



SAINT VINCENT AND THE GRENADINES

ACT NO. 8 OF 2005

I ASSENT

[L.S.]

DR. FREDERICK BALLANTYNE
Governor-General
13th May, 2005

AN ACT to amend the Proceeds of Crime and Money Laundering (Prevention) Act 2001.

[24th May, 2005]

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:-

1. This Act may be cited as the Proceeds of Crime and Money Laundering (Prevention) (Amendment) Act 2005.

Short title

2. The Proceeds of Crime and Money Laundering (Prevention) Act 2001 is amended in the manner set out in the Schedule.

A m e n d m e n t
of Proceeds of
Crime and Money
L a u n d e r i n g
(Prevention) Act
No. 39 of 2001

SCHEDULE

Manner of Amendment

Sections

(a) In subsection (1) as follows -

Section 2

- (i) in the definition "confiscation order" -
 - (i) insert "6," after the word "section";
 - (ii) delete "14 or 19" and insert "15,16 or 17";
- (ii) in paragraph (a) of the definition "corresponding law" delete the words "drug trafficking" and insert the words "drug trafficking";

- (iii) in the definition “drug trafficking arrangement” insert the following paragraphs -
- “(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 are used to secure funds to be placed at that other person’s disposal or are used for that other person’s benefit to acquire property by way of investment;”
- (iv) in the definition “drug trafficking” delete paragraphs (a) and (b);
- (v) in paragraph (b) of the definition “drug trafficking offence” insert the words “an offence” before the words “under sections”;
- (vi) insert the word “a” after the word “includes” in the definition of “interest”;
- (vii) in the definition of “money laundering” delete “43,44, or 45” and insert “41,42 or 43”;
- (viii) insert the following definition after the definition “money laundering”-
- “police officer” includes a customs officer;”
- (ix) in the definition of “property” insert the following before the word “money”-
- “ real or personal property, whether within or outside Saint Vincent and the Grenadines and includes”;
- (x) in the definition of “relevant offence” -
- (a) in paragraph (a), insert the words “or any summary” after the word “indictable”;
- (b) delete paragraph (b) and insert the following -
- “(b) any offence under the Acts listed in Schedule 2.”
- (xi) in paragraph (c) of subsection (2) delete the word “a”

before the word “interest” and insert the word “an”.

(b) insert after subsection (5) the following new subsections -

“(6) For the purposes of this Act, financial institutions and relevant business activities shall have the meaning given by Schedule 1.

(7) For the purposes of this Act, where an act or proceeding is directed or allowed to be done or taken within any time not exceeding six days, Saturdays, Sundays and public holidays shall not be reckoned in the computation of time.”

Section 7

In subsection 5(c), delete “(a)” after the word “paragraph” and insert “(b)”.

Section 8

(a) renumber the second subsection (3) as subsection (4);

(b) renumber subsections (4), (5) and (6) as (5), (6) and (7) respectively; and

(c) delete the word “Prosecution” in paragraph (b) of the subsection renumbered as (7) and insert the word “Prosecutions”.

Section 9

In subsection (1) insert “or 8” after “section 6 or 7”.

Section 11

In subsection (1) and (2) insert “or 8” after “section 6 or 7”.

Section 13

In subsection (2) -

(i) delete “10” and insert “11”;

(ii) delete “11” and insert “12”.

Section 14

(a) in subsection 2, renumber paragraph “(c)” as paragraph “(b)”;

(b) delete the word “insufficient” in the paragraph renumbered as “(b)” and insert the word “sufficient”.

Section 15

In subsection (1) (a) insert “or 8” after “section 6 or 7”.

Section 16

In subsection (7) delete the word “requires” and insert the word “required”.

Section 17

In subsection (2) delete the words “section 9” and insert the words “section 10”.

Section 25

In subsection (4) paragraph (b), delete the words “subsection

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- Section 27 (2)” and insert the words “subsection (3)(a)”.
- (a) In subsection (2)(b) insert the word “not” after the word “has”.
- Section 30 (b) Renumber the second subsection (3) as subsection (4).
- Section 32 In subsection (1) delete the word “pursuant” and insert the word “pursuance”.
- Section 33 In subsection (2) delete the words “Forfeiture Fund” and insert the words “Confiscated Assets Fund.”
- (a) In subsection 5 -
- (i) delete the words “section 9” and insert the words “section 6”
- (ii) delete the words “section 10” and insert the words “section 5”.
- Section 34 (b) In paragraphs (a) and (b) of subsection 6, delete “33 or 45” and insert “3”.
- Section 35 Delete the word “property” in every place where it occurs before the word “incurred” and insert the word “properly”.
- (a) In subsection (1) -
- (i) insert the words “in or outside of Saint Vincent and the Grenadines” after the word “investigation”
- (ii) insert the words “or a police officer” after the words “Director of Public Prosecutions”.
- (b) In subsection 12 -
- (i) delete “22(1)” and insert “20(1)”
- (ii) in paragraph (b)
- (i) delete “34” and insert “35”
- (ii) delete “39” and insert “22 (2)”.
- Section 36 (i) delete “34” and insert “35”
- (ii) delete “39” and insert “22 (2)”.
- Section 37 In subsection (1) paragraph (b)(i), delete the word “produces” and insert the word “produced”.

- Delete “34” wherever it occurs and insert “35”. Section 41
- (a) In subsection (1) -
- (i) delete the semi-colon after the word “Grenadines” and insert a fullstop.
- (ii) delete the words “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”
- (b) in subsection (2)
- (i) insert after the word “knowing” the word “suspecting”;
- (ii) delete the semi-colon after the word “Grenadines” and insert a fullstop; and
- (iii) delete the words “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”.
- (c) Renumber subsection (4) as subsection (3). Section 42
- (a) In subsection (1) paragraph (b) delete the words “or suspect” and insert the words “,suspects or has reasonable grounds to suspect”.
- (b) In subsection (4)(a) and (b) delete the words “or suspect” and insert the words “,suspect or have reasonable grounds to suspect”. Section 43
- In subsection (1), insert after the word “knowing” the words “,suspecting or having reasonable grounds to suspect”. Section 44
- In subsection (2) paragraph (a) -
- (a) delete the words “or suspects” and insert the words “,suspects or has reasonable grounds to suspect”.
- (b) delete the words “drug trafficking” and insert the words “criminal conduct”. Section 45
- In subsection (1)(a) and (2)(a) insert the words “or has reasonable grounds to suspect” after the word “suspect”. Section 46

In subsection (7) -

- (i) delete “(4)” and insert “(6)”;
- (ii) delete paragraph (d) and insert the following:

“(d) appointment of a senior staff member or a staff member at management level to be responsible for continual compliance with this Act and the regulations made hereunder.”

Section 48

(a) In subsection (1) -

- (i) in the marginal note, insert the words “No. 38 of 2001”;
- (ii) in paragraph (a) insert the words “and the financing of terrorism” after the words “money laundering”;
- (iii) in paragraph (d) insert “2001” after the word “Act”

(b) Delete subsection (2) and insert the following -

“(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 Executive Director of the Saint Vincent and the Grenadines International Financial Services Authority;
- (g) the Director of the Saint Vincent and the Grenadines Financial Intelligence Unit;
- (h) the Chairman of the Saint Vincent and the Grenadines International Financial Services

Authority; and

- (i) such other persons as the Minister of Finance may from time to time appoint, Section 49

and the Committee may appoint a sub-committee to assist in formulating the guidance in subsection (1)(b).”

- (a) In the marginal note, delete the words “imported or exported”.

- (b) In subsection (1) -

- (i) delete the words “not below the rank of inspector or a customs officer”; Section 50

- (ii) delete the words “ which is being imported into or exported from” and insert the word “in”.

- (a) In the marginal note, delete the word “orders” and insert the words “of cash”. Section 51

- (b) In subsection (5) after the words “by way of” delete “rehearing” and insert “a hearing *de novo*”.

- (a) In subsection (2) delete “section 50(2)” and insert “section 50(1)”.

- (b) In subsection (4) -

- (i) delete the word “and” after the semi-colon in paragraph (a);

- (ii) insert after paragraph (b) the following paragraphs

“(c) cheques of any kind, including travellers’ cheques;

(d) postal orders;

(e) bankers draft;and

(f) bearer bonds and bearer shares”

- (iii) delete the term and the corresponding definition of “exported”. “Forfeiture orders

- (b) insert after section 51 the following new section -

51A(1) Where a person is convicted of criminal conduct and the court by or before which he is convicted is satisfied that any property which was in his possession or under his control at the time of his apprehension -

- (a) has been used for the purpose of committing criminal conduct;
- (b) has been used for the purpose of facilitating the commission of criminal conduct; or
- (c) was intended by him to be used for the purpose of committing criminal conduct,

the court may make an order of forfeiture of that property under this section.

(2) Facilitating the commission of criminal conduct shall be taken for the purpose of this section to include the taking of any steps after the criminal conduct has been committed for the purpose of disposing of any property to which the criminal conduct relates or of avoiding apprehension or detection.

(3) Where, upon application made by the Director of Public Prosecutions, the court determines that property identified in the application constitutes the proceeds of criminal conduct and is satisfied that the property-

- (a) forms part of or represents the estate of a deceased person; or
- (b) has been abandoned,

the court may make an order for

forfeiture of that property under this section.

(4) In making its determination -

(a) under subsection 3(a), the court shall consider any representations made by a personal representative, beneficiary, or other relevant party regarding the estate of the deceased person; or

(b) under subsection 3(b), the court shall do so one month after notice of the application made by the Director of Public Prosecutions has been advertised in a daily newspaper.

(5) The court shall not order anything to be forfeited under this section where a person who claims to be the owner or to be otherwise interested in the property applies to the court to be heard, unless an opportunity has been given to him to show cause why the order should not be made.

Section 55

In subsection (2) -

(a) in paragraph (a), delete the words “confiscated order” and insert the words “confiscation or a forfeiture order”

(b) in paragraph (c), delete “37” and insert “28”.

(c) insert after paragraph (d) the following-

Section 60

“(e) money forfeited or delivered as a result of a confiscation or forfeiture order under any law in Saint Vincent and the Grenadines.”

Section 61

“compensation

In the marginal note, delete “Cap. 25” and insert “Cap. 125”.

Repeal and replace by the following section-

61. (1) If an investigation is begun against a person

for criminal conduct 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 convictions or convictions concerned,

the court may, on application by a person who held property which was reliable 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 criminal conduct concerned; and
- (b) that the applicant has suffered loss in consequence of anything 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 proceedings could have resulted in a conviction 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 42(3) in relation to any property;
- (b) in consequence of the disclosure and for the purposes of an investigation or prosecution in respect of criminal conduct any act is done or omitted to be done in relation to that property; and
- (c) 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, the court 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 criminal conduct concerned and that, but for the 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.

Section 65

(7) Compensation ordered to be paid under this section and section 21(3) and 22(3) shall be paid out of the Consolidated Fund.

In the marginal note -

Section 66	(a) delete “No. 48 of 1993” and insert “No. 45 of 1993”.	
“Index of defined expressions	(b) delete “No. 12 of 1992” and insert “No. 12 of 1997”.	
	“amount that might be realised	section 2 (3)
	amount to be recovered	section 13
	benefited from-drug trafficking	section 9 (2)
	charging order	section 27
	conclusion of application	section 5
	conclusion or proceedings	section 5
	confiscation order	section 6,7 and 8
	corresponding law	section 54
	drug trafficking	section 2
	drug trafficking arrangement	section 2
	drug trafficking offence	section 2
	external confiscation order	section 52
	gift caught by this Act	section 4
	held (in relation to property)	section 2 (2)
	institution of proceedings interest (in relation to	section 5

property)	section 2 (1)
items subject to legal privilege	section 2 (1)
material	section 2 (1)
money laundering	section 2 (1)
monitoring order	section 39
police officer	section 58
premises	section 2 (1)
prescribed	section 2 (1)
proceeds of drug trafficking	section 10 (1)(a)
production order	section 35
property	section 8 (1)
prosecutors statements	section 11
realisable property	section 2 (1)
relevant offence	section 2 and Schedule 2
restraint order	section 26
subject to appeal transferred (in relation to property)	section 5 (2) section 22
value of gift	section 4
value of proceeds and drug trafficking	section 10 (1)(b)
value of property	section 3 (1).”

No. 8 Proceeds of Crime and Money Laundering (Prevention) (Amendment)

- Schedule 1 Under the item “Relevant Business Activities” insert the word “Charities” after the word “Accountants”.
- Schedule 2 Repeal and replace by the following -

“SCHEDULE 2

(section 2)

An offence under the -

1. Customs (Control and Management) Act 1999;
2. Copyright Act 2003;
3. International Banks Act, 2004;
4. Patents Act 2004;
5. Trademarks Act 2003;
6. United Nations (Anti-Terrorism) Measures Act, 2002”.

Passed in the House of Assembly this 22nd day of March, 2005.

NICOLE HERBERT
Clerk of the House of Assembly.

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