

(4) Without limiting subregulation (1)(c), the following are close associates of a person specified in subregulation (1)(a)—

- (a) any person known to maintain a close business relationship with that person or to be in a position to conduct substantial financial transactions on behalf of the person;
- (b) any person who is known to have joint beneficial ownership of a legal entity or legal arrangement, or any other close business relations, with that person; and
- (c) any person who has sole beneficial ownership of a legal entity or legal arrangement which is known to have been set up for the benefit of that person.

(5) For the purposes of deciding whether a person is a close associate of a person referred to in subregulation (1)(a), a financial business need only have regard to information which is in that person's possession or is publicly known.

Meaning of “shell bank” and “correspondent banking”

7. (1) “Correspondent banking” means the provision of banking services by one bank, (the “correspondent bank”) to another bank (the “respondent bank”).

(2) Without limiting subregulation (1), banking services includes—

- (a) cash management, including establishing interest-bearing accounts in different currencies;
- (b) international wire transfers of funds;
- (c) cheque clearing;
- (d) payable-through accounts; and
- (e) foreign exchange services.

(3) A “shell bank” is a bank that—

- (a) is incorporated and licensed in a country in which it has no physical presence involving meaningful decision-making and management; and
- (b) is not subject to supervision by the Commission or a foreign regulatory authority, by reason of its membership of, or affiliation to, a group that is subject to effective consolidated supervision.

Meaning of “foreign regulated person”

8. (1) “Foreign regulated person” means a person—
- (a) that is incorporated in, or if it is not a corporate body, has its principal place of business in, a jurisdiction outside the Islands (its “home jurisdiction”);
 - (b) that carries on business outside the Islands that, if carried on in the Islands, would require a regulatory licence;
 - (c) that, in respect of the business referred to in paragraph (b)—
 - (i) is subject to legal requirements in its home jurisdiction for the prevention of money laundering and terrorist financing that are consistent with the requirements of the FATF Recommendations, for the time being issued, for that business; and
 - (ii) is subject to effective supervision for compliance with those legal requirements by a foreign regulatory authority.

(2) For the purposes of the definition of “foreign regulated person”, the Code may specify jurisdictions that may be regarded as having legal requirements for the prevention of money laundering that are consistent with the requirements of the FATF Recommendations.

Scope of Regulations

9. These Regulations apply to all financial businesses.

Application of Regulations outside the Islands

10. (1) Subject to subregulations (2), (3) and (4), a relevant financial business that has a branch located in, or a subsidiary incorporated in, a country outside the Islands shall, to the extent that the laws of that country permit—

- (a) comply with these Regulations and the Code in respect of any business carried on through the branch; and
- (b) ensure that these Regulations and the Code are complied with by the subsidiary with respect to any business that it carries on.

(2) A relevant financial business shall have particular regard to ensure that subregulation (1) is complied with where the country in which its branch or subsidiary is situated does not apply, or insufficiently applies, the FATF Recommendations or there is call to apply countermeasures by the FATF, UN or EU. (*Amended by L.N. 38/2018*)

(3) If the country in which a branch or subsidiary of a financial business is situated has more stringent standards with respect to the prevention of money laundering and terrorist financing than are provided for in these Regulations and the Code, the relevant financial business shall ensure that the more stringent requirements are complied with by its branch or subsidiary.

(4) Where the laws of a country outside the Islands do not permit a branch or subsidiary of a financial business to comply with subregulation (1), the relevant financial business shall—

- (a) notify the Commission in writing; and
- (b) to the extent that the laws of the foreign country permit, apply alternative measures to ensure compliance with the FATF Recommendations and to deal effectively with the risk of money laundering and terrorist financing.

(5) For the purposes of this regulation, “relevant financial business” means a financial business—

- (a) that is a regulated financial business; and
- (b) that is—
 - (i) a company incorporated in the Islands;
 - (ii) a partnership based in the Islands;
 - (iii) an individual resident in the Islands; or
 - (iv) any other person having its principal or head office in the Islands.

PART II

CUSTOMER DUE DILIGENCE

Application of customer due diligence measures and ongoing monitoring

11. (1) Subject to subregulations (5) and (6), a financial business shall apply customer due diligence measures—

- (a) before the financial business establishes a business relationship or carries out an occasional transaction;
- (b) where the financial business—
 - (i) suspects money laundering or terrorist financing; or
 - (ii) doubts the veracity or adequacy of documents, data or information previously obtained under its customer due diligence measures or when conducting ongoing monitoring; and
- (c) at other appropriate times to existing customers as determined on a risk-sensitive basis.

(2) Without limiting subregulation (1)(b)(ii) and (1)(c), a financial business shall obtain identification information when there is a change in the—

- (a) identification information of a customer;
- (b) beneficial ownership of a customer; or
- (c) third parties, or the beneficial ownership of third parties.

(3) A financial business shall conduct ongoing monitoring of a business relationship.

(4) In applying customer due diligence measures and conducting ongoing monitoring, a financial business shall—

- (a) assess the risk that any business relationship or occasional transaction involves, or will involve, money laundering or terrorist financing, depending upon the type of customer, business relationship, product or transaction;

- (b) be able to demonstrate to the supervisory authority—
 - (i) that the extent of the customer due diligence measures applied in any case is appropriate having regard to the circumstances of the case, including the risks of money laundering and terrorist financing; and
 - (ii) that it has obtained appropriate information to carry out the risk assessment required under paragraph (a).
- (5) A financial business may complete the verification of the identity of a customer, third party or beneficial owner after the establishment of a business relationship if—
 - (a) it is necessary not to interrupt the normal conduct of business;
 - (b) the money laundering or terrorist financing risks are effectively managed; *(Inserted by L.N. 38/2018)*
 - (c) there is little risk of money laundering or terrorist financing occurring as a result; and
 - (d) verification of identity is completed as soon as reasonably practicable after the contact with the customer is first established.
- (6) The verification of the identity of a bank account holder may take place after the bank account has been opened provided that there are adequate safeguards in place to ensure that, before verification has been completed—
 - (a) the account is not closed; and
 - (b) transactions are not carried out by or on behalf of the account holder, including any payment from the account to the account holder.
- (7) A financial business shall adopt risk management procedures concerning the conditions under which a customer may utilise the business relationship prior to verification. *(Inserted by L.N. 38/2018)*
- (8) A financial business shall determine if there exists any beneficial owner of the beneficiary at the time of pay-out and identify the beneficial owner of the beneficiary at the time of pay-out. *(Inserted by L.N. 38/2018)*
- (9) A financial business that contravenes this regulation is guilty of an offence and is liable on summary conviction, to a fine of \$50,000.

Requirement to cease transaction or terminate relationship

12. (1) If a financial business is unable to apply customer due diligence measures before the establishment of a business relationship or before the carrying out of an occasional transaction in accordance with these Regulations, the financial business shall not establish the business relationship or carry out the occasional transaction.
- (2) If regulation 11(5) or (6) apply and a financial business is unable to complete the verification of the identity of a customer, third party or beneficial owner after the establishment of a business relationship, the financial business shall terminate the business relationship with the customer.
- (3) If a financial business is unable to undertake ongoing monitoring with respect to a business relationship, the financial business shall terminate the business relationship.

(4) If subregulation (1), (2) or (3) applies with respect to a financial business, the financial business shall consider whether he is required to make a money laundering disclosure or a terrorist financing disclosure.

(5) Subregulations (1), (2) and (3) do not apply where the financial business is a lawyer and is in the course of ascertaining the legal position for that person's client or performing the task of defending or representing the client in, or concerning, legal proceedings, including advice on the institution or avoidance of proceedings.

(6) If the financial business has made a money laundering or terrorist financing disclosure, subregulations (1), (2) and (3) do not apply to the extent that the financial business is acting—

- (a) in the case of a money laundering disclosure, with the consent or deemed consent of the Financial Intelligence Agency; or (*Amended by L.N. 38/2018*)
- (b) in the case of a terrorist financing disclosure made under the Anti-terrorist Financing Order, with the consent of a constable, where such consent may lawfully be given.

(7) A financial business who contravenes this regulation is guilty of an offence and is liable on summary conviction to a fine of \$50,000.

Enhanced customer due diligence and ongoing monitoring

13. (1) For the purposes of these Regulations, “enhanced customer due diligence measures” and “enhanced ongoing monitoring” mean customer due diligence measures, or ongoing monitoring, that involve specific and adequate measures to compensate for the higher risk of money laundering or terrorist financing.

(2) A financial business shall, on a risk-sensitive basis, apply enhanced due diligence measures and undertake enhanced ongoing monitoring of the business relationships and transactions with natural and legal persons—

- (a) where the customer has not been physically present for identification purposes;
- (b) where the financial business has, or proposes to have, a business relationship with, or proposes to carry out an occasional transaction with a person, connected with a country that does not apply, or insufficiently applies, the FATF recommendations or from countries for which there is call to apply enhanced or countermeasures by the FATF, UN or EU; (*Amended by L.N. 38/2018*)
- (c) where the financial business is a bank which holds a National Banking licence granted under the Banking Ordinance that has or proposes to have a banking or similar relationship with an institution whose address for that purpose is outside the Islands;
- (d) where the financial business has or proposes to have a business relationship with, or to carry out an occasional transaction with, a politically exposed person;
- (e) where any of the following is a politically exposed person—
 - (i) a beneficial owner of the customer;
 - (ii) a third party for whom a customer is acting;

- (iii) a beneficial owner of a third party described in subparagraph (ii);
- (iv) a person acting, or purporting to act, on behalf of the customer.
- (f) in any other situation which by its nature can present a higher risk of money laundering or terrorist financing.
(Amended by L.N. 38/2018)

(3) In relation to insurance business, where a person carrying out relevant financial business determines that carrying out relevant financial business with a beneficiary presents a higher risk, the person shall perform enhanced customer due diligence including reasonable measures to identify and verify the identity of the beneficial owner of the beneficiary, where applicable, at the time of pay-out. *(Inserted by L.N. 38/2018)*

(4) A financial business shall include the beneficiary of a life insurance policy as a relevant risk factor in determining whether enhanced due diligence measures are applicable. *(Inserted by L.N. 38/2018)*

(5) A financial business who contravenes this regulation is guilty of an offence and is liable on summary conviction, to a fine of \$50,000.

Reliance on introducers and intermediaries

14. (1) Subject to this regulation and any requirements in the Code, a financial business may rely on an introducer or an intermediary to apply customer due diligence measures with respect to a customer, third party or beneficial owner, if—

- (a) the introducer or intermediary is a regulated person or a foreign regulated person; and
- (b) the introducer or intermediary consents to being relied on.

(2) Before relying on an introducer or intermediary to apply customer due diligence measures with respect to a customer, third party or beneficial owner, a financial business shall immediately obtain adequate assurance in writing from the intermediary or introducer that—

- (a) the intermediary or introducer has applied the customer due diligence measures for which the financial business intends to rely on it;
- (b) the intermediary or introducer is required to keep, and does keep, a record of the evidence of identification relating to each of the customers of the intermediary or introducer;
- (c) the intermediary or introducer will, without delay, provide the information in that record to the financial business at the financial business's request; *(Amended by L.N. 38/2018)*
- (d) the intermediary or introducer will, without delay, provide the information in the record for provision to the Commission, where requested by the Commission; and *(Amended by L.Ns. 36/2011 and 38/2018)*
- (e) the intermediary understands and obtained information on the purpose and intended nature of the business relationship; *(Inserted by L.N. 38/2018)*

(3) A financial business shall—

- (a) consider whether an introducer or intermediary is regulated and supervised or monitored and has measures in place for compliance with customer due diligence and record keeping requirements; and
- (b) take into consideration the level of risk of countries in which the introducer or intermediary financial business is located.

(Inserted by L.N. 38/2018)

(4) Where a financial business relies on an introducer or intermediary to apply customer due diligence measures, the financial business remains liable for any failure to apply those measures.

(5) This regulation does not prevent a financial business from applying customer due diligence measures by means of an outsourcing financial business or agent provided that the financial business remains liable for any failure to apply such measures.

Simplified due diligence requirements

15. (1) A financial business is not required to apply customer due diligence measures before establishing a business relationship or carrying out an occasional transaction where—

- (a) the business has reasonable grounds for believing that the customer is—
 - (i) a regulated person;
 - (ii) a foreign regulated person;
 - (iii) a public authority in the Islands; *(Amended by L.N. 38/2018)*
 - (iv) a body corporate, the securities of which are listed on a recognised exchange; or
 - (v) from a sector which is assessed as low risk through a national risk assessment; or *(Inserted by L.N. 38/2018)*
- (b) in the case of life insurance business, the product is a life insurance contract where the annual premium is no more than \$500 or where a single premium of no more than \$2,000 is paid.

(2) Subregulation (1)(a) does not apply with respect to any third party for whom the customer may be acting or with respect to the beneficial owners of such a third party.

(3) Subregulation (1) does not apply if—

- (a) the financial business suspects money laundering or terrorist financing; or
- (b) the customer is located, or resides, in a country that does not apply, or insufficiently applies, the FATF recommendations or from countries for which there is call to apply enhanced or countermeasures by the FATF, UN or EU. *(Amended by L.N. 38/2018)*

Shell banks and anonymous and numbered accounts

16. (1) A financial business—

- (a) shall not enter into or continue a correspondent banking relationship with a shell bank;

- (b) shall take appropriate measures to ensure that it does not enter into, or continue, a correspondent banking relationship with a financial business in a foreign country that is known to permit its accounts to be used by a shell bank.

(Inserted by L.N. 36/2011)

(2) A financial business shall not set up or maintain a numbered account, an anonymous account or an account in a name which it knows, or has reasonable grounds to suspect, is fictitious.

(3) A financial business that contravenes subregulation (1) or (2) commits an offence and is liable on summary conviction to a fine of \$100,000. *(Inserted by L.N. 36/2011)*

PART III

POLICIES, SYSTEMS AND CONTROLS, RECORD KEEPING AND TRAINING

Policies, systems and controls to prevent and detect money laundering and terrorist financing

17. (1) Subject to subregulation (5), a financial business shall establish, maintain and implement appropriate risk-sensitive policies, systems and controls to prevent and detect money laundering and terrorist financing, including policies, systems and controls relating to—

- (a) customer due diligence measures and ongoing monitoring;
- (b) the reporting of disclosures;
- (c) record-keeping;
- (d) the screening of employees;
- (e) internal controls;
- (f) risk assessment and management;
- (g) the monitoring and management of compliance with, and the internal communication of, its policies, systems and controls to prevent and detect money laundering and terrorist financing, including those specified in paragraphs (a) to (f).

(2) The policies, systems and controls referred to in paragraph (1) must include policies, systems and controls which provide for—

- (a) the identification and scrutiny of—
 - (i) complex or unusually large transactions;
 - (ii) unusual patterns of transactions which have no apparent economic or visible lawful purpose; and
 - (iii) any other activity which the financial business regards as particularly likely by its nature to be related to the risk of money laundering or terrorist financing;
- (b) the taking of additional measures, where appropriate, to prevent the use for money laundering or terrorist financing of products and transactions which are susceptible to anonymity;

- (c) determining whether—
- (i) a customer, any third party for whom the customer is acting and any beneficial owner of the customer or third party, is a politically exposed person;
 - (ii) a business relationship or transaction, or proposed business relationship or transaction, is with a person connected with a country that does not apply, or insufficiently applies, the FATF Recommendations or is from countries for which there is call to apply enhanced or countermeasures by the FATF, UN or EU ; or (*Substituted by L.N. 38/2018*)
 - (iii) a business relationship or transaction, or proposed business relationship or transaction, is with a person connected with a country that is subject to measures for purposes connected with the prevention and detection of money laundering or terrorist financing, imposed by one or more countries or sanctioned by the European Union or the United Nations.
- (3) A financial business with any subsidiary or branch that carries on a relevant business shall communicate to that subsidiary or branch, whether in or outside the Islands, the financial business's policies and procedures maintained in accordance with this regulation.
- (4) A financial business shall maintain adequate procedures for monitoring and testing the effectiveness of—
- (a) the policies and procedures maintained under this regulation; and
 - (b) the training provided under regulation 20.
- (5) A sole trader is not required to maintain policies and procedures relating to internal reporting, screening of employees and the internal communication of such policies and procedures.
- (6) For the purposes of this regulation—
- (a) “scrutiny” includes scrutinising the background and purpose of transactions and activities; and
 - (b) “transaction” means any of the following—
 - (i) an occasional transaction;
 - (ii) a transaction within an occasional transaction; or
 - (iii) a transaction undertaken within a business relationship.
- (7) A financial business that contravenes this regulation is guilty of an offence and is liable on summary conviction, to a fine of \$50,000.

Records required to be kept

- 18.** (1) Subject to subregulation (4), a financial business shall keep the records specified in subregulation (2) and such additional records as may be specified in the Code—
- (a) in a form that enables them to be made available on a timely basis, when lawfully required, to the Commission or law enforcement authorities in the Islands; and
 - (b) for at least the period specified in regulation 19.

- (2) A financial business shall ensure that—
- (a) if the records are in the form of hard copies kept outside the Islands, that the copies can be sent to the Islands and made available within seven working days;
 - (b) if the records are not in the form of hard copies (such as records kept on a computer system), that they are readily accessible in or from the Islands and that they are capable of retrieval without undue delay.
- (3) A financial business may rely on the records of a third party in respect of the details of payments and transactions by customers if it is satisfied that the third party will—
- (a) produce copies of the records on request; and
 - (b) notify the financial business if the third party is no longer able to produce copies of the record on request.
- (Inserted by L.N. 38/2018)*
- (4) The records specified for the purposes of subregulation (1) are—
- (a) a copy of the evidence of identity obtained pursuant to the application of customer due diligence measures or ongoing monitoring, or information that enables a copy of such evidence to be obtained;
 - (b) the supporting documents, data or information that have been obtained in respect of a business relationship or occasional transaction which is the subject of customer due diligence measures or ongoing monitoring;
 - (c) a record containing details relating to each transaction carried out by the financial business in the course of any business relationship or occasional transaction;
 - (d) all account files; and
 - (e) all business correspondence relating to a business relationship or an occasional transaction.
- (5) The record to which subregulation (4)(c) refers must include sufficient information to enable the reconstruction of individual transactions.
- (6) A financial business who is relied on by another person in accordance with these regulations shall keep the records specified in paragraph (4)(a) for the period of five years beginning on the date on which he is relied on in relation to any business relationship or occasional transaction.
- (7) Where the financial business (the “first person”) is an introducer or intermediary and has given the assurance that is required under regulation 14(2) to another financial business (the “second person”), the first person shall make available to the second person, at the second person’s request, a copy of the evidence of identification that the first person is required to keep under this regulation, such evidence being the evidence that is referred to in regulation 14(2).
- (8) Subregulations (6) and (7) do not apply where a financial business applies customer due diligence measures by means of an outsourcing financial business or agent.
- (9) For the purposes of this regulation, a person relies on another person where he does so in accordance with regulation 14.
- (10) A financial business who contravenes this regulation is guilty of an offence and is liable on summary conviction, to a fine of \$50,000.

Period for which records must be kept

19. (1) Subject to subregulation (2), the period specified for the purposes of regulation 18 is five years beginning on—

- (a) in the case of the records specified in regulation 18(2)(a), the date on which—
 - (i) the occasional transaction is completed; or
 - (ii) the business relationship ends; or
- (b) in the case of the records specified in subregulation 18(2)(b)—
 - (i) where the records relate to a particular transaction, the date on which the transaction is completed;
 - (ii) for all other records, the date on which the business relationship ends.

(2) The Commission or the Financial Intelligence Agency may, by written notice, specify a period longer than five years for the purposes of regulation 18, and such longer period as is specified in the notice shall apply instead of the period of five years specified in subregulation (1). (*Amended by L.N. 38/2018*)

Training

20. (1) A financial business shall take appropriate measures for the purposes of making employees whose duties relate to the provision of relevant business aware of—

- (a) the anti-money laundering and counter-terrorist financing policies, procedures, systems and controls maintained by the financial business in accordance with these Regulations or the Code;
- (b) the law of the Islands relating to money laundering and terrorist financing offences; and
- (c) these Regulations, the Code and any Guidance issued by the Commission or a supervisory authority.

(2) A financial business shall provide employees specified in subregulation (1) with training in the recognition and handling of—

- (a) transactions carried out by or on behalf of any person who is or appears to be engaged in money laundering or terrorist financing; and
- (b) other conduct that indicates that a person is or appears to be engaged in money laundering or terrorist financing.

(3) For the purposes of subregulation (2), training shall include the provision of information on current money laundering techniques, methods, trends and typologies.

(4) A financial business that contravenes this regulation is guilty of an offence and is liable on summary conviction, to a fine of \$50,000.

PART IV

COMPLIANCE AND DISCLOSURES

Money laundering compliance officer

21. (1) Subject to subregulation (8), a financial business, other than a sole trader, shall appoint an individual approved by the relevant supervisory authority as its money laundering compliance officer in respect of the relevant business being carried on by the financial business.

(2) A sole trader is the money laundering compliance officer in respect of his or her relevant business.

(3) A financial business shall ensure that—

- (a) the individual appointed as money laundering compliance officer under this regulation is of an appropriate level of seniority; and
- (b) the compliance officer has timely access to all records that are necessary or expedient for the purpose of performing his or her functions as money laundering compliance officer.

(4) The principal function of the money laundering compliance officer is to oversee and monitor the financial business' compliance with the Ordinance, all legislation in force concerning terrorist financing, these Regulations and the Code.

(5) When an individual has ceased to be the money laundering compliance officer of a financial business, the financial business shall as soon as practicable appoint another individual approved by the relevant supervisory authority as its money laundering compliance officer.

(6) A financial business shall give the Commission written notice within seven days after the date—

- (a) of the appointment of a money laundering compliance officer; or
- (b) that an individual ceases, for whatever reason, to be its money laundering compliance officer.

(7) The money laundering compliance officer of a financial business may also be appointed to be its money laundering reporting officer.

(8) The Codes may modify the requirements of this regulation in relation to particular types or category of financial business.

(9) A financial business that contravenes this regulation is guilty of an offence and is liable on summary conviction, to a fine of \$25,000.

Money laundering reporting officer

22. (1) Subject to subregulation (6), a financial business, other than a sole trader, shall appoint an individual as its money laundering reporting officer to—

- (a) receive and consider internal money laundering and terrorist financing disclosures;
- (b) consider whether a suspicious activity report should be made to the Financial Intelligence Agency; and (*Amended by L.N. 38/2018*)

- (c) where he considers a suspicious activity report should be made, submitting the report.
- (2) A financial business shall ensure that—
 - (a) the individual appointed as money laundering reporting officer under this regulation is of an appropriate level of seniority; and
 - (b) the money laundering reporting officer has timely access to all records that are necessary or expedient for the purpose of performing his or her functions.
- (3) When an individual has ceased to be the money laundering reporting officer of a financial business, the financial business shall forthwith appoint another individual approved by the relevant supervisory authority as its money laundering reporting officer.
- (4) A financial business shall give the Commission written notice within 7 days after the date—
 - (a) of the appointment of a money laundering reporting officer; or
 - (b) that an individual ceases, for whatever reason, to be its money laundering reporting officer.
- (5) The money laundering reporting officer of a financial business may also be appointed to be its money laundering compliance officer.
- (6) The Codes may modify the requirements of this regulation in relation to particular types or category of financial business.
- (7) A financial business that contravenes this regulation is guilty of an offence and is liable on summary conviction, to a fine of \$25,000.

Risk-based approach to supervision and monitoring of financial business

- 23.** (1) The frequency and intensity of on-site and off-site supervision of financial businesses or groups by the Commission shall be determined on the basis of—
- (a) the money laundering and terrorist financing risks and the policies, internal controls and procedures associated with the financial business or group, as identified by the Commission's assessment of the business' or group's risk profile;
 - (b) the money laundering and terrorist financing risks present in the Islands; and
 - (c) the characteristics of the financial businesses or groups, in particular the diversity and number of financial businesses and the degree of discretion allowed to them under the risk-based approach.
- (2) The Commission shall review the assessment of the money laundering and terrorist financing risk profile of a financial business or group (including the risk of non-compliance) periodically, and in particular when there are major events or developments in the management and operations of the financial business or group.

(Inserted by L.N. 58/2018)

PART V

DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS

Designated supervisory authority

24. (1) For the purposes of section 161(2) of the Ordinance, the Commission is designated as the supervisory authority for a financial business that is not a regulated person, except casinos.

(2) The Gaming Inspectorate under the Ministry responsible for tourism is designated as the supervisory authority for casinos.

(Substituted by L.N. 58/2018)

Supervision of DNFBPs

25. The DNFBP Supervisor's supervision of designated non-financial businesses and professions shall be performed on a risk-sensitive basis, including—

- (a) determining the frequency and intensity of AML/CFT supervision of designated non-financial businesses and professions on the basis of their understanding of the money laundering and terrorist financing risks, taking into consideration the characteristics of the designated non-financial businesses and professions, in particular their diversity and number;
- (b) taking into account the money laundering and terrorist financing risk profile of those designated non-financial businesses and professions, and the degree of discretion allowed to them under the risk-based approach, when assessing the adequacy of the AML/CFT internal controls, policies and procedures of designated non-financial businesses and professions; and
- (c) taking into account the money laundering and terrorist financing risks present in the Islands.

(Inserted by L.N. 58/2018)

Register of designated non-financial businesses and professions

26. (1) The DNFBP Supervisor must establish and keep a register of designated non-financial businesses and professions. *(Amended by L.N. 57/2013)*

(2) There shall be a separate part of the DNFBP Register for each category of designated non-financial business and profession. *(Inserted by L.N. 36/2011 and 57/2013)*

(3) Each part of the DNFBP Register shall contain the following information in respect of each designated non-financial business and profession that has been registered in accordance with regulation 28—

- (a) the name, address in the Islands and contact details of the designated non-financial business and profession;
- (b) the relevant business for which the designated non-financial business and profession is registered;
- (c) the date of registration and, if applicable, de-registration of the designated non-financial business and profession;
- (d) such other information as the DNFBP Supervisor considers appropriate.

(Amended by L.N. 36/2011 and L.N. 57/2013)

(4) The DNFBP Register and the information contained in any document filed with the DNFBP Supervisor may be kept in such manner as the DNFBP Supervisor considers appropriate, including either wholly or partly, by means of a device or facility that—

- (a) records or stores information magnetically, electronically or by other means; and
- (b) permits the information recorded or stored to be inspected and reproduced in legible and usable form.

(Amended by L.N. 57/2013)

Application to register

27. (1) A person may apply to the DNFBP Supervisor to be registered as a designated non-financial business and profession in the DNFBP Register. *(Amended by L.N. 57/2013)*

(2) The application must—

- (a) be in writing and in the form specified by the DNFBP Supervisor ;
- (b) be signed by the applicant or by a person acting on the applicant's behalf;
- (c) be accompanied by such documents or information as may be specified on the application form or by the DNFBP Supervisor;
- (d) be accompanied by a non-refundable registration fee of \$150.

(Amended by L.N. 11 of 2013 and L.N. 57/2013)

(3) The DNFBP Supervisor may require an applicant to—

- (a) provide it with such documents and information, in addition to those specified in subregulation (2), as it reasonably requires to determine the application and any such information shall be in such form as the DNFBP Supervisor may require; and
- (b) verify any document and information provided in support of an application in such manner as the DNFBP Supervisor may specify.

(Amended by L.N. 57/2013)

(4) If, before the determination by the DNFBP Supervisor of an application—

- (a) there is a material change in any information or documentation provided by or on behalf of the applicant to the DNFBP Supervisor in connection with the application; or
- (b) the applicant discovers that any such information or documentation is incomplete, inaccurate or misleading;

the applicant shall give the DNFBP Supervisor as soon as possible written particulars of the change or of the incomplete, inaccurate or misleading information or documentation. *(Amended by L.N. 57/2013)*

Registration

28. (1) Following the receipt of an application under regulation 27 and any additional documents or information that it has required under regulation 25(3), the DNFBP Supervisor must either—

- (a) register the applicant as a designated non-financial business and profession in the DNFBP Register; or
- (b) refuse the application under regulation 29.

(2) If the DNFBP Supervisor registers an applicant, it must provide the applicant with a certificate of registration.

(Substituted by L.N. 38/2018)

Refusal of application

29. (1) The DNFBP Supervisor may refuse an application for registration if—

- (a) the application does not comply with regulation 27;
- (b) the applicant fails to provide any information or documents required by the under regulation 27(3); or
- (c) the DNFBP Supervisor is of the opinion that—
 - (i) the applicant does not intend to carry on the relevant business for which it seeks registration;
 - (ii) the designated non-financial business and profession, or any of its directors, senior officers or owners do not satisfy the DNFBP Supervisor fit and proper criteria; or
 - (iii) it is contrary to the public interest for the designated non-financial business and profession to be registered.

(2) If the DNFBP Supervisor refuses an application for registration, it must send the applicant a written notice of refusal, stating the grounds for its refusal.

(Amended by L.N. 57/2013)

Disciplinary action

30. For the purposes of sections 168 of the Ordinance—

- (a) a designated non-financial business and profession that contravenes a provision of these Regulations set out in Columns 1 and 2 of the table in Schedule 3, commits a disciplinary violation; and
- (b) the amount specified in Column 3 of the table in Schedule 2 with respect to a disciplinary violation, is the maximum administrative penalty that the DNFBP Supervisor may impose on a designated non-financial business and profession for that disciplinary violation.

(Amended by L.N. 57/2013)

PART VI
MISCELLANEOUS

Directions where FATF applies counter-measures

31. The relevant supervisory authority may direct a financial business—

- (a) not to enter into a business relationship;
- (b) not to carry out an occasional transaction;
- (c) not to proceed any further with a business relationship or occasional transaction;
- (d) to impose any prohibition, restriction or limitation relating to a business relationship or occasional transaction; or
- (e) to apply enhanced customer due diligence measures to any business relationship or occasional transaction,

with any natural or legal persons (including financial institutions) from, or situated or incorporated in, a country to which the FATF, UN or EU has decided to apply counter-measures (*Substituted by L.N. 38/2018*)

Customer information

32. (1) For the purposes of section 140 of the Ordinance, “customer information”, in relation to a person (“the specified person”) and a regulated person, is information whether the specified person holds, or has held, an account or accounts at the regulated person, whether solely or jointly with another, and, if so, information as to—

- (a) the account number or numbers;
- (b) the specified person’s full name;
- (c) where the specified person is an individual, the individual’s—
 - (i) date of birth; and
 - (ii) most recent address, any previous address, any postal address and any previous postal address;
- (d) where the specified person is a company—
 - (i) the country where the company is incorporated or is otherwise constituted, established or registered;
 - (ii) the address of the registered office, any previous registered office, any business address, any previous business address, any postal address and any previous postal address;
- (e) where the specified person is a partnership or unincorporated body of persons, the information specified in paragraph (c) with respect to each individual authorised to operate the account, whether solely or jointly;
- (f) such evidence of identity with respect to the specified person as has been obtained by the regulated person;

- (g) the date or dates on which the specified person began to hold the account or accounts and, if the specified person has ceased to hold the account or any of the accounts, the date or dates on which the person did so;
- (h) the full name of any person who holds, or has held, an account at the regulated person jointly with the specified person;
- (i) the account number or numbers of any other account or accounts held at the regulated person to which the specified person is a signatory and details of the person holding the other account or accounts;
- (j) the full name and the information contained in paragraph (c), (d) or (e), as relevant, of any person who is a signatory to an account specified in subparagraph (i).

Prevention of control, participation, etc. of unsuitable person in directorship, operation, etc. of financial business

33. The relevant supervisory authority of a financial business, or such other person as the relevant supervisory authority may deem fit, shall adopt the necessary legal or regulatory measures to prevent or avoid having any person who is unsuitable from controlling, or participating directly or indirectly, in the directorship, management or operation of the financial business. (*Inserted by L.N. 38/2018*)

Prescribed amounts

34. The following amounts are prescribed for the purposes of the Ordinance—

- (a) application of section 32(1) of the Ordinance (minimum amount remaining to be paid under a confiscation order for discharge), the amount prescribed is \$500;
- (b) discharge under section 33 of the Ordinance, the amount prescribed is \$100;
- (c) minimum threshold for the purposes of section 101(1) of the Ordinance, the amount prescribed is \$250;
- (d) definition of “recoverable cash” under section 113 of the Ordinance, the amount prescribed is \$250.

SCHEDULE 1

(Regulation 2)

REGULATORY LICENCES

“Regulatory licence” means a licence issued under one of the following Ordinances—

- (a) the Banking Ordinance;
 - (b) the Trust Companies (Licensing and Supervision) Ordinance; *(Substituted by L.N. 38/2018)*
 - (c) the Company Management (Licensing) Ordinance;
 - (d) the Mutual Funds Ordinance;
 - (e) the Investment Dealers (Licensing) Ordinance;
 - (f) the Insurance Ordinance;
 - (g) the Money Transmitters Ordinance.
-

SCHEDULE 2

(Regulation 2)

FINANCIAL BUSINESS

1. The following are “financial businesses” when acting in the course of a business carried on in, or from within, the Islands—

- (a) subject to paragraph 2, a person who carries on any kind of regulated business;
- (b) a person who carries on money services business as defined in the Money Transmitters Ordinance;
- (c) a person who, by way of business, provides any of the following services to third parties—
 - (i) acting as a secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons or arranging for another person to act in one of the foregoing capacities or as the director of a company;
 - (ii) providing a business, accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement;
 - (iii) acting as, or arranging for another person to act as, a nominee shareholder for another person;
- (d) a person who conducts as a business one or more of the following activities for, or on behalf of, a customer—
 - (i) lending, including consumer credit, mortgage credit, factoring, with or without recourse, and financing of commercial transactions, including forfeiting;
 - (ii) financial leasing;
 - (iii) issuing and managing means of payment, including credit and debit cards, cheques, travellers’ cheques, money orders and bankers’ drafts and electronic money;
 - (iv) financial guarantees or commitments;
 - (v) participation in securities issues and the provision of financial services related to such issues;
 - (vi) providing advice on capital structure, industrial strategy and related questions and advice and services relating to mergers and the purchase of undertakings;
 - (vii) safekeeping and administration of cash;
 - (viii) investing administering or managing funds or money;
 - (ix) money brokering;

- (e) a person who, as a business, trades for his own account or for the account of customers in—
 - (i) money market instruments, including cheques, bills, certificates of deposit and derivatives;
 - (ii) foreign exchange;
 - (iii) exchange, interest rate and index instruments;
 - (iv) financial futures and options;
 - (v) commodities futures; or
 - (vi) shares and other transferable securities;
 - (f) a person who, by way of business—
 - (i) provides accountancy or audit services; or
 - (ii) engages in realtor activities; (*Substituted by L.N. 38/2018*)
 - (g) an independent legal professional;
 - (h) a high value dealer;
 - (i) a person who operates a casino by way of business whenever a transaction involves \$3,000 or more, or the equivalent in any currency. (*Substituted by L.N. 38/2018*)
2. A company that carries on insurance business is a financial business only where it carries on—
- (a) long-term insurance business; or
 - (b) any form of life insurance business or investment related insurance business that may be classified as general insurance business.
3. A person who carries on business as an insurance intermediary is a financial business only where the person acts with respect to any type of business referred to in paragraph 2(a) or (b).
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SCHEDULE 3

(Regulation 28)

DISCIPLINARY ACTION

DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS

REGULATION	Brief Description of Violation	ADMINISTRATIVE PENALTY (\$)
11(1)	Failure to apply required customer due diligence measures	\$5,000
12	Failure to comply with requirements in subregulations (2) and (3) concerning business relationship with the customers	\$7,500
13 (1)	Failure to apply enhanced due diligence in respect of any relevant requirements in 13(1)(a) to (f)	\$5,000
16 (1) and (2)	Failure to comply with the requirements in subregulation (1) and (2) not to set up or maintain a numbered account, an anonymous account or in a name that is fictitious	\$7,500
17	Failure to comply with requirements in subregulations (3) and (4) concerning the maintenance of policies and procedures	\$2,500 and \$250 for every day the disciplinary violation continues or occurs
18	Failure to comply with the requirements in subregulation (1), (4) and (5) concerning the keeping of records	\$2,500 and \$250 for every day the disciplinary violation continues or occurs
20	Failure to comply with the requirements in subregulations (1) and (2) concerning the training of employees	\$2,500 and \$100 for every day the disciplinary violation continues or occurs

21	Failure to comply with the requirements in subregulations (1), (3), (5) and (6) concerning the appointment of a money laundering compliance officer	\$2,500 and \$100 for every day the disciplinary violation continues or occurs
22	Failure to comply with the requirements in subregulations (1), (2), (3) and 4 concerning the appointment of a money laundering reporting officer	\$2,500 and \$100 for every day the disciplinary violation continues or occurs

**ANTI-MONEY LAUNDERING AND
PREVENTION OF TERRORIST FINANCING CODE**

ARRANGEMENT OF REGULATIONS

PART 1

PRELIMINARY PROVISIONS AND INTERPRETATION

REGULATION

1. Citation
2. Interpretation
3. Scope of Code

PART 2

POLICIES, SYSTEMS AND CONTROLS

4. Risk assessment
5. Responsibilities of board
6. Policies, systems and controls
7. Group-wide programmes
8. Outsourcing
9. Money laundering reporting and compliance officers

PART 3

CUSTOMER DUE DILIGENCE

10. Scope of, and interpretation for, this Part
11. Customer due diligence measures to be applied by financial business
12. Relationship information
13. Customer due diligence re-beneficiary of life insurance
14. Politically exposed persons
15. Identification information, individuals
16. Verification of identity, individuals
17. Identification information, legal entities
18. Verification of identity, legal entities
19. Verification of directors and beneficial owners
20. Identification information, trusts and trustees
21. Verification of identity, trusts and trustees
22. Identification information, foundations
23. Verification of identity, foundations
24. Verification of persons concerned with a foundation
25. Non face-to-face business

26. Certification of documents; documentation re application of regulation 14 of the AML/CFT Regulations
27. Intermediaries and introducers

PART 4

MONITORING CUSTOMER ACTIVITY

28. Ongoing monitoring policies, systems and controls

PART 5

REPORTING SUSPICIOUS ACTIVITY AND TRANSACTIONS

29. Reporting procedures
30. Internal reporting procedures
31. Evaluation of SARs by MLRO
32. Reports to Financial Intelligence Agency

PART 6

EMPLOYEE TRAINING AND AWARENESS

33. Training and vetting obligations

PART 7

RECORD KEEPING

34. Interpretation for this Part
35. Manner in which records to be kept
36. Transaction records
37. Records concerning suspicious transactions etc
38. Records concerning policies, systems and controls and training
39. Outsourcing
40. Reviews of record keeping procedures

PART 8

CORRESPONDENT BANKING

41. Application of this Part of the Code
42. Restrictions on correspondent banking
43. Payable through accounts

PART 9

WIRE TRANSFERS

44. Interpretation
45. Scope of this Part
46. Exemptions
47. Transfer of funds by digital device
48. Payment service provider of payer
49. Payment service provider of payee
50. Intermediary payment service provider
51. Money or value transfer services, etc. to comply AML/CFT requirements

**ANTI-MONEY LAUNDERING AND
PREVENTION OF TERRORIST FINANCING CODE— SECTION 118(1)**

(Legal Notices 13/2011, 54/2018 and 57/2018)

Commencement

[6 May 2011]

PART 1

PRELIMINARY PROVISIONS AND INTERPRETATION

Citation

1. This Code may be cited as the Anti-Money Laundering and Prevention of Terrorist Financing Code.

Interpretation

2. (1) In this Code—

“AML” means anti-money laundering;

“AML/CFT Regulations” means the Anti-Money Laundering and Prevention of Terrorist Financing Regulations;

“bank” means a bank that holds a licence issued under the Banking Ordinance or a financial business which conducts as a business one or more of the activities specified in paragraph 1(d)(i) to (ix) of Schedule 2 to the AML/CFT Regulations;

“board” means—

- (a) in relation to a corporate body, the board of directors, committee of management or other governing authority of the corporate body, by whatever name called or, if the corporate body only has one director, that director;
- (b) in relation to a partnership, the partners, or in the case of a limited partnership, the general partners; or
- (c) in relation to any other organisation or undertaking, the persons fulfilling functions equivalent to the functions of the directors of a company;

“CFT” means combating terrorist financing;

“Code” means the Anti-money Laundering and Terrorist Financing Code;

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

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

“financial group” means a group that consists of a parent company or any other type of legal person, exercising control and coordinating functions over the rest of the group for the application of group supervision together with branches or subsidiaries that are subject to anti-money laundering policies and procedures at the group level; *(Inserted by L.N. 54/2018)*

“Financial Intelligence Agency” means the Agency established under the Financial Intelligence Agency Ordinance; *(Inserted by L.N. 54/2018)*

“legal arrangement” means a trust or partnership or other entity created between parties which lacks separate legal personality; *(Inserted by L.N. 54/2018)*

“legal entity” includes a company, a foundation, a partnership, whether limited or general, an association or any unincorporated body of persons, but does not include a trust;

“POCO” means the Proceeds of Crime Ordinance;

“TCI” means the Turks and Caicos Islands;

“terrorist financing legislation” means—

- (a) the Anti-terrorist Financing Order;
- (b) the Terrorism (UN) Order;
- (c) the Al-Qa’ida and Taliban (United Nations Measures) (Overseas Territories) Order 2002;
- (d) the Counter Terrorism Order 2010; and
- (e) any legislation having application in the TCI with respect to terrorist financing.

(2) Any word or phrase defined in POCO or the AML/CFT Regulations has, unless the context otherwise requires, the same meaning in this Code.

Scope of Code

3. This Code applies, to the extent specified, to—
- (a) financial businesses within the meaning of the AML/CFT Regulations; and
 - (b) directors and boards of financial businesses.

PART 2

POLICIES, SYSTEMS AND CONTROLS

Risk assessment

4. (1) A financial business shall undertake as soon as reasonably practicable after it commences business to carry out and document a risk assessment for the purpose of—

- (a) assessing the money laundering and terrorist financing risks that it faces faced by the business and its customers;
- (b) determining how to best manage and mitigate those risks; and

(c) designing, establishing, maintaining and implementing AML/CFT policies, systems and controls that comply with the requirements of the AML/CFT Regulations and this Code and that are appropriate for the risks that it faces.

(2) The risk assessment carried out under subregulation (1) shall take particular account of all relevant risk factors including—

- (a) the organisational structure of the financial business, including the extent to which it outsources activities;
- (b) its customers;
- (c) the countries with which its customers are connected;
- (d) the products and services that the financial business provides or offers to provide;
- (e) the persons to whom and how the financial business delivers its products and services;
- (f) the nature, scale and complexity of the activities of the financial business;
- (g) reliance on third parties for elements of the customer due diligence process; and
- (h) new business practices and new or technological developments for new and existing products.

(3) A financial business shall regularly review and update the risk assessment if there are material changes to any of the matters specified in subregulation (2). (*Amended by L.N. 57/2018*)

(*Amended by L.N. 57/2018*)

(4) A financial business shall undertake the risk assessments prior to the launch or use of new products, practices and technologies; (*Amended by L.N. 57/2018*)

(5) As part of the risk assessment referred to above, a financial business shall carry out and document an assessment (“customer risk assessment”) that estimates the risk of ML/FT posed by a customer as well as prepare and update a risk profile for each customer taking into account the matters specified in subregulation (2). (*Amended by L.N. 57/2018*)

(6) The customer risk assessment must be undertaken prior to the establishment of a business relationship or the carrying out of an occasional transaction with or for that customer.

(7) The customer risk assessment must have regard to all relevant risk factors, including—

- (a) the business risk assessment carried out under subregulation (1); (*Amended by L.N. 57/2018*)
- (b) the nature, scale, complexity and location of the customer’s activities;
- (c) the persons to whom and how the financial business delivers its products and services; and
- (d) reliance on third parties for elements of the customer due diligence process.
(*Substituted by L.N. 54/2018*)

(8) A financial business shall have appropriate mechanisms to provide risk assessment information to the Commission. (*Inserted by L.N. 57/2018*)

(9) The risk assessment carried out under subregulation (1) shall take particular account of—

- (a) the organisational structure of the financial business, including the extent to which it outsources activities;
- (b) its customers;
- (c) the countries with which its customers are connected;
- (d) the products and services that the financial business provides or offers to provide; and
- (e) how the financial business delivers its products and services.

(10) A financial business shall review and update the risk assessment if there are material changes to any of the matters specified in subregulation (9).

(11) As part of the risk assessment referred to above, a financial business shall prepare and update a risk profile for each customer taking into account the matters specified in subregulation (9).

Responsibilities of board

5. (1) The board of a financial business has ultimate responsibility for—

- (a) identifying and managing the money laundering and terrorist financing risks that the financial business faces;
- (b) ensuring that adequate resources are devoted to AML/CFT efforts; and
- (c) ensuring that the financial business complies with its obligations under POCO, the AML/CFT Regulations and this Code.

(2) Without limiting subregulation (1), the board of a financial business has the following responsibilities—

- (a) undertaking the risk assessment required by Regulation 4;
- (b) on the basis of the risk assessment, establishing documented policies to prevent money laundering and terrorist financing;
- (c) ensuring that—
 - (i) appropriate and effective AML/CFT policies, systems and controls are established, documented and implemented; and
 - (ii) AML/CFT responsibilities are clearly and appropriately apportioned; and
- (d) assessing the effectiveness of, and compliance with, the policies, systems and controls established and promptly taking such actions as is required to remedy deficiencies.

(3) In order to assess the effectiveness of the AML/CFT policies, systems and controls, the board shall, among other things—

- (a) ensure that it receives regular, timely and adequate information relevant to the management of the financial business's money laundering and terrorist financing risk;

- (b) monitor the ongoing competence and effectiveness of the MLCO and the MLRO;
- (c) undertake periodic reviews of the adequacy of policies and procedures for higher risk customers;
- (d) consider whether the incidence of suspicious activity reports (or an absence of such reports) has highlighted any deficiencies in the financial business's customer due diligence or reporting policies and procedures and whether changes are required to address any such deficiencies;
- (e) consider whether inquiries have been made by the Financial Intelligence Agency, or production orders received, without issues having previously being identified by customer due diligence or reporting policies and procedures;
- (f) consider changes made or proposed in respect of new legislation, regulatory requirements or guidance, or as a result of changes in business activities.

(Inserted by L.N. 54/2018)

(4) In order to assess compliance with the AML/CFT policies, systems and controls, the board shall periodically commission and consider a compliance report from the MLCO. *(Inserted by L. N. 54/2018)*

Policies, systems and controls

6. (1) Without limiting Regulation 17 of the AML/CFT Regulations, the policies, systems and controls established, maintained and implemented by a financial business under that regulation shall be documented and shall—

- (a) include customer acceptance policies and procedures;
- (b) provide for transaction limits and management approvals to be established for higher risk customers;
- (c) provide for the monitoring of compliance by branches and subsidiaries of the financial business both within and outside the TCI.

(2) A financial business shall establish, maintain and implement systems and controls and take such other measures, as it considers appropriate to guard against the use of technological developments in money laundering or terrorist financing.

(3) A financial business shall maintain an adequately independent audit function to test compliance (including sample testing) with their policies, systems and control established under this regulation.

(4) A financial business shall communicate the policies, systems and control established in accordance with subregulation (1) to all its staff.

Group-wide programmes

7. A financial group or other person carrying out financial business through a similar financial group arrangement shall implement group-wide programmes against money laundering and terrorist financing, which are applicable, and appropriate to, all branches and majority-owned subsidiaries of the financial group, and these programmes shall include—

- (a) the procedure set out in regulation 17 of the AML/CFT Regulations and regulations 6 and 32(3);

- (b) policies and procedures for sharing information required for the purpose of customer due diligence and money laundering and terrorist financing risk management;
- (c) the provision, at group-level, of compliance, audit and anti-money laundering and counter terrorist financing functions, of customer, account, and transaction information from branched and subsidiaries when necessary for anti-money laundering or counter terrorist financing purposes;
- (d) adequate safeguards on the confidentiality and use of information exchanged.
(Inserted by L.N. 54/2018)

Outsourcing

8. (1) Subject to subregulation (2), a financial business may outsource AML/CFT activities, including obligations imposed by the AML/CFT Regulations or this Code.

(2) A financial business shall not outsource—

- (a) its AML/CFT compliance functions without the prior written approval of the Commission;
- (b) any activity, if the outsourcing of that activity would impair the ability of the Commission to monitor and supervise the financial business with respect to its AML/CFT obligations;
- (c) the setting and approval of the its AML/CFT risk management and other strategies;
- (d) oversight of the its AML/CFT policies, systems and controls; or
- (e) any activity unless it is satisfied that the person to whom the activity is to be outsourced will report any knowledge, suspicion, or reasonable grounds for knowledge or suspicion of money laundering or terrorist financing activity to its MLRO.

(3) A financial business shall—

- (a) consider the effect that any outsourcing arrangement may have on the money laundering and terrorist financing risks that it faces; and
- (b) comply with such general outsourcing requirements as may, from to time, be issued by the Commission with respect to regulated persons.

(4) Where a financial business outsources an AML or CFT activity, it retains ultimate responsibility for the performance of that activity.

Money laundering reporting and compliance officers

9. (1) Subject to subregulation (3), the MLRO appointed by a financial business pursuant to regulation 22 of the AML/CFT Regulations shall—

- (a) be an employee of the financial business or of a company in the same group as the financial business and shall be based in the TCI;
- (b) have the appropriate skills and experience and otherwise be fit and proper to act as its MLRO;
- (c) possess sufficient independence to perform his role objectively;

- (d) have sufficient seniority in the organisational structure of the financial business to undertake its responsibilities effectively and, in particular, to enable the MLRO to have direct access to the board with respect to AML/CFT matters; and
 - (e) have sufficient resources, including time, to perform the function of MLRO effectively.
- (2) Subject to subregulation (3), the MLCO appointed by a financial business pursuant to regulation 21 of the AML/CFT Regulations shall—
- (a) be an employee of the financial business or of a company in the same group as the financial business and shall be based in the TCI;
 - (b) have the appropriate skills and experience and otherwise be fit and proper to act as its MLCO;
 - (c) possess sufficient independence to perform his role objectively;
 - (d) have sufficient seniority in the organisational structure of the financial business to undertake its responsibilities effectively and, in particular, to ensure that his requests, where appropriate, are acted upon by the financial business and its staff and his recommendations properly considered by the board;
 - (e) report regularly, and directly, to the board and have regular contact with the board;
 - (f) have sufficient resources, including time, to perform the function of MLCO effectively;
 - (g) have unfettered access to all business lines, support departments and information necessary to perform the functions of MLCO effectively.
- (3) A financial business may apply to the Commission for an exemption from subregulation (1)(a) or (2)(a).

PART 3

CUSTOMER DUE DILIGENCE

Scope of, and interpretation for, this Part

10. (1) This Part applies to customer due diligence measures that a financial business is required to apply by the AML/CFT Regulations.

(2) For the purposes of this Part, a branch or subsidiary is a “qualifying branch or subsidiary” if it is part of—

- (a) a group of companies that has its head office in a country—
 - (i) that is subject to legal requirements in its home country for the prevention of money laundering and terrorist financing that are consistent with the requirements of the FATF Recommendations; and
 - (ii) is subject to effective supervision for compliance with those legal requirements by a foreign regulatory authority;

- (b) a group headquartered in a well-regulated country which applies group standards to subsidiaries and branches worldwide, and tests the application of, and compliance with, such standards.

Customer due diligence measures to be applied by financial business

11. (1) Subject to complying with the specific requirements of the AML/CFT Regulations and this Code, a financial business must apply a risk-sensitive approach to determining the extent and nature of the customer due diligence measures to be applied to a customer and to any third party or beneficial owner.

(2) Without limiting subregulation (1), a financial business shall—

- (a) obtain customer due diligence information on every customer, third party and beneficial owner comprising—
 - (i) identification information in accordance with regulation 15, 17, 20 or 22 as the case may be; and
 - (ii) relationship information in accordance with regulation 12;
- (b) consider, on a risk-sensitive basis, whether further identification or relationship information is required;
- (c) on the basis of the information obtained under paragraph (a) and (b), prepare and record a risk assessment with respect to the customer;
- (d) verify the identity of the customer and any third party and take reasonable measures, on a risk-sensitive basis, to verify the identity of each beneficial owner in accordance with regulation 5(1)(e) of the AML/CFT Regulations and the relevant regulation of this Code; and
- (e) periodically update the customer due diligence information that it holds and adjust the risk assessment that it has made accordingly.

(3) In preparing a risk assessment with respect to a customer, a financial business shall take account of all relevant risks and shall consider, in particular, the relevance of the following risks—

- (a) customer risk;
- (b) product risk;
- (c) delivery risk; and
- (d) country risk.

(4) Where a financial business is required by the AML/CFT Regulations or this Code to verify the identity of a person, it shall verify that person's identity using documents, data or information obtained from a reliable and independent source.

(5) This regulation does not limit the requirements of the AML/CFT Regulations.

(6) For the purposes of this regulation, “beneficial owner”, with respect to a customer, means a beneficial owner of the customer or of a third party.

Relationship information

12. (1) For the purposes of regulation 11, relationship information is information concerning the business relationship, or proposed business relationship, between the financial business and the customer.

(2) The relationship information obtained by a financial business shall include information concerning—

- (a) the purpose and intended nature of the business relationship;
- (b) the type, volume and value of the expected activity;
- (c) the source of funds and, where the customer risk assessment indicates that the customer, business relationship or occasional transaction presents a high risk, the source of wealth of the customer, third party or beneficial owner;
- (d) details of any existing relationships with the financial business;
- (e) unless the customer is resident in the TCI, the reason for using a financial business based in the TCI; and
- (f) such other information concerning the relationship that, on a risk-sensitive basis, the financial business considers appropriate.

(3) Where the customer, third party or beneficial owner is the trustee of a trust or a legal entity (including a company), a financial business shall obtain the following relationship information—

- (a) the type of trust or legal entity;
- (b) the nature of the activities of the trust or legal entity and the place or places where the activities are carried out;
- (c) in the case of a trust—
 - (i) where the trust is part of a more complex structure, details of that structure, including any underlying companies or other legal entities;
 - (ii) classes of beneficiaries or charitable objects;
- (d) in the case of a legal entity, its ownership and, where the legal entity is a company, details of any group of which the company forms a part, including details of the ownership of the group;
- (e) whether the trust, the trustee(s) or the legal entity is subject to supervision in or outside the TCI and, if so, details of the relevant supervisory body.

Customer due diligence re- beneficiary of life insurance

13. In addition to the customer due diligence measures required for the customer and the beneficial owner, a financial business shall conduct the following customer due diligence measures on the beneficiary of life insurance and other investment related insurance policies, as soon as the beneficiary is identified or designated and shall do so no later than at the time of the pay-out—

- (a) for a beneficiary that is identified as a specifically named natural person or legal person or legal arrangement – taking the name of the person; and

- (b) for a beneficiary that is designated by characteristics or by class or by other means – obtaining sufficient information concerning the beneficiary to satisfy the financial business that it will be able to establish the identity of the beneficiary at the time of the pay-out.

(Inserted by L.N. 54/2018)

Politically exposed persons

14. (1) A financial business shall establish, maintain and implement appropriate risk management systems to determine whether a customer, third party or beneficial owner is a politically exposed person and those risk management systems shall take into account that a person may become a politically exposed person after the establishment of a business relationship.

(2) A financial business shall ensure that no business relationship is established with a politically exposed person, or where the third party or beneficial owner is a politically exposed person, unless the prior approval of the board or senior management has been obtained.

(3) Where a financial business has established a business relationship with a customer and the customer, a third party or beneficial owner is subsequently identified as a politically exposed person, the business relationship shall not be continued unless the approval of the board or senior management has been obtained.

(4) Subregulation (3) applies whether the customer, third party or beneficial owner —

- (a) was a politically exposed person at the time that the business relationship was established, but the person was subsequently identified as a politically exposed person; or
- (b) becomes a politically exposed after the establishment of the business relationship.

(5) A financial business shall take reasonable measures to establish the source of wealth and the source of funds of customers, third parties and beneficial owners identified as politically exposed persons.

(6) In the case of a life insurance policy, a financial business shall take reasonable measures, no later than at the time of pay-out—

- (a) to determine whether the beneficiary, and where applicable the beneficial owner of the beneficiary, is a politically exposed person;
- (b) to ensure that senior management is informed before pay-out of the policy proceeds; and
- (c) to conduct enhance scrutiny on the whole business relationship with the policy holder and if necessary, to consider making a suspicious activity report.

(Inserted by L.N. 54/2018)

Identification information, individuals

15. (1) A financial business shall obtain the following identification information with respect to an individual who it is required by the AML/CFT Regulations or this Code to identify—

- (a) the full legal name of, any former names of and any other names used by the individual;

- (b) the gender of the individual;
- (c) the principal residential address of the individual; and
- (d) the date of birth of the individual.

(2) Where a financial business determines that an individual who it is required to identify presents a higher level of risk, the financial business shall obtain additional identification information with respect to the individual.

(3) The additional identification information to be obtained with respect to a higher risk individual shall include at least two of the following—

- (a) the individual's place of birth;
- (b) the individual's nationality; and
- (c) an official government issued identity number or other government identifier.

Verification of identity, individuals

16. (1) A financial business shall—

- (a) verify the identity of an individual where required by the AML/CFT Regulations or this Code to do so; and
- (b) take reasonable measures to re-verify an aspect of an individual's identity if it changes after the individual's identity has been verified.

(2) Without limiting subregulation (1)(b), the following represent changes of an individual's identity within the meaning of that subregulation—

- (a) marriage;
- (b) change of nationality; and
- (c) change of address.

(3) Where a financial business determines that an individual whose identity it is required to verify presents a low risk, the financial business shall, using evidence from at least one independent source verify—

- (a) the individual's full legal name, any former names and any other names used by the individual; and
- (b) either—
 - (i) the principal residential address of the individual; or
 - (ii) the individual's date of birth.

(4) Where a financial business determines that an individual whose identity it is required to verify presents a higher level of risk, the financial business shall, using evidence from at least two independent sources, verify—

- (a) the individual's full legal name, any former names and any other names used by the individual;
- (b) the principal residential address of the individual; and

- (c) the individual's—
 - (i) date of birth;
 - (ii) place of birth;
 - (iii) nationality; and
 - (iv) gender.

(5) Where a financial business determines that an individual whose identity it is required to verify presents a high level of risk, the financial business shall, using evidence from at least two independent sources, verify the individual's—

- (a) nationality or address; and
- (b) government issued identity number or other government identifier.

(6) A document used to identify the identity of an individual must be in a language understood by those employees of the financial business who are responsible for verifying the individual's identity.

Identification information, legal entities

17. (1) This regulation and regulations 18 and 19 apply to a legal entity other than a foundation.

(2) A financial business shall obtain the following identification information with respect to a legal entity that it is required by the AML/CFT Regulations or this Code to identify—

- (a) the full name of the legal entity and any trading names that it uses;
- (b) the date of the incorporation, registration or formation of the legal entity;
- (c) evidence that the company exists; (*Substituted by L.N. 54/2018*)
- (d) the registered office or, if it does not have a registered office, the address of the head office of the legal entity;
- (e) the name and address of the registered agent of the legal entity (or equivalent), if any;
- (f) the mailing address of the legal entity;
- (g) the principal place of business of the legal entity;
- (h) the names of the directors of the legal entity;
- (i) identification information on those directors who have authority to give instructions to the financial business concerning the business relationship or occasional transaction;
- (j) identification information on individuals who are the ultimate holders of 10% or more of the legal entity; (*Amended by L.N. 54/2018*)
- (k) the names of persons occupying a senior management position in the legal entity. (*Inserted by L.N. 54/2018*)

(3) Where a financial business determines that a legal entity that it is required to identify presents a higher level of risk, the financial business shall obtain such additional identification information with respect to the legal entity as it consider appropriate.

(4) Where subregulation (3) applies, but without limiting it, a financial business shall obtain identification information on every director of the legal entity.

(5) Where identification information on an individual, as a director or beneficial owner, is required to be obtained, regulation 14 applies.

Verification of identity, legal entities

18. (1) A financial business shall—

- (a) verify the identity of a legal entity where required by the AML/CFT Regulations to do so; and
- (b) take reasonable measures to verify the identity of the beneficial owners of the legal entity.

(2) Where a financial business determines that a legal entity, the identity of which it is required to verify, presents a low risk, the financial business shall verify the regulating powers of the legal entity by obtaining its articles of incorporation. (*Substituted by L.N 54/2018*)

(3) Where a financial business determines that a legal entity, the identity of which it is required to verify, presents a higher level of risk, the financial business shall verify—

- (a) the address of the registered office, or head office, of the legal entity, as applicable; and
- (b) the address of the principal place of business of the legal entity, if different from its registered office or head office.

(4) Where a financial business determines that a legal entity, the identity of which it is required to verify, presents a high level of risk, the financial business shall verify such other components of the legal entity's identification, as it considers appropriate.

(5) A document used to identify the identity of a legal entity or its beneficial owners must be in a language understood by those employees of the financial business who are responsible for verifying their identity.

Verification of directors and beneficial owners

19. (1) A financial business shall in all cases verify the identity of any director of the legal entity specified in regulation 17(2).

(2) Where the financial business determines that the legal entity presents more than a low level of risk, it shall verify such additional components of the identity of the legal entity as it considers appropriate.

(3) Where subregulation (2) applies, but without limiting it, a financial business shall verify the identity of each director and each beneficial owner of the legal entity.

(4) Where the identity of an individual, as director or beneficial owner, is required to be verified, regulation 15 applies.

Identification information, trusts and trustees

20. (1) Where a financial business is required by the AML/CFT Regulations or this Code to identify a trust, it shall—

- (a) obtain the following identification information—
 - (i) the name of the trust;
 - (ii) the date of the establishment of the trust;
 - (iii) any official identifying number;
 - (iv) identification information on each trustee of the trust;
 - (v) the mailing address of the trustees;
 - (vi) identification information on each settlor of the trust;
 - (vii) identification information on each protector or enforcer of the trust;
 - (viii) identification information on each beneficiary with a vested right and each beneficiary or each person who is an object of a power; (*Inserted by L.N. 54/2018*)
 - (ix) the beneficiaries or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust (including through a chain of control or ownership; and (*Inserted by L. N. 54 of 2018*))
- (b) obtain confirmation from the trustees that they have provided all the information requested and that they will update the information in the event that it changes on a timely basis. (*Amended by L.N. 54/2018*)

(2) For the purpose of this Code, “settlor” includes a person who, as settlor, established the trust and any person who has, at any time, subsequently settled assets into the trust.

(3) Where a financial business determines that any business relationship or occasional transaction concerning the trust that it is required to identify presents a higher level of risk, the financial business shall obtain such additional identification information as it consider appropriate.

(4) Where the financial services business is a trustee, it will obtain and hold adequate, accurate, and current the information specified in subregulation (1)(a)(vi) (vii) and (viii) and keep it as up to date as possible, and updated on a timely basis.

(Substituted by L.N. 54/2018)

(5) Where the financial business is a trustee, it must hold basic information on other regulated agents of, and other service providers to, the trust, including, but not limited to, investment advisors or managers and accountants.

(Inserted by L.N 54/2018)

(6) Trustees shall disclose their status to financial institutions and DNFBPs when forming a business relationship or carrying out an occasional transaction.

(Inserted by L.N. 54/2018)

(7) Identification information required to be obtained on any person under this regulation shall be obtained in accordance with regulation 15 if the person is an individual, regulation 16 if the person is a legal entity or regulation 22 if the person is a foundation.

Verification of identity, trusts and trustees

21. (1) Where a financial business is required by the AML/CFT Regulations or this Code to verify the identity of a trust, it shall verify—

- (a) the name and date of establishment of the trust;
- (b) the identity of each trustee, settlor and protector or enforcer of the trust; and
- (c) the appointment of the trustee and the nature of his duties.

(2) Where a financial business determines that a trust, the identity of which it is required to verify, presents a higher level of risk, the financial business shall—

- (a) take reasonable measures to verify the identity of each person specified in regulation 20(1); and
- (b) verify such other components of the legal entity's identification as it considers appropriate.

(3) A document used to verify the identity of a trust or a person specified in this regulation must be in a language understood by those employees of the financial business who are responsible for verifying the identity of the trust or person concerned.

(4) A person whose identity is required by this regulation to be verified shall—

- (a) if the person is an individual, be verified in accordance with regulation 16
- (b) if the person is a legal entity, be verified in accordance with regulation 18; or
- (c) if the person is a foundation, be verified in accordance with regulation 23.

Identification information, foundations

22. (1) A financial business shall obtain the following identification information with respect to a foundation, that it is required by the AML/CFT Regulations or this Code to identify—

- (a) the full name of the foundation;
- (b) the date and country of the establishment, registration, formation or incorporation of the foundation;
- (c) any official identifying number;
- (d) the registered address, or equivalent, of the foundation or, if the foundation does not have a registered address (or equivalent), the address of the head office of the foundation;
- (e) the mailing address of the foundation, if different from its registered address or equivalent;
- (f) the principal place of business of the foundation, if different from its registered address or equivalent;
- (g) the name and address of the registered agent of the foundation, if any;
- (h) the name and address of the Secretary, or equivalent, of the foundation, if any;
- (i) the names of the Foundation Council members (or equivalent) and, if any decision requires the approval of any other persons, the names of those persons;

- (j) identification information on those Foundation Council members (or equivalent) who have authority to give instructions to the financial business concerning the business relationship or occasional transaction;
- (k) identification information on the guardian of the foundation (or equivalent), if any; and
- (l) identification information on the founder or founders, on any other person who has contributed to the assets of the foundation and on any person to whom the rights of the founder or founders have been assigned.

(2) Where a financial business determines that a foundation that it is required to identify presents a higher level of risk, the financial business shall obtain such additional identification information with respect to the foundation as it considers appropriate.

(3) Where subregulation (2) applies, but without limiting it, a financial business shall obtain identification information on—

- (a) every Foundation Council member of the foundation, or equivalent;
- (b) any other persons whose approval is required for any decision;
- (c) any beneficiaries of the foundation.

(4) Identification information required to be obtained on any person under this regulation shall be obtained in accordance with regulation 15 if the person is an individual or regulation 16 if the person is a legal entity.

Verification of identity, foundations

23. (1) Where a financial business is required by the AML/CFT Regulations or this Code to verify the identity of a foundation, it shall—

- (a) verify the identity of the foundation; and
- (b) take reasonable measures to verify the identity of persons concerned with the operation of the foundation.

(2) Where a financial business determines that a foundation the identity of which it is required to verify presents a low risk, the financial business shall, using evidence from at least one independent source, verify—

- (a) the name of the foundation and any official identifying number;
- (b) the date and country of the foundation's establishment, registration, formation or incorporation.

(3) Where a financial business determines that a foundation, the identity of which it is required to verify, presents a higher level of risk, the financial business shall verify—

- (a) the registered address office of the foundation, or the equivalent, or in the case of a foundation that does not have a registered address, the address of the head office of the foundation; and
- (b) the address of the principal place of business of the foundation, if different from its registered office or head office.

(4) Where a financial business determines that a foundation, the identity of which it is required to verify, presents a high level of risk, the financial business shall verify such other components of the foundation's identification, as it considers appropriate.

(5) A document used to identify the identity of a foundation or persons concerned with the foundation must be in a language understood by those employees of the financial business who are responsible for verifying their identity.

(6) A person whose identity is required by this regulation or regulation 23 to be verified shall—

- (a) if the person is an individual, be verified in accordance with regulation 16; or
- (b) if the person is a legal entity, be verified in accordance with regulation 18.

Verification of persons concerned with a foundation

24. (1) A financial business shall in all cases verify the identity of—

- (a) any Foundation Council member (or equivalent) specified in regulation 22(1)(i);
- (b) the founder or founders, on any other person who has contributed to the assets of the foundation and on any person to whom the rights of the founder or founders have been assigned; and
- (c) the guardian of the foundation (or equivalent).

(2) Where the financial business determines that the foundation presents more than a low level of risk, it shall verify such additional components of the identity of the foundation, as it considers appropriate.

(3) Where subregulation (2) applies, but without limiting it, a financial business shall verify the identity of—

- (a) each Foundation Council member (or equivalent) of the foundation and, if any decision requires the approval of any other persons, those persons;
- (b) any beneficiaries of the foundation.

Non face-to-face business

25. Where a financial business applies customer due diligence measures to, or carries out ongoing monitoring with respect to, an individual who is not physically present, the financial business, in addition to complying with the AML/CFT Regulations and this Code with respect to customer due diligence measures, shall—

- (a) perform at least one additional check designed to mitigate the risk of identity fraud; and
- (b) apply such additional enhanced customer due diligence measures or undertake enhanced ongoing monitoring, as the financial business considers appropriate (if any).

Certification of documents; documentation re application of regulation 14 of the AML/CFT Regulations

26. (1) A financial business shall not rely on a document as a certified document unless—
- (a) the document is certified by an individual who is subject to professional rules of conduct which provide the financial business with a reasonable level of comfort as to the integrity of the certifier;
 - (b) the individual certifying the document certifies that—
 - (i) he or she has seen original documentation verifying the person’s identity or residential address;
 - (ii) the copy of the document (which he certifies) is a complete and accurate copy of that original; and
 - (iii) where the documentation is to be used to verify identity of an individual and contains a photograph, the photograph contained in the document certified bears a true likeness to the individual requesting certification;
 - (c) the certifier has signed and dated the copy document, and provided adequate information so that he may be contacted in the event of a query; and
 - (d) in circumstances where the certifier is located in a higher risk jurisdiction, or where the financial business has some doubts as to the veracity of the information or documentation provided by the applicant, the financial business has taken steps to check that the certifier is real.
- (2) Where a financial business does not apply customer due diligence measures before establishing a business relationship or carrying out an occasional transaction in reliance on regulation 14 of the AML/CFT Regulations, the financial business shall obtain and retain documentation establishing that regulation 14 applies.

Intermediaries and introducers

27. (1) Before relying on an intermediary or an introducer to apply customer due diligence measures in accordance with regulation 14 of the AML/CFT Regulations with respect to a customer, a financial business shall—
- (a) satisfy itself that the intermediary or introducer is a regulated person or a foreign regulated person and has procedures in place to undertake customer due diligence measures in accordance with, or equivalent to, the AML/CFT Regulations and this Code;
 - (b) assess the risk of relying on the intermediary or introducer with a view to determining—
 - (i) whether it is appropriate to rely on the intermediary or introducer; and
 - (ii) if it considers it is so appropriate, whether it should take any additional measures to manage that risk;
 - (c) obtain adequate assurance in writing from the intermediary or introducer that—
 - (i) the intermediary or introducer has applied the customer due diligence measures that the financial business for which the financial business intends to rely on it;

- (ii) the intermediary or introducer is required to keep, and does keep, a record of the evidence of identification relating to each of the customers of the intermediary or introducer;
 - (iii) the intermediary or introducer will, without delay, provide the information in that record to the financial business at the request of the financial business; and
 - (iv) the intermediary or introducer will, without delay, provide the information in the record for provision to the Commission, where requested by the Commission;
- (d) where the financial business intends to rely on an introducer, immediately obtain in writing from the introducer—
- (i) confirmation that each introduced customer is an established customer of the introducer; and
 - (ii) sufficient information, including information verifying the identity or ultimate beneficial owner, if not a natural person, about each introduced customer to enable it to assess the risk of money laundering and terrorist financing involving that customer; and
- (e) where the financial business intends to rely on an intermediary, immediately obtain in writing sufficient information, including information verifying the identity or ultimate beneficial owner, if not a natural person, about the customer for whom the intermediary is acting to enable the financial business to assess the risk of money laundering and terrorist financing involving that customer.
- (2) A financial business shall—
- (a) make and retain records—
 - (i) detailing the evidence that it relied upon in determining that the introducer is a regulated person, together with that evidence or copies of it; and
 - (ii) detailing the risk assessment carried out under subregulation (1)(b) and any additional risk mitigation measures it considers appropriate; and
 - (b) retain in its records—
 - (i) the assurances obtained under subregulation (1)(c) and the confirmations that it has obtained under subregulation (1)(d); and
 - (ii) the information that it has sought and obtained under subregulation (1)(d) and (e).

PART 4

MONITORING CUSTOMER ACTIVITY

Ongoing monitoring policies, systems and controls

28. (1) The ongoing monitoring policies, systems and controls established by a financial business in accordance with regulation 17 of the AML/CFT Regulations shall—

- (a) provide for a more thorough scrutiny of higher risk customers including politically exposed persons;
- (b) be designed to identify unusual and higher risk activity or transactions and require that special attention is paid to higher risk activity and transactions;
- (c) require that any unusual or higher risk activity or transaction is examined by an appropriate person to determine the background and purpose of the activity or transaction;
- (d) require the collection of appropriate additional information; and
- (e) be designed to establish whether there is a rational explanation, an apparent economic or visible lawful purpose, for unusual or higher risk activity or transactions identified, and require a written record to be kept of the conclusions of the financial business.

(2) When conducting ongoing monitoring, a financial business shall regard the following as presenting a higher risk—

- (a) complex transactions;
- (b) unusual large transactions;
- (c) unusual patterns of transactions, which have no apparent economic or lawful purpose;
- (d) activity and transactions—
 - (i) connected with countries which do not, or insufficiently apply, the FATF Recommendations or for which there is call to apply enhanced or countermeasures by the FATF; or (*Amended by L.N. 54/2018*)
 - (ii) which are the subject of UN or EU countermeasures; and
- (e) activity and transactions that may be conducted with natural and legal persons (including financial institutions) persons who are the subject of FATF, UN or EU sanctions and countermeasures. (*Substituted by L.N. 54/2018*)

PART 5

REPORTING SUSPICIOUS ACTIVITY AND TRANSACTIONS

Reporting procedures

29. (1) A financial business shall establish and maintain reporting procedures that—

- (a) communicate the identity of the MLRO to its employees;

- (b) require that a report is made to the MLRO of any information or other matter coming to the attention of any employee handling relevant business which, in the opinion of that person, gives rise to knowledge, suspicion or reasonable grounds for knowledge or suspicion that another person is engaged in money laundering or terrorist financing;
- (c) require that a report is considered promptly by the MLRO in the light of all other relevant information for the purpose of determining whether or not the information or other matter contained in the report gives rise to knowledge, suspicion or reasonable grounds for knowledge or suspicion of money laundering or terrorist financing;
- (d) allow the MLRO to have access to all other information which may be of assistance in considering the report; and
- (e) provide for the information or other matter contained in a report to be disclosed as soon as is reasonably practicable and in any event, within twenty-four hours by the MLRO to the Financial Intelligence Agency in writing, where the MLRO knows, suspects or has reasonable grounds to know or suspect that another person is engaged in or attempted to engage in money laundering or terrorist financing regardless of the amount of the transaction. (*Amended by L.N 54/2018*)

(2) For the purposes of this regulation, MLRO includes any deputy MLRO that may be appointed.

Internal reporting procedures

30. (1) A financial business shall establish internal reporting procedures that provide that—

- (a) where a customer fails to supply adequate customer due diligence information, or adequate documentation verifying identity (including the identity of any beneficial owners), consideration should be given to making a suspicious activity report;
- (b) include the reporting of all suspicious transactions, including attempted transactions regardless of the amount of the transaction and business that has been refused;
- (c) require employees to make internal suspicious activity reports containing all relevant information in writing to the MLRO as soon as it is reasonably practicable and in any event, within twenty-four hours after the information comes to their attention;
- (d) require suspicious activity reports to include as full a statement as possible of the information giving rise to knowledge or reasonable grounds for suspicion of money laundering or terrorist financing activity and full details of the customer;
- (e) provide that reports are not filtered out by supervisory staff or managers so that they do not reach the MLRO;
- (f) require suspicious activity reports to be acknowledged by the MLRO.

(2) A financial business must establish and maintain arrangements for disciplining any employee who fails, without reasonable excuse, to make an internal suspicious activity report

where he or she has knowledge or reasonable grounds for suspicion of money laundering or terrorist financing.

Evaluation of SARs by MLRO

31. A financial business shall ensure that—

- (a) all relevant information is promptly made available to the MLRO on request so that internal suspicious activity reports are properly assessed;
- (b) each suspicious activity report is considered by the MLRO in light of all relevant information; and
- (c) the MLRO documents the evaluation process followed and reasons for the decision to make a report or not to make a report to the Financial Intelligence Agency. *(Amended by L.N. 54/2018)*

Reports to the Financial Intelligence Agency

32. (1) A financial business shall require the MLRO to make external suspicious activity reports directly to the Financial Intelligence Agency as soon as practical and in any event, within 24 hours, that—

- (a) include the information specified in subregulation (2);
- (b) include the amount of the suspicious transaction, or attempted transaction, regardless of the amount of the transaction; and *(Inserted by L.N. 57/018)*
- (c) are in such form as may be prescribed or specified by the Financial Intelligence Agency.

(Amended by L.N. 54/2018)

(2) The information required to be included in a report to the Financial Intelligence Agency for the purposes of subregulation (1) is—

- (a) full details of the customer and as full a statement as possible of the information giving rise to knowledge, suspicion or reasonable grounds for knowledge or suspicion;
- (b) if a particular type of criminal conduct is suspected, a statement of this conduct;
- (c) where a financial business has additional relevant evidence that could be made available, the nature of this evidence; and
- (d) such statistical information as the Financial Intelligence Agency may require. *(Amended by L. N. 54/2018)*

(3) Where a MLRO forms a suspicion of money laundering or terrorist financing and reasonably believes that satisfying ongoing customer due diligence requirements of the Regulations and this Code for a customer or customer due diligence of the Regulations and this Code for an applicant for business will tip-off a customer or an applicant, the MLRO shall—

- (a) instruct the financial business not to complete the customer due diligence requirement of the Regulations and this Code; and
- (b) file a suspicious activity report.

(Inserted by L.N. 54/2018)

PART 6

EMPLOYEE TRAINING AND AWARENESS

Training and vetting obligations

- 33.** (1) A financial business shall—
- (a) provide appropriate basic AML/CFT awareness training to employees whose duties do not relate to the provision of relevant business;
 - (b) establish and maintain procedures that monitor and test the effectiveness of its employees' AML/CFT awareness and the training provided to them;
 - (c) vet the competence and probity of employees whose duties relate to the provision of relevant business at the time of their recruitment and at any subsequent change in role and that their competence and probity is subject to ongoing monitoring;
 - (d) provide training, to temporary and contract staff and, where appropriate, the staff of any third parties fulfilling a function in relation to a financial business under an outsourcing agreement; and
 - (e) provide employees with adequate training in the recognition and handling of transactions at appropriate frequencies.
- (2) The training provided by a financial business shall—
- (a) be tailored to the business carried out by the financial business and relevant to the employees to whom it is delivered, including particular vulnerabilities of the financial business;
 - (b) cover the legal obligations of employees to make disclosures under section 127 of POCO and explain the circumstances in which such disclosures must be made;
 - (c) explain the risk-based approach to the prevention and detection of money laundering and terrorist financing;
 - (d) highlight to employees the importance of the contribution that they can individually make to the prevention and detection of money laundering and terrorist financing; and
 - (e) be provided to employees as soon as practicable after their appointment.

PART 7

RECORD KEEPING

Interpretation for this Part

34. In this Part “records” means records that a financial business is required to keep by the AML/CFT Regulations or this Code.

Manner in which records to be kept

35. (1) A financial business shall ensure that its records are kept in such manner that—

- (a) facilitates ongoing monitoring and their periodic updating; (b) ensures that they are readily accessible to the financial business in the TCI; and
- (c) enables the Commission, internal and external auditors and other competent authorities to assess the effectiveness of systems and controls that are maintained by the financial business to prevent and detect money laundering and the financing of terrorism.

(2) Where records are kept other than in legible form, they must be kept in such manner that enables them to be readily produced in the TCI in legible form.

Transaction records

36. (1) Records relating to transactions with customers shall contain the following information concerning each transaction carried out—

- (a) the name and address of the customer;
- (b) if the transaction is a monetary transaction, the currency and the amount of the transaction;
- (c) if the transaction involves a customer's account, the number, name or other identifier for the account;
- (d) the date of the transaction;
- (e) details of the counterparty, including account details;
- (f) the nature of the transaction;
- (g) details of the transaction; and
- (h) any conclusions reached as a result of an examination conducted in accordance with 30(1)(c) and (e).

(2) A financial business shall, together with its records concerning a business relationship or occasional transaction, keep for the minimum period specified in regulation 19 of the AML/CFT Regulations, all customer files and business correspondence relating to the relationship or occasional transaction.

(3) The transaction records kept by a financial business shall—

- (a) contain sufficient details to enable a transaction to be understood; and
- (b) enable an audit trail of the movements of incoming and outgoing funds or asset movements to be readily constructed.

(4) A financial business shall maintain records for securities and derivatives transactions for each transaction that identify—

- (a) the client—
 - (i) name of the account holder, including the identity of the beneficial owner; and
 - (ii) person authorised to transact business;

- (b) the amount purchased or sold;
- (c) the time of the transaction;
- (e) the price of the transaction; and
- (f) the individual and the bank or broker and brokerage house that handled the transaction.

Records concerning suspicious transactions, etc.

37. (1) A financial business shall keep for a period of five years from the date a business relationship ends, or for five years from the date that an occasional transaction was completed, records containing, with respect to that business relationship or transaction—

- (a) any internal suspicious activity reports and supporting documentation;
- (b) the decision of the MLRO concerning whether to make a suspicious activity report to the Financial Intelligence Agency and the basis of that decision; (
- (c) details of any reports made to the Financial Intelligence Agency;
- (d) records concerning reviews of and the conclusions reached in respect of—
 - (i) complex transactions;
 - (ii) unusual large transactions;
 - (iii) unusual patterns of transactions, which have no apparent economic or visible lawful purpose; and
 - (iv) customers, including natural and legal persons, and transactions connected with countries which do not apply, or insufficiently apply, the FATF Recommendations or are the subject of UN or EU countermeasures.

(2) A financial business shall keep records of all enquiries relating to money laundering or terrorist financing made to it by the Financial Intelligence Agency for a period of at least five years from the date that the enquiry was made.

(Amended by L.N. 54 of 2018)

Records concerning policies, systems and controls and training

38. (1) A financial business shall keep records documenting its policies, systems and controls to prevent and detect money laundering for a period of at least five years from the date that the policies, systems and controls are superseded or otherwise cease to have effect.

(2) A financial business shall keep records for at least five years detailing all dates on which training on the prevention and detection of money laundering and the financing of terrorism was provided to employees, the nature of the training and the names of employees who received the training.

Outsourcing

39. (1) If a financial business outsources record keeping to a third party, the financial business remains responsible for compliance with the record keeping requirements of the AML/CFT Regulations and this Code.

(2) A financial business shall not enter into outsourcing arrangements or place reliance on third parties to keep records where access to records is likely to be impeded by confidentiality or data protection restrictions.

Reviews of record keeping procedures

40. A financial business shall—

- (a) periodically review the accessibility of, and condition of, paper and electronically retrievable records and consider the adequacy of the safekeeping of records; and
- (b) periodically test procedures relating to the retrieval of records.

PART 8

CORRESPONDENT BANKING

Application of this Part

41. This Part applies to a bank.

Restrictions on correspondent banking

42. A bank that is, or that proposes to be, a correspondent bank shall—

- (a) not enter into or not maintain relationships with any respondent bank that is a shell bank;
- (b) not maintain relationships with any respondent bank that itself provides correspondent banking services to shell banks;
- (c) apply customer due diligence measures on respondent banks using a risk-based approach that takes into account, in particular—
 - (i) the respondent's domicile;
 - (ii) the respondent bank's ownership and management structure;
 - (iii) the respondent bank's customer base, including its geographic location, its business, including the nature of services provided by the respondent bank to its customers, whether or not relationships are conducted by the respondent on a non face-to-face basis and the extent to which the respondent bank relies on third parties to identify and hold evidence of identity on, or to conduct other due diligence on, its customers;
- (d) determine from publicly available sources the reputation of the respondent bank and the quality of its supervision;
- (e) assess the respondent bank's anti-money laundering and terrorist financing systems and controls to ensure that they are consistent with the requirements of the FATF Recommendations;
- (f) not enter into a new correspondent banking relationship unless it has the prior approval of senior management;

- (g) ensure that the respective anti-money laundering and counter terrorist financing responsibilities of each party to the correspondent relationship are understood and properly documented;
- (h) ensure that the correspondent relationship and its transactions are subject to annual review by senior management;
- (i) be able to demonstrate that the information obtained in compliance with the requirements set out in this regulation is held for all existing and new correspondent relationships; and
- (j) not enter into a correspondent banking relationship where it has knowledge or suspicion that the respondent or any of its customers is engaged in money laundering or the financing of terrorism.

Payable through accounts

43. Where a correspondent bank provides customers of a respondent bank with direct access to its services, whether by way of payable through accounts or by other means, it shall ensure that it is satisfied that the respondent bank—

- (a) has undertaken appropriate customer due diligence and, where applicable, enhanced customer due diligence in respect of the customers that have direct access to the correspondent bank's services; and
- (b) is able to provide relevant customer due diligence information and verification evidence to the correspondent bank upon request.

PART 9

WIRE TRANSFERS

Interpretation

44. (1) For the purposes of this Part—

“batch file transfer” means several individual transfers of funds which are bundled together for transmission;

“full originator information”, with respect to a payee, means the name and account number of the payer, together with—

- (a) the payer's address; and
- (b) either—
 - (i) the payer's date and place of birth; or
 - (ii) the customer identification number or national identity number of the payer or, where the payer does not have an account, a unique identifier that allows the transaction to be traced back to that payer;

“intermediate payment service provider” means a payment service provider, neither of the payer nor the payee, that participates in the execution of transfer of funds;

“payee” means a person who is the intended final recipient of transferred funds;

“payer” means a person who holds an account and allows a transfer of funds from that account or, where there is no account, a person who places an order for the transfer of funds;

“payment service provider” means a person whose business includes the provision of transfer of funds services;

“transfer of funds” means a transaction carried out on behalf of a payer through a payment service provider by electronic means with a view to making funds available to a payee at a payment service provider, irrespective of whether the payer and the payee are the same person; and

“unique identifier” means a combination of letters, numbers or symbols determined by the payment service provider, in accordance with the protocols of the payment and settlement or messaging system used to effect the transfer of funds.

Scope of this Part

45. Subject to regulation 43, this Part applies to a transfer of funds in any currency which is sent or received by a payment service provider that is established in the TCI.

Exemptions

46. (1) Subject to subregulation (2), a transfer of funds carried out using a credit or debit card is exempt from this Part if—

- (a) the payee has an agreement with the payment service provider permitting payment for the provision of goods and services; and
- (b) a unique identifier, allowing the transaction to be traced back to the payer, accompanies the transfer of funds.

(2) A transfer of funds is not exempt from the application of this Part if the credit or debit card is used as a payment system to effect the transfer.

(3) A transfer of funds is exempt from this Part if the transfer is carried out using electronic money, the amount transacted does not exceed \$1,000 and where the device on which the electronic money is stored—

- (a) cannot be recharged, the maximum amount stored in the device is \$200; or
- (b) can be recharged, a limit of \$2,500 is imposed on the total amount that can be transacted in a calendar year, unless an amount of \$1,000 or more is redeemed in that calendar year by the bearer of the device.

(4) For the purposes of this regulation, electronic money is money as represented by a claim on the issuer which—

- (a) is stored on an electronic device;
- (b) is issued on receipt of funds of an amount not less in value than the monetary value issued; and
- (c) is accepted as means of payment by persons other than the issuer.

- (5) A transfer of funds is exempt if—
- (a) the payer withdraws cash from the payer's own account;
 - (b) there is a debit transfer authorization between two parties permitting payments between them through accounts, provided a unique identifier accompanies the transfer of funds to enable the transaction to be traced back;
 - (c) it is made using truncated cheques;
 - (d) it is a transfer to the Government of, or a public body in, the TCI for taxes, duties, fines or charges of any kind; or
 - (e) both the payer and the payee are payment service providers acting on their own behalf.

Transfer of funds by digital device

47. (1) A transfer of funds made by mobile telephone or any other digital or information technology device will be required to obtain simplified payer and beneficiary information if—

- (a) the transfer is prepaid and does not exceed \$1000;
 - (b) the transfer is post-paid;
 - (c) the payee has an agreement with the payment service provider permitting payment for the provision of goods and services;
 - (d) a unique identifier, allowing the transaction to be traced back to the payer, accompanies the transfer of funds; and
 - (e) the payment service provider of the payee is licensed.
- (2) Simplified payer information shall include at a minimum—
- (a) the name of the payer; and
 - (b) the account number where such account is used to process the transaction or, in the absence of an account, a unique transaction reference number which permits traceability of the transaction.
- (3) Simplified beneficiary information shall include at a minimum—
- (a) the name of the beneficiary; and
 - (b) the account number where such account is used to process the transaction or, in the absence of an account, a unique transaction reference number which permits traceability of the transaction.

(Inserted by L.N. 54/2018)

Payment service provider of payer

48. (1) Subject to regulation 43, the payment service provider of a payer shall ensure that every transfer of funds is accompanied by the full originator payer information.

(2) subregulation (1) does not apply in the case of a batch file transfer from a single payer, where some or all of the payment service providers of the payees are situated outside the TCI, if—

- (a) the batch file contains the complete information on the payer; and

- (b) the individual transfers bundled together in the batch file carry the account number of the payer or a unique identifier.
- (3) The payment service provider of the payer shall, before transferring any funds, verify the full originator information on the basis of documents, data or information obtained from a reliable and independent source.
- (4) A payment service provider of the payer shall collect beneficiary and payee information including the name and account number or unique transaction reference in order to facilitate the traceability of the transaction. (*Inserted by L.N. 54/2018*)
- (5) In the case of a transfer from an account, the payment service provider may deem verification of the full originator information to have taken place if it has complied with the provisions of the AML/CFT Regulations and this Code relating to the verification of the identity of the payer in connection with the opening of that account.
- (6) In the case of a transfer of funds not made from an account, the full originator information on the payer shall be deemed to have been verified by a payment service provider of the payer if—
- (a) the transfer consists of a transaction of an amount not exceeding \$1,000;
 - (b) the transfer is not a transaction that is carried out in several operations that appear to be linked and that together comprise an amount exceeding \$1,000; and
 - (c) the payment service provider of the payer does not suspect that the payer is engaged in money laundering, terrorist financing or other financial crime.
- (7) The payment service provider of the payer shall keep records of the full originator information, on the payer and the beneficiary, that accompanies the transfer of funds, for the period of five years. (*Substituted by L.N. 54/2018*)
- (8) Where the payment service provider of the payer and the payee are situated in the TCI, a transfer of funds need only be accompanied by—
- (a) the account number of the payee; or
 - (b) a unique identifier that allows the transaction to be traced back to the payer, where the payer does not have an account number.
- (9) Where this regulation applies, the payment service provider of the payer shall, upon request from the payment service provider of the payee, make available to the payment service provider of the payee the full originator information within three working days, excluding the day on which the request was made.
- (10) Where a payment service provider of the payer fails to comply with a request to provide the full originator information within the period specified in subregulation (9), the payment service provider of the payee may notify the Commission, either or both of which shall require the payment service provider of the payer to comply with the request immediately.
- (11) Without prejudice to subregulation (10), where a payment service provider of the payer fails to comply with a request, the payment service provider of the payee may—
- (a) issue such warning to the payment service provider of the payer as may be considered necessary;

- (b) set a deadline to enable the payment service provider of the payer to provide the required full originator information;
- (c) reject future transfers of funds from the payment service provider of the payer;
- (d) restrict or terminate its business relationship with the payment service provider of the payer with respect to transfer of funds services or any mutual supply of services.

(12) A payment service provider shall not execute a wire transfer if it is not in receipt of the required payer and beneficiary information as required in subregulations (1) to (11). (*Inserted by L.N. 54/2018*)

Payment service provider of payee

49. (1) The payment service provider of the payee shall verify that fields within the messaging or payment and settlement system used to effect the transfer in respect of the full originator information on the payer have been completed in accordance with the characters or inputs admissible within the conventions of that messaging or payment and settlement system.

(2) The payment service provider of the payee shall put in place effective procedures for the detection of any missing or incomplete information on both the payer and the payee. (*Amended by L.N. 54/2018*)

(3) A payment service provider of the payee shall take reasonable measures, including post-event or real-time monitoring, to identify transfers that lack the required originator or beneficiary information. (*Inserted by L.N. 54/2018*)

(4) The payment service provider of the payee shall, for transfers of \$1,000 or more verify the identity of the beneficiary, if the identity has not been previously verified, and shall maintain this information for five years. (*Inserted by L.N. 54/2018*)

(5) In the case of batch file transfers, the full originator information is required only in the batch file and not in the individual transfers bundled together in it.

(6) Where the payment service provider of the payee becomes aware that the full originator information on the payer is missing or incomplete when receiving transfers of funds, the payment service provider of the payee shall—

- (a) reject the transfer,
- (b) request for the full originator information on the payer, or
- (c) take such course of action as the Commission directs, after it has been notified of the deficiency discovered with respect to the full originator information of the payer,

unless where doing so would result in contravening POCO Prevention of Terrorism Ordinance or the Anti-terrorist Financing Order. (*Amended by L.N. 54/2018*)

(7) A payment service provider of a payee shall adopt risk-based policies and procedures for determining when to execute, reject or suspend a wire transfer where the required originator or beneficiary information is incomplete and the resulting procedures to be applied. (*Inserted by L.N. 54/2018*)

(8) A missing or an incomplete information shall be a factor in the risk-based assessment of a payment service provider of the payee as to whether a transfer of funds or any related transaction is to be reported to the Financial Intelligence Agency as a suspicious

transaction or activity with respect to money laundering or terrorist financing. (*Amended by L.N. 54/2018*)

(9) Where a payment service provider regularly fails to supply the required information on the payer, the payment service provider of the payee shall adopt reasonable measures to rectify noncompliance with this Code, before—

- (a) rejecting any future transfers of funds from that payment service provider;
- (b) restricting its business relationship with that payment service provider; or
- (c) terminating its business relationship with that payment service provider,

and the payment service provider of the payee shall report to the Financial Intelligence Agency and the relevant supervisory authority any such decision to restrict or terminate its business relationship with the payment service provider.

(Inserted by L.N. 54/2018)

(10) The payment service provider of the payee shall keep records of any information received on the payer for a period of at least five years.

Intermediary payment service provider

50. (1) This regulation applies where the payment service provider of the payer is situated outside the TCI and the intermediary service provider is situated within the TCI.

(2) An intermediary payment service provider shall ensure that any information it receives on the payer and beneficiary that accompanies a transfer of funds is kept with that transfer. (*Amended by L.N. 54/2018*)

(3) An intermediary payment service provider shall take reasonable measures to identify cross border wire transfers that lack required originator or beneficiary information. (*Inserted by L.N. 54/2018*)

(4) An intermediary service provider shall put risk-based policies and procedures in place for determining when to execute, reject or suspend a wire transfer lacking the required originator or beneficiary information and the appropriate follow-up action. (*Inserted by L.N. 54/2018*)

(5) Where this regulation applies, an intermediary service provider may use to send a transfer to the payment service provider of the payee a system with technical limitations which prevents the information on the payer from accompanying the transfer of funds.

(6) Where, in receiving a transfer of funds, the intermediary payment service provider becomes aware that information on the payer required under this Part is incomplete, the intermediary payment service provider may only use a payment system with technical limitations if the intermediary payment service provider (either through a payment or messaging system, or through another procedure that is accepted or agreed upon between the intermediary payment service provider and the payment service provider of the payee) provides confirmation that the information is incomplete.

(7) An intermediary payment service provider that uses a system with technical limitations shall, if the payment service provider of the payee requests, within three working days after the day on which the intermediary payment service provider receives the request, make available to the payment service provider of the payee all the information on the payer that the intermediary payment service provider has received, whether or not the information is the full originator information.

(8) An intermediary payment service provider that uses a system with technical limitations which prevents the information on the payer from accompanying the transfer of funds shall keep records of all the information on the payer and beneficiary that it has received for a period of at least five years. *(Amended by L.N. 54/2018)*

Money or value transfer services, etc. to comply AML/CFT requirements

51. (1) A person who carries on money or value transfer services and its agents shall comply with the relevant AML/CFT requirements relating to its business, including wire transfer arrangements in all countries in which it operates either directly or through their agents.

(2) A person who carries on money or value transfer services shall require his or its sub-agents to follow his or its AML/CFT compliance programme and monitor those sub-agents for compliance with the AML/CFT compliance programme.

(Inserted by L.N. 54/2018)

NON-PROFIT ORGANISATIONS REGULATIONS

ARRANGEMENT OF REGULATIONS

PART I

PRELIMINARY

REGULATION

1. Citation
2. Interpretation

PART II

NON-PROFIT SUPERVISOR

3. Prescribed supervisory authority
4. Functions and duties of NPO Supervisor

PART III

REGISTRATION OF NON-PROFIT ORGANISATIONS

5. Register to be kept
6. Requirement to register
7. Application to register
8. Registration
9. Refusal of application to register
10. De-registration

PART IV

OBLIGATIONS OF NON-PROFIT ORGANISATIONS

11. Changes of information to be provided to NPO Supervisor
12. Records
13. Provision of records to the NPO Supervisor
14. Controllers and Accounts
15. Power to require an audit

PART V

ENFORCEMENT ACTION

16. NPO Supervisor may take disciplinary action
17. Notice of intention to take disciplinary action
18. Disciplinary action

19. Recovery of administrative penalty

PART VI

MISCELLANEOUS

20. Confidentiality
21. Offence, false and misleading information
22. Non-applicability

NON-PROFIT ORGANISATIONS REGULATIONS—SECTIONS 174 AND 175

(Legal Notices 12/2013, 50 /2014 and 40/2018)

Commencement

[21 November 2014]

PART I

PRELIMINARY

Citation

1. (1) These Regulations may be cited as the Non-Profit Organisations Regulations 2014 and shall, except for Part V, come into operation on publication.

(2) Part V shall come into operation on such date as the Governor may appoint by notice published in the *Gazette*.

Interpretation

2. (1) In these Regulations—

“controller” means a person who owns, controls or directs a non-profit organisation and includes—

- (a) a trustee of a trust, where the non-profit organisation is established as a trust;
- (b) a director of a company, where the non-profit organisation is established as a company;
- (c) a general partner of a partnership, where the non-profit organisation is established as a partnership;
- (d) a person responsible for the management and administration of an unincorporated association, where the non-profit organisation is established as an unincorporated association;
- (e) a person not specified in paragraphs (a), (b), (c), or (d) where the non-profit organisation is established by that person;
- (f) a person deemed a controller by the NPO Supervisor;
(Inserted by L.N. 40/2018)

“FATF” means the international body known as the Financial Action Task Force on Money Laundering;

“FATF Recommendations” means the FATF Recommendations, February 2012 and such amendments as may from time to time be made to them;

“fiduciary” means—

- (a) a trustee of the trust, where the non-profit organisation is established as a trust;

- (b) a director of the company, where the non-profit organisation is established as a company;
- (c) a person responsible for all aspects of the management and administration of the unincorporated association, where the non-profit organisation is established by an unincorporated association; or
- (d) a person not covered in paragraphs (a), (b) and (c), where the non-profit organisation is established by that person;

“gross annual income” during any period, means the total income of the non-profit organisation from any source during the twelve months immediately preceding the first day of that period, including, but not limited to—

- (a) income received from the provision of goods or services;
- (b) rental income;
- (c) interest and other income derived from its investments;
- (d) donations of money or other property made to the organisation;

“non-profit organisation” has the meaning specified in section 2(1) of the Proceeds of Crime Ordinance; (*Inserted by L.N. 40 of 2018*)

“NPO legislation” means—

- (a) the Proceeds of Crime Ordinance;
- (b) terrorist financing legislation and any Ordinances, regulations and other laws relating to terrorism and terrorist financing that are applicable to non-profit organisations;
- (c) these Regulations; and
- (d) an Anti-money Laundering and Terrorist Financing Code issued under section 175(b) of the Ordinance that is applicable to non-profit organisations;

“NPO Register” means the register of non-profit organisations established and kept under regulation 5;

“NPO Supervisor” means the supervisory authority specified under regulation 3;

“Ordinance” means the Proceeds of Crime Ordinance.

(2) Unless otherwise provided terms used in these Regulations shall have the same meaning as defined in the Ordinance.

PART II

NPO SUPERVISOR

Prescribed supervisory authority

3. The Financial Services Commission is prescribed as the NPO Supervisor.

Functions and duties of NPO Supervisor

4. The functions of the NPO Supervisor are—

- (a) to act as the registration, supervision and enforcement authority for non-profit organisations operating in the Islands;
- (b) to monitor compliance—
 - (i) by non-profit organisations with the registration requirements of these Regulations; and
 - (ii) by registered non-profit organisations with the NPO legislation;
- (c) to monitor the effectiveness of the NPO legislation in—
 - (i) protecting non-profit organisations from being used for terrorist financing or money laundering; and
 - (ii) ensuring the compliance of the Government with the FATF Recommendations, as they apply to non-profit organisations;
- (d) to undertake periodic reviews of the non-profit sector in the Islands for the purpose of identifying the features and types of non-profit organisations that are at risk of being used for terrorist financing or money laundering;
- (e) to undertake outreach to non-profit organisations with the objective of protecting the non-profit sector in the Islands from being used for terrorist financing or money laundering; and
- (f) to discharge such other functions as may be assigned to the NPO Supervisor under the Ordinance, these Regulations or any other Ordinance.

(2) The outreach activities undertaken by the NPO Supervisor shall include—

- (a) raising awareness of non-profit organisations concerning the risks of their being used for terrorist financing or money-laundering and the measures available to protect against such abuse; and
- (b) promoting transparency, accountability, integrity and public confidence in the administration and management of non-profit organisations.

(3) Where the NPO Supervisor forms the view that the NPO legislation is not effective in protecting non-profit organisations from being used for terrorist financing or money laundering, the NPO Supervisor shall make a report to the Governor in Cabinet recommending appropriate changes to the NPO legislation.

PART III

REGISTRATION OF NON-PROFIT ORGANISATIONS

Register to be kept

5. (1) The NPO Supervisor shall establish and keep a Register of non-profit organisations.

(2) The NPO Register shall contain the following information in respect of each non-profit organisation that has been registered—

- (a) its full name, address in the Islands, telephone number and e-mail address (if any);
- (b) a summary of its purpose, objectives and activities;
- (c) the names of the persons who own, control or direct the non-profit organisation;
- (d) the date of its registration and, if applicable, de-registration;
- (e) whether it is incorporated or unincorporated and, if incorporated, the number with which it is registered under the Companies Ordinance;
- (f) if the non-profit organisation is not incorporated—
 - (i) the address in the Islands that it has given as its address for the service of notices and other document; and
 - (ii) the address where it keeps its records; and
- (g) such other information as the NPO Supervisor considers appropriate.

(3) The NPO Supervisor shall maintain a file in respect of each registered non-profit organisation (whether currently registered or not) in which shall be kept the following—

- (a) originals or notarised copies of the non-profit organisation's constitutional documents and by-laws, as amended from time to time, and, if incorporated, the official document certifying its incorporation; and
- (b) other documents, correspondence and material relevant to the non-profit organisation as the NPO Supervisor considers appropriate.

(4) The NPO Register and the information contained in any document filed with the NPO Supervisor may be kept in such manner as the NPO Supervisor considers appropriate, by means of a device or facility that—

- (a) records or stores information magnetically, electronically or by other means; and
- (b) permits the information recorded or stored to be inspected and reproduced in legible and usable form.

(5) A person may, during normal business hours on payment of a fee of \$50, require the NPO Supervisor to provide details of the information entered on the NPO Register in respect of a registered non-profit organisation.

Requirement to register

6. (1) Subject to subregulation (2), a non-profit organisation shall be registered in the NPO Register if it is—

- (a) incorporated, formed or otherwise established in the Islands; or
- (b) administered in or from within the Islands.

(2) A non-profit organisation is exempted from the requirement to be registered under this Regulation if the non-profit organisation—

- (a) has a gross annual income not exceeding \$10,000 and assets not exceeding \$20,000 in value; and
- (b) has been issued with a certificate of exemption pursuant to subregulation (4).

(3) A non-profit organisation can at any time apply in writing to the NPO Supervisor for a certificate of exemption from the requirement for registration by submitting an application in the form specified by the NPO Supervisor and such documents as the NPO Supervisor may specify.

(4) The NPO Supervisor shall issue a certificate of exemption to a non-profit organisation which makes an application under subregulation (3) if the NPO Supervisor is satisfied that the requirements under subregulation (2)(a) are met and if the NPO Supervisor is satisfied that the non-profit organisation poses no risk of facilitating terrorist-financing or money-laundering, having regard to one or more of the following matters—

- (a) the length of time it has operated as a non-profit organisation without indication of having facilitated terrorist-financing or money-laundering;
- (b) the nature of its activity or its manner of functioning;
- (c) the identity or type of its members;
- (d) its affiliation with organisations outside the Islands or lack thereof.

(5) Where an unregistered non-profit organisation—

- (a) is found not to qualify under subregulation (2)(a); or
- (b) qualifies under subparagraph (2)(a), but is unable to demonstrate to the satisfaction of the NPO Supervisor that it poses no risk of facilitating terrorist-financing or money laundering,

the NPO Supervisor shall give written notice to the non-profit organisation that it does not qualify for exemption from the requirement to be registered and unless the non-profit organisation, within thirty days after the date of the notice, shows good reason to the satisfaction of the NPO Supervisor why it should be exempted, it shall be required to be registered.

(6) Where the NPO Supervisor reasonably determines—

- (a) that an exempted non-profit organisation poses a risk of facilitating terrorist-financing or money-laundering; or
- (b) that an exempted non-profit organisation has a gross annual income and assets that exceed the amounts specified in subregulation (2)(a),

the NPO Supervisor shall give written notice to the non-profit organisation stating that it will no longer be exempted from the requirement to be registered and unless the non-profit organisation, within fourteen days after the date of the notice, shows good reason to the satisfaction of the NPO Supervisor why it should continue to be exempted, the non-profit organisation shall no longer be exempted from the provisions of these Regulations and, where it is in possession of a certificate of exemption, shall immediately return the certificate to the NPO Supervisor.

(7) An application for a certificate of exemption shall be accompanied by an application fee of \$150.

(8) A non-profit organisation shall not solicit or cause to be solicited contributions from the public, or any section of the public, within the Islands or elsewhere, unless the non-profit organisation is registered or exempt from the obligation to register under these Regulations. *(Inserted by L.N. 40/2018)*

(9) A non-profit organisation that operates when not registered or exempted under this regulation commits an offence and is liable on summary conviction to a fine of \$50,000. *(Amended by L.N. 40/2018)*

Application to register

7. (1) Application may be made to the NPO Supervisor to register a non-profit organisation or a proposed non-profit organisation.

(2) The application shall be—

- (a) in writing and in the form specified by the NPO Supervisor;
- (b) signed by a controller of the non-profit organisation: and *(Substituted by L.N. 40/2018)*
- (c) accompanied by—
 - (i) a copy of the governing document of the organisation;
 - (ii) such other documents or information as may be specified by these Regulations or as the NPO Supervisor may reasonably require; and
 - (iii) a non-refundable fee of \$150. *(Substituted by L.N. 40/2018)*

(3) The governing document of the organisation shall include—

- (a) the name of the organisation;
- (b) the officers of the organisation;
- (c) a declaration that the organisation is a non-profit organisation;
- (d) a statement of the organisation's purpose, objectives and activities;
- (e) a statement of the manner of electing the governing body of the organisation;
- (f) the organisational structure of the organisation;
- (g) the duties and powers of the governing body including procedures for financial decisions of the organisation;
- (h) provisions—
 - (i) limiting the objects of the organisation to pursue solely or primarily charitable or non-profit purposes and requiring the organisation to apply its income solely to promoting those purposes; and
 - (ii) to prohibit the organisation from distributing any part of the profits generated to members, shareholders or office-bearers except for the payment in cash or in specie to any member or office-bearer in reimbursement of any expense or in consideration of any property made available or services provided by the member or office-bearer for the benefit of the company in furthering its purposes;

- (i) provisions to state the procedure for changing the governing instrument;
 - (j) provisions to require that, on the closing of the organisation, any surplus assets are not to be paid or transferred to its members or office-bearers but must be transferred to another non-profit organisation, whether in the Islands or elsewhere—
 - (i) specified in the governing instrument; or
 - (ii) designated by resolution of the members at a meeting of the organisation called for the purpose of making such a designation or for purposes that include the making of such a designation.
(Inserted by L.N. 40/2018)
- (4) The NPO Supervisor may require an applicant to—
- (a) submit such additional documents and information, in addition to what is specified in subregulation (2)(c)(i), as the NPO Supervisor may reasonably require to determine the application, and such documents and information shall be in such form as the NPO Supervisor may require; and
 - (b) verify any document or information provided in support of an application in such manner as the NPO Supervisor may specify.
- (5) If, before the determination by the NPO Supervisor of an application or before the registration of a non-profit organisation—
- (a) there is a material change in any information or documentation provided by or on behalf of the applicant to the NPO Supervisor in connection with the application; or
 - (b) the applicant discovers that any such information or documentation is incomplete, inaccurate or misleading,
- the applicant shall, as soon as reasonably practicable, give the NPO Supervisor written particulars of the change or of the incomplete, inaccurate or misleading information or documentation.
- (6) Where an application is made to register a non-profit company, the NPO Supervisor shall satisfy himself that the applicant is duly registered under Part V of the Companies Ordinance.

Registration

- 8.** (1) Following the receipt of an application and registration fee under regulation 7 and any additional documents or information that it has required under regulation 7(4)(a), unless the NPO Supervisor refuses the application under regulation 9(1), the NPO Supervisor shall—
- (a) if the application is for the registration of an established non-profit organisation, register the non-profit organisation in the NPO Register and provide the applicant and the non-profit organisation with a certificate of registration; or
 - (b) if the application relates to a proposed non-profit organisation, provide the applicant with written notice of its intention to register the proposed non-profit organisation, provided that the non-profit organisation is established within a period of twenty-one days from the date of the notice.

(2) Subject to subregulation (3), if—

- (a) the NPO Supervisor provides notice of its intention to register a proposed non-profit organisation; and
- (b) within twenty-one days of the date of the notice, the NPO Supervisor is provided with satisfactory evidence that the proposed non-profit organisation has been established,

the NPO Supervisor shall register the non-profit organisation, and provide the applicant and the non-profit organisation with a certificate of registration.

(3) Every non-profit organisation registered under these Regulations shall keep—

- (a) its certificate of registration at the address listed in the NPO Register; and
- (b) in the case of a non-profit organisation that is not incorporated, the address specified in regulation 5(2)(ii),

and produce it for inspection, without charge, at the request of any person.

(4) Notwithstanding subregulation (2), the NPO Supervisor may refuse to register a non-profit organisation if, following the provision of a notice under subregulation (1)(b), the NPO Supervisor forms the opinion that there are grounds under regulation 9(1) for refusing the application for registration.

Refusal of application to register

9. (1) The NPO Supervisor may refuse an application for registration if—

- (a) the application does not comply with regulation 7(2);
- (b) the applicant fails to provide any information or documents required by the NPO Supervisor under regulation 7(4);
- (c) the NPO Supervisor is of the opinion that—
 - (i) the non-profit organisation is not, or the proposed non-profit organisation will not be a non-profit organisation within the meaning of the Ordinance;
 - (ii) the non-profit organisation or proposed non-profit organisation is being used for terrorist financing or money-laundering or it is intended or likely that it will be used for such purpose;
 - (iii) it is contrary to the public interest for the non-profit organisation to be registered; or
 - (iv) any of the persons involved in the establishment or operation of the non-profit organisation has been convicted of an offence involving dishonesty;
- (d) the non-profit organisation, having previously been registered under these Regulations, has been de-registered under regulation 10.

(2) The NPO Supervisor may refuse an application for registration if—

- (a) the non-profit organisation is established for illegal purposes;
- (b) the non-profit organisation does not have a connection with the Islands;

- (c) the information represented on the application for registration of the non-profit organisation is manifestly incorrect;
- (d) the name of the non-profit organisation—
 - (i) is identical to a name by which a non-profit organisation in existence is already registered or so nearly resembles such name or translated name so as to be calculated to deceive;
 - (ii) contains the words “royal”, “imperial” or “empire” or, in the opinion of the NPO Supervisor suggests, or is calculated to suggest the patronage of Her Majesty or of any member of the Royal Family or connection with Her Majesty’s Government or any department thereof in the United Kingdom or elsewhere;
 - (iii) contains the words “gaming”, “lottery”, “bank”, “insurance” or any similar word which is restricted in use by the laws of the Islands or in the opinion of the NPO Supervisor connotes any of such activities or any derivative of any of such words or of such similar words, whether in English or in any other language, or in the opinion of the Registrar suggests or is calculated to suggest any of such activities; or
 - (iv) is different from the name in which the entity was established if the entity was established as a company, trust, partnership, or foundation.

(Inserted by L.N. 40/2018)

(3) If the NPO Supervisor refuses an application for registration, it shall send the applicant a written notice of refusal, stating the grounds for its refusal.

De-registration

10. (1) The NPO Supervisor shall de-register a registered non-profit organisation if—

- (a) the non-profit organisation is convicted of an offence under the Ordinance, the terrorist financing legislation or these Regulations;
- (b) a civil forfeiture order is made against the non-profit organisation under the Ordinance or the terrorist financing legislation;
- (c) a forfeiture order is made against the NPO under article 15 or 16 of the Anti-terrorist Financing Order;
- (d) subject to subregulation (3), a person authorised on behalf of the non-profit organisation requests that the non-profit organisation be de-registered; or
- (e) the non-profit organisation has been struck off the Companies Register.

(2) The NPO Supervisor may de-register a registered non-profit organisation if, in the opinion of the NPO Supervisor the non-profit organisation—

- (a) has breached these Regulations or an Anti-money Laundering and Terrorist Financing Code made under section 175(b) of the Ordinance, that applies to it;
- (b) no longer exists or is not carrying out, and is not likely to carry out, the activities specified for the non-profit organisation in the NPO Register; or
- (c) is being used, or may in the future be used, for, or to assist in, terrorist financing or money laundering.

(3) The NPO Supervisor shall not de-register a non-profit organisation under subregulation (1)(d) if the NPO Supervisor is of the opinion that the de-registration of the NPO would hinder the NPO Supervisor in the exercise of its functions.

(4) Subject to subregulation (5), before de-registering a non-profit organisation under any provision of this regulation other than subregulation (1)(d), the NPO Supervisor shall give written notice to the non-profit organisation stating—

- (a) the grounds upon which it intends to de-register the non-profit organisation; and
- (b) that unless the non-profit organisation, by written notice, shows good reason why it should not be de-registered, it will be de-registered on a date not less than fourteen days after the date of the notice.

(5) If it is not practicable for the NPO Supervisor to give notice to the non-profit organisation under subregulation (4) or where there has been no response from the non-profit organization within the time specified in subregulation (4), the NPO Supervisor shall publish a notice in the *Gazette* to the effect that it intends to de-register the non-profit organisation.

(6) Where the NPO Supervisor de-registers a non-profit organisation, the NPO Supervisor shall mark the name of the non-profit organisation in the NPO Register as de-registered, showing the date of its de-registration.

PART IV

OBLIGATIONS OF NON-PROFIT ORGANISATIONS

Changes of information to be provided to NPO Supervisor

11. (1) A non-profit organisation shall, where there is any change in information which has been provided to the NPO Supervisor, issue written notification of the change to the NPO Supervisor within fourteen days of such change occurring.

(2) If there has been any change in information of a non-profit organisation which has not been notified to the NPO Supervisor, the purported change will not take effect legally and shall be treated as if no change had occurred.

(3) Changes required to be provided under this regulation include—

- (a) changes to the non-profit organisation's purposes, objectives and activities;
- (b) changes of office-bearers and their addresses and other contact details;
- (c) changes of the non-profit organisation's address and other contact details; and
- (d) changes to the governing instrument (before making any changes to a governing instrument, it is advisable to ensure that these changes will not affect the NPO's non-profit status).

(4) It shall be the duty of a controller of a non-profit organisation to ensure that the NPO Supervisor is notified of any change in information within fourteen days of such change.

(Substituted by L.N. 40/2018)

Records

12. (1) Every non-profit organisation, whether registered or exempted, shall keep—

- (a) records of—
 - (i) its purpose, objectives and activities;
 - (ii) the identity of the persons who control or direct its activities, including, as appropriate, senior officers, directors and trustees;
 - (iii) the identity, credentials and good standing of its beneficiaries and associate non-profit organisations; and
- (b) financial records that—
 - (i) show and explain its transactions, within and outside the Islands, and that are sufficiently detailed to show that its funds have been used in a manner consistent with its purposes, objectives and activities; and
 - (ii) show the source of its gross annual income.

(2) A non-profit organisation shall keep the records specified under subregulation (1) for a period of at least five years.

(3) A non-profit organisation that contravenes this regulation commits an offence and is liable on summary conviction to a fine of \$20,000.

Provision of records to the NPO Supervisor

13. (1) The NPO Supervisor may, on the grounds specified in subregulation (2), by written notice to a non-profit organisation, require it to produce any record that the non-profit organisation is required to keep under regulation 12.

(2) The NPO Supervisor may give notice under sub-regulation (1) only where it has reasonable cause to suspect that the non-profit organisation is being used, or may in the future be used, for, or to assist in, terrorist financing or money laundering.

(3) A notice given under subregulation (1)—

- (a) shall specify—
 - (i) the records which the NPO Supervisor requires to be produced;
 - (ii) the place where the records specified in the notice shall be produced to the NPO Supervisor, which may be by inspection at the premises of the non-profit organisation; and
 - (iii) the period within which the records shall be produced; and
- (b) may require the documents to be produced to a person or persons specified in the notice.

(4) The NPO Supervisor may require the person who produced the records or any person who appears to be an officer or employee of the non-profit organisation or otherwise associated with it, to provide an explanation of the records.

(5) The NPO Supervisor may take copies or extracts of the records produced under this regulation or may retain the original records for a period not exceeding—

- (a) a period of one year; or
- (b) such longer period as the Court, on the application of the NPO Supervisor, may specify.

(6) Disclosure of records under this regulation shall not be treated as a breach of any enactment, rule of law or agreement restricting the disclosure of information and shall not give rise to civil proceedings.

(7) A non-profit organisation that fails to comply with a notice issued under subregulation (1) commits an offence and is liable on summary conviction to a fine of \$50,000.

(8) A person required to provide an explanation of any records produced under this regulation who, without reasonable excuse, fails to provide the explanation, commits an offence and is liable on summary conviction to a fine of \$50,000.

Controllers and Accounts

14. (1) A non-profit organisation shall have at least two persons as its controller.
(Inserted by L.N. 40/2018)

(2) A controller of a non-profit organisation shall cause proper financial statements to be kept of—

- (a) all sums of money received and expended and the matters in respect of which the receipt and expenditure relate;
- (b) all sales and purchases of property;
- (c) all sums of money raised through fundraising;
- (d) non-monetary transactions;
- (e) records of assets and liabilities; and
- (f) any other matter that may be prescribed.

(Substituted by L.N. 40/2018)

(3) A controller of a non-profit organisation shall prepare and submit annually to the NPO Supervisor financial statements of the organisation's revenue and expenditure and shall ensure that the financial statements show and explain all the transactions of the non-profit organisation and disclose at any time its financial position.

(Inserted by L.N. 40/2018)

(4) The registered non-profit organisation shall submit—

- (a) financial statements, certified by an accountant, where the gross annual income of the non-profit organisation exceeds \$500,000; or
- (b) financial statements, in a form approved by the NPO Supervisor, where the gross annual income of the non-profit organisation does not exceed \$500,000.

(5) The financial statements required by subregulation (2) shall include—

- (a) a list of donors who have donated in excess of \$10,000 as a single donation or cumulatively, during the year; and

- (b) a breakdown of any funds raised, or donations received, and disbursed, by any association of person operating under and subject to the control of the non-profit organisation.

(6) The statements required by subregulation (2) shall be submitted, within six months after the end of the year or its financial year, unless prior written approval of an extension has been granted by the NPO Supervisor.

(7) A registered non-profit organisation shall pay to the NPO Supervisor a fee of \$100 upon submitting its financial statements.

Power to require an audit

15. (1) Where the NPO Supervisor has reasonable cause to suspect that a non-profit organisation is being used, or may in the future be used, for, or to assist in, terrorist financing or money laundering, it may, by written notice to the non-profit organisation, require an audit of its accounts to be investigated and audited by an independent auditor appointed by the non-profit organisation with the approval of the NPO Supervisor.

(2) An auditor appointed in accordance with subregulation (1) shall—

- (a) have the right of access to all books, accounts and documents relating to the non-profit organisation that are in the possession or under the control of the directors and persons acting or having concern in the management and administration of the non-profit organisation or of the property or income of the non-profit organisation or to which the directors and such persons have access;
- (b) be entitled to require from any person referred to in paragraph (a) or any past or present member, officer or servant of the non-profit organisation, such information and explanation as he thinks necessary for the performance of his duties; and
- (c) at the conclusion of, or during the progress of, the audit make such reports to the NPO Supervisor on the audit or the accounts or affairs of the non-profit organisation as the auditor thinks the case requires, and send a copy of the report to the persons referred to in paragraph (a).

(3) The expenses of an audit under subregulation (1), including the remuneration of the auditor, shall be paid by the non-profit organisation.

(4) A person commits an offence if he—

- (a) fails to afford an auditor any facility to which he is entitled under subregulation (2);
- (b) fails to make full disclosure to the NPO Supervisor of all material facts required to be disclosed under this Ordinance in respect of a non-profit organisation; or
- (c) knowingly makes—
 - (i) a false statement of a material fact; or
 - (ii) a statement containing information that is misleading in light of the circumstances in which it was made.

(5) A person who is convicted of an offence under subregulation (4) is liable on summary conviction to a fine of \$5,000 or to a term of imprisonment for six months, or to both.

PART V
ENFORCEMENT ACTION

NPO Supervisor may take disciplinary action

16. (1) For the purposes of this Part—

(a) “disciplinary violation” means a contravention of—

- (i) the requirement to keep records of the identity of the persons who control or direct the activities of the organisation, including as appropriate, senior officers, directors and trustees;
- (ii) the requirement to keep records of identity, credentials and good standing of beneficiaries and associate non-profit organisations;
- (iii) the requirement to keep a list of donors who have donated in excess of \$10,000 as a single donation or cumulatively, during the year;
- (iv) the requirement to keep financial records in accordance with regulation 14(2);

(Substituted by L.N. 40/2018)

(b) the imposition of an administrative penalty becomes final on the earliest of—

- (i) the payment by the non-profit organisation of the penalty;
- (ii) the date when, in accordance with regulation 17(5), the non-profit organisation is considered to have committed the disciplinary violation; or
- (iii) the dismissal of any appeal of the non-profit organisation, provided that the time for any further appeal has expired.

(2) The NPO Supervisor may take disciplinary action against a non-profit organisation if it is satisfied that the non-profit organisation has committed a disciplinary violation.

(3) The NPO Supervisor takes disciplinary action against a non-profit organisation by imposing an administrative penalty on it.

(4) The NPO Supervisor, in deciding whether to impose an administrative penalty on a non-profit organisation, shall take into account the following matters—

- (a) the nature and seriousness of the contravention;
- (b) whether the non-profit organisation has previously contravened these Regulations or any relevant legislation;
- (c) whether the contravention was caused by the negligence of the non-profit organisation;
- (d) the ability of the non-profit organisation to pay the penalty;
- (e) any gain resulting to the non-profit organisation as a result of the contravention; and
- (f) such other matters as the NPO Supervisor considers appropriate.

(Inserted by L.N. 40/2018)

(5) An administrative penalty imposed on a non-profit organisation shall be a penalty imposed on the controllers of the non-profit organisation.

(Inserted by L.N. 40/2018)

(6) The administrative penalty imposed on a non-profit organisation in respect of a disciplinary violation shall be a sum no greater than the maximum sum specified below—

The requirement to keep records of the identity of the persons who control or direct the activities of the organisation, including as appropriate, senior officers, directors and trustees	A maximum of \$50,000
The requirement to keep records of identity, credentials and good standing of beneficiaries and associate non-profit organisations	A maximum of \$50,000
The requirement to keep a list of donors who have donated in excess of \$10,000 as a single donation or cumulatively, during the year	A maximum of \$50,000
The requirement to keep financial records in accordance with regulation 14(2)	A maximum of \$50,000

(Substituted by L.N. 40/2018)

(7) A violation that is committed or continued on more than one day constitutes a separate violation for each day on which it is committed or continued.

(8) The NPO Supervisor shall not take disciplinary action against a non-profit organisation in respect of a disciplinary violation committed more than two years prior to the date upon which it sends a notice to the non-profit organisation under regulation 17.

(9) If the conduct or omission that constitutes a disciplinary violation also constitutes an offence, the taking of disciplinary action against a non-profit organisation does not prevent the non-profit organisation being also prosecuted for the offence.

Notice of intention to take disciplinary action

17. (1) If the NPO Supervisor intends to take disciplinary action against a non-profit organisation, it shall send a notice of its intention to the non-profit organisation which—

- (a) sets out the alleged disciplinary violation and the relevant facts surrounding the violation;
- (b) sets out the penalty it intends to impose for the violation; and
- (c) advises the non-profit organisation of its right to make written representations to the NPO Supervisor in accordance with subregulation (2).

(2) A non-profit organisation that receives a notice under subregulation (1) may, within twenty-eight days of the date upon which it receives the notice, send written representations to the NPO Supervisor disputing the facts of the alleged disciplinary violation or the administrative penalty or both.

Disciplinary action

18. (1) After the expiration of twenty-eight days from the date that the NPO Supervisor sent a notice under regulation 17 to a non-profit organisation, the NPO Supervisor may take disciplinary action against that non-profit organisation by sending it a penalty notice stating—

- (a) the disciplinary violation in respect of which the notice is issued;
- (b) the date on which notice of intention to take disciplinary action in respect of that violation was sent to the non-profit organisation;
- (c) the amount of the administrative penalty for the violation;
- (d) a date, not less than twenty-eight days after the date of the penalty notice, by which the non-profit organisation shall pay the penalty to the NPO Supervisor; and
- (e) that if the non-profit organisation does not pay the penalty or exercise its rights of appeal under section 176 of the Proceeds of Crime Ordinance, it will be considered to have committed the violation and that it is liable for the penalty set out in the notice.

(2) Before taking disciplinary action against a non-profit organisation under subregulation (1), the NPO Supervisor shall consider any written representations that it has received from the non-profit organisation and, where it receives such representations, it must provide reasons for the action that it takes.

(3) A non-profit organisation that receives a penalty notice under subregulation (1) shall pay the penalty stated to the NPO Supervisor on or before the date specified in the notice or appeal the notice under section 176 of the Proceeds of Crime Ordinance.

(4) If the non-profit organisation pays the administrative penalty, it is considered to have committed the violation and the disciplinary action is over.

(5) A non-profit organisation that neither pays the administrative penalty nor appeals the notice within twenty-eight days is considered to have committed the disciplinary violation and is liable for the penalty.

(6) If the NPO Supervisor imposes an administrative penalty on a non-profit organisation, the NPO Supervisor shall, after the imposition of the penalty has become final, advertise the imposition of the penalty by publication in the *Gazette*.

Recovery of administrative penalty

19. (1) An administrative penalty constitutes a debt to the NPO Supervisor and may be recovered in the court.

(2) The NPO Supervisor may, after the imposition of a penalty has become final, issue a certificate certifying the unpaid amount of any debt referred to in subregulation (1) and the registration of the certificate in the court has the same effect as a judgment of the court for a debt of the amount specified in the certificate together with the costs of registration.

PART VI
MISCELLANEOUS

Confidentiality

20. (1) A person shall keep confidential all information relating to a non-profit organisation which he has acquired in his capacity as an employee of the Financial Services Commission, except as required for an inquiry in respect of any matter under these Regulations or the Ordinance or on the order of a court of competent jurisdiction.

(2) A person who contravenes subregulation (1) commits an offence and is liable on summary conviction to a fine of \$10,000.

Offence, false and misleading information

21. A person who, with intent to deceive or for any purpose of these Regulations—

- (a) provides any information, makes any representation or submits any document or return that he or she knows to be false or materially misleading or does not believe to be true; or
- (b) recklessly provides any information, makes any representation or submits any document or return that is false or materially misleading,

commits an offence and is liable on summary conviction to a fine of \$50,000.

Non-applicability

22. These Regulations do not apply to a non-profit organisation that—

- (a) does not solicit funds from the general public or receive concession from the Government or any statutory body in the pursuit of its objects; and
- (b) has as its fiduciary, management body or other service provider a person that is regulated by the Financial Services Commission under the Trustees Licensing Ordinance, the Company Management (Licensing) Ordinance or any other relevant law.

