

AS TABLED IN THE HOUSE OF ASSEMBLY

A BILL

entitled

PROCEEDS OF CRIME AMENDMENT (NO. 2) ACT 2013

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WHEREAS it is expedient to amend the Proceeds of Crime Act 1997 to make provision for civil proceedings before the Supreme Court to allow recovery of property which is, or represents, property obtained through unlawful conduct and for connected purposes.

PROCEEDS OF CRIME AMENDMENT (NO. 2) ACT 2013

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

Citation

1 This Act, which amends the Proceeds of Crime Act 1997 (the "principal Act"), may be cited as the Proceeds of Crime Amendment (No. 2) Act 2013.

Amends section 7

2 Section 7 of the principal Act is amended—

(a) in subsection (1) by inserting the following definitions in the appropriate alphabetical order—

“ civil recovery investigation ” means—

(a) an investigation into—

(i) whether property is recoverable property or associated property;

(ii) who holds the property; or

(iii) the property's extent or whereabouts,

(b) but an investigation is not a civil recovery investigation if—

(i) proceedings for a recovery order have been started in respect of the property in question;

(ii) an interim receiving order applies to the property in question; or

(iii) subject to section 36.1I(2), the property in question is detained under section 50;

“enforcement authority” has the meaning given by section 36F;

“excepted joint owner” has the meaning given by section 36.1A(4);

“recoverable property” means property obtained through unlawful conduct, and is to be read in accordance with sections 36X to 36.1G;

“recovery order” means an order made under section 36X;

“respondent” means—

(a) where proceedings are brought by the enforcement authority by virtue of Part IIIA, the person against whom the proceedings are brought;

(b) where no such proceedings have been brought but the enforcement authority has applied for an interim receiving order

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or property freezing order, the person against whom he intends to bring such proceedings;

“share”, in relation to an excepted joint owner, has the meaning given by section 36.1A(4);

“suitably qualified person” includes a professional accountant or professional legal adviser;

“unlawful conduct” has the meaning given by section 36B;”;

(b) inserting after subsection (3) the following—

“(4) For the purpose of deciding whether or not property was recoverable at any time (including times before the commencement of the Proceeds of Crime (No 2) Act 2013), it is to be assumed that the Proceeds of Crime Amendment (No 2) Act 2013 was in force at that and any other relevant time.

(5) References to the satisfaction of the enforcement authority’s right to recover property obtained through unlawful conduct are to be read in accordance with section 36.1F.”.

Amends section 8

3 Section 8 of the principal Act is amended by inserting after subsection (1)(d), the following—

“(e) an application under section 36X is concluded—

(i) if the court decides not to make or vary (as the case may be) a recovery order, when it makes that decision; or

(ii) if a recovery order is made or varied as a result of that application, when the order is satisfied;

(f) a recovery order is satisfied when no amount is due pursuant to it.”.

Amends section 35

4 Section 35 of the principal Act is amended—

(a) in the heading by inserting after the word “defendant”, the words “or respondent”.

(b) in subsection (1)—

(i) by inserting after the words “realisable property”, the words “or recoverable property”;

(ii) in paragraph (a) by—

(a) inserting after the words “restraint order”, the words “, a property freezing order or an interim receiving order”;

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- (b) deleting the word “and”;
- (iii) in paragraph (b) by—
 - (a) inserting after the words “31(5) or (6)”, the words “, or 36H or 36O,”;
 - (b) inserting after the words “section 28 or 31”, the words “; or 36L; and”;
- (iv) inserting after paragraph (b), the following—
 - “(c) any proceeds realised by virtue of Part IIIA for the time being in the hands of a trustee appointed under section 36Y.”;
- (c) in subsection (2) by—
 - (i) inserting after the words “sections 28 to 32”, the words “, section 36M or 36P”; and
 - (ii) inserting after the word “receiver”, the words “or trustee appointed under section 36Y”.

Amends section 36

5 Section 36 of the principal Act is amended—

- (a) in the heading by inserting after the word “property”, the words “or recoverable property”;
- (b) in subsection (1)—
 - (i) by inserting after the words “realisable property”, the words “or recoverable property”;
 - (ii) in paragraph (b) by deleting the comma after the word “31” and substituting in its place the word “; or”;
 - (iii) by inserting after paragraph (b) the following—
 - “(c) any proceeds of property realised by virtue of Part IIIA for the time being in the hands of a trustee appointed under section 36Y,”;
- (c) in subsection (2) by inserting after the words “32 or”, the words “section 36M or 36P or on a receiver or a trustee appointed under section 36Y or”.

Inserts Part IIIA

6 The principal Act is amended by inserting after section 36 the following—

“PART IIIA

CIVIL RECOVERY OF THE PROCEEDS ETC. OF UNLAWFUL CONDUCT

Civil recovery proceedings

36A (1) The enforcement authority may recover, in civil proceedings before the Supreme Court, property which is, or represents, property obtained through unlawful conduct.

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

(3) Proceedings for a recovery order may be taken by the enforcement authority against any person who the authority is satisfied holds recoverable property.

(4) The enforcement authority shall serve the originating summons—

(a) on the respondent; and

(b) unless the court dispenses with service, on any other person who the enforcement authority thinks holds any associated property which the authority wishes to be subject to a recovery order,

wherever domiciled, resident or present.

(5) If any property which the enforcement authority wishes to be subject to a recovery order is not specified in the originating summons it shall be described in the summons in general terms; and the originating summons shall state whether it is alleged to be recoverable property or associated property.

(6) The references above to the originating summons include any affidavit filed in support.

(7) Section 62 of the Supreme Court Act 1905 shall be deemed to extend to the making of rules under that section to regulate—

(a) the practice and procedure for the making of recovery orders;

(b) proceedings in relation to such orders.

Unlawful conduct

36B (1) Conduct is unlawful conduct if it is unlawful under the criminal law of Bermuda.

(2) Conduct which—

(a) occurs in a country outside Bermuda and is unlawful under the criminal law of that country; and

(b) if it occurred in Bermuda, would be unlawful under the criminal law of Bermuda,

is also unlawful conduct.

(3) The court shall decide whether it is proved—

- (a) that any matters alleged to constitute unlawful conduct have occurred; or
- (b) that any person has obtained any property through such unlawful conduct.

Property obtained through unlawful conduct

36C (1) A person obtains property through unlawful conduct (whether his own conduct or another's) if he obtains property by or in return for the conduct.

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

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

Associated property

36D (1) "Associated property" means property of any of the following descriptions (including property held by the respondent) which is not itself the recoverable property—

- (a) any interest in the recoverable property;
- (b) any other interest in the property in which the recoverable property subsists;
- (c) if the recoverable property is a tenancy in common, the tenancy of the other tenant;
- (d) if the recoverable property is part of a larger property, but not a separate part, the remainder of that property.

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

(3) No property (referred to in subsection (1)) is to be treated as associated with recoverable property consisting of rights under a pension scheme, pension fund or pension plan.

Obtaining and disposing of property

36E (1) References to a person disposing of his property include a reference—

- (a) to his disposing of a part of it; or
- (b) to his granting an interest in it,

(or to both); and references to the property disposed of are to any property obtained on the disposal.

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

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

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

Enforcement authority

36F (1) There shall be an enforcement authority which shall be designated by the Minister for the purposes of this Part.

(2) The Minister may by order designate a a public authority as the enforcement authority.

(3) An order made by the Minister under subsection (2) shall be subject to the negative resolution procedure.

Financial threshold

36G (1) The enforcement authority may not start proceedings for a recovery order unless the enforcement authority reasonably believes that the aggregate value of the recoverable property which the authority wishes to be subject to a recovery order is not less than \$25,000.

(2) The Minister may by order vary the amount specified in subsection (1).

(3) If the enforcement authority applies for an interim receiving order before starting the proceedings, subsection (1) applies to the application instead of to the start of the proceedings.

(4) This section does not affect the continuation of proceedings for a recovery order which have been properly started or the making or continuing effect of an interim receiving order which has been properly applied for.

Property freezing orders

Application for property freezing order

36H (1) Where the enforcement authority may take proceedings for a recovery order in the court, the authority may apply to the court for a property freezing order (whether before or after starting the proceedings).

(2) A property freezing order is an order that—

- (a) specifies or describes the property to which it applies; or
 - (b) subject to any exclusions (see section 36J(1)(b) and (2)), prohibits any person to whose property the order applies from in any way dealing with the property.
- (3) An application for a property freezing order may be made ex parte—
- (a) if the circumstances are such that notice of the application would prejudice any right of the enforcement authority to obtain a recovery order in respect of any property; or
 - (b) if the enforcement authority has taken all reasonable steps to serve notice of the application, but has not been able to do so.
- (4) The court may make a property freezing order on an application if it is satisfied that the condition in subsection (5) is met and, where applicable, that the condition in subsection (6) is met.
- (5) The first condition is that there is a good arguable case—
- (a) that the property to which the application for the order relates is or includes recoverable property; and
 - (b) that, if any of it is not recoverable property, it is associated property.
- (6) The second condition is that, if—
- (a) the property to which the application for the order relates includes property alleged to be associated property; and
 - (b) the enforcement authority has not established the identity of the person who holds it,

the authority has taken all reasonable steps to do so.

Variation and setting aside of order

- 36I (1) The court may at any time vary or set aside a property freezing order.
- (2) If the court makes an interim receiving order that applies to all of the property to which a property freezing order applies, it shall set aside the property freezing order.
- (3) If the court makes an interim receiving order that applies to some but not all of the property to which a property freezing order applies, it shall vary the property freezing order so as to exclude any property to which the interim receiving order applies.
- (4) If the court decides that any property to which a property freezing order applies is neither recoverable property nor associated property, it shall vary the order so as to exclude the property.

(5) Before exercising power under this Part to vary or set aside a property freezing order, the court shall (as well as giving the parties to the proceedings an opportunity to be heard) give such an opportunity to any person who may be affected by its decision.

(6) Subsection (5) does not apply where the court is acting as required by subsection (2) or (3).

Exclusions

36J (1) The power to vary a property freezing order includes (in particular) power to make exclusions as follows—

- (a) power to exclude property from the order; and
- (b) power, otherwise than by excluding property from the order, to make exclusions from the prohibition on dealing with the property to which the order applies.

(2) Exclusions from the prohibition on dealing with the property to which the order applies (other than exclusions of property from the order) may also be made when the order is made.

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

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

(4) An exclusion may be made subject to such conditions as the court deems appropriate in the circumstances.

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

- (a) is limited to reasonable legal expenses that the person has reasonably incurred or that he reasonably incurs;
- (b) specifies the total amount that may be released for legal expenses in pursuance of the exclusion; and
- (c) is made subject to the required conditions by virtue of section 65(1A) in addition to any conditions imposed under subsection (4).

(6) The court, in deciding whether to make an exclusion for the purpose of enabling a person to meet legal expenses of his in respect of proceedings under this Part shall have regard (in particular) to the desirability of the person being represented in any proceedings under this Part in which he is a participant.

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

(8) The power to make exclusions shall, subject to subsection (6), be exercised with a view to ensuring, so far as practicable, that the satisfaction of any right of the enforcement authority to recover the property obtained through unlawful conduct is not unduly prejudiced.

(9) Subsection (8) does not apply where the court is acting as required by section 36I(3) or (4).

Restriction on proceedings and remedies

36K (1) While a property freezing order has effect—

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

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

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

(4) Before exercising any power conferred by this section, the court shall (as well as giving the parties to any of the proceedings concerned an opportunity to be heard) give such an opportunity to any person who may be affected by the court's decision.

Receivers in connection with property freezing orders

36L (1) Subsection (2) applies if—

- (a) the court makes a property freezing order on an application by the enforcement authority; and
- (b) the authority applies to the court to proceed under subsection (2) (whether as part of the application for the property freezing order or at any time afterwards).

(2) The court may by order appoint a receiver in respect of any property to which the property freezing order applies.

(3) An application for an order under this section may be made ex parte if the circumstances are such that notice of the application would prejudice any right of the enforcement authority to obtain a recovery order in respect of any property.

(4) In its application for an order under this section, the enforcement authority shall nominate a suitably qualified person for appointment as a receiver.

(5) Such suitable qualified person may be a member of staff of the enforcement authority.

(6) The enforcement authority may apply a sum received by it under section 36.1G(2) in making payment of the remuneration and expenses of a receiver appointed under this section.

(7) Subsection (6) does not apply in relation to the remuneration of the receiver if he is a member of staff of the enforcement authority (but it does apply in relation to such remuneration if the receiver is a person providing services under arrangements made by the enforcement authority).

Powers of receiver appointed under section 36L

36M (1) If the court appoints a receiver under section 36L on an application by an enforcement authority, the court may act under this section on the application of the authority.

(2) The court may by order authorise or require the receiver—

- (a) to exercise any of the management powers mentioned in paragraph 5 of Schedule 1 in relation to any property in respect of which the receiver is appointed;
- (b) to take any other steps the court thinks appropriate in connection with the management of any such property (including securing the detention, custody or preservation of the property in order to manage it).

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

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

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

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

(6) If—

- (a) the receiver deals with any property which is not property in respect of which he is appointed under section 36L; and
- (b) at the time he deals with the property he believes on reasonable grounds that he is entitled to do so by virtue of his appointment,

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

(7) A receiver appointed under section 36L shall (subject to section 36L(7)) be entitled to be paid his remuneration and expenses out of the proceeds of the property realised by the receiver.

Supervision of section 36L receiver and variations

36N (1) Any of the following persons may at any time apply to the court for directions as to the exercise of the functions of a receiver appointed under section 36L—

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

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

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

(3) The court may at any time vary or set aside the appointment of a receiver under section 36L, or any order under section 36M.

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

- (a) the receiver;
- (b) the parties to the proceedings for the appointment of the receiver, for the order under section 36M or, as the case may be, for the directions under this section;
- (c) the parties to the proceedings for the property freezing order concerned;

- (d) any person who may be affected by the court's decision.

Interim receiving orders

Application for interim receiving order

36O (1) Where the enforcement authority may take proceedings for a recovery order in the court, the authority may apply to the court ex parte for an interim receiving order (whether before or after starting the proceedings).

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

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

(3) An application for an interim receiving order may be made ex parte if the circumstances are such that notice of the application would prejudice any right of the enforcement authority to obtain a recovery order in respect of any property.

(4) The court may make an interim receiving order on the application if it is satisfied that the conditions in subsections (5) and, where applicable, (6) are met.

(5) The first condition is that there is a good arguable case—

- (a) that the property to which the application for the order relates is or includes recoverable property; and
- (b) that, if any of it is not recoverable property, it is associated property.

(6) The second condition is that, if—

- (a) the property to which the application for the order relates includes property alleged to be associated property; and
- (b) the enforcement authority has not established the identity of the person who holds it,

the authority has taken all reasonable steps to do so.

(7) In its application for an interim receiving order, the enforcement authority shall nominate a suitably qualified person for appointment as interim receiver, but the nominee may not be a member of staff of the enforcement authority.

(8) The extent of the power to make an interim receiving order is not limited by sections 36P to 36W.

Functions of interim receiver

36P (1) An interim receiving order may authorise or require the interim receiver—

- (a) to exercise any of the powers mentioned in Schedule 1;

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

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

- (a) whether or not the property to which the order applies is recoverable property or associated property;
- (b) whether or not any other property is recoverable property (in relation to the same unlawful conduct) and, if it is, who holds it.

(3) If—

- (a) the interim receiver deals with any property which is not property to which the order applies; and
- (b) at the time he deals with the property he believes on reasonable grounds that he is entitled to do so in pursuance of the order,

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

Registration

36Q (1) Notice of any interim receiving order (which relates to land) shall be deposited in the office of the Registrar-General for recording and registration in accordance with section 3 of the Registrar-General (Recording of Documents) Act 1955.

(2) A person applying for an interim receiving order shall be treated for the purposes of Registrar-General (Recording of Documents) Act 1955 as a depositor as that term is defined in that Act.

Duties of respondent etc.

36R (1) An interim receiving order may require any person to whose property the order applies—

- (a) to bring the property to a place specified by the interim receiver or place it in the custody of the interim receiver (if, in either case, he is able to do so);
- (b) to do anything he is reasonably required to do by the interim receiver for the preservation of the property.

(2) An interim receiving order may require any person to whose property the order applies to bring any documents relating to the property which are in his possession or control to a place specified by the interim receiver or to place them in the custody of the interim receiver.

Supervision of interim receiver and variation of order

36S (1) The interim receiver, any party to the proceedings and any person affected by any action taken by the interim receiver, or who may be affected by any action proposed to be taken by him, may at any time apply to the court for directions as to the exercise of the interim receiver's functions.

(2) Before giving any directions under subsection (1), the court shall (as well as giving the parties to the proceedings an opportunity to be heard) give such an opportunity to the interim receiver and to any person who may be interested in the application.

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

(4) Before exercising any power to vary or set aside an interim receiving order, the court shall (as well as giving the parties to the proceedings an opportunity to be heard) give such an opportunity to the interim receiver and to any person who may be affected by the court's decision.

Restrictions on dealing etc. with property

36T (1) An interim receiving order shall, subject to any exclusions made in accordance with this section, prohibit any person to whose property the order applies from dealing with the property.

(2) Exclusions may be made when the interim receiving order is made or on an application to vary the order.

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

(a) to meet his reasonable living expenses; or

(b) to carry on any trade, business, profession or occupation,

and may be made subject to conditions.

(4) But an exclusion may not be made for the purpose of enabling any person to meet any legal expenses in respect of proceedings under this Part except as provided by regulations under section 65(1A).

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

(6) The power to make exclusions shall be exercised with a view to ensuring, so far as practicable, that the satisfaction of any right of the enforcement authority to recover the property obtained through unlawful conduct is not unduly prejudiced.

Restriction on proceedings and remedies

36U (1) While an interim receiving order has effect—

(a) the court may stay any action, execution or other legal process in respect of the property to which the order applies;

- (b) no distress may be levied against the property to which the order applies except with the leave of the court and subject to any terms the court may impose.

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

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

(4) Before exercising any power conferred by this section, the court shall (as well as giving the parties to any of the proceedings in question an opportunity to be heard) give such an opportunity to the interim receiver (if appointed) and any person who may be affected by the court's decision.

Exclusion of property which is not recoverable etc.

36V (1) If the court decides that any property to which an interim receiving order applies is neither recoverable property nor associated property, it shall vary the order so as to exclude it.

(2) The court may vary an interim receiving order so as to exclude from the property to which the order applies any property which is alleged to be associated property if the court thinks that the satisfaction of any right of the enforcement authority to recover the property obtained through unlawful conduct will not be prejudiced.

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

Reporting

36W (1) An interim receiving order shall require the interim receiver to inform the enforcement authority and the court as soon as reasonably practicable if he thinks that—

- (a) any property to which the order applies by virtue of a claim that it is recoverable property is not recoverable property;
- (b) any property to which the order applies by virtue of a claim that it is associated property is not associated property;
- (c) any property to which the order does not apply is recoverable property (in relation to the same unlawful conduct) or associated property;

- (d) any property to which the order applies is held by a person who is different from the person it is claimed holds it; or
 - (e) there has been any other material change of circumstances.
- (2) An interim receiving order shall require the interim receiver—
- (a) to report his findings to the court;
 - (b) to serve copies of his report on the enforcement authority and on any person who holds any property to which the order applies or who may otherwise be affected by the report.

Vesting and realisation of recoverable property

Recovery orders

36X (1) If in proceedings under this Part the court is satisfied that any property is recoverable, the court shall make a recovery order.

(2) The recovery order shall vest the recoverable property in the trustee for civil recovery.

(3) But the court may not make in a recovery order any provision in respect of any recoverable property if each of the conditions in subsection (4) or (as the case may be) (5) is met and it would not be just and equitable to do so.

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

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

(5) In deciding whether it would be just and equitable to make the provision in the recovery order where the conditions in subsection (4) are met, the court shall have regard to—

- (a) the degree of detriment that would be suffered by the respondent if the provision were made;
- (b) the enforcement authority's interest in receiving the realised proceeds of the recoverable property.

(6) A recovery order may sever any property.

(7) A recovery order may impose conditions as to the manner in which the trustee for civil recovery may deal with any property vested by the order for the purpose of realising it.

(8) A recovery order made by the court may provide for payment under section 36.1D of reasonable legal expenses that a person has reasonably incurred, or may reasonably incur, in respect of—

- (a) the proceedings under this Part in which the order is made; or
- (b) any related proceedings under this Part.

(9) If regulations under section 65(1A) apply to an item of expenditure, a sum in respect of the item is not payable under section 36.1G in pursuance of provision under subsection (8) unless—

- (a) the enforcement authority agrees to its payment; or
- (b) the court has assessed the amount allowed by the regulations in respect of that item and the sum is paid in respect of the assessed amount.

(10) This section is subject to sections 36.1A to 36.1E.

Functions of the trustee for civil recovery

36Y (1) The trustee for civil recovery is a suitably qualified person nominated by the enforcement authority, and appointed by the court to give effect to a recovery order.

(2) The functions of the trustee are—

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

(3) In performing his functions, the trustee acts on behalf of the enforcement authority and shall comply with any directions given by the enforcement authority.

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

(5) The trustee has the powers mentioned in Schedule 2.

(6) References in this section to a recovery order include an order under section 36.1D and references to property vested in the trustee by a recovery order include property vested in him in pursuance of an order under that section.

Rights of pre-emption, etc.

36Z (1) A recovery order is to have effect in relation to any property despite any provision (of whatever nature) which would otherwise prevent, penalise or restrict the vesting of the property.

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

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

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

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

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

Associated and joint property

36.1A (1) Sections 36.1B to 36.1C apply if the court makes a recovery order in respect of any recoverable property in a case within subsection (2) or (3).

(2) A case is within this subsection if—

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

(3) A case is within this subsection if—

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

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

Agreements about associated and joint property

36.1B (1) The recovery order may, instead of vesting the recoverable property in the trustee for civil recovery, require the person who holds the associated property or who is the excepted joint owner to make a payment to the trustee where—

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

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

(3) The amount of the payment is to be the amount which the enforcement authority and that person agree represents—

- (a) in a case within section 36.1A(2), the value of the recoverable property;
- (b) in a case within section 36.1A(3), the value of the recoverable property less the value of the excepted joint owner's share.

(4) But if—

- (a) an interim receiving order applied at any time to the associated property or joint tenancy; and
- (b) the enforcement authority agrees that the person has suffered loss as a result of the interim receiving order,

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

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

(6) A recovery order which makes any requirement under subsection (1) shall make provision for any recoverable property to cease to be recoverable.

Associated and joint property: default of agreement

36.1C (1) Where this section applies, the court may make the following provision if—

- (a) there is no agreement under section 36.1B; and
- (b) the court thinks it just and equitable to do so.

(2) The recovery order may provide—

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

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

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

or for both.

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

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

(5) If—

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

a recovery order making any provision by virtue of subsection (2) or (3) may require the enforcement authority to pay compensation to that person.

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

Consent orders

36.1D (1) The court may make an order staying any proceedings for a recovery order on terms agreed by the parties for the disposal of the proceedings if each person to whose property the proceedings, or the agreement, relates is a party both to the proceedings and the agreement.

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

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

(3) Section 36.1G applies to property vested in the trustee for civil recovery, or money paid to him, in pursuance of the agreement as it applies to property vested in him by a recovery order or money paid under section 36.1B.

Limit on recovery

36.1E (1) This section applies if the enforcement authority seeks a recovery order in respect of both property which is or represents property obtained through unlawful conduct and related property.

(2) For the purposes of this section—

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

(3) The court is not to make a recovery order if it thinks that the enforcement authority's right to recover the original property has been satisfied by a previous recovery order.

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

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

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

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

or both.

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

(7) If—

- (a) an order is made under section 51 for the forfeiture of property which is later determined is recoverable property; and
- (b) the enforcement authority subsequently seeks a recovery order in respect of related property,

the order under section 51 is to be treated for the purposes of this section as if it were a recovery order obtained by the enforcement authority in respect of the forfeited property.

(8) If—

- (a) in pursuance of a judgment in civil proceedings (whether in Bermuda or elsewhere), the claimant has obtained property from the defendant (“the judgment property”);
- (b) the claim was based on the defendant’s having obtained the judgment property or related property through unlawful conduct; and
- (c) the enforcement authority subsequently seeks a recovery order in respect of property which is related to the judgment property,

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

(9) If—

- (a) property has been taken into account in deciding the amount of a person’s benefit from criminal conduct for the purpose of making a confiscation order under section 9 or 10; and
- (b) the enforcement authority subsequently seeks a recovery order in respect of related property,

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

Section 36.1E: Supplementary

36.1F (1) Subsections (2) and (3) give examples of the satisfaction of the enforcement authority’s right to recover the original property.

(2) If—

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

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

(3) If—

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

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

(4) In this section—

- (a) a part disposal means a disposal to which section 36E(1) applies,
- (b) the original property has the same meaning as in section 36.1E(2).

Applying realised proceeds

36.1G (1) This section applies to—

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

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

- (a) first, any payment required to be made by him by virtue of section 36.1C;
- (b) next, any payment of legal expenses which, after giving effect to section 36X(9), are payable under this subsection in pursuance of provision under section 36X(8) contained in the recovery order;
- (c) then, any payment of expenses incurred by a person acting as a receiver or trustee under this Part, whether or not he has realised or disposed of any property under this Part,

and any sum which remains is to be paid into the Consolidated Assets Fund.

(3) The trustee may apply a sum received by him under subsection (2) in making payment of the remuneration and expenses of—

- (a) the trustee; or
- (b) any receiver or interim receiver appointed in, or in anticipation of, the proceedings under section 36H or 36O.

(4) Subsection (3)(a) does not apply in relation to the remuneration of the trustee if the trustee is a member of staff of the enforcement authority.

Exemptions etc.

Victims of theft, etc.

36.1H (1) In proceedings for a recovery order, a person who claims that any property alleged to be recoverable property, or any part of the property, belongs to him may apply for a declaration under this section.

(2) If the applicant appears to the court to meet the following condition, the court may make a declaration to that effect.

(3) The condition is that—

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

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

Other exemptions

36.1I (1) Proceedings for a recovery order may not be taken against any person in circumstances of a prescribed description; and the circumstances may relate to the person himself or to the property or to any other matter.

(2) Proceedings for a recovery order may not be taken in respect of cash seized and detained in accordance with section 50 unless the proceedings are also taken in respect of property other than cash which is property of the same person.

(3) Proceedings for a recovery order may not be taken against any person in respect of any recoverable property which he holds by reason of his acting, or having acted, as a receiver or trustee.

(4) In subsection (1), prescribed means prescribed by an order made by the Minister subject to the negative resolution procedure.

Recoverable property

Property obtained through unlawful conduct: recoverable property

36.1J (1) Property obtained through unlawful conduct is recoverable property.

(2) But if property obtained through unlawful conduct has been disposed of since it was so obtained, it is recoverable property only if it is held by a person into whose hands it may be followed.

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

- (a) the person who through the conduct obtained the property; or

- (b) a person into whose hands it may (by virtue of this subsection) be followed.

Tracing property, etc.

36.1K (1) Where property obtained through unlawful conduct (“the original property”) is or has been recoverable, property which represents the original property is also recoverable property.

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

- (a) he disposes of recoverable property, whether the original property or property which (by virtue of this Part) represents the original property; and
- (b) he obtains other property in place of it,

the other property represents the original property.

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

Mixing property

36.1L (1) Subsection (2) applies if a person’s recoverable property is mixed with other property (whether his property or another’s).

(2) The portion of the mixed property which is attributable to the recoverable property represents the property obtained through unlawful conduct.

(3) Recoverable property is mixed with other property if it is used—

- (a) to increase funds held in a bank account;
- (b) in part payment for the acquisition of an asset;
- (c) for the restoration or improvement of land;
- (d) by a person holding a leasehold interest in the property to acquire the freehold; or
- (e) for any other purpose similar to those set out in paragraphs (a) to (d).

Recoverable property: accruing profits

36.1M (1) This section applies where a person who has recoverable property obtains further property consisting of profits accruing in respect of the recoverable property.

(2) The further property is to be treated as representing the property obtained through unlawful conduct.

General exceptions

36.1N (1) If—

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

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

(2) If recoverable property is vested, or otherwise disposed of in pursuance of powers conferred by virtue of this Act, it ceases to be recoverable.

(3) If—

- (a) in pursuance of a judgment in civil proceedings (whether in Bermuda or elsewhere), the defendant makes a payment to the claimant or the claimant otherwise obtains property from the defendant;
- (b) the claimant's claim is based on the defendant's unlawful conduct; and
- (c) apart from this subsection, the sum received, or the property obtained, by the claimant would be recoverable property,

the property ceases to be recoverable.

(4) If—

- (a) a payment is made to a person in pursuance of a compensation order or a restitution order made under any law in force in Bermuda in respect of loss suffered in consequence of unlawful conduct; and
- (b) apart from this subsection, the sum received would be recoverable property,

the property ceases to be recoverable.

(5) If—

- (a) in pursuance of a requirement under any law in force in Bermuda relating to any financial institution, an amount is paid to or distributed among any persons in pursuance of or in accordance with the court's directions; and
- (b) apart from this subsection, the sum received by them would be recoverable property,

the property ceases to be recoverable.

(6) Property is not recoverable while a restraint order applies to it, that is—

- (a) an order under section 28; or
- (b) an order under Schedule 2 Part 1 paragraph 5 of the Anti-Terrorism (Financial and Other Measures) Act 2004.

(7) Property is not recoverable if it has been taken into account under section 9 in deciding the amount of a person's benefit from criminal conduct for the purpose of making a confiscation order in accordance with the court's directions.

(8) Where—

- (a) a person enters into a transaction to which section 36.1K(2) applies; and
- (b) the disposal is one to which subsection (1) or (2) applies,

this section does not affect the recoverability (by virtue of section 36.1K(2)) of any property obtained on the transaction in place of the property disposed of.

Other exemptions

36.1O (1) Subject to subsections (2) and (3), an order may provide that property is not recoverable or (as the case may be) associated property if—

- (a) it is prescribed property; or
- (b) it is disposed of in pursuance of a prescribed enactment or an enactment of a prescribed description.

(2) An order may provide that if property is disposed of in pursuance of a prescribed enactment or an enactment of a prescribed description, it is to be treated for the purposes of section 36.1E as if it had been disposed of in pursuance of a recovery order.

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

(4) In this section, an order means an order made by the Minister, subject to the negative resolution procedure; and prescribed means prescribed by the order.

Granting interests

36.1P (1) If a person grants an interest in his recoverable property, the question whether the interest is also recoverable is to be determined in the same manner as it is on any other disposal of recoverable property.

(2) Accordingly, on his granting an interest in the property ("the property in question")—

- (a) where the property in question is property obtained through unlawful conduct, the interest is also to be treated as obtained through that conduct;
- (b) where the property in question represents in his hands property obtained through unlawful conduct, the interest is also to be treated as representing in his hands the property so obtained.

Use of information by enforcement authority

36.1Q Information obtained by or on behalf of the enforcement authority in connection with the exercise of any of the authority's functions may only be used by the authority in connection with the exercise of its functions under this Part.

Disclosure of information to enforcement authority

36.1R (1) Information which is held by or on behalf of a permitted person (whether it was obtained before or after the coming into force of this section) may be disclosed to the enforcement authority for the purpose of the exercise by the enforcement authority of its functions under this Part.

(2) Notwithstanding any restriction otherwise imposed by any law for the time being in force in Bermuda on the disclosure by a permitted person of information obtained in an official capacity by that person relating to any recoverable property, that person may disclose such information relating to recoverable property to the enforcement authority for any of the purposes to which this section applies.

(3) The Minister, after consultation with such persons as may be appropriate, shall produce Guidance for the purposes of this section and such Guidance shall specify the information to be disclosed, the manner in which, and any conditions subject to which, it is to be disclosed.

(4) The information that may be disclosed under this section includes information obtained before the commencement of this section.

(5) The purposes to which this section applies are—

- (a) for the purposes of the initiation of any civil recovery investigation or proceedings;
- (b) the purpose of facilitating a determination of whether any civil recovery investigation or proceedings should be initiated.

(6) Nothing in this section shall be taken to prejudice any power to disclose information which exists apart from this section, or to prejudice the rights conferred on the Director of Public Prosecutions under any provision of law.

(7) A disclosure under this section is not to be taken to breach any restriction on the disclosure of information (however imposed).

(8) But nothing in this section authorises the making of a disclosure which contravenes any provision of law relating to data protection.

(9) This section does not affect a power to disclose which exists apart from this section.

(10) In this section “permitted person” means—

- (a) a police officer;
- (b) such other person as may be prescribed by order subject to the negative resolution procedure as a permitted person.

(11) Section 6 of the Statutory Instruments Act 1977 shall not apply to Guidance produced by the Minister under subsection (3).

Disclosure of information by enforcement authority

36.1S (1) Information obtained by or on behalf of the enforcement authority in connection with the exercise of any of the authority’s functions may be disclosed by the authority if the disclosure is for the purposes of any of the following—

- (a) any civil recovery investigation which is being or may be carried out, whether in Bermuda or elsewhere;
- (b) any civil recovery proceedings which have been or may be started, whether in Bermuda or elsewhere;
- (c) the exercise of the enforcement authority’s functions under this Act;
- (d) the exercise by a police officer of his functions under this Act;
- (e) in the interest of safeguarding national security;
- (f) investigations or proceedings outside Bermuda which have led or may lead to the making of an external recovery order.

(2) If the enforcement authority makes a disclosure of information for a purpose specified in subsection (1) the authority may make any further disclosure of the information by the person to whom it discloses it subject to such conditions as he thinks fit.

(3) Such a person shall not further disclose the information in contravention of the conditions.

(4) A disclosure under this section is not to be taken to breach any restriction on the disclosure of information (however imposed).

(5) But nothing in this section authorises the making of a disclosure—

- (a) which contravenes any law in force in Bermuda relating to data protection;
- (b) which is otherwise prohibited under any law in force in Bermuda.

Concealing or transferring recoverable property

36.1T (1) A person is guilty of an offence if he—

- (a) conceals or disguises any property which is, or in whole or in part directly or indirectly represents, recoverable property or associated property; or
- (b) converts or transfers that property or removes it from Bermuda,

for the purpose of avoiding, or assisting another person to avoid, civil recovery proceedings or the making or enforcement of a recovery order.

(2) A person is guilty of an offence if, knowing or having reasonable grounds to suspect that any property is, or in whole or in part directly or indirectly represents, recoverable property or associated property, he—

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

for the purpose of assisting any person to avoid prosecution for a drug trafficking or relevant offence or the making or enforcement of a confiscation order.

(3) Section 43, which relates to concealing or transferring proceeds of criminal conduct, applies with the necessary modifications for the purposes of this Part, as it applies for the purposes of Part V (offences relating to money laundering).

Assisting another to retain recoverable property

36.1U (1) Subject to circumstances where a person discloses in good faith to the FIA a suspicion or belief that any funds or investments are derived from or used in connection with unlawful conduct, or any matter on which such a suspicion or belief is based, a person is guilty of an offence if he enters into or is otherwise concerned in an arrangement whereby—

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

and he knows or suspects that A is a person who is or has been engaged in unlawful conduct and the property in question is recoverable property or associated property.

(2) Section 44, which relates to assisting another to retain proceeds of criminal conduct, applies with the appropriate modifications, for the purposes of this Part, as it applies for the purposes of Part V (offences relating to money laundering), as if references to “criminal conduct” were references to “unlawful conduct”.

Acquisition, possession or use of recoverable property

36.1V (1) A person is guilty of an offence if, knowing that any property is, or in whole or in part directly or indirectly represents, recoverable property or associated property, he acquires or uses that property or has possession of it.

(2) Section 45, which relates to acquisition, possession or use of proceeds of criminal conduct, applies with the appropriate modifications, including the modifications set out below, for the purposes of this Part, as it applies for the purposes of Part V (offences relating to money laundering)—

- (a) as if references to “criminal conduct” were references to “unlawful conduct”; and
- (b) as if references to a “confiscation order” were references to a “recovery order”.

Disclosure of suspicion of recoverable property

36.1W Where a person in good faith discloses to the FIA—

- (a) his suspicion or belief that property is recoverable property or associated property; 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 upon the disclosure of information however imposed.

Tipping off

36.1X (1) A person is guilty of an offence—

- (a) if—
 - (i) he knows or suspects that a police officer is acting, or is proposing to act, in connection with a civil recovery investigation which is being, or is about to be, conducted; and
 - (ii) he discloses to any other person information or any other matter which is likely to prejudice that investigation or proposed investigation; or
- (b) if—
 - (i) he knows or suspects that a disclosure has been made to the FIA or to an appropriate person under section 36.1U, 36.1V or 36.1W; and
 - (ii) he discloses to any other person information or any other matter which is likely to prejudice any civil recovery investigation which might be conducted following such a disclosure.

(2) Section 47, which relates to tipping off, applies with the necessary modifications including the modifications set out below for the purposes of this Part, as it applies for the purposes of Part V (offences relating to money laundering)—

- (a) as if references to “an investigation which is being, or is about to be conducted into money laundering” were references to “a civil recovery investigation which is being, or is about to be conducted”; and
- (b) as if references to a “criminal conduct” were references to “unlawful conduct”.

Penalties

36.1Y Section 48, which relates to penalties for money laundering, applies where a person is guilty of an offence under section 36.1T, 36.1U, 36.1V or 36.1X, as section 48 applies where a person is guilty of an offence set out in that section. ”.

Amends section 37

7 Section 37 of the principal Act is amended—

- (a) by repealing subsection (1) and replacing it with the following—

“(1) For the purpose of—

- (a) an investigation into—
 - (i) drug trafficking,
 - (ii) money laundering,
 - (iii) whether any person has benefited from criminal conduct,
 - (iv) the whereabouts of any proceeds of criminal conduct; or
- (b) a civil recovery investigation,

a police officer may apply to the Supreme Court for an order under subsection (2) (a “production order”) in relation to particular material or material of a particular description.”;

- (b) in subsection (4) by deleting paragraph (a) and substituting it with the following—

“(a) that there are reasonable grounds for suspecting that—

- (i) a specified person has carried on drug trafficking, or money laundering or has benefited from criminal conduct; or
- (ii) in the case of a civil recovery investigation, the property the application for the order specifies as being subject to the investigation is recoverable property or associated property; ”;

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- (c) in subsection (11) by inserting after the words, “relevant offence”, the words “or a civil recovery investigation relates to unlawful conduct”.

Amends section 39

8 Section 39 of the principal Act is amended—

- (a) by repealing subsection (1) and replacing it with the following—

“(1) For the purpose of—

- (a) an investigation into—

- (i) drug trafficking,
- (ii) money laundering,
- (iii) whether any person has benefited from criminal conduct,
- (iv) the whereabouts of any proceeds of criminal conduct; or

- (b) a civil recovery investigation,

a police officer may apply to the Supreme Court for a warrant under this section in relation to specified premises.”;

- (b) in subsection (2)—

- (i) in paragraph (b) by deleting the word “or”;
- (ii) in paragraph (c) by deleting the full stop after the word “fulfilled”, and substituting the words “; or”; and
- (iii) by inserting after paragraph (c) the following—

“(d) that the conditions in subsection (4A) are fulfilled.”;

- (c) by inserting after subsection (4) the following—

“(4A) The conditions referred to in subsection (2)(d) are—

- (a) that there are reasonable grounds for believing that the property specified in the application for the warrant is recoverable property or associated property;
- (b) that the material cannot be identified at the time of the application but—
 - (i) it relates to the property specified in the application, the question whether it is recoverable property or associated property, the question as to who holds any such property; and
 - (ii) any question as to whether the person who appears to hold any such property holds other property which is recoverable

property, or any question as to the extent or whereabouts of any property mentioned in this paragraph, and

- (c) that the material is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the warrant is made, but that the material cannot at the time of the application be particularised. ”.

Amends section 40

9 Section 40(1) of the principal Act is amended by inserting after the words “Director of Public Prosecutions,” the words “or the Attorney-General in the case of a civil recovery investigation”.

Amends section 41

10 Section 41 of the principal Act is amended by repealing subsection (4) and replacing it with the following—

“(4) A monitoring order shall not be made unless the court is satisfied—

- (a) that there are reasonable grounds for suspecting that the person in respect of whom the information is sought—
 - (i) has committed or is about to commit a drug trafficking offence or a relevant offence;
 - (ii) was involved in the commission, or is about to be involved in the commission, of such an offence; or
 - (iii) has benefited directly or indirectly or is about to benefit directly or indirectly from the commission of such an offence;
- (b) that the property specified in the application is subject to a civil recovery investigation and there are reasonable grounds for suspecting that—
 - (i) the property specified in the application for the order is recoverable property or associated property; and
 - (ii) a person specified in the application appears to hold all or some of the property.”.

Amends section 41A

11 Section 41A of the principal Act is amended—

- (a) in subsection (1), by inserting after the word “may”, the words “(or the Supreme Court in the case of a civil recovery investigation),”; and
- (b) by repealing subsection (2) and replacing it with the following—

“(2) The application for a customer information order must state that—

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- (a) a person specified in the application is subject to a confiscation investigation or a money laundering investigation; or
- (b) property specified in the application is subject to a civil recovery investigation and a person specified in the application appears to hold the property. ”.

Amends section 41C

12 Section 41C of the principal Act is amended by inserting after subsection (3) the following—

“(3A) In the case of a civil recovery investigation, there shall be reasonable grounds for suspecting that—

- (a) the property specified in the application for the order is recoverable property or associated property;
- (b) the person specified in the application holds all or some of the property. ”.

Amends section 42

13 Section 42(1) of the principal Act is amended by inserting after the words “criminal conduct”, the words “or a civil recovery investigation”.

Amends section 50

14 Section 50(6) of the principal Act is amended—

- (a) in paragraph (a) by deleting the word “or” and in its place substituting a semicolon;
- (b) in paragraph (b) by deleting the comma following the word “connected” and in its place substituting the word “; or”;
- (c) by inserting after paragraph (b) the following—
 - “(c) civil recovery proceedings are instituted under Part IIIA with respect to recoverable property which includes such property,”; and
- (d) in the continuation clause, by inserting after the word “offence”, the words “or proceedings for a recovery order”.

Amends section 53

15 Section 53 of the principal Act is amended—

- (a) in the heading by inserting after the words “confiscation orders” the words “or external recovery orders”;
- (b) in subsection (1)(a) by—

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- (i) inserting after the words “shall apply to confiscation orders” the words “or external recovery orders”;
- (ii) inserting after the words “may result in an external confiscation order” the words “or an external recovery order”; and
- (c) by inserting after subsection (4) the following—

“(4A) In this section and section 54, “external recovery order” means an order made by a court in a designated country for the purpose of recovering property the value of such property that has been, or represents, property obtained through unlawful conduct; and “modifications” includes additions, alterations and omissions.”.

Amends section 54

16 Section 54 of the principal Act is amended—

- (a) in the heading by inserting after the words “confiscation orders”, the words “or external recovery orders”;
- (b) in subsection (1) by inserting after the words “confiscation order” the words “or an external recovery order”;
- (c) in subsection (3) by inserting after the words “confiscation order” the words “or external recovery order”.

Amends section 55

17 Section 55(2) of the principal Act is amended—

- (a) in paragraph (a) by deleting the word “and”; and
- (b) by inserting after paragraph (a) the following—

“(aa) in relation to civil recovery proceedings, means a law which corresponds with a provision of Bermuda law which relates to unlawful conduct; and”.

Amends section 55A

18 Section 55A of the principal Act is amended—

- (a) in subsection (2) by inserting after paragraph (ba) the following—

“(bb) property recovered under Part IIIA;”;

- (b) in subsection (3)(a)—

- (i) in subparagraph (iiia) by deleting the word “and”;

- (ii) in subparagraph (iv) by deleting, after the word “2004” the full stop, and in its place substituting the word “; and”;

(iii) by inserting after subparagraph (iv) the following—

“(v) training of officials in the effective implementation of the provisions of this Act in relation to civil recovery.”; and

(c) by inserting after subsection (3)(ca) the following—

“(cb) towards the expenses of the enforcement authority;”.

Amends section 60

19 Section 60 of the principal Act is amended—

(a) by inserting after subsection (1) the following—

“(1A) If a civil recovery investigation is begun with respect to property and any of the following circumstances occur—

(a) no civil recovery proceedings are instituted with respect to that property;

(b) civil recovery proceedings are instituted and in the case of any property to which a property freezing order or an interim receiving order has at any time applied, the court does not in the course of the proceedings decide that the property is recoverable property or associated property;

(c) civil recovery proceedings are instituted with respect to that property—

(i) and a recovery order is made; but

(ii) the recovery order is set aside on appeal;

the court may, on application by a person who held that property or the person whose property it is, order compensation to be paid to the applicant if, having regard to all the circumstances, it considers it appropriate to make such an order.”;

(b) in subsection (2)(b) by inserting after the words “charging order”, the words “, or property freezing order, and an interim receiving order or a recovery order.”;

(c) by repealing subsection (3) and replacing it with the following—

“(3) The court shall not order compensation to be paid in any case—

(a) where it appears to the court that the investigation would have been continued, or the proceedings would have been instituted or continued, as the case may be, if the serious default had not occurred; or

(b) if the court—

- (i) makes an order under section 36.1C(5) or 36.1D;
- (ii) has made a declaration in respect of the property by virtue of section 36.1H(2); or
- (iii) is satisfied that any of the general exceptions set out in section 36.1N apply.”.

Amends section 61

20 Section 61(1)(a)(i) of the principal Act is amended by inserting after the words “charging order”, the words “or a property freezing order, an interim receiving order or a recovery order”.

Amends section 64

21 Section 64 of the principal Act is amended by inserting the following in the appropriate alphabetical order—

associated property	section 36D
civil recovery investigation	section 7(1)
enforcement authority	section 36F
interim receiving order	section 36O
property freezing order	section 36H
property obtained through unlawful conduct	section 36C
recoverable property	section 7(1)
recovery order	section 36X
respondent	section 7(1)
unlawful conduct	section 36B

Amends section 65

22 Section 65 of the principal Act is amended by inserting after subsection (1) the following—

“(1A) Without prejudice to the generality of subsection (1), the Minister shall by regulations—

- (a) make further provisions in relation to the enforcement authority for the purposes of Part IIIA;
- (b) make provisions in relation to pensions for the purposes of Part IIIA;
- (c) specify the required conditions for the purposes of section 36J(5), 36T(4) or 36X(9), and a required condition may in particular—
 - (i) restrict who may receive sums released in pursuance of the exclusion (by, for example, requiring released sums to be paid to professional legal advisers); or

- (ii) may be made for the purpose of controlling the amount of any sum released in pursuance of the exclusion in respect of an item of expenditure.

(1B) A required condition made for the purpose mentioned in subsection (1A)(c)(ii) may (for example)—

- (a) provide for sums to be released only with the agreement of the enforcement authority;
- (b) provide for a sum to be released in respect of an item of expenditure only if the court has assessed the amount allowed by regulations under this section in respect of that item and the sum is released for payment of the assessed amount.”.

Inserts Schedules 1 and 2

23 The principal Act is amended by inserting after section 69 the following—

“SCHEDULE 1

(Section 36P)

POWERS OF INTERIM RECEIVER

The interim receiver shall have the powers set out in this Schedule:

Seizure

- 1 Power to seize property to which the order applies.

Information

- 2 (1) Power to obtain information or to require a person to answer any question.

(2) A requirement imposed in the exercise of the power has effect notwithstanding any restriction on the disclosure of information (however imposed).

(3) An answer given by a person in pursuance of such a requirement may not be used in evidence against him in criminal proceedings.

(4) Sub-paragraph (3) does not apply—

- (a) on a prosecution for an offence under section 119 of the Criminal Code Act 1907 (perjury); or
- (b) on a prosecution for some other offence where, in giving evidence, he makes a statement inconsistent with it.

(5) But an answer may not be used by virtue of sub-paragraph (4)(b) against a person unless—

- (a) evidence relating to it is adduced; or
- (b) a question relating to it is asked,

by him or on his behalf in the proceedings arising out of the prosecution.

Entry, search, etc.

3 (1) Power to—

- (a) enter any premises in Bermuda to which the interim order applies; and
- (b) take any of the following steps.

(2) Those steps are—

- (a) to carry out a search for or inspection of anything described in the order;
- (b) to make or obtain a copy, photograph or other record of anything so described;
- (c) to remove anything which he is required to take possession of in pursuance of the order or which may be required as evidence in the proceedings under Part 2.

(3) The order may describe anything generally, whether by reference to a class or otherwise.

Supplementary

4 (1) An order making any provision under paragraph 2 or 3 must make provision in respect of legal professional privilege.

(2) An order making any provision under paragraph 3 may require any person—

- (a) to give the interim receiver or administrator access to any premises which he may enter in pursuance of paragraph 3;
- (b) to give the interim receiver or administrator any assistance he may require for taking the steps mentioned in that paragraph.

Management

5 (1) Power to manage any property to which the order applies.

(2) Managing property includes—

- (a) selling or otherwise disposing of assets comprised in the property which are perishable or which ought to be disposed of before their value diminishes;

- (b) where the property comprises assets of a trade or business, carrying on, or arranging for another to carry on, the trade or business;
- (c) incurring capital expenditure in respect of the property.

SCHEDULE 2

(Section 36Y)

POWERS OF TRUSTEE FOR CIVIL RECOVERY

The trustee in civil recovery shall have the powers set out in this Schedule:

Sale

- 1 Power to sell the property or any part of it or any interest in it.

Expenditure

- 2 Power to incur expenditure for the purpose of—
- (a) acquiring any part of the property, or any interest in it, which is not vested in him;
 - (b) discharging any liabilities, or extinguishing any rights, to which the property is subject.

Management

- 3 (1) Power to manage property.
- (2) Managing property includes doing anything mentioned in paragraph 5(2) of Schedule 1.

Legal proceedings

- 4 Power to start, carry on or defend any legal proceedings in respect of the property.

Compromise

- 5 Power to make any compromise or other arrangement in connection with any claim relating to the property.

Supplementary

- 6 (1) For the purposes of, or in connection with, the exercise of any of his powers—
- (a) power by his official name to do any of the things mentioned in subparagraph (2);
 - (b) power to do any other act which is necessary or expedient.
- (2) Those things are—
- (a) holding property;
 - (b) entering into contracts;

- (c) suing and being sued;
- (d) employing agents; and
- (e) executing a power of attorney, deed or other instrument.”.

Amendment of Limitation Act 1984

24 The Limitation Act 1984 is amended by inserting the following section after section
28—

“Actions for recovery of property obtained through unlawful conduct etc

28A (1) None of the time limits given in the preceding provisions of this Act applies to any proceedings under Part IIIA of the Proceeds of Crime Act 1997.

(2) Proceedings under Part IIIA of the Proceeds of Crime Act 1997 for a recovery order in respect of any recoverable property shall not be brought after the expiration of the period of twenty years from the date on which the enforcement authority's cause of action accrued.

(3) Proceedings under Part IIIA of the Proceeds of Crime Act 1997 are brought when—

- (a) an originating summons is issued;
- (b) an application is made for a property freezing order; or
- (c) an application is made for an interim receiving order,

whichever is the earlier.

(4) The enforcement authority's cause of action accrues in respect of any recoverable property—

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

(5) If—

- (a) a person would (but for the preceding provisions of this Act) have a cause of action in respect of the conversion of a chattel; and
- (b) proceedings are started under Part IIIA of the Proceeds of Crime Act 1997 for a recovery order in respect of the chattel,

section 5(2) of this Act does not prevent his asserting on an application under section 36.1H of that Act that the property belongs to him, or the Court making a declaration in his favour under that section.

(6) If the court makes such a declaration, his title to the chattel is to be treated as not having been extinguished by section 5(2) of this Act.”.

Amendment of other legislation

25 (1) The Minister may by Regulations under this section repeal or amend any provision—

- (a) in any Act passed before this Act; or
- (b) in any instrument made under an Act before the passing of this Act,

where it appears to him that that provision is inconsistent with, or requires amendment consequentially upon or has become unnecessary in consequence of, provisions of this Act.

(2) Regulations made under subsection (1) are subject to the negative resolution procedure.

Transitional

26 Until the enforcement authority has been designated under section 36F, the Minister shall exercise the powers and perform the functions conferred on the enforcement authority for the purposes of Part IIIA.

Commencement

27 This Act shall come into operation on such day as the Minister may appoint by notice published in the Gazette, and the Minister may appoint different days for different provisions.

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EXPLANATORY MEMORANDUM

This Bill seeks to amend the Proceeds of Crime Act 1997 (“the principal Act”) to make provision for civil proceedings before the Supreme Court to allow recovery of property which is, or represents, property obtained through unlawful conduct (also known as civil recovery), and for connected purposes.

Clause 1 provides the citation for the Bill.

Clause 2 amends section 7 of the principal Act by inserting new definitions relating to civil recovery.

Clause 3 amends section 8 of the principal Act by inserting provisions which set out when an application for the making of a recovery order for civil recovery is concluded and when a recovery order that has been made is satisfied.

Clause 4 amends section 35 of the principal Act by inserting provisions which set out the interrelationship between bankruptcy and civil recovery proceedings.

Clause 5 amends section 36 of the principal Act by inserting provisions which set out the interrelationship between company winding up proceedings and civil recovery proceedings.

Clause 6 inserts into the principal Act, Part IIIA (Civil Recovery of Proceeds of Unlawful Conduct). A summary of the sections contained therein is as follows:

Sections 36A to 36G provide for an enforcement authority responsible for instituting civil recovery proceedings. Section 36A enables the enforcement authority to institute civil proceedings in the Supreme Court for the purposes of recovering property which is, or represents, property obtained through unlawful conduct.

Section 36B specifies the conduct that is unlawful conduct. Section 62 applies the civil standard of proof.

Section 36C explains what it means to obtain property through unlawful conduct.

Section 36D defines “associated property” and makes provision for the circumstances in which such property may be the subject of a recovery order.

Section 36E explains references to a person disposing of his property. “Disposing” of property is a key feature of the provisions at sections 36.1K and 36.1L, which deal with following and tracing property.

Section 36F provides that the enforcement authority shall be designated by order made by the Minister responsible for justice and that order shall be made subject to the negative resolution procedure.

Section 36G provides that the enforcement authority may not take proceedings for a recovery order unless it reasonably believes that the total value of the recoverable property is not less than \$25,000. This ensures that civil recovery will not be used in minor or trivial

cases. The Minister may change this amount by order subject to the affirmative resolution procedure.

Sections 36H to 36N allow for property freezing orders in relation to civil recovery proceedings. Section 36H enables the enforcement authority to make an ex parte application in the Supreme Court for a property freezing order and sets out how such an application is to be made.

Section 36I makes provisions for the Court to vary or set aside a property freezing order.

Section 36J allows the Court to exclude certain assets from a property freezing order to enable respondents whose property is subject to civil proceedings to have access to their assets in order to meet expenses such as reasonable living expenses and the cost of their legal representation. The amounts able to be drawn down are controlled to avoid dissipation of assets.

Section 36K allows the Court to restrict other proceedings and remedies in the interest of a property freezing order.

Section 36L empowers the Court to appoint a receiver in respect of any property to which a property freezing order applies.

Section 36M sets out the powers of a receiver appointed by virtue of section 36L.

Section 36N makes provision for supervision of a receiver appointed by virtue of section 36L.

Sections 36O to 36W allow for interim receiving orders in relation to civil recovery proceedings. Section 36O makes provision for interim receiving orders. Interim receivership procedure may, but need not always, form the preliminary stage of civil recovery proceedings.

Section 36P specifies the functions of an interim receiver appointed by virtue of section 36O.

Section 36Q provides that any notice of an interim receiving order relating to land must be deposited at the office of the Registrar-General thereby ensuring that where an interim receiving order affecting land is applied for, its effect may be reinforced by taking action to prevent the disposal of the land in question.

Section 36R provides for certain duties, to be placed on a person whose property is subject to an interim receiving order, as are reasonably required for the preservation of the property.

Section 36S permits an interim receiver, a respondent, any party to the proceedings, and anyone else affected by the receiver's actions (including the enforcement authority) to ask the Court to clarify the receiver's powers.

Section 36T provides that the interim receiving order must prevent any dealing with the property to which it applies, subject to any exclusions which may be made under that section.

Section 36U enables the existence of an interim receiving order to have an effect on collateral legal proceedings affecting the property in question.

Section 36V empowers the Court to vary an interim receiving order at any time with the effect of excluding property from the proceedings.

Section 36W requires an interim receiver to keep the enforcement authority and the Court informed.

Section 36X sets out what the Court must do if the Court finds any property to be recoverable.

Section 36Y requires the Court, where it makes a recovery order, or a consent order under section 36.1D, to appoint a trustee for civil recovery. The enforcement authority is required to nominate someone suitably qualified, and may appoint a member of staff of the enforcement authority. This is because, unlike the interim receiver, the trustee acts in the interests of the enforcement authority following the Court's judgment in favour of the authority and has no investigative functions. The trustee is under a duty to secure the property which will be vested in him, and to liquidate non-cash assets for the benefit of the enforcement authority.

Section 36Z establishes that a recovery order will override any provisions that would otherwise prevent, penalise or restrict the vesting of the property in the trustee for civil recovery.

Section 36.1A explains how associated property and joint property are to be dealt with when a recovery order is made.

Section 36.1B provides for a situation where a person who holds associated property, or an excepted joint owner, comes to an agreement with the enforcement authority to make a payment to the trustee in lieu of the recoverable property. Where an agreement is reached, the recovery order may then require the person to make the payment to the trustee, rather than vesting the property in the trustee.

Section 36.1C makes provision for the Court, if the Court thinks it would be just and equitable to do so, where no agreement can be reached under section 36.1B, to make provision concerning associated property or joint property. In deciding what provision to make, the Court must have regard to the rights of the persons and the value to them of the property, as well as the interest of the enforcement authority.

Section 36.1D gives the parties to civil recovery proceedings the power to settle the proceedings at any time after the originating summons.

Section 36.1E provides that subject to certain safeguards described elsewhere (e.g. for bona fide purchasers), property is recoverable if it was obtained through unlawful conduct, or it "represents" property obtained through unlawful conduct.

Section 36.1F gives examples of circumstances in which the enforcement authority's right to recover property would be satisfied, for the purposes of section 36.1G.

Section 36.1G governs the use of sums in the hands of the trustee for civil recovery.

Section 36.1H deals with recovery of property which has been stolen or is the result of some other unlawful conduct comprising the deprivation of a true owner of his property, and therefore potentially recoverable by the enforcement authority.

Section 36.1I provides that proceedings for civil recovery may not be taken in respect of certain people in prescribed circumstances.

Sections 36.1J to 36.1P make provisions for recoverable property. Section 36.1J defines when property is recoverable, and how the original property may be followed when it is disposed of by the person who originally obtained it or a person who subsequently obtained it.

Section 36.1K allows the enforcement authority to recover property which has not itself been obtained through unlawful conduct, but which represents such property.

Section 36.1L confirms that property which was not itself obtained through unlawful conduct at any stage can come to represent such property, and therefore be potentially recoverable, not only by being traceable by the enforcement authority under section 36.1K but also by having become mixed with recoverable property.

Section 36.1M provides that the property that is recoverable under sections 36.1F to 36.1H is to be taken to include accrued profits; the profits are to be treated as representative property. So, for example, if the enforcement authority can recover money paid into a bank account, the authority can recover it with any interest accrued.

Section 36.1N constitutes a limitation on the enforcement authority's ability to follow and trace property.

Section 36.1O provides that certain property is not recoverable or associated property if it is prescribed by order or is disposed of in pursuance of a prescribed enactment.

Section 36.1P makes provision about the granting of interests in property.

Sections 36.1Q to 36.1S make provisions pertaining to the use and disclosure of information by and to the enforcement authority. Section 36.1Q ensures that the enforcement authority can use information obtained in connection with any one of the authority's functions under this Part only.

Section 36.1R enables information to be disclosed to the enforcement authority by a person (a "permitted person") listed in that section. The Minister will be able to add to the list of permitted persons by order.

Section 36.1S provides that the enforcement authority may disclose information to any person or body for any of the purposes set out in that section.

Sections 36.1T to 36.1Y enable the offence related provisions under the principal Act to apply with modifications to civil recovery proceedings. Section 36.1T applies section 43, with the necessary modifications, to create an offence of concealing or transferring recoverable property, or assisting a person to do so.

Section 36.1U applies section 44, with the necessary modifications, to create an offence of assisting another to retain recoverable property.

Section 36.1V applies section 45, with the necessary modifications, to create an offence of acquiring, possessing or using recoverable property.

Section 36.1W deals with disclosure of information where there is suspicion that property is recoverable property.

Section 36.1X applies section 47, with the necessary modifications, to create an offence of tipping off in relation to a civil recovery investigation.

Section 36.1Y applies the penalties set out in section 48 to offences committed in relation to civil recovery.

Clause 7 amends section 37 of the principal Act to include civil recovery investigation as a purpose for which a production order may be made by the Supreme Court and the conditions that must be fulfilled.

Clause 8 amends section 39 of the principal Act to include a civil recovery investigation as a purpose for which a search warrant may be issued by the Supreme Court and the conditions that must be fulfilled.

Clause 9 amends section 40 of the principal Act to enable the Attorney-General, subject to a civil recovery investigation, to apply to the Supreme Court for an order requiring a Government Department to produce any material in its possession.

Clause 10 amends section 41 of the principal Act to enable account monitoring orders to be made by the Supreme Court subject to a civil recovery investigation.

Clause 11 amends section 41A of the principal Act to enable customer information orders to be made by a court subject to a civil recovery investigation.

Clause 12 amends section 41C of the principal Act by inserting provisions which set out the requirements to be met before a customer information order can be made.

Clause 13 amends section 42 of the principal Act to make prejudicing a civil recovery investigation an offence.

Clause 14 amends section 50 of the principal Act to include under the provisions related to seizure and detention of property, property detained in relation to civil recovery proceedings.

Clause 15 amends section 53 of the principal Act to enable the enforcement of recovery orders made in relation to a country or territory outside of Bermuda, designated by Minister responsible for justice as being a country or territory to which such orders apply.

Clause 16 amends section 54 of the principal Act to enable the registration of an external recovery order.

Clause 17 amends section 55 of the principal Act to include provisions setting out the meaning of corresponding law in relation to civil recovery proceedings.

Clause 18 amends section 55A of the principal Act to require that property recovered under Part IIIA be paid into the Consolidated Assets Fund and to enable authorised payments out of that fund to be made for the purposes of training officials in relation to civil recovery and meeting the expenses of the enforcement authority.

Clause 19 amends section 60 of the principal Act by setting out the circumstances in which the Supreme Court may make an order that compensation to be paid to a person who owns or holds property against which a civil recovery investigation was conducted.

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Clause 20 amends section 61 to enable the Court to make a declaration for costs in relation to civil recovery proceedings.

Clause 21 amends section 64 of the principal Act to include in the index of defined expressions new expressions relating to civil recovery.

Clause 22 amends section 65 of the principal Act to enable the Minister responsible for justice to make regulations in relation to civil recovery- including regulations pertaining to the powers and functions of the enforcement authority and provisions for the recovery of property in relation to pensions.

Clause 23 inserts into the principal Act Schedules 1 and 2, which set out the powers of interim receivers and trustees for civil recovery, respectively.

Clause 24 amends the Limitation Act 1984 to set a limitation period within which proceedings for a recovery order must be brought. Proceedings must be brought within 20 years of the original property being obtained through unlawful conduct.

Clause 25 provides for consequential amendments to other legislation to be made by regulations under this section.

Clause 26 provides that until the enforcement authority has been designated under section 36F, the Minister shall perform the functions of the enforcement authority.

Clause 27 sets out the commencement provision.