

STATES OF JERSEY

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DRAFT CIVIL ASSET RECOVERY (INTERNATIONAL CO-OPERATION) (JERSEY) LAW 200

**Lodged au Greffe on 25th September 2007
by the Minister for Home Affairs**

STATES GREFFE



Jersey

DRAFT CIVIL ASSET RECOVERY (INTERNATIONAL CO-OPERATION) (JERSEY) LAW 200

European Convention on Human Rights

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000 the Minister for Home Affairs has made the following statement –

In the view of the Minister for Home Affairs the provisions of the Draft Civil Asset Recovery (International Co-operation) (Jersey) Law 200- are compatible with the Convention Rights.

(Signed) **Senator W. Kinnard**

REPORT

1. In recent years there has been a growing trend in countries introducing domestic civil asset forfeiture (also known as civil asset recovery) schemes. Civil asset forfeiture is a civil action brought by the State seeking a court ruling that particular property held by the individual represents the proceeds of criminal conduct and should therefore be forfeited to the State. The Respondents are those who claim ownership of the questioned property. In jurisdictions that have adopted such proceedings the court is concerned with the status of the property as opposed to the guilt of its owner. Civil forfeiture schemes currently operate in a number of jurisdictions around the world including, at least, England and Wales, Scotland, Northern Ireland, Republic of Ireland, Switzerland, Italy, [USA](#), [Australia](#), [South Africa](#) and various Canadian Provinces. Civil forfeiture has been in use in the Republic of Ireland since 1996 as a result of the Irish Proceeds of Crime Act, 1996 and in the UK since 2002 by virtue of the Proceeds of Crime Act, 2002, enacted there.
2. The nature of organised crime itself is the main reason cited by Governments in justification of introducing civil forfeiture schemes. It is considered that organised crime heads use their resources to keep themselves distant from the crimes they are controlling and to mask the criminal origin of their assets, so that the assets appear legitimate. For these reasons some jurisdictions have found it increasingly difficult to carry out successful criminal investigations leading to the prosecution and conviction of such individuals. The result is perceived to be that finances derived from crime can be out of the reach of the law under criminal confiscation schemes (which require a conviction) and remain available to be used to finance further crime. In order to deprive criminals of their ill-gotten gains a number of jurisdictions have introduced legislative schemes providing for the forfeiture of proceeds of crime before their civil courts, using the civil standard of proof. This means that those jurisdictions do not need to attain a criminal conviction in order to have the proceeds of crime forfeited, but instead that the civil asset recovery agency has to prove on the balance of probabilities that the assets in question represent the proceeds of crime, or of unlawful conduct.
3. Civil forfeiture of property is currently provided for in relation to the forfeiture of cash (but not property), without conviction, under the Terrorism (Jersey) Law 2002. The Drug Trafficking Offences (Jersey) Law 1988 also allows for the forfeiture of cash which has been imported into or exported from Jersey and which the Royal Court is satisfied directly or indirectly represents any person's proceeds of, or is intended by any person for use in, drug trafficking. These provisions are to be repealed and replaced by the Draft Proceeds of Crime (Cash Seizure) (Jersey) Law 200-, which, if adopted, will allow for the civil forfeiture of cash reasonably suspected of being used in, intended for use in, being the proceeds of, or connected to unlawful conduct. "Unlawful conduct" is defined as the commission of an offence against the law of Jersey or against the law of a country or territory that, if it had been committed in Jersey, would have been an offence against the law of Jersey. Furthermore, the Draft Customs and Excise (Amendment No. 5) (Jersey) Law 200 includes provisions which enable a customs officer to detain cash where there is a possibility that it is to be used for money laundering or terrorist activities. The owner of the cash has 6 months to prove that this is not the case, after that period the cash is forfeited. This power is subject to a right to apply to the Minister for Home Affairs for the return of the cash and a right to review of a refusal by the Minister to return it by the Royal Court.
4. Jersey does not, however, have a domestic civil forfeiture regime that allows for the civil forfeiture of any property proved on the balance of probabilities to be the proceeds of crime or unlawful conduct, where a conviction has not been attained.
5. During the International Monetary Fund Assessment in 2008, Jersey will be assessed against the 40 Recommendations and 9 Special Recommendations of the Financial Action Task Force on Money Laundering. Recommendation 3 of the Financial Action Task Force on Money Laundering provides that—
“Countries may consider adopting measures that allow such proceeds or instrumentalities to be confiscated without requiring a criminal conviction, or which require an offender to demonstrate the lawful origin of the property alleged to be liable to confiscation, to the extent that such a requirement is consistent with the principles of their domestic law.”

6. In order to consider how best to take forward issues surrounding the civil forfeiture of property found to represent the proceeds of crime, the Civil Asset Recovery Working Group was established comprising of representatives of the Law Officers' Department, the Joint Financial Crimes Unit and the Jersey Financial Services Commission. The Working Group was tasked with giving consideration to civil forfeiture measures and was asked to report back to me on its conclusions.
7. Having reviewed its recommendations, I have determined that, in accordance with the Law Drafting Programme, civil asset recovery should be approached in two phases. The first phase is the introduction of legislation to provide for the enforcement of external civil asset forfeiture orders in Jersey. Law Drafting time for this was allocated in the 2007 Law Drafting Programme. The second phase is the implementation of legislation to introduce a limited domestic civil forfeiture scheme in Jersey. Law drafting time has been set aside in the 2008 Programme for this legislation to be drafted.
8. This draft Law is designed to address the first phase of the introduction of civil asset recovery by providing for the enforcement of external civil asset recovery orders in Jersey.
9. The Criminal Justice Policy provides that Home Affairs will, in conjunction with the Law Officers' Department, investigate ways of expanding powers in relation to civil asset forfeiture with the aim of introducing, in the first instance by 2008, legislation to assist other jurisdictions to recover such assets. The draft Law will therefore achieve this aim. Furthermore, the States Strategic Plan 2006-2011 provides, at paragraph 1.8.7, for the introduction of powers to assist other jurisdictions pursuing civil confiscation of criminal proceeds by 2008. These powers are necessary because if they do not exist, the door would be open to criminals who are seeking to escape the effect of civil asset forfeiture orders abroad to do so by putting their ill-gotten gains in Jersey.
10. In summary, the draft Law provides for –
 - (i) the service of external civil asset recovery process in Jersey;
 - (ii) evidence sharing in relation to external civil asset recovery proceedings and investigations;
 - (iii) the making of a property restraint order where it appears to the Court that external civil asset recovery proceedings relating to property in Jersey have been instituted in another jurisdiction but are not concluded or are to be instituted in another jurisdiction and that there are reasonable grounds for believing that an external civil asset recovery order may be made in the proceedings;
 - (iv) registration by the Royal Court of external civil asset recovery orders; and
 - (v) the recovery of property subject to an external civil asset recovery order registered with the Royal Court.
11. In an effort to assist in the recovery of the proceeds of crime held in Jersey, it is considered necessary to include provisions to enable evidence sharing with external civil asset recovery agencies. Jersey is currently unable to provide evidence to such agencies because Article 5 of the Criminal Justice (International Co-operation) Jersey Law 2001 only allows for the provision of evidence and assistance in relation to criminal proceedings taking place in an overseas court. In the past this has meant that occasionally it has not been possible to accommodate requests for assistance received from the Assets Recovery Agency (now merged with the Serious Organised Crime Agency) in England and Wales, the Criminal Assets Bureau in Ireland and the U.S. Department of Justice. The draft Law enables the Attorney General to provide assistance to jurisdictions operating a civil forfeiture scheme in order to allow them to secure evidence for use in their civil forfeiture investigations or proceedings. Once civil forfeiture proceedings have taken place in that jurisdiction and a civil asset forfeiture order is made there, that order may then be registered by the Royal Court in Jersey and the money recovered by an application to the Royal Court by the Attorney General. It is envisaged that where money is likely to be recovered in Jersey under the provisions of the draft Law, that the Attorney General may enter into an agreement to share the proceeds of any assets recovered with the jurisdiction requesting assistance.
12. The draft Law also establishes a new Special Fund, for the purposes of Article 3 of the Public Finances (Jersey) Law 2005, namely the Civil Asset Recovery Fund. It is intended that money recovered under an external civil asset recovery order registered with the Royal Court will be paid into this Fund. Money recovered under the Proceeds of Crime (Cash Seizure) (Jersey) Law 200- and any domestic civil forfeiture scheme will also be paid into this fund. It is necessary to create a new special fund because of

the need to give effect to asset sharing agreements. In the absence of any discretion under the Public Finances Law to make payments not previously agreed in the Business Plan, the only way this can be effectively achieved is by the creation of a new special fund. The establishment of this Fund has been agreed with the Minister for Treasury and Resources.

13. The Minister shall apply monies in the Civil Asset Recovery Fund to –
 - (a) discharge Jersey's obligations under any asset sharing agreement;
 - (b) pay to the Viscount –
 - (i) any amount required under Article 8(2), and
 - (ii) any amount required to be paid to the Viscount under any other enactment pursuant to which money recovered by any process is required to be paid into the Fund;
 - (c) meet the expenses reasonably incurred by the Minister in administering the Fund;
 - (d) meet the expenses reasonably incurred by the Attorney General in the discharge of his or her functions under –
 - (i) this Law, and
 - (ii) any other enactment pursuant to which money recovered by any process is required to be paid into the Fund.
14. At the end of each financial year, the Minister shall pay into the consolidated fund any amount of money standing in the Civil Asset Recovery Fund which has not been applied, or is not required to be applied, to discharge the obligations and expenses set out above.

Financial and Manpower Statement

15. It is difficult to predict the impact of this legislation upon staffing requirements in the part of the Law Officers' Department that deals with mutual legal assistance requests (and, principally, that part of the Viscount's Department that deals with asset restraint and recovery issues) because at this stage there are not many countries with civil asset recovery regimes. The United Kingdom, the United States and Ireland are most likely to be seeking assistance in the short term but as international standards develop, it is likely that in the longer term there may be additional resources required. No immediate increases in staff on account of this legislation will be sought. If in the future such increases become necessary, the present intention is that these will be funded where appropriate from the Civil Assets Recovery Fund.

European Convention on Human Rights

Article 16 of the Human Rights (Jersey) Law 2000 requires the Minister in charge of a Projet de Loi to make a statement about the compatibility of the provisions of the Projet with the Convention rights (as defined by Article 1 of the Law). On 21st September 2007 the Minister for Home Affairs made the following statement before Second Reading of this Projet in the States Assembly –

In the view of the Minister for Home Affairs the provisions of the Draft Civil Asset Recovery (International Co-operation) (Jersey) Law 200- are compatible with the Convention Rights.

Explanatory Note

This Law is intended to enable Jersey to co-operate with other countries or territories in respect of proceedings in those countries that are instigated for the purpose of enabling the seizure by those countries or territories of the “proceeds of crime”.

Part 1 – Introductory provisions

Article 1 sets out the definitions of various words and phrases used in the Law.

Those phrases include the phrase “tainted property”, which is defined as property that has been found by an external decision-making body to have been –

- (a) used in, or intended to be used in, unlawful conduct; or
- (b) obtained in the course of, from the proceeds of, or in connection with, unlawful conduct.

An “external decision-making body” is defined as a court or tribunal, or other body or person, who or which is authorized, under a law of a country or territory outside Jersey, to make external civil asset recovery orders in “external civil asset recovery proceedings” (which are proceedings in which such orders may be made). Those orders are orders that authorize the forfeiture to the State of “tainted property”.

A “responsible authority” is an external decision-making body, or a body which conducts investigations relating to the forfeiture of tainted property or has the function of making requests for assistance of the kind mentioned in Article 2 or 3.

Article 2 sets out a process whereby Jersey may provide, at the request of the responsible authority of another country, assistance to that country, by serving on a person in Jersey a summons (or its equivalent) or a document setting out a decision of an authority of that country in external civil asset recovery proceedings.

Part 2 – Evidence in relation to external civil asset recovery proceedings

Article 3 enables Jersey to assist another country to obtain evidence in Jersey relating to external civil asset recovery proceedings that have been, or may be, instituted in the country. The assistance may be provided by the Attorney General if he has received a request from the country in relation to such proceedings or an investigation undertaken for the purpose of such a proceeding that has been, or may be, instigated, and if he is satisfied that there are reasonable grounds to suspect that relevant evidence may be located in Jersey.

The assistance that may be provided by the Attorney General consists of issuing a notice to a person in Jersey, setting out certain requirements that they shall fulfil. Those requirements are that the person provide to him or her, the Viscount or a court in Jersey, documents or other articles that may constitute evidence for the purpose of the external civil asset recovery proceedings. The person may be required to attend before the Viscount or court to give evidence as well.

A person who fails to comply with such a requirement shall be liable to a fine of level 4 on the standard scale (£5,000).

Article 4 sets out the circumstances in which a person is excused from the obligation to comply with a requirement imposed on him or her under Article 3. Those circumstances include those in which a person in civil proceedings in Jersey could refuse to give the evidence – e.g. on the grounds of self-incrimination, or legal professional privilege. They also include the circumstances in which the person could, under the law of the country from which the request for assistance originated, refuse to comply with the requirement. However, in the case of the latter, the person shall only be excused if the authority that made the request concedes that the refusal is so justified. If the authority does not, the person shall be required to give the evidence - but if the claim is then upheld by a court in the country, the evidence shall not be transmitted by the Attorney General.

Article 5 sets out a requirement that if the Viscount or a court obtains evidence under Article 3, they shall transmit it to the Attorney General, who may transmit it to the responsible authority of the relevant country or territory. The Attorney General may also transmit any evidence that he or she has obtained under Article 3. The Article also enables the transmission of any associated certificate, affidavit or other verifying document, that is required to be transmitted in order to satisfy the request under Article 3 to which the evidence relates.

Part 3 – Enforcement of external civil asset recovery orders

Article 6 enables an order to be known as a “property restraint order” to be made by the Royal Court, on an application by the Attorney General made at the request of another country or territory. Such an order may only be made if civil asset recovery proceedings have begun, or are to be instituted, and it appears to the Court that there are reasonable grounds for believing that a civil asset recovery order may be made in those proceedings. The order may be discharged by the Royal Court if the proposed civil asset recovery proceedings to which it relates have not begun within a reasonable time.

Article 7 sets out that which is authorized by a property restraint order. Broadly speaking, such an order “freezes” property that might become subject to a civil asset recovery order, by preventing persons taking action in relation to the property. Property subject to such an order vests in the Viscount. The Article sets out that such an order may be varied or discharged on the application of a person whose property is affected by it, and that such an order shall be discharged on the satisfaction of an order made under Article 10.

Article 8 exempts the Viscount from any liability that might otherwise be attached to him or her by virtue of an action taken under a property restraint order in relation to property that then does not become subject to an external civil asset recovery order. The exemption applies if the action could have been taken if the property had been subject to such an order and he or she had reasonable grounds for thinking that he or she was entitled to take the action, but shall not apply if the Viscount has been negligent in taking the action.

Article 9 enables external civil asset recovery orders to be registered.

Article 10 provides that if an external civil asset recovery order has been registered under Article 9, an order may on the application of the Attorney General, be made in relation to the property referred to in the registered order. On the making of the order under this Article, the property to which it relates may be dealt with (including by selling it) by the Viscount.

Article 11 establishes a fund to be called the Civil Asset Recovery Fund.

Moneys received under Article 10 shall be paid into the Fund. The Fund shall be used to discharge Jersey’s obligations under any asset sharing agreement for mutual assistance in the civil recovery of the proceeds of unlawful conduct. The Fund shall also be used by the Minister for Treasury and Resources to remunerate the Viscount for and reimburse his or her expenses reasonably incurred in the discharge of his or her functions under this Law and under any other Law which provides for recovered money to be paid into the Fund; to cover the reasonable expenses of the Minister for Treasury and Resources in administering the Fund; and to reimburse the reasonable expenses of the Attorney General in the discharge of his or her functions under this Law and under any other Law which provides for recovered money to be paid into the Fund. Any money remaining must be paid into the consolidated fund.

Article 12 states that the Attorney General shall represent other countries in proceedings under Article 7 or 9; and that a request from another country delivered to the Attorney General under one of those Articles shall constitute the authority of that country or territory to act on its behalf.

Part 4 – Concluding provisions

Article 13 sets out how notice shall be given under this Law in relation to a person who is deceased or who cannot be located. The Article also specifies how actions may continue to be taken under this Law after the death of certain persons, if the relevant external civil asset recovery proceedings or order to which the actions relate may continue on foot, or remain in force, in the country or territory in which they are or may be made.

Article 14 grants a person appearing to the Royal Court to be likely to be affected by the making of an order under this Law by the Court a right to appear before the Court and make representations.

Article 15 enables rules of court to be made by the Royal Court for the purpose of proceedings under the Law.

Article 16 enables the States to make Regulations –

- (a) in relation to evidential matters and matters of proof for the purposes of the Law;
- (b) to enable the issue of search warrants, where either external civil asset recovery proceedings have been commenced or where there is an investigation to ascertain whether such proceedings should be commenced.

Article 17 contains transitional provisions.

Article 18 sets out the name by which the Law may be cited, and that the Law shall come into force 7 days after it is registered.



Jersey

DRAFT CIVIL ASSET RECOVERY (INTERNATIONAL CO-OPERATION) (JERSEY) LAW 200

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Jersey

DRAFT CIVIL ASSET RECOVERY (INTERNATIONAL CO-OPERATION) (JERSEY) LAW 200

A LAW to enable Jersey to co-operate with other countries in external civil asset recovery proceedings and investigations and for related purposes

Adopted by the States [date to be inserted]

Sanctioned by Order of Her Majesty in Council [date to be inserted]

Registered by the Royal Court [date to be inserted]

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

PART 1

INTRODUCTORY PROVISIONS

1 Interpretation

(1) In this Law –

“document” includes information recorded in any form and, in relation to information recorded otherwise than in legible form, references to its production include references to producing a copy of the information in legible form;

“evidence” includes documents and other articles;

“external civil asset recovery order” means an order or other judicial authority, that –

- (a) is made, other than in the course of criminal proceedings, by an external decision-making body in a country or territory outside Jersey; and
- (b) specifies that property specified in the order is tainted property, or specifies an amount of money to be money to be forfeited or recovered in lieu of tainted property;

“external civil asset recovery proceedings” means proceedings –

- (a) which are judicial in nature but are not criminal proceedings; and
- (b) in which external civil asset recovery orders may be made;

“external decision-making body” means a court or tribunal, or other body or person, who or which is authorized, under a law of a country or territory outside Jersey, to make external civil asset recovery orders;

“items subject to legal professional privilege” has the meaning assigned to that expression by the Drug Trafficking Offences (Jersey) Law 1988^[1];

“Minister” means the Minister for Treasury and Resources;

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

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

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

“property restraint order” means an order made under Article 7;

“recoverable property” means any property in respect of which an external civil asset recovery order has been, or could be, made in external civil asset recovery proceedings;

“respondent” means a person against whom, or against whose property, an external civil asset recovery order has been made or against whom, or against whose property, external civil asset recovery proceedings have been, or are to be, instituted;

“responsible authority” means –

- (a) an external decision-making body;
- (b) a person or body who or which –
 - (i) is authorized under a law of a country or territory outside Jersey to conduct investigations on behalf of the country or territory in relation to external civil asset recovery proceedings that are or may be instituted, and
 - (ii) is conducting such an investigation; and
- (c) any other authority in a country or territory which appears to the Attorney General to have the function of making requests, in relation to external civil asset recovery proceedings, of the kind to which Article 2 or 3 applies;

“tainted property” means property that has been found by an external decision-making body to have been –

- (a) used in, or intended to be used in, unlawful conduct; or
- (b) obtained in the course of, from the proceeds of, or in connection with, unlawful conduct;

“unlawful conduct” means the commission of an offence against a law of a country or territory, including Jersey.

- (2) For the purposes of this Law, external civil asset recovery proceedings are instituted in a country or territory outside Jersey when an application has been made to an external decision-making body in the other country or territory for an external civil asset recovery order.
- (3) For the purposes of this Law, external civil asset recovery proceedings are concluded in a country or territory outside Jersey –
 - (a) when (disregarding any power of an external decision-making body to grant leave to appeal out of time) there is no further possibility of an external civil asset recovery order being made in the proceedings; or
 - (b) on the satisfaction of an external civil asset recovery order made in the proceedings, whether by forfeiture, recovery, or realisation, of all property liable to be forfeited, recovered, realised or otherwise dealt with under the order.
- (4) An external civil asset recovery order is subject to appeal until (disregarding any power of an external decision-making body or 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.

- (1) If the Attorney General receives from the government of, or a responsible authority in, a country or territory outside Jersey –
 - (a) a summons or other process requiring a person to appear as a respondent, or to attend as a witness, in external civil asset recovery proceedings in that country or territory; or
 - (b) a document issued by an external decision-making body in that country or territory as part of external civil asset recovery proceedings and recording a decision of the body made in the course of those proceedings,

together with a request for it to be served on a person in Jersey, the Attorney General may cause the process or document to be served by post, or, if the request is for personal service, instruct the Viscount to cause it to be personally served.
- (2) Service by virtue of this Article of any process mentioned in paragraph (1)(a) shall not impose an obligation under the law of Jersey to comply with it.
- (3) A process served by virtue of this Article shall be accompanied by a notice –
 - (a) stating the effect of paragraph (2);
 - (b) indicating that the person on whom it is served may wish to seek advice as to the possible consequences of the person's failing to comply with the process under the law of the country or territory where it was issued; and
 - (c) indicating that under that law the person may not, as a witness, be accorded the same rights and privileges as would be accorded to the person as a witness in civil proceedings in Jersey.
- (4) If the Viscount is instructed under this Article to cause a process or document to be served, the Viscount shall –
 - (a) if it has been served, inform the Attorney General as soon as practicable when and how it was served and (if possible) provide the Attorney General with a receipt signed by the person on whom it was served; or
 - (b) if he or she has been unable to cause the process or document to be served, inform the Attorney General as soon as practicable of that fact and of the reason he or she has been unable to cause the process to be served.

PART 2

EVIDENCE IN RELATION TO EXTERNAL CIVIL ASSET RECOVERY PROCEEDINGS

3 Evidence for, and assistance in relation to, external civil asset recovery proceedings

- (1) This Article applies in relation to a request if –
 - (a) the Attorney General receives from a responsible authority a request for assistance in obtaining evidence in Jersey in connection with –
 - (i) external civil asset recovery proceedings that have been instituted in a country or territory, or
 - (ii) an investigation for the purpose of external civil asset recovery proceedings that are being, or may be, instituted in a country or territory; and
 - (b) the Attorney General is satisfied that there are reasonable grounds to suspect that the evidence is, or relates to, property that –
 - (i) has been used in, or is intended to be used in, unlawful conduct, or
 - (ii) has been, or was intended to be, obtained in the course of, from the proceeds of, or in connection with, unlawful conduct.
- (2) If this Article applies in relation to a request, the Attorney General may issue a notice in writing to a

person specifying any of, or any combination of, the following requirements –

- (a) that the person is required to give to the Attorney General, by the date specified in the notice, documents, or other articles, which are specified in the notice and that may constitute evidence for the purposes of the request;
 - (b) that the person –
 - (i) is required to give, to a court or the Viscount (as specified in the notice) documents, or other articles, which are specified in the notice and that may constitute evidence for the purposes of the request, and
 - (ii) may be required by a court or the Viscount (as specified in the notice) to attend and to give evidence in proceedings before the court specified or the Viscount in relation to that evidence;
 - (c) that the person may be required by a court or the Viscount (as specified in the notice) to attend and to give evidence in proceedings before the court specified or the Viscount in relation to the request.
- (3) A person shall not, without reasonable excuse, fail to comply with a requirement of a notice given to the person under paragraph (2) that is a requirement of the kind specified in sub-paragraph (a) of that paragraph, in relation to evidence that the person may, under Article 4, be compelled to give in proceedings under this Article.
- (4) A person who contravenes paragraph (3) commits an offence and shall be liable to a fine of level 4 or the standard scale.
- (5) A court shall have the same powers for securing the attendance of –
- (a) a person to whom a notice has been given under paragraph (2) specifying a requirement of the kind that is specified in sub-paragraph (b) or (c) of that paragraph; or
 - (b) any other witness,
- for the purpose of proceedings under this Article as it has for the purpose of other proceedings before it.
- (6) The Viscount shall have the same powers for securing the attendance of –
- (a) a person to whom a notice has been given under paragraph (2) specifying a requirement of the kind that is specified in sub-paragraph (b) or (c) of that paragraph; or
 - (b) any other witness,
- for the purposes of proceedings before the Viscount under this Article as the Royal Court has for the purposes of any proceedings before it.
- (7) A court or the Viscount, as the case may be, may in proceedings before it or him or her under this Article, take evidence on oath.
- (8) An order for costs shall not be made in proceedings before a court or the Viscount under this Article.
- (9) For the avoidance of doubt it is declared that the Bankers' Books Evidence (Jersey) Law 1986^[2] applies to any proceedings before a court or the Viscount under this Article as it applies to other proceedings before the court or, in the case of the Viscount, would apply to proceedings before the Royal Court.
- (10) The Bankers' Books Evidence (Jersey) Law 1986 applies to the giving to the Attorney General, in pursuance of a requirement of a kind that is referred to in sub-paragraph (a) of paragraph (2) and that is specified in a notice given under that paragraph, of any evidence to which that Law applies, as if the giving of the evidence to the Attorney General took place in proceedings before a court.

4 Giving of evidence in proceedings under Article 3

- (1) A person shall not be compelled to give in proceedings under Article 3 any evidence which the

person could not be compelled to give –

- (a) in civil proceedings in Jersey; or
 - (b) subject to paragraph (2), in civil proceedings in the country or territory from which the request under Article 3(1) has come.
- (2) Paragraph (1)(b) does not apply unless the claim of the person questioned to be exempt from giving the evidence is conceded by the responsible authority which made the request under Article 3(1).
 - (3) If the claim made by a person is not conceded in accordance with paragraph (2)–
 - (a) the person may (subject to the other provisions of this Article) be required to give the evidence to which the claim relates; and
 - (b) the evidence shall not be transmitted to the responsible authority which requested it if a court in the country or territory in question, on the matter being referred to it, upholds the claim.
 - (4) In this Article, references to giving evidence include references to answering any question and to producing any document or other article and the references in paragraph (3) to the transmission of evidence given by a person shall be construed accordingly.
 - (5) In this Article, references to giving evidence in proceedings under Article 3 shall include the giving of evidence to the Attorney General pursuant to a requirement that is specified in a notice given under Article 3(2) and that is of a kind that is specified in subparagraph (a) of Article 3(2).

5 Transmission of evidence received in proceedings under Article 3

- (1) The evidence received by a court or the Viscount, as the case may be, under Article 3 shall be provided to the Attorney General for transmission to the responsible authority which made the request under that Article.
- (2) If, in order to comply with the request, it is necessary for the evidence to be accompanied by any certificate, affidavit or other verifying document, the court or the Viscount, as the case may be, shall also provide for transmission by the Attorney General of any document of that nature as may be specified in the notice nominating the court or Viscount.
- (3) The Attorney General may transmit to the responsible authority which made the request under Article 3 any evidence that is provided to him or her pursuant to a notice given to a person under that Article in relation to the request.
- (4) If the evidence consists of a document the original or a copy may be transmitted, and if it consists of any other article the article itself or a description, photograph or other representation of it may be transmitted, as may be necessary in order to comply with the request.

PART 3

ENFORCEMENT OF EXTERNAL CIVIL ASSET RECOVERY ORDERS

6 Making of property restraint order

- (1) The Attorney General may apply to the Royal Court to make a property restraint order under this Article in respect of recoverable property specified in the application.
- (2) An application under paragraph (1) may also be made on an *ex parte* application to the Bailiff in Chambers.
- (3) After receiving an application under paragraph (1), the Royal Court may–
 - (a) make a property restraint order in respect of any recoverable property specified in the application; and
 - (b) give directions in relation to the management or dealing with the property, other than directions

to dispose of, or realise, the property (other than perishable property).

- (4) The Royal Court may only make a property restraint order if the application is made on behalf of the government of a country or territory outside Jersey and if the requirements of either paragraph (5) or (6) have been complied with.
- (5) The requirements of this paragraph are that –
 - (a) external civil asset recovery proceedings that relate to property in Jersey have been instituted in a country or territory outside Jersey;
 - (b) the proceedings have not been concluded; and
 - (c) it appears to the Royal Court that there are reasonable grounds for believing that an external civil asset recovery order may be made in the proceedings.
- (6) The requirements of this paragraph are that –
 - (a) it appears to the Royal Court that external civil asset recovery proceedings that may relate to property in Jersey are to be instituted in a country or territory outside Jersey; and
 - (b) it appears to the Royal Court that there are reasonable grounds for believing that an external civil asset recovery order may be made in the proceedings.
- (7) A property restraint order –
 - (a) shall specify the respondent, if any, to whom it relates;
 - (b) shall specify the recoverable property to which it relates;
 - (c) shall provide for service on, or the provision of notice to, persons affected by it in the manner that the Royal Court may direct; and
 - (d) may be made subject to conditions or restrictions specified in the order.
- (8) If the Royal Court has made a property restraint order, it shall discharge it if any proposed external civil asset recovery proceedings to which it relates are not instituted within the time that the Court considers reasonable.

7 Effect, and discharge of, property restraint order

- (1) Subject to paragraph (3), on the making of a property restraint order–
 - (a) all the recoverable property that is specified in the order shall vest in the Viscount;
 - (b) any specified person may be prohibited from dealing with any recoverable property held by that person that is specified in the order;
 - (c) any specified person may be prohibited from dealing with any recoverable property that is specified in the order and that is transferred to the person after the making of the order; and
 - (d) any specified person having possession of any recoverable property that is specified in the order may be required to give possession of it to the Viscount.
- (2) Subject to paragraph (3), on the making of a property restraint order the Viscount shall take possession of, and, in accordance with the directions of the Royal Court under Article 6(3), manage or otherwise deal with, any recoverable property that is specified in the order.
- (3) Any property vesting in the Viscount pursuant to paragraph (1)(a) shall so vest subject to all *hypothecs* and security interests with which the property was burdened before it was so vested.
- (4) A property restraint order –
 - (a) may be discharged or varied in respect of any property to which the external civil asset recovery proceedings in respect of which the order was made may relate; and
 - (b) shall be discharged on satisfaction of an order made under Article 10.
- (5) An application for the discharge or variation of a property restraint order may be made to the Bailiff in Chambers by any person affected by it and the Bailiff may rule upon the application or may, at the

Bailiff's discretion, refer it to the Royal Court for adjudication.

- (6) If it appears to the Royal Court that any property restraint order, or any variation or discharge of such an order, made by it may affect immovable property situate in Jersey, it shall order the registration of the order in the Public Registry.
- (7) If it appears to the Bailiff that any variation or discharge of a property restraint order made by him or her pursuant to paragraph (5) affects immovable property situate in Jersey, the Bailiff shall order the registration of the order in the Public Registry.
- (8) For the purposes of this Article, dealing with property held by any person includes (without prejudice to the generality of the expression) –
 - (a) where a debt is owed to that person, making a payment to any person in reduction of the amount of the debt; and
 - (b) removing the property from Jersey.
- (9) If the Royal Court has made a property restraint order, a police officer may, for the purpose of preventing any recoverable property to which the property restraint order relates being removed from Jersey, seize the property.
- (10) Property seized under paragraph (9) shall be dealt with in accordance with directions of the Royal Court.

8 Liability and costs of Viscount

- (1) If the Viscount takes any action under a property restraint order in relation to property which is not liable to be dealt with under an external civil asset recovery order, the Viscount shall not be liable to any person in respect of any loss or damage resulting from the Viscount's action (except in so far as the loss or damage is caused by the Viscount's negligence) if –
 - (a) the action taken was action which the Viscount would be entitled to take if the property were property which is liable to be dealt with under an external civil asset recovery order; and
 - (b) the Viscount believed, and had reasonable grounds for believing, that the Viscount was entitled to take that action in relation to that property.
- (2) The Viscount shall be entitled –
 - (a) to be remunerated for managing property that has vested in him or her under this Law; and
 - (b) to be paid any expenses he or she has reasonably incurred in managing property that has vested in him or her under this Law.

9 Registration of external civil asset recovery orders

On an application made on behalf of the government of a country or territory outside Jersey, the Royal Court may register an external civil asset recovery order made in the country or territory if –

- (a) it is satisfied that at the time of registration the order is in force and not subject to appeal;
- (b) where the respondent in relation to the order did not appear in the proceedings in which the order was made, it is satisfied that he or she received notice of the proceedings in sufficient time to enable him or her to defend them; and
- (c) it is of the opinion that enforcing the order in Jersey would not be contrary to the interests of justice.

10 Recovery of property

- (1) If an external civil asset recovery order has been registered in the Royal Court under Article 9, the Court may, on the application of the Attorney General, order that –
 - (a) so much of the property, specified in the order, as is not subject to a property restraint order,

shall vest in the Viscount and may, in accordance with the directions of the Court, be managed, dealt with, or realised, by the Viscount; and

(b) any property specified in the order that is subject to a property restraint order may, in accordance with the directions of the Court, be managed, dealt with, or realised, by the Viscount.

- (2) The Royal Court shall not exercise the powers conferred by paragraph (1) in respect of any property unless a reasonable opportunity has been given for persons holding any interest in the property to make representations to the Court.
- (3) Subject to paragraph (4), on the making of an order under paragraph (1) the Viscount shall take possession of, and, in accordance with directions of the Royal Court under paragraph (1), manage or otherwise deal with, the recoverable property that is specified in the order.
- (4) Any property vesting in the Viscount pursuant to paragraph (1) shall so vest subject to all *hypothecs* and security interests with which the property was burdened before it was so vested.
- (5) If it appears to the Royal Court that any order made by it under paragraph (1)(a) may affect immovable property situate in Jersey, it shall order the registration of the order in the Public Registry.

11 Civil Asset Recovery Fund

- (1) There shall be established a fund to be called the Civil Asset Recovery Fund.
- (2) The Civil Asset Recovery Fund shall be managed and controlled by the Minister.
- (3) Any money that is –
 - (a) obtained by the Viscount under Article 10, including by the realisation of property to which an order under that Article relates; or
 - (b) obtained under an asset sharing agreement,shall be paid into the Civil Asset Recovery Fund.
- (4) Except as required by paragraph (9), money that is paid into the Civil Asset Recovery Fund is not required to be credited to the consolidated fund.
- (5) The Civil Asset Recovery Fund shall be a special fund for the purposes of the Public Finances (Jersey) Law 2005^[3].
- (6) The Minister shall apply monies in the Civil Asset Recovery Fund –
 - (a) to discharge Jersey's obligations under any asset sharing agreement;
 - (b) to pay to the Viscount –
 - (i) any amount required under Article 8(2), and
 - (ii) any amount required to be paid to the Viscount under any other enactment pursuant to which money recovered by any process is required to be paid into the Fund;
 - (c) to meet the expenses reasonably incurred by the Minister in administering the Fund;
 - (d) to meet the expenses reasonably incurred by the Attorney General in the discharge of his or her functions under –
 - (i) this Law, and
 - (ii) any other enactment pursuant to which money recovered by any process is required to be paid into the Fund.
- (7) At the end of each financial year, the Minister shall pay into the consolidated fund so much of the amount of money standing to the account of the Civil Asset Recovery Fund as has not been applied or is not required to be applied, to discharge the obligation described in paragraph (6)(a), or to pay the remuneration for, and meet the expenses incurred, in the year, in accordance with paragraph (6).

(b) to (d).

(8) Monies paid into the Civil Asset Recovery Fund, while not applied for any of the purposes mentioned in paragraph (6) or not required to be paid into the consolidated fund under paragraph (7), shall be held by the Treasurer of the States.

(9) In this Article –

“asset sharing agreement” means any agreement or arrangement made by or on behalf of Jersey with a country or territory outside Jersey for the sharing of the proceeds of unlawful conduct that, as a result of mutual assistance in proceedings (other than criminal proceedings), have been confiscated or forfeited either in Jersey or elsewhere;

“consolidated fund” has the meaning assigned to it in the Public Finances (Jersey) Law 2005.

12 Representation of governments of other countries or territories

(1) In any proceedings pursuant to Article 7 or 9, the government of a country or territory outside Jersey shall be represented by the Attorney General.

(2) In any proceedings pursuant to Article 7 or 9, a request for assistance sent to the Attorney General by a responsible authority of a country or territory outside Jersey shall, unless the contrary is shown, be deemed to constitute the authority of the government of that country or territory for the Attorney General to act on its behalf.

PART 4

CONCLUDING PROVISIONS

13 Application in event of death or disappearance of person

(1) A notice that may be given by a person under this Law to another person who is deceased shall be deemed to have been given if it is given to the personal representatives of the other person’s estate or, if none, his or her heirs.

(2) If a person’s whereabouts is unknown, or a person has absconded, the Royal Court shall not make an order in relation to the person, or in relation to the property of the person, unless it is satisfied that the Attorney General has taken reasonable steps to contact the person.

(3) Where –

(a) a notice is or may be issued under Article 3(2) in relation to external civil asset recovery proceedings, or investigations for the purpose of such proceedings, that are being, or may be, instituted; and

(b) the person, if any, to whom the proceedings relate, or who has possession of evidence to which the notice may relate, dies,

then, despite that death, Part 2 shall continue to apply in relation to –

(i) any evidence; and

(ii) any person who may be required to give any evidence under that Part in relation to the proceedings or investigations,

if the proceedings or investigations may, under the law of the country or territory in which they are or may be instigated, continue despite the death of the deceased.

(4) The death of a person in relation to whom external civil asset recovery proceedings are or may be instigated shall not prevent the making of, or the continuance in force of, a property restraint order, or an order under Article 10, in respect of property to which the external civil asset recovery proceedings relates or may relate, if the proceedings may, under the law of the country or territory in

which the proceedings are or may be instigated, continue, despite the death of the person.

- (5) The death of a person in relation to whom an external civil asset recovery order is made, shall not prevent the making of, or the continuance in force of, a property restraint order, or an order under Article 10, in respect of recoverable property to which the external civil asset recovery order relates.
- (6) The death of a person who has an interest in property in Jersey in relation to which a property restraint order, or an order under Article 10, may be made shall not prevent such an order being made or continuing in force in relation to the property.

14 Right of person affected to make representation to Royal Court

Any person appearing to the Royal Court to be likely to be affected by the making of an order under this Law by the Court shall be entitled to appear before the Court and make representations.

15 Rules of Court

- (1) The power to make Rules of Court under Article 13 of the Royal Court (Jersey) Law 1948^[4] shall include a power to make Rules for the purposes of giving effect to, and regulating the procedure under, this Law.
- (2) Rules made for the purposes of giving effect to, and regulating the procedure under this Law, may, in particular, make provision with respect to the persons entitled to appear or take part in proceedings, before a court or the Viscount, to which this Law applies and for excluding the public from any such proceedings.

16 Regulations

- (1) The States may by Regulations make such provision as to the evidence or proof of any matter for the purposes of this Law as appears to the States to be necessary or expedient.
- (2) The States may by Regulations make provision for the issue of, and the powers conferred by, warrants for the search of premises, of persons on such premises, and of articles on such premises or persons, where –
 - (a) external civil asset recovery proceedings have been issued; or
 - (b) where investigations are being, or have been, undertaken for the purpose of determining whether to institute external civil asset recovery proceedings.
- (3) Regulations made under paragraph (2) may further provide for the keeping, use and onward transmission of any evidence seized pursuant to such a warrant.
- (4) Regulations made by the States under this Article may include such incidental, consequential and transitional provisions as appear to the States to be necessary or expedient.

17 Transitional provisions

This Law shall apply to and in relation to –

- (a) external civil asset recovery proceedings;
- (b) investigations for the purpose of external criminal asset recovery proceedings that are being, or may be, conducted; and
- (c) any order or other judicial authority, or document or evidence,
whether or not –
 - (i) the proceedings or investigations began before or after the commencement of this Law; or

- (ii) any order or other judicial authority, or document or evidence was made, or came into existence, before or after the commencement of this Law.

18 Citation and commencement

- (1) This Law may be cited as the Civil Asset Recovery (International Co-operation) (Jersey) Law 200-.
- (2) This Law shall come into force 7 days after it is registered.

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- [1] *chapter 08.580*
- [2] *chapter 08.040*
- [3] *chapter 24.900*
- [4] *chapter 07.770*