

COLLAS DAY | DISPUTE RESOLUTION

New Civil Forfeiture Regime in Guernsey

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The Forfeiture of Money, etc in Civil Proceedings (Bailiwick of Guernsey) Law, 2007 (the “Law”) recently came into force and represents a major step forward in the ability of Guernsey’s authorities to freeze and confiscate the proceeds of unlawful activities. The Law also facilitates greater international cooperation and assistance in dealing with the proceeds of unlawful conduct. In particular, foreign authorities will now find it much easier to request and receive assistance from H.M. Procureur (Guernsey’s equivalent of the UK’s Attorney General) and the Royal Court in doing so.

Forfeiture of Money

Where a claimant has reasonable grounds for suspecting that funds in a bank account are the proceeds of unlawful conduct, or are intended to be used in unlawful conduct, it can apply to H.M. Procureur for an order prohibiting the funds from being paid out of the account.

While any money is frozen, H.M. Procureur may make an application to the Royal Court of Guernsey for the forfeiture of the whole or part of the funds. The Royal Court may order the forfeiture of the money if it is satisfied on a balance of probabilities that the money is the proceeds of unlawful conduct or is intended for use in unlawful conduct. This lower burden of proof is the key difference between the new civil forfeiture regime and the existing criminal confiscation and forfeiture regime, which requires the much more onerous criminal burden of proof to be satisfied (i.e. beyond reasonable doubt).

At present, the Law only enables the forfeiture of money due to the fact that extra resources would be required to ascertain and manage other assets (such as houses, cars and boats) pending their disposal and realisation of their value. Those resources

are unavailable at present. It is expected that once adequate resources have been allocated and suitable provisions put in place, the civil forfeiture regime will be extended to cover such other assets.

Investigatory Powers

The Law also brings into force a wide range of powers to assist the progress of civil forfeiture investigations, including the following:

Production Orders:

The Bailiff of Guernsey may, on an application by or with the authority of H.M. Procureur, make a production order requiring a person specified in the application as appearing to be in possession or control of material, to produce such material to H.M. Procureur or a police officer, or requiring that person to give H.M. Procureur or a police officer access to the material.

Customer information orders:

A customer information order is an order that a bank covered by the application must, on being required to do so by notice in writing given by or with the authority of H.M. Procureur, provide any such customer information as it has relating to the person specified in the application. Essentially, this information is likely to be whether the bank holds accounts for the specified person and, if so, his account numbers, name, date of birth and address etc.

Account monitoring orders:

An account monitoring order is an order that a bank specified in an application for an order must, for the period stated in the order, provide account information of the description specified in the order to H.M. Procureur or a police officer. This is in order to enable the police to monitor movements of money in and out of suspect accounts.

Disclosure orders:

A disclosure order is an order authorising H.M. Procureur to give notice in writing to any person whom he considers to have relevant information requiring that person, in respect of any matter relevant to the investigation for the purposes of which the order is sought, to answer questions, to provide information or to produce documents.

These investigatory powers are also available under the criminal confiscation and forfeiture regime.

The Law also introduces a new ‘tipping-off’ offence. If H.M. Procureur or the police are conducting an investigation into whether any money is the proceeds of unlawful conduct, with a view to commencing proceedings in connection with freezing such funds or seizing cash, a person commits a criminal offence if they make a disclosure which is likely to prejudice such an investigation. It is also an offence for somebody to falsify, conceal or destroy any documents which are relevant to an investigation.

Assistance to other jurisdictions

Provided that it was granted by a 'designated country', an overseas forfeiture order may now be registered and enforced in the Bailiwick of Guernsey.

Under Section 53 of the Law, the States of Guernsey may designate any country for the purposes of the Law if it appears to the States that such country has legislation in force corresponding to the relevant provisions of the Law. These designated countries include the United Kingdom and Republic of Ireland.

Following registration of an overseas forfeiture order under the Law, the order has effect and is enforceable in all respects as if it were an order of the Royal Court for the forfeiture of monies made under the Law.

Conclusion

The Law significantly increases the powers of H.M. Procureur and the Royal Court to seize tainted property or assets. It will also give, for the first time, designated foreign jurisdictions the ability to seize such property without the need to apply to the Royal Court. Such significant advances in this area of legislation will assist the police and claimants alike in recovering assets obtained by, or to be used for, unlawful conduct.

For further information relating to the new civil forfeiture regime in Guernsey, please contact:

Gareth Bell
t: +44 (0)1481 734275
e: gareth.bell@collasday.com

Sam Dingle
t: +44 (0)1481 734234
e: sam.dingle@collasday.com



► **collas day** PO Box 140, Manor Place,
St Peter Port, Guernsey GY1 4EW
► **t:** +44 (0)1481 723191 **f:** +44 (0)1481 711880
e: inbox@collasday.com ► **w:** collasday.com

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▶ **collas day** PO Box 140, Manor Place, St Peter Port, Guernsey GY1 4EW
▶ **t:** +44 (0)1481 723191 **f:** +44 (0)1481 711880 **e:** inbox@collasday.com ▶ **w:** collasday.com