

SCHEDULES

SCHEDULE 2

Article 15

FORFEITURE ORDERS

PART 1

TERRITORY ORDERS

Interpretation

1. In this Schedule—

“forfeiture order” means an order made by a court under article 15, and

“forfeited property” means the money or other property to which a forfeiture order applies.

Implementation of forfeiture orders

2.—(1) Where a court makes a forfeiture order it may make such other provision as appears to it to be necessary for giving effect to the order, and in particular it may—

- (a) require any of the forfeited property to be paid or handed over to the proper officer or to a constable designated for the purpose by the chief officer of the police force of the Territory;
- (b) direct any of the forfeited property other than money or land to be sold or otherwise disposed of in such manner as the court may direct and the proceeds (if any) to be paid to the proper officer;
- (c) appoint a receiver to take possession, subject to such conditions and exceptions as may be specified by the court, of any of the forfeited property, to realise it in such manner as the court may direct and to pay the proceeds to the proper officer;
- (d) direct a specified part of any forfeited money, or of the proceeds of the sale, disposal or realisation of any forfeited property, to be paid by the proper officer to a specified person falling within article 15(7).

(2) A forfeiture order shall not come into force until there is no further possibility of it being varied or set aside on appeal (disregarding any power of a court to grant leave to appeal out of time).

(3) In sub-paragraph (1)(b) and (d) a reference to the proceeds of the sale, disposal or realisation of property is a reference to the proceeds after deduction of the costs of sale, disposal or realisation.

3.—(1) A receiver appointed under paragraph 2 shall be entitled to be paid his remuneration and expenses out of the proceeds of the property realised by the receiver and paid to the proper officer under paragraph 2(1)(c).

(2) If and so far as those proceeds are insufficient, the receiver shall be entitled to be paid his remuneration and expenses out of the funds of the government of the Territory.

(3) A receiver appointed under paragraph 2 shall not be liable to any person in respect of any loss or damage resulting from action—

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- (a) which he takes in relation to property which is not forfeited property, but which he reasonably believes to be forfeited property,
 - (b) which he would be entitled to take if the property were forfeited property, and
 - (c) which he reasonably believes that he is entitled to take because of his belief that the property is forfeited property.
- (4) Sub-paragraph (3) does not apply in so far as the loss or damage is caused by the receiver's negligence.

4.—(1) In paragraphs 2 and 3 “the proper officer” means the person holding or acting in the office (however styled) of clerk to the court by which the forfeiture order was made.

(2) The proper officer shall issue a certificate in respect of a forfeiture order if an application is made by—

- (a) the prosecutor in the proceedings in which the forfeiture order was made,
- (b) the defendant in those proceedings, or
- (c) a person whom the court heard under article 15(7) before making the order.

(3) The certificate shall state the extent (if any) to which, at the date of the certificate, effect has been given to the forfeiture order.

Restraint orders

5.—(1) The Supreme Court may make a restraint order under this paragraph where—

- (a) proceedings have been instituted for an offence under any of articles 6 to 9,
- (b) the proceedings have not been concluded,
- (c) an application for a restraint order is made to the Supreme Court by the prosecutor, and
- (d) a forfeiture order has been made, or it appears to the Supreme Court that a forfeiture order may be made, in the proceedings for the offence.

(2) The Supreme Court may also make a restraint order under this paragraph where—

- (a) a criminal investigation has been started with regard to an offence under any of articles 6 to 9,
- (b) an application for a restraint order is made to the Supreme Court by a person who the Supreme Court is satisfied will have the conduct of any proceedings for the offence, and
- (c) it appears to the Supreme Court that a forfeiture order may be made in any proceedings for the offence.

(3) A restraint order prohibits a person to whom notice of it is given, subject to any conditions and exceptions specified in the order, from dealing with property in respect of which a forfeiture order has been or could be made in any proceedings referred to in sub-paragraph (1) or (2).

(4) An application for a restraint order may be made ex parte to a judge in Chambers.

(5) In this paragraph a reference to dealing with property includes a reference to removing the property from the Territory.

(6) In this paragraph “criminal investigation” means an investigation which police officers or others have a duty to conduct with a view to it being ascertained whether a person should be charged with an offence.

6.—(1) A restraint order shall provide for notice of it to be given to any person affected by the order.

(2) A restraint order may be discharged or varied by the Supreme Court on the application of a person affected by it.

(3) A restraint order made under paragraph 5(1) shall in particular be discharged on an application under sub-paragraph (2) if the proceedings for the offence have been concluded.

(4) A restraint order made under paragraph 5(2) shall in particular be discharged on an application under sub-paragraph (2)—

(a) if no proceedings in respect of offences under any of articles 6 to 9 are instituted within such time as the Supreme Court considers reasonable, or

(b) if all proceedings in respect of offences under any of articles 6 to 9 have been concluded.

7.—(1) A constable may seize any property subject to a restraint order for the purpose of preventing it from being removed from the Territory.

(2) Property seized under this paragraph shall be dealt with in accordance with the Supreme Court's directions.

8.—(1) Any provision of any law in force in the Territory with respect to land charges or land registration—

(a) shall apply in relation to restraint orders as they apply in relation to orders affecting land made by the court for the purpose of enforcing judgments or recognizances, and

(b) shall apply in relation to applications for restraint orders as they apply in relation to other pending land actions.

(2) Where a restraint order is made under paragraph 5(1) or an application for such an order is made, the prosecutor in the proceedings for the offence shall be treated for the purposes of any provision relating to inhibitions contained in any law in force in the Territory with respect to land registration as a person interested in respect of any registered land to which the restraint order or the application for the restraint order relates.

(3) Where a restraint order is made under paragraph 5(2) or an application for such an order is made, the person who the Supreme Court is satisfied will have the conduct of any proceedings for an offence under any of articles 6 to 9 shall be treated for the purposes of any such provision as is referred to in sub-paragraph (2) as a person interested in respect of any registered land to which the restraint order or the application for a restraint order relates.

Compensation

9.—(1) This paragraph applies where a restraint order is discharged under paragraph 6(4)(a).

(2) This paragraph also applies where a forfeiture order or a restraint order is made in or in relation to proceedings for an offence under any of articles 6 to 9 which—

(a) do not result in conviction for an offence under any of those articles,

(b) result in conviction for an offence under any of those articles in respect of which the person convicted is subsequently pardoned by Her Majesty, or

(c) result in conviction for an offence under any of those articles which is subsequently quashed.

(3) A person who has an interest in any property which was subject to the order may apply to the Supreme Court for compensation.

(4) The Supreme Court may order compensation to be paid to the applicant if satisfied—

(a) that there was a serious default on the part of a person concerned in the investigation or prosecution of the offence,

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- (b) that the person concerned was or was acting as a member of the police force of the Territory or was or was acting under the authority of the Attorney General or the Director of Public Prosecutions of the Territory,
 - (c) that the applicant has suffered loss in consequence of anything done in relation to the property by or in pursuance of the forfeiture order or restraint order, and
 - (d) that, having regard to all the circumstances, it is appropriate to order compensation to be paid.
- (5) The Supreme Court shall not order compensation to be paid where it appears to it that proceedings for the offence would have been instituted even if the serious default had not occurred.
- (6) Compensation payable under this paragraph shall be paid out of the funds of the government of the Territory.

Proceedings for an offence: timing

- 10.**—(1) For the purpose of this Part of this Schedule, proceedings for an offence are instituted—
- (a) when a summons or warrant is issued, or a complaint is laid, in respect of the offence;
 - (b) when a person is charged with the offence after being taken into custody without a warrant; or
 - (c) when a bill of indictment charging a person with the offence is preferred.
- (2) Where the application of sub-paragraph (1) would result in there being more than one time for the institution of proceedings they shall be taken to be instituted at the earliest of those times.
- (3) For the purposes of this Part of this Schedule proceedings are concluded—
- (a) when a forfeiture order has been made in those proceedings and effect has been given to it in respect of all the forfeited property, or
 - (b) when no forfeiture order has been made in those proceedings and there is no further possibility of one being made as a result of an appeal (disregarding any power of a court to grant leave to appeal out of time).

PART 2

EXTERNAL ORDERS

Enforcement of orders made in designated countries

- 11.**—(1) The Governor may by order make provision for the purpose of enabling the enforcement in the Territory of external orders.
- (2) An “external order” means an order—
- (a) which is made in a country or territory (including any part of the United Kingdom or any territory to which this Order extends or any other British overseas territory) that is designated for the purposes of this paragraph by the order made by the Governor, and
 - (b) which makes relevant provision.
- (3) “Relevant provision” means—
- (a) provision for the forfeiture of terrorist property (“an external forfeiture order”), or
 - (b) provision prohibiting dealing with property which is subject to an external forfeiture order or in respect of which such an order could be made in proceedings which have been or are to be instituted in the designated country or territory (“an external restraint order”).

- (4) An order made by the Governor under this paragraph may, in particular, include provision—
 - (a) which, for the purpose of facilitating the enforcement of an external order that may be made, has effect at times before there is an external order to be enforced;
 - (b) which disapplies, or qualifies or modifies the application of, any of the provisions of sub-paragraphs (6)(b) and (7) to (14) of this paragraph to or in relation to any specified external order (or any specified class of such orders) made in a specified designated country or territory;
 - (c) for the proof of any matter relevant for the purposes of anything falling to be done in pursuance of the order made by the Governor.
- (5) An order made by the Governor under this paragraph may also make provision with respect to anything falling to be done on behalf of the Territory in a designated country or territory in relation to proceedings in that country or territory for or in connection with the making of an external order.
- (6) An external order shall be enforced in the Territory only in accordance with—
 - (a) the provisions of, or any provisions made under, this paragraph, and
 - (b) any provisions made by rules of court as to the manner in which, and the conditions subject to which, such orders are to be enforced there.
- (7) On an application made to it in accordance with rules of court for registration of an external order made in a designated country or territory, the Supreme Court shall direct that the order shall, in accordance with such rules, be registered in that Court.
- (8) Rules of court shall also make provision—
 - (a) for cancelling or varying the registration of an external forfeiture order when effect has been given to it, whether in the Territory or elsewhere, in respect of all or, as the case may be, part of the money or other property to which the order applies; and
 - (b) for cancelling or varying the registration of an external restraint order which has been discharged or varied by the court by which it was made.
- (9) If an external forfeiture order is registered under this paragraph, the Supreme Court shall have, in relation to that order, the same powers as a court has under paragraph 2(1) to give effect to a forfeiture order made by it, and—
 - (a) paragraphs 3 and 4 shall apply accordingly, and
 - (b) after making any payments required by virtue of paragraph 2(1)(d) or (3), the balance of any sums received by the proper officer (as defined by paragraph 4(1)) by virtue of an order made under this sub-paragraph shall be paid by him to the Governor.
- (10) If an external restraint order is registered under this paragraph—
 - (a) paragraphs 7 and 8 shall apply as they apply to a restraint order under paragraph 5, and
 - (b) the Supreme Court shall have the like power, in relation to proceedings brought or likely to be brought for that order, to make an order for inspection of property or for related matters as it would have, under any law for the time being in force in the Territory, if those proceedings had been brought or were likely to be brought in the Supreme Court.
- (11) In addition, if an external order is registered under this paragraph—
 - (a) the Supreme Court shall have, in relation to its enforcement, the same power as if the order had originally been made in the Supreme Court,
 - (b) proceedings for or with respect to its enforcement may be taken as if the order had originally been made in the Supreme Court, and
 - (c) proceedings for or with respect to contravention of such an order, whether before or after such registration, may be taken as if the order had originally been made in the Supreme Court.

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(12) The Supreme Court may also make such orders or do otherwise as seems to it appropriate for the purpose of—

- (a) assisting the achievement in the Territory of the purposes of an external order that has been registered under this paragraph, or
- (b) assisting a receiver or other person directed by such an external order to sell or otherwise dispose of property.

(13) The following documents shall be received in evidence in the Territory without further proof—

- (a) a document purporting to be a copy of an external order and to be certified as such by a proper officer of the court by which it was made, and
- (b) a document purporting to be a certificate for purposes corresponding to those of paragraph 4(2) and (3) and to be certified by a proper officer of the court concerned.

(14) Where, under any of the provisions of this paragraph, a thing is to be done in accordance with rules of court, it may, if there are for the time being no rules of court in force in the Territory governing that matter, be done in accordance with such directions in that behalf as may be given by a judge of the Supreme Court on application made ex parte to him in Chambers.

(15) An order made by the Governor under this paragraph may make different provision for different cases.

PART 3

Insolvency

General

12. In this Part of this Schedule—

“ancillary order” means an order made in connection with a forfeiture, other than the forfeiture order,

“forfeiture order” means an order made in the Territory under article 15 or an external forfeiture order which is enforceable in the Territory by virtue of an order made by the Governor under paragraph 11,

“forfeited property” means the money or other property to which a forfeiture order applies, and

“restraint order” means an order made under paragraph 5 or an external restraint order which is enforceable in the Territory by virtue of an order made by the Governor under paragraph 11.

Protection of creditors against forfeiture

13.—(1) During the period of six months beginning with the making of a forfeiture order, the following shall not be finally disposed of under this Schedule—

- (a) the money to which the order applies, and
- (b) the money which represents any property to which the order applies.

(2) For the purposes of this paragraph money is finally disposed of under this Schedule when—

- (a) in the case of a forfeiture order made in the Territory, it is paid to the person or authority authorised by law to receive the proceeds of fines, or
- (b) in the case of an external forfeiture order, it is paid to the Governor under paragraph 11(9) (b).

- 14.—**(1) This paragraph applies where—
- (a) before or after a forfeiture order is made, the commencement of an insolvency occurs in qualifying insolvency proceedings,
 - (b) an insolvency practitioner would, but for the forfeiture order, exercise a function in those proceedings in relation to property to which the forfeiture order applies, and
 - (c) he gives written notice to the relevant officer of the matters referred to in sub- paragraphs (a) and (b) before the end of the period of six months beginning with the making of the forfeiture order.
- (2) Sub-paragraph (3) shall apply to—
- (a) the property in relation to which the insolvency practitioner would, but for the forfeiture order, exercise a function as described in sub-paragraph (1)(b), and
 - (b) the proceeds of sale of that property.
- (3) The property—
- (a) shall cease to be subject to the forfeiture order and any ancillary order, and
 - (b) shall be dealt with in the insolvency proceedings as if the forfeiture order had never been made.
- (4) But—
- (a) the property to which sub-paragraph (3) applies is the balance remaining after the relevant officer has exercised his powers under paragraph 17(1), and
 - (b) sub-paragraph (3) shall not take effect in respect of property in relation to which the relevant officer, or any person acting in pursuance of an ancillary order, has incurred obligations until those obligations have been discharged.
- (5) In this paragraph “the commencement of an insolvency” means—
- (a) the making of a bankruptcy order,
 - (b) in the case of the insolvent estate of a deceased person, the making of an insolvency administration order, or
 - (c) in the case of a company, the passing of a resolution for its winding up or, where no such resolution has been passed, the making of an order by a court for its winding up.
- 15.—**(1) Where by virtue of paragraph 14(3) property falls to be dealt with in insolvency proceedings, the Governor shall be taken to be a creditor in those proceedings for a debt to the amount or value of the property.
- (2) The Governor’s debt—
- (a) shall rank after the debts of all other creditors, and
 - (b) shall not be paid until they have been paid in full with interest under the relevant provision.
- (3) In sub-paragraph (2)(b) the “relevant provision” means—
- (a) in relation to the winding up of a company, the provision of the law for the time being in force in the Territory relating to such winding up on insolvency that provides for the payment, from any surplus remaining after the payment of debts proved on the winding up, of interest on those debts in respect of the periods during which they have been outstanding since the company went into liquidation, and
 - (b) in relation to a bankruptcy, the provision of the law for the time being in force in the Territory relating to bankruptcy that provides for the payment, from any surplus remaining after the payment of debts that are preferential or rank equally under such law, of interest

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on those debts in respect of the periods during which they have been outstanding since the commencement of the bankruptcy.

(4) Sub-paragraphs (2) and (3) apply notwithstanding any other law for the time being in force in the Territory.

16.—(1) This paragraph applies to any property which ceased to be subject to a forfeiture order by virtue of paragraph 14(3) in consequence of the making of a bankruptcy order.

(2) The property shall again become subject to the forfeiture order and, if applicable, any ancillary order if the bankruptcy order is annulled.

(3) Where the property is money or has been converted into money—

(a) the court which ordered the annulment of the bankruptcy shall make an order specifying property comprised in the estate of the bankrupt or debtor to the amount or value of the property, and

(b) the specified property shall become subject to the forfeiture order, and any applicable ancillary order, in place of the property.

17.—(1) Where money or other property falls to be dealt with in accordance with paragraph 14(3), the relevant officer may—

(a) deduct allowable forfeiture expenses from that money;

(b) retain so much of that property as he considers necessary for the purpose of realising it and deducting allowable forfeiture expenses from the proceeds of realisation.

(2) Where property is delivered up in pursuance of paragraph 14(3) and the relevant officer has not made provision under sub-paragraph (1) for all the allowable forfeiture expenses, then—

(a) a person who has incurred allowable forfeiture expenses for which provision has not been made shall have a claim to their value in the insolvency proceedings, and

(b) the expenses in question shall be treated for the purposes of the insolvency proceedings as if they were expenses of those proceedings.

Protection of insolvency practitioners

18.—(1) This paragraph applies where an insolvency practitioner seizes or disposes of property which is subject to a forfeiture order or a restraint order and—

(a) he reasonably believes that he is entitled to do so in the exercise of his functions, and

(b) he would be so entitled if the property were not subject to a forfeiture order or a restraint order.

(2) The insolvency practitioner shall not be liable to any person in respect of any loss or damage resulting from the seizure or disposal except in so far as the loss or damage is caused by his negligence.

(3) The insolvency practitioner shall have a lien on the property seized or the proceeds of its sale—

(a) for such of his expenses as were incurred in connection with the insolvency proceedings in relation to which the seizure or disposal purported to take place, and

(b) for so much of his remuneration as may be reasonably assigned for his acting in connection with those proceedings.

(4) Sub-paragraphs (1) to (3) are without prejudice to the generality of any provision contained in any law relating to insolvency for the time being in force in the Territory.

(5) In this paragraph “insolvency practitioner” means a person acting as such and, for the purposes of this paragraph, the question whether any person is acting as such shall be determined in accordance with sub-paragraphs (6), (7) and (8) except that the expression shall also include an Official Receiver (however styled) acting as receiver or manager of property.

(6) For the purposes of this paragraph a person acts as an insolvency practitioner in relation to a company by acting—

- (a) as its liquidator, provisional liquidator, administrator or administrative receiver, or
- (b) as supervisor of a voluntary arrangement approved by it under the law for the time being in force in the Territory relating to the insolvency of companies.

(7) For the purposes of this paragraph a person acts as an insolvency practitioner in relation to an individual by acting—

- (a) as his trustee in bankruptcy or interim receiver of his property, or
- (b) as trustee under a deed which is a deed of arrangement made for the benefit of his creditors, or
- (c) as supervisor of a voluntary arrangement proposed by him and approved under the law for the time being in force in the Territory relating to the insolvency of individuals, or
- (d) in the case of a deceased individual to whose estate the provisions of the law for the time being in force in the Territory relating to the administration of the insolvent estates of deceased persons apply, as administrator of that estate.

(8) References in sub-paragraph (7) to an individual include, except in so far as the context otherwise requires, references to a partnership.

19.—(1) The Governor may make an order under this paragraph to secure that an external insolvency practitioner has the same rights under this Part of this Schedule in relation to property situated in the Territory as he would have if he were an insolvency practitioner in the Territory.

(2) An order made this paragraph may, in particular, include—

- (a) provision which modifies the rights under this Part of this Schedule which are to be conferred under the order;
- (b) provision as to the manner in which the rights conferred under the order are to be exercised;
- (c) provision as to the conditions subject to which those rights are to be exercised, including the obtaining of leave from a court;
- (d) provision empowering a court granting such leave to impose such conditions as it thinks fit.

(3) An order under this paragraph may make different provision for different purposes.

(4) In this paragraph—

- (a) “external insolvency practitioner” means a person exercising under the insolvency law of a designated country or territory (that is to say, a country or territory designated as mentioned in paragraph 11) functions corresponding to those exercised by insolvency practitioners under the insolvency law of the Territory,
- (b) “the insolvency law of the Territory” means the provisions of the law for the time being in force in the Territory relating to insolvency and includes any provisions of the law for the time being in force in the Territory relating to companies which regulate the disqualification of company directors, and
- (c) “the insolvency law of a designated country or territory” means so much of the law for the time being in force in that country or territory as corresponds to provisions falling within sub-paragraph (b).

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Interpretation

20.—(1) In this Part of this Schedule (other than in paragraph 18) “insolvency practitioner” means a person acting in any qualifying insolvency proceedings in the Territory as—

- (a) a liquidator of a company or partnership,
- (b) a trustee in bankruptcy,
- (c) an administrator of the insolvent estate of a deceased person, or
- (d) a receiver or manager of any property.

(2) In this Part of this Schedule “qualifying insolvency proceedings” means—

- (a) any proceedings, under any law for the time being in force in the Territory relating to insolvency, for the winding up of a company or an unregistered company and includes any voluntary winding up of a company under any such law,
- (b) any proceedings, under any such law, for the winding up of an insolvent partnership,
- (c) any proceedings in bankruptcy, or
- (d) any proceedings, under any such law, in relation to the insolvent estate of a deceased person.

(3) In this Part of this Schedule “the relevant officer” means the proper officer within the meaning given in paragraph 4.

(4) In this Part of this Schedule references to the proceeds of sale or realisation of property are references to the proceeds after deduction of the costs of sale or realisation.