

I assent,



SAMUEL WEYMOUTH TAPLEY SEATON
Governor-General

22nd March, 2021.

SAINT CHRISTOPHER AND NEVIS

No. 10 of 2021

AN ACT to amend the Proceeds of Crime Act, Cap. 4.28.

[Published 26th March 2021, Extra-Ordinary Gazette No. 15 of 2021.]

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:

1. Short title.

This Act may be cited as the Proceeds of Crime (Amendment) Act, 2021.

2. Interpretation.

In this Act, unless the context requires otherwise, “Act” means the Proceeds of Crime Act, Cap 4.28.

3. Amendment to section 2 of the Act.

The Act is amended in Section 2 by:

(1)(a) inserting in subsection (1), in the correct alphabetical order, the following new definitions:

“associated property” means property of any of the following descriptions 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 a tenancy in common, the tenancy of the other tenant;
- (d) if the recoverable property is part of a larger property, but not a separate part, the remainder of that property;

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“cash” includes:

- (a) notes and coins in any currency;
- (b) postal orders;
- (c) cheques of any kind, including travellers’ cheques;
- (d) bankers’ drafts;
- (e) electronic cash;
- (f) bearer bonds and bearer shares; and
- (g) any other monetary instrument that is prescribed as cash;

“civil recovery investigation” means 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

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

“compensation order” means an order to pay compensation made under any enactment;

“conduct” includes omissions;

“country” includes a territory;

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

“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 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;

“dealing” with property includes disposing of it, diminishing the value of it, or removing it from Saint Christopher and Nevis;

“excepted joint owner” means a person who obtained the property in circumstances in which it would not be recoverable as against him; and

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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 if the joint tenancy had been severed;

“interim receiving order” means an order made by the court under section 58S;

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

“management receiver” means a receiver appointed under section 58P;

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

“money laundering offence” means

- (a) an offence under section 4 of the Act;
- (b) an attempt, conspiracy or incitement to commit an offence specified in paragraph (a);
- (c) aiding, abetting, counselling or procuring the commission of an offence specified in paragraph (a); and
- (d) any stage of money laundering including layering, placement or integration.

“period of 72 hours” excludes:

- (a) any Saturday or Sunday;
- (b) bank and government holidays;
- (c) any other day on which the Magistrate or High Court may be closed.

“property freezing order” means an order made under section 58L;

“recoverable property” means

- (a) property obtained through unlawful conduct and tainted property;
- (b) 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, but only if it is held by a person into whose hands it may be followed;

“recovery order” means an order made under section 58BB;

“regulated business” means a business that is listed in Schedule 1;

“regulated person” means any person carrying on a regulated business activity listed in the First Schedule;

“respondent” means

- (a) where proceedings are brought by the Attorney General under this Part, the person against whom the proceedings are brought; and

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- (b) where no such proceedings have been brought but the Attorney General has applied for an interim receiving order, the person against whom the Attorney General intends to bring such proceedings;

“suitably qualified person” means a person who holds an accounting qualification and who is not the Attorney General or a person attached to the Office of the Attorney General;

“transfer” includes a sale or disposition;

“trustee for civil recovery” means a person whose functions are set out in section 58CC;

“unlawful conduct” means conduct which:

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

- (1)(b) deleting the definition of “document” in subsection (1) and replacing it with the following:

“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;
- (c) amending the definition of “Court” in subsection (1), by deleting the word “includes” replacing it with the word “means”;
- (d) deleting from subsection (1), the definition of “serious offence”, and deleting the expression, “serious” wherever it occurs;
- (e) replacing the definition of “tainted property” as follows
 - “ “tainted property” includes property that has

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- (a) has been used in, or in connection with the commission of an offence; and
 - (b) subject to section 3(15) has been used in, or in connection with, unlawful conduct; or
 - (c) is intended to be used in, or in connection with, unlawful conduct;
- (2) Section 3 of the Act is amended by inserting the following new subsections:
 - “(15) Property belonging to a person, is not tainted property if:
 - (a) the unlawful conduct is not the unlawful conduct of the owner; and
 - (b) where paragraph (a) applies, the owner does not give his consent, express or implied, to the property being used in, or in connection with, the unlawful conduct concerned.
 - (16) For the purpose of subsection (15), the “unlawful conduct concerned” is the unlawful conduct that the property has been used in, or in connection with, or that the property is intended to be used in, or in connection with.
 - (17) A person obtains property through unlawful conduct whether his conduct or the conduct of another person, when he obtains property by or in return for the conduct.
 - (18) In determining 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;
 - (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 unlawful conduct of one of a number of kinds, each of which would have been unlawful conduct.”.
 - (19) For the purposes of Part III, “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—

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- (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.

- (20) Material held with the intention of furthering a criminal purpose is not privileged material.
- (21) For the purpose of Part IVA, 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.”.

4. Amendment to Part III of the Act.

The Act is amended in Part III by inserting immediately after section 37 the following new sections:

Customer information orders

Customer information to be specified in regulations

37A. The regulations shall specify types or categories of information that are “customer information” for the purposes of sections 37B to 37E.

Application for customer information order

- 37B. (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 37C.
- (2) 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.
 - (3) 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.

Customer information order

37C. (1) On an application made under section 37B, 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 a law enforcement officer, provide any such customer information as it has relating to the person specified in the application.
- (3) A regulated person who 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.

Offences.

- 37D. (1) A regulated person is guilty of 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.

Protection of statements.

- 37E. (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 IV;
 - (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.

Account monitoring orders**Application for account monitoring order.**

- 37F. (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 37G.
- (2) 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.
- (3) 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.

Account monitoring order

- 37G (1) On an application made under section 37F, 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 benefited 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—

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- (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 37F, 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.

Protection of statements.

- 37H. (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 IV;
 - (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—

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(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.

Disclosure of information.

37I. An account monitoring order has effect in spite of any restriction on the disclosure of information, however imposed.

Disclosure Orders**Application for a disclosure order.**

37J. (1) Application may be made by a law enforcement officer to a judge or master of the court for a disclosure order under section 37K.

(2) 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.

(3) 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 any document, or document 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.

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- (7) Documents so produced may be retained for so long as it is necessary to retain 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.

Disclosure Order

- 37K. (1) On an application under section 37J, 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 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.

Offences

- 37L. (1) A person commits an offence if without reasonable excuse he fails to comply with a requirement imposed on him under a disclosure order.

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- (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.

Protection of statements

- 37M. (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 IV;
 - (b) on a prosecution for an offence under section 37L (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.

Unexplained Wealth Orders**Unexplained wealth orders**

- 37N. (1) A judge or master may, on an application made by the Attorney General, 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 whom the Attorney General thinks holds the property
- (3) The person specified may include a person outside of Saint Christopher and Nevis.
- (4) 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 including, in particular, how any costs incurred in obtaining it were met.
- (5) 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.
- (6) The order may, in connection with requiring the respondent to provide the statement mentioned in subsection (4) also require the respondent to provide information, or to produce any document, of a kind specified or described in the order.
- (7) 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.

Requirements for making of unexplained wealth order.

- 37O. (1) Before making an unexplained wealth order in respect of any property, the judge or master must be satisfied that there are reasonable grounds to suspect that -

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- (a) the respondent holds the property;
 - (b) the value of the property is greater than \$100,000; and
 - (c) 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.
- (2) The judge or Master must also 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 Saint Christopher and Nevis or elsewhere, or
 - (ii) a person connected with the respondent is, or has been, so involved.
- (3) 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.
- (4) For the purposes of subsection (1)(c)—
- (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.
- (5) In subsection (2)(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,

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- (c) an individual who has been entrusted with a prominent function by an international organisation
 - (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.
- (6) Where the property in respect of which the order is sought comprises more than one item of property, the reference in subsection (1)(b) to the value of the property is to the total value of those items.

Effect of order: cases of non-compliance.

- 37P. (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 IVA, 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 37O(1)(b).
- (4) It is for the Court hearing the proceedings under Part IVA in relation to which reliance is placed on the presumption to determine the matters in subsection (3).
- (5) The “response period” is whatever period the court specifies under section 37N(7) 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.
- (6) For the purposes of subsection (1)—
- (a) subject to section 37Q, 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.
- (7) 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 the total value of the respondent’s interest in those items.

Effect of order: cases of compliance or purported compliance

- 37Q. (1) This section applies in a case where, before the end of the response period (as defined by section 37P(5)), 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 37V has effect in relation to the property, the Attorney General 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 a 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 Attorney General 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 Attorney General 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
 - (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 (b) references to compliance include purported compliance.
 - (8) In this section “enforcement or investigatory proceedings” means any proceedings in relation to property taken under—

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- (a) Part IV,
- (b) Part IVA, or
- (c) other provisions of this Part.

Offence

- 37R. (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.
- (2) A person guilty of 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 \$100,000, or to both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or to a fine not exceeding \$500,000 or to both.

Protection of statements

- 37S. (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 IV,
 - (b) on a prosecution for an offence under section 37R,
 - (c) on a prosecution for an offence under the Perjury Act, Cap. 4.23 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.

Disclosure of information, copying of documents, etc.

- 37T. (1) An unexplained wealth order has effect in spite of any restriction on the disclosure of information, however imposed.

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- (2) Section 3(19) 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 Attorney General 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) If the Attorney General 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.

Supplementary.

- 37U. (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***Application for interim freezing order.**

- 37V. (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 37X, 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 Attorney General that applied for the unexplained wealth order to which the interim freezing order relates,

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- (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.

Variation and discharge of interim freezing order.

- 37W. (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 37Q(4).
 - (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 37Q(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 37Q(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 may give such an opportunity to any person who may be affected by its decision.

(9) Subsection (8) 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 14,
- (b) a property freezing order, or
- (c) an interim receiving order;

“response period” has the meaning given by section 37P(5).

Exclusions

37X. (1) The power to vary an interim freezing order includes 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, may also be made when the order is made.
- (3) An exclusion may 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.

Restrictions on proceedings and remedies

37Y. (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

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- (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 Magistrates 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 shall give such an opportunity to any person who may be affected by the court’s decision.

Receivers in connection with interim freezing orders

- 37Z. (1) This section applies where the Court makes an interim freezing order on an application by the Attorney General.
- (2) The Court may, on an application by the Attorney General, 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 Attorney General must nominate a suitably qualified person for appointment as a receiver.
 - (6) The Attorney General may apply a sum received by it under section 58KK(2) in making payment of the remuneration and expenses of a receiver appointed under this section.

- (7) Subsection (6) does not apply in relation to the remuneration of the receiver if that person is a member of staff of the Attorney General, but it does apply in relation to such remuneration if the receiver is a person or body or authority providing services under arrangements made by the Attorney General.

Powers of receivers appointed under section 37Z.

- 37AA. (1) If the Court appoints a receiver under section 37Z, on an application by the Attorney General, 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 3 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 37Z, 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) Subsection (7) does not apply to the extent that the loss or damage is caused by the receiver's negligence.

Supervision of section 37Z receiver and variations.

37BB. (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 37Z—

- (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 37Z,
 - (b) an order under section 37AA, 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 under section 37Z, for the order under section 37AA 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

Enforcement abroad: civil recovery authority.

37CC.(1) This section applies if—

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- (a) the Court makes an unexplained wealth order in respect of any property,
 - (b) it appears to the Attorney General that the risk mentioned in section 37V(2) applies in relation to the property, and
 - (c) the civil recovery authority believes that the property is in a country outside Saint Christopher and Nevis, the receiving country.
- (2) The Attorney General may forward the request for assistance to the government of the receiving country.
 - (3) 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.

Enforcement abroad: receiver.

37DD. (1) This section applies if—

- (a) an interim freezing order has effect in relation to property, and
 - (b) the receiver appointed under section 37Z in respect of the property believes that it is in a country outside Saint Christopher and Nevis, 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.

Procedure.

37EE. (1) An application for 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 customer information orders, account monitoring orders and disclosure orders; and

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- (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 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.

5. Amendment to Part IV of the Act.

The Act is amended in Part IV by inserting immediately after that Part the following new Part:

“PART IVA – CIVIL RECOVERY**Purposes of Part IVA.**

58A. (1) The purposes of this Part are to:

- (a) enable the Attorney General 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) ensure that the powers conferred by this Part, which are exercisable in relation to any property, including cash, are exercisable whether or not any proceedings have been brought for an offence in connection with the property.

Standard of proof.

58B. The 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.

*Recoverable property and associated property***Following recoverable property.**

58C.(1) Subject to subsection (2), property obtained through unlawful conduct and tainted property is recoverable property.

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- (2) Property obtained through unlawful conduct that has been disposed of since it was obtained through unlawful conduct, and tainted property that has been disposed of since it became tainted property, is recoverable property only 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.

Tracing property.

- 58D.(1) Where property obtained through unlawful conduct or tainted property, being “the original property”, is or has been recoverable property, property which represents the original property is also recoverable property.
- (2) Where a person enters into a transaction by which he:
 - (a) disposes of recoverable property, whether the original property or property which, by virtue of this Part, represents the original property; and
 - (b) obtains other property in place of it,
 the other property represents the original property.
- (3) Where 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.

Mixing property.

- 58E. (1) Where a person’s recoverable property is mixed with other property, whether the property is his 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;

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- (c) for the restoration or improvement of land; or
- (d) by a person holding a leasehold interest in the property to acquire the freehold.

Accruing profits.

- 58F. (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 shall be treated as representing the property obtained through unlawful conduct or the tainted property, as the case may be.

General exceptions.

- 58G. (1) Where:
- (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) where it is vested, forfeited or otherwise disposed of pursuant to powers conferred under this Part;
 - (b) where:
 - (i) pursuant to a judgement in civil proceedings, whether in Saint Christopher and Nevis or elsewhere, the respondent makes a payment to the claimant or the claimant otherwise obtains property from the respondent;
 - (ii) the claimant's claim is based on the respondent's unlawful conduct; and
 - (iii) apart from this paragraph, the sum received, or the property obtained, by the claimant would be recoverable property; or
 - (c) where 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

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- (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 subsection (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 58D(2) applies; and
 - (b) the disposal is one to which subsection (1) or (2)(a) applies;
 this section does not affect the recoverability, by virtue of section 58D(2), of any property obtained on the transaction in place of the property disposed of.
- (6) For the purposes of subsection (2), "claimant" includes "plaintiff".

Other exemptions.

- 58H.(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 under subsection (1) may provide that if property is disposed of pursuant to a prescribed enactment or an enactment of a prescribed description, it shall be treated for the purposes of section 58II 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.

Granting interests.

- 58I. (1) Where a person grants an interest in his 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) Upon a person granting an interest in the property being "the property in question"

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

Obtaining and disposing of property.

- 58J. (1) References to a person disposing of his property include a reference to:
- (a) his disposing of a part of it;
 - (b) his granting an interest in it; or
 - (c) both disposing and granting under paragraphs (a) and (b);
- 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 shall be treated as making a disposal of his 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 shall be treated as disposed of by him to the other person.
 - (4) A person shall only be treated as having obtained his property for value in a case where he gave unexecuted consideration if the consideration has become executed consideration.

*Recovery orders and property freezing orders***Application for recovery order.**

- 58K. (1) The Attorney General may, by way of a claim form, apply to the Court for a recovery order against any person who the Attorney General believes holds recoverable property.
- (2) The Attorney General shall serve the claim form under subsection (1):
 - (a) on the respondent; and
 - (b) unless the court dispenses with service, on any other person who the Attorney General believes holds any associated property which the Attorney General wishes to be subject to the recovery order.
 - (3) In the claim form, the Attorney General shall:
 - (a) identify, by particularising or by a general description, the property in relation to which the Attorney General seeks a recovery order;

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- (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 Attorney General 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.

Application for property freezing order.

- 58L.(1) Where the Attorney General may take proceedings for a recovery order in the Court, the Attorney General 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 Attorney General to obtain a recovery order in respect of any property.
 - (4) A property freezing order shall not be made, unless the court 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 Attorney General has not established the identity of the person who holds it, the Attorney General has taken all reasonable steps to do so.
 - (5) The Attorney General shall serve within ten days of the order being made a copy of the property freezing order on any person who holds any property to which the order relates or who may otherwise be affected by the order.

Variation and setting aside of freezing order.

- 58M. (1) The Court may, at any time, vary or set aside a property freezing order.

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- (2) Where the Court makes an interim receiving order, it shall vary or set aside the property freezing order to exclude any property subject to the interim receiving order.
- (3) Where the Court determines that any property to which a property freezing order relates is neither recoverable property nor associated property, it shall vary the order to exclude the property.
- (4) Unless acting in accordance with subsection (2), the Court shall, before varying or setting aside a property freezing order, hear the parties to the proceedings and any person who may be affected by its decision.

Exclusions.

- 58N.(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 relates.
- (2) An exclusion may be made subject to such conditions as the Court thinks appropriate and may, in particular, make provision for the purpose of enabling any person to:
- (a) meet his reasonable legal expenses or reasonable living expenses; or
 - (b) 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 has incurred, or may incur, in respect of proceedings under this Part, the Court shall ensure that the exclusion:
- (a) is limited to reasonable legal expenses that the person has reasonably incurred or that he reasonably incurs; and
 - (b) specifies the total amount that may be released for legal expenses pursuant to the exclusion.
- (4) Notwithstanding 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 Attorney General to recover the property obtained through unlawful conduct or the tainted property is not unduly prejudiced.

Restriction on proceedings and remedies.

- 58O.(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

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- (b) no distress may be levied against the property to which the order applies except with the leave of the Court and subject to such terms as appear to the Court to be necessary.
- (2) Where a 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 the proceedings to continue on any such terms it thinks fit.
- (3) Where 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 such terms as appear to the Court to be necessary or desirable.
- (4) The Court shall, before exercising any power conferred by this section, hear the parties to any of the proceedings concerned and any person who may be affected by the decision of the Court.

Receivers in connection with property freezing orders.

- 58P. (1) The Court may appoint a receiver in respect of any property to which the property freezing order relates if:
- (a) the Court makes a property freezing order on an application by the Attorney General; and
 - (b) the Attorney General 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 Attorney General to obtain a recovery order in respect of any property.
 - (3) In an application for an order under this section, the Attorney General shall nominate a suitably qualified person for appointment as a receiver.
 - (4) The Attorney General may apply a sum received by him under section 58KK(3) in making payment of the remuneration, if any, and expenses of a receiver appointed under this section.

Powers of receivers appointed under section 58P.

- 58Q. (1) Where the Court appoints a receiver under section 58P, on the application of the Attorney General, it may, by order, authorise or require the receiver to:
- (a) exercise any powers specified in paragraph 5 of Schedule 3 in relation to any property in respect of which the receiver is appointed; and

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

Supervision of receiver and variations.

- 58R(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 58P
- (a) the receiver;
 - (b) any party to the proceedings for the appointment of the receiver or the property freezing order;
 - (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 directions under subsection (1), the Court shall give the following an opportunity to be heard:

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- (a) the receiver;
 - (b) the parties to the proceedings for the appointment of the receiver and for the property freezing order; 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 58P, any order under section 58Q or any directions under this section.
- (4) Before exercising any power under subsection (3), the Court shall give the following the opportunity to be heard:
- (a) the receiver;
 - (b) the parties to the proceedings for the appointment of the receiver, for the order under section 58Q or for the directions under this section, as the case may be;
 - (c) the parties to the proceedings for the property freezing order; and
 - (d) any person who may be affected by the decision of the Court.

Interim receiving order**Interim receiving order.**

- 58S. (1) Where the Attorney General may take proceedings for a recovery order, the Attorney General 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 the:
- (a) detention, custody or preservation of property; and
 - (b) 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 Attorney General 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 that:
 - (i) the property to which the application for the order relates is or includes recoverable property; and
 - (ii) if any of it is not recoverable property, it is associated property; and
 - (b) if

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- (i) the property to which the application for the order relates includes property alleged to be associated property; and
- (ii) the Attorney General has not established the identity of the person who holds it,

the Attorney General has taken all reasonable steps to do so.

- (5) The Attorney General shall, in his application for an interim receiving order, nominate a suitably qualified person for appointment as interim receiver.
- (6) The Attorney General shall serve within ten days of the order being made a copy of the interim receiving order on any person who holds any property to which the order relates or who may otherwise be affected by the order.

Functions of interim receiver.

58T. (1) An interim receiving order may authorise or require the interim receiver to:

- (a) exercise any of the powers specified in Schedule 3;
- (b) take any other steps the Court considers appropriate;

for the purpose of securing the detention, custody or preservation of the property to which the order relates 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 whether or not:
 - (a) the property to which the order applies is recoverable property or associated property;
 - (b) any other property is recoverable property, in relation to the same unlawful conduct and, if it is, who holds it; or
 - (c) any other property is tainted property, in relation to the same unlawful conduct and, if it is, who holds it.

(3) Where:

- (a) the interim receiver deals with any property which is not property to which the order relates; and
- (b) at the time he deals with the property he believes on reasonable grounds that he 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 dealing with the property except so far as the loss or damage is caused by his negligence.

Duty of person to whose property the order relates.

- 58U. (1) An interim receiving order may require any person to whose property the order relates to bring:
- (a) the property to such place as may be specified by the interim receiver or to place the property in the custody of the interim receiver and to do anything he is reasonably required to do by the interim receiver for the preservation of the property; and
 - (b) any documents relating to the property which are in his 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.

Supervision of interim receiver and variation of order.

- 58V. (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, may at any time apply to the Court for directions as to the exercise of the functions of the interim receiver.
- (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 must give the following the 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 decision of the Court under subsection (2), as the case may be.

Restrictions on dealing etc. with property.

- 58W. (1) Subject to subsection (2), an interim receiving order:
- (a) shall prohibit any person to whose property the order relates 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 to:
- (a) meet his reasonable living expenses;
 - (b) meet his reasonable legal expenses; or

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- (c) 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 Attorney General to recover the property obtained through unlawful conduct or tainted property is not unduly prejudiced.

Restriction on proceedings and remedies.

58X. (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 relates; and
 - (b) no distress may be levied against the property to which the order relates except with the leave of the Court and subject to such terms the Court may impose.
- (2) Where 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, that Court may either stay the proceedings or allow the proceedings to continue on such terms that it thinks fit.
- (3) Where 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 such terms as appear to the Court to be necessary or desirable.
- (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 decision of the Court to make representations to the Court.

Exclusion of property which is not recoverable.

- 58Y. (1) Where the Court determines that any property to which an interim receiving order relates is neither recoverable property nor associated property, it shall vary the order to exclude that property.
- (2) The Court may vary an interim receiving order to exclude from the property to which the order relates any property which is alleged to be associated property, if it thinks that the satisfaction of any right of the Attorney

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General 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.

Reporting.

58Z.(1) An interim receiving order shall require the interim receiver to inform the Attorney General and the Court as soon as reasonably practicable if the interim receiver thinks that:

- (a) any property to which the order relates by virtue of a claim that it is recoverable property is not recoverable property;
- (b) any property to which the order relates by virtue of a claim that it is associated property is not associated property;
- (c) any property to which the order does not relate is recoverable property in relation to the same unlawful conduct or associated property;
- (d) any property to which the order relates 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 to:

- (a) report his findings to the Court; and
- (b) serve copies of his report on the Attorney General and on any person who holds any property to which the order relates or who may otherwise be affected by the report.

Registration of interim receiving order.

58AA.(1) Where the Attorney General has applied for a property freezing order or an interim receiving order, he 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 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.

*Vesting and realisation of recoverable property***Recovery orders.**

58BB.(1) Where, in proceedings under this Part, the Court is satisfied that any property is recoverable property, it shall make a recovery order and shall

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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 the Trustee for Civil Recovery.
- (3) The Court shall not make in a recovery order any provision in respect of any recoverable property if:
 - (a) each of the conditions referred to in subsection (4) is satisfied; and
 - (b) it would not be just and equitable to do so.
- (4) The conditions referred to in subsection 3(a) are that:
 - (a) that the respondent obtained the recoverable property in good faith;
 - (b) that the respondent took any action, or omitted to take any action, after obtaining the property which he would not have taken, or omitted to take, if he had not obtained the property; or he took any action, or omitted to take any action, before obtaining the property which he would not have taken, or omitted to take, if he had not believed he was going to obtain it;
 - (c) that when the respondent took, or omitted to take, the action referred to in paragraph (b), he had no notice that the property was recoverable;
 - (d) that if a recovery order were made in respect of the property, it would, by reason of the action or omission of the respondent be detrimental to him.
- (5) In determining whether it would be just and equitable to make the provision in the recovery order where the conditions in subsection (4) are satisfied, 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 interest of the Attorney General in receiving the realised proceeds of the recoverable property.
- (6) A recovery order may sever any property.
- (7) A recovery order may:
 - (a) impose conditions as to the manner in which the Trustee for Civil Recovery may deal with any property vested by the order for the purpose of realising it; and
 - (b) provide for payment 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 58EE to 58KK.
- (9) The Attorney General shall serve within ten days of the order being made a copy of the recovery order on any person who holds any property to which the order relates or who may otherwise be affected by the order.

Functions of the Trustee for Civil Recovery.

58CC. (1) The functions of the Trustee for Civil Recovery are:

- (a) to secure the detention, custody or preservation of any property vested in him 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 Attorney General;
 - (c) to otherwise give effect to the recovery order; and
 - (d) to perform any other functions conferred on him by virtue of this Part.
- (2) In performing his functions, the Trustee for Civil Recovery acts on behalf of the Attorney General and shall comply with any directions given to him by the Attorney General.
 - (3) The Trustee for Civil Recovery shall realise the value of property vested in him by the recovery order, so far as practicable, in the manner best calculated to maximise the amount payable to the Attorney General.
 - (4) The Trustee for Civil Recovery has the powers specified in Schedule 4.
 - (5) References in this section to a recovery order include a consent order made under section 58HH and references to property vested in the Trustee for Civil Recovery by a recovery order include property vested in him in a consent order.

Rights of pre-emption.

- 58DD. (1) A recovery order has effect in relation to any property despite any provision, of whatever nature, which would otherwise prevent, penalize 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) 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.
 - (4) In this section “right of return” means any right under a provision for the return or reversion of property in specified circumstances.

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- (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.

Associated and joint property.

58EE.(1) Sections 58FF and 58GG apply where 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 property of the respondent, 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.

Agreements about associated and joint property.

58FF.(1) Where:

- (a) this section applies; and
- (b) the Attorney General, 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 Court may, instead of vesting the recoverable property in the Trustee for Civil Recovery, require the person who holds the associated property or who is the excepted joint owner to make a payment to the Trustee for Civil Recovery.

- (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 Attorney General and that person agree represents:
 - (a) in the circumstances specified in section 58EE(1)(a), the value of the recoverable property; or

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- (b) in a case within section 58EE(1)(b), the value of the recoverable property less the value of the share of the excepted joint owner.
- (4) Where:
 - (a) a property freezing order or an interim receiving order applied at any time to the associated property or joint ownership; and
 - (b) the Attorney General 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 Attorney General and that person agree is reasonable, having regard to that loss and to any other relevant circumstances.
- (5) Where there is more than one item of associated property or excepted joint owner, the total amount to be paid to the Trustee for Civil Recovery, 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 Attorney General.
- (6) A recovery order which makes any requirement under subsection (1) must make provision for any recoverable property to cease to be recoverable.

Associated and joint property: default of agreement.

58GG.(1) Where this section applies, the Court may make the following provision if:

- (a) there is no agreement under section 58FF; 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 for Civil Recovery or for the interest of the excepted joint owner to be extinguished, as the case may be; or
 - (b) in the case of an excepted joint owner, for the severance of his 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 for Civil Recovery 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 for Civil Recovery.
- (4) In making any provision in a recovery order by virtue of subsection (2) or (3), the Court shall have regard to:

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

(5) Where:

- (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 under subsection (2) or (3) may require the Attorney General 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.

Consent orders.

58HH.(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:
 - (a) stay the proceedings;
 - (b) make provision for any property which may be recoverable property to cease to be recoverable; and
 - (c) make any further provision which the Court considers appropriate.
- (3) Section 58KK applies to property vested in the Trustee for Civil Recovery, or money paid to him, pursuant to the agreement as it applies to property vested in him by a recovery order or money paid under section 58FF.

Limit on recovery.

58II. (1) This section applies where the Attorney General seeks a recovery order in respect of:

- (a) both property which is or represents property obtained through unlawful conduct, or tainted property, and related property; or
- (b) property which is or represents property obtained through unlawful conduct, or tainted property, where such an order, or an order section 58HH, has previously been made in respect of related property.

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- (2) For the purposes of this section
 - (a) “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, shall be treated as related to each other.
- (3) The Court shall not to make a recovery order if it thinks that the right of the Attorney General to recover the original property has been satisfied by a previous recovery order or an order under section 58HH.
- (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 right of the Attorney General to recover the original property.
- (5) The Court may in order to satisfy that right to the extent required make a recovery order in respect of:
 - (a) only some of the related items of property; or
 - (b) only a part of any of the related items of property; or
 - (c) both items of property under paragraphs (a) and (b).
- (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) Where:
 - (a) a forfeiture order is made for the forfeiture of recoverable property; and
 - (b) the Attorney General subsequently seeks a recovery order in respect of related property,the forfeiture order shall be treated for the purposes of this section as if it were a recovery order obtained by the Attorney General in respect of the forfeited property.
- (8) Where:
 - (a) pursuant to a judgment in civil proceedings, whether in Saint Christopher and Nevis or elsewhere, the claimant has obtained property from the respondent being “the judgment property”;

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- (b) the claim was based on the respondent having obtained the judgment property or related property through unlawful conduct; and
- (c) the Attorney General subsequently seeks a recovery order in respect of property which is related to the judgment property;

the judgment shall be treated for the purposes of this section as if it were a recovery order obtained by the Attorney General in respect of the judgment property.

(9) For the purposes of subsection (8), “claimant” includes “plaintiff”.

(10) Where:

- (a) property has been taken into account in determining the amount a person benefited from criminal conduct for the purpose of making a confiscation order; and
- (b) the Attorney General subsequently seeks a recovery order in respect of related property,

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

(11) In subsection (10), a confiscation order includes an order under an equivalent enactment.

(12) In relation to an order mentioned in subsection (11), the reference to the amount a person benefited from criminal conduct is to be read as a reference to the corresponding amount under the Act in question.

Limits on recovery, supplementary.

58JJ. (1) Where:

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

the right of the Attorney General to recover the original property is satisfied by the making of a recovery order in respect of either the original property or the other property.

(2) Where:

- (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 right of the Attorney General 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.

(3) In this section:

“part disposal” means a disposal to which section 58J(1) applies;

“original property” has the same meaning as in section 58II.

Applying realised proceeds.

58KK. (1) The Trustee for Civil Recovery is to make out of the sums:

- (a) which represent the realised proceeds of property which were vested in him by a recovery order or which he obtained pursuant to a recovery order; and
- (b) vested in him by a recovery order or obtained by him pursuant to a recovery order;

the payments specified under subsection (2).

(2) The Trustee for Civil Recovery shall:

- (a) first, make any payment required to be made by him under section 58GG;
- (b) next, make any payment of legal expenses which are payable under this subsection in pursuance of provision under section 58BB(7)(b) pursuant to the recovery order;
- (c) pay any fees payable to a liquidator of a company appointed by or supervised by the Court; and
- (d) pay any sum which remains to the Attorney General.

(3) The Attorney General may apply a sum received by him under subsection (2) in making payment of the remuneration and expenses of

- (a) the Trustee for Civil Recovery; or
- (b) any receiver appointed in, or in anticipation of, the proceedings for the recovery order.

(4) The remaining sum, after payments made pursuant to subsection (3), and any accrued interest on it, shall be paid into the Forfeiture Fund after:

- (a) the period permitted under section 58TT 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.

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- (5) 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 Companies Act and a foundation which may be dissolved.

*Exemptions etc.***Victims of theft, etc.**

- 58LL.(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 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 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 was deprived of it; and
 - (c) the property the applicant claims belongs to him.
- (3) Property to which a declaration under this section applies is not recoverable property.

Other exemptions.

- 58MM.(1) Proceedings for a recovery order may not be taken:
- (a) in respect of cash found at any place in Saint 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 Attorney General in respect of any recoverable property held by the Attorney General; or
 - (c) against any person in respect of any recoverable property which he holds by reason of his acting, or having acted, as Public 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 to the property or to any other matter.
- (3) 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 Companies Act and a foundation which may be dissolved.

*Scope of Powers***Scope of powers**

58NN. (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) Such an order may not be made by the Court in respect of property that is outside of Saint Christopher and Nevis, unless there is or has been a connection between the case and Saint Christopher and Nevis.
- (3) The circumstances in which there is or has been such a connection include those described in Schedule 5.

Enforcement abroad before recovery order: Attorney General.

58OO.(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 of Saint Christopher and Nevis being the receiving country.
- (2) The property freezing conditions are the conditions in section 58L(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 send a request for assistance in relation to the property to the Minister for Legal Affairs with a view to it being forwarded under this section.
- (4) The Minister for Legal Affairs may 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 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.

Enforcement abroad before recovery order: Receiver

58PP.(1) This section applies if:

- (a) a property freezing order made by the Court has effect in relation to property; and

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- (b) the receiver appointed under section 58P in respect of the property believes that it is in a country outside of Saint Christopher and Nevis.
- (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 Saint Christopher and Nevis being “the receiving country”.
- (3) The receiver may send a request for assistance in relation to the property to the Minister of Legal Affairs with a view to it being forwarded under this section.
- (4) The Minister of Legal Affairs 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.

Evidence Overseas: Interim Receiver

58QQ.(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 58T(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 of Saint Christopher and Nevis.
- (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
 - (b) the judge thinks that there is relevant evidence in a country outside of Saint Christopher and Nevis.
- (4) The assistance that may be requested under this section is assistance in obtaining outside of Saint Christopher and Nevis relevant evidence specified in the request.
- (5) Relevant evidence is evidence as to a matter described in section 58T(a), (b) and (c).

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- (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 an authority recognized 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 Minister of Legal Affairs with a view to it being forwarded to a Court, tribunal, government or authority mentioned under subsection (6).
- (8) The Minister of Legal Affairs must forward the request for assistance to the Court, tribunal, government or authority.
- (9) “Evidence” in this section and section 58RR includes documents, information in any other form and material.

Evidence Overseas: Restrictions on use

- 58RR. (1) This section applies to evidence obtained by means of a request for assistance under section 58QQ.
- (2) The evidence must not be used for any purpose other than:
 - (a) for the purpose of carrying out the functions of the interim receiver; or
 - (b) for the purpose of proceedings under sections 58NN to 58SS, 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;
 - (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.

Enforcement abroad: after recovery order

- 58SS. (1) This section applies if:
- (a) a recovery order made by the Court has effect in relation to property; and
 - (b) the Attorney General or the Trustee for Civil Recovery believes that the property is in a country outside of Saint Christopher and Nevis.

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- (2) The Attorney General or Trustee for Civil Recovery may send a request for assistance in relation to the property to the Minister of Legal Affairs with a view to it being forwarded under this section.
- (3) The Minister for Legal Affairs may forward a request for assistance from the Attorney General to the government of the receiving country.
- (4) The Minister of Legal Affairs must forward a request for assistance from the Trustee for Civil Recovery 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 a 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 realized 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 realised in pursuance of a request under this section;
 - (b) the date of realisation; and
 - (c) the proceeds of realisation.

*General***Compensation: property freezing order or interim receiving order.**

- 58TT.(1) Where, 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 civil recovery 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 under section 58LL;
or
 - (b) makes a consent order under section 58HH.
 - (3) Where 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:

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- (a) with the date of the decision; or
 - (b) if any application is made for leave to appeal, with the date on which the application is withdrawn or refused; or
 - (c) if the application under paragraph (b) is granted, with the date on which any proceedings on appeal are finally concluded.
- (4) Where 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) Where the Court is satisfied that the applicant has suffered loss as a result of the property freezing order or the interim receiving order, the Court may require the Attorney General to pay compensation to the applicant.
 - (6) Where, but for section 58DD(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) An application for compensation under subsection (6) must be made within the period of three months beginning with the vesting referred to in section 58DD(2).
 - (8) Where the Court is satisfied that, in consequence of the operation of section 58DD, the right in question cannot subsequently operate in favour of the applicant or become exercisable by him, the Court may require the Attorney General to pay compensation to the applicant, as the case may be.
 - (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.

Financial threshold.

- 58UU. (1) The Attorney General shall not start proceedings for a recovery order unless the Attorney General reasonably believes that the aggregate value of the recoverable property which the Attorney General wishes to be subject to a recovery order is equal to or greater than ten thousand dollars.
- (2) Where the Attorney General 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.

Limitation.

- 58VV.(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;
 - (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 was 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 58K; or
 - (b) an application is made for an interim receiving order.

Property acquired before commencement date.

58WW. (1) 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.”

6. Amendment to section 61 of the Act.

The Act is amended in section 61 by inserting immediately after the word “forfeited” where it appears in subsection (2)(a) the expression “, recovered”.

7. Amendment to section 61B of the Act.

The Act is amended in section 61B as follows:

- (1) by inserting immediately after the word “forfeiture” where it appears in subsection (1) the expression, “, recovery”;
- (2) by deleting subsection (1)(b)(ii) and inserting the following new subsections (1)(b)(ii) and (1)(b)(iii):
 - “(ii) any amount owing pursuant to compensation or costs awarded under this Act;
 - “(iii) any amount owing to a forensic accountant or receiver;”
- (3) by inserting immediately after the word “forfeited” where it appears in subsection (2), the word “, recovered”.

8. Amendment to section 61C of the Act.

The Act is amended by deleting section 61C and replacing it with the following section:

“Use of Fund.

61C. The Board shall, after payment of any amount due under section 61B(2), make the following payments on an annual basis from the monies standing in the account:

- (a) fifteen per cent to supplement the resources allocated under the budget to the Financial Intelligence Unit;
- (b) fifteen per cent to supplement the resources allocated under the budget to the Police Force;
- (c) five per cent to supplement the resources allocated under the budget to the Coastguard;
- (d) five per cent to supplement the resources allocated under the budget to Customs;
- (e) ten per cent to supplement the resources allocated under the budget to the Director of Public Prosecutions or the National Prosecution Service;
- (f) ten per cent to supplement the resources allocated under the budget to the Attorney General’s Office;
- (g) twenty per cent to supplement the resources allocated under the budget to drug related education and rehabilitation programmes;
- (h) ten per cent to supplement the resources allocated under the budget to the Magistrates’ Court;
- (i) ten per cent to the Regional Security System .”.

9. Amendment of Schedule 1.

The Act is amended in Schedule 1 by inserting immediately after paragraph 26 the following new paragraphs 27 and 28

- “ 27. Virtual Asset Business and Virtual Asset Service Providers
28. Non-Government Organisations”.

10. Insertion of New Schedules.

The Act is amended by inserting immediately after Schedule 2, the following new Schedules:

“SCHEDULE 3

(Sections 37AA, 58Q(1)(a) and 58T)

POWERS OF RECEIVER AND INTERIM RECEIVERS

A receiver appointed under section 37AA or 58P(1) and an interim receiver appointed under section 58S(1) have the powers set out in the Schedule.

Seizure

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

Information

2. (1) The 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.

Entry, search, etc

3. (1) The power to enter any premises in Saint Christopher and Nevis to which the interim receiving 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;
 - (c) remove anything which he is required to take possession of in pursuance of the order or which may be required as evidence in proceedings under Part IVA of this Act.
- (2) The order may describe anything generally, whether by reference to a class or otherwise.

Supplementary

4. (1) An order making any provision under paragraph 2 or 3 must make provision in respect of legal professional privilege.
- (2) An order making any provision under paragraph 3 may require any person:
 - (a) to give the 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.

Management

5. (1) The 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 4

(Section 58CC(4))

POWERS OF TRUSTEE FOR CIVIL RECOVERY

A Trustee for Civil Recovery appointed under section 58BB(1) has the powers set out in this Schedule.

Sale

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

Expenditure

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

Management

3. (1) The 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.

Legal proceedings

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

Compromise

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

Supplementary

6. For the purposes of, or in connection with, the exercise of any of his powers, the Trustee for Civil Recovery has the power:
 - (a) in his official name to:
 - (i) hold property;
 - (ii) enter into contracts;
 - (iii) sue and be sued;

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- (iv) employ agents; and
 - (v) execute a power of attorney, deed or other instrument; and
- (b) to do any other act which is necessary or expedient.”

SCHEDULE 5

(Section 58NN(3))

Unlawful conduct

1. There is a connection where the unlawful conduct occurred entirely or partly in Saint Christopher and Nevis.

Tainted property

2. There is a connection where the property became tainted property due to unlawful conduct that occurred entirely or partly in Saint Christopher and Nevis.

Property

3. There has been a connection where the property in question has been in Saint Christopher and Nevis, 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 Saint Christopher and Nevis 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 Saint Christopher and Nevis 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 Saint Christopher and Nevis;
 - (b) was linked to Saint Christopher and Nevis at a time when the property became tainted property;
 - (c) has been linked to Saint Christopher and Nevis at any time since the property became tainted property;
 - (d) was linked to Saint Christopher and Nevis at a time when the unlawful conduct, or some of the unlawful conduct, was taking place; or
 - (e) has been linked to Saint Christopher and Nevis 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;

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- (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 at the time;
 - (e) a person who holds other property that is recoverable property in relation to the unlawful conduct, or
 - (f) a person who, at any time, has held other property that was recoverable property in relation to the unlawful conduct, at the time.
- (3) A person is linked to Saint Christopher and Nevis if the person is:
- (a) a citizen of Saint Christopher and Nevis;
 - (b) a body incorporated or constituted under the law of the Saint Christopher and Nevis, or .
 - (c) a person domiciled, resident or present in Saint Christopher and Nevis.

Property Held on Trust

6. (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 Saint Christopher and Nevis;
 - (b) the trust is entirely or partly governed by the law of Saint Christopher and Nevis.
 - (c) one or more of the trustees is linked to Saint Christopher and Nevis, or
 - (d) one or more of the beneficiaries of the trust is linked to Saint Christopher and Nevis.
- (2) A person is linked to Saint Christopher and Nevis if the person falls within paragraph 5(3).
- (3) “Beneficiaries” includes beneficiaries with a contingent interest in the trust property and potential beneficiaries.

Interpretation

7. “The 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

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- (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, one or more of those kinds of conduct.

ANTHONY MICHAEL PERKINS
Speaker

Passed by the National Assembly this 18th day of March, 2021.

SONIA BODDIE-THOMPSON
Clerk of the National Assembly