

SAINT VINCENT AND THE GRENADINES

**PROCEEDS OF CRIME AND MONEY LAUNDERING
(PREVENTION) ACT 2001**

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SAINT VINCENT AND THE GRENADINES

ACT NO. 39 OF 2001

I ASSENT

AN ACT to amend the Proceeds of Crime Act No. 12 of 1997 and to provide for the prevention of money laundering and any other related matters.

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the House of Assembly of Saint Vincent and the Grenadines, and by the authority of the same as follows:

PART I

PRELIMINARY

**Short title,
commencement
and application**

1. (1) This Act may be cited as the Proceeds of Crime and Money Laundering (Prevention) Act, 2001 and shall come into operation on such day as the Governor General may appoint by Notice published in the *Gazette*.

(2) This Act shall apply to any property, whether or not situated in Saint Vincent and the Grenadines.

Interpretation

2. (1) In this Act-

"Committee" means the National Anti-Money Laundering Committee established under section 48 of this Act ;

"confiscation order" means an order made under section 7 or 8 (including such an order made by virtue of section 14 or 19);

"court" means the High Court;

"corresponding law"-

- (a) in relation to proceedings relating to drug trafficking has the meaning given in section 2 of the Drug Trafficking Offences Act 1993 and;
- (b) in any other case, means a law which corresponds with a provision of Saint Vincent and the Grenadines law which creates a relevant offence.

"criminal conduct" means-

- (a) drug trafficking, or
- (b) any relevant offence;

"defendant" means a person against whom proceedings have been instituted for an offence (whether or not he has been convicted);

"drug trafficking" has the same meaning as defined under section 2 (1) of the Drug Trafficking Offences Act;

"drug trafficking arrangement" means an arrangement whereby-

- (a) the retention or control by or on behalf of another person of that other person's proceeds of drug trafficking is facilitated; or
- (b) the proceeds of drug trafficking by another person are used to secure that those funds are placed at that other person's disposal or are used for that other person's benefit to acquire property by way of investment;

"drug trafficking offence" means

- (a) an offence as defined in the Drug Trafficking Offences Act;
- (b) under sections 41, 42 or 45 of this Act which relates to the proceeds of drug trafficking;

or an offence under the Criminal Code constituting an attempt, incitement or conspiracy to commit a drug trafficking offence;

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"interest", in relation to property, includes right;

"items subject to legal privilege" means-

- (a) communications between a professional legal adviser and his client made in connection with the giving of legal advice to the client; and
- (b) communications between a professional legal adviser and his client or between such an adviser and any other person made in connection with or in contemplation of legal proceedings and for the purpose of such proceedings, this includes items when they are in the possession of a person who is entitled to possession of them; but items held with the intention of furthering a criminal purpose are not items subject to legal privilege;

"material" includes any book, document or other record in any form whatsoever, and any container or article relating thereto;

"money laundering" means doing any act-

- (a) which constitutes an offence under section 43, 44 or 45; or
- (b) which would constitute such an offence if done in Saint Vincent and the Grenadines;

and for these purposes, having possession of any property shall be taken to be doing an act in relation to it;

"premises" includes any place and, in particular, includes-

- (a) any vehicle, vessel, aircraft, or structure in the coastal waters of Saint Vincent and the Grenadines; and
- (b) any tent or other moveable structure;

"prescribe" means prescribe by regulations made under section 63;

"property" means money and all other property, movable or immovable, including things in action and other intangible or incorporeal property; and

"realisable property" means-

- (a) any property held by the defendant (other than property in respect of which there is in force a forfeiture order made under any other provision

in Saint Vincent and
the Grenadines);

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

"relevant offence" means-

- (a) any indictable offence or an offence triable both summarily or on indictment in Saint Vincent and the Grenadines from which a person has benefited as defined in section 7(3) of this Act, other than a drug trafficking offence;
- (b) any offence listed in Schedule 2 to this Act;
- (c) any act or omission which, had it occurred in Saint Vincent and the Grenadines, would have constituted an offence as defined in paragraph (a) or paragraph (b);.

(2) For the purposes of this Act-

- (a) property is held by any person if he holds any interest in it;
- (b) references to property held by a person include a reference to property vested in his trustee in bankruptcy or liquidator;
- (c) references to an interest held in property by a person beneficially include a reference to an interest which would be held by him beneficially if the property were not so vested in his trustee in bankruptcy or liquidator; and

(d) property is transferred by one person to another if the first person transfers or grants to the other any interest in the property.

(3) For the purposes of this Act, the amount that might be realised at the time a confiscation order is made against the defendant shall be the total of the values at that time of all the realisable property held by the defendant less any obligations having priority at that time together with the total of the values at that time of all gifts caught by this Act.

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

(a) to pay an amount due in respect of a fine, or other order imposed or made on conviction of an offence, where the fine was imposed or order made before the confiscation order; or

(b) to pay any sum which would be included among the preferential debts in the defendant's bankruptcy commencing on the date of the confiscation order or winding up under an order of the court made on that date.

(5) For the purposes of subsection (4)(b), "preferential debts"-

(a) in relation to bankruptcy, means the debts to be paid in priority under the Bankruptcy Act (assuming the date of the confiscation order to be the date of the receiving order); and

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- (b) in relation to winding up, means the debts to be paid in priority in accordance with the Companies Act (assuming the date of the confiscation order to be the date of the winding up).

Value of property

3. (1) Subject to the following subsections and section 4, for the purposes of this Act, the value of property (other than cash) in relation to any person holding the property shall be its market value, except that where any other person holds an interest in the property, the value shall be-

- (a) the market value of the first-mentioned person's beneficial interest in the property, less
- (b) the amount required to discharge any incumbrance (other than a charging order) on that interest.

(2) Subject to section 4 (3), references in this Act to the value at any time (referred to in subsection (3) as the "material time") of a gift caught by this Act are references to-

- (a) the value of the gift to the recipient when he received it adjusted to take account of subsequent changes in the value of money; or
- (b) where subsection (3) applies, the value mentioned therein,

whichever is the greater.

(3) Subject to section 4 (3), if at the material time the recipient holds-

- (a) the property which he received (not being cash); or
- (b) property which, in whole or in part, directly or indirectly represents in his hands the property which he received,

the value referred to in subsection (2)(b) shall be the value to him 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 so represents the property which he received, but disregarding in either case any charging order.

Gifts caught by this Act

4. (1) In relation to a drug trafficking offence, a gift (including a gift made before the commencement of this Act) is caught by this Act if-

- (a) it was made by the defendant at any time since the beginning of the period of six years ending-
 - (i) when the proceedings for the drug trafficking offence were instituted against him, or
 - (ii) where no such proceedings have been instituted, when an application for a charging or restraint order is made under section 25 or 26; or
- (b) it was made by the defendant at any time and was a gift of property-
 - (i) received by the defendant in connection with drug trafficking carried on by him or another person, or
 - (ii) which in whole or in part directly or indirectly represented in the defendant's hands property received by him in that connection.

(2) In relation to a relevant offence, a gift (including a gift made before the commencement of this Act) is caught by this Act if-

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

(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 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 those circumstances, this section and section 3 shall apply as if the defendant had made a gift of such share in the property as it bears to the whole property.

Institution and conclusion of proceedings

5. (1) For the purposes of this Act

- (a) proceedings for an offence are instituted in Saint Vincent and the Grenadines when information is laid charging a person with an offence;
- (b) proceedings in Saint Vincent and the Grenadines for an offence are concluded on the occurrence of one of the following events:

- (i) the discontinuance of the proceedings;
 - (ii) the acquittal of the defendant;
 - (iii) the quashing of the defendant's conviction for the offence;
 - (iv) the satisfaction of a confiscation order made in the proceedings;
- (c) an application under section 14, 15, 17 or 19 is concluded
- (i) if the court decides not to make or vary (as the case may be) a confiscation order against the defendant, when it makes that decision; or
 - (ii) if a confiscation order is made or varied as a result of that application, when the order is satisfied;
- (d) a confiscation order is satisfied when no amount is due under it.

(2) For the purposes of this Act, 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.

PART II

CONFISCATION ORDERS

**Confiscation orders
drug trafficking**

6. (1) Where a defendant appears before the court to be sentenced for one or more drug trafficking offences, the court shall proceed under this section

- (a) on the application of the Director of Public Prosecutions, or
- (b) of its own motion where it considers it appropriate to do so.

(2) The court shall first determine whether the defendant has benefited from drug trafficking.

(3) For the purposes of this Act, a person has benefited from drug trafficking if he has at any time (whether before or after the commencement of this Act) received any payment or other reward in connection with drug trafficking carried on by him or another person.

(4) If the court determines that he has so benefited, it shall, before sentencing or otherwise dealing with him in respect of the offence or (as the case may be) any of the offences concerned, make a confiscation order and determine in accordance with section 12 the amount to be recovered in his case under the order.

(5) The court shall then, in respect of the offence or offences concerned

- (a) order the defendant to pay the amount of the confiscation order within such period as it may specify; and
- (b) take into account the confiscation order before
 - (i) imposing any fine on him;
 - (ii) making any other order involving any payment by him; and
 - (iii) making a forfeiture order; but
- (c) subject to paragraph (b), leave the confiscation order out of account in determining the appropriate sentence or other manner of dealing with the defendant.

(6) Where a person is convicted of one or more drug trafficking offences before a magistrates' court and where

(a) it appears to the magistrate that the person convicted may have benefited and has or may have realisable property; or

(b) it appears to the Director of Public Prosecutions that the person may have benefited and has or may have realisable property, on application by the Director of Public Prosecutions,

the magistrate shall before passing sentence send the case to the court for determination as to whether a confiscation order should be made.

**Confiscation orders
relevant offences**

7. (1) Where a defendant appears before the court to be sentenced for one or more relevant offences, the court shall proceed under this section

(a) on the application of the Director of Public Prosecutions, or

(b) of its own motion where it considers it appropriate to do so.

(2) The court shall first determine whether the defendant has benefited from

(a) the offence or offences for which he is to be sentenced ("the principal offence"),

(b) any other relevant offence of which he was convicted in the same proceedings as the principal offence, and

(c) any relevant offences which the court will be taking into consideration in determining his sentence for the principal offence.

- (3) For the purposes of this Act
- (a) a person benefits from an offence if he obtains property as a result of or in connection with its commission and his benefit is the value of any property so obtained; and
 - (b) if he derives a pecuniary advantage as a result of or in connection with the commission of an offence, he is to be treated as if he had obtained instead a sum of money equal to the value of the pecuniary advantage.

(4) If the court determines that the defendant has benefited from the offences mentioned in subsection (2), it shall, before sentencing or otherwise dealing with him in respect of the principal offence, make a confiscation order and determine in accordance with section 15 the amount to be recovered in his case under the order.

- (5) The court shall then in respect of the principal offence
- (a) order the defendant to pay the amount of the confiscation order within such period as it may specify; and
 - (b) take into account the confiscation order before
 - (i) imposing any fine on him, or
 - (ii) making any other order involving any payment by him; but
 - (c) subject to paragraph (a), leave the confiscation order out of account in determining the appropriate sentence or other manner of dealing with the defendant.

(6) Where a person is convicted of a relevant offence in any proceedings before a magistrates' court and where

- (a) it appears to the magistrate that the defendant may have

benefited and has or may have realisable property; or

- (b) it appears to the Director of Public Prosecutions that the defendant may have benefited and has or may have realisable property, on application by the Director of Public Prosecutions,

the magistrate shall before passing sentence send the case to the court for determination as to whether a confiscation order should be made.

Extended benefit

8. (1) This section applies where a defendant is convicted in any proceedings before the court or a magistrates' court of a relevant offence other than drug trafficking where the Director of Public Prosecutions gives notice that the benefit is

- (a) one hundred thousand dollars or more, or
- (b) one hundred thousand dollars or more when taken with any benefit assessed in respect of any previous relevant offence other than drug trafficking in the preceding six years and that notice contains a declaration that it is in the opinion of the Director of Public Prosecutions that the case is one in which it is appropriate for the provisions of this section to be applied.

(2) When the Director of Public Prosecutions gives notice in accordance with subsection (1), the court shall, subject to subsection (4), make the assumptions specified in subsection (3) made for the purpose

- (a) of determining whether the defendant has benefited from the commission of the relevant offence;
- (b) if he has, the value of the defendant's benefit from the commission of the offence.

- are
- (3) The assumptions referred to in subsection (2)
 - (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 at any time since the beginning of the relevant period, was received by him, at the earliest time when he appears to the court to have held it, as a result of or in connection with the commission of the relevant offence;
 - (b) that any expenditure of his since the beginning of the relevant period was out of payments received by him as a result of or in connection with the commission of the relevant offence;
 - (c) that for the purposes of valuing any benefit which he had or which he is assumed to have had at any time, he received the benefit free of any other interests in it.

- (3) The court shall not make any assumptions 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 relates, is shown to be correct in relation to a relevant 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 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.

(4) Where the court does not make one or more of the required assumptions, it shall state its reasons.

(5) If the court determines that the defendant has benefited from the commission of a specified offence that is not drug trafficking in accordance with this section, it shall then

(a) determine in accordance with section 14 the amount to be recovered in his case, and

(b) make an order under this section ordering the defendant to pay that amount.

(6) Where a person is convicted of a relevant offence in any proceedings before a magistrates' court and where

(a) it appears to the magistrate that the defendant may have benefited and has or may have realisable property; or

(b) it appears to the Director of Public Prosecutions that the defendant may have benefited and has or may have realisable property, on application by the Director of Public Prosecutions,

the magistrate shall before passing sentence send the case to the court for determination as to whether a confiscation order should be made.

**Postponed
determinations**

9. (1) Where the court is proceeding under section 6 or 7, (as the case may be), but considers that it needs more information before

(a) determining whether the defendant has benefited as mentioned in the section in question, or

- (b) determining the amount to be recovered from him under a confiscation order,

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

(2) More than one postponement may be made under subsection (1).

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

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

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

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

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

(7) Where the court exercises its power under this section it may nevertheless proceed to sentence the defendant in respect of the offence in question or any such offences; and on making a postponed confiscation order by virtue of this section it may vary any fine or other order involving payment imposed on the defendant in accordance with subsection (5)(b) of section 6 or 7 (as the case may be).

**Assessing proceeds
of drug trafficking**

10. (1) For the purposes of this Act
- (a) any payments or other rewards received by a person at any time (whether before or after the commencement of this Act) in connection with drug trafficking carried on by him or another person are his proceeds of drug trafficking; and
 - (b) the value of his proceeds of drug trafficking is the aggregate of the values of the payments or other rewards.
- (2) Subject to subsections (4) and (5), the court shall make the required assumptions for the purpose
- (a) of determining whether the defendant has benefited from drug trafficking, and
 - (b) if he has, of determining the value of his proceeds of drug trafficking.
- (3) The required assumptions are
- (a) that any property appearing to the court
 - (i) to have been held by the defendant at any time since his conviction, or
 - (ii) to have been transferred to him at any time since the beginning of the period of six years ending when the proceedings were instituted against him,was received by him as a payment or reward in connection with drug trafficking carried on by him;
 - (b) that any expenditure of his since the beginning of that period was met out of payments received by him in connection with drug trafficking carried on by him;
 - (c) that, for the purpose of valuing any property received or assumed to have

been received by him at any time as such a reward, he received the property free of other interests in it.

(4) The court shall not make any of the required assumptions in relation to any particular property or expenditure if

- (a) that assumption is shown to be incorrect in the defendant's case; or
- (b) the court is satisfied that there would be a serious risk of injustice in the defendant's case if that assumption were to be made;

and where the court, by virtue of this subsection, does not make one of the required assumptions it shall state its reasons.

(5) For the purpose of assessing the value of the proceeds derived by the defendant from drug trafficking in a case where a confiscation order has previously been made against him the court shall leave out of account any such proceeds that are shown to the court to have been taken into account in determining the amount to be recovered under the previous order.

**Statement of
information by the
Director of Public
Prosecutions**

11. (1) Where the Director of Public Prosecutions asks the court to proceed under section 6 or 7 he shall give the court, within such period as it may direct, a statement (a "prosecutor's statement") of matters which he considers relevant in connection with

- (a) determining whether the defendant has benefited as mentioned in the section in question; or
- (b) assessing the value of his proceeds of drug trafficking or benefit from any relevant offences.

(2) Where the court proceeds under section 6 or 7 without the Director of Public Prosecutions having asked it to do so, it may require him to give it a prosecutor's statement, within such period as it may direct.

(3) Where a prosecutor's statement has been given

- (a) the Director of Public Prosecutions may at any time give the court a further statement; and
- (b) the court may at any time require him to give it a further statement, within the period as it may direct.

(4) Where any prosecutor's statement has been given and the court is satisfied that it has been served on the defendant, it may require the defendant, within such period as it may direct

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

and the court may for the purposes of the determination and assessment mentioned in subsection (1) treat any acceptance by the defendant as conclusive of the matters to which it relates.

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

(6) Where

- (a) there is tendered to the court by the defendant a statement as to any matters relevant to determining the amount that might be realised at the time the confiscation order is made; and
- (b) the Director of Public Prosecutions accepts to any extent any allegation in the statement,

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

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

(8) No acceptance by the defendant under this section that proceeds have been derived by him from drug trafficking or from any relevant offence shall be admissible in evidence in any proceedings for an offence.

Provision of information by defendant

12. (1) For the purpose of obtaining information to assist it in carrying out its functions in relation to making a confiscation order, the court may order the defendant to give it information in a manner and before a date as may be specified in the order.

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

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

Amount to be recovered

13. (1) Subject to subsection (3), the amount to be recovered under a confiscation order shall be the amount the court assesses to be the value of the defendant's proceeds of drug trafficking or benefit from relevant offences (as the case may be).

(2) 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 reason of the acceptance of an allegation made in a statement given under section 10 or made in the giving of information under section 11 or otherwise), the court may issue a certificate giving its opinion as to the matters concerned and shall do so if satisfied as mentioned in subsection (3).

(3) If the court is 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 proceeds of drug trafficking or benefit from relevant offences (as the case may be), the amount to be recovered under the confiscation order shall be the amount appearing to the court to be the amount that might be so realised.

Protection of third party rights

14. (1) Where an application is made for a confiscation order, a person who asserts an interest in realisable property may apply to the court, before the confiscation order is made, for an order under subsection (2).

(2) If a person applies to the court for an order under this subsection in respect of his interest in realisable property and the court is satisfied

- (a) that he was not in any way involved in the defendant's criminal conduct; and
- (c) that he acquired the interest
 - (i) for sufficient consideration; and
 - (ii) without knowing, and in circumstances that he would not have formed a reasonable suspicion, that the property was, at the time he acquired it, property that was involved in or was the proceeds of criminal conduct,

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

(3) Subject to subsection (4), where a confiscation order has already been made, a person who asserts an interest in the property may apply under this subsection to the court for an order under subsection (2).

(4) Except with the leave of the court, an application shall not be made under subsection (3)

- (a) by a person
 - (i) who had knowledge of the application for a confiscation order before the order was made, or
 - (ii) who appeared at the hearing of that application; or
- (b) later than 28 days beginning with the day on which the confiscation order was made.

(5) A person who makes an application under subsection (1) or (3) shall give not less than seven days written notice of the making of the application to the Director of Public Prosecutions who shall be a party to any proceedings on the application.

Subsequent proceedings

Reconsideration of case

15. (1) This section applies where a defendant has appeared before the court to be sentenced in respect of one or more drug trafficking or relevant offences but the court has not made a confiscation order because either

- (a) it did not proceed under section 6 or 7, or
- (b) the court has made a determination under subsection (2) of section 6 or 7 or 18 ("a subsection (2) determination") that the defendant has not benefited from drug trafficking or from any relevant offence.

(2) If the Director of Public Prosecutions has evidence which was not previously available but which he believes would have led the court to determine that the defendant had benefited from drug trafficking or from any relevant offence he may make an application to the court.

(3) On such an application the court shall consider the evidence and if satisfied that the defendant had so benefited, the court shall make a confiscation order and order the payment of such amount as it thinks just in all the circumstances of the case, including in particular the amount of any fine or other orders for payment imposed on the defendant in respect of the offence or offences in question.

Revised assessment of proceeds of criminal conduct

16. (1) This section applies where the court has made a determination of the amount to be recovered under a confiscation order ("the current determination").

(2) Where the Director of Public Prosecutions is of the opinion that the real value of the defendant's proceeds of drug trafficking or benefit from any relevant offences was greater than their assessed value, he may apply to the court for the evidence on which he has formed his opinion to be considered by the court.

(3) If, having considered the evidence, the court is satisfied that the real value of the defendant's proceeds of drug trafficking or benefit from any relevant offences is greater than their assessed value (whether because the real value at the time of the current determination was higher than was thought or because the value of the proceeds or benefit in question has subsequently increased), the court shall make a fresh determination of the amount to be recovered under a confiscation order.

(4) In subsections (2) and (3)

"assessed value" means the value of the defendant's proceeds of drug trafficking or benefit from any relevant offences as assessed by the court in accordance with section 13(1) of this Act; and

"real value" means-

- (a) the value of the defendant's proceeds of drug trafficking which took place in the period by reference to which the current determination was made or in any earlier period; or
- (b) the value of his benefit from any of the relevant offences mentioned in section 7(2).

(5) Any determination by virtue of this section shall be by reference to the amount that might be realised at the time when the determination is made.

(6) For the avoidance of doubt, section 10(5) shall not apply in relation to any of the defendant's proceeds of drug trafficking taken into account in respect of the current determination.

(7) If, as a result of making the fresh determination required by subsection (3), the amount to be recovered exceeds the amount set by the current determination, the court may substitute for the amount to be recovered under the confiscation order such greater amount as it thinks just in all the circumstances of the case.

(8) Where the court varies a confiscation order by virtue of this section it shall substitute for the term of imprisonment in default fixed under section 23(1) in respect of the amount to be recovered under the order such longer term as may be determined in accordance with that section in respect of the greater amount to be recovered under the order as varied.

**Reconsideration
supplementary**

17. (1) On an application under section 15 or 16, the court may take into account any payment or other reward received by the defendant on or after the date

- (a) of the conviction (in the case of an application under section 15 by virtue of subsection (1)(a));
- (b) of the subsection (2) determination (in the case of an application under section 15 by virtue of subsection (1)(b)); or
- (c) of the current determination (in the case of an application under section 16);

but only if the Director of Public Prosecutions shows that it was received by the defendant in connection with drug trafficking carried on, or with any relevant offence committed, on or before that date.

(2) In considering any evidence which relates to any payment or reward in relation to drug trafficking to which subsection (1) applies, the court shall not make the assumptions which would otherwise be required by section 9.

(3) No application shall be entertained by the court under section 15 or 16 if it is made after the end of the period of six years beginning with the date on which the defendant was convicted, or where the application relates to more than one conviction, the date of the latest conviction.

(4) Sections 11 and 12 apply, with such modifications as may be necessary, in relation to applications under sections 15 and 16 as they apply in relation to proceedings under sections 6 and 7.

**Increase in
realisable property**

18. (1) This section applies where, by virtue of section 13(3), the amount which a person is ordered to pay under a confiscation order is less than the amount assessed to be his proceeds of drug trafficking or benefit from relevant offences (as the case may be).

(2) If, on an application made

- (a) by the Director of Public Prosecutions, or
- (b) by a receiver appointed under section 26 or 29 in relation to the realisable property of the person in question,

the court is satisfied that the amount that might be realised in the case of the person in question is greater than the amount taken into account in making the confiscation order (whether it was greater than was thought when the confiscation order was made or has subsequently increased), the court shall issue a certificate to that effect, giving its reasons.

(3) Where a certificate has been issued the Director of Public Prosecutions may apply to the court for an increase in the amount to be recovered under the confiscation order; and on that application the court may

- (a) substitute for that amount such amount not exceeding the amount assessed as the value referred to in subsection (1) as appears to the court to be appropriate having regard to the amount now shown to be realisable; and
- (b) increase the term of imprisonment fixed in respect of the confiscation order under section 25(1) if the effect of the substitution is to increase the maximum period applicable in relation to the order under that section.

**Inadequacy of
realisable property**

19. (1) If, on an application made in respect of a confiscation order,
- (a) by the defendant; or
 - (b) by a receiver appointed under section 26 or 29,

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.

- (2) For the purposes of subsection (1)
- (a) in the case of realisable property held by a person who has been adjudged bankrupt, the court shall take into account the extent to which any property held by him 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 had, directly or indirectly, made a gift caught by this Act from any risk of realisation under this Act.

(3) Where a certificate has been issued under subsection (1), the person who applied for it may apply to the court which made the confiscation order for the amount to be recovered under the order to be reduced.

- (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 in default fixed under section 23(1) in respect of the amount to be recovered

under the order a shorter term if such is determined in accordance with that section in respect of the lesser amount to be recovered under the order as varied.

(5) Any person appearing to the court to be likely to be affected by any exercise of its powers under this section shall be entitled to appear before the court and make representations.

Absconded or deceased persons

**Confiscation order
where defendant
has absconded or
died**

20. (1) Where a person has been convicted of one or more drug trafficking or relevant offences, on the application of the Director of Public Prosecutions the court may make a confiscation order against him if satisfied that he has absconded or his personal representative or his estate, if satisfied that he has died.

(2) Where proceedings for one or more drug trafficking or relevant offences have been instituted but not concluded, on the application of the Director of Public Prosecutions the court may make a confiscation order against the defendant if satisfied that he has absconded, but shall not do so until after the period of two years beginning with the date which is, in the opinion of the court, the date on which the defendant absconded.

(3) In any proceedings under this section-

- (a) section 10(2) shall not apply;
- (b) section 11 shall apply with the omission of subsections (4) to (6);
- (c) the court shall not make a confiscation order against a defendant unless it is satisfied that the Director of Public Prosecutions has taken reasonable steps to contact him; and
- (d) any person appearing to the court to be likely to be affected by the making of a confiscation order shall be entitled to appear before the court and make representations.

(4) Where an application has been made to the court under this section in relation to a defendant who has absconded and the court has decided not to make a confiscation order against him, section 15 shall not apply at any time while he remains an absconder.

Variation of order made against absconder

21. (1) Where a confiscation order is made by virtue of section 20(2) and the defendant ceases to be an absconder, he may apply to the court for a variation of the amount to be recovered under the order.

(2) If on such an application the court is satisfied that the value of the defendant's proceeds of drug trafficking in the period by reference to which the determination in question was made, or the value of his benefit from relevant offences, or the amount that might have been realised at the time the order was made, was less than the amount ordered to be paid under the confiscation order, the court

- (a) may if it considers it just in all the circumstances reduce the amount to be recovered under the confiscation order, and
- (b) if it does so, shall reduce the term of imprisonment in default in accordance with section 23(1).

(3) Where the court reduces the amount to be recovered under a confiscation order it may, on the application of a person who held property which was realisable property, order compensation to be paid to him if satisfied that he has suffered loss as a result of the making of the confiscation order and if, having regard to all the circumstances of the case, it considers it appropriate to do so.

(4) No application shall be entertained by the court if it is made after the end of six years beginning on the day on which the confiscation order was made.

Discharge of order where absconder acquitted

22. (1) Where a confiscation order is made by virtue of section 20(2) and the defendant is subsequently tried for the offence or offences in question and acquitted on all counts, the court shall cancel the confiscation order.

(2) Where a confiscation order is made by virtue of section 20(2) against a person who ceases to be an absconder and subsection (1) of this section does not apply, the court may on the application of the defendant cancel the confiscation order if satisfied that

- (a) there has been undue delay in continuing the proceedings in respect of which the power under section 20(2) of this Act was exercised; or
- (b) the Director of Public Prosecutions does not intend to proceed with the prosecution.

(3) Where the court cancels a confiscation order under this section it may, on the application of a person who held property which was realisable property, order compensation to be paid to him if satisfied that he has suffered loss as a result of the making of the confiscation order and if, having regard to all the circumstances of the case it considers it appropriate to do so.

(4) Where the court cancels a confiscation order under this section it may make such consequential or incidental order as it thinks fit.

PART III

ENFORCEMENT OF CONFISCATION ORDERS

Default powers

Imprisonment in default

23. (1) Where the court orders the defendant to pay an amount under a confiscation order it shall in addition direct him to be imprisoned in default of payment of any amount under the confiscation order as follows;

- (a) if the amount does not exceed \$20,000, for a term not exceeding 2 years;
- (b) if the amount exceeds \$20,000 but does not exceed \$50,000, for a term not exceeding 5 years;

- (c) if the amount exceeds \$50,000 but does not exceed \$100,000, for a term not exceeding 7 years; and
- (d) if the amount exceeds \$100,000, for a term not exceeding 10 years.

(2) Where

- (a) a warrant to commit the defendant to prison is issued for a default in payment of an amount ordered to be paid under a confiscation order in respect of an offence or offences; and
- (b) at the time the warrant is issued, the defendant is liable to serve any term of imprisonment in respect of the offence or offences,

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

(3) Where a defendant serves a term of imprisonment in default of paying any amount due under a confiscation order, his serving that term does not prevent the confiscation order from continuing to have effect, so far as any other method of enforcement is concerned.

Interest on unpaid sums

24. (1) If any sum required to be paid by a person under a confiscation order is not paid when it is required to be paid, that person shall be liable to pay interest on that sum for the period for which it remains unpaid; and the amount of interest shall for the purposes of enforcement, be treated as part of the amount to be recovered from him under the confiscation order.

(2) The court may, on the application of the Director of Public Prosecutions, increase the term of imprisonment fixed in respect of the confiscation order if the effect of subsection (1) is to increase the maximum period applicable in relation to the order under section 23(1).

(3) The rate of interest under subsection (1) shall be that for the time being applying to a judgment debt.

Restraint and charging orders

**Cases in which
restraint and
charging orders
may be made**

25. (1) The powers conferred on the court by section 26 to make a restraint order and by section 27 to make a charging order are exercisable where

- (a) proceedings have been instituted against the defendant for a drug trafficking or relevant offence or an application has been made in respect of the defendant under section 15, 16, 18 or 20;
- (b) the proceedings have not, or the application has not been concluded;
- (c) the court is satisfied that there is reasonable cause to believe
 - (i) in the case of an application under section 16 or 18 of this Act, that the court will be satisfied as mentioned in section 16(3) or 18(2); or
 - (ii) in any other case, that the defendant has benefited from drug trafficking or from any relevant offence (as the case may be).

(2) The court shall not exercise those powers if it is satisfied that there has been undue delay in continuing the proceedings or application in question, or that it is not intended to proceed with the prosecution.

(3) Those powers are also exercisable where the court is satisfied-

- (a) that a person is to be charged with a drug trafficking or relevant offence or an application as mentioned in subsection (1)(a) is to be made; and
- (b) the court is satisfied as mentioned in subsection (1)(c).

(4) For the purposes of sections 26 and 27, at any time when those powers are exercisable before proceedings have been instituted

- (a) references in this Act to the defendant shall be construed as references to the person referred to in subsection (3)(a); and
- (b) references in this Act to realisable property shall be construed as if, immediately before that time, proceedings had been instituted against the person referred to in subsection (2) for a drug trafficking or relevant offence.

(5) Where the court has made a restraint or charging order by virtue of subsection (3), the court shall discharge the order if proceedings in respect of the offence are not instituted, or if the application is not made, within such time as the court considers reasonable.

Restraint orders

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

(2) 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 after the making of the order.

(3) This section shall not have effect in relation to any property for the time being subject to a charge under section 27 of this Act.

(4) A restraint order

- (a) may be made only on an application by the Director of Public Prosecutions;

- (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, on the application of any person affected by the order, be discharged or varied in relation to any property; and
- (b) shall be discharged when proceedings for the offence are concluded.

(6) Where the court has made a restraint order, the court

- (a) may at any time appoint a receiver
 - (i) to take possession of any realisable property; and
 - (ii) in accordance with the directions of the court, to manage or otherwise deal with any property in respect of which he is appointed,

subject to such exceptions and conditions as may be specified by the court; and

- (b) may require any person having possession of property in respect of which the receiver is appointed under this section to give possession of it to the receiver.

(7) For the purposes of this section, dealing with property held by any person includes (without prejudice to the generality of the expression)

- (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 Saint Vincent and the Grenadines.

(8) Where the court has made a restraint order, a police officer may seize any realisable property for the purpose of preventing its removal from Saint Vincent and the Grenadines; and property so seized shall be dealt with in accordance with the directions of the court.

Charging orders

27. (1) For the purposes of this Act, a charging order is an order made under this section imposing on any such realisable property as may be specified in the order a charge for securing the payment of money to the Crown

(2) The court may make a charging order on realisable property for securing the payment to the Crown-

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

(3) A charging order

- (a) may be made only on an application by the Director of Public Prosecutions; and
- (b) may be made on an ex parte application to a Judge in chambers.

(3) Subject to subsection (6), a charge may be imposed by a charging order only on

- (a) any interest in realisable property, which is 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 chargeable asset;
or
 - (ii) under any trust; or

(b) any interest in realisable property held by a person as trustee of a trust if the interest is in a chargeable 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.

(5) In this section:

(a) "chargeable asset" means any of the following;

- (i) land in Saint Vincent and the Grenadines;
- (ii) relevant securities;
- (iii) motor vehicle;
- (iv) vessel;
- (v) aircraft;
- (vi) any other type of asset which the Minister of Finance may by order prescribe for the purposes of this section; and

(b) "relevant securities" means any of the following:

- (i) securities of the government or of any public authority including the Eastern Caribbean Securities Commission;
- (ii) stock of any body incorporated in Saint Vincent and the Grenadines;
- (iii) stock of any body incorporated outside Saint Vincent and the Grenadines or of any

country or territory outside Saint Vincent and the Grenadines, being stock registered in a register kept at any place within Saint Vincent and the Grenadines;

- (iv) options in relation to stock described in subparagraphs (ii) or (iii);
- (v) units of any unit trust in respect of which a register of the unit holders is kept at any place in Saint Vincent and the Grenadines.

(6) In any case where a charge is imposed by a charging order on any interest in any relevant securities, the court may provide for the charge to extend to any interest or dividend payable in respect of them.

(7) Where the court has made a charging order, the court may give such directions to such person as the court thinks fit to safeguard the assets under the charging order.

(8) The court

- (a) may, on the application of any person affected by the charging order, make an order discharging or varying it; and
- (b) shall make an order discharging the charging order if the proceedings for the offence are concluded or on payment into court of the amount which is secured by the charge.

**Charging orders
supplementary**

28. (1) A charging order may be made either absolutely or subject to conditions including in particular conditions

- (a) as to notifying any person holding any interest in the property to which the order relates; or
- (b) as to the time when the charge is to become enforceable.

(2) Notice of any charging order shall be deposited in the High Court Registry for recording and registration in accordance with Part 48 of the Eastern Caribbean Supreme Court Civil Procedure Rules 2000.

(3) Subject to any provision made under section 28, a charge imposed by a charging order shall have the like effect and shall 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

**Realisation of
property**

29. (1) The court may, on an application by the Director of Public Prosecutions, exercise the powers conferred by this section, where a confiscation order has been made and it is neither satisfied nor subject to appeal.

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

(3) The court may empower the receiver appointed under this section or section 26 or in pursuance of a charging order-

- (a) to enforce any charge imposed under section 27 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 for the time being subject to a charge under section 27, to take possession of the property subject to such conditions or exceptions as may be specified by the court.

(4) The court may order any person having possession of realisable property to give possession of it to the receiver.

(5) The court may empower the receiver to realise any realisable property in such manner as the court may direct.

(6) The court

- (a) may 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
- (b) may, on the payment being made, by order transfer, grant or extinguish any interest in the property.

(7) Subsections (4) to (6) shall not apply to property for the time being subject to a charge under section 27 of this Act or any other Act in force in Saint Vincent and the Grenadines.

(8) The court shall not in respect of any property exercise the powers conferred by subsection (3)(a), (5) or (6) unless a reasonable opportunity has been given for persons holding any interest in the property to make representations to the court.

**Application of
proceeds of
realisation etc**

30. (1) The following sums in the hands of the receiver pursuant to section 26 or 29 or in pursuance of a charging order-

- (a) the proceeds of the enforcement of any charge imposed under section 29;
- (b) the proceeds of the realisation, other than by the enforcement of such a charge, of any property under section 26 or 29; and
- (c) any other sums, being property held by the defendant,

shall, after such payments (if any) as the 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 such sums remain in the hands of the receiver, he shall distribute those sums

(a) among such of those who held property which has been realised under this Act; and

(b) in such proportions,

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

**Exercise of powers
for the realisation of
property**

31. (1) This section shall apply to the powers conferred on the court by sections 26 to 30 or on the receiver pursuant to section 26 or 29 or in pursuance of a charging order.

(2) Subject to subsections (3) to (6), the powers 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.

(5) 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.

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

**Receivers
supplementary**

32. (1) Where a receiver appointed under section 26 or 29 or in pursuance of a charging order

- (a) takes any action in relation to property which is not realisable property, being action which he would be entitled to take if it were such property, and
- (b) believes and has reasonable grounds for believing, that he is entitled to take that action in relation to that property,

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

(2) Any amount due in respect of the remuneration and expenses of a receiver so appointed shall be paid out of the Forfeiture Fund.

Insolvency

**Bankruptcy of
defendant**

33. (1) Where a person who holds realisable property is adjudged bankrupt-

- (a) property for the time being subject to a restraint order made before the order adjudging him bankrupt; and
- (b) any proceeds of property realised by virtue of section 26(6) or 29(5) or (6) for the time being in the hands of a receiver appointed under section 26 or 29,

shall be excluded from the bankrupt's estate for the purposes of the Bankruptcy Act .

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(2) Where a person has been adjudged bankrupt, the powers conferred on the court by sections 26 to 30 or on a receiver shall not be exercised in relation to property for the time being comprised in the property of the bankrupt for the purposes of the Bankruptcy Act.

Cap. 98

(3) Nothing in the Bankruptcy Act shall be taken as restricting, or enabling the restriction of, the exercise of those powers referred to in subsection (2).

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(4) Subsection (2) shall not affect the enforcement of a charging order-

- (a) made before the order adjudging the person bankrupt; or
- (b) on property which was subject to a restraint order when the order adjudging him bankrupt was made.

(5) Where, in the case of a debtor, the receiver constituted by virtue of section 9 of the Bankruptcy Act or an interim receiver stands appointed under section 10 of the Bankruptcy Act, and any property of the debtor is subject to a restraint order-

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Cap. 98

- (a) the powers conferred on the receiver by virtue of that Act shall not apply to property for the time being subject to the restraint order; and
- (b) any such property in the hands of the receiver shall, subject to a lien for any expenses (including his remuneration) properly incurred in respect of the property, be dealt with in such manner as the court may direct.

(6) Where a person is adjudged bankrupt and has directly or indirectly made a gift caught by this Act-

- (a) no order shall be made by virtue of section 33 or 45 of the Bankruptcy Act (avoidance of certain settlements in respect of the making of the gift at any time when-
 - (i) proceedings for the drug trafficking or relevant offence have been instituted against him and have not been concluded;
 - (ii) an application has been made in respect of the defendant under section 15, 16, 18 or 20 of this Act and has not been concluded;or

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**Winding up of
company holding
realisable property**

(iii) property of the person to whom the gift was made is subject to a restraint order or a charging order; and

(b) any order made by virtue of section 33 or 45 of the Bankruptcy Act after the conclusion of the proceedings shall take into account any realisation under this Act of property held by the person to whom the gift was made.

34. (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 shall not be exercisable in relation to-

(a) property for the time being subject to a restraint order made before the relevant time; and

(b) any proceeds of property realised by virtue of section 26(6) or 29(5) or (6) for the time being in the hands of a receiver appointed under section 26 or 29,

but there shall be payable out of such property any expenses (including the remuneration of the liquidator) properly incurred in the winding up in respect of the property.

(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 court by sections 26 to 30 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

(a) so as to inhibit him from exercising those functions for the purpose of distributing any property held by the company to the company's creditors; or

- (b) so as to prevent the payment out of any property of expenses (including the remuneration of the liquidator) properly incurred in the winding up in respect of the property.

No. 8 of 1994
No. 18 of 1996

(3) Nothing in the Companies Act or the International Business Companies Act shall be taken as restricting, or enabling the restriction of, the exercise of those powers referred to in subsection (2).

(4) Subsection (2) shall 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.

(5) In this section-

No. 8 of 1994

"company" means any company which may be wound up under the Companies Act or the International Business Companies Act;

No. 18 of 1996

"liquidator" includes any person appointed to the office of liquidator (whether provisionally or otherwise) under the Companies Act 1994 or the International Business Companies Act 1996;

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No. 8 of 1996

"the 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
 - (i) such an order has been made; but
 - (ii) before the presentation of the petition for the

winding up of the company by court order, such a resolution had been passed by the company, the time of the passing of the resolution; and

- (c) in any other case where such an order has been made, the time of the making of the order.

PART IV

INFORMATION GATHERING POWERS

Production orders

35. (1) For the purpose of an investigation into
- (a) drug trafficking,
 - (b) a relevant offence,
 - (c) whether any person has benefited from criminal conduct, or
 - (d) the whereabouts of any proceeds of criminal conduct,

the Director of Public Prosecutions may apply to the court for an order under subsection (2) in relation to particular material or material of a particular description.

(2) Subject to section 38 (10) the court may if it is satisfied on such an application that the conditions in subsection (4) are fulfilled, make a production order requiring the person who appears to the court to be in possession of the material to which the application relates

- (a) to produce it to a police officer for him to take away; or
- (b) to give a police officer access to it, within such period as the order may specify.

(3) The period to be specified in a production order shall be seven days unless it appears to the court that a longer or shorter period would be appropriate in the particular circumstances of the application.

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

- (a) that there are reasonable grounds for suspecting that a specified person has carried on drug trafficking or has benefited from criminal conduct;
- (b) that 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 purpose of which the application is made; and
 - (ii) does not consist of or include items subject to legal privilege; and
- (c) that 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 a production order under subsection (2)(b) in relation to material on any premises, it may, on the same or a subsequent application of the Director of Public Prosecutions, order any person who appears to him to be entitled to grant entry to the premises to allow a police officer to enter the premises to obtain access to the material.

(6) An application under subsection (1) or (5) may be made ex parte to a judge in Chambers.

(7) Where the material, to which an application under this section relates, consists of information contained in or accessible by means of a computer

- (a) a production 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) a production 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.

(8) A production order

- (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.

(9) A police officer may photograph or make copies of any material produced or to which access is given under this section.

(10) Rules of court may make provision as to

- (a) the discharge and variation of production orders; and
- (b) proceedings in relation to such orders.

No. 46 of 1993

(11) Where the investigation into whether a person has benefited from criminal conduct or the whereabouts of the proceeds of criminal conduct relates to a relevant offence which was not committed in Saint Vincent and the Grenadines, an application under subsection (1) shall not be made unless the provisions of section 20(1) of the Mutual Assistance in Criminal Matters Act as modified by subsection (12) have been complied with.

No. 46 of 1993

(12) Section 22(1) of the Mutual Assistance in Criminal Matters Act shall apply for the purposes of this section and section 36 with the following modifications

- (a) in subsection (1), for the words "criminal proceedings" to the end there shall be substituted "an investigation into whether a person has benefited from a relevant offence or the whereabouts of the proceeds of a relevant offence";
- (b) for the words "by a notice" to the end of subsection (2) there shall be substituted "the Director of Public Prosecutions may make an application for a production order under section 34 of this Act or for a search warrant under section 39 of the Mutual assistance in Criminal Matters Act."

No. 46 of 1993

Failure to comply with production order

36. (1) Where a person is required by a production order to produce any material to a police officer or give a police officer access to any material, the person commits an offence under this section if he

- (a) contravenes the order without reasonable excuse; or
- (b) in purported compliance with the order produces or makes available any material known to the person to be false or misleading in a material particular without

- (i) indicating to the police officer to whom the material is produced or made available that the material is false or misleading and the respect in which the material is false or misleading; and
- (ii) providing correct information to the police officer if the person is in possession of, or can reasonably acquire, the correct information.

(2) A person who commits an offence under this section shall be liable on summary conviction to imprisonment for two years or a fine of \$100,000 or both.

Search warrants

37. (1) For the purpose of an investigation into-
- (a) drug trafficking,
 - (b) a relevant offence,
 - (c) whether any person has benefited from criminal conduct, or
 - (d) the whereabouts of any proceeds of criminal conduct,

a police officer may apply to the court for a warrant under this section in relation to specified premises.

(2) On such an application, the court may issue a warrant authorising a police officer to enter and search the premises if the court is satisfied

- (a) that a production order made in relation to material on the premises has not been complied with;
- (b) that the conditions in subsection (3) are fulfilled; or
- (c) that the conditions in subsection (4) are fulfilled.

are

- (3) The conditions referred to in subsection (2)(b)
 - (a) that there are reasonable grounds for suspecting that a specified person has carried on drug trafficking or has benefited from criminal conduct;
 - (b) that the conditions in section 34(4)(b) and (c) are fulfilled in relation to any material on the premises; and
 - (c) that 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.

are

- (4) The conditions referred to in subsection (2)(c)
 - (a) that there are reasonable grounds for suspecting that a specified person has carried on drug trafficking or has benefited from 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;
 - (ii) to drug trafficking;

- (iii) to the question whether that person has benefited from criminal conduct; or
- (iv) to any question as to the extent or whereabouts of any proceeds of criminal conduct,

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

(5) Where a police officer has entered premises in the execution of a warrant issued under this section, he 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 purpose of which the warrant was issued.

(6) A police officer may photograph or make copies of any material seized under this section.

(7) A person who hinders or obstructs a police officer in the execution of a warrant issued under this section commits an offence and is liable on summary conviction to imprisonment for two years or a fine of \$100,000 or both.

(8) Where the investigation into whether a person has benefited from criminal conduct or the whereabouts of the proceeds of criminal conduct relates to a relevant offence which was not committed in Saint Vincent and the Grenadines, an application under subsection (1) shall not be made unless the provisions of section 20(1) of the Mutual Assistance in Criminal Matters Act, as modified by section 34(12) have been complied with.

No. 46 of 1993

**Disclosure of
information by
Government
Departments**

38. (1) Subject to subsection (4), the Court may, on an application by the Director of Public Prosecutions, order any material mentioned in subsection (3) which is in the possession of a Government Department to be produced to the court within such period as the court may specify.

(2) The power to make an order under subsection (1) is exercisable if

- (a) the powers conferred on the court to make a restraint order or a charging order are exercisable by virtue of section 25(1); or
- (b) those powers are exercisable by virtue of section 25(3) and the court has made a restraint or charging order which has not been discharged,

but where the power to make an order under subsection (1) is exercisable by virtue only of paragraph (b), section 25(4) shall apply for the purposes of this section as it applies for the purposes of sections 26 and 27.

(3) The material referred to in subsection (1) is any material which

- (a) has been submitted to an officer of a Government Department by the defendant or by a person who has at any time held property which was realisable property;
- (b) has been made by an officer of a Government Department in relation to the defendant or such a person; or
- (c) is correspondence which passed between an officer of a Government Department and the defendant or such a person,

and an order under that subsection may require the production of all such material, or of a particular description of such material, in the possession of the body concerned.

(4) An order under subsection (1) shall not require the production of any material unless it appears to the court that the material is likely to contain information that would facilitate the exercise of the powers conferred on the court by section 26, 27 or 29 or on a receiver appointed under section 26 or 29 or in pursuance of a charging order.

(5) The court may by order authorise the disclosure to such a receiver of any material produced under subsection (1) or any part of such material; but the court shall not make an order under this subsection unless a reasonable opportunity has been given for an officer of the Government Department to make representations to the court.

(6) Material disclosed in pursuance of an order under subsection (5) may, subject to any conditions contained in the order, be further disclosed for the purposes of the functions under this Act of the receiver or the court.

(7) The court may by order authorise the disclosure to a police officer of any material produced under subsection (1) or any part of such material; but the court shall not make an order under this subsection unless-

- (a) a reasonable opportunity has been given for an officer of the Government Department to make representations to the court; and
- (b) it appears to the court that the material is likely to be of substantial value in exercising functions relating to criminal conduct.

(8) Material disclosed in pursuance of an order under subsection (7) may, subject to any conditions contained in the order, be further disclosed for the purposes of functions relating to criminal conduct.

(9) Material may be produced or disclosed in pursuance of this section notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by statute or otherwise.

(10) An order under subsection (1) and, in the case of material in the possession of a Government Department, a production order, may require any officer of the Government Department (whether named in the order or not) who may for the time being be in possession of the material concerned to comply with it, and such an order shall be served as if the proceedings were civil proceedings against the department.

Monitoring orders

39. (1) The Director of Public Prosecutions may apply to the court for an order directing a financial institution to give to a police officer information obtained by the institution about transactions conducted by a particular person with the institution.

(2) An application for a monitoring order shall be made ex parte to a judge in Chambers and shall be supported by affidavit.

(3) A monitoring order shall apply in relation to transactions conducted during the period specified in the order, commencing not earlier than the day on which notice of the order is given to the financial institution and ending not later than three months after the day on which the order is made.

(4) A monitoring order shall not be made unless the court is satisfied that there are reasonable grounds for suspecting that the person in respect of whom the information is sought

- (a) has committed or is about to commit a drug trafficking offence or a relevant offence;
- (b) was involved in the commission, or is about to be involved in the commission, of such an offence; or
- (c) has benefited directly or indirectly or is about to benefit directly or indirectly from the commission of such an offence.

(5) A monitoring order shall specify

- (a) the name or names in which the account is believed to be held;
- (b) the nature of the information which the institution is required to give; and
- (c) the manner in which the information is to be given.

(6) A person who knowingly

- (a) contravenes a monitoring order; or
- (b) provides false or misleading information in purported compliance with the order,

commits an offence and is liable on summary conviction to imprisonment for two years or a fine of \$100,000 or both.

(7) A reference in this section to a transaction includes a reference

- (a) to the making of a fixed term deposit;
- (b) to the transfer of an amount so deposited or any part of it at the end of the term; and

- (c) to the existence or use of a deposit box held by the institution.

(8) The provision of information to a police officer by virtue of a monitoring order 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 criminal, civil or administrative liability.

**Offence of
prejudicing
investigation**

40. (1) Where in relation to an investigation into criminal conduct

- (a) a production order has been made, or has been applied for and has not been refused;
- (b) a warrant under section 37 has been issued; or
- (c) a monitoring order has been made,

a person commits an offence if, knowing or suspecting that the investigation is taking place, he makes any disclosure which is likely to prejudice the investigation or reveal the existence of the monitoring order.

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

- (a) that he did not know or suspect that the disclosure was likely to prejudice the investigation or reveal the existence of the monitoring order; or
- (b) that he had lawful authority or reasonable excuse for making the disclosure.

(3) Nothing in subsection (1) 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 in connection with the giving by the legal adviser of legal advice to the client; or
- (b) to any person

- (i) in contemplation of, or in connection with, legal proceedings; and
- (ii) for the purpose of those proceedings;

but this subsection does not apply in relation to any information or other matter which is disclosed with a view to furthering any criminal purpose.

- (4) A person who commits an offence under this section shall be liable
 - (a) on summary conviction to imprisonment for two years or a fine of \$50,000 or both; and
 - (b) on conviction on indictment to imprisonment for five years or a fine of \$100,000 or both.

PART V

MONEY LAUNDERING

Offences

Concealing or transferring proceeds of criminal conduct

- 41. (1) A person commits an offence if he
 - (a) conceals or disguises any property which is, or in whole or in part directly or indirectly represents, his proceeds of criminal conduct, or
 - (b) converts or transfers that property, brings it into or removes it from Saint Vincent and the Grenadines;

for the purpose of avoiding prosecution for a drug trafficking or relevant offence or the making or enforcement in his case of a confiscation order.

(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

- (a) conceals or disguises that property, or

- (b) converts or transfers that property, brings it into or removes it from Saint Vincent and the Grenadines;

for the purpose of assisting any person to avoid prosecution for a drug trafficking or relevant offence or the making or enforcement of a confiscation order.

- (4) In this section 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.

Arranging with another to retain the proceeds of criminal conduct

42. (1) Subject to subsection (3), a person commits an offence if he enters into or is otherwise concerned in an arrangement whereby

- (a) the retention or control by or on behalf of another person ("A") of A's proceeds of criminal conduct is facilitated (whether by concealment, removal from the jurisdiction, transfer to nominees or otherwise); or
- (b) A's proceeds of criminal conduct
 - (i) are used to secure that funds are placed at A's disposal; or
 - (ii) are used for A's benefit to acquire property.

and he knows or suspects that A is a person who is or has been engaged in or has benefited from criminal conduct.

(2) 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 represented in his hands his proceeds of criminal conduct.

(3) Where a person discloses in good faith to a police officer a suspicion or belief that any funds or investments are derived from or used in connection with criminal conduct, or 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 does any act in contravention of subsection (1) and the disclosure relates to the arrangement concerned, he does not commit an offence under this section if
 - (i) the disclosure is made before he does the act concerned and the act is done with the consent of a police officer; or
 - (ii) the disclosure is made after he does the act, but is made on his initiative and as soon as it is reasonable for him to make it.

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

- (a) that he did not know or suspect that the arrangement related to any person's proceeds of criminal conduct;
- (b) that he did not know or suspect that by the arrangement the retention or control by or on behalf of A of any property was facilitated or, as the case may be, that by the arrangement any property was used as mentioned in subsection (1)(b); or
- (c) that
 - (i) he intended to disclose to a police officer such a suspicion, belief or matter as is mentioned in subsection (3) in relation to the arrangement, but

- (ii) there is reasonable excuse for his failure to make any such disclosure in the manner mentioned in subsection (3)(b).

(5) In the case of a person who was in employment at the time in question, subsections (3) and (4) shall have effect in relation to disclosures and intended disclosures to the appropriate person in accordance with any procedure established by his employer for the making of such disclosures as they have effect in relation to disclosures, and intended disclosures, to a police officer.

**Acquisition,
possession or use of
proceeds of criminal
conduct**

43. (1) A person commits an offence if, knowing that any property is, or in whole or in part directly or indirectly represents, another person's proceeds of criminal conduct, he acquires or uses that property or has possession of it.

(2) Subject to subsection (4) it is a defence to a charge of committing an offence under this section that the person charged acquired or used the property or had possession of it for adequate consideration.

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

- (a) a person does not acquire property for adequate consideration if the value of the consideration is significantly less than the value of the property; and
- (b) a person does not use or have possession of property for adequate consideration if the value of the consideration is significantly less than the value of his use or possession of the property.

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

(5) Where a person discloses in good faith to a police officer a belief that any property is, or in whole or in part directly or indirectly represents, another person's proceeds of criminal conduct, or any matter on which such a 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 criminal, civil or administrative liability; and
- (b) if he does any act in relation to the property in contravention of subsection (1), he does not commit an offence under this section if
 - (i) the disclosure is made before he does the act in question and the act is done with the consent of the police officer; or
 - (ii) the disclosure is made after he does the act, but is made on his initiative and as soon as it is reasonable for him to make it.

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

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

- (a) he intended to disclose to a police officer such a belief or matter as is mentioned in subsection (5), but
- (b) there is reasonable excuse for his failure to make any such disclosure in the manner mentioned in subsection (5)(b).

(8) In the case of a person who was in employment at the time in question, subsections (5) and (7) shall have effect in relation to disclosures, and intended disclosures, to the appropriate person in accordance with any procedure established by his employer as they have effect in relation to disclosures, and intended disclosures, to a police officer.

(9) No police officer or other person commits an offence under this section in respect of anything done by him in the course of acting in connection with the enforcement, or intended enforcement, of any provision of this Act or of any other statutory provision relating to drug trafficking or relevant offences or the proceeds of criminal conduct.

Disclosure of knowledge or suspicion of money laundering

44. (1) Where a person in good faith discloses to a police officer-

(a) his 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, 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 criminal, civil or administrative liability.

(2) A person commits an offence if

(a) he knows or suspects that another person is engaged in money laundering which relates to any proceeds of drug trafficking;

(b) the information, or other matter, on which that knowledge or suspicion is based came to his attention in the course of his trade, profession, business or employment; and

(c) he does not disclose the information or other matter to a police officer as soon as is reasonably practicable after it comes to his attention.

(3) Subsection (2) does not make it an offence for a professional legal adviser to fail to disclose any information or other matter which has come to him in privileged circumstances.

(4) It is a defence to a charge of committing an offence under this section that the person charged had a reasonable excuse for not disclosing the information or other matter in question.

(5) Any disclosure made by a person who was in employment at the time in question to the appropriate person in accordance with any procedure established by his employer shall be treated, for the purposes of this section, as a disclosure to a police officer.

(6) For the purposes of this section, any information or other matter comes to a professional legal adviser in privileged circumstances if it is communicated or given to him

- (a) by, or by a representative of, a client of his 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
- (c) by any person-
 - (i) in contemplation of, or in connection with, legal proceedings; and
 - (ii) for the purpose of those proceedings;

but 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.

Tipping-off

45. (1) A person commits an offence if

- (a) he knows or suspects that a police officer 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 the proceeds of criminal conduct; and

- (b) he 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 knows or suspects that a disclosure has been made to a police officer or to an appropriate person under section 41, 42 or 43; and
- (b) he discloses to any other person information or any other matter which is likely to prejudice any investigation which might be conducted following such a disclosure.

(3) Nothing in subsection (1) or (2) 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 in connection with the giving by the adviser of legal advice to the client; or
- (b) to any person
 - (i) in contemplation of, or in connection with, legal proceedings; and
 - (ii) for the purpose of those proceedings;

but this subsection does not apply in relation to any information or other matter which is disclosed with a view to furthering any criminal purpose.

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

**Record keeping
and reporting
suspicious
transactions**

(5) No police officer or other person commits an offence under this section in respect of anything done by him in the course of acting in accordance with the enforcement, or intended enforcement, of any provision of this Act or of any other statutory provision relating to criminal conduct or the proceeds of criminal conduct.

46. (1) Every financial institution or person engaged in a relevant business activity shall keep and retain records relating to financial activities in accordance with the Regulations made under section 67 of this Act.

(2) Every financial institution or person engaged in relevant business activity shall pay special attention to all complex, unusual or large transactions, whether completed or not, and to all unusual patterns of transactions, and to insignificant but periodic patterns of transactions, which have no apparent economic or lawful purpose.

(3) Upon suspicion that the transactions described in subsection(2) could constitute or be related to money laundering or the proceeds of criminal conduct, a financial institution or person engaged in a relevant business activity shall report the suspicious transactions to the Financial Intelligence Unit in a form specified in the Regulations, as soon as reasonably practicable, and in any event, within fourteen days of the date the transaction was deemed to be suspicious as relating to money laundering or the proceeds of criminal conduct.

(4) Failure to report a suspicious transaction as required by subsection (3) is an offence.

(5) When the report referred to in subsection (3) is made in good faith, the financial institutions or persons engaged in relevant business activities and their employees, staff, directors, owners or other representatives as authorised by law, shall be exempted from criminal, civil or administrative liability as the case may be, for complying with this section or for breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, regardless of the result of the communication.

(6) Every financial institution or person engaged in a relevant business activity shall develop and implement a written compliance programme reasonably designed to ensure and monitor compliance with Regulations made under this Act.

(7) A compliance programme referred to in subsection(4) shall include

- (a) a system of internal controls to ensure ongoing compliance;
- (b) internal or external independent testing for compliance
- (c) training of personnel in the identification of suspicious transactions; and
- (d) appointment of a staff member responsible for continual compliance with this Act and the Regulations.

Penalties for money laundering

47. (1) A person commits an offence under section 41, 42 or 43 (money laundering) and is liable

- (a) on summary conviction, to imprisonment for five years or a fine of \$500,000 or both; and
- (b) on conviction on indictment, to imprisonment for twenty years or an unlimited fine or both.

(2) A person commits an offence under section 44, 45 or 46 (4) (failure to disclose knowledge or suspicion, tipping off failure to report a suspicious transaction) and is liable

- (a) on summary conviction, to imprisonment for three years or a fine of \$500,000 or both; or
- (b) on conviction on indictment, to imprisonment for ten years or an unlimited fine or both.

Prevention of money laundering

Establishment of Committee

48. (1) There shall be established a Committee, to be known as the National Anti-Money Laundering Committee, for the purpose of

- (a) advising the Minister of Finance in relation to the detection and prevention of money laundering in Saint Vincent and the Grenadines;
- (b) issuing from time to time guidance to the Financial Intelligence Unit as to compliance with this Act and regulations made under this Act;
- (c) advising the Minister of Finance as to the participation of Saint Vincent and the Grenadines in the international effort against money laundering;
- (d) to receive reports from the Financial Intelligence Unit required to be submitted under the Financial Intelligence Unit Act and such reports as the Committee may require to be submitted by the Financial Intelligence Unit from time to time,

and the Committee shall meet as often as may be necessary to carry out its duties.

- (2) The members of the Committee shall be
 - (a) the Director General of Finance and Planning (who shall be Chairman),
 - (b) the Director of Public Prosecutions,
 - (c) the Attorney General,
 - (d) the Commissioner of Police,
 - (e) the Comptroller of Customs,
 - (f) the Chairman of the Saint Vincent and the Grenadines Offshore Finance Authority,

(g) such other persons as the Minister of Finance may from time to time appoint, and the Committee may appoint a sub-committee, to assist in formulating the guidance mentioned in subsection (1)(b).

(3) The Minister of Finance may, after consulting the Committee, make such regulations as he thinks fit for the purposes of detecting and preventing money laundering.

(4) Without prejudice to the generality of subsection (3), such Regulations may in particular

- (a) require such financial and other institutions as may be prescribed to establish and maintain procedures relating to the identification of clients, the keeping of records, the making of reports and training;
- (b) create criminal offences of failing to comply with the Regulations; and
- (c) provide that in determining whether a person has complied with the regulations the trial court may take account of any current relevant guidance issued by the Committee.

PART VI SEIZURE OF CASH

Seizure and detention of cash imported or exported

49. (1) A police officer not below the rank of inspector or a customs officer may seize and detain, in accordance with this Part, any cash which is being imported into or exported from Saint Vincent and the Grenadines if the officer has reasonable grounds for suspecting that it directly or indirectly represents any person's proceeds of criminal conduct or is intended by any person for use in any criminal conduct.

(2) Cash seized by virtue of this section shall not be detained for more than forty-eight hours unless its continued detention is authorised by an order made by a magistrate; and no such order shall be made unless the magistrate is satisfied

- (a) that there are reasonable grounds for the suspicion mentioned in subsection (1); 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 Saint Vincent and the Grenadines or elsewhere) of criminal proceedings against any person for an offence with which the cash is connected.

(3) Any order under subsection (2) shall authorise the continued detention of the cash to which it relates for such period, not exceeding three months beginning with the date of the order, as may be specified in the order; and a court of summary jurisdiction, if satisfied as to the matters mentioned in that subsection, may thereafter from time to time by order authorise the further detention of the cash but so that

- (a) no period of detention specified in such an order shall exceed three months beginning with the date of the order; and
- (b) the total period of detention shall not exceed two years from the date of the order under subsection (2).

(4) Any application for an order under subsection (2) or (3) shall be made by a police officer.

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

- (a) a court of summary jurisdiction may direct its release if satisfied
 - (i) on an application made 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 for its detention as are mentioned in subsection (2); or

(ii) on an application made by any other person, that detention of the cash is not for that or any other reason justified; and

(b) a police officer may release the cash if satisfied that its detention is no longer justified but shall first notify the magistrate or court of summary jurisdiction under whose order it is being detained.

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

(a) an application for its forfeiture is made under section 48; or

(b) proceedings are instituted (whether in Saint Vincent and the Grenadines 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.

Forfeiture orders and appeals

50. (1) A court of summary jurisdiction may make an order ordering the forfeiture of any cash which has been seized under section 49 if satisfied, on an application made by a police officer while the cash is detained under that section, that the cash directly or indirectly represents any person's proceeds of, or benefit from, or is intended by any person for use in, criminal conduct.

(2) An order may be made under subsection (1) whether or not proceedings are brought against any person for an offence with which the cash in question is connected.

(3) Any party to the proceedings in which a forfeiture order is made (other than the applicant) may, before the end of the period of thirty days beginning with the date on which it is made, appeal to the Court.

(4) On an application made by an appellant to a court of summary jurisdiction at any time, that court may order the release of so much of the cash to which the forfeiture order relates as it considers appropriate to enable him to meet his legal expenses in connection with the appeal.

(5) An appeal under this section shall be by way of rehearing, and the court may make such order as it considers appropriate and, in particular, may order the release of the cash (or any remaining cash) together with any accrued interest.

**Seizure
supplementary**

51. (1) Cash consisting of coins and bank-notes seized under this Part and detained for more than forty-eight hours shall where practicable, 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.

(2) An order under section 50(2) shall provide for notice to be given to persons affected by the order.

(3) Without prejudice to the generality of any existing power to make rules, provision may be made by rules of court-

- (a) with respect to applications to any court under this Part;
- (b) for the giving of notice of such applications to persons affected;
- (c) for the joinder of persons as parties; and
- (d) generally with respect to the procedure under this Part before any court.

(4) In this Part-

"cash" means-

- (a) coins and bank-notes in any currency; and
- (b) negotiable instruments;

"exported", in relation to any cash, includes its being brought to any place in Saint Vincent and the Grenadines for the purpose of being exported.

PART VII
MISCELLANEOUS & SUPPLEMENTAL
Foreign orders etc

**Enforcement of
external confiscation
orders**

52. (1) The Attorney General may, by order
- (a) direct in relation to a country or territory outside Saint Vincent and the Grenadines designated by the order 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 designated country and may result in an external confiscation order being made there;
 - (b) make
 - (i) such provision in connection with the taking of action in the designated country with a view to satisfying a confiscation order;
 - (ii) such provision as to evidence or proof of any matter for the purposes of this section and section 53; and

(iii) such incidental, consequential and transitional provision, as appears to him to be expedient; and

(c) without prejudice to the generality of this subsection, direct that, in such circumstances as may be specified, proceeds arising out of action taken in the designated country with a view to satisfying a confiscation order and which are retained there shall nevertheless be treated as reducing the amount payable under the order to such extent as may be specified.

(2) An order under this section may make different provision for different cases or classes of cases.

(3) The power to make an order under this section includes power to modify this Act in such a way as to confer power on a person to exercise a discretion.

(4) In this section and section 53-

"external confiscation order" means an order made by a court in a designated country for the purpose

(a) of recovering property, or the value of such property, obtained as a result of or in connection with

(i) criminal conduct; or

(ii) any offence which would, if committed in Saint Vincent and the Grenadines, be a drug trafficking offence or relevant offence; or

- (b) of depriving a person of a pecuniary advantage so obtained;

(5) An order under this section is subject to the negative resolution procedure.

Registration of external confiscation orders

53. (1) On an application made by or on behalf of the government of a designated country, the 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 affected by the order did not appear in the proceedings, that he received notice of the proceedings in sufficient time to enable him to defend them; and
- (c) it is of the opinion that enforcing the order in Saint Vincent and the Grenadines would not be contrary to the interests of justice.

(2) In subsection (1)(a), "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.

(3) The 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.

Evidence of corresponding law

54. A document purporting to be issued by or on behalf of the Government of a country or territory and purporting to state the terms of a corresponding law in force in that country or territory shall be admitted in evidence, in proceedings under this Act, on its production by the prosecution without further proof, and such document shall be conclusive evidence that

- (a) it is issued by or on behalf of the Government of that country or territory;
- (b) the terms of such law are as stated in the document;
- (c) any facts stated in the document to constitute an offence under such law do constitute such offence.

**Confiscated Assets
Fund**

55. (1) There shall be established a fund to be known as the Confiscated Assets Fund ("the Fund").

(2) There shall be paid into the Fund-

- (a) proceeds of criminal conduct recovered under a confiscation order;
- (b) cash forfeited under Part VI;
- (c) money forfeited under section 37 of the Drugs (Prevention of Misuse) Act;
- (d) money paid to the Government of Saint Vincent and the Grenadines by a foreign jurisdiction in respect of confiscated assets, whether under a treaty or arrangement providing for mutual assistance in criminal matters or otherwise.

Cap. 219

(3) The Minister of Finance may, after consulting the National Anti-Money Laundering Committee and Cabinet, authorise payments to be made out of the Fund-

- (a) for purposes related to-
 - (i) law enforcement, including the Financial Intelligence Unit and in particular the investigation of suspected cases of drug trafficking and money laundering;
 - (ii) treatment and rehabilitation of drug addicts;
 - (iii) public education in relation to drug addiction;

- (iv) activities of the Offshore Financial Authority;
- (b) to satisfy an obligation of the Government of Saint Vincent and the Grenadines to a foreign jurisdiction in respect of confiscated assets, whether under a treaty or arrangement providing for mutual assistance in criminal matters or otherwise;
- (c) to meet the expenses of the National Anti-Money Laundering Committee;
- (d) to meet the remuneration and expenses of a receiver appointed under this Act;
- (e) to pay compensation or costs awarded under this Act;
- (f) to cover costs associated with the administration of the Fund; and such other purposes as Parliament may from time to time determine.

Administration of the Fund

56. (1) The moneys paid into the Fund shall be invested in accordance with the laws of Saint Vincent and the Grenadines, and the income earned from such investments shall be paid into the Fund.

(2) The financial year of the Fund shall end on 31st March in each year.

(3) The Director of Audit shall cause proper accounts, and proper records in relation to the accounts, of the Fund to be kept, and shall cause to be prepared in respect of each financial year a statement of the accounts of the Fund in such form as the Minister May direct.

(4) Within six months after the end of each financial year, the Minister shall send to the Director of Audit a copy of the statement of account for that financial year.

(5) The Director of Audit shall examine every statement of accounts received by him under this section and shall make a report in writing on the statement to the Minister.

(6) The Minister shall lay on the table in the House of Assembly a copy of the Director of Audit's report.

Offences by bodies corporate

57. Where a body corporate commits an offence under this Act and that offence is proved to have been committed with the consent or connivance of any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he, as well as the body corporate, commits that offence and is liable to be proceeded against and punished accordingly.

Police powers

58. (1) A police officer may arrest without warrant any person whom he reasonably believes has committed an offence under this Act.

(2) A Customs Officer may, in any case relating to the commission of an offence under this Act, exercise all or any of the powers in relation to investigations into an offence which is arrestable without warrant conferred on a police officer by the Criminal Code .

Cap. 124

Police officers duty of confidentiality

59. (1) Except for the purpose of the performance of his duties or the exercise of his functions or when lawfully required to do so by any court or under the provisions of any enactment, no police officer shall disclose any information or matter which has been obtained by him in the performance of his duties or the exercise of his functions under this Act.

(2) Any person who contravenes this section commits an offence and shall be liable on summary conviction to imprisonment five years or a fine of \$500,000 or both.

Procedure

60. Where a defendant is charged with criminal conduct which may be tried summarily or on indictment

- (a) the power of the Director of Public Prosecutions to issue a certificate under section 450 of the Criminal Code requiring an offence to be tried on indictment may be exercised where the Director of Public Prosecutions intends to make an application for a confiscation order if the defendant is convicted; and

Cap. 124

Cap. 24
Magistrates Act

Compensation

- (b) the power of a court of summary jurisdiction to commit the defendant to the court for sentencing under section 26(1) of the Magistrates Act may be exercised where the court of summary jurisdiction is of the opinion that the defendant is one against whom the court may consider making a confiscation order.

61. (1) If an investigation is begun against a person for criminal conduct or offences and any of the following circumstances occur;

- (a) no proceedings are instituted against that person;
- (b) proceedings are instituted against that person but do not result in his conviction for any criminal conduct; or
- (c) proceedings are instituted against that person and he is convicted of one or more criminal conduct, but
 - (i) the conviction or convictions concerned are quashed; or
 - (ii) he is granted a pardon 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.

(2) The court shall not order compensation to be paid unless it is satisfied

- (a) that there has been some serious default on the part of any person concerned in the investigation or prosecution of the offence or offences concerned; and
- (b) that the applicant has suffered loss in consequence of anything done in relation to the property by, or in pursuance of a restraint order or a charging order.

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

(4) Without prejudice to subsection (1), where

- (a) a disclosure is made by any person in accordance with section 41(5) or 44(3) in relation to any property;
- (b) in consequence of the disclosure and for the purposes of an investigation or prosecution in respect of a drug trafficking offence or offences any act is done or omitted to be done in relation to that property; and
- (c) no proceedings are instituted against any person in respect of that offence or offences or no restraint order or charging order is made in relation to that property,

the court may, on application by a person who held the 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.

(5) The court shall not order compensation to be paid under subsection (4) unless it is satisfied

- (a) that there has been some serious default on the part of any person concerned in the investigation or prosecution of the offence or offences concerned and that, but for that default, the act or omission referred to in subsection (4)(b) would not have occurred; and
- (b) the applicant has, in consequence of the act or omission referred to in subsection (4)(b), suffered loss in relation to the property.

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

(7) Compensation ordered to be paid under this section and sections 20 and 21 shall be paid out of the Consolidated Fund.

Costs

62. (1) Where

- (a) a person brings, or appears at, court proceedings under this Act and endeavours
 - (i) to prevent a confiscation order or a restraint order or a charging order from being made against property of his; or
 - (ii) to have property of his excluded from such an order; and
- (b) that person is successful in that endeavour; and
- (c) the court is satisfied that he was not in any way involved in criminal conduct,

then the court may by order declare that he is entitled to be paid all reasonable costs incurred by him in connection with those proceedings, or such part of those costs as the court determines.

(2) The costs referred to in subsection (1) are not limited to costs of a kind that are normally recoverable by a successful party in civil proceedings.

(3) Costs payable by virtue of a declaration made by the court under subsection (1) shall be paid out of the Consolidated Fund

Civil standard of proof

63. Any question of fact to be decided by a court in proceedings under this Act, except any question of fact that is for the prosecution to prove in any proceedings for an offence under this Act, shall be decided on the balance of probabilities.

Appeals

64. Any decision of a court in proceedings under this Act, except proceedings in relation to any offence committed under this Act, is a judgment of a court in a civil cause or matter within section 12(1) and (2) of the Eastern Caribbean Supreme Court (Saint Vincent and the Grenadines) Act.

Cap. 18

Application of Fugitive Offenders Acts

Supplemental

No. 48 of 1993

No. 12 of 1992

Cap. 126

65. An offence under this Act, the Drug Trafficking Offences Act, and the Proceeds of Crime Act will for the purposes of the Fugitive Offenders Act be extraditable offences and this provision will apply whether or not there is an extradition treaty with the requesting State.

Index of defined expression

66. In this Act the expressions listed below are defined by, or otherwise fall to be construed in accordance with, the provisions of this Act:

amount that might be realised	section 4(4)
amount to be recovered	section 15
benefited from-	
drug trafficking	section 9(3)
relevant offence	section 10(3)
charging order	section 29
conclusion of application	section 8(1)
conclusion of proceedings	section 8(1)
confiscation order	section 7
corresponding law	section 55
criminal conduct	section 3
drug trafficking	section 3
drug trafficking arrangement	section 3
drug trafficking offence	section 3
external confiscation order	section 53

gift caught by this Act	section 6
held (in relation to property)	section 4(2)
institution of proceedings	section 8(1)
interest (in relation to property)	section 4(1)
items subject to legal privilege	section 7
material	section 7
money laundering	section 7
monitoring order	section 41
police officer	section 57
premises	section 7
prescribed	section 7
proceeds of drug trafficking	section 12(1)(a)
production order	section 37
property	section 4(1), (2)
prosecutor's statement	section 13(4)
realisable property	section 4(3)
relevant offence	section 3 and Schedule
restraint order	section 28
subject to appeal	section 8(2)
transferred (in relation to property)	section 4(2)
value of gift	section 5(2)
value of proceeds of drug trafficking	section 12(1)(b)
value of property	section 5(1)

Regulations

67. (1) Regulations may be made for prescribing anything which is required to be prescribed under this Act and generally for carrying out the purposes and provisions of this Act by the Minister of Finance.

(2) Regulations made under this section shall be subject to negative resolution in the House.

**Repeal and saving
No. 12 of 1997**

68. This Act repeals and replaces the Proceeds of Crime Act save and except the sections 59, 60 and 61.

SCHEDULE 1

[section 2]

Financial Institutions

A bank licensed under the Banking Act

A bank licensed under the International Banks Act 1996

A building society registered under the Building Societies Act

An insurance company registered under the Insurance Act

International insurance business licensed under the International Insurance Act 1996

Registered agents and trustees licensed under the Registered Agent and Trustee Licensing Act 1996

A Trust licensed under the International Trusts Act 1996

A person licensed to operate an exchange bureau

A person licensed as a dealer or investment adviser

A person who carries on cash remitting services

A person who carries on postal courier services

Mutual fund licensed under the Mutual Funds Act 1997

Credit Unions

Relevant Business Activities

Lending (including personal credits, factoring with or without recourse, financial or commercial transaction including forfeiting cheque cashing services

Finance leasing

Venture risk capital

Money transmission services

Issuing and administering means of payment (e.g. credit cards, travellers' cheques and bankers' drafts)

Guarantees and commitments

Trading for own account of customers in:

- (a) money marked instruments (cheques, bills, certificates of deposit etc.)
- (b) foreign exchange
- (c) financial futures and options
- (d) exchange and interest rate instruments; and
- (e) transferable instruments

Underwriting share issues and the participation in such issues

Money broking

Investment business

Deposit taking

Bullion dealing

Financial intermediaries

Custody services

Securities broking and underwriting

Investment and merchant banking

Asset management services

Trusts and other fiduciary services

Company formation and management services

Collective investment schemes and mutual funds

Car dealerships

Jewellers

Real estate agents

Casinos

Internet gambling

Pool betting

Lottery agents

Barristers- at- Law and Solicitors

Accountants

SCHEDULE 2

[section 2]

Customs Control and Management Act 14 of 1999

Copyright Act Cap 262

Merchandise Marks Act Cap 106

Patents Act Cap 110

Registration of Trade Marks Act Cap 113

Passed in the House of Assembly this day of 2001.

Clerk of the House of Assembly

OBJECTS AND REASONS

This Bill seeks to extend the powers of the courts in relation to the tracing and confiscation of the proceeds of drug trafficking and all other offences from which a defendant has benefited. The bill also criminalizes money laundering where the proceeds are derived from any offences.

The Act will establish a National Anti-Money Laundering Committee to oversee the development of anti-money laundering strategies in Saint Vincent and the Grenadines. The Act also establishes a forfeiture fund that will administer assets that have been subjected to confiscation and forfeiture.

The reasons for this Act are to update the existing provisions of the Drug Trafficking Offences 1993 and the Proceeds of Crime Act 1997. The Act has also taken cognisance of the Revised 40 Recommendation of the Financial Action Task Force, the revised 19 Recommendations of the Caribbean Financial Action Task Force and the 25 point criteria for assessing Non-Cooperative Countries and Territories of the Financial Action Task Force.

CHARLES J ANTROBUS
Governor-General
18th December, 2001