



VIRGIN ISLANDS

PROCEEDS OF CRIMINAL CONDUCT ACT

Revised Edition

showing the law as at 1 January 2020

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Law Revision Act 2014.

This edition contains a consolidation of the following laws—

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Amended by Acts: 12 of 2001 .. in force 1 January 2002 (S.I. 51/2001)
19 of 2003 .. in force 1 April 2004 (S.I. 20/2004)
16 of 2006 .. in force 1 December 2006
3 of 2008 .. in force 8 February 2008
1 of 2010 .. in force 9 April 2010
7 of 2012 .. in force 30 August 2012
11 of 2017 .. in force 9 June 2017

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PROCEEDS OF CRIMINAL CONDUCT ACT

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PROCEEDS OF CRIMINAL CONDUCT ACT

*(Act 5 of 1997, 12 of 2001, 19 of 2003, 16 of 2006, 3 of 2008,
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AN ACT TO MAKE PROVISION FOR THE RECOVERY OF THE PROCEEDS OF CERTAIN CRIMINAL CONDUCT AND TO PROVIDE FOR OTHER MATTERS CONNECTED THEREWITH.

Commencement

[2 January 1998]

PRELIMINARY

Short title

1. This Act may be cited as the Proceeds of Criminal Conduct Act.

Interpretation

2. (1) In this Act, unless the context otherwise requires—

“Agency” means the Financial Investigation Agency established under section 3(1) of the Financial Investigation Agency Act; *(Inserted by Act 3 of 2008)*

“charging order” means an order made under section 18 imposing on such realisable property as may be specified in the order a charge for securing the payment of money to the revenue of the Territory;

“Commission” means the Financial Services Commission established under the Financial Services Commission Act; *(Inserted by Act 3 of 2008)*

“confiscation order” means an order made by a court under section 6;

“country” includes territory; *(Inserted by Act 3 of 2008)*

“court” means the High Court or the Magistrate’s Court; *(Inserted by Act 3 of 2008)*

“criminal conduct” means conduct which constitutes an offence to which this Act applies or would constitute such an offence if it had occurred in the Territory and, for the purposes of a confiscation order, includes an offence under the Drugs (Prevention of Misuse) Act; *(Amended by Act 3 of 2008)*

“defendant” means a person against whom proceedings have been instituted for an offence to which this Act applies, whether or not he or she has been convicted and, for the purposes of a confiscation order, includes a person against whom proceedings have been instituted for an offence under the Drugs (Prevention of Misuse) Act; *(Amended by Act 3 of 2008)*

“drug trafficking offence” has the same meaning assigned to it under section 2 of the Drug Trafficking Offences Act;

“interest”, in relation to property, includes right;

“police officer” includes the Director and an investigating Officer of the Agency; *(Substituted by Act 11 of 2017)*

“proceeds of criminal conduct”, in relation to any person who has benefitted from criminal conduct, means that benefit;

“property” includes money and all other property, real or personal, including things in action and other intangible or incorporeal property;

“Registrar” means the Registrar of the High Court;

“restraint order” means an order made by the High Court under section 17.

“Steering Committee” means the Steering Committee established under section 3(3) of the Financial Investigation Agency Act; *(Inserted by Act 3 of 2008)*

(1A) Where in this Act provision is made—

(a) for a report or a disclosure to be made to a police officer or the Steering Committee or a disclosure to be made by the Steering Committee, the requirement shall be considered to be complied with if it is made to or by the Agency; or

(b) conferring power on a police officer, that power may be exercised by or on the authority of the Agency.

(Inserted by Act 3 of 2008)

(2) The expressions listed in the left-hand column below fall to be construed in accordance with the provisions of this Act listed in the right-hand column in relation to those expressions—

Expressions	Relevant provision
Benefitted from an offence	Section 6(6)
Dealing with property	Section 17(11)
Gift caught by this Act	Section 4(1)
Making a gift	Section 4(3)
Value of gift	Section 3(8)
Value of property	Section 3(4).

(3) Nothing in this Act confers any power on any court in connection with offences committed before the coming into force of this Act or proceedings against a person for an offence instituted before the coming into force of this Act.

(4) References in this Act to property obtained, or to a pecuniary advantage derived, in connection with the commission of an offence include a reference to property obtained, or to a pecuniary advantage derived, both in that connection and in some other connection.

(5) For the purposes of this Act—

(a) property is held by a person if he or she holds or obtains an interest in it; *(Amended by Act 3 of 2008)*

(b) references to property held by a person include a reference to property vested in his or her trustee in bankruptcy or liquidator;

(c) references to an interest held by a person beneficially in property include a reference to an interest which would be held by him or her beneficially if the property were not so vested;

- (d) references to an offence to which this Act applies are references to all indictable offences, other than drug trafficking offences save for the purposes of the making of a confiscation order;
(Amended by Act 3 of 2008)
- (e) property is transferred by one person to another if the first person transfers or grants to the other an interest in the property;
- (f) proceedings for an offence are instituted—
 - (i) when a summons or warrant is issued in respect of the offence;
 - (ii) when a person is charged with the offence after being taken into custody without a warrant;
 - (iii) when an indictment is preferred,and where the application of this paragraph would result in there being more than one time for the institution of proceedings, they shall be taken to have been instituted at the earliest of those times;
- (g) proceedings for an offence subject to subsection (5A), are concluded—
 - (i) when the defendant is acquitted on all counts or, as the case may be, every charge against him or her is dismissed;
 - (ii) if he or she is convicted on one or more counts but the court decides not to make a confiscation order against him or her, when the court makes that decision;
 - (iii) if he or she is sentenced without the court having considered whether or not to proceed under section 6 in his or her case, when he or she is sentenced; or
 - (iv) if a confiscation order is made against him or her in those proceedings, when the order is satisfied;
(Amended by Act 3 of 2008)
- (h) an application under section 12, 13, or 14 subject to subsection (5A) is concluded—
 - (i) if the court decides not to make or, as the case may be, not to vary an order against the defendant on that application, when it makes that decision;
 - (ii) if an order against the defendant is made or varied on that application, when the order is satisfied; or
 - (iii) if the application is withdrawn, when the prosecutor notifies the withdrawal of the application to the court to which it was made;
(Amended by Act 3 of 2008)
- (i) a confiscation order is satisfied when no amount is due under it; and
- (j) an order is subject to appeal until (disregarding any power of a court to grant leave to appeal out of time) there is no further

possibility of an appeal on which the order could be varied or set aside.

(5A) A proceeding or an application referred to in subsection (2)(g) and (h) respectively shall not be treated as concluded, until there is no further responsibility of an appeal in respect of the proceeding or application. *(Inserted by Act 3 of 2008)*

(6) For the purposes of section 23, a confiscation order shall be treated as satisfied when the defendant in respect of whom it was made has served a term of imprisonment in default of payment of the amount due under the order.

Realisable property and its value

3. (1) Subject to subsection (2), “realisable property”, for the purposes of this Act, means—

- (a) any property held by the defendant; and
- (b) any property held by a person to whom the defendant has directly or indirectly made a gift caught by this Act.

(2) Property is not realizable property if an order—

- (a) under section 29 of the Drugs (Prevention of Misuse) Act;
- (b) under section 49 of the Drug Trafficking Offences Act;
- (c) under article 15 for the Anti-terrorism (Financial and Other Measures) (Overseas Territories) Order 2002; or
- (d) made pursuant to any other enactment, is in force in respect of the property.

(Substituted by Act 3 of 2008)

(3) For the purposes of this Act, the amount that may be realised at the time a confiscation order is made is—

- (a) the total of the values at that time of all the realisable property held by the defendant, less;
- (b) where there are obligations having priority at that time, the total amounts payable in pursuance of such obligations, together with the total of the values at that time of all gifts caught by this Act.

(4) For the purpose of subsection (3), an obligation has priority at any time if it is an obligation of the defendant to—

- (a) pay an amount due in respect of a fine, or other order of a court, imposed or made on conviction of an offence, where the fine was imposed or order made before the confiscation order; or
- (b) pay a sum which, if the defendant had been adjudged bankrupt or was being wound-up, would be among the preferential debts.

(Substituted by Act 3 of 2008)

(5) Subject to the provisions of this section, for the purposes of this Act the value of property (other than cash), in relation to any person holding the property is—

- (a) where any other person holds an interest in the property—

- (i) the market value of the first-mentioned person's beneficial interest in the property; less
 - (ii) the amount required to discharge any incumbrance other than a charging order under this Act, the Drug Trafficking Offences Act, 1992 or any other enactment) on that interest; and (*Amended by Act 3 of 2008*)
 - (b) in any other case, its market value.
- (6) References in this Act to the value at any time (referred to in subsection (7) as "the material time") of any property obtained by a person as a result of or in connection with the commission of an offence are references—
- (a) to the value of the property to him or her when he or she obtained it adjusted to take account of subsequent changes in the value of money; or
 - (b) to, where subsection (7) applies, the value mentioned in that subsection, whichever is the greater.
- (7) If at the material time the person holds—
- (a) the property (not being cash) which he or she obtained; or
 - (b) property which, in whole or in part, directly or indirectly represents in his or her hands the property which he or she obtained, the value referred to in subsection (6)(b) is the value to him or her at the material time of the property mentioned in paragraph (a) or, as the case may be, of the property mentioned in paragraph (b) so far as it represents the property which he or she obtained, but disregarding any charging order.
- (8) Subject to section 4(3), references in this Act to the value at any time (referred to in subsection (9) as "the material time" of a gift caught by this Act are references—
- (a) to the value of the gift to the recipient when he or she received it adjusted to take account of subsequent changes in the value of money; or
 - (b) to, where subsection (9) applies, the value mentioned in that subsection, whichever is the greater.
- (9) Subject to section 4(3), if at the material time the person holds—
- (a) the property (not being cash) which he or she received; or
 - (b) property which, in whole or in part, directly or indirectly represents in his or her hands the property which he or she received,

the value referred to in subsection (8) is the value to him or her at the material time of the property mentioned in paragraph (a) or, as the case may be, of the property mentioned in paragraph (b), so far as it represents the property which he or she received, but disregarding any charging order.

Gifts caught by this Act

4. (1) A gift, including a gift made before the coming into force of this Act, is caught by this Act if—

- (a) it was made by the defendant at any time after the commission of the offence or, if more than one, the earliest of the offences to which the proceedings relate; and
- (b) the court considers it appropriate in all the circumstances to take the gift into account.

(2) The reference in subsection (1) to an offence to which the proceedings relate include, where the proceedings have resulted in the conviction of the defendant, a reference to an offence which the court takes into consideration when determining his or her sentence.

(3) For the purposes of this Act—

- (a) the circumstances in which the defendant is to be treated as making a gift include those where he or she transfers property to another person, directly or indirectly, for a consideration the value of which is significantly less than the value of the consideration provided by the defendant; and
- (b) in the circumstances mentioned in paragraph (a), the provisions of subsections (1) and (2) and section 3 shall apply as if the defendant has made a gift of such share in the property as bears to the whole property the same proportion as the difference between the values referred to in paragraph (a) bears to the value of the consideration provided by the defendant.

Application

5. This Act applies to property wherever situated.

MAKING OF CONFISCATION ORDERS

Confiscation orders

6. (1) For the purposes of this section and sections 7 to 11B, a confiscation order may be made by a Magistrate or a judge of the High Court.

(1A) Where a confiscation order is made pursuant to subsection (1) by a Magistrate, it shall relate in monetary terms to a sum not exceeding \$100,000. *(Inserted by Act 3 of 2008)*

(1B) Where on the evidence before a Magistrate, the Magistrate concludes that a confiscation order to be made by him or her will or is likely to exceed the sum allowable under subsection (1A), he or she shall, notwithstanding anything to the contrary contained in any enactment—

- (a) sentence the defendant, if the defendant is not already sentenced; and

- (b) commit the defendant to a judge of the High Court for a confiscation order to be made in respect of the defendant.
(Inserted by Act 3 of 2008)

(1C) Subject to subsection (1B), where an offender is convicted of an offence in any proceedings before a court, the court shall—

- (a) if the prosecutor has given written notice to the court that he or she considers that it would be appropriate for the court to proceed under this section, or
- (b) if the court considers, even in the absence of the notice referred to in paragraph (a), that it would be appropriate for the court to proceed under this section,

act in the manner provided by this section before sentencing or otherwise dealing with the person in respect of that offence or any other relevant criminal conduct.
(Inserted by Act 3 of 2008)

(2) The court shall first determine whether the offender has benefitted from any relevant criminal conduct.

(3) Subject to subsection (4), if the court determines that the offender has benefitted from any relevant criminal conduct, it shall—

- (a) determine, in accordance with subsection (8), the amount to be recovered in his or her case by virtue of this section;
- (b) exclude in the determination any property that is subject to a cash forfeiture order or a forfeiture order under the Drugs (Prevention of Misuse) Act, Drug Trafficking Offences Act, the Anti-terrorism (Financial and Other Measures) (Overseas Territories) Order 2002 or any other enactment; and *(Inserted by Act 3 of 2008)*
- (c) make an order under this section ordering the offender to pay the amount determined under paragraph (a).

(4) If, in a case falling within subsection (3), the court is satisfied that a victim of any relevant criminal conduct has instituted, or intends to institute, civil proceedings against the defendant in respect of loss, injury or damage sustained in connection with that conduct—

- (a) the court may make an order under this section;
- (b) subsection (8) shall not apply for determining the amount to be recovered in that case by virtue of this section; and
- (c) where the court makes an order in exercise of the power conferred by paragraph (a), the sum required to be paid under the order shall be of such amount, not exceeding the amount which (but for paragraph (b)) would apply by virtue of subsection (8), as the court thinks fit.

(5) Subject to section 9(6), the reference in this Act to “relevant criminal conduct”, in relation to a person convicted of an offence in any proceedings before a court, means that offence taken together with any other offences which are offences—

- (a) of which he or she is convicted in the same proceedings or in other proceedings under the Drugs (Prevention of Misuse) Act or the Drug Trafficking Offences Act; or (*Amended by Act 3 of 2008*)
- (b) which the court will be taking into consideration in determining his or her sentence for the offence in question.

(6) For the purposes of this Act, a person benefits from an offence if he or she obtains property as a result of or in connection with its commission and his or her benefit is the value of the property so obtained.

(7) Where a person derives pecuniary or other quantifiable advantage as a result of or in connection with the commission of an offence, he or she is to be treated for the purposes of this Act as if he or she had obtained as a result of or in connection with the commission of the offence a sum of money equal to the value of the pecuniary or other quantifiable advantage. (*Amended by Act 3 of 2008*)

(8) Subject to subsection (4), the sum which an offender is required to pay by virtue of an order made by a court under this section shall be equal to—

- (a) the benefit in respect of which it is made; or
- (b) the amount appearing to the court to be the amount that might be realised at the time the order is made, whichever is the less.

(9) In determining any question arising under this Act as to whether a person has benefitted from any offence or the amount to be recovered in the person's case, proof shall be established on a balance of probabilities. (*Substituted by Act 3 of 2008*)

Power of court in making a confiscation order

7. (1) Where a court makes a confiscation order under section 6 against a defendant in any proceedings, it shall, in respect of any offence of which the defendant is convicted in those proceedings, take account of the order before—

- (a) imposing any fine on him or her;
- (b) making an order involving any payment by him or her, other than an order under section 27 of the Criminal Code; or
- (c) making any order under section 29 of the Drugs (Prevention of Misuse) Act,

but subject to that shall leave the order out of account in determining the appropriate sentence or other manner of dealing with him or her.

(2) No enactment restricting the power of a court dealing with an offender in a particular way from dealing with him or her also in any other way shall by reason only of the making of a confiscation order restrict the court from dealing with an offender in any way it considers appropriate in respect of an offence to which this Act applies.

(3) Where—

- (a) a court makes both a confiscation order and an order for the payment of compensation under section 27 of the Criminal Code; and

- (b) it appears to the court that he or she will not have sufficient means to satisfy both the orders in full,

it shall direct that as much of the compensation as will not in its opinion be recoverable because of the insufficiency of his or her means shall be paid out of any sums recovered under the confiscation order.

Postponed determination

8. (1) Where a court is acting under section 6 but considers that it requires further information before determining—

- (a) whether the defendant has benefitted from any relevant criminal conduct; or
- (b) the amount to be recovered in the defendant's case,

it may, for the purpose of enabling that information to be obtained, postpone making that determination for such period as it may specify.

(2) More than one postponement may be made under subsection (1) in relation to the same case.

(3) Unless it is satisfied that there are exceptional circumstances, the court shall not specify a period under subsection (1) which by itself or, where there have been one or more previous postponements under subsection (1) or (4), when taken together with the earlier specified period or periods, exceeds 18 months beginning with the date of conviction. (*Amended by Act 3 of 2008*)

(4) Where the defendant appeals against his or her conviction, the court may, on that account—

- (a) postpone making any of the determinations mentioned in subsection (1) for such period as it may specify; or
- (b) where it has already exercised its powers under this section to postpone, extend the specified period.

(5) A postponement or extension under subsection (1) or (4) may be made—

- (a) on application by the defendant or the prosecutor; or
- (b) by the court of its own motion.

(6) Unless the court is satisfied that there are exceptional circumstances, any postponement or extension under subsection (4) shall not exceed the period ending 3 months after the date on which the appeal is determined or otherwise disposed of.

(7) Where the court exercises its power under subsection (1) or (4), it may nevertheless proceed to sentence, or otherwise deal with, the defendant in respect of the offence or any of the offences concerned.

(8) Where the court proceeds under subsection (7)—

- (a) section 6(3) shall have effect; and
- (b) section 7(1) shall have effect as if after the word "determining" there were inserted the words relation to any offence in respect of which he or she has not been sentenced or otherwise dealt with.

(9) In sentencing, or otherwise dealing with, the defendant in respect of the offence, or any of the offences, concerned at any time during the specified period, the court shall not—

- (a) impose any fine on him or her; or
- (b) make any such order as is mentioned in section 7(1)(b) or (c).

(10) Where the court has sentenced the defendant under subsection (7) during the specified period, it may, after the end of that period, vary the sentence by imposing a fine or making any such order as is mentioned in section 7(1)(b) or (c).

(11) In this section, a reference to—

- (a) an appeal includes a reference to an application under section 162 of the Magistrate’s Code of Procedure Act;
- (b) “the date of conviction” means the date on which the defendant was convicted of the offence concerned or, if convicted for two or more offences, the date of the latest of those offences.

Confiscation Relating to a Course of Criminal Conduct

9. (1) In this section, “qualifying offence”, in relation to proceedings before a court, means any offence in relation to which the following conditions are satisfied—

- (a) it is an offence to which this Act applies;
- (b) it is an offence which was committed after the coming into force of this Act; and
- (c) that court is satisfied that it is an offence from which the defendant has benefitted.

(2) This section applies in a case where an offender is convicted in any proceedings before a court of a qualifying offence if—

- (a) the prosecutor gives written notice for the purposes of section 6(1)(a);
- (b) the notice given by the prosecutor under section 6(1)(a) contains a declaration that it is the prosecutor’s opinion that the case is one in which it is appropriate for the provisions of this section to be applied; and
- (c) the offender—
 - (i) is convicted in those proceedings of at least 2 qualifying offences including the offence in question; or
 - (ii) has been convicted of a qualifying offence on at least one previous occasion during the relevant period.

(3) When proceeding under section 6 in pursuance of the notice referred to in subsection (2)(a), the court shall, subject to subsection (5), determine, if it thinks fit so to do, that the assumptions specified in subsection (4) are to be made for the purpose—

- (a) of determining whether the defendant has benefitted from a relevant criminal conduct; and
 - (b) if he or she has benefitted, of assessing the value of the defendant's benefit from such conduct.
(Amended by Act 3 of 2008)
- (4) The assumptions referred to in subsection (3) are—
 - (a) that any property appearing to the court—
 - (i) to be held by the defendant at the date of conviction or at any time in the period between that date and the determination in question; or
 - (ii) to have been transferred to him or her at any time since the beginning of the relevant period,
was received by him or her, at the earliest time when he or she appears to the court to have held it, as a result of or in connection with the commission of offences to which this Act applies;
 - (b) that any expenditure of his or hers since the beginning of the relevant period was met out of payments received by him or her as a result of or in connection with the commission of offences to which this Act applies;
 - (c) that, for the purpose of valuing any benefit which he or she had or which he or she is assumed to have had at any time, he or she received the benefit free of any other interests in it.
- (5) Where the court has determined that the assumptions specified in subsection (4) are to be made in any case, it shall not in that case make any such assumption in relation to any particular property or expenditure if—
 - (a) that assumption, so far as it relates to that property or expenditure, is shown to be incorrect in the defendant's case;
 - (b) that assumption, so far as it so relates, is shown to be correct in relation to an offence the defendant's benefit from which has been the subject of a previous confiscation order; or
 - (c) the court is satisfied that there would (for any other reason) be a serious risk of injustice in the defendant's case if the assumption were to be made in relation to that property or expenditure.
- (6) Where the assumptions specified in subsection (4) are made in any case, the offences from which, in accordance with those assumptions the defendant is assumed to have benefitted shall be treated as if they were comprised, for the purposes of this Act, in the conduct which is to be treated, in that case, as relevant criminal conduct in relation to the defendant.
- (7) For the purposes of this section—
 - (a) “the date of conviction” means—
 - (i) in a case falling within paragraph (b), the date on which the defendant is convicted of the offence in question; or
 - (ii) where he or she is convicted of that offence and one or more other offences in the proceedings in question and those

convictions are not all on the same date, the date of the latest of those convictions; and

- (b) “the relevant period” means the period of 6 years ending when the proceedings in question were instituted against the defendant.

Statements, etc. relevant to making confiscation orders

10. (1) Subsection (2) applies in a case where a person has been convicted of an offence if—

- (a) the prosecutor has given written notice to the court for the purposes of section 6(1)(a); or
- (b) the court is proceeding in pursuance of section 6(1)(b) and requires a statement under this section from the prosecutor.

(2) Where this subsection applies, the prosecutor shall, within such period as the court may direct, tender to the court a statement as to any matters relevant—

- (a) to determining whether the defendant has benefitted from any relevant criminal conduct; or
- (b) to an assessment of the value of the defendant’s benefit from that conduct,

and, where such a statement is tendered in a case in which a declaration has been made for the purposes of section 9(2)(b), that statement shall also set out all such information available to the prosecutor as may be relevant for the purposes of section 9(4) and (5)(b) and (c).

(3) Where a statement is tendered to the court under this section—

- (a) the prosecutor may at any time tender to the court a further statement as to the matters mentioned in subsection (2); and
- (b) the court may at any time require the prosecutor to tender any further statement within such period as it may direct.

(4) Where—

- (a) a statement has been tendered to a court by the prosecutor under this section; and
- (b) the defendant accepts to any extent any allegation in the statement,

the court may, for the purpose of determining whether the defendant has benefitted from any relevant criminal conduct or of assessing the value of the defendant’s benefit from such conduct, treat his or her acceptance as conclusive of the matters to which it relates.

(5) Where—

- (a) a statement is tendered by the prosecutor under this section; and
- (b) the court is satisfied that a copy of that statement has been served on the defendant,

the court may require the defendant to indicate to what extent he or she accepts each allegation in the statement and, so far as he or she does not accept any such allegation, to indicate any matters he or she proposed to rely on.

(6) If the defendant fails in any respect to comply with a requirement under subsection (5), he or she may be treated, for the purposes of this section, as accepting every allegation in the statement apart from—

- (a) any allegation in respect of which he or she has complied with the requirement; and
- (b) any allegation that he or she has benefitted from an offence or that any property was obtained by him or her as a result of or in connection with the commission of an offence.

(7) Where—

- (a) there is tendered to the court by the defendant a statement as to any matters relevant to determine the amount that might be realised at the time the confiscation order is made; and
- (b) the prosecutor accepts to any extent any allegation in the statement, the court may, for the purposes of that determination, treat the acceptance by the prosecutor as conclusive of the matters to which it relates.

(8) An allegation may be accepted or a matter indicated for the purposes of this section—

- (a) orally before the court; or
- (b) in writing in accordance with rules of court.

(9) If the court is satisfied as to any matter relevant for determining the amount that might be realised at the time the confiscation order is made (whether by an acceptance under this section or otherwise), the court may issue a certificate giving the court's opinion as to the matters concerned and shall do so if satisfied that the amount that might be realised at the time the confiscation order is made is less than the amount the court assesses to be the value of the defendant's benefit from any relevant criminal conduct.

(10) Where the court has given a direction under this section, it may at any time vary the direction by giving a further direction.

Provision of information by defendant

11. (1) This section applies in a case where a person has been convicted of an offence if—

- (a) the prosecutor has given a written notice to the court for the purposes of section 6(1)(a); or
- (b) the court is proceeding in pursuance of section 6(1)(b) or is considering whether so to proceed.

(2) For the purpose of obtaining information to assist it in carrying out its functions under this Act, the court may at any time order the defendant to give it such information as may be specified in the order.

(3) An order made under subsection (2) may require all, or any specified part, of the required information to be given to the court in such manner, and within such period, as may be specified in the order.

(4) If the defendant fails, without reasonable excuse acceptable to the court, to comply with an order made under this section, the court may draw such inference from that failure as it considers appropriate.

(5) Where the prosecutor accepts to any extent an allegation made by the defendant—

- (a) in giving to the court information required by an order made under this section; or
- (b) in any other statement tendered to the court for the purposes of this Act,

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

(6) For the purposes of this section, an allegation may be accepted—

- (a) orally before the court; or
- (b) in writing in accordance with rules of court.

Powers to be exercised where defendant has died or absconded

11A. (1) Subsection (2) applies where a person has been convicted of an offence.

(2) If the prosecutor asks a court to proceed under this section, the court may make a confiscation order against the defendant if satisfied that the defendant has died or absconded.

(3) Subsection (4) applies where proceedings for an offence have been instituted against a person but have not been concluded.

(4) If the prosecutor asks a court to proceed under this section, the court may make a confiscation order against the defendant if satisfied that the defendant has absconded.

(5) The power conferred by subsection (4) may not be exercised at any time before the end of the period of 2 years beginning with the date which is, in the opinion of the court, the date on which the defendant absconded.

(6) In any proceedings on an application under the section—

- (a) sections 9(3) and 10(4), (5), (6) and (7) shall not apply;
- (b) the court shall not make a confiscation order against a person who has absconded unless it is satisfied that the prosecutor has taken reasonable steps to contact the person; and
- (c) a person appearing to the court to be likely to be affected by the making of a confiscation order by the court shall be entitled to appear before the court and make representations.

(Inserted by Act 3 of 2008)

Effect of conviction where the court has acted under section 11A

11B. (1) Where the court has made a confiscation order by virtue of section 11A, it shall, in respect to the offence or any of the offences concerned—

- (a) take account of the order before—
 - (i) imposing any fine on the person;
 - (ii) making any order involving any payment by the person; or
 - (iii) making any order under section 29 of the Drugs (Prevention of Misuse) Act; and
- (b) subject to paragraph (a), leave the order out of account in determining the appropriate sentence or other manner of dealing with the defendant.

(2) Where the court has made a confiscation order by virtue of section 11A and the defendant subsequently appears before the court to be sentenced in respect of the offence concerned, section 6 shall not apply so far as the defendant's appearance is in respect of that offence.

(Inserted by Act 3 of 2008)

REVIEW AND REVISION OF CERTAIN QUESTIONS AND DETERMINATIONS

Review of cases where proceeds of crime not assessed

12. (1) This section applies in a case where—

- (a) a person has been convicted of an offence in any proceedings before a court;
- (b) the prosecutor did not give written notice for the purposes of section 6(1)(a); and
- (c) a determination was made for the purposes of section 6(1)(b) not to proceed under that section, or no determination was made for those purposes.

(2) If the prosecutor has evidence which, at the date of conviction or, if later, when any determination not to proceed under section 6 was made, was not available to him or her and therefore was not considered by the court, but which he or she believes would have led the court to determine (if the written notice under section 6(1)(a) had been given and the evidence had been considered by the court) that the defendant had benefitted from a relevant criminal conduct, the prosecutor may apply to the court for it to consider the evidence.

(3) If, having considered the evidence, the court is satisfied that it is appropriate to do so, it shall proceed under section 6 as if it were doing so before sentencing or otherwise dealing with the defendant in respect of a relevant criminal conduct, and section 8 shall apply accordingly.

(4) In considering whether it is appropriate to proceed under section 6 in accordance with subsection (3), the court shall have regard to all the circumstances of the case.

(5) Where, having decided in pursuance of subsection (3) to proceed under section 6, the court determines that the defendant did benefit from a relevant criminal conduct—

- (a) section 6(3) shall not apply and subsection (8) thereof shall not apply for determining the amount to be recovered in that case;
- (b) the court may make a confiscation order; and
- (c) if the court makes an order in exercise of the power conferred under paragraph (b), the sum required to be paid by the order shall be such amount, not exceeding the amount which (but for paragraph (a)) would apply by virtue of section 6(8), as the court thinks fit.

(6) In considering the circumstances of any case under subsection (5)(b) and (c), the court shall have regard, in particular, to—

- (a) any fine imposed on the defendant in respect of any relevant criminal conduct; and
- (b) any order made in connection with any relevant criminal conduct under section 27 of the Criminal Code.

(7) In making any determination under or for the purposes of this section, the court may take into account, to the extent that they represent in what respects the defendant has benefitted from any relevant criminal conduct, any payments or other rewards which were not received by him or her until after the time when he or she was sentenced or otherwise dealt with in the case in question.

(8) Where an application under this section contains such declaration as is mentioned in section 9(2)(b), the section shall, subject to subsection (9) of this section, apply in the case of any determination on the application as if it were a determination in a case in which the requirements of section 9(2)(a) and (b) had been satisfied.

(9) For the purposes of any determination to which section 9 applies by virtue of subsection (8), none of the assumptions specified in subsection (4) of that section shall be made in relation to any property, unless it is property held by or transferred to the defendant before the time when he or she was sentenced or otherwise dealt with in the case in question.

(10) Sections 10 and 11 shall apply where the prosecutor makes an application under this section as they apply in a case where the prosecutor has given written notice to the court for the purpose of section 6(1)(a), but as if the reference in section 11(1)(a) to a declaration made for the purposes of section 9(2)(b) were a reference to a declaration for the purposes of subsection (8).

(11) No application shall be entertained by the court under this section if it is made after the end of the period of 6 years beginning with the date of conviction.

(12) For the purposes of this section, “the date of conviction” means—

- (a) in a case not falling within paragraph (b), the date on which the defendant was convicted of the offence in question; or
- (b) where the defendant was convicted of the offence in question and one or more other offences in the same proceedings and those

convictions were not all on the same date, the date of the latest of those convictions.

Revision of assessment of proceeds of crime

13. (1) This section applies where in any case there has been a determination under section 6(2) (referred to in this section and section 14(6) as “the original determination”) that the defendant in that case had not benefitted from any relevant criminal conduct.

(2) If the prosecutor has evidence which was not considered by the court which made the original determination, but which the prosecutor believes would have led the court, if the evidence had been considered, to determine that the defendant had benefitted from a relevant criminal conduct, the prosecutor may apply to the court for it to consider that evidence.

(3) If, having considered the evidence, the court is satisfied that if that evidence had been available it would have determined that the defendant had benefitted from a relevant criminal conduct, that court—

(a) shall proceed, as if it were proceeding under section 6, to make a fresh determination of whether the defendant has benefitted from any relevant criminal conduct and then make such determination as is mentioned in section 6(3)(a); and

(b) may, after making the determinations referred to in paragraph (a), make an order, subject to subsection (5), requiring the payment of such sums as it thinks fit.

(4) An order made under subsection (3)(b) shall be deemed for all purposes to be a confiscation order.

(5) The court shall not, in exercise of the power conferred by subsection (3)(b), make an order for the payment of a sum which is more than the amount determined in pursuance of paragraph (a) of that subsection.

(6) In making a determination under or for the purposes of subsection (3), the court may take into account, to the extent that they represent in what respects the defendant has benefitted from any relevant criminal conduct, any payments or other rewards which were not received by him or her until after the making of the original determination.

(7) Where, in a case in which section 9 does not otherwise apply, an application under this section contains such declaration as is mentioned in subsection (2)(b) of that section, that section shall, subject to subsection (8) of this section, apply in the case of any determination on the application as if it were a determination in a case in which the requirements of section 8(2)(a) and (b) had been satisfied.

(8) Where, for the purposes of a determination under subsection (3), section 9 applies, none of the assumptions specified in subsection (4) of that section shall be made in relation to any property, unless it is property held by or transferred to the defendant before the time when he or she was sentenced or otherwise dealt with in the case in question.

(9) No application shall be entertained by the court under this section if it is made after the end of the period of 6 years beginning with the date of conviction.

(10) Section 8 shall apply where the court is acting under this section as it applies where the court is acting under section 6.

(11) Sections 10 and 11 shall apply where the prosecutor makes an application under this section as they apply in a case where the prosecutor has given written notice to the court for the purposes of section 6(1)(a), but as if—

- (a) the reference in section 10(2) to a declaration made for the purposes of section 9(2)(b) included a reference to a declaration for the purposes of subsection (7); and
- (b) any reference in section 10(9) to the time the confiscation order is made were a reference to the time the order is made on that application.

(12) In this section, the term “the date of conviction” has the same meaning as in section 12(12).

Revision of assessment of amount to be recovered

14. (1) This section applies where, in the case of a person convicted of an offence, there has been a determination under this Act (referred to in this section as “the current determination”) of any sum required to be paid in his or her case under any confiscation order.

(2) Where the prosecutor is of the opinion that the value of any benefit to the defendant from any relevant criminal conduct was greater than the value at which that benefit was assessed by the court on the current determination, the prosecutor may apply to the court for the evidence on which the prosecutor has formed his or her opinion to be considered by the court.

(3) If, having considered the evidence, the court is satisfied that the value of the benefit from any relevant criminal conduct is greater than the value so assessed by the court (whether because its real value was higher at the time of the current determination than was thought or because the value of the benefit in question has subsequently increased), the court—

- (a) shall, subject to subsection (4), make a fresh determination, as if it were proceeding under section 6, of—
 - (i) the amount by which the defendant has benefitted from the relevant criminal conduct; and
 - (ii) the amount appearing to be the amount that might be realised at the time of the fresh determination; and
- (b) may, subject to subsection (5), increase, to such extent as it thinks just in all the circumstances of the case, the amount to be recovered by virtue of section 6 and to vary accordingly any confiscation order made by reference to the current determination.

(4) Where the court is under a duty to make a fresh determination for the purposes of subsection (3)(a) in any case to which section 9 applies, it shall not, in determining any amounts for those purposes, make any of the assumptions specified in section 9(4) in relation to any property, unless it is property held by or transferred to the defendant before the time when he or she was sentenced or otherwise dealt with in the case in question.

(5) The court shall not, in exercise of the power conferred by subsection (3)(b), vary any order so as to require the payment of any sum which is more than the lesser of the 2 amounts determined in pursuance of paragraph (a) of that subsection.

(6) In making any determination under or for the purposes of subsection (3), the court may take into account, to the extent that they represent in what respect the defendant has benefitted from any relevant criminal conduct, any payments or other rewards which were not received by him or her until after the making of the original determination.

(7) No application shall be entertained by a court under this section if it is made after the end of the period of 6 years beginning with the date of conviction.

(8) Section 8 shall apply where the court is acting under this section as it applies where the court is acting under section 6.

(9) Sections 10 and 11 shall apply where the prosecutor makes an application under this section as they apply in a case where the prosecutor has given written notice to the court for the purposes of section 6(1)(a), but as if any reference in section 10(9) to the time the confiscation order is made were a reference to the time of the determination to be made on that application.

(10) In this section, the term “the date of conviction” has the same meaning as in section 12(12).

ENFORCEMENT, ETC. OF CONFISCATION ORDERS

Interest on sums unpaid under a confiscation order

15. (1) If any sum required to be paid by a person under a confiscation order, whether forthwith or within a specified period, is not paid, that person is liable to pay interest on the sum for the period for which it remains unpaid.

(2) The amount of the interest referred to in subsection (1) shall be treated as part of the amount to be recovered from the person liable to pay interest under the confiscation order.

(3) The rate of interest under this section shall be that applicable to a civil judgment debt under section 7 of the Judgments Act.

Cases in which restraint and charging orders may be made

16. (1) The powers conferred on the High Court by sections 17(1) and 18(1) are exercisable where—

- (a) proceedings have been instituted against any person for an offence to which this Act applies;
- (b) the proceedings have not been concluded or, if they have, an application that has not been concluded has been made under section 12, 13 or 14 in respect of the defendant in those proceedings; and
- (c) the court is satisfied that there is reasonable cause to believe—

- (i) in a case where there is an application under section 14, that the court will be satisfied as mentioned in subsection (3) of that section; or
 - (ii) in any other case, that the proceedings may result or have resulted in, or that the application is made by reference to, a conviction of the defendant for an offence which he or she may be, or has been, shown to have benefitted.
- (2) The High Court shall not exercise the powers conferred by virtue of subsection (1) if it is satisfied that—
- (a) there has been undue delay in continuing the proceedings or application in question; or
 - (b) the person who appears to the court to be the person who has or will have the conduct of the prosecution or, as the case may be, who made that application does not intend to proceed with it.
- (3) The powers conferred on the High Court by sections 17(1) and 18(1) are also exercisable where the Court is satisfied that—
- (a) a person is to be charged with an offence to which this Act applies or an application of a kind mentioned in subsection (1)(b) is to be made; and
 - (b) the making or variation of a confiscation order may result from proceedings for that offence or, as the case may be, from the application.
- (4) For the purposes of sections 17 and 18, at any time when these powers are exercisable before proceedings have been instituted, references in this Act—
- (a) to the defendant shall be construed as references to the person referred to in subsection (3)(a); and
 - (b) to realisable property shall be construed as if, immediately before that time, proceedings had been instituted against the person referred to in subsection (3)(a) for an offence to which this Act applies.
- (5) Where the High Court has made an order under section 17(1) or 18(1) by virtue of subsection (3), it shall discharge the order if—
- (a) proceedings in respect of the offence are not instituted or, as the case may be, no application is made, within such time as the court considers reasonable; or
 - (b) the court is satisfied that the case has become a case in which, in pursuance of subsection (2), it would be unable to exercise the powers conferred by virtue of subsection (1).

Restraint order

17. (1) The High Court may make a restraint order prohibiting a person from dealing with any realisable property, subject to such conditions and exceptions as may be specified in the order.

(2) Without prejudice to the generality of subsection (1), the court may, in making a restraint order, include such provision as it thinks fit for living and legal expenses.

(3) A restraint order may apply—

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

(4) A restraint order—

- (a) may be made only on an application by a prosecutor;
- (b) may be made on an *ex parte* application to a judge in Chambers; and
- (c) shall provide for notice to be given to persons affected by the order.

(5) A restraint order—

- (a) may be discharged or varied in relation to any property; and
- (b) shall be discharged on the conclusion of the proceedings or application in question.

(6) An application for the discharge or variation of a restraint order may be made by any person affected by it.

(7) Where the High Court has made a restraint order, it may at any time appoint a receiver—

- (a) to take possession of any realisable property; and
- (b) in accordance with the court's directions, to manage or otherwise deal with any property in respect of which he or she is appointed, subject to such conditions and exceptions as may be specified by the Court, and may require any person having possession of property in respect of which a receiver is appointed under this subsection to give possession of the property to the receiver.

(8) Where the High Court has made a restraint order, a police officer may, for the purpose of preventing any realisable property being removed from the Territory, seize the property.

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

(10) This section shall not have effect in relation to a property that is subject to a charge under section 18.

(11) For the purposes of this section, dealing with any property held by a person includes—

- (a) where a debt is owed to that person, making a payment to any person in reduction of the amount of the debt; and
- (b) removing the property from the Territory.

(12) The Registered Land Ordinance shall apply in relation to—

- (a) restraint orders, as it applies in relation to orders affecting land made by the court for the purpose of enforcing judgments; and
- (b) applications for restraint orders, as it applies in relation to other pending land actions.

Charging orders

18. (1) The High Court may make a charging order on realisable property for securing the payment to the Crown—

- (a) where a confiscation order has not been made, of an amount equal to the value from time to time of the property charged; and
- (b) in any other case, of an amount not exceeding the amount payable under the confiscation order.

(2) A charging order—

- (a) may be made only on an application by a prosecutor;
- (b) may be made on an *ex parte* application to a judge in Chambers;
- (c) shall provide for notice to be given to persons affected by the order; and
- (d) may be made subject to such conditions as the court thinks fit, including the time when the charge is to become effective.

(3) Subject to subsection (5), a charge may be imposed by a charging order only on an interest in realisable property—

- (a) being an interest held beneficially by the defendant or by a person to whom the defendant has directly or indirectly made a gift caught by this Act—
 - (i) in any asset of a kind mentioned in subsection (4); or
 - (ii) under any trust; or
- (b) held by a person as trustee of a trust if the interest is in such an asset or is an interest under another trust, and a charge may by virtue of paragraph (a) be imposed by a charging order on the whole beneficial interest under the first-mentioned trust.

(4) The assets referred to in subsection (3) are—

- (a) land in the Territory; or
- (b) securities of any of the following kinds—
 - (i) any description of security issued by or on behalf of the Government of the Territory;
 - (ii) the stock of any body corporate incorporated within the Territory;
 - (iii) shares in any mutual fund registered under the Securities and Investment Business Act.

(5) In any case where a charge is imposed by a charging order on an interest in an asset of a kind mentioned in subsection (4)(b), the Court may

provide for the charge to extend to any interest or dividend payable in respect of the asset.

(6) In relation to a charging order, the court—

- (a) may at any time make an order discharging or varying it; and
- (b) shall make an order discharging it on—
 - (i) the conclusion of the proceedings or application in question; or
 - (ii) the payment into court of the amount payment of which is secured by the charge, whichever occurs first.

(7) An application for the discharge or variation of a charging order may be made by any person affected by it.

(8) The Registered Land Ordinance shall apply in relation to charging orders as it applies in relation to orders or writs issued or made for the purpose of enforcing judgments.

(9) Subject to any provision made under section 19 or by rules of court, a charge imposed by a charging order shall have the like effect and be enforceable in the same manner as an equitable charge created by the person holding the beneficial interest or, as the case may be, the trustees by writing under their hand.

Realisation of property

19. (1) Where the exercise of the power of a court relates to a confiscation order made by a Magistrate pursuant to proceedings instituted for an offence to which this Act applies, the powers conferred by this section and sections 20 to 25 may as far as relevant be exercised by the Magistrate and the references in this section and sections 20 to 22 to “High Court” and “Court” shall be construed as if they were references to “court”. *(Substituted by Act 3 of 2008)*

(1A) Where—

- (a) a confiscation order is made in proceedings instituted for an offence to which this Act applies or an order is made or varied on an application under section 12, 13 or 14;
- (b) the proceedings in question have not, or the application has not, been concluded; and
- (c) the order or variation is not subject to appeal,

the High Court may, on an application by a prosecutor, exercise the powers conferred by subsections (2) to (6).

(Amended by Act 3 of 2008)

(2) The Court may appoint a receiver in respect of realisable property.

(3) The Court may empower a receiver appointed under subsection (2), under section 17 or in pursuance of a charging order—

- (a) to enforce any charge imposed under section 18 on realisable property or on interest or dividends payable in respect of such property; and

- (b) in relation to any realisable property other than property subject to a charge under section 18, to take possession of the property subject to such conditions or exceptions as may be specified by the Court.
- (4) The Court may—
- (a) order any person having possession of realisable property to give possession of it to any such receiver;
 - (b) empower any such receiver to realise any realisable property in such manner as the Court may direct; and
 - (c) order any person holding an interest in realisable property to make such payment to the receiver in respect of any beneficial interest held by the defendant or, as the case may be, the recipient of a gift caught by this Act as the Court may direct and the Court may, on payment being made, by order transfer, grant or extinguish any interest in the property.
- (5) Subsection (4) does not apply to property which is subject to a charge under section 18.
- (6) The Court shall not, in respect of any property exercise the powers conferred by subsections (3)(a), (4)(b) and (c), unless a reasonable opportunity has been given for persons holding an interest in the property to make representations to the Court.

Application of proceeds or realisation and other sums

20. (1) Subject to subsection (2)—

- (a) the proceeds of the enforcement of any charge imposed under section 18;
- (b) the proceeds of the realisation, other than by the enforcement of a charge, of any property under section 17 or 19; and
- (c) any other sums, being property held by the defendant,

which are in the hands of a receiver appointed under this Act or in pursuance of a charging order shall, after such payments (if any) as the High Court may direct have been made out of those sums, be applied on the defendant's behalf towards the satisfaction of the confiscation order.

(2) If, after the amount payable under the confiscation order has been fully paid, any sums remain in the hands of the receiver, he or she shall distribute the sums among those persons who held property which has been realised under this Act, and in such proportions as the High Court may direct after giving a reasonable opportunity for such persons to make representations to the Court.

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

(4) If the money was paid to the Registrar by a receiver appointed under this Act or in pursuance of a charging order, the Registrar shall next pay the receiver's remuneration and expenses.

(5) After making—

- (a) any payment required by subsection (4); and
- (b) in a case to which subsection (5) applies, any payment required by that subsection,

the Registrar shall reimburse any amount paid under section 26(2).

(6) The Registrar shall finally pay any compensation directed to be paid out of any sums recovered under the confiscation order under section 7(3).

(7) Any balance in the hands of the Registrar after he or she has made all payments required by this section shall be treated as if it were a fine imposed by the court.

(8) Where under subsection (3) a sum falls to be applied in payment both of compensation and of other outgoings—

- (a) the person entitled to the compensation is liable to pay to the revenue of the Territory such an amount as bears to the remuneration or expenses the same proportion as the amount payable in accordance with the direction under section 7(3) bears to the total amount payable under the confiscation order;
- (b) the Registrar shall deduct from the amount failing to be applied in payment of the compensation an amount equal to the amount of any liability arising by virtue of paragraph (a);
- (c) notwithstanding the deduction under paragraph (b), the person entitled to the compensation shall be treated as having received the whole amount which falls to be applied in payment of it; and
- (d) the amount deducted shall be treated as if it were a fine imposed by the court.

(9) The receipt, payment, reimbursement or deduction by the Registrar of any sums or expenses under this section shall, in relation to the Magistrate's Court, be construed to refer to the Magistrate or to such other person of his or her staff as may be appointed in that regard to assist the Magistrate. (*Inserted by Act 3 of 2008*)

Exercise of powers by High Court or receiver

21. (1) This section applies to the powers conferred on the High Court by sections 17 to 20, or on a receiver appointed under this Act or in pursuance of a charging order.

(2) Subject to the provisions of this section, the powers referred to in subsection (1) shall be exercised with a view to making available for satisfying the confiscation order or, as the case may be, any confiscation order that may be made in the defendant's case the value for the time being of realisable property held by any person by the realisation of such property.

(3) In the case of realisable property held by a person to whom the defendant has directly or indirectly made a gift caught by this Act, the powers shall be exercised with a view to realising no more than the value for the time being of the gift.

(4) The powers shall be exercised with a view to allowing any person other than the defendant or the recipient of any such gift to retain or recover the value of any property held by him or her.

(5) An order may be made or other action taken in respect of a debt owed by the Crown.

(6) In exercising those powers, no account shall be taken of any obligations of the defendant or of the recipient of any such gift which conflict with the obligation to satisfy the confiscation order.

Variation of confiscation order

22. (1) If, on an application made in respect of a confiscation order by—

- (a) the defendant; or
- (b) a receiver appointed under section 17 or 19, or in pursuance of a charging order, the court is satisfied that the realisable property is inadequate for the payment of any amount remaining to be recovered under the order, the court shall issue a certificate to that effect, giving its reasons. *(Amended by Act 3 of 2008)*

(2) For the purposes of subsection (1)—

- (a) in the case of realisable property held by a person who has been adjudged bankrupt or whose estate has been sequestrated, the court shall take into account the extent to which any property held by him or her may be distributed among creditors; and
- (b) the court may disregard any inadequacy in the realisable property which appears to the court to be attributable wholly or partly to anything done by the defendant for the purpose of preserving any property held by a person to whom the defendant has directly or indirectly made a gift caught by this Act from any risk of realisation under this Act.

(Amended by Act 3 of 2008)

(3) Where a certificate has been issued under subsection (1), the person who applied for it may apply to the court for the amount to be recovered under the order to be reduced. *(Amended by Act 3 of 2008)*

(4) The court shall, on an application under subsection (3)—

- (a) substitute for the amount to be recovered under the order such lesser amount as the court thinks just in all the circumstances of the case; and
- (b) substitute for the term of imprisonment fixed under section 96 of the Magistrate's Code of Procedure Act and section 25 of the Criminal Code, in respect of the amount to be recovered under the order a shorter term determined in accordance with those sections in respect of the lesser amount.

(5) A Magistrate's Court shall, on an application under subsection (3), substitute for the amount to be recovered under the order such lesser amount as the court thinks just in all the circumstances of the case. *(Amended by Act 3 of 2008)*

(6) Rules of court may make provision—

- (a) for the giving of notice of any application under this section; and
- (b) for any person appearing to the court to be likely to be affected by any exercise of its powers under this section to be given an opportunity to make representations to the court.

Bankruptcy of defendant, etc.

23. (1) Where an order for bankruptcy is made against a person who holds realisable property—

- (a) any property for the time being subject to a restraint order made before the order for bankruptcy; and
- (b) any proceeds of property realised by virtue of section 17(7) or 19(4)(b) or (c) for the time being in the hands of a receiver appointed under section 17 or 19,

is excluded from the property of the bankrupt for the purposes of the Insolvency Act.

(Amended by Act 3 of 2008)

(2) Where an order for bankruptcy is made against a person, the powers conferred on the High Court by sections 17 to 20 or on a receiver so appointed shall not be exercised in relation—

- (a) to property comprised in the property of the bankrupt for the purposes of the Insolvency Act; and
- (b) to property which is to be applied for the benefit of creditors of the bankrupt under the Insolvency Act.

(Amended by Act 3 of 2008)

(3) Subject to subsection (2), nothing in the Insolvency Act, shall be taken as restricting, or enabling the restriction of, the exercise of the powers conferred on the High Court by sections 17 to 20 or on a receiver so appointed.
(Amended by Act 3 of 2008)

(4) Subsection (2) does not affect the enforcement of a charging order—

- (a) made before the order for bankruptcy was made; or
- (b) on property which was subject to a restraint order when the order for bankruptcy was made.

(5) Where, in the case of a debtor—

- (a) the trustee in bankruptcy constituted under Part V of the Insolvency Act has been ordered to become the receiver or manager of the property or business of the debtor; and
- (b) any property of the debtor is subject to a restraint order,

the powers conferred on the trustee by virtue of the Insolvency Act do not apply to property subject to the restraint order.

(Amended by Act 3 of 2008)

(6) Where an order for bankruptcy is made against a person who has directly or indirectly made a gift caught by this Act, the provisions of the Insolvency Act shall not apply—

- (a) in respect of the making of the gift at any time when proceedings for an offence to which this Act applies have been instituted against him or her and have not been concluded; or
- (b) when property of the person to whom the gift was made is subject to a restraint order or charging order.

(Amended by Act 3 of 2008)

Winding-up of company holding realisable property

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

- (a) to property subject to a restraint order made before the relevant time; and
- (b) to any proceeds of property realised by virtue of section 17(7) or 19(4)(b) or (c) for the time being in the hands of a receiver appointed under section 17 or 19.

(2) Where, in the case of a company, such an order has been made or such a resolution has been passed, the powers conferred on the High Court by sections 17 to 19 or on a receiver so appointed shall not be exercised in relation to any realisable property held by the company in relation to which the functions of the liquidator are exercisable so as to—

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

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

(4) For the purposes of this section, “relevant time” means—

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

Supplementary provisions relating to receivers

25. (1) Where a receiver appointed under this Act or in pursuance of a charging order takes any action—

- (a) in relation to property which is not realisable property, being action which he or she would be entitled to take if it were such property;
- (b) believing, and having reasonable grounds for believing, that he or she is entitled to take that action in relation to that property,

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

(2) Any amount due in respect of the remuneration and expenses of a receiver so appointed shall, if no sum is available to be applied in payment of it under section 20(5), be paid out of the revenues of the Territory or, in a case where proceedings for an offence to which this Act applies are not instituted, by the person on whose application the receiver was appointed.

Compensation

26. (1) If proceedings are instituted against a person for an offence to which this Act applies and—

- (a) the proceedings do not result in his or her conviction for the offence, or
- (b) where he or she is convicted of one or more offences—
 - (i) the conviction or convictions concerned is or are quashed; or
 - (ii) he or she is pardoned by the Governor in Her Majesty's name and on Her Majesty's behalf in respect of the conviction or convictions concerned,

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

(Amended by Act 3 of 2008)

(2) The court shall not order compensation to be paid in any case unless it is satisfied that—

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

(Amended by Act 3 of 2008)

(3) The court shall not order compensation to be paid in any case where it appears to the court that the proceedings would have been instituted or continued even if the serious default had not occurred. *(Amended by Act 3 of 2008)*

(4) The amount of compensation to be paid under this section shall be such as the court—

- (a) has jurisdiction to award; and
- (b) considers just in all the circumstances of the case.
(Substituted by Act 3 of 2008)

MONEY LAUNDERING AND OTHER OFFENCES

Issuing Code of Practice

27. (1) Without prejudice to anything that may be contained in the Terrorism (United Nations Measures) (Overseas Territories) Order, 2001 and the Anti-terrorism (Financial and Other Measures) (Overseas Territories) Order, 2002, the Commission may, after consultation with the Anti-money Laundering and Terrorist Financing Advisory Committee established under section 27A, issue a Code of Practice for the purpose of—

- (a) giving practical guidance on issues relating generally to money laundering and the financing of terrorism;
 - (b) providing guidance regarding adherence to the requirements of this Act and any other enactment relating to money laundering and the financing of terrorism;
 - (c) preventing, detecting and dealing with money laundering and terrorist financing activities;
 - (d) implementing, consistent with the provisions of this Act and any other enactment relating to money laundering and terrorist financing, internationally established standards for the prevention and detection of money laundering and terrorist financing activities; and
 - (e) providing such other things as are necessary, relevant or incidental to the matters outlined in paragraphs (a) to (d).
(Substituted by Act 3 of 2008)
- (2) A Code of Practice issued pursuant to subsection (1) shall apply to—
- (a) entities that are regulated by the Commission;
 - (b) entities not regulated by the Commission but are identified by the Caribbean Financial Action Task Force and the Financial Action Task Force as forming a link in the fight against money laundering and the financing of terrorism;
 - (c) entities (whether public or private), not falling under paragraph (b), that are not regulated by the Commission but which the Commission designate, by a Notice published in the *Gazette*, as vulnerable to activities of money laundering and terrorist financing; and
 - (d) professionals who may be engaged in preparing or carrying out transactions for their clients concerning—
 - (i) the buying and selling of real estate;

- (ii) managing client monies, securities or other assets;
- (iii) the management of bank, savings or securities accounts;
- (iv) the organisation of contributions for the creation, operation or management of companies;
- (v) the creation, operation or management of legal persons or arrangements;
- (vi) the buying and selling of business entities; and
- (vii) any other activity relating or incidental to any of the matters outlined in subparagraphs (i) to (vi).

(Substituted by Act 3 of 2008)

(3) A Code of Practice issued pursuant to subsection (1) shall—

- (a) be published in the *Gazette*; and
- (b) be subject to a negative resolution of the House of Assembly.

(Substituted by Act 3 of 2008)

(4) Where a person fails to comply with or contravenes a provision of a Code of Practice, he or she commits an offence and is liable on summary conviction to a fine not exceeding \$150,000 or to a term of imprisonment not exceeding 2 years or both. *(Amended by Acts 1 of 2010 and 7 of 2012)*

(5) Where a body corporate commits an offence under subsection (4), every director, partner or other senior officer of the body corporate shall, subject to subsection (6), be proceeded against as if the director, partner or other senior officer committed the offence and is liable on conviction to the penalty prescribed in subsection (4). *(Substituted by Act 3 of 2008)*

(6) A director, partner or other senior officer of a body corporate does not commit an offence under subsection (5) if the director, partner or other senior officer can show that neither he nor she knew nor connived in the commission of the offence. *(Substituted by Act 3 of 2008)*

(7) Notwithstanding subsection (4), a Code of Practice may in specific cases of non-compliance with or in contravention of the provisions of the Code create offences and impose penalties to be enforced—

- (a) by the Commission for entities that are regulated by the Commission; or
- (b) by the Agency for entities that are regulated by the Agency,

as administrative penalties, but no penalty imposed shall exceed one hundred thousand dollars. *(Substituted by Act 11 of 2017)*

(8) Administrative penalties collected by the—

- (a) Commission by virtue of subsection (7) shall be paid into a bank account to be retained for use by the Commission; and
- (b) Agency by virtue of subsection (7) shall be paid into the Financial Investigation Agency Asset Fund of the Agency, as established under section 12 of the Financial Investigation Agency Act. *(Substituted by Act 11 of 2017)*

(8A) Where moneys are paid into the Fund under section 8(b), the Financial Secretary, with the approval of the Minister of Finance, may determine what proportion of that amount shall be used by the Agency. *(Inserted by Act 11 of 2017)*

(9) A reference in this section and section 27A to “money laundering” includes drug money laundering within the meaning of the Drug Trafficking Offences Act. *(Substituted by Act 3 of 2008)*

Joint Anti-money Laundering and Terrorist Financing Committee

27A. (1) There is established a committee to be known as the Joint Anti-Money Laundering and Terrorist Financing Advisory Committee (“the Committee”) which shall consist of members drawn from the public and private sectors with knowledge and experience in anti-money laundering and countering the financing of terrorism issues.

(2) Subject to subsection (4), the Committee shall comprise not less than 7 and not more than 14 members who shall be appointed by the Minister, on the advice of the Attorney General and the Managing Director of the Commission.

(3) The members of the Committee shall be appointed for such period and on such terms and conditions as the Minister may determine, but the appointments shall be staggered in such a way as to ensure that the terms of office of all the members do not expire at the same time.

(4) The Managing Director of the Commission shall serve as a member and Chairman of the Committee.

(5) The Committee shall have the responsibility of advising the Commission on initiatives for the prevention and detection of money laundering and terrorist financing activities in order to—

- (a) ensure the stability of the financial sector of the Territory;
- (b) assist the Commission in formulating an appropriate approach in developing a Code of Practice under section 27;
- (c) keep entities, whether or not regulated by the Commission but considered essential to the Territory’s fight against money laundering and terrorist financing activities, compliant with anti-money laundering and countering the financing of terrorism measures established locally, regionally and internationally; and
- (d) keep the Territory attuned to developments on international cooperation as they relate or are incidental to anti-money laundering and terrorist financing activities.

(6) The Committee may on its own motion provide such other advice as it considers essential to the Territory’s efforts to effectively combat money laundering and terrorist financing activities.

(7) The Committee may make its own rules of procedure.

(Inserted by Act 3 of 2008)

Assisting another to retain the benefit of criminal conduct

28. (1) Subject to subsections (2) and (3), a person commits an offence if he or she enters into or is otherwise concerned in an arrangement which he or she knows or suspects, facilitates, whether by concealment, removal from the Territory, transfer to nominees or other means, the acquisition, retention, use or control of proceeds of criminal conduct by or of himself or herself or by or on behalf of another person. *(Substituted by Act 3 of 2008)*

(2) Where a person discloses to the Reporting Authority a suspicion or belief that any funds, investments or other property are derived from or used in connection with criminal conduct or discloses to the Reporting Authority any matter on which such a suspicion or belief is based—

- (a) the disclosure shall not be treated as a breach of any restriction upon the disclosure of information imposed by statute or otherwise and shall not give rise to any civil liability; and
- (b) if he or she does any act in contravention of subsection (1) and the disclosure relates to the arrangement concerned, he or she does not commit an offence under this section if—
 - (i) the disclosure is made before he or she does the act concerned being an act done with the consent of a police officer in aid of a law enforcement function;
 - (ii) the disclosure is made after he or she does the act, but is made on his or her initiative and as soon as it is reasonable for him or her to make it; and
 - (iii) he or she had good reason for his or her failure to make the disclosure before he or she did the act concerned.

(Amended by Act 3 of 2008)

(3) In proceedings against a person for an offence under this section, it is a defence to prove—

- (a) that he or she did not know or suspect that the arrangement related to any person's proceeds of criminal conduct;
- (b) that he or she did not know or suspect that by the arrangement the acquisition, retention, use or control by or on behalf of the other person mentioned in subsection (1)(b) of any property was facilitated as mentioned in that subsection; or *(Substituted by Act 3 of 2008)*
- (c) that he or she intended to disclose to the Reporting Authority such a suspicion, belief or matter as is mentioned in subsection (2) in relation to the arrangement, but there is reasonable excuse for his or her failure to make disclosure in accordance with subsection (2)(b).

(4) In the case of a person who was in employment at the relevant time, subsections (2) and (3) shall have effect in relation to disclosures, and intended disclosures, to the appropriate person in accordance with the procedure established by his or her employer for the making of such disclosures as they have effect in relation to disclosures, and intended disclosures, to the Reporting Authority.

(5) Where information is disclosed to or received by the Steering Committee under this section, the Steering Committee may disclose the information—

- (a) to any law enforcement agency in the Territory;
- (b) to any law enforcement agency in any other country, in order—
 - (i) to report the possible commission of an offence;
 - (ii) to initiate a criminal investigation respecting the matter disclosed;
 - (iii) to assist with any criminal investigations or criminal proceedings respecting the matter disclosed; or
 - (iv) to generally give effect to the purposes of this Act.
(Substituted by Act 3 of 2008)

(5A) Before making a disclosure under subsection (5), the Steering Committee shall, in exercising that discretion, consider the interests of third parties. *(Inserted by Act 3 of 2008)*

(6) *(Repealed by Act 3 of 2008)*

(7) *(Repealed by Act 3 of 2008)*

(8) A person who commits an offence under this section is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 2 years or to a fine not exceeding \$250,000 or both; or
- (b) on conviction on indictment, to imprisonment for a term not exceeding 14 years or to a fine not exceeding \$500,000 or both.
(Amended by Acts 1 of 2010 and 7 of 2012)

(8A) No member of the Steering Committee or the Agency or other person concerned in law enforcement commits an offence under this section in respect of anything done by him or her in the due discharge of the enforcement, or intended enforcement, of any provision of this Act or of any other enactment relating to criminal conduct or the proceeds of criminal conduct. *(Inserted by Act 3 of 2008)*

(9) In this section, references to any person's proceeds of criminal conduct include a reference to any property which in whole or in part directly or indirectly represents in his or her hands his or her proceeds of criminal conduct.

Acquisition, possession or use of proceeds of criminal conduct

29. (1) A person commits an offence if—

- (a) he or she acquires, transfers or uses any property or has possession of it which, in whole or in part, directly or indirectly represents his or her proceeds of criminal conduct; or
- (b) knowing or suspecting that any property is, or in whole or in part directly or indirectly represents, another person's proceeds of criminal conduct, he or she acquires, transfers or uses that property or has possession of it.

(Substituted by Act 3 of 2008)

(2) It is a defence to a charge of committing an offence under this section, save under subsection (1)(a), that the person charged acquired, transferred or used the property or had possession of it for adequate consideration. (*Substituted by Act 3 of 2008*)

(3) For the purposes of subsection (2)—

(a) a person acquires property for inadequate consideration if the value of the consideration is significantly less than the value of the property; and

(b) a person uses or has possession of property for inadequate consideration if the value of the consideration is significantly less than the value of his or her use or possession of the property.

(4) The provision for any person of services or goods which are of assistance to him or her in criminal conduct shall not be treated as consideration for the purposes of subsection (2).

(5) Where a person discloses to the Reporting Authority a suspicion or belief that any property is, or in whole or in part directly or indirectly represents, another person's proceeds of criminal conduct or discloses to the Reporting Authority any matter on which such a suspicion or belief is based—

(a) the disclosure shall not be treated as a breach of any restriction upon the disclosure of information imposed by statute or otherwise and shall not give rise to any civil liability; and

(b) if he or she does any act in relation to that property in contravention of subsection (1)(b) he or she does not commit an offence under this section if—

(i) the disclosure is made before he or she does the act concerned being an act done with the consent of a police officer in aid of a law enforcement function; or

(ii) the disclosure is made after he or she does the act, but on his or her initiative and as soon as it is reasonable for him or her to make it; and

(iii) he or she had good reason for his or her failure to make the disclosure before he or she did the act concerned.

(Amended by Act 3 of 2008)

(6) Where information is disclosed to or received by the Steering Committee under this section, the Steering Committee may disclose the information—

(a) to any law enforcement agency in the Territory;

(b) to any law enforcement agency in any other country, in order—

(i) to report the possible commission of an offence;

(ii) to initiate a criminal investigation respecting the matter disclosed;

(iii) to assist with any criminal investigations or criminal proceedings respecting the matter disclosed; or

(iv) to generally give effect to the purposes of this Act.
(*Substituted by Act 3 of 2008*)

(6A) Before making a disclosure under subsection (6), the Steering Committee shall, in exercising that discretion, consider the interests of third parties. (*Inserted by Act 3 of 2008*)

(7) (*Repealed by Act 3 of 2008*)

(8) (*Repealed by Act 3 of 2008*)

(9) In proceedings against a person for an offence under this section, save under subsection (1)(b) it is a defence to prove that he or she intended to disclose to the Reporting Authority such a suspicion, belief or matter as is mentioned in subsection (5), but there is reasonable excuse for his or her failure to make the disclosure in accordance with paragraph (b) of that subsection. (*Amended by Act 3 of 2008*)

(10) In the case of a person who was in employment at the relevant time, subsections (5) and (9) shall have effect in relation to disclosures, and intended disclosures, to the appropriate person in accordance with the procedure established by his or her employer for the making of such disclosures as they have effect in relation to disclosures, and intended disclosures, to the Reporting Authority.

(11) A person who commits an offence under this section is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 2 years or to a fine not exceeding, \$250,000 or both; or (*Amended by Acts 1 of 2010 and 7 of 2012*)

(b) on conviction on indictment, to imprisonment for a term not exceeding 14 years or to a fine not exceeding \$500,000 or both. (*Amended by Acts 1 of 2010 and 7 of 2012*)

(12) No member of the Reporting Authority or other person concerned in law enforcement commits an offence under this section in respect of anything done by him or her in the course of acting in connection with the enforcement, or intended enforcement, of any provision of this Act or of any other enactment relating to criminal conduct or the proceeds of such conduct. (*Amended by Act 3 of 2008*)

(13) For the purposes of this section, having possession of any property shall be taken to be doing an act in relation to it.

Concealing or transferring proceeds of criminal conduct

30. (1) A person commits an offence if he or she—

(a) conceals or disguises any property which is, or in whole or in part directly or indirectly represents, the proceeds of criminal conduct;
or

(b) converts or transfers that property or removes that property from the Territory.

(*Substituted by Act 3 of 2008*)

(2) A person commits an offence if, knowing or having reasonable grounds to suspect that any property is, or in whole or in part directly or indirectly represents, another person's proceeds of criminal conduct, he or she—

- (a) conceals or disguises that property; or
- (b) converts or transfers that property or removes it from the Territory.

(Substituted by Act 3 of 2008)

(3) In subsections (1) and (2), the references to concealing or disguising any property include references to concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it.

(3A) If a person does any act in relation to property which belongs to another person in contravention of subsection (2), he or she does not commit an offence under that subsection if he or she discloses that act and—

- (a) the disclosure is made before he or she does the act concerned, being an act done with the consent of a police officer in aid of a law enforcement function; or
- (b) the disclosure is made after he or she does the act, but on his or her initiative and as soon as it is reasonable for him or her to make it; and
- (c) he had a good reason for his or her failure to make the disclosure before he or she did the act concerned.

(Inserted by Act 3 of 2008)

(3B) No member of the Steering Committee or the Agency or other person concerned in law enforcement commits an offence under this section in respect of anything done by him or her in the due discharge of the enforcement, or intended enforcement, of any provision of this Act or of any other enactment relating to criminal conduct or the proceeds of such conduct.

(Inserted by Act 3 of 2008)

(4) A person who commits an offence under this section is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 2 years or to a fine not exceeding, \$250,000 or both; or *(Amended by Acts 1 of 2010 and 7 of 2012)*
- (b) on conviction on indictment, to imprisonment for a term not exceeding 14 years or to a fine not exceeding \$500,000 or both. *(Amended by Acts 1 of 2010 and 7 of 2012)*

Mandatory reporting of suspicious transactions

30A. (1) A person commits an offence if—

- (a) he knows or suspects, or has reasonable grounds for knowing or suspecting, that another person is engaged in money laundering;
- (b) the information or other matter on which his or her knowledge or suspicion is based, or which gives reasonable grounds for such knowledge or suspicion, came to his or her attention in the course of his or her trade, profession, business or employment; and

- (c) he or she does not disclose the information or other matter to the Steering Committee as soon as is reasonably practicable after it comes to his or her attention.
- (2) A person does not commit an offence under subsection (1), if—
- (a) he or she has a reasonable excuse for not disclosing the information or matter;
 - (b) he or she is a professional legal adviser and the information or other matter came to his or her attention in privileged circumstances; or
 - (c) he or she does not know or suspect and has no reasonable grounds for knowing or suspecting that another person is engaged in money laundering.
- (3) In deciding whether a person has committed an offence under subsection (1), the court shall consider whether the person complied with the provisions of any Code of Practice issued under section 27 and any Regulations made pursuant to section 41 at the time of the commission of the offence.
- (4) Where a person discloses to the Steering Committee—
- (a) his or her suspicion or belief that another person is engaged in money laundering; or
 - (b) any information or other matter on which that suspicion or belief is based,
- that disclosure shall not be treated as a breach of any restriction imposed by statute or otherwise.
- (5) Without prejudice to subsection (2) or (3), in the case of a person who was in employment at the relevant time, it is a defence to a charge of committing an offence under this section that he or she disclosed the information or matter in question to the appropriate person in accordance with the procedure established by his or her employer for the making of such disclosures.
- (6) A disclosure to which subsection (5) applies shall not be treated as a breach of any restriction imposed by statute or otherwise.
- (7) Where a disclosure made in compliance with subsection (1) relates to a specific transaction in respect of which investigative action has been taken or is contemplated, the Agency shall notify the person who made the disclosure or the institution he or she represents that such action has been taken or is contemplated and direct that all future transactions by or relating to the person to whom the disclosure relates shall be treated in such manner as the Agency thinks fit.
- (8) For the purposes of subsection (2)(b), information or other matter comes to a professional legal adviser in privileged circumstances if it is communicated or given to him or her—
- (a) by a client of his or hers or a representative of a client of his or hers, in connection with the giving of legal advice to the client;
 - (b) by, or by a representative of, a person seeking legal advice from the adviser; or
 - (c) by any person—

- (i) in contemplation of, or in connection with, legal proceedings;
and
 - (ii) for the purpose of those proceedings.
- (9) No information or other matter shall be treated as coming to a professional legal adviser in privileged circumstances if it is communicated or given with a view to furthering any criminal purpose.
- (10) A person who commits an offence under subsection (1) is liable—
- (a) on summary conviction, to a fine not exceeding \$150,000, imprisonment for a term not exceeding 3 years, or both; or
 - (b) on conviction on indictment, to a fine not exceeding \$500,000 or imprisonment for a term not exceeding 5 years, or both.
- (Amended by Acts 1 of 2010 and 7 of 2012)*
- (11) A person who fails to comply with a direction given pursuant to subsection (7), commits an offence and is liable on summary conviction to a fine not exceeding \$150,000 or imprisonment for a term not exceeding 3 years, or both. *(Substituted by Act 3 of 2008 and amended by Act 7 of 2012)*

Tipping-off

31. (1) A person commits an offence if—
- (a) he or she knows or suspects that any member of the Reporting Authority or other person is acting, or is proposing to act, in connection with an investigation which is being, or is about to be, conducted into money laundering or any action in relation to or arising from money laundering; and *(Amended by Act 3 of 2008)*
 - (b) he or she discloses to any other person information or any other matter which is likely to prejudice that investigation, or proposed investigation.
- (2) A person commits an offence if—
- (a) he or she knows or suspects that a disclosure (“the disclosure”) is being or had been made to the Steering Committee under section 28, 29 or 30A; and *(Substituted by Act 3 of 2008 and amended by Act 1 of 2010)*
 - (b) he or she discloses to any other person information or any other matter which is likely to prejudice any investigation which might be conducted following the disclosure.
- (3) A person commits an offence if—
- (a) he or she knows or suspects that a disclosure (“the disclosure”) of a kind mentioned in section 28(2), 29(5) or 30A(4) has been made: and *(Amended by Act 1 of 2010)*
 - (b) he or she discloses to any person information or any other matter which is likely to prejudice any investigation which might be conducted following the disclosure.
- (4) Nothing in subsections (1) to (3) makes it an offence for a professional legal adviser to disclose any information or other matter—

- (a) to, or to a representative of, a client of his or hers in connection with the giving by the adviser of legal advice to the client;
- (b) by, or by a representative of, a person seeking legal advice from the adviser; or *(Inserted by Act 3 of 2008)*
- (c) to any person—
 - (i) in contemplation of, or in connection with, legal proceedings; and
 - (ii) for the purpose of those proceedings.

(5) Subsection (4) does not apply in relation to any information or other matter which is disclosed with a view to furthering any criminal purpose.

(6) In proceedings against a person for an offence under subsection (1), (2) or (3), it is a defence to prove that he or she did not know or suspect that the disclosure was likely to be prejudicial in the way mentioned in that subsection.

(7) In this section “money laundering” means doing any act which constitutes an offence under section 28, 29, 30 or 30A or, in the case of an act done otherwise than in the Territory, would constitute such an offence if done in the Territory. *(Amended by Act 3 of 2008)*

(8) For the purposes of subsection (7), having possession of any property shall be taken to be doing an act in relation to it.

(9) A person who commits an offence under this section is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 2 years or to a fine not exceeding \$250,000 or both; or *(Amended by Acts 1 of 2010 and 7 of 2012)*
- (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine not exceeding \$500,000 or both. *(Amended by Acts 1 of 2010 and 7 of 2012)*

(10) No member of the Reporting Authority or other person shall be convicted of an offence under this section in respect of anything done by him or her in the course of acting in connection with the enforcement, or intended enforcement, of any provision of this Act or of any other enactment relating to an offence to which this Act applies.

ENFORCEMENT OF EXTERNAL ORDERS

Enforcement of external confiscation orders and proceedings

32. (1) The Cabinet may, by Order—

- (a) direct in relation to a country or territory outside the Territory (referred to in this section and section 33 as a “requesting country”) that, subject to such modifications as may be specified, this Act shall apply to external confiscation orders and to proceedings which have been or are to be instituted in the requesting country and may result in an external confiscation order being made there; *(Substituted by Act 11 of 2017)*
- (b) make—

- (i) such provision in connection with the taking of action in the requesting country with a view to satisfying a confiscation order; *(Amended by Act 11 of 2017)*
 - (ii) such provision as to evidence or proof of any matter for the purposes of this section and section 33;
 - (iii) such incidental, consequential and transitional provision, as appears to the Cabinet to be expedient; and
(Amended by Act 3 of 2008)
 - (c) without prejudice to the generality of this subsection, direct that in such circumstances as may be specified, proceeds which arise out of action taken in the requesting country with a view to satisfying a confiscation order shall be treated as reducing the amount payable under the Order to such extent as may be specified.
(Amended by Act 11 of 2017)
- (2) An Order under this section may make different provisions for different cases or classes of case.
- (3) The power to make an order under this section includes the power to modify (whether by additions, alterations, omissions or otherwise) this Act in such a way as to confer power on a person to exercise a discretion.
- (4) An Order made under this section shall not come into force, unless it is passed by a negative resolution of the House of Assembly. *(Amended by Act 3 of 2008)*
- (5) In this section and section 33, “external confiscation order” means an order made by a court in a requesting country for the purpose of—
- (a) recovering property obtained as a result of or in connection with conduct corresponding to an offence to which this Act applies;
 - (b) recovering the value of property so obtained; or
 - (c) depriving a person of a pecuniary advantage so obtained.
(Amended by Act 11 of 2017)

Registration of external confiscation orders

33. (1) On an application made by the Attorney General on behalf of the Government of a requesting country, the High Court may register an external confiscation order made there if—

- (a) it is satisfied that at the time of registration the order is in force and not subject to appeal;
- (b) it is satisfied, where the person against whom the order so made did not appear in the proceedings, that he or she received notice of the proceedings in sufficient time to enable him or her to defend them; and
- (c) it is of the opinion that enforcing the order in the Territory would not be contrary to the interests of justice.
(Amended by Act 11 of 2017)

(2) The High Court shall not register an external confiscation order made in a requesting country where the Attorney General has issued a certificate to the effect that the application to register the order is contrary to the public interest of the Territory. (*Amended by Act 11 of 2017*)

(3) The High Court shall cancel the registration of an external confiscation order if it appears to the Court that the order has been satisfied by payment of the amount due under it or by the person against whom it was made serving imprisonment in default of payment or by any other means.

(4) For the purposes of subsection (1), “appeal” includes—

- (a) any proceedings by way of discharging or setting aside a judgment; and
- (b) an application for a new trial or a stay of execution.

MISCELLANEOUS PROVISIONS

Enforcement of fines and confiscation orders

34. (1) Where a court orders the defendant to pay any sum under this Act, section 25 of the Criminal Code, or section 84(1)(c) of the Criminal Procedure Act, shall have effect as if that sum were a fine imposed on him or her by the court.

(2) Where—

- (a) the court has directed that in default of payment of a sum ordered to be paid under this Act in respect of an offence the defendant shall serve a term of imprisonment; and
- (b) at the time the direction is made, the defendant is liable to serve a term of imprisonment in respect of the offence,

the term of imprisonment to be served in default of payment of the sum shall not begin to run until after the term mentioned in paragraph (b).

(3) For the purposes of subsection (2)—

- (a) consecutive terms of imprisonment and terms of imprisonment which are wholly or partly concurrent shall be treated as a single term; and
- (b) there shall be disregarded any sentence, suspended under any enactment, which has not taken effect at the time the defendant has defaulted as specified in the direction.

(4) Subject to section 2(6), where the defendant serves a term of imprisonment in default of paying any sum due under a confiscation order, his or her serving that term does not prevent the confiscation order from continuing to have effect, so far as any other method of enforcement is concerned.

Forfeiture

34A. (1) Subject to subsection (3), where a person is convicted of an offence under section 28, 29 or 30, the court—

- (a) may, in passing sentence, order forfeiture to the Government of the Territory of any real property or any ship, vessel, boat, aircraft, vehicle or other means of conveyance of any description shown to the satisfaction of the court to relate to the offence; and
- (b) shall, in passing sentence, order forfeiture to the Government of the Territory of any article, money or valuable consideration shown to the satisfaction of the court to relate to the offence.

(2) Subject to subsection (3), where, in a trial for an offence under this Act, it is shown to the satisfaction of the court that any property is or represents proceeds of criminal conduct or has been, is being or is reasonably likely to be, used in connection with the retention, control, acquisition, possession, use, concealment, disguising, conversion, transfer or moving of proceeds of criminal conduct, the court may, whether or not the defendant is convicted of the offence, order forfeiture to the Government of the Territory of any such property.

(3) The court shall not order anything to be forfeited under this section unless an opportunity has been given to the person claiming to be the owner or other person interested in it to show cause within 21 days from the date of conviction why the order should not be made.

(4) Forfeiture under subsection (1) shall extend—

- (a) to any property which there is reason to believe has been obtained from the proceeds of anything relating to the offence for which a person is convicted or to a conspiracy to commit any such offence; or
- (b) to anything into which any such property has been converted.

(Inserted by Act 16 of 2006)

Prejudicing an investigation

34B. (1) For the purposes of this section—

- (a) “confiscation investigation” is an investigation into whether a person has benefitted from his or her criminal conduct, or the extent or whereabouts of his or her benefit from his or her criminal conduct; and
- (b) “money laundering investigation” is an investigation into whether a person has committed a money laundering offence.

(2) Where a person knows or suspects that a police officer, the Steering Committee or the Agency is acting or proposing to act in connection with a confiscation investigation or a money laundering investigation which is being or is about to be conducted, he or she commits an offence if—

- (a) he or she makes a disclosure which is likely to prejudice the investigation; or
- (b) he or she falsifies, conceals, mutilates, destroys or otherwise disposes of, or causes or permits the falsification, concealment, mutilation, destruction or disposal, of documents which are relevant to the investigation.

(3) A person does not commit an offence under subsection (2)(a) if—

- (a) he or she does not know or suspect that the disclosure is likely to prejudice the investigation;
 - (b) the disclosure is made in the exercise of a function under this Act or any other enactment relating to criminal conduct or benefit from criminal conduct or in compliance with a requirement imposed under or by virtue of this Act; or
 - (c) he or she is a professional legal adviser and the disclosure is made—
 - (i) to, or to a representative of, a client of his or hers in connection with the giving by the adviser of legal advice to the client; or
 - (ii) to any person in contemplation of, or in connection with, legal proceedings and for the purpose of those proceedings.
- (4) A person does not commit an offence under subsection (2)(b) if—
- (a) he or she does not know or suspect that the documents are relevant to the investigation; or
 - (b) he or she does not intend to conceal any facts disclosed by the documents from a police officer, the Steering Committee or the Agency carrying out the investigation.
- (5) A person who commits an offence under subsection (2) is liable—
- (a) on summary conviction to a fine not exceeding \$10,000 or imprisonment for a term not exceeding 3 years, or both; or
 - (b) on conviction on indictment to a fine not exceeding \$25,000 or imprisonment to a term not exceeding 5 years, or both.
- (Inserted by Act 3 of 2008)*

Powers of arrest

35. A police officer may arrest without a warrant any person who has committed, or whom the police officer reasonably suspects to have committed, an offence to which this Act applies.

Order to make material available

36. (1) A police officer may, for the purposes of an investigation into money laundering as defined in section 31(7) or whether any person has benefitted from any criminal conduct or into the extent or whereabouts of the proceeds of any criminal conduct, apply to the court for an order under subsection (2) in relation to a particular material or material of a particular description. *(Amended by Act 3 of 2008)*

(2) If, on an application under subsection (1), the court is satisfied that the conditions in subsection (4) are fulfilled, it may make an order that the person who appears to the court to be in possession of the material to which the application relates shall—

- (a) produce it to a police officer for him or her to take away; or
- (b) give a police officer access to it,

within such period as the order may specify.

(Amended by Act 3 of 2008)

(3) The period to be specified in an order under subsection (2) shall be 7 days, unless it appears to the court that a longer or shorter period would be appropriate in the particular circumstances of the application. *(Amended by Act 3 of 2008)*

(4) The conditions referred to in subsection (2) are that—

- (a) there are reasonable grounds for suspecting that a specified person is involved in or may be related to an act of money laundering or has benefitted from any criminal conduct; *(Amended by Act 3 of 2008)*
- (b) there are reasonable grounds for suspecting that the material to which the application relates—
 - (i) is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purposes of which the application is made; and
 - (ii) does not consist of or include items subject to legal privilege; and
- (c) there are reasonable grounds for believing that it is in the public interest, having regard—
 - (i) to the benefit likely to accrue to the investigation if the material is obtained; and
 - (ii) to the circumstances under which the person in possession of the material holds it, that the material should be produced or that access to it should be given.

(5) Where the court makes an order under subsection (2)(b) in relation to material on any premises, it may, on the application of a police officer, order any person who appears to the court to be entitled to grant entry to the premises to allow a police officer to enter the premises to obtain access to the material. *(Amended by Act 3 of 2008)*

(6) An application under subsection (1) or (5) may be made *ex parte* to a judge or magistrate in chambers. *(Amended by Act 3 of 2008)*

(7) Provision may be made by rules of court as to—

- (a) the discharge and variation of orders under this section; and
- (b) proceedings relating to such orders.

(8) Where the material to which an application under this section relates consists of information contained in a computer—

- (a) an order under subsection (2)(a) shall have effect as an order to produce the material in a form in which it can be taken away and in which it is visible and legible; and
- (b) an order under subsection (2)(b) shall have effect as an order to give access to the material in a form in which it is visible and legible.

- (9) An order under subsection (2)—
- (a) shall not confer any right to production of, or access to, items subject to legal privilege;
 - (b) shall have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by statute or otherwise; and
 - (c) may be made in relation to material in the possession of a Government department.

- (9A) Where material is produced pursuant to an order under this section—
- (a) a police officer or the Agency may make a copy of the material; and
 - (b) the material may—
 - (i) be retained for as long as it is necessary for the purposes of completing an investigation; and
 - (ii) where it is required for legal proceedings, be retained until those proceedings are concluded.
(Inserted by Act 3 of 2008)

(10) Where, in relation to an investigation into an offence to which this Act applies, an order under subsection (2) has been made or has been applied for and has not been refused or a warrant under section 37 has been issued, a person who, knowing or suspecting that the investigation is taking place, makes any disclosure which is likely to prejudice the investigation commits an offence.

- (11) In proceedings against a person for an offence under this section, it is a defence to prove that—
- (a) he or she did not know or suspect that the disclosure was likely to prejudice the investigation; or
 - (b) he had lawful authority or reasonable excuse for making the disclosure.

(12) A person who commits an offence under subsection (10) is liable on summary conviction to imprisonment for a term not exceeding 2 years or to a fine not exceeding \$150,000. *(Amended by Acts 1 of 2010 and 7 of 2012)*

Authority for search

37. (1) A police officer may, for the purposes of an investigation into money laundering as defined in section 31(7) or whether any person has benefitted from any criminal conduct or into the extent or whereabouts of the proceeds of any criminal conduct, apply to the court for a warrant under this section in relation to specified premises. *(Amended by Act 3 of 2008)*

(2) On an application made under subsection (1), the court may issue a warrant authorising a police officer to enter and search the premises if the court is satisfied that—

- (a) an order made under section 36 in relation to material on the premises has not been complied with;
- (b) the conditions in subsection (3) are fulfilled; or

(c) the conditions in subsection (4) are fulfilled.

(Amended by Act 3 of 2008)

(3) The conditions referred to in subsection (2)(b) are that—

(a) there are reasonable grounds for suspecting that a specified person has benefitted from criminal conduct;

(b) the conditions in section 36(4)(b) and (c) are fulfilled in relation to any material on the premises; and

(c) it would not be appropriate to make an order under that section in relation to the material because—

(i) it is not practicable to communicate with any person entitled to produce the material;

(ii) it is not practicable to communicate with any person entitled to grant access to the material or entitled to grant entry to the premises on which the material is situated; or

(iii) the investigation for the purposes of which the application is made might be seriously prejudiced unless a police officer could secure immediate access to the material.

(4) The conditions referred to in subsection (2)(c) are—

(a) that there are reasonable grounds for suspecting that a specified person is involved in or may be related to an act of money laundering or has benefitted from any criminal conduct;

(b) that there are reasonable grounds for suspecting that there is on the premises any such material relating—

(i) to the specified person; or

(ii) to the question whether that person is involved in or may be related to an act of money laundering or has benefitted from any criminal conduct or to any question as to the extent or whereabouts of the proceeds of any criminal conduct,

as is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purposes of which the application is made, but that the material cannot at the time of the application be particularized; and

(c) that—

(i) it is not practicable to communicate with any person entitled to grant entry to the premises;

(ii) entry to the premises will not be granted unless a warrant is produced; or

(iii) the investigation for the purposes of which the application is made might be seriously prejudiced unless a police officer arriving at the premises could secure immediate entry to them.

(Amended by Act 3 of 2008)

(5) Where a police officer has entered premises in the execution of a warrant issued under this section, he or she may seize and retain any material, other than items subject to legal privilege, which is likely to be of substantial value (whether by itself or together with other material) to the Investigation for the purposes of which the warrant was issued.

(6) Where any material is seized pursuant to subsection (5)—

- (a) a police officer or the Agency may make a copy of the material; and
- (b) the material may—
 - (i) be retained for as long as it is necessary for the purposes of completing an investigation; and
 - (ii) where it is required for legal proceedings, be retained until those proceedings are concluded.

(Inserted by Act 3 of 2008)

Seizure and detention of cash

37A. (1) For the purposes of—

- (a) this section and sections 37B and 37C, “cash” includes coins, notes in any currency, cheques and any other monetary or type of bearer negotiable instrument;
- (b) this section and section 37B, “customs officer” means an officer appointed under section 6 of the Customs Ordinance; and
- (c) this section, “exported”, in relation to cash, includes its being brought to any place in the Territory for the purpose of being exported.

(2) A police officer or a customs officer may seize and detain any cash which is found in the Territory or is being imported into or exported from the Territory if its amount is not less than \$10,000 and he or she has reasonable grounds for suspecting that the cash—

- (a) is intended by any person for use in criminal conduct; or
- (b) directly or indirectly represents any person’s proceeds of criminal conduct.

(3) Cash within the threshold provided in subsection (2) that is being imported into or exported from the Territory shall not be seized and detained if it is declared to the Comptroller of Customs or a representative of the Comptroller at the port of entry or exit, unless there are reasonable grounds for suspecting that the cash—

- (a) is intended by any person for use in criminal conduct; or
- (b) directly or indirectly represents any person’s proceeds of criminal conduct.

(4) Cash seized by virtue of subsection (2) or (3) shall not be detained for more than 72 hours, unless its continued detention is authorised by order of a Magistrate upon an application made by a police officer or the Comptroller of Customs.

(5) A Magistrate shall not make an order under subsection (4), unless he or she is satisfied—

- (a) that there are reasonable grounds for the suspicion mentioned in subsection (2) or, as the case may be, subsection (3); and
- (b) that continued detention of the cash is justified while its origin or derivation is further investigated or consideration is given to the institution (whether in the Territory or elsewhere) of criminal proceedings against any person for an offence with which the cash is connected; or
- (c) that proceedings against any person for an offence with which the cash is connected have been started but have not been concluded.

(6) Where an order is made under subsection (4), the Magistrate—

- (a) shall provide for notice to be given to persons affected by it and the notice shall be in such form as the Magistrate shall determine, unless otherwise provided in rules made under the Magistrate's Code of Procedure Act;
- (b) shall authorise the continued detention of the cash to which the order relates for a period, not exceeding 3 months beginning with the date of the order, as may be specified in the order; and
- (c) may thereafter, if satisfied as to the matters mentioned in that subsection, from time to time by order authorise the further detention of the cash, but so that—
 - (i) no period of detention specified in such an order shall exceed 3 months beginning with the date of the order; and
 - (ii) the total period of detention shall not exceed 2 years from the date of the order.

(7) At any time while cash is detained by virtue of this section—

- (a) the Magistrate may direct its release if satisfied, on an application made—
 - (i) by the person from whom it was seized or a person by or on whose behalf it was being imported or exported, that there are no, or are no longer any, such grounds as are mentioned in subsection (5) to warrant its continued detention; or
 - (ii) by any other person, that the continued detention of the cash is not for that or any other reason justified; and
- (b) a police officer or the Comptroller of Customs may, subject to subsections (8) and (9), release the cash if satisfied that its continued detention is no longer justified.

(8) A police officer or the Comptroller of Customs shall not release cash pursuant to subsection (7)(b), unless he or she first notifies—

- (a) the Magistrate under whose order the cash is being detained; or
- (b) another Magistrate in the absence of the one under whose order the cash is being detained.

(9) Where on an application under subsection (7) for the release of cash that is being detained the Magistrate finds that only a part of the cash, if it relates to liquid currency, is intended for use by a person in criminal conduct or directly or indirectly represents any person's proceeds of criminal conduct, the Magistrate may order the release of that part of the cash as does not relate to the intended criminal conduct or directly or indirectly represent the proceeds of criminal conduct.

(10) Subsection (9) does not apply to cash that is in the form of bearer negotiable or other monetary instrument.

(11) If at any time when any cash is being detained by virtue of this section—

- (a) an application for its forfeiture is made under section 37B; or
- (b) proceedings are instituted (whether in the Territory or elsewhere) against any person for an offence with which the cash is connected,

the cash shall not be released until any proceedings pursuant to the application or, as the case may be, the proceedings for that offence have been concluded.

(Inserted by Act 3 of 2008)

Forfeiture

37B. (1) A Magistrate may order the forfeiture to the Crown of the whole or any part of cash which has been seized pursuant to section 37A if he or she is satisfied, on an application made by a police officer or the Comptroller of Customs, that the cash—

- (a) is intended by any person for use in criminal conduct; or
- (b) directly or indirectly represents any person's proceeds of criminal conduct.

(2) The standard of proof in proceedings on an application under subsection (1) shall be on a balance of probability.

(3) An order may be made under subsection (1) irrespective of whether proceedings are brought against a person for an offence with which the cash in question is connected.

(4) Where an application for the forfeiture of any cash is made under subsection (1), the cash is to be detained (and may not be released under any power conferred by this section or section 37A) until any proceedings in pursuance of the application, including any proceedings on appeal, are concluded.

(5) Any party to proceedings under this section who is aggrieved by an order of the Magistrate may, within 30 days from the date on which the order is made, appeal to the Court of Appeal which may make such order as it thinks appropriate.

(Inserted by Act 3 of 2008)

Interest

37C. Cash seized pursuant to section 37A and detained for more than 72 hours shall, unless required as evidence of an offence, be held in an interest-bearing account and the interest accruing on any such cash shall be added to that cash on its forfeiture or release. *(Inserted by Act 3 of 2008)*

Immunity from suit

38. No action shall be brought against any police officer or member of the Reporting Authority or the Agency or any of its officers for anything done, in good faith, in exercise of the powers conferred on him or her by this Act. *(Amended by Act 3 of 2008)*

39. *(Repealed by Act 3 of 2008)*

Power of amendment

40. The Cabinet may, by Order published in the *Gazette*, amend section 18 by adding to or removing from the kinds of asset referred to in that section any assets of a kind which in the opinion of the Cabinet ought to be so added or removed. *(Amended by Act 3 of 2008)*

Regulations

41. (1) The Cabinet may make regulations for the effective carrying out of the provisions of this Act.

(2) Without prejudice to subsection (1), the Cabinet may, for the purposes of ensuring compliance with established standards of regulation and cooperation in relation to anti-money laundering activities and with the advice of the Commission, make regulations specifically—

- (a) providing for the identification procedures and processes to be established and administered in relation to business entities that are regulated by the Financial Services Commission;
- (b) providing for the maintenance, format, retention and retrieval of records;
- (c) requiring the maintenance of a register of inquiries and the adoption of due diligence measures;
- (d) requiring the establishment of procedures for the recognition and reporting of suspicious transactions;
- (e) requiring the establishment of training programmes, including refresher training programmes, to educate persons on the provisions of this Act, any other enactment and any regional and international initiatives relating to money laundering and terrorist financing; and
- (f) providing for anything relating to or incidental to the matters specified in paragraphs (a) to (e).

(3) Regulations made under subsection (2) shall—

- (a) apply to any entity to which section 27 may be applicable, but without prejudice to any obligations and liabilities that may apply

to the entity pursuant to any Code of Practice made and applicable to or in relation to that entity; and

(b) provide for the offences and penalties to be applicable to any contravention or non-compliance with the provisions of the Regulations.

(4) Any penalty prescribed under subregulation (3)(b) shall not exceed a fine of \$150,000. (*Amended by Acts 1 of 2010 and 7 of 2012*)
(*Substituted by Act 3 of 2008*)
