



ANGUILLA

PROCEEDS OF CRIMINAL CONDUCT ACT, 2000

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I Assent

Peter Johnstone

Governor

ANGUILLA

NO. 14/2000

PROCEEDS OF CRIMINAL CONDUCT ACT, 2000

An Act to provide for the recovery of the proceeds of criminal conduct; to create certain money laundering offences; to provide for connected matters and to make consequential amendments to other enactments to make them consistent with this Act

[Gazetted 31st July 2000] [Commencement: Section 38]

ENACTED by the Legislature of Anguilla

PRELIMINARY PROVISIONS**Definitions**

1. (1) In this Act—

“appropriate authority of a designated country or territory” means an authority appointed under section 33(1)(a);

“Attorney General” means the Attorney General of Anguilla;

“benefit”, in relation to criminal conduct or an offence, means the value of—

(a) any property obtained; or

(b) any pecuniary advantage derived;

directly or indirectly, as a result of or in connection with that criminal conduct or the commission of an offence;

“charging order” means an order made under section 18;

“confiscation order” means an order made under section 3;

“Court”, except where the High Court is specified, means the High Court or Magistrate’s Court exercising jurisdiction at first instance in a matter to which this Act applies;

“criminal conduct” means an act or omission that constitutes an offence or would constitute an offence if it had occurred in Anguilla;

“defendant” means a person against whom proceedings have been instituted for an offence, whether or not he is convicted;

“designated country or territory” means a country or territory outside of Anguilla designated under section 33(1)(a);

“drug trafficking offence” has the same meaning as in the Drugs Trafficking Offences Ordinance, 2000;

“external confiscation order” means an order, decree, direction, judgment or other exercise of authority by a court of competent jurisdiction in a designated country or territory for the purpose of recovering property, the value of property or the value of any pecuniary advantage obtained or derived as a result of or in connection with conduct that would be an offence if it had occurred in Anguilla;

“gift” or “gift caught by this Act” means a gift referred to in section 2(7);

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

“offence” means an offence, other than a drug trafficking offence, that is or may be proceeded with by indictment;

“police officer” includes a customs officer appointed under the Customs Ordinance, 1981;

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

“property” means real or personal property wherever situated and includes—

(a) an interest in property, whether legal, equitable or otherwise; and

(b) money;

“realisable property” means property referred to in section 2(1) and (2);

“relevant criminal conduct”, in relation to a person convicted of an offence in any proceedings before a Court, means that offence taken together with any other offence of which he is convicted in the same proceedings and in the circumstances referred to in section 5(6) includes the offences referred to in that subsection;

“Reporting Authority” means the Reporting Authority constituted under the Money Laundering Reporting Authority Act, 2000;

“restraint order” means an order made under section 17;

“value”, in relation to property including a gift, means the value of the property as determined under sections 2(4) and (5);

(2) Nothing in this Act confers any power on the Court in connection with offences committed before the commencement of this Act or proceedings against a person for an offence instituted before the commencement of this Act.

(3) The following subsections shall have effect for the interpretation of this Act.

(4) Property is held by any person if he holds any interest in it.

(5) A reference to property held by a person includes a reference to property vested in his trustee in bankruptcy or liquidator.

(6) A reference to an interest held by a person beneficially in property includes a reference to an interest that would be held by him beneficially if the property were not vested in his trustee in bankruptcy or liquidator.

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

(8) Proceedings for an offence are instituted in Anguilla—

- (a) when the Magistrate issues a summons or warrant under the Magistrate’s Code of Procedure Act in respect of the offence; or
- (b) when a person is charged with the offence after being taken into custody without a warrant;

and where the application of this subsection would result in there being more than one time for the institution of proceedings, they shall be taken to have been instituted at the earliest of those times.

(9) Proceedings for an offence are concluded—

- (a) when the defendant is acquitted on all counts or every charge against him is dismissed, as the case may be;
- (b) if he is convicted on one or more counts or charges but the Court decides not to make a confiscation order against him, when the Court makes that decision;
- (c) if he is sentenced without the Court having considered whether or not to proceed under section 3 in his case, when he is sentenced; and
- (d) if a confiscation order is made against him in those proceedings, when the order is satisfied.

(10) An application under section 9, 10 or 11 is concluded—

- (a) if the Court decides not to make or vary, as the case may be, any order against the defendant on that application, when it makes that decision;

- (b) if an order against the defendant is made or varied on that application, when the order is satisfied; and
- (c) if the application is withdrawn, when the prosecutor notifies the withdrawal of the application to the Court to which it was made.

(11) For the purposes of this Act, a confiscation order is satisfied when no amount is due under it.

(12) 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.

Interpretation of principal terms

2. (1) In this Act, “realisable property” means, subject to subsection (2)—

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

(2) Property is not realisable property if an order is in force with respect to the property under section 30 (forfeiture) of the Drugs (Prevention of Misuse) Ordinance, 1988.

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

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

together with the total of the values at that time of all gifts caught by this Act.

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

- (a) where any other person holds an interest in the property, is—
 - (i) the market value of the first-mentioned person's beneficial interest in the property, less
 - (ii) the amount required to discharge any encumbrance (other than a charging order) on that interest; and
- (b) in any other case, its market value.

(5) A reference in this Act to the value to a person at a particular time of property, other than money, obtained by the person, including the value to the recipient of property that is a gift caught by this Act, is a reference to the following—

- (a) if at the particular time the person holds the property that he obtained or received or property that, in whole or in part, directly or indirectly represents in his hands the property that he obtained or received, the greater of—
 - (i) the value of the property to him when he obtained or received it, adjusted to take account of subsequent changes in the value of money, and
 - (ii) the value of the property at the particular time disregarding any charging order made in respect of the person against the property; and
 - (b) in any other case, the value of the property to him when he obtained or received it, adjusted to take account of subsequent changes in the value of money.
- (6) For the purposes of subsection (3), an obligation has priority at any time if it is an obligation of the defendant to—
- (a) pay an amount due in respect of a fine, or other order of a Court, imposed or made on conviction of an offence, where the fine was imposed or order made before the confiscation order; or
 - (b) pay any sum that, on the date the confiscation order is made, would be among the preferential debts in the defendant's bankruptcy.
- (7) A gift is caught by this Act if—
- (a) it was made by the defendant at any time after the commission of the offence or, if more than one, the earliest of the offences to which the proceedings for the time being relate; and
 - (b) the Court considers it appropriate in all the circumstances to take the gift into account.
- (8) 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 consideration provided by the defendant; and
 - (b) in those circumstances, the preceding provisions of this section shall apply as if the defendant had made a gift of such share in the property as bears to the whole property the same proportion as the difference between the values referred to in paragraph (a) bears to the value of the consideration provided by the defendant.

CONFISCATION ORDERS

Duty to make confiscation orders

3. (1) Where a defendant is convicted in any proceedings before the Court of an offence, it is the duty of the Court—

- (a) if the prosecutor has given written notice to the Court that he considers that it would be appropriate for the Court to proceed under this section; or
- (b) if the Court considers, even though it has not been given such notice, that it would be appropriate for it so to proceed;

to act as follows before sentencing or otherwise dealing with the defendant in respect of that offence or any other relevant criminal conduct.

(2) The Court shall first determine whether the defendant has benefited from any relevant criminal conduct.

(3) Subject to subsection (4), if the Court determines that the defendant has benefited from any relevant criminal conduct, it shall then—

- (a) determine in accordance with subsection (5) the amount to be recovered in his case by virtue of this section; and
- (b) make an order under this section ordering the defendant to pay that amount.

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

- (a) the Court shall have a power instead of a duty, to make an order under this section;
- (b) subsection (5) shall not apply for determining the amount to be recovered in that case by virtue of this section; and
- (c) where the Court makes an order in exercise of that power, the sum required to be paid under that order shall be of such amount, not exceeding the amount that (but for paragraph (b)) would apply by virtue of subsection (5), as the Court thinks fit.

(5) Subject to subsection (4), the sum that an order made by the Court under this section requires the defendant to pay shall be equal to—

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

whichever is less.

(6) The standard of proof required to determine any question arising under this Act as to—

- (a) whether a person has benefited from any offence; or
- (b) the amount to be recovered in his case;

shall be that applicable in civil proceedings.

Making confiscation orders

4. (1) Where a Court makes a confiscation order against a defendant in any proceedings, it shall be its duty, in respect of any offence of which he is convicted in those proceedings, to take account of the order before—

- (a) imposing any fine on him;
- (b) making any order involving any payment by him; or
- (c) making any order under section 30 (forfeiture) of the Drugs (Prevention of Misuse) Ordinance, 1988,

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

(2) No Act or Ordinance restricting the power of a Court dealing with the defendant in a particular way from dealing with him also in any other way shall by reason only of the making of a confiscation order restrict the Court from dealing with the defendant in any way it considers appropriate in respect of an offence.

Confiscation relating to a course of criminal conduct

5. (1) This section applies in a case where the defendant is convicted of a qualifying offence in any proceedings before a Court if—

- (a) the prosecutor gives written notice for the purposes of section 3(1)(a);
- (b) that notice contains a declaration that it is the prosecutor's opinion that the case is one in which it is appropriate for this section to be applied; and
- (c) the defendant—
 - (i) is convicted in those proceedings of at least two qualifying offences (including the offence in question), or
 - (ii) has been convicted of a qualifying offence on at least one previous occasion during the relevant period.

(2) In this section, “qualifying offence” means any offence from which, in the opinion of the Court, the defendant has benefited.

(3) When proceeding under section 3 in pursuance of the notice mentioned in subsection (1)(a), the Court may, if it thinks fit, determine that (subject to subsection (5)), the assumptions specified in subsection (4) are to be made for the purpose—

- (a) of determining whether the defendant has benefited from relevant criminal conduct; and
- (b) if he has, of assessing the value of the defendant's benefit from such conduct.

(4) Those assumptions are—

- (a) that any property appearing to the Court—
 - (i) to be held by the defendant at the date of conviction or at any time in the period between that date and the determination in question, or
 - (ii) to have been transferred to him 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 offences;
- (b) that any expenditure of his since the beginning of the relevant period was met out of payments received by him as a result of or in connection with the commission of offences; and
- (c) that, for the purposes of valuing any property that he had or that he is assumed to have had at any time, he received the property free of any other interests in it.

(5) Where the Court has determined that the assumptions specified in subsection (4) are to be made in any case, it shall not in that case make any such assumption in relation to any particular property or expenditure if—

- (a) that assumption, so far as it relates to that property or expenditure, is shown to be incorrect in the defendant's case;
- (b) that assumption, so far as it so relates, is shown to be correct in relation to an offence respecting which a previous confiscation order has been made; or
- (c) the Court is satisfied that there would (for any other reason) be a serious risk of injustice in the defendant's case if the assumption were to be made in relation to that property or expenditure.

(6) Where the assumptions specified in subsection (4) are made in any case, the offences from which, in accordance with those assumptions, the defendant is assumed to have benefited shall be treated as if they were comprised, for the purposes of this Act, in the conduct that is to be treated, in that case, as relevant criminal conduct in relation to the defendant.

(7) In this section —

“date of conviction” means—

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

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

Postponed determinations

6. (1) Where the Court is acting under section 3, but considers that it requires further information before—

- (a) determining whether the defendant has benefited from any relevant conduct; or
- (b) determining the amount to be recovered in his case;

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

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

(3) Unless it is satisfied that there are exceptional circumstances, the Court shall not specify a period under subsection (1) that—

- (a) by itself; or
- (b) where there have been one or more previous postponements under subsection (1) or (4), when taken together with the earlier specified period or periods;

exceeds 6 months beginning with the date of conviction.

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

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

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

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

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

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

(8) Where the Court has so proceeded—

- (a) section 3(1) shall have effect as if the words from “before sentencing” onwards were omitted; and

(b) section 4(1) shall have effect as if after “determining” there were inserted “relation to any offence in respect of which he has not been sentenced or otherwise dealt with”.

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

(a) impose any fine on him; or

(b) make any such order as is mentioned in section 4(1)(b) or (c).

(10) Where the Court has sentenced the defendant under subsection (7) during the specified period, it may, after the end of that period, vary the sentence by imposing a fine or making any such order as is mentioned in section 4(1)(b) or (c) so long as it does so within a period of 28 days beginning with the end of the specified period.

(11) In this section, “date of conviction” means—

(a) the date on which the defendant was convicted of the offence concerned; or

(b) where he was convicted in the same proceedings, but on different dates, of two or more offences that are comprised in relevant criminal conduct, the date of the latest of those convictions.

Statements, etc. relevant to making confiscation orders

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

(a) the prosecutor has given written notice to the Court for the purposes of section 3(1)(a); or

(b) the Court is proceeding in pursuance of section 3(1)(b) and requires a statement under this section from the prosecutor.

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

(a) to determining whether the defendant has benefited from any relevant criminal conduct; or

(b) to an assessment of the value of the defendant's benefit from that conduct;

and, where such a statement is tendered in a case in which a declaration has been made for the purposes of section 5(1)(b), the statement shall also set out all such information available to the prosecutor as may be relevant for the purposes of sections 5(4) and 5(5) (b) or (c).

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

(a) the prosecutor may at any time tender to the Court a further statement as to the matters mentioned in subsection (2); and

(b) the Court may at any time require the prosecutor to tender that further statement within such period as it may direct.

(4) Where—

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

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

(5) Where—

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

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

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

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

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

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

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

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

Provision of information by defendant

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

- (a) the prosecutor has given written notice to the Court for the purposes of section 3(1)(a); or

(b) the Court is proceeding in pursuance of section 3(1)(b) or is considering whether so to proceed.

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

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

(4) Rules of Court may make provision as to the maximum or minimum period that may be allowed under subsection (3).

(5) 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.

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

(a) in giving to the Court information required by an order under this section; or

(b) in any other statement tendered to the Court for the purposes of this Act;

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

(7) For the purposes of this section, an allegation may be accepted in such manner as may be prescribed by the rules of Court or as the Court may direct.

REVIEW AND REVISION OF CERTAIN QUESTIONS AND DETERMINATIONS

Review of cases where proceeds of crime not assessed

9. (1) This section applies in any case where—

(a) a person has been convicted in any proceedings before the Court of an offence;

(b) the prosecutor did not give written notice for the purposes of section 3(1)(a); and

(c) a determination was made for the purposes of section 3(1)(b) not to proceed under that section or no determination was made for those purposes.

(2) If the prosecutor has evidence—

(a) that, at the date of conviction or, if later, when any determination not to proceed under section 3 was made, was not available to the prosecutor (and, accordingly, was not considered by the Court);

but—

(b) that the prosecutor believes would have led the Court to determine, if—

- (i) the prosecutor had given written notice for the purposes of section 3(1)(a), and
- (ii) the Court had considered the evidence,

that the defendant had benefited from relevant criminal conduct;

the prosecutor may apply to the relevant Court for it to consider the evidence.

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

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

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

- (a) section 3(3)(b) shall not apply, and section 3(5) shall not apply for determining the amount to be recovered in that case;
- (b) that Court shall have a power, instead of a duty, to make a confiscation order; and
- (c) if the Court makes an order in exercise of that power, the sum required to be paid by that order shall be of such amount, not exceeding the amount that (but for paragraph (a)) would apply by virtue of section 3(5), as the Court thinks fit.

(6) In considering the circumstances of any case either under subsection (4) or for the purposes of subsection (5)(b) and (c), the relevant Court shall have regard, in particular, to any fine imposed on the defendant in respect of any relevant criminal conduct.

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

(8) Where an application under this section contains such a declaration as is mentioned in section 5(1)(b), that section shall apply (subject to subsection (9)) in the case of any determination on the application as if it were a determination in a case in which the requirements of section 5(1)(a) and (b) had been satisfied.

(9) For the purposes of any determination to which section 5 applies by virtue of subsection (8), none of the assumptions specified in section 5(4) shall be made in relation to any property unless it is property held by or transferred to the defendant before the time when he was sentenced or otherwise dealt with in the case in question.

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

(11) Sections 7 and 8 shall apply where the prosecutor makes an application under this section as they apply in a case where the prosecutor has given written notice to the Court for the purposes of

section 3(1)(a), but as if the reference in section 7(2) to a declaration made for the purposes of section 5(1)(b) were a reference to a declaration for the purposes of subsection (8).

(12) In this section—

“date of conviction” means—

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

“relevant Court” means—

- (a) where the defendant was convicted in proceedings before the High Court, that Court; and
- (b) where he was convicted in proceedings before the Magistrate's Court, that Court.

Revision of assessment of proceeds of crime

10. (1) This section applies where in any case there has been a determination under section 3(2) (the “original determination”) that the defendant in that case had not benefited from any relevant criminal conduct.

(2) If the prosecutor has evidence—

- (a) that was not considered by the Court that made the original determination;

but—

- (b) that the prosecutor believes would have led that Court (if it had been considered) to determine that the defendant had benefited from relevant criminal conduct;

the prosecutor may apply to the relevant Court for it to consider that evidence.

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

- (a) shall proceed as if it were proceeding under section 3 before sentencing or otherwise dealing with the defendant in respect of any relevant criminal conduct—
 - (i) to make a fresh determination of whether the defendant has benefited from any relevant criminal conduct, and
 - (ii) then to make such a determination as is mentioned in section 3(3)(a); and
- (b) subject to subsection (4), shall have a power, after making those determinations, to make an order requiring the payment of such sums as it thinks fit;

and an order under paragraph (b) shall be deemed for all purposes to be a confiscation order.

(4) The relevant Court shall not, in exercise of the power conferred by paragraph (3)(b), make an order for the payment of a sum that is more than the amount determined in pursuance of subparagraph (3)(a)(ii).

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

(6) Where, in a case in which section 5 does not otherwise apply, an application under this section contains such a declaration as is mentioned in section 5(1)(b), section 5 shall apply (subject to subsection (7)) in the case of any determination on the application as if it were a determination in a case in which the requirements of section 5(1)(a) and (b) had been satisfied.

(7) For the purposes of any determination under or for the purposes of subsection (3) to which section 5 applies, none of the assumptions specified in section 5(4) shall be made in relation to any property unless it is property held by or transferred to the defendant before the time when he was sentenced or otherwise dealt with in the case in question.

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

(9) Section 6 shall apply where the Court is acting under this section as it applies where the Court is acting under section 3.

(10) Sections 7 and 8 shall apply where the prosecutor makes an application under this section as they apply in a case where the prosecutor has given written notice to the Court for the purposes of section 3(1)(a) but—

- (a) as if the reference in section 7(2) to a declaration made for the purposes of section 5(1)(b) included a reference to a declaration for the purposes of subsection (6); and
- (b) as if any reference in section 7(8) to the time the confiscation order is made were a reference to the time the order is made on that application.

(11) In this section—

“date of conviction” has the same meaning as in section 9;

“relevant Court” means—

- (a) where the conviction by reference to which the original determination was made was in proceedings before the High Court, that Court; and
- (b) where the conviction was in proceedings before the Magistrate's Court, that Court.

Revision of assessment of amount to be recovered

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

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

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

- (a) subject to subsection (4), shall make a fresh determination as if it were proceeding under section 3 before sentencing or otherwise dealing with the defendant in respect of any relevant criminal conduct, of the following amounts, that is to say—
 - (i) the amount by which the defendant has benefited from such conduct, and
 - (ii) the amount appearing to be the amount that might be realised at the time of the fresh determination; and
- (b) subject to subsection (5), shall have a power to increase to such extent as it thinks just in all the circumstances of the case, the amount to be recovered by virtue of that section and to vary accordingly any confiscation order made by reference to the current determination.

(4) Where—

- (a) the relevant Court is under a duty to make a fresh determination for the purposes of paragraph (3)(a) in any case; and
- (b) that case is a case to which section 5 applies;

the Court shall not have power, in determining any amounts for those purposes, to make any of the assumptions specified in section 5(4) in relation to any property unless it is property held by or transferred to the defendant before the time when he was sentenced or otherwise dealt with in the case in question.

(5) The relevant Court shall not, in exercise of the power conferred by paragraph (3)(b), vary any order so as to make it an order requiring the payment of any sum that is more than the lesser of the 2 amounts determined in pursuance of paragraph (3)(a).

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

(7) Where the relevant Court varies a confiscation order under subsection (3), it shall substitute for the term of imprisonment fixed pursuant to section 12 in respect of the amount to be recovered under the order a longer term determined in accordance with that section in respect of any greater amount substituted under subsection (3).

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

(9) Section 6 shall apply where the Court is acting under this section as it applies where the Court is acting under section 3.

(10) Sections 7 and 8 shall apply where the prosecutor makes an application under this section as they apply in a case where the prosecutor has given written notice to the Court for the purposes of section 3(1)(a), but as if any reference in section 7(8) to the time the confiscation order is made were a reference to the time of the determination to be made on that application.

(11) In this section—

“date of conviction” has the same meaning as in section 9;

“relevant Court” means—

(a) where the Court that made the current determination is the High Court, that Court; and

(b) where the Court that made the current determination is the Magistrate's Court, that Court.

Application of procedure for enforcing payment

12. (1) Where the Court orders the defendant to pay any amount under this Act, the order shall have effect as if that amount were a fine imposed on him by the Court.

(2) Where the whole or any part of the sum ordered to be paid is not paid when required by the Court, the Court may in respect of a sum in default set out in Column 1 below, impose a term of imprisonment not exceeding the maximum period set out opposite that amount in Column 2—

Column 1	Column 2
SUM IN DEFAULT	MAXIMUM PERIOD
\$10,000 or less	6 months
More than \$10,000 but not more than \$20,000	12 months
More than \$20,000 but not more than \$200,000	18 months
More than \$200,000 but not more than \$400,000	2 years
More than \$400,000 but not more than \$1,000,000	3 years
More than \$1,000,000, 000 but not more than \$4,000,000	5 years
More than \$4,000,000	10 years

(3) Where—

- (a) a warrant of commitment is issued for a default in payment of an amount ordered to be paid under this Act in respect of any offence or offences; and
- (b) at the time the warrant is issued, the defendant is liable to serve a term of custody 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) has been served.

(4) Where the 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.

(5) This section applies in relation to confiscation orders made by the Court of Appeal in its appellate jurisdiction, as it applies in relation to confiscation orders made by a Court, being a Court of original jurisdiction and the reference in subsection (1) to the Court shall be construed accordingly.

Interest on sums unpaid under confiscation orders

13. (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 (whether forthwith on the making of the order or at a time specified in the order)—

- (a) that person shall be liable to pay interest on that sum for the period for which it remains unpaid; and
- (b) the amount of the 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 prosecutor, increase the term of imprisonment fixed in respect of the confiscation order under section 12 if the effect of subsection (1) is to increase the maximum period applicable in relation to the order under that section.

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

Variation of confiscation orders

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

- (a) by the defendant;
- (b) by a receiver appointed under section 17 or 20; or
- (c) in pursuance of the charging order;

the Court is satisfied that the realisable property is inadequate for the payment of any amount remaining to be recovered under the order, the Court shall issue a certificate to that effect, giving the Court's reasons.

(2) For the purposes of subsection (1), the Court may disregard any inadequacy in the realisable property that 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—

- (a) where the confiscation order was made by the High Court, to that Court; and
- (b) where the confiscation order was made by the Magistrate's Court, to that Court;

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 fixed under section 12 in respect of the amount to be recovered under the order, a shorter term determined in accordance with that section in respect of the lesser amount.

(5) Rules of Court may make provision—

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

Confiscation orders enforced outside of Anguilla

15. (1) Where—

- (a) a confiscation order has been made;
- (b) a request has been sent by the Attorney General to the appropriate authority of a designated country or territory for assistance in enforcing that order; and
- (c) in execution of that request property is recovered in the designated country or territory;

the amount payable under the confiscation order shall be treated as reduced by the value of the property so recovered.

(2) For the purposes of this section, and without prejudice to the admissibility of any evidence apart from this subsection, a certificate purporting to be issued by or on behalf of the appropriate authority of a designated country or territory stating that property has been recovered in execution of a request by the Attorney General, stating the value of the property so recovered and the date on which it was recovered shall, in any proceedings in the Court, be admissible as evidence of the facts stated in it.

(3) Where the value of property recovered is expressed in a currency other than that of Anguilla, the extent to which the amount payable under the confiscation order is to be reduced shall be calculated on the basis of the exchange rate prevailing on the date on which the property was recovered in the designated country or territory.

(4) For the purpose of this section, a written certificate purporting to be signed by a person acting in the capacity of manager of a bank licensed under the Banking Ordinance, 1991 and stating the exchange rate prevailing on a specified date is admissible in evidence of the facts stated in it.

RESTRAINT AND CHARGING ORDERS

Cases in which restraint orders and charging orders may be made

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

- (a) proceedings have been instituted in Anguilla against any person for an offence;
- (b) the proceedings have not been concluded or (if they have) an application that has not been concluded has been made under section 9, 10 or 11 in respect of the defendant in those proceedings; and
- (c) the High Court is satisfied that there is reasonable cause to believe —
 - (i) in a case where there is an application under section 11, that the High Court will be satisfied as mentioned in section 11(3), and
 - (ii) in any other case, that the proceedings may result or have resulted in, or that the application is made by reference to, a conviction of the defendant for an offence from which he may be, or has been, shown to have benefited.

(2) The High Court shall not exercise those powers by virtue of subsection (1) if it is satisfied—

- (a) that there has been undue delay in continuing the proceedings or application in question; or
- (b) that the person who appears to the High Court to be the person who has or will have the conduct of the prosecution or, as the case may be, who made that application, does not intend to proceed with it.

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

- (a) the High Court is satisfied that a person is to be charged (whether by the laying of an information or otherwise) with an offence or that an application of a kind mentioned in paragraph (1)(b) is to be made; and

- (b) the High Court is satisfied that the making or variation of a confiscation order may result from proceedings for that offence or, as the case may be, from the application.

(4) For the purposes of sections 17 and 18 at any time when those powers are exercisable before proceedings have been instituted—

- (a) a reference in this Act to the defendant shall be construed as a reference to the person referred to in paragraph (3)(a);
- (b) a reference in this Act to the prosecutor shall be construed as a reference to the person who the High Court is satisfied to have the conduct of the proposed proceedings; and
- (c) a reference 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 paragraph (3) (a) for an offence.

(5) Where the High Court has made an order under section 17(1) or 18(1) by virtue of subsection (3), the High Court shall discharge the order if proceedings in respect of the offence are not instituted (whether by the laying of an information or otherwise) or, as the case may be, no application is made within such time as the High Court considers reasonable or if the High Court is satisfied that the case has become a case in which, in pursuance of subsection (2), it would be unable to exercise the powers conferred by virtue of subsection (1).

Restraint orders

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

(2) Without prejudice to the generality of subsection (1), a restraint order may make such provision as the High Court thinks fit for living expenses and legal expenses.

(3) A restraint order may apply—

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

(4) This section shall not have effect in relation to any property for the time being subject to a charge under section 18.

(5) A restraint order—

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

(6) A restraint order—

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

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

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

- (a) to take possession of any realisable property; and
- (b) in accordance with the Court's directions, to manage or otherwise deal with any property in respect of which he is appointed;

subject to such exceptions and conditions as may be specified by the High Court and may require any person having possession of property in respect of which a receiver is appointed under this section to give possession of it to the receiver.

(9) 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 Anguilla.

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

(11) Property seized under subsection (10) shall be dealt with in accordance with the High Court's directions.

Charging orders in respect of land, securities, etc.

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

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

(2) 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.

(3) A charging order—

- (a) may be made only on an application by the prosecutor;

- (b) may be made on an *ex parte* application to a Judge in Chambers;
 - (c) shall provide for notice to be given to persons affected by the order; and
 - (d) may be made subject to such conditions as the High Court thinks fit and, without prejudice to the generality of this paragraph, such conditions as it thinks fit as to the time when the charge is to become effective.
- (4) Subject to subsection (6), a charge may be imposed by a charging order only on—
- (a) any interest in realisable property, being an interest held beneficially by the defendant or by a person to whom the defendant has directly or indirectly made a gift caught by this Act—
 - (i) in any asset of a kind mentioned in subsection (5), 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 such an asset or is an interest under another trust and a charge may by virtue of paragraph (a) be imposed by a charging order on the whole beneficial interest under the first-mentioned trust.
- (5) The assets referred to in subsection (4) are—
- (a) land in Anguilla; or
 - (b) securities of any of the following kinds—
 - (i) stock of any body incorporated within Anguilla,
 - (ii) units of any unit trust in respect of which a register of the unit holders is kept at any place within Anguilla.
- (6) In any case where a charge is imposed by a charging order on any interest in an asset of a kind mentioned in paragraph (5)(b), the High Court may provide for the charge to extend to any interest or dividend payable in respect of the asset.
- (7) In relation to a charging order, the High Court—
- (a) may at any time make an order discharging or varying it; and
 - (b) shall make an order discharging it on the occurrence of whichever of the following first occurs, that is to say—
 - (i) the conclusion of the proceedings or application in question, and
 - (ii) the payment into High Court of the amount payment of which is secured by the charge.

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

Charging orders: supplementary provisions

19. (1) Subject to any provision made under section 20 or by rules of the High Court, 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.

(2) Where a charging order has been protected by an entry registered under the Registered Land Ordinance, 1974, an order under section 18(7) discharging the charging order may direct that the entry be cancelled.

REALISING PROPERTY

Realisation of property

20. (1) Where—

- (a) a confiscation order is made in proceedings instituted for an offence or an order is made or varied on an application under section 9, 10 or 11;
- (b) the proceedings in question have not, or the application in question has not, been concluded; and
- (c) the order or variation is not subject to appeal;

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

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

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

- (a) to enforce any charge imposed under section 18 on realisable property or on interest or dividends payable in respect of such property; and
- (b) in relation to any realisable property other than property for the time being subject to a charge under section 18, to take possession of the property subject to such conditions or exceptions as may be specified by the High Court.

(4) The High Court may order any person having possession of realisable property to give possession of it to any such receiver.

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

(6) The High Court 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 High Court may direct and the High Court may, on the payment being made, by order transfer, grant or extinguish any interest in the property.

(7) Subsections (4) to (6) do not apply to property for the time being subject to a charge under section 18.

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

Application of proceeds of realisation and other sums

21. (1) Subject to subsection (2), the following sums in the hands of a receiver appointed under this Act or in pursuance of a charging order, that is—

- (a) the proceeds of the enforcement of any charge imposed under section 18;
- (b) the proceeds of the realisation, other than by the enforcement of such a charge, of any property under section 17 or 20; and
- (c) any other sums, being property held by the defendant;

shall, after such payments (if any) as the High Court may direct have been made out of those sums, be applied on the defendant's behalf towards the satisfaction of the confiscation order.

(2) If, after the amount payable under the confiscation order has been fully paid, any such sums remain in the hands of such a receiver, the receiver shall distribute them—

- (a) among such of those who held property that has been realised under this Act; and
- (b) in such proportions;

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

(3) The receipt of any sum by the Registrar of the High Court (the “Registrar”) on account of an amount payable under a confiscation order, whether or not the order is made in the Magistrate’s Court or the High Court, shall reduce the amount so payable, but the Registrar shall apply the money received for the purposes specified in this section and in the order so specified.

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

(5) After making any payment required by subsection (4), the Registrar shall reimburse any amount paid under section 25(2).

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

Exercise of powers by High Court or receiver

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

(2) Subject to this section, 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) An order may be made or other action taken in respect of a debt owed by the Crown.

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

Effect of bankruptcy

23. (1) Where a person who holds realisable property is adjudged bankrupt—

- (a) any 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 17(8) (restraint order) or sections 20(5) or (6) (realisable property in the hands of a receiver) for the time being in the hands of a receiver appointed under section 17 or 20;

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

(2) Where a person has been adjudged bankrupt, the powers conferred on the High Court by sections 17 to 21 or on a receiver by such order appointed shall not be exercised in relation to—

- (a) property of the bankrupt for the time being for the purposes of the Bankruptcy Act; and
- (b) property that is to be applied for the benefit of creditors of the bankrupt by virtue of a condition imposed under section 27(2) of that Act.

(3) Nothing in the Bankruptcy Act shall be taken as restricting, or enabling the restriction of, the exercise of the powers conferred on the High Court by sections 17 to 21 or on a receiver.

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

- (a) made before the order adjudging the person a bankrupt; or

- (b) on property that was subject to a restraint order when the order adjudging him bankrupt was made.

(5) Where, in the case of a debtor, an interim receiver stands appointed under section 10 of the Bankruptcy Act and any property of the debtor is subject to a restraint order, 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 under section 28 or 44 of the Bankruptcy Act in respect of the making of the gift at any time when proceedings for an offence have been instituted against him and have not been concluded or when 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 under either of those sections 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.

Winding up of company holding realisable property

24. (1) Where realisable property is held by a company and an order for the winding up of the company has been made or a resolution has been passed by the company for the voluntary winding up, the functions of the liquidator 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 17(8), 20(5) or (6) for the time being in the hands of a receiver appointed under section 17 or 20.

(2) Where, in the case of a company, such an order has been made or such a resolution has been passed, the powers conferred on the High Court by sections 17 to 20 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 or any provisional liquidator) properly incurred in the winding up in respect of the property.

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

(4) In this section—

“company” means a company that may be wound up under any Act or Ordinance of Anguilla;

“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 such an order has been made and, before the presentation of the petition for the winding up of the company by the High Court, 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.

Receivers: supplementary provisions

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

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

(2) Any amount due in respect of the remuneration and expenses of a receiver so appointed shall, if no sum is available to be applied in payment of it under section 21(4), be paid by the prosecutor or, in a case where proceedings for an offence are not instituted, by the person on whose application the receiver was appointed.

COMPENSATION

Compensation

26. (1) If proceedings are instituted against a person for one or more offences and—

- (a) the proceedings do not result in his conviction for any offence; or
- (b) where he is convicted of one or more of the offences—
 - (i) the conviction or convictions concerned are quashed, or
 - (ii) he is pardoned by the Governor in respect of the conviction or convictions concerned;

the High Court may, on an application by a person who held property that was realisable property, order compensation to be paid by the Government of Anguilla to the applicant if, having regard to all the circumstances, it considers it appropriate to make such an order.

(2) The High Court shall not order compensation to be paid in any case unless the High Court is satisfied—

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

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

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

MONEY LAUNDERING OFFENCES

Assisting another to retain the benefit of criminal conduct

27. (1) Subject to subsection (3), if a person enters into or is otherwise concerned in an arrangement whereby—

- (a) the retention or control by or on behalf of another (call him “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 by way of investment,

knowing or suspecting that A is a person who is or has been engaged in criminal conduct or has benefited from criminal conduct, he is guilty of an offence.

(2) In this section, a reference to any person’s proceeds of criminal conduct includes a reference to any property, that in whole or in part directly or indirectly represented in his hands his proceeds of criminal conduct.

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

- (a) the disclosure shall not be treated as a breach of any restriction upon the disclosure of information imposed by any enactment, rule of law or otherwise and shall not give rise to any civil proceedings; 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 the disclosure is made—
 - (i) before he does the act concerned and the act is done with the consent of the Reporting Authority, or
 - (ii) 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); or
- (c) that—
 - (i) he intended to disclose to the Reporting Authority 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 disclosure in accordance with paragraph (3)(b).

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

(6) A person guilty of an offence under this section is liable—

- (a) on summary conviction, to imprisonment for a term of 12 months or a fine of \$20,000 or to both; or
- (b) on conviction on indictment, to imprisonment for a term of 14 years or a fine without limit or to both.

(7) No police officer, member of the Reporting Authority or other person is guilty of 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 this Act.

Acquisition, possession or use of proceeds of criminal conduct

28. (1) A person is guilty of 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) 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 acquires property for inadequate consideration if the value of the consideration is significantly less than the value of the property; and
- (b) a person uses or has possession of property for inadequate consideration if the value of the consideration is significantly less than the value of his use or possession of the property.

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

- (a) the disclosure shall not be treated as a breach of any restriction upon the disclosure of information imposed by any enactment, rule of law or otherwise and shall not give rise to any civil proceedings; and
- (b) if he does any act in relation to that 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 concerned and the act is done with the consent of the Reporting Authority, or
 - (ii) the disclosure is made after he does the act, but on his initiative and as soon as it is reasonable for him to make it.

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

- (a) he intended to disclose to the Reporting Authority such a suspicion, belief or matter as is mentioned in subsection (5);

but—

- (b) there is reasonable excuse for his failure to make the disclosure in accordance with paragraph(5)(b).

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

(8) In the case of a person who was in employment at the relevant time, subsections (5) and (6) shall have effect in relation to disclosures, and intended disclosures, to the appropriate person in accordance with the procedure established by his employer for the making of such disclosures as they have effect in relation to disclosures, and intended disclosures, to the Reporting Authority.

(9) A person guilty of an offence under this section is liable—

- (a) on summary conviction, to imprisonment for a term of 12 months or a fine of \$20,000 or to both; or
- (b) on conviction on indictment to imprisonment for a term of 14 years or a fine without limit or to both.

(10) No police officer, member of the Reporting Authority or other person is guilty of 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 this Act.

Concealing or transferring proceeds of criminal conduct

29. (1) A person is guilty of an offence if he—

- (a) conceals or disguises any property that is, or in whole or in part directly or indirectly represents, his proceeds of criminal conduct; or
- (b) converts or transfers that property or removes it from the jurisdiction;

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

(2) A person is guilty of 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 or removes it from the jurisdiction;

for the purpose of assisting any person to avoid prosecution for an offence or to avoid the making or enforcement in his case of a confiscation order.

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

(4) A person guilty of an offence under this section is liable—

- (a) on summary conviction, to imprisonment for a term of 12 months or a fine of \$20,000 or to both; or
- (b) on conviction on indictment, to imprisonment for a term of 14 years or a fine without limit or to both.

Tipping off

30. (1) A person is guilty of an offence if—

- (a) he knows or suspects that any police officer, member of the Reporting Authority or other person is acting, or is proposing to act, in connection with an investigation that is being, or is about to be, conducted into money laundering; and
 - (b) he discloses to any other person information or any other matter that is likely to prejudice that investigation, or proposed investigation.
- (2) A person is guilty of an offence if—
- (a) he knows or suspects that a disclosure (the “disclosure”) has been made to the Reporting Authority under sections 27(3) or 28(5); and
 - (b) he discloses to any other person information or any other matter that is likely to prejudice any investigation that might be conducted following the disclosure.
- (3) A person is guilty of an offence if—
- (a) he knows or suspects that a disclosure of a kind mentioned in section 27(5) or 28(8) (the “disclosure”) has been made; and
 - (b) he discloses to any person information or any other matter that is likely to prejudice any investigation that might be conducted following the disclosure.
- (4) Nothing in subsections (1) to (3) makes it an offence for any person to disclose information or any other matter to a professional legal adviser for the purpose of legal advice or 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.
- (5) Subsection (4) does not apply in relation to any information or other matter that is disclosed with a view to furthering any criminal purpose.
- (6) In proceedings against a person for an offence under subsection (1), (2) or (3), it is a defence to prove that he did not know or suspect that the disclosure was likely to be prejudicial in the way mentioned in that subsection.
- (7) In this section “money laundering” means doing any act that constitutes an offence under section 27, 28 or 29 or, in the case of an act done otherwise than in Anguilla, would constitute such an offence if done in Anguilla.
- (8) For the purposes of subsection (7), having possession of any property shall be taken to be doing an act in relation to it.
- (9) A person guilty of an offence under this section is liable—

- (a) on summary conviction, to imprisonment for a term not of 12 months or a fine of \$20,000 or to both; or
- (b) on conviction on indictment, to imprisonment for a term of 5 years or a fine without limit or to both.

(10) No police officer, member of the Reporting Authority or other person is guilty of 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 this Act or of any other enactment relating to an offence.

INVESTIGATIONS

Order to make material available

31. (1) A police officer of the rank of inspector or above may, for the purposes of an investigation into whether any person has benefited from any criminal conduct or into the extent or whereabouts of the proceeds of any criminal conduct, apply to the High Court for an order under subsection (2) in relation to particular material or material of a particular description.

(2) If, on such an application, the High Court is satisfied that the conditions in subsection (4) are fulfilled, he may make an order that the person who appears to him to be in possession of the material to which the application relates shall—

- (a) produce it to a police officer of the rank of inspector or above for him to take away; or
- (b) give a police officer of the rank of inspector or above access to it;

within such period as the order may specify.

(3) The period to be specified in an order under subsection (2) shall be 7 days unless it appears to the High 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 that there are reasonable grounds—

- (a) for suspecting that a specified person has benefited from any criminal conduct;
- (b) 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) 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 High Court makes an order under paragraph (2)(b) in relation to material on any premises he may, on the application of a police officer of the rank of inspector or above, order any person who appears to him to be entitled to grant entry to the premises to allow a police officer of the rank of inspector or above 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) Provision may be made by rules of the High Court as to—

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

(8) Where the material to which an application under subsection (1) relates consists of information contained in a computer —

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

(9) An order under subsection (2)—

- (a) shall not confer any right to production of, or access to, items subject to legal privilege;
- (b) shall have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by any enactment, rule of law, or otherwise; and
- (c) shall not be made in relation to material in the possession of a government department without the prior written approval of the head of that department, or, if that approval is not granted, the written approval of the Governor acting in his discretion.

(10) In this section—

“items subject to legal privilege” means—

- (a) communications between a professional legal adviser and his client or any person representing his client made in connection with the giving of legal advice to the client;
- (b) communications between a professional legal adviser and his client or any person representing his client or between such an adviser or his client or any such representative and any other person made in connection with or in contemplation of legal proceedings and for the purposes of such proceedings; and

- (c) items enclosed with or referred to in such communications and made—
 - (i) in connection with the giving of legal advice, or
 - (ii) in connection with or in contemplation of legal proceedings and for the purposes of such proceedings,when they are in the possession of a person who is entitled to possession of them;

but does not include any communications that take place or items enclosed or referred to in any communication with the intention of furthering a criminal purpose;

“premises” includes any place and, in particular, includes—

- (a) any vehicle, vessel, aircraft or hovercraft;
- (b) any offshore installation; and
- (c) any tent or movable structure.

Authority for search

32. (1) A police officer of the rank of inspector or above may, for the purposes of an investigation into whether any person has benefited from any criminal conduct or into the extent or whereabouts of the proceeds of any criminal conduct, apply to the High Court for a warrant under this section in relation to specified premises.

(2) On such application the High Court may issue a warrant authorising a police officer of the rank of inspector or above to enter and search the premises if he is satisfied—

- (a) that an order made under section 31 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.

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

- (a) that there are reasonable grounds for suspecting that a specified person has benefited from criminal conduct;
- (b) that the conditions in section 31(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 section 31 in relation to the material because—
 - (i) it is not practicable to communicate with any person entitled to produce the material,

- (ii) it is not practicable to communicate with any person entitled to grant access to the material or entitled to grant entry to the premises on which the material is situated, or
 - (iii) the investigation for the purposes of which the application is made might be seriously prejudiced unless a police officer could secure immediate access to the material.
- (4) The conditions referred to in paragraph (2)(c) are—
- (a) that there are reasonable grounds for suspecting that a specified person has benefited from any criminal conduct;
 - (b) that there are reasonable grounds for suspecting that there is on the premises any such material relating—
 - (i) to the specified person, or
 - (ii) to the question whether that person has benefited from any criminal conduct or to any question as to the extent or whereabouts of the proceeds of any criminal conduct,as is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purposes of which the application is made, but that the material cannot at the time of the application be particularized; and
 - (c) that—
 - (i) it is not practicable to communicate with any person entitled to grant entry to the premises,
 - (ii) entry to the premises will not be granted unless a warrant is produced, or
 - (iii) the investigation for the purposes of which the application is made might be seriously prejudiced unless a police officer arriving at the premises could secure immediate entry to them.
- (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, that is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purposes of which the warrant was issued.
- (6) Section 31(10) applies to this section.

EXTERNAL CONFISCATION ORDERS AND RULES OF COURT

Regulations re: external confiscation orders

- 33.** (1) The Governor in Council may by regulation—

- (a) designate a country or territory outside of Anguilla (a “designated country or territory”) and appoint an appropriate authority of a designated country or territory (an “appropriate authority of a designated country or territory”);
- (b) direct in relation to a designated country or territory that, subject to such modifications, additions and omissions as may be specified, this Act shall apply to external confiscation orders and to proceedings that have been or are about to be instituted in the designated country or territory that have resulted, or may result, in an external confiscation order being made there;
- (c) make—
 - (i) such provision in connection with the taking of action in the designated country or territory 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 34, and
 - (iii) such incidental, consequential and transition provision,as appears to him expedient;
- (d) without prejudice to the generality of this subsection, direct that in such circumstances as may be specified proceeds that arise out of action taken in the designated country or territory with a view to satisfying a confiscation order shall be treated as reducing the amount payable under the order to such extent as may be specified.

(2) A regulation under subsection (1) may make different provision for different cases or classes of cases.

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

Registration of external confiscation orders

34. (1) A request for assistance sent to the Attorney General by the appropriate authority of a designated country or territory —

- (a) shall be accompanied by a statement of facts, either alleged or proved, in respect of which proceedings have been, or are about to be, instituted that have resulted, or may result, in an external confiscation order being made; and
- (b) unless the contrary is shown, is deemed to constitute the authority of the government of the designated country or territory for the Attorney General to act on its behalf in any proceedings in Court under this section or under the regulations.

(2) An application by an appropriate authority of a designated country or territory for the registration of an external confiscation order or an application made in respect of proceedings that have been, or are about to be, instituted in the designated country that have resulted, or may result, in an external confiscation order being made may not be made by any person other than the Attorney General or his representative.

- (3) The High Court may register an external confiscation order if—
- (a) the amount payable under the external confiscation order is—
 - (i) at least \$80,000, or
 - (ii) less than \$80,000 and the Attorney General certifies that it is in the public interest to register the order;
 - (b) the High Court is satisfied that at the time of registration the order is in force and not subject to appeal;
 - (c) the High Court is satisfied, where the person against whom the order was made did not appear in the proceedings, that he received notice of the proceedings in sufficient time to enable him to defend them; and
 - (d) the High Court is of the opinion that enforcing the order in Anguilla would not be contrary to the interests of justice.
- (4) The High Court shall not register an external confiscation order if —
- (a) the Attorney General has issued a certificate to the effect that the application to register the order is contrary to the public interest of Anguilla; or
 - (b) the facts set out in the statement referred to under paragraph (1)(a) do not amount to criminal conduct.
- (5) The High Court shall cancel the registration of an external confiscation order if it appears to the High Court that the order has been satisfied by payment of the amount due under it or by the person against whom it was made serving imprisonment in default of payment or by any other means.
- (6) In this section, “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.

Rules of Court

35. Rules of Court in relation to this Act may be made under section 17 of the Eastern Caribbean Supreme Court (Anguilla) Ordinance, 1982 or under section 246 of the Magistrate’s Code of Procedure Act.

Citation

36. This Act may be cited as the Proceeds of Criminal Conduct Ordinance, 2000.

Amendments

37. The Acts set out in the Schedule are amended as provided in the Schedule.

Coming into force

38. This Act comes into force on the day appointed by the Governor by notice published in the *Gazette*.

Leroy Rogers
Speaker

Passed by the House of Assembly the 10th day of July, 2000.

M. O. Connor
Clerk of the House of Assembly

SCHEDULE

(Section 37)

Drugs (Prevention of Misuse) Ordinance, 1988 amended

1. Section 2 of the Drugs (Prevention of Misuse) Ordinance, 1988 is amended by adding the following definition in alphabetical order--

““Court”, except where a particular court is specified, means the High Court or Magistrate’s Court exercising jurisdiction in the first instance in a matter to which this Ordinance applies;”

Drugs Trafficking Offences Ordinance, 1988 amended

2. The Drugs Trafficking Offences Ordinance, 1988 is amended as follows—

(a) in section 2, the definition of “Court” is replaced by the following:

““Court”, except where the High Court or Court of Appeal is specified, means the High Court or Magistrate’s Court exercising jurisdiction in the first instance in a matter to which this Ordinance applies;”

(b) in sections 10, 11 and 12, “Court” is replaced by “High Court”;

(c) section 13 is amended by replacing “shall be enforceable in the same courts and in the same manner” with “shall be enforceable in the High Court in the same manner”;

(d) in section 14, “Court” is replaced by “High Court”;

(e) section 15 is amended—

(i) in subsections (1) and (2), by replacing “Court” with “High Court”,

(ii) in subsection (3), by adding “whether the order is made in the Magistrate’s Court or the High Court” after “confiscation order”, and

(iii) in subsection (7), by replacing “imposed by the Court” with “imposed by the High Court”;

(f) in sections 16, 17, 18, 19, 19A, 21 and 23A, “Court” and “court” are replaced by “High Court”;

(g) in sections 24 and 25, “a judge”, “the judge” and “he” and “him” (where those pronouns refer to a judge) are replaced by “the High Court”;

(h) in section 30, “Court” is replaced by “High Court”.