



## Ministry of Finance and Economic Development

<b>Policy Name</b>	<b>Asset Management (Proceeds of Crime) Policy</b>		
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<b>Authorizing Post</b>	Financial Secretary and Chief Officer		
<b>Relevant Laws</b>	<ul style="list-style-type: none"> <li>• Proceeds of Crime Law (2020 Revision)</li> <li>• Anti-Money Laundering Regulations (2020 Revision)</li> <li>• Public Management and Finance Law (2020 Revision)</li> <li>• Financial Regulations (2018 Revision)</li> </ul>		
<b>Related Policies</b>			
<b>Key Topics</b>	<p>This document covers the following topics:</p> <ul style="list-style-type: none"> <li>• the purpose of the Asset Management Policy;</li> <li>• the types of assets managed;</li> <li>• how the assets will be managed;</li> <li>• how the Treasury Department accounts for assets;</li> <li>• enforcement; and</li> <li>• asset sharing.</li> </ul>		
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## Terms

“CJICL”	Criminal Justice (International Cooperation) Law (2020 Revision)
“MLAT”	The Mutual Legal Assistance (United States of America) Law (2015 Revision)
“ODPP”	Office of the Director of Public Prosecutions
“POCL”	Proceeds of Crime Law (2020 Revision)
“RMU”	Risk Management Unit, Ministry of Finance & Economic Development

## Scope

1. The Asset Management (Proceeds of Crime) Policy (the “Policy”) applies to assets that have been confiscated through a court order or a civil recovery order as set out in the Proceeds of Crime Law (2020 Revision). This Policy does not apply to the management of the Government’s physical assets and equipment for its operations.

## Purpose

2. The purpose of this Policy is to provide clear guidance and a uniform approach to manage assets in accordance with the Law, to ensure that the outcome aligns with the objectives of the Public Management and Finance Law (2018 Revision) as it relates to asset management, and to ensure frozen, restrained or confiscated assets are managed in a manner that maximizes benefits and reduces risk.

## Statutory Framework

3. The statutory framework is provided for by the Proceeds of Crime Law (2020 Revision) (the “Law”) and the Public Management and Finance Law (2020 Revision).

## Appointment of Official Receiver

4. The Official Receiver is governed under the powers contained in the Public Service Management Law (2018 Revision) and is appointed from within the Ministry of Finance and Economic Development on prior consultation with the Deputy Governor, the Director of Public Prosecutions and the Financial Secretary. Where a receivership is ordered by a court, such receivership shall be performed by the Official Receiver. However, where it is inexpedient for the Official Receiver to perform that role, the court may appoint a receiver from the private sector.

## Powers and Functions of the Official Receiver

5. The powers of the Official Receiver are outlined in Part III, IV, Schedules 2 and 3 of the Law.
6. Part III of the Law, provides for the appointment of the Official Receiver to manage realizable property subject to a restraint order or enforce a confiscation order, not subject to appeal. On the application of the DPP to appoint the Official Receiver, the court may order a management

receivership in respect of any realizable property to which a restraint order applies or an enforcement receivership.

7. Where the Official Receiver is appointed under an order for management receivership or enforcement receivership by order of the Court, the Official Receiver can be authorized to take possession of the property; enter into a contract; sue; employ agents; execute powers of attorney; deeds or other instruments; manage the property; realize so much of the property as necessary to meet the receiver's remuneration and expenses; search or inspect anything authorized by the court; make or obtain copy, photograph or other record of anything so authorized; remove anything which the receiver is authorized to take possession of; or any other steps the court thinks appropriate.
8. Part IV of the Law provides for the appointment of the Official Receiver to manage recoverable property subject to an interim receiving order and act as trustee for recoverable property subject to a recovery order.
9. An interim receiving order may authorize the Official Receiver to exercise any of the powers referred to in Schedule 2 of the Law, take any steps the court thinks appropriate to secure the detention, custody or preservation of the property to which the order applies, to establish whether the property is recoverable or associated property and whether any other property is recoverable.
10. The functions of the Official Receiver as trustee under a recovery order include, securing the detention, custody or preservation of any property vested in the trustee, in property other than money to realize the value of the property, so far as practicable, in the manner best calculated to maximize the amount payable to the Accountant General.
11. Schedule 2 of the Law sets out the powers of the Official Receiver under an interim receiving order to include, seizure of property to which the order applies, to obtain information or require a person to answer any question, enter and search any property to which the interim order applies, and manage any property subject to the interim order.
12. In satisfying a recovery order Schedule 3 of the Law outlines the powers of the Official Receiver to include, selling the property subject to a recovery order; managing the property; start, carry on or defend legal proceedings in respect of the property; make compromises or arrangements with respect to any claim relating to the property.

## **Pre-seizure Planning**

13. Pre-seizure planning is the process of evaluating assets and confiscation scenarios prior to freezing or seizure of property. Law enforcement should consult with the ODPP and the Official Receiver as to whether an application for the appointment of a management receivership or recovery order should be made.
  - 13.1 Decisions to be considered during this stage are:
    - a. Should interim measures be taken?

- b. Should the asset be left in the control of the owner or possessor, or should the Official Receiver take possession?
- c. Where the asset is left in the control of the owner/possessor, which restrictions should be placed on the use or disposal of the asset?
- d. Where the asset is placed in the control of the Official Receiver, which administrative measures should be prepared to identify the legal liabilities and reputational risks to be minimized?
- e. the Official Receiver should consider whether the sale of asset maybe required particularly if the assets are perishable or the value diminishes.
- f. Where the management of the assets requires a specific skill not possessed by the Official Receiver, the Official Receiver shall notify the court and the court shall appoint a receiver from the private sector.

## Sale of Assets

- 14. The Law allows for sale of assets with or without the owner's consent in specific circumstances prior to the conclusion of the case. This includes assets which are perishable or which ought to be disposed of before their value diminishes. In accordance with industry best practice perishable or quickly depreciating assets may include but are not limited to, meat and produce; volatile assets such as cryptocurrencies; virtual assets; aircrafts and vessels; and limited edition vehicles. The selling or disposing of quickly depreciating assets during an interim order is provided for Section 88 and Schedule 2 of the Law.

## Preserving the Value of Assets

- 15. In order to ensure the safe keeping, efficient and effective management of seized property, consideration should be given to the class or type of property. Properties fall into the following classes: Freehold Property; Leasehold Property; Shareholdings; Trading Businesses; Motor Vehicles; Vessels and Airplanes; Precious Metals; Jewels; Artwork; Wine; Cryptocurrencies and Perishable Assets. There may be other classes of property however, the foregoing are more common in our jurisdiction.

When seeking to seize or restrain property, consideration must be given to:

- a. securing the property;
- b. preserving or maintaining the property;
- c. realizing the property;
- d. associated risks to the property; and
- e. use of third party professionals and suppliers.

## Considerations by Asset Class and Steps to be taken to Preserve the Assets

### 15.1 Freehold Property

#### a. *Title Review*

Prior to instructing valuers or agents, the Official Receiver must determine whether the property has good title. The Official Receiver should obtain title searches for each asset and ensure that they are reviewed to establish whether or not the property has a clean and saleable title as incumbrances such as charges and boundary issues may impact the value and disposal.

The Government's interest in the property by way of charge or restriction should be registered against the property. This will prevent the sale of the asset or the transfer of ownership.

*b. Property Insurance*

The Official Receiver must ascertain if the property has adequate insurance with a licensed property insurer and must notify the Ministry of Finance and Economic Development's RMU of all property interests and the appropriate values. If the property is uninsured the Official Receiver in consultation with the RMU shall seek professional advice on the scope of coverage needed and effect adequate coverage. Where the other assets of the defendant are insufficient to meet the cost of insurance premiums, consideration should be given to the possibility and risks of the property generating income to cover the costs of its management such as leasing the property. In the event that the property is incapable of generating income, the Government may seek reimbursement from the proceeds of sale.

*c. Secure the property*

All reasonable efforts must be made to secure the property. In doing so the Official Receiver shall consult with the RMU as to the appropriate method(s) of securing the property. Such measures may include, changing the locks to the premises and keys are held by the Official Receiver or its agents, implementing electronic means of securing the property such as security systems and cameras.

*d. Co-owner/third parties asserting interests in the property*

The property may be co-owned or there may be third parties claiming an interest in the property, such as tenants or sub tenants in occupation. Where this occurs steps must be taken to ensure that any third party claims are *bona fide* and that the interest concerned is not beneficially owned by the defendant/suspect. Once an order is in force the Official Receiver has a duty to consider any third party interest and take the necessary steps to ensure that the third party holds a bona fide interest and to seek the appropriate action under criminal or civil proceedings. If it is determined that the third party holds a bona fide interest in the property special consideration should be given to protect their interest, such as allowing them to remain on the property.

Where a commercial property is occupied by a business tenant, the Official Receiver must establish:

- I. The basis of the occupation;
- II. Whether there are any outstanding rent, service charge or rents deposits or insurance premiums; and
- III. Landlord obligations such as repairs to premises, and service contracts.

*e. Valuation and Disposal*

The Official Receiver should obtain a formal valuation where property assets are to be sold without a formal and lengthy marketing process. In establishing value it is useful to ascertain whether there are any recent valuations to underpin the value of the freehold property assets. This may expedite the process of the Official Receiver's own third party valuation. The Official Receiver should request that the valuation is made on both the basis of a going concern sale of the property, and a break-up sale, the latter of which should be on both the basis of vacant possession and with a tenant in-situ. The Official Receiver should also request that the valuer recommends the optimum disposal strategy, including estimated time frames, unless a real estate agent is to be engaged.

*f. Expenses*

Provisions would have to be made for the payment of utilities, maintenance fees and related expenses such as strata fees and service contracts which may be urgent at the date of restraint. If funds are available from the suspect's assets, or a restrained account, they should be used to maintain the overall value of the property. If funds are not available, the government may consider paying the expenses relating to maintaining and/or securing the property and seek reimbursement from any proceeds of sale. However, where expenses are exceeding the realizable value of the asset, the government should consider selling the asset.

**15.2 Leasehold Property**

A leasehold property is a property occupied under an agreement with a landlord (usually a lease but does not have to be) under which a party can occupy it for a fixed period of time for the payment of a regular rental. Expert advice should be sought when restraining or managing a leasehold property under an interim or confiscation order.

**15.3 Businesses/Shareholdings**

Should it become necessary to appoint a management receiver to manage a company, the DPP shall appoint a receiver with the relevant expertise from the private sector.

**15.4 Motor Vehicles, Boats, Vessels and Airplanes**

On appointment, the Official Receiver shall consult with the RMU on the best way to manage these types of assets. The RMU will notify the government's insurers and implement its various policies regarding these types of assets.

*a. Maintenance*

Prior to the seizure of any assets consideration must be given to the appropriate storage facility for the proper maintenance and security of seized vehicles, boats, vessels and airplanes, and the appropriate expertise sought in the management of these assets.

*b. Valuation*

Considering the expenses and the depreciating natures of motor vehicles, boats, vessels and airplanes, it may be best not to store these types of assets for the duration of the proceedings as their realizable value may not cover the cost of maintaining them. Consideration should be given to selling such assets while they are in fairly good condition.

When deciding whether to sell these types of assets, the Official Receiver must consult the RMU and an expert on the particular asset to determine its value.

*c. Retention by Suspect*

A final option to consider would be allowing the suspect to retain the use of such assets during the course of the confiscation proceedings and to post a bond guaranteeing payment of an amount equivalent to its value at the time the case was initiated.

#### **15.5 Precious Metals, Jewels, Artwork and Wine**

On appointment, the Official Receiver shall immediately notify the RMU and retain expert for inspections, verifications and valuations of such assets for the purposes of insurance and sale. The Official Receiver and RMU on advice of the expert will take all reasonable steps to secure the property and arrange appropriate storage.

#### **15.6 Perishable and Rapidly Depreciating Assets**

This typically includes assets such as food, grain, flowers, farm animals, and farm crops. Ideally, the Official Receiver should take steps to sell the perishable or rapidly depreciating assets and place the proceeds from sale in a trust account.

#### **15.7 Cryptocurrencies**

Due to the volatile nature of cryptocurrencies, the Official Receiver will on restraint manage the cryptocurrency on a short term basis and shall take steps to convert cryptocurrency to fiat currency within five (5) business days of appointment. Once converted, the proceeds are to be placed on term deposit/trust pending the outcome of the proceedings.

Alternatively, the Official Receiver, in consultation with the Financial Secretary, may exercise discretion to appoint one of the pre-approved custodians to take custody, manage, convert and realise the cryptocurrency where it is deemed appropriate to do so.



## **Accounting for Restrained Assets and Proceeds from Sale Assets subject to Confiscation Orders**

16. Funds will usually be received as USD drafts, electronic funds transfer (EFT) and international wire transfers. In some cases, the Government receives the full proceeds of these amounts which are later shared with the requesting country. The opposite is also true where the Government is the requesting party.

### **Receipt and Accounting of Funds Received under MLAT/CJICL and POCL**

- 16.1 Funds received under CJICL and MLAT are usually received in the form of USD drafts and wire transfers which have been sent to the Chief Justice or the ODPP are then forwarded to the Ministry of Finance & Economic Development for processing by Treasury. EFTs and international wire transfers are paid in directly to the Government's bank account at Royal Bank Cayman ("RBC") for CJICL and Cayman National Bank ("CNB") for MLAT. Information on the EFTs and international wire transfers, including cause numbers are received from the Chief Justice.
- 16.2 These funds are held in trust accounts pending the determination of the sharing agreement between both governments. Once an agreement has been made, the government's portion will be recorded as general revenue. The funds are recorded according to its source (CJICL, POCL or MLAT) and deposited at the Government's designated bank.
- 16.3 Funds received as a result of civil recovery order under the POCL are received by the Treasury Department from the Bureau of Financial Investigations, are recorded in the civil recovery register. On receipt of the funds, the Financial Secretary will determine whether the funds should be placed in general revenue or co-mingled with other funds recovered under the POCL.

## **Asset Sharing**

17. CJICL and MLAT allows for the provision of mutual legal assistance between the USA, other international jurisdictions and the Cayman Islands for investigation, prosecution, and suppression of criminal assets. Section 16 of the Treaty and Section 19 of the CJICL allows for the Government and the requesting country to determine how the assets/proceeds of a confiscation order would be shared between them.

### **Process of Asset Sharing**

- 17.1 Once the governments have agreed to the amount to be shared having taken into consideration the respective costs expended by them to obtain/obtain and realise the asset, the agreed sum will be sent to Cabinet to approve the agreement.
- 17.2 If Cabinet is in agreement, the Financial Secretary will instruct the Cash Management Unit to facilitate payment/receipt payment. On determining the sharing agreement, the retained portion is treated as executive revenue and accounted for under paragraph 16.2 above.

## **Disposal and Use of Assets under Confiscation Order**

18. Once an order for final confiscation/forfeiture has been made, and the assets have been shared in the case of domestic and CJICL/MLAT assets respectively, the Government may determine how it wishes to dispose or use the assets or proceeds in accordance with national laws. However, the Government should give special consideration to allocating the shared asset for the use of law enforcement purposes, including drug prevention and rehabilitation.

### **Process for the Disposal and Use of Confiscated Assets**

- 18.1 The Asset Forfeiture Fund Review Committee (AFFRC) will determine the value of the funds available to Government under this arrangement and decide on the best use of the funds. Cabinet will determine how proceeds should be spent. All disbursements from the fund are reviewed and agreed by the AFFRC.
- 18.2 When a request for expenditure has been approved by the AFFRC, it will be treated as output expenditure. Where an asset has been purchased it will be treated as equity injection and will be included in the Annual Plan and Estimates. Funding of the output expenditure and the equity injection would therefore be provided by Cabinet. Where there is no appropriation at the start of a fiscal year for the use of the funds, a supplementary appropriation will be required.

### **Centralized Database, Asset Registry and Data Management**

- 19 The Official Receiver shall create and maintain asset registry and data management system to accurately record and manage the assets under the control of the Official Receiver.

### **Reporting Statement**

- 20 A report shall be prepared at the end of the financial year and presented to the Financial Secretary. The Reporting Statement shall include:
- a. description and value of the restrained assets under the control of the Official Receiver;
  - b. value of assets realized following a confiscation order;
  - c. number of confiscation orders made;
  - d. total funds retained following asset sharing;
  - e. balance of the trust accounts; and
  - f. information relating to disbursements and how the assets will be used.

### **Monitoring of this Policy**

- 21 A review of this Policy will take place on an annual basis. An ongoing program of performance monitoring will be developed to evaluate the operational effectiveness of the Asset Recovery Programme.

### **Retention of Information and Records**

- 22 The information and records relating to frozen, restrained and confiscated assets shall be retained in accordance with the Government's Policy on document retention as outlined in Chapter 31 of the Financial Procedures Manual.

## Appendix A – Management Record

Date Official Receiver Appointed	Date of Request	Type of Request	Responsible Party	Response	Date Actioned/Comp

## Appendix B – Asset Registry

Entry No.	Cause No	Defendant	Cat/Type of Offence	Asset Type	Value of Asset	Location of Asset	Date of Confiscation	Date Official Receiver Appointed	Account No.	ORG No.

## Appendix C – Proceeds of Crime Law (2020 Revision) Schedule 2

### SCHEDULE 2

#### Powers of Official Receiver During an Interim Receiving Order

(section 88)

##### *Seizure*

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

##### *Information*

2.
  - (1) Power to obtain information or to require a person to answer any question.
  - (2) A requirement imposed in the exercise of the power has effect in spite of any restriction on the disclosure of information (however imposed).
  - (3) An answer given by a person in pursuance of such a requirement may not be used in evidence against him in criminal proceedings.
  - (4) Subparagraph (3) does not apply —
    - (a) on a prosecution for an offence under section 101 of the *Penal Code (2019 Revision)* (perjury); or
    - (b) on a prosecution for some other offence where, in giving evidence, he makes a statement inconsistent with it.
  - (5) An answer may not be used by virtue of subparagraph (4)(b) against a person unless —
    - (a) evidence relating to it is adduced; or
    - (b) a question relating to it is asked, by him or on his behalf in the proceedings arising out of the prosecution.

##### *Entry, search, etc.*

3.
  - (1) Power to —
    - (a) enter any premises in the Islands to which the interim order applies; and
    - (b) take any of the following steps —
      - (i) to carry out a search for or inspection of anything described in the order;
      - (ii) to make or obtain a copy, photograph or other record of anything so described; or
      - (iii) to remove anything which he is required to take possession of in pursuance of the order or which may be required as evidence in the proceedings under Part IV relating to the civil recovery orders in the Grand Court.
  - (2) The order may describe anything generally, whether by reference to a class or otherwise.

##### *Supplementary*

4.
  - (1) An order making any provision under paragraph 2 or 3 shall make provision in respect of legal professional privilege.
  - (2) An order making any provision under paragraph 3 may require any person —

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

#### *Management*

- 5.
  - (1) Power to manage any property to which the order applies.
  - (2) Managing property includes —
    - (a) selling or otherwise disposing of assets comprised in the property which are perishable or which ought to be disposed of before their value diminishes;
    - (b) where the property comprises assets of a trade or business, carrying on, or arranging for another to carry on, the trade or business; and
    - (c) incurring capital expenditure in respect of the property.

## Appendix D – Proceeds of Crime Law (2020 Revision) Schedule 3

### Powers of Trustee for Civil Recovery

(section 97)

#### *Sale*

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

#### *Expenditure*

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

#### *Management*

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

#### *Legal proceedings*

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

#### *Compromise*

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

#### *Supplementary*

6. (1) For the purposes of, or in connection with, the exercise of any of his powers —
  - (a) power by his official name to do any of the following —
    - (i) holding property;
    - (ii) entering into contracts;
    - (iii) suing and being sued;
    - (iv) employing agents;
    - (v) executing a power of attorney, deed or other instrument; and
  - (b) power to do any other act which is necessary.