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I assent,

SAMUEL WEYMOUTH TAPLEY SEATON

Governor-General.

4th June, 2020.

SAINT CHRISTOPHER AND NEVIS

No. 9 of 2020

AN ACT to provide for the forfeiture or confiscation of the proceeds of crime and to make provision for persons who benefit from criminal conduct and to provide for related or incidental matters.

[Published 11th June 2020, Official Gazette No. 44 of 2020.]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the National Assembly of Saint Christopher and Nevis and by the authority of the same as follows:

PART 1

PRELIMINARY

1. Interpretation

In this Act, unless the context otherwise requires,

“Account forfeiture notice” has the meaning specified in section 145;

“Account freezing order” has the meaning specified in section 140;

“AMLR” means the Anti-Money Laundering Regulations, SRO No. 46 of 2011;

“ATR” means the Anti-Terrorism (Prevention of Terrorist Financing) Regulations, SRO No. 47 of 2011;

“associated property” has the meaning specified in section 71;

“cash” includes—

- (a) notes and coins in any currency that is designated as legal tender;
- (b) postal orders;
- (c) cheques of any kind, including travellers' cheques;
- (d) bankers' drafts;

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- (e) electronic cash;
- (f) bearer bonds and bearer shares;
- (g) fixed value casino tokens; and
- (h) any other monetary instrument that is prescribed as cash by order published in the Gazette

“Civil Recovery Authority” means the Attorney General;

“civil recovery investigation” means, subject to section 2, an investigation into—

- (a) whether property is recoverable property or associated property;
- (b) who holds the property; or
- (c) the extent or whereabouts of the property;

“commencement date” means the date on which this Act comes into operation;

“company” means a body corporate, wherever incorporated, registered or formed, and includes a foundation;

“Compensation order” means an order to pay compensation made under the criminal laws of St. Christopher and Nevis;

“compliance order” means an order made under section 22

“conduct” includes omissions;

“confiscation order” means an order made under section 14;

“country” includes a territory;

“Court” means the Magistrate’s Court or the High Court unless otherwise defined in this Act;

“Criminal investigation” means an investigation conducted by a police officer or other law enforcement officer with a view to it being ascertained whether a person should be charged with an offence;

“criminal conduct” is conduct which constitutes an offence or would constitute an offence if it had occurred in St. Christopher and Nevis;

“criminal property” has the meaning specified in section 163;

“criminal recovery investigation” means an investigation into –

- (a) whether a person has benefited from his or her criminal conduct, or
- (b) the extent or whereabouts of his benefit from his or her criminal conduct, or
- (c) the extent or whereabouts of realizable property available for satisfying a confiscation order made in respect of him or her;

“Customs Act” means the Customs Act, No. 19 of 2014;

“date of conviction”, means—

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- (a) in relation to an offence, the date on which the defendant was convicted of the offence concerned; or
- (b) if there are two or more offences and the convictions were on different dates, the date of the latest;

“dealing” with property includes disposing of it, taking possession of it or removing it from St. Christopher and Nevis;

“defendant” means a person against whom proceedings have been instituted for an offence, whether or not he or she has been convicted;

“detained cash investigation” means an investigation into whether cash detained under section 115, or a part of such cash, is recoverable cash;

“detained property investigation” means an investigation into:

- (a) the derivation of property detained under sections 126 and 127, or a part of such property;
- (b) whether property detained under sections 126 and 127 or a part of such property is intended by any person to be used in unlawful conduct.

“document” means a document in any form and includes—

- (a) any writing or printing on any material;
- (b) any record of information or data, however compiled, and whether stored in paper, electronic, magnetic or any non-paper based form;
- (c) any storage medium, including discs and tapes;
- (d) books and drawings;
- (e) a photograph, film, tape, negative or other medium in which one or more visual images are embodied so as to be capable (with or without the aid of equipment) of being reproduced; and
- (f) any court application, order and other legal process;

“drug trafficking offence” means—

- (a) a trafficking offence under the Drugs (Prevention and Abatement of the Misuse and Abuse of Drugs) Act, Cap. 9.08;
- (b) an attempt, conspiracy or incitement to commit an offence specified in paragraph (a); or
- (c) aiding, abetting, counselling, facilitating or procuring the commission of an offence specified in paragraph (a);

“enforcement receiver” means a receiver appointed under section 50(1);

“Financial Intelligence Unit” means the agency established pursuant to section 3 of the Financial Intelligence Unit Act, Cap. 21.09;

- (a) concerning the proceeds of crime or the suspected proceeds of crime;

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(b) required by any law or enactment for the purposes of combating money laundering

(c) concerning the combating of terrorist financing or related purposes;

“Commission” means the Financial Services Regulatory Commission established pursuant to section 3 of the Financial Services Regulatory Commission Act, Cap.21.10;

“Financial institution” includes the following:

(a) a bank licensed under the Banking Act, No. 1 of 2015;

(b) an insurance company licensed pursuant to the provisions of the Insurance Act, Cap. 21.11 of the Laws;

(c) a credit union registered under the Co-operatives Societies Act, No. 3 of 2011;

(d) a money services business licensed pursuant to the provisions of the Money Services Businesses Act, Cap. 21.21; or

(e) an entity established under the provisions of the Development Bank Act, Cap.21.05;

(d) international banks licensed under the International Banking Ordinance; and

(e) any other institution involved in deposit taking or lending as a core activity as approved by the relevant authority.

“Fixed-value casino token” means a casino token that represents a right to be paid the amount stated on it”;

“FSR” means the Financial Services Implementation of Industry Standards made pursuant to SRO No. 51 of 2011;

“forfeiture order” means an order for the forfeiture of:

(a) cash under section 118;

(b) listed assets under section 130; and

(c) money held in a financial institution account under section 150.

“frozen funds investigation” means an investigation into:

(a) the derivation of money held in an account in relation to which an account freezing order made under section 140 (a frozen account) has effect or of a part of such money; or

(b) whether money held in a frozen account, or a part of such money, is intended by any person to be used in unlawful conduct.

“Fund” means the Forfeiture Fund established under section 215;

“general criminal conduct” has the meaning specified in section 12(1);

“gift” has the meaning specified in section 9;

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“interest”, in relation to property includes—

- (a) a right, including a right to possession of the property;
- (b) any legal interest or estate; and
- (c) any equitable interest or power;

“interim receiving order” means an order made by the Court under section 81;

“law enforcement officer” includes a police officer, a customs officer and an officer of the Financial Intelligence Unit;

“liquidation” includes the dissolution of a foundation;

“liquidator” includes a person appointed to supervise the dissolution of a foundation;

“management receiver” means a receiver appointed under section 49(1);

“minimum value” means three thousand dollars for the purposes of sections 123 – 138;

“money laundering investigation” means an investigation into whether a person has committed a money laundering offence;

“money laundering” means an act which—

- (a) constitutes a money laundering offence;
- (b) constitutes an attempt, conspiracy or incitement to commit a money laundering offence;
- (c) constitutes aiding, abetting, counselling or procuring the commission of a money laundering offence; or
- (d) would constitute an offence specified in paragraph (a), (b) or (c) if done in St. Christopher and Nevis;

“money laundering offence” means—

- (a) an offence under section 165, 166 or 167;
- (b) an attempt, conspiracy or incitement to commit an offence specified in paragraph (a); or
- (c) aiding, abetting, counselling or procuring the commission of an offence specified in paragraph (a);

“Money Laundering Reporting Officer” means the person appointed as Money Laundering Reporting Officer by a person carrying on relevant business;

“offence” means any offence contrary to the laws of St. Christopher and Nevis

“particular criminal conduct” has the meaning specified in section 12(2);

“period of 72 hours” excludes:

- (a) any Saturday or Sunday;
- (b) bank and government holidays;

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(c) any other day on which the Magistrate or High Court may be closed.

“premises” includes—

- (a) any place;
- (b) any vehicle, vessel, aircraft or hovercraft;
- (c) any offshore installation; and
- (d) any tent or movable structure;

“privileged material” has the meaning specified in section 174;

“production order” means an order made under section 176(2)

“property” means —

- (a) property of every kind, whether situated in St. Christopher and Nevis or elsewhere, and whether real or personal, tangible or intangible, heritable or moveable and includes money; and
- (b) legal documents or instruments in any form, including electronic or digital title to or interest in property referred to in paragraph (a);

“property freezing order” means an order made under section 74;

“realisable property” has the meaning specified in section 6;

“recoverable amount” means the amount that the Court determines should be recovered from a defendant under a confiscation order;

“recoverable property” shall be construed in accordance with sections 64 to 72;

“recovery order” means an order made under section 90;

“Registrar” means a Registrar or Deputy Registrar of the Court;

“regulated business” means a business for which a regulatory licence is required;

“regulated person” means a person who holds a regulatory licence;

“regulated service provider” means a service provider that is a regulated person;

“relevant business” means —

- (a) a business specified in Schedule 6;
- (b) the business of an independent legal professional

“restraint order” means an order made under section 45(1);

“service provider” has the meaning specified in the Anti-Money Laundering Regulations, the Anti-Terrorist Financing Regulations;

“tainted gift” has the meaning specified in section 10;

“transfer” includes a sale or disposition;

“trustee” means the trustee for civil recovery appointed by the Court under section 90(1);

“unlawful conduct” has the meaning specified in section 62; and

“value”, in relation to property, means the value of the property determined in accordance with sections 7, 8 and 11.

2. Other interpretative provisions.

(1) An investigation is not a civil recovery investigation within the meaning of section 1 if—

- (a) proceedings for a recovery order have been instituted in respect of the property in question;
- (b) an interim receiving order applies to the property in question;
- (c) the property in question is detained under sections 115 or 127;
- (d) an account freezing order has been made under section 140.

(2) A reference in this Act—

- (a) to sentencing a defendant for an offence includes a reference to otherwise dealing with him or her in respect of the offence;
- (b) to an amount expressed in dollars, includes a reference to an equivalent amount in any other currency;
- (c) to an offence that has been, or will be, “taken into consideration”, means an offence that has been, or will be, taken into consideration under the criminal laws of St. Christopher and Nevis.

3. Provisions relating to “property”.

The following provisions apply in relation to property for the purposes of this Act—

- (a) property is held by a person if he holds an interest in it;
- (b) property is obtained by a person if he obtains an interest in it;
- (c) property is transferred by one person to another if the first person transfers or grants to the other person an interest in the property;
- (d) a reference to property held by a person includes a reference to property vested in his trustee in bankruptcy or, in the case of a company, its liquidator; and
- (e) a reference to an interest held by a person beneficially in property includes a reference to an interest that would be held by that person beneficially if the property were not vested in his trustee in bankruptcy or, in the case of a company, its liquidator.

4. Benefit from criminal conduct and pecuniary advantage.

(1) For the purposes of this Act—

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- (a) a person benefits from criminal conduct if he or she obtains property as a result of or in connection with the conduct;
 - (b) if a person benefits from criminal conduct, his or her benefit is the value of the property obtained as a result of or in connection with the conduct; and
 - (c) if a person derives a pecuniary advantage as a result of or in connection with criminal conduct, he or she is to be taken to obtain, as a result of or in connection with the conduct, a sum of money equal to the value of the pecuniary advantage.
- (2) References to property obtained or a pecuniary advantage derived in connection with conduct include references to property obtained or a pecuniary advantage derived both in that connection and in some other connection.

PART 2**CONFISCATION****Division 1***Interpretation***5. Sections 6 to 13 have effect for this Part.**

Sections 6 to 13 have effect for the purposes of this Part.

6. Realisable property.

- (1) Subject to subsection (2), “realisable property” means—
 - (a) any property held by the defendant; and
 - (b) any property held by the recipient of a tainted gift.
- (2) Property is not realisable property if there is an order in respect of the property under any of these provisions:
 - (a) section 81, 90, 115(2), 118(2), 127, 130, 132(6), 140, 150 of this Act;
 - (b) section 27 of the Drugs (Prevention and Abatement of the Misuse and Abuse of Drugs) Act;
 - (c) the Customs Act;
 - (d) contained in Part V of the Anti-Terrorism Act, providing for forfeiture.

7. Value of property.

- (1) The value of property held by a person at any time is—
 - (a) if at that time another person holds an interest in the property, the market value of the first-mentioned person’s interest in the property at that time, ignoring any charging order made against the interest;
 - (b) in any other case, the market value of the property at that time.
- (2) This section has effect subject to sections 8 and 11.

8. Value of property obtained from conduct.

(1) The value of property obtained by a person as a result of or in connection with his or her criminal conduct at the time when the Court makes its decision (the material time) is the greater of the following—

- (a) the value of the property, at the time the person obtained it, adjusted to take account of later changes in the value of money;
- (b) the value, at the material time, of the property specified under subsection (2).

(2) The property specified for the purposes of subsection (1) is as follows—

- (a) if the person holds the property obtained, the property specified under this subsection is that property;
- (b) if the person holds no part of the property obtained, the property specified under this subsection is any property which directly or indirectly represents it in his hands;
- (c) if he or she holds part of the property obtained, the property specified under this subsection is that part and any property which directly or indirectly represents the other part in his or her hands.

(3) The references in subsection 8(1)(a) and (b) to the value are to the value found in accordance with section 7.

9. Gifts.

(1) If a defendant transfers property to another person for no consideration or for a consideration the value of which is significantly less than the value of the property at the time of the transfer, he or she is to be treated as making a gift.

(2) Where subsection (1) applies, the property given is to be treated as such share in the property transferred as is represented by the fraction—

- (a) the numerator of which is the difference between the two values specified in subsection (1); and
- (b) the denominator of which is the value of the property at the time of the transfer.

10. Tainted gifts.

(1) Where the Court has determined that section 15 applies to a defendant or where the Court has not yet made a determination as to whether or not that section applies to a defendant, a gift is tainted—

- (a) if it was made by the defendant at any time after the relevant date; or
- (b) if it was made by the defendant at any time and was of property—
 - (i) which was obtained by the defendant as a result of or in connection with his or her general criminal conduct; or

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- (ii) which, in whole or part and whether directly or indirectly, represented in the defendant's hands property obtained by him or her as a result of or in connection with his or her general criminal conduct.
- (2) For the purposes of subsection (1), the relevant date is the first day of the period of six years ending with—
- (a) the day when proceedings for the offence concerned were instituted against the defendant; or
 - (b) if there are two or more offences and proceedings for them were instituted on different days, the earliest of those days.
- (3) In the case of a defendant with respect to whom the Court has determined that section 15 does not apply, a gift is tainted if it was made by the defendant at any time after—
- (a) the date on which the offence concerned was committed; or
 - (b) if his particular criminal conduct consists of two or more offences and they were committed on different dates, the date of the earliest offence.
- (4) For the purposes of subsection (3)—
- (a) an offence which is a continuing offence is committed on the first occasion when it is committed; and
 - (b) the defendant's particular conduct includes any conduct which constitutes offences which the Court has taken into consideration in deciding his or her sentence for the offence or offences concerned.
- (5) A gift may be a tainted gift whether it was made before or after the commencement date.
- (6) References to the recipient of a tainted gift are to the person to whom the defendant has made the gift.

11. Value of tainted gifts.

- (1) The value at any time (the material time) of a tainted gift is the greater of the following—
- (a) the value (at the time of the gift) of the property given, adjusted to take account of later changes in the value of money;
 - (b) the value (at the material time) of the property specified under subsection (2).
- (2) The property specified under this subsection is as follows—
- (a) if the recipient holds the property given, the property specified under this subsection is that property;
 - (b) if the recipient holds no part of the property given, the property specified under this subsection is any property which directly or indirectly represents it in his or her hands;

- (c) if the recipient holds part of the property given, the property specified under this subsection is that part and any property which directly or indirectly represents the other part in his or her hands.

(3) The references in subsection (1)(a) and (b) to the value are to the value found in accordance with section 7.

12. General and particular criminal conduct.

(1) General criminal conduct, with respect to a defendant, means all his criminal conduct and for the purposes of this definition, it is immaterial—

- (a) whether the conduct occurred before or after the commencement date; or
- (b) whether property constituting a benefit from his or her conduct was obtained before or after the commencement date.

(2) Particular criminal conduct, with respect to a defendant, means all his or her criminal conduct—

- (a) which constitutes the offence or offences of which he or she was convicted;
- (b) which constitutes any other offence or offences of which he or she was convicted in the same proceedings;
- (c) which constitutes offences which have been or will be taken into consideration by the Court in sentencing the defendant for the offence or offences concerned.

13. Institution and conclusion of proceedings and other interpretative provisions.

(1) Proceedings for an offence are instituted in St. Christopher and Nevis—

- (a) when the Magistrate issues a summons or warrant in respect of the offence; or
- (b) when a person is charged with the offence after being taken into custody without a warrant;
- (c) when a bill of indictment is preferred under the Indictments Act, Cap. 4.14.

(2) Where the application of subsection (1) would result in there being more than one time for the institution of proceedings, the proceedings shall be taken to have been instituted at the earliest of those times.

(3) Proceedings for an offence are concluded—

- (a) when the defendant is acquitted on all counts or every charge against him or her is dismissed, as the case may be;
- (b) if the defendant is convicted in the proceedings and the conviction is set aside or the defendant is pardoned before a confiscation order is made, the proceedings are concluded when the conviction is set aside or the defendant is pardoned;
- (c) if a confiscation order is made against the defendant in the proceedings, when the order is satisfied or discharged or when the order is set aside and the decision to set aside the proceedings is no longer subject to appeal;

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- (d) if the defendant is convicted on one or more counts or charges but the Court decides not to make a confiscation order against him or her, when the Court's decision is no longer subject to appeal by the prosecutor;
 - (e) if he is sentenced without the Court having considered whether or not to proceed under section 25 in his or her case, when he or she is sentenced.
- (4) An application under section 30, 31, 32, 33, 38 or 39 is concluded—
- (a) if the Court decides not to make or vary, as the case may be, any order against the defendant on that application, when it makes that decision;
 - (b) if an order against the defendant is made or varied on that application, when the order is satisfied or discharged or, when the order is set aside, the application is no longer subject to appeal; and
 - (c) if the application is withdrawn, when the prosecutor notifies the withdrawal of the application to the Court.
- (5) A confiscation order is satisfied when no amount is due under it.
- (6) The amount payable under a confiscation order, where part of the amount has been paid, means the amount that remains to be paid.
- (7) An order is subject to appeal until, disregarding any power of a court to grant leave to appeal out of time, there is no further possibility of an appeal on which the order could be varied or set aside.

Division 2*Confiscation order***14. Making of confiscation order.**

- (1) This section applies if—
- (a) a defendant—
 - (i) is convicted by the Court of an offence or offences; or
 - (ii) is committed to the High Court by the Magistrate's Court for sentencing in respect of an offence or offences; and
 - (b) either—
 - (i) the prosecutor asks the Court to proceed under this section, or
 - (ii) the Court considers that it is appropriate for it to do so.
- (2) For the purposes of this section and sections 15 to 43, a reference to the Court means the Magistrate's Court or the High Court.
- (3) Where this section applies, the Court shall determine whether section 15 applies in the defendant's case, and—

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- (a) if it determines that section 15 does apply in his case, whether he or she has benefited from his or her general criminal conduct; or
 - (b) if it determines that section 15 does not apply in his case, whether he or she has benefited from his or her particular criminal conduct.
- (4) If the Court determines in accordance with subsection (3) that the defendant has benefited from his or her general or particular criminal conduct, it shall—
- (a) determine the amount to be recovered from him or her, the “recoverable amount”, in accordance with section 16; and
 - (b) make a confiscation order requiring him or her to pay that amount.
- (5) If the Court is satisfied that any victim of the defendant’s criminal conduct has instituted, or intends to institute, civil proceedings against the defendant in respect of loss, injury or damage sustained in connection with the defendant’s conduct—
- (a) it shall treat the duty in subsection (3) as a power; and
 - (b) the recoverable amount is such amount as the Court considers just, but the recoverable amount shall not exceed the amount that it would have been if this subsection did not apply.
- (6) Where the prosecutor intends to apply for a confiscation order—
- (a) the prosecutor shall on the date of conviction or within 14 days of conviction give a defendant falling within section 14(1) (a) written notice of the application; and
 - (b) the person may appear and adduce evidence at the hearing of the application.
- (7) The Court shall determine any question arising under subsection (3) or (4) on a balance of probabilities.
- (8) The Court may postpone the proceedings for a confiscation order under the procedure identified in section 25.
- (9) Unless the Court postpones the proceedings for confiscation under section 25, it shall proceed under this section before sentencing the defendant with respect to the offence or offences referred to in subsection (1).

15. Application of this section.

- (1) For the purposes of this Part, this section applies to a defendant if he or she is convicted of—
- (a) a drug trafficking offence or a money laundering offence or any offence listed in Schedule 7; or
 - (b) an offence that constitutes conduct forming part of a course of criminal activity within the meaning of subsection (2); or
 - (c) an offence committed over a period of at least six months and the defendant has benefited from the conduct which constitutes the offence.

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- (2) For the purposes of paragraph (1)(b), conduct forms part of a course of criminal activity if the defendant has benefited from the conduct and—
- (a) in the proceedings in which he or she was convicted, he or she was convicted of at least one other qualifying offence; or
 - (b) he or she has been convicted on at least one previous occasion in the period of six years prior to the commencement of those proceedings of at least one qualifying offence.
- (3) Subsections (1)(b) and (1)(c) do not apply to a defendant if the value of the relevant benefit obtained is less than \$10,000.
- (4) For the purposes of subsection (3), “relevant benefit” means the total benefit from—
- (a) all offences comprising the course of criminal activity; and
 - (b) conduct which constitutes an offence which has been or will be taken into consideration by the Court in sentencing the defendant for an offence specified in paragraph (a).
- (5) In this section, “qualifying offence” means an offence which constitutes conduct from which the defendant has benefitted.

16. Recoverable amount.

- (1) Subject to this section, the recoverable amount for the purposes of section 14(3)(a) is an amount equal to the defendant’s benefit from the conduct concerned.
- (2) Subsection (3) applies where the defendant proves that the value of the benefit under subsection (1) is greater than the amount available to him or her, being the aggregate of—
- (a) the total of the values, at the time the confiscation order is made, of all the realisable property then held by the defendant less the total amount payable pursuant to obligations which then have priority; and
 - (b) the total of the values, at the time the confiscation order is made, of all tainted gifts.
- (3) In the circumstances referred to in subsection (2), the recoverable amount is—
- (a) the amount the defendant proves is available to him or her in accordance with that subsection; or
 - (b) a nominal amount, if that amount is nil.
- (4) For the purposes of subsection (2), an obligation has priority if it is an obligation of the defendant—
- (a) to pay an amount due in respect of a fine or other order of a court which was imposed or made on conviction of an offence and at any time before the time the confiscation order is made; or

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(b) to pay a sum which would be included among the preferential debts of the defendant if the defendant's bankruptcy or, in the case of a company, its liquidation had commenced on the date of the confiscation order.

(5) "Preferential debt" means a debt that, in the bankruptcy of an individual or the liquidation of a company, is payable in priority to the debts of other creditors.

(6) In calculating the defendant's benefit from the conduct concerned for the purposes of subsection (1), any property in respect of which a recovery order or a forfeiture order is in force shall be ignored.

17. Defendant's benefit.

(1) In determining, for the purposes of section 14, whether a defendant has benefited from conduct, and his or her benefit from that conduct, the Court shall—

- (a) take account of conduct occurring up to the time it makes its determination; and
- (b) take account of property obtained up to that time.

(2) Subsections (3) to (5) apply where the conduct concerned for the purposes of section 14, is the defendant's general criminal conduct.

(3) Where a confiscation order has previously been made against the defendant under this Act or another Act, and his or her benefit for the purposes of that order was his or her benefit from his or her general criminal conduct—

- (a) his or her benefit determined at the time the last confiscation order was made against him or her shall be taken for the purposes of this section to be his or her benefit from his or her general criminal conduct at that time; and
- (b) the Court shall deduct the aggregate of the following amounts—
 - (i) the amount ordered to be paid under each confiscation order previously made against the defendant under this Act, and
 - (ii) the amount ordered to be paid under each confiscation order previously made against him or her under a specified Act.

(4) Paragraph (3)(b) does not apply to an amount which has been taken into account for the purposes of a deduction under that subsection on any earlier occasion.

(5) The reference to general criminal conduct in the case of a confiscation order made under a specified Act is a reference to conduct in respect of which a court is required or entitled to make one or more assumptions for the purpose of assessing a person's benefit from the conduct.

18. Assumptions to be made where section 15 applies.

(1) Subject to subsection (3), if the Court determines under section 14(2) that section 15 applies to the defendant, it shall make the assumptions specified in subsection (2) for the purposes of—

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- (a) determining whether the defendant has benefited from his or her general criminal conduct; and
 - (b) determining his or her benefit from the conduct.
- (2) The assumptions referred to under subsection (1) are—
- (a) that any property transferred to the defendant at any time after the relevant date was obtained by him or her—
 - (i) as a result of his or her general criminal conduct; and
 - (ii) at the earliest time he or she appears to have held it;
 - (b) that any property held by the defendant at any time after the date of conviction was obtained by him or her—
 - (i) as a result of his or her general criminal conduct; and
 - (ii) at the earliest time he or she appears to have held it;
 - (c) that any expenditure incurred by the defendant at any time after the relevant date was met from property obtained by him or her as a result of his or her general criminal conduct; and
 - (d) that, for the purpose of valuing any property obtained, or assumed to have been obtained, by the defendant, he or she obtained it free of any other interests in it.
- (3) The Court shall not make an assumption under subsection (1) in relation to particular property or expenditure if—
- (a) the assumption is shown to be incorrect; or
 - (b) there would be a serious risk of injustice if the assumption were made.
- (4) If the Court does not make one or more of the assumptions under subsection (1), it shall state its reasons.
- (5) For the purposes of this section, the relevant date is the first day of the period of six years ending with—
- (a) the date when proceedings for the offence concerned were instituted against the defendant; or
 - (b) if there are two or more offences and proceedings for them were instituted on different days, the earliest of those days.
- (6) If a confiscation order has been made against the defendant under this Act or a specified Act, within the meaning of section 17(5), at any time during the period referred to in subsection (5)—
- (a) the relevant date is the date when the defendant’s benefit was calculated for the purposes of the last such confiscation order;
 - (b) the assumption specified in paragraph (2)(b) does not apply to any property which was held by him or her on or before the relevant date.

19. Time for payment.

(1) Unless subsection (2) applies, the full amount ordered to be paid under a confiscation order must be paid on the day on which the order is made.

(2) If the court making the confiscation order is satisfied that the defendant is unable to pay the full amount on that day, it may make an order requiring whatever cannot be paid on that day to be paid –

- (a) in a specified period, or
- (b) in specified periods each of which relates to a specified amount.

(3) A specified period –

- (a) must start with the day on which the confiscation is made, and
- (b) must not exceed three months.

(4) If –

- (a) within any specified period the defendant applies to the Court for that period to be extended, and
- (b) the Court is satisfied that, despite having made all reasonable efforts, the defendant is unable to pay the amount to which the specified period relates within that period,

the Court may make an order extending the period for all or any part or parts of the amount in question.

(5) An extended period –

- (a) must start with day on which the confiscation order is made, and
- (b) must not exceed six months.

(6) An order under subsection (4) –

- (a) may be made after the end of the specified period to which it relates, but
- (b) must not be made after the end of the period of six months starting with the day on which the confiscation order is made.

(7) Periods specified or extended under this section must be such that, where the Court believes that a defendant will by a particular day be able –

- (a) to pay the amount remaining to be paid, or
- (b) to pay an amount towards what remains to be paid

that amount is required to be paid no later than that day.

(8) The Court must not make an order under subsection (2) or (4) unless it gives the prosecutor an opportunity to make representations.

20. Interest on sums unpaid under confiscation order.

(1) If the amount required to be paid by a person under a confiscation order is not paid when it is required to be paid, he or she shall pay interest on the amount unpaid for the period for which it remains unpaid at the rate for the time being applying to a civil judgment debt.

(2) For the purposes of subsection (1), no amount is required to be paid under a confiscation order if—

- (a) an application has been made under section 19(4);
- (b) the application has not been determined by the Court; and
- (c) the period of six months starting with the day on which the confiscation order was made has not ended.

(3) The amount of interest payable under this section shall be treated as part of the amount to be paid under the confiscation order.

21. Effect of order on Court's other powers.

(1) Where the Court makes a confiscation order against a defendant, it shall, in respect of any offence of which he or she is convicted in those proceedings, take account of the confiscation order before—

- (a) imposing a fine on him or her;
- (b) making any order involving any payment by him or her, other than a compensation order; or
- (c) making any other order for confiscation or compensation under any other enactment.

(2) Subject to subsection (1), the Court shall leave the confiscation order out of account in deciding the appropriate sentence for the defendant.

(3) The Court shall make an order under subsection (4) if it—

- (a) makes a confiscation order and a compensation order against the same person in the same proceedings; and
- (b) believes that the person concerned will not have sufficient means to satisfy both orders in full.

(4) Where subsection (3) applies, the Court shall order that such amount of the compensation order that it believes will not be recoverable because of the insufficiency of the person's means, shall be paid out of any sums recovered under the confiscation order.

22. Orders for securing compliance with confiscation order.

(1) This section applies where the court makes a confiscation order.

(2) The court may make such an order as it believes is appropriate for the purpose of ensuring that the confiscation order is effective (“compliance order”).

(3) The court must consider whether to make a compliance order –

- (a) on the making of the confiscation order, and
- (b) if it does not make a compliance order then, at any later time while the confiscation order is still in effect on the application of the prosecutor.

(4) In considering whether to make a compliance order, the court must, in particular, consider whether any restriction or prohibition on the defendant's travel outside St. Christopher and Nevis ought to be imposed for the purpose mentioned in subsection (2).

- (5) The court may discharge or vary a compliance order on an application made by –
 - (a) the prosecutor;
 - (b) any person affected by the order.

23. Appeals against orders under section 22.

(1) If on the application under section 22(3)(b) the court decides not to make a compliance order, the prosecutor may appeal to the Court of Appeal against the decision.

(2) The following persons may appeal to the Court of Appeal in respect of the court's decision to make, discharge or vary a compliance order –

- (a) the prosecutor,
- (b) any person affected by the order.

(3) On an appeal under subsection (1) or (2) the Court of Appeal may –

- (a) confirm the decision, or
- (b) make such order as it believes appropriate.

24. Court may order payment by a financial institution.

(1) This section applies to money which -

- (a) is held by a person; and
- (b) is held in an account maintained by a person with a financial institution.

(2) This section applies if the following conditions are satisfied –

- (a) a confiscation order is made against the person by whom the money is held;
- (b) a receiver has not been appointed under section 50;

(3) In such a case, the Court may order the financial institution to pay the money to the Court on account of the amount payable under the confiscation order.

(4) If a financial institution fails to comply with an order under subsection (3) it commits an offence against this section.

(5) A person who commits an offence under subsection (4) is liable on summary conviction to a fine not exceeding fifty thousand dollars.

Division 3*Procedure***25. Postponement.**

- (1) If the Court considers it appropriate to do so, it may—
 - (a) postpone proceedings under section 14 for a specified period (the postponement period); and
 - (b) extend the postponement period for a specified period on one or more occasions.
- (2) Unless the Court is satisfied that there are exceptional circumstances, the postponement period, whether as originally ordered or as extended, shall not exceed a period of two years from the date of the conviction of the defendant.
- (3) Where the defendant appeals against his or her conviction, the Court may, on that account—
 - (a) postpone making any of the determinations mentioned in subsection (1) for such period as it may specify; or
 - (b) where it has already exercised its powers under this section to postpone, extend the postponement period.
- (4) Unless the Court is satisfied that there are exceptional circumstances, any postponement or extension under subsection (3), shall not exceed a period of three months from the date on which the appeal is determined or otherwise disposed of.
- (5) A postponement or extension under subsection (1) or (3) may be made—
 - (a) on application by the defendant or the prosecutor; or
 - (b) by the Court of its own motion.
- (6) An application to extend the postponement period may be granted after the postponement period has ended, provided that the application is made before it ends.
- (7) A confiscation order must not be quashed only on the ground that there was a defect or omission in the procedure connected with the application for or the granting of a postponement.
- (8) Subsection (7) does not apply if before it made the confiscation order the Court –
 - (a) imposed a fine on the defendant; or
 - (b) made an order falling under section 21(1)(b) or (c)

26. Effect of postponement.

- (1) Subject to subsection (2), where the Court exercises its power to postpone proceedings under section 25, it may nevertheless proceed to sentence the defendant in respect of the offence or any of the offences concerned.
- (2) In sentencing the defendant in respect of the offence, or any of the offences concerned during the postponement period, the Court shall not—

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- (a) impose a fine on him or her;
- (b) make any order involving any payment by him or her, other than a compensation order; or
- (c) make an order referred to in section 21(1)(b) or (c).

(3) Subject to subsection (4), where the Court has sentenced the defendant under subsection (1) during the postponement period, it may, after the end of that period, vary the sentence by—

- (a) imposing a fine on him or her;
- (b) making any order involving any payment by him, including a compensation order; or
- (c) making an order referred to in section 21(1)(b) or (c).

(4) The Court may proceed under subsection (3) only within the period of twenty-eight days commencing on the last day of the postponement period.

(5) If the Court proceeds to sentence the defendant under subsection (1), section 14 has effect as if the defendant's particular criminal conduct included conduct which constitutes offences which the Court has taken into consideration in deciding his or her sentence for the offence or offences concerned.

27. Statement of information.

(1) If the Court is proceeding under section 14, the prosecutor shall give the Court a statement of information—

- (a) in a case where section 14(1)(b)(i) applies, within the period ordered by the Court; and
- (b) in a case where section 14(1)(b)(ii) applies, if the Court orders him to give it a statement of information, within the period ordered by the Court.

(2) If the prosecutor believes that section 15 applies with respect to the defendant, the statement of information is a statement of matters the prosecutor believes are relevant in connection with deciding—

- (a) whether section 15 applies to the defendant;
- (b) whether he or she has benefited from his or her general criminal conduct; and
- (c) his or her benefit from the conduct.

(3) A statement under subsection (2) shall include information the prosecutor believes is relevant—

- (a) in connection with the making by the Court of an assumption under section 18; and
- (b) for the purpose of enabling the Court to determine if the circumstances are such that it shall not make such an assumption.

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(4) If the prosecutor does not believe that section 15 applies to the defendant, the statement of information is a statement of matters the prosecutor believes are relevant in connection with deciding—

- (a) whether the defendant has benefited from his or her particular criminal conduct; and
- (b) his or her benefit from the conduct.

(5) If the prosecutor gives the Court a statement of information, the prosecutor—

- (a) may at any time give the Court a further statement of information; and
- (b) shall give the Court a further statement of information if it orders the prosecutor to do so, within the period ordered by the Court.

(6) The Court may, at any time, vary an order made under this section.

28. Defendant’s response to statement of information.

(1) If the prosecutor gives the Court a statement of information and a copy is served on the defendant, the Court may order the defendant—

- (a) to indicate (within the period it orders) the extent to which he or she accepts each allegation in the statement; and
- (b) so far as he or she does not accept such an allegation, to give particulars of any matters he or she proposes to rely on.

(2) If the defendant accepts to any extent an allegation in a statement of information, the Court may treat his or her acceptance as conclusive of the matters to which it relates for the purpose of deciding the issues referred to in section 27(2) or (4), as the case may be.

(3) If the defendant fails in any respect to comply with an order under subsection (1), he or she may be treated for the purposes of subsection (2) as accepting every allegation in the statement of information apart from—

- (a) any allegation in respect of which he or she has complied with the requirement; and
- (b) any allegation that he or she has benefited from his or her general or particular criminal conduct.

(4) For the purposes of this section, an allegation may be accepted or particulars may be given in a manner ordered by the Court.

(5) The Court may, at any time, vary an order made under this section.

(6) No acceptance under this section that the defendant has benefited from conduct is admissible in evidence in proceedings for an offence.

29. Provision of information by defendant.

(1) For the purpose of obtaining information to help it in carrying out its functions under section 14, the Court may at any time order the defendant to give it information specified in the order.

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- (2) An order under this section may require all or a specified part of the information to be given in a specified manner and before a specified date.
- (3) If the defendant fails without reasonable excuse to comply with an order under this section the Court may draw such inference as it believes is appropriate.
- (4) Subsection (3) does not affect any power of the Court to deal with the defendant in respect of a failure to comply with an order under this section.
- (5) If the prosecutor accepts to any extent an allegation made by the defendant—
- (a) in giving information required by an order under this section, or
 - (b) in any other statement given to the Court in relation to any matter relevant to determining the amount available to him or her for the purposes of section 16(2), the Court may treat the acceptance as conclusive of the matters to which it relates.
- (6) For the purposes of this section an allegation may be accepted in a manner ordered by the Court.
- (7) The Court may, at any time, vary an order made under this section.
- (8) No information given under this section which amounts to an admission by the defendant that he or she has benefited from criminal conduct is admissible in evidence in proceedings for an offence.

Division 4*Reconsideration of confiscation order***30. Reconsideration of case where no confiscation order made.**

- (1) This section applies if—
- (a) section 14(1)(a) applies in respect of a defendant, but the Court has not proceeded under that section;
 - (b) there is evidence which was not available to the prosecutor on the relevant date;
 - (c) before the end of the period of six years starting with the date of conviction, the prosecutor applies to the Court to consider the evidence; and
 - (d) after considering the evidence the Court believes it is appropriate for it to proceed under section 14.
- (2) Where subsection (1) applies, the Court shall proceed under section 14 and subsections (3) to (8) apply for that purpose.
- (3) If the Court has already sentenced the defendant for the offence (or any of the offences) concerned, section 14 has effect as if his or her particular criminal conduct included conduct which constitutes offences which the Court has taken into consideration in deciding his or her sentence for the offence or offences concerned.

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- (4) Instead of taking account of the matters specified in section 17(1)(a) and (b), the Court shall take account of—
- (a) conduct occurring before the relevant date;
 - (b) property obtained before the relevant date; and
 - (c) property obtained on or after the relevant date if it was obtained as a result of or in connection with conduct occurring before the relevant date.
- (5) For the purposes of this section—
- (a) the assumptions specified in section 18(2)(a) and (b) do not apply with regard to property first held by the defendant on or after the relevant date;
 - (b) the assumption specified in section 18(2)(c) does not apply with regard to expenditure incurred by the defendant on or after the relevant date; and
 - (c) the assumption specified in section 18(2)(d) does not apply with regard to property obtained, or assumed to have been obtained, by the defendant on or after the relevant date.
- (6) The recoverable amount for the purposes of section 14 is such amount, not exceeding the amount determined in accordance with section 16, as the Court considers just.
- (7) In arriving at the just amount the Court shall have regard in particular to—
- (a) the recoverable amount determined in accordance with section 16;
 - (b) any fine imposed on the defendant in respect of the offence or any of the offences concerned;
 - (c) any order within section 21(1)(b) or (c) that has been made against him or her in respect of the offence, or any of the offences, concerned and has not already been taken into account by the Court in determining what is the realisable property held by him or her for the purposes of section 16; and
 - (d) any compensation order that has been made against him or her in respect of the offence, or any of the offences, concerned.
- (8) If a compensation order has been made against the defendant in respect of the offence or offences concerned subsections (5) and (6) do not apply.
- (9) For the purposes of this section, the relevant date is—
- (a) if the Court made a decision not to proceed under section 14, the date of the decision; or
 - (b) if the Court did not make such a decision, the date of conviction.

31. Reconsideration of benefit where no confiscation order made.

- (1) This section applies if—
- (a) in proceeding under section 14, the Court has determined that—

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- (i) section 15 applies to the defendant but he or she has not benefited from his or her general criminal conduct; or
 - (ii) section 15 does not apply to the defendant and he or she has not benefited from his or her particular criminal conduct;
 - (b) there is evidence which was not available to the prosecutor when the Court determined that the defendant had not benefited from his or her general or particular criminal conduct;
 - (c) before the end of the period of six years starting with the date of conviction the prosecutor applies to the Court to consider the evidence; and
 - (d) after considering the evidence, the Court concludes that it would have determined that the defendant had benefited from his or her general or particular criminal conduct, as the case may be, if the evidence had been available to it.
- (2) If this section applies, the Court—
- (a) shall make a fresh determination under section 14(2)(a) or (b) as to whether the defendant has benefited from his or her general or particular criminal conduct, as the case may be; and
 - (b) may make a confiscation order under section 14.
- (3) Subsections (4) to (8) apply if the Court proceeds under section 14 pursuant to this section.
- (4) If the Court has already sentenced the defendant for the offence, or any of the offences, concerned, section 14 has effect as if the defendant’s particular criminal conduct included conduct which constitutes offences which the Court has taken into consideration in deciding his or her sentence for the offence or offences concerned.
- (5) Instead of taking account of the matters specified in section 17(1)(a) and (b), the Court shall take account of—
- (a) conduct occurring before the date of the original decision that the defendant had not benefited from his or her general or particular criminal conduct;
 - (b) property obtained before that date; and
 - (c) property obtained on or after that date if it was obtained as a result of or in connection with conduct occurring before that date.
- (6) For the purposes of this section—
- (a) the assumptions specified in section 18(2)(a) and (b) do not apply with regard to property first held by the defendant on or after the date of the original decision that the defendant had not benefited from his or her general or particular criminal conduct;
 - (b) the assumption specified in section 18(2)(c) does not apply with regard to expenditure incurred by him or her on or after that date; and

- (c) the assumption specified in section 18(2)(d) does not apply with regard to property obtained, or assumed to have been obtained, by him or her on or after that date.

(7) The recoverable amount for the purposes of section 16 is such amount as the Court considers just, but that amount shall not exceed the amount that the recoverable amount would have been under section 16 if this subsection did not apply.

- (8) In arriving at the just amount the Court shall have regard in particular to—
 - (a) the recoverable amount determined in accordance with section 16;
 - (b) any fine imposed on the defendant in respect of the offence, or any of the offences, concerned;
 - (c) any order within section 21(1)(b) or (c) that has been made against him or her in respect of the offence (or any of the offences) concerned and has not already been taken into account by the Court in determining what is the realisable property held by him or her for the purposes of section 16; and
 - (d) any compensation order that has been made against him or her.

32. Reconsideration of benefit where confiscation order made.

- (1) This section applies if—
 - (a) the Court has made a confiscation order;
 - (b) there is evidence which was not available to the prosecutor at the relevant time;
 - (c) the prosecutor believes that if the Court were to determine the amount of the defendant's benefit pursuant to this section it would exceed the relevant amount;
 - (d) before the end of the period of six years starting with the date of conviction the prosecutor applies to the Court to consider the evidence; and
 - (e) after considering the evidence, the Court believes it is appropriate for it to proceed under this section.

(2) Where this section applies, the Court shall make a new calculation of the defendant's benefit from the conduct concerned, and subsections (3) to (11) apply for this purpose.

(3) If the Court has already sentenced the defendant for the offence, or any of the offences, concerned, section 14 has effect as if his or her particular criminal conduct included conduct which constitutes offences which the Court has taken into consideration in deciding his or her sentence for the offence or offences concerned.

(4) Instead of taking account of the matters specified in section 17(1)(a) and (b), the Court shall take account of—

- (a) conduct occurring up to the time it determined the defendant's benefit for the purposes of the confiscation order;
- (b) property obtained up to that time; and

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- (c) property obtained after that time if it was obtained as a result of or in connection with conduct occurring before that time.
- (5) In applying section 17(3)(b), the confiscation order shall be ignored.
- (6) For the purposes of this section—
 - (a) the assumptions specified in section 18(2)(a) and (b) do not apply with regard to property first held by the defendant after the time the Court determined his or her benefit for the purposes of the confiscation order;
 - (b) the assumption specified in section 18(2)(c) does not apply with regard to expenditure incurred by him or her after that time; and
 - (c) the assumption specified in section 18(2)(d) does not apply with regard to property obtained (or assumed to have been obtained) by him or her after that time.
- (7) If the amount determined under the new calculation of the defendant's benefit exceeds the relevant amount, the Court—
 - (a) shall make a new calculation of the recoverable amount for the purposes of section 14; and
 - (b) if it exceeds the amount required to be paid under the confiscation order, may vary the order by substituting for the amount required to be paid such amount as it believes is just.
- (8) In applying subsection (6)(a) the Court shall—
 - (a) take the new calculation of the defendant's benefit; and
 - (b) apply section 16 as if references to the time the confiscation order is made were to the time of the new calculation of the recoverable amount and as if references to the date of the confiscation order were to the date of that new calculation.
- (9) In applying subsection (6)(b) the Court—
 - (a) shall have regard in particular to—
 - (i) any fine imposed on the defendant for the offence (or any of the offences) concerned;
 - (ii) any order within section 21(1)(b) or (c) that has been made against him or her in respect of the offence, or any of the offences, concerned and has not already been taken into account by the Court in determining what is the realisable property held by him or her for the purposes of section 16; and
 - (iii) any compensation order that has been made against him or her in respect of the offence, or any of the offences, concerned; but
 - (b) shall not have regard to an order falling within subparagraph (a)(iii) if an order has been made under section 21(4).

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(10) In determining under this section whether one amount exceeds another, the Court shall take account of any change in the value of money.

(11) For the purposes of this section,

(a) the relevant time is—

(i) when the Court calculated the defendant's benefit for the purposes of the confiscation order, if this section has not applied previously; or

(ii) when the Court last calculated the defendant's benefit pursuant to this section, if this section has applied previously; and

(b) the relevant amount is—

(i) the amount determined as the defendant's benefit for the purposes of the confiscation order, if this section has not applied previously; or

(ii) the amount last determined as the defendant's benefit pursuant to this section, if this section has applied previously.

33. Reconsideration of amount available to defendant where order made.

(1) This section applies if—

(a) the Court has made a confiscation order;

(b) the amount required to be paid was the amount determined in accordance with section 16(3); and

(c) the prosecutor or a receiver appointed under section 50(1) applies to the Court to make a new calculation of the amount available to the defendant.

(2) In a case where this section applies the Court shall make the new calculation, and in doing so it shall apply section 16 as if references to the time the confiscation order is made were to the time of the new calculation and as if references to the date of the confiscation order were to the date of the new calculation.

(3) If the amount determined under the new calculation exceeds the relevant amount, the Court may vary the order by substituting for the amount required to be paid such amount as the Court considers just, but that amount shall not exceed the amount determined as the defendant's benefit from the conduct concerned.

(4) In deciding what is just the Court—

(a) shall have regard, in particular to—

(i) any fine imposed on the defendant for the offence, or any of the offences, concerned;

(ii) any order within section 21(1)(b) or (c) that has been made against him or her in respect of the offence, or any of the offences, concerned and has not already been taken into account by the Court in determining what is the realisable property held by him or her for the purposes of section 16; and

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- (iii) any compensation order that has been made against him or her in respect of the offence, or any of the offences, concerned; but
 - (b) shall not have regard to an order falling within paragraph (a)(iii) if an order has been made under section 21(4).
- (5) In determining under this section whether one amount exceeds another, the Court shall take account of any change in the value of money.
- (6) The relevant amount is—
- (a) the amount determined as the amount available to the defendant for the purposes of the confiscation order, if this section has not applied previously; or
 - (b) the amount last determined as the amount available to the defendant pursuant to this section, if this section has applied previously.
- (7) The amount determined as the defendant’s benefit from the conduct concerned is—
- (a) the amount determined when the confiscation order was made; or
 - (b) if one or more new calculations of the defendant’s benefit have been made under section 31 the amount determined on the occasion of the last such calculation.

34. Variation of order where amount available to defendant is inadequate.

- (1) This section applies if—
- (a) the Court has made a confiscation order; and
 - (b) the defendant, or a receiver appointed under section 50(1), applies to the Court to vary the order under this section.
- (2) Where this section applies, the Court shall calculate the amount available to the defendant, and in doing so it shall apply section 16 as if references to the time the confiscation order is made were to the time of the calculation and as if references to the date of the confiscation order were to the date of the calculation.
- (3) If the Court determines that the amount available to the defendant calculated in accordance with subsection (2) is inadequate for the payment of any amount remaining to be paid under the confiscation order, it may vary the order by substituting for the amount required to be paid such smaller amount as the Court considers is just.
- (4) If a person has been adjudged bankrupt or his or her estate has been sequestrated, or if an order for the liquidation of a company has been made, the Court shall take into account the extent to which realisable property held by that person or that company may be distributed among creditors.
- (5) The Court may disregard any inadequacy which it believes is attributable, wholly or partly, to anything done by the defendant for the purpose of preserving property held by the recipient of a tainted gift from any risk of realisation under this Act.

(6) In subsection (4) “company” means any company which may be liquidated under the Companies Act, including a company that has given notice of its inability to pay claims under the International Business Companies Act and a foundation which may be dissolved.

35. Discharge of order for inadequacy of amount available to defendant.

- (1) This section applies if—
- (a) the Court has made a confiscation order;
 - (b) the Magistrate’s Court Clerk applies to the Court for the discharge of the order; and
 - (c) the amount remaining to be paid under the order is less than such sum as may be prescribed by the Court.

(2) Where this section applies, the Court shall calculate the amount available to the defendant and, in doing so, it shall apply section 16 as if references to the time the confiscation order is made were to the time of the calculation and as if references to the date of the confiscation order were to the date of the calculation.

- (3) If the Court—
- (a) determines that the amount available to the defendant calculated in accordance with subsection (2) is inadequate to meet the amount remaining to be paid; and
 - (b) is satisfied that the inadequacy is due wholly to one or more of the reasons specified in subsection (4),

it may discharge the confiscation order.

- (4) The reasons referred to in subsection (3) are—
- (a) in a case where any of the realisable property consists of money in a currency other than dollars, that fluctuations in currency exchange rates have occurred;
 - (b) such other reasons as may be prescribed by the Court.

36. Discharge of order where small amount outstanding.

The Court may discharge a confiscation order if—

- (a) the Registrar of the Court or the Magistrate’s Court Clerk as the case may be, applies to the Court for the discharge of the order; and
- (b) the amount remaining to be paid under the order is the prescribed sum or less.

37. Information.

Where the Court proceeds under section 14 pursuant to section 30 or 31 or the prosecutor applies under section 32—

- (a) the prosecutor shall give the Court a statement of information within such period as the Court orders;
- (b) section 27 applies, with appropriate modifications where the prosecutor applies under section 32; and

- (c) section 28 and 29 apply.

Division 5

Defendant absconds

38. Defendant convicted or committed.

- (1) This section applies if—
- (a) a defendant absconds after—
 - (i) he or she is convicted of an offence or offences in proceedings before the Court.
 - (ii) he or she is committed to the High Court by the Magistrate’s Court for sentencing; and
 - (b) the prosecutor applies to the Court to proceed under this section; and
 - (c) the Court believes it is appropriate for it to do so.
- (2) Where this section applies, subject to subsection (3), the Court shall proceed under section 14.
- (3) Where the Court proceeds under section 14 as applied by this section, this Part has effect with the following modifications—
- (a) any person the Court believes is likely to be affected by an order under section 14 is entitled to appear before the Court and make representations;
 - (b) the Court shall not make an order under section 14 unless the prosecutor has taken reasonable steps to contact the defendant;
 - (c) sections 18, 27(3), 28 and 29 shall be ignored; and
 - (d) sections 30, 31 and 32 shall be ignored while the defendant is still an absconder.
- (4) Once the defendant ceases to be an absconder, section 30 applies provided at the time when section 38(1)(a) applies, the Court did not proceed under section 14.

39. Defendant neither convicted nor acquitted.

- (1) This section applies if—
- (a) proceedings for an offence or offences are instituted against a defendant but are not concluded;
 - (b) the defendant absconds;
 - (c) the period of two years, starting with the day the Court believes he or she absconded, has ended;
 - (d) the prosecutor applies to the Court to proceed under this section; and
 - (e) the Court believes it is appropriate for it to do so.
- (2) If subsection (1) applies, subject to subsection (3), the Court shall proceed under section 14.

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(3) Where the Court proceeds under section 14 as applied by this section, this Part has effect with the following modifications—

- (a) any person the Court believes is likely to be affected by an order under section 14 is entitled to appear before the Court and make representations;
- (b) the Court shall not make an order under section 14 unless the prosecutor has taken reasonable steps to contact the defendant;
- (c) sections 18, 27(3) and sections 28 to 30 shall be ignored; and
- (d) section 32 shall be ignored while the defendant is still an absconder.

(4) Once the defendant has ceased to be an absconder, section 32 has effect as if references to the date of conviction were to—

- (a) the day when proceedings for the offence concerned were instituted against the defendant; or
- (b) if there are two or more offences and proceedings for them were instituted on different days, the earliest of those days.

(5) If—

- (a) the Court makes an order under section 14 as applied by this section; and
- (b) the defendant is later convicted in proceedings before the Court of the offence, or any of the offences, concerned;

section 14 does not apply so far as that conviction is concerned.

40. Variation of order.

(1) This section applies if—

- (a) the Court makes a confiscation order under section 14 as applied by section 39;
- (b) the defendant ceases to be an absconder;
- (c) the defendant is convicted of an offence, or any of the offences, mentioned in section 39(1)(a);
- (d) the defendant believes that the amount required to be paid was too large, taking into account the circumstances prevailing when the amount was determined for the purposes of the order; and
- (e) before the end of the relevant period the defendant applies to the Court to consider the evidence on which his belief is based.

(2) If, after considering the evidence, the Court concludes that the defendant's belief is well founded—

- (a) it shall determine the amount which should have been the amount required to be paid, taking into account the circumstances prevailing when the amount was determined for the purposes of the order; and
- (b) it may vary the order by substituting for the amount required to be paid such amount as it believes is just.

- (3) The relevant period is the period of 28 days starting with—
- (a) the date on which the defendant was convicted of the offence mentioned in section 39(1)(a); or
 - (b) if there are two or more offences and the convictions were on different dates, the date of the latest.

(4) In a case where section 39(1)(a) applies to more than one offence, the Court shall not make an order under this section unless it is satisfied that there is no possibility of any further proceedings being taken or continued in relation to any such offence in respect of which the defendant has not been convicted.

41. Discharge of order.

(1) Where the Court makes a confiscation order under section 14 as applied by section 39, it shall discharge the order if—

- (a) the defendant is later tried for the offence or offences concerned and acquitted on all counts; and
- (b) he or she applies to the Court to discharge the order.

(2) Subsection (3) applies if—

- (a) the Court makes a confiscation order under section 14 as applied by section 39;
- (b) the defendant ceases to be an absconder;
- (c) subsection (1)(a) does not apply; and
- (d) he or she applies to the Court to discharge the order.

(3) In the circumstances specified in subsection (2), the Court may discharge the order if it determines that—

- (a) there has been undue delay in continuing the proceedings mentioned in section 39(1); or
- (b) the prosecutor does not intend to proceed with the prosecution.

(4) If the Court discharges a confiscation order under this section it may make such a consequential or incidental order as it considers is appropriate.

Division 6

Appeals

42. Appeal to Court of Appeal.

(1) If the Court makes a confiscation order, the prosecutor or the defendant may appeal to the Court of Appeal in respect of the order.

(2) If the Court decides not to make a confiscation order, the prosecutor may appeal to the Court of Appeal against the decision.

(3) Subsections (1) and (2) do not apply to an order or decision made by virtue of section 30, 31, 38 or 39 unless the appellant is the defendant.

43. Court's powers on appeal.

(1) On an appeal under section 42(1) the Court of Appeal may confirm, set aside or vary the confiscation order.

(2) On an appeal under section 42(2), the Court of Appeal may confirm the decision, or if it believes the decision was wrong it may—

- (a) itself proceed under section 14 (ignoring subsections (1) to (4)); or
- (b) direct the Court to proceed afresh under section 14.

(3) In proceeding afresh pursuant to this section, the Court shall comply with any directions the Court of Appeal may make.

(4) If the Court of Appeal makes or varies a confiscation order under this section or does so pursuant to a direction under this section it shall have regard to—

- (a) any fine imposed on the defendant in respect of the offence, or any of the offences, concerned; and
- (b) any order within section 21(1)(b) or (c) that has been made against him or her in respect of the offence, or any of the offences, concerned, unless the order has already been taken into account by the Court in determining what is the realisable property held by the defendant for the purposes of section 16(2).

(5) If the Court of Appeal proceeds under section 14 or the Court proceeds afresh under that section pursuant to a direction under this section, subsections (6) to (11) apply.

(6) If the Court has already sentenced the defendant for the offence, or any of the offences, concerned, section 14 has effect as if his or her particular criminal conduct included conduct which constitutes offences which the Court has taken into consideration in deciding his or her sentence for the offence or offences concerned.

(7) If a compensation order has been made against the defendant in respect of the offence, or any offences, concerned—

- (a) the Court shall have regard to it; and
- (b) section 21(3) and (4) do not apply.

(8) Instead of taking account of the matters specified in section 17(1)(a) and (b), the Court shall take account of—

- (a) conduct occurring before the relevant date;
- (b) property obtained before that date; and
- (c) property obtained on or after that date if it was obtained as a result of or in connection with conduct occurring before that date.

(9) For the purposes of this section—

- (a) the assumptions specified in section 18(2)(a) and (b) do not apply with regard to property first held by the defendant on or after the relevant date;

- (b) the assumption specified in section 18(2)(c) does not apply with regard to expenditure incurred by him or her on or after that date; and
 - (c) the assumption specified in section 18(2)(d) does not apply with regard to property obtained, or assumed to have been obtained, by him on or after that date.
- (10) Section 37 applies as it applies in the circumstances specified in that section.
- (11) The relevant date is the date on which the Court decided not to make a confiscation order.

Division 7

Restraint orders

44. Conditions for exercise of powers.

- (1) The Court may exercise the powers conferred by section 45 if—
- (a) a criminal investigation has been started in St. Christopher and Nevis with regard to an offence and there is reasonable cause to believe that the alleged offender has benefited from his or her criminal conduct;
 - (b) proceedings for an offence have been instituted in St. Christopher and Nevis and not concluded and there is reasonable cause to believe that the defendant has benefited from his or her criminal conduct;
 - (c) an application by the prosecutor has been made under section 30, 31, 38 or 39 and not concluded, or the Court believes that such an application is to be made, and there is reasonable cause to believe that the defendant has benefited from his or her criminal conduct;
 - (d) an application by the prosecutor has been made under section 32 and not concluded, or the Court believes that such an application is to be made, and there is reasonable cause to believe that the Court will decide under that section that the amount determined under the new calculation of the defendant’s benefit exceeds the relevant amount, as defined in that section; or
 - (e) an application by the prosecutor has been made under section 33 and not concluded, or the Court believes that such an application is to be made, and there is reasonable cause to believe that the Court will decide under that section that the amount determined under the new calculation of the amount available to the defendant exceeds the relevant amount (as defined in that section).
- (2) Subsection (1)(b) is not satisfied if the Court believes that—
- (a) there has been undue delay in continuing the proceedings; or
 - (b) the prosecutor does not intend to proceed.
- (3) If an application mentioned in subsection (1)(c), (d) or (e) has been made, the condition specified in the relevant paragraph is not satisfied if the Court believes that—

- (a) there has been undue delay in continuing the application; or
 - (b) the prosecutor does not intend to proceed.
- (4) If subsection (1)(a) is satisfied—
- (a) references in this Part to the defendant are to the alleged offender;
 - (b) references in this Part to the prosecutor are to the person the Court believes is to have conduct of any proceedings for the offence; and
 - (c) section 13(2) has effect as if proceedings for the offence had been instituted against the defendant when the investigation was started.

45. Restraint orders.

(1) If any paragraph in section 44(1) is satisfied, the Court may, on the application of the prosecutor, by order, prohibit any person specified in the order from dealing with any realisable property held by him, subject to such conditions and exceptions as may be specified in the order.

(2) Without limiting subsection (1) and subject to subsection (3), a restraint order may make such provision as the Court thinks fit for—

- (a) reasonable living expenses and reasonable legal expenses; or
- (b) enabling any person to carry on any trade, business, profession or occupation.

(3) Where the Court exercises the power to make an exception for the purpose of enabling a person to meet reasonable legal expenses that the person has incurred, or may incur, in respect of proceedings under this section, it must ensure that the exception—

- (a) is limited to reasonable legal expenses that the person has reasonably incurred or that the person reasonably incurs,
- (b) specifies the total amount that may be released for legal expenses in pursuance of the exception.

(4) A restraint order may apply—

- (a) to all realisable property held by the person specified in the order, whether the property is described in the order or not; and
- (b) to realisable property transferred to the person specified in the order after the order is made.

(5) On the application of the prosecutor, whether made as part of the application for the restraint order or subsequent thereto, the Court may make such order as it considers appropriate for ensuring the restraint order is effective.

(6) A restraint order does not affect property for the time being subject to a charging order under any other enactment.

(7) Where the Court has made a restraint order, a law enforcement officer may, for the purpose of preventing any property to which the order applies being removed from St. Christopher and Nevis, seize the property.

(8) Property seized under subsection (7) shall be dealt with in accordance with the Court's directions.

(9) Subsection (10) applies if—

- (a) a court makes a restraint order, and
- (b) the applicant for the order applies to the court to proceed under subsection (10) (whether as part of the application for the restraint order or at any time afterwards)

(10) The court may make such order as it believes is appropriate for the purpose of ensuring the restraint order is effective.

(11) If on an application for a restraint order the court decides not to make one, the person who applied for the order may appeal to the Court of Appeal against that decision.

(12) If an application is made under section 46(2) in relation to a restraint order or an order under section 45(9) the following persons may appeal to the Court of Appeal in respect of the Court's decision on the application—

- (a) the person who applied for the order;
- (b) any person affected by the order.

(13) On an appeal under subsections (11) or (12) the Court of Appeal may—

- (a) confirm the decision, or
- (b) make such order as it believes is appropriate.

46. Application, discharge and variation.

(1) A restraint order—

- (a) may be made on an ex parte application to a judge in chambers or master of the Court; and
- (b) shall provide for notice to be given to persons affected by the order.

(2) An application to discharge or vary a restraint order or an order made under section 45(4) may be made to the Court by the prosecutor or by any person affected by the order.

(3) On an application under subsection (2), the Court—

- (a) may discharge or vary the restraint order;
- (b) if the application was made on the basis that proceedings were instituted or an application was made, the Court shall discharge the restraint order on the conclusion of the proceedings or the application, as the case may be;

- (c) if the application was made on the basis that an investigation was started or an application was to be made, the Court shall discharge the restraint order if within a reasonable period proceedings for the offence are not instituted or the application is not made, as the case may be.

47. Hearsay evidence.

(1) Evidence shall not be excluded on the ground that it is hearsay, of whatever degree, in proceedings—

- (a) for a restraint order;
- (b) for an application to discharge or vary a restraint order; or
- (c) on an appeal against a restraint order or an order discharging or varying a restraint order.

(2) For the purposes of this section, “hearsay” is a statement which is made otherwise than by a person while giving oral evidence in the proceedings and which is tendered as evidence of the matters stated.

(3) This section does not affect the admissibility of evidence which is admissible apart from this section.

48. Application to Registrar of Lands for restriction.

(1) Where the prosecutor has applied for a restraint order, he or she shall be treated as a person interested in any registered land, lease or charge to which the application relates, or to which a restraint order made on the application relates, and he or she may apply to the Registrar of Lands for a restriction prohibiting or restricting dealings with the registered land, lease or charge.

(2) The Registrar of Lands may, on an application made under subsection (1), order a restriction to be entered.

49. Appointment of management receiver.

(1) If the Court makes a restraint order, it may, on the application of the prosecutor, whether as part of the application for the restraint order or at any time afterwards, appoint a management receiver in respect of any realisable property to which the restraint order applies.

(2) The Court may, by order, give the management receiver the following powers, or any of them in relation to any realisable property to which the restraint order applies—

- (a) power to take possession of the property;
- (b) power to manage or otherwise deal with the property;
- (c) power to start, carry on or defend any legal proceedings in respect of the property;
- (d) power to realise so much of the property as is necessary to meet his or her remuneration and expenses; and

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- (e) power to exercise such other powers as the Court considers it appropriate to confer on him or her for the purpose of exercising his or her functions.
- (3) The Court may require any person having possession of property in respect of which a receiver is appointed under this section to give possession of it to the management receiver.
- (4) The Court—
- (a) may order a person holding an interest in any realisable property to which the restraint order applies to make to the management receiver such payment as the Court specifies in respect of a beneficial interest held by the defendant or the recipient of a tainted gift; and
 - (b) may, on the payment being made, by order transfer, grant or extinguish any interest in the property.
- (5) For the purposes of this section, managing or otherwise dealing with property includes—
- (a) selling the property or any part or interest in it;
 - (b) carrying on or arranging for another person to carry on any trade or business the assets of which are or are part of the property; or
 - (c) incurring capital expenditure in respect of the property.
- (6) The Court shall not in respect of any property give the receiver the powers specified in paragraphs (2)(b) or (d) or exercise the powers conferred by subsection (3) or (4) unless a reasonable opportunity has been given for persons holding any interest in the property to make representations to the Court.
- (7) Subsection (6), so far as relating to the power mentioned in subsection (2)(b), does not apply to property which –
- (a) is perishable; or
 - (b) ought to be disposed of before its value diminishes

50. Appointment of enforcement receiver.

- (1) On the application of the prosecutor, the Court may appoint an enforcement receiver in respect of realisable property, except property subject to a charge specified in section 45(6), if—
- (a) a confiscation order is made;
 - (b) the confiscation order is not satisfied; and
 - (c) the confiscation order is not subject to appeal.
- (2) Subject to such directions, exceptions and conditions as may be specified by the Court, an enforcement receiver has the following powers in relation to the realisable property—
- (a) to take possession of the property;

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- (b) to manage or otherwise deal with the property;
 - (c) to realise the property, in such manner as the Court may specify;
 - (d) to start, carry on or defend any legal proceedings in respect of the property; and
 - (e) to exercise such other powers as the Court considers it appropriate to confer on him or her for the purpose of exercising his or her functions.
- (3) The Court may require any person having possession of realisable property to give possession of it to the enforcement receiver.
- (4) The Court may—
- (a) order a person holding an interest in realisable property to make to the receiver such payment as the Court specifies in respect of a beneficial interest held by the defendant or the recipient of a tainted gift; and
 - (b) on the payment being made, by order transfer, grant or extinguish any interest in the property.
- (5) For the purposes of this section, managing or otherwise dealing with property includes—
- (a) selling the property or any part or interest in it;
 - (b) carrying on or arranging for another person to carry on any trade or business the assets of which are or are part of the property;
 - (c) incurring capital expenditure in respect of the property.
- (6) The Court shall not in respect of any property exercise the powers conferred by subsections (3), (4) or (5) unless a reasonable opportunity has been given for persons holding any interest in the property to make representations to the Court.
- (7) Subsection (6), so far as relating to the power mentioned in subsection (2)(b), does not apply to property which:
- (a) is perishable; or
 - (b) ought to be disposed of before its value diminishes.

51. Effect of restraint order.

- (1) Where a restraint order is made, or an enforcement receiver is appointed, no distress may be levied against any realisable property to which the order applies except with the leave of the Court and subject to any terms the Court may impose.
- (2) If the restraint order applies to, or the enforcement receiver is appointed in respect of, a tenancy of any premises, no landlord or other person to whom rent is payable may exercise a 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.
- (3) If proceedings are pending before the Court in respect of any property and the Court is satisfied that a restraint order, or an order for the appointment of an enforcement

receiver, 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 it thinks fit.

(4) Before exercising any power conferred by subsection (3), the Court shall give an opportunity to be heard to—

- (a) the prosecutor; and
- (b) the enforcement receiver or, in the case of a restraint order, any receiver appointed in respect of the property under this Part.

52. Application of proceeds of realisation and other sums.

(1) Subject to subsection (2), the following sums in the hands of an enforcement receiver, that is—

- (a) the proceeds of the realisation of any property under section 50, and
- (b) any other sums in which the defendant holds an interest,

shall, after such payments, if any, as the Court may direct have been made out of those sums, be applied on the defendant's behalf towards the satisfaction of the confiscation order.

(2) If, after the amount payable under the confiscation order has been fully paid, any such sums remain in the hands of such a receiver, the receiver shall distribute them—

- (a) among such of those who held property which has been realized under this Act, and
- (b) in such proportions,

as the Court may direct after giving a reasonable opportunity for such persons to make representations to the Court.

(3) The receipt of any sum by the Registrar on account of an amount payable under a confiscation order shall reduce the amount so payable, but the Registrar shall apply the money received for the purposes specified in this section and in the order so specified.

(4) The Registrar shall first pay the receiver's remuneration and expenses if the money was paid to the Registrar by a receiver appointed under this Act.

(5) If the Court made an order under section 21(4), the Registrar shall, after making any payment required by subsection (4), next apply any balance in his or her hands in payment of such amount of the compensation order as may be outstanding.

(6) Any balance in the hands of the Registrar after he has made all payments required by this section shall be paid into the National Forfeiture Fund.

53. Further provisions with respect to receivers.

(1) If a management or enforcement receiver—

- (a) takes action in relation to property which is not realisable property,
- (b) would be entitled to take the action if it were realisable property, and

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(c) believes on reasonable grounds that he is entitled to take the action, he or she is not liable to any person in respect of any loss or damage resulting from the action, except so far as the loss or damage is caused by his or her negligence.

(2) Application may be made to the Court for an order giving directions as to the exercise of the powers of a management or enforcement receiver by—

- (a) the receiver;
- (b) any person affected by action taken by the receiver; or
- (c) any person who may be affected by action the receiver proposes to take.

(3) On an application under this section, the Court may make such order as it considers appropriate.

54. Discharge and variation.

(1) Application may be made to the Court to vary or discharge an order made under section 49 or 50 by—

- (a) the receiver;
- (b) the prosecutor; or
- (c) any person affected by the order.

(2) On an application under this section the Court may discharge or vary the order.

(3) In the case of an order under section 49—

- (a) if the condition in section 44 which was satisfied was that proceedings were instituted or an application was made, the Court must discharge the order on the conclusion of the proceedings or of the application, as the case may be;
- (b) if the condition which was satisfied was that an investigation was started or an application was to be made, the Court must discharge the order if within a reasonable time proceedings for the offence are not instituted or the application is not made, as the case may be.

55. Discharge of management receiver.

(1) Where a management receiver is appointed in respect of realisable property and the Court appoints an enforcement receiver, the Court shall order the management receiver to transfer to the enforcement receiver all property that he or she holds by virtue of the exercise of his or her powers.

(2) Subject to subsection (4) the court may appoint the same person as the enforcement receiver.

(3) Subsection (1) does not apply to property which the management receiver holds by virtue of the exercise by him or her of his or her power under section 49(2)(d).

(4) If the management receiver complies with an order under subsection (1) he or she is discharged—

- (a) from his or her appointment under section 49; and
- (b) from any obligation under this Act arising from his or her appointment.

(5) Where this section applies, the Court may make such a consequential or incidental order as it considers appropriate.

56. Winding up of company holding realisable property.

(1) Where realisable property is held by a company and an order for the winding up of the company has been made or a resolution has been passed by the company for the voluntary winding up, the functions of the liquidator or any provisional liquidator, shall not be exercisable in relation to—

- (a) property for the time being subject to a restraint order made before the relevant time; and
- (b) any proceeds of property for the time being in the hands of a receiver appointed under this Act.

(2) Where, in the case of a company, such an order has been made or such a resolution has been passed, the powers conferred on the Court by sections 44 to 52 shall not be exercised in relation to any realisable property held by the company in relation to which the functions of the liquidator are exercisable—

- (a) so as to inhibit him from exercising those functions for the purpose of distributing any property held by the company to the company's creditors; or
- (b) so as to prevent the payment out of any property of expenses including the remuneration of the liquidator or any provisional liquidator properly incurred in the winding up in respect of the property.

(3) Subsection (2) does not affect the enforcement of a charging order made before the relevant time or on property which was subject to a restraint order at the relevant time.

(4) In this section—

“company” means any company which may be liquidated under the Companies Act, including a company that has given notice of its inability to pay claims under the International Business Ordinance as well as a foundation which may be dissolved.

“the relevant time” means—

- (a) where no order for the winding up of the company has been made, the time of the passing of the resolution for voluntary winding up;
- (b) where such an order has been made and, before the presentation of the petition for the winding up of the company by the Court, such a resolution had been passed by the company, the time of the passing of the resolution; and
- (c) in any other case where such an order has been made, the time of the making of the order.

57. Exercise of powers by Court or receiver.

- (1) This section applies to—
 - (a) the powers conferred on the Court by sections 45 to 53; and
 - (b) the powers of a receiver appointed under this Part.
- (2) Subject to this section, the powers—
 - (a) shall be exercised with a view to the value for the time being of realisable property being made available, by the property's realisation, for satisfying any confiscation order that has been, or may be, made against the defendant;
 - (b) shall be exercised, in a case where a confiscation order has not been made, with a view to securing that there is no diminution in the value of realisable property;
 - (c) shall be exercised without taking account of any obligation of the defendant or a recipient of a tainted gift if the obligation conflicts with the objective of satisfying any confiscation order that has been made, or may be made, against the defendant; and
 - (d) may be exercised in respect of a debt owed by the Crown.
- (3) Subsection (2) has effect subject to the following—
 - (a) the powers must be exercised with a view to allowing a person other than the defendant or a recipient of a tainted gift to retain or recover the value of any interest held by him or her;
 - (b) in the case of realisable property held by a recipient of a tainted gift, the powers must be exercised with a view to realising no more than the value for the time being of the gift; and
 - (c) in a case where a confiscation order has not been made against the defendant, property must not be sold if the Court so orders under subsection (4).
- (4) If on an application by the defendant, or by the recipient of a tainted gift, the Court decides that property cannot be replaced it may order that it must not be sold.
- (5) An order under subsection (4) may be revoked or varied.

Division 8*Other matters***58. Compensation.**

- (1) If proceedings are instituted against a person for an offence or offences to which this Act applies and either—
 - (a) the proceedings do not result in his or her conviction for any such offence, or
 - (b) where he or she is convicted of one or more such offences—
 - (i) the conviction or convictions concerned are quashed, or

(ii) he or she is pardoned in respect of the conviction or convictions concerned; the Court may, subject to this section, on an application by a person who held property which was realisable property, order compensation to be paid to the applicant if, having regard to all the circumstances, it considers it appropriate to make such an order.

(2) The Court shall not order compensation to be paid in any case unless the Court is satisfied—

- (a) that there has been some serious default on the part of a person concerned in the investigation or prosecution of the offence concerned; and
- (b) that the applicant has suffered loss in consequence of anything done in relation to the property by or pursuant to an order under this Act.

(3) The Court shall not order compensation to be paid in any case where it appears to the Court that the proceedings would have been instituted or continued even if the serious default had not occurred.

(4) The amount of compensation to be paid under this section shall be such as the Court thinks just in all the circumstances of the case.

59. Enforcement abroad

(1) This section applies if—

- (a) any of the conditions in section 44(1) is satisfied;
- (b) the prosecutor believes that realisable property is situated in a country or territory outside St. Christopher and Nevis; and
- (c) the prosecutor sends a request for assistance to the Attorney General with a view to it being forwarded under this section.

(2) In a case where no confiscation order has been made, a request for assistance is a request to the government of the receiving country to secure that any person is prohibited from dealing with realisable property.

(3) In a case where a confiscation order has been made and has not been satisfied, discharged or set aside, a request for assistance is a request to the government of the receiving country to secure that—

- (a) any person is prohibited from dealing with realisable property;
- (b) realisable property is realised and the proceeds are applied in accordance with the law of the receiving country.

(4) No request for assistance may be made for the purposes of this section in a case where a confiscation order has been made and has been satisfied, discharged or set aside.

(5) If the Attorney General believes it is appropriate to do so, he or she may forward the request for assistance to the government of the receiving country.

(6) If property is realised pursuant to a request under subsection (3) the amount ordered to be paid under the confiscation order must be taken to be reduced by an amount equal to the proceeds of realisation.

(7) A certificate issued by or on behalf of the requested government is admissible as evidence of the facts it states if it states—

- (a) that property has been realised pursuant to a request under subsection (3);
- (b) the date of realisation; and
- (c) the proceeds of realisation.

(8) If the proceeds of realisation made pursuant to a request under subsection (3) are expressed in a currency other than dollars, they must be taken to be the dollar equivalent calculated in accordance with the rate of exchange prevailing at the end of the day of realisation.

PART 3

CIVIL RECOVERY

Division 1

Preliminary

60. General.

(1) This Part has effect for the purposes of—

- (a) enabling the Civil Recovery Authority, to recover in civil proceedings before the Court, property which is, or represents—
 - (i) property obtained through unlawful conduct; or
 - (ii) property that has been used in, or in connection with, or is intended to be used in, or in connection with, unlawful conduct; and
- (b) enabling property which is, or represents, property obtained through unlawful conduct, or which is intended to be used in unlawful conduct, to be forfeited in civil proceedings before the Magistrate’s Court and in certain circumstances, to be forfeited by the giving of a notice.

(2) The powers conferred by this Part are exercisable in relation to any property, including cash, whether or not any proceedings have been brought for an offence in connection with the property.

61. Interpretation for this Part.

(1) In this Part—

“Recovery Authority” means the Civil Recovery Authority;

“excepted joint owner” has the meaning specified in section 93(2);

“property obtained through unlawful conduct” has the meaning specified in section 63;

“respondent” means—

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- (a) where proceedings are brought by the Recovery Authority under this Part, the person against whom the proceedings are brought; and
- (b) where no such proceedings have been brought but the Recovery Authority has applied for an interim receiving order, the person against whom the Recovery Authority intends to bring such proceedings;

“Suitably qualified person” means a person or company appointed by the court who has been nominated by the Recovery Authority and who in the opinion of the court has the qualifications and experience to carry out the functions and responsibilities as a trustee or interim receiver.

“tainted property” means, subject to subsection (3), property that —

- (a) has been used in, or in connection with, unlawful conduct; or
- (b) is intended to be used in, or in connection with, unlawful conduct; and

“value” means market value.

(2) For the purposes of this Part, proceedings against a 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.

(3) Property belonging to a person (“the owner”) is not tainted property if the unlawful conduct concerned is not the unlawful conduct of the owner.

(4) For the purposes of subsection (3), the “unlawful conduct concerned” is the unlawful conduct that the property is used in, or in connection with, or that the property is intended to be used in, or in connection with.

(5) “company” means any company which may be liquidated under the Companies Act, including a company that has given notice of its inability to pay claims under the International Business Companies Act and a foundation which may be dissolved.

(6) “plaintiff” includes “claimant”.

(7) Sections 62 to 72 and this section have effect for the purposes of this Part.

62. Meaning of “unlawful conduct”.

(1) “Unlawful conduct” is conduct which—

- (a) if it occurs in St. Christopher and Nevis, is unlawful under the criminal law of St. Christopher and Nevis; or
- (b) if it occurs in a country outside St. Christopher and Nevis—
 - (i) is unlawful under the criminal law applying in that country; and
 - (ii) if it occurred in St. Christopher and Nevis, would be unlawful under the criminal law of St. Christopher and Nevis.

(2) The Court, or in respect of proceedings for the recovery of property, the Magistrate's Court, shall decide on a balance of probabilities whether it is proved—

- (a) that any matters alleged to constitute unlawful conduct have occurred;
- (b) that any person used, or intended to use any property in, or in connection with unlawful conduct; or

63. Meaning of “property obtained through unlawful conduct”.

(1) A person obtains property through unlawful conduct, whether his or her own conduct or another person's conduct, if he or she obtains property by or in return for the conduct.

(2) In deciding whether any property was obtained through unlawful conduct—

- (a) it is immaterial whether or not any money, goods or services were provided in order to put the person in question in a position to carry out the conduct; and
- (b) it is not necessary to show that the conduct was of a particular kind if it is shown that the property was obtained through conduct of one of a number of kinds, each of which would have been unlawful conduct.

Division 2

Recoverable property and associated property

64. Recoverable property.

(1) Subject to subsection (2), property obtained through unlawful conduct and tainted property is recoverable property.

(2) Property obtained through unlawful conduct that has been disposed of since it was obtained through unlawful conduct or tainted property that has been disposed of since it became tainted property, is recoverable property if it is held by a person into whose hands it may be followed.

(3) Recoverable property may be followed into the hands of a person obtaining it on a disposal by—

- (a) in the case of property obtained through unlawful conduct, the person who through the conduct obtained the property;
- (b) in the case of tainted property, any person who had possession of the property for the purposes, or with the intent, of using the property for unlawful conduct; or
- (c) a person into whose hands it may, by virtue of this subsection, be followed.

65. Tracing property.

(1) Where property obtained through unlawful conduct or tainted property (“the original property”) is or has been recoverable property, property which represents the original property is also recoverable property.

(2) If a person enters into a transaction by which—

- (a) he or she disposes of recoverable property, whether the original property or property which, by virtue of this Part, represents the original property, and
- (b) he or she obtains other property in place of it,

the other property represents the original property.

(3) If a person disposes of recoverable property which represents the original property, the property may be followed into the hands of the person who obtains it, and it continues to represent the original property.

66. Mixing property.

(1) If a person's recoverable property is mixed with other property, whether the property is his or her property or another person's property, the portion of the mixed property which is attributable to the recoverable property represents the property obtained through unlawful conduct or the tainted property, as the case may be.

(2) Without limiting subsection (1), recoverable property is mixed with other property if it 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.

67. Recoverable property, accruing profits.

(1) This section applies where a person who has recoverable property obtains further property consisting of profits accruing in respect of the recoverable property.

(2) The further property is to be treated as representing the property obtained through unlawful conduct or the tainted property, as the case may be.

68. Recoverable property, general exceptions.

(1) If—

- (a) a person disposes of recoverable property, and
- (b) the person who obtains it on the disposal does so in good faith, for value and without notice that it was recoverable property,

the property may not be followed into that person's hands and, accordingly, it ceases to be recoverable.

(2) Recoverable property ceases to be recoverable—

- (a) if it is vested, forfeited or otherwise disposed of pursuant to powers conferred by virtue of this Part;
- (b) if—

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- (i) pursuant to a judgment in civil proceedings, whether in St. Christopher and Nevis or elsewhere, the defendant makes a payment to the plaintiff or the plaintiff otherwise obtains property from the defendant;
 - (ii) the plaintiff's claim is based on the defendant's unlawful conduct; and
 - (iii) apart from this paragraph, the sum received, or the property obtained, by the plaintiff would be recoverable property; or
 - (c) a payment is made to a person under a compensation order and, apart from this paragraph, the sum received would be recoverable property.
- (3) Property is not recoverable—
- (a) while a restraint order applies to it, whether made under this Act or under another enactment; or
 - (b) if it has been taken into account in determining the amount of a person's benefit from criminal conduct for the purpose of making a confiscation order—
 - (i) under this Act; or
 - (ii) under another enactment.

(4) In relation to an order mentioned in subparagraph (3)(b)(ii), the reference to the amount of a person's benefit from criminal conduct is to be construed as a reference to the corresponding amount under the Act in question.

(5) Where—

- (a) a person enters into a transaction to which section 65(2) applies, and
- (b) the disposal is one to which subsection (1) or paragraph (2)(a) applies,

this section does not affect the recoverability, by virtue of section 65(2), of any property obtained on the transaction in place of the property disposed of.

69. Other exemptions.

(1) Regulations may provide that property is not recoverable or, as the case may be, associated property if—

- (a) it is prescribed property; or
- (b) it is disposed of pursuant to a prescribed enactment or an enactment of a prescribed description.

(2) The regulations may provide that if property is disposed of pursuant to a prescribed enactment or an enactment of a prescribed description, it is to be treated for the purposes of section 97 as if it had been disposed of pursuant to a recovery order.

(3) Regulations made under this section may apply to property, or a disposal of property, only in prescribed circumstances and the circumstances may relate to the property or disposal itself or to a person who holds or has held the property or to any other matter.

70. Granting interests.

(1) If a person grants an interest in his or her recoverable property, the question whether the interest is also recoverable is to be determined in the same manner as it is on any other disposal of recoverable property.

(2) Accordingly, on his or her granting an interest in the property (“the property in question”)—

- (a) where the property in question is property obtained through unlawful conduct or is tainted property, the interest is also to be treated as obtained through that conduct or as tainted property, as the case may be; and
- (b) where the property in question represents in his or her hands property obtained through unlawful conduct or tainted property, the interest is also to be treated as representing in his or her hands the property so obtained or the tainted property, as the case may be.

71. Meaning of “associated property”.

(1) “Associated property” means property of any of the following descriptions, including property held by the respondent which is not itself the recoverable property—

- (a) any interest in the recoverable property;
- (b) any other interest in the property in which the recoverable property subsists;
- (c) if the recoverable property is in common ownership, the share of the other owner;
- (d) if the recoverable property is part of a larger property, but not a separate part, the remainder of that property.

(2) References to property being associated with recoverable property are to be construed accordingly.

72. Obtaining and disposing of property.

(1) References to a person disposing of his or her property include a reference—

- (a) to his or her disposing of a part of it;
- (b) to his or her granting an interest in it; or
- (c) to both;

and references to the property disposed of are to any property obtained on the disposal.

(2) A person who makes a payment to another person is to be treated as making a disposal of his other property to the other person, whatever form the payment takes.

(3) Where a person’s property passes to another person under a will or intestacy or by operation of law, it is to be treated as disposed of by him or her to the other person.

(4) A person is only to be treated as having obtained his or her property for value in a case where he or she gave unexecuted consideration if the consideration has become executed consideration.

Division 3*Recovery orders and property freezing orders***73. Application for recovery order.**

(1) The Recovery Authority may apply to the Court for a recovery order by way of a claim against any person who the Recovery Authority believes holds recoverable property.

(2) The Recovery Authority shall serve a claim form under subsection (1)—

- (a) on the respondent; and
- (b) unless the Court dispenses with service, on any other person who the Recovery Authority believes holds any associated property which the Recovery Authority wishes to be subject to the recovery order.

(3) The Recovery Authority shall, in the claim form—

- (a) identify, by particularising or by a general description, the property in relation to which the Recovery Authority seeks a recovery order;
- (b) state, in relation to each item or description of property identified in the application—
 - (i) whether it is alleged that the property is recoverable property or associated property; and
 - (ii) either who is alleged to hold the property or where the Recovery Authority is unable to identify who holds the property, the steps that have been taken to establish their identity; and
- (c) nominate a suitably qualified person for appointment by the Court as the trustee for civil recovery.

(4) The references above to the claim form include the particulars of claim, where they are served subsequently.

74. Application for property freezing order.

(1) Where the Recovery Authority may take proceedings for a recovery order in the Court, the Recovery Authority may apply to the Court for a property freezing order, whether before or after instituting the proceedings.

(2) A property freezing order is an order that, subject to any exclusions, prohibits any person whose property is specified or described in the order, from in any way dealing with the property.

(3) An application for a property freezing order may be made without notice if the circumstances are such that notice of the application would prejudice any right of the Recovery Authority to obtain a recovery order in respect of any property.

(4) The Court may make a property freezing order if it is satisfied that—

- (a) there is a good arguable case that—

- (i) the property to which the application for the order relates is or includes recoverable property; and
 - (ii) if any of the property is not recoverable property, it is associated property; and
- (b) if the property to which the application for the order relates includes property alleged to be associated property, and the Recovery Authority has not established the identity of the person who holds it, the Recovery Authority has taken all reasonable steps to do so.

75. Variation and setting aside of order.

- (1) The Court may at any time vary or set aside a property freezing order.
- (2) If the Court makes an interim receiving order, it must vary or set aside the property freezing order to exclude any property subject to the interim receiving order.
- (3) If the Court decides that any property to which a property freezing order applies is neither recoverable property nor associated property, it must vary the order so as to exclude the property.
- (4) Unless acting in accordance with subsection (2), the Court must give the parties to the proceedings and any person who may be affected by its decision an opportunity to be heard before varying or setting aside a property freezing order.

76. Exclusions.

- (1) The power to make or vary a property freezing order includes the power to—
 - (a) exclude specified property, or property described in the order, from the order; and
 - (b) otherwise make exclusions from the prohibition on dealing with the property to which the order applies.
- (2) An exclusion may be made subject to such conditions as the Court considers appropriate and may, in particular, make provision for the purpose of enabling any person—
 - (a) to meet his or her reasonable living expenses or legal expenses; or
 - (b) to carry on any trade, business, profession or occupation.
- (3) Where the Court exercises the power to make an exclusion for the purpose of enabling a person to meet legal expenses that he or she has incurred, or may incur, in respect of proceedings under this Part, it must ensure that the exclusion—
 - (a) is limited to reasonable legal expenses that the person has reasonably incurred or that he or she reasonably incurs; and
 - (b) specifies the total amount that may be released for legal expenses pursuant to the exclusion.
- (4) Subject to subsection (2) or (3), the power to make exclusions must be exercised with a view to ensuring, so far as practicable, that the satisfaction of any right of the Recovery

Authority to recover the property obtained through unlawful conduct or the tainted property is not unduly prejudiced.

77. Restriction on proceedings and remedies.

- (1) While a property freezing order has effect—
 - (a) the Court may stay any action, execution or other legal process in respect of the property to which the order applies; and
 - (b) no distress may be levied against the property to which the order applies except with the leave of the Court and subject to any terms the Court may impose.

(2) If the Court is satisfied that a property freezing order has been applied for or made in respect of any property in respect of which proceedings are pending, it may either stay the proceedings or allow them to continue on any terms it thinks fit.

(3) If a property freezing order applies to a tenancy of any premises, no landlord or other person to whom rent is payable may exercise the right of forfeiture 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 must give the parties to any of the proceedings concerned and any person who may be affected by the Court's decision an opportunity to be heard.

78. Receivers in connection with property freezing orders.

(1) The Court may appoint a receiver in respect of any property to which the property freezing order applies if—

- (a) the Court makes a property freezing order on an application by the Recovery Authority; and
- (b) the Recovery Authority applies to the Court for the appointment of a receiver, whether as part of the application for the property freezing order or at any time afterwards.

(2) An application for an order under this section may be made without notice if the circumstances are such that notice of the application would prejudice any right of the Recovery Authority to obtain a recovery order in respect of any property.

(3) In its application for an order under this section, the Recovery Authority must nominate a suitably qualified person for appointment as a receiver.

(4) The Recovery Authority may apply a sum received by it under section 99(2) in making payment of the remuneration, if any, and expenses of a receiver appointed under this section.

79. Powers of receivers appointed under section 78.

(1) If the Court appoints a receiver under section 78 on an application by the Recovery Authority, the Court may, on the application of the Recovery Authority, by order, authorise or require the receiver —

- (a) to exercise any of the powers specified in Schedule 1 (management powers) in relation to any property in respect of which the receiver is appointed; and
- (b) to take any other steps the court thinks appropriate in connection with the management of any such property, including securing the detention, custody or preservation of the property in order to manage it.

(2) The Court may by order require any person in respect of whose property the receiver is appointed—

- (a) to bring the property to a place specified by the receiver or to place it in the custody of the receiver; and
- (b) to do anything he is reasonably required to do by the receiver for the preservation of the property.

(3) The Court may by order require any person in respect of whose property the receiver is appointed to bring any documents relating to the property which are in his or her possession or control to a place specified by the receiver or to place them in the custody of the receiver.

(4) Any prohibition on dealing with property imposed by a property freezing order does not prevent a person from complying with any requirements imposed by virtue of this section.

(5) If—

- (a) the receiver deals with any property which is not property in respect of which he or she is appointed; and
- (b) at the time he or she deals with the property he or she believes on reasonable grounds that he or she is entitled to do so by virtue of his or her appointment, the receiver is not liable to any person in respect of any loss or damage resulting from his or her dealing with the property except so far as the loss or damage is caused by his or her negligence.

80. Supervision of section 78 receiver and variations.

(1) Any of the following persons may at any time apply to the Court for directions as to the exercise of the functions of a receiver appointed under section 78—

- (a) the receiver;
- (b) any party to the proceedings for the appointment of the receiver or the property freezing order concerned;
- (c) any person affected by any action taken by the receiver; and
- (d) any person who may be affected by any action proposed to be taken by the receiver.

(2) Before giving any directions under subsection (1), the Court must give an opportunity to be heard to—

- (a) the receiver;
- (b) the parties to the proceedings for the appointment of the receiver and for the property freezing order concerned; and
- (c) any person who may be interested in the application under subsection (1).

(3) The Court may at any time vary or set aside the appointment of a receiver under section 78, any order under section 79 or any directions under this section.

(4) Before exercising any power under subsection (3), the Court must give an opportunity to be heard to—

- (a) the receiver;
- (b) the parties to the proceedings for the appointment of the receiver, for the order under section 82 or, as the case may be, for the directions under this section;
- (c) the parties to the proceedings for the property freezing order concerned; and
- (d) any person who may be affected by the court's decision.

Division 4

Interim receiving order

81. Application for, and making of, interim receiving order.

(1) Where the Recovery Authority may take proceedings for a recovery order, the Recovery Authority may apply to the Court for an interim receiving order, whether before or after instituting the proceedings.

(2) 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 Recovery Authority to obtain a recovery order in respect of any property.

(4) The Court may make an interim receiving order on the application—

- (a) if it is satisfied there is a good arguable case—
 - (i) that the property to which the application for the order relates is or includes recoverable property; and
 - (ii) that, if any of it is not recoverable property, it is associated property; and
- (b) if—
 - (i) the property to which the application for the order relates includes property alleged to be associated property; and

- (ii) the Recovery Authority has not established the identity of the person who holds it, the Recovery Authority has taken all reasonable steps to do so.

(5) The Recovery Authority shall, in its application for an interim receiving order, nominate a suitably qualified person for appointment as interim receiver.

82. Functions of interim receiver.

- (1) An interim receiving order may authorise or require the interim receiver—
 - (a) to exercise any of the powers specified in Schedule 1,
 - (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 subsection (2).

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

- (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; or
- (c) whether or not any other property is tainted 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 which is not property to which the order applies, and
- (b) at the time he or she deals with the property he or she believes on reasonable grounds that he or she is entitled to do so pursuant to the order,

the interim receiver is not liable to any person in respect of any loss or damage resulting from his or her dealing with the property except so far as the loss or damage is caused by his or her negligence.

83. Duties of respondent.

An interim receiving order may require any person to whose property the order applies—

- (a) to bring the property to such place as may be specified by the interim receiver or to place it in the custody of the interim receiver and to do anything he or she is reasonably required to do by the interim receiver for the preservation of the property; and
- (b) to bring any documents relating to the property which are in his or her possession or control to such place as may be specified by the interim receiver or to place them in the custody of the interim receiver.

84. Supervision of interim receiver and variation of order.

(1) The interim receiver, any party to the proceedings and any person affected by any action taken by the interim receiver, or who may be affected by any action proposed to be taken by him or her, may at any time apply to the Court for directions as to the exercise of the interim receiver's functions.

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

(3) Before giving any directions under subsection (1) or exercising any power to vary or set aside an interim receiving order, the Court shall give the following an opportunity to be heard—

- (a) the parties to the proceedings;
- (b) the interim receiver; and
- (c) any person who may be interested in an application under subsection (1) or affected by the Court's decision under subsection (2), as the case may be.

85. Restrictions on dealing etc. with property.

(1) Subject to subsection (2), an interim receiving order—

- (a) shall prohibit any person to whose property the order applies from dealing with the property; and
- (b) may be made subject to such conditions as the Court considers appropriate.

(2) The Court may, when the interim receiving order is made or on an application to vary the order, make such exclusions from the order as it considers just, including making provision for the purpose of enabling any person—

- (a) to meet his or her reasonable living expenses;
- (b) to meet his or her reasonable legal expenses; or
- (c) to carry on any trade, business, profession or occupation.

(3) If the excluded property is not specified in the order it shall be described in the order in general terms.

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

86. Restriction on proceedings and remedies.

(1) While an interim receiving order has effect—

- (a) the Court may stay any action, execution or other legal process in respect of the property to which the order applies; and
- (b) no distress may be levied against the property to which the order applies except with the leave of the Court and subject to any terms the Court may impose.

(2) If any Court in which proceedings are pending in respect of any 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 such terms that it 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 the following the right to be heard—

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

87. Exclusion of property which is not recoverable.

(1) If the Court decides that any property to which an interim receiving order applies is neither recoverable property nor associated property, it 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 which is alleged to be associated property if the Court thinks that the satisfaction of any right of the Recovery Authority to recover the property obtained through unlawful conduct or tainted property will not be prejudiced.

(3) The Court may exclude any property within subsection (2) on such terms or conditions, applying while the interim receiving order has effect, which the Court thinks necessary or expedient.

88. Reporting.

(1) An interim receiving order shall require the interim receiver to inform the Recovery Authority and the Court as soon as reasonably practicable if he or she thinks that—

- (a) any property to which the order applies by virtue of a claim that it is recoverable property is not recoverable property;
- (b) any property to which the order applies by virtue of a claim that it 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 associated property;
- (d) any property to which the order applies is held by a person who is different from the person it is claimed holds it; 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 or her findings to the Court; and
 - (b) to serve copies of his or her report on the Recovery Authority and on any person who holds any property to which the order applies or who may otherwise be affected by the report.

89. Recovery Authority may apply to Registrar of Lands for restriction.

(1) Where the Recovery Authority has applied for a property freezing order or an interim receiving order, he or she shall be treated as a person interested in any registered land, lease or charge to which the application relates, or to which a property freezing order or an interim receiving order made on the application relates, and he or she may apply to the Registrar of Lands for a restriction prohibiting or restricting dealings with the registered land, lease or charge.

(2) The Registrar of Lands may, on an application made under subsection (1), order a restriction to be entered.

Division 5

Vesting and realisation of recoverable property

90. Recovery orders.

(1) If in proceedings under this Part the Court is satisfied that any property is recoverable property, the Court shall make a recovery order and shall appoint a suitably qualified person as the trustee for civil recovery to give effect to the recovery order.

(2) Where a recovery order is made, the recoverable property vests in the person appointed by the Court to be trustee.

(3) The Court shall not make in a recovery order any provision in respect of any recoverable property if—

- (a) each of the conditions in subsection (4) is met; and
- (b) it would not be just and equitable to do so.

(4) The conditions referred to in paragraph (3)(a) are that—

- (a) the respondent obtained the recoverable property in good faith;
- (b) the respondent took any action, or omitted to take any action, after obtaining the property which he or she would not have taken, or omitted to take, if he or she had not obtained the property or he or she took any action, or omitted to take any action, before obtaining the property which he or she would not have taken, or omitted to take, if he or she had not believed he or she was going to obtain it;
- (c) when he or she took, or omitted to take, the action referred to in paragraph (b), he or she had no notice that the property was recoverable;
- (d) if a recovery order were made in respect of the property, it would, by reason of his or her action or omission be detrimental to him or her.

(5) In deciding whether it would be just and equitable to make the provision in the recovery order where the conditions in subsection (4) are met, the Court shall have regard to—

- (a) the degree of detriment that would be suffered by the respondent if the provision were made;
- (b) the Recovery Authority's interest in receiving the realised proceeds of the recoverable property.

(6) A recovery order may sever any property.

(7) A recovery order—

- (a) may impose conditions as to the manner in which the trustee may deal with any property vested by the order for the purpose of realising it; and
- (b) may provide for payment under section 99 of reasonable legal expenses that a person has reasonably incurred, or may reasonably incur, in respect of—
 - (i) the proceedings under this Part in which the order is made; or
 - (ii) any related proceedings under this Part.

(8) This section is subject to sections 91 to 99.

91. Functions of the trustee.

(1) The functions of the trustee are—

- (a) to secure the detention, custody or preservation of any property vested in him or her by the recovery order;
- (b) in the case of property other than money, to realise the value of the property for the benefit of the Recovery Authority;
- (c) to otherwise give effect to the recovery order; and
- (d) to perform any other functions conferred on him or her by virtue of this Part.

(2) In performing his or her functions, the trustee acts on behalf of the Recovery Authority and shall comply with any directions given to him or her by the Recovery Authority.

(3) The trustee shall realise the value of property vested in him or her by the recovery order, so far as practicable, in the manner best calculated to maximise the amount payable to the Recovery Authority.

(4) The trustee has the powers specified in Schedule 2.

(5) References in this section to a recovery order include a consent order made under section 96 and references to property vested in the trustee by a recovery order include property vested in him or her pursuant to such a consent order.

92. Rights of pre-emption.

(1) A recovery order is to have effect in relation to any property despite any provision, of whatever nature, which would otherwise prevent, penalise or restrict the vesting of the property.

(2) A right of pre-emption, right of return or other similar right does not operate or become exercisable as a result of the vesting of any property under a recovery order.

(3) A right of return means any right under a provision for the return or reversion of property in specified circumstances.

(4) Where property is vested under a recovery order, any such right is to have effect as if the person in whom the property is vested were the same person in law as the person who held the property and as if no transfer of the property had taken place.

(5) References to rights in subsections (2), (3) and (4) do not include any rights in respect of which the recovery order was made.

(6) This section applies in relation to the creation of interests, or the doing of anything else, by a recovery order as it applies in relation to the vesting of property.

93. Associated and joint property.

(1) Sections 94 and 95 apply if the Court makes a recovery order in respect of any recoverable property, and—

(a) if—

- (i) the property to which the proceedings relate includes property which is associated with the recoverable property and is specified or described in the application; and
- (ii) if the associated property is not the respondent's property, the claim form or application has been served on the person whose property it is or the Court has dispensed with service; or

(b) if—

- (i) the recoverable property belongs to joint owners; and
- (ii) one of the owners is an excepted joint owner.

(2) An excepted joint owner is a person who obtained the property in circumstances in which it would not be recoverable as against him or her and references to the excepted joint owner's share of the recoverable property are to so much of the recoverable property as would have been his or hers if the joint ownership had been severed.

94. Agreements about associated and joint property.

(1) Where—

- (a) this section applies, and
- (b) the Recovery Authority (on the one hand) and the person who holds the associated property or who is the excepted joint owner (on the other) agree,

the recovery order may, instead of vesting the recoverable property in the trustee, require the person who holds the associated property or who is the excepted joint owner to make a payment to the trustee.

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(2) A recovery order which makes any requirement under subsection (1) may, so far as required for giving effect to the agreement, include provision for vesting, creating or extinguishing any interest in property.

(3) The amount of the payment shall be the amount which the Recovery Authority and that person agree represents—

- (a) in the circumstances specified in section 93(1)(a), the value of the recoverable property; or
- (b) in a case within section 93(1)(b), the value of the recoverable property less the value of the excepted joint owner's share.

(4) If—

- (a) a property freezing order or an interim receiving order applied at any time to the associated property or joint ownership, and
- (b) the Recovery Authority agrees that the person has suffered loss as a result of the property freezing order or interim receiving order,

the amount of the payment may be reduced by any amount the Recovery Authority and that person agree is reasonable, having regard to that loss and to any other relevant circumstances.

(5) If there is more than one such item of associated property or excepted joint owner, the total amount to be paid to the trustee, and the part of that amount which is to be provided by each person who holds any such associated property or who is an excepted joint owner, is to be agreed between both, or all, of them and the Recovery Authority.

(6) A recovery order which makes any requirement under subsection (1) shall make provision for any recoverable property to cease to be recoverable.

95. Associated and joint property: default of agreement.

(1) Where this section applies, the Court may make the following provision if—

- (a) there is no agreement under section 94; and
- (b) the Court thinks it just and equitable to do so.

(2) The recovery order may provide—

- (a) for the associated property to vest in the trustee or, as the case may be, for the excepted joint owner's interest to be extinguished; or
- (b) in the case of an excepted joint owner, for the severance of his or her interest.

(3) A recovery order making any provision by virtue of subsection (2)(a) may provide for either or both of the following:

- (a) for the trustee to pay an amount to the person who holds the associated property or who is an excepted joint owner;
- (b) for the creation of interests in favour of that person, or the imposition of liabilities or conditions, in relation to the property vested in the trustee.

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(4) In making any provision in a recovery order by virtue of subsection (2) or (3), the Court shall have regard to—

- (a) the rights of any person who holds the associated property or who is an excepted joint owner and the value to him or her of that property or, as the case may be, of his or her share, including any value which cannot be assessed in terms of money; and
- (b) the Recovery Authority's interest in receiving the realised proceeds of the recoverable property.

(5) If—

- (a) a property freezing order or an interim receiving order applied at any time to the associated property or joint ownership; and
- (b) the Court is satisfied that the person who holds the associated property or who is an excepted joint owner has suffered loss as a result of the property freezing order or interim receiving order,

a recovery order making any provision by virtue of subsection (2) or (3) may require the Recovery Authority to pay compensation to that person.

(6) The amount of compensation to be paid under subsection (5) is the amount the Court thinks reasonable, having regard to the person's loss and to any other relevant circumstances.

96. Consent orders.

(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 both to the proceedings and the agreement.

(2) An order under subsection (1) may, as well as staying the proceedings—

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

(3) Section 99 applies to property vested in the trustee, or money paid to him or her, pursuant to the agreement as it applies to property vested in him or her by a recovery order or money paid under section 94.

97. Limit on recovery.

(1) This section applies if the Recovery Authority seeks a recovery order—

- (a) in respect of both property which is or represents property obtained through unlawful conduct, or tainted property, and related property; or
- (b) in respect of property which is or represents property obtained through unlawful conduct, or tainted property, where such an order, or an order under section 96, has previously been made in respect of related property.

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- (2) For the purposes of this section—
- (a) the original property means the property obtained through unlawful conduct or the tainted property, as the case may be; and
 - (b) the original property, and any items of property which represent the original property, are to be treated as related to each other.
- (3) The Court is not to make a recovery order if it thinks that the Recovery Authority’s right to recover the original property has been satisfied by a previous recovery order or an order under section 96.
- (4) Subject to subsection (3), the Court may act under subsection (5) if it thinks that—
- (a) a recovery order may be made in respect of two or more related items of recoverable property; but
 - (b) the making of a recovery order in respect of both or all of them is not required in order to satisfy the Recovery 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 either or both of the following —
- (a) only some of the related items of property; or
 - (b) only a part of any of the related items of property;
- (6) Where the Court may make a recovery order in respect of any property, this section does not prevent the recovery of any profits which have accrued in respect of the property.
- (7) If—
- (a) an order is made under sections 118, 130 or 150 for the forfeiture of recoverable property, and
 - (b) the Recovery Authority subsequently seeks a recovery order in respect of related property,

the order under section 118 is to be treated for the purposes of this section as if it were a recovery order obtained by the Recovery Authority in respect of the forfeited property.

- (8) If—
- (a) pursuant to a judgment in civil proceedings, whether in St. Christopher and Nevis or elsewhere, the plaintiff has obtained property from the defendant (“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 Recovery 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 Recovery Authority in respect of the judgment property.

(9) If—

- (a) property has been taken into account in determining the amount of a person’s benefit from criminal conduct for the purpose of making a confiscation order, and
- (b) the Recovery Authority subsequently seeks a recovery order in respect of related property,

the confiscation order is to be treated for the purposes of this section as if it were a recovery order obtained by the Recovery Authority in respect of the property referred to in paragraph (a).

(10) In subsection (9), a confiscation order means—

- (a) an order under section 14, or
- (b) an order under an equivalent enactment;

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 under the Act in question.

98. Limits on recovery, supplementary.

(1) Subsections (2) and (3) give examples of the satisfaction of the Recovery Authority’s right to recover the original property.

(2) If—

- (a) there is a disposal, other than a part disposal, of the original property, and
- (b) other property (“the representative property”) is obtained in its place,

the Recovery 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 representative property.

(3) If—

- (a) there is a part disposal of the original property, and
- (b) other property (“the representative property”) is obtained in place of the property disposed of,

the Recovery 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 representative property or the property disposed of.

(4) In this section—

- (a) a part disposal means a disposal to which section 72(1) applies; and
- (b) the original property has the same meaning as in section 97.

99. Applying realised proceeds.

(1) This section applies to—

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- (a) sums which represent the realised proceeds of property which was vested in the trustee by a recovery order or which he or she obtained pursuant to a recovery order; and
 - (b) sums vested in the trustee by a recovery order or obtained by him or her pursuant to a recovery order.
- (2) The trustee is to make out of the sums—
- (a) first, any payment required to be made by him or her by virtue of section 95;
 - (b) next, any payment of legal expenses which are payable under this subsection in pursuance of provision under section 90(7)(b) contained in the recovery order;
 - (c) any fees payable to a liquidator of a company appointed by or supervised by the Court; and
 - (d) any sum which remains is to be paid to the Recovery Authority.
- (3) The Recovery Authority may apply a sum received by it under subsection (2) in making payment of the remuneration and expenses of—
- (a) the trustee; or
 - (b) any interim receiver appointed in, or in anticipation of, the proceedings for the recovery order.
- (4) Any sum remaining, after payments made in accordance with subsection (3), and any accrued interest on that sum, shall be paid into the Fund after:
- (a) the period permitted under section 108 to lodge an application for compensation has expired or the application for compensation has been determined or disposed of; or
 - (b) the period within which an appeal may be made or, if a person appeals, after the appeal has been determined or disposed of;

whichever comes later.

Division 6

Exemptions etc.

100. Victims of theft, etc.

- (1) In proceedings for a recovery order, a person who claims that any property alleged to be recoverable property, or any part of the property, belongs to him or her may apply for a declaration to that effect under this section.
- (2) The Court may make a declaration under subsection (1) if it appears to the Court that—
- (a) the applicant was deprived of the property he or she claims, or of property which it represents, by unlawful conduct;
 - (b) the property the applicant was deprived of was not recoverable property immediately before he or she was deprived of it; and

- (c) the property he or she claims belongs to him or her.
- (3) Property to which a declaration under this section applies is not recoverable property.

101. Other exemptions.

- (1) Proceedings for a recovery order may not be taken;
 - (a) in respect of cash found at any place in St. Christopher and Nevis unless the proceedings are also taken in respect of property other than cash which is property of the same person;
 - (b) against the Recovery Authority in respect of any recoverable property held by the Recovery Authority; or
 - (c) against any person in respect of any recoverable property which he or she holds by reason of his or her acting, or having acted, as Trustee in bankruptcy appointed under the Bankruptcy Act, or as liquidator of a company appointed by, or supervised by the Court.
- (2) Regulations may provide that proceedings for a recovery order may not be taken against any person in circumstances of a prescribed description and the circumstances may relate to the person himself or herself, to the property or to any other matter.

102. Scope of Powers.

- (1) Subject to subsection (2), an order under this Part may be made by the Court—
 - (a) in respect of property wherever situated; and
 - (b) in respect of a person wherever domiciled, resident or present.
- (2) An order under this Part may not be made by the Court in respect of property that is outside of the State unless there is or has been a connection between the case and the State.
- (3) The circumstances in which there is or has been such a connection include those described in Schedule 8

103. Enforcement abroad before recovery order: Attorney General.

- (1) this section applies if—
 - (a) the property freezing conditions are met in relation to property;
 - (b) the property is not property to which a recovery order applies; and
 - (c) the Attorney General believes that the property is in a country outside the State (the receiving country).
- (2) The property freezing conditions are the conditions in section 74(4) and for the purposes of this subsection, the references in those provisions to property to which the application for the order relates are to be read as references to the property mentioned in subsection (1)(a).
- (3) The Attorney General may forward the request for assistance to the government of the receiving country.

(4) A request for assistance under this section is a request to the government of the receiving country—

- (a) to secure that any person is prohibited from dealing with the property;
- (b) for assistance in connection with the management of the property, including with securing its detention, custody or preservation.

104. Enforcement abroad before recovery order: receiver.

(1) This section applies if—

- (a) a property freezing order made by the Court has effect in relation to property; and
- (b) the receiver appointed under section 78 in respect of the property believes that it is in a country outside of the State (the receiving country).

(2) This section also applies if—

- (a) an interim receiving order made by the Court has effect in relation to property; and
- (b) the interim receiver believes that the property is in a country outside of the State (the receiving country).

(3) The receiver may send a request for assistance in relation to the property to the Attorney General with a view to it being forwarded under this section.

(4) The Attorney General must forward the request for assistance to the government of the receiving country.

(5) A request for assistance under this section is a request to the government of the receiving country—

- (a) to secure that any person is prohibited from dealing with the property;
- (b) for assistance in connection with the management of the property, including with securing its detention, custody or preservation.

105. Evidence overseas: interim receiver.

(1) This section applies if—

- (a) an interim receiving order made by the Court has effect in relation to property; and
- (b) the order requires the interim receiver to take steps to establish a matter described in section 82(2) (a), (b) or (c).

(2) The interim receiver may request assistance under this section if the interim receiver thinks that there is relevant evidence in a country outside the State.

(3) A judge of the Court may request assistance under this section if—

- (a) an application is made by the interim receiver or by a person subject to investigation by the interim receiver; and

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- (b) the judge thinks that there is relevant evidence in a country outside the State.
- (4) The assistance that may be requested under this section is assistance in obtaining outside of the State relevant evidence specified in the request.
- (5) Relevant evidence is evidence as to a matter described in section 82(2) (a), (b) and (c).
- (6) A request for assistance under this section may be sent—
 - (a) to a court or tribunal which is specified in the request and which exercises jurisdiction in the place where the evidence is to be obtained;
 - (b) to the government of the country concerned; or
 - (c) to authority recognised by the government of the country concerned as the appropriate authority for receiving requests for assistance of that kind.
- (7) Alternatively, a request for assistance under this section may be sent to the Attorney General with a view to it being forwarded to a court, tribunal, government or authority mentioned in subsection (6).
- (8) The Attorney General must forward the request for assistance to the court, tribunal, government or authority.
- (9) In this section and section 106, “evidence” includes documents, information in any other form and material.

106. Evidence overseas: restrictions on use.

- (1) This section applies to evidence obtained by means of a request for assistance under section 105.
- (2) The evidence must not be used for any purpose other than—
 - (a) for the purposes of carrying out the functions of the interim receiver; or
 - (b) for the purposes of proceedings under sections 102 to 107 in respect of property described in subsection (3) or any proceedings arising out of such proceedings.
- (3) That property is—
 - (a) the property that is the subject of the interim receiving order; or
 - (b) other property that is recoverable property in respect of the same unlawful conduct, or tainted property.
- (4) Subsection (2) does not apply if the court, tribunal, government or authority to whom the request for assistance was sent consents to the use.

107. Enforcement abroad: after recovery order.

- (1) This section applies if—

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- (a) a recovery order made by the Court has effect in relation to property; and
 - (b) the Attorney General or the trustee believes that the property is in a country outside of the State (the receiving country).
- (2) The Attorney General of his or her own motion may forward a request for assistance to the government of the receiving country in relation to the property.
- (3) The trustee may send a request for assistance in relation to the property to the Attorney General with a view to it being forwarded under this section to the government of the receiving country.
- (4) Where the trustee sends a request for assistance to the Attorney General under this section the Attorney General must forward a request for assistance from the trustee to the government of the receiving country.
- (5) A request for assistance is a request to the government of the receiving country for assistance in connection with the management and disposal of the property and includes request—
- (a) to secure the detention, custody or preservation of the property;
 - (b) in the case of money, to secure that it is applied in accordance with the law of the receiving country;
 - (c) in the case of property other than money, to secure that the property is realised and the proceeds are applied in accordance with the law of the receiving country.
- (6) A certificate purporting to be issued by or on behalf of the government of the receiving country is admissible as evidence of the facts it states if it states—
- (a) that property has been realized in pursuance of a request under this section;
 - (b) the date of realisation; and
 - (c) the proceeds of realisation.

Division 7*Miscellaneous***108. Compensation.**

- (1) If, in the case of any property to which a property freezing order or an interim receiving order has at any time applied, the Court does not in the course of the proceedings decide that the property is recoverable property or associated property, the person whose property it is may make an application to the Court for compensation.
- (2) Subsection (1) does not apply if the Court—
- (a) has made a declaration in respect of the property by virtue of section 100; or
 - (b) makes a consent order under section 96.
- (3) If the Court has made a decision by reason of which no recovery order could be made in respect of the property, the application for compensation shall be made within the

period of three months beginning with the date of the decision or, if any application is made for leave to appeal, with the date on which the application is withdrawn or refused or, if the application is granted, on which any proceedings on appeal are finally concluded.

(4) If the proceedings in respect of the property have been discontinued, the application for compensation shall be made within the period of three months beginning with the discontinuance.

(5) If the Court is satisfied that the applicant has suffered loss as a result of the property freezing order or the interim receiving order, it may require the Recovery Authority to pay compensation to him or her.

(6) If, but for section 92(2), any right mentioned there would have operated in favour of, or become exercisable by, any person, he may make an application to the Court for compensation.

(7) The application for compensation under subsection (6) shall be made within the period of three months beginning with the vesting referred to in section 92(2).

(8) If the Court is satisfied that, in consequence of the operation of section 92, the right in question cannot subsequently operate in favour of the applicant or, as the case may be, become exercisable by him or her, it may require the Recovery Authority to pay compensation to him or her.

(9) The amount of compensation to be paid under this section is the amount the Court thinks reasonable, having regard to the loss suffered and any other relevant circumstances.

109. Financial threshold.

(1) If the regulations prescribe a minimum threshold for the purposes of this section, the Recovery Authority may not start proceedings for a recovery order unless the Recovery Authority reasonably believes that the aggregate value of the recoverable property which the Recovery Authority wishes to be subject to a recovery order is equal to or greater than the prescribed threshold.

(2) If the Recovery Authority applies for a property freezing order or an interim receiving order before starting the proceedings, subsection (1) applies to the application for the property freezing order or interim receiving order instead of to the start of the proceedings.

(3) This section does not affect the continuation of proceedings for a recovery order which have been properly started or the making or continuing effect of a property freezing order or an interim receiving order which has been properly applied for.

110. Limitation.

(1) Proceedings shall not be brought for a recovery order in respect of any recoverable property after the expiration of twenty years from—

- (a) in the case of proceedings for a recovery order in respect of property obtained through unlawful conduct, when the property was so obtained;

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- (b) in the case of proceedings for a recovery order in respect of tainted property, when the property became tainted property; or
 - (c) in the case of proceedings for a recovery order in respect of any other recoverable property, when the property obtained through unlawful conduct which it represents is so obtained.
- (2) For the purposes of subsection (1), proceedings for a recovery order are brought when—
- (a) an application is filed with the Court under section 73; or
 - (b) an application is made for an interim receiving order.

111. Property acquired before commencement date.

For the purposes of determining whether property was recoverable at any time, including times before the commencement date, this Part is deemed to have been in force at that time and at any other relevant time.

Division 8*Recovery of cash in summary proceedings***112. Interpretation for sections 113 to 119.**

- (1) For the purposes of sections 113 to 122 —
- “recoverable cash” means cash which is recoverable property or is intended by any person for use in unlawful conduct;
- (2) The amount of cash held in a currency other than Eastern Caribbean dollars shall be its equivalent in Eastern Caribbean dollars at the prevailing rate of exchange.
- (3) Sections 113 to 122 apply only to cash found anywhere in St. Christopher and Nevis.

113. Searches.

- (1) A law enforcement officer who is lawfully on any premises and who has reasonable grounds for suspecting that there is recoverable cash on the premises, may search for the cash there.
- (2) If a law enforcement officer has reasonable grounds for suspecting that a person (the suspect) is carrying recoverable cash, he or she may—
- (a) so far as he or she thinks it necessary or expedient, require the suspect—
 - (i) to permit a search of any article he or she has with him or her; and
 - (ii) to permit a search of his or her person; and
 - (b) for the purposes of exercising his or her power under subparagraph (a)(ii), detain the suspect for so long as is necessary for the exercise of that power.

(3) The powers conferred by this section are exercisable only so far as reasonably required for the purpose of finding cash and this section does not require a person to submit to an intimate search.

114. Seizure of cash.

A law enforcement officer may seize cash if he or she has reasonable grounds for suspecting that—

- (a) it is recoverable cash; or
- (b) part of the cash is recoverable cash and it is not reasonably practicable to seize only that part.

115. Detention of seized cash.

(1) While a law enforcement officer who has seized cash under section 114 continues to have reasonable grounds for his suspicion, the cash seized under that section may be detained initially for a period of 72 hours.

(2) The period for which the cash or any part of it may be detained may be extended by an order made by the Magistrate's Court, but the order may not authorise the detention of any of the cash—

- (a) beyond the end of the period of three months beginning with the date of the order; or
- (b) in the case of any further order under this section, beyond the end of the period of two years beginning with the date of the first order.

(3) An application for an order under subsection (2) may be made by a law enforcement officer, and the Magistrate's Court may make the order if satisfied, in relation to any cash to be further detained, that—

- (a) there are reasonable grounds for suspecting that the cash is recoverable cash and that either—
 - (i) its continued detention is justified while its derivation is further investigated or consideration is given to bringing proceedings, whether in or outside St. Christopher and Nevis, against any person for an offence with which the cash is connected; or
 - (ii) proceedings against any person for an offence with which the cash is connected have been started and have not been concluded; or
- (b) there are reasonable grounds for suspecting that the cash is intended to be used in unlawful conduct and that either—
 - (i) its continued detention is justified while its intended use is further investigated or consideration is given to bringing proceedings, whether in or outside St. Christopher and Nevis, against any person for an offence with which the cash is connected; or
 - (ii) proceedings against any person for an offence with which the cash is connected have been started and have not been concluded.

(4) An application for an order under subsection (2) may also be made in respect of any cash seized under section 114(b), and the Court may make the order if satisfied that—

- (a) either subsection (3)(a) or (b) applies in respect of part of the cash; and
- (b) it is not reasonably practicable to detain only that part.

(5) An order under subsection (2) shall provide for notice to be given to any persons affected by it.

116. Interest.

(1) If cash is detained under section 115 for more than a period of 72 hours, it shall, at the first opportunity, be paid into an interest-bearing account and held there, and the interest accruing on it is to be added to it on its forfeiture or release.

(2) In the case of cash detained under section 115 which was seized under section 114(b), the law enforcement officer, shall as soon as practicable after paying the cash seized into an interest bearing account, release the part of the cash to which the suspicion does not relate.

(3) Subsection (1) does not apply if the cash or, as the case may be, the part to which the suspicion relates, is required as evidence of an offence or evidence in proceedings relating to the seized cash under this Part.

117. Release of detained cash.

(1) While any cash is detained under section 115, the Magistrate's Court may direct the release of the whole or any part of the cash if the Magistrate's Court is satisfied, on an application by the person from whom the cash was seized, that the grounds for the detention of the cash specified in section 115(3) or 115(4) are no longer met in relation to the cash to be released.

(2) The Commissioner of Police, Comptroller of Customs, Director of the Financial Intelligence Unit, the Director of the Commission or their designate may, after notifying the Magistrate's Court under whose order cash is being detained, to release the whole or any part of it if satisfied that the detention of the cash to be released is no longer justified.

118. Forfeiture.

(1) While cash is detained under section 115, an application for the forfeiture of the whole or any part of it may be made to the Magistrate's Court by a law enforcement officer.

(2) The Magistrate's Court may order the forfeiture of the cash, or any part of it, if satisfied that the cash or part—

- (a) is recoverable cash; or
- (b) is intended by any person for use in unlawful conduct.

(3) In the case of recoverable cash which belongs to joint proprietors, one of whom is an excepted joint owner, the order may not apply to so much of it as the Magistrate's Court thinks is attributable to the excepted joint owner's share.

(4) Where an application for the forfeiture of any cash is made under this section, the cash is to be detained (and may not be released under any power conferred by this Part) until any proceedings pursuant to the application, including any proceedings on appeal, are concluded.

(5) Where a law enforcement officer seizes unattended cash under section 108 he or she may apply for immediate forfeiture of that cash.

119. Appeal against forfeiture

(1) Any party to proceedings for an order for the forfeiture of cash under section 118 who is aggrieved by an order under that section or by the decision of the court not to make such an order may appeal to the Court.

(2) An appeal under subsection (1) shall be made within the period of thirty days commencing on the date on which the order is made.

(3) An appeal under subsection (1) shall be by way of a rehearing by the Court which may make any order that it considers appropriate.

(4) If the Court upholds the appeal, it may order the release of the cash and the interest accrued where the appeal is against a forfeiture order.

120. Application of forfeited cash.

After the period within which an appeal under section 119 may be made or, if a person appeals under that section, after the appeal has been determined or disposed of, cash forfeited under section 118, and any accrued interest on it, shall be paid into the Fund.

121. Victims and other owners.

(1) A person who claims that any cash, or any part of it, that is detained under this Part belongs to him, may apply to the Magistrate's Court for the cash or part to be released to him or her.

(2) An application under subsection (1) may be made in the course of detention or forfeiture proceedings or at any other time.

(3) If, on an application under subsection (1), it appears to the Magistrate's Court that—

- (a) the applicant was deprived of the cash to which the application relates, or of property which it represents, by unlawful conduct,
- (b) the property he or she was deprived of was not, immediately before he or she was deprived of it, recoverable property, and
- (c) that cash belongs to him or her,

the Court may order the cash and any accrued interest to which the application relates, to be released to the applicant.

(4) The Magistrate's Court may order the cash and any accrued interest to which the application relates to be released to the applicant or to the person from whom it was seized if—

- (a) an applicant under subsection (1) is not the person from whom the cash to which the application relates was seized;
- (b) it appears to the Magistrate’s Court that that cash belongs to the applicant;
- (c) the Magistrate’s Court is satisfied that the grounds specified in section 115(3) or (4) for the detention of the cash are no longer met or, if an application has been made under section 118, the Court decides not to make an order under that section in relation to that cash; and
- (d) no objection to the making of an order under this subsection has been made by the person from whom that cash was seized.

122. Compensation.

(1) If no forfeiture order is made in respect of any cash detained under this Part, the person to whom the cash belongs or from whom it was seized may make an application to the Magistrate’s Court for compensation.

(2) Subject to section 116 (3), if, for any period beginning with the first opportunity to place the cash in an interest-bearing account after the initial detention of the cash for a period of 72 hours, the cash was not held in an interest-bearing account while detained, the Magistrate’s Court may order an amount of compensation to be paid to the applicant.

(3) The amount of compensation to be paid under subsection (2) is the amount the Magistrate’s Court thinks would have been earned in interest in the period in question if the cash had been held in an interest-bearing account.

(4) If the Magistrate’s Court is satisfied that, taking account of any interest to be paid under section 113 or any amount to be paid under subsection (2), the applicant has suffered loss as a result of the detention of the cash and that the circumstances are exceptional, the Magistrate’s Court may order compensation (or additional compensation) to be paid to him or her.

(5) The amount of compensation to be paid under subsection (4) is the amount the Magistrate’s Court thinks reasonable, having regard to the loss suffered and any other relevant circumstances.

(6) Compensation is to be paid from the Fund.

(7) If a forfeiture order is made in respect only of a part of any cash detained under this Act, this section has effect in relation to the other part.

Division 9

RECOVERY OF LISTED ASSETS IN SUMMARY PROCEEDINGS

Definition of listed asset

123. Listed Assets.

(1) A “listed asset” means an item of property that falls within one of the following descriptions of property-

- (a) precious metals;
 - (b) precious stones;
 - (c) watches;
 - (d) artistic works;
 - (e) computers and electronics;
 - (f) face-value vouchers;
 - (g) postage stamps.
- (2) The Attorney General may by Order amend subsection (1)—
- (a) by removing a description of property;
 - (b) by adding a description of tangible personal or corporeal moveable property.
- (3) In this section—
- (a) “precious metal” means gold, silver or platinum whether in an unmanufactured or a manufactured state;
 - (b) “precious stone” means diamond, ruby, sapphire or emerald whether in an untreated or treated state;
 - (c) “artistic work” means a piece of work falling within such classification under the Copyright Act, Patents Act, Industrial Layout Designs Act or wherever recognised by other intellectual property legislation;
 - (d) “face-value voucher” means a voucher in physical form that represents a right to receive goods or services to the value of an amount stated on it.

124. Searches.

(1) A law enforcement officer who is lawfully on any premises and who has reasonable grounds for suspecting that there is a seizable listed asset on the premises, may search for the listed asset there.

(2) The powers conferred by subsection (5) are exercisable by a law enforcement officer if—

- (a) the law enforcement officer has reasonable grounds for suspecting that there is a seizable listed asset in a vehicle,
 - (b) it appears to the officer that the vehicle is under the control of a person (the suspect) who is in or in the vicinity of the vehicle, and
 - (c) the vehicle is in a place falling within subsection (3).
- (3) The places referred to in subsection (2)(c) are—
- (a) a place to which, at the time of the proposed exercise of the powers, the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission, and
 - (b) any other place to which at that time people have ready access but which is not a dwelling.

(4) But if the vehicle is in a garden or yard or other land occupied with and used for the purposes of a dwelling, the law enforcement officer may exercise the powers conferred by subsection (5) only if the relevant officer has reasonable grounds for believing—

- (a) that the suspect does not reside in the dwelling, and
- (b) that the vehicle is not in the place in question with the express or implied permission of a person who resides in the dwelling.

(5) The powers conferred by this subsection are—

- (a) power to require the suspect to permit entry to the vehicle;
- (b) power to require the suspect to permit a search of the vehicle.

(6) A law enforcement officer may, in exercising the powers conferred by subsection (5), detain the vehicle for so long as is necessary for their exercise.

(7) If a law enforcement officer has reasonable grounds for suspecting that a person (the suspect) is carrying seizable listed asset, he or she may—

- (a) so far as he or she thinks it necessary or expedient, require the suspect—
 - (i) to permit a search of any article he or she has with him or her; and
 - (ii) to permit a search of his or her person; and
- (b) for the purposes of exercising his power under subparagraph (a)(ii), detain the suspect for so long as is necessary for the exercise of that power.

(8) The powers conferred by this section are exercisable only so far as reasonably required for the purpose of finding a listed asset and this section does not require a person to submit to an intimate search.

(9) For the purposes of this section a listed asset is a seizable listed asset if—

- (a) all or part of it is recoverable property or is intended by any person for use in unlawful conduct, and
- (b) the value of the asset, or the part of it that falls within paragraph (a), is not less than the minimum value.

(10) Where a power conferred by this section is being exercised in respect of more than one seizable listed asset, this section is to apply as if the value of each asset or (as the case may be) part of an asset was equal to the aggregate value of all of those assets or parts.

125. Seizure of Listed Assets.

(1) A law enforcement officer may seize any item of property if the officer has reasonable grounds for suspecting that—

- (a) it is a listed asset,
- (b) it is recoverable property or intended by any person for use in unlawful conduct, and
- (c) the value of it is not less than the minimum value.

- (2) A law enforcement officer may also seize any item of property if—
- (a) the law enforcement officer has reasonable grounds for suspecting the item to be a listed asset,
 - (b) the law enforcement officer has reasonable grounds for suspecting that part of the item is recoverable property or intended by any person for use in unlawful conduct,
 - (c) the relevant officer has reasonable grounds for suspecting that the value of the part to which the suspicion relates is not less than the minimum value, and
 - (d) it is not reasonably practicable to seize only that part.

(3) Where the powers conferred by this section are being exercised by a law enforcement officer in respect of more than one item of property, this section is to apply as if the value of each item was equal to the aggregate value of all of those items.

(4) The references in subsection (3) to the value of an item are to be read as including references to the value of part of an item where the power conferred by subsection (2) is being exercised (whether alone or in conjunction with the power conferred by subsection (1)).

126. Initial detention of seized property.

(1) Property seized under section 125 may be detained for an initial period of 72 hours.

(2) Subsection (1) authorises the detention of property only for so long as a law enforcement officer continues to have reasonable grounds for suspicion in relation to that property as described in section 125(1) or (2) as the case may be.

127. Further detention of seized property.

(1) The period for which property seized under section 125, or any part of that property may be detained, may be extended by an order made by a Magistrates' Court;

- (2) An order under subsection (1) may not authorise the detention of any property—
- (a) beyond the end of the period of 3 months beginning with the date of the order, and
 - (b) in the case of any further order under this section, beyond the end of the period of 2 years beginning with the date of the first order.

(3) An application for an order under subsection (1) may be made by a law enforcement officer.

(4) The court may make the order if satisfied, in relation to the item of property to be further detained, that—

- (a) it is a listed asset,
- (b) the value of it is not less than the minimum value, and

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(c) condition 1 or condition 2 is met.

(5) Subsection (4)(b) does not apply where the application is for a second or subsequent order under this section.

(6) Condition 1 is that there are reasonable grounds for suspecting that the property is recoverable property and that either—

- (a) its continued detention is justified while its derivation is further investigated or consideration is given to bringing in Saint Christopher and Nevis or elsewhere, proceedings against any person for an offence with which the property is connected, or
- (b) proceedings against any person for an offence with which the property is connected have been started and have not been concluded.

(7) Condition 2 is that there are reasonable grounds for suspecting that the property is intended to be used in unlawful conduct and that either—

- (a) its continued detention is justified while its intended use is further investigated or consideration is given to bringing in St Christopher and Nevis or elsewhere, proceedings against any person for an offence with which the property is connected, or
- (b) proceedings against any person for an offence with which the property is connected have been started and have not been concluded.

(8) Where an application for an order under subsection (1) relates to an item of property seized under section 125(2), the court may make the order if satisfied that—

- (a) the item of property is a listed asset,
- (b) condition 1 or 2 is met in respect of part of the item,
- (c) the value of that part is not less than the minimum value, and
- (d) it is not reasonably practicable to detain only that part.

(9) Subsection (8)(c) does not apply where the application is for a second or subsequent order under this section.

(10) Where an application for an order under subsection (1) is made in respect of two or more items of property that were seized at the same time and by the same person, this section is to apply as if the value of each item was equal to the aggregate value of all of those items.

(11) The references in subsection (10) to the value of an item are to be read as including references to the value of part of an item where subsection (8) applies in relation to one or more of the items in respect of which the application under subsection (1) is made.

(12) An order under subsection (1) must provide for notice to be given to persons affected by it.

128. Testing and safekeeping of property seized under section 125.

(1) A law enforcement officer may carry out or arrange for the carrying out of tests on any item of property seized under section 125 for the purpose of establishing whether it is a listed asset.

(2) A law enforcement officer must arrange for any item of property seized under section 125 to be safely stored throughout the period during which it is detained.

129. Release of detained property.

(1) This section applies while any property is detained under section 126 or 127.

(2) A Magistrate's Court may direct the release of the whole or any part of the property if the following condition is met.

(3) The condition is that the Court on an application by the person from whom the property was seized, that the conditions in section 126 or 127 (as the case may be) for the detention of the property are no longer met in relation to the property to be released.

(4) A law enforcement officer may, after notifying the Magistrates' Court under whose order the property is being detained, release the whole or any part of it if satisfied that the detention of the property to be released is no longer justified.

130. Forfeiture.

(1) While property is detained under sections 126 or 127, an application for the forfeiture of the whole or any part of it may be made to a Magistrates' Court by a law enforcement officer.

(2) The Court may order the forfeiture of the property or any part of it if satisfied that—

- (a) the property is a listed asset, and
- (b) what is to be forfeited is recoverable property or intended by any person for use in unlawful conduct.

(3) Subsection (2) ceases to apply on the transfer of an application made under this section in accordance with section 133(1)(a) or (b).

(4) Where an application for the forfeiture of any property is made under this section, the property is to be detained and may not be released under any power conferred by this Part until any proceedings in pursuance of the application including any proceedings on appeal are concluded.

(5) Where the property to which the application relates is being detained under this Part as part of an item of property, having been seized under section 125(2), subsection (4) is to be read as if it required the continued detention of the whole of the item of property.

131. Associated and joint property.

(1) Sections 132 and 133 apply if—

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- (a) an application is made under section 130 in respect of property detained under this Division,
 - (b) the Court is satisfied that the property is a listed asset,
 - (c) the Court is satisfied that all or part of the property is recoverable property or intended by any person for use in unlawful conduct, and
 - (d) there exists property that is associated with the property in relation to which the Court is satisfied as mentioned in paragraph (c).
- (2) Sections 132 and 133 also apply if—
- (a) an application is made under section 130 in respect of property detained under this Division,
 - (b) the Court is satisfied that the property is a listed asset,
 - (c) the Court is satisfied that all or part of the property is recoverable property or intended by any person for use in unlawful conduct, and
 - (d) the property in relation to which the court is satisfied as mentioned in paragraph (c) belongs to joint tenants and one of the tenants is an excepted joint owner.
- (3) In this section and sections 132 and 133 “associated property” means property of any of the following descriptions that is not itself the forfeitable property—
- (a) any interest in the forfeitable property;
 - (b) any other interest in the property in which the forfeitable property subsists;
 - (c) if the forfeitable property is a tenancy in common, the tenancy of the other tenant;
 - (d) if the forfeitable property is part of a larger property, but not a separate part, the remainder of that property.

References to property being associated with forfeitable property are to be read accordingly.

(4) In this section and sections 132 and 133 the “forfeitable property” means the property in relation to which the Court is satisfied as mentioned in subsection (1)(c) or (2)(c) (as the case may be).

132. Agreements about associated and joint property.

- (1) Where—
- (a) this section applies, and
 - (b) the person who applied for the order under section 130 (on the one hand) and the person who holds the associated property or who is the excepted joint owner (on the other hand) agree,

the Magistrates’ Court may, instead of making an order under section 130(2), make an order requiring the person who holds the associated property or who is the excepted joint owner to make a payment to a person identified in the order.

(2) The amount of the payment is subject to subsection (3), to be the amount which the persons referred to in subsection (1)(b) agree represents—

- (a) in a case where this section applies by virtue of section 131(1), the value of the forfeitable property;
- (b) in a case where this section applies by virtue of section 131(2), the value of the forfeitable property less the value of the excepted joint owner's share.

(3) The amount of the payment may be reduced if the person who applied for the order under section 130 agrees that the other party to the agreement has suffered loss as a result of the seizure of the forfeitable property and any associated property under section 125 and its subsequent detention.

(4) The reduction that is permissible by virtue of subsection (3) is such amount as the parties to the agreement agree is reasonable, having regard to the loss suffered and any other relevant circumstances.

(5) An order under subsection (1) may, so far as required for giving effect to the agreement, include provision for vesting, creating or extinguishing any interest in property.

(6) For the purposes of section 101(1)(b), on the making of an order under subsection (1), the forfeitable property is to be treated as if it had been forfeited.

(7) If there is more than one item of associated property or more than one excepted joint owner, the total amount to be paid under subsection (1), and the part of that amount which is to be provided by each person who holds any such associated property or who is an excepted joint owner, is to be agreed between both (or all) of them and the person who applied for the order under section 130.

(8) An amount received under an order under subsection (1) must be applied as follows—

- (1) first, it must be applied in payment or reimbursement of any reasonable costs incurred in storing or insuring the forfeitable property and any associated property whilst detained under this Part.
- (2) second, it must be paid by a magistrates' court, into the Fund;

133. Associated and joint property: default of agreement.

(1) Where this section applies and there is no agreement under section 132, the Magistrates' Court may, as well as making an order under section 130(3), make an order—

- (a) providing for the forfeiture of the associated property or (as the case may be) for the excepted joint owner's interest to be extinguished, or
- (b) providing for the excepted joint owner's interest to be severed.

(2) An order under subsection (1) may be made only if the magistrates' court thinks it just and equitable to do so.

(3) An order under subsection (1) must provide for the payment of an amount to the person who holds the associated property or who is an excepted joint owner.

- (4) In making an order under subsection (1), and including provision in it by virtue of subsection (3), the Magistrates' Court must have regard to—
- (a) the rights of any person who holds the associated property or who is an excepted joint owner and the value to that person of that property or (as the case may) of that person's share (including any value that cannot be assessed in terms of money), and
 - (b) the interest of the person who applied for the order under section 130 in realising the value of the forfeitable property.
- (5) If the Magistrates' Court is satisfied that—
- (a) the person who holds the associated property or who is an excepted joint owner has suffered loss as a result of the seizure of the forfeitable property and any associated property under section 125 and its subsequent detention, and
 - (b) the circumstances are exceptional, an order under subsection (1) may require the payment of compensation to that person.
- (6) The amount of compensation to be paid by virtue of subsection (5) is the amount the Magistrates' Court thinks reasonable, having regard to the loss suffered and any other relevant circumstances.
- (7) Compensation to be paid by virtue of subsection (5) is to be paid in the same way that compensation is to be paid under section 138.

134. Appeals.

- (1) Any party to proceedings for an order for the forfeiture of property under section 130 may appeal to the Court against—
- (a) the making of an order under section 130;
 - (b) the making of an order under section 133(1);
 - (c) a decision not to make an order under section 130 unless the reason that no order was made is that an order was instead made under section 132;
 - (d) a decision not to make an order under section 133(1).
- (2) An appeal under subsection (1) must be made before the end of the period of 30 days commencing on the date on which the order was made.
- (3) The appeal under subsection (1) shall be by way of rehearing by the Court which may make any order that it considers appropriate.
- (4) If the Court upholds an appeal against an order forfeiting property, it may order the release of the whole or any part of the property.

135. Realisation of forfeited property.

- (1) If property is forfeited under sections 130 or 133, a law enforcement officer must realise the property or make arrangements for its realisation.

- (2) The property is not to be realised—
 - (a) before the end of the period within which an appeal may be made whether under section 134 or otherwise, or
 - (b) if an appeal is made within that period, before the appeal is determined or otherwise disposed of.
- (3) The realisation of property under subsection (1) must be carried out, so far as practicable, in the manner best calculated to maximise the amount obtained for the property.

136. Proceeds of realization.

- (1) The proceeds of property realised under section 135 must be applied as follows—
 - (a) first, they must be applied in making any payment required to be made by virtue of section 133(3);
 - (b) second, they must be applied in payment or reimbursement of any reasonable costs incurred in storing or insuring the property whilst detained under this Division and in realising the property;
 - (c) third, any balance after payments made under subsections (a) and (b) must be paid by a Magistrates' Court into the Fund;
- (2) If what is realised under section 135 represents part only of an item of property seized under section 125 and detained under this Part, the reference in subsection (1)(b) to costs incurred in storing or insuring the property is to be read as a reference to costs incurred in storing or insuring the whole of the item of property.

137. Victims and other owners.

- (1) A person who claims that any property detained under this Division, or any part of it, belongs to him or her may apply for the property or part to be released.
- (2) An application under subsection (1) is to be made to a Magistrates' Court;
- (3) The application may be made in the course of proceedings under section 127 or 130 or at any other time.
- (4) The Court may order the property to which the application relates to be released to the applicant if it appears to the Court that—
 - (a) the applicant was deprived of the property to which the application relates, or of property which it represents, by unlawful conduct,
 - (b) the property the applicant was deprived of was not, immediately before the applicant was deprived of it, recoverable property, and
 - (c) the property belongs to the applicant.
- (5) If subsection (6) applies, the Court may order the property to which the application relates to be released to the applicant or to the person from whom it was seized.
- (6) This subsection applies where—

- (a) the applicant is not the person from whom the property to which the application relates was seized,
 - (b) it appears to the Court that the property belongs to the applicant,
 - (c) the Court is satisfied that the release condition is met in relation to that property, and
 - (d) no objection to the making of an order under subsection (5) has been made by the person from whom that property was seized.
- (7) The release condition is met—
- (a) in relation to property detained under section 126 or 127, if the conditions in section 126 or (as the case may be) 127 for the detention of the property are no longer met, and
 - (b) in relation to property detained under section 130, if the court decides not to make an order under that section in relation to the property.

138. Compensation.

- (1) If no order under section 130, 132 or 133 is made in respect of any property detained under this Division, the person to whom the property belongs or from whom it was seized may make an application for compensation.
- (2) An application under subsection (1) is to be made to a Magistrates' Court;
- (3) If the Court is satisfied that the applicant has suffered loss as a result of the detention of the property and that the circumstances are exceptional, the Court may order compensation to be paid to the applicant.
- (4) The amount of compensation to be paid is the amount the Court thinks reasonable, having regard to the loss suffered and any other relevant circumstances.
- (5) Compensation is to be paid from the Fund.
- (6) If an order under section 130, 132 or 133 is made in respect only of a part of any property detained under this Chapter, this section has effect in relation to the other part.

Division 10

Forfeiture of money held in Financial Institutions

Freezing of Financial Institution accounts

139. Application for an account freezing order.

- (1) This section applies if a law enforcement officer has reasonable grounds for suspecting that money held in an account maintained with a financial institution—
- (a) is recoverable property, or
 - (b) is intended by any person for use in unlawful conduct.
- (2) Where this section applies the Recovery Authority may apply to the High Court for an account freezing order in relation to the account in which the money is held.

- (3) For the purposes of this Part—
- (a) an account freezing order is an order that, subject to any exclusions (see section 142), prohibits each person by or for whom the account to which the order applies is operated from making withdrawals or payments from the account;
 - (b) an account is operated by or for a person if the person is an account holder or a signatory or identified as a beneficiary in relation to the account.
- (4) An application for an account freezing order may be made without notice if the circumstances of the case are such that notice of the application would prejudice the taking of any steps under this Chapter to forfeit money that is recoverable property or intended by any person for use in unlawful conduct.
- (5) The money referred to in subsection (1) may be all or part of the credit balance of the account.

140. Making of an account freezing order.

- (1) This section applies where an application for an account freezing order is made under section 139 in relation to an account.
- (2) The Court may make the order if satisfied that there are reasonable grounds for suspecting that money held in the account (whether all or part of the credit balance of the account)—
- (a) is recoverable property, or
 - (b) is intended by any person for use in unlawful conduct.
- (3) An account freezing order ceases to have effect at the end of the period specified in the order (which may be varied under section 141) unless it ceases to have effect at an earlier or later time in accordance with the provision made by sections 145(6)(c), 147(2) to (7), 150(5) to (7) and 151.
- (4) The period specified by the Court for the purposes of subsection (3) (whether when the order is first made or on a variation under section 141) may not exceed the period of 2 years, starting with the day on which the account freezing order is (or was) made.
- (5) An account freezing order must provide for notice to be given to persons affected by the order.

141. Variation and setting aside of an account freezing order.

- (1) The Court may at any time vary or set aside an account freezing order on an application made by—
- (a) the Recovery Authority, or
 - (b) any person affected by the order.
- (2) Before varying or setting aside an account freezing order the Court must (as well as giving the parties to the proceedings an opportunity to be heard) give such an opportunity to any person who may be affected by its decision.

142. Exclusions.

(1) The power to vary an account freezing order includes (amongst other things) power to make exclusions from the prohibition on making withdrawals or payments from the account to which the order applies.

(2) Exclusions from the prohibition may also be made when the order is made.

(3) An exclusion may (amongst other things) make provision for the purpose of enabling a person by or for whom the account is operated—

- (a) to meet the person's reasonable living or legal expenses, or
- (b) to carry on any trade, business, profession or occupation.

(4) An exclusion may be made subject to conditions.

(5) Where the Court exercises the power to make an exclusion for the purpose of enabling a person to meet legal expenses that the person has incurred, or may incur, in respect of proceedings under this Part, it must ensure that the exclusion—

- (a) is limited to reasonable legal expenses that the person has reasonably incurred or that the person reasonably incurs,
- (b) specifies the total amount that may be released for legal expenses in pursuance of the exclusion,

(6) The power to make exclusions must, be exercised with a view to ensuring, so far as practicable, that there is not undue prejudice to the taking of any steps under this Chapter to forfeit money that is recoverable property or intended by any person for use in unlawful conduct.

143. Restrictions on proceedings and remedies.

(1) If a court in which proceedings are pending in respect of an account maintained with a financial institution is satisfied that an account freezing order has been applied for or made in respect of the account, it may either stay the proceedings or allow them to continue on any terms it thinks fit.

(2) Before exercising the power conferred by subsection (1), the Court must (as well as giving the parties to any of the proceedings concerned an opportunity to be heard) give such an opportunity to any person who may be affected by the Court's decision.

144. The minimum amount.

(1) "The minimum amount" is \$3000XCD.

(2) The Attorney General may by regulations amend the amount for the time being specified in subsection (1).

(3) For the purposes of this Part the amount of any money held in a Financial Institution account in a currency other than Eastern Caribbean Currency Dollars must be taken to be its Eastern Caribbean Currency Dollar equivalent, calculated in accordance with the Eastern Caribbean Currency prevailing rate of exchange.

145. Account forfeiture notices.

(1) This section applies while an account freezing order made by the Court has effect. In this section the account to which the order applies is “the frozen account”.

(2) A law enforcement officer must give a notice for the purpose of forfeiting money held in the frozen account (whether all or part of the credit balance of the account) if satisfied that the money—

- (a) is recoverable property, or
- (b) is intended by any person for use in unlawful conduct.

(3) A notice given under subsection (2) is referred to in this Part as an account forfeiture notice.

(4) An account forfeiture notice must—

- (a) state the amount of money held in the frozen account which it is proposed be forfeited,
- (b) confirm that the law enforcement officer is satisfied as mentioned in subsection (2),
- (c) specify a period for objecting to the proposed forfeiture and an address to which any objections must be sent, and
- (d) explain that the money will be forfeited unless an objection is received at that address within the period for objecting.

(5) The period for objecting must be within 30 days starting with the day after the notice is given.

(6) If no objection is made within the period for objecting, and the notice has not lapsed under section 147—

- (a) the amount of money stated in the notice is forfeited (subject to section 148),
- (b) the financial institution with which the frozen account is maintained must transfer that amount of money into an interest-bearing account nominated by a law enforcement officer, and
- (c) immediately after the transfer has been made, the account freezing order made in relation to the frozen account ceases to have effect.

(7) An objection may be made by anyone (whether a recipient of the notice or not).

(8) An objection means a written objection sent to the address specified in the notice; and an objection is made when it is received at the address.

(9) An objection does not prevent forfeiture of the money held in the frozen account under section 150.

146. Giving of account forfeiture notice.

(1) The Minister of Justice shall make regulations about how an account forfeiture notice is to be given.

(2) The regulations may, amongst other things, provide—

- (a) for an account forfeiture notice to be given to such person or persons, and in such manner, as may be prescribed;
- (b) for circumstances in which, and the time at which, an account forfeiture notice is to be treated as having been given.

(3) The regulations must ensure that where an account forfeiture notice is given, it is, if possible, given to every person to whom notice of the account freezing order was given.

147. Lapse of account forfeiture notice.

(1) An account forfeiture notice lapses if—

- (a) an objection is made within the period for objecting specified in the notice under section 145(4)(c),
- (b) an application is made under section 150 for the forfeiture of money held in the frozen account, or
- (c) an order is made under section 141 setting aside the relevant account freezing order.

(2) Subject to subsections (3) and (7), if an account forfeiture notice lapses under subsection (1)(a), the relevant account freezing order ceases to have effect at the end of the period of 72 hours starting with the making of the objection (“the 72-hour period”).

(3) If within the 72-hour period an application is made—

- (a) for a variation of the relevant account freezing order under section 141 so as to extend the period specified in the order, or
- (b) for forfeiture of money held in the frozen account under section 150,

the order continues to have effect until the relevant time (and then ceases to have effect).

(4) In the case of an application of the kind mentioned in subsection (3)(a), the relevant time means—

- (a) if an extension is granted, the time determined in accordance with section 140(3), or
- (b) if an extension is not granted, the time when the application is determined or otherwise disposed of.

(5) In the case of an application of the kind mentioned in subsection (3)(b), the relevant time is the time determined in accordance with section 150(5).

(6) If within the 72-hour period it is decided that no application of the kind mentioned in subsection (3)(a) or (b) is to be made, a law enforcement officer must, as soon as possible, notify the financial institution with which the frozen account is maintained of that decision.

(7) If the financial institution is notified in accordance with subsection (6) before the expiry of the 72-hour period, the relevant account freezing order ceases to have effect on the financial institution being so notified.

- (8) In relation to an account forfeiture notice—
 - (a) “the frozen account” is the account in which the money to which the account forfeiture notice relates is held;
 - (b) “the relevant account freezing order” is the account freezing order made in relation to the frozen account.
- (9) In calculating a period of 72 hours for the purposes of this section no account is to be taken of—
 - (a) any Saturday or Sunday;
 - (b) bank and government holidays;
 - (c) any other day on which the Court may be closed.

148. Application to set aside forfeiture.

(1) A person aggrieved by the forfeiture of money in pursuance of section 145(6)(a) may apply to a magistrates’ court for an order setting aside the forfeiture of the money or any part of it.

(2) The application must be made before the end of the period of 30 days starting with the day on which the period for objecting ended (“the 30-day period”).

(3) But the court may give permission for an application to be made after the 30-day period has ended if it thinks that there are exceptional circumstances to explain why the applicant—

- (a) failed to object to the forfeiture within the period for objecting, and
- (b) failed to make an application within the 30-day period.

(4) On an application under this section the court must consider whether the money to which the application relates could be forfeited under section 150 (ignoring the forfeiture mentioned in subsection (1)).

(5) If the court is satisfied that the money to which the application relates or any part of it could not be forfeited under that section it must set aside the forfeiture of that money or part.

- (6) Where the court sets aside the forfeiture of any money—
 - (a) it must order the release of that money, and
 - (b) the money is to be treated as never having been forfeited.

149. Application of money forfeited under an account forfeiture notice.

(1) Money forfeited in pursuance of section 145(6)(a), and any interest accrued on it whilst in the account referred to in section 145(6)(b), is to be paid into the Fund.

- (2) But it is not to be paid in—
 - (a) before the end of the period within which an application under section 148 may be made (ignoring the possibility of an application by virtue of section 148(3)), or

- (b) if an application is made within that period, before the application is determined or otherwise disposed of.

150. Forfeiture order.

(1) This section applies while an account freezing order has effect. In this section the account to which the account freezing order applies is “the frozen account”.

(2) An application for the forfeiture of money held in the frozen account (whether all or part of the credit balance of the account) may be made to a Magistrates’ Court by a law enforcement officer.

(3) The Court may order the forfeiture of the money or any part of it if satisfied that the money or part—

- (a) is recoverable property, or
- (b) is intended by any person for use in unlawful conduct.

(4) But in the case of recoverable property which belongs to joint tenants, one of whom is an excepted joint owner, an order by a Magistrates’ Court may not apply to so much of it as the Court thinks is attributable to the excepted joint owner’s share.

(5) Where an application is made under subsection (2), the account freezing order is to continue to have effect until the time referred to in subsection (6)(b) or (7). But subsections (6)(b) and (7) are subject to section 151.

(6) Where money held in a frozen account is ordered to be forfeited under subsection (4)—

- (a) the financial institution with which the frozen account is maintained must transfer that amount of money into an interest-bearing account nominated by a law enforcement officer, and
- (b) immediately after the transfer has been made the account freezing order made in relation to the frozen account ceases to have effect.

(7) Where, other than by the making of an order under subsection (4), an application under subsection (2) is determined or otherwise disposed of, the account freezing order ceases to have effect immediately after that determination or other disposal.

151. Continuation of account freezing order pending appeal.

(1) This section applies where, on an application under subsection (2) of section 150 in relation to an account to which an account freezing order applies, the Court decides—

- (a) to make an order under subsection (4) of that section in relation to part only of the money to which the application related, or
- (b) not to make an order under subsection (4) of that section.

(2) The person who made the application under section 150(2) may apply without notice to the court that made the decision referred to in subsection (1)(a) or (b) for an order that the account freezing order is to continue to have effect.

(3) Where the Court makes an order under subsection (2) the account freezing order is to continue to have effect until—

- (a) the end of the period of 72 hours starting with the making of the order under subsection (2); or
- (b) if within that period of 72 hours an appeal is brought under section 152 against the decision referred to in subsection (1)(a) or (b), the time when the appeal is determined or otherwise disposed of.

(4) Subsection (9) of section 147 applies for the purposes of subsection (3) as it applies for the purposes of that section.

152. Appeal against decision under section 150.

(1) Any party to proceedings for an order for the forfeiture of money under section 150 who is aggrieved by an order under that section or by the decision of the Court not to make such an order may appeal to the Court.

(2) An appeal under subsection (1) must be made before the end of the period of 30 days starting with the day on which the Court makes the order or decision.

(3) The appeal under subsection (1) shall be by way of a rehearing by the Court, which may make any order it thinks appropriate.

(4) If the Court upholds an appeal against an order forfeiting the money, it may order the release of the whole or any part of the money.

153. Application of money forfeited under account forfeiture order

(1) Money forfeited by an order under section 150, and any interest accrued on it whilst in the account referred to in subsection (7)(a) of that section if forfeited by a Magistrates' Court, is to be paid into the Fund.

(2) But it is not to be paid in—

- (a) before the end of the period within which an appeal under section 152 may be made, or
- (b) if a person appeals under that section, before the appeal is determined or otherwise disposed of.

Supplementary

154. Compensation.

(1) This section applies if—

- (a) an account freezing order is made, and
- (b) none of the money held in the account to which the order applies is forfeited in pursuance of an account forfeiture notice or by an order under section 150.

(2) Where this section applies a person by or for whom the account to which the account freezing order applies is operated may make an application to the Magistrates Court for compensation.

(3) If the Court is satisfied that the applicant has suffered loss as a result of the making of the account freezing order and that the circumstances are exceptional, the Court may order compensation to be paid to the applicant.

(4) The amount of compensation to be paid is the amount the Court thinks reasonable, having regard to the loss suffered and any other relevant circumstances.

(5) Compensation is to be paid from the Fund.

PART 4
MONEY LAUNDERING

Division 1

155. Reporting Committee.

(1) A National Money Laundering Reporting Committee is hereby established under this Act.

(2) The Committee shall comprise—

- (a) the Director General of Finance (who shall be the Chairman)
- (b) the Attorney General;
- (c) the Director of Public Prosecutions;
- (d) the Commissioner of Police;
- (e) the Comptroller of Customs;
- (f) the Director of the (Name of Country) Financial Intelligence Unit;
- (g) the Executive Director of the Financial Services Authority;
- (h) the Chief Immigration Officer; and
- (i) such other person, having appropriate qualifications or experience, as the Attorney General may appoint, for such term as the Attorney General specifies.

(3) The Attorney General may from time to time remove the person appointed as member under subsection (2)(i) and appoint another person in his place.

(4) A member of the Committee specified in paragraph (2)(a) to (h) may appoint a member of his staff of suitable seniority to act as his alternate and to attend meetings of the Committee in his place.

(5) The members of the Committee may adopt procedures for the administration and proceedings of the Committee that are not inconsistent with this Act.

156. Function of the Committee.

(1) The Committee has the following functions-

- (a) to identify and assess the money laundering and terrorist financing risks to which the State is exposed;

- (b) to periodically review and update the national money laundering and terrorist financing risk assessment carried out in accordance with subsection 156 (1) (a);
- (c) to coordinate national anti-money laundering and terrorist policies;
- (d) to advise the Attorney General-
 - (i) in relation to the formulation of policies and on legislation and regulations concerning money laundering and terrorist financing; and
 - (ii) on the participation of the State in the international effort against money laundering and terrorist financing;
- (e) To issue one or more Codes or Guidelines under section 220; and
- (f) To perform such other functions, and exercise such powers-
 - (i) as may be assigned or given to the Committee by this Act, any regulations made under this Act or any other law; or
 - (ii) that are ancillary to the functions set out in this section.

(2) In undertaking its functions, the Committee shall take account of international standards and best practice in relation to the prevention and detection of money laundering and terrorist financing.

157. Annual report of Committee.

The Committee shall, on or before 30th April of each year, prepare and submit to the Minister a report of the work of the Committee for the 12 month period ending on the previous 31st December.

158. Reporting Authority: Functions.

(1) For the purposes of this Part the Financial Intelligence Unit for St. Christopher and Nevis shall be the Money Laundering Reporting Authority and, as such, is responsible for receiving (and, where permitted by this or any other Act, requesting), analysing and disseminating—

- (a) disclosures made under this Act and, in accordance with subsection (3), terrorist financing disclosures; and
 - (b) such other disclosures of financial information that may be required or permitted by any enactment for the purposes of combating money laundering or the financing of terrorism.
- (2) Without limiting subsection (1), the Reporting Authority—
- (a) shall receive all disclosures of information, including information from a foreign financial intelligence unit, which—
 - (i) concern the proceeds of crime, money laundering, terrorism or the financing of terrorism or the suspected proceeds of crime, suspected money laundering, suspected terrorism or the suspected financing of terrorism; and

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- (ii) which are relevant to its responsibilities as a Financial Intelligence Unit;
 - (b) may, by written notice, require any person to provide the Reporting Authority with information, other than information that is privileged material, for the purpose of clarifying or amplifying information disclosed to the Reporting Authority;
 - (c) shall receive requests for information from foreign financial intelligence units concerning the proceeds of crime, money laundering, terrorism or the financing of terrorism or the suspected proceeds of crime, suspected money laundering, suspected terrorism or the suspected financing of terrorism;
 - (d) may enter into such written agreements, arrangements or memoranda of understanding with foreign financial intelligence units as the Reporting Authority considers necessary or desirable for the discharge or performance of the functions of the Reporting Authority, including for the exchange of information;
 - (e) shall retain for a minimum period of five years a written record of—
 - (i) all information received, requested or disseminated by the Reporting Authority; and
 - (ii) all agreements or arrangements entered into under paragraph (c);
 - (f) may provide such feedback to persons who have disclosed information to the Reporting Authority as it considers appropriate;
 - (g) shall collect, compile and publish annually in such manner and form as the Reporting Authority determines, statistical information relating to disclosures made to the Reporting Authority and any dissemination of such disclosures by the Reporting Authority; and
 - (h) has such other functions as may be specified in this or any other Act.
- (3) Where a law enforcement officer receives a terrorist financing disclosure, he shall forthwith pass the disclosure to the Reporting Authority.
- (4) Cabinet shall after consultation with the Commissioner of Police, by Order designate a suitably qualified person who, subject to the direction and control of the members of the Reporting Authority, shall be the director of the Reporting Authority responsible for—
- (a) the day-to-day management and operation of the Reporting Authority;
 - (b) carrying out the functions of the Reporting Authority with respect to
 - (i) the receiving, (and where permitted by this or any other Act, requesting) and analysing of disclosures made to the Reporting Authority; and
 - (ii) the keeping of written records as required by paragraph (2)(d); and
 - (c) carrying out such other functions of the Reporting Authority as the members of the Reporting Authority may direct.
- (5) For the purposes of this section “terrorist financing disclosure” has the meaning specified in the Anti-money Laundering and Terrorist Financing Regulations.

159. Disclosure by Reporting Authority.

(1) The Reporting Authority may disclose any information disclosed to it to any law enforcement agency in St. Christopher and Nevis.

(2) The Reporting Authority, having regard to the purpose for which the disclosure is to be made and the interests of third parties, may, subject to such conditions as it may impose, including as to further disclosure, disclose to a foreign financial intelligence unit information disclosed to it, in order to—

- (a) report the possible commission of an offence;
- (b) initiate a criminal investigation respecting the matter disclosed;
- (c) assist with any investigation or criminal proceedings respecting the matter disclosed; or
- (d) generally, give effect to the purposes of this Act.

160. Immunity.

Neither the Reporting Authority, any member, employee or agent of the Reporting Authority nor any person appointed to assist the Reporting Authority shall be liable in damages for anything done or omitted to be done in the discharge or purported discharge of any function or duty or the exercise or purported exercise of any power under this Act or any other enactment unless it is shown that the act or omission was in bad faith.

161. Confidentiality of information disclosed.

(1) No person, including an, employee or agent of the Reporting Authority and a person appointed to assist the Reporting Authority shall disclose any information or matter that he acquires as a result of his connection with the Reporting Authority except as required or permitted—

- (a) by this Act or any other enactment; or
- (b) an Order of the Court.

(2) Subsection (1) does not apply to a person who discloses any information or matter with the authority of, and on behalf of, the Reporting Authority.

- (3) A person who contravenes subsection (1) commits an offence and is liable—
- (a) on summary conviction, to imprisonment for a term of 12 months or to a fine of \$20,000 or to both; or
 - (b) on conviction on indictment, to imprisonment for a term of 5 years or to a fine of \$100,000 or to both.

162. Annual report of Reporting Authority.

The Reporting Authority shall, on or before 30 April of each year, prepare and submit to the Cabinet a report of the work of the Reporting Authority for the 12 month period ending on the previous 31 December.

Division 2*Money Laundering Offences***163. Meaning of “criminal property”.**

- (1) Property is criminal property if—
 - (a) it constitutes a person’s benefit from criminal conduct or it represents such a benefit, in whole or part and whether directly or indirectly; and
 - (b) the alleged offender knows or suspects that it constitutes or represents such a benefit.
- (2) For the purposes of subsection (1), it is immaterial—
 - (a) who carried out the conduct;
 - (b) who benefited from it; or
 - (c) whether the conduct occurred before or after the commencement date.
 - (i) References to property obtained or a pecuniary advantage derived in connection with conduct include references to property obtained or a pecuniary advantage derived in both that connection and some other connection.
 - (ii) If a person benefits from conduct his benefit is the property obtained as a result of or in connection with the conduct.

164. General provisions for sections 165 to 173.

- (1) This section has effect for the purposes of sections 165 to 173.
- (2) In the sections specified in subsection (1)—
 - (a) “prohibited act” means an act specified in section 165(1), 166(1) or 167(1);
 - (b) a reference to the making by a person of a disclosure to “the relevant Money Laundering Reporting Officer”, means the Money Laundering Reporting Officer appointed by that person’s employer; and
 - (c) “protected disclosure” has the meaning specified in section 173.
- (3) A disclosure by a person is an authorised disclosure if—
 - (a) it is a disclosure made to the Reporting Authority or to the relevant Money Laundering Reporting Officer that property is criminal property;
 - (b) the disclosure—
 - (i) in the case of a disclosure to the Reporting Authority, is made in the form and manner, if any, that may be prescribed in Anti-money Laundering and Terrorist Financing Regulations; or
 - (ii) in the case of a disclosure to the relevant Money Laundering Reporting Officer, is made in the course of his employment and in accordance with the procedures established by his employer for the purpose; and

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- (c) the disclosure—
 - (i) is made before the person does the prohibited act; or
 - (ii) is made after the person does the prohibited act, there is good reason for his failure to make the disclosure before he did the prohibited act and the disclosure is made on his own initiative and as soon as it is practicable for him to make it.
- (4) The appropriate consent is—
 - (a) where a person makes a disclosure to the relevant Money Laundering Reporting Officer, the consent of the relevant Money Laundering Reporting Officer to do the prohibited act; or
 - (b) where a person makes a disclosure to the Reporting Authority, the consent of the Reporting Authority to do the prohibited act.
- (5) A person is deemed to have the appropriate consent if—
 - (a) he makes an authorised disclosure to the Reporting Authority;
 - (b) either—
 - (i) the Reporting Authority does not, on or before the last day of the notice period, notify the person that consent to doing the prohibited act is refused; or
 - (ii) on or before the last day end of the notice period he receives notice from the Reporting Authority that consent to the doing of the prohibited act is refused and the moratorium period has expired.
- (6) For the purposes of subsection (5)—
 - (a) the notice period is the period of 7 working days commencing with the first working day after the person makes the disclosure; and
 - (b) the moratorium period is the period of 30 days commencing with the day on which the person receives notice that consent to the doing of the prohibited act is refused.
- (7) A Money Laundering Reporting Officer shall not consent to the doing of a prohibited act unless—
 - (a) he has made a disclosure that property is criminal property to the Reporting Authority; and
 - (b) the Reporting Authority gives consent to the doing of the prohibited act.
- (8) A person who is a Money Laundering Reporting Officer commits an offence if—
 - (a) he gives consent to the doing of a prohibited act where the Reporting Authority has not consented to the doing of the act; and
 - (b) he knows or suspects that the act is a prohibited act.
- (9) A Money Laundering Reporting Officer commits an offence under this section is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding \$50,000 or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine not exceeding \$100,000 or to both.

165. Concealing, disguising, converting, transferring and removing criminal property.

- (1) Subject to subsection (2), a person commits an offence if he—
 - (a) conceals criminal property;
 - (b) disguises criminal property;
 - (c) converts criminal property;
 - (d) transfers criminal property; or
 - (e) removes criminal property from St. Christopher and Nevis.
- (2) A person commits an offence under subsection (1) if—
 - (a) he makes an authorised disclosure and, if the disclosure is made before he does the act specified in subsection (1), he has the appropriate consent;
 - (b) he intended to make such a disclosure but had a reasonable excuse for not doing so; or
 - (c) the act he does is done in carrying out a function he has relating to the enforcement of any provision of this Act or of any other enactment relating to criminal conduct or benefit from criminal conduct.
- (3) Concealing or disguising criminal property includes concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it.
- (4) A person who commits an offence under this section is liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding 5 years or to a fine not exceeding two hundred thousand dollars (\$200,000) or to both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 14 years or to a fine not exceeding five hundred thousand dollars (\$500,000.00) or to both.

166. Arrangements.

- (1) Subject to subsection (2), a person commits an offence if he enters into or becomes concerned in an arrangement which he knows or suspects facilitates, by whatever means, the acquisition, retention, use or control of criminal property by or on behalf of another person.
- (2) A person is not guilty of an offence under subsection (1) if—
 - (a) he makes an authorised disclosure and, if the disclosure is made before he does the act specified in subsection (1), he has the appropriate consent;
 - (b) he intended to make such a disclosure but had a reasonable excuse for not doing so; or

- (c) the act he does is done in carrying out a function he has relating to the enforcement of any provision of this Act or of any other enactment relating to criminal conduct or benefit from criminal conduct.
- (3) A person guilty of an offence under this section is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 5 years or to a fine not exceeding \$200,000 or to both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 10 years or to a fine not exceeding four hundred thousand dollars or to both.

167. Acquisition, use and possession.

- (1) Subject to subsection (2), a person commits an offence if he—
- (a) acquires criminal property;
 - (b) uses criminal property; or
 - (c) has possession of criminal property.
- (2) A person is not guilty of an offence under subsection (1) if—
- (a) he makes an authorised disclosure and, if the disclosure is made before he does the act specified in subsection (1), he has the appropriate consent;
 - (b) he intended to make such a disclosure but had a reasonable excuse for not doing so;
 - (c) he acquired or used or had possession of the property—
 - (i) for adequate consideration; and
 - (ii) without knowing or suspecting that the property was criminal property;or
 - (d) the act he does is done in carrying out a function he has relating to the enforcement of any provision of this Act or of any other enactment relating to criminal conduct or benefit from criminal conduct.
- (3) For the purposes of this section—
- (a) a person acquires property for inadequate consideration if the value of the consideration is significantly less than the value of the property;
 - (b) a person uses or has possession of property for inadequate consideration if the value of the consideration is significantly less than the value of the use or possession of the property; and
 - (c) the provision by a person of goods or services which he knows or suspects may help another to carry out criminal conduct is not consideration.
- (4) A person guilty of an offence under this section is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 5 years or to a fine not exceeding two hundred thousand (\$200,000.00) or to both;

- (b) on conviction on indictment, to imprisonment for a term not exceeding 14 years or to a fine not exceeding five hundred thousand dollars (\$500,000.00) or to both.

168. Duty to disclose knowledge or suspicion of money laundering.

- (1) Where a person—
 - (a) knows or suspects, or has reasonable grounds for knowing or suspecting, that another person is engaged in money laundering, and
 - (b) the information or other matter on which his knowledge or suspicion is based, or which gives reasonable grounds for such knowledge or suspicion, came to him in the course of a relevant business,

he shall disclose the information or other matter as soon as is practicable after it comes to him to the relevant Money Laundering Reporting Officer or to the Reporting Authority.

(2) A disclosure under subsection (1) to the Reporting Authority shall be in the form and manner, if any, that may be required by the Reporting Authority.

(3) Subject to subsection (4), a person who does not disclose any information or other matter as required by subsection (1) commits an offence.

- (4) A person is not guilty of an offence under subsection (3) if—
 - (a) he has a reasonable excuse for not disclosing the information or other matter;
 - (b) he is a professional legal advisor and the information or other matter came to him in privileged circumstances; or
 - (c) he is a trainee, paralegal, legal secretary or any other person who is employed by, or is in partnership with, a professional legal adviser to provide the adviser with assistance or support and the information or other matter—
 - (i) came to him in connection with the provision of such assistance or support; and
 - (ii) came to the professional legal adviser in privileged circumstances.

(5) Without limiting subsection (4)(a), a person has a reasonable excuse for not disclosing information or other matter under subsection (1) if—

- (a) he does not know or suspect that another person is engaged in money laundering; and
- (b) he has not been provided by his employer with anti-money laundering training as may be required by the Anti-money Laundering and Terrorist Financing Regulations.

(6) Subject to subsection (7), for the purposes of this section, any information or other matter comes to a professional legal advisor in privileged circumstances if it is communicated or given to him—

- (a) by, or by a representative of, a client of his in connection with the giving by the advisor of legal advice to the client;

- (b) by, or by a representative of, a person seeking legal advice from the advisor;
or
- (c) by a person in connection with legal proceedings or contemplated legal proceedings.

(7) Subsection (6) does not apply to any information or other matter which is communicated or given with the intention of furthering a criminal purpose.

(8) For the purposes of subsection (1), a person makes a disclosure to the relevant Money Laundering Reporting Officer if he make the disclosure in the course of his employment and in accordance with the procedures established by his employer for the purpose.

- (9) A person guilty of an offence under this section is liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding 2 years or to a fine not exceeding \$75,000 or to both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 10 years or to a fine not exceeding \$250,000 or to both.

169. Duty to disclose, Money Laundering Reporting Officer of service provider.

- (1) Where the Money Laundering Reporting Officer of a service provider—
 - (a) knows or suspects, or has reasonable grounds for knowing or suspecting, that another person is engaged in money laundering, and
 - (b) the information or other matter on which his knowledge or suspicion is based, or which gives reasonable grounds for such knowledge or suspicion, came to him in consequence of a disclosure made under section 168,

he shall disclose the information or other matter as soon as is practicable after it comes to him to the Reporting Authority.

(2) A disclosure under subsection (1) to the Reporting Authority shall be in the form and manner, if any, that may be prescribed in the Anti-money Laundering and Terrorist Financing Regulations.

(3) Subject to subsection (4), a person who does not disclose any information or other matter as required by subsection (1) commits an offence.

(4) A person is not guilty of an offence under subsection (3) if he has a reasonable excuse for not disclosing the information or other matter.

- (5) A person guilty of an offence under this section is liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding 2 years or to a fine not exceeding \$75,000 or to both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 10 years or to a fine not exceeding \$250,000 or to both.

170. Duty to disclose, Money Laundering Reporting Officer.

(1) Where the Money Laundering Reporting Officer of a person carrying on relevant business—

- (a) knows or suspects that another person is engaged in money laundering, and
- (b) the information or other matter on which his knowledge or suspicion is based, or which gives reasonable grounds for such knowledge or suspicion, came to him in consequence of an authorised or protected disclosure,

he shall disclose the information or other matter as soon as is practicable after it comes to him to the Reporting Authority.

(2) A disclosure under subsection (1) to the Reporting Authority shall be in the form and manner, if any, that may be specified by the Reporting Authority.

(3) Subject to subsection (4), a person who does not disclose any information or other matter as required by subsection (1) commits an offence.

(4) A person is not guilty of an offence under subsection (3) if he has a reasonable excuse for not disclosing the information or other matter.

(5) A person guilty of an offence under this section is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 2 years or to a fine not exceeding \$75,000 or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 10 years or to a fine not exceeding \$250,000 or to both.

171. Prejudicing investigation and tipping off.

(1) Subject to section 172, a person commits an offence if—

- (a) he knows or suspects that the Reporting Authority, a law enforcement officer, the Civil Recovery Authority or any other authorised person is acting, or is proposing to act, in connection with—
 - (i) a criminal recovery investigation;
 - (ii) a civil recovery investigation;
 - (iii) a money laundering investigation;
 - (iv) a detained cash investigation;
 - (v) a detained property investigation; and
 - (vi) a frozen funds investigation.
- (b) he—
 - (i) makes a disclosure that is likely to prejudice that investigation, or proposed investigation; or
 - (ii) falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of, documents which are relevant to the investigation.

- (2) Subject to section 172, a person commits an offence if—
 - (a) he knows or suspects that an authorised or protected disclosure has been made; and
 - (b) he makes a disclosure which is likely to prejudice any investigation which might be conducted following that disclosure.
- (3) A person guilty of an offence under this section shall be liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding 5 years or a fine not exceeding \$200,000 or to both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 14 years or a fine without limit or to both.

172. Circumstances in which offence under section 171 not committed.

(1) Nothing in section 171 makes it an offence for a person to make a disclosure to a professional legal adviser for the purposes of legal advice or for a professional legal adviser to make a disclosure—

- (a) to, or to a representative of, a client of his in connection with the giving by the legal adviser of legal advice to the client; or
- (b) to any person—
 - (i) in contemplation of, or in connection with, legal proceedings; and
 - (ii) for the purpose of those proceedings.

(2) Subsection (1) does not apply to a disclosure made with the intention of furthering any criminal purpose.

(3) In proceedings against a person for an offence under section 171(1) or (2), it is a defence to prove that he did not know or suspect that the disclosure was likely to be prejudicial in the way specified in section 171(1)(b)(i) or 171(2)(b), as the case may be.

- (4) A person is not guilty of an offence under section 171(1)(b)(ii) if—
 - (a) he does not know or suspect that the documents are relevant to the investigation, or
 - (b) he does not intend to conceal any facts disclosed by the documents from any person carrying out the investigation.

(5) No member of the Reporting Authority, law enforcement officer or other person shall be guilty of an offence under section 171 in respect of anything done by him in the course of acting in connection with the enforcement, or intended enforcement, of any provision of this Act or of any other enactment relating to criminal conduct or benefit from criminal conduct or in compliance with a requirement imposed under or by virtue of this Act.

173. Protection of disclosures.

- (1) A disclosure is a protected disclosure if—

- (a) the information or other matter disclosed came to the person making the disclosure in the course of his trade, profession, business or employment;
 - (b) the information or other matter disclosed causes the person making the disclosure to know or suspect, or gives him reasonable grounds for knowing or suspecting, that another person is engaged in money laundering; and
 - (c) the disclosure is made to the Reporting Authority, or to the relevant Money Laundering Reporting Officer in accordance with the procedures established by his employer for the purpose, as soon as is practicable after the information or other matter comes to the person making the disclosure.
- (2) A protected disclosure, which for these purposes includes an authorised disclosure, shall not be treated as a breach of any enactment, rule of law or agreement restricting the disclosure of information and shall not give rise to civil proceedings.

PART 5

INVESTIGATIONS

Division 1

General

174. Meaning of privileged material.

- (1) For the purposes of this Part, “privileged material” means—
- (a) communications between a professional legal adviser and his client or any person representing his client made in connection with the giving of legal advice to the client;
 - (b) communications between a professional legal adviser and his client or any person representing his client or between such an adviser or his client or any such representative and any other person made in connection with or in contemplation of legal proceedings and for the purposes of such proceedings; and
 - (c) material enclosed with or referred to in such communications and made—
 - (i) in connection with the giving of legal advice, or
 - (ii) in connection with or in contemplation of legal proceedings and for the purposes of such proceedings;

when they are in the possession of a person who is entitled to possession of them.

(2) Material held with the intention of furthering a criminal purpose is not privileged material.

Division 2

Production orders

175. Application for production order.

(1) Application may be made by a law enforcement officer to a judge or master of the court for a production order under section 176.

- (2) An application for a production order shall state that—
- (a) a person specified in the application is subject to a criminal recovery investigation or a money laundering investigation or that the property specified in the application is subject to a civil recovery investigation, a detained cash investigation, a detained property investigation or a frozen funds investigation;
 - (b) the order is sought—
 - (i) for the purposes of the investigation, and
 - (ii) in relation to material, or material of a description, specified in the application; and
 - (c) a person specified in the application appears to be in possession or control of the material.

176. Production order.

(1) On an application made under section 175, a judge or master may make a production order if he is satisfied that—

- (a) there are reasonable grounds for suspecting that—
 - (i) in the case of a criminal recovery investigation, the person specified in the application as being subject to the investigation has benefited from his criminal conduct;
 - (ii) in the case of a civil recovery investigation, the property specified in the application as being subject to the investigation is recoverable property or associated property;
 - (iii) in the case of a money laundering investigation, the person specified in the application as being subject to the investigation has committed a money laundering offence;
 - (iv) in the case of a detained cash investigation that the cash, or part of it, is recoverable cash;
 - (v) in the case of a detained property investigation into the derivation of property, the property the application for the order specifies as being subject of the investigation, or part of it, is recoverable property;
 - (vi) in the case of a detained property investigation into the intended use of property, the property that the application for the order specifies as being subject of the investigation, or part of it, is intended by any person to be used in unlawful conduct;
 - (vii) in the case of a frozen funds investigation into the derivation of money held in an account to which an account freezing order made under section 140 has effect (a frozen account), the property the application for the order specifies as being subject to the investigation or part of it, is recoverable property;

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- (viii) in the case of a frozen funds investigation into the intended use of the money held in a frozen account, the property the application for the order specifies as being subject to the investigation, or part of it, is intended by any person to be used in unlawful conduct
 - (b) there are reasonable grounds for believing that—
 - (i) the person specified in the application as appearing to be in possession or control of the specified material is in possession or control of it; and
 - (ii) there are reasonable grounds for believing that the material is likely to be of substantial value, whether by itself or together with other material, to the investigation for the purposes of which the order is sought; and
 - (c) there are reasonable grounds for believing that it is in the public interest for the material to be produced or for access to be given to it having regard to—
 - (i) the benefit likely to accrue to the investigation if the material is obtained; and
 - (ii) the circumstances under which the person the application specifies as appearing to be in possession or control of the material holds it.
- (2) A production order is an order—
- (a) requiring the person specified in the order as appearing to be in possession or control of material to produce it to a law enforcement officer for him to take away, or
 - (b) requiring that person to give a law enforcement officer access to it,
- within the period stated in the order.
- (3) A production order may be made in relation to material in the possession or control of a government entity.
- (4) The period specified in a production order shall be seven days commencing on the date that the order is made, unless it appears to the judge that a longer or shorter period would be appropriate in the particular circumstances.
- (5) A production order does not require a person to produce, or give access to, privileged material.
- (6) A person who without reasonable excuse, fails to comply with a requirement imposed on him by a production order commits an offence and is liable on summary conviction to imprisonment of two years or to a fine of \$5000.00 or both.

177. Order to grant entry.

Where the judge makes a production order in relation to material on any premises he may, on the application of a law enforcement officer, order any person to grant entry to the premises to allow him or her to enter the premises to obtain access to the material.

178. Further provisions relating to production orders.

(1) Where any material specified in an application for a production order consists of information contained in a computer—

- (a) an order under section 176 shall have effect as an order to produce the material in a form in which it can be taken away and in which it is visible and legible; and
- (b) an order under section 176 shall have effect as an order to give access to the material in a form in which it is visible and legible.

(2) A law enforcement officer may take copies of any material which is produced, or to which access is given, in compliance with a production order.

(3) Material produced in compliance with a production order may be retained for so long as it is necessary to retain it, as opposed to copies of it, in connection with the investigation for the purposes of which the order was made.

(4) If a law enforcement officer has reasonable grounds for believing that—

- (a) the material may need to be produced for the purposes of any legal proceedings, and
- (b) it might otherwise be unavailable for those purposes; it may be retained until the proceedings are concluded.

Division 3*Search and seizure warrants***179. Application for search and seizure warrant.**

(1) Application may be made by a law enforcement officer to a judge or master of the Court for a search and seizure warrant under section 180.

(2) An application for a search and seizure warrant shall state that—

- (a) a person specified in the application is subject to a criminal recovery investigation or a money laundering investigation or that property specified in the application is subject to a civil recovery investigation, a detained cash investigation, a detained property investigation or a frozen funds investigation; and
- (b) the warrant is sought—
 - (i) for the purposes of the investigation;
 - (ii) in relation to the premises specified in the application; and
 - (iii) in relation to material specified in the application, or that there are reasonable grounds for believing that there is material falling within section 180 (5), (6) or (7) on the premises.

(4) A search and seizure warrant is a warrant authorising a law enforcement officer —

- (a) to enter and search the premises specified in the application for the warrant; and

- (b) to seize and retain any material found there which is likely to be of substantial value, whether by itself or together with other material, to the investigation for the purposes of which the application is made.

180. Search and seizure warrant.

(1) On an application made under section 179, a judge or master may issue a search and seizure warrant if he is satisfied that—

- (a) a production order in relation to material has not been complied with and there are reasonable grounds for believing that the material is on the premises specified in the application for the warrant; or
- (b) subsection (2) applies and either—
 - (i) the conditions specified in subsection (3) are fulfilled; or
 - (ii) the conditions specified in subsection (4) are fulfilled.

(2) This subsection applies for the purposes of subsection (1)(b) if there are reasonable grounds for suspecting that—

- (i) in the case of a criminal recovery investigation, the person specified in the application for the warrant has benefitted from his criminal conduct; or
- (ii) in the case of a civil recovery investigation, the property specified in the application for the warrant is recoverable property or associated property;
- (iii) in the case of a money laundering investigation, the person specified in the application for the warrant has committed a money laundering offence.
- (iv) in the case of a detained cash investigation that the cash, or part of it, is recoverable cash.
- (v) in the case of a detained property investigation into the derivation of property, the property the application for the order specifies as being subject of the investigation, or part of it, is recoverable property;
- (vi) in the case of a detained property investigation into the intended use of property, the property that the application for the order specifies as being subject of the investigation, or part of it, is intended by any person to be used in unlawful conduct;
- (vii) in the case of a frozen funds investigation into the derivation of money held in an account to which an account freezing order made under section 140 has effect (a frozen account), the property the application for the order specifies as being subject to the investigation or part of it, is recoverable property;
- (viii) in the case of a frozen funds investigation into the intended use of the money held in a frozen account, the property the application for the order specifies as being subject to the investigation, or part of it, is intended by any person to be used in unlawful conduct.

(3) The conditions referred to in subsection (1)(b)(i) are—

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- (a) that there are reasonable grounds for believing that—
 - (i) any material on the premises specified in the application for the warrant is likely to be of substantial value, whether by itself or together with other material, to the investigation for the purposes of which the warrant is sought; and
 - (ii) it is in the public interest for the material to be obtained, having regard to the benefit likely to accrue to the investigation if the material is obtained; and
 - (b) that it would not be appropriate to make a production order—
 - (i) that it is not practicable to communicate with any person against whom the production order could be made;
 - (ii) that it is not practicable to communicate with any person who would be required to comply with an order to grant entry to the premises; or
 - (iii) that the investigation might be seriously prejudiced unless a law enforcement officer is able to secure immediate access to the material.
- (4) The conditions referred to in subsection (1)(b)(ii) are—
- (a) there are reasonable grounds for believing that there is material on the premises specified in the application for the warrant and that—
 - (i) in the case of a criminal recovery investigation, the material falls within subsection (5);
 - (ii) in the case of a civil recovery investigation, the material falls within subsection (6);
 - (iii) in the case of a money laundering investigation, the material falls within subsection (7); or
 - (iv) in the case of a cash detention investigation, the material falls within subsection (8).
 - (v) in the case of a detained property investigation, the material falls within subsections (9) and (10);
 - (vi) in the case of a frozen funds investigation, the material falls within subsections (11) and (12).
 - (b) there are reasonable grounds for believing that it is in the public interest for the material to be obtained, having regard to the benefit likely to accrue to the investigation if the material is obtained; and
 - (c) one of the following apply—
 - (i) it is not practicable to communicate with any person entitled to grant entry to the premises;
 - (ii) entry to the premises will not be granted unless a warrant is produced;
or

- (iii) the investigation might be seriously prejudiced unless a law enforcement officer arriving at the premises is able to secure immediate entry to them.
- (5) In the case of a criminal recovery investigation, material falls within this subsection if it cannot be identified at the time of the application but it—
- (a) relates to the person specified in the application, the question whether he has benefited from his criminal conduct or any question as to the extent or whereabouts of his benefit from his criminal conduct or of realisable property available for satisfying a confiscation order made against him; and
 - (b) is likely to be of substantial value, whether by itself or together with other material, to the investigation for the purposes of which the warrant is sought.
- (6) In the case of a civil recovery investigation, material falls within this subsection if it cannot be identified at the time of the application but it—
- (a) relates to the property specified in the application, the question whether it is recoverable property or associated property, the question as to who holds any such property, any question as to whether the person who appears to hold any such property holds other property which is recoverable property, or any question as to the extent or whereabouts of any property mentioned in this paragraph; and
 - (b) is likely to be of substantial value, whether by itself or together with other material, to the investigation for the purposes of which the warrant is sought.
- (7) In the case of a money laundering investigation, material falls within this subsection if it cannot be identified at the time of the application but it—
- (a) relates to the person specified in the application or the question whether he has committed a money laundering offence; and
 - (b) is likely to be of substantial value, whether by itself or together with other material, to the investigation for the purposes of which the warrant is sought.
- (8) In the case of a detained cash investigation material falls within this subsection if it cannot be identified at the time of the application but it:
- (a) relates to the property specified in the application, the question whether the property, or part of it, is recoverable cash; and
 - (b) is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the warrant is sought.
- (9) In the case of a detained property investigation, into the derivation of property, material falls within this subsection if it cannot be identified at the time of the application but it:
- (a) relates to the property specified in the application or the question whether the property or a part of it, is recoverable property or any other question as to its derivation;
 - (b) is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the warrant is sought.

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(10) In the case of a detained property investigation, into the intended use of property, material falls within this subsection if it cannot be identified at the time of the application but it:

- (a) relates to the property specified in the application or the question whether the property or a part of it, is intended by any person to be used in unlawful conduct;
- (b) is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the warrant is sought.

(11) In the case of a frozen funds investigation into the derivation of money held in a frozen account, material falls within this subsection if it cannot be identified at the time of the application but it—

- (a) relates to the property specified in the application, the question whether the property, or a part of it, is recoverable property or any other question as to its derivation, and
- (b) is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the warrant is sought.

(12) In the case of a frozen funds investigation into the intended use of money held in a frozen account, material falls within this subsection if it cannot be identified at the time of the application but it—

- (a) relates to the property specified in the application or the question whether the property, or a part of it, is intended by any person to be used in unlawful conduct, and
- (b) is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the warrant is sought.

(13) A search and seizure warrant does not confer the right to seize privileged material.

(14) A person who hinders or obstructs a law enforcement officer in the execution of a warrant issued under this section commits an offence and is liable on summary conviction to imprisonment for two years or to a fine of \$100,000.00 or both.

Division 4

Customer information orders

181. Customer information to be specified in regulations.

The regulations shall specify types or categories of information that are “customer information” for the purposes of sections 182 to 183.

182. Application for customer information order.

(1) Application may be made by a law enforcement officer to a judge or master of the court for a customer information order under section 183.

(2) No application for a disclosure order may be made in relation to a cash detention investigation, a detained property investigation or a frozen funds investigation.

- (3) An application for a customer information order shall state that—
 - (a) a person specified in the application is subject to a criminal recovery investigation or a money laundering investigation or that property specified in the application is subject to a civil recovery investigation and a person specified in the application appears to hold the property;
 - (b) the order is sought for the purposes of the investigation; and
 - (c) the order is sought against the regulated person or regulated persons specified in the application.
- (4) An application for a customer information order may specify—
 - (a) all regulated persons;
 - (b) a particular description, or particular descriptions, of regulated persons; or
 - (c) a particular regulated person or particular regulated persons.
- (5) No application for a customer information order may be made in relation to a detained cash investigation.

183. Customer information order.

- (1) On an application made under section 182, a judge or master may make a customer information order if he is satisfied that—
 - (a) there are reasonable grounds for suspecting that—
 - (i) in the case of a criminal recovery investigation, the person specified in the application has benefited from his criminal conduct;
 - (ii) in the case of a civil recovery investigation, the property specified in the application is recoverable property or associated property and the person specified in the application holds all or some of the property; or
 - (iii) in the case of a money laundering investigation, the person specified in the application has committed a money laundering offence;
 - (b) there are reasonable grounds for believing that customer information which may be provided in compliance with the order is likely to be of substantial value, whether by itself or together with other information, to the investigation for the purposes of which the order is sought; and
 - (c) there are reasonable grounds for believing that it is in the public interest for the customer information to be provided, having regard to the benefit likely to accrue to the investigation if the information is obtained.
- (2) A customer information order is an order that a regulated person covered by the application for the order shall, on being required to do so by notice in writing given by an appropriate officer, provide any such customer information as it has relating to the person specified in the application.
- (3) A regulated person which is required to provide information under a customer information order shall provide the information to an appropriate officer in such manner, and at or by such time, as an appropriate officer requires.

(4) If a regulated person on which a requirement is imposed by a notice given under a customer information order requires the production of evidence of authority to give the notice, it is not bound to comply with the requirement unless evidence of the authority has been produced to it.

(5) A customer information order shall have effect notwithstanding any obligation as to confidentiality or other restriction upon the disclosure of information imposed by any enactment, rule of law or otherwise.

184. Offences.

- (1) A regulated person commits an offence if
 - (a) without reasonable excuse, it fails to comply with a requirement imposed on it under a customer information order; or
 - (b) in purported compliance with a customer information order, it—
 - (i) makes a statement which it knows to be false or misleading in a material particular; or
 - (ii) recklessly makes a statement which is false or misleading in a material particular.
- (2) A regulated person guilty of an offence under subsection (1)(a) is liable—
 - (a) on summary conviction, to a fine not exceeding \$100,000;
 - (b) on conviction on indictment to a fine not exceeding \$250,000.
- (3) A regulated person guilty of an offence under subsection (1)(b) is liable—
 - (a) on summary conviction, to a fine not exceeding \$100,000;
 - (b) on conviction on indictment to a fine not exceeding \$250,000.

185. Protection of statements.

(1) Subject to subsection (2), a statement made by a regulated person in response to a customer information order may not be used in evidence against it in criminal proceedings.

- (2) Subsection (1) does not apply—
 - (a) in the case of proceedings under Part 2;
 - (b) on a prosecution for an offence under section 187; or
 - (c) on a prosecution for some other offence where, in giving evidence, the regulated person makes a statement inconsistent with the statement mentioned in subsection (1).

(3) A statement may not be used by virtue of paragraph (2)(c) against a regulated person unless—

- (a) evidence relating to it is adduced, or
- (b) a question relating to it is asked,

by or on behalf of the regulated person in the proceedings arising out of the prosecution.

Division 5*Account monitoring orders***186. Application for account monitoring order.**

(1) Application may be made by a law enforcement officer to a judge or master of the court for an account monitoring order under section 187.

(2) No application for a disclosure order may be made in relation to a cash detention investigation, a detained property investigation or a frozen funds investigation.

(3) An application for an account monitoring order shall state that—

(a) a person specified in the application is subject to a criminal recovery investigation or a money laundering investigation or that property specified in the application is subject to a civil recovery investigation and a person specified in the application appears to hold the property;

(b) the order is sought for the purposes of the investigation; and

(c) the order is sought against the regulated person specified in the application in relation to account information of the description specified.

(4) An application for an account monitoring order may specify information relating to—

(a) all accounts held by the person specified in the application at the regulated person so specified;

(b) a particular description, or particular descriptions, of accounts so held; or

(c) a particular account or particular accounts so held.

(4) No application for an account monitoring order may be made in relation to a cash detention investigation.

187. Account monitoring order.

(1) On an application made under section 186, a judge or master may make an account monitoring order if he is satisfied that—

(a) in the case of a criminal recovery investigation, there are reasonable grounds for suspecting that the person specified in the application for the order has benefitted from his criminal conduct;

(b) in the case of a civil recovery investigation, there are reasonable grounds for suspecting that—

(i) the property specified in the application for the order is recoverable property or associated property; and

(ii) the person specified in the application holds all or some of the property;

(c) in the case of a money laundering investigation, there are reasonable grounds for suspecting that the person specified in the application for the order has committed a money laundering offence.

(2) In the case of any investigation, the judge or master shall not make an account monitoring order unless he is satisfied that—

- (a) there are reasonable grounds for believing that account information which may be provided in compliance with the order is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the order is sought; and
- (b) there are reasonable grounds for believing that it is in the public interest for the account information to be provided, having regard to the benefit likely to accrue to the investigation if the information is obtained.

(3) If on an application under section 186, the judge or master is satisfied that the conditions specified in this section are fulfilled, he may make an order that the regulated person specified in the application shall, for the period stated in the order, which shall not exceed 90 days, provide account information of the description specified in the order to a law enforcement officer in the manner, and at or by the time or times, stated in the order.

(4) For the purposes of subsection (3), “account information” is information relating to an account or accounts held at the regulated person specified in the order by the person specified in the order, whether solely or jointly with one or more other persons.

(5) An order under subsection (3) may specify account information relating to—

- (a) all accounts held by the person and at the regulated person specified in the order;
- (b) a particular description, or particular descriptions, of accounts so held; or
- (c) a particular account, or particular accounts, so held.

188. Statements.

(1) Subject to subsection (2), a statement made by a regulated person in response to an account monitoring order may not be used in evidence against it in criminal proceedings.

(2) Subsection (1) does not apply—

- (a) in the case of proceedings under Part 2;
- (b) in the case of proceedings for contempt of court; or
- (c) on a prosecution for an offence where, in giving evidence, the regulated person makes a statement inconsistent with the statement mentioned in subsection (1).

(3) A statement may not be used by virtue of paragraph (2)(c) against a regulated person unless—

- (a) evidence relating to it is adduced, or
- (b) a question relating to it is asked,

by or on behalf of the regulated person in the proceedings arising out of the prosecution.

189. Disclosure of information.

An account monitoring order has effect in spite of any restriction on the disclosure of information (however imposed).

Division 6*Disclosure Orders***190. Application for a disclosure order.**

(1) Application may be made by a law enforcement officer to a judge or master of the Court for a disclosure order under section 191.

(2) No application for a disclosure order may be made in relation to a cash detention investigation, a detained property investigation or a frozen funds investigation.

(3) An application for a disclosure order must state that –

- (a) a person specified in the application is subject to a money laundering investigation, a criminal recovery investigation or that property specified in the application is subject to a civil recovery investigation and a person specified in the application appears to hold the property; and
- (b) the order is sought for the purposes of the investigation.

(4) A disclosure order is an order authorising the law enforcement officer to give to any person the law enforcement officer considers has relevant information, notice in writing requiring him to do, with respect to any matter relevant to the investigation for the purposes of which the order is sought, any of the following –

- (a) answer any question, either at a time specified in the notice or at once, at a place specified;
- (b) provide information specified in the notice, by a time and in a manner so specified;
- (c) produce documents, or documents of a description, specified in the notice, either at or by a time so specified or at once, and in a manner so specified.

(5) Relevant information is information (whether or not contained in a document) which the law enforcement officer considers to be relevant to the investigation.

(6) A person is not bound to comply with a requirement imposed by a notice given under a disclosure order unless evidence of authority to give the notice is produced to him.

(7) Documents so produced may be retained for so long as it is necessary to retain them (as opposed to a copy of them) in connection with the investigation for the purposes of which the order was made.

(8) A person is not bound to provide privileged material, privileged information or to answer any privileged questions, except that a lawyer may be required to provide the name and address of a client.

(9) Where a law enforcement officer has reasonable grounds for believing that—

- (a) the documents may need to be produced for the purposes of any legal proceedings, and
- (b) they might otherwise be unavailable for those purposes.

They may be retained until the proceedings are concluded.

191. Disclosure Order.

(1) On an application under section 190, a judge or master may make a disclosure order if he is satisfied that –

- (a) in the case of a criminal recovery investigation, there are reasonable grounds to believe the person specified in the application as being subject to the investigation has benefited from his criminal conduct;
- (b) in the case of a civil recovery investigation, the property specified in the application as being subject to the investigation is recoverable property or associated property;
- (c) in the case of a money laundering investigation, the person specified in the application for the order committed a money laundering offence.

(2) In the case of a money laundering investigation, a criminal recovery investigation or a civil recovery investigation, the judge or master shall not make a disclosure order unless he is satisfied that—

- (a) there are reasonable grounds for believing that information which may be provided in compliance with the order is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the order is sought; and
- (b) there are reasonable grounds for believing that it is in the public interest for the information to be provided, having regard to the benefit likely to accrue to the investigation if the information is obtained.

192. Offences.

(1) A person commits an offence if without reasonable excuse he fails to comply with a requirement imposed on him under a disclosure order.

(2) A person guilty of an offence under subsection (1) is liable on summary conviction

- (a) to imprisonment for a term not exceeding six months; or
- (b) a fine not exceeding \$10,000.00; or
- (c) both

(3) A person commits an offence if, in purported compliance with a requirement imposed on him under a disclosure order, he—

- (a) makes a statement which he knows to be false or misleading in a material particular, or

- (b) recklessly makes a statement which is false or misleading in a material particular.
- (4) A person guilty of an offence under subsection (3) is liable on summary conviction
 - (a) to imprisonment for a term not exceeding six months;
 - (b) or to a fine not exceeding \$10,000.00; or
 - (c) both.

193. Statements.

- (1) A statement made by a person in response to a requirement imposed on him under a disclosure order may not be used in evidence against him in criminal proceedings.
- (2) Subsection (1) does not apply—
 - (a) in the case of proceedings under Part 2;
 - (b) on a prosecution for an offence under section 192 (1) or (3);
 - (c) on a prosecution for an offence of fabricating false evidence or making a false statutory declaration or false statement (whether oral or written) without oath with intent to defeat, obstruct, or pervert the course of justice in any proceeding; or
 - (d) on a prosecution for some other offence where, in giving evidence, the person makes a statement inconsistent with the statement mentioned in subsection (1).
- (3) A statement may not be used by virtue of subsection (2)(d) 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.

Division 7

Unexplained Wealth orders

194. Unexplained wealth orders.

- (1) The High Court may, on an application made by the Recovery Authority, may make an unexplained wealth order in respect of any property if the Court is satisfied that each of the requirements for the making of the order is fulfilled.
- (2) An application for an order must—
 - (a) specify or describe the property in respect of which the order is sought, and
 - (b) specify the person, being the respondent, whom the enforcement authority thinks holds the property and the person specified may include a person outside Saint Christopher and Nevis.

(3) An unexplained wealth order is an order requiring the respondent to provide a statement—

- (a) setting out the nature and extent of the respondent’s interest in the property in respect of which the order is made, and
- (b) explaining how the respondent obtained the property and including, in particular, how any costs incurred in obtaining it were met.

(4) The order must specify—

- (a) the form and manner in which the statement is to be given,
- (b) the person to whom it is to be given, and
- (c) the place at which it is to be given or, if it is to be given in writing, the address to which it is to be sent.

(5) The order may, in connection with requiring the respondent to provide the statement mentioned in subsection (3), also require the respondent to provide information, or to produce documents, of a kind specified or described in the order.

(6) The respondent must comply with the requirements imposed by an unexplained wealth order within whatever period the Court may specify (and different periods may be specified in relation to different requirements).

195. Requirements for making of unexplained wealth order.

(1) The requirements for the making of an unexplained wealth order in respect of any property is that the Court must be satisfied that -

- (a) the respondent holds the property, and
- (b) the value of the property is greater than \$100,000.

(2) The Court must be satisfied that there are reasonable grounds for suspecting that the known sources of the respondent’s lawfully obtained income would have been insufficient for the purposes of enabling the respondent to obtain the property.

(3) The High Court must be satisfied that—

- (a) the respondent is a politically exposed person, or
- (b) there are reasonable grounds for suspecting that—
 - (i) the respondent is, or has been, involved in unlawful conduct (whether in a part of the United Kingdom or elsewhere); or
 - (ii) a person connected with the respondent is, or has been, so involved.

(4) It does not matter for the purposes of subsection (1)(a)—

- (a) whether or not there are other persons who also hold the property;
- (b) whether the property was obtained by the respondent before or after the coming into force of this section.

(5) For the purposes of subsection (2)—

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- (a) regard is to be had to any mortgage, charge or other kind of security that it is reasonable to assume was or may have been available to the respondent for the purposes of obtaining the property;
 - (b) it is to be assumed that the respondent obtained the property for a price equivalent to its market value;
 - (c) income is “lawfully obtained” if it is obtained lawfully under the laws of the country from where the income arises;
 - (d) “known” sources of the respondent’s income are the sources of income (whether arising from employment, assets or otherwise) that are reasonably ascertainable from available information at the time of the making of the application for the order.
- (6) In subsection (3)(a), “politically exposed person” means —
- (a) an individual who is, or has been entrusted with a prominent public function within Saint Christopher and Nevis;
 - (b) an individual who has been entrusted with a prominent public function by a foreign jurisdiction;
 - (c) an individual who has been entrusted with a prominent function by an international organization;
 - (d) a family member of a person within paragraphs (a), (b) and (c); or
 - (e) known to be a close associate of a person within those paragraphs.
- (7) Where the property in respect of which the order is sought comprises more than one item of property, the reference in subsection (2)(b) to the value of the property is to the total value of those items.

196. Effect of order: cases of non-compliance.

- (1) This section applies in a case where the respondent fails, without reasonable excuse, to comply with the requirements imposed by an unexplained wealth order in respect of any property before the end of the response period.
- (2) The property is to be presumed to be recoverable property for the purposes of any proceedings taken in respect of the property under Part 3, unless the contrary is shown.
- (3) The presumption in subsection (2) applies in relation to property—
- (a) only so far as relating to the respondent’s interest in the property, and
 - (b) only if the value of that interest is greater than the sum specified in section 195(1)(b).

and it is for the Court hearing the proceedings under Part 3 in relation to which reliance is placed on the presumption to determine the matters in this subsection.

- (4) The “response period” is whatever period the Court specifies under section 194(6) as the period within which the requirements imposed by the order are to be complied with (or the period ending the latest, if more than one is specified in respect of different requirements).

- (5) For the purposes of subsection (1)—
- (a) subject to section 197, a respondent who purports to comply with the requirements imposed by an unexplained wealth order is not to be taken to have failed to comply with the order;
 - (b) where an unexplained wealth order imposes more than one requirement on the respondent, the respondent is to be taken to have failed to comply with the requirements imposed by the order unless each of the requirements is complied with or is purported to be complied with.

(6) Where an unexplained wealth order is made in respect of property comprising more than one item of property, the reference in subsection (3)(b) to the value of the respondent's interest in the property is to the total value of the respondent's interest in those items.

197. Effect of order: cases of compliance or purported compliance.

(1) This section applies in a case where, before the end of the response period (as defined by section 196(4)), the respondent complies, or purports to comply, with the requirements imposed by an unexplained wealth order in respect of any property in relation to which the order is made.

(2) If an interim freezing order subject to section 202 has effect in relation to the property, the enforcement authority must determine what enforcement or investigatory proceedings, if any, it considers ought to be taken in relation to the property.

(3) A determination under subsection (2) must be made within the period of 60 days starting with the day of compliance.

(4) If the determination under subsection (2) is that no further enforcement or investigatory proceedings ought to be taken in relation to the property, the civil recovery authority must notify the Court of that fact as soon as reasonably practicable (and in any event before the end of the 60 day period mentioned in subsection (3)).

(5) If there is no interim freezing order in effect in relation to the property, the civil recovery authority may (at any time) determine what, if any, enforcement or investigatory proceedings it considers ought to be taken in relation to the property.

(6) A determination under this section to take no further enforcement or investigatory proceedings in relation to any property does not prevent such proceedings being taken subsequently (whether as a result of new information or otherwise) in relation to the property.

- (7) For the purposes of this section—
- (a) the respondent complies with the requirements imposed by an unexplained wealth order only if all of the requirements are complied with;
 - (b) references to the day of compliance are to the day on which the requirements imposed by the order are complied with (or, if the requirements are complied with over more than one day, the last of those days), and

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- (c) where an order requires the sending of information in writing to, or the production of documents at, an address specified in the order, compliance with the order (so far as relating to that requirement) occurs when the written information is received, or the documents are produced, at that address,

and in paragraphs (a) to (c) references to compliance include purported compliance.

(8) In this section “enforcement or investigatory proceedings” means any proceedings in relation to property taken under—

- (a) Part 2 (confiscation proceedings),
- (b) Part 3 (civil recovery of the proceeds of unlawful conduct), or
- (c) other provisions of this Part.

198. Offence.

(1) A person commits an offence if, in purported compliance with a requirement imposed by an unexplained wealth order, the person—

- (a) makes a statement that the person knows to be false or misleading in a material particular; or
- (b) recklessly makes a statement that is false or misleading in a material particular;
- (c) A person who commits an offence under this section is liable in accordance with the provisions of the Perjury Act, Cap. 4.23.

199. Statements.

(1) A statement made by a person in response to a requirement imposed by an unexplained wealth order may not be used in evidence against that person in criminal proceedings.

(2) Subsection (1) does not apply—

- (a) in the case of proceedings under Part 1;
- (b) on a prosecution for an offence under section 198;
- (c) on a prosecution for an offence under the Perjury Act; or
- (d) on a prosecution for some other offence where, in giving evidence, the person makes a statement inconsistent with the statement mentioned in subsection (1).

(3) A statement may not be used by virtue of subsection (2)(d) 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 the person’s behalf in proceedings arising out of the prosecution.

200. Disclosure of information, copying of documents, etc.

(1) An unexplained wealth order has effect in spite of any restriction on the disclosure of information (however imposed).

(2) Section 190(8) rights in connection with privileged information, questions and material) applies in relation to requirements imposed by an unexplained wealth order as they apply in relation to requirements imposed under a disclosure order.

(3) The civil recovery authority may take copies of any documents produced by the respondent in connection with complying with the requirements imposed by an unexplained wealth order.

(4) Documents so produced may also be retained for so long as it is necessary to retain them (as opposed to a copy of them) in connection with an investigation in relation to the property in respect of which the unexplained wealth order is made.

(5) But if the civil recovery authority has reasonable grounds to believe that the documents—

- (a) may need to be produced for the purposes of any legal proceedings; and
- (b) might otherwise be unavailable for those purposes,

they may be retained until the proceedings are concluded.

201. Supplementary.

(1) An application for an unexplained wealth order may be made without notice.

(2) Rules of Court may make provision as to the practice and procedure to be followed in connection with proceedings relating to unexplained wealth orders before the Court.

Unexplained wealth orders: interim freezing of property

202. Application for interim freezing order.

(1) This section applies where the Court makes an unexplained wealth order in respect of any property.

(2) The Court may make an interim freezing order in respect of the property if the court considers it necessary to do so for the purposes of avoiding the risk of any recovery order that might subsequently be obtained being frustrated.

(3) Subject to section 204 an interim freezing order is an order that prohibits the respondent to the unexplained wealth order, and any other person with an interest in the property, from in any way dealing with the property.

(4) An interim freezing order—

- (a) may be made only on the application of the civil recovery authority that applied for the unexplained wealth order to which the interim freezing order relates,
- (b) must be made in the same proceedings as those in which the unexplained wealth order is made, and
- (c) may be combined in one document with the unexplained wealth order.

(5) If an application for an unexplained wealth order in respect of any property is made without notice, an application for an interim freezing order in respect of the property must also be made without notice.

203. Variation and discharge of interim freezing order.

(1) The Court may at any time vary or discharge an interim freezing order.

(2) The Court must discharge an interim freezing order, so far as it has effect in relation to any property, in each of the following three cases.

(3) The first case is where—

(a) the applicable 72 hour period has ended, and

(b) a relevant application has not been made before the end of that period in relation to the property concerned.

(4) The second case is where—

(a) a relevant application has been made before the end of the applicable 72 hour period in relation to the property concerned, and

(b) proceedings on the application (including any on appeal), have been determined or otherwise disposed of.

(5) The third case is where the Court has received a notification in relation to the property concerned under section 197(4) (notification from civil recovery authority of no further proceedings).

(6) The “applicable 72 hour period” is to be read as follows—

(a) in a case where the respondent complies, or purports to comply, with the requirements imposed by an unexplained wealth order before the end of the response period, it is the period of 72 hours beginning with the day after the day with which the 60 day period mentioned in section 197(3) ends;

(b) in any other case, it is the period of 72 hours beginning with the day after the day with which the response period ends.

(7) Section 197(7) applies for the purposes of subsection (6) in determining whether a person complies, or purports to comply, with the requirements imposed by an unexplained wealth order and when such compliance, or purported compliance, takes place.

(8) Before exercising power under this section to vary or discharge an interim freezing order, the Court must (as well as giving the parties to the proceedings an opportunity to be heard) give such an opportunity to any person who may be affected by its decision.

(9) Subsection (9) does not apply where the Court is acting as required by subsection (2).

(10) In this section—

“relevant application” means an application for—

- (a) a restraint order under section 45,
- (b) a property freezing order, or
- (c) an interim receiving order;

“response period” has the meaning given by section 196(4).

204. Exclusions.

(1) The power to vary an interim freezing order includes (amongst other things) power to make exclusions as follows—

- (a) power to exclude property from the order, and
- (b) power, otherwise than by excluding property from the order, to make exclusions from the prohibition on dealing with the property to which the order applies.

(2) Exclusions from the prohibition on dealing with the property to which the order applies (other than exclusions of property from the order) may also be made when the order is made.

(3) An exclusion may (amongst other things) make provision for the purpose of enabling any person—

- (a) to meet the person’s reasonable living or legal expenses, or
- (b) to carry on any trade, business, profession or occupation.

(4) An exclusion may be made subject to conditions.

(5) Where the Court exercises the power to make an exclusion for the purpose of enabling a person to meet legal expenses that the person has incurred, or may incur, in respect of proceedings under this Division, it must ensure that the exclusion—

- (a) is limited to reasonable legal expenses that the person has reasonably incurred or reasonably incurs, and
- (b) specifies the total amount that may be released for legal expenses in pursuance of the exclusion,

(6) If excluded property is not specified in the order it must be described in the order in general terms.

205. Restrictions on proceedings and remedies.

(1) While an interim freezing order has effect—

- (a) the Court may stay any action, execution or other legal process in respect of the property to which the order applies, and
- (b) no distress may be levied may be exercised, against the property to which the order applies except with the leave of the Court and subject to any terms the Court may impose.

(2) If a Court or the Magistrate's Court in which proceedings are pending in respect of any property is satisfied that an interim freezing order has been applied for or made in respect of the property, it may—

- (a) stay the proceedings, or
- (b) allow them to continue on any terms it thinks fit.

(3) If an interim freezing order applies to a tenancy of any premises, a right of forfeiture in relation to the premises is exercisable—

- (a) only with the leave of the Court, and
- (b) subject to any terms that the Court may impose.

(4) The reference in subsection (3) to a “right of forfeiture” in relation to premises is to the right of a landlord or other person to whom rent is payable to exercise a right of forfeiture by peaceable re-entry to the premises in respect of any failure by the tenant to comply with a term or condition of the tenancy.

(5) Before exercising a power conferred by this section, the Court must (as well as giving the parties to any proceedings concerned an opportunity to be heard) give such an opportunity to any person who may be affected by the Court’s decision.

206. Receivers in connection with interim freezing orders.

(1) This section applies where the Court makes an interim freezing order on an application by the civil recovery authority.

(2) The Court may, on an application by the civil recovery authority, by order appoint a receiver in respect of any property to which the interim freezing order applies.

(3) An application under subsection (2) may be made at the same time as the application for the interim freezing order or at any time afterwards.

(4) The application may be made without notice if the circumstances of the case are such that notice of the application would prejudice the right of the civil recovery authority to obtain a recovery order in respect of any property.

(5) In its application the civil recovery authority must nominate a suitably qualified person for appointment as a receiver.

(6) The person nominated may be a member of staff of the civil recovery authority.

(7) The civil recovery authority may apply a sum received by it under section 99(2) in making payment of the remuneration and expenses of a receiver appointed under this section.

(8) Subsection (7) does not apply in relation to the remuneration of the receiver if that person is a member of staff of the civil recovery authority (but it does apply in relation to such remuneration if the receiver is a person providing services under arrangements made by the civil recovery authority).

207. Powers of receivers appointed under section 206.

(1) If the Court appoints a receiver under section 206 on an application by the Recovery authority, the Court may act under this section on the application of the authority.

- (2) The Court may by order authorise or require the receiver—
 - (a) to exercise any of the powers mentioned in paragraph 5 of Schedule 1 (management powers) in relation to any property in respect of which the receiver is appointed;
 - (b) to take any other steps the Court thinks appropriate in connection with the management of any such property (including securing the detention, custody or preservation of the property in order to manage it).
- (3) The Court may by order require any person in respect of whose property the receiver is appointed—
 - (a) to bring the property to a place specified by the receiver or to place it in the custody of the receiver (if in either case the person is able to do so);
 - (b) to do anything the person is reasonably required to do by the receiver for the preservation of the property.
- (4) The Court may by order require any person in respect of whose property the receiver is appointed to bring any documents relating to the property which are in that person's possession or control to a place specified by the receiver or to place them in the custody of the receiver.
- (5) Any prohibition on dealing with property imposed by an interim freezing order does not prevent a person from complying with any requirements imposed by virtue of this section.
- (6) Subsection (7) applies in a case where—
 - (a) the receiver deals with property that is not property in respect of which the receiver was appointed under section 206, but
 - (b) at the time of dealing with the property the receiver believed on reasonable grounds that he or she was entitled to do so by virtue of the appointment.
- (7) The receiver is not liable to any person in respect of any loss or damage resulting from the receiver's dealing with the property.
- (8) But subsection (7) does not apply to the extent that the loss or damage is caused by the receiver's negligence.

208. Supervision of section 206 receiver and variations.

- (1) Any of the following persons may at any time apply to the Court for directions as to the exercise of the functions of a receiver appointed under section 206—
 - (a) the receiver;
 - (b) party to the proceedings for the appointment of the receiver or the interim freezing order concerned;
 - (c) a person affected by an action taken by the receiver;
 - (d) a person who may be affected by an action proposed to be taken by the receiver.

- (2) Before it gives directions under subsection (1) the Court must give an opportunity to be heard to—
- (a) the receiver;
 - (b) the parties to the proceedings for the appointment of the receiver and for the interim freezing order concerned;
 - (c) a person who may be interested in the application under subsection (1).
- (3) The Court may at any time vary or discharge—
- (a) the appointment of a receiver under section 206,
 - (b) an order under section 207, or
 - (c) directions under this section.
- (4) Before exercising a power under subsection (3) the Court must give an opportunity to be heard to—
- (a) the receiver;
 - (b) the parties to the proceedings for the appointment of the receiver, for the order under section 207 or (as the case may be) for the directions under this section;
 - (c) the parties to the proceedings for the interim freezing order concerned;
 - (d) any person who may be affected by the court’s decision.

“Unexplained wealth orders: enforcement abroad”

209. Enforcement abroad: civil recovery authority.

- (1) This section applies if—
- (a) the Court makes an unexplained wealth order in respect of any property,
 - (b) it appears to the civil recovery authority that the risk mentioned in section 202(2) applies in relation to the property, and
 - (c) the civil recovery authority believes that the property is in a country outside St. Christopher and Nevis.
- (3) The Attorney General may forward the request for assistance to the government of the receiving country.
- (4) A request for assistance under this section is a request to the government of the receiving country—
- (a) to secure that any person is prohibited from dealing with the property;
 - (b) for assistance in connection with the management of the property, including with securing its detention, custody or preservation.

210. Enforcement abroad: receiver.

- (1) This section applies if—

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- (a) an interim freezing order has effect in relation to property, and
 - (b) the receiver appointed under section 206 in respect of the property believes that it is in a country outside St Christopher and Nevis known as the receiving country.
- (2) The receiver may send a request for assistance in relation to the property to the Attorney General with a view to it being forwarded under this section.
- (3) The Attorney General must forward the request for assistance to the government of the receiving country.
- (4) A request for assistance under this section is a request to the government of the receiving country—
- (a) to secure that any person is prohibited from dealing with the property;
 - (b) for assistance in connection with the management of the property, including with securing its detention, custody or preservation.”

Division 8*General***211. Procedure.**

- (1) An application for a production order, a customer information order, an account monitoring order, a disclosure order or an unexplained wealth order may be made *ex parte* to a judge in chambers.
- (2) Rules of Court may make provision as to—
- (a) the practice and procedure in connection with proceedings relating to production orders, orders to grant entry under section 177, customer information orders, account monitoring orders and disclosure orders; and
 - (b) applications for the discharge and variation of such orders and proceedings relating to such applications.
- (3) An order of a judge under this Part shall have effect as if it were an order of the Court.
- (4) Subject to specific exclusions in relation to privileged information or material, a production order, a customer information order, an account monitoring order and a disclosure order shall have effect notwithstanding any obligation as to confidentiality or other restriction upon the disclosure of information imposed by any enactment, rule of law or otherwise.
- (5) A privileged question, information or material is a question, information or material as the case may be, which the person would be entitled to refuse to answer, provide or produce on grounds of legal professional privilege.

PART 6
COOPERATION

212. Interpretation for this Part and Schedule 3.

In this Part, and Schedule 3—

- (a) an external order is an order which—
 - (i) is made by an overseas court where property is found or believed to have been obtained as a result of or in connection with criminal conduct; and
 - (ii) is for the recovery of specified property or a specified sum of money;
- (b) an external request is a request by an overseas authority to prohibit dealing with relevant property which is identified in the request;
- (c) an overseas money laundering offence is an act carried out in a country outside St. Christopher and Nevis, which if carried out in St. Christopher and Nevis, would—
 - (i) constitute an offence under section 165, 166 or 167;
 - (ii) constitute an attempt, conspiracy or incitement to commit an offence specified in subparagraph (i); or
 - (iii) constitute aiding, abetting, counselling or procuring the commission of an offence specified in subparagraph (i);
- (d) property is “relevant property” if there are reasonable grounds to believe that it may be needed to satisfy an external order which has been or which may be made;
- (e) an overseas court is a court of a country outside St. Christopher and Nevis; and
- (f) an overseas authority is an authority which has responsibility in a country outside St. Christopher and Nevis for making a request to an authority in another country (including St. Christopher and Nevis) to prohibit dealing with relevant property.

213. External requests and orders.

Schedule 3 applies to external requests and the enforcement of external orders.

PART 7
MISCELLANEOUS

214. Application of procedure for enforcing payment under this Act.

(1) Where the Court or the Magistrate’s Court orders the defendant to pay any amount under this Act, the order shall have effect as if that amount was a fine imposed on the defendant by the Court.

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(2) Where the whole or any part of the sum ordered to be paid is not paid when required by the Court or the Magistrate’s Court as the case may be, the Court or the Magistrate’s Court may in respect of a sum in default set out in Column 1 below, impose a term of imprisonment not exceeding the maximum period set out opposite that amount in Column 2—

Column 1	Column 2
\$10,000 or less	12 months
More than \$10,000 but not more than \$20,000	18 months
More than \$20,000 but not more than \$75,000	2 years
More than \$75,000 but not more than \$200,000	3 years
More than \$200,000 but not more than \$500,000	4 years
More than \$500,000 but not more than \$750,000	5 years
More than \$750,000 but not more than \$1,000,000	6 years
More than \$1,000, 000 but not more than \$4,000,000	8 years
More than \$4,000,000	10 years

(3) Where—

- (a) a warrant of commitment is issued for a default in payment of an amount ordered to be paid under this Act in respect of any offence or offences; and
- (b) at the time the warrant is issued, the defendant is liable to serve a term of custody in respect of the offence or offences;

the term of imprisonment to be served in default of payment of the amount shall not begin to run until after the term mentioned in paragraph (b) has been served.

(4) If, under a power granted by this Act, the Court or the Magistrate’s Court varies a confiscation order and the effect is to reduce the maximum period of imprisonment specified in this section—

- (a) if, as a result, the maximum period of imprisonment is less than the term of imprisonment imposed by the Court or the Magistrate’s Court as the case may be, the Court or Magistrate’s Court shall impose a reduced term of imprisonment; or
- (b) if paragraph (a) does not apply, the Court or Magistrate’s Court may amend the term of imprisonment imposed.

(5) If, under a power granted by this Act, the Court or Magistrate’s Court varies a confiscation order and the effect is to increase the maximum period of imprisonment specified in this section, the Court or magistrate’s Court may on the application of the prosecutor, amend the term of imprisonment imposed.

(6) Where the defendant serves a term of imprisonment in default of paying any amount due under a confiscation order, his serving that term does not prevent the confiscation order from continuing to have effect, so far as any other method of enforcement is concerned.

(7) This section applies in relation to confiscation orders made by the Court of Appeal, in its appellate jurisdiction, as it applies in relation to confiscation orders made by the Court or the Magistrate’s Court.

215. Administration of the Fund.

- (1) The Fund shall be held and administered by the Reporting Authority.
- (2) The Reporting Authority shall open and maintain an account with a bank authorised by the Attorney General in St. Christopher and Nevis, into which all monies payable to the Fund shall be paid.
- (3) The Reporting Authority may, with the approval of Cabinet, invest monies of the Fund that, at any time are not required to be paid out the Fund under section 215 (3).
- (4) Income earned from investments made under subsection (3) shall be part of the Fund.

216. Preparation of financial statements.

- (1) The financial year of the Fund ends on December 31st in each year.
- (2) The Reporting Authority shall
 - (a) keep proper records of the money paid into and out of the Fund and of investments made pursuant to section 215 (3); and
 - (b) ensure that—
 - (i) all money received is properly brought to account;
 - (ii) all payments are correctly made and properly authorised; and
 - (iii) adequate control is maintained over the assets of the Fund.
- (3) The financial records kept under subsection (2) shall—
 - (a) be sufficient to show and explain all transactions relating to the Fund;
 - (b) enable the financial position of the Fund to be determined with reasonable accuracy at any time; and
 - (c) be sufficient to enable financial statements to be prepared and audited in accordance with this section.
- (4) Within two months after the end of each financial year, the Reporting Authority shall prepare—
 - (a) financial statements containing—
 - (i) a statement of the assets of the Fund at the end of the financial year; and
 - (ii) a statement of the money received into the Fund and the payments made out of the Fund during the financial year;
 - (b) such other financial statements for the financial year as may be specified by the Attorney General; and
 - (c) proper and adequate explanatory notes to the financial statements prepared under paragraphs (a) and (b).

217. Audit of financial statements and annual report.

(1) The Reporting Authority shall cause the financial statements prepared under section 217 to be audited and certified by an auditor to be appointed annually by the Attorney General after consultation with the Reporting Authority within three months after the end of the financial year.

(2) The auditor appointed under subsection (1) may be the Director of Auditor or such other suitably qualified person.

(3) The auditor shall prepare a report of his audit of the financial statements of the Fund which shall include statements as to whether, in his opinion—

- (a) he has obtained all the information and explanations necessary for the purposes of the audit; and
- (b) to the best of his information and according to the explanations given to him, the financial statements give a true and fair view of—
 - (i) the assets of the Fund as at the end of the financial year; and
 - (ii) the money received into the Fund and the payments made out of the Fund during the financial year.

(4) Within 6 months after the end of each financial year, the Reporting Authority shall prepare and submit to the Attorney General a copy of the audited financial statements, which shall include the report of the auditor on the financial statements.

(5) The Attorney General shall, as soon as reasonably practicable after their receipt, lay a copy of the audited financial statements, together with the auditor's report, before the Parliament.

218. Regulations.

(1) The Attorney General shall make regulations in relation to the prevention of the use of the financial system for money laundering and terrorist financing.

(2) The Attorney General may make such other regulations as the Attorney General considers appropriate generally for giving effect to this Act and specifically in respect of anything required or permitted to be prescribed by this Act.

(3) The regulations made under this section may—

- (a) make different provision in relation to different persons, circumstances or cases; and
- (b) prescribe offences against the regulations and prescribe a term of imprisonment not exceeding two years, a fine not exceeding \$100,000 or both in respect of any one offence.

(4) In deciding whether a person has committed an offence under the Regulations issued pursuant to subsection (1), the Court shall consider whether the person followed any guidance issued by the Commission under section 220(9).

219. Issuance of Guidelines.

- (1) The Commission shall, after consulting with the Attorney General, by publication in the *Gazette*, issue one or more Guidelines or Codes setting out measures, not inconsistent with this Act, for the prevention and detection of money laundering and terrorist financing.
- (2) A Code may—
 - (a) make different provision in relation to different persons, circumstances or cases; and
 - (b) include such transitional provisions as the Financial Intelligence Unit considers necessary or expedient.
- (3) The Commission may, after consulting with the Minister of Justice, by publication in the *Gazette*, issue a notice of amendment of a Code.
- (4) Before issuing a Code, or a notice of amendment of a Code, the Commission shall—
 - (a) publish a draft of the Code, replacement Code or proposed amendment to the Code, in such manner as the Commission considers appropriate for bringing it to the notice of service providers and other persons who will be affected by it;
 - (b) consider such written representations as it receives.
- (5) A Code issued under this section—
 - (a) is subordinate legislation and has full legislative effect; and
 - (b) comes into operation on such date or dates as are specified in the Code.
- (6) An amendment to a Code comes into effect on the date specified in the notice which, provided that it does not take effect prior to the commencement of the Code, may be retroactive.
- (7) A Code, and any amendment to a Code, shall be subject to annulment by resolution of the House of Assembly.
- (8) In the event that a Code or notice of amendment is annulled in accordance with subsection (7), the Code or notice of amendment shall be of no force or effect from the date on which the resolution annulling it is made, without prejudice to anything done or suffered under the Code or notice of amendment.
- (9) The Commission may issue guidance concerning compliance with the requirements of this Act, the AMLR, the ATR, the FSR and any other Regulations, Guidelines or Codes, concerning such other matters as it considers relevant to its functions.

220. Supervision and enforcement of Regulations and Codes.

- (1) The Anti-money Laundering and Terrorist Financing Regulations shall designate one or more persons or bodies as the relevant supervisory authority for service providers who are not regulated persons.

- (2) Regulations made under subsection (1) may designate—
 - (a) different persons or bodies as the supervisory authority for different types and categories of service provider; and
 - (b) the Commission as the supervisory authority for service providers that are not regulated persons.
- (3) The relevant supervisory authority shall be responsible for—
 - (a) monitoring compliance by service providers with this Act, the Anti-money Laundering and Terrorist Financing Regulations and applicable Codes; and
 - (b) taking appropriate action enforcement action against service providers for breaches of this Act, the Anti-money Laundering and Terrorist Financing Regulations and any applicable Code.
- (4) For the purposes of this Act, “applicable Code”, in relation to a service provider, means a Code that applies to the service provider.
- (5) In undertaking its functions, a relevant supervisory authority has—
 - (a) in the case of the Financial Intelligence Unit acting as the supervisory authority for regulated service providers, the information gathering and enforcement powers provided for in regulations made hereunder; and
 - (b) in the case of a supervisory authority for other service providers, the information gathering and enforcement powers provided for in Schedule 4.
- (6) In determining the enforcement action to be taken against a service provider for a breach of the Anti-money Laundering and Terrorist Financing Regulations and an applicable Code, the relevant supervisory authority shall have regard for the need to ensure that enforcement action taken is effective, proportionate and dissuasive.
- (7) Where any breach of the Anti-money Laundering and Terrorist Financing Regulations constitutes an offence, the taking of enforcement action by the relevant supervisory authority does not prevent the service provider being also prosecuted for the offence.

221. Limitation of liability of supervisory authorities.

- (1) No person or body to whom this section applies shall be liable in damages for anything done or omitted in the discharge or purported discharge of any function under, or authorized by or under, this Act unless it is proved that the act or omission was in bad faith.
- (2) This section applies to—
 - (a) each supervisory authority;
 - (b) any member of the supervisory authority concerned or any person who is, or is acting as, an officer, employee or agent of the supervisory authority or who is performing any duty or exercising any power on behalf of the supervisory authority.

222. Registration of service providers.

- (1) This section applies to a service provider that is not a regulated person.
- (2) A service provider to whom this section applies shall not carry on a relevant business in or from within St. Christopher and Nevis unless the service provider is registered with the relevant supervisory authority in accordance with Regulations made under subsection (3).
- (3) A service provider who contravenes subsection (1) commits an offence and is liable—
 - (a) on summary conviction, to imprisonment for a term of 12 months or to a fine of \$20,000 or to both;
 - (b) on conviction on indictment, to imprisonment for a term of 5 years or to a fine of \$100,000 or to both.

223. Regulations.

- (1) The Attorney General in Council shall make regulations providing for the registration of service providers and such other matters relating to service providers as this Act may require.
- (2) Without limiting subsection (1), the Regulations made under this section may provide for—
 - (a) types or levels of registration;
 - (b) applications for registration;
 - (c) the criteria for determining applications for registration;
 - (d) the grant or refusal of registration; and
 - (e) fees payable for registration.

224. Review of Act.

Every five years beginning on the day on which this section comes into force, the administration and operation of this Act may be reviewed by a Committee of the House of Assembly that may be designated for that purpose by the Speaker of the House of Assembly.

225. Transitional provisions and savings.

- (1) The transitional provisions and savings in Schedule 5 have effect.
- (2) The Attorney General, after consultation with Cabinet, may make such transitional regulations, not inconsistent with Schedule 5, as he or she considers appropriate and may make them retroactive to the date of the coming into force of this Act.

226. Repeals and amendments.

The Proceeds of Crime Act, Cap. 4:28 is hereby repealed.

227. Amendment of Schedules.

The Minister responsible for Justice may, by order, amend the Schedules to this Act.

228. Event of Inconsistency.

In the event of an inconsistency between this Act and the operation of any other law with the exception of the Constitution, this Act shall prevail to the extent of the inconsistency.

229. Short Title.

This Act may be cited as the Proceeds of Crime and Asset Recovery Act, 2020.

SCHEDULE 1**POWERS OF INTERIM RECEIVER****1. Seizure.**

Power to seize property to which the order applies.

2. Information.

(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, other than proceedings for an offence of perjury or any equivalent offence.

3. Entry, search, etc.

(1) Power to enter any premises in St. Christopher and Nevis to which the interim order applies, and to—

- (a) carry out a search for or inspection of anything described in the order;
- (b) make or obtain a copy, photograph or other record of anything so described; and
- (c) 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 III.

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

4. Supplementary.

(1) An order making any provision under paragraph 2 or 3 must make provision in respect of legal professional privilege.

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

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

5. Management.

- (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.

SCHEDULE 2**POWERS OF TRUSTEE****1. Sale.**

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

2. Expenditure.

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; or
- (b) discharging any liabilities, or extinguishing any rights, to which the property is subject.

3. Management.

- (1) Power to manage property.
- (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.

4. Legal proceedings.

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

5. Compromise.

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

6. Supplementary.

- (1) For the purposes of, or in connection with, the exercise of any of his powers—
 - (a) power, by his official name to—
 - (i) hold property;
 - (ii) enter into contracts;
 - (iii) sue and be sued;
 - (iv) employ agents; and
 - (v) execute a power of attorney, deed or other instrument; and
 - (b) power to do any other act which is necessary or expedient.

SCHEDULE 3**EXTERNAL REQUESTS AND ORDERS***Restraint Orders***1. External request to be made to Attorney General.**

An external request shall be made to the Attorney General.

2. Application for restraint order.

(1) The Court may, on the application the Attorney General on behalf of an overseas authority, make a restraint order under paragraph 3 where it is satisfied that—

- (a) relevant property in St. Christopher and Nevis is identified in the external request;
- (b) proceedings for an offence have been commenced in the country from which the external request was made, and not concluded; and
- (c) there is reasonable cause to believe that the defendant named in the request has benefited from his criminal conduct.

(2) An application for a restraint order may be made on an ex parte application to the judge in chambers.

3. Restraint order.

(1) Where the Court is satisfied as to the matters set out in paragraph 2, it may make an order (a restraint order) prohibiting any specified person from dealing with relevant property which is identified in the external request and specified in the order.

- (2) A restraint order—
 - (a) may make provision—
 - (i) for reasonable living expenses and reasonable legal expenses in connection with the proceedings seeking a restraint order or the registration of an external order; and

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(ii) make provision for the purpose of enabling any person to carry on any trade, business, profession or occupation; and

(b) may be made subject to such conditions as the Court considers fit.

(3) Where the Court makes a restraint order it may, on the application of the Attorney General, (whether as part of the application for the restraint order or at any time afterwards) may make such order as it believes is appropriate for the purpose of ensuring that the restraint order is effective.

(4) For the purposes of this section, dealing with property includes removing it from St. Christopher and Nevis.

4. Discharge and variation of restraint order.

(1) An application to discharge or vary a restraint order or an order under paragraph 3(3) may be made to the Court by—

- (a) the Attorney General; or
- (b) any person affected by the order.

(2) On an application made under sub-paragraph (1), the Court may—

- (a) discharge the order; or
- (b) vary the order.

(3) The Court shall discharge the restraint order if—

- (a) at the conclusion of the proceedings for an offence with respect to which the order was made, no external order has been made; or
- (b) within a reasonable time, an external order has not been registered under paragraph 12.

5. Appeal.

(1) If on an application for a restraint order the Court decides not to make one, the Attorney General may appeal to the Court of Appeal against the decision.

(2) If an application is made under paragraph 4(1), in relation to a restraint order or an order under paragraph 3(3), the Attorney General or any person affected by the order may appeal to the Court of Appeal in respect of the Court's decision on the application.

(3) On an appeal under sub-paragraph (1) or (2), the Court of Appeal may—

- (a) confirm the decision; or
- (b) make such order as it believes is appropriate.

6. Seizure of property subject to restraint order.

(1) If a restraint order is in force, a law enforcement officer may seize any property which is specified in it to prevent its removal from St. Christopher and Nevis.

(2) Property seized under sub-paragraph (1) shall be dealt with in accordance with the directions of the Court which made the order.

7. Hearsay evidence in restraint proceedings.

(1) Evidence shall not be excluded in restraint proceedings on the ground that it is hearsay (of whatever degree).

(2) For the purposes of sub-paragraph (1), restraint proceedings are proceedings—

- (a) for a restraint order;
- (b) for the discharge or variation of a restraint order;
- (c) on an appeal under paragraph 5.

(3) Nothing in this paragraph affects the admissibility of evidence which is admissible apart from this paragraph.

8. Appointment of receiver.

(1) If the Court makes a restraint order, on the application of the Attorney General (whether made as part of the application for the restraint order or at any time afterwards), the Court may by order appoint a receiver in respect of any property which is specified in the restraint order.

(2) On the application of the Attorney General, the Court may, by order confer on a receiver appointed under sub-paragraph (1), any one or more of the following powers in relation to any property which is specified in the restraint order—

- (a) power to take possession of the property;
- (b) power to manage or otherwise deal with the property;
- (c) power to start, carry on or defend any legal proceedings in respect of the property;
- (d) power to realise so much of the property as is necessary to meet the receiver's remuneration and expenses.

(3) The Court may by order confer on the receiver power to enter any premises in St. Christopher and Nevis and to do any of the following—

- (a) search for or inspect anything authorised by the Court;
- (b) make or obtain a copy, photograph or other record of anything so authorised;
- (c) remove anything which the receiver is required or authorised to take possession of pursuant to an order of the Court.

(4) The Court may by order authorise the receiver to do any one or more of the following for the purpose of the exercise of his functions—

- (a) hold property;
- (b) enter into contracts;
- (c) sue and be sued;

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- (d) employ agents;
- (e) execute powers of attorney, deeds or other instruments;
- (f) take such other steps the Court thinks appropriate.

(5) The Court may order any person who has possession of property which is specified in the restraint order to give possession of it to the receiver.

(6) The Court—

- (a) may order a person holding an interest in property which is specified in the restraint order to make to the receiver such payment as the Court specifies in respect of a beneficial interest held by the defendant or the recipient of a tainted gift;
- (b) may (on the payment being made) by order transfer, grant or extinguish any interest in the property.

(7) The Court shall not—

- (a) confer the power mentioned in paragraph (2)(b) or (d) in respect of property, or
- (b) exercise the power conferred on it by paragraph (6) in respect of property,

unless it gives persons holding interests in the property a reasonable opportunity to make representations to it.

(8) Paragraph (7), so far as relating to the power mentioned in sub-paragraph (a), does not apply to property which:

- (a) is perishable; or
- (b) ought to be disposed of before its value diminishes.

(9) The Court may order that a power conferred by an order under this paragraph is subject to such conditions and exceptions as it specifies.

9. Restrictions relating to restraint orders.

(1) Where the Court makes a restraint order—

- (a) no distress may be levied against any property which is specified in the order except with the leave of the Court and subject to any terms the Court may impose; and
- (b) if the order applies to a tenancy of any premises, no landlord or other person to whom rent is payable may exercise a 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.

(2) If proceedings are pending before the Court in respect of any property and the Court is satisfied that a restraint 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 it thinks fit.

(3) Before exercising any power conferred by sub-paragraph (3), the Court shall give an opportunity to be heard to—

- (a) the Attorney General; and
- (b) any receiver appointed in respect of the property under this Schedule.

External Orders

10. Applications to give effect to external orders.

(1) The Attorney General may apply to the Court, on behalf of an overseas authority, to give effect to an external order in St. Christopher and Nevis.

(2) No application to give effect to such an order may be made otherwise than under paragraph (1).

(3) An application under paragraph (1) may be made on an ex parte application to a judge in chambers.

11. Conditions for Court to give effect to external orders.

(1) The Court shall give effect to an external order by registering it where it is satisfied—

- (a) the external order was made consequent on the conviction of the person named in the order and no appeal is outstanding in respect of that conviction;
- (b) the external order is in force and no appeal is outstanding in respect of it;

(2) In paragraph (1) “appeal” includes—

- (a) any proceedings by way of discharging or setting aside the order; and
- (b) an application for a new trial or stay of execution.

12. Registration of external orders.

(1) Where the Court decides to give effect to an external order, it shall—

- (a) register the order in the Court;
- (b) provide for notice of the registration to be given to any person affected by it; and
- (c) appoint the Attorney General as the enforcement authority for the order.

(2) Only an external order registered by the Court may be implemented under this Schedule.

(3) The Court may cancel the registration of the external order, or vary the property to which it applies, on an application by the Attorney General or any person affected by it if, or to the extent that, the Court is of the opinion that any of the conditions in paragraph 11 is not satisfied.

(4) The Court shall cancel the registration of the external order, on an application by the Attorney General or any person affected by it, if it appears to the Court that the order has been satisfied—

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- (a) in the case of an order for the recovery of a sum of money specified in it, by payment of the amount due under it;
 - (b) in the case of an order for the recovery of specified property, by the surrender of the property; or
 - (c) by any other means.
- (5) Where the registration of an external order is cancelled or varied under sub-paragraph (3) or (4), the Court shall provide for notice of this to be given to the Attorney General and any person affected by it.

13. Appeal to Court of Appeal concerning external orders.

- (1) If on an application for the Court to give effect to an external order by registering it, the Court decides not to do so, the Attorney General may appeal to the Court of Appeal against the decision.
- (2) If an application is made under paragraph 12(3) or (4) in relation to the registration of an external order, the Attorney General or any person affected by the registration may appeal to the Court of Appeal in respect of the Court's decision on the application.
- (3) On an appeal under sub-paragraph (1) or (2), the Court of Appeal may—
- (a) confirm or set aside the decision to register; or
 - (b) direct the Court to register the external order, or so much of it as relates to property other than to which paragraph 11(1)(c) applies.

14. Sums in currency other than dollars.

- (1) This paragraph applies where the external order which is registered under paragraph 12 specifies a sum of money.
- (2) If the sum of money which is specified is expressed in a currency other than Eastern Caribbean Dollars, the sum of money to be recovered is to be taken to be the dollar equivalent calculated in accordance with the rate of exchange prevailing at the end of the working day immediately preceding the day when the Court registered the external order under paragraph 12.
- (3) The dollar equivalent shall be calculated by the Attorney General.
- (4) The notice referred to in paragraph 12(1)(b) and (5) shall set out the amount in dollars which is to be paid.

15. Time for payment.

- (1) This paragraph applies where the external order is for the recovery of a specified sum of money.
- (2) Subject to sub-paragraphs (3) to (6), the amount ordered to be paid under—
- (a) an external order that has been registered under paragraph 12, or
 - (b) where paragraph 14(2) applies, the notice under paragraph 12(1)(b),

shall be paid on the date on which the notice under paragraph 12(1)(b) is delivered to the person affected by it.

(3) Where there is an appeal under paragraph 13 and a sum falls to be paid when the appeal has been determined or withdrawn, the duty to pay is delayed until the day on which the appeal is determined or withdrawn.

(4) If the person affected by an external order which has been registered shows that he needs time to pay the amount ordered to be paid, the Court may make an order allowing payment to be made in a specified period, which—

(a) shall start with the day on which the notice under paragraph 12(1)(b) was delivered to the person affected by the order or the day referred to in sub-paragraph (3), as the case may be; and

(b) shall not exceed three months.

(5) If within the specified period the person affected by an external order applies to the Court for the period to be extended and the Court believes that there are exceptional circumstances, it may make an order extending the period.

(6) The extended period—

(a) shall start with the day on which the notice under paragraph 22(1)(b) was delivered to the person affected by it or the day referred to in paragraph (3), as the case may be; and

(b) shall not exceed six months.

(7) An order under sub-paragraph (5)—

(a) may be made after the end of the specified period; but

(b) shall not be made after the end of the extended period.

(8) The Court shall not make an order under sub-paragraph (5) or (7) unless it gives the Attorney General an opportunity to make representations.

16. Appointment of receivers.

If an external order is registered, is not satisfied, and, in the case of an external order for the recovery of a specified sum of money, any period specified by order under paragraph 15 has expired, the Court, on the application of the Attorney General may appoint a receiver in respect of—

(a) where the external order is for the recovery of a specified sum of money, realisable property; or

(b) where the external order is for the recovery of specified property, that property.

17. Powers of receivers in respect of monetary external orders.

(1) If the Court appoints a receiver under paragraph 16, it may, on the application of the Attorney General, where the external order is for the recovery of a specified sum of money by order confer on the receiver the following powers in relation to any realisable property—

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- (a) power to take possession of the property;
 - (b) power to manage or otherwise deal with the property;
 - (c) power to realise the property, in such manner as the Court may specify; and
 - (d) power to start, carry on or defend any legal proceedings in respect of the property.
- (2) The Court may by order confer on the receiver power to enter any premises in St. Christopher and Nevis and to do any of the following—
- (a) search for or inspect anything authorised by the Court;
 - (b) make or obtain a copy, photograph or other record, of anything so authorised; and
 - (c) remove anything which the receiver is required or authorised to take possession of pursuant to an order of the Court.
- (3) The Court may by order authorise the receiver to do any of the following for the purposes of the exercise of his functions—
- (a) hold property;
 - (b) enter into contracts;
 - (c) sue and be sued;
 - (d) employ agents;
 - (e) execute powers of attorney, deeds or other instruments; and
 - (f) take any other steps the Court thinks appropriate.
- (4) The Court may order any person who has possession of realisable property to give possession of it to the receiver.
- (5) The Court—
- (a) may order a person holding an interest in realisable property to make to the receiver such payment as the Court specifies in respect of a beneficial interest held by the defendant or the recipient of a tainted gift; and
 - (b) may on payment being made by order transfer, grant or extinguish any interest in the property.
- (6) Paragraphs (2), (5) and (6) do not apply to property for the time being subject to a charge under any of these provisions—
- (a) the Drugs (Prevention & Abatement of the Misuse and Abuse of Drugs) Act; or
 - (b) any Proceeds of Criminal Conduct legislation; or
 - (c) the AMLR.
- (7) The Court shall not—
- (a) confer the power mentioned in paragraph (2)(b) or (c) in respect of property; or

(b) exercise the power conferred on it by paragraph (6) in respect of property, unless it gives persons holding interests in the property a reasonable opportunity to make representations to it.

(8) Paragraph (8), so far as relating to the power mentioned in sub-paragraph (a), does not apply to property which:

(a) is perishable; or

(b) ought to be disposed of before its value diminishes.

(9) The Court may order that a power conferred by an order under this paragraph is subject to such conditions and exceptions as it specifies.

18. Powers of receivers in respect of external orders for the recovery of specified property.

(1) If the Court appoints a receiver under paragraph 17, it may act under this paragraph on the application of the Attorney General where the external order is for the recovery of property specified in the order (“the specified property”).

(2) The Court may by order confer on the receiver the following powers in relation to the specified property—

(a) power to take possession of the property;

(b) power to manage or otherwise deal with the property;

(c) power to realise the property, in such manner as the Court may specify;

(d) power to start, carry on or defend any legal proceedings in respect of the property.

(3) The Court may by order confer on the receiver power to enter any premises in St. Christopher and Nevis and to do any of the following—

(a) search for or inspect anything authorised by the Court;

(b) make or obtain a copy, photograph or other record of anything so authorised; and

(c) remove anything which the receiver is required or authorised to take possession of pursuant to an order of the Court.

(4) The Court may by order authorise the receiver to do any of the following for the purposes of the exercise of his functions—

(a) hold property;

(b) enter into contracts;

(c) sue and be sued;

(d) employ agents;

(e) execute powers of attorney, deeds or other instruments; and

(f) take any other steps the Court thinks appropriate.

(5) The Court may order any person who has possession of the specified property to give possession of it to the receiver.

(6) The Court—

(a) may order a person holding an interest in the specified property to make to the receiver such payment as the Court specifies in respect of a beneficial interest held by the defendant or the recipient of a tainted gift; and

(b) may on the payment being made by order transfer, grant or extinguish any interest in the property.

(7) The Court shall not—

(a) confer the power mentioned in sub-paragraph (2)(b) or (c) in respect of property, or

(b) exercise the power conferred on it by paragraph (6) in respect of property,

unless it gives persons holding interests in the property a reasonable opportunity to make representations to it.

(8) Paragraph (7), so far as relating to the power mentioned in sub-paragraph (a), does not apply to property which:

(a) is perishable; or

(b) ought to be disposed of before its value diminishes

(9) The Court may order that a power conferred by an order under this paragraph is subject to such conditions and exceptions as it specifies.

19. Meaning of “managing or otherwise dealing with property”.

For the purposes of paragraphs 8 and 17, managing or otherwise dealing with property includes—

(a) selling the property or any part of it or interest in it;

(b) carrying on or arranging for another person to carry on any trade or business the assets of which are or are part of the property; or

(c) incurring capital expenditure in respect of the property.

20. Application of sums by receiver.

(1) This paragraph applies to sums which are in the hands of a receiver appointed under paragraph 16 if they are—

(a) the proceeds of the realisation of property under paragraph 17 or 18;

(b) where paragraph 17 applies, sums other than those mentioned in sub-paragraph (a) in which the defendant holds an interest.

(2) The sums shall be applied as follows—

(a) first, they shall be applied in making any payments directed by the Court; and

(b) second, they shall be applied on the defendant’s behalf towards satisfaction of the external order.

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(3) If the amount payable under the external order has been fully paid and any sums remain in the receiver's hands he shall distribute them—

- (a) among such persons who held (or hold) interests in the property concerned as the Court directs; and
- (b) in such proportions as it directs.

(4) Before making a direction under sub-paragraph (3) the Court shall give persons who held (or hold) interests in the property concerned a reasonable opportunity to make representations to it.

(5) For the purposes of sub-paragraphs (3) and (4) the property concerned is—

- (a) the property represented by the proceeds mentioned in sub-paragraph (1)(a);
- (b) the sums mentioned in sub-paragraph (1)(b).

(6) The receiver applies sums as mentioned in paragraph (2)(c) by paying them to the Attorney General on account of the amount payable under the order.

21. Sums received by Attorney General.

(1) Where the Attorney General receives sums on account of the amount payable under a registered external order or the value of the property specified in the order, his receipt of the sums reduces the amount payable under the order, but he shall apply the sums received as follows—

- (a) first, he shall apply them in payment of the remuneration and expenses of a receiver appointed under paragraph 8 to the extent that they have not been met by virtue of the exercise by that receiver of a power conferred under paragraph 8(2)(d); and
- (b) second, in payment of the remuneration and expenses of the receiver appointed under paragraph 16.

(2) Any sums which remain after the Attorney General has made any payments required by the preceding provisions of this paragraph shall be paid into the National Forfeiture Fund.

22. Satisfaction of external order.

(1) A registered external order is satisfied when no amount is due under it.

(2) Where such an order authorises the recovery of property specified in it, no further amount is due under the order when all of the specified property has been sold.

23. Restrictions relating to receivers.

(1) Where the Court makes an order under paragraph 16 appointing a receiver in respect of any realisable property or specified property—

- (a) no distress may be levied against the property except with the leave of the Court and subject to any terms the Court may impose; and

(b) if the receiver is appointed order in respect of a tenancy of any premises, no landlord or other person to whom rent is payable may exercise a 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.

(2) If proceedings are pending before the Court in respect of any property and the Court is satisfied that a restraint 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 it thinks fit.

(3) If the Court is satisfied that an order under paragraph 16 appointing a receiver in respect of the property has been applied for or made, the Court may either stay the proceedings or allow them to continue on any terms it thinks fit.

(4) Before exercising any power conferred by sub-paragraph (4), the Court shall give an opportunity to be heard to—

- (a) the Attorney General; and
- (b) the receiver, if the order under paragraph 16 has been made.

24. Protection of receiver appointed under paragraphs 8 or 16.

If a receiver appointed under paragraphs 8 or 16—

- (a) takes action in relation to property which is not realisable property or, as the case may be, the specified property,
- (b) would be entitled to take the action if it were realisable property or, as the case may be, the specified property, and
- (c) believes on reasonable grounds that he is entitled to take the action,

he is not liable to any person in respect of any loss or damage resulting from the action, except so far as the loss or damage is caused by his negligence.

25. Further applications by receivers.

(1) A receiver appointed under paragraph 8 or 16 may apply to the Court for an order giving directions as to the exercise of his powers.

(2) The following persons may apply to the Court—

- (a) any person affected by action taken by a receiver appointed under paragraph 8 or 16; or
- (b) any person who may be affected by action such a receiver proposes to take.

(3) On an application under this paragraph the Court may make such order as it believes is appropriate.

26. Discharge and variation of receiver orders.

(1) The following persons may apply to the Court to vary or discharge an order made under paragraph 8 or paragraphs 16 to 18—

- (a) the receiver;
 - (b) the Attorney General; or
 - (c) any person affected by the order.
- (2) On an application under this paragraph, the Court—
- (a) may discharge the order; or
 - (b) may vary the order.

27. Discharge of receivers appointed under paragraph 8.

(1) If a receiver is appointed under paragraph 8 in respect of property which is identified in the restraint order (the first receiver), and the Court appoints a receiver under paragraph 16 (the second receiver), the Court shall order the first receiver to transfer to the second receiver all property held by him by virtue of the powers conferred on him by paragraph 8.

(2) Sub-paragraph (1) does not apply to property which the first receiver holds by virtue of the exercise by him of his power under paragraph 8(2)(d).

- (3) If the first receiver complies with an order under sub-paragraph (1) he is discharged—
- (a) from his appointment under paragraph 8;
 - (b) from any obligation under this Schedule arising from his appointment.

(4) If this paragraph applies the Court may make such a consequential or incidental order as it believes is appropriate.

28. Appeal to Court of Appeal about receivers.

(1) If on an application for an order under any of paragraphs 8 or 16 to 18 the Court decides not to make one, the person who applied for the order may appeal to the Court of Appeal against the decision.

(2) If the Court makes an order under any of paragraphs 8 or 16 to 18, the following persons may appeal to the Court of Appeal in respect of the Court's decision—

- (a) the person who applied for the order;
- (b) any person affected by the order.

(3) If on an application for an order under paragraph 25 the Court decides not to make one, the person who applied for the order may appeal to the Court of Appeal against the decision.

(4) If the Court makes an order under paragraph 25, the following persons may appeal to the Court of Appeal in respect of the Court's decision—

- (a) the person who applied for the order;
- (b) any person affected by the order;
- (c) the receiver.

(5) The following persons may appeal to the Court of Appeal against a decision of the Court on an application under paragraph 26—

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- (a) the person who applied for the order in respect of which the application was made;
 - (b) any person affected by the Court’s decision; and
 - (c) the receiver.
- (6) On an appeal under this paragraph the Court of Appeal may—
- (a) confirm the decision, or
 - (b) make such order as it believes is appropriate.

*Interpretation for this Schedule***29. Tainted gifts.**

(1) For the purposes of section 10, a gift is tainted if it was made by the defendant at any time after—

- (a) the date on which the offence to which the external order or external request relates was committed; or
- (b) if his criminal conduct consists of two or more such offences and they were committed on different dates, the date of the earliest.

(2) For the purposes of paragraph (1), an offence which is a continuing offence is committed on the first occasion when it is committed.

(3) A gift may be a tainted gift whether it was made before the commencement date.

30. Specified property.

In this Schedule, “specified property” means property specified in an external order, other than an order that specifies a sum of money.

SCHEDULE 4**POWERS AND DUTIES OF SUPERVISORY AUTHORITIES****OF SERVICE PROVIDERS THAT ARE NOT REGULATED PERSONS****1. Interpretation.**

In this Schedule:

“AML/CFT obligation”, in relation to a service provider, means an obligation of the service provider under this Act, the AMLR, the ATR, the FSR and any other Regulations, applicable Code or Guidelines;

“compliance visit” means an inspection undertaken under paragraph 2;

“registration” means registration under section 222; and

“service provider” means a service provider that is not a regulated person and, in relation to a supervisory authority, means a service provider for which the supervisory authority is the relevant supervisory authority.

2. Compliance visits.

The relevant supervisory authority may, for the purposes of carrying out its functions, at any reasonable time—

- (a) enter and inspect any premises occupied or used by a service provider, whether in or outside St. Christopher and Nevis;
- (b) review the business and activities of the service provider and the service provider's policies, procedures, systems and controls;
- (c) examine and make copies of documents belonging to or in the possession or control of a service provider that, in the opinion of the supervisory authority, are relevant to the service provider's business or to its AML/CFT obligations; and
- (d) seek information and explanations from the officers, employees, agents and representatives of the service provider, whether verbally or in writing, and whether in preparation for, during or after a compliance visit.

3. Enforcement action.

For the purposes of this Schedule, the relevant supervisory authority is entitled to take enforcement action against a service provider if, in the opinion of the supervisory authority—

- (a) the service provider
 - (i) has contravened or is in contravention of this Act, the AMLR, the ATR, the FSR and any other Regulations or any applicable Code or Guidelines;
 - (ii) has failed to comply with a directive given to it by the supervisory authority;
 - (iii) is in breach of any term or condition of its registration,
 - (iv) has provided the supervisory authority with any false, inaccurate or misleading information, whether on making application for registration or subsequent to its registration; or
 - (v) the service provider has refused or failed to co-operate with the supervisory authority on a compliance visit; or
- (b) any of the following do not satisfy the supervisory authority's fit and proper criteria—
 - (i) the service provider;
 - (ii) the services providers anti-money laundering reporting officer or anti-money laundering compliance officer;
 - (iii) a director or officer of the service provider; or
 - (iv) a person having a share or interest in the service provider, whether equitable or legal.

4. Directives.

(1) Where the relevant supervisory authority is entitled to take enforcement action against a service provider, it may by written notice issue such directives to the service provider as it considers appropriate.

(2) Without limiting subparagraph (1), a directive may—

- (a) require the service provider to take, or not to take, such action or measures as the supervisory authority considers appropriate;
- (b) impose a prohibition, restriction or limitation on the business or activities of the service provider, including a prohibition that the licensee shall cease to engage in any type of business or that it shall not enter into any new contracts for any class or type of business;
- (c) require that any director, key employee or person having functions in relation to the service provider be removed and replaced by another person acceptable to the supervisory authority; or
- (d) require that any individual—
 - (i) not perform a specified function or functions for,
 - (ii) not engage in specified employment by,
 - (iii) not hold a specified position in the business of, the service provider.

(3) A directive issued under this paragraph may be of unlimited duration or of a duration specified in the notice of the direction.

(4) The power to issue a directive under this paragraph includes the power, whether on the application of the service provider or on the volition of the supervisory authority, to vary or withdraw any directive.

(5) A notice of a directive shall—

- (a) specify the reasons for giving the directive; and
- (b) specify when the directive is to take effect.

(6) A service provider who, fails to comply with a directive issued under this paragraph commits an offence and is liable on summary conviction, to imprisonment for a term of 12 months or to a fine of \$20,000 or to both.

5. Cancellation of registration.

(1) The relevant supervisory authority may, by written notice, cancel the registration of a service provider—

- (a) at the request of the service provider; or
- (b) if it is entitled to take enforcement action against the service provider.

(2) Subject to subsection (3), the relevant supervisory authority shall give a service provider not less than 14 days written notice of its intention to cancel the service provider's registration.

(3) If the relevant supervisory authority is of the opinion that it is in the public interest to do so, it may cancel the registration of a service provider with immediate effect.

(4) A notice given under subsection (2) shall state the grounds on which the relevant supervisory authority intends to cancel the registration and shall state—

- (a) that unless the service provider, by written notice given to the supervisory authority, shows good reason why its registration should not be cancelled, the registration will be cancelled on the date specified in the notice; or
- (b) where subsection (3) applies, that the registration is cancelled with effect from the date of the notice.

6. Administrative penalties.

(1) The Regulations made under section 224 shall provide for the imposition by the relevant supervisory authority of administrative penalties on licensees who contravene a provision of the Anti- money Laundering and Terrorist Financing Regulations or an applicable Code.

(2) An administrative penalty paid to the relevant supervisory authority under regulations made in accordance with subsection (1) shall be used by the supervisory authority for the purposes of undertaking its functions.

7. Power to require information and production of documents.

(1) Where reasonably required for the discharge of its functions under this Act, the Anti-money Laundering and Terrorist Financing Regulations or an applicable Code, a relevant supervisory authority may, by notice in writing given to a person specified in subsection (2), require him—

- (a) to provide specified information or information of a specified description; or
- (b) to produce specified documents or documents of a specified description.

(2) A notice under sub-paragraph (1)—

- (a) may be issued to—
 - (i) a service provider;
 - (ii) a person who at any time has been a service provider, but who has ceased to be a service provider; or
 - (iii) a director, senior manager or key employee of a service provider or former service provider; and
- (b) may require that the information is to be provided to, or the documents are to be produced to, such person as may be specified in the notice;
- (c) shall specify the place where, and the period within which, the information or documents shall be provided or produced.

(3) A relevant supervisory authority may require—

- (a) any information provided under this section to be provided in such form; and

- (b) any information provided or document produced under this section to be verified or authenticated in such manner;

as it may reasonably specify.

(4) A relevant supervisory authority may take copies or extracts of any document produced under this section.

(5) Where a person claims a lien on a document, its production under this section is without prejudice to his lien.

SCHEDULE 5

(Section 227)

TRANSITIONAL PROVISIONS AND SAVINGS

1. Interpretation.

(1) In this Schedule,

“former legislation” means—(to be inserted by the respective countries, and would apply to the relevant provisions of the countries drug trafficking, and proceeds of crime and criminal conduct legislation)

(2) Where an offence is committed over a period of two or more days, or at some time during a period of two or more days, for the purposes of this Schedule, it shall be taken to have been committed on the earliest of those days.

2. Confiscation.

(1) The provisions of this Act specified in column 1 shall not have effect where the offence, or any of the offences, referred to in the provision specified in column 2, was committed before the commencement date.

Column 1

Section 14 confiscation order

Section 38 defendant convicted or committed absconds

Section 39 defendant neither convicted not acquitted absconds

Column 2

Section 14(1)(a)

Section 38(1)(a)

Section 39(1)(a)

(2) A restraint order or order for enforcement abroad shall not have effect where—

- (a) the powers specified in those sections would be exercisable by virtue of section 44(1)(a) or (b) being satisfied; and
- (b) the offence referred to in section 44(1)(a) or (b), as the case may be, was committed before the commencement date.

(3) Where the Court is determining whether section 15 applies to a defendant—

- (a) conduct shall not form part of a course of criminal conduct where any of the offences referred to in section 15(2)(a) was committed before the commencement date; and

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- (b) conduct shall form part of a course of criminal conduct, notwithstanding that any of the offences of which the defendant was convicted on at least two separate occasions in the period referred to in section 15(2)(b) were committed before the commencement date.

(4) Where sub-paragraph (1) or (2) applies with respect to an offence or offences, the confiscation provisions in the Drug Trafficking Offences legislation or the Proceeds of Criminal Conduct legislation (as appropriate for the offence concerned) have full effect, notwithstanding their repeal.

(5) For the avoidance of doubt, where Part II of this Act applies with respect to an offence or offences, the confiscation provisions of the former legislation shall not apply with respect to that offence or those offences.

3. Cash seizure.

(1) Sections 109 to 119 have no application with respect to cash seized prior to the commencement date under any international cooperation legislation.

(2) Where such international cooperation legislation continues to apply to the cash seized notwithstanding its repeal.

4. Money laundering.

(1) Sections 160, 161 and 162 shall not have effect where the conduct that constitutes an offence under those sections commenced prior to the commencement date and ended after the commencement date and the equivalent provisions in the former legislation shall continue to have effect with respect to such conduct, notwithstanding their repeal.

(2) Section 163 shall not have effect where the information or other matter on which the knowledge or suspicion that another person is involved in money laundering is based, or which gives reasonable grounds for such knowledge or suspicion, came to a person before the commencement date and the equivalent provisions in the old legislation continue to apply in such circumstances.

5. Reporting Authority.

The persons who were, immediately before the commencement date, members of the Reporting Committee continue to be members of the Reporting Committee until the Attorney General appoints members of the Reporting Committee in accordance with section 120(2).

SCHEDULE 6

1. A person is engaged in a relevant business who, by way of business, provides any of the following services to third parties, when providing such services—

- (a) acting as a secretary of a company, a partner of a partnership, a counsellor in a foundation or a similar position in relation to other legal persons or legal arrangements or arranging for another person to act in one of the foregoing capacities or as the director of a company;

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- (b) providing a business, accommodation, correspondence or administrative address for a company, a partnership, foundation or any other legal person or legal arrangement;
 - (c) acting as, or arranging for another person to act as, a nominee shareholder for another person;
 - (d) arranging for another person to act as a nominee shareholder for another person;
2. A person who conducts as a business one or more of the following activities for, or on behalf of, a customer—
- (a) lending, including consumer credit, mortgage credit, factoring, with or without recourse, and financing of commercial transactions, including forfeiting;
 - (b) financial leasing;
 - (c) issuing and managing means of payment, including credit and debit cards, cheques, travellers' cheques, money orders and bankers' drafts and electronic money;
 - (d) financial guarantees or commitments;
 - (e) participation in securities issues and the provision of financial services related to such issues;
 - (f) providing advice on capital structure, industrial strategy and related questions and advice and services relating to mergers and the purchase of undertakings;
 - (g) safekeeping and administration of cash;
 - (h) investing administering or managing funds or money;
 - (i) money broking;
3. A person who, as a business, trades for his own account or for the account of customers in:
- (a) money market instruments, including cheques, bills, certificates of deposit and derivatives;
 - (b) foreign exchange;
 - (c) exchange, interest rate and index instruments;
 - (d) financial futures and options;
 - (e) commodities futures; or
 - (f) shares and other transferable securities;
4. A person who, by way of business—
- (a) provides accountancy or audit services;
 - (b) acts as a real estate agent, when the person is involved in a transaction concerning the buying and selling of real estate;

5. An independent legal professional;
6. A high value dealer.

SCHEDULE 7

Section 15 (1) (a)

OFFENCES

1. Offences under Parts III and IV of the Anti-Terrorism Act;
2. Offences of trafficking in persons pursuant to the provisions of the Human Trafficking Act;
3. Offences in connection with a prohibition or restriction on importation or exportation of goods or a fraudulent evasion under the Customs Act (relevant section to be inserted ie, unlawful production/cultivation or supply of controlled drugs, possession with intent to supply, drug trafficking, improper importation of goods, exploration of prohibited or restricted goods, fraudulent evasion using a ship for illicit traffic in drugs)
4. Offences of Arms Trafficking (exportation of prohibited goods, fraudulent evasion, dealing in firearms or ammunition by way of trade or business)
5. Pimps and brothels (procuring woman by threats, procuring woman by false pretences, procuring a defective woman to have sexual intercourse, procuring woman for prostitution, detaining a woman in a brothel, causing or encouraging prostitution etc. of girl under 16, causing or encouraging prostitution of defective woman, man living on earnings of prostitution, woman exercising control over prostitute, keeping a brothel, letting premises for use as a brothel)
6. Corruption
7. Counterfeiting offences (making counterfeit notes and coins, passing counterfeit notes or coins, possession of counterfeit notes or coins, making or possessing materials or equipment for counterfeiting)
8. Intellectual property offences (making or dealing in an article which infringes copyright, making or possessing an article designed or adapted for making a copy of a copyright work, making or dealing in an illicit recording, making or dealing in unauthorised decoders, unauthorised use etc of trade mark)
9. Blackmail
10. Offences under the International Banks Act (insert relevant sections)
11. Inchoate offences
 - (a) An offence of attempting, conspiring or inciting the commission of an offence specified in this Schedule
 - (b) An offence of aiding, abetting, counselling or procuring the commission of such an offence.

SCHEDULE 8**(Section 102A (3))****CONNECTION WITH THE STATE****Unlawful conduct.**

1. There is a connection where the unlawful conduct occurred entirely or partly in the State.

Tainted property.

2. There is a connection where the property became tainted property due to unlawful conduct that occurred entirely or partly in the State.

Property.

3. There has been a connection where the property in question has been in the State, but only if it was recoverable property in relation to the unlawful conduct, or tainted property, for some or all of the time it was there.

4. There is a connection where there is other property in the State that is recoverable property in relation to the unlawful conduct, or tainted property.

5. There has been a connection where, at any time, there has been other property in the State that, at the time, was recoverable property in relation to the unlawful conduct, or tainted property.

Person.

6 (1) There is or has been a connection where a person described in sub-paragraph (2)—

- (a) is linked to the State;
- (b) was linked to the State at a time when the property became tainted property;
- (c) has been linked to the State at any time since the property became tainted property;
- (d) was linked to the State at a time when the unlawful conduct, or some of the unlawful conduct, was taking place; or
- (e) has been linked to the State at any time since that conduct took place.

(2) Those persons are—

- (a) a person whose conduct was, or was part of, the unlawful conduct;
- (b) a person who was deprived of property by the unlawful conduct;
- (c) a person who holds the property in question;
- (d) a person who has held the property in question, but only if it was recoverable property in relation to the unlawful conduct, or tainted property, at the time;

- (e) a person who holds other property that is recoverable property in relation to the unlawful conduct, or tainted property; or
 - (f) a person who, at any time, has held other property that was recoverable property in relation to the unlawful conduct, or tainted property, at the time.
- (3) A person is linked to the State if the person is—
- (a) a citizen of the State;
 - (b) a body incorporated or constituted under the law of the State, or
 - (c) a person domiciled, resident or present in the State.

Property held on trust.

7 (1) There is a connection where the property in question is property held on trust, or an interest in property held on trust, and—

- (a) the trust arises under the law of the State;
- (b) the trust is entirely or partly governed by the law of the State;
- (c) one or more of the trustees is linked to the State, or
- (d) one or more of the beneficiaries of the trust is linked to the State.

(2) A person is linked to the State if the person falls within paragraph 6(3).

(3) In this paragraph, “beneficiaries” includes beneficiaries with a contingent interest in the trust property and potential beneficiaries.

Interpretation.

8. In this Schedule, “unlawful conduct” means:
- (a) in a case in which the property in question was obtained through unlawful conduct, that conduct;
 - (b) in a case in which the property in question represents property obtained through unlawful conduct, that conduct; or
 - (c) in a case in which it is shown that the property in question was obtained through unlawful conduct of one of a number of kinds or represents property so obtained (see section 66(2) (b), one or more of those kinds of conduct).

ANTHONY MICHAEL PERKINS
Speaker

Passed by the National Assembly this 23rd day of January, 2020.

SONIA BODDIE-THOMPSON
Clerk of the National Assembly