

THE PROCEEDS OF CRIME ACT

ORDER
(under section 55 (1))

The Proceeds of Crime (Authorized Officers) Order, 2007

L.N. 139/2007

REGULATIONS
(under sections 102 and 138)

The Proceeds of Crime (Money Laundering Prevention) Regulations,
2007

L.N. 44E/2007

REGULATIONS
(under section 138)

The Proceeds of Crime Regulations, 2007

L.N. 44C/2007

THE PROCEEDS OF CRIME ACT

REGULATIONS
(under sections 55)

THE PROCEEDS OF CRIME (AUTHORISED OFFICERS) ORDER, 2007

(Made by the Minister on the 2nd day of August, 2007)

L.N. 139/2007

1. These Regulations may be cited as the Proceeds of Crime (Authorized Officers) Order, 2007.

2. Every financial investigator of the Financial Investigation Division of the Ministry of Finance and Planning is hereby designated to be an authorized officer for the purposes of Part IV of the Act.

THE PROCEEDS OF CRIME ACT

REGULATIONS
(under sections 102 and 138)THE PROCEEDS OF CRIME (MONEY LAUNDERING PREVENTION)
REGULATIONS, 2007*(Made by the Minister on the 29th day of March, 2007)*

L.N. 44E/2007

1. These Regulations may be cited as the Proceeds of Crime (Money Laundering Prevention) Regulations, 2007. Citation.

2.—(1) In these Regulations— Interpretation.

“applicant for business” means a person seeking to form a business relationship, or carry out a one-off transaction, with a regulated business;

“business relationship” means any arrangement between two or more persons where the purpose of the arrangement is to facilitate the carrying out of—

(a) two or more transactions between the persons concerned; or

(b) transactions between the persons concerned on a frequent, habitual or regular basis;

“competent authority” has the meaning specified in Part V of the Act;

“designated authority” has the meaning specified in Part V of the Act;

“employee” means a person (including a person in a senior management position) who has entered into or works under a contract of services, or a contract for services, with a regulated business, whether such contract is express or implied, oral or in writing;

“money transfer and remittance agent or agency” means an approved money transfer and remittance agent or agency as defined by section 2 of the Bank of Jamaica Act;

“one-off transaction” means any transaction other than a transaction carried out in the course of a business relationship formed with a regulated business;

“regulated business” means a business falling within the regulated sector as defined in the Fourth Schedule to the Act;

“relevant financial business” means any financial business carried on by a regulated business.

(2) Any reference in paragraph (1) to an arrangement between two or more persons is a reference to an arrangement in which at least one person is acting in the course of a regulated business.

(3) In determining whether a person has complied with any of the requirements of these Regulations, a court shall take account of any relevant guidance that was at the time concerned—

- (a) issued by the designated authority or a body that regulates, or is representative of, any trade profession, business or employment concerned;
- (b) approved by the Minister; and
- (c) published in the *Gazette*.

(4) In proceedings against any person for an offence under this regulation, it shall be a defence for that person to show that he took all reasonable steps and exercised due diligence to avoid committing the offence.

(5) In this regulation, “supervisory or regulatory guidance” means guidance issued, adopted or approved by the relevant competent authority.

3.—(1) Subject to the provisions of these Regulations, it shall be the duty of a financial institution to make a report to the designated authority, either on its own initiative or in response to a request made to it by the designated authority, in relation to any cash transaction involving the prescribed amount being carried out by any person with that institution.

(2) Subject to paragraph (3), paragraph (1) shall not apply to transactions carried out by—

- (a) a ministry, department or agency of government;
- (b) a statutory body or authority;
- (c) a company registered under the Companies Act, in which the Government or an agency of the Government, whether by the holding of shares or by other financial input, is in a position to influence the policy of the company;

Duty of
financial
institution to
report certain
transactions.

- (d) any Embassy, High Commission, consular office or organization to which the Diplomatic Immunities and Privileges Act applies; or
- (e) any organization in relation to which an order is made under section 3(2) of the Technical Assistance (Immunities and Privileges) Act.

(3) An authorized officer of the designated authority may, without prejudice to its rights to utilize disclosure orders or other remedies against any public body, request in writing information from a body specified in paragraph (2) (a), (b) or (c).

(4) A financial institution that makes a report under paragraph (1) to the designated authority shall not disclose the existence of that report to any other person except the competent authority.

(5) Where a financial institution makes a report in accordance with paragraph (1), that institution, its directors and employees shall, regardless of the outcome of the report, be exempt from—

- (a) any liability to prosecution for an offence under section 92 or 93 of the Act (money laundering), in relation to any conduct disclosed in the report; and
- (b) any criminal, civil or administrative liability, as the case may be, for breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision.

(6) In making a report under paragraph (1) or a suspicious transactions report under section 94 or 95 of the Act, a regulated business shall comply with such directions as may be given by the designated authority in relation to—

- (a) previous or current reports;
- (b) the provision of information required in such reports; and
- (c) the provision of additional information in relation to queries concerning specific matters arising from the reports, including—
 - (i) due diligence procedures followed in relation to a specific transaction;
 - (ii) persons authorized to sign on the account in question;
 - (iii) errors identified in the reports; and
 - (iv) such other matters as may be specified in the directions.

(7) A financial institution that fails to comply with paragraph (1) or (4), or a regulated business that fails to comply with paragraph (6), commits

an offence and is liable upon conviction before a Resident Magistrate's Court to a fine not exceeding four hundred thousand dollars.

(8) In paragraph (1)—

“cash transaction” means a transaction involving the physical transfer of currency from one person to another;

“prescribed amount” means in relation to—

- (a) a money transfer and remittance agent or agency, five thousand dollars or more;
- (b) *cambios* and *bureaux de change*, eight thousand dollars or more;
- (c) any other financial institution, fifteen thousand dollars or more,

in the currency of the United States of America or an equivalent amount in Jamaican currency or any other currency.

(9) For the purposes of the definition of “cash transaction” and “prescribed amount” in paragraph (8), “currency” refers to the coin and paper money designated as the legal tender of any country and which circulates and is customarily used and accepted as a medium of exchange in the country of issue.

Exemption
from duty to
report under
regulation 3.

4.—(1) A financial institution may apply in writing to the Minister responsible for finance or a person designated in writing by that Minister for exemption from the requirements of regulation 3 in relation to a transaction or series of transactions carried out or to be carried out by a person who is an established customer of that institution.

(2) The Minister responsible for finance may grant an exemption in relation to a transaction or series of transactions specified in an application under paragraph (1) if the Minister is satisfied that the exemption should be granted, having regard to the matters specified in paragraph (3).

(3) The matters referred to in paragraph (2) are as follows—

- (a) the transaction or series of transactions consists of a deposit into or a withdrawal from an account maintained by that customer with the financial institution;
- (b) the customer carries on—
 - (i) a retail business (other than a business that includes the selling of vehicles, vessels, farm machinery or aircraft);

- (ii) a business declared by the Minister by order to be an entertainment business or a hospitality business for the purposes of these Regulations;
- (c) the account through which the transaction or series of transactions is conducted is maintained for the purposes of any such business; and
- (d) the amount of cash involved in the transaction or series of transactions does not exceed an amount that is reasonably commensurate with the lawful business activities of the customer.

(4) In paragraph (1) “established customer”, in relation to an application for exemption, means a person who has been a customer of the financial institution for not less than a period of twelve months immediately preceding the date of the application.

5.—(1) A regulated business shall establish and implement such programmes, policies, procedures, and controls as may be necessary for the purpose of preventing or detecting money laundering.

Regulatory
controls by
regulated
businesses.

(2) Without prejudice to the generality of paragraph (1), the programmes referred to in that paragraph shall include—

- (a) the establishment of procedures to ensure high standards of integrity of employees;
- (b) the development of a system to evaluate the personal employment and financial history of those employees;
- (c) the establishment of programmes for training of employees on a continuing basis and for instructing employees as to their responsibilities in respect of the provisions of the Act and these Regulations;
- (d) arrangements for an independent audit in order to ensure that the programmes as aforesaid are being implemented.

(3) For the purposes of this regulation, a regulated business shall nominate an officer of the business who performs management functions to be responsible for ensuring the implementation of the programmes, policies, procedures and controls referred to in paragraph (1), including the reporting of transactions referred to in regulation 3 or section 94 or 95 of the Act.

(4) A regulated business shall consult with the competent authority for the purpose of carrying out its obligations under this regulation.

(5) A regulated business that fails to comply with paragraph (1) or

(3) commits an offence and is liable upon conviction, before a Resident Magistrate's Court to a fine not exceeding four hundred thousand dollars.

Systems and
training to
prevent money
laundering

6.—(1) No regulated business shall form a business relationship, or carry out a one-off transaction, with or for another person unless the regulated business—

- (a) maintains the following procedures in relation to that business relationship or one-off transaction—
 - (i) identification procedures and transaction verification procedures in accordance with regulations 7 and 11;
 - (ii) record-keeping procedures in accordance with regulation 14;
 - (iii) procedures of internal control and communication in accordance with regulation 15;
- (b) takes appropriate measures from time to time for the purpose of making employees whose duties include the handling of relevant financial business aware of—
 - (i) the procedures under sub-paragraph (a) which relate to the relevant financial business in question; and
 - (ii) the provisions of the Act and any regulations made thereunder; and
- (c) provides such employees from time to time with training in the recognition and handling of transactions carried out by, or on behalf of, any person who is, or appears to be, engaged in money laundering.

(2) A person who fails to comply with paragraph (1) commits an offence and is liable upon conviction—

- (a) before a Resident Magistrate—
 - (i) in the case of an individual, to a fine not exceeding one million dollars or to imprisonment for a term not exceeding twelve months, or to both such fine and imprisonment;
 - (ii) in the case of a body corporate, to a fine not exceeding three million dollars;
- (b) in a Circuit Court—

- (i) in the case of an individual, to a fine or to imprisonment for a term not exceeding twenty years, or to both such fine and imprisonment;
- (ii) in the case of a body corporate, to a fine.

7.—(1) Subject to regulation 8, identification procedures maintained by a regulated business are in accordance with this regulation if such procedures require that—

Identification procedures, business relationships and transactions.

- (a) as soon as is practicable after contact is first made between the regulated business and an applicant for business concerning any particular business relationship or one-off transaction—
 - (i) the applicant for business produces satisfactory evidence of his identity to the regulated business; and
 - (ii) the regulated business takes such measures as are specified in its identification procedures as will verify the applicant's identity; and
- (b) where the regulated business is unable to verify the applicant's identity, the business relationship or one-off transaction in question shall not proceed any further;
- (c) as concerns any business relationship, customer information is updated—
 - (i) at least once in every five years during the course of the business relationship; and
 - (ii) whenever there is any doubt about the veracity or adequacy of previously obtained customer information; and
- (d) where customer information is not updated as required under sub-paragraph (c), the business relationship in question shall not proceed any further.

(2) Transaction verification procedures maintained by a regulated business are in accordance with the regulation if such procedures require that—

- (a) as concerns any business relationship or one-off transaction, the regulated business takes such measures as are specified in its transaction verification procedures as will produce satisfactory evidence as to the purpose and intended nature of the business relationship or one-off transaction in any of the circumstances specified in paragraph (3); and

(b) where such evidence is not obtained, the business relationship or one-off transaction in question shall not proceed any further.

(3) The circumstances referred to in paragraph (2) are as follows—

(a) where any transaction involves the prescribed amount;

(b) where transactions carried out in a single operation or in several operations appear to be linked;

(c) where a transaction is carried out by means of wire transfers;

(d) where there is any doubt about the veracity or adequacy of previously obtained evidence of identity;

(e) where the reporting entity is required to make a report under section 94 or 95 of the Act.

(4) For the purposes of paragraphs (1) and (2), where the applicant for business is a body corporate—

(a) the reporting entity shall carry out reasonable due diligence procedures concerning the identification of the body corporate and transaction verification; and

(b) evidence that such procedures have been carried out shall be sufficient.

(5) In this regulation—

“customer information” includes the applicant for business’s full name, current address, taxpayer registration number or other reference number, date and place of birth (in the case of a natural person) and, where applicable, the information referred to in regulation 13(1) (c);

“prescribed amount” has the meaning assigned to it in regulation 3(8).

8.—(1) The identification procedures set out in regulation 7 shall not be required in the case of customer transactions of a value of two hundred and fifty dollars or less in the currency of the United States of America or its equivalent in any other currency, unless the nature of the transaction is suspicious.

(2) The provisions of paragraph (1) do not apply to a money transfer and remittance agent or agency.

9.—(1) Every regulated business conducting wire transfers or any other electronic funds transfer shall ensure that it receives and includes in its

De minimis
amounts not
requiring
identification.

Electronic
funds
transfers.

records accurate and relevant information on funds transfers throughout the payment process and chain, including the correct name, address and account number (if any), of the persons involved, any other relevant reference numbers and the instructions given in relation to the transfer.

(2) For the purposes of paragraph (1), “persons involved” means—

- (a) the holder of the account that is the source from which the funds are transferred;
- (b) the person that places the order for the transfer of the funds; and
- (c) every recipient of the funds transferred.

(3) A person who breaches this regulation commits an offence and is liable on conviction before a Resident Magistrate to—

- (a) in the case of an individual, a fine not exceeding one million dollars or to imprisonment for a term not exceeding twelve months, or both such fine and imprisonment;
- (b) in the case of a body corporate, a fine not exceeding three million dollars.

10.—(1) Paragraph (2) shall apply in any case where—

- (a) a payment is to be made by an applicant for business;
- (b) it is reasonable in all the circumstances for the payment to be made, or the details thereof to be sent, by post or by telephone or any other electronic means; and
- (c) satisfactory evidence of the identity of the applicant for business would, but for this regulation, be required under identification procedures adopted in accordance with regulation 7.

Payment by
post, etc.

(2) The fact that the payment is debited from an account held in the applicant’s name at any of the financial institutions specified in paragraph (4) (whether the account is held by the applicant alone or jointly with one or more other persons) shall constitute the required evidence of identity for the purpose of regulation 7.

(3) For the purposes of paragraph (1), it shall be immaterial whether the payment or its details are sent or given to a regulated business or to some other person acting on its behalf.

(4) The financial institutions referred to in paragraph (1) are—

- (a) a bank licensed under the Banking Act;
- (b) a financial institution licensed under the Financial Institutions Act;

- (c) a building society registered under the Building Societies Act;
- (d) a society registered under the Co-operative Societies Act.

Identification procedures re transactions on behalf of another.

11.—(1) This regulation applies where, in relation to any relevant financial business, a person is, or appears to be an agent.

(2) For the purposes of this regulation, “agent” means an applicant for business who acts otherwise than as principal.

(3) Identification procedures maintained by a regulated business are in accordance with this regulation if, in a case to which this regulation applies, the regulated business requires reasonable measures to be taken for the purpose of—

- (a) establishing the identity of the principal; and
- (b) verifying that the agent is authorized to act on behalf of the principal.

(4) In determining for the purposes of paragraph (3), what constitutes reasonable measures in any particular case, regard shall be had to all the circumstances of the case and, in particular, to the best practice which, for the time being, is followed in the relevant field of business and is applicable to those circumstances.

(5) Without prejudice to the generality of paragraph (4), if the conditions mentioned in paragraph (6) are fulfilled in relation to an agent (whether the principal is undisclosed or disclosed for reference purposes only) it shall be reasonable for a regulated business to accept a written assurance from the agent to the effect that evidence of the identity of any principal on whose behalf the agent may act in relation to the regulated business has been obtained and recorded under procedures maintained by the agent.

(6) The conditions referred to in paragraph (5) are that, in relation to the business relationship or transaction in question, there are reasonable grounds for believing that—

- (a) the agent is based or incorporated in, or formed under the law of, a country in which there are in force provisions at least equivalent to those mentioned in Part V of the Act; and
- (b) the agent—
 - (i) would be a regulated business if the agent were situated in Jamaica; and

- (ii) acts in the course of a business in relation to which a foreign regulatory authority exercises regulatory functions and control.

12.—(1) Subject to paragraph (2), where—

Identification
procedures,
exemption.

- (a) there are reasonable grounds for believing that the applicant for business is a regulated business; or
- (b) any one-off transaction is carried out with or for a third party pursuant to an introduction effected by a person who identifies the third party and has provided an assurance in accordance with paragraph (2),

regulations 7 and 11 shall be construed as entitling the reporting entity to exercise its discretion as to whether or not to require any steps to be taken to obtain evidence of the identity of the applicant for business.

(2) The assurance referred to in paragraph (1) is that evidence of the identity of all third parties introduced by that person will have been obtained and recorded under procedures maintained by him and—

- (a) that person falls within sub-paragraph (1) (a); or
- (b) there are reasonable grounds for believing that the conditions mentioned in regulation 11 (5) (a) and (b) are fulfilled in relation to that person.

(3) Nothing in this regulation shall apply in any circumstances where any person handling the transaction knows or suspects that the applicant for business is engaged in money laundering or that the transaction is carried out on behalf of another person engaged in money laundering.

13.—(1) For the purposes of these Regulations, evidence of identity is satisfactory if—

Identification
procedures,
supplementary
provisions.

- (a) it is reasonably capable of establishing that the applicant for business is the person he claims to be;
- (b) the person who obtains the evidence is reasonably satisfied, in accordance with the procedures maintained under these Regulations in relation to the regulated business concerned, that such evidence establishes the fact that the applicant for business is the person he claims to be;
- (c) in the case of any transaction involving—

- (i) a settlement, trust or other type of legal arrangement, it establishes the identity of the settlor, legal owner or other person who exercises effective control of the legal arrangement, as the case may require, and the beneficial owner;
- (ii) a person other than a natural person, it establishes—
 - (A) the identity of the natural persons who exercise ultimate effective control over that person; and
 - (B) in the case of a body corporate, it includes evidence of incorporation and establishes the identity of each director and shareholder (if any).

(2) In determining for the purposes of regulation 7 the period within which satisfactory evidence of the identity of the applicant for business has to be obtained in relation to any particular business relationship or one-off transaction, all the circumstances shall be taken into account, including, in particular—

- (a) the nature of the business relationship or the one-off transaction concerned;
- (b) the geographical locations of the parties; and
- (c) whether it is practical to obtain the evidence before commitments are entered into between the parties or before any money is transferred.

Record-keeping procedures.

14.—(1) Record-keeping procedures maintained by a person under regulation 6(1) (a) are in accordance with this regulation if they require the keeping of a record for the prescribed period in accordance with paragraphs (2), (3) and (4).

(2) A record shall be kept in any case where evidence of the identity of an applicant for business is obtained under procedures maintained in accordance with regulation 7 or 11.

(3) The record referred to in paragraph (2) shall indicate the nature of the evidence and shall—

- (a) comprise a copy of the evidence;
- (b) provide such information as would enable a copy of it to be obtained; or

- (c) in a case where it is not reasonably practicable to comply with sub-paragraph (a) or (b), provide sufficient information to enable the details as to a person's identity contained in the relevant evidence to be re-obtained.

(4) In relation to all relevant financial business a record shall be kept of each transaction, in such manner and form as shall facilitate the reconstruction of transactions.

(5) For the purposes of paragraph (1), the prescribed period is a period of five years commencing with the date on which the relevant financial business was completed or the business relationship was terminated, whichever occurs later.

15. Internal reporting procedures maintained by a regulated business shall include provisions—

Internal reporting procedures.

- (a) for identifying a person in accordance with regulation 5 (3) (in this regulation referred to as “the nominated officer”) to whom a report is to be made of any information or other matter which—

- (i) comes to the attention of a person handling relevant financial business; and

- (ii) in the opinion of the person handling that business, gives rise to some knowledge or suspicion that another person is engaged in money laundering;

- (b) for requiring that any such report be considered in the light of all other relevant information by the nominated officer, or by another person, acting on behalf of the nominated officer, for the purpose of determining whether or not the information or other matter contained in the report gives rise to such knowledge or suspicion;

- (c) for any person charged with considering a report in accordance with paragraph (b) to have reasonable access to other information that may be of assistance to him and is available to the regulated business; and

- (d) for any person charged with considering a report in accordance with sub-paragraph (b) to make such reports to the designated authority as may be required under section 95 of the Act.

16.—(1) A regulated business shall not, in the course of its relevant financial business, permit any person to conduct any transaction with the regulated business by means of a numbered account, an anonymous account or any account in a fictitious name.

Regulated businesses not to operate anonymous accounts, etc.

(2) In this regulation—

“anonymous account” means any account for which the regulated business does not have such information as would, when subjected to the identification and transaction verification procedures required by these Regulations, constitute evidence of identity which meets the requirements of regulations 11 and 13;

“fictitious name” means any name which when subjected to the identification procedures required by these Regulations does not constitute, in relation to the person conducting the transaction, such evidence of identity as meets the requirements of regulations 11 and 13;

“numbered account” means an account that is identifiable solely by reference to the number or numbers assigned to that account.

Form in
which reports
shall be made.

17.—(1) Subject to paragraph (4), every disclosure to the designated authority made pursuant to section 94 or 95 of the Act (suspicious transactions reporting) shall be contained in a report in accordance with Form 1 of the Schedule.

Schedule.
Form 1.

(2) Subject to paragraph (4), every report made pursuant to regulation 3 (threshold transactions reporting) shall be in accordance with Form 2 of the Schedule.

Form 2.

(3) A report made under paragraph (1) or (2) may—

- (a) contain such adjustments to the applicable form set out in the Schedule as may be approved by the designated authority; and
- (b) be submitted in electronic form.

(4) A report from a regulated business in respect of relevant financial business conducted outside of Jamaica, submitted pursuant to paragraph (1) or (2), may be in such form as may be approved by the designated authority.

(5) Upon receiving a report submitted pursuant to paragraph (1) or (2), the designated authority shall issue to the regulated business a receipt therefor:

Provided that no such receipt shall be construed as signifying compliance with these Regulations as regards the contents of the report.

Application
of standards
to overseas
branches and
subsidiaries.

18.—(1) Every regulated business shall ensure that its branches and subsidiaries situated outside of Jamaica implement, where necessary, and conform with, the standards and conduct set out in the Part V of the Act and

in these Regulations:

Provided that wherever there is a difference in applicable standards between the jurisdiction where the regulated business is located and the jurisdiction where any of its branches or subsidiaries is located there shall be compliance with the higher required standard.

(2) Where any regulated business becomes aware of any instance in which any of its overseas branches or subsidiaries is unable to conform to the standard and conduct referred to in paragraph (1), the regulated business shall ensure that in each such instance—

- (a) the branch or subsidiary advises it of such inability; and
- (b) the regulated business advises the competent authority of the inability and the reason therefor.

(3) A person who contravenes this regulation commits an offence and is liable on conviction before a Resident Magistrate—

- (a) in the case of an individual, to a fine not exceeding one million dollars or to imprisonment for a term not exceeding twelve months, or to both such fine and imprisonment;
- (b) in the case of a body corporate, to a fine not exceeding three million dollars.

19.—(1) Except as otherwise provided in this regulation, the obligations of a regulated business under these Regulations shall apply, in respect of any business relationship formed by the regulated business prior to the relevant date, as it applies in respect of an applicant for business.

Requirements
re-existing
customers.

(2) Subject to paragraph (3), nothing in these Regulations shall require a regulated business to maintain procedures in accordance with regulations 7 and 11 which require evidence to be obtained in respect of any business relationship formed by him prior to the relevant date, as to the identity of the person with whom that relationship has been formed.

(3) Notwithstanding paragraph (2), the provisions of regulation 7(1) (c) shall, as of the relevant date, apply to the updating of evidence of identity in relation to any business relationship formed by the regulated business prior to the relevant date.

(4) For the purpose of paragraphs (2) and (3), the “relevant date” is the 29th day of March 2007.

THE PROCEEDS OF CRIME (MONEY LAUNDERING PREVENTION)
REGULATIONS, 2007

(Regulation 17)

SCHEDULE
Form I
Proceeds of Crime (Money Laundering
Prevention) Regulations
Suspicious Transactions Report

| | | | |
|---|---|--------------------------------|-------------------------------------|
| PART 1 | Reporting Financial Institution Information | | |
| 1. Name of Financial Institution | | | |
| 2. Address of Financial Institution | | 3. TRN. | |
| 5. Type of Financial Institution | | 4. Branch address | |
| PART 2 | Person(s) involved in Transaction(s) | | |
| Section A | Persons on whose behalf Transaction is conducted (Customer) | | 6. Multiple persons [] |
| 7. Individual's last name or organization's name | | 8. First name | 9. M.I. |
| 10. Permanent Address | | 11. Date of Birth (DD/MM/YYYY) | |
| | | 12. TRN | |
| 13. Method used to verify identity: [] Examined identification credential/document [] Known Customer – Information on file | | | |
| 14. Describe identification credential: a. [] Driver's licence b. [] Passport c. [] National I.D. d. [] Other, specify | | | |
| e. issued by: | | f. Number: | |
| 15. Customer's Account No. and Type | | | |
| 16. Occupation/Business/Principal Activity: | | | |
| Section B | Person(s) conducting transaction (Agent) | | 17. Multiple persons [] See Part 6 |
| 18. Individual's last name or organization's name | | 19. First Name | 20. M.I. |
| 21. Permanent Address | | 22. Date of Birth (DD/MM/YYYY) | |
| | | 23. TRN. | |
| 24. Method used to verify identity a. [] Examined Identification credential/document b. [] Known Customer-Information on file | | | |
| 25. Describe identification credential: a. [] Driver's licence b. [] Passport c. [] National I. D. d. [] Other specify | | | |
| e. Issued by: | | f. Number | |
| Section C | Person(s) benefiting from transaction | | 26. Multiple persons [] See Part 6 |
| 27. Individual's last name or organization's name | | 28. First Name | 29. M.I. |

| | | | |
|---|--|------------------------------------|--------------------------------|
| 30. Permanent Address | | | |
| PART 3 <i>Preparer Information</i> | | | |
| 31. Last Name | | 32. First Name | |
| | | 33. M.I. | |
| 34. Title | | 35. Phone No. | |
| 36. Signature | | 37. Date of Signature (DD/MM/YYYY) | |
| PART 4 Contact for Assistance (If different than preparer info. in Part 3) | | | |
| 38. Last Name | | 39. First Name | |
| | | 40. M.I. | |
| 41. Title | | 42. Phone No. | |
| PART 5 Transaction Details | | | 1. Multiple Transaction (\$) |
| 2. Transaction Type | | 3. Date (DD/MM/YYYY) | |
| | | 4. Title | |
| 5. Transaction Currency | | 6. Transaction Account | |
| 7. Accounts Affected (if any) | | 8. JAS Equivalent | |
| Type Number | | 9. JAS Exchange Rate | |
| _____ | | 10. US\$ Equivalent | |
| _____ | | 11. US\$ Exchange Rate | |
| _____ | | 12. Source of funds | |
| 13. Transaction Type | | 14. Date (DD/MM/YYYY) | |
| | | 15. Time | |
| 16. Transaction Currency | | 17. Transaction Amount | |
| 18. Accounts Affected (if any) | | 19. JAS Equivalent | |
| Type Number | | 20. JAS Exchange Rate | |
| _____ | | 21. US\$ Equivalent | |
| _____ | | 22. US\$ Exchange Rate | |
| _____ | | 23. Source of funds | |
| 24. Transaction Type | | 25. Date (DD/MM/YYYY) | |
| | | 26. Time | |
| 27. Transaction Currency | | 28. Transaction Account | |
| | | | |

| Form II | | (Regulation 17) |
|--|---|-------------------------------------|
| Proceeds of Crime (Money Laundering Prevention) Regulations Threshold Transactions Report | | |
| PART I | Reporting Financial Institution Information | |
| 1. Name of Financial Institution | | |
| 2. Address of Financial Institution | | 3. TRN. |
| | | 4. Branch address |
| 5. Type of Financial Institution | | |
| PART 2 | Person(s) involved in Transaction(s) | |
| Section A | Persons on whose behalf Transaction is conducted (Customer) | 6. Multiple persons [] See Part 6 |
| 7. Individual's last name or organization's name | | 8. First name |
| | | 9. M.I. |
| 10. Permanent Address | | 11. Date of Birth (DD/MM/YYYY) |
| | | 12. TRN. |
| 13. Method used to verify identity: a. [] Examined identification credential/document b. [] Known Customer – Information on file | | |
| 14. Describe identification credential: a. [] Driver's licence b. [] Passport c. [] National I.D. d. [] Other, specify | | |
| e issued by: _____ f. Number: _____ | | |
| 15. Customer's Account No. and Type | | |
| 16. Occupation/Business/Principal Activity: | | |
| Section B | Person(s) conducting transaction (Agent) | 17. Multiple persons [] See Part 6 |
| 18. Individual's last name or organization's name | | 19. First Name |
| | | 20. M.I. |
| 21. Permanent Address | | 22. Date of Birth (DD/MM/YYYY) |
| | | 23. TRN. |
| 24. Method used to verify identity a [] Examined Identification credential/document b [] Known Customer-Information on file | | |
| 25. Describe identification credential: a. [] Driver's licence b. [] Passport c. [] National I. D. d. [] Other specify | | |
| e. Issued by: _____ f Number _____ | | |

THE PROCEEDS OF CRIME (MONEY LAUNDERING PREVENTION)
REGULATIONS, 2007

| | | | | | | | | | |
|---|---|-------------------------------------|-----------------------------|-------|-------|-------|-------|-------------------|----------------------|
| Section C | Person(s) benefiting from transaction (Agent) | 26. Multiple persons [] See Part 6 | | | | | | | |
| 27. Individual's last name or organization's name | | 28. First Name | 29. M.I. | | | | | | |
| 30. Address | | | | | | | | | |
| PART 3 | <i>Preparer Information</i> | | | | | | | | |
| 31. Last Name | | 32. First Name | 33. M.I. | | | | | | |
| 34. Title | | 35. Phone No. | | | | | | | |
| 36. Signature | | 37. Date of Signature (DD/MM/YYYY) | | | | | | | |
| PART 4 | Contact for Assistance (If different than preparer info. in Part 3) | | | | | | | | |
| 38. Last Name | | 39. First Name | 40. M.I. | | | | | | |
| 41. Title | | 42. Phone No. | | | | | | | |
| PART 5 | Transaction Details | | 1. Multiple Transaction [] | | | | | | |
| 2. Transaction Type | | 3. Date (DD/MM/YYYY) | 4. Title | | | | | | |
| 5. Transaction Currency | 6. Transaction Account | | | | | | | | |
| 7. Accounts Affected (if any) <table style="width: 100%; border: none;"> <tr> <td style="width: 50%; text-align: center;">Type</td> <td style="width: 50%; text-align: center;">Number</td> </tr> <tr> <td>_____</td> <td>_____</td> </tr> <tr> <td>_____</td> <td>_____</td> </tr> </table> | | Type | Number | _____ | _____ | _____ | _____ | 8. JAS Equivalent | 9. JAS Exchange Rate |
| | | Type | Number | | | | | | |
| | | _____ | _____ | | | | | | |
| _____ | _____ | | | | | | | | |
| 10. US\$ Equivalent | 11. US\$ Exchange Rate | | | | | | | | |
| 13. Transaction Type | | 12. Source of funds | | | | | | | |
| 13. Transaction Type | | 14. Date (DD/MM/YYYY) | 15. Time | | | | | | |

| | | | |
|---|--|------------------------|------------------------|
| 16. Transaction Currency | | 17. Transaction Amount | |
| 18. Accounts Affected (if any) Type Number _____ _____ _____ | | 19. JA\$ Equivalent | 20. JA\$ Exchange Rate |
| | | 21. US\$ Equivalent | 22. US\$ Exchange Rate |
| | | 23. Source of funds | |

| | | | |
|--|--|-------------------------|------------------------|
| 24. Transaction Type | | 25. Date (DD/MM/YYYY) | 26. Time |
| 27. Transaction Currency | | 28. Transaction Account | |
| 29. Account Affected (if any) Type Number _____ _____ _____ | | 30. JA\$ Equivalent | 31. JA\$ Exchange Rate |
| | | 32. US\$ Equivalent | 33. US\$ Exchange Rate |
| | | 34. Source of funds | |

| | | | |
|--|--|-------------------------|------------------------|
| 35. Transaction Type | | 36. Date (DD/MM/YYYY) | 37. Time |
| 38. Transaction Currency | | 39. Transaction Account | |
| 40. Account Affected (if any) Type Number _____ _____ _____ | | 41. JA\$ Equivalent | 42. JA\$ Exchange Rate |
| | | 43. US\$ Equivalent | 44. US\$ Exchange Rate |
| | | 45. Source of funds | |

| | | | |
|--|------------------|---------------|--------|
| PART 6 | Multiple Persons | | |
| 1. Person Involvement | | | |
| a. <input type="checkbox"/> On behalf of (customer) b. <input type="checkbox"/> Conducting (agent) c. <input type="checkbox"/> Beneficiary | | | |
| 2. Individual's last name or organization's name | | 3. First name | 4 M.I. |

THE PROCEEDS OF CRIME (MONEY LAUNDERING PREVENTION)
REGULATIONS, 2007

| | | | |
|--|--|--------------------------------|-----------|
| 5. Permanent address | | 6. Date of Birth (DD/MM/YYYY) | |
| | | 7. TRN No. | |
| 8. Method used to verify identity: a. <input type="checkbox"/> Examined identification credential/ document b. <input type="checkbox"/> Known Customer – Information on file | | | |
| 9. Describe identification credential: a. <input type="checkbox"/> Driver's licence b. <input type="checkbox"/> Passport c. <input type="checkbox"/> National I.D. d. <input type="checkbox"/> Other. specify: | | | |
| e. Issued by: | | f. Number: | |
| 10. Account No. and Type (if customer): | | | |
| 11. Occupation/Business/Principal Activity: | | | |
| 12. Person Involvement | | | |
| a. <input type="checkbox"/> On behalf of (customer) b. <input type="checkbox"/> Conducting (agent) c. <input type="checkbox"/> Beneficiary | | | |
| 13. Individual's last name or organization's name | | 14. First name | 15. M. I. |
| 16. Permanent address | | 17. Date of Birth (DD/MM/YYYY) | |
| | | 18. TRN. | |
| 19. Method used to verify identity: a. <input type="checkbox"/> Examined identification credential/document b. <input type="checkbox"/> Known Customer – Information on file | | | |
| 20. Describe identification credential: a. <input type="checkbox"/> Driver's licence b. <input type="checkbox"/> Passport c. <input type="checkbox"/> National I.D. d. <input type="checkbox"/> Other. specify | | | |
| e. Issued by: | | f. Number: | |
| 21. Account No. and Type (if customer): | | | |
| 22. Occupation/ Business/ Principal Activity: | | | |
| 23. Permanent Involvement | | | |
| a. <input type="checkbox"/> On behalf of (customer) b. <input type="checkbox"/> Conducting (agent) c. <input type="checkbox"/> Beneficiary | | | |
| 24. Individual's last name or organization's name | | 25. First name | 26. M.I. |
| 27. Permanent address | | 28. Date of Birth (DD/MM/YYYY) | |
| | | 29. TRN. | |
| 30. Method used to verify identity: a. <input type="checkbox"/> Examined identification credential/document b. <input type="checkbox"/> Known Customer – Information on file | | | |
| 31. Describe identification credential: a. <input type="checkbox"/> Driver's licence b. <input type="checkbox"/> Passport c. <input type="checkbox"/> National I.D. d. <input type="checkbox"/> Other. specify: | | | |
| e. Issued by: | | f. Number: | |
| 32. Account No. and Type (if customer): | | | |
| 33. Occupation/Business/Principal Activity: | | | |

THE PROCEEDS OF CRIME ACT

REGULATIONS
(under section 138)

THE PROCEEDS OF CRIME REGULATIONS, 2007

(Made by the Minister on the 29th day of March, 2007)

L.N. 44C/2007

1. These Regulations may be cited as the Proceeds of Crime Regulations, 2007. Citation.

2.—(1) For the purposes of the Act, proceedings for an offence are commenced at the time when— Commencement and conclusion of proceedings.

(a) a justice of the peace issues a summons under section 2 of the Justices of the Peace Jurisdiction Act in respect of the offence;

(b) a person is charged with an offence after being taken into custody without a warrant;

(c) an indictment is preferred under—

(i) section 274 of the Judicature (Resident Magistrates) Act; or

(ii) section 2 of the Criminal Justice Administration Act (preferment at Circuit Courts).

(2) If more than one time is found under paragraph (1) in relation to proceedings, the proceedings are commenced at the earliest of those times.

(3) Where the defendant is acquitted on all counts in proceedings for an offence, the proceedings are concluded when the defendant is acquitted.

(4) Where the defendant is convicted in proceedings for an offence and the conviction quashed or the defendant is pardoned before a forfeiture order or pecuniary penalty order is made, the proceedings are concluded when the conviction is quashed or the defendant is pardoned, as the case may be.

(5) Where a forfeiture order or pecuniary penalty order is made against the defendant in proceedings for an offence, the proceedings are concluded—

(a) when the order is satisfied or discharged; or

(b) when the order is quashed and there is no further possibility of an appeal against the decision to quash the order.

(6) Where the defendant is convicted in proceedings for an offence but the Court decides not to make a forfeiture order or pecuniary penalty order against the defendant, the following rules apply—

- (a) if an application for leave to appeal under section 29(2) of the Act is refused, the proceedings are concluded when the decision to refuse is made;
- (b) if the time for applying for leave to appeal under section 29(2) of the Act expires without an application being made, the proceedings are concluded when the time expires;
- (c) if on an appeal under section 29(2) of the Act the Court of Appeal confirms the Court's decision, and an application for leave to appeal from the decision of the Court of Appeal is refused, the proceedings are concluded when the decision to refuse is made;
- (d) if on an appeal under section 29(2) of the Act the Court of Appeal confirms the Court's decision and the time for applying for leave to appeal from the decision of the Court of Appeal expires without an application being made, the proceedings are concluded when the time expires;
- (e) if on an appeal under section 29(2) of the Act the Court of Appeal confirms the Supreme Court's decision and an appeal from the decision of the Court of Appeal is confirmed, the proceedings are concluded when the decision of the Court of Appeal is confirmed;
- (f) if on an appeal under section 29(2) of the Act the Court of Appeal directs the Court to reconsider the case, and on reconsideration the Court decides not to make a forfeiture order or pecuniary penalty order against the defendant, the proceedings are concluded when the Court makes that decision;
- (g) if on an appeal from the decision of the Court of Appeal, the Court of Appeal is directed to consider the case, and on reconsideration the Court of Appeal decides not to make a forfeiture order or pecuniary penalty order against the defendant, the proceedings are concluded when the Court of Appeal makes that decision.

(7) In applying paragraph (6), any power to extend the time for making an application for leave to appeal shall be ignored.

(8) In applying paragraph (6), the fact that a court may decide on a later occasion to make a forfeiture order or pecuniary penalty order against the defendant shall be ignored.

3.—(1) An application under section 20 (reconsideration of case where no order is made), 21 (reconsideration of benefit after order is made), 26, 27 or 28 (forfeiture orders or pecuniary penalty orders where defendant absconds) of the Act is concluded—

Conclusion of applications for reconsideration.

- (a) in a case where the Court decides not to make a forfeiture order or pecuniary penalty order against the defendant, when the Court makes that decision;
- (b) in a case where a forfeiture order or pecuniary penalty order is made against the defendant as a result of the application, when the order is satisfied or discharged, or when the order is quashed and there is no further possibility of an appeal against the decision to quash the order;
- (c) in a case where the application is withdrawn, when the person who made the application notifies the Court to which the application was made of the withdrawal.

(2) An application under section 22 (reconsideration of benefit after order is made) or 24 (reconsideration of available amount after order is made) of the Act is concluded—

- (a) in a case where the Court decides not to vary the forfeiture order or pecuniary penalty order concerned, when the Court makes that decision;
- (b) in a case where the Court varies the forfeiture order or pecuniary penalty as a result of the application, when the order is satisfied or discharged, or when the order is quashed and there is no further possibility of an appeal against the decision to quash the order;
- (c) in a case where the application is withdrawn, when the person who made the application notifies the Court, to which the application was made, of the withdrawal.

(3) For the purposes of Part IV of the Act, proceedings against any person for an offence are concluded when—

- (a) the person is convicted or acquitted;
- (b) the prosecution is discontinued; or

(c) the jury is discharged without a finding.

Examples of right to recover property obtained through unlawful conduct.

4. The following examples are intended to assist in construing references to the satisfaction of the enforcing authority's right to recover property obtained through unlawful conduct (hereinafter in this regulation referred to as the original property)—

- (a) where there is a disposal, other than a part disposal, of the original property and other property is obtained in its place, the enforcing 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 other property;
- (b) where there is a part disposal of the original property and other property is obtained in its place, the enforcing 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 other property or the property disposed of.

Procedure on application for recovery order.

5.—(1) In proceeding under section 57 of the Act (proceedings for recovery orders), the enforcing authority shall serve the claim form—

- (a) on the respondent; and
- (b) unless the Court dispenses with such service, on any other person who the enforcing authority believes holds any associated property that the enforcing authority wishes to be subject to a recovery order,

wherever domiciled, resident or present.

(2) Where the enforcing authority wishes any property to be subject to a recovery order, the enforcing authority shall, in the claim form—

- (a) specify the property or describe it in general terms; and
- (b) state whether the property is alleged to be recoverable property or associated property.

(3) The references in this section to the claim form include the particulars of claim, where the particulars of claim are served subsequently.

Interim receiving order.

6.—(1) In any case in which the enforcing authority is entitled to take proceedings for a recovery order before a court the enforcing authority may, before or after the start of such proceedings, apply to the court for an interim order under paragraph (2).

(2) An interim order under this subsection (hereinafter called 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 without notice if the circumstances are such that notice of the application would prejudice any right of the enforcing authority to obtain a recovery order in respect of any property.

(4) On an application under paragraph (1), the Court may make an interim receiving order if the Court is satisfied that the conditions set out in paragraph (5) and, where applicable, paragraph (6) are met.

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

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

(6) The condition is that—

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

the enforcing authority has taken all reasonable steps to do so.

(7) In its application for the interim receiving order, the enforcing authority shall nominate a suitably qualified person, not being a member of the staff of the Agency, for appointment as interim receiver.

(8) Nothing in regulations 7 to 14 shall be construed to limit the power to make an interim receiving order.

7.—(1) An interim receiving order may authorize or require the interim receiver—

- (a) to exercise any of the powers mentioned in the Schedule;
- (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 paragraph (2).

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

Functions
of interim
receiver.

Schedule.

- (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 that is not property to which the interim receiving order applies; and
 - (b) at the time of the dealing, the interim receiver 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.

Duties of owner, etc.

8.—(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, the person is able to do so;
- (b) to bring any documents relating to the property which are in that person's possession or control to a place specified by the interim receiver or to place them in the custody of the interim receiver;
- (c) to do anything that such person is reasonably required to do by the interim receiver for the purpose of preserving the property.

(2) In this section, "document" means anything in which information of any description is recorded, whether in electronic form or otherwise.

Application for directions, variation of order.

9.—(1) The interim receiver, any party to the proceedings or any person affected by any action taken by the interim receiver, or who may be affected by any action proposed to be taken by the interim receiver, 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 paragraph (1), the Court shall give an opportunity to be heard to the persons mentioned in that subsection.

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

(4) Before exercising any power under this Part to vary or set aside an interim receiving order, the Court shall give an opportunity to be heard to the persons mentioned in paragraph (1).

10.—(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.

Restrictions
on dealing,
etc., with
property.

(2) Exclusions may be made when the interim receiving order is made 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:

Provided that an exclusion may not be made for the purpose of enabling any person to meet any legal expenses in respect of proceedings under Part IV of the Act.

(4) If the excluded property is not specified in the order, such property shall be described in the order in general terms.

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

11.—(1) A copy of an interim receiving order that affects—

(a) registered land in Jamaica, shall be registered with the Registrar of the Supreme Court and with the Registrar of Titles who shall record the particulars of the order in the Register Book of Titles;

(b) unregistered land in Jamaica, shall be—

(i) lodged in the Record Office; and

(ii) published in at least one daily newspaper in circulation throughout Jamaica.

Registration
of interim
receiving
order.

(2) An interim receiving order is of no effect with respect to land unless the order is registered under paragraph (1).

(3) Where particulars of an interim receiving order are registered as required by this section, a person who subsequently deals with the property concerned shall, for the purposes of regulation 10, be deemed to have notice of the order at the time of the dealing.

(4) The registration of an interim receiving order under this section shall be exempt from the payment of fees under the Registration of Titles Act and stamp duty under the Stamp Duty Act.

Restriction on proceedings and remedies.

12.—(1) While an interim receiving order has effect the Court may stay any action, execution or other legal process in respect of the property to which the order applies.

(2) If a court (whether the Supreme Court or any other court) in which proceedings are pending in respect of the 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 that the court 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 give an opportunity to be heard to—

- (a) the parties to any of the proceedings in question;
- (b) the interim receiver (if appointed); and
- (c) any other person who may be affected by the Court's decision.

Exclusion of property that is not recoverable, etc.

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

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

(3) The Court may exclude any property falling within subsection (2) on any terms or conditions—

- (a) applying while the interim receiving order has effect; and
- (b) which the Court thinks necessary or expedient.

Reporting.

14.—(1) An interim receiving order shall require the interim receiver to inform the enforcing authority and the Court, as soon as is reasonably practicable, if the interim receiver thinks that—

- (a) any property to which the order applies by virtue of a claim that the property is recoverable property, is not recoverable property;

- (b) any property to which the order applies by virtue of a claim that the property 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 is associated property;
- (d) any property to which the order applies, is held by a person who is not the person claimed to hold the property; 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; and
- (b) to serve copies of his report on the enforcing authority and on any person who holds property to which the order applies or who may otherwise be affected by the report.

15.—(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 to both the proceedings and the agreement.

Consent orders.

(2) An order under paragraph (1) may include—

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

(3) Section 67 (applying realized proceeds) of the Act applies to property vested in, or paid to, the Agency in pursuance of the agreement, as it applies to property vested in the Agency by a recovery order or money paid under section 62 (agreements about associated or joint property) of the Act.

16.—(1) This regulation applies where recoverable property to which proceedings under Part IV of the Act relate includes rights under a pension scheme.

Consent orders affecting pensions.

(2) An order made under regulation 15—

- (a) shall not stay the proceedings on terms that the rights are vested in any other person;
- (b) may include provision imposing the requirement set out in paragraph (3), if the trustees or managers of the scheme are parties to the agreement by virtue of which the order is made.

(3) The requirement is that the trustees or managers of the pension scheme—

- (a) make a payment in accordance with the agreement; and
- (b) give effect to any other provision made by virtue of this regulation in respect of the scheme.

(4) The trustees or managers of the pension scheme may enter into an agreement in respect of the proceedings on any terms on which an order made under regulation 15 may stay the proceedings.

(5) The following provisions apply in respect of an order under regulation 15, so far as such order includes the requirement set out in paragraph (3)—

- (a) the order shall override the provisions of the pensions scheme to the extent that they conflict with the requirement;
- (b) the order may provide for the recovery by the trustees or managers of the scheme (whether by deduction from any amount which they are required to pay in pursuance of the agreement or otherwise) of costs incurred by them in—
 - (i) complying with the order; or
 - (ii) providing information, before the order was made, to the enforcing authority, interim receiver or interim administrator;
- (c) sections 64 (4) and 65 (read with section 66) of the Act apply as if the requirement were included in an order made by virtue of section 64 (2) of the Act.

Limit on recovery.

17.—(1) This regulation applies if the enforcing authority seeks a recovery order—

- (a) in respect of both property which is, or represents, property obtained through unlawful conduct and related property; or
- (b) in respect of property which is, or represents, property obtained through unlawful conduct where such an order, or an order under regulation 15, has previously been made in respect of related property.

(2) For the purposes of this regulation—

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

(3) The Court shall not make a recovery order if it thinks that the enforcing authority's right to recover the original property has been satisfied by a previous recovery order or under regulation 15.

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

(a) a recovery order may be made in respect of two or more related items of recoverable property; and

(b) the making of a recovery order in respect of both or all of them is not required in order to satisfy the enforcing 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 makes a recovery order in respect of any property, this section does not prevent the recovery of any profits that have accrued in respect of the property.

(7) Where—

(a) an order is made under section 79 of the Act for the forfeiture of recoverable property; and

(b) the enforcing authority subsequently seeks a recovery order in respect of related property,

the order under section 79 of the Act is to be treated for the purposes of this section as if it were a recovery order obtained by the enforcing authority in respect of the forfeited property.

(8) If—

(a) in pursuance of a judgment in civil proceedings (whether in Jamaica or elsewhere), the claimant has obtained property from the defendant (hereinafter in this section referred to as 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 enforcing 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 enforcing authority in respect of the judgment property.

(9) Where—

- (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 forfeiture order or pecuniary penalty order; and
- (b) the enforcing authority subsequently seeks a recovery order in respect of related property,

the forfeiture order or pecuniary penalty order, as the case may be, shall be treated for the purposes of this section as if it were a recovery order obtained by the enforcing authority in respect of the property referred to in paragraph (a).

(10) In paragraph (9), a forfeiture order or pecuniary penalty order means—

- (a) an order under section 5(2) (c) or (3) of the Act; or
- (b) a forfeiture order under the Dangerous Drugs Act,

and in relation to an order mentioned in paragraph (b), the reference to the amount of a person's benefit from criminal conduct is to be read as a reference to the corresponding amount ordered to be forfeited under the enactment in question.

18. For the purposes of section 86 of the Act, examples of cases in which recoverable property is mixed with other property include if the recoverable property 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; or
- (d) by a person holding a leasehold interest in the property to acquire the freehold.

Examples
of mixing
property.

Seizures.

Information.

SCHEDULE

(Regulation 7)

Powers of Interim Receiver

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

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 referred to in sub-paragraph (1) has effect in spite of any restriction on the disclosure of information (however imposed).

(3) An answer given by a person in pursuance of a requirement mentioned in sub-paragraph (2) may not be used in evidence against that person in criminal proceedings.

SCHEDULE, *contd.*

(4) Sub-paragraph (3) does not apply in the case of—

- (a) a prosecution for an offence under the Perjury Act; or
- (b) a prosecution for some other offence where, in giving evidence, the person makes a statement inconsistent with the answer.

(5) 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 the person or on his behalf in the proceedings arising out of the prosecution.

3.—(1) Power to—

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

- (i) carry out a search for, or inspection of, anything described in the order;
- (ii) make or obtain a copy, photograph or other record of anything so described;
- (iii) remove anything that the interim receiver is required to take possession of in pursuance of the order or which may be required as evidence in the proceedings under Part IV of the Act.

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

4.—(1) An order making any provision under paragraph 2 or 3 must make provision in respect of any information or other matter in the possession of an attorney-at-law in privileged circumstances, as defined by section 94(8) of the Act.

Entry, search,
etc.

Supplemen-
tary.

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

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

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

Management.

(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.