

ANTIGUA AND BARBUDA



THE PROCEEDS OF CRIME (AMENDMENT) ACT, 2014

No. 3 of 2014

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THE PROCEEDS OF CRIME (AMENDMENT) ACT, 2014

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[L.S.]



I Assent,

Louise Lake-Tack,
Governor-General.

12th May, 2014

ANTIGUA AND BARBUDA

THE PROCEEDS OF CRIME (AMENDMENT) ACT, 2014

No. 3 of 2014

AN ACT to amend the Proceeds of Crime Act, No. 13 of 1993.

ENACTED by the Parliament of Antigua and Barbuda as follows—

1. Short title

This Act may be cited as the Proceeds of Crime (Amendment) Act, 2014.

2. Interpretation

In this Act—

“ONDCP” means the Office of National Drug and Money Laundering Control Policy, established pursuant to the Office of National Drug and Money Laundering Control Policy Act 2003 (No. 11 of 2003);

“Police Force” means the Royal Antigua and Barbuda Police Force; and

“principal Act” means the Proceeds of Crime Act 1993 (No. 13 of 1993).

3. Amendment of section 16- Application of procedure for enforcing fines

Section 16 of the principal Act is amended in subsection (1) by repealing paragraphs (b) and (c) and substituting the following paragraphs —

“(b) direct that the term of imprisonment imposed pursuant to paragraph (a) be served consecutively to any other form of imprisonment imposed on the person, or that the person is then serving;

(c) direct that the Prisons Act Cap. 341 and any regulation made under that Act regarding the remission of sentence of prisoners serving a term of imprisonment shall not apply in relation to a term of imprisonment imposed on a person pursuant to paragraph (a).”

4. Amendment of section 18- Confiscation order on conviction

The principal Act is amended by repealing section 18 and substituting the following section —

“(1) For the purposes of this section and sections 19 to 24, with respect to a confiscation order made against a person in respect of the person’s conviction for a scheduled offence, such order may be made by a Magistrate in a Magistrates’ Court or a Judge of the High Court.

(2) Where a confiscation order is made under subsection (1) by a Magistrate, it shall relate in monetary terms to a sum not exceeding \$100,000.00.

(3) Where, on the evidence before a Magistrate, the Magistrate is satisfied that a confiscation order to be made by him will or is likely to exceed the sum permitted under subsection (2), he shall commit the defendant to the High Court in respect of the offence for which the defendant was convicted.

(4) A committal under this section may be made while the defendant is in custody or on bail.

(5) Where a person is committed to the High Court under this section in respect of an offence, the High Court —

(a) shall inquire into the circumstances of the case; and

(b) may deal with the defendant in the same way in which the Magistrates’ Court would deal with him if it had just convicted him of the offence.

(6) Where a person appears before a Court to be sentenced for one or more scheduled offences, the Court shall, on the application of the Director of Public Prosecutions or on the Court’s own motion where it considers it appropriate to do so—

(a) first determine whether the person has benefited from —

- (i) the offence for which he is to be sentenced;
 - (ii) any other relevant offence of which he was convicted in the same proceedings as the principal offence; and
 - (iii) any relevant offences which the Court will be taking into consideration in determining his sentence for the principal offence;
- (b) assess the value of the benefits derived by a person from the commission of an offence in accordance with sections 19 to 22;
- (c) where the Court determines that the person has benefited from the scheduled offence, before sentencing or otherwise dealing with the person, the Court shall make a confiscation order and determine in accordance with section 21 the amount to be recovered under the order; and
- (d) the Court shall then—
- (i) order the person to pay the amount of the confiscation order within such period as it may specify;
 - (ii) take into account the confiscation order before imposing any fine on him; and
 - (iii) notwithstanding paragraph (ii), leave the confiscation order out of account in determining the appropriate sentence for him.

5. Amendment to section 19- Rules for determining benefit and assessing value

Section 19 of the principal Act is amended as follows—

- (a) in subsection (3), by inserting immediately after the words “shall unless the contrary is proved”, the following words-
 - “or there is a serious risk of injustice”;
- (b) in subsection (3)(b) by repealing the words “by reason of the commission of that scheduled offence or those scheduled offences for which the person was convicted” and substituting “as a result of or in connection with the commission of scheduled offences”;
- (c) in subsection (3)(c) by repealing the words “that scheduled offence or those”;
- (d) in subsection (3)(d) by repealing the words “that scheduled offence, or those”.

6. Insertion of section 19A -Postponement of determination

The principal Act is amended by inserting after section 19 the following section –

“19A. Postponement of determination

(1) Where the Court is hearing an application under section 18 or is making a determination under section 19 but the Court considers more information is needed before –

- (a) determining whether the person has benefited; or
- (b) determining the amount to be recovered from the defendant under a confiscation order,

the Court may, for the purpose of enabling that information to be obtained, postpone making the determination for a specified period of time.

(2) The Court may make more than one postponement under subsection (1).

(3) Where the Court is satisfied that there are exceptional circumstances, the Court shall not specify a period under subsection (1) which by itself or taken together with any other postponement under this section, exceeds one year from the date of conviction.

(4) Where the person appeals against his conviction, the Court may–

- (a) postpone making either or both of the determinations mentioned in subsection (1) for the period specified; or
- (b) where it has exercised its powers to postpone, extend the period specified.

(5) A postponement or extension under subsection (1) or (4) may be made on the application of the Director of Public Prosecutions or the defence or on the Court’s own motion.

(6) Where the Court is satisfied there are exceptional circumstances, any postponement or extension under subsection (4) shall not extend beyond 3 months after the appeal is determined or otherwise disposed of.

(7) Where the Court exercises its power under this section it may nevertheless proceed to sentence the defendant in respect of the offence in question or any such offences and on making a postponed confiscation order under this section, the Court may vary any fine imposed on the person in accordance with section 18(1) (b).”

7. Amendment of section 20- Statements relating to benefits from commission of scheduled offences

The principal Act is amended by repealing section 20 and substituting the following section —

“(1) Where the Director of Public Prosecutions applies under section 18 for a confiscation order, the Director of Public Prosecutions shall tender to the Court within such period as the Court may direct, a prosecutor’s statement as to any matters relevant to determining whether the person has benefited as mentioned in section 19.

(2) Where the Court makes an order under section 18 without the Director of Public Prosecutions having applied to the Court for the order, the Court may require the Director of Public Prosecutions to tender a prosecutor’s statement, within such period as the Court may direct.

(3) Where a prosecutor’s statement is tendered under subsection (1) or (2) –

- (a) the Director of Public Prosecutions may at any time give the Court a further statement; and
- (b) the Court may at any time require the Director of Public Prosecutions to give the Court a further statement, within the period specified.

(4) Where a prosecutor’s statement is tendered and the Court is satisfied that the statement has been served on the defendant, the Court may require the defendant, within the period specified –

- (a) to indicate the extent to which he accepts the statement; and
- (b) so far as he does not accept the statement, to give particulars of any matters on which he proposes to rely, and the Court may for the purposes of the determination and assessment mentioned in subsection (1), treat any acceptance by the defendant as conclusive of the matters to which it relates.

(5) To the extent that the person fails in any respect to comply with a requirement under subsection (4), he may be treated for the purposes of this section as having accepted every matter in the statement.

(6) Where –

- (a) there is tendered to the Court by the person, a statement as to any matters relevant to determining the amount that might be realized at the time the confiscation order is made; and
- (c) the Director of Public Prosecutions accepts to any extent any matter in the statement,

the Court may, for the purposes of that determination, treat that acceptance as conclusive of the matters to which it relates.

(7) A matter may be accepted or a matter indicated for the purposes of this section either orally before the Court or in writing.

(8) An acceptance by a person under this section that he received any benefits from the commission of a scheduled offence is not admissible in any proceedings for any offence.”

8. Insertion of section 20A- Order for disclosure of financial information

The principal Act is amended by inserting immediately after section 20 the following section –

“20A. Order for disclosure of financial information

(1) For the purposes of obtaining information with respect to the finances of a defendant, to assist the Court in carrying out its functions in relation to making a confiscation order, the Court may order a person to provide such information in a specified manner and by a specified date.

(2) If the person fails without reasonable excuse to comply with any order under this section, the Court may draw such inference from that failure as it considers appropriate.

(3) Where the Director of Public Prosecutions accepts to any extent any statement made by the defendant in giving the Court information required under this section, the Court may treat that acceptance as conclusive of the matters to which it relates.”

9. Amendment of section 31- Application for restraining order

Section 31 of the principal Act is amended—

(a) in subsection (1) by—

(i) deleting the word “or” after the semicolon in paragraph (a);

(ii) inserting the word “or” after the semicolon in paragraph (b); and

(iii) inserting immediately after paragraph (b) the following paragraph—

“(c) is being investigated by a member of the Police Force or an officer of the ONDCP with regard to a scheduled offence;”;

(b) in subsection (2) by repealing paragraph (b) and substituting the following—

“(b) where the defendant has not been convicted of a scheduled offence, the offence for which he is charged, or is about to be charged, or is being investigated;”.

10. Amendment of section 32- Restraining orders

Section 32(1) of the principal Act is amended by—

(a) repealing paragraph (a) and substituting the following paragraph—

“(a) the defendant has been convicted of a scheduled offence, has been charged with a scheduled offence or is being investigated by the Police Force or an officer of the ONDCP for a scheduled offence;”;

(b) after paragraph (e), deleting the comma after the phrase “the Court may make an order” and substituting with a period;

(c) inserting a new subsection (1a) immediately before paragraph (f) where the chapter reads as follows—

“The Court may make an order under subsection (1) —”

(d) renumbering paragraphs (f) and (g) as (a) and (b).

11. Amendment of section 42- Production and Inspection orders

Section 42 of the principal Act is amended by repealing subsection (6).

12. Insertion of Part IIIA

The principal Act is amended by inserting immediately after section 60 the following new Part IIIA –

**“PART IIIA
CIVIL RECOVERY**

60A. Purpose

(1) The purposes of this Part are to—

(a) enable the Attorney General to recover in civil proceedings, property which is, or represents property—

(i) obtained through unlawful conduct; or

(ii) that has been used in, or in connection with, or is intended to be used in, or in connection with, unlawful conduct; and

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

60B. Standard of proof

- (1) The Court shall decide on a balance of probabilities whether it is proved that any—
- (a) matters alleged to constitute unlawful conduct have occurred; or
 - (b) person used, or intended to use, any property in, or in connection with, unlawful conduct.

RECOVERABLE PROPERTY AND ASSOCIATED PROPERTY

60C. Following recoverable property

(1) Subject to section 60G, property obtained through unlawful conduct, or tainted property, is recoverable property but if the property obtained through unlawful conduct or the tainted property has been disposed of (since it was so obtained), it is recoverable property only if it is held by a person into whose hands it may be followed.

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

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

60D. Tracing property

(1) Where property obtained through unlawful conduct or tainted 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.

60E. Mixing property

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

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

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

60F. Accruing profits

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

(2) Further property referred to in subsection (1) shall be treated as representing property obtained through unlawful conduct or tainted property, as the case may be.

60G. General exceptions

(1) Where—

- (a) a person disposes of recoverable property; and
- (b) the person who obtains the recoverable property upon its disposal, and does so in good faith, for value and without notice that it was recoverable property, the recoverable property may not be followed into that person's hands and, accordingly, ceases to be recoverable.

(2) Recoverable property ceases to be recoverable—

- (a) where it is vested, forfeited or otherwise disposed of pursuant to powers conferred under this Part;

(b) where—

(i) pursuant to a judgment in civil proceedings, whether in Antigua and Barbuda or elsewhere, the defendant makes a payment to the 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) a payment is made to a person under a compensation order and, apart from this paragraph, the sum received would be recoverable property.

(3) Property is not recoverable—

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

(b) where it has been taken into account in determining the amount of a person's benefit from criminal conduct for the purpose of making a confiscation order—

(i) under this Act; or

(ii) under another enactment.

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

(5) Where —

(a) a person enters into a transaction to which section 60D(2) applies; and

(b) the disposal is one to which subsection (1) or (2)(a) applies;

this section does not affect the recoverability (by virtue of section 60D(2)) of any property obtained in the transaction in place of the property disposed of.

60H. Other exemption

(1) The Minister responsible for Legal Affairs may make Regulations to provide that property is not recoverable or, as the case may be, associated property if it is—

(a) prescribed property; or

(b) disposed of pursuant to a prescribed enactment or an enactment of a prescribed description.

(2) Regulations made pursuant to subsection (1) may provide that if property is disposed of pursuant to a prescribed enactment or an enactment of a prescribed description, it is treated for the purposes of section 60II as if it had been disposed of pursuant to a recovery order.

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

60I. Granting interests

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

(2) Upon granting an interest in the property where the property in question —

(a) is property obtained through unlawful conduct or is tainted property, the interest is also 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 treated as representing in his hands the property so obtained or the tainted property, as the case may be.

60J. Obtaining and disposing of property

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

(a) the disposal of a part of the property;

(b) the grant of an interest in the property; or

(c) both the disposal or grant of an interest in the property under paragraphs (a) and (b); and

any reference to the property disposed of is a reference to any property obtained upon the disposal of the property.

(2) For the purposes of this section—

- (a) a person who makes a payment to another person is treated as making a disposal of his property to the other person, whatever form the payment takes;
- (b) where a person's property passes to another person under a will or intestacy or by operation of law, it is treated as disposed of by him to the other person; and
- (c) a person is only treated as having obtained his property for value in a case where he gave unexecuted consideration if the consideration has become executed consideration.

RECOVERY ORDERS AND PROPERTY FREEZING ORDERS

60K. Application for recovery order

(1) The Attorney General may apply to the Court using a claim form, for a recovery order against any person who the Attorney General believes holds recoverable property.

(2) The Attorney General may serve a claim under subsection (1) —

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

(3) The Attorney General shall, in the claim—

- (a) identify, by particularizing or by a general description, the property in relation to which the Attorney General seeks a recovery order;
- (b) state, in relation to each item or description of property identified in the application—
 - (i) whether it is alleged that the property is recoverable property or associated property; and
 - (ii) either who is alleged to hold the property or where the Attorney General is unable to identify the person who holds the property, the steps that have been taken to establish the identity of the person; and

- (c) nominate a suitably qualified person for appointment by the Court as the trustee for civil recovery.

60L. Application for property freezing order

(1) Where the Attorney General may institute proceedings for a recovery order, the Attorney General may apply to the Court for a property freezing order, before or after instituting the proceedings.

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

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

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

(a) there is a good arguable case that—

(i) the property to which the application for the order relates is or includes recoverable property; and

(ii) if any of the property is not recoverable property, it is associated property; and

(b) if the property to which the application for the order relates includes property alleged to be associated property, and the Attorney General has not established the identity of the person who holds it, the Attorney General has taken all reasonable steps to do so.

(5) The Attorney General shall serve within ten days of the order being made a copy of the property freezing order on any person who holds any property to which the order relates or who may otherwise be affected by the order.

60M. Variation and setting aside of freezing order

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

(2) Where the Court makes an interim receiving order, the Court shall vary or set aside the property freezing order to exclude any property subject to the interim receiving order.

(3) Where the Court determines that any property to which a property freezing order relates is neither recoverable property nor associated property, the Court shall vary the order to exclude the property.

(4) Unless acting in accordance with subsection (2), the Court shall give the parties to the proceedings and any person who may be affected by its decision an opportunity to be heard before varying or setting aside a property freezing order.

60N. Exclusions

(1) The power of the Court to make or vary a property freezing order includes the power to—

- (a) exclude specified property, or property described in the order, from the order; and
- (b) otherwise make exclusions from the prohibition on dealing with the property to which the order relates.

(2) An exclusion may be made subject to such conditions as the Court considers appropriate and may, in particular, make provision for the purpose of enabling any person to—

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

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

- (a) is limited to reasonable legal expenses that the person has reasonably incurred or that he reasonably incurs; and
- (b) specifies the total amount that may be released for legal expenses pursuant to the exclusion.

(4) Notwithstanding subsection (2) or (3), the power to make exclusions must be exercised by the Court with a view to ensuring, so far as practicable, that the satisfaction of any right of the Attorney General to recover the property obtained through unlawful conduct or the tainted property is not unduly prejudiced.

60O. Restriction on proceedings and remedies

(1) While a property freezing order remains in force—

- (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 such terms as appear to the Court to be necessary or desirable.

(2) Where a Court (whether a High Court or any other Court) is satisfied that a property freezing order has been applied for or made in respect of any property in respect of which proceedings are pending, the Court may stay the proceedings or allow the proceedings to continue on such terms as appear to the Court to be necessary.

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

(4) Before exercising any power conferred by this section, the Court shall give the parties to any of the proceedings concerned and any person who may be affected by the decision of the Court, an opportunity to be heard.

60P. Receivers in connection with property freezing orders

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

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

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

(3) In an application for an order under this section, the Attorney General shall nominate a suitably qualified person for appointment as a receiver.

(4) The Attorney General may apply a sum received by him under section 60KK (3) in making payment of the remuneration, if any, and expenses of a receiver appointed under this section.

60Q. Powers of receivers appointed under section 60P

- (1) Where the Court appoints a receiver under section 60P on an application by the Attorney General, the Court may make an order, authorizing or requiring the receiver to—

- (a) exercise any powers specified in section 5 of the Schedule II in relation to any property in respect of which the receiver is appointed; and
- (b) take any other steps the Court thinks appropriate in connection with the management of any such property, including securing the detention, custody or preservation of the property in order to manage it.

(2) The Court may make an order requiring 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; and
- (b) do anything he is reasonably required to do by the receiver for the preservation of the property.

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

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

(5) Where—

- (a) the receiver deals with any property which is not property in respect of which he is appointed; and
- (b) at the time he deals with the property he believes on reasonable grounds that he is entitled to do so by virtue of his appointment,

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

60R. Supervision of receiver and variations

(1) Any of the following persons may at any time apply to the Court for directions as to the exercise of the functions of a receiver appointed under section 60P—

- (a) the receiver;
- (b) any party to the proceedings for the appointment of the receiver or the property freezing order;

(c) any person affected by any action taken by the receiver; and

(d) any person who may be affected by any action proposed to be taken by the receiver.

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

(a) the receiver;

(b) the parties to the proceedings for the appointment of the receiver and for the property freezing order; and

(c) any person who may be interested in the application under subsection (1).

(3) The Court may at any time vary or set aside the appointment of a receiver under section 60P, any order under section 60Q or any directions under this section.

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

(a) the receiver;

(b) the parties to the proceedings for the appointment of the receiver, for the order under section 60Q or for the directions under this section, as the case may be;

(c) the parties to the proceedings for the property freezing order; and

(d) any person who may be affected by the decision of the Court.

INTERIM RECEIVING ORDER

60S. Interim receiving order

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

(2) An interim receiving order is an order for the—

(a) detention, custody or preservation of property; and

(b) appointment of an interim receiver.

(3) An application for an interim receiving order may be made without notice if the circumstances are such that notice of the application would prejudice any right of the Attorney General to obtain a recovery order in respect of any property.

(4) The Court may make an interim receiving order if—

(a) it is satisfied there is a good arguable case that—

(i) the property to which the application for the order relates is or includes recoverable property; and

(ii) if any of it is not recoverable property, it is associated property; and

(b) property to which the application for the order relates—

(i) includes property alleged to be associated property; and

(ii) if the Attorney General has not established the identity of the person who holds it,

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

(5) The Attorney General shall, in his application for an interim receiving order, nominate a suitably qualified person for appointment as interim receiver.

(6) the Attorney General shall serve within ten days of the order being made a copy of the interim receiving order on any person who holds any property to which the order relates or who may otherwise be affected by the order.

60T. Functions of interim receiver

(1) An interim receiving order may authorize or require the interim receiver to—

(a) exercise any of the powers specified in Schedule II;

(b) take any other steps the Court thinks appropriate;

for the purpose of securing the detention, custody or preservation of the property to which the order applies or of taking any steps under subsection (2).

(2) An interim receiving order shall require the interim receiver to take any steps which the Court considers necessary to establish whether or not –

- (a) the property to which the order applies is recoverable property or associated property;
- (b) any other property is recoverable property, in relation to the same unlawful conduct and, if it is, who holds it; or
- (c) any other property is tainted property, in relation to the same unlawful conduct and, if it is, who holds it.

(3) Where—

- (a) the interim receiver deals with any property which is not property to which the order relates; and
- (b) at the time he deals with the property he believes on reasonable grounds that he is entitled to do so pursuant to the order,

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

60U. Duty of person to whose property the order relates

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

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

60V. Supervision of interim receiver and variation of order

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

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

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

- (a) the parties to the proceedings;

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

60W. Restrictions on dealing etc. with property

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

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

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

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

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

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

60X. Restriction on proceedings and remedies

(1) While an interim receiving order remains in force—

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

(2) Where any Court in which proceedings are pending in respect of any property is satisfied that an interim receiving order has been applied for or made in respect of the property, the Court

may stay the proceedings or allow the proceedings to continue on such terms as appear to the Court to be necessary or desirable.

(3) Where the interim receiving order applies to a tenancy of any premises, no landlord or other person to whom rent is payable may exercise any right of forfeiture by peaceable re-entry in relation to the premises in respect of any failure by the tenant to comply with any term or condition of the tenancy, except with the leave of the Court and subject to such terms as appear to the Court to be necessary or desirable.

(4) Before exercising any power conferred by this section, the Court shall give the following the right to be heard—

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

60Y. Exclusion of property which is not recoverable

(1) Where the Court determines that any property to which an interim receiving order relates is neither recoverable property nor associated property, the Court shall vary the order to exclude that property.

(2) The Court may vary an interim receiving order to exclude from the property to which the order relates any property which is alleged to be associated property if the Court thinks that the satisfaction of any right of the Attorney General to recover the property obtained through unlawful conduct or tainted property will not be prejudiced.

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

60Z. Reporting

- (1) An interim receiving order shall require the interim receiver to inform the Attorney General and the Court as soon as reasonably practicable if the interim receiver thinks that—
 - (a) any property to which the order relates by virtue of a claim that it is recoverable property is not recoverable property;
 - (b) any property to which the order relates by virtue of a claim that it is associated property is not associated property;

- (c) any property to which the order does not relate is recoverable property in relation to the same unlawful conduct or associated property;
 - (d) any property to which the order relates is held by a person who is different from the person it is claimed holds it; or
 - (e) there has been any other material change of circumstances.
- (2) An interim receiving order shall require the interim receiver to —
- (a) report his findings to the Court; and
 - (b) serve copies of his report on the Attorney General and on any person who holds any property to which the order relates or who may otherwise be affected by the report.

60AA. Registration of interim receiving order

(1) Where the Attorney General has applied for a property freezing order or an interim receiving order, he shall be treated for the purposes of Registration of Land Act Cap. 374 as a person entitled to stay the registration of dealing with land to which the application relates, or to which a property freezing order or an interim receiving order made on the application relates.

(2) A property freezing order or an interim receiving order is of no effect with respect to registered land unless it is registered as a charge under the Registration of Land Act Cap. 374.

VESTING AND REALISATION OF RECOVERABLE PROPERTY

60BB. Recovery orders

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

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

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

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

(4) An order under subsection (3)(a) shall not make any provision in respect of any recoverable property if the Court is satisfied —

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

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

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

(6) A recovery order may sever any property.

(7) A recovery order may—

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

(8) This section is subject to sections 60EE to 60II.

(9) The Attorney General shall serve within ten days of the order being made a copy of the recovery order on any person who holds any property to which the order relates or who may otherwise be affected by the order.

60CC. Functions of the trustee

(1) The functions of the trustee are—

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

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

(3) The trustee shall realise the value of property vested in him by the recovery order, so far as practicable, in the manner best calculated to maximize the amount payable to the Attorney General.

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

(5) References in this section to a recovery order include a consent order made under section 60HH and references to property vested in the trustee by a recovery order include property vested in him pursuant to a consent order.

60DD. Rights of pre-emption

(1) A recovery order remains in force in relation to any property despite any provision, of whatever nature, which would otherwise prevent, penalize or restrict the vesting of the property.

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

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

(4) In this section “right of return” means any right under a provision for the return or reversion of property in specified circumstances.

(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.

60EE. Associated and joint property

(1) Sections 60FF and 60GG apply where the Court makes a recovery order in respect of any recoverable property, if—

- (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;
- (b) if the associated property is not the property of the respondent, the application has been served on the person whose property it is or the Court has dispensed with service; or
- (c) the recoverable property belongs to joint owners; and
- (d) one of the owners is an excepted joint owner.

60FF. Agreements about associated and joint property

(1) Where—

- (a) this section applies; and
- (b) the Attorney General and the person who holds the associated property or who is the excepted joint owner agree,

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

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

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

- (a) in the circumstances specified in section 60EE(1)(a), the value of the recoverable property; or

(b) in a case within section 60EE(1)(b), the value of the recoverable property less the value of the share of the excepted joint owner.

(4) Where—

(a) a property freezing order or an interim receiving order applied at any time to the associated property or joint ownership; and

(b) the Attorney General agrees that the person has suffered loss as a result of the property freezing order or interim receiving order,

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

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

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

60GG. Associated and joint property: default of agreement

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

(a) there is no agreement under section 60FF; and

(b) the Court thinks it just and equitable to do so.

(2) The recovery order may provide—

(a) for the associated property to vest in the trustee or for the interest of the excepted joint owner to be extinguished, as the case may be; or

(b) in the case of an excepted joint owner, for the severance of his interest.

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

(a) for the trustee to pay an amount to the person who holds the associated property or who is an excepted joint owner;

(b) for the creation of interests in favour of that person, or the imposition of liabilities or conditions, in relation to the property vested in the trustee.

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

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

(5) Where—

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

a recovery order making any provision under subsection (2) or (3) may require the Attorney General to pay compensation to that person.

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

60HH. Consent orders

(1) The Court may make an order staying any proceedings for a recovery order on terms agreed by the parties for the disposal of the proceedings if each person to whose property the proceedings, or the agreement, relates is a party both to the proceedings and the agreement.

(2) An order under subsection (1) may—

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

(3) Section 60KK applies to property vested in the trustee, or money paid to him, pursuant to the agreement as it applies to property vested in him by a recovery order or money paid under section 60FF.

60II. Limit on recovery

- (1) This section applies where the Attorney General seeks a recovery order in respect of—
- (a) both property which is or represents property obtained through unlawful conduct, or tainted property, and related property; or
 - (b) property which is or represents property obtained through unlawful conduct, or tainted property, where such an order, or an order under section 60HH, has previously been made in respect of related property.
- (2) For the purposes of this section—
- (a) “original property” means the property obtained through unlawful conduct or the tainted property, as the case may be; and
 - (b) the original property, and any items of property which represent the original property, are treated as related to each other.
- (3) The Court is not to make a recovery order if it thinks that the right of the Attorney General to recover the original property has been satisfied by a previous recovery order or an order under section 60HH.
- (4) Subject to subsection (3), the Court may act under subsection (5) if it thinks that—
- (a) a recovery order may be made in respect of two or more related items of recoverable property; but
 - (b) the making of a recovery order in respect of both or all of them is not required in order to satisfy the right of the Attorney General to recover the original property.
- (5) The Court may in order to satisfy that right to the extent required make a recovery order in respect of—
- (a) only some of the related items of property; or
 - (b) only a part of any of the related items of property; or
 - (c) both items of property under paragraphs (a) and (b).
- (6) Where the Court may makes a recovery order in respect of any property, this section does not prevent the recovery of any profits which have accrued in respect of the property.
- (7) Where—
- (a) a forfeiture order is made for the forfeiture of recoverable property; and

(b) the Attorney General subsequently seeks a recovery order in respect of related property, the forfeiture order is treated for the purposes of this section as if it were a recovery order obtained by the Attorney General in respect of the forfeited property.

(8) Where—

- (a) pursuant to a judgment in civil proceedings, whether in Antigua and Barbuda or elsewhere, the claimant has obtained property from the defendant;
- (b) the claim was based on the defendant having obtained the judgment property or related property through unlawful conduct; and
- (c) the Attorney General subsequently seeks a recovery order in respect of property which is related to the judgment property;

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

(9) Where—

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

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

(10) In subsection (9), a confiscation order includes an order under an equivalent enactment.

(11) In relation to an order mentioned in subsection (10), the reference to the amount a person benefited from criminal conduct is to be read as a reference to the corresponding amount under the Act in question.

60JJ. Limits on recovery, supplementary

(1) Where—

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

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

(2) Where—

- (a) there is a part disposal of the original property, and
- (c) other property is obtained in place of the property disposed of,

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

(1) For the purposes of this section—

“part disposal” means a disposal to which section 60J(1) applies;

“original property” has the same meaning as in section 60II.

60KK. Applying realised proceeds

(1) The trustee is to make out of the sums —

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

the payments specified under subsection (2).

(2) The trustee shall —

- (a) first, make any payment required to be made by him under section 60GG;
- (b) next, make any payment of legal expenses which are payable under this subsection in pursuance of provision under section 60BB(7)(b) pursuant to the recovery order;
- (c) pay any fees payable to a liquidator of a company appointed by or supervised by the Court; and
- (d) pay any sum which remains to the Attorney General.

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

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

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

- (a) the period permitted under section 60NN 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.

(5) In this section, “company” means any company which may be liquidated under the Companies Act 1995 including a company that has given notice of its inability to pay claims under the International Business Corporations Act Cap. 222 and a foundation which may be dissolved.

EXEMPTIONS ETC.

60LL. Victims of theft, etc

(1) In proceedings for a recovery order, a person who claims that any property alleged to be recoverable property, or any part of the property, belongs to him may apply for a declaration to that effect under this section.

(2) The Court may make a declaration under subsection (1) if it appears to the Court that the—

- (a) applicant was deprived of the property he claims, or of property which it represents, by unlawful conduct;
- (d) property the applicant was deprived of was not recoverable property immediately before he was deprived of it; and
- (e) property the applicant claims belongs to him.

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

60MM. Other exemptions

(1) The proceedings for a recovery order may not be taken-

- (a) in respect of cash found at any place in Antigua and Barbuda unless the proceedings are also taken in respect of property other than cash which is property of the same person;
- (b) against the Attorney General in respect of any recoverable property held by the Attorney General; or

- (c) against any person in respect of any recoverable property which he holds by reason of his acting, or having acted, as trustee in bankruptcy appointed under the Bankruptcy Act Cap.41 or as liquidator of a company appointed by, or as supervised by the Court.

(2) The Minister responsible for Legal Affairs may prescribe in Regulations that proceedings for a recovery order may not be taken against any person in circumstances of a prescribed description and the circumstances may relate to the person himself, to the property or to any other matter.

(3) In this section, “company” means any company which may be liquidated under the Companies Act 1995, including a company that has given notice of its inability to pay claims under the Bankruptcy Act Cap. 41 and a foundation which may be dissolved.

GENERAL

60NN. Scope of Powers

(1) Subject to subsection (2), a civil recovery order under this Part may be made by the Court in respect of—

- (a) property wherever situated; and
- (b) a person wherever domiciled, resident or present.

(2) Such an order may not be made by the Court in respect of property that is outside of Antigua and Barbuda, unless there is or has been a connection between the case and Antigua and Barbuda.

(3) The circumstances in which there is or has been such a connection include those described in Schedule IV.

60OO. Enforcement Abroad Before Recovery Order: Attorney General

(1) This section applies where—

- (a) the property freezing conditions are met in relation to property;
- (b) the property is not property to which a recovery order applies; and
- (c) the Attorney General believes that the property is located in a country outside of Antigua and Barbuda (the receiving country).

(2) The property freezing conditions are the conditions in section 60L(4) and for the purposes of this subsection, the references in those provisions to property to which the application for the order relates are to be read as references to the property mentioned in subsection (1)(a).

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

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

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

60PP. Enforcement Abroad Before Recovery Order: Receiver

(1) This section applies if—

- (a) a property freezing order made by the Court has effect in relation to property; and
- (b) the receiver appointed under section 60P in respect of the property believes that it is in a country outside of Antigua and Barbuda (the receiving country).

(2) This section also applies if—

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

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

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

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

60QQ. Evidence Overseas: Interim Receiver

(1) This section applies if—

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

(b) the order requires the interim receiver to take steps to establish a matter described in section 60T(2)(a), (b) or (c).

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

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

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

(b) the judge thinks that there is relevant evidence in a country outside of Antigua and Barbuda.

(4) The assistance that may be requested under this section is assistance in obtaining, outside of Antigua and Barbuda, relevant evidence specified in the request.

(5) For the purposes of this section, “relevant evidence” means evidence as to a matter described in section 60T(2)(a), (b) and (c).

(6) A request for assistance under this section may be sent to—

(a) a court or tribunal which is specified in the request and which exercises jurisdiction in the place where the evidence is to be obtained;

(b) the government of the country concerned; or

(c) an authority recognised by the government of the country concerned as the appropriate authority for receiving requests for assistance of that kind.

(7) Alternatively, a request for assistance under this section may be sent to the Attorney General with a view to it being forwarded to a court, tribunal, government or authority mentioned in subsection (6).

(8) The Attorney General must forward the request for assistance to the court, tribunal, government or authority.

(9) For the purpose of this section, “evidence” includes documents, information in any other form and material.

60RR. Evidence Overseas: Restrictions on Use

(1) This section applies to evidence obtained by means of a request for assistance under section 60PP.

(2) The evidence must not be used for any purpose other than—

- (a) for the purposes of carrying out the functions of the interim receiver; or
- (b) for the purposes of proceedings under this Chapter of this Part in respect of property described in subsection (3) or any proceedings arising out of such proceedings.

(3) That property is—

- (a) the property that is the subject of the interim receiving order; or
- (b) other property that is recoverable property in respect of the same unlawful conduct, or tainted property.

(4) Subsection (2) does not apply if the court, tribunal, government or authority to whom the request for assistance was sent consents to the use.

60SS. Enforcement Abroad: After Recovery Order

(1) This section applies where—

- (a) a recovery order made by the Court has effect in relation to property; and
- (b) the Attorney General or the trustee believes that the property is in a country outside of Antigua and Barbuda (the receiving country).

(2) The Attorney General may forward a request for assistance to the government of the receiving country.

(3) The Attorney General must forward a request for assistance from the trustee to the government of the receiving country.

(4) A request for assistance is a request to the government of the receiving country for assistance in connection with the management and disposal of the property and includes a request—

- (a) to secure the detention, custody or preservation of the property;
- (b) in the case of money, to secure that it is applied in accordance with the law of the receiving country;
- (c) in the case of property other than money, to secure that the property is realised and the proceeds are applied in accordance with the law of the receiving country.

(5) A certificate purporting to be issued by or on behalf of the government of the receiving country is admissible as evidence of the facts it states, if it states—

- (a) that property has been realised in pursuance of a request under this section;
- (b) the date of realisation; and
- (d) the proceeds of realisation.

60TT. Compensation: property freezing order or interim receiving order

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

(2) Subsection (1) does not apply if the Court—

- (a) has made a declaration in respect of the property under section 60LL; or
- (b) makes a consent order under section 60HH.

(3) Where the Court has made a decision by reason of which no recovery order could be made in respect of the property, the application for compensation shall be made within the period of three months beginning -

- (a) with the date of the decision; or
- (b) if any application is made for leave to appeal, with the date on which the application is withdrawn or refused; or
- (c) if the application under paragraph (b) is granted, with the date on which any proceedings on appeal are finally concluded.

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

(5) Where the Court is satisfied that the applicant has suffered loss as a result of the property freezing order or the interim receiving order, the Court may require the Attorney General to pay compensation to the applicant.

(6) Where, but for section 60DD(2), any right mentioned there would have operated in favour of, or become exercisable by, any person, he may make an application to the Court for compensation.

(7) An application for compensation under subsection (6) must be made within the period of three months beginning with the vesting referred to in section 60DD (2).

(8) Where the Court is satisfied that, in consequence of the operation of section 60DD, the right in question cannot subsequently operate in favour of the applicant or become exercisable by him, the Court may require the Attorney General to pay compensation to the applicant, as the case may be.

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

60UU. Financial threshold

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

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

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

60VV. Limitation

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

- (a) in the case of proceedings for a recovery order in respect of property obtained through unlawful conduct, when the property was so obtained;
- (b) in the case of proceedings for a recovery order in respect of tainted property, when the property became tainted property; or
- (c) in the case of proceedings for a recovery order in respect of any other recoverable property, when the property obtained through unlawful conduct which it represents is so obtained.

(2) For the purposes of subsection (1), proceedings for a recovery order are brought when—

- (a) an application is filed with the Court under section 60K; or
- (b) an application is made for an interim receiving order.

60WW. Property acquired before commencement date

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

60XX. Interpretation in Part IIIA

(1) In this Part —

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

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

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

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

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

“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 ownership had been severed;

“forfeiture fund” has the meaning assigned under the Money Laundering (Prevention) Act No. 9 of 1996.

“interim receiving order” means an order made by the court under section 60S;

“property freezing order” means an order made under section 60L;

“recoverable property” means –

(a) property obtained through unlawful conduct and tainted property;

(b) property obtained through unlawful conduct that has been disposed of since it was obtained through unlawful conduct or tainted property that has been disposed of since it became tainted property, if it is held by a person into whose hands it may follow;

“recovery order” means an order made under section 60BB;

“respondent” means—

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

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

“suitably qualified person” means a person who holds an accounting qualification, with knowledge or experience in the area of insolvency;

“tainted property” means, subject to subsection (2), property that —

(a) has been used in, or in connection with, unlawful conduct; or

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

“trustee” means the trustee for civil recovery appointed by the Court under section 60BB(1);

“unlawful conduct” means conduct which—

(a) if it occurs in Antigua and Barbuda, is unlawful under the criminal law of Antigua and Barbuda; or

(b) if it occurs in a country outside Antigua and Barbuda—

(i) is unlawful under the criminal law applying in that country; and

(ii) if it occurred in Antigua and Barbuda, would be unlawful under the criminal law of Antigua and Barbuda;

“value” means market value.

(2) Property belonging to a person is not tainted property if the unlawful conduct is not the unlawful conduct of the owner.

(3) For the purposes of subsection (2), the “unlawful conduct” is the unlawful conduct that the property is used in, or in connection with, or that the property is intended to be used in, or in connection with.”

(4) For the purpose of this Act a person obtains property through unlawful conduct (whether his own conduct or another’s) when they obtain property by or in return for the conduct.

(5) In deciding whether any property was obtained through unlawful conduct:

(a) it is immaterial whether or not any money, good or services were provided in order to put the person in question in a position to carry out the conduct;

(b) it is not necessary to show that the conduct was of a particular kind if it is shown that the property was obtained through conduct of one of a number of kinds, each of which would have been unlawful conduct.

13. Amendment on standard of proof

Save and except for the offences contained in sections 28, 37, 46, 49, 50, 61, 62 and 63, any question of fact that is to be decided by the Court in proceedings brought under this Act, shall be decided on the balance of probabilities.

14. Amendment of the Schedule

(1) The word “Schedule” in the principal Act is repealed wherever it appears and substituted with the words “Schedule I”.

(2) The Schedule to the principal Act is amended by inserting a new paragraph 7 as follows-

“(7) Any indictable or triable either way offence in Antigua and Barbuda, from which a person has benefited, as defined in section 19 of this Act.”.

15. Insertion of new Schedules II, III and IV

The Act is amended by inserting immediately after Schedule I the following new Schedules II, III and IV—

“SCHEDULE II

(Section 60T(1)(a))

POWERS OF INTERIM RECEIVERS

Seizure

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

Information

2. (1) Power to obtain information or to require a person to answer any question.

(2) A requirement imposed in the exercise of the power has effect in spite of any restriction on the disclosure of information (however imposed).

(3) An answer given by a person in pursuance of such a requirement may not be used in evidence against him in criminal proceedings, other than proceedings for an offence of perjury or any equivalent offence.

Entry, search, etc.

3. (1) Power to enter any premises in Antigua and Barbuda to which the order applies, and to—

(a) carry out a search for or inspection of anything described in the order;

(b) make or obtain a copy, photograph or other record of anything so described; and

(c) 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 Act.

(2) The order may describe anything generally, whether by reference to a class or otherwise.

Supplementary

4. (1) An order making any provision under paragraph 2 or 3 must make provision in respect of legal professional privilege.

(2) An order making any provision under paragraph 3 may require any person—

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

Management

5. (1) Power to manage any property to which the order applies.

(2) Managing property includes—

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

SCHEDULE III

(Section 60CC(4))

POWERS OF TRUSTEE

Sale

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

Expenditure

2. Power to incur expenditure for the purpose of—

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

Management

3. (1) Power to manage property.

(2) Managing property includes—

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

Legal proceedings

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

Compromise

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

Supplementary

6. For the purposes of, or in connection with, the exercise of any of his powers—

- (a) power, in his official name to—
 - (i) hold property;
 - (ii) enter into contracts;
 - (iii) sue and be sued;
 - (iv) employ agents; and
 - (v) execute a power of attorney, deed or other instrument; and
- (b) power to do any other act which is necessary or expedient.”

SCHEDULE IV**CONNECTION WITH ANTIGUA AND BARBUDA** (Section 60NN)**Unlawful conduct**

1. There is a connection where the unlawful conduct occurred entirely or partly in Antigua and Barbuda.

Tainted property

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

Property

3. There has been a connection where the property in question has been in Antigua and Barbuda, but only if it was recoverable property in relation to the unlawful conduct, or tainted property, for some or all of the time it was there.

4. There is a connection where there is other property in Antigua and Barbuda that is recoverable property in relation to the unlawful conduct, or tainted property.

5. There has been a connection where, at any time, there has been other property in Antigua and Barbuda that, at the time, was recoverable property in relation to the unlawful conduct, or tainted property.

Person

6. (1) There is or has been a connection where a person described in sub-paragraph (2)—

- (a) is linked to Antigua and Barbuda;
- (b) was linked to Antigua and Barbuda at a time when the property became tainted property;
- (c) has been linked to Antigua and Barbuda at any time since the property became tainted property;
- (d) was linked to Antigua and Barbuda at a time when the unlawful conduct, or some of the unlawful conduct, was taking place; or
- (e) has been linked to Antigua and Barbuda at any time since that conduct took place.

(2) Those persons are—

- (a) a person whose conduct was, or was part of, the unlawful conduct;
 - (b) a person who was deprived of property by the unlawful conduct;
 - (c) a person who holds the property in question;
 - (d) a person who has held the property in question, but only if it was recoverable property in relation to the unlawful conduct, or tainted property, at the time;
 - (e) a person who holds other property that is recoverable property in relation to the unlawful conduct, or tainted property; or
 - (f) a person who, at any time, has held other property that was recoverable property in relation to the unlawful conduct, or tainted property, at the time.
- (3) A person is linked to Antigua and Barbuda if the person is—
- (a) a citizen of Antigua and Barbuda;
 - (b) a body incorporated or constituted under the law of Antigua and Barbuda, or
 - (c) a person domiciled, resident or present in Antigua and Barbuda.

Property Held on Trust

7. (1) There is a connection where the property in question is property held on trust, or an interest in property held on trust, and—
- (a) the trust arises under the law of Antigua and Barbuda;
 - (b) the trust is entirely or partly governed by the law of Antigua and Barbuda;
 - (c) one or more of the trustees is linked to Antigua and Barbuda, or
 - (d) one or more of the beneficiaries of the trust is linked to Antigua and Barbuda.
- (2) A person is linked to Antigua and Barbuda if the person falls within paragraph 5(3).
- (3) “Beneficiaries” includes beneficiaries with a contingent interest in the trust property and potential beneficiaries.

Interpretation

8. For the purposes of this Schedule, “unlawful conduct” means—

- (a) in a case in which the property in question was obtained through unlawful conduct, that conduct;
- (b) in a case in which the property in question represents property obtained through unlawful conduct, that conduct; or
- (b) in a case in which it is shown that the property in question was obtained through unlawful conduct of one of a number of kinds or represents property so obtained (see section 60XX (5)(b)), one or more of those kinds of conduct.”.

Passed the House of Representatives on the 12th day of March, 2014.

Passed the Senate on the 31st day of March, 2014.

D. Gisele Isaac-Arrindell,
Speaker.

Hazlyn M. Francis,
President.

Ramona Small,
Clerk to the House of Representatives.

Ramona Small,
Clerk to the Senate.