

**CRIME (MONEY LAUNDERING AND PROCEEDS)  
ACT 2007**

**Principal Act**

<b>Act. No. 1995-14</b>	<i>Commencement</i>	1.1.1996
	<i>Assent</i>	7.11.1995

Amending enactments	Relevant current provisions	Commencement date
Act. 2004-14	ss. 2(2A), (3)(a), 3(5), 5(4), 6(1) and (4), 8(1), (1)(f), (1)(h)-(o), 12(5), 14(1)(h) and (i), 14(3), 20(4), 21(4) and (5) and 45	17.3.2005
2007-37	ss. 1, 2(2A)(i), (2A)(a), (c), (3), (3)(b)(i), (4)(c)(i) & (5), 3(5), (5)(i), (7)(a) & (8), 5, 5A, Part III heading, 6(1), (2), (3) & (5), 7, 8(1)(a), (e) & (k), (2) & (3), 9, 10, 10A, 10B, 10C, 10D, 10E, 10F, 10G, 10H, 10I, 10J, 10K, 10L, 10M, 10N, 10O, 10P, 10Q, 10R, 11, 12, 13, 14, 15, 16, 17, 18(d), 19, 19A, 20(1), (2), (3), (5) & (6), 20A, 20B, 21, 23(6), 42, 44, Sch.1 & 2	20.12.2007
LN. 2010/079	ss. 6(1)(a) & 10P(9)	29.4.2010

**English sources:**

None

**EU Legislation/International Agreements involved:**

Directive 79/267/EEC  
Directive 91/308/EEC  
Directive 97/5/EC  
Directive 97/7/EC,  
Directive 2000/12/EC  
Directive 2000/46/EC  
Directive 2002/65/EC  
Directive 2002/83/EC  
Directive 2002/87/EC

Directive 2002/92/EC  
Directive 2003/71/EC  
Directive 2004/39/EC  
Directive 2004/109/EC  
Directive 2005/60/EC  
Directive 2006/48/EC  
Directive 2007/64/EC  
Regulation (EC) No. 974/98

**ARRANGEMENT OF SECTIONS**

Section

**PART I.**  
**PRELIMINARY.**

1. Title.

**PART II.**  
**MONEY LAUNDERING AND OTHER OFFENCES.**

2. Assisting another to retain the benefit of criminal conduct.
3. Acquisition, possession or use of property representing proceeds of criminal conduct.
4. Concealing or transferring proceeds of criminal conduct.
5. Tipping-off.
- 5A. Restriction on disclosure.

**PART III.**  
**MEASURES TO PREVENT THE USE OF THE FINANCIAL SYSTEM  
FOR PURPOSES OF MONEY LAUNDERING AND TERRORIST  
FINANCING.**

6. Interpretation.
7. Business relationships.
8. Relevant financial business.
9. *Repealed.*
10. *Repealed.*

*Customer Due Diligence*

- 10A. Meaning of customer due diligence measures.
- 10B. Application of customer due diligence measures.
- 10C. Ongoing monitoring.
- 10D. Timing of verification.
- 10E. Casinos.
- 10F. Requirement to cease transactions etc..
- 10G. Simplified due diligence.
- 10H. Enhanced customer due diligence and ongoing monitoring.
- 10I. Non face-to-face.
- 10J. Correspondent banking.
- 10K. Politically exposed persons.
- 10L. Branches and subsidiaries.
- 10M. Shell banks, anonymous accounts etc..
- 10N. Reliance.

- 10O. Directions where Financial Action Task Force applies counter-measures.

*Record-keeping, procedures and training*

- 10P. Record-keeping.  
10Q. Policies and procedures.  
10R. Training.  
11-17. *Repealed.*  
18. Internal reporting procedures.  
19. Supervisory authorities.  
19A. Duties of supervisory authorities.  
20. Supervisors, etc. to report evidence of money laundering.  
20A. Criminal offences.  
20B. Offences by bodies corporate, partnerships and unincorporated associations.  
21. *Repealed.*  
22. Revocation of the Drug Trafficking (Money Laundering) Regulations 1995.

**PART IV.**

**CONFISCATION OF THE PROCEEDS OF CRIMINAL CONDUCT.**

23. Confiscation orders.  
24. Making of confiscation orders.  
25. Postponed determinations.  
26. Statements, etc. relevant to making confiscation orders.  
27. Definition of principal terms used.  
28. Application of procedure for enforcing fines.  
29. Cases in which restraint orders and charging orders may be made.  
30. Restraint orders.  
31. Charging orders in respect of land, securities, etc.  
32. Charging orders; supplementary provisions.  
33. Realisation of property.  
34. Application of proceeds of realisation and other sums.  
35. Exercise of powers by Supreme Court or receiver.  
36. Variation of confiscation orders.  
37. Bankruptcy of defendant, etc.  
38. Winding up of company holding realisable property.  
39. Persons acting as insolvency practitioners.  
40. Receivers; supplementary provisions.  
41. Compensation.  
42. Enforcement of external orders.  
43. Registration of external confiscation orders.  
44. Interpretation.

**PART V  
GENERAL**

45. Regulations.

**SCHEDULE 1  
SCHEDULE 2**

**1995-14**

Crime (Money Laundering and Proceeds)

AN ACT TO MAKE PROVISION FOR THE CONFISCATION OF THE PROCEEDS OF CRIMINAL CONDUCT, OTHER THAN DRUG TRAFFICKING OFFENCES, AND ITS VALUE, TO MAKE PROVISION WITH RESPECT TO THE LAUNDERING OF THE PROCEEDS OF CRIMINAL CONDUCT AND TO TRANSFER THE EXISTING TRANSPOSITION OF COUNCIL DIRECTIVE 91/308/EEC FROM THE SUBSIDIARY TO THE PRIMARY NATIONAL LAW OF GIBRALTAR.

**PART I.**  
**PRELIMINARY.**

**Title.**

1. This Act may be cited as the Crime (Money Laundering and Proceeds) Act 2007.

**PART II.**  
**MONEY LAUNDERING AND OTHER OFFENCES.**

**Assisting another to retain the benefit of criminal conduct.**

2. (1) Subject to subsection (3), if a person enters into or is otherwise concerned in an arrangement whereby—

- (a) the retention or control by or on behalf of another (“A”) of A’s proceeds of criminal conduct is facilitated (whether by concealment, removal from the jurisdiction, transfer to nominees or otherwise); or
- (b) A’s proceeds of criminal conduct—
  - (i) are used to secure that funds are placed at A’s disposal; or
  - (ii) are used for A’s benefit to acquire property by way of investment,

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

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

(2A) Where a person undertakes relevant financial business in accordance with section 8 and that person –

- (a) knows, suspects or has reasonable grounds to suspect that another person is engaged in money laundering, or is attempting to launder money;
- (b) the information or other matter, on which that knowledge or suspicion is based came to his attention in the course of his trade, profession, business or employment; and
- (c) he does not disclose the information or other matter to the GFIU as soon as is reasonably practicable after it comes to his attention,

he is guilty of an offence.

(2B) A person is not guilty of an offence under subsection (2A) if–

- (a) that person is a notary, independent legal professional, auditor, external accountant or tax advisor, and
- (b) the information has been obtained on or received from one of their clients–
  - (i) in the course of ascertaining the legal position for their client; or
  - (ii) whilst performing the task of defending or representing that client in, or concerning judicial proceedings, including advice on instituting or avoiding proceedings,

whether such information is received or obtained before, during or after such proceedings.

(3) Where a person discloses to the GFIU a suspicion or belief that any funds or investments are derived from or used in connection with criminal conduct or discloses to the GFIU any matter on which a suspicion or belief is based–

- (a) the disclosure when made in good faith shall not be treated as a breach of any restriction upon the disclosure of information imposed by statute or otherwise; and
- (b) if he does any act in contravention of subsection (1) and the disclosure relates to the arrangement concerned, he does not commit an offence under this section if–

- (i) the disclosure is made before he does the act concerned and the act is done with the consent of the GFIU; or
  - (ii) the disclosure is made after he does the act, but is made on his initiative and as soon as it is reasonable for him to make it.
- (4) In proceedings against a person for an offence under this section, it is a defence to prove–
- (a) that he did not know or suspect that the arrangement related to any person’s proceeds of criminal conduct; or
  - (b) that he did not know or suspect that by the arrangement, the retention or control by or on behalf of A of any property was facilitated or, as the case may be, that by the arrangement any property was used, as mentioned in subsection (1); or
  - (c) that–
    - (i) he intended to disclose to the GFIU such a suspicion, belief or matter as is mentioned in subsection (3) in relation to the arrangement; but
    - (ii) there is reasonable excuse for his failure to make disclosure in accordance with subsection (3)(b).
- (5) In the case of a person who was in employment at the relevant time, subsections (3) and (4) shall have effect in relation to disclosures, and intended disclosures, to the appropriate person in accordance with the procedure established by his employer for the making of such disclosures as they have effect in relation to disclosures, and intended disclosures, to the GFIU.
- (6) A person guilty of an offence under this section shall be liable–
- (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale or to both; or
  - (b) on conviction on indictment, to imprisonment for a term not exceeding fourteen years or to a fine or to both.
- (7) In this Part:

“confiscation order” has the meaning given to it by section 23(7)(a);

“criminal conduct” means conduct which–

- (a) if it occurs in Gibraltar constitutes an indictable offence other than a drug trafficking offence; or
- (b) if it does not occur in Gibraltar would constitute such an indictable offence if it had occurred in Gibraltar;

“property” has the meaning given to it by section 44(1).

(8) In this Part and in Part III–

“Gibraltar Financial Intelligence Unit” and “GFIU” means that body comprised of police officers and customs officers with responsibility, inter alia, for receiving, processing, analysing and disseminating information relating to suspect financial transactions;

“the Money Laundering Directive” means Council Directive 2005/60/EC on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, as the same may from time to time be amended.

**Acquisition, possession or use of property representing proceeds of criminal conduct.**

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

(2) It is a defence to a charge of committing an offence under this section that the person charged acquired or used the property or had possession of it for adequate consideration.

(3) For the purposes of subsection (2)–

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

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

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

- (a) the disclosure when made in good faith shall not be treated as a breach of any restriction upon the disclosure of information imposed by statute or otherwise; and
- (b) if he does any act in relation to that property in contravention of subsection (1), he does not commit an offence under this section if—
  - (i) the disclosure is made before he does the act concerned and the act is done with the consent of the GFIU, or
  - (ii) the disclosure is made after he does the act, but on his initiative and as soon as it is reasonable for him to make it.

(6) For the purposes of this section, having possession of any property shall be taken to be doing an act in relation to it.

(7) In proceedings against a person for an offence under this section, it is a defence to prove that—

- (a) he intended to disclose to the GFIU such a suspicion, belief or matter as is mentioned in subsection (5), but
- (b) there is reasonable excuse for his failure to make the disclosure in accordance with paragraph (b) of that subsection.

(8) In the case of a person who was in employment at the relevant time, subsections (5) and (7) shall have effect in relation to disclosures, and intended disclosures, to the appropriate person in accordance with the procedure established by his employer for the making of such disclosures as they have effect in relation to disclosures, and intended disclosures, to the GFIU.

(9) A person guilty of an offence under this section is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale or to both, or
- (b) on conviction on indictment, to imprisonment for a term not exceeding fourteen years or to a fine or to both.

(10) No Police or Customs Officer or other person shall be guilty of an offence under this section 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 Part or Part IV or of any other enactment relating to criminal conduct or the proceeds of such conduct.

**Concealing or transferring proceeds of criminal conduct.**

4. (1) A person is guilty of an offence if he—

- (a) conceals or disguises any property which is, or in whole or in part directly or indirectly represents, his proceeds of criminal conduct; or
- (b) converts or transfers that property or removes it from the jurisdiction,

for the purpose of avoiding prosecution for an offence to which this Part applies or the making or enforcement in his case of a confiscation order.

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

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

for the purpose of assisting any person to avoid prosecution for an offence to which this Part applies or the making or enforcement in his case of a confiscation order.

(3) In subsections (1) and (2) the references to concealing or disguising any property include references to concealing or disguising its nature, source, location, disposition, movement or ownership of 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 not exceeding six months or to a fine not exceeding level 5 on the standard scale or to both, or
- (b) on conviction on indictment, to imprisonment for a term not exceeding fourteen years or to a fine or to both.

## **Tipping-off.**

5.(1) A person is guilty of an offence if—

- (a) he discloses any matter within subsection (2); and
- (b) the information on which the disclosure is based came to him in the course of a business or activity to which section 8(1) applies.

(2) The matters are—

- (a) that either he or another person has made a disclosure under this Part—
  - (i) to a police officer;
  - (ii) to a customs officer;
  - (iii) the appropriate person under section 18; or
  - (iv) to the GFIU,

of information that came to him in the course of a business or activity listed in section 8(1); or

- (b) that an investigation into allegations that an offence under this Part has been committed is being contemplated or is being carried out.

(3) Nothing in subsections (1) and (2) makes it an offence for a notary, independent legal professional, auditor, external accountant or tax advisor to disclose any information or other matter—

- (a) to a client or his representative in connection with the giving by the notary, independent legal professional, auditor, external accountant or tax advisor of advice in connection with ascertaining the legal position for their client or performing their task of defending or representing that client in, or concerning, judicial proceedings, including advice on instituting or avoiding proceedings, whether such information is received or obtained before, during or after such proceedings; or
- (b) to any person, in contemplation of, or in connection with, ascertaining the legal position for their client or performing their task of defending or representing that client in, or concerning, judicial proceedings, including advice on

## Crime (Money Laundering and Proceeds)

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instituting or avoiding proceedings, whether such information is received or obtained before during or after such proceedings.

(4) Subsection (2) does not apply in relation to any information or other matter which is disclosed with a view to furthering any criminal purpose.

(5) A person shall not incur any liability under this section where the disclosure is made by a credit or financial institution belonging to the same group as defined by article 2(12) of Directive 2002/87/EC and—

- (a) the disclosure is made to an institution that is subject to the requirements of the Money Laundering Directive; or
- (b) the disclosure is made to an institution in a State or Territory other than an EEA State or Territory which imposes requirements equivalent to those laid down in the Money Laundering Directive and is supervised for compliance with those requirements.

(6) Nothing in this section shall prevent a disclosure by a person to whom article 2(1)(3)(a) and (b) of the Money Laundering Directive applies (an auditor, external accountant, tax advisor, notary or independent legal professional) if—

- (a) the disclosure is to another such person;
- (b) both the person making the disclosure and the person to whom it is made perform their professional activities in an EEA state or territory or in a country or territory which imposes requirements that are equivalent to the Money Laundering Directive; and
- (c) those persons perform their professional activities within different undertakings that share common ownership, management or control.

(7) Nothing in this section shall prevent the disclosure of information when this is done for the purposes of preventing money laundering and the following conditions are satisfied—

- (a) the disclosure is between a person to whom article 2(1)(1), (2) and (3)(a) and (b) of the Money Laundering Directive applies and another person from the same professional category;
- (b) the person to whom the disclosure is made is situated within the EEA or if outside the EEA, in a State or Territory which imposes requirements that are equivalent to the Money Laundering Directive,

- (c) the disclosure relates to the same customer and the same transaction; and
- (d) the person making the information and the person receiving it are subject to equivalent duties of professional confidentiality and protection of personal data (within the meaning of section 2 of the Data Protection Act 2004).

(8) A person shall not be guilty of an offence under this section where he makes a disclosure to his client and the purpose of that disclosure was to seek to dissuade the client from engaging in criminal activity.

(9) In this section “money laundering” means–

- (a) doing any act which constitutes an offence under section 2, 3 or 4;
- (b) doing any act which constitutes an offence under sections 5, 6, 7 or 8 of the Terrorism Act 2005,
- (c) doing any act which constitutes an offence under any other enactment that applies in Gibraltar and that offence relates to terrorism or the financing of terrorism,

or in the case of an act done otherwise than in Gibraltar, would constitute such an offence if done in Gibraltar.

(10) For the purposes of subsection (9), having possession of any property shall be taken to be doing an act in relation to it.

(11) A person guilty of an offence under this section shall be liable–

- (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale or to both, or
- (b) on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine or to both.

(12) No police or customs officer or other person shall be guilty of an offence under this section 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 Act or of any other enactment relating to an offence to which this Part applies.

### **Restriction on disclosure.**

5A.(1) Where the Commission of the European Communities adopts a decision pursuant to article 40(4) of the Money Laundering Directive, the Minister may, by notice in the Gazette, prohibit the disclosure of information, by persons subject to the provisions of this Act, to any person who is situated in the State or Territory to which the notice relates.

(2) A person who contrary to subsection (1) makes a disclosure concerning a State or Territory in respect of which the Minister has notified under subsection (1) is guilty of an offence and is liable-

- (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale or to both; or
- (b) on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine or to both.”.

### PART III.

#### MEASURES TO PREVENT THE USE OF THE FINANCIAL SYSTEM FOR PURPOSES OF MONEY LAUNDERING AND TERRORIST FINANCING.

#### **Interpretation.**

6. (1) In this Part-

“applicant for business” means a person seeking to form a business relationship, or carry out a one-off transaction, with a person who is carrying out relevant financial business in Gibraltar;

“the Authority” has the same meaning as in the Financial Services (Investment and Fiduciary Services) Act;

“Banking Supervisor” means the person appointed in accordance with section 13 of the Financial Services (Banking) Act<sup>1</sup>;

“beneficial owner” has the same meaning as in Article 3(6) of the Money Laundering Directive;

“business relationship” has the meaning given by section 7;

“Commissioner of Banking” means a person appointed in accordance with section 12 of the Financial Services (Banking) Act<sup>1</sup>;

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<sup>1</sup> 1992-11

<sup>1</sup> 1992-11

“Commissioner of Insurance” means a person appointed in accordance with section 7 of the Insurance Companies Act 1987<sup>2</sup>;

“Consolidated Banking Directive” means Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions;

“credit institution” means a credit institution, as defined in the first subparagraph of Article 1(1) of Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions, including branches within the meaning of Article 1(3) of that Directive located in the Community of credit institutions having their head offices inside or outside the Community;

“Customs Officer” has the same meaning as in the Imports and Exports Act 1986<sup>3</sup>;

“Electronic Money Directive” means Directive 2000/46/EC on the taking up and pursuit and prudential supervision of the business of electronic money institutions;

“European institution”, “European authorised institution” and “European subsidiary institution” have the same meanings as in the Financial Services (Banking) Act;

“financial institution” means—

- (a) an undertaking other than a credit institution which carries out one or more of the activities listed in paragraphs 2 to 12 and 14 of Schedule I of the Financial Services (Banking) Act, including the activities of currency exchange offices (bureaux de change);
- (b) an insurance company duly authorised in accordance with Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance, insofar as it carries out activities covered by that Directive;
- (c) an investment firm as defined in point 1 of Article 4(1) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments;
- (d) a collective investment undertaking marketing its units or shares;

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<sup>2</sup> 1987-10

<sup>3</sup> 1986-21

- (e) an insurance intermediary as defined in Article 2(5) of Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation, with the exception of intermediaries as mentioned in Article 2(7) of that Directive, when they act in respect of life insurance and other investment related services;
- (f) branches, when located in the Community, of financial institutions as referred to in points (a) to (e), whose head offices are inside or outside the Community;

“Financial Services Commission” means the Financial Services Commission established under section 3 of the Financial Services Commission Act 2007;

“home regulated activity”, in relation to a European institution means any activity listed in the Annex I to the Consolidated Banking Directive–

- (a) in relation to which an authority in its home State has regulatory functions; and
- (b) which in the case of a European subsidiary institution, it is carrying on in its home State;

“insurance business” means long term business within the meaning of Council Directive 79/267/EEC;

“Insurance Supervisor” means a person appointed in accordance with section 8 of the Insurance Companies Act 1987<sup>2</sup>;

”Minister” means the Minister with responsibility for finance;

“money service business” means an undertaking which by way of business operates a currency exchange office, transmits money (or any representations of monetary value) by any means or cashes cheques which are made payable to customers;

“Police Officer” has the same meaning as in the Police Act 2006<sup>5</sup>;

“regulated market”–

- (a) within the EEA, has the meaning given by point 14 of Article 4(1) of Directive 2004/39/EC on markets in financial instruments; and

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<sup>5</sup> 2006-20

- (b) outside the EEA, means a regulated financial market which subjects companies whose securities are admitted to trading to disclosure obligations which are contained in international standards and are equivalent to the specified disclosure obligations;

“relevant financial business” has the meaning given by section 8;

“Savings Bank” means the Gibraltar Savings Bank constituted under section 3 of the Savings Bank Act<sup>6</sup>;

“the specified disclosure obligations” means disclosure requirements consistent with–

- (a) Article 6(1) to (4) of Directive 2003/6/EC on insider dealing and market manipulation;
- (b) Articles 3, 5, 7, 8, 10, 14 and 16 of Directive 2003/71/EC on the prospectuses to be published when securities are offered to the public or admitted to trading;
- (c) Articles 4 to 6, 14, 16 to 19 and 30 of Directive 2004/109/EC relating to the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market; or
- (d) Community legislation made under the provisions mentioned in paragraphs (a) to (c);

“supervisory authority” has the meaning given by section 19.

(2) In this Part “euro” means the currency unit as defined in Council Regulation (EC) No. 974/98 on the introduction of the euro.

(3) In this Part, except in so far as the context otherwise requires, “money laundering” means doing any act which constitutes an offence–

- (a) under section 2, 3 or 4 of this Act;
- (b) section 54, 55 or 56 of the Drug Trafficking Offences Act, 1995<sup>13</sup>;
- (c) doing any act which constitutes an offence under sections 5, 6, 7 or 8 of the Terrorism Act 2005<sup>14</sup>;

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<sup>6</sup> 1935-11

<sup>13</sup> 1995-06

- (d) doing any act which constitutes an offence under any other enactment that applies in Gibraltar and that offence relates to terrorism or the financing of terrorism,

or in the case of an act done outside Gibraltar would constitute such an offence under that Act if done in Gibraltar.

(4) *Deleted.*

(5) For the purposes of this section, a business relationship formed by any person acting in the course of relevant financial business is an established business relationship where that person has through the application of customer due diligence measures obtained, satisfactory evidence of the identity of the person who, in relation to the formation of that business relationship, was the applicant for business.

**Business relationships.**

7. In this Part “business relationship” means a business, professional or commercial relationship between a relevant financial business and a customer, which is expected by the relevant financial business, at the time when contact is established, to have an element of duration.

**Relevant financial business.**

8. (1) For the purposes of this Part, “relevant financial business” means, subject to subsection (2), the business of engaging in one or more of the following businesses or activities –

- (a) electronic money issuer or deposit-taking business carried on by a person who is for the time being an authorised institution under the Banking Act<sup>1</sup>;
- (b) *Deleted*
- (c) business of the Savings Bank;
- (d) any home regulated activity carried on by a European institution;
- (e) investment business within the meaning of the Financial Services (Investment and Fiduciary Services) Act<sup>8</sup>;

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<sup>14</sup> 2005-43

<sup>1</sup> 1992-11

<sup>8</sup> 1989-47

- (f) any of the activities in points 1 to 12 or 14 of the Annex I to the Consolidated Banking Directive other than an activity falling within paragraphs (a) to (e);
- (g) insurance business carried on by a person who has received official authorisation pursuant to Article 6 or 27 of the First Life Directive;
- (h) auditors, external accountants and tax advisors;
- (i) real estate agents;
- (j) notaries and other independent legal professionals, when they participate whether—
  - (i) by assisting in the planning or execution of transactions for their client concerning the—
    - (A) buying and selling of real property or business entities;
    - (B) managing of client money, securities or other assets;
    - (C) opening or management of bank, savings or securities accounts; or
  - (ii) by acting on behalf of and for their client in any financial or real estate transaction;
- (k) controlled activity other than a general insurance intermediary under the Financial Services (Investment and Fiduciary Services) Act<sup>8</sup>;
- (l) dealers in all high value goods whenever payment is made in cash and in an amount of 15,000 euro or more;
- (m) casinos;
- (n) currency exchange offices / bureaux de change;
- (o) money transmission / remittance offices.

(2) A business is not relevant financial business in so far as it consists of activity in respect of which a person would require authorisation under the Financial Services (Investment and Fiduciary Services) Act if (disregarding

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<sup>8</sup> 1989-47

for this purpose paragraph (h) of Part I of Schedule 4 to that Act) he were not an exempt person by virtue of section 4 of and Schedule 4 to that Act.

(3) The Minister may by regulations add to, delete or otherwise amend the list of businesses or activities set out in section 8(1).

(4) In this section—

“deposit taking business” has the same meaning as in the Financial Services (Banking) Act;

“the First Life Directive” means the First Council Directive on the Coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct life assurance (Council Directive 79/267/EEC).

9. *Repealed.*

#### *Customer Due Diligence*

#### **Meaning of customer due diligence measures.**

10A. “Customer due diligence measures” means—

- (a) identifying the customer and verifying the customer’s identity on the basis of documents, data or information obtained from a reliable and independent source;
- (b) identifying, where there is a beneficial owner who is not the customer, the beneficial owner and taking adequate measures, on a risk-sensitive basis, to verify his identity so that the relevant financial business is satisfied that it knows who the beneficial owner is, including, in the case of a legal person, trust or similar legal arrangement, measures to understand the ownership and control structure of the person, trust or arrangement; and
- (c) obtaining information on the purpose and intended nature of the business relationship.

#### **Application of customer due diligence measures.**

10B.(1) Subject to sections 10D, 10E, 10G to 10K, 10M(4) and 10N, a relevant financial business must apply customer due diligence measures when it—

- (a) establishes a business relationship;

- (b) carries out an occasional transaction amounting to 15,000 euro or more, whether the transaction is carried out in a single operation or in several operations which appear to be linked;
  - (c) suspects money laundering or terrorist financing;
  - (d) doubts the veracity or adequacy of documents, data or information previously obtained for the purposes of identification or verification.
- (2) Subject to section 10M(4), a relevant financial business must also apply customer due diligence measures at other appropriate times to existing customers on a risk-sensitive basis.
- (3) A relevant financial business must–
- (a) determine the extent of customer due diligence measures on a risk-sensitive basis depending on the type of customer, business relationship, product or transaction; and
  - (b) be able to demonstrate to his supervisory authority that the extent of the measures is appropriate in view of the risks of money laundering and terrorist financing.
- (4) Where–
- (a) a relevant financial business is required to apply customer due diligence measures in the case of a trust, legal entity (other than a body corporate) or a legal arrangement (other than a trust); and
  - (b) the class of persons in whose main interest the trust, entity or arrangement is set up or operates is identified as a beneficial owner, the relevant financial business is not required to identify all the members of the class.

### **Ongoing monitoring.**

10C.(1) A relevant financial business must conduct ongoing monitoring of a business relationship.

(2) “Ongoing monitoring” of a business relationship means the scrutiny of transactions undertaken throughout the course of the relationship (including, where necessary, the source of funds) to ensure that the transactions are consistent with the relevant financial business’s or person’s knowledge of the customer, his business and risk profile and keeping the documents, data or information obtained for the purpose of applying customer due diligence measures up-to-date.

(3) Section 10B(3) applies to the duty to conduct ongoing monitoring under subsection (1) as it applies to customer due diligence measures.

**Timing of verification.**

10D.(1) This section applies in respect of the duty under section 10B(1)(a) and (b) to apply the customer due diligence measures referred to in section 10A(a) and (b).

(2) Subject to subsection (3) to (5) and section 10E, a relevant financial business must verify the identity of the customer (and any beneficial owner) before the establishment of a business relationship or the carrying out of an occasional transaction.

(3) Such verification may be completed during the establishment of a business relationship if–

- (a) this is necessary not to interrupt the normal conduct of business; and
- (b) there is little risk of money laundering or terrorist financing occurring, provided that the verification is completed as soon as practicable after contact is first established.

(4) The verification of the identity of the beneficiary under a life insurance policy may take place after the business relationship has been established provided that it takes place at or before the time of payout or at or before the time the beneficiary exercises a right vested under the policy.

(5) 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–

- (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), before verification has been completed.

**Casinos.**

10E.(1) A casino must establish and verify the identity of all customers who purchase or exchange gambling chips with a value of 2,000 euro or more.

(2) If the casino is subject to state supervision it shall be deemed to have complied with the customer due diligence requirements if it registers,

identifies and verifies the identity of the customer immediately on or before entry, regardless of the number of the gambling chips purchased.

### **Requirement to cease transactions etc..**

10F.(1) Where, in relation to any customer, a relevant financial business is unable to apply customer due diligence measures in accordance with the provisions of this Part, it—

- (a) must not carry out a transaction with or for the customer through a bank account;
- (b) must not establish a business relationship or carry out an occasional transaction with the customer;
- (c) must terminate any existing business relationship with the customer;
- (d) must consider whether he is required to make a disclosure to the GFIU.

(2) Subsection (1) does not apply to notaries, independent members of professions which are legally recognised and controlled, auditors and tax advisors who are in the course of ascertaining the legal position for their client or performing the task of defending or representing that client in, or concerning, legal proceedings, including advice on the institution or avoidance of proceedings.

### **Simplified due diligence.**

10G.(1) A relevant financial business is not required to apply customer due diligence measures in the circumstances mentioned in section 10B(1)(a), (b) or (d) where he has reasonable grounds for believing that the customer, transaction or product related to such transaction, falls within any of the following subsections.

- (2) The customer is—
  - (a) a credit or financial institution which is subject to the requirements of the money laundering directive; or
  - (b) a credit or financial institution (or equivalent institution) which—
    - (i) is situated in a non-EEA State which imposes requirements equivalent to those laid down in the money laundering directive; and

- (ii) is supervised for compliance with those requirements.
- (3) The customer is a company whose securities are listed on a regulated market subject to specified disclosure obligations.
- (4) The customer is an independent legal professional and the product is an account into which monies are pooled, provided that—
  - (a) where the pooled account is held in a non-EEA State or Territory—
    - (i) that State or Territory imposes requirements to combat money laundering and terrorist financing which are consistent with international standards; and
    - (ii) the independent legal professional is supervised in that State or Territory for compliance with those requirements; and
  - (b) information on the identity of the persons on whose behalf monies are held in the pooled account is available, on request, to the institution which acts as a depository institution for the account.
- (5) The customer is a public authority in Gibraltar.
- (6) The customer is a public authority which fulfils all the conditions set out in paragraph 1 of Schedule 1.
- (7) The product is—
  - (a) a life insurance contract where the annual premium is no more than 1,000 euro or where a single premium of no more than 2,500 euro is paid;
  - (b) an insurance contract for the purposes of a pension scheme where the contract contains no surrender clause and cannot be used as collateral;
  - (c) a pension, superannuation or similar scheme which provides retirement benefits to employees, where contributions are made by an employer or by way of deduction from an employee's wages and the scheme rules do not permit the assignment of a member's interest under the scheme; or
  - (d) electronic money, within the meaning of Article 1(3)(b) of the electronic money directive, where—

- (i) if the device cannot be recharged, the maximum amount stored in the device is no more than 150 euro; or
- (ii) if the device can be recharged, a limit of 2,500 euro is imposed on the total amount transacted in a calendar year, except when an amount of 1,000 euro or more is redeemed in the same calendar year by the bearer (within the meaning of Article 3 of the electronic money directive).

(8) The product and any transaction related to such product fulfils all the conditions set out in paragraph 2 of Schedule 1.

### **Enhanced customer due diligence and ongoing monitoring.**

10H. A relevant financial business must apply on a risk-sensitive basis enhanced customer due diligence measures and enhanced ongoing monitoring–

- (a) in accordance with sections 10I to 10K;
- (b) in any other situation which by its nature can present a higher risk of money laundering or terrorist financing.

### **Non face-to-face.**

10I. here the customer has not been physically present for identification purposes, a relevant financial business must take specific and adequate measures to compensate for the higher risk, for example, by applying one or more of the following measures–

- (a) ensuring that the customer's identity is established by additional documents, data or information;
- (b) supplementary measures to verify or certify the documents supplied, or requiring confirmatory certification by a credit or financial institution which is subject to the Money Laundering Directive;
- (c) ensuring that the first payment is carried out through an account opened in the customer's name with a credit institution.

### **Correspondent banking.**

10J. credit institution (“the correspondent”) which has or proposes to have a correspondent banking relationship with a respondent institution (“the respondent”) from a non-EEA State or Territory must–

- (a) gather sufficient information about the respondent to understand fully the nature of its business;
- (b) determine from publicly-available information the reputation of the respondent and the quality of its supervision;
- (c) assess the respondent's anti-money laundering and anti-terrorist financing controls;
- (d) obtain approval from senior management before establishing a new correspondent banking relationship;
- (e) document the respective responsibilities of the respondent and correspondent; and
- (f) be satisfied that, in respect of those of the respondent's customers who have direct access to accounts of the correspondent, the respondent-
  - (i) has verified the identity of, and conducts ongoing monitoring in respect of, such customers; and
  - (ii) is able to provide to the correspondent, upon request, the documents, data or information obtained when applying customer due diligence measures and ongoing monitoring.

**Politically exposed persons.**

10K.(1) relevant financial business that proposes to have a business relationship or carry out an occasional transaction with a politically exposed person must—

- (a) have approval from senior management for establishing the business relationship with that person;
- (b) take adequate measures to establish the source of wealth and source of funds which are involved in the proposed business relationship or occasional transaction; and
- (c) where the business relationship is entered into, conduct enhanced ongoing monitoring of the relationship.

(2) In subsection (1), “a politically exposed person” means a person who is—

- (a) an individual who is or has, at any time in the preceding year, been entrusted with a prominent public function by—
  - (i) another State or territory;
  - (ii) a Community institution; or
  - (iii) an international body,  
  
including a person who falls in any of the categories listed in paragraph 3(1)(a) of Schedule 1;
- (b) an immediate family member of a person referred to in paragraph (a), including a person who falls in any of the categories listed in paragraph 3(1)(c) of Schedule 1; or
- (c) a known close associate of a person referred to in paragraph (a), including a person who falls in either of the categories listed in paragraph 3(1)(d) of Schedule 1.

(3) For the purpose of deciding whether a person is a known close associate of a person referred to in subsection (2)(a), a relevant financial business need only have regard to information which is in its possession or is publicly known.

## **Branches and subsidiaries.**

10L.(1) credit or financial institution must require its branches and subsidiary undertakings which are located in a non-EEA State or Territory to apply, to the extent permitted by the law of that State or Territory, measures at least equivalent to those set out in this Act with regard to customer due diligence measures, ongoing monitoring and record-keeping.

(2) Where the law of a non-EEA State or Territory does not permit the application of such equivalent measures by the branch or subsidiary undertaking located in that State or Territory, the credit or financial institution must—

- (a) inform its supervisory authority accordingly; and
- (b) take additional measures to handle effectively the risk of money laundering and terrorist financing.

(3) In this section “subsidiary undertaking” except in relation to an incorporated friendly society, has the meaning given by section 2 of the Companies (Consolidated Accounts) Act 1999 and, in relation to a body corporate in or formed under the law of an EEA State other than the law of Gibraltar, includes an undertaking which is a subsidiary undertaking within

the meaning of any rule of law in force in that State for purposes connected with implementation of the European Council Seventh Company Law Directive 83/349/EEC on consolidated accounts.

**Shell banks, anonymous accounts etc..**

10M.(1) A credit institution must not enter into, or continue, a correspondent banking relationship with a shell bank.

(2) A credit institution must take appropriate measures to ensure that it does not enter into, or continue, a corresponding banking relationship with a bank which is known to permit its accounts to be used by a shell bank.

(3) A credit or financial institution carrying on business in Gibraltar must not set up an anonymous account or an anonymous passbook for any new or existing customer.

(4) As soon as reasonably practicable on or after 15th December 2007 all credit and financial institutions carrying on business in Gibraltar must apply customer due diligence measures to, and conduct ongoing monitoring of, all anonymous accounts and passbooks in existence on that date and in any event before such accounts or passbooks are used.

(5) A “shell bank” means a credit institution, or an institution engaged in equivalent activities, incorporated in a jurisdiction in which it has no physical presence involving meaningful decision making and management, and which is unaffiliated with a regulated financial group.

**Reliance.**

10N. (1) A relevant financial business may rely on a person who falls within subsection (2) (or who the relevant financial business has reasonable grounds to believe falls within subsection (2)) to apply any customer due diligence measures provided that—

- (a) the other person consents to being relied on; and
- (b) notwithstanding the relevant person's reliance on the other person, the relevant person remains liable for any failure to apply such measures.

(2) The persons are—

- (a) a credit or financial institution which is an authorised person;
- (b) an auditor, insolvency practitioner, external accountant, tax adviser or independent legal professional supervised for the

purposes of this Act by one of the bodies listed in Part 1 of Schedule 2;

- (c) a person who carries on business in another EEA state who is—
  - (i) a credit or financial institution, auditor, insolvency practitioner, external accountant, tax adviser or independent legal professional;
  - (ii) subject to mandatory professional registration recognised by law; and
  - (iii) supervised for compliance with the requirements laid down in the money laundering directive in accordance with section 2 of Chapter V of that directive; or
- (d) a person who carries on business in a non-EEA state who is—
  - (i) a credit or financial institution (or equivalent institution), auditor, insolvency practitioner, external accountant, tax adviser or independent legal professional;
  - (ii) subject to mandatory professional registration recognised by law;
  - (iii) subject to requirements equivalent to those laid down in the Money Laundering Directive; and
  - (iv) supervised for compliance with those requirements in a manner equivalent to section 2 of Chapter V of the Money Laundering Directive.

(3) In subsection (2)(c)(i) and (d)(i), "auditor" and "insolvency practitioner" includes a person situated in another EEA state or a non-EEA state who provides services equivalent to the services provided by an auditor or insolvency practitioner.

(4) Nothing in this section prevents a relevant financial business applying customer due diligence measures by means of an outsourcing service provider or agent provided that the relevant person remains liable for any failure to apply such measures.

(5) In this section, "financial institution" excludes money service businesses.

**Directions where Financial Action Task Force applies counter-measures.**

10O.(1) The Minister may direct any relevant financial business—

- (a) not to enter into a business relationship;
- (b) not to carry out an occasional transaction; or
- (c) not to proceed any further with a business relationship or occasional transaction,

with a person who is situated or incorporated in a non-EEA State or Territory to which the Financial Action Task Force has decided to apply counter-measures.

- (2) Where the Minister issues a direction under subsection (1) he shall cause that direction to be published in the Gazette.

*Record-keeping, procedures and training*

**Record-keeping.**

10P.(1) Subject to subsection (4), a relevant financial business must keep the records specified in subsection (2) for at least the period specified in subsection (3).

- (2) The records are—
  - (a) a copy of, or the references to, the evidence of the customer's identity obtained pursuant to section 10B, 10C, 10E, 10H, 10I, 10J, 10K or 10M(4);
  - (b) the supporting records (consisting of the original documents or copies) in respect of a business relationship or occasional transaction which is the subject of customer due diligence measures or ongoing monitoring.
- (3) The period is five years beginning on—
  - (a) in the case of the records specified in subsection (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 subsection (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.

(4) A relevant financial business who is relied on by another person must keep the records specified in subsection (2)(a) for five years beginning on the date on which he is relied on for the purposes of sections 10B, 10E, 10H, 10I, 10J, 10K or 10M(4) in relation to any business relationship or occasional transaction.

(5) A person referred to in section 10N(2)(a) or (b) who is relied on by a relevant financial business must, if requested by the person relying on him within the period referred to in subsection (4)–

- (a) as soon as reasonably practicable make available to the person who is relying on him any information about the customer (and any beneficial owner) which he obtained when applying customer due diligence measures; and
- (b) as soon as reasonably practicable forward to the person who is relying on him copies of any identification and verification data and other relevant documents on the identity of the customer (and any beneficial owner) which he obtained when applying those measures.

(6) A relevant financial business who relies on a person referred to in section 10N(2)(c) or (d) to apply customer due diligence measures must take steps to ensure that the third party will, if requested by the relevant financial business within the period referred to in subsection (4)–

- (a) as soon as reasonably practicable make available to him any information about the customer (and any beneficial owner) which the third party obtained when applying customer due diligence measures; and
- (b) as soon as reasonably practicable forward to him copies of any identification and verification data and other relevant documents on the identity of the customer (and any beneficial owner) which the third party obtained when applying those measures.

(7) Subsection (5) and (6) do not apply where a relevant financial business applies customer due diligence measures by means of an outsourcing service provider or agent.

(8) For the purposes of this section a person relies on another person when he does so in accordance with section 10N(1).

(9) Institutions and persons referred to in section 8(1) situated in Gibraltar shall recognise and accept the outcome of the customer due diligence requirements laid down in this Act and carried out in accordance with this Act by an institution referred to in section 8(1) in Gibraltar or another EEA State and meeting the requirements laid down in subsections (10) and (11) even if, in the case of institutions situated in another EEA State, the documents or data on which these requirements have been based are different to those required in Gibraltar.

**Policies and procedures.**

10Q.(1) A relevant financial business must establish and maintain appropriate and risk-sensitive policies and procedures relating to—

- (a) customer due diligence measures and ongoing monitoring;
- (b) reporting;
- (c) record-keeping;
- (d) internal control;
- (e) risk assessment and management;
- (f) the monitoring and management of compliance with, and the internal communication of, such policies and procedures, in order to prevent activities related to money laundering and terrorist financing.

(2) The policies and procedures referred to in subsection (1) include policies and procedures—

- (a) which provide for 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 relevant financial business regards as particularly likely by its nature to be related to money laundering or terrorist financing;
- (b) which specify the taking of additional measures, where appropriate, to prevent the use for money laundering or terrorist financing of products and transactions which might favour anonymity;

- (c) to determine whether a customer is a politically exposed person;
- (d) under which–
  - (i) an individual in the relevant financial business's organisation is the appropriate person nominated to receive disclosures under section 18;
  - (ii) anyone in the organisation to whom information or other matter comes in the course of the business as a result of which he knows or suspects or has reasonable grounds for knowing or suspecting that a person is engaged in money laundering or terrorist financing is required to comply with Part II of this Act;
  - (iii) where a disclosure is made to the appropriate person, he must consider it in the light of any relevant information which is available to the relevant financial business and determine whether it gives rise to knowledge or suspicion or reasonable grounds for knowledge or suspicion that a person is engaged in money laundering or terrorist financing.

(3) Subsection (2)(d) does not apply where the relevant financial business is an individual who neither employs nor acts in association with any other person.

(4) A credit or financial institution must establish and maintain systems which enable it to respond fully and rapidly to enquiries from the GFIU as to–

- (a) whether it maintains, or has maintained during the previous five years, a business relationship with any person; and
- (b) the nature of that relationship.

(5) A credit or financial institution must communicate where relevant the policies and procedures which it establishes and maintains in accordance with this section to its branches and subsidiary undertakings which are located outside Gibraltar.

(6) In this section–

“politically exposed person” has the same meaning as in section 10K(2);

“subsidiary undertaking” has the same meaning as in section 10L.

**Training.**

10R. A relevant financial business must take appropriate measures so that all relevant employees of his are–

- (a) made aware of the law relating to money laundering and terrorist financing; and
- (b) regularly given training in how to recognise and deal with transactions and other activities which may be related to money laundering or terrorist financing.

11-17. *Repealed.*

**Internal reporting procedures.**

18. Internal reporting procedures maintained by a person are in accordance with this section if they include provision–

- (a) identifying a person (“the appropriate person”) to whom a report is to be made of any information or other matter which comes to the attention of a person handling relevant financial business and which, in the opinion of the person handling that business, gives rise to a knowledge or suspicion that another person is engaged in money laundering;
- (b) requiring that any such report be considered in the light of all other relevant information by the appropriate person, or by another designated person, for the purpose of determining whether or not the information or other matter contained in the report does give rise to such a knowledge or suspicion;
- (c) for any person charged with considering a report in accordance with paragraph (b) to have reasonable access to other information which may be of assistance to him and which is available to the person responsible for maintaining the internal reporting procedures concerned; and
- (d) for securing that the information or other matter contained in a report is disclosed to the GFIU where the person who has considered the report under the procedures maintained in accordance with the preceding provisions of this section knows or suspects that another person is engaged in money laundering.

**Supervisory authorities.**

19. (1) References in this Part to supervisory authorities shall be construed in accordance with the following provisions.

(2) For the purposes of this Part, each of the bodies listed in Part I of Schedule 2 shall be a supervisory authority.

(3) The Minister may by Order published in the Gazette add to, delete from, or amend the list of supervisory authorities in Part I of Schedule 2.

**Duties of supervisory authorities.**

19A. A supervisory authority must effectively monitor the relevant persons for whom it is the supervisory authority and take necessary measures for the purpose of securing compliance by such persons with the requirements of this Act.

(2) Where under section 19 there is more than one supervisory authority for a relevant person, the supervisory authorities shall agree between them which one shall act as the supervisory authority for that person and shall notify that person accordingly.

**Supervisors, etc. to report evidence of money laundering.**

20. (1) Subject to subsection (2), where a supervisory authority—

- (a) obtains any information; and
- (b) is of the opinion that the information indicates that any person has or may have been engaged in money laundering,

the authority shall, as soon as is reasonably practicable, disclose that information to the GFIU.

(2) Where any person is a secondary recipient of information obtained by a supervisory authority, and that person forms such an opinion as is mentioned in subsection (1)(b), that person may disclose the information to the GFIU.

(3) Where any person within subsection (6)—

- (a) obtains any information whilst acting in the course of any investigation, or discharging any functions to which his appointment or authorisation relates; and
- (b) is of the opinion that the information indicates that any person has or may have been engaged in money laundering,

that person shall, as soon as is reasonably practicable, either disclose that information to the GFIU or disclose that information to the supervisory authority by whom he was appointed or authorised.

(4) Any disclosure when made in good faith made by virtue of the preceding provisions of this section shall not be treated as a breach of any restriction imposed by statute or otherwise.

(5) Any information—

- (a) which has been disclosed to the GFIU by virtue of the preceding provisions of this section; and
- (b) which would, apart from the provisions of subsection (4), be subject to such a restriction as is mentioned in that subsection;

may be disclosed by the GFIU, or any person obtaining the information directly or indirectly from him, in connection with the investigation of any criminal offence or for the purposes of any criminal proceedings, but not otherwise.

- (6) (a) Persons falling within this section are persons or inspectors appointed under an enactment set out in Part II of Schedule 2;
- (b) The Minister may by Order published in the Gazette add to, delete from or amend the list of enactments set out in Part II of Schedule 2.

(7) In this section “secondary recipient” in relation to information obtained by a supervisory authority, means any person to whom that information has been passed by the authority.

**Criminal offences.**

20A.(1) A person who fails to comply with any requirement in sections 10B(1), (2) or (3), 10C(1) or (3), 10D(2), 10E, 10F(1)(a), (b) or (c), 10H, 10L(1) or (2), 10M(1), (2), (3) or (4), 10P(1), (4), (5) or (6), 10Q(1), (4) or (5) or 10R, or a direction made under section 10O, is guilty of an offence and liable—

- (a) on summary conviction, to a fine not exceeding level 5 on the standard scale;
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine or to both.

(2) In deciding whether a person has committed an offence under subsection (1), the court must consider whether he followed any relevant

guidance which was at the time issued by a supervisory authority or any other appropriate body.

(3) In subsection (2), an “appropriate body” means any body which regulates or is representative of any trade, profession, business or employment carried on by the alleged offender.

(4) A person is not guilty of an offence under this section if he took all reasonable steps and exercised all due diligence to avoid committing the offence.

### **Offences by bodies corporate, partnerships and unincorporated associations.**

20B.(1) Where an offence under a provision of this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any other person who was purporting to act in any such capacity he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by the members, subsection (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of a body corporate.

(3) Where an offence is committed by a partnership, or by an unincorporated association other than a partnership, is proved to have been committed with the consent or connivance of, or is attributable to any neglect on the part of, a partner in the partnership or (as the case may be) a person concerned in the management or control of the association he, as well as the partnership or association, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

21. *Repealed.*

### **Revocation of the Drug Trafficking (Money Laundering) Regulations 1995.**

22. The Drug Trafficking (Money Laundering) Regulations 1995 are hereby revoked.

## **PART IV.**

### **CONFISCATION OF THE PROCEEDS OF CRIMINAL CONDUCT.**

#### **Confiscation orders.**

23. (1) The court shall have power, in addition to dealing with an offender in any other way, to make an order under this section requiring him to pay such sum as the court thinks fit.

(2) The court may make an order against an offender where—

(a) he is found guilty of any offence to which this Part applies; and

(b) it is satisfied—

(i) that he has benefited from that offence or from that offence taken together with some other offence of which he is convicted in the same proceedings, or which the court takes into consideration in determining his sentence, and which is not a drug trafficking offence; and

(ii) that his benefit is at least the minimum amount.

(3) For the purposes of this Part, a person benefits from an offence if he obtains property as a result of or in connection with its commission and his benefit is the value of the property so obtained.

(4) Where a person derives a pecuniary advantage as a result of or in connection with the commission of an offence, he is to be treated for the purposes of this Part as if he had obtained as a result of or in connection with the commission of the offence a sum of money equal to the value of the pecuniary advantage.

(5) The sum which an order made by the court under this section requires an offender to pay must be at least the minimum amount, but must not exceed—

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

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

whichever is the less.

(6) For the purposes of this Part, the minimum amount is £10,000 or such other amount as the Minister may specify by notice in the Gazette.

(7) In this Part—

(a) an order made by the court under this section is referred to as a “confiscation order”;

- (b) “drug trafficking offence” has the same meaning as in the Drug Trafficking Offences Act, 1995;
- (c) “the court” means the Supreme Court;
- (d) references to an offence to which this Part applies are references to any indictable offence other than a drug trafficking offence; and
- (e) a person against whom proceedings have been instituted for an offence to which this Part applies is referred to (whether or not he has been convicted) as “the defendant”.

### **Making of confiscation orders.**

24. (1) The court shall not make a confiscation order unless the prosecutor has given written notice to the court to the effect that it appears to him that, were the court to consider that it ought to make such an order, it would be able to make an order requiring the offender to pay at least the minimum amount.

(2) If the prosecutor gives the court such a notice, the court shall determine whether it ought to make a confiscation order.

(3) When considering whether to make a confiscation order the court may take into account any information that has been placed before it showing that a victim of an offence to which the proceedings relate has instituted, or intends to institute, civil proceedings against the defendant in respect of loss, injury or damage sustained in connection with the offence.

(4) If the court determines that it ought to make such an order, the court shall, before sentencing or otherwise dealing with the offender in respect of the offence or, as the case may be, any of the offences concerned, determine the amount to be recovered in his case by virtue of this section and make a confiscation order for that amount specifying the offence or offences.

(5) Where the court makes a confiscation order against a defendant in any proceedings, it shall be its duty, in respect of any offence of which he is convicted in those proceedings, to take account of the order before—

- (a) imposing any fine on him;
- (b) making any order involving any payment by him, other than an order under section 227 of the Criminal Procedure Act (compensation orders); or

- (c) making any order under section 20 of the Drugs (Misuse) Act<sup>10</sup> or sections 123 or 124 of the Imports and Exports Act 1986 or section 233A of the Criminal Procedure Act,

but subject to that shall leave the order out of account in determining the appropriate sentence or other manner of dealing with him.

(6) No enactment restricting the power of the 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 Part applies.

(7) Where—

- (a) the court makes both a confiscation order and an order for the payment of compensation under section 227 of the Criminal Procedure Act against the same person in the same proceedings; and
- (b) it appears to the court that he will not have sufficient means to satisfy both the orders in full,

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

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

- (a) whether a person has benefited as mentioned in section 23(2)(b)(i);
- (b) whether his benefit is at least the minimum amount; or
- (c) the amount to be recovered in his case by virtue of this section,

shall be that applicable in civil proceedings.

**Postponed determinations.**

25. (1) Where the court is acting under section 23 but considers that it requires further information before—

- (a) determining whether the defendant has benefited as mentioned in section 23(2)(b)(i);

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<sup>10</sup> 1971-09

- (b) determining whether his benefit is at least the minimum amount; or
- (c) determining the amount to be recovered in his case by virtue of section 24,

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

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

(3) Unless it is satisfied that there are exceptional circumstances, the court shall not specify a period under subsection (1) which—

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

exceeds six months beginning with the date of conviction.

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

- (a) postpone 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 specified period;

(5) A postponement or extension under subsection (1) or (4) may be made—

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

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

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

- (8) Where the court has so proceeded, section 24 shall have effect as if—
- (a) in subsection (4), the words from “before sentencing” to “offences concerned” were omitted; and
  - (b) in subsection (5) after “determining” there were inserted “in relation to any offence in respect of which he has not been sentenced or otherwise dealt with”.
- (9) In sentencing, or otherwise dealing with, the defendant in respect of the offence, or any of the offences concerned at any time during the specified period, the court shall not—
- (a) impose any fine on him;
  - (b) make any such order as is mentioned in section 24(5)(b) or (c).
- (10) In this section, references to an appeal include references to an application under section 295 of the Criminal Procedure Act (statement of case by the magistrates’ court).
- (11) 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 may be taken together for the purposes of subsection (2) or, as the case may be, (3) of section 23, the date of the latest of those convictions.

**Statements, etc. relevant to making confiscation orders.**

26. (1) Where—

- (a) a defendant has been convicted of an offence to which this Part applies and the prosecutor tenders to the court a statement as to any matters relevant—
  - (i) to determining whether the defendant has benefited from the offence or from any other offence to which this Part applies of which he is convicted in the same proceedings or which is taken into consideration in determining his sentence; or
  - (ii) to an assessment of the value of the defendant’s benefit from the offence or any other offence to which this Part

applies of which he is so convicted or which is so taken into consideration; and

- (b) the defendant accepts to any extent any allegation in the statement;

the court may, for the purposes of so determining or making such an assessment, treat his acceptance as conclusive of the matters to which it relates.

(2) Where—

- (a) a statement is tendered under subsection (1)(a), and
- (b) the court is satisfied that a copy of that statement has been served on the defendant,

the court may require the defendant to indicate to what extent he accepts each allegation in the statement and, so far as he does not accept any such allegation, to indicate any matters he proposes to rely on.

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

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

(4) Where—

- (a) there is tendered to the court by the defendant a statement as to any matters relevant to determining the amount that might be realised at the time the confiscation order is made; and
- (b) the prosecutor accepts to any extent any allegation in the statement;

the court may, for the purposes of that determination, treat the acceptance by the prosecutor as conclusive of the matters to which it relates.

(5) An allegation may be accepted or a matter indicated for the purposes of this section either—

- (a) orally before the court; or

(b) in writing in accordance with rules of court.

(6) If the court is satisfied as to any matter relevant for determining the amount that might be realised at the time the confiscation order is made (whether by an acceptance under this section or otherwise), the court may issue a certificate giving the court's opinion as to the matters concerned and shall do so if satisfied that the amount that might be realised at the time the confiscation order is made is less than the amount the court assesses to be the value of the defendant's benefit from the offence or, if more than one, all the offences in respect of which the order may be made.

**Definition of principal terms used.**

27. (1) In this Part, "realisable property" means, subject to subsection (2)–

- (a) any property held by the defendant; and
- (b) any property held by a person to whom the defendant has directly or indirectly made a gift caught by this Part .

(2) Property is not realisable property if there is in force in respect of it an order under any of the following enactments, namely–

- (a) section 20 of the Drugs (Misuse) Act;
- (b) section 233A of the Criminal Procedure Act.

(3) For the purposes of this Part the amount that might be realised at the time a confiscation order is made is–

- (a) the total of the values at that time of all the realisable property held by the defendant, less
- (b) where there are obligations having priority at that time, the total amounts payable in pursuance of such obligations,

together with the total of the values at that time of all gifts caught by this Part.

(4) Subject to the following provisions of this section, for the purposes of this Part the value of property (other than cash) in relation to any person holding the property–

- (a) where any other person holds an interest in the property, is–
  - (i) the market value of the first-mentioned person's beneficial interest in the property, less

(ii) the amount required to discharge any incumbrance (other than a charging order) on that interest; and

(b) in any other case, is its market value.

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

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

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

whichever is the greater.

(6) If at the material time he holds—

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

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

the value referred to in subsection (5)(b) is the value to him at the material time of the property mentioned in paragraph (a) or, as the case may be, of the property mentioned in paragraph (b), so far as it so represents the property which he obtained, but disregarding any charging order.

(7) Subject to subsection (13), references in this Part to the value at any time (referred to in subsection (8) as “the material time”) of a gift caught by this Part are references to—

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

(b) where subsection (8) applies, the value there mentioned.

(8) Subject to subsection (13), if at the material time he holds—

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

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

the value referred to in subsection (7) is the value to him at the material time of the property mentioned in paragraph (a) or, as the case may be, of the property mentioned in paragraph (b) so far as it so represents the property which he received, but disregarding any charging order.

(9) For the purposes of subsection (3), an obligation has priority at any time if it is an obligation of the defendant to—

- (a) pay an amount due in respect of a fine, or other order of a court, imposed or made on conviction of an offence, where the fine was imposed or order made before the confiscation order; or
- (b) to pay any sum which would be included among the preferential debts (within the meaning given by subsection (10)) in the defendant's bankruptcy commencing on the date of the confiscation order or winding up under an order of the court made on that date.

(10) For the purposes of subsection (9) “the preferential debts” means—

- (a) in relation to bankruptcy, the debts to be paid in priority under section 33 of the Bankruptcy Act, and
- (b) in relation to winding up, the preferential debts referred to in section 241 of the Companies Act.

(11) A gift (including a gift made before the commencement of this Part ) is caught by this Part if—

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

(12) The reference in subsection (11) to an offence to which the proceedings for the time being relate includes, where the proceedings have resulted in the conviction of the defendant, a reference to any offence which the court takes into consideration when determining his sentence.

(13) For the purposes of this Part—

- (a) the circumstances in which the defendant is to be treated as making a gift include those where he transfers property to another person directly or indirectly for a consideration the

value of which is significantly less than the value of the consideration provided by the defendant; and

- (b) in those circumstances, the preceding provisions of this section shall apply as if the defendant had made a gift of such share in the property as bears to the whole property the same proportion as the difference between the values referred to in paragraph (a) bears to the value of the consideration provided by the defendant.

### **Application of procedure for enforcing fines.**

28. (1) Where the court orders the defendant to pay an amount under this Part, section 180(1)(c) of the Criminal Procedure Act shall have effect as if that amount were a fine imposed on him by the court, and—

- (a) the court shall make an order fixing the term of imprisonment which he is to undergo if any sum which he is liable to pay is not duly paid or recovered, and
- (b) the limitation of the term of imprisonment to one year contained in the proviso to section 180(1)(c) of the Criminal Procedure Act shall not apply.

(2) Subject to subsections (3) and (4), the periods set out in the second column of the table in section 10(2) of the Drug Trafficking Offences Act 1995 shall be the maximum periods of imprisonment under subsection (1) applicable respectively to the amounts set out opposite thereto.

(3) Where the amount due at the time imprisonment is imposed is so much as remains due after part payment, then subject to subsection (4), the maximum period applicable to the amount shall be the period applicable to the whole sum reduced by such number of days as bears to the total number of days therein the same proportion as the part paid bears to the total sum.

(4) In calculating the reduction required under subsection (3) any fraction of a day shall be left out of account and the maximum period shall not be reduced to less than five days.

### **Cases in which restraint orders and charging orders may be made.**

29.(1) The powers conferred on the court by sections 30(1) and 31(1) are exercisable where—

- (a) proceedings have been instituted in Gibraltar against the defendant for an offence to which this Part applies;
- (b) the proceedings have not been concluded; and

- (c) either a confiscation order has been made or it appears to the court that there are reasonable grounds for thinking that a confiscation order may be made in them.
- (2) Those powers are also exercisable where–
- (a) the court is satisfied that, whether by the laying of an information or otherwise, a person is to be charged with an offence to which this Part applies; and
  - (b) it appears to the court that a confiscation order may be made in proceedings for the offence.
- (3) For the purposes of sections 30 and 31 at any time when those powers are exercisable before proceedings have been instituted–
- (a) references in this Part to the defendant shall be construed as references to the person referred to in subsection (2)(a);
  - (b) references in this Part to the prosecutor shall be construed as references to the person who the court is satisfied is to have the conduct of the proposed proceedings; and
  - (c) references in this Part to realisable property shall be construed as if, immediately before that time, proceedings had been instituted against the person referred to in subsection (2)(a) for an offence to which this Part applies.
- (4) Where the court has made an order under section 30(1) or 31(1) by virtue of subsection (2), the court shall discharge the order if proceedings in respect of the offence are not instituted (whether by the laying of an information or otherwise) within such time as the court considers reasonable.

**Restraint orders.**

30. (1) The court may by order (referred to in this Part as a “restraint order”) prohibit any person from dealing with any realisable property 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 living expenses and legal expenses.

(3) A restraint order may apply–

- (a) to all realisable property held by a specified person, whether the property is described in the order or not; and
  - (b) to realisable property held by a specified person, being property transferred to him after the making of the order.
- (4) This section shall not have effect in relation to any property for the time being subject to a charge under section 31.
- (5) A restraint order–
- (a) may be made only on an application by the prosecutor;
  - (b) may be made on an ex parte application to a judge in chambers; and
  - (c) shall provide for notice to be given to persons affected by the order.
- (6) A restraint order–
- (a) may be discharged or varied in relation to any property; and
  - (b) shall be discharged when proceedings for the offence are concluded.
- (7) An application for the discharge or variation of a restraint order may be made by any person affected by it.
- (8) Where the court has made a restraint order, the court may at any time appoint a receiver–
- (a) to take possession of any realisable property; and
  - (b) in accordance with the court's directions, to manage or otherwise deal with any property in respect of which he is appointed,

subject to such exceptions and conditions as may be specified by the court and 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 receiver.

- (9) For the purposes of this section, dealing with property held by any person includes (without prejudice to the generality of the expression)–
- (a) where a debt is owed to that person, making payment to any person in reduction of the amount of the debt; and

(b) removing the property from Gibraltar.

(10) Where the court has made a restraint order, a Police or Customs Officer may, for the purpose of preventing any realisable property being removed from Gibraltar, seize the property.

(11) Property seized under subsection (10) shall be dealt with in accordance with the court's directions.

**Charging orders in respect of land, securities, etc..**

31.(1) The court may make a charging order on realisable property for securing the payment to the Crown—

- (a) where a confiscation order has not been made, of an amount equal to the value from time to time of the property charged; and
- (b) in any other case, of an amount not exceeding the amount payable under the confiscation order.

(2) For the purposes of this Part, a charging order is an order made under this section imposing on any such realisable property as may be specified in the order a charge for securing the payment of money to the Crown.

(3) A charging order—

- (a) may be made only on an application by the prosecutor;
- (b) may be made on an ex parte application to a judge in chambers;
- (c) shall provide for notice to be given to persons affected by the order; and
- (d) may be made subject to such conditions as the court thinks fit and, without prejudice to the generality of this paragraph, such conditions as it thinks fit as to the time when the charge is to become effective.

(4) Subject to subsection (6), a charge may be imposed by a charging order only on—

- (a) any interest in realisable property being an interest held beneficially by the defendant or by a person to whom the

defendant has directly or indirectly made a gift caught by this Part—

- (i) in any asset of a kind mentioned in subsection (5); or
  - (ii) under any trust; or
- (b) any interest in realisable property held by a person as trustee of a trust if the interest is in such an asset or is an interest under another trust and a charge may by virtue of paragraph (a) be imposed by a charging order on the whole beneficial interest under the first-mentioned trust.
- (5) The assets referred to in subsection (4) are—
- (a) land in Gibraltar; or
  - (b) securities of any of the following kinds—
    - (i) government stock;
    - (ii) stock of any body incorporated within Gibraltar;
    - (iii) stock of any body incorporated outside Gibraltar or of any country or territory outside Gibraltar, being stock registered in a register kept at any place within Gibraltar;
    - (iv) units of any unit trust in respect of which a register of the unit holders is kept at any place within Gibraltar.
- (6) In any case where a charge is imposed by a charging order on any interest in an asset of a kind mentioned in subsection (5)(b), the court may provide for the charge to extend to any interest or dividend payable in respect of the asset.
- (7) The court may make an order discharging or varying the charging order and shall make an order discharging the charging order if the proceedings for the offence are concluded or the amount payment of which is secured by the charge is paid into court.
- (8) An application for the discharge or variation of a charging order may be made by any person affected by it.
- (9) In this section “dividend”, “government stock”, “stock” and “unit trust” have the same meaning as in the Charging Orders Act 1988.

### **Charging orders; supplementary provisions.**

32. (1) Subject to any provision made under section 33 or by rules of court, a charge imposed by a charging order shall have the like effect and shall be enforceable in the same manner as an equitable charge created by the person holding the beneficial interest or, as the case may be, the trustees by writing under their hand.

(2) The Government may, by notice in the Gazette, amend section 31 by adding to or removing from the kinds of asset for the time being referred to there any asset of a kind which, in its opinion, ought to be so added or removed.

**Realisation of property.**

33. (1) Where—

- (a) a confiscation order is made;
- (b) the order is not subject to appeal; and

(c) the proceedings in which it was made have not been concluded, the court may, on an application by the prosecutor, exercise the powers conferred by subsections (2) to (6).

(2) The court may appoint a receiver in relation to realisable property.

(3) The court may empower a receiver appointed under subsection (2), under section 30 or in pursuance of a charging order—

- (a) to enforce any charge imposed under section 31 on realisable property or on interest or dividends payable in respect of such property; and
- (b) in relation to any realisable property other than property for the time being subject to a charge under section 31, to take possession of the property subject to such conditions or exceptions as may be specified by the court.

(4) The court may order any person having possession of realisable property to give possession of it to any such receiver.

(5) The court may empower any such receiver to realise any realisable property in such manner as the court may direct.

(6) The court may order any person holding an interest in realisable property to make such payment to the receiver in respect of any beneficial interest held by the defendant or, as the case may be, the recipient of a gift caught by this Part as the court may direct and the court may, on the

payment being made, by order transfer, grant or extinguish any interest in the property.

(7) Subsections (4) to (6) do not apply to property for the time being subject to a charge under section 31.

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

### **Application of proceeds of realisation and other sums.**

34. (1) Subject to subsection (2), the following sums in the hands of a receiver appointed under this Part or in pursuance of a charging order, that is—

- (a) the proceeds of the enforcement of any charge imposed under section 31;
- (b) the proceeds of the realisation, other than by the enforcement of such a charge, of any property under section 30 or 33; and
- (c) any other sums, being property held by the defendant;

shall first be applied in payment of such expenses incurred by a person acting as an insolvency practitioner as are payable under section 39(2) and then 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.

(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 realised under this Part, 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 clerk to the magistrates' court on account of an amount payable under a confiscation order shall reduce the amount so payable, but the clerk to the magistrates' court shall apply the money received for the purposes specified in this section and in the order so specified.

(4) The clerk to the magistrates' court shall first pay any expenses incurred by a person acting as an insolvency practitioner and payable under section 39(2) but not already paid under subsection(1).

(5) If the money was paid to the clerk to the magistrates' court by a receiver appointed under this Part or in pursuance of a charging order, the clerk to the magistrates' court shall next pay the receiver's remuneration and expenses.

(6) After making—

(a) any payment required by subsection (4); and

(b) in a case to which subsection (5) applies, any payment required by that subsection,

the clerk to the magistrates' court shall reimburse any amount paid under section 38(2).

(7) The clerk to the magistrates' court shall finally pay any compensation directed to be paid out of any sums recovered under the confiscation order under section 25(7).

(8) Any balance in the hands of the clerk to the magistrates' court after he has made all payments required by the preceding provisions of this section shall be paid into any special fund established under the Public Finance (Control and Audit) Act having as prescribed income such sums, and in the absence of such a fund, shall be paid into the Consolidated Fund.

**Exercise of powers by Supreme Court or receiver.**

35. (1) This section applies to the powers conferred on the court by sections 30 to 34, or on a receiver appointed under this Part or in pursuance of a charging order.

(2) Subject to the following provisions of this section, the powers shall be exercised with a view to making available for satisfying the confiscation order or, as the case may be, any confiscation order that may be made in the defendant's case the value for the time being of realisable property held by any person by the realisation of such property.

(3) In the case of realisable property held by a person to whom the defendant has directly or indirectly made a gift caught by this Part the powers shall be exercised with a view to realising no more than the value for the time being of the gift.

(4) The powers shall be exercised with a view to allowing any person other than the defendant or the recipient of any such gift to retain or recover the value of any property held by him.

(5) An order may be made or other action taken in respect of a debt owed by the Crown.

(6) In exercising those powers, no account shall be taken of any obligations of the defendant or of the recipient of any such gift which conflict with the obligation to satisfy the confiscation order.

### **Variation of confiscation orders.**

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

(2) For the purposes of subsection (1)–

(a) in the case of realisable property held by a person who has been adjudged bankrupt or whose estate has been sequestrated the court shall take into account the extent to which any property held by him may be distributed among creditors; and

(b) the court may disregard any inadequacy in the realisable property which appears to the court to be attributable wholly or partly to anything done by the defendant for the purpose of preserving any property held by a person to whom the defendant had directly or indirectly made a gift caught by this Part from any risk of realisation under this Part.

(3) Where a certificate has been issued under subsection (1), the defendant may apply to the court for the amount to be recovered under the confiscation order to be reduced.

(4) The court shall, on an application under subsection (3)–

(a) substitute for the amount to be recovered under the order such lesser amount as the court thinks just in all the circumstances of the case; and

(b) substitute for the term of imprisonment fixed under section 28(1) in respect of the amount to be recovered under the order a shorter term determined in accordance with that section in respect of the lesser amount.

(5) Rules of court may make provision–

- (a) for the giving of notice of any application under this section;
- (b) for any person appearing to the court to be likely to be affected by any exercise of its powers under this section to be given an opportunity to make representations to the court.

**Bankruptcy of defendant, etc.**

37. (1) Where a person who holds realisable property is adjudged bankrupt—

- (a) property for the time being subject to a restraint order made before the order adjudging him bankrupt, and
- (b) any proceeds of property realised by virtue of section 30(8) or 33(5) or (6) for the time being in the hands of a receiver appointed under section 30 or 33,

is excluded from the bankrupt's estate for the purposes of the Bankruptcy Act.

(2) Where a person had been adjudged bankrupt, the powers conferred on the court by sections 30 to 34 or on a receiver appointed under those sections shall not be exercised in relation to—

- (a) property for the time being comprised in the bankrupt's estate for the purposes of the Bankruptcy Act;
- (b) property which is to be applied for the benefit of creditors of the bankrupt by virtue of a condition imposed under section 25(2) of the Bankruptcy Act,

but nothing in that Act shall be taken as restricting, or enabling the restriction of, the exercise of those powers.

(3) Subsection (2) does not affect the enforcement of a charging order—

- (a) made before the order adjudging the person bankrupt; or
- (b) on property which was subject to a restraint order when the order adjudging him bankrupt was made.

(4) Where in the case of a debtor, an interim receiver stands appointed under section 10 of the Bankruptcy Act and any property of the debtor is subject to a restraint order, the powers conferred on the receiver by virtue of that Act do not apply to property for the time being subject to the restraint order.

(5) Where a person is adjudged bankrupt and has directly or indirectly made a gift caught by this Part—

- (a) no order shall be made under section 26 or 42 of the Bankruptcy Act (avoidance of certain transactions), in respect of the making of the gift at any time when proceedings for an offence to which this Part applies have been instituted against him and have not been concluded or when property of the person to whom the gift was made is subject to a restraint order or charging order; and
- (b) any order made under section 26 or 42 of the Bankruptcy Act after the conclusion of the proceedings shall take into account any realisation under this Part of property held by the person to whom the gift was made.

(6) Section 27 of the Bankruptcy Act shall have effect as if amounts payable under a confiscation order were a debt excepted under subsection (1)(a) of that section.

### **Winding up of company holding realisable property.**

38. (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 of the company, 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 realised by virtue of section 30(8) or 33(5) or (6) for the time being in the hands of a receiver appointed under section 30 or 33.

(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 section 30 to 34 or on a receiver so appointed 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 purposes 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;

but nothing in the Companies Act shall be taken as restricting, or enabling the restriction of, the exercise of those powers.

(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 Act; 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.

#### **Persons acting as insolvency practitioners.**

39. (1) Without prejudice to the generality of any enactment contained in the Bankruptcy Act or in any other Act, where—

- (a) any person acting as an insolvency practitioner seizes or disposes of any property in relation to which his functions are not exercisable because it is for the time being subject to a restraint order; and
- (b) at the time of the seizure or disposal he believes, and has reasonable grounds for believing, that he is entitled (whether in pursuance of an order of the court or otherwise) to seize or dispose of that property,

he shall not be liable to any person in respect of any loss or damage resulting from the seizure or disposal except in so far as the loss or damage is caused by his negligence in so acting, and a person so acting shall have a lien on the property, or the proceeds of its sale, for such of his expenses as

were incurred in connection with the liquidation, bankruptcy or other proceedings in relation to which the seizure or disposal purported to take place and for so much of his remuneration as may reasonably be assigned for his acting in connection with those proceedings.

(2) Any person who, acting as an insolvency practitioner, incurs expenses—

- (a) in respect of such property as is mentioned in subsection (1) (a) and in so doing does not know and has no reasonable grounds to believe that the property is for the time being subject to a restraint order; or
- (b) other than in respect of such property as is so mentioned, being expenses which, but for the effect of a restraint order, might have been met by taking possession of and realising the property,

shall be entitled (whether or not he has seized or disposed of that property so as to have a lien under that subsection) to payment of those expenses under section 34(1) or (4).

(3) In this Part, the expression “acting as an insolvency practitioner” includes a trustee in bankruptcy or interim receiver of an insolvent person, a trustee under a deed of arrangement made for the benefit of the creditors, a liquidator, administrator or receiver in the winding up of a company, and any other person acting in a similar capacity.

### **Receivers; supplementary provisions.**

40. (1) Where a receiver appointed under section 30 or 33 or in pursuance of a charging order—

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

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

(2) Any amount due in respect of the remuneration and expenses of a receiver so appointed shall, if no sum is available to be supplied in payment of it under section 34(5) be paid by the prosecutor or, in a case where

proceedings for an offence to which this Part applies are not instituted, by the person on whose application the receiver was appointed.

**Compensation.**

41. (1) If proceedings are instituted against a person for an offence or offences to which this Part 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 may, 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 in pursuance of an order under sections 30 to 34.

(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.

(5) Compensation payable under this section shall be paid out of any special fund established under the Public Finance (Control and Audit) Act which has as its prescribed expenditure such compensation, or in the absence of such a fund, out of the Consolidated Fund.

**Enforcement of external orders.**

42. (1) The Minister may, by order–

- (a) direct in relation to a country or territory outside Gibraltar designated by the order (a “designated country”) that, subject to such modifications as may be specified, this Part shall apply to external confiscation orders and to proceedings which have been or are to be instituted in the designated country and may result in an external confiscation order being made there;
- (b) make–
  - (i) such provision in connection with the taking of action in the designated country with a view to satisfying a confiscation order;
  - (ii) such provision as to evidence or proof of any matter for the purposes of this section and section 43; and
  - (iii) such incidental, consequential and transitional provision, as appears to the Minister to be expedient; and
- (c) without prejudice to the generality of this subsection, direct that in such circumstances as may be specified, proceeds which arise out of action taken in a designated country with a view to satisfying a confiscation order shall be treated as reducing the amount payable under the order to such extent as may be specified.

(2) In this Part–

“external confiscation order” means an order made by a court in a designated country for the purpose–

- (a) of recovering–
  - (i) property obtained as a result of or in connection with conduct corresponding to an offence to which this Part applies; or
  - (ii) the value of property so obtained; or
- (b) of depriving a person of a pecuniary advantage so obtained; and

“modifications” includes additions, alterations and omissions.

(3) An order under this section may make different provision for different cases or classes of case.

(4) The power to make an order under this section includes power to modify this Part in such a way as to confer power on a person to exercise a discretion.

**Registration of external confiscation orders.**

43. (1) On an application made by or on behalf of the Government of a designated country, the court may register an external confiscation order made there if—

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

(2) In subsection (1), “appeal” includes—

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

(3) The court shall cancel the registration of an external confiscation order if it appears to the court that the order has been satisfied by payment of the amount due under it or by the person against whom it was made serving imprisonment in default of payment or by any other means.

**Interpretation.**

44. (1) In this Part and in Part II—

“Customs Officer” has the same meaning as in the Imports and Exports Act 1986;

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

“Minister” means the Minister with responsibility for finance;

“Police Officer” has the same meaning as in the Police Act;

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

“property” includes money and all other property, real or personal, heritable or moveable, including things in action and other intangible or incorporeal property.

(2) The expressions listed in the left hand column below are respectively defined or (as the case may be) fall to be construed in accordance with the provisions of this Act listed in the right-hand column in relation to those expressions.

Expression	Relevant provision
benefited from an offence	section 23(3)
charging order	section 31(2)
confiscation order	section 23(7) (a)
criminal conduct	section 2(7)
dealing with property	section 30(9)
defendant	section 23(7) (e)
gift caught by this Part	section 27(11)
making a gift	section 27(13)
offence to which this Part applies	section 23(7) (d)
realisable property	section 27(1)
restraint order	section 30(1)
value of gift	section 27(7) & (8)
value of property	section 27(4) to (6)

(3) This Part and Part II apply to property wherever situated.

(4) References in this Part and Part II to offences include a reference to offences committed before the commencement of this Act, but nothing in this Part confers any power on any court in connection with proceedings against a person for an offence instituted before the commencement of this Part.

(5) References in this Part and Part II to property obtained, or to a pecuniary advantage derived, in connection with the commission of an offence include a reference to property obtained or to a pecuniary advantage derived, both in that connection and in some other connection.

(6) The following provisions shall have effect for the interpretation of this Part and Part II.

(7) Property is held by any person if he holds any interest in it.

(8) References to an interest held by a person beneficially in property include a reference to an interest which would be held by him beneficially if the property were not so vested.

(9) Property is transferred by one person to another if the first person transfers or grants to the other any interest in the property.

(10) Proceedings for an offence are instituted—

- (a) when a justice of the peace issues a summons or warrant under section 100 of the Criminal Procedure Act in respect of that offence;
- (b) when a person is charged with the offence after being taken into custody without a warrant;
- (c) when a bill of indictment is preferred under section 130 of the Criminal Procedure Act, in a case falling within subsection (2)(b) of that section;

and where the application of this subsection 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.

(11) Proceedings are concluded—

- (a) when (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of a confiscation order being made in the proceedings;
- (b) on the satisfaction of a confiscation order made in the proceedings (whether by payment of the amount due under the order or by the defendant serving imprisonment in default).

(12) 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.

## **PART V GENERAL**

### **Regulations**

45. The Government may make regulations generally for carrying out any of the purposes or provisions of this Act or any matters incidental or consequential thereto as may appear to the Government to be necessary or

proper for giving full effect to this Act or to the obligations of the Government under Community law.

## SCHEDULE 1

Sections 10G, 10K

**Simplified due diligence.**

1. For the purposes of section 10G(6), the conditions are—
  - (a) the authority has been entrusted with public functions pursuant to the Treaty on the European Union, the Treaties on the European Communities or Community secondary legislation;
  - (b) the authority's identity is publicly available, transparent and certain;
  - (c) the activities of the authority and its accounting practices are transparent;
  - (d) either the authority is accountable to a Community institution or to the authorities of an EEA State, or otherwise appropriate check and balance procedures exist ensuring control of the authority's activity.
  
2. For the purposes of section 10G(8), the conditions are—
  - (a) the product has a written contractual base;
  - (b) any related transaction is carried out through an account of the customer with a credit institution which is subject to the Money Laundering Directive or with a credit institution situated in a non-EEA State which imposes requirements equivalent to those laid down in that directive;
  - (c) the product or related transaction is not anonymous and its nature is such that it allows for the timely application of customer due diligence measures where there is a suspicion of money laundering or terrorist financing;
  - (d) the product is within the following maximum threshold—
    - (i) in the case of insurance policies or savings products of a similar nature, the annual premium is no more than 1,000 euro or there is a single premium of no more than 2,500 euro;
    - (ii) in the case of products which are related to the financing of physical assets where the legal and beneficial title of the assets is not transferred to the customer until the

termination of the contractual relationship (whether the transaction is carried out in a single operation or in several operations which appear to be linked), the annual payments do not exceed 15,000 euro;

- (iii) in all other cases, the maximum threshold is 15,000 euro;
- (e) the benefits of the product or related transaction cannot be realised for the benefit of third parties, except in the case of death, disablement, survival to a predetermined advanced age, or similar events;
- (f) in the case of products or related transactions allowing for the investment of funds in financial assets or claims, including insurance or other kinds of contingent claims–
  - (i) the benefits of the product or related transaction are only realisable in the long term;
  - (ii) the product or related transaction cannot be used as collateral; and
  - (iii) during the contractual relationship, no accelerated payments are made, surrender clauses used or early termination takes place.

### **Politically exposed persons.**

3.(1) For the purposes of section 10K(2)–

- (a) individuals who are or have been entrusted with prominent public functions include the following–
  - (i) heads of state, heads of government, ministers and deputy or assistant ministers;
  - (ii) members of parliaments;
  - (iii) members of supreme courts, of constitutional courts or of other high-level judicial bodies whose decisions are not generally subject to further appeal, other than in exceptional circumstances;
  - (iv) members of courts of auditors or of the boards of central banks;
  - (v) ambassadors, chargés d'affaires and high-ranking officers in the armed forces; and

- (vi) members of the administrative, management or supervisory bodies of state-owned enterprises;
- (b) the categories set out in paragraphs (i) to (vi) of sub-paragraph (a) do not include middle ranking or more junior officials;
- (c) immediate family members include the following—
  - (i) a spouse;
  - (ii) a partner;
  - (iii) children and their spouses or partners; and
  - (iv) parents;
- (d) persons known to be close associates include the following—
  - (i) any individual who is known to have joint beneficial ownership of a legal entity or legal arrangement, or any other close business relations, with a person referred to in section 10J(5)(a); and
  - (ii) any individual who has sole beneficial ownership of a legal entity or legal arrangement which is known to have been set up for the benefit of a person referred to in section 10J(5)(a).

(2) In paragraph (1)(c) “partner” means a person who is considered by his national law as equivalent to a spouse.

**SCHEDULE 2**

Section 19(2)

**PART I**

**The following are supervisory bodies–**

- (a) the Financial Services Commission;
- (b) the Authority appointed under section 2(1) of the Financial Services (Investment and Fiduciary Services) Act;
- (c) the Commissioner of Banking and the Banking Supervisor;
- (d) the Commissioner of Insurance and the Insurance Supervisor;
- (e) the Financial Secretary, or such other person or entity as may from time to time be designated by the Minister for Finance by notice in the Gazette in respect of relevant financial businesses to which section 8(1) applies and which are not supervised by a body listed in paragraphs (a) to (d).

**PART II**

- (a) the Financial Services (Banking) Act, 1992;
- (b) the Insurance Companies Act, 1987;
- (c) the Financial Services (Investment and Fiduciary Services) Act, 1989;
- (d) the Companies Act.