ANGUILLA

REVISED REGULATIONS OF ANGUILLA

under

DRUGS TRAFFICKING OFFENCES ACT
R.S.A. c. D50

Showing the Law as at 15 December 2004

Regulation	Citation	Page
DRUGS TRAFFICKING OFFENCES ACT (DESIGNATED COUNTRIES AND TERRITORIES) ORDER	R.R.A. D50-1	3

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Revised Regulations of Anguilla: D50-1

DRUGS TRAFFICKING OFFENCES ACT (R.S.A. c. D50)

DRUGS TRAFFICKING OFFENCES ACT (DESIGNATED COUNTRIES AND TERRITORIES) ORDER

Note: These Regulations are enabled under section 25 of the Drugs Trafficking Offences Act, R.S.A. c. D50.[1]

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Interpretation

1. In this Order—

"Act" means the Drugs Trafficking Offences Act;

"appropriate authority of a designated country" means—

(a) the authority specified opposite that country in Schedule 1 to this Order; or

(b) where no authority is so specified, the authority appearing to the Court to be the appropriate authority of that country for the purposes of sections 25 and 26 of the Act, and of the other provisions of the Act as applied under section 2(2) of this Order;

"Court" means the High Court;

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

[1] This Note has been corrected to reflect the renumbering of the Act by Act 12/2004.

"designated country" means a country or territory designated under section 3(1) of this Order.

Designation of and application of the Act to countries and territories

2. (1) Each of the countries and territories specified in Schedule 1 to this Order is hereby designated for the purposes of sections 25 and 26 of the Act.

(2) In relation to a designated country, the Act shall apply, subject to the modifications specified in Schedule 2 to this Order, to external confiscation orders and to proceedings which have been or are to be instituted in the designated country and may result in an external confiscation order being made there, and, accordingly, in relation to such orders and such proceedings, the Act shall have effect as set out in Schedule 3 to this Order.

Proof of orders and judgment of Court in a designated country

3. (1) For the purposes of sections 25 and 26 of the Act, and of the other provisions of the Act as applied under section 2(2) of this Order—

(a) any order made or judgment given by a Court in 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, that purports to be a copy of any order made or judgment given by a Court in 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 in a designated country is duly authenticated for the purpose of paragraph (1)(b) if it purports to be certified by any person in his capacity as a judge, magistrate or officer of the Court in question or by or on behalf of the appropriate authority of the designated country.

Evidence in relation to proceedings and orders in a designated country

4. (1) For the purposes of sections 25 and 26 of the Act, and of the other provisions of the Act as applied under section 2(2) of this Order, 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 there;

(b) that an external confiscation order is in force and is not subject to appeal;

(c) that all or a certain amount of the sum 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 of recovering payments or other rewards received in connection with drug trafficking or their value;

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 in a designated country, shall be admissible as evidence of any fact stated therein.

(3) A document is duly authenticated for the purposes of subsection (2) if it purports to be certified by any person in his capacity as a judge, magistrate or officer of the Court in the designated country, or by or on behalf of the appropriate authority of the designated country, to have been received in evidence or to be a copy of a document so received, or, as the case may be, to be the original document containing or summarising the evidence or a true copy of that document.

(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.

Certificate as to appropriate authority of a designated country

5. Where in relation to any designated country no authority is specified in Schedule 1 to this Order, a certificate made by the Governor to the effect that the authority specified therein is the appropriate authority for the purposes of sections 25 and 26 of the Act, and of the other provisions of the Act as applied by section 2(2) of this Order shall be sufficient evidence of that fact.

Representation of government of a designated country

6. A request for assistance sent to the Governor 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 26 of the Act or any other provision of the Act as applied by section 2(2) of this Order.

Satisfaction of confiscation order in a designated country

7. (1) Where—

(a) a confiscation order has been made under section 4 of the Act;

(b) a request has been sent by the Governor to the appropriate authority of a designated country for assistance in enforcing that order; and

(c) in execution of that request property is 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 purposes 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 Governor stating the value of the property so recovered and the date on which it was recovered shall, in any proceedings in a Court in Anguilla, be admissible as evidence of the facts so stated.

Currency conversion

8. (1) Where the value of property recovered as described in section 7(1) of this Order is expressed in a currency other than that of Anguilla, the extent to which the amount payable under the confiscation order is to be reduced under that section 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 26 of the Act is expressed in a currency other than that of Anguilla, for the purpose of any action taken in relation to that order under the Act as applied under section 2(2) of this Order, the amount shall be converted into the currency of Anguilla on the basis of the exchange rate prevailing on the date of registration of the Order.

(3) For the purposes of this section, a written certificate purporting to be signed by any person acting in his capacity as an officer of any bank in Anguilla and stating the exchange rate prevailing on a specified date shall be admissible as evidence of the facts so stated.

Citation

9. These Regulations may be cited as the Drugs Trafficking Offences Act (Designated Countries and Territories) Order, Revised Regulations of Anguilla D50-1.

———————

SCHEDULE 1

DESIGNATED COUNTRIES

(Section 2(1))

Designated country	**Appropriate authority**
Afghanistan	
Algeria	
Antigua and Barbuda	
Argentina	
Armenia	
Australia	
Azerbaijan	
the Bahamas	
Bahrain	
Bangladesh	
Barbados	the Attorney General
Belarus	
Belgium	
Belize	
Bermuda	the Attorney General of Bermuda
Bhutan	
Bolivia	
Bosnia and Herzegovina	
Brazil	
British Virgin Islands	the Attorney General of the British Virgin Islands
Brunai Darussalam	
Bulgaria	
Burkina Faso	
Burundi	
Cameroon	
Canada	
Cape Verde	
the Cayman Islands	the Attorney General of the Cayman Islands
Chad	
Chile	
China	
Colombia	
Costa Rica	

Cote d'Ivoire	
Croatia	
Cuba	
Cyprus	
Czech Republic	
Denmark	
Dominica	
Dominican Republic	
Ecuador	
Egypt	
El Salvador	
England and Wales	Director of Public Prosecution
Ethiopia	
European Community	
Fiji	
Finland	
France	
Gabon	
Gambia	
Germany	
Ghana	
Gibraltar	the Attorney General of Gibraltar
Greece	
Grenada	
Guatemala	
Guernsey	Her Majesty's Attorney General for the Bailiwick of Guernsey
Guinea	
Guinea-Bissau	
Guyana	
Haiti	
Holy See	
Honduras	
Hong Kong	the Attorney General of Hong Kong
Hungary	
India	
Indonesia	
Iran	
Ireland	

Isle of Man	Her Majesty's Attorney General for the Isle of Man
Israel	
Italy	the Ministry of Justice
Jamaica	
Japan	
Jersey	Her Majesty's Attorney General for the Bailiwick of Jersey
Jordan	
Kenya	
Kuwait	
Kyrgyzstan	
Latvia	
Lebanon	
Lesotho	
Luxembourg	
Macedonia	
Madagascar	
Malawi	
Malaysia	
Maldives	
Mali	
Malta	
Mauritania	
Mexico	
Moldova	
Monaco	
Montserrat	the Attorney General of Montserrat
Morocco	
Myanmar	
Nepal	
Netherlands	
New Zealand	
Nicaragua	
Niger	
Nigeria	
Northern Ireland	the Home Office
Norway	
Oman	

Pakistan	
Panama	
Paraguay	
Peru	
Poland	
Portugal	
Qatar	
Romania	
Russian Federation	
St. Kitts and Nevis	
St. Lucia	
St. Vincent and the Grenadines	
Sao Tomas and Principe	
Saudi Arabia	
Scotland	the Lord Advocate
Senegal	
Seychelles	
Sierra Leone	
Slovakia	
Slovenia	
Spain	
Sri Lanka	
Sudan	
Suriname	
Swaziland	
Sweden	
Switzerland	
Syrian Arab Republic	
Tajikistan	
Togo	
Trinidad and Tobago	
Tunisia	
Turkey	
Turks and Caicos Islands	
Turkmenistan	
Uganda	
Ukraine	
United Arab Emirates	

United Republic of Tanzania
United States of America
Uruguay
Uzbekistan

Venezuela

Yemen
Yugoslavia (Serbia and Montenegro),
Federal Republic of

Zaire
Zambia
Zimbabwe

SCHEDULE 2

(Section 2(2))

MODIFICATION OF THE DRUGS TRAFFICKING OFFENCES ACT

1. In section 1—

(a) in subsection (1) the definition of "drug trafficking offence" shall be omitted;

(b) in subsection (2) in the list of expressions and relevant provisions the entries for "Benefited from drug trafficking", "Proceeds of drug trafficking" and "Value of proceeds of drug trafficking" shall be omitted;

(c) subsection (4) shall be omitted;

(d) at the end of subsection (5) the full stop shall be omitted and there shall be added the words ", and whether received before or after the Drugs Trafficking Offences Act (Designated Countries and Territories) Order commenced and whether received in connection with drug trafficking carried on by the recipient or some other person.";

(e) for subsection (11) there shall be substituted the following—

"(11) Proceedings for an offence are instituted in a designated country when—

(a) under the law of the designated country concerned one of the steps specified in relation to that country in Column 2 of the Appendix hereto has been taken there in respect of alleged drug trafficking by the defendant;

(b) where no steps have been specified in relation thereto as mentioned in paragraph (a), the defendant has been notified in writing in accordance with the laws of the designated country for an external confiscation order; or

(c) an application has been made to a court in a designated country for an external confiscation order;

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

(f) in paragraph (12)(b), for the words from "payment" to the end of the subsection there shall be substituted the words "the recovery of all property liable to be recovered, or the payment of any amount due, or otherwise).".

2. After section 1 there shall be inserted the Appendix set out at the end of Schedule 3 to this Order.

3. In section 3—

(a) for subsection (1) there shall be substituted the following subsection—

"(1) In this Act, "realisable property" means, subject to subsection (2)—

(a) in relation to an external confiscation order made 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 Act.";

(b) subsections (3) and (7) shall be omitted; and

(c) in subsection (8) for the words "3rd January, 1989" in the first place where they occur there shall be substituted the words "the Drugs Trafficking Offences Act (Designated Countries and Territories) Order, 1992 (now repealed) came into operation".

4. For section 4 there shall be substituted the following section—

"**External confiscation orders**

4. (1) An order made by a Court in a designated country for the purpose of recovering payments or other rewards received in connection with drug trafficking or their value is referred to in this Act as an "external confiscation order".

(2) In subsection (1) the reference to an order includes any order, decree, direction or judgment, or any part thereof, however described.

(3) 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 in a designated country, is referred to in this Act as the "defendant".".

5. Sections 5 to 7 shall be omitted.

6. Section 8 shall be omitted.

7. In section 9—

(a) for paragraph (1)(a), there shall be substituted—

"(a) proceedings have been instituted against the defendant in a designated country,";

(b) for paragraph (1)(c), there shall be substituted—

"(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.";

(c) for subsection (2), there shall be substituted the following subsection—

"(2) The powers conferred on the Court by sections 10 and 11 are also exercisable where it appears to the Court that proceedings are to be instituted against a defendant in a designated country and that there are reasonable grounds for believing that an external confiscation order may be made in them.";

(d) subsection (3) shall be omitted; and

(e) in subsection (4) delete all the words from the word "within" to the end of that subsection.

8. In section 10—

(a) for paragraphs (2)(a) and (b) there shall be substituted—

" (a) where an application under subsection (4) 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 the property is described in the restraint order or not, and

(ii) to realisable property held by a specified person, being property transferred to him after the making of the restraint order.";

(b) in paragraph (4)(a), for the words "the prosecutor" there shall be substituted the words "or on behalf of the government of a designated country or, in a case where an external confiscation order has been registered under section 26, by a receiver appointed under section 13, or the prosecutor", and for paragraph (4)(c) of that subsection there shall be substituted the following paragraph—

"(c) notwithstanding anything in the Rules of the Supreme Court, may provide for service on, or the provision of notice to, persons affected by the order in such manner as the Court may direct."; and

(c) for paragraph (5)(b) there shall be substituted—

"(b) shall be discharged when the proceedings in relation to which the order was made are concluded.".

9. In section 11—

(a) for paragraphs (1)(a) and (b) there shall be substituted the following—

"(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.";

(b) in paragraph (3)(a) for the words "the prosecutor" there shall be substituted the words "or on behalf of the government of a designated country or, in a case where an external confiscation order has been registered under section 26, by a receiver appointed under section 13, or the prosecutor", and for paragraph (3)(c) of that subsection, there shall be substituted the following paragraph—

"(c) notwithstanding anything in the Rules of the Supreme Court, shall provide for service on, or the provision of notice to persons affected by the order in such manner as the Court may direct;"; and

(c) in subsection (7), for the words "for the offence" there shall be substituted the words "against the defendant in the designated country".

10. After section 12 there shall be inserted the following section—

"**Applications for restraint and charging orders**

12A. Notwithstanding anything in the Rules of the Supreme Court, an application under section 10(4) or 11(3) shall be supported by an affidavit which shall—

(a) state, where applicable, the grounds for believing that an external confiscation order may be made in the proceedings instituted or to be instituted in the designated country concerned;

(b) to the best of the deponent's ability, give particulars of the realisable property in respect of which the order is sought and specify the person or persons holding such property; and

(c) in a case to which section 9(2) applies, indicate when it is intended that proceedings should be instituted in the designated country concerned;

and the affidavit may, unless the Court otherwise directs, contain statements of information or belief with the sources and grounds thereof.".

11. In section 13, for subsection (1) there shall be substituted the following two subsections—

"(1) Where an external confiscation order has been registered in the Court under section 26, the Court may, on the application of the prosecutor, exercise the powers conferred by subsections (1A) to (6).

(1A) In respect of any sum of money payable under the external confiscation order, the Court may make a garnishee order as if the sum were due to the Crown 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.".

12. In section 14—

(a) in subsection (1), for the words from "sums", in the last place where it occurs, to the end of the subsection, there shall be substituted the words: "be paid to the Court and applied for the purposes specified in subsections (3) to (6) and in the order so specified.";

(b) in subsection (2), for the words "If, after the amount payable under the confiscation order", there shall be substituted the words "Where a fixed amount is payable under the confiscation order and, after that amount";

(c) subsection (3) shall be omitted;

(d) in subsection (4), for the words "The Registrar of the High Court shall first", there shall be substituted the words "Any sums paid to the Court under subsection (1) or under an order made under section 13(1A) or otherwise in satisfaction of an external confiscation order shall be first applied to";

(e) for subsection (5) there shall be substituted the following subsection—

"(5) If the money was paid to the Court by a receiver appointed under section 10 or 13 or in pursuance of a charging order, the receiver's remuneration and expenses shall next be paid.";

(f) in subsection (6), for the words "the Registrar of the High Court shall reimburse any amount paid under section 19" there shall be substituted the words, "any amount paid under section 20 shall be reimbursed."; and

(g) for subsection (7) there shall be substituted the following subsection—

"(7) Any sums remaining after all the payments required to be made under the foregoing provisions of this section have been made shall be paid into the Consolidated Fund of Anguilla."

13. In section 15—

(a) in subsection (2), for the words from "making available" to the end of the subsection there shall be substituted the words "recovering property which is liable to be recovered under an external confiscation order registered in the Court under section 26 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."; and

(b) in subsection (6), after the word "the" in the fourth place where it occurs, there shall be inserted the word "external".

14. Section 16 shall be omitted.

15. Sections 21 to 35 shall be omitted.

SCHEDULE 3

(Section 2(2))

DRUGS TRAFFICKING OFFENCES ACT AS MODIFIED

Interpretation

1. (1) In this Act—

"corresponding law" has the same meaning as in section 2 of the Drugs (Prevention of Misuse) Act;

"drug trafficking" means doing or being concerned in any of the following, whether in Anguilla or elsewhere—

(a) importing or exporting a controlled drug where the importation or exportation is prohibited by section 4(1) of that Act or a corresponding law;

(b) producing or supplying a controlled drug where the production or supply contravenes section 6 of the Drugs (Prevention of Misuse) Act or a corresponding law;

(c) transporting or storing a controlled drug where possession of the drug contravenes section 7 of that Act or a corresponding law;

(d) manufacturing or supplying a scheduled substance within the meaning of section 11 of the Criminal Justice (International Co-operation)(Anguilla) Act where the manufacture or supply is an offence under that section;

and includes a person doing the following, whether in Anguilla or elsewhere, that is, entering into or being otherwise concerned in an arrangement whereby—

(e) the retention or control by or on behalf of another person of the other person's proceeds of drug trafficking is facilitated; or

(f) the proceeds of drug trafficking by another person are used to secure that funds are placed at the other person's disposal or are used for the other person's benefit to acquire property by way of investment;

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

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

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

Expression	***Relevant provision***
Charging order	Section 11(2)
External confiscation order	Section 4
Dealing with property	Section 10(8)
Defendant	Section 4(3)
Gift caught by this Act	Section 3(8)
Making a gift	Section 3(9)
Realisable property	Section 3(1)
Restraint order	Section 10(1)
Value of gift, payment or reward	Section 3(5)
Value of property	Section 3(4)

(3) This Act applies to property whether it is situated in Anguilla or elsewhere.

(5) References in this Act to anything received in connection with drug trafficking include a reference to anything received both in that connection and in some other connection, and whether received before or after the Drugs Trafficking Offences Act (Designated Countries and Territories) Order, 1992 (now repealed) commenced and whether received in connection with drug trafficking carried on by the recipient or some other person.

(6) The following provisions shall have effect for the interpretation of this Act.

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

(8) References to property held by a person include a reference to property vested in his trustee in bankruptcy or liquidator.

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

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

(11) Proceedings are instituted in a designated country when—

(a) under the law of the designated country concerned one of the steps specified in relation to that country in column 2 of the Appendix hereto has been taken there in respect of alleged drug trafficking by the defendant; or

(b) an application has been made to a Court in a designated country for an external confiscation order;

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

(12) Proceedings for an offence are concluded—

(a) when (disregarding any power of a Court to grant leave to appeal out of time) there is no further possibility of a confiscation order being made in the proceedings; or

(b) on the satisfaction of a confiscation order made in the proceedings (whether by the recovery of all property liable to be recovered, or in the payment of any amount due, or otherwise).

(13) An order is subject to appeal until (disregarding any power of a Court to grant leave to appeal out of time) there is further possibility of an appeal on which the order could be varied or set aside.

Definition of principal terms used

3. (1) In this Act, "realisable property" means, subject to subsection (2)—

(a) in relation to an external confiscation order made 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 Act.

(2) Property is not realisable property if an order under section 29 of the Drugs (Prevention of Misuse) Act is in force in respect of the property.

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

(a) where any other person holds an interest in the property, is—

(i) the market value of the first-mentioned person's beneficial interest in the property,

less—

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

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

(5) Subject to subsection (9), references in this Act to the value at any time (referred to in subsection (6) as the "material time") of a gift caught by this Act or of any payment or reward are references to—

(a) the value of the gift, payment or reward to the recipient when he received 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) Subject to subsection (9), if at the material time the recipient 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 paragraph (5)(b) is the value to him at the material time of the property mentioned in paragraph (a) or, as the case may be, of the property mentioned in paragraph (b) so far as it so represents the property which he received, but disregarding in either case any charging order.

(8) A gift (including a gift made before 1st March, 1992 when the Drugs Trafficking Offences Act (Designated Countries and Territories) Order, 1992 (now repealed) commenced) is caught by this Act if—

(a) it was made by the defendant at any time since the beginning of the period of 6 years ending when the proceedings were instituted against him; or

(b) it was made by the defendant at any time and was a gift of property—

(i) received by the defendant in connection with drug trafficking carried on by him or another, or

(ii) which in whole or in part directly or indirectly represented in the defendant's hands property received by him in that connection.

(9) For the purposes of this Act—

(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.

External confiscation orders

4. (1) An order made by a Court in a designated country for the purpose of recovering payments or other rewards received in connection with drug trafficking or their value is referred to in this Act as an "external confiscation order".

(2) In subsection (1) the reference to an order includes any order, decree, direction or judgment, or any part thereof, however described.

(3) 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 in a designated country, is referred to in this Act as the "defendant".

Cases in which restraint orders and charging orders may be made

9. (1) The powers conferred on the Court by sections 10 and 11 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 believing that such an order may be made in them.

(2) The powers conferred on the Court by sections 10 and 11 are also exercisable where it appears to the Court that proceedings are to be instituted against the defendant in a designated country and that there are reasonable grounds for believing that an external confiscation order may be made in them.

(4) Where the Court has made an order under section 10 or 11 by virtue of subsection (2), the Court shall discharge the order if the proposed proceedings are not instituted within such time as the Court considers reasonable.

Restraint orders

10. (1) The Court may by order (in this Act referred to as a "restraint order") prohibit any person from dealing with any realisable property, subject to such conditions and exceptions as may be specified in the order.

(2) A restraint order may apply—

(a) where an application under subsection (4) 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 the property is described in the restraint order or not, and

(ii) to realisable property held by a specified person, being property transferred to him after the making of the restraint order.

(3) This section shall not have effect in relation to any property for the time being subject to a charge under section 11.

(4) A restraint order—

(a) may be made only on application by or on behalf of the government of a designated country or, in a case where an external confiscation order has been registered under section 26, by a receiver appointed under section 13 or by the prosecutor;

(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, may provide for service on, or the provision of notice to, persons affected by the order in such manner as the Court may direct.

(5) 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 are concluded.

(6) An application for the discharge or variation of a restraint order may be made by any person affected by it.

(7) Where the Court has made a restraint order, the Court may at any time appoint a receiver—

(a) to take possession of any realisable property; and

(b) in accordance with the Court's directions, to manage or otherwise deal with any property in respect of which he is appointed;

subject to such exceptions and conditions as may be specified by the Court, and may require any person having possession of property in respect of which a receiver is appointed under this section to give possession of it to the receiver.

(8) For the purposes of this section, dealing with property held by any person includes (without prejudice to the generality of the expression)—

(a) where a debt is owed to the person, making a payment to any person in reduction of the amount of the debt; and

(b) removing the property from Anguilla.

(9) Where the Court has made a restraint order, a police officer may, for the purpose of preventing any realisable property being moved from Anguilla, seize the property.

(10) Property seized under subsection (9) shall be dealt with in accordance with the Court's directions.

(11) The Registered Land Act shall apply—

(a) in relation to restraint orders, as it applies in relation to orders affecting land made by the Court for the purposes of enforcing judgments or recognizances; and

(b) in relation to applications for restraint orders, as it applies in relation to other pending land actions.

(12) A person applying for a restraint order under paragraph (4)(a) shall be treated for the purposes of section 132 of the Registered Land Act as a person interested in relation to any registered land to which a restraint order or an application for such an order relates.

Charging orders in respect of land, securities, etc.

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

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

(3) A charging order—

(a) may be made only on an application by or on behalf of the government of a designated country or, in a case where an external confiscation order has been registered under section 26, by a receiver appointed under section 13 or by the prosecutor;

(b) may be made on an *ex parte* application to a Judge in Chambers;

(c) notwithstanding anything in the Rules of the Supreme Court, shall provide for service on, or the provision of notice 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 Act—

(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 Anguilla; or

(b) securities of any of the following kinds—

(i) government stock,

(ii) stock of any body (other than a building society) incorporated within Anguilla,

(iii) stock of any body incorporated outside of Anguilla being stock registered in a register kept at any place within Anguilla,

(iv) units of any unit trust in respect of which a register of the unit holders is kept at any place within Anguilla.

(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 (5)(b), the Court may provide for the charge to extend to any interest or dividend payable in respect of the asset.

(7) The Court may make an order discharging or varying the charging order and shall make an order discharging the charging order if the proceedings against the defendant in the designated country are concluded or the amount, payment of which is secured by the charge, is paid into Court.

(8) An application for the discharge or variation of a charging order may be made by any person affected by it.

Charging orders: supplementary provisions

12. (1) Subject to any provisions made under section 13 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 by the person holding the beneficial interest or, as the case may be, the trustees by writing under their hand.

(2) Where a charging order has been protected by an entry registered under the Registered Land Act, an order under section 11(7) of this Act discharging the charging order may direct that the entry be cancelled.

Applications for restraint and charging orders

12A. Notwithstanding anything in the Rules of the Supreme Court, an application under section 10(4) or 11(3) of this Act shall be supported by an affidavit which shall—

(a) state, where applicable, the grounds for believing that an external confiscation order may be made in the proceedings instituted or to be instituted in the designated country concerned;

(b) to the best of the deponent's ability, give particulars of the realisable property in respect of which the order is sought and specify the person or persons holding such property; and

(c) in a case to which section 9(2) applies, indicate when it is intended that proceedings should be instituted in the designated country concerned;

and the affidavit may, unless the Court otherwise directs, contain statements of information or belief with the sources and grounds thereof.

Realisation of property

13. (1) Where an external confiscation order has been registered in the Court under section 26, the Court may, on the application of the prosecutor exercise the powers conferred by subsections (1A) to (6).

(1A) In respect of any sum of money payable under the external confiscation order, the Court may make a garnishee order as if the same were due to the Crown 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.

(2) The Court may appoint a receiver in respect of 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 interest or dividends payable in respect of such property; and

(b) in relation to any realisable property other than property for the time being subject to a charge under section 11, to take possession of the property subject to such conditions or exceptions as may be specified by the Court.

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

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

(6) The Court may order any person holding an interest in realisable property to make such payment to the receiver in respect of any beneficial interest held by the defendant or, as the case may be, the recipient of a gift caught by this Act as the Court may direct and the Court may, on the payment being made, by order transfer, grant or extinguish any interest in the property.

(7) Subsections (4) to (6) do not apply to property for the time being subject to a charge under section 11.

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

Application of proceeds of realisation and other sums

14. (1) Subject to subsection (2), the following sums in the hands of a receiver appointed under section 10 or 13 or in pursuance of a charging order, that is—

(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 section 10 or 13; and

(c) any other sums, being property held by the defendant;

shall first be applied in payment of such expenses incurred by a person acting as a receiver or liquidator as are payable under section 19 and then 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 subsections (4) to (6), 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 such a receiver, the receiver shall distribute those sums—

(a) among such of those who held property which has been realised under this Act; and

(b) in such proportions;

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

(4) Any sums paid to the Court under subsection (1) or under an order made under section 13(1A) or otherwise in satisfaction of an external confiscation order shall be first applied to pay any expenses incurred by a person acting as a receiver or liquidator and payable under section 19 but not already paid under subsection (1).

(5) If the money was paid to the Court by a receiver appointed under section 10 or 13, or in pursuance of a charging order, the receiver's remuneration and expenses shall next be paid.

(6) After there has been made—

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

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

any amount paid under section 20 shall be reimbursed.

(7) Any sums remaining after all the payments required to be made under the foregoing provisions of this section have been made shall be paid into the Consolidated Fund of Anguilla.

Exercise of powers of Court or receiver

15. (1) The following provisions apply to the powers conferred on the Court by sections 10 to 14 or on a receiver appointed under section 10 or 13 or in pursuance of a charging order.

(2) Subject to the following provisions of this section, the powers shall be exercised with a view to recovering property which is liable to be recovered under an external confiscation order registered in the Court under section 26 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 Act, the powers shall be exercised with a view to realising no more than the value for the time being of the gift.

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

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

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

Bankruptcy of defendant, etc.

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

(a) property for the time being subject to a restraint order made before the order adjudging him bankrupt; and

(b) any proceeds of property realised by virtue of section 10(7) or 13(5) or (6) for the time being in the hands of a receiver appointed under section 10 or 13;

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

(2) Where a person has been adjudged bankrupt, the powers conferred on the Court by sections 10 to 14 or on a receiver so appointed 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; and

(b) property which is to be applied for the benefit of creditors of the bankrupt by virtue of a condition imposed under section 27(2) of that Act.

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

(a) made before the order adjudging the person bankrupt; or

(b) on property which was subject to a restraint order when the order adjudging him bankrupt was made.

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

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

(a) no order shall be made under section 28 or 44 of the Bankruptcy Act in respect of the making of the gift at any time when property of the person to whom the gift was made is subject to a restraint order or charging order; and

(b) any order made under either of those sections after the discharge of the restraint or charging order shall take into account any realisation under this Act of property held by the person to whom the gift was made.

Winding up of company holding realisable property

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

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

(b) any proceeds of property realised by virtue of section 10(7) or 13(5) or (6) for the time being in the hands of a receiver appointed under section 10 or 13.

(2) Where, in the case of a company, such an order has been made or such a resolution has been passed, the powers conferred on the Court by sections 10 to 14 or on a receiver so appointed shall not be exercised in relation to any realisable property held by the company in relation to which the functions of the liquidator are exercisable—

(a) so as to inhibit him from exercising those functions for the purpose of distributing any property held by the company to the company's creditors; or

(b) so as to prevent the payment out of any property of expenses (including the remuneration of the liquidator or any provisional liquidator) properly incurred in the winding up in respect of the property.

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

(4) In this section—

"company" means any company which may be wound up under the Companies Act;

"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 has 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 and liquidators dealing with property subject to restraint order

19. (1) Without prejudice to the generality of the Bankruptcy Act or any other written law, where—

(a) any person acting as receiver or liquidator seizes or disposes of any property in relation to which his functions are not exercisable because it is for the time being subject to a restraint order; and

(b) at the time of the seizure or disposal he believes, and has reasonable grounds for believing that he is entitled (whether in pursuance of an order of the Court or otherwise) to seize or dispose of that property;

he shall not be liable to any person in respect of any loss or damage resulting from the seizure or disposal except in so far as the loss or damage is caused by his negligence in so acting, and a person so acting shall have a lien on the property, or the proceeds of its sale, for such of his expenses as were incurred in connection with the liquidation, bankruptcy or other proceedings in relation to which the seizure or disposal purported to take place for so much of his remuneration as may reasonably be assigned for his acting in connection with those proceedings.

(2) Any person who, acting as receiver or liquidator, incurs expenses—

(a) in respect of such property as is mentioned in paragraph (1)(a) and in so doing does not know and has no reasonable grounds to believe that the property is for the time being subject to a restraint order; or

(b) other than in respect of such property as is so mentioned, being expenses which, but for the effect of a restraint order, might have been met by taking possession of and realising the property;

shall be entitled (whether or not he has seized or disposed of that property so as to have a lien under subsection (1)) to payment of those expenses under section 14.

(3) In this Act, the expression "acting as a receiver or liquidator" shall be construed in accordance with the provisions of the Bankruptcy Act and Companies Act.

Receivers: supplementary provisions

20. (1) Where a receiver appointed under section 10 or 13 or in pursuance of a charging order takes any action—

(a) in relation to property which is not realisable property, being action which he would be entitled to take if it were such property; and

(b) believing and having reasonable grounds for believing, that he is entitled to take that action in relation to that property;

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

(2) Any amount due in respect of the remuneration and expenses of a receiver so appointed shall, if no sum is available to be applied in payment of it under section 14(5), be paid by the person on whose application the receiver was appointed.

Registration of external confiscation orders

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

(a) it is satisfied that at the time of registration the order is in force and not subject to appeal;

(b) it is satisfied, where the person against whom the order is made did not appear in the proceedings, that he received notice of the proceedings in sufficient time to enable him to defend them; and

(c) it is of the opinion that enforcing the order in Anguilla would not be contrary to the interests of justice.

(2) In subsection (1) "appeal" includes—

(a) any proceedings by way of discharging or setting aside a judgment; and

(b) an application for a new trial or a stay of execution.

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

Minor amendments

34. Section 29 of the Bankruptcy Act (effect of order of discharge) shall have effect as if amounts payable under external confiscation orders were debts excepted under subsection (1) of that section.

APPENDIX INSTITUTION OF PROCEEDINGS

Designated Country	Point at which proceedings are instituted
Argentina	when a judge has ordered that a person be detained for the purpose of testifying in connection with the commission of an offence
Australia	(a) when an information has been laid before a justice of the peace (b) when a person is charged with an offence after having been taken into custody without a warrant (c) when a bill of indictment is preferred
the Bahamas	(a) when an information has been laid before a justice of the peace (b) when a person is charged with an offence after having been taken into custody without a warrant (c) when a bill of indictment is preferred
Bahrain	when a bill of indictment is lodged in court against any person for an offence
Barbados	(a) when an information has been laid before a magistrate (b) when a person is charged with an offence (c) when a bill of indictment is preferred
Bermuda	when an information is laid charging a person with an offence
British Virgin Islands	(a) when a summons or warrant is issued in respect of an offence (b) when a person is charged with an offence after being taken into custody without a warrant (c) when an indictment is preferred
the Cayman Islands	(a) when a charge has been signed under subsection (3) or (4) of section 13 of the Criminal Procedure Code in respect of the offence (b) when a person is charged with the offence after being arrested without a warrant under subsection (5) of that section
Ecuador	when a writ is issued by a judge initiating criminal proceedings

England and Wales	(a)	when a justice of the peace issues a summons or warrant under section 1 of the Magistrates' Courts Act 1980 in respect of the offence
	(b)	when a person is charged with the offence after being taken into custody without a warrant
	(c)	when a bill of indictment is preferred under section 2 of the Administration of Justice (Miscellaneous Provisions) Act 1933 in a case falling within paragraph (b) of subsection (2) of that section
Germany	when a person is notified that he is accused of an offence and will be brought before a court	
Gibraltar	when a person is charged with an offence, whether by the laying of an information or otherwise	
Guernsey	when a person is charged with an offence	
Guyana	when a charge has been laid against a person for an offence	
Hong Kong	(a)	when a magistrate issues a warrant or summons
	(b)	when a person is charged with an offence
	(c)	when an indictment is preferred
India	(a)	when information relating to the commission of any crime is received by any law enforcement agency empowered to investigate such crime under the law for the time being in force and laid before a court of law
	(b)	when any allegation is made orally or in writing to a court of law that a person has committed an offence
	(c)	when a person is charged with an offence
	(d)	when any investigation or inquiry into the commission of any offence is directed by a court of law
Isle of Man	(a)	where a justice of the peace issues a summons under section 4 of the Summary Jurisdiction Act 1989, when the complaint in relation to the offence is made to him
	(b)	where a justice of the peace issues a warrant for the arrest of any person under that section, when the complaint in relation to the offence is made to him

	(c)	where a person is charged with the offence after being taken into custody without a warrant, when he is taken into custody
	(d)	where an information is preferred by the Attorney General in a case where there have been no committal proceedings, when the information is lodged in the General Registry in accordance with section 4(1) of the Criminal Code Amendment Act 1917
Italy	(a)	when a person is notified, in accordance with article 369 of the Italian Code of Criminal Procedure, that a prosecution against him is in progress
	(b)	when a proposal for the application of a preventive measure (misura di prevenzione) is laid before a court
Jersey	(a)	when the Bailiff issues a warrant in respect of an offence for the arrest of a person who is out of the island
	(b)	when a person is arrested and charged with an offence
	(c)	when a summons in respect of an offence is served on a person at the instance of the Attorney General
	(d)	when a summons in respect of the offence is served on a person in accordance with the provisions of Article 8 of the Police Court (Miscellaneous Provisions) (Jersey) Law, 1949
Malaysia	when a person is charged with an offence	
Montserrat	(a)	when a judge issues a summons or warrant in respect of an offence
	(b)	when a person is charged with an offence after being taken into custody without a warrant
Netherlands	(a)	when a pre-trial financial investigation has been initiated
	(b)	when the provisional measure has been ordered by an investigating magistrate
	(c)	when a public prosecutor has requested a pre-trial criminal investigation by an investigating magistrate to be instituted
	(d)	when a public prosecutor has laid an indictment
Northern Ireland	(a)	when a summons or warrant is issued under Article 20 of the Magistrates' Courts (Northern Ireland) Order 1981 in respect of that offence
	(b)	when a person is charged with an offence after being taken into custody without a warrant

	(c)	when an indictment is presented under section 2(2)(c), (e) or (f) of the Grand Jury (Abolition) Act (Northern Ireland) 1969
Panama	when a person has been charged with an offence	
Saudi Arabia	when an information has been laid before a judicial authority	
Scotland	(a)	when a warrant of apprehension to arrest and commit a suspect is granted
	(b)	when a person is charged with an offence after having been arrested without a warrant
South Africa	(a)	when a summons is issued in respect of an offence
	(b)	when a person is charged with an offence
	(c)	when a bill of indictment is preferred
Spain	when by virtue of a judicial resolution it is decided to proceed against a person for an offence	
Sweden	when a public prosecutor has established that there are reasonable grounds to suspect that a person has committed an offence and accordingly is obliged under the Code of Judicial Procedure to notify the person of the suspicion	
Switzerland	when proceedings for an offence are brought before an examining magistrate	
United Mexican States	when criminal proceedings are instituted by a judicial authority	
United States of America	when an indictment, information or complaint has been filed against a person in respect of an offence	
Uruguay	when criminal proceedings are instituted by a judicial authority	