

**ANTIGUA AND BARBUDA**



**PROCEEDS OF CRIME (AMENDMENT) BILL, 2019**

**NO. OF 2019**



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**ARRANGEMENT OF CLAUSES**

Clauses

1. Short title
2. Interpretation
3. Repeal of section 67
4. Insertion of new Sections 67A – 67K

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**AN ACT** to amend the Proceeds of Crime 1993, 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, 2019.

**2. Interpretation**

In this Act—

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

**3. Repeal of section 67 - of the principal Act**

The principal Act is amended by repealing Section 67 in its entirety and replacing it as follows -

**“67. External requests and Orders**

(1) The Attorney General may by order under this section apply the provisions of sections 67A through to 67K of the Act to any external order or request from an overseas authority.

(2) In sections 67 to 67K the following meanings shall apply -

(a) “external order” is an order or judgment which-

(i) is made by a foreign court in respect of property in Antigua and Barbuda that is or is believed to have been obtained as a result of or in connection with criminal conduct; and

(ii) is for the recovery of the proceeds, instrumentalities or benefits of crime which is represented by specified property or a specified sum money;

(b) “external request” is a request by an overseas authority to prohibit dealings with or recovery of relevant property which is identified in the request;

- (c) “overseas authority” means the authority in a foreign country tasked with the responsibility of making a request to the central authority in Antigua and Barbuda to prohibit dealings with relevant property;
- (d) “relevant property” in relation to an external order, is property which is believed on reasonable grounds will be required to satisfy an external order which has been or which may be made;
- (e) “specified property” means property specified in an external order, other than an order for a specified sum of money.”

## **5. Insertion of new sections 67A, 67B, 67C, 67D, 67E, 67F, 67G, 67H, 67I, 67J, 67K**

The principal Act is amended by inserting the following new sections after section 67-

### **“67A. Application to give effect to external orders**

(1) The Attorney General or the Director of the Office of National Drug and Money Laundering Control Policy may apply to the Court on behalf of an overseas authority to give effect to an external order in Antigua and Barbuda.

(2) An application under subsection (1) may be made *ex parte* to a judge in chambers.

### **67B. Conditions for registering an external order**

(1) The Court shall register an external order where it is satisfied that -

- (a) the external order was made consequent on the conviction of the person named in the order and no appeal is outstanding in respect of that conviction; or
- (b) the external order was made against a person consequent on an application in civil proceedings *in rem* or *in personam* whether or not a person has been convicted and no appeal is outstanding in respect of the order.

(2) In subsection (1), “appeal” includes-

- (a) proceedings for the discharge or the setting aside of the order; or
- (b) an application for a new trial or for a stay of execution.

### **67C. Matters consequent on the registration of an external order**

(1) An external order that has been registered by the court shall have effect as if the order had been made by a competent court in Antigua and Barbuda.

(2) Where the court registers an external order, it shall-

- (a) provide for notice of the registration of the external order to be given to any person affected by it; and

- (b) appoint the Attorney General or such other authority designated by the Attorney General as the enforcement authority for the purpose of implementing and enforcing the order.

**67D. Cancellation or variation of the registration of an external order**

(1) The Attorney General or a person affected by the registration of an external order may apply to the court to cancel the registration of the order or to vary the terms of the order and the extent to which it shall apply.

(2) The Court shall cancel the registration of the external order if it appears to the Court that the order has been satisfied –

- (a) in the case of an order for the recovery of a sum of money specified in it, by payment of the amount due under it;
- (b) in the case of an order for the recovery of specified property, by the surrender of the property; or
- (c) by any other means acceptable to the court.

(3) The Court may vary the terms of an external order and the extent to which it shall apply where the court is satisfied on the evidence in support of the application for variation of the external order, that there are good and substantial grounds for the variation.

(4) Where an external order has been cancelled or the terms have been varied, the Attorney General shall serve Notice of the order on any person affected by the external order and shall cause said order to be published in the official *Gazette*.

**67E. Appeal to Court of Appeal concerning external orders**

(1) The Attorney General may appeal the decision of the court not to register an external order by filing an appeal with the Court of Appeal.

(2) The Attorney General or a person affected by an external order may appeal against a decision of the court on an application made pursuant to section 67D.

(3) The Court of Appeal may deal with the appeal by –

- (a) confirming or setting aside the decision to register the external order; or
- (b) direct the Court to register the external order, or to register and give effect to so much of the order as the court deems fit.

**67F. Application for a restraint order**

(1) The Court may issue a restraint order on the application of the Attorney General or the Director of the Office of National Drug and Money Laundering Control Policy if it is satisfied that–

- (a) relevant property in Antigua and Barbuda is identified in the external request;

- (b) proceedings for an offence have been commenced in the country from which the external request was made, and not concluded; and
- (c) there is reasonable cause to believe that the defendant named in the request has benefited from his criminal conduct.

(2) An application for a restraint order may be made on an *ex parte* application to a judge in chambers.

#### **67G. Restraint order**

(1) Where the Court is satisfied as to the matters set out in subsection (2), it may make an order (a restraint order) prohibiting any specified person from dealing with relevant property which is identified in the external request and specified in the order.

(2) A restraint order may –

- (a) make provision for reasonable living expenses and legal expenses in connection with the proceedings seeking a restraint order or the registration of an external order where the defendant or person affected by the order is unable to meet those expenses out of other property or for the purpose of enabling any person to carry on any trade, business, profession or occupation; and
- (b) may be made subject to such conditions as the Court deems fit.

(3) for the purpose of this section, dealing with property includes transferring the property or removing the property which is the subject of an order from the jurisdiction of the court in Antigua and Barbuda.

#### **67H. Discharge and variation of restraint order**

(1) An application to discharge or vary a restraint order may be made to the Court by-

- (a) the Attorney General; or
- (b) any person affected by the order.

(2) On an application under subsection (1), the Court may-

- (a) discharge the order; or
- (b) vary the order

(3) The Court shall discharge the restraint order if-

- (a) at the conclusion of the proceedings for an offence with respect to which the order was made, no external order has been made; or
- (b) within a reasonable time, an external order has not been registered under subsection 67B.

**67I. Seizure of property subject to restraint order**

(1) If a restraint order is in force, a law enforcement officer may seize any property which is specified in it to prevent its removal from Antigua and Barbuda.

(2) Property seized under subsection (1) shall be dealt with in accordance with the directions of the Court which made the order.

**67J. Hearsay evidence in restraint proceedings**

(1) Evidence shall not be excluded in restraint proceedings on the ground that it is hearsay evidence.

(2) For the purposes of subsection (1), restraint proceedings are proceedings-

- (a) for a restraint order;
- (b) for the discharge or variation of a restraint order; or
- (c) on an appeal against a decision of the court in respect of an application for a restraint order pursuant to the Act.

(3) Nothing in this section affects the admissibility of evidence which is admissible apart from this section.

**67K. Restrictions relating to restraint orders**

(1) Where the Court makes a restraint order-

- (a) no distress may be levied against any property which is specified in the order except with the leave of the Court; and
- (b) against property that is the basis of any tenancy agreement, no landlord or other person to whom rent is payable may exercise a right of forfeiture by peaceable re-entry in relation to the premises in respect of any failure by the tenant to comply with any term or condition of the tenancy, except with the leave of the Court and subject to any terms the Court may impose.

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

(3) Before exercising any power conferred by this section, the Court shall give an opportunity to be heard to-

- (a) the Attorney General;
- (b) any receiver appointed in respect of the property; and
- (c) any landlord or agent for the landlord.”

Passed by the House of Representatives  
on the day of 2019.

Passed by the Senate on the  
day of 2019.

Speaker

President

Clerk to the House of Representative

Clerk to the Senate

### **EXPLANATORY MEMORANDUM**

This amendment to the Proceeds of Crime Act 1993, No 13 of 1993 are for the purpose of satisfying Antigua and Barbuda's obligations under international law. It allows the relevant authority in Antigua and Barbuda to better deal with the proceeds and instrumentalities of crime, where a person has been convicted in another jurisdiction, but the convicted individual has or is believed to have an interest in property that is located in Antigua and Barbuda.

**Hon. Steadroy C. O. Benjamin**

*Minister with responsibility for Legal Affairs,  
National Security and labour*