

**THE STATES OF DELIBERATION**  
**of the**  
**ISLAND OF GUERNSEY**

**POLICY & RESOURCES COMMITTEE AND  
COMMITTEE FOR HOME AFFAIRS**

THE FUTURE GOVERNANCE AND OPERATION OF THE SEIZED ASSET FUND

The States are asked to decide:

Whether, after consideration of the Policy Letter entitled “The Future Governance and Operation of the Seized Asset Fund”, dated 08<sup>th</sup> February, 2021, they are of the opinion:

1. To agree that receipts from seized assets will be first used to support cost recovery, victim compensation and asset sharing.
2. To agree that any remaining assets will be divided between a new Seized Asset Fund and a fund for community purposes, with an allocation of 80% to the Seized Asset Fund and 20% to community purposes (as set out in section 6.5 of the Policy Letter).
3. To agree that the Policy & Resources Committee will have the authority to approve the use of assets in the Seized Asset Fund for distinct initiatives aligned with the Fund’s purpose (as set out in section 6.6 of the Policy Letter).
4. To agree that the Policy & Resources Committee will consult the Committee *for* Home Affairs before approving any funding from the Seized Asset Fund.
5. To approve the immediate transfer of 20% of the uncommitted balance of the current Seized Asset Fund to the Social Investment Fund.
6. To agree that the new arrangements for the governance and operation of seized asset distribution should be introduced on a policy basis as soon as practicable and to direct the Policy & Resources Committee to liaise with HM Receiver General in respect of the implementation of the new arrangements ahead of the introduction of legislation.
7. To direct the preparation of legislation as necessary to put the seized asset arrangements on a legislative footing.

The above Propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications in accordance with Rule 4(1) of the Rules of Procedure of the States of Deliberation and their Committees.

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THE FUTURE GOVERNANCE AND OPERATION OF THE SEIZED ASSET FUND

The Presiding Officer  
States of Guernsey  
Royal Court House  
St Peter Port

08<sup>th</sup> February 2021,

Dear Sir

**1. Executive Summary**

- 1.1. The Seized Asset Fund forms an important part of the Bailiwick of Guernsey's asset recovery regime. Recovered criminal proceeds without an alternate claim are deposited into the Fund where they are then distributed to the islands' benefit. Under present arrangements, the contents of the Fund are assigned to specific initiatives led by Law Enforcement or the Law Officers' Chambers, or to societal initiatives aimed at community support and crime reduction.
- 1.2. In 2018, the States agreed<sup>1</sup> that a review of the governance and operation of the Fund would be carried out by the Committee *for* Home Affairs and the Policy & Resources Committee ("the Committees"). The need for a review was supported by a letter from HM Procureur which recognised that the Fund arrangements, established in 1995, were out of step with best practice and recommended that the Fund be put on a statutory footing.
- 1.3. Over the course of the review, issues were identified in regard to the absence of political representation in the Fund structure, limited Fund reporting, and organisational limits on accessing funding. The Committee *for* Home Affairs and the Policy & Resources Committee, informed by consultation with the Law

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<sup>1</sup> States of Guernsey Annual Budget for 2019, Billet d'État No XXIV - Resolutions

Officers, have developed a seized asset distribution model which addresses these limits and reflects international obligations and good practice.

- 1.4. In the proposed model, seized assets are first used to recuperate asset recovery costs, support victim compensation, and fulfil any asset sharing agreements with other jurisdictions. This proposal is consistent with the Bailiwick's international obligations and reflects the importance of a sustainable asset recovery regime.
- 1.5. After the first three priorities are met, the new model would divide any remaining funds between a ring-fenced internal fund (80%) and a fund for community purposes (20%).
- 1.6. The internal fund would be available to individual initiatives with no ongoing funding requirement aimed at improving the performance of the criminal justice system (particularly the tracing and recovery of assets, key objectives in Law Enforcement's approach to economic crime), reducing the crime rate, and repairing the damage caused by crime. The fund would be available to initiatives that are not technically criminal justice matters but which are relevant to criminal justice more widely. For example, it is essential that the Bailiwick is able to prioritise the effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and the financing of proliferation, and other related threats to the integrity of the international financial system, in line with the Financial Action Task Force (FATF) Recommendations and the global focus on tracing and confiscating criminal proceeds.
- 1.7. It is proposed that the Social Investment Fund be used to distribute the funds intended for community purposes. The Social Investment Fund is a separately constituted body, acting as a States partner, which uses public and some private funds to invest in the Bailiwick's charitable and community sector organisations. Distribution through this mechanism will ensure that seized asset funds are more easily accessible to third sector organisations, prevent unnecessary duplication of process and allow applicants to access existing support to develop and propose initiatives.
- 1.8. To further good governance, it is proposed that the internal fund be governed by a States Committee which will introduce political representation into the governance structure. It is recommended that the Policy & Resources Committee fulfil this role. The Committee has mandated responsibility for the allocation of public funds and is independent from the use of seized asset funding. It is also well positioned to coordinate applications from different areas, ensure that proposed initiatives are aligned to wider States work, and achieve an appropriate balance between the use of General Revenue and seized asset funding.

- 1.9. The Policy & Resources Committee would be required to follow appropriate guidelines when assessing an initiative's impact on the criminal justice system. These guidelines would be produced by the Law Officers with support from Law Enforcement. In addition, before considering applications, the Policy & Resources Committee would be required to formally consult with the Committee *for* Home Affairs.
- 1.10. The prominent role of the Committee *for* Home Affairs reflects the focus of the Committee's mandate. The Committee *for* Home Affairs has clear policy and advisory responsibilities for justice policy, crime prevention and law enforcement (including efforts to address economic crime). Operations within the mandate of the Committee are also most likely to contribute to the aims of the internal fund and any application of the fund will need to be aligned to the objectives of these services and will need to consider any associated ongoing cost or service implications.
- 1.11. The transparency of the seized asset regime will be further improved by an annual reporting cycle, both in terms of the internal fund and the allocation to the Social Investment Fund. Necessary operational confidentiality will be maintained as part of any reporting. Further clarity on the use of funding will also be driven by placing the fund arrangements on a statutory footing. This will clearly demonstrate to the public and international partners how assets are being governed and used.
- 1.12. Further detail on the current arrangements and the future model are laid out in this policy letter. The Committees believe that the proposed model retains the current pragmatic and proportionate approach, whilst ensuring that the Bailiwick can continue to meet its international obligations and derive benefits from seized asset funding.

## **2. Introduction – what is the Seized Asset Fund?**

- 2.1. Like many developed jurisdictions, the Bailiwick of Guernsey has a comprehensive legal framework for the identification and recovery of criminal proceeds. By seizing such assets, the islands prevent them from being reinvested in further criminality and demonstrate a commitment to tackling international issues such as money laundering, terrorist financing and drug trafficking.
- 2.2. The process of asset recovery generally consists of four phases: an intelligence gathering phase, an investigative phase, a judicial phase, and a disposal or distribution phase. This may be carried out in response to domestic criminality or to confiscate locally held assets on behalf of another jurisdiction (often leading to an asset sharing agreement). Whilst each step in the recovery process is

significant, this policy letter is focused on the Bailiwick's arrangements for the final distribution of assets.

- 2.3. In the Bailiwick, seized assets without an alternate claim are transferred to the Seized Asset Fund. The Fund was set up in 1995, with the agreement of the then Advisory and Finance Committee. A report was made to the States on the establishment of the Fund as part of the Policy Planning, Economic and Financial Report<sup>2</sup>, following advice given by HM Procureur (acting in his capacity as HM Receiver General).
- 2.4. Originally, the Fund was intended to provide a resource in the fight against drug trafficking. Since it was established however, international standards on financial crime have advanced and broader confiscation powers have been introduced. The recovery route for assets in the Seized Asset Fund may have been through confiscation orders (for example, orders issued under the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999), as part of asset sharing agreements with partnering jurisdictions, or through civil forfeiture. Civil forfeiture is not the focus of this policy letter however the current practice of allocating such assets to the Seized Asset Fund will continue as part of any future model (further information on the legislative framework governing asset recovery is available in Appendix 1). HM Procureur has advised that the changes in the Fund's circumstances (Appendix 1) have gradually exposed it to a different range of risks and opportunities.
- 2.5. In order to ensure that the Fund continues to operate in an effective manner, the States agreed that a review of its governance and operation should be carried out by the Committee *for* Home Affairs and the Policy & Resources Committee ("the Committees"). The Committees have carried out this review and developed an effective future operating model which remains proportionate to the Islands' needs. The model is based on lessons learned from other jurisdictions and the existing good practice and opportunities in the Fund's current arrangements.

### **3. Existing Arrangements - How does the Seized Asset Fund work?**

- 3.1. The current operation of the Fund is laid in detail out in the Seized Asset Fund Expenditure Policy<sup>3</sup>. Sections 3.2-3.3 provide an overview of this policy, how it prioritises asset distribution and the decision makers involved.

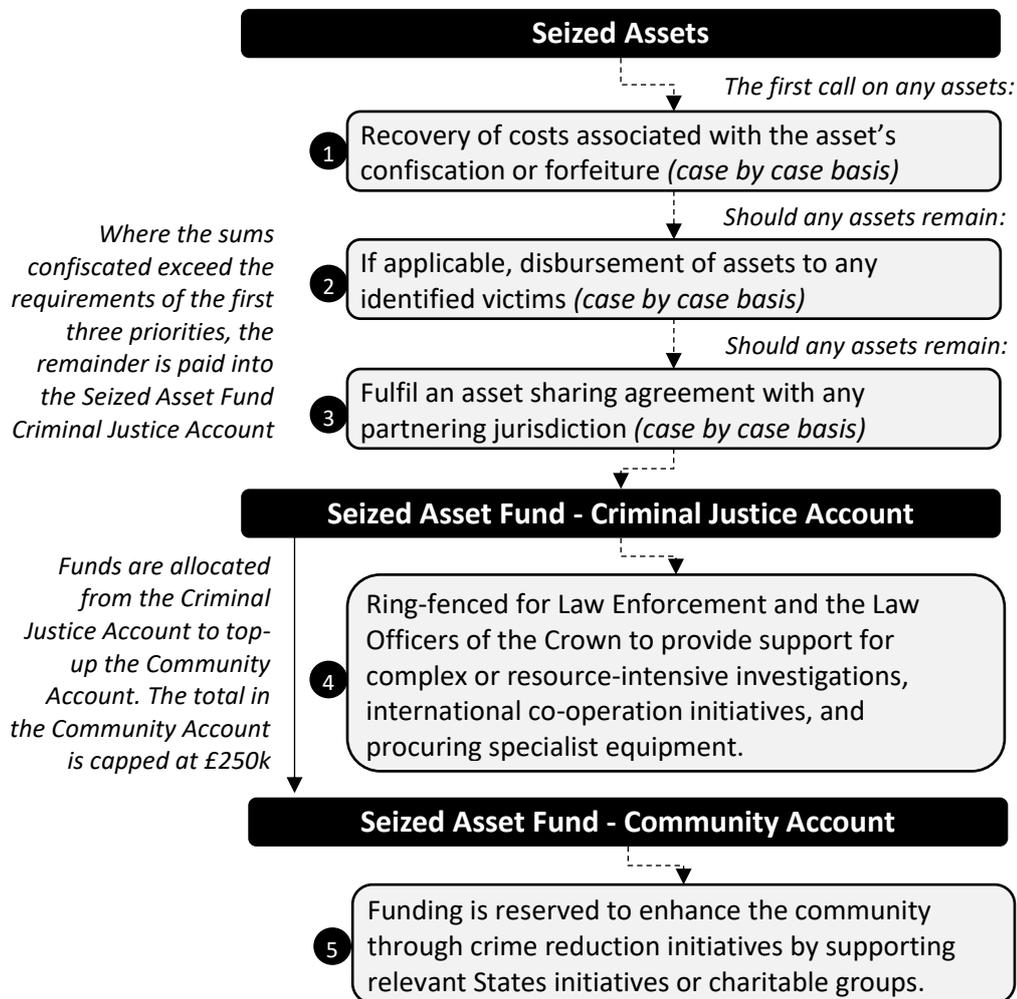
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<sup>2</sup> 1995 Policy Planning, Economic and Financial Report, Billet d'État XV, 1995

<sup>3</sup> Seized Asset Fund Expenditure Policy

### 3.2. Distribution of Seized Assets

3.2.1. Figure 3.1 summarises the current arrangements for the distribution of confiscated or forfeited assets.



**Figure 3.1: The existing model for the distribution of seized assets**

3.2.2. The current model gives precedence to cost recovery, victim compensation and asset sharing (1, 2, 3), each of which are assessed and apportioned on a case-by-case basis. The prioritisation of these three uses is in line with global expectations and best-practice, with a number of international treaties and guidance documents emphasising their importance for ensuring an effective and sustainable asset recovery regime (further information on international expectations associated with asset distribution is provided in section 6).

3.2.3. Where the sum confiscated exceeds these requirements, and provided that it is not a pre-condition of any asset share that the funds are put to a specific purpose, the remainder is retained in the Seized Asset Fund to be allocated to

Law Officers' Chambers or Law Enforcement initiatives (4), or to support crime reduction initiatives in the community (5).

- 3.2.4. The funding ring-fenced for Law Enforcement and the Law Officers' Chambers is allocated, on a case by case basis, to support complex or resource-intensive investigations, discrete international co-operation initiatives, or to procure specialist equipment. Financial support is not provided to services which should otherwise be funded through general revenue (although service pilots may be funded) or, as receipts are not consistent, where ongoing funding is required.
- 3.2.5. The Seized Asset Fund Community Account has wider eligibility criteria. It can be allocated to related initiatives of community benefit, such as crime prevention initiatives, drug and alcohol rehabilitation and mental health initiatives, and to support groups like Victim Support and Witness Service or other relevant charitable organisations. The account, however, is currently limited to £250k and individual applications cannot exceed £50k. As with the ring-fenced funding, long-term support is not available as ongoing finance cannot be guaranteed.
- 3.2.6. By focusing the use of Fund assets primarily on the criminal justice system, the Bailiwick has benefited from a positive feedback loop whereby the performance of the asset recovery regime, and wider criminal justice operations, is improved by financial support from recovered assets which in turn results in an increased volume of assets being seized and further financial support to improve the system. This relationship is recognised in asset recovery regimes across the world.

### 3.3. Fund Governance and Administration

- 3.3.1. Applications to the Seized Asset Fund are made on a case by case basis. The authority to grant any funding requests rests with the Seized Asset Fund Committee, which is chaired by HM Procureur (in her role as HM Receiver General). The committee comprises H.M. Receiver General, H.M. Deputy Receiver General, the States Treasurer, the Chief Executive, the Director of Operations, Justice and Regulation and the Head of Law Enforcement.
- 3.3.2. In the case of any applications to the Community Account<sup>4</sup>, a sub-committee can assess and grant funding requests up to £50k based on the request's alignment to the account's community enhancement aim, but in practice applications have been decided by the full Committee. The community account has two application periods each year, between January and March and June and August. Financial support is not available from the account at any other time.

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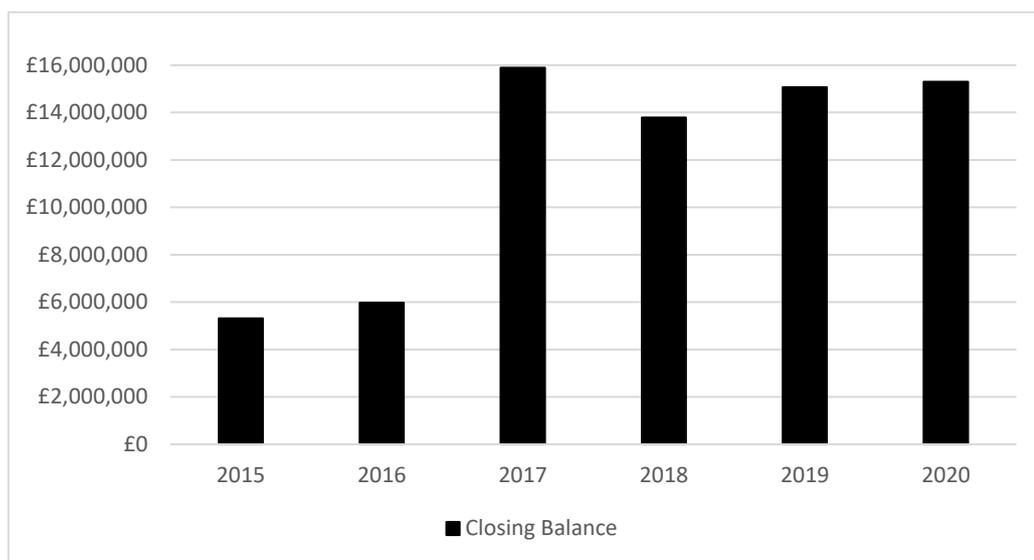
<sup>4</sup> Seized Asset Fund Community Account - Terms of Reference

3.3.3. Administrative support for any meetings of the Fund committee is provided by the Law Officer’s Chambers. Fund decisions are recorded and accounts for the Fund are maintained, however, historically, these have not been published. When the Fund was first established, these accounts were prepared by Treasury.

3.4. **Under this existing operating model, the financial support available from seized assets has successfully contributed to a wide range of valuable initiatives. Since the Seized Asset Fund was established however, the volume of assets involved has significantly increased and the international environment within which asset recovery takes place has advanced.**

#### 4. Accounts - What is the financial status of the Seized Asset Fund?

4.1. The Seized Asset Fund has a current balance of approximately £15.3m (£3m of this balance is committed to future work)<sup>5</sup>. Figure 4.1 illustrates how the Fund balance has changed between 2015 and 2020.



**Figure 4.1: Seized Asset Fund Closing Balance 2015 – 2020.** The Fund received a large injection of income from a seizure in the United States of America in 2017.

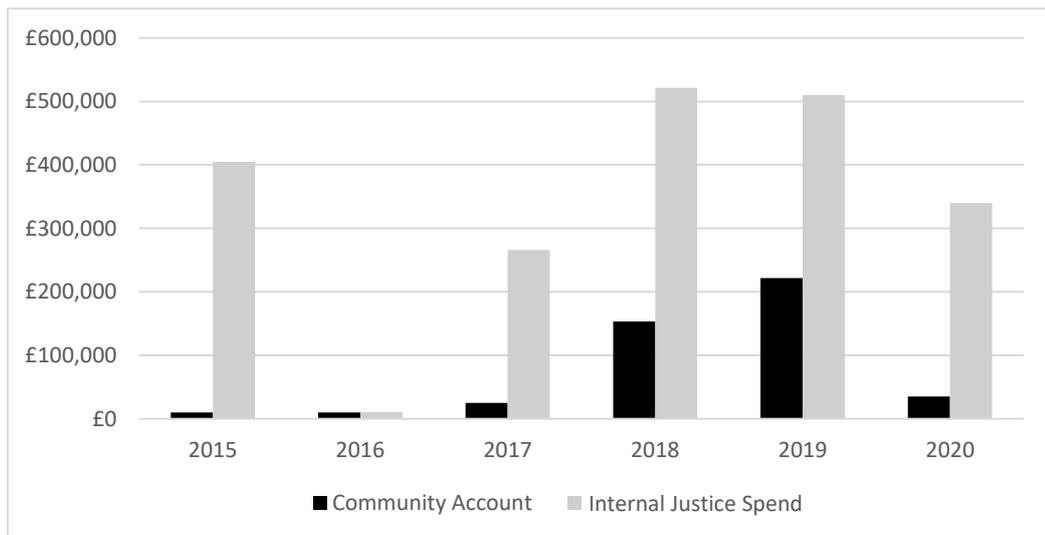
Payments from the Fund have been used to support the criminal justice system and thereby assist the Bailiwick to meet its international obligations. Both community and States initiatives have received investment, including the

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<sup>5</sup> Based on accounts which are subject to audit

purchase of NUIX, a computer software programme to facilitate searches of complex documentation in financial investigations, and funding a time limited pilot of a dedicated asset recovery team, the International Cooperation and Asset Recovery Team.

4.2. Figure 4.2 illustrates the division of funding between the Seized Asset Fund Community Account and remaining spend from the Fund. On average, 20% of spend has been dedicated to initiatives of community benefit through the Community Account.



**Figure 4.2: Spend from the Community Account and the main Fund. Income dedicated to asset sharing agreements has not been included in this analysis.**

4.3. **The balance of the Seized Asset Fund has risen over the last few years. The scale of funding involved emphasises the need to ensure that the Fund has an appropriate governance structure and an effective mechanism for funding beneficial initiatives.**

**5. Issues and Opportunities – what are the potential areas for improvement?**

5.1. The Seized Asset Fund was established over twenty years ago. In this time, the Fund has supported a range of successful States’ and community initiatives. The circumstances within which the Fund operates however, have evolved over the years. For example, the focus of international compliance interests on asset management and disposal regimes has increased and the legal framework for asset recovery and the structure of Law Enforcement have changed, increasing the volume of assets deposited in the Fund. These changes have resulted in the Fund’s exposure to different opportunities and risks.

5.2. In reviewing the Fund's operation and governance, the Policy & Resources Committee and Committee *for* Home Affairs, in consultation with the Law Officers, have sought to build on existing good practice and identify options for improvement. Sections 5.3 to 5.5 describe some of the opportunities to improve the current arrangements. By taking these opportunities forward, the operation of the Seized Asset Fund should better reflect the States' commitment to good governance and sound financial management, however any improvements made will need to remain proportionate to the Bailiwick's circumstances.

### 5.3. Governance of the Fund

#### 5.3.1. *Increased Political Representation*

5.3.2. The current governance model for the Seized Asset Fund includes a committee established at Law Officer and States of Guernsey officer-level. Decisions concerning the application of the Fund are taken by H.M. Receiver General, after consulting with committee members, including H.M. Receiver General, H.M. Deputy Receiver General, the States Treasurer, the Chief Executive, the Director of Operations, Justice & Regulation and the Head of Law Enforcement.

5.3.3. Whilst this committee include experienced senior officers and Crown appointees, it includes the main users of the fund and there is no political representation in the structure. This differs from wider governance in the States where politicians are responsible for, and have visibility of, expenditure. Whilst political review of Fund applications might not be ideal in a jurisdiction with a greater volume of recovered assets and more disparate services, political representation is commonly seen in the decision-making structures of other small jurisdictions. In Jersey, for example, legislation provides that the Minister for Treasury and Resources approves expenditure from the Criminal Offences Confiscations Fund (Jersey's equivalent of the Seized Asset Fund), following consultation with the Attorney General.

5.3.4. **By including appropriate States Members in the Fund's governance, or by making use of an existing States' Committee, the Seized Asset Fund's visibility would be enhanced, and the Fund would move in line with the States' wider governance structure. This would also help ensure applications are not agreed without consideration of wider budget implications and strategic priorities.**

#### 5.3.5. *Increased Reporting*

5.3.6. An analysis of Seized Asset Fund expenditure is not currently published. While there will remain a need to maintain operational confidentiality for Law Enforcement and the Law Officer's Chambers cases, there is no reason why transparent reporting on the Fund cannot otherwise be achieved, going forward.

5.3.7. **Mandatory annual reporting to the States of the Fund’s distribution would help to enhance its overall transparency. In addition, although information about the Seized Asset Fund Community Account and the Fund’s Expenditure Policy are currently available on the Law Officers’ website, greater reporting would help to draw attention to the financial support available to external organisations so as to generate more applications and better demonstrate the Islands’ use of seized assets. It would also act as a deterrent to criminals by demonstrating Guernsey’s commitment to the use of repressive measures whenever necessary.**

5.4. Legislative Provision

5.4.1. The Seized Asset Fund is currently operated on a policy basis only and has not been established under legislation. This issue was first identified in the International Monetary Fund (IMF) report<sup>6</sup> carried out in 2003 which recommended that consideration be given to adopting legislation to provide for an asset forfeiture fund and for asset sharing with other jurisdictions. The lack of a legal basis for the fund was also raised in a letter to the Policy & Resources Committee and Committee *for* Home Affairs from HM Procureur in 2019.

5.4.2. **Without legislative provision, the Islands’ arrangements may be perceived as less binding by international partners or by the public. Additionally, without resolution from the States Assembly, the establishment of the Fund remains as per the 1995 model and with the structure and governance as laid down in its Constitution.**

5.5. Purpose of Funding

5.5.1. *Outcome-based Allocation*

5.5.2. The majority of assets held in the Fund are currently ring-fenced for Law Enforcement and the Law Officers (although other service areas and the third sector are eligible for limited funding from the community account). The criminal justice functions discharged by Law Enforcement and the Law Officers (which include not only the investigation and prosecution of crime and recovery of related criminal proceeds, but also financial intelligence functions and the civil forfeiture of the proceeds of crime) are likely to be the services with the greatest capacity to improve the asset recovery process and impact criminal activity.

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<sup>6</sup> Guernsey-Crown Dependency of the United Kingdom: Assessment of the Supervision and Regulation of the Financial Sector Volume II—Detailed Assessment of Observance of Standards and Codes

However, there are other services within the remit of the Committee *for* Home Affairs which have a key role to play in the effective operation of the criminal justice system, such as the prison and probation services, as well as services that are outside the remit of the Committee *for* Home Affairs but are nonetheless an essential part of the anti-money laundering and terrorist financing (AML/CFT) framework, such as the Guernsey Registry. In addition, there may be initiatives relating to other services, such as health and education, which have an indirect, but nevertheless meaningful, impact on criminal justice related matters, particularly in repairing the damage of crime.

**5.5.3. In this case, restricting access to the majority of Fund assets according to the purpose for which they will be used, rather than restricting funding to specific service areas, would offer a more flexible approach appropriate to the size of the jurisdiction and the volume of assets seized.**

5.5.4. *Community Account Cap*

5.5.5. The initial overall cap on the Community Account (£250k) was deliberately established to ensure that the majority of funding was used to support the activity of Law Enforcement and the Law Officer's Chambers. Applications to the Community Account have also been limited to £50k by agreement of the Fund committee. This ensures that multiple, and wide-ranging, initiatives can be funded at the same time, rather than a single initiative consuming all of the resource. However, it does restrict community investment to relatively small initiatives, the number of which is currently limited by the overall cap.

**5.5.6. If the overall cap on community funding were amended to reflect a percentage of the available proceeds, it might enable more initiatives to be supported following cases with particularly high asset forfeiture.**

5.5.7. *Opportunity to Combine States' Funding Sources*

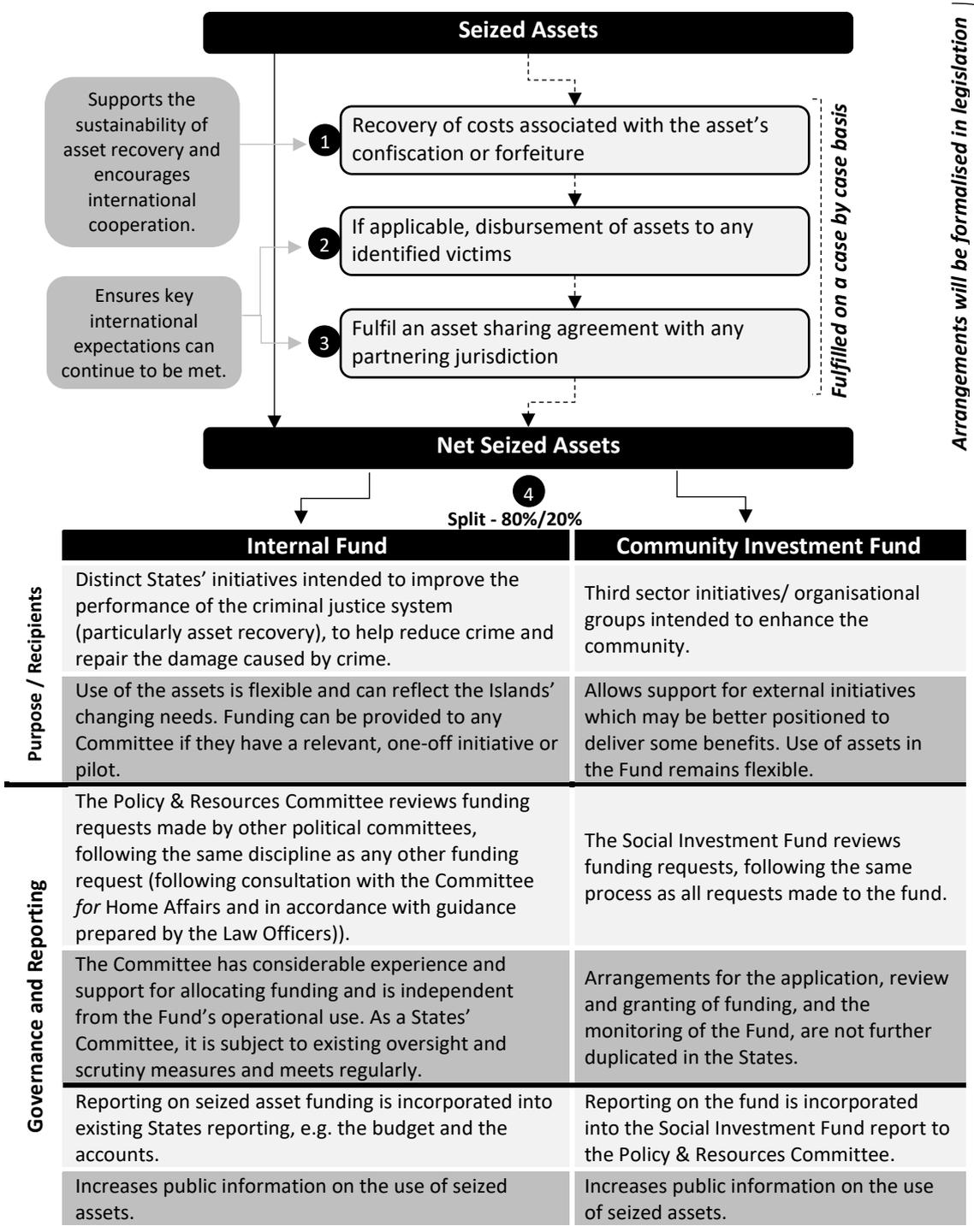
5.5.8. As the Fund is not comprised of States' funding or grants, it has been governed separately from these forms of resource. As such, it is potentially more difficult for service areas or NGOs to combine resources from the Fund with other funding sources.

**5.5.9. Enhancing the ease with which financial support could be combined, or applications considered together, may help to maximise the benefit that can be generated for the community and allow the Fund to contribute to more significant or long-term initiatives by helping to mitigate the risk associated with unpredictable receipts from asset recovery.**

- 5.6. **The above opportunities and issues have been considered by the Policy & Resources Committee and Committee *for* Home Affairs as part of their review of the Fund. Alongside lessons taken from international guidance, best practice and other jurisdictions, the Committees have used these insights to develop a model for the future operation and governance of seized assets. This model is described in detail in Section 6.**

## 6. Future Arrangements - What will the proposed model look like?

6.1. Based on the Policy & Resources Committee and Committee *for* Home Affairs review, figure 6.1 provides an overview of the proposed governance and operation for the distribution of seized assets.



**Figure 6.1: Proposed model for the governance and operation of seized asset funds.**

6.2. Within the proposed model, assets recovered would continue to be allocated for the recovery of costs, disbursement to victims and asset sharing, however the net receipts (i.e. where the sums confiscated exceed the requirements of the three priorities) would be split between internal (States) and community investment. These would be managed and governed separately to ensure that appropriate conditions are in place for the different stakeholders.

6.3. The model aims to address the key issues with existing arrangements by focusing on outcomes rather than service area and by using existing States' governance and reporting mechanisms to improve transparency, good governance, and efficiency. Sections 6.4 to 6.8 describe the components of the proposed model in further detail.

#### 6.4. Case by Case – Prioritised Distribution (1-3)

6.4.1. Like the existing model, the proposed arrangements prioritise **(1) the recovery of operational costs, (2) victim compensation and (3) asset sharing**. These uses are common across jurisdictions and are strongly encouraged by international agreements and guidance.

(1) An analysis of the laws and practices on asset recovery in EU Member States<sup>7</sup> identified that all Members had mechanisms in place for victim compensation. Furthermore, several international agreements strongly encourage jurisdictions to prioritise the use of recovered assets to compensate victims of crime. Articles 14 and 25 of the United Nations Convention against Transnational Organised Crime<sup>8</sup> (“UNTOC”) provide for the return of recovered proceeds to prior legitimate owners and for compensating victims over payment to the State. Article 57 of the United Nations Convention against Corruption<sup>9</sup> (“UNCAC”) further states that State Parties should give priority consideration to compensating victims of crime. Both conventions have been extended to the Bailiwick of Guernsey.

(2) UNCAC also mandates the return of assets in corruption cases, such as the embezzlement of public funds. In most other cases where a country enforces a confiscation order made by the courts of another country, the normal default position is that assets remain in the country that enforced the order, not the one that initiated the request. An asset sharing agreement on the other hand, enables part of the proceeds to be

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<sup>7</sup> Disposal of Confiscated Assets in the EU Member States - Laws and Practices, Center for the Study of Democracy

<sup>8</sup> United Nations Convention against Transnational Organised Crime

<sup>9</sup> United Nations Convention against Corruption

returned to the initiating country. These agreements can be made on a case-by-case basis or can be part of an ongoing arrangement (such as the agreement currently in place between the Bailiwick and the USA).

Asset sharing in this way helps to ensure that jurisdictions are not rewarded for serving as havens for criminal wealth and encourages international cooperation, helping to improve the performance of global crime fighting efforts. With this in mind, asset sharing is recommended as best practice within the majority of key asset recovery guidance<sup>10</sup> and has been advised by the Law Officers for many years.

- (3) Effective asset recovery programmes can be expensive. Resources need to be allocated for all stages of the forfeiture process, including investigation, tracing and seizing the assets. Where possible, it is relatively common for jurisdictions to allow law enforcement agencies to recover costs from the forfeited proceeds in a case. This is accounted for in the UNCAC where Article 57 (4) states that State Parties may deduct reasonable expenses incurred in investigations, prosecutions or judicial proceedings leading to the asset recovery.

6.4.2. **By ensuring that funding is allocated to these three uses first, the Bailiwick will continue to be able to fulfil its international obligations and preserve the sustainability of its asset recovery regime.**

6.4.3. Whilst the capacity for each of these uses is vital, not all cases will result in the distribution of funding to victims or to other jurisdictions. In many cases where the proceeds of crime are seized, direct victims are difficult to identify (for example, in the case of drug trafficking). In some cases, consideration will also be needed as to whether allocation is appropriate. For example, where an identified victim is a large corporation in a politically unstable jurisdiction, there may be a risk that the returned proceeds would simply be stolen again.

6.4.4. In the case of asset sharing, such sharing would only be undertaken where or when it was considered necessary. To be effective, the amount shared would need to reflect the impact and effort of each jurisdiction's contribution towards recovery. As such, responsibility for agreeing the terms of any asset share most appropriately rest with the Law Officers' Chambers, in close consultation with Law Enforcement.

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<sup>10</sup> Including the Stolen Asset Recovery initiative ("StAR") guidance, the Global Forum on Asset Recovery Principles, and Financial Action Task Force ("FATF") guidance.

6.4.5. **Conclusion: Receipts from confiscated or forfeited assets need to be first used to support cost recovery, victim compensation and asset sharing.**

6.5. Fund Arrangements - Distribution of Remaining Assets (4)

6.5.1. In some cases, confiscated or forfeited assets will exceed the requirements of cost recovery, victim compensation, and asset sharing. It is proposed that the States continue to apply a fund-based structure in order to appropriately manage and distribute these remaining assets.

6.5.2. The continued use of a fund structure to distribute assets is aligned to the best practice promoted by the FATF recommendations on Combatting Money Laundering and the Financing of Terrorism<sup>11</sup> and the G8 Best Practices for the Administration of Seized Assets<sup>12</sup>. It also reflects the mechanisms employed in comparable jurisdictions, such as the Criminal Offences Confiscations Fund in Jersey and the Seized Assets Fund in the Isle of Man. In small jurisdictions, like the Bailiwick of Guernsey and the other Crown Dependencies, the use of a fund offers a proportionate and flexible solution to ensure financial support continues to be provided where it is needed.

6.5.3. In order to ensure funding can be suitably accessed by both internal services and external organisations, it is recommended that forfeited assets be divided between a replacement seized asset fund for internal investment and the Social Investment Fund for community investment. This division will support the assets to have the greatest positive impact across the Bailiwick community. As in the existing arrangements, it would provide both the opportunity for development in important criminal justice services and wider initiatives to address financial crime, and would retain the capacity to support third sector initiatives better positioned to engage different community groups or help repair the damage of crime.

6.5.4. A percentage split is proposed to divide assets between the two funds. This would provide a relatively simple means of initially separating funds and ensure that the criminal justice or wider financial crime benefits available from supporting external initiatives are not put at risk by high demand from internal services. The need for, and potential benefits from, States' initiatives are likely to be greater, as such, the proposed split would favour the use of assets by States' services (including the Law Officers) by allocating 80% to the internal fund and 20% for community purposes, with the ability for the Policy & Resources Committee to allocate these funds to the Social Investment Fund.

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<sup>11</sup> FATF Recommendations, International Standards on Combatting Money Laundering and the Financing of Terrorism & Proliferation

<sup>12</sup> G8 Best Practices for the Administration of Seized Assets

- 6.5.5. This split would be applied to the existing uncommitted contents of the Seized Asset Fund, as well as any future assets recovered. Transferring a percentage of the uncommitted contents will ensure that funding is in place for any ongoing criminal justice or related initiatives.
- 6.5.6. The separate objectives, governance, and reporting arrangements would be in place for States and community allocation to ensure that the operation is as efficient and transparent as possible and that fund applications can be made and assessed effectively.
- 6.5.7. It is proposed that the Policy & Resources Committee be delegated authority to transfer seized asset receipts to the Social Investment Fund. This procedure, which reflects the arrangements for the Channel Islands Lottery Appropriation Account, would enable the Policy & Resources Committee to re-direct the transfer of assets to the Social investment Fund, without the need for legislative change. This will be beneficial in the event that the Social Investment Fund did not require seized asset funding or was no longer the most appropriate vehicle to achieve the desired outcomes.
- 6.5.8. **Conclusion: Any remaining monies should be divided between an internal Seized Asset Fund (80%) and an allocation for community purposes of 20% to the Social Investment Fund, subject to a mechanism for the Policy & Resources Committee to redirect the allocation of assets for community purposes if necessary. The uncommitted assets within the current Seized Asset Fund should be similarly divided.**

#### 6.6. Internal Investment – Operation and Governance

- 6.6.1. It is proposed that the internal investment fund be used to support one-off projects or short-term initiatives aligned to the following objectives:
- **Improving the performance of the criminal justice system (particularly asset recovery) and the effective implementation of standards and initiatives in related areas such as anti-money laundering and terrorist financing (AML/CFT),**
  - **Reducing the crime rate, and**
  - **Repairing the damage caused by crime, including restorative justice measures.**
- 6.6.2. These objectives continue to reflect the positive relationship between the performance of the criminal justice system and the volume of seized assets held. This relationship is recognised internationally and is utilised in the vast majority of asset distribution regimes. In the UK, for example, 50% of funds are dedicated

to the Home Office and 50% are returned to the agencies which contributed to recovering the assets. The importance of this relationship is also commonly recognised in asset sharing agreements where it is often a condition that proceeds are reinvested in asset recovery or law enforcement works.

- 6.6.3. Whilst retaining the link between the asset recovery regime and seized asset distribution, these criteria have been kept intentionally broad. This approach will help ensure that funding can be used where it delivers the most value and, over time, can remain aligned to the Islands' criminal justice needs (including related matters such as AML/CFT), and government policy. Such criteria will also help ensure initiatives are outcome-led and that applications consider the available benefits.
- 6.6.4. **Conclusion: The internal seized asset fund should be reserved for distinct initiatives aimed at improving the performance of the criminal justice system, reducing the crime rate, and repairing the damage caused by crime.**
- 6.6.5. In the current model, significant internal investment is restricted to particular service areas, namely the Law Officers' Chambers and Law Enforcement. Although these services are likely to continue to make the greatest use of seized asset funding, it is proposed to remove the ring-fencing restriction and ensure that seized asset receipts are accessible to the most effective criminal justice or criminal justice-related initiatives, regardless of their origin. For example, this will enable the Committee *for* Home Affairs to apply financial support to criminal justice measures more widely, such as in the prison or the probation service. It will also support the Committee *for* Home Affairs to prioritise the pursuit of money laundering, terrorist financing and the financing of proliferation of weapons of mass destruction through the timely identification and tracing of assets and the implementation of an effective AML/CFT framework. This proposal also recognises the positive, if indirect, impact that initiatives in services such as health and education can have on criminal behaviour and addressing the damage caused by crime.
- 6.6.6. Whilst any political Committee would be able to submit a funding application, it is proposed that a single States' Committee be responsible for reviewing and finalising funding requests in line with good governance. This Committee would be subject to well established oversight and scrutiny processes and would have an existing administrative support structure on which to rely. The relatively high frequency of States' Committee meetings would also help to improve internal

access to the fund and ensure that the assets are rapidly dedicated to suitable criminal justice initiatives

- 6.6.7. As the Committee responsible for the allocation of public funds and the Committee most independent from the potential applicants, it is recommended that this role be assigned to the Policy & Resources Committee. This is consistent with the arrangements for States-wide funds such as the Transformation and Transition Fund and the Corporate Housing Programme Fund.
- 6.6.8. The Committee is well positioned to coordinate and approve applications, to ensure that any criminal justice initiatives (and initiatives related to crime more widely) supported by the fund are aligned to other States' work, and to monitor the performance of the fund. Furthermore, the Policy & Resources Committee has visibility and understanding of all States expenditure. It would be able to find the best overall balance between the use of General Revenue and other resources, including seized assets, to ensure that the total funding available to support criminal justice initiatives and initiatives in respect of related matters (e.g. AML/CFT) goes as far as possible.
- 6.6.9. It is acknowledged that the impact of initiatives, particularly indirect initiatives, can be very difficult to determine or demonstrate. It is proposed that specific guidelines are produced by the Law Officers, with support from Law Enforcement, to help the Policy & Resources Committee identify whether an application would support one or more of the three objectives of the Fund. These guidelines would also contain a risk-based policy for dealing with AML/CFT initiatives which would be in line with the risk-based policies of Guernsey's operational authorities in this area.
- 6.6.10. To further support assessment, the Policy & Resources Committee would consult with the Committee *for* Home Affairs before considering any funding proposals. The Committee *for* Home Affairs would need to provide a recommendation based on the Committee's policy and advisory responsibilities for justice policy, law enforcement and crime prevention and the potential impact of the request on the Committee's operational services including Law Enforcement. To support this advice, it is recommended that the President of the Committee *for* Home Affairs would attend Policy & Resources Committee meetings when such applications were being considered.
- 6.6.11. The proposed consultation and advice process is required to help identify duplication or incompatibility between initiatives from different Committees or funded by different means. The involvement of the Committee *for* Home Affairs helps to ensure that initiatives are aligned to wider criminal justice and law enforcement objectives and are deliverable by operational services. It would also

help to reduce any perception that might otherwise arise about the jurisdiction departing from criminal justice matters in allocating the relevant funds.

6.6.12. Both Committees would engage with subject matter experts, such as the Head of Law Enforcement and HM Procureur, as required to inform their recommendations and decisions.

6.6.13. The Policy & Resources Committee would also be required to include a report on the fund and its performance, at an appropriate level of detail, within existing Policy & Resources Committee reports to the States (such reporting is included in the Isle of Man budget<sup>13</sup> and accounts<sup>14</sup>, whilst Jersey publishes decisions and transfers made in regard to the fund<sup>15</sup>).

6.6.14. **Conclusion: The authority for expenditure from the internal seized asset fund should be allocated to the Policy & Resources Committee, subject to appropriate guidelines and consultation requirements, whilst applications for funding should be open to any Committee of the States<sup>16</sup>.**

#### 6.7. Community Investment – Operation and Governance

6.7.1. In order not to create unnecessary duplication, it is proposed that community funding be distributed through the Social Investment Fund. In this case, financial support would be allocated to initiatives which meet the Social Investment Fund's stated outcomes which are aligned to government objectives and seek to enhance the Islands' community. Like seized asset recovery, the Social Investment Fund has a Bailiwick-wide role.

6.7.2. The use of seized assets for wider social purposes is relatively common. Article 10 of EU Directive 2014/42/EU<sup>17</sup> on the freezing and confiscation of instrumentalities and proceeds of crime encourages EU Member States to '*consider taking measures allowing confiscated property to be used for public interest or social purpose*'. Social use in this way helps to improve the level of visibility and transparency around seized asset use. In Scotland, for example, seized assets are used by the Cashback for Communities<sup>18</sup> scheme which supports young people in the communities most effected by crime.

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<sup>13</sup> [Isle of Man - 2019/2020 Budget](#)

<sup>14</sup> [Isle of Man - 2017/2018 Accounts](#)

<sup>15</sup> [States of Jersey - Prison Funding from the COCF](#)

<sup>16</sup> Applications would need to be submitted by political Committees to the Policy & Resources Committee and applications would not be accepted from service leads.

<sup>17</sup> [Directive 2014/42/EU](#)

<sup>18</sup> [Cashback for Communities Website](#)

6.7.3. By channelling resources through the Social Investment Fund rather than a separate committee, the opportunity is generated to support initiatives across the third sector, ensure the availability of funding has a high profile in the community and support charities to have a more streamlined approach to access States' funding (including the possibility to access greater funding for initiatives than would be possible from seized assets alone).

6.7.4. **Conclusion: Community investment should be dedicated to social purposes and should be allocated to the Social Investment Fund for distribution.**

## 6.8. Formalising Fund Operation and Governance

6.8.1. Given the international importance of having a robust and effective regime, not only to deter criminals and maximise the recovery of seized assets, but also to demonstrate the Islands' commitment to addressing the international criminal economy, HM Procureur and HM Receiver General has recommended that the future seized asset arrangements be put on a legislative footing.

6.8.2. Legislation will provide the most clarity in regard to the fund arrangements and will help ensure that its use remains consistent over time. The potential time required for legislation to be drafted and approved however, has the potential to delay any improvements to the arrangements. It is proposed that new arrangements be introduced under States Resolution initially, and then legislation be enacted as soon as possible.

6.8.3. **Conclusion: The new arrangements for the governance and operation of seized asset distribution should be introduced on a policy basis with immediate effect. However, the fund should also be moved onto a legislative footing as soon as possible.**

## 7. **Conclusion**

7.1. In light of domestic and international developments concerning the recovery and use of seized assets, it is proposed that the Bailiwick's model for seized asset distribution be amended to place it on a statutory footing and bring it into line with modern good governance practices.

7.2. The Committee *for* Home Affairs and the Policy & Resources Committee believe that the proposed system for the governance and operation of seized asset funds will be more flexible and efficient whilst retaining the key link with the performance of the criminal justice system and remaining proportionate and pragmatic.

## **8. Compliance with Rule 4**

- 8.1. Rule 4 of the Rules of Procedure of the States of Deliberation and their Committees sets out the information which must be included in, or appended to, motions laid before the States.
- 8.2. In accordance with Rule 4(1), the Propositions in this Policy Letter have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications. She has advised that there is no reason in law why the Propositions should not be put into effect.
- 8.3. To comply with Rule 4(4) of the Rules of Procedure of the States of Deliberation and their Committees, it is confirmed that the Propositions attached to this Policy Letter have the unanimous support of the Policy & Resources Committee and the Committee *for* Home Affairs.
- 8.4. In accordance with Rule 4(5), the Propositions relate to the duties of the Policy & Resources Committee and Committee *for* Home Affairs in respect of "fiscal policy, economic affairs and the financial and other resources of the States" and "crime prevention" and "justice policy".

Yours faithfully

### **Policy & Resources Committee**

P T R Ferbrache  
President

H J R Soulsby  
Vice President

M A J Helyar  
J P Le Tocq  
D J Mahoney

### **Committee *for* Home Affairs**

R G Prow  
President

S P J Vermeulen  
Vice President

M P Leadbeater  
C J Le Tissier  
A W Taylor

## APPENDIX 1 – CHANGES SINCE THE CREATION OF THE FUND

### Legislation

Since 1995, in line with the evolution of international standards on financial crime, a number of key pieces of legislation governing asset recovery have come into force, as noted below:

- Domestic confiscation orders in drugs cases – s2 of the Drug Trafficking (Bailiwick of Guernsey) Law, 2000 (this replaced precursor drug trafficking legislation that was in force at the time of the creation of the Fund);
- Domestic confiscation orders in non-drugs cases – s2 of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999;
- Domestic confiscation and civil forfeiture powers in terrorism cases – sections 18 and 19 respectively of the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002;
- Domestic civil forfeiture orders in all kinds of criminal case – s13 of the Forfeiture of Money, etc. in Civil Proceedings (Bailiwick of Guernsey) Law, 2007;
- Overseas confiscation orders in all kinds of criminal case enforced under s49 of the Drug Trafficking (Bailiwick of Guernsey) Law, 2000 and s35 of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 respectively;
- Overseas confiscation and civil forfeiture powers in terrorism cases – sections 18 and 19 respectively of the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002;
- Overseas civil forfeiture orders in all kinds of criminal case enforced under s49 of the Forfeiture of Money etc. in Civil Proceedings (Bailiwick of Guernsey) Law 2007.

In addition to these enactments that have a direct bearing on the Fund, the Police Property and Forfeiture (Bailiwick of Guernsey) Law 2006 is relevant to asset recovery more widely. It provides for property that comes into the possession of the police through lawful investigation or property used in or derived from an offence to be forfeited and the Police (Property) Regulations 2010 provide, inter alia, for the establishment of the Police Property Law Fund into which the proceeds of the sale of property are paid and administered by the Committee *for* Home Affairs.

The effect of these various changes is two-fold. First, the proceeds of crime generally, rather than just the proceeds of drug trafficking, may now be seized and confiscated. Second, this may be done without the need for a criminal conviction.

## Operational changes and international engagement

Since 1995 there have been a number of operational changes, in many cases to keep pace with international standards.

Looking first at law enforcement, 2009 saw the creation of the Financial Investigation Unit, which comprised the Financial Intelligence Service (jointly staffed by Guernsey Police and Guernsey Border Agency staff), the Financial Criminal Team and the Civil Forfeiture Team. This was followed not long afterwards by the creation of the Economic Crime Division and new post of Head of Economic Crime.

On the Law Officers' side, in 2010 the first specialist Economic Crime Prosecutor was appointed. A second Economic Crime Prosecutor was appointed in 2020. In 2015, HM Procureur announced the creation of a multi-disciplinary International Cooperation and Asset Recovery team ('ICART'). This was a new pilot project set up in conjunction with law enforcement and it represented a £2 million investment from the Fund. ICART was intended primarily to help undertake proactive asset recovery measures and it is currently investigating cases with a potential asset recovery value in excess of the original £2 million set up costs.

Representatives from the two organisations have made significant contributions to a range of international initiatives dealing with asset recovery and are recognised internationally for their expertise in this area. Initiatives and bodies in which they have participated include -

- The Stolen Asset Recovery Initiative developed jointly by the World Bank and the United Nations Office on Drugs and Crime World Bank
- The Camden Asset Recovery Inter-Agency Network
- The Egmont group of Financial Intelligence Units
- The Arab Forum on Asset Recovery
- The Ukraine Forum on Asset Recovery

## International Developments

The key international instruments on asset recovery are the United Nations Convention against Corruption (UNCAC) and the Financial Action Task Force (FATF) Recommendations on Combating Money Laundering and the Financing of Terrorism.

UNCAC was extended to the Bailiwick in 2009. Article 31(3) requires States parties to adopt, in accordance with their domestic law, such legislative and other measures as

may be necessary to regulate the administration by the appropriate authorities of frozen, seized or confiscated property covered by the Convention.

In 2012, the FATF Recommendations were revised to include a specific requirement for jurisdictions to have in place mechanisms for, among other things, managing and disposing of confiscated property.

In addition to these requirements, a number of international bodies have issued relevant guidance. This includes –

- the Group of Eight Guidelines, a high level document concerning Best Practices for the Administration of Seized Assets guide;
- the Stolen Asset Recovery Initiative developed jointly by the World Bank and the United Nations Office on Drugs and Crime;
- the Global Forum on Asset Recovery Principles for the Disposition and Transfer of Confiscated Stolen Assets in Corruption Cases;
- the FATF Guidance on Best Practices on Confiscation and Framework for Ongoing Work on Asset Recovery.

Also, at EU level, the EU has adopted secondary legislation to harmonise developments concerning cooperation between asset recovery agents in its Member States (e.g. EU Decision 2007/845/JHA and the later Directive 2014/42/EU on the freezing and confiscation of instrumentalities and proceeds of crime).