

Explanatory Memorandum after page 194

2019-02-27

OBJECTS AND REASONS

This Bill would provide for the recovery of proceeds and instrumentalities of crime and generally reform the law relating to persons who benefit from criminal conduct.

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FIRST SCHEDULE
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BARBADOS

A Bill entitled

An Act to provide for the recovery of proceeds and instrumentalities of crime.

ENACTED by the Parliament of Barbados as follows:

PART I

PRELIMINARY

Short title

1. This Act may be cited as the *Proceeds and Instrumentalities of Crime Act, 2019*.

Interpretation

2.(1) In this Act

“account monitoring order” means an order made under section 142(1);

“associated property” has the meaning specified in section 80;

“Barbados Revenue Authority” means the body established by section 3 of the *Barbados Revenue Authority Act, 2014* (Act 2014-1);

“cash” includes

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

“cash forfeiture order” means an order made under section 114(1);

“civil recovery investigation” means, subject to subsection (2), an investigation to determine

- (a) whether property is recoverable property or associated property;
- (b) who holds particular recoverable property or associated property; or

(c) the extent or location of particular recoverable property or associated property;

“claimant” includes a plaintiff;

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

“company” means a body corporate, howsoever called and wherever incorporated, registered or formed;

“compensation order” has the meaning assigned to it by section 2 of the *Penal System Reform Act*, Cap. 139;

“confiscation order” means an order described in section 13(2)(a);

“country” includes a territory;

“Court” means the High Court;

“Criminal Assets Recovery Fund” means the fund referred to in section 3 of the *Criminal Assets Recovery Fund Act, 2016* (Act 2016-10);

“criminal conduct” means conduct which constitutes an offence in Barbados or would constitute an offence if it occurred in Barbados;

“criminal recovery investigation” means an investigation into

(a) whether a person has benefited from his criminal conduct;

(b) the extent or location of a person’s benefit from his criminal conduct;

(c) the amount available to a person, as described in section 17(2) or the extent or location of realisable property available for satisfying a confiscation order made in respect of the person; or

(d) whether particular property is an instrumentality of an offence, who holds the property or the extent or location of the property;

“customer information order” means an order made under section 141(1);

“date of conviction” means

- (a) in relation to an offence, the date on which the defendant was convicted of the offence; or
- (b) where there are 2 or more offences and the convictions were on different dates, the date of the latest conviction;

“dealing”, in relation to property, includes taking possession of the property, disposing of the property and removing the property from Barbados;

“disclosure order” means an order made under section 140(1);

“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 non-paper based form;
- (c) any storage medium including discs and tapes;
- (d) books and drawings;
- (e) a photograph, film, tape, negative or other medium in which one or more visual images are embodied so as to be capable (with or without the aid of equipment) of being reproduced; and
- (f) any court application, order and other legal process;

“drug trafficking offence” means

- (a) an offence under section 18 or 19 of the *Drug Abuse (Prevention and Control) Act*, Cap. 131;
- (b) an attempt, conspiracy or incitement to commit an offence specified in paragraph (a); or
- (c) aiding, abetting, counselling or procuring the commission of an offence specified in paragraph (a);

“enforcement receiver” means a person appointed pursuant to section 58(1);

“external order” means an order made, or to be made, by a court of a country other than Barbados, for the recovery of property determined to be proceeds or an instrumentality of crime;

“external request” means a request made by a country other than Barbados;

“forfeiture order” means an order described in section 13(2)(b) or (c);

“freezing order” means an order made under section 83 or 139, as the case may be;

“general criminal conduct” has the meaning specified in section 11(1);

“gift” has the meaning specified in section 8;

“instrumentality” means property used in, or in connection with, or intended to be used in, or in connection with, the commission of an offence;

“interest”, in relation to property, includes

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

“law enforcement officer” means a police officer or a customs officer;

“liquidation” means the dissolution or winding up of a company;

“liquidator” means a person appointed to supervise the liquidation of a company;

“listed asset forfeiture order” means an order made under section 125 or 128, as the case may be;

“management receiver” means a person appointed pursuant to section 57(1);

“money laundering” means an act which

- (a) constitutes a money laundering offence; or
- (b) would constitute a money laundering offence if done in Barbados;

“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 6 of the *Money Laundering and Financing of Terrorism (Prevention and Control) Act, 2011 (Act 2011-23)*;
- (b) an attempt, conspiracy or incitement to commit an offence specified in paragraph (a); or
- (c) aiding, abetting, counselling or procuring the commission of an offence specified in paragraph (a);

“particular criminal conduct” has the meaning specified in section 11(2);

“police officer” means a member of the Royal Barbados Police Force;

“premises” includes any place, vehicle, vessel, aircraft, hovercraft, offshore installation and tent or other movable structure;

“property” means

- (a) assets of every kind, whether situated in Barbados or elsewhere and whether real or personal, tangible or intangible and includes money; and
- (b) legal documents or instruments in any form, including electronic or digital, evidencing title to or interest in assets referred to in paragraph (a) such as bank credits, travellers’ cheques, bank cheques, money orders, shares, securities, bonds, drafts and letters of credit;

“prosecutor” means the Director of Public Prosecutions;

“realisable property” has the meaning specified in section 5;

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

“Recovery Authority” means the Attorney-General;

“recoverable property” shall be construed in accordance with sections 73 to 81;

- “recovery order” means an order made under section 92(1);
- “recovery trustee” means a person appointed by the Court to give effect to a recovery order;
- “Registrar” means the Registrar of the Supreme Court;
- “relevant property” shall be construed in accordance with section 52(6);
- “restraining order” means an order made under section 54(1);
- “search and seizure warrant” means a warrant issued under section 154(1);
- “senior law enforcement officer” means a police officer at or above the rank of sergeant or a senior customs officer, as the case may be;
- “tainted gift” has the meaning specified in section 9;
- “terrorist designation order” has the meaning assigned to it in section 2 of the *Anti-Terrorism Act*, Cap. 158;
- “transfer” includes a sale or other disposition;
- “unlawful conduct” has the meaning specified in section 71;
- “value” in relation to property, means the value of the property determined in accordance with sections 6, 7 and 10.
- (2) An investigation is not a civil recovery investigation within the meaning of subsection (1) where
- (a) proceedings for a recovery order have been instituted in respect of the property in question;
 - (b) a freezing order applies to the property and a receiver is appointed in respect of the order under section 87 or 139; or
 - (c) the property is detained under section 111 or 122.
- (3) A reference in this Act to
- (a) sentencing a defendant for an offence includes a reference to otherwise dealing with him in respect of the offence;

- (b) an amount expressed in dollars includes a reference to an equivalent amount in any other currency.

Interpretative provisions relating to property

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

Benefit from criminal conduct

- 4.(1) For the purposes of this Act
 - (a) a person benefits from conduct where he obtains property or a pecuniary advantage as a result of, or in connection with, the conduct;
 - (b) where a person benefits from conduct, his benefit is the value of the property obtained, or the pecuniary advantage derived, as a result of, or in connection with, the conduct; and
 - (c) where a person derives a pecuniary advantage as a result of, or in connection with, conduct, he is to be taken to have obtained, as a result of, or in connection with the conduct, a sum of money equal to the value of the pecuniary advantage.

(2) A reference to property obtained or a pecuniary advantage derived in connection with conduct includes a reference to property obtained or a pecuniary advantage derived both in that connection and in some other connection.

(3) A reference to a person's benefit from conduct includes a reference to a benefit obtained by, or otherwise accruing to, another person at the request or direction of the first person.

PART II

CRIMINAL RECOVERY OF PROCEEDS AND INSTRUMENTALITIES OF CRIME

Division 1

Preliminary to Part II

Interpretation of realisable property and defendant

5.(1) Subject to subsection (2), "realisable property" means any property held by

- (a) a defendant; or
- (b) a recipient of a tainted gift.

(2) Property is not realisable property where there is a forfeiture order in respect of the property under this Act or any other enactment.

(3) In this Part, "defendant" means a person against whom proceedings have been instituted for an offence, whether or not he has been convicted.

Value of property generally

6.(1) For the purposes of this Part, the value of property, other than cash, held by a person at any time is

- (a) where at the time another person holds an interest in the property, the market value of the first person's interest in the property at the time, ignoring any charge made against the interest; and
- (b) in any other case, the market value of the property at the time.

(2) This section has effect subject to sections 7 and 10.

Value of property obtained from criminal conduct

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

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

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

- (a) where the person holds the property obtained, not being cash, the property specified in this subsection is that property;
- (b) where the person holds no part of the property obtained, the property specified in this subsection is any property which directly or indirectly represents, in his hands, the property obtained;
- (c) where the person holds part of the property obtained, the property specified in this subsection is that part and any property which directly or indirectly represents, in his hands, the other part of the property obtained.

Gifts

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

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

- (a) the numerator of which is the difference between the 2 values specified in subsection (1); and
- (b) the denominator of which is the value of the property at the time of the transfer.

Tainted gifts

9.(1) Where the Court determines that section 16 applies to a defendant or where the Court has not yet made a determination as to whether or not that section applies to a defendant, a gift is tainted where it was

- (a) made by the defendant at any time after the relevant date; or
 - (b) made by the defendant and was of property
 - (i) which was obtained by the defendant as a result of, or in connection, with his general criminal conduct; or
 - (ii) which, in whole or part and whether directly or indirectly, represented in the defendant's hands property obtained by him as a result of, or in connection with, his general criminal conduct.
- (2) For the purposes of subsection (1), "the relevant date" is the first day of the period of 6 years ending with
- (a) the day on which proceedings for the offence concerned were instituted against the defendant; or

- (b) where there are 2 or more offences and proceedings for them were instituted against the defendant on different days, the earliest of those days.
- (3) Where the Court determines that section 16 does not apply to a defendant, a gift is tainted where it was made by the defendant at any time after
 - (a) the date on which the offence concerned was committed; or
 - (b) where his particular criminal conduct consists of 2 or more offences and they were committed on different dates, the date of the earliest offence.
- (4) For the purposes of subsection (3)
 - (a) an offence which is a continuing offence is committed on the first occasion when it is committed; and
 - (b) the defendant's particular conduct includes any conduct which constitutes offences which the Court has taken into consideration in deciding his sentence for the offence or offences concerned.
- (5) A gift may be a tainted gift whether it was made before or after the commencement date.
- (6) References to a recipient of a tainted gift are to a person to whom a defendant has made the gift.

Value of tainted gifts

10.(1) The value at any time (“the material time”) of a tainted gift is the greater of the following:

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

- (2) The property specified for the purposes of subsection (1) is as follows:
- (a) where the recipient holds the property given, the property specified in this subsection is that property;
 - (b) where the recipient holds no part of the property given, the property specified in this subsection is any property which directly or indirectly represents, in his hands, the property given;
 - (c) where the recipient holds part of the property given, the property specified in this subsection is that part and any property which directly or indirectly represents, in his hands, the other part of the property given.

General and particular criminal conduct

11.(1) General criminal conduct, with respect to a defendant, means all his criminal conduct and for the purposes of this definition, it is immaterial whether the conduct occurred, or property constituting a benefit from the conduct was obtained, before or after the commencement date.

(2) Particular criminal conduct, with respect to a defendant, means all his criminal conduct which constitutes

- (a) the offence of which he was convicted;
- (b) any other offence or offences of which he was convicted in the same proceedings; and
- (c) an offence which has been or will be taken into consideration by the Court in sentencing the defendant for the offence specified in paragraph (a).

Institution and conclusion of proceedings and other interpretative provisions

12.(1) Proceedings for an offence are instituted where

- (a) a magistrate issues a summons or warrant in respect of the offence; or

- (ii) set aside and the decision to set the order aside is no longer subject to appeal; and
 - (c) the application is withdrawn, when the prosecutor notifies the Court of the withdrawal of the application.
- (5) A confiscation order is satisfied when no amount is due under it.
- (6) An order is subject to appeal until, disregarding any power of a court to grant leave to appeal out of time, there is no further possibility of an appeal on which the order could be varied or set aside.

Application for confiscation order or forfeiture order on conviction

13.(1) Where a defendant is

- (a) convicted by the Court of an offence or offences; or
- (b) committed to the Court by a magistrate in respect of an offence or offences under section 68,

the Court may, on the application of the prosecutor or on its own motion, make all or any of the orders specified in subsection (2).

(2) The orders referred to in subsection (1) are:

- (a) an order confiscating any benefit that the defendant obtained as a result of, or in connection with, the commission of the offence or offences;
- (b) an order forfeiting any property that is an instrumentality of the offence or offences;
- (c) an order forfeiting any property that the defendant obtained as a result of, or in connection with, the commission of the offence or offences, including any tainted gift.

(3) Where an application is made to the Court for an order referred to in subsection (2) in respect of a person's conviction of an offence, the Court may, in determining the application, have regard to the transcript of any proceedings against the person for the offence.

(4) Where an application is made for an order referred to in subsection (2) and the Court has not, when the application is made, passed sentence on the person for the offence, the Court may, where it is satisfied that it is reasonable to do so in all the circumstances, defer passing sentence until it has determined the application for the order.

Division 2

Confiscation Orders

Application for confiscation order

14.(1) Where the prosecutor intends to apply to the Court for a confiscation order or the Court on its own motion determines that it is appropriate to proceed under section 15 against a defendant

- (a) the prosecutor shall give the defendant no less than 14 days' written notice of the application; and
- (b) the defendant may appear and adduce evidence at the hearing of the application.

(2) The prosecutor may, before the final determination of an application for a confiscation order, apply to the Court to amend the application to include any other property, and the Court may so amend the application where it is satisfied that

- (a) the property was not reasonably capable of identification when the application was originally made; or
- (b) necessary evidence became available only after the application was originally made.

(3) Where the prosecutor intends to apply to amend an application for a confiscation order against a defendant and the effect of the amendment would be to include an additional benefit in the application for the confiscation order the

prosecutor shall give the defendant no less than 14 days' written notice of the application to amend.

Making of confiscation order

15.(1) Where the prosecutor applies to the Court for a confiscation order or the Court on its own motion determines that it is appropriate to proceed under this section, the Court shall determine whether section 16 applies in the defendant's case, and where it determines that section 16

- (a) applies, whether the defendant has benefited from his general criminal conduct; or
- (b) does not apply, whether the defendant has benefited from his particular criminal conduct.

(2) Where the Court determines in accordance with subsection (1) that a defendant has benefited from his general or particular criminal conduct, the Court shall

- (a) determine the amount to be recovered from him (the "recoverable amount") in accordance with section 17; and
- (b) make a confiscation order requiring him to pay that amount.

(3) Where the Court is satisfied that any victim of the defendant's criminal conduct has instituted, or intends to institute, civil proceedings against the defendant in respect of any loss, injury or damage sustained in connection with the defendant's conduct

- (a) the Court shall treat the duty in subsection (2) as a power; and
- (b) the recoverable amount is such amount as the Court considers just, but the recoverable amount shall not exceed the amount that it would have been if this subsection did not apply.

(4) The Court shall determine any question arising under subsection (1) or (2) on a balance of probabilities.

(5) The Court may postpone the proceedings for a confiscation order under the procedure set out in section 24.

(6) Unless the Court postpones the proceedings for confiscation under section 24, it shall proceed under this section before sentencing the defendant with respect to the offence or offences referred to in section 13(1).

Application of section 16

16.(1) This section applies to a defendant who is convicted of

- (a) a drug trafficking offence;
- (b) a money laundering offence;
- (c) an offence that constitutes conduct forming part of a course of criminal activity within the meaning of subsection (2); or
- (d) an offence committed over a period of at least 6 months and has benefited from the conduct which constitutes the offence.

(2) For the purposes of subsection (1)(c), conduct forms part of a course of criminal activity where the defendant benefited from the conduct and

- (a) in the proceedings in which he was convicted of an offence in relation to the conduct, he was also convicted of at least one other qualifying offence; or
- (b) he was convicted on at least one previous occasion in the period of 6 years prior to the commencement of the proceedings of at least one qualifying offence.

(3) Subsection (1)(b) and (c) do not apply to a defendant where the value of the relevant benefit obtained is less than \$10 000 or such other amount as may be prescribed by the Minister by Order subject to negative Resolution.

(4) In this section

“qualifying offence” means an offence which constitutes conduct from which the defendant has benefited;

“relevant benefit” means the total benefit from

- (a) all offences comprising the course of criminal activity; and
- (b) conduct which constitutes an offence which has been or will be taken into consideration by the Court in sentencing the defendant for any offence specified in paragraph (a).

Recoverable amount

17.(1) Subject to this subsections (2) to (6), the recoverable amount for the purposes of section 15(2)(a) is an amount equal to the defendant’s benefit from the conduct concerned.

(2) Subsection (3) applies where the defendant proves that the value of the benefit under subsection (1) is greater than the amount available to him, being the aggregate of the total of the values, at the time the confiscation order is made, of

- (a) all the realisable property then held by the defendant less the total amount payable pursuant to obligations which then have priority; and
- (b) all tainted gifts.

(3) In the circumstances referred to in subsection (2), the recoverable amount is

- (a) the amount the defendant proves is available to him in accordance with that subsection; or
- (b) a nominal amount, where the amount referred to in paragraph (a) is nil.

(4) For the purposes of subsection (2), an obligation has priority where it is an obligation of the defendant to pay

- (a) an amount due in respect of a fine or other order of a court which was imposed or made on conviction of an offence and at any time before the time the confiscation order is made; or

- (b) a sum which would be included among the preferential debts of the defendant if the defendant's bankruptcy or, in the case of a company, its liquidation, had commenced on the date of the confiscation order.
- (5) In subsection (4), "preferential debt" means a debt that, in the bankruptcy of an individual or the liquidation of a company, is payable in priority to the debts of other creditors.
- (6) In calculating the defendant's benefit from the conduct concerned for the purposes of subsection (1), any property in respect of which a recovery order, a cash forfeiture order, a listed asset forfeiture order or a forfeiture order is in force shall be ignored.

Defendant's benefit

- 18.(1)** In determining, for the purposes of section 15, whether a defendant has benefited from conduct, and, if so, his benefit from that conduct, the Court shall take account of
- (a) conduct occurring up to the time it makes its determination; and
 - (b) property obtained up to that time.
- (2) Subsections (3) to (5) apply where the conduct concerned, for the purposes of section 15, is the defendant's general criminal conduct.
- (3) Where a confiscation order has previously been made against the defendant under this Act or any other enactment, and his benefit for the purposes of that order was his benefit from his general criminal conduct
- (a) his benefit determined at the time the last confiscation order was made against him shall be taken for the purposes of this section to be his benefit from his general criminal conduct at that time; and
 - (b) the Court shall deduct the aggregate of the amounts ordered to be paid under each confiscation order previously made against the defendant under
 - (i) this Act; and

(ii) any other enactment.

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

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

Assumptions to be made where section 16 applies

19.(1) Subject to subsection (3), where the Court determines under section 15(1) that section 16 applies to the defendant, the Court shall make the assumptions specified in subsection (2) for the purposes of determining

(a) whether the defendant has benefited from his general criminal conduct; and

(b) his benefit from the conduct.

(2) The assumptions referred to in subsection (1) are that

(a) any property transferred to the defendant at any time after the relevant date was obtained by him

(i) as a result of his general criminal conduct; and

(ii) at the earliest time he appears to have held it;

(b) any property held by the defendant at any time after the date of conviction was obtained by him

(i) as a result of his general criminal conduct; and

(ii) at the earliest time he appears to have held it;

(c) any expenditure incurred by the defendant at any time after the relevant date was met from property obtained by him as a result of his general criminal conduct; and

- (d) for the purpose of valuing any property obtained, or assumed to have been obtained, by the defendant, he obtained the property free of any other interests in it.
- (3) The Court shall not make an assumption under subsection (1) in relation to particular property or expenditure where
 - (a) the assumption is shown to be incorrect; or
 - (b) there would be a serious risk of injustice if the assumption were made.
- (4) Where the Court does not make one or more of the assumptions under subsection (1), the Court shall state its reasons.
- (5) For the purposes of this section, “the relevant date” is the first day of the period of 6 years ending with
 - (a) the date when proceedings for the offence concerned were instituted against the defendant; or
 - (b) where there are 2 or more offences and proceedings for them were instituted on different days, the earliest of those days.
- (6) Where a confiscation order has been made against the defendant under this Act or any other enactment at any time during the period referred to in subsection (5)
 - (a) the relevant date is the date when the defendant’s benefit was calculated for the purposes of the last such confiscation order;
 - (b) the assumption specified in subsection (2)(b) does not apply to any property which was held by him on or before the relevant date.

Time for payment under confiscation order

20.(1) Subject to subsections (2) to (5), the amount ordered to be paid under a confiscation order shall be paid on the making of the order.

- (2) Where the defendant shows that he needs time to pay the amount ordered to be paid, the Court may make an order allowing payment to be made within a period not exceeding 6 months after the date of the confiscation order.
- (3) Where, on the application of the defendant, the Court is satisfied that there are exceptional circumstances, the Court may extend the period specified in subsection (2).
- (4) An order under subsection (3) may be made after the end of the period originally given for payment but shall not be made after the end of the period of 12 months starting with the date on which the confiscation order was made.
- (5) The Court shall not make an order under subsection (2) or (3) unless it gives the prosecutor an opportunity to make representations to the Court.
- (6) This section and sections 21 and 23 apply where an external order for the recovery of a specified sum of money is registered in Barbados subject to the following modifications:
- (a) a reference to a confiscation order shall be treated as a reference to the external order; and
 - (b) a reference to the date of the confiscation order shall be treated as a reference to the date that notice of the registration of the order is given to the person affected by it.

Interest on sums unpaid under confiscation order

- 21.(1)** Where the amount required to be paid by a person under a confiscation order is not paid when it is required to be paid, the person shall pay interest on the amount unpaid for the period for which it remains unpaid at the rate for the time being applicable to a civil judgment debt.
- (2) For the purposes of subsection (1), no amount is required to be paid under a confiscation order where
- (a) an application has been made under section 20(3);
 - (b) the application has not been determined by the Court; and

(c) the period of 12 months starting with the date on which the confiscation order was made has not ended.

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

Effect of confiscation order on Court's other powers

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

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

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

- (3) The Court shall make an order under subsection (4) where it
- (a) makes a confiscation order and a compensation order against the same person in the same proceedings; and
 - (b) believes that the person will not have sufficient means to satisfy both orders in full.

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

Court may order payment by financial institution

23.(1) This section applies to money which is held by a person in an account maintained by the person with a financial institution.

- (2) This section applies where the following conditions are satisfied:
- (a) a restraining order has effect in relation to money to which this section applies;
 - (b) a confiscation order is made against the person by whom the money is held;
 - (c) an enforcement receiver has not been appointed; and
 - (d) any period allowed under section 20 for payment of the amount ordered to be paid under the confiscation order has ended.
- (3) Where subsection (2) applies, the Court may order the financial institution to pay the money to the Court on account of the amount payable under the confiscation order.
- (4) A financial institution that fails to comply with an order under subsection (3) is guilty of an offence and is liable on summary conviction to a fine of \$50,000.
- (5) For the purposes of this section, “financial institution” means
- (a) a commercial bank, trust company, finance company, merchant bank and brokerage house or other deposit-taking institution;
 - (b) a society registered under the *Co-operative Societies Act*, Cap. 378A; and
 - (c) a building society registered under the *Building Societies Act*, Cap. 377.

Postponement of confiscation proceedings

- 24.(1)** Where the Court considers it appropriate to do so, the Court may
- (a) postpone proceedings under section 15 for a specified period (“the postponement period”); and
 - (b) extend the postponement period for a specified period on one or more occasions.

- (2) Unless the Court is satisfied that there are exceptional circumstances, the postponement period, whether as originally ordered or as extended, shall not exceed a period of 2 years from the date of the conviction of the defendant.
- (3) Where the defendant appeals against his conviction, the Court may, on that account
- (a) defer making any determination as to postponement mentioned in subsection (1) for such period as it may specify; or
 - (b) where it has already exercised its powers under this section to postpone, extend the postponement period.
- (4) Unless the Court is satisfied that there are exceptional circumstances, any postponement or extension under subsection (3), shall not exceed a period of 3 months from the date on which the appeal is determined or otherwise disposed of.
- (5) A postponement or extension under subsection (1) or (3) may be made
- (a) on the application of the defendant or the prosecutor; or
 - (b) by the Court of its own motion.
- (6) An application to extend the postponement period may be granted after the postponement period has ended, provided that the application is made before it ends.

Effect of postponement

- 25.(1)** Subject to subsection (2), where the Court exercises its power to postpone proceedings under section 24, it may nevertheless proceed to sentence a defendant in respect of the offence or any of the offences concerned.
- (2) In sentencing the defendant in respect of the offence, or any of the offences, concerned during the postponement period, the Court shall not
- (a) impose a fine on him;

- (b) make any order involving any payment by him, other than a compensation order; or
 - (c) make any other order for confiscation, compensation or forfeiture under this Act or any other enactment.
- (3) Subject to subsection (4), where the Court has sentenced the defendant under subsection (1) during the postponement period, the Court may, after the end of that period, vary the sentence by
 - (a) imposing a fine on him;
 - (b) making any order involving any payment by him, including a compensation order; or
 - (c) making any other order for confiscation, compensation or forfeiture under this Act or any other enactment.
- (4) The Court may proceed under subsection (3) only within the period of 28 days commencing on the last day of the postponement period.
- (5) Where the Court proceeds to sentence the defendant under subsection (1), section 15 has effect as if the defendant's particular criminal conduct included conduct which constitutes offences which the Court has taken into consideration in deciding his sentence for the offence or offences concerned.

Statement of information

- 26.(1)** The prosecutor shall give the Court a statement of information within the period ordered by the Court where
- (a) the prosecutor applies for a confiscation order; or
 - (b) the Court on its own motion determines that it is appropriate to proceed under section 15 and orders the prosecutor to give the statement.

- (2) Where the prosecutor believes that section 16 applies with respect to a defendant, the statement of information is a statement of matters the prosecutor believes are relevant in connection with deciding
- (a) whether section 16 applies to the defendant;
 - (b) whether the defendant has benefited from his general criminal conduct; and
 - (c) his benefit from the conduct.
- (3) A statement under subsection (2) shall include information the prosecutor believes is relevant
- (a) in connection with the making by the Court of an assumption under section 19; and
 - (b) for the purpose of enabling the Court to determine whether the circumstances are such that it shall not make such an assumption.
- (4) Where the prosecutor does not believe that section 16 applies to a defendant, the statement of information is a statement of matters the prosecutor believes are relevant in connection with deciding
- (a) whether the defendant has benefited from his particular criminal conduct; and
 - (b) his benefit from the conduct.
- (5) Where the prosecutor gives the Court a statement of information, the prosecutor
- (a) may at any time give the Court a further statement of information; and
 - (b) shall give the Court a further statement of information where it orders him to do so, within the period ordered by the Court.
- (6) The Court may, at any time, vary an order made under this section.

Defendant's response to statement of information

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

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

(2) Where the defendant accepts to any extent an allegation in a statement of information, the Court may treat his acceptance as conclusive of the matters to which it relates for the purpose of deciding the issues referred to in section 26(2) or (4), as the case may be.

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

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

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

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

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

Provision of information by defendant

28.(1) The Court may, at any time, for the purpose of obtaining information to help the Court in carrying out its functions under this Act, order a defendant to provide it with such information as may be specified in the order.

- (2) An order under this section may require all or a specified part of the information to be given in a specified manner and before a specified date.
- (3) Where the defendant fails without reasonable excuse to comply with an order under this section the Court may draw such inference as it believes is appropriate.
- (4) Subsection (3) does not affect any power of the Court to deal with the defendant in respect of a failure to comply with an order under this section.
- (5) Where the prosecutor accepts to any extent an allegation made by the defendant
 - (a) in giving information required by an order under this section; or
 - (b) in any other statement given to the Court in relation to any matter relevant to determining the amount available to him for the purposes of section 17,

the Court may treat the acceptance as conclusive of the matters to which it relates.

- (6) For the purposes of this section an allegation may be accepted in a manner ordered by the Court.
- (7) The Court may, at any time, vary an order made under this section.
- (8) No information given under this section which amounts to an admission by a defendant that he has benefited from criminal conduct is admissible in evidence in proceedings for an offence.

Reconsideration of case where no confiscation order made

- 29.(1)** This section applies where
- (a) section 13(1) applies in respect of a defendant, but the Court has not proceeded under section 15;
 - (b) there is evidence which was not available to the prosecutor on the relevant date;

- (c) before the end of the period of 6 years starting with the date of conviction, the prosecutor applies to the Court to consider the evidence; and
 - (d) after considering the evidence the Court believes it is appropriate for it to proceed under section 15.
- (2) Where subsection (1) applies, the Court shall proceed under section 15 and subsections (3) to (8) apply for the purpose.
- (3) Where the Court has already sentenced the defendant for the offence (or any of the offences) concerned, section 15 has effect as if his particular criminal conduct included conduct which constitutes offences which the Court has taken into consideration in deciding his sentence for the offence or offences concerned.
- (4) The Court shall, instead of taking account of the matters specified in section 18(1)(a) and (b), take account of
 - (a) conduct occurring before the relevant date;
 - (b) property obtained before the relevant date; and
 - (c) property obtained on or after the relevant date where it was obtained as a result of, or in connection with, conduct occurring before the relevant date.
- (5) For the purposes of this section
 - (a) the assumptions specified in section 19(2)(a) and (b) do not apply with regard to property first held by the defendant on or after the relevant date;
 - (b) the assumption specified in section 19(2)(c) does not apply with regard to expenditure incurred by the defendant on or after the relevant date; and
 - (c) the assumption specified in section 19(2)(d) does not apply with regard to property obtained, or assumed to have been obtained, by the defendant on or after the relevant date.

- (6) The recoverable amount for the purposes of section 15 is such amount, not exceeding the amount determined in accordance with section 17, as the Court considers just.
- (7) In arriving at the just amount the Court shall have regard in particular to
- (a) the recoverable amount determined in accordance with section 17;
 - (b) any fine imposed on the defendant in respect of the offence or any of the offences concerned;
 - (c) any order within section 22(1)(b) or (c) that has been made against the defendant in respect of the offence, or any of the offences, concerned and has not already been taken into account by the Court in determining what is the realisable property held by him for the purposes of section 17; and
 - (d) any compensation order that has been made against the defendant in respect of the offence, or any of the offences, concerned.
- (8) Where a compensation order has been made against the defendant in respect of the offence or offences concerned section 22(3) and (4) do not apply.
- (9) For the purposes of this section, “the relevant date” is, where the Court
- (a) made a decision not to proceed under section 15, the date of the decision; or
 - (b) did not make such a decision, the date of conviction.

Reconsideration of benefit where no confiscation order made

- 30.(1)** This section applies where
- (a) in proceeding under section 15, the Court has determined that
 - (i) section 16 applies to the defendant but he has not benefited from his general criminal conduct; or
 - (ii) section 16 does not apply to the defendant and he has not benefited from his particular criminal conduct;

- (b) there is evidence which was not available to the prosecutor when the Court determined that the defendant had not benefited from his general or particular criminal conduct;
 - (c) before the end of the period of 6 years starting with the date of conviction the prosecutor applies to the Court to consider the evidence; and
 - (d) after considering the evidence, the Court concludes that it would have determined that the defendant had benefited from his general or particular criminal conduct, as the case may be, if the evidence had been available to it.
- (2) Where this section applies, the Court
 - (a) shall make a fresh determination under section 15(1)(a) or (b) as to whether the defendant has benefited from his general or particular criminal conduct, as the case may be; and
 - (b) may make a confiscation order under section 15.
- (3) Subsections (4) to (8) apply where the Court proceeds under section 15 pursuant to this section.
- (4) Where the Court has already sentenced the defendant for the offence, or any of the offences concerned, section 15 has effect as if the defendant's particular criminal conduct included conduct which constitutes offences which the Court has taken into consideration in deciding his sentence for the offence or offences concerned.
- (5) The Court shall, instead of taking account of the matters specified in section 18(1)(a) and (b), take account of
 - (a) conduct occurring before the date of the original decision that the defendant had not benefited from his general or particular criminal conduct;
 - (b) property obtained before that date; and

- (c) property obtained on or after that date where it was obtained as a result of, or in connection with, conduct occurring before that date.
- (6) For the purposes of this section
 - (a) the assumptions specified in section 19(2)(a) and (b) do not apply with regard to property first held by the defendant on or after the date of the original decision that the defendant had not benefited from his general or particular criminal conduct;
 - (b) the assumption specified in section 19(2)(c) does not apply with regard to expenditure incurred by him on or after that date; and
 - (c) the assumption specified in section 19(2)(d) does not apply with regard to property obtained, or assumed to have been obtained, by him on or after that date.
- (7) The recoverable amount for the purposes of section 17 is such amount as the Court considers just, but that amount shall not exceed the amount that the recoverable amount would have been under section 17 if this subsection did not apply.
- (8) In arriving at the just amount the Court shall have regard in particular to
 - (a) the recoverable amount determined in accordance with section 17;
 - (b) any fine imposed on the defendant in respect of the offence, or any of the offences, concerned;
 - (c) any order within section 22(1)(b) or (c) that has been made against him in respect of the offence, or any of the offences, concerned and has not already been taken into account by the Court in determining what is the realisable property held by him for the purposes of section 17; and
 - (d) any compensation order that has been made against him.

Reconsideration of benefit where confiscation order made

- 31.(1)** This section applies where
- (a) the Court has made a confiscation order;
 - (b) there is evidence which was not available to the prosecutor at the relevant time;
 - (c) the prosecutor believes that if the Court were to determine the amount of the defendant's benefit pursuant to this section it would exceed the relevant amount;
 - (d) before the end of the period of 6 years starting with the date of conviction the prosecutor applies to the Court to consider the evidence; and
 - (e) after considering the evidence the Court believes it is appropriate for it to proceed under this section.
- (2) Where this section applies, the Court shall make a new calculation of the defendant's benefit from the conduct concerned, and subsections (3) to (11) apply for this purpose.
- (3) Where the Court has already sentenced the defendant for the offence, or any of the offences concerned, section 15 has effect as if his particular criminal conduct included conduct which constitutes offences which the Court has taken into consideration in deciding his sentence for the offence or offences concerned.
- (4) The Court shall, instead of taking account of the matters specified in section 18(1)(a) and (b), take account of
- (a) conduct occurring up to the time it determined the defendant's benefit for the purposes of the confiscation order;
 - (b) property obtained up to that time; and
 - (c) property obtained after that time where it was obtained as a result of, or in connection with, conduct occurring before that time.

- (5) In applying section 18(3)(b), the confiscation order shall be ignored.
- (6) For the purposes of this section
 - (a) the assumptions specified in section 19(2)(a) and (b) do not apply with regard to property first held by the defendant after the time the Court determined his benefit for the purposes of the confiscation order;
 - (b) the assumption specified in section 19(2)(c) does not apply with regard to expenditure incurred by him after that time; and
 - (c) the assumption specified in section 19(2)(d) does not apply with regard to property obtained, or assumed to have been obtained, by him after that time.
- (7) Where the amount determined under the new calculation of the defendant's benefit exceeds the relevant amount, the Court
 - (a) shall make a new calculation of the recoverable amount for the purposes of section 15; and
 - (b) where it exceeds the amount required to be paid under the confiscation order, may vary the order by substituting for the amount required to be paid, such amount as it believes is just.
- (8) In applying subsection (7)(a) the Court shall
 - (a) take the new calculation of the defendant's benefit; and
 - (b) apply section 17 as if references to the time the confiscation order is made were to the time of the new calculation of the recoverable amount and as if references to the date of the confiscation order were to the date of that new calculation.
- (9) In applying subsection (7)(b) the Court
 - (a) shall have regard in particular to
 - (i) any fine imposed on the defendant for the offence, or any of the offences, concerned;

- (ii) any order within section 22(1)(*b*) or (*c*) that has been made against the defendant in respect of the offence, or any of the offences, concerned and has not already been taken into account by the Court in determining what is the realisable property held by him for the purposes of section 17; and
 - (iii) any compensation order that has been made against the defendant in respect of the offence, or any of the offences, concerned; but
 - (*b*) shall not have regard to an order falling within paragraph (*a*)(iii) where an order has been made under section 22(4).
- (10) In determining under this section whether one amount exceeds another, the Court shall take account of any change in the value of money.
- (11) For the purposes of this section,
- “the relevant time” is
- (*a*) when the Court calculated the defendant’s benefit for the purposes of the confiscation order, where this section has not applied previously; or
 - (*b*) when the Court last calculated the defendant’s benefit pursuant to this section, where this section has applied previously;
- “the relevant amount” is
- (*a*) the amount determined as the defendant’s benefit for the purposes of the confiscation order, where this section has not applied previously; or
 - (*b*) the amount last determined as the defendant’s benefit pursuant to this section, where this section has applied previously.

Reconsideration of amount available to defendant where confiscation order made

32.(1) This section applies where

- (a) the Court has made a confiscation order;
- (b) the amount required to be paid was the amount determined in accordance with section 17(3); and
- (c) the prosecutor or an enforcement receiver appointed in relation to the order applies to the Court to make a new calculation of the amount available to the defendant.

(2) Where this section applies, the Court shall make the new calculation and, in doing so, it shall apply section 17 as if references to the time the confiscation order is made were to the time of the new calculation and as if references to the date of the confiscation order were to the date of the new calculation.

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

(4) In deciding what is just the Court

- (a) shall have regard, in particular to
 - (i) any fine imposed on the defendant for the offence, or any of the offences, concerned;
 - (ii) any order within section 22(1)(b) or (c) that has been made against the defendant in respect of the offence, or any of the offences, concerned and has not already been taken into account by the Court in determining what is the realisable property held by him for the purposes of section 17; and

- (iii) any compensation order that has been made against him in respect of the offence, or any of the offences, concerned; but
 - (b) shall not have regard to an order falling within paragraph (a)(iii) where an order has been made under section 22(4).
- (5) In determining under this section whether one amount exceeds another, the Court shall take account of any change in the value of money.
- (6) In this section (3), “the relevant amount” is
- (a) the amount determined as the amount available to the defendant for the purposes of the confiscation order, where this section has not applied previously; or
 - (b) the amount last determined as the amount available to the defendant pursuant to this section, where this section has applied previously.
- (7) In this section, the amount determined as the defendant’s benefit from the conduct concerned is
- (a) the amount determined when the confiscation order was made; or
 - (b) where one or more new calculations of the defendant’s benefit have been made under section 31 the amount determined on the occasion of the last such calculation.

Variation of order where amount available to defendant is inadequate

- 33.(1)** This section applies where
- (a) the Court has made a confiscation order; and
 - (b) the defendant, the prosecutor or an enforcement receiver appointed in relation to the order applies to the Court to vary the order under this section.
- (2) Where this section applies, the Court shall calculate the amount available to the defendant and, in doing so, it shall apply section 17 as if references to the

time the confiscation order is made were to the time of the calculation and as if references to the date of the confiscation order were to the date of the calculation.

(3) Where the Court determines that the amount available to the defendant calculated in accordance with subsection (2) is inadequate for the payment of any amount remaining to be paid under the confiscation order, the Court may vary the order by substituting for the amount required to be paid, such smaller amount as it considers just.

(4) Where a person has been adjudged bankrupt or his estate has been sequestrated, or where an order for the liquidation of a company has been made, the Court shall take into account the extent to which realisable property held by the person or company may be distributed among creditors.

(5) The Court may disregard any inadequacy which it believes is attributable, wholly or partly, to anything done by the defendant for the purpose of preserving property held by the recipient of a tainted gift from any risk of realisation under this Act.

Discharge of order for inadequacy of amount available to defendant

34.(1) This section applies where

- (a) the Court has made a confiscation order;
- (b) the Registrar applies to the Court for the discharge of the order; and
- (c) the amount remaining to be paid under the order is less than such sum as may be prescribed by the Minister by Order.

(2) Where this section applies, the Court shall calculate the amount available to the defendant and, in doing so, it shall apply section 17 as if references to the time the confiscation order is made were to the time of the calculation and as if references to the date of the confiscation order were to the date of the calculation.

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

it may discharge the confiscation order.

- (4) The reasons referred to in subsection (3) are
- (a) in a case where any of the realisable property consists of money in a currency other than dollars, that fluctuations in currency exchange rates have occurred; and
 - (b) such other reasons as may be prescribed by the Minister by Order.
- (5) The discharge of a confiscation order under this section does not prevent the making of an application in respect of the order under section 31(1)(d) or 32(1)(c).
- (6) Where on such an application the Court determines that the order should be varied under section 31(7) or 32(3), as the case may be, the court may provide that its discharge under this section is revoked.

Discharge of order where small amount outstanding

35.(1) The Court may, on its own motion or upon the application of the person against whom a confiscation order is made, discharge a confiscation order where the amount remaining to be paid under the order is less than such sum as may be prescribed by the Minister by Order.

- (2) The discharge of a confiscation order under this section does not prevent the making of an application in respect of the order under section 31(1)(d) or 32(1)(c).

(3) Where on such an application the Court determines that the order should be varied under section 31(7) or 32(3), as the case may be, the court may provide that its discharge under this section is revoked.

Additional cases where statement of information to be submitted

36. Where the Court proceeds under section 15 pursuant to section 29 or 30 or the prosecutor applies under section 31

- (a) the prosecutor shall give the Court a statement of information within such period as the Court orders;
- (b) section 26 applies, with such modifications as may be necessary, where the prosecutor applies under section 31; and
- (c) sections 27 and 28 apply.

Making of confiscation order where defendant absconds after conviction or committal

37.(1) This section applies where

- (a) a defendant absconds
 - (i) before or after he is convicted of an offence or offences in proceedings before the Court; or
 - (ii) after he is committed to the Court by a magistrate in respect of an offence or offences under section 68;
- (b) the prosecutor applies to the Court to proceed under this section; and
- (c) the Court believes it is appropriate for it to do so.

(2) Where this section applies, subject to subsections (3) and (4), the Court may proceed under section 15.

(3) Where the Court proceeds under section 15 pursuant to subsection (1), this Part has effect with the following modifications:

- (a) any person the Court believes is likely to be affected by an order under section 15 is entitled to appear before the Court and make representations;
- (b) the Court shall not make an order under section 15 unless the prosecutor has taken reasonable steps to contact the defendant;
- (c) sections 19, 26(3), 27 and 28 shall be ignored; and
- (d) sections 29, 30 and 31 shall be ignored while the defendant is still an absconder.

(4) Where a defendant ceases to be an absconder, section 29 applies instead of subsection (3).

Making of confiscation order where defendant absconds and is neither convicted nor acquitted

38.(1) This section applies where

- (a) proceedings for an offence or offences are instituted against a defendant but are not concluded;
- (b) the defendant absconds;
- (c) a period of 2 years, starting with the date the Court believes the defendant absconded, has ended;
- (d) the prosecutor applies to the Court to proceed under this section; and
- (e) the Court believes it is appropriate for it to do so.

(2) Where subsection (1) applies, subject to subsection (3), the Court shall proceed under section 15.

(3) Where the Court proceeds under section 15 pursuant to this section, this Part has effect with the following modifications:

- (a) any person the Court believes is likely to be affected by an order under section 15 is entitled to appear before the Court and make representations;
- (b) the Court shall not make an order under section 15 unless the prosecutor has taken reasonable steps to contact the defendant;
- (c) sections 19, 26(3) and 27 to 30 shall be ignored; and
- (d) section 31 shall be ignored while the defendant is still an absconder.

(4) Where the defendant ceases to be an absconder, section 31 has effect as if references to the date of conviction were to

- (a) the day when proceedings for the offence concerned were instituted against the defendant; or
- (b) where there are 2 or more offences and proceedings for them were instituted on different days, the earliest of those days.

(5) Where

- (a) the Court makes an order under section 15 as applied by this section; and
- (b) the defendant is later convicted in proceedings before the Court of the offence, or any of the offences, concerned,

section 15 does not apply so far as that conviction is concerned.

Variation of confiscation order made pursuant to section 38

39.(1) This section applies where

- (a) the Court makes a confiscation order under section 15 as applied by section 38;
- (b) the defendant ceases to be an absconder;

- (c) the defendant is convicted of an offence, or any of the offences, mentioned in section 38(1)(a);
 - (d) the defendant believes that the amount required to be paid was too large, taking into account the circumstances prevailing when the amount was determined for the purposes of the order; and
 - (e) before the end of the relevant period the defendant applies to the Court to consider the evidence on which his belief is based.
- (2) Where, after considering the evidence, the Court concludes that the defendant's belief is well founded, the Court
- (a) shall determine the amount which should have been the amount required to be paid, taking into account the circumstances prevailing when the amount was determined for the purposes of the order; and
 - (b) may vary the order by substituting for the amount required to be paid, such amount as it believes is just.
- (3) For the purposes of subsection (1), the relevant period is the period of 28 days starting with
- (a) the date on which the defendant was convicted of the offence mentioned in section 38(1)(a); or
 - (b) where there are 2 or more offences and the convictions were on different dates, the date of the latest.
- (4) Where section 38(1)(a) applies to more than one offence, the Court shall not make an order under this section unless it is satisfied that there is no possibility of any further proceedings being taken or continued in relation to any such offence in respect of which the defendant has not been convicted.

Discharge of confiscation order made pursuant to section 38

40.(1) Where the Court makes a confiscation order under section 15 as applied by section 38, it shall discharge the order where the defendant

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

(2) Subsection (3) applies where

- (a) the Court makes a confiscation order under section 15 as applied by section 38;
- (b) the defendant ceases to be an absconder;
- (c) subsection (1)(a) does not apply; and
- (d) the defendant applies to the Court to discharge the order.

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

- (a) there has been undue delay in continuing the proceedings mentioned in section 38(1); or
- (b) the prosecutor does not intend to proceed with the prosecution.

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

Appeal to Court of Appeal in respect of confiscation order

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

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

(3) Subsections (1) and (2) do not apply to an order or decision made by virtue of section 29, 30, 37 or 38 unless the appellant is the defendant.

Court's powers on appeal in respect of confiscation order

42.(1) On an appeal under section 41(1) the Court of Appeal may confirm, set aside or vary the confiscation order.

(2) On an appeal under section 41(2), the Court of Appeal may confirm the decision, or where it believes the decision was wrong it may

(a) itself proceed under section 15 (ignoring subsections (1) to (3) of section 15); or

(b) direct the Court to proceed afresh under section 15.

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

(4) Where the Court of Appeal makes or varies a confiscation order under this section or the Court does so pursuant to a direction by the Court of Appeal under this section, the relevant court shall have regard to

(a) any fine imposed on the defendant in respect of the offence, or any of the offences, concerned; and

(b) any order within section 22(1)(b) or (c) that has been made against the defendant in respect of the offence, or any of the offences, concerned, unless the order has already been taken into account by the Court in determining what is the realisable property held by the defendant for the purposes of section 17.

(5) Where the Court of Appeal proceeds under section 15 or the Court proceeds afresh under that section pursuant to a direction under this section, subsections (6) to (11) apply and in subsections (6) to (10) "court" means the Court of Appeal or the Court, as the case may be.

(6) Where the court has already sentenced the defendant for the offence, or any of the offences concerned, section 15 has effect as if his particular criminal

conduct included conduct which constitutes offences which the court has taken into consideration in deciding his sentence for the offence or offences concerned.

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

- (a) the court shall have regard to the order; and
- (b) section 22(3) and (4) do not apply in relation to the order.

(8) The court shall, instead of taking account of the matters specified in section 18(1)(a) and (b), take account of

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

(9) For the purposes of this section

- (a) the assumptions specified in section 19(2)(a) and (b) do not apply with regard to property first held by the defendant on or after the relevant date;
- (b) the assumption specified in section 19(2)(c) does not apply with regard to expenditure incurred by him on or after that date; and
- (c) the assumption specified in section 19(2)(d) does not apply with regard to property obtained, or assumed to have been obtained, by him on or after that date.

(10) Section 36 applies where the court proceeds under section 15 pursuant to this section as section 36 applies in the circumstances specified in section 36.

(11) The relevant date is the date on which the Court decided not to make a confiscation order.

*Division 3**Forfeiture Orders***Application for forfeiture order**

43.(1) Where the prosecutor intends to apply for a forfeiture order against property in respect of a person's conviction of an offence

- (a) the prosecutor shall give no less than 14 days' written notice of the application to the person and to any other person who the prosecutor has reason to believe may have an interest in the property;
- (b) the person, and any other person who claims an interest in the property, may appear and adduce evidence at the hearing of the application; and
- (c) the Court may, at any time before the final determination of the application, direct the prosecutor to
 - (i) give notice of the application to any person who, in the opinion of the Court, appears to have an interest in the property; and
 - (ii) publish, at least twice, in the *Official Gazette* and in a daily newspaper widely circulated in Barbados, notice of the application in the manner and containing the particulars, and within the time, that the Court considers appropriate.

(2) The prosecutor may, before the final determination of an application for a forfeiture order, apply to the Court to amend the application to include any other property, and the Court may so amend the application where it is satisfied that

- (a) the property was not reasonably capable of identification when the application was originally made; or
- (b) necessary evidence became available only after the application was originally made.

(3) Where the prosecutor intends to apply to amend an application for a forfeiture order and the amendment would have the effect of including additional

property in the application for the forfeiture order, the prosecutor shall give no less than 14 days' written notice of the application to amend to any person who he has reason to believe may have an interest in the property to be included in the application for the forfeiture order.

(4) Any person who claims an interest in the property to be included in the application for the forfeiture order may appear and adduce evidence at the hearing of the application to amend it.

(5) Where an application under this section is finally determined, no further application for a forfeiture order may be made in respect of the offence for which the person was convicted unless the Court gives leave for the making of a new application on being satisfied that

- (a) the property to which the new application relates was identified after the previous application was determined;
- (b) necessary evidence became available after the previous application was determined; or
- (c) it is in the interests of justice that the new application be made.

(6) The prosecutor shall not make an application under this section after the end of the relevant application period in relation to the conviction.

(7) In subsection (6) "relevant application period", in relation to a person's conviction of an offence, means the period of 12 months, where the person is to be taken to have been convicted of the offence by reason of

- (a) subsection (8)(a), after the day on which the person was convicted of the offence;
- (b) subsection (8)(b), after the day on which the person was discharged without conviction;
- (c) subsection (8)(c), after the day on which the court took the offence into account in passing sentence for the other offence referred to therein.

- (8) For the purposes of subsection (7), a person is to be taken to be convicted of an offence where
- (a) he is convicted, whether summarily or on indictment, of the offence;
 - (b) he is charged with the offence and is found guilty but is discharged without conviction; or
 - (c) a court with his consent takes the offence, of which he has not been found guilty, into account in sentencing him for another offence.

Making of forfeiture order

44.(1) Where the prosecutor applies to the Court for a forfeiture order against property in respect of a person's conviction of an offence and the Court is satisfied that the property is property of the nature specified in section 13(2)(b) or (c) in respect of the offence, the Court may order that the property or such of the property as is specified by the Court in the order be forfeited to the Crown.

- (2) In determining whether property is property of the nature specified in section 13(2)(b) or (c) the Court may infer that
- (a) the property was used in, or in connection with, or was intended to be used in, or in connection with, the commission of the offence, where the evidence establishes that the property was in the person's possession at the time of, or immediately after, the commission of the offence for which the person was convicted;
 - (b) the property was obtained as a result of, or in connection with, the commission by the person of the offence for which the person was convicted, where the evidence establishes that property, and in particular money, was found in the person's possession or under his control in a building, vehicle, receptacle or other place during the course of investigations conducted by the police before or after the arrest and charge of the person for the offence for which the person was convicted;

- (c) the value of the increase represents property which was obtained as a result of, or in connection with, the commission by the person of the offence for which the person was convicted, where the evidence establishes that the value, after the commission of the offence, of all ascertainable property of the person convicted of the offence exceeds the value of all ascertainable property of the person prior to the commission of the offence, and the Court is satisfied that the income of the person from sources unrelated to the criminal conduct of the person cannot reasonably account for the increase in value.
- (3) Where the Court orders that property, other than money, be forfeited to the Crown, the Court shall specify in the order the amount that it considers to be the value of the property at the time when the order is made.
- (4) In considering whether a forfeiture order should be made under subsection (1), the Court shall have regard to
- (a) the rights and interests, if any, of third parties in the property;
 - (b) the gravity of the offence concerned;
 - (c) any hardship that may reasonably be expected to be caused to any person, by the operation of the order; and
 - (d) the use that is ordinarily made of the property, or the use to which the property was intended to be put.
- (5) Where the Court makes a forfeiture order the Court may give such directions as are necessary or convenient for giving effect to the order.

Effect of forfeiture order

45.(1) Subject to subsection (2), where the Court makes a forfeiture order against any property, the property vests absolutely in the Crown by virtue of the order.

- (2) Where property directed by a forfeiture order to be forfeited is registrable property
- (a) the property vests in the Crown in equity but does not vest in the Crown at law until the applicable registration requirements have been complied with;
 - (b) the Crown is entitled to be registered as owner of the property; and
 - (c) the Attorney-General has power on behalf of the Crown to do, or authorise the doing of, anything necessary or convenient to obtain the registration of the Crown as owner, including the execution of any instrument required to be executed by a person transferring an interest in property of that kind.
- (3) Where the Court makes a forfeiture order against property
- (a) the property shall not, except with the leave of the Court and in accordance with any directions of the Court, be disposed of, or otherwise dealt with, by or on behalf of the Crown, before the relevant appeal date; and
 - (b) if, after the relevant appeal date, the order has not been discharged, the property may be disposed of and the proceeds applied or otherwise dealt with in accordance with the directions of the Recovery Authority; and the directions shall be followed.
- (4) Without limiting the generality of subsection (3)(b) the directions that may be given pursuant to that subsection include a direction that the property is to be disposed of in accordance with the provisions of any enactment specified in the direction.
- (5) In this section
- “registrable property” means property the title to which is passed by registration in accordance with the *Land Registration Act*, Cap. 229;

“relevant appeal date” used in relation to a forfeiture order made in consequence of a person’s conviction of an offence, means

- (a) the date on which the period allowed by the rules of court for the lodging of an appeal against a person’s conviction or for the lodging of an appeal against the making of a forfeiture order expires without an appeal having been lodged, whichever is the later; or
- (b) where an appeal against a person’s conviction or against the making of a forfeiture order is lodged, the date on which the appeal lapses in accordance with the rules of court or is finally determined, whichever is the later.

Voidable transfers

46. The Court may

- (a) before making a forfeiture order; and
- (b) in the case of property in respect of which a restraining order was made, where the order was served in accordance with section 54(5),

set aside any conveyance or transfer of the property that occurred after the seizure of the property or the service of the restraining order, unless the conveyance or transfer was made for valuable consideration to a person acting in good faith and without notice.

Protection of third parties in relation to forfeiture order

47.(1) Where an application is made for a forfeiture order against property, a person who claims an interest in the property may apply to the Court, before the forfeiture order is made, for an order under subsection (2).

(2) Where a person applies to the Court for an order under this section in respect of his interest in property and the Court is satisfied on a balance of probabilities

- (a) that he was not in any way involved in the commission of the offence; and
- (b) where he acquired the interest during or after the commission of the offence, that he acquired the interest
 - (i) for sufficient consideration; and
 - (ii) without knowing, and in circumstances such as not to arouse a reasonable suspicion, that the property was, at the time he acquired it, property of the nature specified in section 13(2)(b) or (c),

the Court shall make an order declaring the nature, extent and value (as at the time the order is made) of his interest.

(3) Subject to subsection (4), where a forfeiture order has already been made directing the forfeiture of property, a person who claims an interest in the property may, before the end of the period of 12 months beginning on the day on which the forfeiture order is made, apply under this subsection to the Court for an order under subsection (2).

(4) A person who

- (a) had knowledge of the application for the forfeiture order before the order was made; or
- (b) appeared at the hearing of that application,

shall not be permitted to make an application under subsection (3), except with the leave of the Court.

(5) A person who intends to make an application under subsection (1) or (3) shall give no less than 14 days' written notice of the making of the application to the prosecutor, who shall be a party to any proceedings on the application.

(6) An applicant or the prosecutor may, in accordance with the rules of court, appeal to the Court of Appeal from an order made under subsection (2).

(7) The Recovery Authority shall, on application made by any person who has obtained an order under subsection (2), and where the period allowed by the rules of court with respect to the making of appeals has expired or any appeal from that order taken under subsection (6) has been determined, direct that

- (a) the property or the part thereof to which the interest of the applicant relates be returned to the applicant; or
- (b) an amount equal to the value of the interest of the applicant, as declared in the order, be paid to the applicant;

and the directions shall be followed.

Discharge of forfeiture order on appeal and quashing of conviction

48.(1) Where the Court makes a forfeiture order against property in reliance on a person's conviction of an offence and the conviction is subsequently quashed, the quashing of the conviction discharges the order.

(2) Where a forfeiture order against property is discharged as provided for in subsection (1) or by the court hearing an appeal against the making of the order, any person who claims to have an interest in the property immediately before the making of the forfeiture order may apply to the Recovery Authority in writing for the transfer of the interest to the person.

(3) On receipt of an application under subsection (2) the Recovery Authority shall

- (a) where the interest is vested in the Crown, give directions that the property or part thereof to which the interest of the applicant relates be transferred to the person; or
- (b) in any other case, direct that there be payable to the person an amount equal to the value of the interest as at the time the order is made;

and the directions shall be followed.

(4) In the exercise of his powers under this section and section 47 the Recovery Authority shall have the power to do or authorise the doing of anything necessary or convenient to effect the transfer or return of property, including the execution of any instrument and the making of an application for the registration of an interest in the property on any appropriate register.

Payment instead of forfeiture order

49. Where the Court is satisfied that a forfeiture order should be made in respect of the property of a person convicted of an offence but that the property or any part thereof or interest therein cannot be made subject to such an order and, in particular

- (a) cannot, on the exercise of due diligence, be located;
- (b) has been transferred to a third party in circumstances which do not give rise to a reasonable inference that the title or interest was transferred for the purpose of avoiding the forfeiture of the property;
- (c) is located outside Barbados;
- (d) has been substantially diminished in value or rendered worthless; or
- (e) has been commingled with other property that cannot be divided without difficulty,

the Court may, instead of ordering the property or part thereof or interest therein to be forfeited, order the person to pay to the Crown an amount equal to the value of the property, part or interest.

Application for forfeiture order on abscondence

50.(1) Where a person absconds in connection with an offence committed after the commencement date, the prosecutor may apply to the Court for a forfeiture order under section 51 in respect of any property that is property of the nature specified in section 13(2)(b) or (c).

(2) For the purposes of this section, a person shall be deemed to have absconded in connection with an offence where

- (a) an information has been laid alleging the commission of the offence by the person;
- (b) a warrant for the arrest of the person has been issued in relation to the information; and
- (c) reasonable attempts to arrest the person pursuant to the warrant have been unsuccessful during the period of 6 months commencing on the day the warrant was issued,

and the person shall be deemed to have so absconded on the last day of the period of 6 months.

(3) Where the prosecutor applies under this section for a forfeiture order against any property specified in subsection (1) the Court shall, before hearing the application, direct that notice of the application be

- (a) given to any person who, in the opinion of the Court, appears to have an interest in the property;
- (b) published, at least twice, in the *Official Gazette* and in a daily newspaper widely circulated in Barbados containing such particulars, and for so long, as the Court may require.

Making of forfeiture order on abscondence

51.(1) Subject to section 50(3), where an application is made to the Court under section 50(1) for a forfeiture order against any property in consequence of a person's abscondence in connection with an offence and the Court is satisfied that

- (a) the property is property of the nature specified in section 13(2)(b) or (c) in respect of the offence;
- (b) proceedings in respect of an offence committed in relation to the property were commenced; and

- (c) the person charged with the offence referred to in paragraph (b) has absconded,

the Court may order that the property or such of the property as is specified by the Court in the order be forfeited to the Crown.

- (2) Sections 44(2), (3), (4) and (5), 45, 46 and 47 apply with such modifications and adaptations as may be necessary to give effect to this section.

Division 4

Restraining Orders and Management and Enforcement Receivers

Conditions for exercise of power to make restraining order

- 52.(1)** The Court may exercise the powers conferred by section 54 where
- (a) a criminal investigation has been started with regard to an offence and there are reasonable grounds to suspect that the alleged offender has benefited from his criminal conduct;
 - (b) proceedings for an offence have been instituted and not concluded and there is reasonable cause to believe that the defendant has benefited from his criminal conduct;
 - (c) an application by the prosecutor has been made under section 29, 30, 37 or 38 and not concluded, or the Court believes that such an application is to be made, and there is reasonable cause to believe that the defendant has benefited from his criminal conduct;
 - (d) an application by the prosecutor has been made under section 31 and not concluded, or the Court believes that such an application is to be made, and there is reasonable cause to believe that the Court will decide under that section that the amount determined under the new calculation of the defendant's benefit exceeds the relevant amount, as defined in that section;

- (e) an application by the prosecutor has been made under section 32 and not concluded, or the Court believes that such an application is to be made, and there is reasonable cause to believe that the Court will decide under that section that the amount determined under the new calculation of the amount available to the defendant exceeds the relevant amount, as defined in that section;
 - (f) a criminal investigation has been started with regard to an offence and there are reasonable grounds to suspect that the alleged offender has obtained property as a result of, or in connection with, the commission of the offence or that certain property is an instrumentality of the offence;
 - (g) proceedings for an offence have been instituted and not concluded and there is reasonable cause to believe that the defendant has obtained property as a result of, or in connection with, the commission of the offence or that certain property is an instrumentality of the offence;
 - (h) an application by the prosecutor has been made under section 43 or 50 and not concluded, or the Court believes that such an application is to be made, and there is reasonable cause to believe that the defendant has obtained property as a result of, or in connection with, the commission of the offence or that certain property is an instrumentality of the offence;
 - (i) there is a terrorist designation order in force against a person in respect of whom the powers conferred by section 54 are sought to be exercised;
or
 - (j) an external request for the making, in Barbados, of an order to prohibit dealing with relevant property is accepted.
- (2) Subsection (1)(b) or (g) is not satisfied where the Court believes that
- (a) there has been undue delay in continuing the proceedings; or
 - (b) the prosecutor does not intend to proceed.

- (3) Where an application mentioned in subsection (1)(c), (d), (e) or (h) has been made, the condition specified in the relevant paragraph is not satisfied where the Court believes that
- (a) there has been undue delay in continuing the application; or
 - (b) the prosecutor does not intend to proceed.
- (4) Where subsection (1)(a), (f) or (i) is satisfied
- (a) references in this Part to
 - (i) the defendant are to the alleged offender or the person against whom the terrorist designation order is in force; and
 - (ii) the prosecutor are to the person the Court believes is to have conduct of any proceedings for the offence; and
 - (b) section 12(2) has effect as if proceedings for the offence had been instituted against the defendant when the investigation was started or, where a terrorist designation order is involved, when the terrorist designation order came into force.
- (5) Where subsection (1)(j) is satisfied, references in this Part to
- (a) the defendant are to the alleged offender; and
 - (b) the prosecutor are to the person the Court believes is to have conduct of any proceedings for or related to the restraining order.
- (6) For the purposes of external requests, property is “relevant property” where there are reasonable grounds to believe that it may be needed to satisfy an external order.

Application for restraining order

- 53.(1)** Where the prosecutor intends to apply for a restraining order
- (a) the application may be made without notice to a judge in Chambers;

- (b) the application shall, subject to subsections (2) and (3), state
- (i) where the defendant has been convicted of an offence, the offence for which the defendant was convicted, the date of the conviction, the court before which the conviction was obtained and whether an appeal has been lodged against the conviction;
 - (ii) where the defendant has not been convicted of an offence but a criminal investigation has been started with regard to an offence or proceedings for an offence have been instituted and not concluded, the nature of the offence involved and the grounds for believing that the defendant committed the offence, and where proceedings have been instituted, the court before which the proceedings were instituted;
 - (iii) the grounds for believing that the defendant benefited from his criminal conduct and in particular, that he obtained property as a result of, or in connection with, the commission of the offence;
 - (iv) the grounds for believing that certain property is an instrumentality of the offence;
 - (v) a description of the property in respect of which the restraining order is sought;
 - (vi) the name and address of the person who is believed to be in possession of the property;
 - (vii) where the application seeks a restraining order against property of a person, other than the defendant, the grounds for believing that the property is property of the nature specified section 13(2) (b) or (c) in relation to the offence;
 - (viii) the grounds for believing that a forfeiture order or a confiscation order may be or is likely to be made under this Act in respect of the property; and

- (c) the prosecutor shall, unless the Court is of the opinion that giving notice before the making of the order would result in the disappearance, dissipation or reduction in value of the property, give such written notice of the application as the Court may require to the defendant and to any other person who may be affected by the order.
- (2) Notwithstanding subsection (1)(b)(ii), where the defendant is a person against whom a terrorist designation order is in force
 - (a) it shall not be necessary to support the application with the information specified in subsection (1)(b)(ii); but
 - (b) the application shall be accompanied by a copy of the terrorist designation order.
- (3) Notwithstanding subsection (1), where the defendant is a person in relation to whom an external request is made and accepted, it is sufficient for the application to be supported by a certificate by the official authorised to receive and accept such requests certifying that the request was duly made and accepted in accordance with any relevant enactment, treaty or other arrangement.

Making of restraining order

- 54.(1)** Where any paragraph in section 52(1) is satisfied, the Court may, on the application of the prosecutor, by order, prohibit any person specified in the order from dealing with any realisable property held by him, subject to such conditions and exceptions as the Court may specify in the order.
- (2) Where a restraining order is to be made under subsection (1), the order shall be made without delay.
 - (3) Without limiting subsection (1) and subject to subsection (4), a restraining order may make such provision as the Court thinks fit for meeting out of any realisable property subject to the order
 - (a) any reasonable living expenses;
 - (b) any reasonable legal expenses; and

- (c) any reasonable expenses to enable any person to carry on any trade, business, profession or occupation.
- (4) A restraining order may apply to
 - (a) all realisable property held by a person specified in the order, whether the property is described in the order or not; and
 - (b) realisable property transferred to the person specified in the order after the order is made.
- (5) A copy of a restraining order shall be served on a person affected by the order in such manner as the Court directs or as may be prescribed by rules of court.
- (6) On the application of the prosecutor, whether at the time of the application for the restraining order or at any time afterwards, the Court may make such order as it considers appropriate for ensuring that the restraining order is effective.
- (7) In considering whether to make an order under subsection (6), the Court shall, in particular, consider whether any restriction or prohibition on the defendant's travel outside Barbados ought to be imposed for the purpose mentioned in that subsection.
- (8) A restraining order does not affect property for the time being subject to a charge under any other enactment or pursuant to an order of a court.
- (9) Where the Court makes a restraining order, a law enforcement officer may, for the purpose of preventing any property to which the order applies from being removed from Barbados, seize the property.
- (10) Property seized under subsection (9) shall be dealt with in accordance with the Court's directions.

Variation or discharge of restraining order

55.(1) An application to vary or discharge a restraining order or an order made under section 54(6) may be made to the Court by the prosecutor or by any person affected by the order.

- (2) On an application under subsection (1), the Court
- (a) may vary or discharge the restraining order; or
 - (b) where the application for the restraining order was made on the basis that
 - (i) proceedings referred to in section 52(1) were instituted or an application referred to in that subsection was made, the Court shall discharge the restraining order on the conclusion of the proceedings or the application, as the case may be;
 - (ii) an investigation referred to in section 52(1) was started or an application referred to in that subsection was to be made, the Court shall discharge the restraining order where, within a reasonable period, proceedings for the offence are not instituted or the application is not made, as the case may be.
- (3) Where a restraining order was made on the basis that an external request for the making, in Barbados, of an order to prohibit dealing with relevant property was accepted, the Court shall discharge the order where
- (a) at the conclusion of the proceedings for an offence with respect to which the order was made, no external order is made; or
 - (b) within a reasonable period, no external order is made.

Hearsay evidence

56.(1) Notwithstanding anything to the contrary in the *Evidence Act*, Cap. 121, evidence shall not be excluded on the ground that it is hearsay, of whatever degree, in proceedings

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

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

Appointment of management receiver

57.(1) Where the Court makes a restraining order, it may, on the application of the prosecutor, whether at the time of the application for the restraining order or at any time afterwards, appoint a suitably qualified person to be known as a management receiver in respect of any realisable property to which the restraining order applies.

(2) The Court may, subject to such directions, exceptions and conditions as it may specify, give the management receiver all or any of the following powers, in relation to any realisable property to which the restraining order applies:

- (a) power to take possession of the property;
- (b) power to manage or otherwise deal with the property;
- (c) power to initiate, carry on or defend any legal proceedings in respect of the property;
- (d) power to realise so much of the property as is necessary to meet his remuneration and expenses;
- (e) power to enter any premises and to
 - (i) search for or inspect anything authorised by the Court;
 - (ii) make or obtain a copy, photograph or other record of anything so authorised;
 - (iii) remove anything which the receiver is required or authorised to take possession of by the Court; and
- (f) power to exercise such other powers as the Court considers it appropriate to confer on him for the purpose of exercising his functions.

- (3) The Court may authorise a management receiver to do any one or more of the following for the purpose of the exercise of his functions:
- (a) hold property;
 - (b) enter into contracts;
 - (c) sue and be sued;
 - (d) employ agents;
 - (e) execute powers of attorney, deeds and other instruments; and
 - (f) take such other steps the Court thinks appropriate.
- (4) The Court may require any person having possession of property in respect of which a management receiver is appointed to give the receiver possession of the property.
- (5) The Court may, by order
- (a) require any person holding an interest in any realisable property to which a restraining order applies to pay the management receiver such amount as the Court specifies in respect of a beneficial interest held by the defendant or by a recipient of a tainted gift; and
 - (b) on the payment being made, transfer, grant or extinguish the beneficial interest in the property.
- (6) For the purposes of this section, managing or otherwise dealing with property includes
- (a) selling the property or any part or interest in it;
 - (b) where the property comprises assets of a trade or business, carrying on, or arranging for another person to carry on, the trade or business; and
 - (c) incurring capital expenditure in respect of the property.
- (7) The Court shall not in respect of any property give the management receiver the powers specified in subsection (2)(b) or (d) or exercise the powers conferred by subsection (4) or (5) unless the Court gives any person holding an

interest in the property a reasonable opportunity to make representations to the Court.

Appointment of enforcement receiver

58.(1) The Court may, on the application of the prosecutor, appoint a suitably qualified person to be known as an enforcement receiver in respect of

- (a) realisable property, except property subject to a charge under any other enactment or pursuant to an order of a court, where
 - (i) the Court makes a confiscation order which is not satisfied and is not subject to appeal; or
 - (ii) there is registered in Barbados, an external order for the recovery of a specified sum of money which is not satisfied and in respect of which the time for payment in accordance with section 20 has expired; or
- (b) property (referred to as “specified property”) where an external order in relation to the recovery of the property is registered in Barbados.

(2) The Court may, by order, subject to such directions, exceptions and conditions as it may specify, give the enforcement receiver all or any of the following powers, in relation to any realisable property to which the confiscation order applies:

- (a) power to take possession of the property;
- (b) power to manage or otherwise deal with the property;
- (c) power to initiate, carry on or defend any legal proceedings in respect of the property;
- (d) power to realise the property in such manner as the Court may specify;
- (e) power to enter any premises and to
 - (i) search for or inspect anything authorised by the Court;

- (ii) make or obtain a copy, photograph or other record of anything so authorised;
 - (iii) remove anything which the receiver is required or authorised to take possession of by the Court; and
 - (f) power to exercise such other powers as the Court considers it appropriate to confer on him for the purpose of exercising his functions.
- (3) The Court may authorise an enforcement receiver to do any one or more of the following for the purpose of the exercise of his functions:
- (a) hold property;
 - (b) enter into contracts;
 - (c) sue and be sued;
 - (d) employ agents;
 - (e) execute powers of attorney, deeds and other instruments; and
 - (f) take such other steps the Court thinks appropriate.
- (4) The Court may require any person having possession of property in respect of which an enforcement receiver is appointed to give the receiver possession of the property.
- (5) The Court may, by order
- (a) require any person holding an interest in any realisable property to which a confiscation order applies to pay the enforcement receiver such amount as the Court specifies in respect of a beneficial interest held by the defendant or by a recipient of a tainted gift; and
 - (b) on the payment being made, transfer, grant or extinguish the beneficial interest in the property.
- (6) For the purposes of this section, managing or otherwise dealing with property includes
- (a) selling the property or any part or interest in it;

- (b) where the property comprises assets of a trade or business, carrying on, or arranging for another person to carry on, the trade or business; and
 - (c) incurring capital expenditure in respect of the property.
- (7) The Court shall not, in respect of any property, exercise the powers conferred by subsection (4) or (5) unless the Court gives any person holding an interest in the property a reasonable opportunity to make representations to the Court.
- (8) For the purpose of
 - (a) subsection (1)(a)(ii), a reference in subsections (2) and (5) to a confiscation order shall be treated as a reference to the external order; and
 - (b) subsection (1)(b), a reference in subsections (2) and (5) to realisable property shall be treated as a reference to the specified property referred to in the external order.

Effect of restraining order or order appointing enforcement receiver

59.(1) Where the Court makes a restraining order or an order appointing an enforcement receiver, no distress may be levied against any realisable property to which the order applies except with the leave of the Court and subject to any terms the Court may impose.

(2) Where a restraining order or an order appointing an enforcement receiver applies to a tenancy of any premises, no landlord or other person to whom rent is payable may exercise a right of forfeiture by peaceable re-entry in relation to the premises in respect of any failure by the tenant to comply with any term or condition of the tenancy, except with the leave of the Court and subject to any terms the Court may impose.

(3) Where proceedings are pending before the Court in respect of any property and the Court is satisfied that a restraining order or an order for the appointment of an enforcement receiver has been applied for or made in respect of the property,

the Court may stay the proceedings or allow them to continue on any terms the Court thinks fit.

(4) The Court shall, before exercising any power conferred by subsection (3), give the prosecutor and any management or enforcement receiver appointed in respect of the property a reasonable opportunity to make representations to the Court.

Application of proceeds of realisation and other sums

60.(1) Subject to subsection (2), an enforcement receiver shall, after making such payments as the Court may direct, out of the following sums in his hands:

- (a) the proceeds of the realisation of any property realised pursuant to his powers under section 58; and
- (b) any other sums in which a defendant holds an interest,

apply the remainder, if any, on the defendant's behalf towards the satisfaction of the confiscation order.

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

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

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

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

(4) Where a receiver appointed under this Act pays money to the Registrar, the Registrar shall pay the receiver's remuneration and expenses before applying the sum for any other purpose.

(5) Where the Court makes an order under section 22(4), the Registrar shall, after making any payment required by subsection (4), next apply any balance in his hands in payment of such amount of the compensation order as may be outstanding.

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

(7) A reference in this section to a confiscation order shall be deemed to include a reference to an external order described in section 58(1).

Receivers not liable for certain action

61. Where a management or enforcement receiver

- (a) takes action in relation to property
 - (i) which is not realisable property; or
 - (ii) in the case of an external order described in section 58(1)(b), which is not the specified property;
- (b) would be entitled to take the action if the property were realisable property or the specified property, as the case may be; and
- (c) believes on reasonable grounds that he is entitled to take the action,

the receiver is not liable to any person in respect of any loss or damage resulting from the action, except so far as the loss or damage is caused by his negligence.

Receivers and other interested persons may seek Court's directions

62. A receiver or any person who is, or may be, affected by any action that the receiver takes or proposes to take may apply to the Court for an order giving directions on the exercise of the powers of the receiver; and the Court may make such order as it considers appropriate.

Discharge and variation of section 57 or 58 order

63.(1) A receiver, prosecutor or person affected by an order under section 57 or 58 may apply to the Court to vary or discharge the order; and the Court may vary or discharge the order as it considers appropriate.

(2) In the case of an order under section 57, where the condition in section 52(1) which was satisfied was that

- (a) proceedings were instituted or an application was made, the Court shall discharge the order on the conclusion of the proceedings or the application, as the case may be;
- (b) an investigation was started or an application was to be made, the Court shall discharge the order where, within a reasonable period, proceedings for the offence are not instituted or the application is not made, as the case may be.

Discharge of management receiver

64.(1) Where a management receiver is appointed in respect of property and the Court

- (a) appoints an enforcement receiver, the Court shall order the management receiver to transfer to the enforcement receiver all property that he holds by virtue of the exercise of his powers;
- (b) makes a forfeiture order against the property or a part of the property, the Court shall, without prejudice to the generality of section 44(5), order the management receiver to transfer, to such person as the Recovery Authority may appoint or identify for the purpose or such person as the Court may direct, all or any part of the property that he holds by virtue of the exercise of his powers.

(2) Subsection (1) does not apply to property which the management receiver holds by virtue of the exercise by him of his power under section 57(2)(d).

(3) Where the management receiver complies with an order under subsection (1) he is discharged from his appointment under section 57 and any obligation under this Act arising from his appointment.

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

Winding up of company holding realisable property

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

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

(2) Where, in the case of a company, an order or resolution referred to in subsection (1) has been made or passed, as the case may be, the powers conferred on the Court by sections 53 to 60 shall not be exercised in relation to any realisable property held by the company in relation to which the functions of the liquidator are exercisable so as to

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

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

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

Exercise of powers by Court and receiver

66.(1) This section applies to the powers conferred

- (a) on the Court by sections 53 to 60; and
- (b) on a management or an enforcement receiver,

in relation to a confiscation order that has been, or may be, made or a forfeiture order that may be made.

(2) Subject to subsections (3), (4) and (5), the powers referred to in subsection (1)

- (a) shall be exercised
 - (i) with a view to the value for the time being of realisable property being made available, by the realisation of the property, for satisfying any confiscation order that has been, or may be, made against the defendant;
 - (ii) in a case where a confiscation order or a forfeiture order has not been made, with a view to securing that there is no diminution in the value of realisable property;
 - (iii) without taking account of any obligation of the defendant or a recipient of a tainted gift, where the obligation conflicts with the

objective of satisfying any confiscation order that has been made, or may be made, against the defendant; and

- (b) may be exercised in respect of a debt owed by the Crown.
- (3) Subsection (2) has effect subject to the following:

 - (a) the powers must be exercised with a view to allowing a person other than the defendant or a recipient of a tainted gift to retain or recover the value of any interest held by him;
 - (b) in the case of realisable property held by a recipient of a tainted gift, the powers must be exercised with a view to realising no more than the value for the time being of the gift; and
 - (c) in a case where a confiscation order has not been made against the defendant, property must not be sold where the Court so orders under subsection (4).
- (4) Where on an application by the defendant, or by the recipient of a tainted gift, the Court decides that the property cannot be replaced the Court may order that the property must not be sold.
- (5) An order under subsection (4) may be revoked or varied.
- (6) A reference in this section to a confiscation order shall be deemed to include a reference to an external order described in section 58(1).
- (7) For the purposes of the application of this section and of sections 57(5) and 58(5) to an external request or an external order, as the case may be

 - (a) a gift is tainted where it was made by the defendant at any time after

 - (i) the date on which the offence to which the external request or external order relates was committed; or
 - (ii) where his criminal conduct consists of 2 or more such offences and they were committed on different dates, the date of the earliest;

- (b) an offence which is a continuing offence is committed, for the purpose of paragraph (a), on the first occasion when it is committed; and
- (c) a gift may be a tainted gift where it was made before the commencement date.

Division 5

General Provisions related to Part II

Compensation where defendant not convicted etc.

67.(1) Where proceedings are instituted against a person for an offence or offences to which this Act applies and either

- (a) the proceedings do not result in his conviction for any such offence; or
- (b) where he is convicted of one or more such offences,
 - (i) the conviction or convictions concerned are quashed; or
 - (ii) he is pardoned in respect of the conviction or convictions, the Court may,

subject to this section, on an application by a person who held property which was realisable property, order compensation to be paid to the applicant where, having regard to all the circumstances, it considers it appropriate to make such an order.

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

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

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

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

Committal by magistrate

68.(1) This section applies where

- (a) a defendant is convicted of an offence by a magistrate; and
- (b) the prosecutor asks a magistrate to commit the defendant to the Court with a view to a confiscation order or forfeiture order being considered.

(2) Where this section applies, the magistrate

- (a) shall commit the defendant to the Court in respect of the offence; and
- (b) may commit him to the Court in respect of any other offence falling within subsection (3).

(3) An offence falls within this subsection where

- (a) the defendant has been convicted of it by a magistrate; and
- (b) the magistrate has power to deal with him in respect of it.

(4) Where a defendant is committed to the Court under this section in respect of an offence or offences, the Court

- (a) shall inquire into the circumstances of the case;
- (b) may deal with the defendant in any way in which the magistrate could deal with him if he had just convicted him of the offence; and
- (c) section 13 applies accordingly.

(5) A committal under this section may be in custody or on bail.

PART III

CIVIL RECOVERY OF PROCEEDS AND INSTRUMENTALITIES OF
CRIME

Division 1

Preliminary to Part III

Scope of Part III

- 69.(1)** This Part has effect for the purposes of enabling
- (a) the Recovery Authority to recover in civil proceedings before the Court, property which is, or represents
 - (i) property obtained through unlawful conduct;
 - (ii) property used in, or in connection with, or intended to be used in, or in connection with, unlawful conduct; and
 - (b) property which is, or represents, property obtained through unlawful conduct, or which is intended to be used in unlawful conduct, to be forfeited in civil proceedings.
- (2) The powers conferred by this Part are exercisable in relation to any property, including cash, whether or not proceedings have been brought for an offence in connection with the property.

Interpretation of Part III

- 70.(1)** In this Part
- “assigned matter” has the meaning assigned to it in section 2(1) of the *Customs Act*, Cap. 66;
 - “excepted joint owner” has the meaning specified in section 95(3);
 - “period of 72 hours” excludes Saturdays, Sundays and public holidays;

“property obtained through unlawful conduct” has the meaning specified in section 72;

“respondent” means

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

“tainted property” means, subject to subsection (3), property used in, or in connection with, or intended to be used in, or in connection with, unlawful conduct;

“value” means market value.

(2) For the purposes of this Part, proceedings against a person for an offence are concluded when

- (a) the person is convicted or acquitted;
- (b) the prosecution is discontinued; or
- (c) the jury is discharged without a finding.

(3) Property belonging to a person (“the owner”) is not tainted property where

- (a) the unlawful conduct concerned is not the unlawful conduct of the owner; and
- (b) the owner does not give his consent, express or implied, to the property being used in, or in connection with, the unlawful conduct.

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

(5) Sections 71 to 81 and this section have effect for the purposes of this Part.

Meaning of “unlawful conduct”

- 71.(1)** “Unlawful conduct” is conduct which, if it occurs in
- (a) Barbados, is unlawful under the criminal law of Barbados; or
 - (b) a country other than Barbados
 - (i) is unlawful under the criminal law of that country; and
 - (ii) if it occurred in Barbados, would be unlawful under the criminal law of Barbados.
- (2) The Court, or in respect of proceedings for the forfeiture of cash or listed assets, a magistrate, shall decide on a balance of probabilities whether it is proved that
- (a) any matters alleged to constitute unlawful conduct have occurred; or
 - (b) any person used, or intended to use, any property in, or in connection with, unlawful conduct.

Meaning of “property obtained through unlawful conduct”

- 72.(1)** A person obtains property through unlawful conduct, whether his own conduct or another person’s conduct, where he obtains property by or in return for the conduct.
- (2) In deciding whether any property was obtained through unlawful conduct it is
- (a) immaterial whether or not any money, goods or services were provided in order to put the person in question in a position to carry out the conduct; and
 - (b) not necessary to show that the conduct was of a particular kind where it is shown that the property was obtained through conduct of one of a number of kinds, each of which would have been unlawful conduct.

Recoverable property

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

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

(a) in the case of

- (i) property obtained through unlawful conduct, by the person who, through the conduct, obtained the property;
- (ii) tainted property, by any person who had possession of the property for the purpose, or with the intent, of using the property for unlawful conduct; or

(b) by a person into whose hands it may, by virtue of this subsection, be followed.

Tracing recoverable property

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

(2) 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 recoverable property

75.(1) Where a person's recoverable property is mixed with other property, whether the other 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 where it is used, among other things,

- (a) to increase funds held in a bank account;
- (b) in part payment for the acquisition of an asset;
- (c) for the restoration or improvement of land;
- (d) for the discharge, in whole or in part, of a mortgage, charge or other security; or
- (e) by a person holding a leasehold interest in property to acquire the freehold.

Profits accruing on recoverable property

76. Where a person who has recoverable property obtains additional property consisting of profits accruing in respect of the recoverable property, the additional property is to be treated as representing the property obtained through unlawful conduct or the tainted property, as the case may be.

Cases in which property is not, or ceases to be, recoverable

77.(1) Where

- (a) a person disposes of recoverable property; and
- (b) the person who obtains the property 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 by virtue of this Part;
- (b) where
 - (i) pursuant to a judgment in civil proceedings, whether in Barbados or elsewhere, a defendant makes a payment to a claimant or the claimant otherwise obtains property from the defendant;
 - (ii) the claimant's claim is based on the defendant's unlawful conduct; and
 - (iii) apart from this paragraph, the sum received, or the property obtained, by the 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 where

- (a) a restraining order applies to it, whether made under
 - (i) this Act; or
 - (ii) another enactment;

- (b) 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 under
 - (i) this Act; or
 - (ii) another enactment.
- (4) The reference to the amount of a person's benefit from criminal conduct is to be construed, in relation to an order mentioned in subsection (3)(b)(ii), as a reference to the corresponding amount under the enactment in question.
- (5) Where
 - (a) a person enters into a transaction to which section 74(2) applies; and
 - (b) the disposal is one to which subsection (1) or subsection (2)(a) applies,
 this section does not affect the recoverability, by virtue of section 74(2), of any property obtained on the transaction in the place of the property disposed of.

Minister may prescribe cases in which property is not recoverable or associated property

- 78.(1)** The Minister may by Order subject to negative Resolution provide that property is not recoverable or, as the case may be, associated property where it is
- (a) property specified in the Order or property of the description specified in the Order; or
 - (b) disposed of pursuant to an enactment specified in the Order or an enactment of a description specified in the Order.
- (2) An Order made under subsection (1) may
- (a) provide that where property is disposed of pursuant to an enactment specified in the Order or an enactment of a description specified in the Order, it is to be treated for the purposes of section 99 as if it had been disposed of pursuant to a recovery order;

- (b) apply to property, or a disposal of property, only in such circumstances as may be prescribed in the Order, 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 in recoverable property

79.(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 that question is determined on any other disposal of recoverable property.

(2) In furtherance of subsection (1), where a person grants an interest in property and that property

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

Meaning of “associated property”

80. “Associated property” means, in relation to recoverable property, property of any of the following descriptions (including property held by a respondent) which is not itself the recoverable property:

- (a) any interest in the recoverable property;
- (b) any other interest in the property in which the recoverable property subsists;
- (c) where the recoverable property is a tenancy in common, the tenancy of the other tenant;

- (d) where the recoverable property is part of a larger property, but not a separate part, the remainder of the larger property,

and a reference to property being associated with recoverable property shall be construed accordingly.

Obtaining and disposing of property

81.(1) A reference to a person disposing of his property includes a reference to his disposing of a part of it or granting an interest in it or both, and a reference to the property disposed of is to any property obtained on the disposal.

(2) A person who makes a payment to another person is to be treated as making a disposal of his 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 otherwise by operation of law, it is to be treated as disposed of by him to the other person.

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

Division 2

Recovery Orders and Freezing Orders

Making of Recovery Orders and Freezing Orders

Application for recovery order

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

(2) The Recovery Authority shall serve the claim form

- (a) on the respondent; and

- (3) The Court may make a freezing order
 - (a) where it is satisfied
 - (i) that there is a good arguable case that
 - (A) the property to which the application for the order relates is or includes recoverable property; and
 - (B) in a case where any of the property is not recoverable property, it is associated property; and
 - (ii) in a case where the property to which the application for the order relates includes property alleged to be associated property, and the Recovery Authority has not established the identity of the person who holds it, that the Recovery Authority has taken all reasonable steps to do so; and
 - (b) subject to such exclusions and conditions as are permitted by this Act or as the Court considers appropriate.

Variation and setting aside of freezing order

- 84.(1)** The Court may at any time vary or set aside a freezing order.
- (2) Where the Court determines that any property to which a freezing order applies is neither recoverable property nor associated property, the Court shall vary the order so as to exclude the property.
- (3) The Court shall, unless acting under subsection (2), give the parties to the proceedings, any receiver appointed in respect of property subject to the freezing order and any person who may be affected by its decision an opportunity to be heard before varying or setting aside the order.

Exclusions from freezing order

- 85.(1)** The power to make or vary a freezing order includes the power to
 - (a) exclude specified property, or property described in the order, from the order; and

Effect of freezing order

86.(1) Where a freezing order has effect

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

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

(3) Where a freezing order applies to a tenancy of any premises, no landlord or other person to whom rent is payable may exercise the right of forfeiture in relation to the premises in respect of any failure by the tenant to comply with any term or condition of the tenancy, except with the leave of the Court and subject to any terms the Court may impose.

(4) The Court shall, before exercising any power conferred by this section, give the parties to any of the proceedings concerned, where a receiver is appointed under section 87, the receiver, and any person who may be affected by the Court's decision an opportunity to be heard.

Receivers may be appointed in respect of freezing orders

87.(1) Where the Court makes a freezing order, the Court may, on the application of the Recovery Authority, whether at the time of the application for the freezing order or at any time afterwards, appoint a receiver in respect of any property to which the freezing order applies.

(2) An application for the appointment of a receiver may be made without notice where the circumstances are such that notice of the application would prejudice any right of the Recovery Authority to obtain a recovery order in respect of any property to which the order relates.

- (3) The Court may, by order, authorise or require the receiver
- (a) to exercise any of the powers specified in subsection (4) in relation to any property in respect of which the receiver is appointed;
 - (b) to take any other measures 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; and
 - (c) where the Recovery Authority so requests in its application, to take any measures which the Court considers necessary to establish whether or not
 - (i) the property to which the order applies is recoverable property or associated property; or
 - (ii) any other property is recoverable property in relation to the same unlawful conduct and, if it is, who holds it.
- (4) The powers referred to in subsection (3)(a) are power to
- (a) seize the property to which the order applies;
 - (b) obtain information or require a person to answer any question;
 - (c) enter any premises to which the order applies and to
 - (i) carry out a search for or inspection of anything described in the order;
 - (ii) make or obtain a copy, photograph or other record of anything so described; and
 - (iii) remove anything which he is required to take possession of in pursuance of the order or which may be required as evidence in the proceedings under this Part,

and the order by which the power is granted may describe anything generally, whether by reference to a class or otherwise;

- (d) manage any property to which the order applies including power
 - (i) to sell or otherwise dispose of assets comprised in the property which are perishable or which ought to be disposed of before their value diminishes;
 - (ii) where the property comprises assets of a trade or business, to carry on, or arrange for another to carry on, the trade or business; and
 - (iii) to incur capital expenditure in respect of the property.
- (5) For the purpose of subsection (4)(b)
 - (a) a requirement imposed in the exercise of the power has effect in spite of any restriction on the disclosure of information, however imposed; and
 - (b) a statement made by a person in pursuance of such a requirement may not be used in evidence against him in criminal proceedings, other than proceedings for
 - (i) an offence under the *Perjury Act*, Cap. 142; or
 - (ii) another offence where, in giving evidence, the person makes a statement inconsistent with that previous statement.
- (6) A statement may not be used by virtue of subsection (5)(b)(ii) against a person unless
 - (a) evidence relating to it is adduced; or
 - (b) a question relating to it is asked,by or on behalf of the person in the proceedings.
- (7) An order making any provision under
 - (a) subsection (4)(b) or (c) shall include provision in respect of legal professional privilege;

- (b) subsection (4)(c) may require any person to give the receiver

 - (i) access to any premises which the receiver may enter in pursuance of subsection (4)(c); and
 - (ii) any assistance the receiver may require for taking the steps mentioned in subsection (4)(c).
- (8) The Court may, by order, require any person in respect of whose property the receiver is appointed to

 - (a) bring the property to a place specified by the receiver or to place it in the custody of the receiver;
 - (b) do anything he is reasonably required to do by the receiver for the preservation of the property; and
 - (c) 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.
- (9) Any prohibition on dealing with property imposed by a freezing order does not prevent a person from complying with any requirements imposed by virtue of this section.
- (10) The Recovery Authority may, in its application for an order under this section, nominate a suitably qualified person for appointment as a receiver.
- (11) The Recovery Authority may apply a sum received by it under section 100(2) in making payment of the remuneration and expenses of a receiver appointed under this section.

Supervision of receiver appointed in respect of freezing order

88.(1) Any of the following persons may apply to the Court for directions as to the exercise of the functions of a receiver appointed in respect of a freezing order:

- (a) the receiver;

- (b) any party to the proceedings for the appointment of the receiver or the freezing order concerned;
 - (c) any person affected by action taken by the receiver; and
 - (d) any person who may be affected by action the receiver proposes to take.
- (2) The Court shall, before giving any directions under subsection (1), 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 freezing order concerned; and
 - (c) any person who may be interested in the application under subsection (1).

Receiver appointed in respect of freezing order not liable for certain action

89. 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.

Variation or setting aside of order appointing receiver in respect of freezing order

90.(1) The Court may at any time vary or set aside any order appointing a receiver under section 87 or any other order made under that section or any directions given under section 88.

- (2) The Court shall, before exercising any power under subsection (1), give an opportunity to be heard to
- (a) the receiver;
 - (b) the parties to the proceedings for the appointment of the receiver under section 87 or any other order under that section or, as the case may be, for directions under section 88;
 - (c) the parties to the proceedings for the freezing order concerned; and
 - (d) any person who may be affected by the Court's decision.

Reporting by receiver

91. Where a receiver is appointed in respect of a freezing order, the receiver shall

- (a) inform the Recovery Authority and the Court as soon as reasonably practicable where he thinks that
 - (i) any property to which the order applies by virtue of a claim that it is
 - (A) recoverable property, is not recoverable property; or
 - (B) associated property, is not associated property;
 - (ii) any property to which the order does not apply is recoverable property (in relation to the same unlawful conduct) or is associated property;
 - (iii) any property to which the order applies is held by a person who is different from the person it is claimed holds it; or
 - (iv) there has been any other material change of circumstances;
- (b) report his findings to the Court; and

- (c) serve copies of his report on the Recovery Authority and on any person who holds any property to which the order applies or who may otherwise be affected by the report.

Vesting and Realisation of Recoverable Property

Making of recovery order

92.(1) Where in proceedings under this Part the Court is satisfied that any property is recoverable property, the Court shall make an order vesting the property in a recovery trustee.

(2) The Recovery Authority may nominate a suitably qualified person to be appointed as the recovery trustee in respect of a recovery order.

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

(a) each of the conditions in subsection (4) is met; and

(b) it would not be just and equitable to do so.

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

(a) the respondent obtained the recoverable property in good faith;

(b) the respondent

(i) 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

(ii) 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 the property;

(c) when the respondent took, or omitted to take, the action referred to in paragraph (b), he had no notice that the property was recoverable; and

- (d) if a recovery order were made in respect of the property, it would, by reason of his action or omission be detrimental to him.
- (5) In deciding whether, under subsection (3), it would not be just and equitable to make in a recovery order any provision in respect of any recoverable property where the conditions in subsection (4) are met, the Court shall have regard to
- (a) the degree of detriment that would be suffered by the respondent if the provision were made; and
 - (b) the Recovery Authority's interest in receiving the realised proceeds of the recoverable property.
- (6) The Court may in a recovery order
- (a) sever any property;
 - (b) impose conditions as to the manner in which a recovery trustee may deal with any property vested by the order for the purpose of realising it; and
 - (c) provide for payment under section 100 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.
- (7) This section is subject to sections 93 to 100.

Functions of the Recovery Trustee under Part III

93.(1) The functions of a recovery trustee are:

- (a) to secure the detention, custody or preservation of any property vested in him by a recovery order;
- (b) in the case of property other than money, to realise the value of the property for the benefit of the Recovery Authority;

- (c) to otherwise give effect to the recovery order; and
 - (d) to perform any other functions conferred on him by virtue of this Part.
- (2) In performing his functions, a recovery trustee acts on behalf of the Recovery Authority and shall comply with any directions given to him by the Recovery Authority.
- (3) A recovery trustee 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 Recovery Authority.
- (4) A recovery trustee has the power
 - (a) to sell the property or any part of it or interest in it;
 - (b) to incur expenditure for the purpose of
 - (i) acquiring any part of the property, or any interest in it, which is not vested in him; or
 - (ii) discharging any liabilities, or extinguishing any rights, to which the property is subject;
 - (c) to manage the property including power
 - (i) to sell or otherwise dispose of assets comprised in the property which are perishable or which ought to be disposed of before their value diminishes;
 - (ii) where the property comprises assets of a trade or business, to carry on, or arrange for another to carry on, the trade or business; and
 - (iii) to incur capital expenditure in respect of the property;
 - (d) to initiate, carry on or defend any legal proceedings in respect of the property;
 - (e) to make any compromise or other arrangement in connection with any claim relating to the property; and

- (f) for the purposes of, or in connection with, the exercise of any of his other powers
 - (i) by his official name to
 - (A) hold property;
 - (B) enter into contracts;
 - (C) sue and be sued;
 - (D) employ agents; and
 - (E) execute a power of attorney, deed or other instrument; and
 - (ii) to do any other act which is necessary or expedient.

(5) A reference in this section to a recovery order includes a consent order made under section 98 and a reference to property vested in a recovery trustee by a recovery order includes property vested in him pursuant to such a consent order.

Rights of pre-emption

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

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

(3) In subsection (2), “right of return” means any right under a provision for the return or reversion of property in specified circumstances.

(4) Where property is vested under a recovery order, any right referred to in subsection (2) shall have effect as if the person in whom the property is vested were the same person in law as the person who held the property and as if no transfer of the property had taken place.

- (5) References to rights in subsections (2), (3) and (4) do not include any rights in respect of which the recovery order was made.
- (6) This section applies in relation to the creation of interests, or the doing of anything else, by a recovery order, as it applies in relation to the vesting of property.

Associated and joint property

95.(1) Sections 96 and 97 apply where the Court makes a recovery order in respect of any recoverable property in any of the circumstances set out in subsection (2).

- (2) The circumstances referred to in subsection (1) are where
- (a) 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, where the associated property is not the respondent's property, the application for the recovery order
 - (i) has been served on the person whose property it is; or
 - (ii) the Court has dispensed with service; or
 - (b) the recoverable property belongs to joint tenants and one of the tenants is an excepted joint owner.
- (3) For the purposes of this Part "excepted joint owner" means a person who obtained the property in circumstances in which it would not be recoverable as against him and references to the excepted joint owner's share of the recoverable property are to so much of the recoverable property as would have been his if the joint tenancy had been severed.

Agreements on associated and joint property

- 96.(1)** Where
- (a) this section applies; and

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

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

(2) Where in a recovery order the Court makes any requirement under subsection (1), the Court 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 to be made under subsection (1) shall be the amount which the Recovery Authority and the person agree represents, in the circumstances specified in

- (a) section 95(2)(a), the value of the recoverable property; or
- (b) section 95(2)(b), the value of the recoverable property less the value of the excepted joint owner's share.

(4) Where

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

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

(5) Where there is more than one

- (a) such item of associated property; or
- (b) excepted joint owner,

the total amount to be paid to the recovery trustee, and the part of that amount which is to be provided by each person who holds any such associated property or who is an excepted joint owner, is to be agreed between both, or all, of them and the Recovery Authority.

(6) Where in a recovery order the Court makes any requirement under subsection (1), the Court shall make provision for any recoverable property to cease to be recoverable.

Absence of agreement on associated and joint property

97.(1) Where this section applies, the Court may make the provision set out in subsections (2) to (6) where

- (a) there is no agreement under section 96; and
- (b) the Court thinks it just and equitable to do so.

(2) The Court may provide in the recovery order for

- (a) the associated property to vest in the recovery trustee or, as the case may be, the excepted joint owner's interest to be extinguished; or
- (b) the excepted joint owner's interest to be severed.

(3) Where the Court makes in a recovery order any provision under subsection (2)(a) the Court may provide for either or both of the following:

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

(4) The Court shall, in making any provision in a recovery order under subsection (2) or (3), have regard to

- (a) the rights of any person who holds the associated property or who is an excepted joint owner and the value to him of that property or, as the

case may be, of his share, including any value which cannot be assessed in terms of money; and

(b) the Recovery Authority's interest in receiving the realised proceeds of the recoverable property.

(5) Where

(a) a freezing order applied at any time to the associated property or joint tenancy; 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 freezing order,

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

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

Consent orders

98.(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 where 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, in addition to staying the proceedings, make

(a) provision for any property which may be recoverable property to cease to be recoverable; and

(b) any further provision which the Court thinks appropriate.

(3) Section 100 applies to property vested in a recovery trustee, or money paid to him, pursuant to an agreement referred to in subsection (1) as it applies to property vested in him by a recovery order or money paid under section 96.

Limit on recovery

99.(1) This section applies where the Recovery Authority 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 under section 98, has previously been made in respect of related property.
- (2) For the purposes of this section
- (a) “the original property” means the property obtained through unlawful conduct or the tainted property, as the case may be; and
 - (b) the original property, and any items of property which represent the original property, are to be treated as related to each other.
- (3) The Court shall not make a recovery order where it thinks that the Recovery Authority’s right to recover the original property has been satisfied by a previous recovery order or an order under section 98.
- (4) Subject to subsection (3), the Court may act under subsection (5) where it thinks that
- (a) a recovery order may be made in respect of 2 or more related items of recoverable property; but
 - (b) the making of a recovery order in respect of both or all of the related items is not required in order to satisfy the Recovery Authority’s right to recover the original property.

(5) The Court may, in order to satisfy the right of the Recovery Authority referred to in subsection (4)(a) to the extent required, make a recovery order in respect of either or both of the following:

- (a) only some of the related items of property;
- (b) only a part of any of the related items of property.

(6) Where the Court may make a recovery order in respect of any property, this section does not prevent the recovery of any profits which have accrued in respect of the property.

(7) Where

- (a) an order is made under section 114, 125 or 128 for the forfeiture of recoverable property; and
- (b) the Recovery Authority subsequently seeks a recovery order in respect of related property,

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

(8) Where

- (a) an order is made under section 127 instead of an order being made under section 125 for the forfeiture of recoverable property; and
- (b) the Recovery Authority subsequently seeks a recovery order in respect of related property,

the order under section 127 shall be treated for the purposes of this section as if it were a recovery order obtained by the Recovery Authority in respect of the property that was the forfeitable property in relation to the order under section 127.

(9) Where

- (a) pursuant to a judgment in civil proceedings, whether in Barbados or elsewhere, a claimant has obtained property from a defendant (“the judgment property”);
- (b) the claim was based on the defendant’s having obtained the judgment property or related property through unlawful conduct; and
- (c) the Recovery Authority subsequently seeks a recovery order in respect of property which is related to the judgment property,

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

(10) Where

- (a) a forfeiture order is made for the forfeiture of property that, but for the order, would have been recoverable property; and
- (b) the Recovery Authority 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 Recovery Authority in respect of the forfeited property.

(11) Where

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

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

(12) In subsections (10) and (11),

“forfeiture order” means an order described in section 13(2)(*b*) or (*c*) or an equivalent order under another enactment;

“confiscation order” means

(*a*) an order described in section 13(2)(*a*); or

(*b*) an equivalent order under another enactment,

and, in relation to an order specified in paragraph (*b*), the reference in subsection (11)(*a*) to the amount of a person’s benefit from criminal conduct is to be read as a reference to the corresponding amount under the enactment in question.

(13) Without prejudice to any other circumstances in which the Recovery Authority’s right to recover the original property may be satisfied, where there is

(*a*) a disposal, other than a part disposal, of the original property, and other property (“the representative property”) is obtained in its place, the Recovery Authority’s right to recover the original property is satisfied by the making of a recovery order in respect of either the original property or the representative property.

(*b*) a part disposal of the original property, and other property (“the representative property”) is obtained in place of the property disposed of, the Recovery Authority’s right to recover the original property is satisfied by the making of a recovery order in respect of the remainder of the original property together with either the representative property or the property disposed of.

(14) In subsection (13), a part disposal means a disposal to which section 81(1) applies.

Application of realised proceeds

100.(1) Subsection (2) applies to sums which are in the hands of a recovery trustee where they are

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

(2) The recovery trustee shall make out of the sums

- (a) first, any payment required to be made by him by virtue of section 97;
- (b) next, any payment of legal expenses which are payable under this subsection pursuant to provision the Court made in the recovery order under section 92(6)(c); and
- (c) then payment of any fees payable to a liquidator appointed by or supervised by the Court,

and shall pay any sum which remains to the Recovery Authority.

(3) The Recovery Authority may apply a sum received by it under subsection (2) in making payment of the remuneration and expenses of any recovery trustee or 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 Criminal Assets Recovery Fund after

- (a) the period permitted under section 104 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.

Exemptions

Victims of theft, etc.

101.(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) where 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 he claims belongs to him.

(3) Property to which a declaration under this section applies is not recoverable property.

Cases in which proceedings for recovery order shall not be taken

102.(1) Proceedings for a recovery order shall not be taken

- (a) against the Recovery Authority in respect of any recoverable property held by the Recovery Authority;
- (b) against any person in respect of any recoverable property which he holds by reason of his acting, or having acted, as trustee in bankruptcy appointed under the *Bankruptcy and Insolvency Act*, Cap. 303, or as liquidator of a company appointed or supervised by the Court; or

- (c) in respect of cash found at any place in Barbados unless the proceedings are also taken in respect of property other than cash which is property of the same person.
- (2) The Minister may by Order subject to negative Resolution provide that proceedings for a recovery order shall not be taken against any other person in circumstances of a prescribed description and the circumstances may relate to the person himself, to the property or to any other matter.

Scope of Powers

Scope of powers

103.(1) Subject to subsection (2), an order under this Division may be made by the Court in respect of

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

Compensation where freezing order made but property is not recoverable or associated property

104.(1) Where, in the case of any property to which a freezing order has at any time applied, the Court does not in the course of the proceedings decide that the property is recoverable property or associated property, the person whose property it is may make an application to the Court for compensation.

- (2) Subsection (1) does not apply where the Court makes
- (a) a declaration in respect of the property by virtue of section 101; or

- (b) a consent order under section 98.
- (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 3 months beginning with

 - (a) the date of the decision; or
 - (b) where an application is made for leave to appeal against the decision, the date on which

 - (i) the application is withdrawn or refused; or
 - (ii) where the application is granted, 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 3 months beginning with the discontinuance.
- (5) Where the Court is satisfied that the applicant has suffered loss as a result of the freezing order, the Court may require the Recovery Authority to pay compensation to the applicant.
- (6) Where, but for section 94(2), any right mentioned in that section would have operated in favour of, or become exercisable by, any person, the person may make an application to the Court for compensation.
- (7) The application for compensation under subsection (6) shall be made within the period of 3 months beginning with the vesting referred to in section 94(2).
- (8) Where the Court is satisfied that, in consequence of the operation of section 94, the right in question cannot subsequently operate in favour of the applicant or, as the case may be, become exercisable by him, the Court may require the Recovery Authority to pay compensation to him.

(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

105.(1) The Minister may by Order subject to negative Resolution prescribe a threshold for the purposes of this section.

(2) Where a threshold is prescribed under subsection (1), the Recovery Authority shall not initiate proceedings for a recovery order unless the Recovery Authority reasonably believes that the aggregate value of the recoverable property which the Recovery Authority wishes to be subject to a recovery order is equal to or greater than the prescribed threshold.

(3) Where the Recovery Authority applies for a freezing order before initiating proceedings for a recovery order, subsection (2) applies to the application for the freezing order instead of to the initiation of the proceedings.

(4) 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 freezing order which has been properly applied for.

Limitation

106.(1) Proceedings shall not be brought for a recovery order in respect of any recoverable property after the expiration of 20 years, in the case of proceedings for a recovery order in respect of

- (a) property obtained through unlawful conduct, from when the property was so obtained;
- (b) tainted property, from when the property became tainted property; or
- (c) any other recoverable property, from when the property obtained through unlawful conduct which the other recoverable property represents was so obtained.

- (2) For the purposes of subsection (1), proceedings for a recovery order are brought when an application is
- (a) filed with the Court under section 82; or
 - (b) made for a freezing order.

Property acquired before commencement date

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

Division 3

Recovery of Cash in Summary Proceedings

Interpretation of sections 109 to 118

108.(1) For the purposes of sections 109 to 118 “recoverable cash” means cash which is recoverable property or is intended by any person for use in unlawful conduct.

(2) The amount of cash held in a currency other than Barbados dollars shall be its equivalent in Barbados dollars at the prevailing rate of exchange.

Searches for recoverable cash

109.(1) A law enforcement officer who

- (a) is lawfully on any premises; and
- (b) has reasonable grounds for suspecting that there is recoverable cash on the premises,

may search for the cash on the premises.

- (2) Where a law enforcement officer has reasonable grounds for suspecting that a person (“the suspect”) is carrying recoverable cash, the officer may
- (a) so far as he thinks it necessary or expedient, require the suspect to permit a search of
 - (i) any article the suspect has with him; and
 - (ii) his person; and
 - (b) for the purposes of exercising his power under paragraph (a)(ii), detain the suspect for so long as is necessary for the exercise of that power.
- (3) The powers conferred by this section are exercisable
- (a) only so far as reasonably required for the purpose of finding the cash; and
 - (b) by a law enforcement officer who is a customs officer only where he has reasonable grounds to believe that the unlawful conduct in question relates to an assigned matter.
- (4) This section does not require a person to submit to an intimate search.

Seizure of cash

110. A law enforcement officer may seize cash where he has reasonable grounds for suspecting that

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

Detention of seized cash

111.(1) Where a law enforcement officer who has seized cash under section 110 continues to have reasonable grounds for his suspicion, the cash seized under that section may be detained initially for a period of 72 hours.

(2) The period for which the cash or any part of it may be detained may be extended by a magistrate by order, but the order may not authorise the detention of any of the cash

- (a) beyond the end of the period of 3 months beginning with the date of the order; or
- (b) in the case of any further order under this section, beyond the end of the period of 2 years beginning with the date of the first order.

(3) An application for an order under subsection (2) may be made by a senior law enforcement officer, and the magistrate may make the order where he is satisfied, in relation to any cash to be further detained, that there are reasonable grounds for suspecting that the cash is

- (a) recoverable cash and that
 - (i) its continued detention is justified while its derivation is further investigated or consideration is given to bringing proceedings, whether in or outside Barbados, against any person for an offence with which the cash is connected; or
 - (ii) proceedings against any person for an offence with which the cash is connected have been instituted and have not been concluded; or
- (b) intended to be used in unlawful conduct and that
 - (i) its continued detention is justified while its intended use is further investigated or consideration is given to bringing proceedings, whether in Barbados or elsewhere, against any person for an offence with which the cash is connected; or
 - (ii) proceedings against any person for an offence with which the cash is connected have been instituted and have not been concluded.

(4) Where an application for an order under subsection (2) relates to cash seized under section 110(b), the magistrate may make the order where he is satisfied that

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

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

Interest on detained cash

112.(1) Where cash is detained under section 111 for more than a period of 72 hours, the cash shall, at the first opportunity, be paid by the law enforcement officer into an interest-bearing account and held there, and the interest accruing on it is to be added to it on its forfeiture or release.

(2) In the case of cash detained under section 111 which was seized under section 110(b), the law enforcement officer, shall as soon as practicable after paying the cash seized into an interest-bearing account, release the part of the cash to which the suspicion does not relate.

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

Release of detained cash

113.(1) Where cash is detained under section 111, a magistrate may order the release of the whole or any part of the cash where the magistrate is satisfied, on an application by the person from whom the cash was seized, that the grounds for the detention of the cash specified in section 111(3) or (4) are no longer met in relation to the cash to be released.

(2) The Commissioner of Police or the Comptroller of Customs, as the case may be, or an authorised representative of either functionary may, after notifying the magistrate under whose order cash is being detained or where that magistrate

is unavailable, another magistrate, release the whole or any part of the cash where he is satisfied that the detention of the cash to be released is no longer justified.

Making of cash forfeiture order

114.(1) Where cash is detained under section 111, a police officer may apply to a magistrate for an order for the forfeiture of the whole or any part of the cash.

(2) The magistrate may order the forfeiture of the cash, or any part of it, where he is satisfied that the cash or the part of the cash is

(a) recoverable cash; or

(b) intended by any person for use in unlawful conduct.

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

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

Appeal against cash forfeiture order

115.(1) Any party to proceedings for a cash forfeiture order who is aggrieved by the making of the order or the decision of the magistrate not to make the order may appeal to the Court.

(2) An appeal under subsection (1) shall

(a) be made within the period of 30 days commencing on the date on which the order was made or the decision not to make the order was taken; and

(b) be by way of a rehearing by the Court which may make any order that it considers appropriate.

- (3) Where the Court upholds an appeal against a cash forfeiture order, it may order the release of the whole or any part of the cash.

Application of forfeited cash

116. After the period within which an appeal under section 115 may be made or, where a person appeals under that section, after the appeal has been determined or disposed of, cash forfeited under section 114, and any accrued interest on it, shall be paid into the Criminal Assets Recovery Fund.

Victims and other owners of cash

117.(1) A person who claims that any cash, or any part of it, that is detained under this Division belongs to him, may apply to the magistrate for the cash or the part of it to be released to him.

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

- (3) Where, on an application, it appears to the magistrate that

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

the magistrate may order the cash to which the application relates to be released to the applicant.

- (4) The magistrate may order the cash to which an application relates to be released to the applicant or to the person from whom it was seized where

- (a) the applicant is not the person from whom the cash to which the application relates was seized;
- (b) it appears to the magistrate that the cash belongs to the applicant;

- (c) the magistrate is satisfied that the grounds specified in section 111(3) or (4) for the detention of the cash are no longer met or, where an application has been made under section 114, the Court decides not to make an order under that section in relation to the cash; and
- (d) no objection to the making of an order under this subsection has been made by the person from whom that cash was seized.

Compensation where cash detained but not forfeited

118.(1) Where no cash forfeiture order is made in respect of any cash detained under this Division, the person to whom the cash belongs or from whom it was seized may make an application to a magistrate for compensation for the detention.

(2) Where, for any period beginning with the first opportunity to place the cash in an interest-bearing account after the initial detention of the cash for a period of 72 hours, the cash was not held in an interest-bearing account while detained, the magistrate may order an amount of compensation to be paid to the applicant.

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

(4) Where the magistrate is satisfied that, taking account of any interest to be paid under section 112 or any amount to be paid under subsection (2), the applicant has suffered loss as a result of the detention of the cash and that the circumstances are exceptional, the magistrate may order compensation, or additional compensation, to be paid to him.

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

(6) Compensation under this section shall be paid from the Criminal Assets Recovery Fund.

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

Division 4

Recovery of Listed Assets in Summary Proceedings

Meaning of listed assets

119.(1) In this Division,

“face-value voucher” means a voucher in physical form that represents a right to receive goods or services to the value of an amount stated on it;

“listed asset” means an item of property that falls within one of the following descriptions of property:

- (a) precious metals;
- (b) precious stones;
- (c) watches;
- (d) artistic works;
- (e) face-value vouchers;
- (f) postage stamps;

“precious metals” means gold, silver or platinum, whether in an unmanufactured or a manufactured state.

(2) The Minister may by Order subject to negative Resolution amend subsection (1) by

- (a) removing a description of property; or
- (b) adding a description of personal property.

Searches for seizable listed assets

120.(1) A law enforcement officer who

- (a) is lawfully on any premises; and
- (b) has reasonable grounds for suspecting that there is a seizable listed asset on the premises,

may search for the listed asset on the premises.

(2) Where a law enforcement officer has reasonable grounds for suspecting that a person (“the suspect”) is carrying the seizable listed asset, the officer may

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

(3) The powers conferred by this section are exercisable

- (a) only so far as reasonably required for the purpose of finding the listed asset; and
- (b) by a law enforcement officer who is a customs officer only where he has reasonable grounds to believe that the unlawful conduct in question relates to an assigned matter.

(4) This section does not require a person to submit to an intimate search.

(5) For the purposes of this section, a listed asset is a seizable listed asset where

- (a) all or part of it is recoverable property or is intended by any person for use in unlawful conduct; and

- (b) the value of the asset, or the part of it that falls within paragraph (a), is not less than such value as may be prescribed by the Minister by Order subject to negative Resolution.
- (6) Where a power conferred by this section is being exercised in respect of more than one seizable listed asset, this section applies as if the value of each asset or, as the case may be, part of an asset were equal to the aggregate value of all of those assets or parts.
- (7) The powers conferred by subsections (1) to (6) on a law enforcement officer include the power to carry out, or arrange for the carrying out of, tests on anything found during the course of the search for the purpose of establishing whether it is a listed asset.

Seizure of listed assets

121.(1) A law enforcement officer may seize any item of property where he has reasonable grounds for suspecting that

- (a) it is a listed asset;
 - (b) it is recoverable property or intended by any person for use in unlawful conduct; and
 - (c) the value of it is not less than the value prescribed under section 120(5)(b).
- (2) A law enforcement officer may also seize any item of property where
- (a) he has reasonable grounds for suspecting that
 - (i) the item is a listed asset;
 - (ii) part of the item is recoverable property or intended by any person for use in unlawful conduct; and
 - (iii) the value of the part to which the suspicion relates is not less than the value prescribed under section 120(5)(b); and
 - (b) it is not reasonably practicable to seize only that part.

- (3) Where a power conferred by this section is being exercised in respect of more than one item of property, this section applies as if the value of each item were equal to the aggregate value of all of those items.
- (4) The references in subsection (3) to the value of an item are to be read as including references to the value of part of an item where the power conferred by subsection (2) is being exercised whether alone or in conjunction with the power conferred by subsection (1).

Detention of seized property

122.(1) Where a law enforcement officer who has seized property under section 121 continues to have reasonable grounds for his suspicion in relation to the property, the property seized under that section may be detained initially for a period of 72 hours.

(2) The period for which the property or any part of it may be detained may be extended by a magistrate by order, but the order may not authorise the detention of any of the property

- (a) beyond the end of the period of 3 months beginning with the date of the order; or
- (b) in the case of any further order under this section, beyond the end of the period of 2 years beginning with the date of the first order.

(3) An application for an order under subsection (2) may be made by a senior law enforcement officer, and the magistrate may make the order where he is satisfied, in relation to any item of property to be further detained, that

- (a) the property is a listed asset;
- (b) the value of the property is not less than the value prescribed under section 120(5)(b); and

- (c) there are reasonable grounds for suspecting that the property is recoverable property and that
 - (i) its continued detention is justified while its derivation is further investigated or consideration is given to bringing proceedings, whether in Barbados or elsewhere, against any person for an offence with which the property is connected; or
 - (ii) proceedings against any person for an offence with which the property is connected have been instituted and have not been concluded; or
 - (d) there are reasonable grounds for suspecting that the property is intended to be used in unlawful conduct and that
 - (i) its continued detention is justified while its intended use is further investigated or consideration is given to bringing proceedings, whether in Barbados or elsewhere, against any person for an offence with which the property is connected; or
 - (ii) proceedings against any person for an offence with which the property is connected have been instituted and have not been concluded.
- (4) Where an application for an order under subsection (2) relates to an item of property seized under section 121(2), the magistrate may make the order where he is satisfied that
- (a) the item of property is a listed asset;
 - (b) subsection (3)(c) or (d) applies in respect of part of the item;
 - (c) the value of that part is not less than the value prescribed under section 120(5)(b); and
 - (d) it is not reasonably practicable to detain only that part.
- (5) Where an application for an order under subsection (2) is made in respect of two or more items of property that were seized at the same time and by the

same person, this section applies as if the value of each item were equal to the aggregate value of all of those items.

(6) The references in subsection (5) to the value of an item are to be read as including references to the value of part of an item where subsection (4) applies in relation to one or more of the items in respect of which the application under subsection (2) is made.

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

(8) Subsections (3)(b) and (4)(c) do not apply where the application is for a second or subsequent order under this section.

Testing and safekeeping of property seized under section 121

123. A law enforcement officer

- (a) may carry out, or arrange for the carrying out of, tests on any item of property seized under section 121 for the purpose of establishing whether it is a listed asset; and
- (b) shall arrange for any item of property seized under section 121 to be safely stored throughout the period during which it is detained under this Division.

Release of detained property

124.(1) Where property is detained under section 122, a magistrate may order the release of the whole or any part of the property where the magistrate is satisfied, on an application by the person from whom the property was seized, that the grounds for the detention of the property specified in section 122 are no longer met in relation to the property to be released.

(2) The Commissioner of Police or the Comptroller of Customs, as the case may be, or an authorised representative of either functionary may, after notifying the magistrate under whose order property is being detained or, where that magistrate is unavailable, another magistrate, release the whole or any part of the

property, where he is satisfied that the detention of the property to be released is no longer justified.

Making of listed asset forfeiture order

125.(1) Where property is detained under this Division, a police officer may apply to a magistrate for an order for the forfeiture of the whole or any part of the property.

(2) The magistrate may order the forfeiture of the property, or any part of the property, where he is satisfied that

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

(3) An order under subsection (2) may provide for the payment under section 130 of reasonable legal expenses that a person has reasonably incurred, or may reasonably incur, in respect of

- (a) the proceedings in which the order is made; or
- (b) any related proceedings under this Division.

(4) Subsection (1) shall cease to apply on the transfer, in accordance with section 128(1), of an application made under this section.

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

(6) Where the property to which the application relates is being detained under this Division as part of an item of property, having been seized under section 121, subsection (5) shall be read as if it required the continued detention of the whole of the item of property.

Associated and joint property in relation to listed assets

126.(1) Sections 127 and 128 apply where

- (a) an application is made under section 125 in respect of property detained under this Division;
- (b) the magistrate is satisfied that
 - (i) the property is a listed asset; and
 - (ii) all or part of the property is recoverable property or intended by a person for use in unlawful conduct; and
- (c) there exists property that is associated with the property in relation to which the magistrate is satisfied as mentioned in paragraph (b).

(2) Sections 127 and 128 also apply where

- (a) an application is made under section 125 in respect of property detained under this Division;
- (b) the magistrate is satisfied that
 - (i) the property is a listed asset; and
 - (ii) all or part of the property is recoverable property; and
- (c) the property in relation to which the magistrate is satisfied as mentioned in paragraph (b) belongs to joint tenants and one of the tenants is an excepted joint owner.

(3) For the purpose of this Division,

“associated property” means, in relation to forfeitable property, property of any of the following descriptions, including property held by a respondent, which is not itself the forfeitable property:

- (a) any interest in the forfeitable property;

- (b) any other interest in the property in which the forfeitable property subsists;
- (c) where the forfeitable property is a tenancy in common, the tenancy of the other tenant;
- (d) where the forfeitable property is part of a larger property, but not a separate part, the remainder of the larger property,

and a reference to property being associated with forfeitable property shall be construed accordingly;

“forfeitable property” means the property in relation to which the magistrate is satisfied as mentioned in subsection (1)(b) or (2)(b), as the case may be.

Agreements on associated and joint property in relation to listed assets

127.(1) Where

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

the magistrate may, instead of making a listed asset forfeiture order, make an order requiring the person who holds the associated property or who is the excepted joint owner to make a payment to such person as he may specify in the order.

(2) The amount of the payment to be made under subsection (1) shall, subject to subsection (3), be the amount which the Recovery Authority and the person agree represents, in the circumstances specified in

- (a) section 126(1), the value of the forfeitable property; or
- (b) section 126(2), the value of the forfeitable property less the value of the excepted joint owner’s share.

- (3) The amount of the payment may be reduced where the Recovery Authority agrees that the other party to the agreement has suffered loss as a result of the seizure of the forfeitable property and any associated property under section 121 and its subsequent detention.
- (4) The reduction that is permissible under subsection (3) is such amount as the parties to the agreement agree is reasonable having regard to the loss suffered and any other relevant circumstances.
- (5) An order under subsection (1) may, so far as required for giving effect to the agreement, include provision for vesting, creating or extinguishing any interest in property.
- (6) An order under subsection (1) may provide for the payment under subsection (9) of reasonable legal expenses that a person has reasonably incurred, or may reasonably incur, in respect of
- (a) the proceedings in which the order is made; or
 - (b) any related proceedings under this Division.
- (7) For the purposes of section 77(2), on the making of an order under subsection (1), the forfeitable property shall be treated as if it had been forfeited.
- (8) Where there is more than one item of associated property or more than one excepted joint owner, the total amount to be paid under subsection (1), and the part of that amount which is to be provided by each person who holds any such associated property or who is an excepted joint owner, is to be agreed between both or all of them and the Recovery Authority.
- (9) An amount received under an order under subsection (1) shall be applied as follows:
- (a) first, it must be applied in making any payment of legal expenses which are payable under this subsection in pursuance of provision under subsection (6);

- (b) second, it must be applied in payment or reimbursement of any reasonable costs incurred in storing or insuring the forfeitable property and any associated property while it was detained under this Division;
- (c) third, it must be paid into the Criminal Assets Recovery Fund.

Absence of agreement on associated and joint property in relation to listed assets

128.(1) Where this section applies and there is no agreement under section 127, the magistrate

- (a) shall, where the value of the forfeitable property and any associated property is equal to or more than such amount as may be prescribed by the Minister by Order; and
- (b) may, where the value of the forfeitable property and any associated property is less than such amount as may be prescribed by the Minister by Order,

transfer the application for a listed asset forfeiture order to the Court.

(2) Where an application is transferred to it, the Court may order the forfeiture of the property to which the application relates, or any part of that property, where it is satisfied that

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

(3) An order under subsection (2) may include provision of the type that may be included in an order made under section 125.

(4) The Court may, in addition to making an order under subsection (2), make an order for

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

- (b) the excepted joint owner's interest to be severed.
- (5) Where the magistrate decides not to transfer an application referred to in subsection (1), the magistrate may, in addition to making an order under section 125(2), make an order for
 - (a) the forfeiture of the associated property or, as the case may be, for the excepted joint owner's interest to be extinguished; or
 - (b) the excepted joint owner's interest to be severed.
- (6) An order under subsection (4) or (5)
 - (a) may be made only where the Court or the magistrate, as the case may be, thinks it just and equitable to do so; and
 - (b) shall provide for the payment of an amount to the person who holds the associated property or who is the excepted joint owner.
- (7) In making an order under subsection (4) or (5), and including provision in it by virtue of subsection (6), the Court or the magistrate, as the case may be, shall have regard to
 - (a) the rights of any person who holds the associated property or who is an excepted joint owner and the value to that person of that property or, as the case may be, of that person's share, including any value that cannot be assessed in terms of money; and
 - (b) the interest of the Recovery Authority in realising the value of the forfeitable property.
- (8) Where the Court or the magistrate, as the case may be, is satisfied that
 - (a) the person who holds the associated property or who is the excepted joint owner has suffered loss as a result of the seizure of the forfeitable property and any associated property and its subsequent detention; and
 - (b) the circumstances are exceptional, an order under subsection (4) or (5) may require the payment of compensation to that person.

(9) The amount of compensation to be paid under subsection (8) is the amount the Court or the magistrate, as the case may be, thinks reasonable, having regard to the person's loss and to any other relevant circumstances.

(10) Compensation to be paid under subsection (9) shall be paid in the same way that compensation is to be paid under section 132.

Appeal against listed asset forfeiture order

129.(1) Any party to proceedings for a listed asset forfeiture order may appeal against

- (a) the making of the order under section 125 or 128;
- (b) the decision not to make the order under section 125, unless the reason that no order was made is that an order was instead made under section 127;
- (c) the decision not to make the order under section 128(5).

(2) Subsection (1)(b) and (c) do not apply where the application for the order under section 125 was transferred in accordance with section 128.

(3) An appeal under subsection (1) shall

- (a) be made within the period of 30 days commencing on the date on which the order was made or the decision not to make the order was taken; and
- (b) be by way of a rehearing by the relevant court which may make any order that it considers appropriate.

(3) Where the relevant court upholds an appeal against a listed asset forfeiture order, it may order the release of the whole or any part of the property involved.

Realisation of forfeited property and proceeds of realisation

130.(1) After the period within which an appeal under section 129 may be made or, where a person appeals under that section, after the appeal has been

determined or disposed of, the Recovery Authority shall realise the property, and for the purpose, may appoint a suitably qualified person to do so on its behalf.

(2) The realisation of property under subsection (1) shall be carried out, so far as practicable, in the manner best calculated to maximise the amount obtained for the property.

(3) The proceeds of property realised under subsection (1) shall be applied as follows:

- (a) first, they shall be applied in making any payment required to be made under section 128(8);
- (b) second, they shall be applied in making any payment of legal expenses which are payable under this subsection in pursuance of provision under section 125 or 127;
- (c) third, they shall be applied in making any payment or reimbursement of any reasonable costs incurred in storing or insuring the property whilst detained under this Division and in realising the property;
- (d) fourth, they shall be paid into the Criminal Assets Recovery Fund.

(4) Where what is realised under section (1) represents part only of an item of property seized and detained under this Division, the reference in subsection (3) (c) to costs incurred in storing or insuring the property is to be read as a reference to costs incurred in storing or insuring the whole of the item of property.

Victims and other owners of detained property

131.(1) A person who claims that any property, or any part of it, that is detained under this Division belongs to him, may apply to the magistrate for the property or the part of it to be released to him.

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

- (3) Where, on an application, it appears to the magistrate that
- (a) the applicant was deprived of the property to which the application relates, or of property which the property represents, by unlawful conduct;
 - (b) the property the applicant was deprived of was not, immediately before he was deprived of it, recoverable property; and
 - (c) the property belongs to the applicant,

the magistrate may order the property to be released to the applicant.

- (4) The magistrate may order the property to which an application relates to be released to the applicant or to the person from whom it was seized where
- (a) the applicant is not the person from whom the property to which the application relates was seized;
 - (b) it appears to the magistrate that the property belongs to the applicant;
 - (c) the magistrate is satisfied that the grounds specified in section 122 for the detention of the property are no longer met or, where an application has been made for a listed asset forfeiture order, the court decided not to make the order in relation to the property; and
 - (d) no objection to the making of an order under this section has been made by the person from whom that property was seized.

Compensation where property detained but not forfeited

132.(1) Where no order under section 125, 127 or 128 is made in respect of any property detained under this Division, the person to whom the property belongs or from whom it was seized may make an application to a magistrate for compensation for the detention.

- (2) Where the magistrate is satisfied that the applicant has suffered loss as a result of the detention of the property and that the circumstances are exceptional, the magistrate may order compensation to be paid to him.

(3) The amount of compensation to be paid under subsection (2) is the amount the magistrate thinks reasonable having regard to the loss suffered and any other relevant circumstances.

(4) Compensation under this section shall be paid from the Criminal Assets Recovery Fund.

(5) Where a listed asset forfeiture order is made in respect only of a part of any property detained, this section has effect in relation to the other part.

PART IV

INVESTIGATIONS

Division 1

Preliminary to Part IV

Interpretation and application of Part IV

133.(1) For the purposes of this Part,

“business transaction” has the meaning assigned to it in section 2 of the *Money Laundering and Financing of Terrorism (Prevention and Control) Act, 2011* (Act 2011-23);

“customer” has the meaning assigned to it in section 2 of the *Money Laundering and Financing of Terrorism (Prevention and Control) Act, 2011* (Act 2011-23);

“financial institution” has the meaning assigned to it in section 2 of the *Money Laundering and Financing of Terrorism (Prevention and Control) Act, 2011* (Act 2011-23);

“non-financial business entity or professional” has the meaning assigned to it in section 2 of the *Money Laundering and Financing of Terrorism (Prevention and Control) Act, 2011* (Act 2011-23);

“senior police officer”, in relation an order or warrant specified in this Part or an application for such an order or warrant, means a police officer at or above the rank of sergeant;

“privileged information or material” means, subject to subsection (2),

- (a) communications between an attorney-at-law and his client or any person representing his client made in connection with the giving of legal advice to the client;
- (b) communications between an attorney-at-law and his client or any person representing his client or between such an attorney-at-law 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) information or material enclosed with or referred to in such communications and made
 - (i) in connection with the giving of legal advice; or
 - (ii) in connection with, or in contemplation of, legal proceedings and for the purposes of such proceedings,

when the communications are in the possession of a person who is entitled to possession of them.

(2) The following is not privileged information or material:

- (a) in the case of an attorney-at-law, the name and address of a client; and
- (b) information or material held with the intention of furthering a criminal purpose.

(3) This Part applies to non-financial business entities and professionals as it applies to financial institutions.

Orders and warrants sought for civil recovery investigations

134. Where an application under this Part for an order or warrant specifies property that is subject to a civil recovery investigation, references in this Part to the investigation for the purposes of which the order or warrant is sought include an investigation into

- (a) whether a person who appears to hold or to have held the specified property holds or has held other property;
- (b) whether the other property is or has been recoverable property or associated property; and
- (c) the nature, extent or location of the other property.

*Division 2**Unexplained Wealth Orders***Unexplained wealth orders**

135.(1) A judge in Chambers may, on the application of the Recovery Authority, where he is satisfied that each of the requirements set out in section 136 is fulfilled, make an order requiring a person (“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;
- (b) explaining how the respondent obtained the property, including, in particular, how any costs incurred in obtaining the property were met; and
- (c) setting out such other information in connection with the property as may be so specified.

- (2) An application for an unexplained wealth order
 - (a) shall
 - (i) specify or describe the property in respect of which the order is sought; and
 - (ii) specify the person whom the Recovery Authority thinks holds the property, and the person specified may include a person outside Barbados; and
 - (b) may be made without notice.
- (3) An unexplained wealth order
 - (a) shall specify
 - (i) the form and manner in which the statement is to be given;
 - (ii) the person to whom it is to be given; and
 - (iii) the place at which it is to be given or, where it is to be given in writing, the address to which it is to be sent; and
 - (b) may, in connection with requiring the respondent to provide the statement, also require the respondent to produce documents of a kind specified or described in the order.
- (4) A respondent against whom an unexplained order is made shall comply with the requirements imposed by the order within such period as the judge may specify, and different periods may be specified in relation to different requirements.
- (5) A person who, in purported compliance with a requirement imposed by an unexplained wealth order,
 - (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,

is guilty of an offence.

(6) An offence under subsection (5) is punishable upon summary conviction by

- (a) a fine of \$10,000 or imprisonment for 2 years, or both, where the offender is an individual;
- (b) a fine of \$50,000, where the offender is a body corporate.

Requirements for making of unexplained wealth order

136.(1) The requirements referred to in section 135(1) are that

- (a) there are reasonable grounds for suspecting that
 - (i) the respondent holds the property;
 - (ii) the value of the property is more than such amount as may be prescribed by the Minister by Order; and
 - (iii) 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; and
 - (b) the respondent is a politically exposed person; or
 - (c) there are reasonable grounds for suspecting that
 - (i) the respondent is, or has been, involved in unlawful conduct, whether in Barbados or elsewhere; or
 - (ii) a person connected with the respondent is, or has been, so involved.
- (2) It does not matter for the purposes of subsection (1)(a)(i)
- (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 commencement date.

- (3) For the purposes of subsection (1)(a)(iii)
- (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” where 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 information available at the time of the making of the application for the order.
- (4) In subsection (1)(b), “politically exposed person” means
- (a) an individual who is, or has been entrusted with a prominent public function within Barbados or by an international organisation or a country other than Barbados;
 - (b) a family member of a person referred to in paragraph (a);
 - (c) a person known to be a close associate of a person referred to in paragraph (a);
 - (d) a person otherwise connected with a person referred to in paragraph (a).
- (5) Where the property in respect of which an unexplained wealth order is sought comprises more than one item of property, the reference in subsection (1)(a)(ii) to the value of the property is to the total value of those items.

Effect of unexplained wealth order in cases of non-compliance

137.(1) 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, the property shall be presumed to be recoverable property for the purposes of any proceedings taken in respect of the property under Part III, unless the contrary is shown.

- (2) The presumption in subsection (1) applies in relation to property
 - (a) only so far as relating to the respondent's interest in the property; and
 - (b) only where the value of that interest is more than such amount as may be prescribed under section 136(1)(a)(ii).
- (3) It is for the court hearing the proceedings under Part III in relation to which reliance is placed on the presumption to determine the matters in subsection (2).
- (4) The "response period" is such period as the judge may specify under section 135(4) as the period within which the requirements imposed by the order are to be complied with, or the period ending the latest, where more than one is specified in respect of different requirements.
- (5) For the purposes of subsection (1)
 - (a) subject to section 138, 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 a respondent, the respondent shall be taken to have failed to comply with the requirements imposed by the order unless each of the requirements is complied with or is purported to be complied with.
- (6) Where an unexplained wealth order is made in respect of property comprising more than one item of property, the reference in subsection (2)(b) to the value of the respondent's interest in the property is to the total value of the respondent's interest in those items.

Effect of unexplained wealth order in cases of compliance or purported compliance

138.(1) This section applies where, before the end of the response period (as defined by section 137(4)), the respondent complies, or purports to comply, with the requirements imposed by an unexplained wealth order in respect of any property in relation to which the order is made.

(2) Where a freezing order made under section 139 has effect in relation to the property, the Recovery Authority shall 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) shall be made within the period of 60 days starting with the date of compliance.

(4) Where the determination under subsection (2) is that no further enforcement or investigatory proceedings ought to be taken in relation to the property, the Recovery Authority shall notify the court of that fact as soon as reasonably practicable, and in any event, before the end of the period of 60 days mentioned in subsection (3).

(5) Where no freezing order is in effect in relation to the property, the Recovery Authority may, at any time, determine what, if any, enforcement or investigatory proceedings it considers ought to be taken in relation to the property.

(6) A determination under this section to take no further enforcement or investigatory proceedings in relation to any property does not prevent such proceedings being taken subsequently, whether as a result of new information or otherwise, in relation to the property.

(7) For the purposes of this section

- (a) the respondent complies with the requirements imposed by an unexplained wealth order only if all of the requirements are complied with;

- (b) references to the date of compliance are to the day on which the requirements imposed by the order are complied with, or, where 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 it relates to that requirement, occurs when the written information is received, or the documents are produced, at that address,

and in paragraphs (a) to (c) references to compliance include purported compliance.

(8) In this section “enforcement or investigatory proceedings” means any proceedings in relation to property taken under this Part or Part II or III.

Freezing orders and receivers in relation to unexplained wealth orders

139.(1) Where a judge makes an unexplained wealth order in respect of any property and the judge considers it necessary to do so for the purpose of avoiding the risk of any recovery order that might subsequently be obtained being frustrated, the judge may, on the application of the Recovery Authority, by order prohibit 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.

- (2) An application for a freezing order referred to in subsection (1)
 - (a) shall be made in the same proceedings as those in which the unexplained wealth order is made;
 - (b) may be combined in one document with the unexplained wealth order; and
 - (c) shall be made without notice where the application for the unexplained wealth order is made without notice.

- (3) The court
- (a) may at any time vary or discharge a freezing order made under subsection (1); and
 - (b) shall discharge a freezing order, so far as it has effect in relation to any property, in each of the following 3 cases:
 - (i) the first case is where the applicable 72 hour period has ended and a relevant application has not been made before the end of that period in relation to the property concerned;
 - (ii) the second case is where a relevant application has been made before the end of the applicable 72 hour period in relation to the property concerned and proceedings on the application, including any on appeal, have been determined or otherwise disposed of; and
 - (iii) the third case is where the court has received a notification in relation to the property concerned under section 138(4).
- (4) For the purpose of subsection (3), “applicable 72 hour period” means
- (a) where the respondent complies, or purports to comply, with the requirements imposed by an unexplained wealth order before the end of the response period, the period of 72 hours beginning with the day after the day on which the period of 60 days mentioned in section 138(3) ends;
 - (b) in any other case, the period of 72 hours beginning with the day after the day on which the response period ends.
- (5) Section 138(7) applies for the purposes of subsection (4) 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.
- (6) The court shall, before exercising power under this section to vary or discharge a freezing order, as well as giving the parties to the proceedings an

opportunity to be heard, give such an opportunity to any person who may be affected by its decision.

(7) Subsection (6) does not apply where the court is acting as required by subsection (3)(b).

(8) In this section

“relevant application” means an application for a restraint order, a freezing order made under section 83(1) or the appointment of a receiver;

“response period” has the meaning specified in section 137(4).

(9) Sections 85, 86, 87, 88, 89 and 90 apply in respect of a freezing order made under subsection (1) and the appointment of a receiver in relation thereto, subject to the modification set out in subsection (10) and such other modifications as may be necessary, as those sections apply with respect to a freezing order made under section 83(1) and the appointment of a receiver under section 87 in relation to that order.

(10) The modification referred to in subsection (9) is that section 87(3)(a) applies for the purpose of this section as if the reference, in section 87(3)(a), to subsection (4) were to subsection (4)(d) of that section.

Division 3

Disclosure Orders, Customer Information Orders and Account Monitoring Orders

Disclosure orders

140.(1) A judge in Chambers may, on the application of a senior police officer, where he is satisfied that each of the requirements set out in subsection (3) is fulfilled, make an order authorising the officer to give to any person the officer considers has relevant information, notice in writing requiring the person, with

respect to any matter relevant to the investigation for the purposes of which the order is sought, to

- (a) answer any question, either at a time specified in the notice or at once, at a place so specified;
 - (b) provide any information specified in the notice, by a time and in a manner so specified;
 - (c) produce any document, or any documents of a description, specified in the notice, either at or by a time so specified or at once, and in a manner so specified.
- (2) An application for a disclosure order shall be made without notice and shall state that
 - (a) a person specified in the application is subject to a criminal recovery investigation or a money laundering investigation and the order is sought for the purposes of the investigation; or
 - (b) a person specified in the application or property specified in the application is subject to a civil recovery investigation and the order is sought for the purposes of the investigation.
- (3) The requirements referred to in subsection (1) are that there are reasonable grounds for suspecting
 - (a) in the case of
 - (i) a criminal recovery investigation, that the person specified in the application has benefited from his criminal conduct or that property specified in the application as being subject to the investigation is an instrumentality of an offence;
 - (ii) a civil recovery investigation, that
 - (A) the person specified in the application as being subject to the investigation holds recoverable property or associated

- property or has, at any time, held property that was recoverable property or associated property at the time; or
- (B) the property specified in the application as being subject to the investigation is recoverable property or associated property; or
- (iii) a money laundering investigation, that the person specified in the application as being subject to the investigation has committed a money laundering offence; and
- (b) there are reasonable grounds for believing that
- (i) 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
- (ii) 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.
- (4) 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.
- (5) A person who
- (a) without reasonable excuse, fails to comply with a requirement imposed on him under a disclosure order; or
- (b) in purported compliance with a requirement imposed on him under a disclosure order
- (i) makes a statement which he 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,
- is guilty of an offence.

- (6) An offence under subsection (5) is punishable upon summary conviction by
- (a) a fine of \$10,000 or imprisonment for 2 years, or both, where the offender is an individual;
 - (b) a fine of \$50,000, where the offender is a body corporate.
- (7) For the purposes of subsection (1), “relevant information” is information, whether or not contained in a document, which the officer considers to be relevant to the investigation.

Customer information order

141.(1) A judge in Chambers may, on the application of a senior police officer, where he is satisfied that each of the requirements set out in subsection (3) is fulfilled, make an order requiring a financial institution, upon the written request of the officer to do so, to provide any customer information that the institution has relating to the person specified in the application.

- (2) An application for a customer information order
- (a) shall be made without notice and shall
 - (i) specify the person subject to investigation, whether a criminal recovery investigation, a civil recovery investigation or a money laundering investigation;
 - (ii) state that the order is sought for the purposes of the investigation; and
 - (iii) specify or describe the financial institution against which the order is sought; and
 - (b) may relate to
 - (i) all financial institutions;
 - (ii) a particular description, or particular descriptions, of financial institutions; or

- (iii) a particular financial institution or particular financial institutions.

(3) The requirements referred to in subsection (1) are that there are reasonable grounds for

(a) suspecting, in the case of

- (i) a criminal recovery investigation, that the person specified in the application has benefited from his criminal conduct or that property specified in the application is an instrumentality of an offence and the person specified in the application holds or has held the property;
- (ii) a civil recovery investigation, that the person specified in the application holds recoverable property or associated property or has, at any time, held property that was recoverable property or associated property at the time; or
- (iii) a money laundering investigation, that the person specified in the application has committed a money laundering offence; and

(b) believing that

- (i) customer 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
- (ii) 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.

(4) A financial institution that is required to provide information under a customer information order shall provide the information to the officer in such manner, and at or by such time, as the officer by notice in writing requires.

(5) Where a financial institution 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, the institution is not bound to comply with the requirement unless evidence of the authority is produced to the institution.

- (6) A financial institution which
- (a) without reasonable excuse, fails to comply with a requirement imposed on the institution under a customer information order; or
 - (b) in purported compliance with a customer information order
 - (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,

is guilty of an offence and is liable on summary conviction to a fine of \$500,000.

(7) The Minister may by Order subject to negative Resolution prescribe the types or categories of information that constitute customer information for the purposes of this section.

(8) A customer information order does not oblige a financial institution to provide privileged information or material.

Account monitoring order

142.(1) A judge in Chambers may, on the application of an officer, where he is satisfied that each of the requirements set out in subsection (3) is fulfilled, make an order that a financial institution specified in the application shall, for the period stated in the order (which shall not exceed 90 days commencing on the date the order is made) provide account information of the description specified in the order to an officer, in the manner, and at, or by, the time or times, stated in the order.

- (2) An application for an account monitoring order
- (a) shall be made without notice and shall
 - (i) specify the person subject to investigation, whether a criminal recovery investigation, a civil recovery investigation or a money laundering investigation;
 - (ii) state that the order is sought for the purposes of the investigation; and
 - (iii) specify the financial institution against which, and describe the account information or material in respect of which, the order is sought; and
 - (b) may relate to
 - (i) all accounts held by the person specified in the application at the financial institution so specified;
 - (ii) a particular description, or particular descriptions, of accounts so held; or
 - (iii) a particular account or particular accounts so held.
- (3) The requirements referred to in subsection (1) are that there are reasonable grounds for
- (a) suspecting, in the case of
 - (i) a criminal recovery investigation, that the person specified in the application has benefited from his criminal conduct or that the property specified in the application is an instrumentality of an offence;
 - (ii) a civil recovery investigation, that 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) a money laundering investigation, that the person specified in the application has committed a money laundering offence; and

(b) believing that

(i) 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

(ii) 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.

(4) For the purposes of this section, “account information” is information relating to an account or accounts held at a financial institution by a person, whether solely or jointly with one or more other persons.

(5) Where a financial institution that has been given notice of an account monitoring order knowingly

(a) contravenes the order; or

(b) provides false or misleading information in purported compliance with the order,

the institution is guilty of an offence and is liable on summary conviction to a fine of \$500,000.

*Division 4**General Provisions on Unexplained Wealth Orders, Customer Information Orders, Accounting Monitoring Orders and Other Similar Disclosures***Protection of statements made pursuant to unexplained wealth, disclosure, customer information and account monitoring orders**

143.(1) Subject to subsection (2), a statement made by a person in response to a requirement imposed by an unexplained wealth order, disclosure order, customer information order or account monitoring order may not be used in evidence against the person in criminal proceedings.

(2) Subsection (1) does not apply in the case of

- (a) proceedings under Part II;
- (b) proceedings for contempt of court;
- (c) a prosecution for an offence under section 135, 140, 141 or 142;
- (d) a prosecution for an offence under the *Perjury Act*, Cap. 142; or
- (e) a prosecution for another 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)(e) against a person unless

- (a) evidence relating to it is adduced; or
- (b) a question relating to it is asked,

by or on behalf of the person in the proceedings arising out of the prosecution.

Confidentiality and disclosure

144.(1) An unexplained wealth order, disclosure order, customer information order and account monitoring order has effect notwithstanding any obligation as

to confidentiality or any other restriction upon the disclosure of information imposed by any enactment, rule of law or otherwise.

(2) A financial institution that is, or has been, subject to a customer information order or an account monitoring order shall not disclose the existence or the operation of the customer information order or the account monitoring order to any person except

- (a) an officer or agent of the institution, for the purpose of ensuring that the order is complied with;
- (b) an attorney-at-law, for the purpose of obtaining legal advice or representation in relation to the order; or
- (c) the Commissioner of Police or another police officer authorised in writing by the Commissioner of Police to receive the information.

(3) A person referred to in subsection (2)(a), (b) or (c) to whom a disclosure of the existence or operation of a customer information order or an account monitoring order has been made, whether in accordance with subsection (2) or otherwise, shall not

- (a) disclose the existence or operation of the order except to another person referred to in subsection (2) for the purposes of
 - (i) the performance of that person's duties, where the disclosure is made by the Commissioner of Police or another police officer;
 - (ii) ensuring that the order is complied with or obtaining legal advice or representation in relation to the order, where the disclosure is made by an officer or agent of the institution; or
 - (iii) giving legal advice or making representations in relation to the order, where the disclosure is made by an attorney-at-law; or
- (b) make a record of, or disclose, the existence of the operation of the order in any circumstances, even when he ceases to be a person referred to in subsection (2).

(4) Nothing in subsection (3) prevents the disclosure by a person referred to in subsection (2)(c) of the existence or operation of a customer information order or an account monitoring order

- (a) for the purposes of, or in connection with, legal proceedings; or
- (b) in the course of proceedings before a court.

(5) A person referred to in subsection (2)(b) shall not be required to disclose to any court the existence or operation of a customer information order or an account monitoring order.

(6) A person who contravenes subsection (2) or (3) is guilty of an offence and is liable on summary conviction to

- (a) a fine of \$20,000 or imprisonment for 3 years or both, in the case of an individual; or
- (b) a fine of \$100,000, in the case of a body corporate.

(7) A reference in this section to disclosing the existence or operation of a customer information order or an account monitoring order to a person includes a reference to disclosing information to the person from which the person could reasonably be expected to infer the existence or operation of the order.

Further provisions relating to unexplained wealth and disclosure orders

145.(1) An unexplained wealth order and a disclosure order do not require a person to provide privileged information or material.

(2) A police officer may take copies of any documents produced by a person in connection with complying with a requirement of an unexplained wealth order or a disclosure order.

(3) Any document produced in compliance with an unexplained wealth order or a disclosure order may be retained for so long as it is necessary to retain it, as opposed to copies of it, in connection with the investigation for the purposes of which the order was made.

(4) Notwithstanding subsection (3), where a police officer has reasonable grounds for believing that the document

(a) may need to be produced for the purposes of any legal proceedings;
and

(b) might otherwise be unavailable for those purposes,

the document may be retained until the proceedings are concluded.

Register of original documents

146.(1) Where a financial institution is under an obligation pursuant to any enactment to retain a document for a prescribed period and before the end of the period the institution is required to release the original of the document, the institution shall retain a complete copy of the document until the period has ended or the original document is returned, whichever occurs first.

(2) A financial institution shall maintain a register of documents released under subsection (1).

(3) A financial institution that contravenes subsection (1) or (2) is guilty of an offence and is liable, on summary conviction, to a fine of \$10,000.

Communication of information to law enforcement authorities

147.(1) Where a financial institution has information about an account held with the institution and the institution has reasonable grounds for believing that

(a) the information may be relevant to an investigation of, or the prosecution of, a person for an offence; or

(b) the information would otherwise be of assistance in the enforcement of this Act or any regulations made under this Act,

the institution shall give the information to a police officer or the prosecutor.

(2) An action, suit or other proceeding does not lie against

(a) a financial institution, or

- (b) an officer, employee or agent of the institution acting in the course of the person's employment or agency

in relation to an action taken by the institution or person pursuant to subsection (1).

Variation and discharge of unexplained wealth, disclosure, customer information and account monitoring orders

148. A person who applied for an unexplained wealth order, disclosure order, customer information order or account monitoring order or a person affected by the order may apply to a judge in Chambers to vary or discharge the order, and the judge may do so where he considers it appropriate.

Division 5

Order for Disclosure of Tax information and Similar Orders

Order for disclosure of tax information

149.(1) A judge in Chambers may, on the application of the prosecutor, where he is satisfied that each of the requirements set out in subsection (3) is fulfilled and notwithstanding any other law but subject to such conditions as he may consider appropriate in the public interest, make an order requiring Barbados Revenue Authority

- (a) to allow the prosecutor or any other person named in the order access to all such information and documents and to examine them; or
- (b) where the judge considers it necessary in the circumstances, to produce all such information and documents to a person referred to in paragraph (a) and allow such person to remove the information and documents from the possession of Barbados Revenue Authority,

within such period as the judge may specify after the expiration of 7 days following the service of the order on Barbados Revenue Authority pursuant to subsection (4).

(2) An application for an order for disclosure of tax information shall be made without notice and shall

- (a) specify the person or property subject to investigation, whether a criminal recovery investigation, a civil recovery investigation or a money laundering investigation;
- (b) state that the order is sought for the purposes of the investigation;
- (c) specify the person in relation to whom the information or documents referred to in paragraph (d) are required; and
- (d) specify or describe the type of information or documents in the possession of Barbados Revenue Authority to which access is sought or that is proposed to be examined or communicated.

(3) The requirements referred to in subsection (1) are that there are reasonable grounds for

- (a) suspecting, in the case of
 - (i) a criminal recovery investigation, that the person specified in the application has benefited from his criminal conduct or that property specified in the application is an instrumentality of an offence;
 - (ii) a civil recovery investigation, that 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) a money laundering investigation, that the person specified in the application has committed a money laundering offence; and
- (b) believing that
 - (i) 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

- (ii) 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.

(4) A copy of an order made by a judge under subsection (1) shall be served on Barbados Revenue Authority in such manner as the judge directs.

(5) A judge who makes an order under subsection (1) may, on the application of Barbados Revenue Authority or the prosecutor, extend the period within which the order is to be complied with.

Objection to disclosure of information

150.(1) Barbados Revenue Authority may object to the disclosure of any information or document in respect of which an order under section 149 has been made by certifying in writing that the information or document should not be disclosed on the grounds that

- (a) Barbados Revenue Authority is prohibited from disclosing the information or document by any bilateral or international treaty, convention or other agreement respecting taxation to which Barbados is a signatory;
- (b) a privilege is attached by law to the information or document;
- (c) the information or document has been placed in a sealed package pursuant to law or an order of a court of competent jurisdiction; or
- (d) disclosure of the information or document would not for any other reason be in the public interest.

(2) Where an objection to the disclosure of information or a document is made under subsection (1) the objection may be determined on application by Barbados Revenue Authority or the prosecutor to a judge in Chambers made not later than 14 days from the date of the objection.

(3) A judge who is to determine an objection pursuant to subsection (2) may, where he considers it necessary, examine the information or document in relation

to which the objection is made and shall grant the objection and order that disclosure of the information or document be refused where he is satisfied as to any of the grounds mentioned in subsection (1).

(4) An appeal lies from a determination under subsection (2) to the Court of Appeal and shall be brought within 14 days from the date of the determination appealed from or within such further time as the Court of Appeal considers appropriate in the circumstances.

Evidential value of copies

151. Where any information or document is examined or provided pursuant to an order under section 149 the person by whom it is examined or to whom it is provided or any officer or person authorised by Barbados Revenue Authority for the purpose, may make or cause to be made one or more copies thereof and any copy purporting to be certified by Barbados Revenue Authority to be a copy made pursuant to this section is evidence of the nature and content of the original information or document and has the same probative force as the original information or document would have had if it had been proved in the ordinary way.

Further disclosure

152. No person to whom information or documents have been disclosed or provided pursuant to an order under section 149 shall further disclose the information or documents except for the purposes of the investigation in relation to which the order was made and proceedings under this Act.

Disclosure of information and documents held by Government departments

153.(1) Notwithstanding any provision in this or in any other law, the Court may on an application by the prosecutor order the person in charge of any Government department or statutory body to produce or furnish to the prosecutor or any other person specified in the order any document or information which is in his possession or under his control or to which he may reasonably have access

(not being a document readily available to the public), which the Court considers relevant to any investigation into, or proceedings relating to, an offence alleged or suspected to have been committed by any person.

(2) Section 150 shall, with such modifications and adaptations as the circumstances may require, apply in respect of an order made under subsection (1).

Division 6

Search and Seizure Warrants

Search and seizure warrant

154.(1) A judge in Chambers may, on the application of a senior police officer, where he is satisfied of the circumstances set out in subsection (3), issue a warrant authorising a police officer to

- (a) enter and search the premises specified in the application for the warrant; and
 - (b) seize and retain any material found on the premises which is likely to be of substantial value, whether or not by itself, to the investigation for the purposes of which the application is made.
- (2) An application for a search and seizure warrant shall
- (a) specify the person or property subject to investigation and the type of investigation, whether a criminal recovery investigation, a civil recovery investigation or a money laundering investigation;
 - (b) state that the warrant is sought for the purposes of the investigation;
 - (c) specify the premises in respect of which the warrant is sought; and
 - (d) specify the material in respect of which the warrant is sought or state that there are reasonable grounds for believing that there is material falling within subsection (7), (8) or (9) on the premises.

- (3) The circumstances referred to in subsection (1) are that
 - (a) a disclosure order in relation to material has not been complied with and there are reasonable grounds for believing that the material is on the premises specified in the application for the warrant; or
 - (b) subsection (4) applies and
 - (i) the conditions specified in subsection (5) are fulfilled; or
 - (ii) the conditions specified in subsection (6) are fulfilled.
- (4) This subsection applies for the purposes of subsection (3)(b) where there are reasonable grounds for suspecting in the case of
 - (a) a criminal recovery investigation, that the person specified in the application for the warrant has benefited from his criminal conduct or that property specified in the application as being subject to the investigation is an instrumentality of an offence;
 - (b) a civil recovery investigation, that the property specified in the application for the warrant is recoverable property or associated property; or
 - (c) a money laundering investigation, that the person specified in the application for the warrant has committed a money laundering offence.
- (5) The conditions referred to in subsection (3)(b)(i) are that
 - (a) there are reasonable grounds for believing that
 - (i) any material on the premises specified in the application for the warrant is likely to be of substantial value, whether or not by itself, to the investigation for the purposes of which the warrant is sought; and
 - (ii) it is in the public interest for the material to be obtained, having regard to the benefit likely to accrue to the investigation if the material is obtained; and

- (b) it would not be appropriate to make a disclosure order because
 - (i) it is not practicable to communicate with any person against whom the disclosure order could be made;
 - (ii) it is not practicable to communicate with any person who would be required to comply with an order to grant entry to the premises; or
 - (iii) the investigation might be seriously prejudiced unless a police officer is able to secure immediate access to the material.
- (6) The conditions referred to in subsection (3)(b)(ii) are that
 - (a) there are reasonable grounds for believing that there is material on the premises specified in the application for the warrant and, in the case of
 - (i) a criminal recovery investigation, that the material falls within subsection (7);
 - (ii) a civil recovery investigation, that the material falls within subsection (8); or
 - (iii) a money laundering investigation, that the material falls within subsection (9);
 - (b) there are reasonable grounds for believing that it is in the public interest for the material to be obtained, having regard to the benefit likely to accrue to the investigation if the material is obtained; and
 - (c) one of the following apply:
 - (i) it is not practicable to communicate with any person entitled to grant entry to the premises;
 - (ii) entry to the premises will not be granted unless a warrant is produced; or

- (iii) the investigation might be seriously prejudiced unless a police officer arriving at the premises is able to secure immediate entry to them.

(7) In the case of a criminal recovery investigation, material falls within this subsection where the material cannot be identified at the time of the application but it

(a) relates to

- (i) the person specified in the application, the question whether he has benefited from his criminal conduct or any question as to the extent or location of his benefit from his criminal conduct; or
- (ii) the property specified in the application, the question whether it is an instrumentality of an offence or any question as to who holds the property or the extent or location of it; and

(b) is likely to be of substantial value, whether or not by itself, to the investigation for the purposes of which the warrant is sought.

(8) In the case of a civil recovery investigation, material falls within this subsection where it cannot be identified at the time of the application but it

(a) relates to the property specified in the application, the question whether it is recoverable property or associated property, the question as to who holds any such property, any question as to whether the person who appears to hold any such property holds other property which is recoverable property or any question as to the extent or location of any property mentioned in this paragraph; and

(b) is likely to be of substantial value, whether or not by itself, to the investigation for the purposes of which the warrant is sought.

(9) In the case of a money laundering investigation, material falls within this subsection where it cannot be identified at the time of the application but it

(a) relates to the person specified in the application or the question whether he has committed a money laundering offence; and

(b) is likely to be of substantial value, whether by itself or together with other material, to the investigation for the purposes of which the warrant is sought.

(10) A search and seizure warrant does not confer the right to seize privileged material.

PART V

MISCELLANEOUS

Undertakings by Crown in respect of restraining orders and freezing orders

155.(1) The Court may, before making a restraining order or a freezing order, require the Crown to give such undertakings as the Court considers appropriate with respect to the payment of damages or costs, or both, in relation to the making and execution of the order.

(2) For the purposes of this section, in the case of

(a) a restraining order, the prosecutor may, after consultation with the Attorney-General; and

(b) a freezing order, the Recovery Authority may

on behalf of the Crown, give to the Court such undertakings with respect to the payment of damages or costs, or both, as are required by the Court.

Registration of restraining order and freezing order

156.(1) A copy of a restraining order or of a freezing order which affects lands, tenements or hereditaments in Barbados shall be registered with the Registrar in accordance with the *Registration of Judgments Act*, Cap. 210, and with the Registrar of Titles.

(2) An order referred to in subsection (1) is of no effect with respect to registered land unless it is registered as a charge under the *Land Registration Act*, Cap. 229.

(3) Where particulars of an order referred to in subsection (1) are recorded or registered, as the case may be, in accordance with the *Registration of Judgments Act*, Cap. 210 or the *Land Registration Act*, Cap. 229, a person who subsequently deals with the property shall, for the purposes of section 157, be deemed to have notice of the order at the time of the dealing.

Contravention of restraining order or freezing order

157.(1) A person who knowingly contravenes a restraining order or a freezing order by disposing of, or otherwise dealing with, property that is subject to the order is guilty of an offence and is liable on conviction on indictment to

- (a) a fine of \$100,000 or imprisonment for 5 years or both, in the case of an individual; or
- (b) a fine of \$500,000, in the case of a body corporate.

(2) Where a restraining order or a freezing order is made against property and the property is disposed of, or otherwise dealt with, in contravention of the order and the disposition or dealing was not for sufficient consideration or not in favour of a person who acted in good faith and without notice, the prosecutor or the Recovery Authority, as the case may be, may apply to the Court for an order that the disposition or dealing be set aside.

(3) On an application under subsection (2) in relation to a disposition or dealing, the Court may set aside the disposition or dealing as from

- (a) the date on which the disposition or dealing took place; or
- (b) the date of the order and declare the respective rights of any persons who acquired interests in the property on, or after the day on which the disposition or dealing took place, and before the date of the order.

Enforcing payment

158.(1) Where the Court orders a defendant to pay any amount under this Act, the order shall have effect as if the amount were a fine imposed on the defendant by the Court.

(2) Where the whole or any part of the sum ordered to be paid is not paid when required by the Court, the Court may in respect of a sum in default set out in the first column of the *Second Schedule*, impose a term of imprisonment not exceeding the maximum period set out opposite that amount in the second column.

(3) Where

- (a) a warrant of commitment is issued for a default in payment of an amount ordered to be paid under this Act in respect of any offence or offences; and
- (b) at the time the warrant is issued, the defendant is liable to serve a term of custody in respect of the offence or offences,

the term of imprisonment to be served in default of payment of the amount shall not begin to run until after the term mentioned in paragraph (b) has been served.

(4) Where, under a power granted by this Act, the Court varies a confiscation order or a recovery order and the effect is to reduce the maximum period of imprisonment specified in this section

- (a) where, as a result, the maximum period of imprisonment is less than the term of imprisonment imposed by the Court, the Court shall impose a reduced term of imprisonment; or
- (b) where paragraph (a) does not apply, the Court may amend the term of imprisonment imposed.

(5) Where, under a power granted by this Act, the Court varies a confiscation order or a recovery order and the effect is to increase the maximum period of

imprisonment specified in this section, the Court may on the application of the prosecutor, amend the term of imprisonment imposed.

(6) Where a defendant serves a term of imprisonment in default of paying any amount due under a confiscation order or a recovery order, his serving that term does not prevent the confiscation order or recovery order from continuing to have effect, so far as any other method of enforcement is concerned.

(7) This section applies in relation to confiscation orders and recovery orders made by a court in its appellate jurisdiction as it applies in relation to confiscation orders and recovery orders made by the Court and the reference in subsection (1) to the Court shall be construed accordingly.

Regulations

159.(1) The Minister may make regulations for giving effect to this Act and, in particular, in respect of anything required or permitted to be prescribed by this Act and may make different provision in relation to different persons, circumstances or cases.

(2) The Minister may, in regulations made under subsection (1), provide for a breach of any provision of the regulations to be an offence punishable on summary conviction by a fine of \$10,000 or imprisonment for 2 years or both.

Repeals and amendments

160.(1) The *Proceeds of Crime Act*, Cap. 143 is repealed.

(2) The enactments set out in the first column of the *Third Schedule* are amended to the extent set out opposite thereto in the second column.

Transitional provisions

161.(1) For the purposes of this section

(a) “former Act” means the *Proceeds of Crime Act*, Cap. 143; and

- (b) where an offence is committed over a period of 2 or more days, or at some time during a period of 2 or more days, the offence shall be taken to have been committed on the earliest of those days.
- (2) Sections 13, 37, 38 and 68 do not apply where the offence or any of the offences referred to in section 13(1)(a) and (b), 37(1)(a), 38(1)(a) and 68(1)(a), respectively, was committed before the commencement date.
- (3) Section 54 does not apply where the powers conferred by section 54 would be exercisable by virtue of section 52(1)(a) or (b) being satisfied and the offence referred to in section 52(1)(a) or (b) as the case may be, was committed before the commencement date.
- (4) Where the Court is determining whether section 16 applies to a defendant
 - (a) conduct shall not form part of a course of criminal activity where any of the offences referred to in section 16(2)(a) was committed before the commencement date; and
 - (b) conduct shall form part of a course of criminal activity notwithstanding that any of the offences of which the defendant was convicted on at least 2 separate occasions in the period referred to in section 16(2)(b) was committed before the commencement date.
- (5) Notwithstanding the repeal of the former Act, the former Act applies as if it had not been repealed where subsection (2) or (3) applies with respect to an offence.
- (6) For the avoidance of doubt, where Part II applies with respect to an offence, the former Act does not apply with respect to the offence.

Commencement

162. This Act comes into operation on a day to be fixed by Proclamation.

FIRST SCHEDULE

(Section 103)

CONNECTION WITH BARBADOS

Unlawful conduct

1. There is a connection where the unlawful conduct occurred entirely or partly in Barbados.

Tainted property

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

Property

- 3.(1) There has been a connection where the property in question has been in Barbados, 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.
 - (2) There is a connection where there is other property in Barbados that is recoverable property in relation to the unlawful conduct, or tainted property.
 - (3) There has been a connection where, at any time, there has been other property in the Barbados that, at the time, was recoverable property in relation to the unlawful conduct, or tainted property.

Person

- 4.(1) There is or has been a connection where a person described in subparagraph (2)
 - (a) is linked to Barbados;
 - (b) was linked to Barbados at a time when the property became tainted property;

- (c) has been linked to Barbados at any time since the property became tainted property;
 - (d) was linked to Barbados at a time when the unlawful conduct, or some of the unlawful conduct, was taking place; or
 - (e) has been linked to Barbados at any time since that conduct took place.
- (2) The persons referred to in sub-paragraph (1) are
- (a) a person whose conduct was, or was part of, the unlawful conduct;
 - (b) a person who was deprived of property by the unlawful conduct;
 - (c) a person who holds the property in question;
 - (d) a person who has held the property in question, but only where 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 Barbados where the person is
- (a) a citizen of Barbados;
 - (b) a body incorporated or constituted under the law of Barbados; or
 - (c) a person domiciled, resident or present in Barbados.

Property held on trust

- 5.(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 Barbados;
 - (b) the trust is entirely or partly governed by the law of Barbados;
 - (c) one or more of the trustees is linked to Barbados; or

- (d) one or more of the beneficiaries of the trust is linked to Barbados.
- (2) A person is linked to Barbados where the person falls within paragraph 4(3).
- (3) “Beneficiaries” includes beneficiaries with a contingent interest in the trust property and potential beneficiaries.

Interpretation

- 6.** “The unlawful conduct” means in a case where
- (a) the property in question was obtained through unlawful conduct, that conduct;
 - (b) the property in question represents property obtained through unlawful conduct, that conduct; or
 - (c) 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.

SECOND SCHEDULE*(Section 140)***IMPRISONMENT ON DEFAULT OF PAYMENT**

First Column SUM IN DEFAULT	Second Column MAXIMUM PERIOD
\$10,000 or less	12 months
More than \$10 000 but not more than \$20 000	18 months
More than \$20 000 but not more than \$75 000	2 years
More than \$75 000 but not more than \$200 000	3 years
More than \$200 000 but not more than \$500 000	4 years
More than \$500 000 but not more than \$750 000	5 years
More than \$750 000 but not more than \$1 000 000	6 years
More than \$1 000 000 but not more than \$4 000 000	8 years
More than \$4 000 000	10 years

THIRD SCHEDULE

(Section 160)

CONSEQUENTIAL AMENDMENTS

Column 1	Column 2
<i>Enactment</i>	<i>Amendments</i>
<i>Drug Abuse (Prevention and Control) Act, Cap. 131.</i>	In section 35(4)(b), delete the words “Proceeds of Crime Act” and substitute the words “ <i>Proceeds and Instrumentalities of Crime Act, 2019</i> (Act 2019-)”.
<i>Mutual Assistance in Criminal Matters Act, Cap. 140A.</i>	<p>1. In section 2</p> <p>(a) in subsection (1)</p> <p>(i) delete the definition of “benefit”;</p> <p>(ii) in the definition of “Commonwealth country”, in paragraph (a), insert after the word “country”, the words “other than Barbados”;</p> <p>(iii) insert in alphabetical order, the following definition:</p> <p style="padding-left: 2em;">“ “criminal conduct” means in relation to</p> <p style="padding-left: 2em;">(a) Barbados, conduct which constitutes an offence in Barbados or would constitute an offence if it occurred in Barbados;</p> <p style="padding-left: 2em;">(b) a Commonwealth country, conduct which constitutes an offence in the country or would constitute an offence if it occurred in the country;”;</p> <p>(iv) in the definition of “criminal matter”, delete paragraph (c) and substitute the following:</p>

THIRD SCHEDULE - (Cont'd)*CONSEQUENTIAL AMENDMENTS*

Column 1	Column 2
<i>Enactment</i>	<i>Amendments</i>
<p><i>Mutual Assistance in Criminal Matters Act, Cap. 140A. - (Cont'd)</i></p>	<p>"(c) in Part II and Part III includes forfeiture proceedings, proceedings to restrain or freeze dealings with property, proceedings for the confiscation or recovery of property, and proceedings for the imposition of pecuniary penalties calculated by reference to the value of property or benefits arising out of criminal conduct, whether such proceedings be characterised as criminal or civil proceedings;"</p> <p>(v) insert in alphabetical order, the following definition:</p> <p style="padding-left: 40px;">“ “instrumentality” in relation to an offence, means property used in, or in connection with, or intended to be used in, or in connection with, the offence;”</p> <p>(vi) delete the definition of “restraining order”; and</p> <p>(vii) in the definition of “serious offence”</p> <p style="padding-left: 40px;">(A) in paragraph (a), delete subparagraph (ii) and substitute the following:</p> <p style="padding-left: 80px;">“(ii) for which a person may, under or by virtue of any enactment, be sentenced to imprisonment for one year or more; or”; and</p>

THIRD SCHEDULE - (Cont'd)*CONSEQUENTIAL AMENDMENTS*

Column 1	Column 2
<i>Enactment</i>	<i>Amendments</i>
<i>Mutual Assistance in Criminal Matters Act, Cap. 140A - (Cont'd)</i>	<p>(B) in paragraph (b), delete subparagraph (ii) and substitute the following:</p> <p style="padding-left: 40px;">“(ii) for which a person may, under or by virtue of any enactment, be sentenced to imprisonment for one year or more; or”; and</p> <p>(b) delete subsection (6) and substitute the following:</p> <p style="padding-left: 40px;">“(6) A reference in this Act to property or benefits derived or obtained from the commission of an offence shall be construed to include instrumentalities.”.</p> <p>2. Delete section 26(6) and (7) substitute the following:</p> <p>“(6) The Supreme Court, on an application by any person affected by an order registered in accordance with this section or by the Attorney-General,</p> <p style="padding-left: 40px;">(a) may</p> <p style="padding-left: 80px;">(i) cancel the registration of the order; or</p> <p style="padding-left: 80px;">(ii) vary the property to which the order applies,</p> <p style="padding-left: 40px;">where, or to the extent that, the Supreme Court is of the opinion that any of the conditions set out in subsection (1) is</p>

THIRD SCHEDULE - (Cont'd)

CONSEQUENTIAL AMENDMENTS

Column 1	Column 2
<i>Enactment</i>	<i>Amendments</i>
<p><i>Mutual Assistance in Criminal Matters Act, Cap. 140A - (Cont'd)</i></p>	<p>not satisfied; and</p> <p>(b) shall cancel the registration of the order where it appears to the Supreme Court that</p> <p style="padding-left: 40px;">(i) the order has been satisfied</p> <p style="padding-left: 80px;">(A) in the case of an order for the recovery of a sum of money specified in the order, by the payment of the sum of money;</p> <p style="padding-left: 80px;">(B) in the case of an order for the recovery of property specified in the order, by the surrender of the property; or</p> <p style="padding-left: 80px;">(C) by any other means; or</p> <p style="padding-left: 40px;">(ii) the order ceased to have effect in the Commonwealth country that made the request for assistance.</p> <p>(6A) Where the Supreme Court</p> <p style="padding-left: 40px;">(a) registers an order or an amendment of</p>

THIRD SCHEDULE - (Cont'd)*CONSEQUENTIAL AMENDMENTS*

Column 1	Column 2
<i>Enactment</i>	<i>Amendments</i>
<i>Mutual Assistance in Criminal Matters Act, Cap. 140A - (Concl'd)</i>	<p>an order;</p> <p>(b) cancels the registration of an order; or</p> <p>(c) varies the property to which the order applies,</p> <p>the Supreme Court shall provide for notice to be given to any person affected by its decision and to the Attorney-General, as the case may be.</p> <p>(7) The <i>Proceeds and Instrumentalities of Crime Act, 2019</i> (Act 2019-) applies, as provided in that Act, with respect to the enforcement of an order registered in accordance with this section.”.</p> <p>3. In section 31(3)(b), delete the words “25 or 27” and substitute the words “25, 27 or 27A,”.</p> <p>4. Delete section 31A and substitute the following:</p> <p>“Application of investigative provisions of Proceeds and Instrumentalities of Crime Act, 2019</p> <p>31A. Without prejudice to any other provision of this Act, Part IV of the <i>Proceeds and Instrumentalities of Crime Act, 2019</i> (Act 2019-) applies, with such modifications as may be necessary, in respect of a serious offence under this Act.”.</p>

THIRD SCHEDULE - (Concl'd)
CONSEQUENTIAL AMENDMENTS

Column 1	Column 2
<i>Enactment</i>	<i>Amendments</i>
<p><i>Money Laundering and Financing of Terrorism (Prevention and Control) Act, 2011 (Act 2011-23).</i></p>	<p>1. In section 2(1)</p> <p>(a) delete the definition of “benefit”;</p> <p>(b) delete the definition of “proceeds of crime” and substitute the following:</p> <p style="padding-left: 40px;">“ “proceeds of crime” means any property or other benefit that a person obtains as a result of, or in connection with, criminal conduct;”.</p> <p>2. Insert after section 5(2), the following:</p> <p style="padding-left: 40px;">“(3) For the purposes of this section it is not necessary to prove that the criminal conduct concerned constitutes a particular offence.”.</p>
<p><i>Criminal Assets Recovery Fund Act, 2016 (Act 2016-10)</i></p>	<p>1. In section 4(a), delete sub-paragraph (i) and substitute the following:</p> <p style="padding-left: 40px;">“(i) the <i>Proceeds and Instrumentalities of Crime Act, 2019</i> (Act 2019-)”.</p> <p>2. In section 6,</p> <p>(a) in paragraph (b), delete sub-paragraph (i) and substitute the following:</p> <p style="padding-left: 40px;">“(i) the <i>Proceeds and Instrumentalities of Crime Act, 2019</i> (Act 2019-)”; and</p> <p>(b) in paragraph (c), delete sub-paragraph (i) and substitute the following:</p> <p style="padding-left: 40px;">“(i) the <i>Proceeds and Instrumentalities of Crime Act, 2019</i> (Act 2019-)”.</p>

EXPLANATORY MEMORANDUM

This Bill would reform the law relating to the recovery of proceeds and instrumentalities of crime and, in particular, provide for such recovery through both criminal and civil proceedings.

PART I - PRELIMINARY

- Clause 1:** provides the short title.
- Clause 2:** provides definitions for certain terms used in the Bill.
- Clause 3:** sets out several interpretative provisions in respect of the term “property”.
- Clause 4:** elaborates on the concept of benefiting from criminal conduct.

PART II - CRIMINAL RECOVERY OF PROCEEDS AND INSTRUMENTALITIES OF CRIME

Division 1

Preliminary to Part II

- Clause 5:** explains what is meant by “realisable property” in relation to a defendant.
- Clause 6:** treats with the value of property generally.
- Clause 7:** deals specifically with the value of property obtained from criminal conduct.
- Clause 8:** elaborates on the concept of gifts.
- Clause 9:** deals particularly with tainted gifts.

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- Clause 10:** addresses how to calculate the value of tainted gifts.
- Clause 11:** explains the concept of a defendant's general and particular criminal conduct. General criminal conduct suggests a criminal lifestyle.
- Clause 12:** speaks to the institution and conclusion of criminal proceedings.
- Clause 13:** specifies the circumstances in which an application may be made for a confiscation or forfeiture order.

Division 2

Confiscation Orders

- Clause 14:** provides for the making of an application for a confiscation order.
- Clause 15:** sets out the procedure for making a confiscation order, which includes determining whether clause 16 applies to the defendant.
- Clause 16:** develops the idea of a defendant being engaged in general criminal conduct and connects specific offences such as money laundering and drug trafficking with such conduct.
- Clause 17:** stipulates how the amount recoverable as the defendant's benefit from his criminal conduct (the recoverable amount) is to be calculated.
- Clause 18:** sets out time periods which are relevant to calculating the defendant's benefit from his criminal conduct in different situations.

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- Clause 19:** specifies several assumptions that may be made where clause 16 applies.
- Clause 20:** states the time at which a defendant must pay the amount stipulated by a confiscation order.
- Clause 21:** provides for interest to be charged where the amount is not paid on time.
- Clause 22:** explains the effect that a confiscation order has on other powers of the court.
- Clause 23:** provides that the court may require a financial institution at which a defendant has an account to pay over money from the account where the defendant fails to satisfy a confiscation order.
- Clause 24:** provides for the court to postpone confiscation proceedings.
- Clause 25:** states the effect of a postponement under clause 24.
- Clause 26:** requires the prosecutor to give to the court a statement of information on the defendant where the prosecutor applies for a confiscation order.
- Clause 27:** gives the defendant an opportunity to respond to the statement of information provided by the prosecutor.
- Clause 28:** empowers the court to require information from the defendant himself.
- Clause 29:** provides for the circumstances in which a case can be reconsidered where the court decided not to make a confiscation order. This includes where fresh evidence becomes available.

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- Clause 30:** provides for the circumstances in which the court can reconsider a defendant's benefit from his criminal conduct where it decided not to make a confiscation order.
- Clause 31:** enables the court to reconsider a defendant's benefit even where it made a confiscation order.
- Clause 32:** enables the court to reconsider the amount available to a defendant to satisfy a confiscation order.
- Clause 33:** provides for the court to vary a confiscation order where the amount available to a defendant to satisfy it is inadequate.
- Clause 34:** permits the court to discharge a confiscation order where the amount available to a defendant to satisfy it is inadequate.
- Clause 35:** allows the court to discharge a confiscation order where the amount outstanding under it is negligible.
- Clause 36:** specifies additional cases in which a statement of information may be required by the court. These include where the court is reconsidering a case.
- Clause 37:** provides for the making of a confiscation order where a defendant absconds.
- Clause 38:** makes further provision in relation to abscondence.
- Clause 39:** provides for the variation of a confiscation order where a defendant ceases to be an absconder.
- Clause 40:** speaks to the discharge of a confiscation order related to abscondence.
- Clause 41:** provides for appeals in respect of confiscation orders.
- Clause 42:** speaks to the court's powers in such appellate proceedings.

Division 3

Forfeiture Orders

- Clause 43:** provides for the prosecutor to apply for a forfeiture order against a defendant.
- Clause 44:** sets out the procedure for the making of the forfeiture order.
- Clause 45:** speaks to the effect of a forfeiture order especially in relation to land.
- Clause 46:** provides that certain transfers of property will be voidable where the property is subject to forfeiture.
- Clause 47:** protects the rights of third parties in relation to forfeiture.
- Clause 48:** provides for the discharge of a forfeiture order.
- Clause 49:** allows for a payment to be made instead of a forfeiture order.
- Clause 50:** provides for the prosecutor to apply for a forfeiture order where a defendant absconds.
- Clause 51:** addresses the making of the forfeiture order where a defendant absconds.

Division 4

Restraining Orders and Management and Enforcement Receivers

- Clause 52:** sets out the circumstances in which the court may make a restraining order in relation to property.
- Clause 53:** gives guidance on applying for the restraining order.

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- Clause 54:* addresses the making of the restraining order and provides that conditions may be attached to the order.
- Clause 55:* provides for a restraining order to be varied or discharged in particular circumstances.
- Clause 56:* permits the use of hearsay evidence in relation to proceedings concerning restraining orders.
- Clause 57:* provides for the appointment of a management receiver to manage property that is subject to a restraining order.
- Clause 58:* provides for the appointment of an enforcement receiver in respect of realisable property, where, for instance, the court makes a confiscation order that is not satisfied.
- Clause 59:* explains the effect of a restraining order and orders appointing management and enforcement receivers.
- Clause 60:* stipulates how the sums realised by an enforcement receiver are to be applied.
- Clause 61:* gives a receiver certain protection in relation to legal action against him.
- Clause 62:* allows a receiver and other interested persons to seek directions from the court where necessary.
- Clause 63:* provides for the variation or discharge of an order appointing a receiver.
- Clause 64:* provides, in particular, for the circumstances in which a management receiver is to be discharged.
- Clause 65:* makes special provision as to what is to be done where a company that is being wound up holds realisable property.

Clause 66: stipulates, among other things, that the powers conferred on the court and on receivers in relation to realisable property must be exercised with a view to protecting the rights of third parties.

Division 5

General Provisions related to Part II

Clause 67: provides for a person who held realisable property to receive compensation in limited cases where no conviction is secured.

Clause 68: allows a magistrate, on the prosecutor’s application, to commit a person to the High Court for sentencing and the making of a confiscation or forfeiture order where appropriate.

**PART III - CIVIL RECOVERY OF PROCEEDS AND
INSTRUMENTALITIES OF CRIME**

Division 1

Preliminary to Part III

Clause 69: sets out the scope of Part III.

Clause 70: defines certain terms used in Part III.

Clause 71: explains what is meant by “unlawful conduct”.

Clause 72: explains the concept of property obtained through unlawful conduct.

Clause 73: defines “recoverable property” which encompasses both property obtained through unlawful conduct and tainted property.

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- Clause 74:** provides for tracing recoverable property.
- Clause 75:** addresses the situation where recoverable property becomes mixed with other property.
- Clause 76:** stipulates that profits accruing in respect of recoverable property are also to be treated as recoverable property.
- Clause 77:** outlines cases in which property is not or will cease to be recoverable.
- Clause 78:** empowers the Minister to prescribe cases in which property is not to be treated, among other things, as recoverable.
- Clause 79:** addresses the situation where a person grants an interest in recoverable property.
- Clause 80:** explains the concept of associated property, which is property that is related in some way to particular recoverable property.
- Clause 81:** explains what is contemplated by “obtaining and disposing of property”.

Division 2

Recovery Orders and Freezing Orders

Making of Recovery Orders and Freezing Orders

- Clause 82:** empowers the Recovery Authority, which under the Bill is the Attorney-General, to apply for a recovery order in respect of recoverable property.
- Clause 83:** empowers the Recovery Authority to apply for a freezing order in respect of property where he may institute proceedings for a recovery order in relation to the property.

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- Clause 84:** provides for the variation or setting aside of a freezing order.
- Clause 85:** sets out the types of exclusions that can be made in respect of freezing orders.
- Clause 86:** specifies the effect of a freezing order.
- Clause 87:** allows for a receiver to be appointed to deal with property that is subject to a freezing order.
- Clause 88:** provides for the receiver and any other interested person to apply to the court for directions where necessary.
- Clause 89:** gives the receiver certain protection in relation to legal action against him.
- Clause 90:** provides for the court to vary or set aside an order appointing a receiver.
- Clause 91:** imposes a duty on a receiver to report certain matters to the court.

Vesting and Realisation of Recoverable Property

- Clause 92:** provides for the making of a recovery order which vests recoverable property in a recovery trustee.
- Clause 93:** sets out the functions of a recovery trustee.
- Clause 94:** speaks to the effect of a recovery order, in particular, as it relates to rights of pre-emption.
- Clause 95:** provides for cases in which there is property that is associated or joined with the recoverable property.
- Clause 96:** allows for the court to accept an agreement made between the Recovery Authority and the person who holds the associated

or joint property, whereby the latter makes a payment to avoid having the recovery order made.

Clause 97: provides guidance as to the procedure to be followed where associated or joint property is involved but there is no agreement between the Recovery Authority and the person who holds the property.

Clause 98: provides for the court to stay proceedings for a recovery order where the parties all consent.

Clause 99: sets out certain limitations on the ability of the Recovery Authority to obtain a recovery order, for example, where a forfeiture order has already been secured.

Clause 100: outlines how sums recovered under a recovery order are to be applied.

Exemptions

Clause 101: protects certain third parties such as victims of theft, from having their property become subject to a recovery order.

Clause 102: specifies cases in which no proceedings for a recovery order may be taken.

Scope of Powers

Clause 103: outlines the scope of the court's powers as regards recovery orders generally and indicates that there must be some connection between the case and Barbados for the court to act. The First Schedule elaborates on the idea of a connection.

Clause 104: provides for compensation to be paid where a freezing order is made but the property involved is not recoverable or associated property.

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- Clause 105:** empowers the Minister to prescribe a threshold for the purposes of determining whether proceedings for a recovery order can be initiated.
- Clause 106:** provides for a limitation period of 20 years for bringing proceedings for a recovery order.
- Clause 107:** enables property acquired before the legislation comes into force to be taken into account for the purposes of determining whether property was recoverable at any time.

Division 3

Recovery of Cash in Summary Proceedings

- Clause 108:** defines recoverable cash.
- Clause 109:** provides for a law enforcement officer, that is, a police officer or a customs officer, to search for recoverable cash.
- Clause 110:** allows the law enforcement officer to seize cash where he suspects that it is recoverable.
- Clause 111:** provides for suspected recoverable cash to be detained initially for 72 hours and then for a longer period until further investigations and proceedings can be conducted.
- Clause 112:** states that the cash seized must be placed in an interest-bearing account.
- Clause 113:** provides for the release of the cash where its detention is no longer justified.
- Clause 114:** empowers the court to make a cash forfeiture order where it is determined that the cash is indeed recoverable cash.
- Clause 115:** provides for an appeal to be made against a forfeiture order.

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- Clause 116:** requires cash that has been forfeited to be paid into the Criminal Assets Recovery Fund.
- Clause 117:** protects victims and other innocent persons whose cash has been wrongfully detained.
- Clause 118:** provides for compensation to be paid where cash is detained but not forfeited.

Division 4

Recovery of Listed Assets in Summary Proceedings

- Clause 119:** defines “listed assets”. This term includes precious metals and stones as well as stamps and artistic works.
- Clause 120:** provides for a law enforcement officer, that is, a police officer or a customs officer, to search for recoverable listed assets.
- Clause 121:** allows the law enforcement officer to seize any listed asset where he suspects that it is recoverable.
- Clause 122:** provides for suspected recoverable listed assets to be detained initially for 72 hours and then for a longer period until further investigations and proceedings can be conducted.
- Clause 123:** permits a law enforcement officer to conduct tests on any item of property seized to determine whether it is indeed a listed asset.
- Clause 124:** provides for the release of a listed asset where its detention is no longer justified.
- Clause 125:** empowers the court to make a listed asset forfeiture order where it is determined that the asset is recoverable.

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- Clause 126:** provides for the treatment of property that is associated or joined with a listed asset that is recoverable.
- Clause 127:** provides for the court to honour agreements made between the Recovery Authority and the owners of property that is associated or joined with a listed asset that is recoverable.
- Clause 128:** specifies how the court must deal with cases in which there is no agreement between the Recovery Authority and the owners of such property.
- Clause 129:** allows for an appeal to be made against a listed asset forfeiture order.
- Clause 130:** provides for the realisation of the value of forfeited listed assets.
- Clause 131:** allows a victim of theft to have his property released where it was detained as a listed asset.
- Clause 132:** makes compensation payable in certain cases where property was detained as a listed asset but not forfeited.

PART IV - INVESTIGATIONS

Division 1

Preliminary to Part IV

- Clause 133:** provides definitions for certain terms used in Part IV and speaks to the application of the part.
- Clause 134:** explains what is meant by “civil recovery investigation” where an application for an order or warrant indicates that property is subject to such an investigation.

Division 2

Unexplained Wealth Orders

- Clause 135:** provides for the making of an unexplained wealth order against a person. Such an order requires a person to set out his interest in particular property and explain how he acquired the property.
- Clause 136:** sets out the requirements for the making of an unexplained wealth order. The order can only be made against certain categories of persons including politically exposed persons.
- Clause 137:** explains the effect that an unexplained wealth order will have where a person fails to comply with it. In such a case, the property in issue will be presumed to be recoverable property.
- Clause 138:** explains the effect that an unexplained wealth order will have where a person complies or purports to comply with it.
- Clause 139:** provides for freezing orders to be made and receivers to be appointed in respect of property that is the subject of an unexplained wealth order.

Division 3

Disclosure Orders, Customer Information Orders and Account Monitoring Orders

- Clause 140:** provides for the making of a disclosure order to enable a police officer to obtain answers or other information or documents from any person upon the production of a notice by him.
- Clause 141:** provides for a police officer to obtain a customer information order to require a particular financial institution or category

of financial institution to supply him with any information the institution has relating to a particular customer.

Clause 142: enables a police officer to secure an account monitoring order to require a financial institution to monitor and provide information on the account of a customer for up to 90 days.

Division 4

General Provisions on Unexplained Wealth Orders, Customer Information Orders, Accounting Monitoring Orders and Other Similar Disclosures

Clause 143: protects persons against self incrimination in relation statements made in response to unexplained wealth, disclosure, customer information and account monitoring orders.

Clause 144: provides that the orders referred to in clause 143 will have effect in spite of any duty of confidentiality that the person required to disclose has.

Clause 145: creates an exception as regards disclosure in relation to privileged information or material.

Clause 146: requires a financial institution to keep a register of documents that it releases pursuant to an order requiring disclosure.

Clause 147: permits a financial institution to voluntarily disclose information that it thinks may be useful to an investigation.

Clause 148: provides for the variation and discharge of unexplained wealth, disclosure, customer information and account monitoring orders.

Division 5

Order for Disclosure of Tax information and Similar Orders

- Clause 149:** makes special provision as regards the disclosure of tax information.
- Clause 150:** provides for Barbados Revenue Authority to object to a disclosure under clause 149.
- Clause 151:** speaks to the evidential value of copies of documents disclosed under clause 149.
- Clause 152:** imposes restrictions on the further disclosure of information released under clause 149.
- Clause 153:** provides for the disclosure of information held by government departments.

Division 6

Search and Seizure Warrants

- Clause 154:** provides for a magistrate to issue a search and seizure warrant to a police officer for the purposes of the legislation.

PART V - MISCELLANEOUS

- Clause 155:** states that the court may require the Crown to give certain undertakings where an application for a freezing or a restraining order is made.
- Clause 156:** provides for the registration of freezing and restraining orders in relation to land.

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- Clause 157:** makes it an offence for a person to contravene a freezing or restraining order.
- Clause 158:** provides for the court to enforce payment of any amount payable under the legislation by treating the amount as a fine and imposing specific terms of imprisonment for failure to pay. These terms are specified in the Second Schedule.
- Clause 159:** empowers the Minister to make regulations for giving effect to the legislation.
- Clause 160:** repeals the *Proceeds of Crime Act*, Cap. 143 and provides for the making of consequential amendments to other pieces of legislation. These are set out in the Third Schedule.
- Clause 161:** makes transitional provision as a result of the repeal of the *Proceeds of Crime Act*, Cap. 143.
- Clause 162:** provides for the legislation to commence upon Proclamation.