

**CONSTITUTION OF BRUNEI DARUSSALAM  
(Order under section 83(3))**

**CRIMINAL CONDUCT (RECOVERY OF PROCEEDS) ORDER, 2000**

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No. S 52

**CONSTITUTION OF BRUNEI DARUSSALAM**  
(Order under section 83(3))

**CRIMINAL CONDUCT (RECOVERY OF PROCEEDS) ORDER, 2000**

In exercise of the power conferred by subsection (3) of section 83 of the Constitution of Brunei Darussalam, His Majesty the Sultan and Yang Di-Pertuan hereby makes the following Order —

**PART I — PRELIMINARY**

**Citation, commencement and long title.**

1. (1) This Order may be cited as the Criminal Conduct (Recovery of Proceeds) Order, 2000 and shall commence on a day to be appointed by the Minister, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by notice in the *Gazette*.

(2) The long title of this Order is "An Order to make further provision for and in relation to the recovery of the proceeds of criminal conduct; to make further provision for facilitating the enforcement of overseas forfeiture and restraint orders; and for connected purposes".

**Interpretation.**

2. (1) In this Order, but subject to the provisions of the Schedule —

"appropriate authority of a designated country" means an authority specified as such in an order made under section 31;

"benefiting from an offence" means or falls to be construed in accordance with subsection (3) of section 5;

"charging order" falls to be construed in accordance with section 11;

"Code of Practice" means the code of practice issued by the Minister under subsection (1) of section 20 following consultation with such bodies as appear to him to be representative of the relevant professions;

"confiscation order" means an order made by the Court under section 5;

"Court" means the High Court or an Intermediate Court;

"court of a designated country" includes a court of any state or territory of a designated country;

"criminal conduct" falls to be construed in accordance with subsection (10) of section 21;

"dealing with property" falls to be construed in accordance with subsection (9) of section 10;

"defendant" falls to be construed in accordance with paragraph (b) of subsection (9) of section 5;

"designated country" means a country or territory outside Brunei Darussalam designated as such by an order made by the Minister under section 31;

"drug trafficking offence" has the same meaning as in subsection (1) of section 2 of the Emergency (Drug Trafficking) (Recovery of Proceeds) Order, 1996 (S 12/96);

"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 Order applies; or

(ii) the value of property so obtained; or

(b) of depriving a person of a pecuniary advantage so obtained,

and the reference in this definition to an order includes any order, decree, direction or judgment or any part thereof, however described;

"gift caught by this Order" falls to be construed in accordance with subsection (10) of section 3;

"interest", in relation to property, includes right;

"making a gift" falls to be construed in accordance with subsection (12) of section 3;

"Minister" means the Minister of Finance;

"offence to which this Order applies" means or (as the case may be) falls to be construed in accordance with paragraph (a) of subsection (9) of section 5;

"premises" includes —

- (a) a vehicle, vessel, aircraft or hovercraft;
- (b) an installation which is maintained, or is intended to be established, for underwater exploitation or exploration;
- (c) a tent or other movable structure;

"realisable property" means or (as the case may be) falls to be construed in accordance with subsection (1) of section 3;

"restraint order" means an order made under subsection (1) of section 10;

"value of property" means or (as the case may be) falls to be construed in accordance with subsections (4) to (6) of section 3;

"value of the gift" means or (as the case may be) falls to be construed in accordance with subsections (7) and (8) of section 3.

(2) This Order applies to property whether it is situated in Brunei Darussalam or elsewhere.

(3) Nothing in this Order confers any power on any court in connection with offences committed before the commencement of this Order or proceedings against a person for an offence instituted before the commencement of this Order.

(4) A reference in this Order to property obtained, or to a pecuniary advantage derived, in connection with the commission of an offence includes a reference to property obtained or to a pecuniary advantage derived both in that connection and in some other connection.

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

(6) A reference to property held by a person includes a reference to property vested in his trustee in bankruptcy or liquidator.

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

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

- (9) Proceedings for an offence are instituted —
- (a) where a complaint is made in respect of that offence; or, if earlier,
  - (b) when a person is charged with the offence after being taken into custody without a warrant.

- (10) 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; or
  - (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).

(11) 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.

(12) A reference in this Order to anything received in connection with any offence to which this Order applies includes a reference to anything received both in that connection and in some other connection.

**Definition of principal terms used.**

3. (1) In this Order, "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 Order.

(2) Property is not realisable property if an order under section 25 of the Misuse of Drugs Act (Chapter 27) is in force in respect of the property.

- (3) For the purposes of this Order, the amount that may be realised under a confiscation order is —
- (a) the total of the values at the time of realisation of all the realisable property held by the defendant, less
  - (b) where there are obligations having priority at the date of realisation, the total amounts payable at that date in pursuance of such obligations,

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

(4) Subject to the following provisions of this section, for the purposes of this Order the value of property (not being 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;
- (b) in any other case, its market value.

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

(7) Subject to subsection (12), a reference in this Order to the value at any time (referred to in subsection (8) as "the material time") of a gift caught by this Order is a reference 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,

whichever is the greater.



(8) Subject to subsection (12), if at the material time a person 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 represents the property which he received, but disregarding in either case any charging order.

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

(10) A gift (including a gift made before the commencement of this Order) is caught by this Order 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.

(11) The reference in subsection (10) 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.

(12) For the purposes of this Order —

- (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.

PART II

BRUNEI DARUSSALAM OFFENCES AND ORDERS

**Application of Part II.**

4. This Part applies to —

- (a) confiscation, restraint and charging orders made by the Court in relation to offences committed in Brunei Darussalam; and
- (b) the money-laundering and other offences mentioned in sections 21 to 25 committed in Brunei Darussalam.

**Confiscation, restraint and charging orders and their administration  
and enforcement**

**Confiscation orders.**

5. (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 it thinks fit.

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

- (a) he is found guilty of an offence to which this Order applies; and
- (b) it is satisfied 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.

(3) For the purposes of this Order, 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 Order 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 that pecuniary advantage.

(5) The sum which an order made by the Court under this section requires an offender to pay shall 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) The standard of proof required to determine any question arising under this Order as to —

- (a) whether a person has benefited as mentioned in paragraph (b) of subsection (2); or
- (b) the amount to be recovered in his case under section 6,

shall be that applicable in civil proceedings.

(7) Where, in any proceedings for an offence under this Order, it is proved that the defendant has benefited from an offence to which this Order applies, any realisable property held by him obtained as a result of or in connection with its commission shall be presumed to have been obtained with knowledge that such an offence had been committed, unless the contrary is proved.

(8) The Court may, on the application of the Attorney General, make a confiscation order when the defendant (whether or not he has been charged) cannot be found or who is outside Brunei Darussalam and cannot be compelled to attend before the Court, or when the identity of the owner of the property is not known.

(9) In this Order —

- (a) references to an offence to which this Order applies are references to any offence, committed in Brunei Darussalam, other than a drug trafficking offence, punishable in Brunei Darussalam (whether or not with any other method of punishment) with imprisonment for a term of not less than five years or for life or which is a capital offence;
- (b) a person against whom proceedings have been instituted for an offence to which this Order applies is referred to (whether or not he has been convicted) as "the defendant".

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

6. (1) A Court shall not make a confiscation order unless the prosecution has given written notice to the Court to the effect that it appears to it 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 such amount as the prosecution may consider reasonable in the circumstances.

(2) If the prosecution has given 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, it shall, before sentencing or otherwise dealing with the defendant 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 by way of compensation, other than an order under section 382 of the Criminal Procedure Code (Chapter 7); or
- (c) making any order under section 3 of the Emergency (Drug Trafficking) (Recovery of Proceeds) Order, 1996 (S 12/96),

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 written law 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 it from dealing with an offender in any way it considers appropriate in respect of an offence to which this Order applies.

(7) Where —

- (a) the Court makes both a confiscation order and an order for payment by way of compensation under section 382 of the Criminal Procedure Code (Chapter 7) 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.

**Postponed determinations.**

7. (1) Where the Court is acting under section 5 but considers that it requires further information before —

*(a)* determining whether the defendant has benefited as mentioned in paragraph *(b)* of subsection (2) of section 5; or

*(c)* determining the amount to be recovered in his case by virtue of section 6,

it may, for the purpose of enabling that information to be obtained, postpone making that 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 subsections (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 subsections (1) or (4) may be made —

- (a) on application by the defendant or the prosecution; 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 subsections (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.

(8) Where the Court has so proceeded, section 6 shall have effect as if —

- (a) in subsection (4), the words and punctuation from ", before sentencing" to "offences concerned," were omitted; and
- (b) in subsection (5), after "determining" in the penultimate line 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 at any time during the specified period, the Court shall not —

- (a) impose any fine on him; or
- (b) make any such order as is mentioned in paragraphs (b) or (c) of subsection (5) of section 6.

(10) In this section, "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 purpose of subsection (2) of section 5, the date of the latest of those convictions.

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

8. (1) Where —

(a) a defendant has been convicted of an offence to which this Order applies and the prosecution tenders to the Court a written 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 Order 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 Order applies of which he is 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 purpose 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 paragraph (a) of subsection (1); 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 purpose 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 prosecution accepts to any extent any allegation in the statement,

the Court may, for the purpose of that determination, treat the acceptance by the prosecution as conclusive of the matters to which it relates.

(5) 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 ruling 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.

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

9. (1) The powers conferred on the Court by subsection (1) of section 10 and subsection (1) of section 11 are exercisable where —

- (a) proceedings have been instituted against the defendant for an offence to which this Order 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 proceedings will be instituted against a person within seven days of the application for an order under subsection (1) of section 10 or subsection (1) of section 11; 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 10 and 11, at any time when those powers are exercisable but before proceedings have been instituted —



- (a) a reference in this Order to the defendant shall be construed as a reference to the person referred to in paragraph (a) of subsection (2); and
- (b) a reference in this Order to realisable property shall be construed as if, immediately before that time, proceedings had been instituted against the person referred to in paragraph (a) of subsection (2) for an offence to which this Order applies.

(4) Where the Court has made an order under subsection (1) of section 10 or subsection (1) of section 11, by virtue of subsection (2) —

- (a) the prosecution shall notify the Court immediately if proceedings have not been instituted within seven days of the application for the order; and
- (b) the Court shall discharge the order if proceedings in respect of the offence have not been instituted within seven days of the application for an order under subsection (1) of section 10 or subsection (1) of section 11.

#### **Restraint orders.**

10. (1) The Court may by 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 the living expenses and legal expenses of the defendant.

(3) A restraint order may apply —

- (a) to all realisable property held by a specified person, whether or not the property is described in the order; 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 11.

(5) A restraint order —

- (a) may be made only on an application by the prosecution;
- (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 have been 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, it 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 conditions and exceptions as may be specified by the Court; and may require any person having possession of property in respect of which a receiver has been appointed under this section to give possession of it to the receiver.

(9) For the purpose of this section, dealing with any 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 Brunei Darussalam.

(10) Where the Court has made a restraint order, a police officer may, for the purpose of preventing any realisable property being removed from Brunei Darussalam, seize the property.

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

(12) In the case of a restraint order made in respect of land —

*(a)* the restraint order shall inhibit for a specified period of time or until the occurrence of a specified event, or generally until further order, the registration of any dealing with any land, lease or charge;

*(b)* a copy of the restraint order under the seal of the Court, with the particulars of the land, lease or charge thereby affected shall be sent

to the officer in charge of the Land Office who shall register it in the Register kept by him under section 7 of the Land Code (Chapter 40) in respect of that land and no restraint order shall bind or affect the land, lease or charge until it has been registered; and

- (c) so long as the restraint order remains registered no instrument which is inconsistent with it shall be registered.

**Charging orders.**

11. (1) The Court may make a charging order on realisable property for securing the payment to the Government —

- (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 Order, a charging order is an order which imposes on any such realisable property as may be specified in the order a charge for securing the payment of money to the Government.

(3) A charging order —

- (a) may be made only on an application by the prosecution;
- (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, in such manner as the Court may direct; 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 Order —
- (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 Brunei Darussalam;

(b) securities of any of the following kinds —

(i) any description of security issued by or on behalf of the Government;

(ii) stock or shares in any limited company or other body registered under the Companies Act (Chapter 39);

(iii) stock or shares in any international business company registered under the International Business Companies Order, 2000;

(iv) interest in any mutual funds;

(v) funds in court;

(vi) such other assets as may be prescribed by the Minister by order in the *Gazette*.

(6) In any case where a charge is imposed by a charging order on any interest in an asset of a kind mentioned in paragraph (b) of subsection (5), the Court may provide for the charge to extend to any interest or dividend payable in respect of such 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 have been concluded or the amount, payment of which is secured by the charge, has been 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) A charge imposed by a charging order made in relation to any interest in land shall be registered as a charge in the Register kept under the Land Code (Chapter 40) by the officer in charge of the Land Office.

(10) Subject to any provision made under section 12 or by Rules of Court, a charge imposed by a charging order shall have the like effect and shall be

enforceable in the same courts and 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.

**Realisation of property.**

12. (1) Where —

- (a) a confiscation order has been 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 prosecution, exercise the powers conferred by subsections (2) to (6).

(2) The Court may appoint a receiver in respect of the realisable property.

(3) The Court may empower a receiver appointed under subsection (2), under section 10, or in pursuance of a charging order —

- (a) to enforce any charge imposed under section 11 on realisable property or on any interest or dividend 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 11, to take possession of the property, subject to such conditions and 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 it may direct.

(6) The Court may order any person holding an interest in any 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 Order as it may direct and it 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 11.

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

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

13. (1) Subject to subsection (2), such of —

- (a) the proceeds of the enforcement of any charge imposed under section 11;
- (b) the proceeds of the realisation, other than by the enforcement of such a charge, of any property under sections 10 or 12; or
- (c) any other sums, being property held by the defendant,

as may be in the hands of a receiver appointed under this Order or in pursuance of a charging order 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 persons who held property which has been realised under this Order; 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 Chief Registrar of the Supreme Court on account of an amount payable under a confiscation order shall reduce the amount so payable, but he shall apply the money received for such of the purposes specified in this section as may be specified in the confiscation order and in the order so specified.

(4) If the money was paid to the Chief Registrar of the Supreme Court by a receiver appointed under this Order or in pursuance of a charging order, he shall first pay the receiver's remuneration and expenses.

(5) After making any payment required by subsection (4), the Chief Registrar of the Supreme Court shall reimburse any amount paid under subsection (2) of section 18.

(6) The Chief Registrar of the Supreme Court shall finally pay any compensation directed to be paid out of any sums recovered under the confiscation order under subsection (7) of section 6.

(7) Any money remaining in the hands of the Chief Registrar of the Supreme Court after he has made all the payments required by the foregoing provisions of this section shall be treated as if it were a fine imposed by the Court.

(8) Where under subsection (3) a sum falls to be applied in payment both of compensation and of other outgoings —

- (a) the person entitled to the compensation shall be liable to pay to the Government such an amount as bears to the remuneration or expenses the same proportion as the amount payable in accordance with the direction under subsection (7) of section 6 bears to the total amount payable under the confiscation order;
- (b) the Chief Registrar of the Supreme Court shall deduct from the amount falling to be applied in payment of the compensation an amount equal to the amount of any liability arising by virtue of paragraph (a);
- (c) notwithstanding the deduction under paragraph (b), the person entitled to the compensation shall be treated as having received the whole amount which falls to be applied in payment of it; and
- (d) the amount deducted shall be treated as if it were a fine imposed by the Court.

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

14. (1) This section applies to the powers conferred on the Court by sections 10 to 13, or on a receiver appointed under this Order or in pursuance of a charging order.

(2) Subject to the following provisions of this section, those 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 that 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 Order, the powers shall be exercised with a view to releasing 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 Government.

(6) Subject to subsections (1) and (3) of section 3, 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.**

15. (1) If, on an application by any person affected by a confiscation order, including the defendant, the Court is satisfied that the realisable property is inadequate for the payment of any amount remaining to be recovered under the order it shall issue a certificate to that effect, giving its reasons.

(2) For the purpose of subsection (1) —

(a) in the case of realisable property held by a person against whom an order of adjudication for bankruptcy has been made, 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 it 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 from any risk of realisation under this Order.

(3) The Court may, on an application under this section, substitute for the amount to be recovered under the order such lesser amount as it thinks just in all the circumstances of the case.

**Bankruptcy of defendant, etc.**

16. (1) Where an order of adjudication for bankruptcy has been made against a person who holds realisable property —

(a) any property subject for the time being to a restraint order made before the order for bankruptcy; and

(b) any proceeds of property realised under subsection (8) of section 10 or subsections (5) or (6) of section 12 for the time being in the hands of a receiver appointed under sections 10 or 12,



is excluded from the property of the bankrupt for the purposes of the Bankruptcy Act (Chapter 67).

(2) Where any order of adjudication for bankruptcy has been made against any person, the powers conferred on the Court by sections 10 to 13 or on a receiver appointed by such order 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 (Chapter 67);
- (b) property which is to be applied for the benefit of creditors of the bankrupt under any provision of or any condition imposed under subsection (3) of section 30 of that Act.

(3) Nothing in the Bankruptcy Act (Chapter 67) shall be taken as restricting or enabling the restriction of the exercise of the powers conferred on the Court by sections 10 to 13 or on a receiver.

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

- (a) made before the order of adjudication for bankruptcy was made; or
- (b) on property which was subject to a restraint order when the order for bankruptcy was made.

(5) Where, in the case of a debtor —

- (a) the Official Receiver appointed by sections 13 or 15 of the Bankruptcy Act (Chapter 67) has been ordered to become the interim receiver or special manager of the property, estate or business (as the case may be) of the debtor; and
- (b) any property of the debtor is subject to a restraint order,

the powers conferred on the Official Receiver under that Act do not apply to property for the time being subject to the restraint order.

(6) Where any order for bankruptcy has been made against a person who has directly or indirectly made a gift caught by this Order, sections 31 and 47 of the Bankruptcy Act (Chapter 67) shall not apply —

- (a) in respect of the making of the gift at any time when proceedings for an offence to which this Order applies have been instituted against him and have not been concluded; or
- (b) when property of the person to whom the gift was made is subject to a restraint order or charging order.

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

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

- (a) any property for the time being subject to a restraint order made before the relevant time; and
- (b) any proceeds of property realised under subsection (8) of section 10 or subsections (5) or (6) of section 12 for the time being in the hands of a receiver appointed under sections 10 or 12.

(2) Where, such an order has been made or such a resolution has been passed, the powers conferred on the Court by sections 10 to 12 or on a receiver appointed by the order 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 so as to —

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

(3) Nothing in the Companies Act (Chapter 39) shall be taken as restricting, or enabling the restriction of, the exercise of those powers.

(4) 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.

(5) In this section, "relevant time" means —

- (a) where an 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;
- (c) in any other case where such an order has been made, the time of the making of the order for winding up.

**Receivers: supplementary provisions.**

18. (1) Where a receiver appointed under this Order or in pursuance of a charging order takes any action —

- (a) in relation to any property which is not realisable property, being action which he would be entitled to take if it were such property;
- (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 was 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 applied in payment of it under subsection (4) of section 13, be paid by the prosecution or, in a case where proceedings for an offence to which this Order applies has not been instituted, by the person on whose application the receiver was appointed.

(3) Without prejudice to the generality of any written law, where —

- (a) any person acting as a receiver 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 believed, and had reasonable grounds for believing, that he was 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 was 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.

(4) Any person who, acting as a receiver, incurs expenses —

- (a) in respect of such property as is mentioned in paragraph (a) of subsection (1) and in so doing did not know and had no reasonable grounds to believe that the property was 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.

**Compensation.**

19. (1) If proceedings have been instituted against a person for an offence or offences to which this Order applies and either —

- (a) the proceedings have not resulted in his conviction for any such offence; or
- (b) where he was convicted of one or more such offences —
- (i) the conviction or convictions have been quashed; or
- (ii) His Majesty the Sultan and Yang Di-Pertuan has granted a pardon in respect of the conviction or convictions,

the Court may, on an application by any person who held property which was realisable property, order compensation to be paid to the applicant out of the Criminal Offences Confiscations Fund established by subsection (I) of section 30 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 it is satisfied that —

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

(3) The Court shall not order compensation to be paid in any case where it appears to it 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.

**Money-laundering and other offences**

**Code of Practice and Reporting Authority.**

20. (1) The Minister may issue a Code of Practice for the purpose of giving practical guidance with respect to any of the requirements of this Order.

(2) The Minister shall appoint two or more persons to act as the Reporting Authority.

(3) The Minister shall in his discretion issue directions to the Reporting Authority respecting its powers and duties under this Order.

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

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

(a) the retention or control by or on behalf of another (call him "A") of property which is the proceeds of A's criminal conduct is facilitated (whether by concealment, removal from the jurisdiction, transfer to nominees or otherwise); or

(b) property which is the proceeds of A's criminal conduct is used —

(i) to secure funds that are placed at A's disposal; or

(ii) 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 has benefited from criminal conduct, is guilty of an offence.

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

(3) Where a person discloses to the Reporting Authority a suspicion or belief that any funds or investment are derived from or used in connection with criminal conduct, or discloses to such Reporting Authority any matter on which such a suspicion or belief is based —

(a) the disclosure shall not be treated as a breach of any restriction upon the disclosure of information imposed by any contract, written law, rules of professional conduct or otherwise and shall not give rise to any civil or criminal liability; 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 was made before he did the act concerned, being an act done with the consent of the Reporting Authority or a police officer; or

*(ii)* the disclosure was made after he did the act, but was made on his initiative and as soon as it was 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 have reason to suspect that the arrangement related to any person's proceeds of criminal conduct;

*(b)* that he did not know or have reason to 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 had intended to disclose to the Reporting Authority such a suspicion, belief or matter as is mentioned in subsection (3) in relation to the arrangement; but

*(ii)* there was reasonable excuse for his failure to make the disclosure in accordance with paragraph *(b)* of that subsection.

(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 Reporting Authority.

(6) Where information is disclosed to the Reporting Authority under subsection (3), the Reporting Authority shall not disclose the information without the consent of the Attorney General who, when considering whether to give his consent, shall take into account —

*(a)* the purpose for which such further disclosure is to be made; and

*(b)* the interests of third parties,

and the Attorney General may impose such conditions on such further disclosure as he may think fit.

(7) Subsection (6) does not apply to information received by the Reporting Authority relating to any matter which it is required to disclose to any person or authority in Brunei Darussalam.

(8) Subject to subsections (6) and (7), the Reporting Authority may disclose any information received under this section —

- (a) in relation to criminal conduct, to any law enforcement agency in Brunei Darussalam;
- (b) in relation to conduct defined in paragraph 3(1)(a) of the Schedule, to any law enforcement agency in any other country or territory,

in order to —

- (i) report the possible commission of an offence;
- (ii) initiate a criminal investigation respecting the matter disclosed;
- (iii) assist with any investigation or criminal proceedings regarding the matter disclosed;
- (iv) generally give effect to the purposes of this Order.

(9) A person guilty of an offence under this section is liable on conviction to imprisonment for a term not exceeding fourteen years, a fine or both.

(10) In this Order, "criminal conduct" means conduct which constitutes an offence to which this Order applies or would constitute such an offence if it had occurred in Brunei Darussalam.

(11) No prosecution shall be instituted for an offence under this section without the consent of the Attorney General.

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

22. (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) In proceedings against a person for an offence under this section, it is a defence to prove that he acquired or used the property or had possession of it for adequate consideration.

(3) For the purpose 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 purpose of subsection (2).

(5) Where a person discloses to the Reporting Authority 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 such Reporting Authority any matter on which such a suspicion or belief is based —

- (a) the disclosure shall not be treated as a breach of any restriction upon the disclosure of information by any written law or otherwise and shall not give rise to any civil or criminal liability; 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 was made before he did that act; or
  - (ii) the disclosure was made after he did that act, but it was made on his initiative and as soon as it was reasonable for him to have made it.

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

(7) Where information is disclosed to the Reporting Authority under subsection (3) of section 21, the Reporting Authority shall not disclose the information without the consent of the Attorney General who, when considering whether to give his consent, shall take into account —

- (a) the purpose for which such further disclosure is to be made; and
- (b) the interests of third parties,

and the Attorney General may impose such conditions on such further disclosure as he may think fit.



(8) Subsection (7) does not apply to information received by the Reporting Authority relating to any matter which it is required to disclose to any person or authority in Brunei Darussalam.

(9) Subject to subsections (7) and (8), the Reporting Authority may disclose any information received under this section —

(a) in relation to criminal conduct, to any law enforcement agency in Brunei Darussalam;

(b) in relation to conduct defined in paragraph 3(1)(a) of the Schedule, to any law enforcement agency in any other country or territory,

in order to —

(i) report the possible commission of an offence;

(ii) initiate a criminal investigation regarding the matter disclosed;

(iii) assist with any investigation or criminal proceedings regarding the matter disclosed;

(iv) generally give effect to the purposes of this Order.

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

(a) he had intended to disclose to the Reporting Authority such a suspicion, belief or matter as is mentioned in subsection (5); but

(b) there was reasonable excuse for his failure to make the disclosure in accordance with paragraph (b) of that subsection.

(11) In the case of a person who was in employment at the relevant time, subsections (5) and (8) 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 Reporting Authority.

(12) A person guilty of an offence under this section is liable on conviction to imprisonment for a term not exceeding fourteen years, a fine or both.

(13) No member of the Reporting Authority or other person is 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 Order or of any other written law relating to criminal conduct or to the proceeds of such conduct.

(14) No prosecution shall be instituted for an offence under this section without the consent of the Attorney General.

**Concealing, transferring, etc., proceeds of criminal conduct.**

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

- (a) conceals or disguises 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 Brunei Darussalam,

for the purpose of avoiding prosecution for an offence or of avoiding the making or enforcement of a confiscation order.

(2) A person is guilty of an offence if, knowing or having reasonable grounds for suspecting 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 Brunei Darussalam,

with intent to assist any person to avoid prosecution for an offence or to avoid the making or enforcement of a confiscation order.

(3) In subsection (1), the reference to concealing or disguising property includes a reference to concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it.

(4) A person guilty of an offence under this section is liable on conviction to imprisonment for a term not exceeding fourteen years, a fine or both.

(5) No prosecution shall be instituted for an offence under this section without the consent of the Attorney General.

**Failure to disclose knowledge or suspicion of money-laundering.**

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

- (a) he knows or suspects that another person is engaged in money-laundering;

- (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 a police officer as soon as is reasonably practicable after it comes to his attention.

(2) Subsection (1) does not make it an offence for a professional legal adviser to fail to disclose any information or other matter which has come to him in privileged circumstances.

(3) It is a defence to a charge of committing an offence under this section that the person charged had a reasonable excuse for not disclosing the information or other matter.

(4) Where a person discloses to a police officer —

- (a) his suspicion or belief that another person is engaged in money-laundering; or
- (b) any information or other matter on which that suspicion or belief is based,

the disclosure shall not be treated as a breach of any restriction imposed by any written law or otherwise.

(5) Without prejudice to subsections (3) or (4), in the case of a person who was in employment at the time in question, it is a defence to a charge of committing an offence under this section that he disclosed the information or other matter to the appropriate person in accordance with the procedure established by his employer for the making of such disclosures.

(6) A disclosure to which subsection (5) applies shall not be treated as a breach of any restriction imposed by any written law or otherwise.

(7) For the purpose of this section, any information or other matter comes to a professional legal adviser in privileged circumstances if it is communicated or given to him —

- (a) by, or by a representative of, a client of his in connection with the giving by him of legal advice to that client;
- (b) by, or by a representative of, a person seeking legal advice from him; or
- (c) by any person —

- (i) in contemplation of, or in connection with, legal proceedings; and
- (ii) for the purpose of those proceedings.

(8) No information or other matter shall be treated as coming to a professional legal adviser in privileged circumstances if it is communicated or given with a view to furthering any criminal purpose.

(9) A person guilty of an offence under this section is liable on conviction to imprisonment for a term not exceeding fourteen years, a fine or both.

(10) No prosecution shall be instituted for an offence under this section without the consent of the Attorney General.

(11) In this section, "money-laundering" means doing any act —

- (a) which constitutes an offence under sections 21, 22 or 23; or
- (b) in the case of an act done outside Brunei Darussalam, which would constitute such an offence if done in Brunei Darussalam,

and for the purpose of this subsection, having possession of any property shall be taken to be doing an act in relation to it.

#### **Tipping-off.**

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

- (a) he knows or has reasonable grounds for suspecting that any member of the Reporting Authority or other person is acting, or is proposing to act, in connection with an investigation which is being, or is about to be, conducted into money-laundering; and
- (b) he discloses to any other person information or any other matter which is likely to prejudice that investigation or proposed investigation.

(2) A person is guilty of an offence if —

- (a) he knows or has reasonable grounds for suspecting that a disclosure ("the disclosure") has been made to the Reporting Authority under sections 21 or 22; and
- (b) he discloses to any other person information or any other matter which is likely to prejudice any investigation which might be conducted following the disclosure.

- (3) A person is guilty of an offence if —
- (a) he knows or suspects that a disclosure of a kind mentioned in subsection (3) of section 21 or subsection (5) of section 22 ("the disclosure") has been made; and
  - (b) he discloses to any person information or any other matter which is likely to prejudice any investigation which might be conducted following the disclosure.

(4) Nothing in subsections (1) to (3) makes it an offence for a person to disclose information or any other matter to an advocate and solicitor for the purposes of legal advice or for an advocate and solicitor to disclose any information or other matter —

- (a) to, or to a representative of, a client of his in connection with the giving by him of legal advice to that client; or
- (b) to any person —
  - (i) in contemplation of, or in connection with, legal proceedings; and
  - (ii) for the purpose of those proceedings.

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

(6) In this section, "money-laundering" means doing any act —

- (a) which constitutes an offence under sections 21, 22 or 23; or
- (b) in the case of any act done outside Brunei Darussalam, which would constitute such an offence if done in Brunei Darussalam,

and for the purpose of this subsection, having possession of any property shall be taken to be doing an act in relation to it.

(7) A person guilty of an offence under this section is liable on conviction to imprisonment for a term not exceeding five years, a fine or both.

(8) No prosecution shall be instituted for an offence under this section without the consent of the Attorney General.

(9) No member of the Reporting Authority or any 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 Order or of any other written law relating to any offence to which this Order applies.

### Supplementary

#### Application of procedure for enforcing fines.

26. (1) Where the Court has ordered a defendant to pay any amount under this Order, sections 253, 254, 255 and 256 of the Criminal Procedure Code (Chapter 7) shall have effect as if that amount were a fine imposed on him by the Court.

(2) Where —

(a) the Court has directed that in default of payment of an amount ordered to be paid under this Order in respect of an offence the defendant shall serve a term of imprisonment; and

(b) at the time the direction was made, the defendant was liable to serve a term of imprisonment in respect of that offence,

the term of imprisonment to be served in default of payment of the amount shall not begin to run until after the term of imprisonment mentioned in paragraph (b).

(3) For the purpose of paragraph (b) of subsection (2) —

(a) consecutive terms of imprisonment and terms of imprisonment which are wholly or partly concurrent shall be treated as a single term; and

(b) there shall be disregarded any sentence suspended under any law relating to the suspension of sentences if that sentence had not taken effect at the time the defendant defaulted as specified in the direction.

#### Powers of arrest and service of documents on absconders.

27. (1) A police officer may arrest without warrant a person who has committed, or whom he reasonably suspects to have committed, an offence to which this Order applies.

(2) Where a document is required under this Order to be served on a person who cannot be found, or who is outside Brunei Darussalam and cannot be compelled to attend before the Court in respect of proceedings under this Order, the Court may dispense with service of the document and the proceedings may be continued to their final conclusion in his absence.

**Order to make material available.**

28. (1) A police officer may, for the purpose of an investigation, whether within Brunei Darussalam or elsewhere, into an offence to which this Order applies, apply to the Court for an order under subsection (2) in relation to particular material or to material of a particular description.

(2) If on such an application the Court is satisfied that the conditions in subsection (4) have been fulfilled, it may make an order that the person who appears to it to be in possession of the material to which the application relates shall —

- (a) produce it to a police officer to take away; or
- (b) give a police officer access to it,

within such period as the order may specify.

(3) The period to be specified in an order under subsection (2) shall be seven days, unless it appears to the Court that a longer or shorter period would be appropriate in the particular circumstances of the application.

(4) The conditions referred to in subsection (2) are that there are reasonable grounds —

- (a) for suspecting that a specified person has carried on or has benefited from an offence to which this Order applies;
- (b) for suspecting that the material to which the application relates —
  - (i) is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the application is made; and
  - (ii) does not consist of or include items subject to legal privilege; and
- (c) for believing that it is in the public interest, having regard to —
  - (i) the benefit likely to accrue to the investigation if the material is obtained; and
  - (ii) the circumstances under which the person in possession of the material holds it,

that the material should be produced or that access to it should be given.

(5) Where the Court has made an order under paragraph (b) of subsection (2) in relation to material on any premises, it may, on the application of a police officer, order any person who appears to it to be entitled to grant entry to the premises to allow a police officer to enter those premises to obtain access to the material.

(6) The Chief Justice may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make Rules of Court as to —

- (a) the discharge and variation of orders under this section; and
- (b) proceedings relating to such orders.

(7) Where the material to which an application under this section relates consists of information contained in a computer —

- (a) an order under paragraph (a) of subsection (2) shall have effect as an order to produce the material in a form in which it can be taken away and in which it is visible and legible; and
- (b) an order under paragraph (b) of subsection (2) shall have effect as an order to give access to the material in a form in which it is visible and legible.

(8) An order under subsection (2) —

- (a) shall not confer any right to production of, or access to, items subject to legal privilege;
- (b) shall have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by any written law or otherwise; and
- (c) may be made in relation to material in the possession of a Government department.

(9) Where, in relation to an investigation into an offence to which this Order applies, an order under subsection (2) has been made or has been applied for and has not been refused, or a warrant under section 29 has been issued, any person who, knowing or suspecting that the investigation is taking place, makes any disclosure which is likely to prejudice the investigation is guilty of an offence.

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

- (a) he did not know or suspect that the disclosure was likely to prejudice the investigation; or



(b) he had lawful authority or reasonable excuse for making the disclosure.

(11) A person guilty of an offence under subsection (9) is liable on conviction to imprisonment for a term not exceeding five years, a fine or both.

**Authority for search.**

29. (1) A police officer may, for the purpose of an investigation into an offence to which this Order applies, apply to the Court for a warrant under this section in relation to specified premises.

(2) On such application, the Court may issue a warrant authorising a police officer to enter and search such premises if it is satisfied that —

(a) an order made under subsection (2) of section 28 in relation to material on the premises has not been complied with;

(b) the conditions in subsection (3) of this section have been fulfilled; or

(c) the conditions in subsection (4) of this section have been fulfilled.

(3) The conditions referred to in paragraph (b) of subsection (2) are that —

(a) there are reasonable grounds for suspecting that a specified person has carried on or has benefited from an offence to which this Order applies;

(b) the conditions in paragraphs (b) and (c) of subsection (4) of section 28 have been fulfilled in relation to any material on such premises; and

(c) it would not be appropriate to make an order under section 28 in relation to the material because —

(i) it is not practicable to communicate with any person entitled to produce the material;

(ii) it is not practicable to communicate with any person entitled to grant access to the material or entitled to grant entry to the premises on which the material is situated; or

(iii) the investigation for the purpose of which the application is made might be seriously prejudiced unless a police officer can secure immediate access to the material.

- (4) The conditions referred to in paragraph (c) of subsection (2) are that —
- (a) there are reasonable grounds for suspecting that a specified person has carried on or has benefited from an offence to which this Order applies;
  - (b) there are reasonable grounds for suspecting that there is on the premises material relating to that specified person or to the offence which is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the application is made, but that the material cannot at the time of the application be particularised; and
  - (c)
    - (i) it is not practicable to communicate with any person entitled to grant entry to the premises;
    - (ii) entry to the premises will not be granted unless a warrant is produced; or
    - (iii) the investigation for the purpose of which the application is made might be seriously prejudiced unless a police officer arriving at the premises can secure immediate entry to them.

(5) Where a police officer has entered premises in the execution of a warrant issued under this section, he may seize and retain any material, other than any items subject to legal privilege, which is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the warrant was issued.

**Criminal Offences Confiscations Fund.**

30. (1) There is hereby established a fund called the Criminal Offences Confiscations Fund which, subject to this section, shall be managed and controlled by the Permanent Secretary.

(2) The Minister may authorise the payment into the Fund of such sum or sums as may be necessary to set up or maintain it, and any such payments shall be charged on and paid out of the Consolidated Fund.

- (3) All amounts —
- (a) contributed by the Government towards the establishment or maintenance of the Fund;
  - (b) recovered under or in satisfaction of a confiscation order; or
  - (c) received under an assets-sharing agreement,

shall be included in the monies which are paid into the Fund.

(4) Monies paid into the Fund shall not form part of the Consolidated Fund.

(5) Subject to subsection (6), monies in the Fund shall be applied by the Permanent Secretary —

- (a) in promoting or supporting measures that, in his opinion, may assist —
  - (i) in preventing, suppressing or otherwise dealing with criminal conduct;
  - (ii) in dealing with the consequences of criminal conduct;
  - (iii) without prejudice to the generality of paragraphs (i) and (ii), in facilitating the enforcement of any written law dealing with criminal conduct;
- (b) discharging the obligations of Brunei Darussalam under assets-sharing agreements; and
- (c) meeting the expenses incurred by the Permanent Secretary in administering the Fund.

(6) Before promoting or supporting any measure under paragraph (a) of subsection (4), the Permanent Secretary shall consult the Attorney General and such other persons as he may consider appropriate.

(7) Monies paid into the Fund, while not applied for any of the purposes mentioned in subsection (5), may be —

- (a) held in the custody of the Permanent Secretary; or
- (b) placed in the name of the Fund, in a current or deposit account, with one or more banks selected by the Permanent Secretary,

and any interest earned on such monies while held in such an account shall be credited to such account.

(8) In this section —

"assets-sharing agreement" means an agreement entered into —

- (a) between Brunei Darussalam and any other country or territory;
- or

(b) between the Attorney General and the appropriate authority of a country or territory outside Brunei Darussalam,

whereby arrangements are made for the sharing of the proceeds of criminal conduct that, as a result of mutual assistance, have been confiscated either in Brunei Darussalam or elsewhere;

"Fund" means the Criminal Offences Confiscations Fund established by subsection (1);

"Permanent Secretary" means the Permanent Secretary to the Ministry of Finance.

### PART III

#### EXTERNAL ORDERS

##### **Enforcement of external confiscation orders and proceedings.**

31. (1) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by order —

- (a) designate countries and territories outside Brunei Darussalam to whose external confiscation orders and proceedings this Order shall, subject to subsection (2), apply;
- (b) specify appropriate authorities of designated countries that are to give effect to the provisions of this Order in relation to external confiscation orders and to related proceedings; and
- (c) specify in respect of designated countries the steps (apart from an application to the Court for an external confiscation order) that need to be taken there to amount to an institution of proceedings.

(2) The provisions contained in the Schedule apply to external confiscation orders and to any proceedings which have been, or are to be, instituted and which may result in external confiscation orders being made in designated countries.

##### **Registration of external confiscation orders.**

32. (1) On an application made by the Attorney General on behalf of the government of a designated country, the Court may, subject to subsection (2), 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) the amount payable under the external confiscation order is at least fifty thousand dollars, except that the Court may register an order where the amount payable is less if the Attorney General certifies that it is in the public interest to register the order;
- (c) it is satisfied, where the person against whom the order so made did not appear in the proceedings, that he received notice of the proceedings in sufficient time to enable him to defend them; and
- (d) it is of the opinion that enforcing the order in Brunei Darussalam would not be contrary to the interests of justice.

In this subsection, "appeal" includes —

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

(2) The Court shall not register an external confiscation order made in a designated country where the Attorney General has issued a certificate to the effect that the application to register the order is against the public interest.

(3) The Court shall cancel the registration of an external confiscation order if it appears to it 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.

**Proof of orders and judgments of courts of designated country.**

33. (1) For the purposes of sections 31 and 32, and of the other provisions of this Order as applied under subsection (2) of section 31 —

- (a) any order made or judgment given by a court of a designated country purporting to bear the seal of that court or to be signed by any person in his capacity as a judge, magistrate or officer of the Court, shall be deemed without further proof to have been duly sealed or, as the case may be, to have been signed by that person; and
- (b) a document, duly authenticated, which purports to be a copy of any order made or judgment given by a court of a designated country shall be deemed without further proof to be a true copy.

(2) A document purporting to be a copy of any order made or judgment given by a court of a designated country is duly authenticated for the purpose of paragraph (a) of subsection (1) if it purports to be certified by any person in his

capacity as a judge, magistrate or officer of that court or by or on behalf of the appropriate authority of the designated country.

**Evidence in relation to proceedings and orders in designated country.**

34. (1) For the purposes of sections 31 and 32, and of the other provisions of this Order as applied by subsection (2) of section 31, a certificate purporting to be issued by or on behalf of the appropriate authority of a designated country stating —

- (a) that proceedings have been instituted and have not been concluded, or that proceedings are to be instituted, in that designated country;
- (b) that an external confiscation order is in force and is not subject to appeal;
- (c) that all or a certain amount payable under an external confiscation order remains unpaid in the designated country, or that other property recoverable under an external confiscation order remains unrecovered there;
- (d) that any person has been notified of any proceedings in accordance with the law of the designated country; or
- (e) that an order (however described) made by a court of the designated country has the purpose —
  - (i) of recovering property obtained as a result of or in connection with conduct to which this Order applies or the value of property so obtained; or
  - (ii) of depriving a person of a pecuniary advantage so obtained,

shall, in any proceedings in the Court, be admissible as evidence of the facts so stated.

(2) In any such proceedings, a statement contained in a document, duly authenticated, which purports to have been received in evidence or to be a copy of a document so received, or to set out or summarise evidence given in proceedings in a court of a designated country, shall be admissible as evidence of any fact stated therein.

(3) A document is duly authenticated for the purpose of subsection (2) if it purports to be certified by any person in his capacity as a judge, magistrate or officer of the court of the designated country or by or on behalf of the appropriate authority of the designated country.

(4) Nothing in this section shall prejudice the admission of any evidence, whether contained in any document or otherwise, which is admissible apart from this section.

**Representation of government of designated country.**

35. A request for assistance sent to the Attorney General by the appropriate authority of a designated country shall, unless the contrary is shown, be deemed to constitute the authority of the government of that country for the Attorney General to act on its behalf in any proceedings in the Court under section 32 or any other provision of this Order as applied by subsection (2) of section 31.

**Satisfaction of confiscation order in designated country.**

36. (1) Where —

- (a) a confiscation order has been made under section 5;
- (b) a request has been sent by the Attorney General to the appropriate authority of a designated country for assistance in enforcing that order; and
- (c) in execution of that request, property has been recovered in that country,

the amount payable under the confiscation order shall be treated as reduced by the value of the property so recovered.

(2) For the purpose of this section, and without prejudice to the admissibility of any evidence which may be admissible apart from this subsection, a certificate purporting to be issued by or on behalf of the appropriate authority of a designated country stating that property has been recovered there in execution of a request by the Attorney General, stating the value of the property so recovered and the date on which it was recovered, shall in any proceedings in a court in Brunei Darussalam, be admissible as evidence of the facts so stated.

**Currency conversion.**

37. (1) Where the value of property recovered as described in subsection (1) of section 36 is expressed in a currency other than that of Brunei Darussalam currency created by subsection (1) of section 8 of the Currency Act (Chapter 32), the extent to which the amount payable under the confiscation order is to be reduced under that subsection shall be calculated on the basis of the exchange rate prevailing on the date on which the property was recovered in the designated country concerned.

(2) Where an amount of money payable or remaining to be paid under an external confiscation order registered in the Court under section 32 is expressed in a currency other than that of Brunei Darussalam, for the purpose of any action taken in relation to that order under this Order as applied by subsection (2) of section 31 the amount shall be converted into Brunei Darussalam currency on the basis of the exchange rate prevailing on the date of the registration of the order.

(3) For the purpose of this section, a written certificate purporting to be signed by any officer of a bank licensed under section 4 of the Banking Act (Chapter 95), and stating the exchange rate prevailing on a specified date shall be admissible as evidence of the facts so stated.

**Rules of Court.**

38. The Chief Justice may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make Rules of Court for the purposes of this Order.

**PART IV**

**AMENDMENT OF BANKRUPTCY ACT**

**Amendment of Bankruptcy Act.**

39. Section 32 of the Bankruptcy Act (Chapter 67) is amended, in paragraph (a) of subsection (1), by inserting "or under section 5 of the Criminal Conduct (Recovery of Proceeds) Order, 2000" immediately after "1995".



SCHEDULE

(section 31(2))

**MODIFICATIONS TO THE ORDER WHEN APPLIED TO EXTERNAL CONFISCATION  
ORDERS AND RELATED PROCEEDINGS**

**Application of Schedule and Introductory.**

1. This Schedule shall apply to external confiscation orders registered under section 32 and to any proceedings which have been or are to be instituted and which may result in such external confiscation orders being made in designated countries and, to the extent that it is at variance with the preceding sections of this Order in relation to the administration and enforcement of external confiscation orders and proceedings which may result in external confiscation orders, the terms of this Schedule shall prevail.

**Interpretation of Schedule.**

2. (1) In this Schedule —

"charging order" means an order made under sub-paragraph (1) of paragraph 7;

"conduct to which this Schedule applies" falls to be construed in accordance with sub-paragraph (a) of sub-paragraph (1) of paragraph 3;

"dealing with property" means or (as the case may be) falls to be construed in accordance with sub-paragraph (9) of paragraph 6;

"defendant" falls to be construed in accordance with sub-paragraph (b) of sub-paragraph (1) of paragraph 3;

"drug trafficking offence" has the same meaning as in subsection (1) of section 2 of the Emergency (Drug Trafficking) (Recovery of Proceeds) Order, 1996 (S 12/96);

"gift caught by this Schedule" falls to be construed in accordance with sub-paragraph (4) of paragraph 3;

"realisable property" falls to be construed in accordance with sub-paragraph (2) of paragraph 3;

"restraint order" means an order made under sub-paragraph (1) of paragraph 6.

- (2) In this Schedule, proceedings are instituted in a designated country —
- (a) when under the law of that country one of the steps specified in relation to that country in an order made under section 31 has been taken there in respect of alleged conduct by the defendant to which this Schedule applies; or
  - (b) when an application has been made to a court in a designated country for an external confiscation order,

and where the application of this paragraph would result in there being more than one time for the institution of proceedings, they shall be taken to have been instituted at the earliest of those times.

- (3) In this Schedule, 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 an external confiscation order being made in the proceedings; or
  - (b) on the satisfaction of an external confiscation order made in the proceedings (whether by the recovery of all property liable to be recovered, or the payment of any amount due, or otherwise).

**Definition of principal terms used in Schedule.**

3. (1) In this Schedule —
- (a) a reference to conduct to which this Schedule applies is a reference to conduct which —
    - (i) constitutes an offence to which this Order applies or would constitute such an offence if it had occurred in Brunei Darussalam, other than drug trafficking offences and offences which relate directly or indirectly to the regulation, imposition, calculation or collection of taxes subject to sub-paragraph (ii);
    - (ii) constitutes an offence to which this Order applies or would constitute such an offence if it had occurred in Brunei Darussalam and which involves —
      - (A) dishonestly misappropriating or converting to one's own use any movable property by means of criminal breach of trust or cheating, or conspiring to do any of those acts, or accounting documents regulating or affecting benefits available in connection with the laws and regulations relating to income or other taxes; and

(B) wilfully making or conspiring to make any false written statement, to government tax authorities with respect to any tax matter arising from the unlawful proceeds of any criminal offence, or without reasonable excuse making an incorrect return to government tax authorities as required by law in respect of, or to pay the tax on, any such unlawful proceeds; and

(b) a person against whom an external confiscation order has been made, or a person against whom proceedings which may result in an external confiscation order being made have been, or are to be, instituted in a Court of a designated country, is referred to as "the defendant".

(2) In this Schedule, "realisable property" means, subject to sub-paragraph (3) —

(a) in relation to an external confiscation order in respect of specified property, the property which is specified in the order; and

(b) in any other case —

(i) any property held by the defendant; and

(ii) any property held by a person to whom the defendant has directly or indirectly made a gift caught by this Order.

(3) Property is not realisable property if an order under section 25 of the Misuse of Drugs Act (Chapter 27) is in force in respect of the property.

(4) A gift (including a gift made before the commencement of this Order) is caught by this Schedule if —

(a) it was made by the defendant at any time after the conduct to which the external confiscation order relates; and

(b) the Court considers it appropriate in all the circumstances to take the gift into account.

#### **Pecuniary Advantage — Equivalence.**

4. Where a person derives a pecuniary advantage as a result of or in connection with conduct to which this Schedule applies, he is to be treated for the purposes of this Schedule as if he had obtained as the result of or in connection with the conduct a sum of money equal to the value of the pecuniary advantage.

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

5. (1) The powers conferred on the Court by sub-paragraph (1) of paragraph 6 or sub-paragraph (1) of paragraph 7 are exercisable where —

- (a) proceedings have been instituted against the defendant in a designated country;
- (b) the proceedings have not been concluded; and
- (c) either an external confiscation order has been made in the proceedings or it appears to the Court that there are reasonable grounds for thinking that such an order may be made in them of at least the minimum amount.

(2) Those powers are also exercisable where the Court is satisfied that proceedings will be instituted against the defendant in a designated country within seven days of the application for an order under sub-paragraph (1) of paragraph 6 or sub-paragraph (1) of paragraph 7.

(3) Where the Court has made an order under sub-paragraph (1) of paragraph 6 or sub-paragraph (1) of paragraph 7 by virtue of sub-paragraph (2) of this paragraph —

- (a) the Attorney General shall notify the Court immediately if proceedings have not been instituted within seven days of the application for the order; and
- (b) the Court shall discharge the order if the proposed proceedings have not been instituted within seven days of the application for the order.

**Restraint orders.**

6. (1) The Court may by 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 sub-paragraph (1), a restraint order may make such provision as the Court thinks fit for the living expenses and legal expenses of the defendant.

(3) A restraint order may apply —

- (a) where an application under sub-paragraph (5) relates to an external confiscation order made in respect of specified property, to property which is specified in that order; and

(b) in any other case —

- (i) to all realisable property held by a specified person, whether or not the property is described in the restraint order; and
- (ii) to realisable property held by a specified person, being property transferred to him after the making of the restraint order.

(4) This paragraph shall not have effect in relation to any property for the time being subject to a charge under paragraph 7.

(5) A restraint order —

- (a) may be made only on an application by the Attorney General on behalf of the government of a designated country or, in a case where an external confiscation order has been registered under section 32, by a receiver appointed under paragraph 9;
- (b) may be made on an *ex parte* application to a judge in chambers; and
- (c) notwithstanding anything in the Rules of the Supreme Court (S 5/90), may provide for service on, or the provision of notice to, persons affected by the order in such manner as the Court may direct.

(6) A restraint order —

- (a) may be discharged or varied in relation to any property; and
- (b) shall be discharged when the proceedings in relation to which the order was made have been 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, it 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 conditions and exceptions 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 purpose of this paragraph, dealing with any 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 Brunei Darussalam.

(10) Where the Court has made a restraint order, a police officer may, for the purpose of preventing any realisable property being removed from Brunei Darussalam, seize the property.

(11) Property seized under sub-paragraph (10) shall be dealt with in accordance with the Court's directions.

(12) In the case of a restraint order made in respect of land —

- (a) the restraint order shall inhibit for a specified period of time or until the occurrence of a specified event, or generally until further order, the registration of any dealing with any land, lease or charge;
- (b) a copy of the restraint order under the seal of the Court, with the particulars of the land, lease or charge thereby affected shall be sent to the officer in charge of the Land Office who shall register it in the Register kept by him under section 7 of the Land Code (Chapter 40) in respect of that land and no restraint order shall bind or affect the land, lease or charge until it has been registered;
- (c) so long as the restraint order remains registered no instrument which is inconsistent with it shall be registered.

**Charging orders.**

7. (1) The Court may make a charging order on realisable property for securing the payment to the Government —

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

(2) For the purposes of this Schedule, a charging order is an order which imposes on any such realisable property as may be specified in the order a charge for securing the payment of money to the Government.

(3) A charging order —

- (a) may be made only on an application by the Attorney General on behalf of the government of a designated country or, in a case where an external confiscation order has been registered under section 32, by a receiver appointed under paragraph 9;
- (b) may be made on an *ex parte* application to a judge in chambers;
- (c) notwithstanding anything in the Rules of the Supreme Court (S 5/90), may provide for service on, or the provision of notice to, persons affected by the order in such manner as the Court may direct.

(4) Subject to sub-paragraph (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 Order —
  - (i) in any asset of a kind mentioned in sub-paragraph (5);
  - (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 sub-paragraph (a) be imposed by a charging order on the whole beneficial interest under the first-mentioned trust.

(5) The assets referred to in sub-paragraph (4) are —

- (a) land in Brunei Darussalam; or
- (b) securities of any of the following kinds —
  - (i) any description of security issued by or on behalf of the Government;
  - (ii) stock or shares in any limited company or other body registered under the Companies Act (Chapter 39);
  - (iii) stock or shares in any international business company registered under the International Business Companies Order, 2000;
  - (iv) equity interests in any mutual funds; or

(v) funds in court.

(6) In any case where a charge is imposed by a charging order on any interest in an asset of a kind mentioned in sub-paragraph (b) of sub-paragraph (5), the Court may provide for the charge to extend to any interest or dividend payable in respect of such asset.

(7) The Court may make an order discharging or varying the charging order if the proceedings against the defendant in the designated country have been concluded or the amount, payment of which is secured by the charge, has been 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) A charge imposed by a charging order made in relation to any interest in land shall be registered as a charge in the Register kept under the Land Code (Chapter 40) by the officer in charge of the Land Office.

(10) Subject to any provision made under paragraph 9 or by Rules of Court, a charge imposed by a charging order shall have the like effect and shall be enforceable in the same courts and 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.

**Applications for restraint and charging orders.**

8. An application under sub-paragraph (5) of paragraph 6 or sub-paragraph (3) of paragraph 7 shall be accompanied by an affidavit by the appropriate authority of the designated country deposing to —

- (a) where proceedings have been instituted, the conduct in which the defendant is alleged to have engaged (exhibiting a copy of the indictment, information or charge), and the grounds for believing that the defendant engaged in that conduct;
- (b) where proceedings will be instituted within seven days of the application, the conduct in which the defendant will be alleged to have engaged, and the grounds for believing that the defendant engaged in that conduct;
- (c) where an external confiscation order has been made, the amount payable under the confiscation order;
- (d) where an external confiscation order has not been made —



- (i) the grounds for the belief that the defendant derived a benefit of a stated amount as a result of the conduct;
- (ii) the grounds for the belief that the amount that might be realised is at least the stated amount;
- (iii) where proceedings have been instituted, the grounds for believing that an external confiscation order may be made and the amount likely to be payable under such a confiscation order; or
- (iv) where proceedings are to be instituted within seven days of the application, the grounds for believing that an external confiscation order is likely to be made and the amount likely to be payable under such a confiscation order;
- (e) a description of the property in respect of which the order is sought;
- (f) the grounds for the belief that the property is realisable property;
- (g) the name and address of the person who is believed to be in the possession of the property; and
- (h) the names and addresses of any parties who may have any interest in that property, and the nature of their interest.

**Realisation of property.**

9. (1) Where an external confiscation order has been registered in the Court under section 32, the Court may, on an application of the Attorney General —

- (a) in respect of any sum of money payable under the external confiscation order, make a garnishee order as if the sum were due to the Government in pursuance of a judgment or order of the Court, but any such order shall direct that the sum payable be paid to the Court;
- (b) appoint a receiver in respect of the realisable property;
- (c) empower a receiver appointed under sub-paragraph (8) of paragraph 6, or in pursuance of a charging order —
  - (i) to enforce any charge imposed under paragraph 10 on realisable property or on interest or dividends payable in respect of such property; and

- (ii) in relation to any realisable property, other than property for the time being subject to a charge under paragraph 10, to take possession of the property subject to such conditions and exceptions as may be specified by the Court;
- (d) order any person having possession of the property to give possession of it to any such receiver;
- (e) empower any such receiver to realise any realisable property in such manner as it may direct; and
- (f) order any person holding an interest in any 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 Schedule as it may direct and, on the payment being made, may by order transfer, grant or extinguish any interest in the property.

(2) Sub-paragraphs (d), (e) and (f) do not apply to property for the time being subject to a charge under paragraph 7.

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

10. (1) Subject to sub-paragraph (2), such of —

- (a) the proceeds of the enforcement of any charge imposed under paragraph 7;
- (b) the proceeds of the realisation, other than by the enforcement of such a charge, of any property under paragraphs 6 or 9; or
- (c) any other sums, being property held by the defendant,

as may be in the hands of a receiver appointed under this Order or in pursuance of a charging order shall, after such payments (if any) as the Court may direct have been made out of those sums, be paid to the Court and applied for the purposes specified in sub-paragraphs (3) and (4) and in the order so specified.

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

- (a) among such of those persons who held property which has been realised under this Schedule; 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) If the money was paid to the Court by a receiver appointed under paragraphs 6 or 9, or in pursuance of a charging order, the receiver's remuneration and expenses shall next be paid.

(4) After any payment required by sub-paragraph (3) has been made, any amount paid under sub-paragraph (2) of paragraph 14 shall be reimbursed.

(5) Any sums remaining after all the payments required to be made under the foregoing provisions of this section have been made shall be paid to the Government.

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

11. (1) This paragraph applies to the powers conferred on the Court by paragraphs 6, 7, 9 and 10, or on a receiver appointed under this Schedule or in pursuance of a charging order.

(2) Subject to the following provisions of this section, those powers shall be exercised with a view to recovering property which is liable to be recovered under an external confiscation order registered in the Court under section 32 or, as the case may be, with a view to making available for recovery property which may become liable to be recovered under any external confiscation order which may be made in the defendant's case.

(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 Schedule, 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 held by the Government.

(6) Subject to sub-paragraph (2) of paragraph 3, 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 external confiscation order.

**Bankruptcy of defendant, etc.**

12. (1) Where an order of adjudication for bankruptcy has been made against a person who holds realisable property —

- (a) any property subject for the time being to a restraint order made before the order for bankruptcy; and
- (b) any proceeds of property realised under sub-paragraph (8) of paragraph 6 or sub-paragraphs (e) or (f) of sub-paragraph (1) of paragraph 9 for the time being in the hands of a receiver appointed under paragraphs 6 or 9,

is excluded from the property of the bankrupt for the purposes of the Bankruptcy Act (Chapter 67).

(2) Where any order of adjudication for bankruptcy has been made against any person, the powers conferred on the Court by paragraphs 6, 7, 9 and 10 or on a receiver appointed by such order 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 (Chapter 67);
- (b) property which is to be applied for the benefit of creditors of the bankrupt under any provision of or any condition imposed under subsection (3) of section 30 of that Act.

(3) Nothing in the Bankruptcy Act (Chapter 67) shall be taken as restricting, or enabling the restriction of the exercise of the powers conferred on the Court by paragraphs 6, 7, 9 and 10 or on a receiver.

(4) Sub-paragraph (2) does not affect the enforcement of a charging order —

- (a) made before the order of adjudication for bankruptcy was made; or
- (b) on property which was subject to a restraint order when the order for bankruptcy was made.

(5) Where in the case of a debtor —

- (a) the Official Receiver appointed by section 12 of the Bankruptcy Act (Chapter 67) has been ordered to become the receiver or manager of the property, estate or business of the debtor; and
- (b) any property of the debtor is subject to a restraint order,

the powers conferred on the Official Receiver under that Act do not apply to property for the time being subject to the restraint order.

{6} Where any order for bankruptcy has been made against a person who has directly or indirectly made a gift caught by this Schedule, sections 31 and 47 of the Bankruptcy Act (Chapter 67) shall not apply when property of the person to whom the gift was made is subject to a restraint order or charging order.

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

13. {1} Where realisable property is held by a company and an order for the winding up of the company has been made or a resolution has been passed by the company for the voluntary winding up, the functions of the liquidator (or any provisional liquidator) shall not be exercisable in relation to —

- (a) any property for the time being subject to a restraint order made before the relevant time; and
- (b) any proceeds of property realised under sub-paragraph (8) of paragraph 6 or sub-paragraphs (e) or (f) of sub-paragraph (1) of paragraph 9 for the time being in the hands of a receiver appointed under paragraphs 6 or 9.

{2} Where such an order has been made or such a resolution has been passed, the powers conferred on the Court by paragraphs 6, 7 and 9 or on a receiver appointed by the order 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 so as to —

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

{3} Sub-paragraph (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 paragraph, "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.

**Receivers: supplementary provisions.**

14. (1) Where a receiver appointed under this Schedule or in pursuance of a charging order takes any action —

- (a) in relation to any 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 was 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 applied in payment of it under sub-paragraph (3) of paragraph 10, be paid by the person on whose application the receiver was appointed.

**Application of procedure for enforcing fines.**

15. (1) Where the Court has ordered the defendant to pay any amount under this Schedule, sections 253, 254, 255 and 256 of the Criminal Procedure Code (Chapter 7) shall have effect as if that amount were a fine imposed on him by the Court.

(2) Where —

- (a) the Court has directed that in default of payment of an amount ordered to be paid under this Schedule in respect of an offence the defendant shall serve a term of imprisonment; and
- (b) at the time the direction was made, the defendant was liable to serve a term of imprisonment in respect of the offence,

the term of imprisonment to be served in default of payment of the amount shall not begin to run until after the term of imprisonment mentioned in sub-paragraph (b).

(3) For the purpose of sub-paragraph (b) of sub-paragraph (2) —

(a) consecutive terms of imprisonment and terms of imprisonment which are wholly or partly concurrent shall be treated as a single term; and

(b) there shall be disregarded any sentence suspended under any law relating to the suspension of sentences if that sentence had not taken effect at the time the defendant defaulted as specified in the direction.

Made this 21st. day of Safar, 1421 Hijriah corresponding to the 25th. day of May, 2000 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY  
THE SULTAN AND YANG DI-PERTUAN  
BRUNEI DARUSSALAM