



ANGUILLA

## REVISED STATUTES OF ANGUILLA

### CHAPTER P98

#### PROCEEDS OF CRIME ACT

Showing the Law as at 31 December 2022

This Edition was prepared under the authority of the Revised Statutes and Regulations Act, R.S.A. c. R55 by the Attorney General as Law Revision Commissioner.

This Edition revises and consolidates—

Act 13/2009, in force 16 July 2009

Act 18/2009, in force 17 July 2009

Act 3/2013, in force 25 September 2013

Act 38/2020, in force 16 December 2020

Act 12/2022, in force 22 December 2022

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**PROCEEDS OF CRIME ACT**

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**PROCEEDS OF CRIME ACT****PART 1****PRELIMINARY PROVISIONS****Interpretation****1. (1) In this Act—**

“AML/CFT obligation” has the meaning specified in the Anti-money Laundering and Terrorist Financing Regulations;

*(Act 3/2013, s. 2(a))*

“Anti-money Laundering and Terrorist Financing Regulations” means the regulations made under section 162(1);

“Anti-terrorist Financing Order” has the meaning specified in the Anti-money Laundering and Terrorist Financing Regulations;

*(Act 3/2013, s. 2(b))*

“associated property” has the meaning specified in section 71;

“cash” includes—

- (a) notes and coins in any currency;
- (b) postal orders;
- (c) cheques of any kind, including travellers’ cheques;
- (d) bankers’ drafts;
- (e) bearer bonds and bearer shares; and
- (f) any other monetary instrument that is prescribed as cash;

“Civil Recovery Authority” means the Attorney General;

“civil recovery investigation” means, subject to subsection (2), an investigation into—

- (a) whether property is recoverable property or associated property;
- (b) who holds the property; or
- (c) the extent or whereabouts of the property;

“Commission” means the Financial Services Commission established under section 2 of the Financial Services Commission Act;

“company” means a body corporate, wherever incorporated, registered or formed, and includes a foundation;

“conduct” includes omissions;

*(Act 3/2013, s. 2(a))*

“confiscation order” means an order made under section 13;

“country” includes a territory;

“Court” means the High Court;

“Criminal Code compensation order” means an order to pay compensation made under section 42 of the Criminal Code;

“criminal conduct” is conduct which constitutes an offence or would constitute an offence if it had occurred in Anguilla;

“criminal property” has the meaning specified in section 117;

“criminal recovery investigation” means an investigation into—

- (a) whether a person has benefited from his criminal conduct;
- (b) the extent or whereabouts of his benefit from his criminal conduct; or
- (c) in respect of a confiscation order made against a person—
  - (i) the available amount for satisfying the order, and
  - (ii) the extent or whereabouts of realisable property available to satisfy the order;

*(Act 12/2022, s. 2(a) and Am. L.R. 31/12/2022)*

“date of conviction”, means—

- (a) in relation to an offence, the date on which the defendant was convicted of the offence concerned; or
- (b) if there are 2 or more offences and the convictions were on different dates, the date of the latest;

“dealing” with property includes disposing of it, taking possession of it or removing it from Anguilla;

“defendant”, except in Part 3, means a person against whom proceedings have been instituted for an offence, whether or not he has been convicted;

*(Act 18/2009, s. 2(a))*

“document” means a document in any form and includes—

- (a) any writing or printing on any material;
- (b) any record of information or data, however compiled, and whether stored in paper, electronic, magnetic or any non-paper based form;

- (c) any storage medium, including discs and tapes;
- (d) books and drawings;
- (e) a photograph, film, tape, negative or other medium in which one or more visual images are embodied so as to be capable (with or without the aid of equipment) of being reproduced; and
- (f) any court application, order and other legal process;

“drug trafficking offence” means—

- (a) an offence under section 4(3), 6(2) or (3), 7(3), 12 or 21 of the Drugs (Prevention of Misuse) Act;
- (b) an offence under section 11 or 17 of the Criminal Justice (International Co-operation)(Anguilla) Act;
- (c) an attempt, conspiracy or incitement to commit an offence specified in paragraph (a) or (b); or
- (d) aiding, abetting, counselling or procuring the commission of an offence specified in paragraph (a) or (b);

“enforcement receiver” means a receiver appointed under section 47(1);

“ENRSP Regulations” means the Externally and Non-Regulated Service Provider Regulations made under section 153;

*(Act 3/2013, s. 2(a))*

“externally regulated service provider” has the meaning specified in the Anti-money Laundering and Terrorist Financing Regulations;

*(Act 3/2013, s. 2(a))*

“external supervisor”, in the case of an externally regulated service provider, means the supervisory authority responsible for supervising the licensed business of the service provider carried on in Anguilla;

*(Act 3/2013, s. 2(a))*

“forfeiture order” means an order for the forfeiture of cash under section 112;

“Fund” means the National Forfeiture Fund established under section 158;

“general criminal conduct” has the meaning specified in section 11(1);

“gift” has the meaning specified in section 8;

“interest”, in relation to property includes—

- (a) a right, including a right to possession of the property;
- (b) any legal interest or estate; and

(c) any equitable interest or power;

“interim receiving order” means an order made by the Court under section 81;

“liquidation” includes the dissolution of a foundation;

“liquidator” includes a person appointed to supervise the dissolution of a foundation;

“management receiver” means a receiver appointed under section 46(1);

“money laundering” means an act which—

(a) constitutes a money laundering offence; or  
(*Act 3/2013, s. 2(d)*)

(b) would constitute a money laundering offence if done in Anguilla;  
(*Act 18/2009, s. 2(b)*)

“money laundering investigation” means an investigation into whether a person has committed a money laundering offence;

“money laundering offence” means—

(a) an offence under section 119, 120 or 121;

(b) an attempt, conspiracy or incitement to commit an offence specified in paragraph (a);  
or

(c) aiding, abetting, counselling or procuring the commission of an offence specified in paragraph (a);

“Money Laundering Reporting Officer” means the person appointed as Money Laundering Reporting Officer by a service provider under and in accordance with the Anti-money Laundering and Terrorist Financing Regulations;

(*Act 18/2009, s. 2(c)*)

“non-profit organisation” or “NPO” means an organisation that—

(a) is established solely or primarily for charitable, religious, cultural, educational, social or fraternal purposes or for the purpose of benefiting the public or a section of the public; and

(b) raises or disburses funds in pursuance of those purposes;  
(*Act 3/2013, s. 2(a)*)

“Non-Profit Organisations Regulations” means the regulations made under section 155;

(*Act 3/2013, s. 2(a)*)

“non-regulated service provider” means a service provider that is neither a regulated service provider nor an externally regulated service provider;

(*Act 3/2013, s. 2(a)*)



“NPO Code” means the Code made under section 155(b)(iii);  
(Act 3/2013, s. 2(a))

“NPO Supervisor” means the person or body designated as NPO Supervisor in the Non-Profit Organisations Regulations;  
(Act 3/2013, s. 2(a))

“organisation” means a body of persons (whether incorporated or unincorporated), any legal entity and any equivalent or similar structure or arrangement and includes persons acting as the trustees of a trust;  
(Act 3/2013, s. 2(a))

“particular criminal conduct” has the meaning specified in section 11(2);

“police officer” includes a person appointed as a customs officer;

“premises” includes—

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

“prescribed” means prescribed by regulations made under section 162;

“privileged material” has the meaning specified in section 129;

“property” means property of every kind, whether situated in Anguilla or elsewhere, and includes—

- (a) money;
- (b) all forms of real or personal and heritable or moveable property; and
- (c) things in action and other intangible or incorporeal property;

“property freezing order” means an order made under section 74;

“realisable property” has the meaning specified in section 5;

“recoverable amount” means the amount that the Court determines should be recovered from a defendant under a confiscation order;

“recoverable property” shall be construed in accordance with sections 64 to 72;

“recovery order” means an order made under section 90;

“Registrar” means the Registrar of the Court;

“regulated business” has the meaning specified in the Anti-money Laundering and Terrorist Financing Regulations;

“regulated person” has the meaning specified in the Anti-money Laundering and Terrorist Financing Regulations;

“regulated service provider” means a service provider that is a regulated person;

“relevant business” has the meaning specified in the Anti-money Laundering and Terrorist Financing Regulations;

*(Act 3/2013, s. 2(e))*

“relevant service provider”, in relation to a supervisory authority, means a service provider whom the supervisory authority is responsible for supervising, in accordance with section 148;

*(Act 3/2013, s. 2(a))*

“restraint order” means an order made under section 42(1);

“senior police officer” means a police officer of the rank of inspector or above or, in relation to the exercise of a power by a customs officer, an officer of the rank of Assistant Comptroller or above;

“service provider” has the meaning specified in the Anti-money Laundering and Terrorist Financing Regulations;

“supervisory authority”, in relation to a service provider, means the supervisory authority that is responsible for the supervision of the service provider, in accordance with section 148;

*(Act 3/2013, s. 2(a))*

“tainted gift” has the meaning specified in section 9;

“terrorism” has the meaning specified in the Anti-money Laundering and Terrorist Financing Regulations;

*(Act 3/2013, s. 2(a))*

“terrorist financing” has the meaning specified in the Anti-money Laundering and Terrorist Financing Regulations;

*(Act 3/2013, s. 2(f))*

“terrorist financing laws” has the meaning specified in the Anti-money Laundering and Terrorist Financing Regulations;

*(Act 3/2013, s. 2(a))*

“trustee” means the trustee for civil recovery appointed by the Court under section 90(1);

“Unit” means the Financial Intelligence Unit established pursuant to Part 2 of the Financial Intelligence Unit Act;

*(Act 38/2020, s. 33(a))*

“unlawful conduct” has the meaning specified in section 62; and

“value”, in relation to property, means the value of the property determined in accordance with sections 6, 7 and 10.

(2) An investigation is not a civil recovery investigation within the meaning of subsection (1) if—

- (a) proceedings for a recovery order have been instituted in respect of the property in question;
- (b) an interim receiving order applies to the property in question; or
- (c) the property in question is detained under section 109.

### **Interpretative provisions and provisions relating to “property”**

2. (1) A reference in this Act—

- (a) to sentencing a defendant for an offence includes a reference to otherwise dealing with him in respect of the offence;
- (b) to an amount expressed in dollars, includes a reference to an equivalent amount in any other currency;
- (c) to an offence that has been, or will be, “taken into consideration”, means an offence that has been, or will be, taken into consideration under section 38 of the Criminal Code\*.

*(Am. in L.R. 15/12/2014)*

(2) The following provisions apply in relation to property for the purposes of this Act—

- (a) property is held by a person if he holds an interest in it;
- (b) property is obtained by a person if he obtains an interest in it;
- (c) property is transferred by one person to another if the first person transfers or grants to the other person an interest in the property;
- (d) a reference to property held by a person includes a reference to property vested in his trustee in bankruptcy or, in the case of a company, its liquidator; and
- (e) a reference to an interest held by a person beneficially in property includes a reference to an interest that would be held by that person beneficially if the property were not vested in his trustee in bankruptcy or, in the case of a company, its liquidator.

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\* This section has been corrected to reflect the renumbering of the Criminal Code, R.S.A. c. C140 (15/12/2014).

**Benefit from criminal conduct and pecuniary advantage****3.** (1) For the purposes of this Act—

- (a) a person benefits from conduct if he obtains property as a result of or in connection with the conduct;
- (b) if a person benefits from conduct, his benefit is the value of the property obtained as a result of or in connection with the conduct; and
- (c) if a person derives a pecuniary advantage as a result of or in connection with conduct, he is to be taken to obtain, as a result of or in connection with the conduct, a sum of money equal to the value of the pecuniary advantage.

(2) References to property obtained or a pecuniary advantage derived in connection with conduct include references to property obtained or a pecuniary advantage derived both in that connection and in some other connection.

**PART 2****CONFISCATION****Division 1***Interpretation***Application of sections 5 to 12****4.** Sections 5 to 12 have effect for the purposes of this Part.**Realisable property****5.** (1) Subject to subsection (2), “realisable property” means—

- (a) any property held by the defendant; and
- (b) any property held by the recipient of a tainted gift.

(2) Property is not realisable property if an order under any of the following provisions is in force in respect of that property—

- (a) section 13(5) or 29 of the Drugs (Prevention of Misuse) Act (forfeiture order);
- (b) section 74, 81, 90, 109(2) or 112 of this Act; or
- (c) Article 15 or 16 of the Anti-terrorist Financing Order.

*(Act 18/2009, s. 3)*

**Value of property**

6. (1) The value of property held by a person at any time is—
- (a) if at that time another person holds an interest in the property, the market value of the first-mentioned person's interest in the property at that time, ignoring any charging order made against the interest under—
    - (i) section 11 of the Drugs Trafficking Offences Act, R.S.A. c. D50 (*repealed*); or
    - (ii) section 18 of the Proceeds of Criminal Conduct Act, R.S.A. c. P100 (*repealed*); or
  - (b) in any other case, the market value of the property at that time.
- (2) This section has effect subject to sections 7 and 10.

**Value of property obtained from criminal conduct**

7. (1) The value of property obtained by a person as a result of or in connection with his criminal conduct at the time when the Court makes its decision (the material time) is the greater of the following—
- (a) the value of the property, at the time the person obtained it, adjusted to take account of later changes in the value of money;
  - (b) the value, at the material time, of the property specified under subsection (2).
- (2) The property specified for the purposes of subsection (1) is as follows—
- (a) if the person holds the property obtained, the property specified under this subsection is that property;
  - (b) if the person holds no part of the property obtained, the property specified under this subsection is any property which directly or indirectly represents it in his hands;
  - (c) if the person holds part of the property obtained, the property specified under this subsection is that part and any property which directly or indirectly represents the other part in his hands.

**Gifts**

8. (1) If a defendant transfers property to another person for no consideration or for a consideration the value of which is significantly less than the value of the property at the time of the transfer, he is to be treated as making a gift.
- (2) Where subsection (1) applies, the property given is to be treated as such share in the property transferred as is represented by the fraction—
- (a) the numerator of which is the difference between the 2 values specified in subsection (1); and
  - (b) the denominator of which is the value of the property at the time of the transfer.

**Tainted gifts**

9. (1) Where the Court has determined that section 14 applies to a defendant or where the Court has not yet made a determination as to whether or not that section applies to a defendant, a gift is tainted—

- (a) if it was made by the defendant at any time after the relevant date; or
- (b) if it was made by the defendant at any time on or after 16 October 2000 and was of property—
  - (i) which was obtained by the defendant as a result of or in connection with his general criminal conduct; or
  - (ii) which, in whole or part and whether directly or indirectly, represented in the defendant's hands property obtained by him as a result of or in connection with his general criminal conduct.

(2) For the purposes of subsection (1), the relevant date is the first day of the period of 6 years ending with—

- (a) the day when proceedings for the offence concerned were instituted against the defendant; or
- (b) if there are 2 or more offences and proceedings for them were instituted on different days, the earliest of those days.

(3) In the case of a defendant with respect to whom the Court has determined that section 14 does not apply, a gift is tainted if it was made by the defendant at any time after—

- (a) the date on which the offence concerned was committed; or
- (b) if his particular criminal conduct consists of 2 or more offences and they were committed on different dates, the date of the earliest offence.

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

- (a) an offence which is a continuing offence is committed on the first occasion when it is committed; and
- (b) the defendant's particular conduct includes any conduct which constitutes offences which the Court has taken into consideration in deciding his sentence for the offence or offences concerned.

(5) A gift may be a tainted gift whether it was made before or after 16 July 2009.

(6) References to the recipient of a tainted gift are to the person to whom the defendant has made the gift.

**Value of tainted gifts**

- 10.** (1) The value at any time (the material time) of a tainted gift is the greater of the following—
- (a) the value (at the time of the gift) of the property given, adjusted to take account of later changes in the value of money;
  - (b) the value (at the material time) of the property specified under subsection (2).
- (2) The property specified under this subsection is as follows—
- (a) if the recipient holds the property given, the property specified under this subsection is that property;
  - (b) if the recipient holds no part of the property given, the property specified under this subsection is any property which directly or indirectly represents it in his hands;
  - (c) if the recipient holds part of the property given, the property specified under this subsection is that part and any property which directly or indirectly represents the other part in his hands.

**General and particular criminal conduct**

- 11.** (1) General criminal conduct, with respect to a defendant, means all his criminal conduct and for the purposes of this definition, it is immaterial—
- (a) whether the conduct occurred before or after 16 July 2009; or
  - (b) whether property constituting a benefit from his conduct was obtained before or after 16 July 2009.
- (2) Particular criminal conduct, with respect to a defendant, means all his criminal conduct—
- (a) which constitutes the offence of which he was convicted;
  - (b) which constitutes any other offence or offences of which he was convicted in the same proceedings; and
  - (c) which constitutes an offence which has been or will be taken into consideration by the Court in sentencing the defendant for the offence specified in paragraph (a).

**Institution and conclusion of proceedings and other interpretative provisions**

- 12.** (1) 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.

(2) Where the application of subsection (1) would result in there being more than one time for the institution of proceedings, the proceedings shall be taken to have been instituted at the earliest of those times.

(3) 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 the defendant is convicted in the proceedings and the conviction is set aside or the defendant is pardoned before a confiscation order is made, when the conviction is set aside or the defendant is pardoned;
- (c) if a confiscation order is made against the defendant in the proceedings, when the order is satisfied or discharged or when the order is set aside and the decision to set aside the proceedings is no longer subject to appeal;
- (d) if the defendant is convicted on one or more counts or charges but the Court decides not to make a confiscation order against him, when the Court's decision is no longer subject to appeal by the prosecutor;
- (e) if the defendant is sentenced without the Court having considered whether or not to proceed under section 22 in his case, when he is sentenced.

(4) An application under section 27, 28, 29, 30, 35 or 36 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 or discharged or, when the order is set aside, the application is no longer subject to appeal; and
- (c) if the application is withdrawn, when the prosecutor notifies the withdrawal of the application to the Court.

(5) A confiscation order is satisfied when no amount is due under it.

(6) 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.



**Division 2***Confiscation order***Making of confiscation order**

**13.** (1) This section applies if—

(a) a defendant—

(i) is convicted by the Court of an offence or offences,

(ii) is committed to the Court by the Magistrate's Court under section 50 of the Magistrate's Code of Procedure Act in respect of an offence or offences, or

(iii) is committed to the Court by the Magistrate's Court in respect of an offence or offences under section 56; and

(b) either—

(i) the prosecutor asks the Court to proceed under this section, or

(ii) the Court considers that it is appropriate for it to do so.

(2) Where this section applies, the Court shall determine whether section 14 applies in the defendant's case, and—

(a) if it determines that section 14 does apply in his case, whether he has benefited from his general criminal conduct; or

(b) if it determines that section 14 does not apply in his case, whether he has benefited from his particular criminal conduct.

(3) If the Court determines in accordance with subsection (2) that the defendant has benefited from his general or particular criminal conduct, it shall—

(a) determine the amount to be recovered from him (the "recoverable amount") in accordance with section 15; and

(b) make a confiscation order requiring him to pay that amount.

(4) If the Court is satisfied that any victim of the defendant's criminal conduct has instituted, or intends to institute, civil proceedings against the defendant in respect of loss, injury or damage sustained in connection with the defendant's conduct—

(a) it shall treat the duty in subsection (3) as a power; and

(b) the recoverable amount is such amount as the Court considers just, but the recoverable amount shall not exceed the amount that it would have been if this subsection did not apply.

(5) The Court shall determine any question arising under subsection (2) or (3) on a balance of probabilities.

(6) Unless the Court postpones the proceedings for a confiscation order under section 22, it shall proceed under this section before sentencing the defendant with respect to the offence or offences referred to in subsection (1).

### **Application of this section**

**14.** (1) For the purposes of this Part, this section applies to a defendant if he is convicted of—

- (a) a drug trafficking offence or a money laundering offence; or
- (b) an offence that constitutes conduct forming part of a course of criminal activity within the meaning of subsection (2).

(2) For the purposes of paragraph (1)(b), conduct forms part of a course of criminal activity if the defendant has benefited from the conduct and—

- (a) in the proceedings in which he was convicted, he was convicted of at least one other qualifying offence; or
- (b) he has been convicted on at least one previous occasion in the period of 6 years prior to the commencement of those proceedings of at least one qualifying offence.

(3) Paragraph (1)(b) does not apply to a defendant if the value of the relevant benefit obtained is less than \$10,000.

(4) For the purposes of subsection (3), “relevant benefit” means the total benefit from—

- (a) all offences comprising the course of criminal activity; and
- (b) conduct which constitutes an offence which has been or will be taken into consideration by the Court in sentencing the defendant for an offence specified in paragraph (a).

(5) In this section, “qualifying offence” means an offence which constitutes conduct from which the defendant has benefited.

### **Recoverable amount**

**15.** (1) Subject to this section, the recoverable amount for the purposes of section 13(3)(a) is an amount equal to the defendant’s benefit from the conduct concerned.

(2) Subsection (3) applies where the defendant proves that the value of the benefit under subsection (1) is greater than the amount available to him, being the aggregate of—

- (a) the total of the values, at the time the confiscation order is made, of all the realisable property then held by the defendant less the total amount payable pursuant to obligations which then have priority; and
- (b) the total of the values, at the time the confiscation order is made, of all tainted gifts.

(3) In the circumstances referred to in subsection (2), the recoverable amount is—

- (a) the amount the defendant proves is available to him in accordance with that subsection; or
- (b) a nominal amount, if that amount is nil.

(4) For the purposes of subsection (2), an obligation has priority if it is an obligation of the defendant—

- (a) to pay an amount due in respect of a fine or other order of a court which was imposed or made on conviction of an offence and at any time before the time the confiscation order is made; or
- (b) to pay a sum which would be included among the preferential debts of the defendant if the defendant's bankruptcy or, in the case of a company, its liquidation had commenced on the date of the confiscation order.

(5) "Preferential debt" means a debt that, in the bankruptcy of an individual or the liquidation of a company, is payable in priority to the debts of other creditors.

(6) In calculating the defendant's benefit from the conduct concerned for the purposes of subsection (1), any property in respect of which a recovery order or a forfeiture order is in force shall be ignored.

### **Defendant's benefit**

**16.** (1) In determining, for the purposes of section 13, whether a defendant has benefited from conduct, and his benefit from that conduct, the Court shall—

- (a) take account of conduct occurring up to the time it makes its determination; and
- (b) take account of property obtained up to that time.

(2) Subsections (3) to (5) apply where the conduct concerned (for the purposes of section 13) is the defendant's general criminal conduct.

(3) Where a confiscation order has previously been made against the defendant under this Act or a specified Act, and his benefit for the purposes of that order was his benefit from his general criminal conduct—

- (a) his benefit determined at the time the last confiscation order was made against him shall be taken for the purposes of this section to be his benefit from his general criminal conduct at that time; and
- (b) the Court shall deduct the aggregate of the following amounts—
  - (i) the amount ordered to be paid under each confiscation order previously made against the defendant under this Act, and
  - (ii) the amount ordered to be paid under each confiscation order previously made against him under a specified Act.

(4) Paragraph (3)(b) does not apply to an amount which has been taken into account for the purposes of a deduction under that subsection on any earlier occasion.

(5) The reference to general criminal conduct in the case of a confiscation order made under a specified Act is a reference to conduct in respect of which a court is required or entitled to make one or more assumptions for the purpose of assessing a person's benefit from the conduct.

(6) In this section, "specified Act" means the Drug Trafficking Offences Act, R.S.A. c. D50 (*repealed*) or the Proceeds of Criminal Conduct Act, R.S.A. c. P100 (*repealed*).

#### **Assumptions to be made where section 14 applies**

**17.** (1) Subject to subsection (3), if the Court determines under section 13(2) that section 14 applies to the defendant, it shall make the assumptions specified in subsection (2) for the purposes of—

- (a) determining whether the defendant has benefited from his general criminal conduct; and
- (b) determining his benefit from the conduct.

(2) The assumptions referred to under subsection (1) are—

- (a) that any property transferred to the defendant at any time after the relevant date was obtained by him—
  - (i) as a result of his general criminal conduct; and
  - (ii) at the earliest time he appears to have held it;
- (b) that any property held by the defendant at any time after the date of conviction was obtained by him—
  - (i) as a result of his general criminal conduct; and
  - (ii) at the earliest time he appears to have held it;
- (c) that any expenditure incurred by the defendant at any time after the relevant date was met from property obtained by him as a result of his general criminal conduct; and
- (d) that, for the purpose of valuing any property obtained, or assumed to have been obtained, by the defendant, he obtained it free of any other interests in it.

(3) The Court shall not make an assumption under subsection (1) in relation to particular property or expenditure if—

- (a) the assumption is shown to be incorrect; or
- (b) there would be a serious risk of injustice if the assumption were made.

(4) If the Court does not make one or more of the assumptions under subsection (1), it shall state its reasons.

(5) For the purposes of this section, the relevant date is the first day of the period of 6 years ending with—

- (a) the date when proceedings for the offence concerned were instituted against the defendant; or
- (b) if there are 2 or more offences and proceedings for them were instituted on different days, the earliest of those days.

(6) If a confiscation order has been made against the defendant under this Act or a specified Act, within the meaning of section 16(6), at any time during the period referred to in subsection (5)—

- (a) the relevant date is the date when the defendant's benefit was calculated for the purposes of the last such confiscation order;
- (b) the assumption specified in paragraph (2)(b) does not apply to any property which was held by him on or before the relevant date.

### **Determination of extent of defendant's interest in property**

**18.** (1) Where the Court considers it appropriate to do so, it may determine the extent, at the time a confiscation order is made, of the defendant's interest in property held by the defendant if it appears to the Court that—

- (a) the property is likely to be realised or otherwise used to satisfy the confiscation order; and
- (b) a person other than the defendant holds, or may hold, an interest in the property.

(2) The Court shall not exercise the power conferred by subsection (1) unless it gives to anyone who the court thinks is or may be a person holding an interest in the property a reasonable opportunity to make representations to it.

(3) A determination under this section is conclusive in relation to any question as to the extent of the defendant's interest in the property that arises in connection with—

- (a) the realisation of the property, or the transfer of an interest in the property, with a view to satisfying the confiscation order; or
- (b) any action or proceedings taken for the purposes of any such realisation or transfer.

(4) Subsection (3) does not apply in relation to a question that arises in proceedings before the Court of Appeal.

(5) In this Part, the "extent" of the defendant's interest in property means the proportion that the value of the defendant's interest in it bears to the value of the property itself.

*(Act 12/2022, s. 3)*

### **Time for payment**

**19.** (1) Subject to this section, the amount ordered to be paid under a confiscation order shall be paid on the making of the order.

(2) If the defendant shows that he needs time to pay the amount ordered to be paid, the Court may make an order allowing payment to be made within a period not exceeding 6 months after the date of the confiscation order.

(3) If, on the application of the defendant, the Court is satisfied that there are exceptional circumstances, it may extend the period specified in subsection (2) so that it ends on a date no later than 12 months after the date of the confiscation order.

(4) An order under subsection (3)—

(a) may be made after the end of the period originally given for payment; but

(b) shall not be made after the end of the period of 12 months starting with the date on which the confiscation order is made.

(5) The Court shall not make an order under subsection (2) or (3) unless it gives the prosecutor an opportunity to make representations to the Court.

#### **Interest on sums unpaid under confiscation order**

**20.** (1) If the amount required to be paid by a person under a confiscation order is not paid when it is required to be paid, he shall pay interest on the amount unpaid for the period for which it remains unpaid at the rate for the time being applying to a civil judgment debt.

(2) For the purposes of subsection (1), no amount is required to be paid under a confiscation order if—

(a) an application has been made under section 19(3);

(b) the application has not been determined by the Court; and

(c) the period of 12 months starting with the day on which the confiscation order was made has not ended.

(3) The amount of interest payable under this section shall be treated as part of the amount to be paid under the confiscation order.

#### **Effect of order on Court's other powers**

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

(a) imposing a fine on him;

(b) making any order involving any payment by him, other than a Criminal Code compensation order; or

(c) making any order under article 15 or 16 of the Anti-terrorist Financing Order or section 29 of the Drugs (Prevention of Misuse) Act.

(2) Subject to subsection (1), the Court shall leave the confiscation order out of account in deciding the appropriate sentence for the defendant.

(3) The Court shall make an order under subsection (4) if it—

- (a) makes a confiscation order and a Criminal Code compensation order against the same person in the same proceedings; and
- (b) believes that the person concerned will not have sufficient means to satisfy both orders in full.

(4) Where subsection (3) applies, the Court shall order that such amount of the Criminal Code compensation order that it believes will not be recoverable because of the insufficiency of the person's means, shall be paid out of any sums recovered under the confiscation order.

### **Division 3**

#### *Procedure*

#### **Postponement**

**22.** (1) If the Court considers it appropriate to do so, it may—

- (a) postpone proceedings under section 13 for a specified period (the postponement period); and
- (b) extend the postponement period for a specified period on one or more occasions.

(2) Unless the Court is satisfied that there are exceptional circumstances, the postponement period, whether as originally ordered or as extended, shall not exceed a period of 2 years from the date of the conviction of the defendant.

(3) 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 postponement period.

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

(5) A postponement or extension under subsection (1) or (3) may be made—

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

(6) An application to extend the postponement period may be granted after the postponement period has ended, provided that the application is made before it ends.

**Effect of postponement**

**23.** (1) Subject to subsection (2), where the Court exercises its power to postpone proceedings under section 22, it may nevertheless proceed to sentence the defendant in respect of the offence or any of the offences concerned.

(2) In sentencing the defendant in respect of the offence, or any of the offences, concerned during the postponement period, the Court shall not—

- (a) impose a fine on him;
- (b) make any order involving any payment by him, other than a Criminal Code compensation order; or
- (c) make an order referred to in section 21(1)(b) or (c).

(3) Subject to subsection (4), where the Court has sentenced the defendant under subsection (1) during the postponement period, it may, after the end of that period, vary the sentence by—

- (a) imposing a fine on him;
- (b) making any order involving any payment by him, including a Criminal Code compensation order; or
- (c) making an order referred to in section 21(1)(b) or (c).

(4) The Court may proceed under subsection (3) only within the period of 28 days commencing on the last day of the postponement period.

(5) If the Court proceeds to sentence the defendant under subsection (1), section 13 has effect as if the defendant's particular criminal conduct included conduct which constitutes offences which the Court has taken into consideration in deciding his sentence for the offence or offences concerned.

**Statement of information**

**24.** (1) If the Court is proceeding under section 13, the prosecutor shall give the Court a statement of information—

- (a) in a case where section 13(1)(b)(i) applies, within the period ordered by the Court; and
- (b) in a case where section 13(1)(b)(ii) applies, if the Court orders him to give it a statement of information, within the period ordered by the Court.

(2) If the prosecutor believes that section 14 applies with respect to the defendant, the statement of information is a statement of matters the prosecutor believes are relevant in connection with deciding—

- (a) whether section 14 applies to the defendant;
- (b) whether he has benefited from his general criminal conduct; and
- (c) his benefit from the conduct.



(3) A statement under subsection (2) shall include information the prosecutor believes is relevant—

- (a) in connection with the making by the Court of an assumption under section 17; and
- (b) for the purpose of enabling the Court to determine if the circumstances are such that it shall not make such an assumption.

(4) If the prosecutor does not believe that section 14 applies to the defendant, the statement of information is a statement of matters the prosecutor believes are relevant in connection with deciding—

- (a) whether the defendant has benefited from his particular criminal conduct; and
- (b) his benefit from the conduct.

(5) If the prosecutor gives the Court a statement of information, he—

- (a) may at any time give the Court a further statement of information; and
- (b) shall give the Court a further statement of information if it orders him to do so, within the period ordered by the Court.

(6) The Court may, at any time, vary an order made under this section.

#### **Defendant's response to statement of information**

**25.** (1) If the prosecutor gives the Court a statement of information and a copy is served on the defendant, the Court may order the defendant—

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

(2) If the defendant accepts to any extent an allegation in a statement of information, the Court may treat his acceptance as conclusive of the matters to which it relates for the purpose of deciding the issues referred to in section 24(2) or (4), as the case may be.

(3) If the defendant fails in any respect to comply with an order under subsection (1), he may be treated for the purposes of subsection (2) as accepting every allegation in the statement of information apart from—

- (a) any allegation in respect of which he has complied with the requirement; and
- (b) any allegation that he has benefited from his general or particular criminal conduct.

(4) For the purposes of this section, an allegation may be accepted or particulars may be given in a manner ordered by the Court.

(5) The Court may, at any time, vary an order made under this section.

(6) No acceptance under this section that the defendant has benefited from conduct is admissible in evidence in proceedings for an offence.

#### **Provision of information by defendant**

**26.** (1) For the purpose of obtaining information to help it in carrying out its functions, the Court may at any time order the defendant to give it information specified in the order.

(2) An order under this section may require all or a specified part of the information to be given in a specified manner and before a specified date.

(3) If the defendant fails without reasonable excuse to comply with an order under this section the Court may draw such inference as it believes is appropriate.

(4) Subsection (3) does not affect any power of the Court to deal with the defendant in respect of a failure to comply with an order under this section.

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

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

(b) in any other statement given to the Court in relation to any matter relevant to determining the amount available to him for the purposes of section 15(2);

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

(6) For the purposes of this section an allegation may be accepted in a manner ordered by the Court.

(7) The Court may, at any time, vary an order made under this section.

(8) No information given under this section which amounts to an admission by the defendant that he has benefited from criminal conduct is admissible in evidence in proceedings for an offence.

### **Division 4**

#### *Reconsideration of confiscation order*

#### **Reconsideration of case where no confiscation order made**

**27.** (1) This section applies if—

(a) section 14(1)(a) applies in respect of a defendant, but the Court has not proceeded under that section;

(b) there is evidence which was not available to the prosecutor on the relevant date;

(c) before the end of the period of six years starting with the date of conviction, the prosecutor applies to the Court to consider the evidence; and

(d) after considering the evidence the Court believes it is appropriate for it to proceed under section 13.

(2) Where subsection (1) applies, the Court shall proceed under section 13 and subsections (3) to (8) apply for that purpose.

(3) If the Court has already sentenced the defendant for the offence (or any of the offences) concerned, section 13 has effect as if his particular criminal conduct included conduct which constitutes offences which the Court has taken into consideration in deciding his sentence for the offence or offences concerned.

(4) Instead of taking account of the matters specified in section 16(1)(a) and (b), the Court shall take account of—

- (a) conduct occurring before the relevant date;
- (b) property obtained before the relevant date; and
- (c) property obtained on or after the relevant date if it was obtained as a result of or in connection with conduct occurring before the relevant date.

(5) For the purposes of this section—

- (a) the assumptions specified in section 17(2)(a) and (b) do not apply with regard to property first held by the defendant on or after the relevant date;
- (b) the assumption specified in section 17(2)(c) does not apply with regard to expenditure incurred by the defendant on or after the relevant date; and
- (c) the assumption specified in section 17(2)(d) does not apply with regard to property obtained, or assumed to have been obtained, by the defendant on or after the relevant date.

(6) The recoverable amount for the purposes of section 13 is such amount, not exceeding the amount determined in accordance with section 15, as the Court considers just.

(7) In arriving at the just amount the Court shall have regard in particular to—

- (a) the recoverable amount determined in accordance with section 15;
- (b) any fine imposed on the defendant in respect of the offence or any of the offences concerned;
- (c) any order within section 21(1)(b) or (c) that has been made against the defendant in respect of the offence, or any of the offences, concerned and has not already been taken into account by the Court in determining what is the realisable property held by him for the purposes of section 15; and
- (d) any Criminal Code compensation order that has been made against the defendant in respect of the offence, or any of the offences, concerned.

(8) If a Criminal Code compensation order has been made against the defendant in respect of the offence or offences concerned subsections (5) and (6) do not apply.

- (9) For the purposes of this section, the relevant date is—
- (a) if the Court made a decision not to proceed under section 13, the date of the decision;  
or
  - (b) if the Court did not make such a decision, the date of conviction.

**Reconsideration of benefit where no confiscation order made**

**28.** (1) This section applies if—

- (a) in proceeding under section 13, the Court has determined that—
  - (i) section 14 applies to the defendant but he has not benefited from his general criminal conduct, or
  - (ii) section 14 does not apply to the defendant and he has not benefited from his particular criminal conduct;
- (b) there is evidence which was not available to the prosecutor when the Court determined that the defendant had not benefited from his general or particular criminal conduct;
- (c) before the end of the period of six years starting with the date of conviction the prosecutor applies to the Court to consider the evidence; and
- (d) after considering the evidence, the Court concludes that it would have determined that the defendant had benefited from his general or particular criminal conduct, as the case may be, if the evidence had been available to it.

(2) If this section applies, the Court—

- (a) shall make a fresh determination under section 13(2)(a) or (b) as to whether the defendant has benefited from his general or particular criminal conduct, as the case may be; and
- (b) may make a confiscation order under section 13.

(3) Subsections (4) to (8) apply if the Court proceeds under section 13 pursuant to this section.

(4) If the Court has already sentenced the defendant for the offence, or any of the offences, concerned, section 13 has effect as if the defendant's particular criminal conduct included conduct which constitutes offences which the Court has taken into consideration in deciding his sentence for the offence or offences concerned.

(5) Instead of taking account of the matters specified in section 16(1)(a) and (b), the Court shall take account of—

- (a) conduct occurring before the date of the original decision that the defendant had not benefited from his general or particular criminal conduct;
- (b) property obtained before that date; and

- (c) property obtained on or after that date if it was obtained as a result of or in connection with conduct occurring before that date.
- (6) For the purposes of this section—
  - (a) the assumptions specified in section 17(2)(a) and (b) do not apply with regard to property first held by the defendant on or after the date of the original decision that the defendant had not benefited from his general or particular criminal conduct;
  - (b) the assumption specified in section 17(2)(c) does not apply with regard to expenditure incurred by him on or after that date; and
  - (c) the assumption specified in section 17(2)(d) does not apply with regard to property obtained, or assumed to have been obtained, by him on or after that date.
- (7) The recoverable amount for the purposes of section 15 is such amount as the Court considers just, but that amount shall not exceed the amount that the recoverable amount would have been under section 15 if this subsection did not apply.
- (8) In arriving at the just amount the Court shall have regard in particular to—
  - (a) the recoverable amount determined in accordance with section 15;
  - (b) any fine imposed on the defendant in respect of the offence, or any of the offences, concerned;
  - (c) any order within section 21(1)(b) or (c) that has been made against him in respect of the offence (or any of the offences) concerned and has not already been taken into account by the Court in determining what is the realisable property held by him for the purposes of section 15; and
  - (d) any Criminal Code compensation order that has been made against him.

#### **Reconsideration of benefit where compensation order made**

**29.** (1) This section applies if—

- (a) the Court has made a confiscation order;
  - (b) there is evidence which was not available to the prosecutor at the relevant time;
  - (c) the prosecutor believes that if the Court were to determine the amount of the defendant's benefit pursuant to this section it would exceed the relevant amount;
  - (d) before the end of the period of 6 years starting with the date of conviction the prosecutor applies to the Court to consider the evidence; and
  - (e) after considering the evidence the Court believes it is appropriate for it to proceed under this section.
- (2) Where this section applies, the Court shall make a new calculation of the defendant's benefit from the conduct concerned, and subsections (3) to (11) apply for this purpose.

(3) If the Court has already sentenced the defendant for the offence, or any of the offences, concerned, section 13 has effect as if his particular criminal conduct included conduct which constitutes offences which the Court has taken into consideration in deciding his sentence for the offence or offences concerned.

(4) Instead of taking account of the matters specified in section 16(1)(a) and (b), the Court shall take account of—

- (a) conduct occurring up to the time it determined the defendant's benefit for the purposes of the confiscation order;
- (b) property obtained up to that time; and
- (c) property obtained after that time if it was obtained as a result of or in connection with conduct occurring before that time.

(5) In applying section 16(3)(b), the confiscation order shall be ignored.

(6) For the purposes of this section—

- (a) the assumptions specified in section 17(2)(a) and (b) do not apply with regard to property first held by the defendant after the time the Court determined his benefit for the purposes of the confiscation order;
- (b) the assumption specified in section 17(2)(c) does not apply with regard to expenditure incurred by him after that time; and
- (c) the assumption specified in section 17(2)(d) does not apply with regard to property obtained (or assumed to have been obtained) by him after that time.

(7) If the amount determined under the new calculation of the defendant's benefit exceeds the relevant amount, the Court—

- (a) shall make a new calculation of the recoverable amount for the purposes of section 13; and
- (b) if it exceeds the amount required to be paid under the confiscation order, may vary the order by substituting for the amount required to be paid such amount as it believes is just.

(8) In applying paragraph (7)(a) the Court shall—

- (a) take the new calculation of the defendant's benefit; and
- (b) apply section 15 as if references to the time the confiscation order is made were to the time of the new calculation of the recoverable amount and as if references to the date of the confiscation order were to the date of that new calculation.

(9) In applying paragraph (7)(b) the Court—

(a) shall have regard in particular to—

- (i) any fine imposed on the defendant for the offence (or any of the offences) concerned,
- (ii) any order within section 21(1)(b) or (c) that has been made against him in respect of the offence, or any of the offences, concerned and has not already been taken into account by the Court in determining what is the realisable property held by him for the purposes of section 15, and
- (iii) any Criminal Code compensation order that has been made against him in respect of the offence, or any of the offences, concerned, but

(b) shall not have regard to an order falling within subparagraph (a)(iii) if an order has been made under section 21(4).

(10) In determining under this section whether one amount exceeds another, the Court shall take account of any change in the value of money.

(11) For the purposes of this section—

(a) the relevant time is—

- (i) when the Court calculated the defendant's benefit for the purposes of the confiscation order, if this section has not applied previously, or
- (ii) when the Court last calculated the defendant's benefit pursuant to this section, if this section has applied previously; and

(b) the relevant amount is—

- (i) the amount determined as the defendant's benefit for the purposes of the confiscation order, if this section has not applied previously, or
- (ii) the amount last determined as the defendant's benefit pursuant to this section, if this section has applied previously.

### **Reconsideration of amount available to defendant where order made**

**30.** (1) This section applies if—

- (a) the Court has made a confiscation order;
- (b) the amount required to be paid was the amount determined in accordance with section 16(3); and
- (c) the prosecutor or an enforcement receiver applies to the Court to make a new calculation of the amount available to the defendant.

(2) In a case where this section applies the Court shall make the new calculation, and in doing so it shall apply section 15 as if references to the time the confiscation order is made were to the time of the new calculation and as if references to the date of the confiscation order were to the date of the new calculation.

(3) If the amount determined under the new calculation exceeds the relevant amount, the Court may vary the order by substituting for the amount required to be paid such amount as the Court considers just, but that amount shall not exceed the amount determined as the defendant's benefit from the conduct concerned.

(4) In deciding what is just the Court—

(a) shall have regard, in particular to—

- (i) any fine imposed on the defendant for the offence, or any of the offences, concerned,
- (ii) any order within section 21(1)(b) or (c) that has been made against him in respect of the offence, or any of the offences, concerned and has not already been taken into account by the Court in determining what is the realisable property held by him for the purposes of section 15, and
- (iii) any Criminal Code compensation order that has been made against him in respect of the offence, or any of the offences, concerned; but

(b) shall not have regard to an order falling within paragraph (a)(iii) if an order has been made under section 21(4).

(5) In determining under this section whether one amount exceeds another, the Court shall take account of any change in the value of money.

(6) The relevant amount is—

- (a) the amount determined as the amount available to the defendant for the purposes of the confiscation order, if this section has not applied previously; or
- (b) the amount last determined as the amount available to the defendant pursuant to this section, if this section has applied previously.

(7) The amount determined as the defendant's benefit from the conduct concerned is—

- (a) the amount determined when the confiscation order was made; or
- (b) if one or more new calculations of the defendant's benefit have been made under section 29 the amount determined on the occasion of the last such calculation.

### **Variation of order where amount available to defendant is inadequate**

**31.** (1) This section applies if—

- (a) the Court has made a confiscation order; and



- (b) the defendant or an enforcement receiver applies to the Court to vary the order under this section.

(2) Where this section applies, the Court shall calculate the amount available to the defendant, and in doing so it shall apply section 15 as if references to the time the confiscation order is made were to the time of the calculation and as if references to the date of the confiscation order were to the date of the calculation.

(3) If the Court determines that the amount available to the defendant calculated in accordance with subsection (2) is inadequate for the payment of any amount remaining to be paid under the confiscation order, it may vary the order by substituting for the amount required to be paid such smaller amount as the Court considers is just.

(4) If a person has been adjudged bankrupt or his estate has been sequestrated, or if an order for the liquidation of a company has been made, the Court shall take into account the extent to which realisable property held by that person or that company may be distributed among creditors.

(5) The Court may disregard any inadequacy which it believes is attributable, wholly or partly, to anything done by the defendant for the purpose of preserving property held by the recipient of a tainted gift from any risk of realisation under this Act.

(6) In subsection (4) “company” means a company which may be liquidated under the Companies Act<sup>†</sup>, including a company in respect of which notice has been given under section 106 of the International Business Companies Act<sup>‡</sup> and a foundation which may be dissolved under the Anguilla Foundation Act.

### **Discharge of order for inadequacy of amount available to defendant**

**32.** (1) This section applies if—

- (a) the Court has made a confiscation order;
- (b) the Magistrate’s Court Clerk applies to the Court for the discharge of the order; and
- (c) the amount remaining to be paid under the order is less than such sum as shall be prescribed.

(2) Where this section applies, the Court shall calculate the amount available to the defendant and, in doing so, it shall apply section 15 as if references to the time the confiscation order is made were to the time of the calculation and as if references to the date of the confiscation order were to the date of the calculation.

(3) If the Court—

- (a) determines that the amount available to the defendant calculated in accordance with subsection (2) is inadequate to meet the amount remaining to be paid; and

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<sup>†</sup> Business Companies Act, 2022 (Act 2/2022) *repealed* the Companies Act, R.S.A. c. C65.

<sup>‡</sup> Business Companies Act, 2022 (Act 2/2022) *repealed* the International Business Companies Act, R.S.A. c. I20.

- (b) is satisfied that the inadequacy is due wholly to a one or more of the reasons specified in subsection (4),

it may discharge the confiscation order.

- (4) The reasons referred to in subsection (3) are—

- (a) in a case where any of the realisable property consists of money in a currency other than dollars, that fluctuations in currency exchange rates have occurred;
- (b) such other reasons as may be prescribed.

### **Discharge of order where small amount outstanding**

- 33.** The Court may discharge a confiscation order if—

- (a) the Magistrate's Court Clerk applies to the Court for the discharge of the order; and
- (b) the amount remaining to be paid under the order is the prescribed sum or less.

### **Information**

- 34.** Where the Court proceeds under section 13 pursuant to section 27 or 28 or the prosecutor applies under section 29—

- (a) the prosecutor shall give the Court a statement of information within such period as the Court orders;
- (b) section 24 applies, with appropriate modifications where the prosecutor applies under section 29; and
- (c) section 25 and 26 apply.

## **Division 5**

### *Where defendant absconds*

### **Defendant convicted or committed**

- 35.** (1) This section applies if—

- (a) a defendant absconds after—
  - (i) he is convicted of an offence or offences in proceedings before the Court;
  - (ii) he is committed to the Court by the Magistrate's Court in respect of an offence or offences under section 50 of the Magistrate's Code of Procedure Act; or
  - (iii) he is committed to the Court in respect of an offence or offences under section 56;
- (b) the prosecutor applies to the Court to proceed under this section; and

(c) the Court believes it is appropriate for it to do so.

*(Act 18/2009, s. 4)*

(2) Where this section applies, subject to subsection (3), the Court shall proceed under section 14.

(3) Where the Court proceeds under section 13 as applied by this section, this Part has effect with the following modifications—

(a) any person the Court believes is likely to be affected by an order under section 13 is entitled to appear before the Court and make representations;

(b) the Court shall not make an order under section 13 unless the prosecutor has taken reasonable steps to contact the defendant;

(c) sections 18, 24(3), 25 and 26 shall be ignored; and

(d) sections 27, 28 and 29 shall be ignored while the defendant is still an absconder.

(4) Once the defendant ceases to be an absconder, section 27 applies as if subsection (1)(a) provided—

“(a) at a time when section 35(1)(a) applies, the Court did not proceed under section 143;”.

### **Defendant neither convicted nor acquitted**

**36.** (1) This section applies if—

(a) proceedings for an offence or offences are instituted against a defendant but are not concluded;

(b) the defendant absconds;

(c) the period of 2 years, starting with the day the Court believes the defendant absconded, has ended;

(d) the prosecutor applies to the Court to proceed under this section; and

(e) the Court believes it is appropriate for it to do so.

(2) If subsection (1) applies, subject to subsection (3), the Court shall proceed under section 13.

(3) Where the Court proceeds under section 13 as applied by this section, this Part has effect with the following modifications—

(a) any person the Court believes is likely to be affected by an order under section 13 is entitled to appear before the Court and make representations;

(b) the Court shall not make an order under section 13 unless the prosecutor has taken reasonable steps to contact the defendant;

(c) sections 17, 24(3) and sections 25 to 28 shall be ignored; and

(d) section 29 shall be ignored while the defendant is still an absconder.

(4) Once the defendant has ceased to be an absconder, section 29 has effect as if references to the date of conviction were to—

- (a) the day when proceedings for the offence concerned were instituted against the defendant; or
- (b) if there are 2 or more offences and proceedings for them were instituted on different days, the earliest of those days.

(5) If—

- (a) the Court makes an order under section 13 as applied by this section; and
- (b) the defendant is later convicted in proceedings before the Court of the offence, or any of the offences, concerned;

section 14 does not apply so far as that conviction is concerned.

### **Variation of order**

**37.** (1) This section applies if—

- (a) the Court makes a confiscation order under section 13 as applied by section 36;
- (b) the defendant ceases to be an absconder;
- (c) the defendant is convicted of an offence, or of any of the offences, mentioned in section 36(1)(a);
- (d) the defendant believes that the amount required to be paid was too large, taking into account the circumstances prevailing when the amount was determined for the purposes of the order; and
- (e) before the end of the relevant period the defendant applies to the Court to consider the evidence on which his belief is based.

(2) If, after considering the evidence, the Court concludes that the defendant's belief is well founded—

- (a) it shall determine the amount which should have been the amount required to be paid, taking into account the circumstances prevailing when the amount was determined for the purposes of the order; and
- (b) it may vary the order by substituting for the amount required to be paid such amount as it believes is just.

(3) The relevant period is the period of 28 days starting with—

- (a) the date on which the defendant was convicted of the offence mentioned in section 36(1)(a); or

- (b) if there are 2 or more offences and the convictions were on different dates, the date of the latest conviction.

(4) In a case where section 36(1)(a) applies to more than one offence, the Court shall not make an order under this section unless it is satisfied that there is no possibility of any further proceedings being taken or continued in relation to any such offence in respect of which the defendant has not been convicted.

### **Discharge of order**

**38.** (1) Where the Court makes a confiscation order under section 13 as applied by section 36, it shall discharge the order if—

- (a) the defendant is later tried for the offence or offences concerned and acquitted on all counts; and
- (b) he applies to the Court to discharge the order.

(2) Subsection (3) applies if—

- (a) the Court makes a confiscation order under section 13 as applied by section 36;
- (b) the defendant ceases to be an absconder;
- (c) paragraph (1)(a) does not apply; and
- (d) the defendant applies to the Court to discharge the order.

(3) In the circumstances specified in subsection (2), the Court may discharge the order if it determines that—

- (a) there has been undue delay in continuing the proceedings mentioned in section 36(1);  
or
- (b) the prosecutor does not intend to proceed with the prosecution.

(4) If the Court discharges a confiscation order under this section it may make such a consequential or incidental order as it considers is appropriate.

## **Division 6**

### *Appeals*

#### **Appeal to Court of Appeal**

**39.** (1) If the Court makes a confiscation order, the prosecutor or the defendant may appeal to the Court of Appeal in respect of the order.

(2) If the Court decides not to make a confiscation order, the prosecutor may appeal to the Court of Appeal against the decision.

(3) Subsections (1) and (2) do not apply to an order or decision made by virtue of section 27, 28, 35 or 36 unless the appellant is the defendant.

### **Court's powers on appeal**

**40.** (1) On an appeal under section 39(1) the Court of Appeal may confirm, set aside or vary the confiscation order.

(2) On an appeal under section 39(2), the Court of Appeal may confirm the decision, or if it believes the decision was wrong it may—

- (a) itself proceed under section 13 (ignoring subsections (1) to (3)); or
- (b) direct the Court to proceed afresh under section 13.

(3) In proceeding afresh pursuant to this section, the Court shall comply with any directions the Court of Appeal may make.

(4) If the Court of Appeal makes or varies a confiscation order under this section or the Court does so pursuant to a direction under this section it shall have regard to—

- (a) any fine imposed on the defendant in respect of the offence, or any of the offences, concerned; and
- (b) any order within section 21(1)(b) or (c) that has been made against the defendant in respect of the offence, or any of the offences, concerned, unless the order has already been taken into account by the Court in determining what is the realisable property held by the defendant for the purposes of section 15(2).

(5) If the Court of Appeal proceeds under section 13 or the Court proceeds afresh under that section pursuant to a direction under this section, subsections (6) to (11) apply, and in those subsections, “Court” means the Court of Appeal or the High Court, as the case may be.

(6) If the High Court has already sentenced the defendant for the offence, or any of the offences, concerned, section 13 has effect as if his particular criminal conduct included conduct which constitutes offences which the Court has taken into consideration in deciding his sentence for the offence or offences concerned.

(7) If a Criminal Code compensation order has been made against the defendant in respect of the offence, or any offences, concerned—

- (a) the Court shall have regard to it; and
- (b) section 21(3) and (4) do not apply.

(8) Instead of taking account of the matters specified in section 16(1)(a) and (b), the Court shall take account of—

- (a) conduct occurring before the relevant date;
- (b) property obtained before that date; and

- (c) property obtained on or after that date if it was obtained as a result of or in connection with conduct occurring before that date.
- (9) For the purposes of this section—
  - (a) the assumptions specified in section 17(2)(a) and (b) do not apply with regard to property first held by the defendant on or after the relevant date;
  - (b) the assumption specified in section 17(2)(c) does not apply with regard to expenditure incurred by him on or after that date; and
  - (c) the assumption specified in section 17(2)(d) does not apply with regard to property obtained, or assumed to have been obtained, by him on or after that date.
- (10) Section 34 applies as it applies in the circumstances specified in that section.
- (11) The relevant date is the date on which the High Court decided not to make a confiscation order.

## Division 7

### *Restraint orders*

#### Conditions for exercise of powers

- 41.** (1) The Court may exercise the powers conferred by section 42 if—
- (a) a criminal investigation has been started in Anguilla with regard to an offence and there is reasonable cause to believe that the alleged offender has benefited from his criminal conduct;
  - (b) proceedings for an offence have been instituted in Anguilla and not concluded and there is reasonable cause to believe that the defendant has benefited from his criminal conduct;
  - (c) an application by the prosecutor has been made under section 27, 28, 35 or 36 and not concluded, or the Court believes that such an application is to be made, and there is reasonable cause to believe that the defendant has benefited from his criminal conduct;
  - (d) an application by the prosecutor has been made under section 29 and not concluded, or the Court believes that such an application is to be made, and there is reasonable cause to believe that the Court will decide under that section that the amount determined under the new calculation of the defendant's benefit exceeds the relevant amount, as defined in that section; or
  - (e) an application by the prosecutor has been made under section 30 and not concluded, or the Court believes that such an application is to be made, and there is reasonable cause to believe that the Court will decide under that section that the amount determined under the new calculation of the amount available to the defendant exceeds the relevant amount (as defined in that section).

(2) Subsection (1)(b) is not satisfied if the Court believes that—

- (a) there has been undue delay in continuing the proceedings; or
- (b) the prosecutor does not intend to proceed.

(3) If an application mentioned in subsection (1)(c), (d) or (e) has been made, the condition specified in the relevant paragraph is not satisfied if the Court believes that—

- (a) there has been undue delay in continuing the application; or
- (b) the prosecutor does not intend to proceed.

(4) If subsection (1)(a) is satisfied—

- (a) references in this Part to the defendant are to the alleged offender;
- (b) references in this Part to the prosecutor are to the person the Court believes is to have conduct of any proceedings for the offence; and
- (c) section 13(2) has effect as if proceedings for the offence had been instituted against the defendant when the investigation was started.

### **Restraint orders**

**42.** (1) If any paragraph in section 41(1) is satisfied, the Court may, on the application of the prosecutor, by order, prohibit any person specified in the order from dealing with any realisable property held by him, subject to such conditions and exceptions as may be specified in the order.

(2) Without limiting subsection (1) and subject to subsections (3) and (4), a restraint order may make such provision as the Court thinks fit for—

- (a) reasonable living expenses and reasonable legal expenses; or
- (b) enabling any person to carry on any trade, business, profession or occupation.  
(Act 12/2022, s. 4)

(3) Provision shall not be made under subsection (2)(a) for any legal expenses which—

- (a) are incurred by the defendant or a recipient of a tainted gift; and
- (b) relate to an offence referred to in section 41(1)(a) or (b) and the conditions specified in section 41(1)(a) or (b) are satisfied.  
(Act 12/2022, s. 4)

(4) A restraint order may apply—

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



(5) On the application of the prosecutor, whether made as part of the application for the restraint order or subsequent thereto, the Court may make such order as it considers appropriate for ensuring the restraint order is effective.

(6) A restraint order does not affect property for the time being subject to a charging order under—

- (a) section 11 of the Drug Trafficking Offences Act, R.S.A. c. D50; or
- (b) section 18 of the Proceeds of Criminal Conduct Act, R.S.A. c. P100 (*repealed*).

(7) Where the Court has made a restraint order, a police officer may, for the purpose of preventing any property to which the order applies being removed from Anguilla, seize the property.

(8) Property seized under subsection (7) shall be dealt with in accordance with the Court's directions.

### **Application, discharge and variation**

**43.** (1) A restraint order—

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

(2) An application to discharge or vary a restraint order or an order made under section 42(5) may be made to the Court by the prosecutor or by any person affected by the order.

(3) On an application under subsection (2), the Court—

- (a) may discharge or vary the restraint order;
- (b) if the application was made on the basis that proceedings were instituted or an application was made, the Court shall discharge the restraint order on the conclusion of the proceedings or the application, as the case may be;
- (c) if the application was made on the basis that an investigation was started or an application was to be made, the Court shall discharge the restraint order if within a reasonable period proceedings for the offence are not instituted or the application is not made, as the case may be.

### **Hearsay evidence**

**44.** (1) Evidence shall not be excluded on the ground that it is hearsay, of whatever degree, in proceedings—

- (a) for a restraint order;
- (b) for an application to discharge or vary a restraint order; or
- (c) on an appeal against a restraint order or an order discharging or varying a restraint order.

(2) For the purposes of this section, “hearsay” is a statement which is made otherwise than by a person while giving oral evidence in the proceedings and which is tendered as evidence of the matters stated.

(3) This section does not affect the admissibility of evidence which is admissible apart from this section.

### **Prosecutor may apply to Registrar of Lands for restriction**

**45.** (1) Where the prosecutor has applied for a restraint order, he shall be treated as a person interested in any registered land, lease or charge to which the application relates, or to which a restraint order made on the application relates, and he may apply to the Registrar of Lands under section 138(1) of the Registered Land Act for a restriction prohibiting or restricting dealings with the registered land, lease or charge.

(2) The Registrar of Lands may, on an application made under subsection (1), order a restriction to be entered

### **Appointment of management receiver**

**46.** (1) If the Court makes a restraint order, it may, on the application of the prosecutor, whether as part of the application for the restraint order or at any time afterwards, appoint a management receiver in respect of any realisable property to which the restraint order applies.

(2) The Court may, by order, give the management receiver the following powers, or any of them in relation to any realisable property to which the restraint order applies—

- (a) power to take possession of the property;
- (b) power to manage or otherwise deal with the property;
- (c) power to start, carry on or defend any legal proceedings in respect of the property;
- (d) power to realise so much of the property as is necessary to meet his remuneration and expenses; and
- (e) power to exercise such other powers as the Court considers it appropriate to confer on him for the purpose of exercising his functions.

(3) The Court may require any person having possession of property in respect of which a management receiver is appointed to give possession of it to the management receiver.

(4) The Court—

- (a) may order a person holding an interest in any realisable property to which the restraint order applies to make to the management receiver such payment as the Court specifies in respect of a beneficial interest held by the defendant or the recipient of a tainted gift; and
- (b) may, on the payment being made, by order transfer, grant or extinguish any interest in the property.

(5) For the purposes of this section, managing or otherwise dealing with property includes—

- (a) selling the property or any part or interest in it;
- (b) carrying on or arranging for another person to carry on any trade or business the assets of which are or are part of the property; or
- (c) incurring capital expenditure in respect of the property.

(6) The Court shall not in respect of any property give the receiver the powers specified in paragraphs (2)(b) or (d) or exercise the powers conferred by subsection (3) or (4) unless a reasonable opportunity has been given for persons holding any interest in the property to make representations to the Court.

#### **Appointment of enforcement receiver**

**47.** (1) On the application of the prosecutor, the Court may appoint an enforcement receiver in respect of realisable property, except property subject to a charge specified in section 42(6), if—

- (a) a confiscation order is made;
- (b) the confiscation order is not satisfied; and
- (c) the confiscation order is not subject to appeal.

(2) Subject to such directions, exceptions and conditions as may be specified by the Court, an enforcement receiver has the following powers in relation to the realisable property—

- (a) to take possession of the property;
- (b) to manage or otherwise deal with the property;
- (c) to realise the property, in such manner as the Court may specify;
- (d) to start, carry on or defend any legal proceedings in respect of the property; and
- (e) to exercise such other powers as the Court considers it appropriate to confer on him for the purpose of exercising his functions.

(3) The Court may require any person having possession of realisable property to give possession of it to the enforcement receiver.

(4) The Court may—

- (a) order a person holding an interest in realisable property to make to the receiver such payment as the Court specifies in respect of a beneficial interest held by the defendant or the recipient of a tainted gift; and
- (b) on the payment being made, by order transfer, grant or extinguish any interest in the property.

(5) For the purposes of this section, managing or otherwise dealing with property includes—

- (a) selling the property or any part or interest in it;
- (b) carrying on or arranging for another person to carry on any trade or business the assets of which are or are part of the property;
- (c) incurring capital expenditure in respect of the property.

(6) The Court shall not in respect of any property exercise the powers conferred by subsection (3), (4) or (5) unless a reasonable opportunity has been given for persons holding any interest in the property to make representations to the Court.

### **Effect of restraint order**

**48.** (1) Where a restraint order is made, or an enforcement receiver is appointed, no distress may be levied against any realisable property to which the order applies except with the leave of the Court and subject to any terms the Court may impose.

(2) If the restraint order applies to, or the enforcement receiver is appointed in respect of, a tenancy of any premises, no landlord or other person to whom rent is payable may exercise a right of forfeiture by peaceable re-entry in relation to the premises in respect of any failure by the tenant to comply with any term or condition of the tenancy, except with the leave of the Court and subject to any terms the Court may impose.

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

(4) Before exercising any power conferred by subsection (3), the Court shall give an opportunity to be heard to—

- (a) the prosecutor; and
- (b) the enforcement receiver or, in the case of a restraint order, any receiver appointed in respect of the property under this Part.

### **Application of proceeds of realisation and other sums**

**49.** (1) Subject to subsection (2), the following sums in the hands of an enforcement receiver, that is—

- (a) the proceeds of the realisation of any property under section 47; and
- (b) any other sums in which the defendant holds an interest;

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

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

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

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

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

(4) 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.

(5) If the Court made an order under section 21(4), the Registrar shall, after making any payment required by subsection (4), next apply any balance in his hands in payment of such amount of the Criminal Code compensation order as may be outstanding.

(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 Court.

#### **Further provisions with respect to receivers**

**50.** (1) If a management or enforcement receiver—

- (a) takes action in relation to property which is not realisable property;
- (b) would be entitled to take the action if it were realisable property; and
- (c) believes on reasonable grounds that he is entitled to take the action;

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

(2) Application may be made to the Court for an order giving directions as to the exercise of the powers of a management or enforcement receiver by—

- (a) the receiver;
- (b) any person affected by action taken by the receiver; or
- (c) any person who may be affected by action the receiver proposes to take.

(3) On an application under this section, the Court may make such order as it considers appropriate.

**Discharge and variation**

**51.** (1) Application may be made to the Court to vary or discharge an order made under section 46 or 47 by—

- (a) the receiver;
- (b) the prosecutor; or
- (c) any person affected by the order.

(2) On an application under this section the Court may discharge or vary the order.

(3) In the case of an order under section 46—

- (a) if the condition in section 41 which was satisfied was that proceedings were instituted or an application was made, the Court must discharge the order on the conclusion of the proceedings or of the application, as the case may be;
- (b) if the condition which was satisfied was that an investigation was started or an application was to be made, the Court must discharge the order if within a reasonable time proceedings for the offence are not instituted or the application is not made, as the case may be.

**Discharge of management receiver**

**52.** (1) Where a management receiver is appointed in respect of realisable property and the Court appoints an enforcement receiver, the Court shall order the management receiver to transfer to the enforcement receiver all property that he holds by virtue of the exercise of his powers.

(2) Subsection (1) does not apply to property which the management receiver holds by virtue of the exercise by him of his power under section 46(2)(d).

(3) If the management receiver complies with an order under subsection (1) he is discharged—

- (a) from his appointment under section 46; and
- (b) from any obligation under this Act arising from his appointment.

(4) Where this section applies, the Court may make such a consequential or incidental order as it considers appropriate.

**Winding up of company holding realisable property**

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

- (a) property for the time being subject to a restraint order made before the relevant time; and
- (b) any proceeds of property for the time being in the hands of a receiver appointed under this Act.

(2) Where, in the case of a company, an order or resolution referred to in subsection (1) has been made or passed, the powers conferred on the Court by sections 41 to 49 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 which was subject to a restraint order at the relevant time.

(4) In this section—

“company” means any company which may be liquidated under the Companies Act<sup>§</sup>, including a company in respect of which notice has been given under section 106 of the International Business Companies Act<sup>\*\*</sup>, and a foundation which may be dissolved under the Anguilla Foundation Act, 2008; and

“the relevant time” means—

- (a) where no order for the winding up of the company has been made, the time of the passing of the resolution for voluntary winding up;
- (b) where such an order has been made and, before the presentation of the petition for the winding up of the company by the 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.

### **Exercise of powers by Court or receiver**

**54.** (1) This section applies to—

- (a) the powers conferred on the Court by sections 42 to 50; and
- (b) the powers of a receiver appointed under this Part.

(2) Subject to this section, the powers—

- (a) shall be exercised with a view to the value for the time being of realisable property being made available, by the property's realisation, for satisfying any confiscation order that has been, or may be, made against the defendant;

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<sup>§</sup> Business Companies Act, 2022 (Act 2/2022) *repealed* the Companies Act, R.S.A. c. C65.

<sup>\*\*</sup> Business Companies Act, 2022 (Act 2/2022) *repealed* the International Business Companies Act, R.S.A. c. I20.

- (b) shall be exercised, in a case where a confiscation order has not been made, with a view to securing that there is no diminution in the value of realisable property;
  - (c) shall be exercised without taking account of any obligation of the defendant or a recipient of a tainted gift if the obligation conflicts with the objective of satisfying any confiscation order that has been made, or may be made, against the defendant; and
  - (d) may be exercised in respect of a debt owed by the Crown.
- (3) Subsection (2) has effect subject to the following—
- (a) the powers must be exercised with a view to allowing a person other than the defendant or a recipient of a tainted gift to retain or recover the value of any interest held by him;
  - (b) in the case of realisable property held by a recipient of a tainted gift, the powers must be exercised with a view to realising no more than the value for the time being of the gift; and
  - (c) in a case where a confiscation order has not been made against the defendant, property must not be sold if the Court so orders under subsection (4).
- (4) If on an application by the defendant, or by the recipient of a tainted gift, the Court decides that property cannot be replaced it may order that it must not be sold.
- (5) An order under subsection (4) may be revoked or varied.

## Division 8

### *Other matters*

#### **Compensation**

**55.** (1) If proceedings are instituted against a person for an offence or offences to which this Act applies and either—

- (a) the proceedings do not result in his conviction for any such offence; or
- (b) where he is convicted of one or more such 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 Court may, subject to this section, on an application by a person who held property which was realisable property, order compensation to be paid to the applicant if, having regard to all the circumstances, it considers it appropriate to make such an order.



(2) The Court shall not order compensation to be paid in any case unless the 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 pursuant to an order under this Act.

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

(4) 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.

### **Committal by Magistrate's Court**

**56.** (1) This section applies if—

- (a) a defendant is convicted of an offence by the Magistrate's Court; and
- (b) the prosecutor asks the Magistrate's Court to commit the defendant to the Court with a view to a confiscation order being considered.

(2) In such a case the Magistrate's Court—

- (a) shall commit the defendant to the Court in respect of the offence; and
- (b) may commit him to the Court in respect of any other offence falling within subsection (3).

(3) An offence falls within this subsection if—

- (a) the defendant has been convicted of it by the Magistrate's Court; and
- (b) the Magistrate's Court has power to deal with him in respect of it.

(4) If a committal is made under this section in respect of an offence or offences—

- (a) section 14 applies accordingly; and
- (b) the committal operates as a committal of the defendant to be dealt with by the Court in accordance with section 58.

(5) A committal under this section may be in custody or on bail.

### **Confiscation orders by Magistrate's Court**

**57.** (1) Subject to subsection (2), the regulations may provide for the making of a confiscation order under section 13 by the Magistrate's Court.

(2) The regulations shall not enable the Magistrate's Court to make a confiscation order in respect of an amount exceeding \$100,000.

(3) The provisions of this Act relating to confiscation orders shall apply with respect to confiscation proceedings before, and confiscation orders made by, the Magistrate's Court, subject to such modifications as may be provided for in the regulations.

### **Sentencing by Court**

**58.** If a defendant is committed to the Court under section 56 in respect of an offence or offences, the Court—

- (a) shall inquire into the circumstances of the case; and
- (b) may deal with the defendant in any way in which the Magistrate's Court could deal with him if it had just convicted him of the offence.

### **Enforcement abroad**

**59.** (1) This section applies if—

- (a) any of the conditions in section 41(1) is satisfied;
- (b) the prosecutor believes that realisable property is situated in a country or territory outside Anguilla (the receiving country); and
- (c) the prosecutor sends a request for assistance to the Attorney General with a view to it being forwarded under this section.

(2) In a case where no confiscation order has been made, a request for assistance is a request to the government of the receiving country to secure that any person is prohibited from dealing with realisable property.

(3) In a case where a confiscation order has been made and has not been satisfied, discharged or set aside, a request for assistance is a request to the government of the receiving country to secure that—

- (a) any person is prohibited from dealing with realisable property;
- (b) realisable property is realised and the proceeds are applied in accordance with the law of the receiving country.

(4) No request for assistance may be made for the purposes of this section in a case where a confiscation order has been made and has been satisfied, discharged or set aside.

(5) If the Attorney General believes it is appropriate to do so he may forward the request for assistance to the government of the receiving country.

(6) If property is realised pursuant to a request under subsection (3) the amount ordered to be paid under the confiscation order must be taken to be reduced by an amount equal to the proceeds of realisation.

(7) A certificate issued by or on behalf of the requested government is admissible as evidence of the facts it states if it states—

- (a) that property has been realised pursuant to a request under subsection (3);

- (b) the date of realisation; and
- (c) the proceeds of realisation.

(8) If the proceeds of realisation made pursuant to a request under subsection (3) are expressed in a currency other than dollars, they must be taken to be the dollar equivalent calculated in accordance with the rate of exchange prevailing at the end of the day of realisation.

### **PART 3**

#### **CIVIL RECOVERY**

##### **Division 1**

##### *Preliminary*

##### **General**

**60.** (1) This Part has effect for the purposes of—

- (a) enabling the Civil Recovery Authority to recover in civil proceedings before the Court, property which is, or represents—
  - (i) property obtained through unlawful conduct, or
  - (ii) property that has been used in, or in connection with, or is intended to be used in, or in connection with, unlawful conduct; and
- (b) enabling cash which is, or represents, property obtained through unlawful conduct, or which is intended to be used in unlawful conduct, to be forfeited in civil proceedings before the Magistrate's Court.

(2) The powers conferred by this Part are exercisable in relation to any property, including cash, whether or not any proceedings have been brought for an offence in connection with the property.

##### **Interpretation**

**61.** (1) In this Part—

“Authority” means the Civil Recovery Authority;

“excepted joint owner” has the meaning specified in section 93(2);

“property obtained through unlawful conduct” has the meaning specified in section 63;

“respondent” means—

- (a) where proceedings are brought by the Authority under this Part, the person against whom the proceedings are brought; and

- (b) where no such proceedings have been brought but the Authority has applied for an interim receiving order, the person against whom the Authority intends to bring such proceedings;

“tainted property” means, subject to subsection (3), property that—

- (a) has been used in, or in connection with, unlawful conduct; or
- (b) is intended to be used in, or in connection with, unlawful conduct; and

“value” means market value.

(2) For the purposes of this Part, proceedings against a person for an offence are concluded when—

- (a) the person is convicted or acquitted;
- (b) the prosecution is discontinued; or
- (c) the jury is discharged without a finding.

(3) Property belonging to a person (“the owner”) is not tainted property if—

- (a) the unlawful conduct concerned is not the unlawful conduct of the owner; and
- (b) where paragraph (a) applies, the owner does not give his consent, express or implied, to the property being used in, or in connection with, the unlawful conduct concerned.

*(Act 18/2009, s. 5(a))*

(4) For the purposes of subsection (3), the “unlawful conduct concerned” is the unlawful conduct that the property has been used in, or in connection with, or that the property is intended to be used in, or in connection with.

*(Act 18/2009, s. 5(b))*

(5) Sections 62 to 72 and this section have effect for the purposes of this Part.

### Meaning of “unlawful conduct”

62. (1) “Unlawful conduct” is conduct which—

- (a) if it occurs in Anguilla, is unlawful under the criminal law of Anguilla; or
- (b) if it occurs in a country outside Anguilla—
  - (i) is unlawful under the criminal law applying in that country, and
  - (ii) if it occurred in Anguilla, would be unlawful under the criminal law of Anguilla.

(2) The Court, or in respect of proceedings for the recovery of cash, the Magistrate’s Court, shall decide on a balance of probabilities whether it is proved—

- (a) that any matters alleged to constitute unlawful conduct have occurred;

- (b) that any person intended to use any cash in unlawful conduct; or
- (c) that any person used, or intended to use, any property in, or in connection with, unlawful conduct.

**Meaning of “property obtained through unlawful conduct”**

**63.** (1) A person obtains property through unlawful conduct, whether his own conduct or another person’s conduct, if he obtains property by or in return for the conduct.

(2) In deciding whether any property was obtained through unlawful conduct—

- (a) it is immaterial whether or not any money, goods or services were provided in order to put the person in question in a position to carry out the conduct; and
- (b) it is not necessary to show that the conduct was of a particular kind if it is shown that the property was obtained through conduct of one of a number of kinds, each of which would have been unlawful conduct.

**Division 2***Recoverable property and associated property***Recoverable property**

**64.** (1) Subject to subsection (2), property obtained through unlawful conduct and tainted property is recoverable property.

(2) Property obtained through unlawful conduct that has been disposed of since it was obtained through unlawful conduct or tainted property that has been disposed of since it became tainted property, is recoverable property if it is held by a person into whose hands it may be followed.

(3) Recoverable property may be followed into the hands of a person obtaining it on a disposal by—

- (a) in the case of property obtained through unlawful conduct, the person who through the conduct obtained the property;
- (b) in the case of tainted property, any person who had possession of the property for the purposes, or with the intent, of using the property for unlawful conduct; or
- (c) a person into whose hands it may, by virtue of this subsection, be followed.

**Tracing property**

**65.** (1) Where property obtained through unlawful conduct or tainted property (“the original property”) is or has been recoverable property, property which represents the original property is also recoverable property.

(2) If a person enters into a transaction by which—

- (a) he disposes of recoverable property, whether the original property or property which, by virtue of this Part, represents the original property; and
- (b) he obtains other property in place of it;

the other property represents the original property.

(3) If a person disposes of recoverable property which represents the original property, the property may be followed into the hands of the person who obtains it, and it continues to represent the original property.

### **Mixing property**

**66.** (1) If a person's recoverable property is mixed with other property, whether the property is his property or another person's property, the portion of the mixed property which is attributable to the recoverable property represents the property obtained through unlawful conduct or the tainted property, as the case may be.

(2) Without limiting subsection (1), recoverable property is mixed with other property if it is used—

- (a) to increase funds held in a bank account;
- (b) in part payment for the acquisition of an asset;
- (c) for the restoration or improvement of land; or
- (d) by a person holding a leasehold interest in the property to acquire the freehold.

### **Recoverable property, accruing profits**

**67.** (1) This section applies where a person who has recoverable property obtains further property consisting of profits accruing in respect of the recoverable property.

(2) The further property is to be treated as representing the property obtained through unlawful conduct or the tainted property, as the case may be.

### **Recoverable property, general exceptions**

**68.** (1) If—

- (a) a person disposes of recoverable property; and
- (b) the person who obtains it on the disposal does so in good faith, for value and without notice that it was recoverable property;

the property may not be followed into that person's hands and, accordingly, it ceases to be recoverable.

(2) Recoverable property ceases to be recoverable—

- (a) if it is vested, forfeited or otherwise disposed of pursuant to powers conferred by virtue of this Part;
- (b) if—
  - (i) pursuant to a judgment in civil proceedings, whether in Anguilla or elsewhere, the defendant makes a payment to the plaintiff or the plaintiff otherwise obtains property from the defendant,
  - (ii) the plaintiff's claim is based on the defendant's unlawful conduct, and
  - (iii) apart from this paragraph, the sum received, or the property obtained, by the plaintiff would be recoverable property; or
- (c) a payment is made to a person under a Criminal Code compensation order and, apart from this paragraph, the sum received would be recoverable property.

(3) Property is not recoverable—

- (a) while a restraint order applies to it, whether made under this Act or under an equivalent provision in the Drug Trafficking Offences Act, R.S.A. c. D50 (*repealed*) or the Proceeds of Criminal Conduct Act, R.S.A. c. P100 (*repealed*); or
- (b) if it has been taken into account in determining the amount of a person's benefit from criminal conduct for the purpose of making a confiscation order—
  - (i) under this Act, or
  - (ii) under an equivalent provision in the Drug Trafficking Offences Act, R.S.A. c. D50 (*repealed*) or the Proceeds of Criminal Conduct Act, R.S.A. c. P100 (*repealed*).

(4) In relation to an order mentioned in subparagraph (3)(b)(ii), the reference to the amount of a person's benefit from criminal conduct is to be construed as a reference to the corresponding amount under the Act in question.

(5) Where—

- (a) a person enters into a transaction to which section 65(2) applies; and
- (b) the disposal is one to which subsection (1) or paragraph (2)(a) applies;

this section does not affect the recoverability, by virtue of section 65(2), of any property obtained on the transaction in place of the property disposed of.

(6) For the purposes of subsection (2), "plaintiff" includes "claimant".

**Other exemptions**

**69.** (1) The regulations may provide that property is not recoverable or, as the case may be, associated property if—

- (a) it is prescribed property; or
- (b) it is disposed of pursuant to a prescribed enactment or an enactment of a prescribed description.

(2) The regulations may provide that if property is disposed of pursuant to a prescribed enactment or an enactment of a prescribed description, it is to be treated for the purposes of section 97 as if it had been disposed of pursuant to a recovery order.

(3) Regulations made under this section may apply to property, or a disposal of property, only in prescribed circumstances and the circumstances may relate to the property or disposal itself or to a person who holds or has held the property or to any other matter.

**Granting interests**

**70.** (1) If a person grants an interest in his recoverable property, the question whether the interest is also recoverable is to be determined in the same manner as it is on any other disposal of recoverable property.

(2) Accordingly, on his granting an interest in the property (“the property in question”)—

- (a) where the property in question is property obtained through unlawful conduct or is tainted property, the interest is also to be treated as obtained through that conduct or as tainted property, as the case may be; and
- (b) where the property in question represents in his hands property obtained through unlawful conduct or tainted property, the interest is also to be treated as representing in his hands the property so obtained or the tainted property, as the case may be.

**Meaning of “associated property”**

**71.** (1) “Associated property” means property of any of the following descriptions (including property held by the respondent) which is not itself the recoverable property—

- (a) any interest in the recoverable property;
- (b) any other interest in the property in which the recoverable property subsists;
- (c) if the recoverable property is a proprietorship in common, the share of the other proprietor;
- (d) if the recoverable property is part of a larger property, but not a separate part, the remainder of that property.

(2) References to property being associated with recoverable property are to be construed accordingly.



**Obtaining and disposing of property**

**72.** (1) References to a person disposing of his property include a reference—

- (a) to his disposing of a part of it;
- (b) to his granting an interest in it; or
- (c) to both;

and references to the property disposed of are to any property obtained on the disposal.

(2) A person who makes a payment to another person is to be treated as making a disposal of his property to the other person, whatever form the payment takes.

(3) Where a person's property passes to another person under a will or intestacy or by operation of law, it is to be treated as disposed of by him to the other person.

(4) A person is only to be treated as having obtained his property for value in a case where he gave unexecuted consideration if the consideration has become executed consideration.

**Division 3***Recovery orders and property freezing orders***Application for recovery order**

**73.** (1) The Authority may apply to the Court for a recovery order against any person who the Authority believes holds recoverable property.

(2) The Authority shall serve an application under subsection (1)—

- (a) on the respondent; and
- (b) unless the Court dispenses with service, on any other person who the Authority believes holds any associated property which the Authority wishes to be subject to the recovery order.

(3) The Authority shall, in the application—

- (a) identify, by particularising or by a general description, the property in relation to which the Authority seeks a recovery order;
- (b) state, in relation to each item or description of property identified in the application—
  - (i) whether it is alleged that the property is recoverable property or associated property, and
  - (ii) either who is alleged to hold the property or where the Authority is unable to identify who holds the property, the steps that have been taken to establish their identity; and

- (c) nominate a suitably qualified person for appointment by the Court as the trustee for civil recovery.

#### **Application for property freezing order**

**74.** (1) Where the Authority may take proceedings for a recovery order in the Court, the Authority may apply to the Court for a property freezing order, whether before or after instituting the proceedings.

(2) A property freezing order is an order that, subject to any exclusions, prohibits any person whose property is specified or described in the order, from in any way dealing with the property.

(3) An application for a property freezing order may be made without notice if the circumstances are such that notice of the application would prejudice any right of the Authority to obtain a recovery order in respect of any property.

(4) The Court may make a property freezing order if it is satisfied that—

- (a) there is a good arguable case that—
  - (i) the property to which the application for the order relates is or includes recoverable property, and
  - (ii) if any of the property is not recoverable property, it is associated property; and
- (b) if the property to which the application for the order relates includes property alleged to be associated property, and the Authority has not established the identity of the person who holds it, the Authority has taken all reasonable steps to do so.

#### **Variation and setting aside of order**

**75.** (1) The Court may at any time vary or set aside a property freezing order.

(2) If the Court makes an interim receiving order, it must vary or set aside the property freezing order to exclude any property subject to the interim receiving order.

(3) If the Court decides that any property to which a property freezing order applies is neither recoverable property nor associated property, it must vary the order so as to exclude the property.

(4) Unless acting in accordance with subsection (2), the Court must give the parties to the proceedings and any person who may be affected by its decision an opportunity to be heard before varying or setting aside a property freezing order.

#### **Exclusions**

**76.** (1) The power to make or vary a property freezing order includes the power to—

- (a) exclude specified property, or property described in the order, from the order; and
- (b) otherwise make exclusions from the prohibition on dealing with the property to which the order applies.

(2) An exclusion may be made subject to such conditions as the Court considers appropriate and may, in particular, make provision for the purpose of enabling any person—

(a) to meet his reasonable living or reasonable legal expenses; or

*(Act 3/2013, s. 3)*

(b) to carry on any trade, business, profession or occupation.

(3) Where the Court exercises the power to make an exclusion for the purpose of enabling a person to meet legal expenses that he has incurred, or may incur, in respect of proceedings under this Part, it must ensure that the exclusion—

(a) is limited to reasonable legal expenses that the person has reasonably incurred or that he reasonably incurs; and

(b) specifies the total amount that may be released for legal expenses pursuant to the exclusion.

(4) Subject to subsection (2) or (3), the power to make exclusions must be exercised with a view to ensuring, so far as practicable, that the satisfaction of any right of the Authority to recover the property obtained through unlawful conduct or the tainted property is not unduly prejudiced.

### **Restriction on proceedings and remedies**

**77.** (1) While a property freezing order has effect—

(a) the Court may stay any action, execution or other legal process in respect of the property to which the order applies; and

(b) no distress may be levied against the property to which the order applies except with the leave of the Court and subject to any terms the Court may impose.

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

(3) If a property freezing order applies to a tenancy of any premises, no landlord or other person to whom rent is payable may exercise the right of forfeiture in relation to the premises in respect of any failure by the tenant to comply with any term or condition of the tenancy, except with the leave of the Court and subject to any terms the Court may impose.

(4) Before exercising any power conferred by this section, the Court must give the parties to any of the proceedings concerned and any person who may be affected by the Court's decision an opportunity to be heard.

### **Receivers in connection with property freezing orders**

**78.** (1) The Court may appoint a receiver in respect of any property to which the property freezing order applies if—

(a) the Court makes a property freezing order on an application by the Authority; and

- (b) the Authority applies to the Court for the appointment of a receiver, whether as part of the application for the property freezing order or at any time afterwards.

(2) An application for an order under this section may be made without notice if the circumstances are such that notice of the application would prejudice any right of the Authority to obtain a recovery order in respect of any property.

(3) In its application for an order under this section, the Authority must nominate a suitably qualified person for appointment as a receiver, who may be a member of staff of the Authority.

(4) The Authority may apply a sum received by it under section 99(2) in making payment of the remuneration, if any, and expenses of a receiver appointed under this section.

### **Powers of receivers**

**79.** (1) If the Court appoints a receiver under section 78 on an application by the Authority, the Court may, on the application of the Authority, by order, authorise or require the receiver —

- (a) to exercise any of the powers specified in Schedule 1 (management powers) in relation to any property in respect of which the receiver is appointed; and
- (b) to take any other steps the Court thinks appropriate in connection with the management of any such property, including securing the detention, custody or preservation of the property in order to manage it.

(2) The Court may by order require any person in respect of whose property the receiver is appointed—

- (a) to bring the property to a place specified by the receiver or to place it in the custody of the receiver; and
- (b) to do anything he is reasonably required to do by the receiver for the preservation of the property.

(3) The Court may by order require any person in respect of whose property the receiver is appointed to bring any documents relating to the property which are in his possession or control to a place specified by the receiver or to place them in the custody of the receiver.

(4) Any prohibition on dealing with property imposed by a property freezing order does not prevent a person from complying with any requirements imposed by virtue of this section.

(5) If—

- (a) the receiver deals with any property which is not property in respect of which he is appointed; and
- (b) at the time he deals with the property he believes on reasonable grounds that he is entitled to do so by virtue of his appointment, the receiver is not liable to any person in respect of any loss or damage resulting from his dealing with the property except so far as the loss or damage is caused by his negligence.

**Supervision of receiver and variations**

**80.** (1) Any of the following persons may at any time apply to the Court for directions as to the exercise of the functions of a receiver appointed under section 78—

- (a) the receiver;
- (b) any party to the proceedings for the appointment of the receiver or the property freezing order concerned;
- (c) any person affected by any action taken by the receiver; and
- (d) any person who may be affected by any action proposed to be taken by the receiver.

(2) Before giving any directions under subsection (1), the Court must give an opportunity to be heard to—

- (a) the receiver;
- (b) the parties to the proceedings for the appointment of the receiver and for the property freezing order concerned; and
- (c) any person who may be interested in the application under subsection (1).

(3) The Court may at any time vary or set aside the appointment of a receiver under section 78, any order under section 79 or any directions under this section.

(4) Before exercising any power under subsection (3), the Court must give an opportunity to be heard to—

- (a) the receiver;
- (b) the parties to the proceedings for the appointment of the receiver, for the order under section 79 or, as the case may be, for the directions under this section;
- (c) the parties to the proceedings for the property freezing order concerned; and
- (d) any person who may be affected by the Court's decision.

**Division 4***Interim receiving order***Application for, and making of, interim receiving order**

**81.** (1) Where the Authority may take proceedings for a recovery order, the Authority may apply to the Court for an interim receiving order, whether before or after instituting the proceedings.

(2) An interim receiving order is an order for—

- (a) the detention, custody or preservation of property; and

(b) the appointment of an interim receiver.

(3) An application for an interim receiving order may be made without notice if the circumstances are such that notice of the application would prejudice any right of the Authority to obtain a recovery order in respect of any property.

(4) The Court may make an interim receiving order on the application—

(a) if it is satisfied there is a good arguable case—

(i) that the property to which the application for the order relates is or includes recoverable property, and

(ii) that, if any of it is not recoverable property, it is associated property; and

(b) if—

(i) the property to which the application for the order relates includes property alleged to be associated property, and

(ii) the Authority has not established the identity of the person who holds it, the Authority has taken all reasonable steps to do so.

(5) The Authority shall, in its application for an interim receiving order, nominate a suitably qualified person for appointment as interim receiver.

### **Functions of interim receiver**

**82.** (1) An interim receiving order may authorise or require the interim receiver—

(a) to exercise any of the powers specified in Schedule 1;

(b) to take any other steps the Court thinks appropriate;

for the purpose of securing the detention, custody or preservation of the property to which the order applies or of taking any steps under subsection (2).

(2) An interim receiving order shall require the interim receiver to take any steps which the Court considers necessary to establish—

(a) whether or not the property to which the order applies is recoverable property or associated property;

(b) whether or not any other property is recoverable property, in relation to the same unlawful conduct and, if it is, who holds it; or

(c) whether or not any other property is tainted property, in relation to the same unlawful conduct and, if it is, who holds it.

(3) If—

- (a) the interim receiver deals with any property which is not property to which the order applies; and
- (b) at the time he deals with the property he believes on reasonable grounds that he is entitled to do so pursuant to the order;

the interim receiver is not liable to any person in respect of any loss or damage resulting from his dealing with the property except so far as the loss or damage is caused by his negligence.

#### **Duties of respondent**

**83.** An interim receiving order may require any person to whose property the order applies—

- (a) to bring the property to such place as may be specified by the interim receiver or to place it in the custody of the interim receiver and to do anything he is reasonably required to do by the interim receiver for the preservation of the property; and
- (b) to bring any documents relating to the property which are in his possession or control to such place as may be specified by the interim receiver or to place them in the custody of the interim receiver.

#### **Supervision of interim receiver and variation of order**

**84.** (1) The interim receiver, any party to the proceedings and any person affected by any action taken by the interim receiver, or who may be affected by any action proposed to be taken by him, may at any time apply to the Court for directions as to the exercise of the interim receiver's functions.

(2) The Court may at any time vary or set aside an interim receiving order.

(3) Before giving any directions under subsection (1) or exercising any power to vary or set aside an interim receiving order, the Court shall give the following an opportunity to be heard—

- (a) the parties to the proceedings;
- (b) the interim receiver; and
- (c) any person who may be interested in an application under subsection (1) or affected by the Court's decision under subsection (2), as the case may be.

#### **Restrictions on dealing etc. with property**

**85.** (1) Subject to subsection (2), an interim receiving order—

- (a) shall prohibit any person to whose property the order applies from dealing with the property; and
- (b) may be made subject to such conditions as the Court considers appropriate.

(2) The Court may, when the interim receiving order is made or on an application to vary the order, make such exclusions from the order as it considers just, including making provision for the purpose of enabling any person—

- (a) to meet his reasonable living expenses;
- (b) to meet his reasonable legal expenses; or
- (c) to carry on any trade, business, profession or occupation.

(3) If the excluded property is not specified in the order it shall be described in the order in general terms.

(4) The power to make exclusions shall be exercised with a view to ensuring, so far as practicable, that the satisfaction of any right of the Authority to recover the property obtained through unlawful conduct or tainted property is not unduly prejudiced.

### **Restriction on proceedings and remedies**

**86.** (1) While an interim receiving order has effect—

- (a) the Court may stay any action, execution or other legal process in respect of the property to which the order applies; and
- (b) no distress may be levied against the property to which the order applies except with the leave of the Court and subject to any terms the Court may impose.

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

(3) If the interim receiving order applies to a tenancy of any premises, no landlord or other person to whom rent is payable may exercise any right of forfeiture by peaceable re-entry in relation to the premises in respect of any failure by the tenant to comply with any term or condition of the tenancy, except with the leave of the Court and subject to any terms the Court may impose.

(4) Before exercising any power conferred by this section, the Court shall give the following the right to be heard—

- (a) the parties to any of the proceedings in question;
- (b) the interim receiver, if appointed; and
- (c) any person who may be affected by the Court's decision.

### **Exclusion of property which is not recoverable**

**87.** (1) If the Court decides that any property to which an interim receiving order applies is neither recoverable property nor associated property, it shall vary the order so as to exclude that property.



(2) The Court may vary an interim receiving order so as to exclude from the property to which the order applies any property which is alleged to be associated property if the Court thinks that the satisfaction of any right of the Authority to recover the property obtained through unlawful conduct or tainted property will not be prejudiced.

(3) The Court may exclude any property within subsection (2) on such terms or conditions, applying while the interim receiving order has effect, which the Court thinks necessary or expedient.

### **Reporting**

**88.** (1) An interim receiving order shall require the interim receiver to inform the Authority and the Court as soon as reasonably practicable if he thinks that—

- (a) any property to which the order applies by virtue of a claim that it is recoverable property is not recoverable property;
  - (b) any property to which the order applies by virtue of a claim that it is associated property is not associated property;
  - (c) any property to which the order does not apply is recoverable property (in relation to the same unlawful conduct) or associated property;
  - (d) any property to which the order applies is held by a person who is different from the person it is claimed holds it; or
  - (e) there has been any other material change of circumstances.
- (2) An interim receiving order shall require the interim receiver—
- (a) to report his findings to the Court; and
  - (b) to serve copies of his report on the Authority and on any person who holds any property to which the order applies or who may otherwise be affected by the report.

### **Authority may apply to Registrar of Lands for restriction**

**89.** (1) Where the Authority has applied for a property freezing order or an interim receiving order, he shall be treated as a person interested in any registered land, lease or charge to which the application relates, or to which a property freezing order or an interim receiving order made on the application relates, and he may apply to the Registrar of Lands under section 138(1) of the Registered Land Act for a restriction prohibiting or restricting dealings with the registered land, lease or charge.

(2) The Registrar of Lands may, on an application made under subsection (1), order a restriction to be entered.

**Division 5***Vesting and realisation of recoverable property***Recovery orders**

**90.** (1) If in proceedings under this Part the Court is satisfied that any property is recoverable property, the Court shall make a recovery order and shall appoint a suitably qualified person as the trustee for civil recovery to give effect to the recovery order.

(2) Where a recovery order is made, the recoverable property vests in the person appointed by the Court to be trustee.

(3) The Court shall not make in a recovery order any provision in respect of any recoverable property if—

(a) each of the conditions in subsection (4) is met; and

(b) it would not be just and equitable to do so.

(4) The conditions referred to in paragraph (3)(a) are that—

(a) the respondent obtained the recoverable property in good faith;

(b) the respondent took any action, or omitted to take any action, after obtaining the property which he would not have taken, or omitted to take, if he had not obtained the property or he took any action, or omitted to take any action, before obtaining the property which he would not have taken, or omitted to take, if he had not believed he was going to obtain it;

(c) when he took, or omitted to take, the action referred to in paragraph (b), he had no notice that the property was recoverable;

(d) if a recovery order were made in respect of the property, it would, by reason of his action or omission be detrimental to him.

(5) In deciding whether it would be just and equitable to make the provision in the recovery order where the conditions in subsection (4) are met, the Court shall have regard to—

(a) the degree of detriment that would be suffered by the respondent if the provision were made;

(b) the Authority's interest in receiving the realised proceeds of the recoverable property.

(6) A recovery order may sever any property.

(7) A recovery order—

(a) may impose conditions as to the manner in which the trustee may deal with any property vested by the order for the purpose of realising it; and

- (b) may provide for payment under section 99 of reasonable legal expenses that a person has reasonably incurred, or may reasonably incur, in respect of—
  - (i) the proceedings under this Part in which the order is made; or
  - (ii) any related proceedings under this Part.
- (8) This section is subject to sections 91 to 99.

### **Functions of the trustee**

- 91.** (1) The functions of the trustee are—
- (a) to secure the detention, custody or preservation of any property vested in him by the recovery order;
  - (b) in the case of property other than money, to realise the value of the property for the benefit of the Authority;
  - (c) to otherwise give effect to the recovery order; and
  - (d) to perform any other functions conferred on him under this Part.
- (2) In performing his functions, the trustee acts on behalf of the Authority and shall comply with any directions given to him by the Authority.
- (3) The trustee shall realise the value of property vested in him by the recovery order, so far as practicable, in the manner best calculated to maximise the amount payable to the Authority.
- (4) The trustee has the powers specified in Schedule 2.
- (5) References in this section to a recovery order include a consent order made under section 96 and references to property vested in the trustee by a recovery order include property vested in him pursuant to such a consent order.

### **Rights of pre-emption**

- 92.** (1) A recovery order is to have effect in relation to any property despite any provision, of whatever nature, which would otherwise prevent, penalise or restrict the vesting of the property.
- (2) A right of pre-emption, right of return or other similar right does not operate or become exercisable as a result of the vesting of any property under a recovery order.
- (3) A right of return means any right under a provision for the return or reversion of property in specified circumstances.
- (4) Where property is vested under a recovery order, any such right is to have effect as if the person in whom the property is vested were the same person in law as the person who held the property and as if no transfer of the property had taken place.
- (5) References to rights in subsections (2), (3) and (4) do not include any rights in respect of which the recovery order was made.

(6) This section applies in relation to the creation of interests, or the doing of anything else, by a recovery order as it applies in relation to the vesting of property.

### **Associated and joint property**

**93.** (1) Sections 94 and 95 apply if the Court makes a recovery order in respect of any recoverable property, and—

(a) if—

- (i) the property to which the proceedings relate includes property which is associated with the recoverable property and is specified or described in the application, and
- (ii) if the associated property is not the respondent's property, the claim form or application has been served on the person whose property it is or the Court has dispensed with service; or

(b) if—

- (i) the recoverable property belongs to joint proprietors, and
- (ii) one of the proprietors is an excepted joint owner.

(2) An excepted joint owner is a person who obtained the property in circumstances in which it would not be recoverable as against him and references to the excepted joint owner's share of the recoverable property are to so much of the recoverable property as would have been his if the joint proprietorship had been severed.

### **Agreements about associated and joint property**

**94.** (1) Where—

- (a) this section applies; and
- (b) the Authority (on the one hand) and the person who holds the associated property or who is the excepted joint owner (on the other) agree;

the recovery order may, instead of vesting the recoverable property in the trustee, require the person who holds the associated property or who is the excepted joint owner to make a payment to the trustee.

(2) A recovery order which makes any requirement under subsection (1) may, so far as required for giving effect to the agreement, include provision for vesting, creating or extinguishing any interest in property.

(3) The amount of the payment shall be the amount which the Authority and that person agree represents—

- (a) in the circumstances specified in section 93(1)(a), the value of the recoverable property; or
- (b) in a case within section 93(1)(b), the value of the recoverable property less the value of the excepted joint owner's share.

(4) If—

- (a) a property freezing order or an interim receiving order applied at any time to the associated property or joint proprietorship; and
- (b) the Authority agrees that the person has suffered loss as a result of the property freezing order or interim receiving order;

the amount of the payment may be reduced by any amount the Authority and that person agree is reasonable, having regard to that loss and to any other relevant circumstances.

(5) If there is more than one such item of associated property or excepted joint owner, the total amount to be paid to the trustee, and the part of that amount which is to be provided by each person who holds any such associated property or who is an excepted joint owner, is to be agreed between both, or all, of them and the Authority.

(6) A recovery order which makes any requirement under subsection (1) shall make provision for any recoverable property to cease to be recoverable.

#### **Associated and joint property: default of agreement**

**95.** (1) Where this section applies, the Court may make the following provision if—

- (a) there is no agreement under section 94; and
- (b) the Court thinks it just and equitable to do so.

(2) The recovery order may provide—

- (a) for the associated property to vest in the trustee or, as the case may be, for the excepted joint owner's interest to be extinguished; or
- (b) in the case of an excepted joint owner, for the severance of his interest.

(3) A recovery order making any provision by virtue of subsection (2)(a) may provide for either or both of the following:

- (a) for the trustee to pay an amount to the person who holds the associated property or who is an excepted joint owner;
- (b) for the creation of interests in favour of that person, or the imposition of liabilities or conditions, in relation to the property vested in the trustee.

(4) In making any provision in a recovery order by virtue of subsection (2) or (3), the Court shall have regard to—

- (a) the rights of any person who holds the associated property or who is an excepted joint owner and the value to him of that property or, as the case may be, of his share, including any value which cannot be assessed in terms of money; and
- (b) the Authority's interest in receiving the realised proceeds of the recoverable property.

(5) If—

- (a) a property freezing order or an interim receiving order applied at any time to the associated property or joint proprietorship; and
- (b) the Court is satisfied that the person who holds the associated property or who is an excepted joint owner has suffered loss as a result of the property freezing order or interim receiving order;

a recovery order making any provision by virtue of subsection (2) or (3) may require the Authority to pay compensation to that person.

(6) The amount of compensation to be paid under subsection (5) is the amount the Court thinks reasonable, having regard to the person's loss and to any other relevant circumstances.

### **Consent orders**

**96.** (1) The Court may make an order staying any proceedings for a recovery order on terms agreed by the parties for the disposal of the proceedings if each person to whose property the proceedings, or the agreement, relates is a party both to the proceedings and the agreement.

(2) An order under subsection (1) may, as well as staying the proceedings—

- (a) make provision for any property which may be recoverable property to cease to be recoverable; and
- (b) make any further provision which the Court thinks appropriate.

(3) Section 99 applies to property vested in the trustee, or money paid to him, pursuant to the agreement as it applies to property vested in him by a recovery order or money paid under section 94.

### **Limit on recovery**

**97.** (1) This section applies if the Authority seeks a recovery order—

- (a) in respect of property which is or represents property obtained through unlawful conduct, or tainted property, and related property; or
- (b) in respect of property which is or represents property obtained through unlawful conduct, or tainted property, where such an order, or an order under section 96, has previously been made in respect of related property.

(2) For the purposes of this section—

- (a) the original property means the property obtained through unlawful conduct or the tainted property, as the case may be; and
- (b) the original property, and any items of property which represent the original property, are to be treated as related to each other.

(3) The Court is not to make a recovery order if it thinks that the Authority's right to recover the original property has been satisfied by a previous recovery order or an order under section 96.

(4) Subject to subsection (3), the Court may act under subsection (5) if it thinks that—

- (a) a recovery order may be made in respect of 2 or more related items of recoverable property; but
- (b) the making of a recovery order in respect of the related items is not required in order to satisfy the Authority's right to recover the original property.

(5) The Court may, in order to satisfy that right to the extent required, make a recovery order in respect of either or both of the following—

- (a) only some of the related items of property; or
- (b) only a part of any of the related items of property.

(6) Where the Court may make a recovery order in respect of any property, this section does not prevent the recovery of any profits which have accrued in respect of the property.

(7) If—

- (a) an order is made under section 112 for the forfeiture of recoverable property; and
- (b) the Authority subsequently seeks a recovery order in respect of related property;

the order under section 112 is to be treated for the purposes of this section as if it were a recovery order obtained by the Authority in respect of the forfeited property.

(8) If—

- (a) pursuant to a judgment in civil proceedings, whether in Anguilla or elsewhere, the plaintiff has obtained property from the defendant ("the judgment property");
- (b) the claim was based on the defendant's having obtained the judgment property or related property through unlawful conduct; and
- (c) the Authority subsequently seeks a recovery order in respect of property which is related to the judgment property;

the judgment is to be treated for the purposes of this section as if it were a recovery order obtained by the Authority in respect of the judgment property.

(9) For the purposes of subsection (8), "plaintiff" includes "claimant".

(10) If—

- (a) property has been taken into account in determining the amount of a person's benefit from criminal conduct for the purpose of making a confiscation order; and
- (b) the Authority subsequently seeks a recovery order in respect of related property;

the confiscation order is to be treated for the purposes of this section as if it were a recovery order obtained by the Authority in respect of the property referred to in paragraph (a).

(11) In subsection (10), a confiscation order means—

- (a) an order under section 13; or
- (b) an order under a corresponding provision of the Drug Trafficking Offences Act, R.S.A. c. D50 (*repealed*) or the Proceeds of Criminal Conduct Act, R.S.A. c. P100, (*repealed*);

and, in relation to an order mentioned in paragraph (b), the reference to the amount of a person's benefit from criminal conduct is to be read as a reference to the corresponding amount under the Act in question.

### **Limits on recovery, supplementary**

**98.** (1) Subsections (2) and (3) give examples of the satisfaction of the Authority's right to recover the original property.

(2) If—

- (a) there is a disposal, other than a part disposal, of the original property; and
- (b) other property ("the representative property") is obtained in its place;

the Authority's right to recover the original property is satisfied by the making of a recovery order in respect of either the original property or the representative property.

(3) If—

- (a) there is a part disposal of the original property; and
- (b) other property ("the representative property") is obtained in place of the property disposed of;

the Authority's right to recover the original property is satisfied by the making of a recovery order in respect of the remainder of the original property together with either the representative property or the property disposed of.

(4) In this section—

- (a) a part disposal means a disposal to which section 72(1) applies; and
- (b) the original property has the same meaning as in section 97.

### **Applying realised proceeds**

**99.** (1) This section applies to—

- (a) sums which represent the realised proceeds of property which was vested in the trustee by a recovery order or which he obtained pursuant to a recovery order; and
- (b) sums vested in the trustee by a recovery order or obtained by him pursuant to a recovery order.



(2) The trustee is to make out of the sums—

- (a) first, any payment required to be made by him by virtue of section 95;
- (b) next, any payment of legal expenses which are payable under this subsection in pursuance of provision under section 90(7)(b) contained in the recovery order;
- (c) any fees payable to a liquidator of a company appointed by or supervised by the Court; and
- (d) any sum which remains is to be paid to the Authority.

(3) The Authority may apply a sum received by it under subsection (2) in making payment of the remuneration and expenses of—

- (a) the trustee; or
- (b) any interim receiver appointed in, or in anticipation of, the proceedings for the recovery order.

(4) In this section, “company” means any company which may be liquidated under the Companies Act<sup>††</sup>, including a company in respect of which notice has been given under section 106 of the International Business Companies Act<sup>‡‡</sup>, and a foundation which may be dissolved under the Anguilla Foundation Act.

## Division 6

### *Exemptions etc.*

#### **Victims of theft, etc.**

**100.** (1) In proceedings for a recovery order, a person who claims that any property alleged to be recoverable property, or any part of the property, belongs to him may apply for a declaration to that effect under this section.

(2) The Court may make a declaration under subsection (1) if it appears to the Court that—

- (a) the applicant was deprived of the property he claims, or of property which it represents, by unlawful conduct;
- (b) the property the applicant was deprived of was not recoverable property immediately before he was deprived of it; and
- (c) the property he claims belongs to him.

(3) Property to which a declaration under this section applies is not recoverable property.

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<sup>††</sup> Business Companies Act, 2022 (Act 2/2022) *repealed* the Companies Act, R.S.A. c. C65.

<sup>‡‡</sup> Business Companies Act, 2022 (Act 2/2022) *repealed* the International Business Companies Act, R.S.A. c. I20.

**Other exemptions**

**101.** (1) The regulations may provide that proceedings for a recovery order may not be taken—

- (a) against any person in circumstances of a prescribed description and the circumstances may relate to the person himself, to the property or to any other matter;
- (b) in respect of cash found at any place in Anguilla unless the proceedings are also taken in respect of property other than cash which is property of the same person;
- (c) against the Commission in respect of any recoverable property held by the Commission;  
or
- (d) against any person in respect of any recoverable property which he holds by reason of his acting, or having acted, as trustee in bankruptcy appointed under the Bankruptcy Act, or as liquidator of a company appointed by, or supervised by, the Court.

(2) In this section, “company” means any company which may be liquidated under the Companies Act<sup>§§</sup>, including a company in respect of which notice has been given under section 106 of the International Business Companies Act<sup>\*\*\*</sup>, and a foundation which may be dissolved under the Anguilla Foundation Act.

**Division 7***Miscellaneous***Compensation**

**102.** (1) If, in the case of any property to which a property freezing order or an interim receiving order has at any time applied, the Court does not in the course of the proceedings decide that the property is recoverable property or associated property, the person whose property it is may make an application to the Court for compensation.

(2) Subsection (1) does not apply if the Court—

- (a) has made a declaration in respect of the property by virtue of section 100; or
- (b) makes a consent order under section 96.

(3) If the Court has made a decision by reason of which no recovery order could be made in respect of the property, the application for compensation shall be made within the period of 3 months beginning with the date of the decision or, if any application is made for leave to appeal, with the date on which the application is withdrawn or refused or, if the application is granted, on which any proceedings on appeal are finally concluded.

(4) If the proceedings in respect of the property have been discontinued, the application for compensation shall be made within the period of 3 months beginning with the discontinuance.

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<sup>§§</sup> Business Companies Act, 2022 (Act 2/2022) *repealed* the Companies Act, R.S.A. c. C65.

<sup>\*\*\*</sup> Business Companies Act, 2022 (Act 2/2022) *repealed* the International Business Companies Act, R.S.A. c. I20.

(5) If the Court is satisfied that the applicant has suffered loss as a result of the property freezing order or the interim receiving order, it may require the Authority to pay compensation to him.

(6) If, but for section 92(2), any right mentioned there would have operated in favour of, or become exercisable by, any person, he may make an application to the Court for compensation.

(7) The application for compensation under subsection (6) shall be made within the period of 3 months beginning with the vesting referred to in section 92(2).

(8) If the Court is satisfied that, in consequence of the operation of section 92, the right in question cannot subsequently operate in favour of the applicant or, as the case may be, become exercisable by him, it may require the Authority to pay compensation to him.

(9) The amount of compensation to be paid under this section is the amount the Court thinks reasonable, having regard to the loss suffered and any other relevant circumstances.

### **Financial threshold**

**103.** (1) If the regulations prescribe a minimum threshold for the purposes of this section, the Authority may not start proceedings for a recovery order unless the Authority reasonably believes that the aggregate value of the recoverable property which the Authority wishes to be subject to a recovery order is equal to or greater than the prescribed threshold.

(2) If the Authority applies for a property freezing order or an interim receiving order before starting the proceedings, subsection (1) applies to the application for the property freezing order or interim receiving order instead of to the start of the proceedings.

(3) This section does not affect the continuation of proceedings for a recovery order which have been properly started or the making or continuing effect of a property freezing order or an interim receiving order which has been properly applied for.

### **Limitation**

**104.** (1) Proceedings shall not be brought for a recovery order in respect of any recoverable property after the expiration of 6 years from—

- (a) in the case of proceedings for a recovery order in respect of property obtained through unlawful conduct, when the property was so obtained;
- (b) in the case of proceedings for a recovery order in respect of tainted property, when the property became tainted property; or
- (c) in the case of proceedings for a recovery order in respect of any other recoverable property, when the property obtained through unlawful conduct which it represents is so obtained.

(2) For the purposes of subsection (1), proceedings for a recovery order are brought when—

- (a) an application is filed with the Court under section 73; or
- (b) an application is made for an interim receiving order or a property freezing order.

*(Act 3/2013, s. 4)*

**Property acquired before commencement date**

**105.** For the purposes of determining whether property was recoverable at any time, including times before 16 July 2009, this Part is deemed to have been in force at that time and at any other relevant time.

**Division 8***Recovery of cash in summary proceedings***Interpretation**

**106.** (1) For the purposes of sections 107 to 116—

“minimum amount” means such amount as is prescribed as the minimum amount; and

“recoverable cash” means cash—

(a) which is recoverable property or is intended by any person for use in unlawful conduct; and

(b) the amount of the cash is not less than the minimum amount.

(2) The amount of cash held in a currency other than Eastern Caribbean dollars shall be its equivalent in Eastern Caribbean dollars at the prevailing rate of exchange.

(3) Sections 107 to 116 apply only to cash found anywhere in Anguilla.

**Searches**

**107.** (1) A police officer who is lawfully on any premises and who has reasonable grounds for suspecting that there is recoverable cash on the premises, may search for the cash there.

(2) If a police officer has reasonable grounds for suspecting that a person (the suspect) is carrying recoverable cash, he may—

(a) so far as he thinks it necessary or expedient, require the suspect—

(i) to permit a search of any article he has with him, and

(ii) to permit a search of his person; and

(b) for the purposes of exercising his power under subparagraph (a)(ii), detain the suspect for so long as is necessary for the exercise of that power.

(3) The powers conferred by this section are exercisable only so far as reasonably required for the purpose of finding cash and this section does not require a person to submit to an intimate search.

(4) The powers conferred under this section may be exercised only with the prior approval of a senior police officer unless, in the circumstances, it is not practicable to obtain the authority before exercising the power.

(5) Where the powers conferred under this section are exercised without prior approval as required by subsection (4), the police officer exercising the power shall make a written report to a senior officer as soon as is reasonably practicable.

(6) The written report made under subsection (5) shall include particulars of the circumstances that led the police officer to believe—

- (a) where no cash is seized or any cash seized is not detained for more than 48 hours, that the powers were exercisable; and
- (b) that it was not practicable to obtain the prior approval of a senior police officer.

### **Seizure of cash**

**108.** (1) A police officer may seize cash if he has reasonable grounds for suspecting that—

- (a) it is recoverable cash; or
- (b) part of the cash is recoverable cash and it is not reasonably practicable to seize only that part.

*(Act 12/2022, s. 5(a))*

(2) After a seizure is made by a police officer under subsection (1), the police officer shall promptly and, in any event within 24 hours of the seizure, report the seizure to the Unit.

*(Act 12/2022, s. 5(b))*

### **Detention of seized cash**

**109.** (1) While a police officer who has seized cash under section 108 continues to have reasonable grounds for his suspicion, the cash seized under that section may be detained initially for a period of 72 hours, excluding public holidays and weekends.

*(Act 12/2022, s. 6)*

(2) The period for which the cash or any part of it may be detained may be extended by an order made by the Magistrate's Court, but the order may not authorise the detention of any of the cash—

- (a) beyond the end of the period of 3 months beginning with the date of the order; or
- (b) in the case of any further order under this section, beyond the end of the period of 2 years beginning with the date of the first order.

(3) An application for an order under subsection (2) may be made by a senior police officer, and the Magistrate's Court may make the order if satisfied, in relation to any cash to be further detained, that—

- (a) there are reasonable grounds for suspecting that the cash is recoverable cash and that either—
  - (i) its continued detention is justified while its derivation is further investigated or consideration is given to bringing proceedings, whether in or outside Anguilla, against any person for an offence with which the cash is connected; or

- (ii) proceedings against any person for an offence with which the cash is connected have been started and have not been concluded; or
- (b) there are reasonable grounds for suspecting that the cash is intended to be used in unlawful conduct and that either—
  - (i) its continued detention is justified while its intended use is further investigated or consideration is given to bringing proceedings, whether in or outside Anguilla, against any person for an offence with which the cash is connected; or
  - (ii) proceedings against any person for an offence with which the cash is connected have been started and have not been concluded.

(4) An application for an order under subsection (2) may also be made in respect of any cash seized under section 108(b), and the Court may make the order if satisfied that—

- (a) either paragraph (3)(a) or (b) applies in respect of part of the cash; and
- (b) it is not reasonably practicable to detain only that part.

(5) An order under subsection (2) shall provide for notice to be given to any persons affected by it.

### Interest

**110.** (1) If cash is detained under section 109 for more than 48 hours, it shall, at the first opportunity, be paid into an interest-bearing account and held there, and the interest accruing on it is to be added to it on its forfeiture or release.

(2) In the case of cash detained under section 109 which was seized under section 108(b), the police officer, shall as soon as reasonably practicable after paying the cash seized into an interest bearing account, release the part of the cash to which the suspicion does not relate.

*(Act 3/2013, s. 5)*

(3) Subsection (1) does not apply if the cash or, as the case may be, the part to which the suspicion relates, is required as evidence of an offence or evidence in proceedings relating to the seized cash under this Part.

### Release of detained cash

**111.** (1) While any cash is detained under section 109, the Magistrate's Court may direct the release of the whole or any part of the cash if the Magistrate's Court is satisfied, on an application by the person from whom the cash was seized, that the grounds for the detention of the cash specified in section 109(3) or 109(4) are no longer met in relation to the cash to be released.

(2) A police officer may, after notifying the Magistrate's Court under whose order cash is being detained, release the whole or any part of it if satisfied that the detention of the cash to be released is no longer justified.

### Forfeiture

**112.** (1) While cash is detained under section 109, an application for the forfeiture of the whole or any part of it may be made to the Magistrate's Court by a police officer.

(2) The Magistrate's Court may order the forfeiture of the cash, or any part of it, if satisfied that the cash or part—

- (a) is recoverable cash; or
- (b) is intended by any person for use in unlawful conduct.

(3) In the case of recoverable cash which belongs to joint proprietors, one of whom is an excepted joint owner, the order may not apply to so much of it as the Magistrate's Court thinks is attributable to the excepted joint owner's share.

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

### **Appeal against forfeiture**

**113.** (1) Any party to proceedings in which a forfeiture order is made who is aggrieved by the order may appeal to the Court.

(2) An appeal under subsection (1) shall be made within the period of 30 days commencing on the date on which the order is made.

(3) An appeal under subsection (1) is to be by way of a rehearing by the Court which may make any order that it considers appropriate.

(4) If the Court upholds the appeal, it may order the release of the cash.

### **Application of forfeited cash**

**114.** After the period within which an appeal under section 113 may be made or, if a person appeals under that section, after the appeal has been determined or disposed of, cash forfeited under section 112, and any accrued interest on it, shall be paid into the Fund.

### **Victims and other owners**

**115.** (1) A person who claims that any cash, or any part of it, that is detained under this Part belongs to him, may apply to the Magistrate's Court for the cash or part to be released to him.

(2) An application under subsection (1) may be made in the course of detention or forfeiture proceedings or at any other time.

(3) If, on an application under subsection (1), it appears to the Magistrate's Court that—

- (a) the applicant was deprived of the cash to which the application relates, or of property which it represents, by unlawful conduct;
- (b) the property he was deprived of was not, immediately before he was deprived of it, recoverable property; and
- (c) that cash belongs to him;

the Court may order the cash to which the application relates to be released to the applicant.

(4) The Magistrate's Court may order the cash to which the application relates to be released to the applicant or to the person from whom it was seized if—

- (a) an applicant under subsection (1) is not the person from whom the cash to which the application relates was seized;
- (b) it appears to the Magistrate's Court that that cash belongs to the applicant;
- (c) the Magistrate's Court is satisfied that the grounds specified in section 109(3) or (4) for the detention of the cash are no longer met or, if an application has been made under section 112, the Court decides not to make an order under that section in relation to that cash; and
- (d) no objection to the making of an order under this subsection has been made by the person from whom that cash was seized.

### Compensation

**116.** (1) If no forfeiture order is made in respect of any cash detained under this Part, the person to whom the cash belongs or from whom it was seized may make an application to the Magistrate's Court for compensation.

(2) If, for any period beginning with the first opportunity to place the cash in an interest-bearing account after the initial detention of the cash for 48 hours, the cash was not held in an interest-bearing account while detained, the Magistrate's Court may order an amount of compensation to be paid to the applicant.

(3) The amount of compensation to be paid under subsection (2) is the amount the Magistrate's Court thinks would have been earned in interest in the period in question if the cash had been held in an interest-bearing account.

(4) If the Magistrate's Court is satisfied that, taking account of any interest to be paid under section 108 or any amount to be paid under subsection (2), the applicant has suffered loss as a result of the detention of the cash and that the circumstances are exceptional, the Magistrate's Court may order compensation (or additional compensation) to be paid to him.

(5) The amount of compensation to be paid under subsection (4) is the amount the Magistrate's Court thinks reasonable, having regard to the loss suffered and any other relevant circumstances.

(6) Compensation is to be paid from the Fund.

(7) If a forfeiture order is made in respect only of a part of any cash detained under this Act, this section has effect in relation to the other part.



**PART 4****MONEY LAUNDERING****Division 1***Money Laundering Offences***Meaning of “criminal property” and “pecuniary advantage”**

**117.** (1) Property is criminal property if—

- (a) it constitutes a person’s benefit from criminal conduct or it represents such a benefit, in whole or part and whether directly or indirectly; and
- (b) the alleged offender knows or suspects that it constitutes or represents such a benefit.  
(Act 12/2022, s. 7)

(2) For the purposes of subsection (1), it is immaterial—

- (a) who carried out the conduct;
- (b) who benefited from it; or
- (c) whether the conduct occurred before or after 16 July 2009.

(3) References to property obtained or a pecuniary advantage derived in connection with conduct include references to property obtained or a pecuniary advantage derived in both that connection and some other connection.

(4) If a person benefits from conduct his benefit is the property obtained as a result of or in connection with the conduct.

**General provisions**

**118.** (1) This section has effect for the purposes of sections 119 to 128.  
(Act 3/2013, s. 9(a))

(2) In the sections specified in subsection (1)—

- (a) “prohibited act” means an act specified in section 119(1), 120(1) or 121(1);
- (b) a reference to the making by a person of a disclosure to “the relevant Money Laundering Reporting Officer”, means the Money Laundering Reporting Officer appointed by that person’s employer;
- (c) “protected disclosure” has the meaning specified in section 128(1); and  
(Act 3/2013, s. 9(a))
- (d) “authorised disclosure” has the meaning specified in subsection (3).  
(Act 3/2013, s. 9(a))

- (e) for the purposes of a disclosure to a relevant Money Laundering Reporting Officer—
  - (i) references to a person's employer include any body, association or organisation (including a voluntary organisation) in connection with whose activities the person exercises a function (whether or not for gain or reward), and
  - (ii) references to employment shall be construed accordingly.  
*(Act 12/2022, s. 8(a))*
- (3) A disclosure by a person is an authorised disclosure if—
  - (a) it is a disclosure that property is criminal property that is made to—
    - (i) the Unit, or
    - (ii) the relevant Money Laundering Reporting Officer, in accordance with the procedures established by the person's employer for the purpose; and-  
*(Act 12/2022, s. 8(b))*
  - (b) one of the conditions specified in paragraph (4)(a), (b) or (c) is satisfied.  
*(Act 3/2013, s. 9(b))*
- (4) The conditions referred to in subsection (3) are that—
  - (a) the person makes the disclosure before he does the prohibited act;
  - (b) the person makes the disclosure while he is doing the prohibited act, he began to do the act at a time when, because he did not know or suspect that the property constituted or represented a person's benefit from criminal conduct the act was not a prohibited act, and the disclosure is made on his own initiative and as soon as is practicable after he first knows or suspects that the property constitutes or represents a person's benefit from criminal conduct;
  - (c) the person makes the disclosure after he does the prohibited act, there is good reason for his failure to make the disclosure before he did the prohibited act and the disclosure is made on his own initiative and as soon as it is practicable for him to make it.
- (5) The appropriate consent is—
  - (a) where a person makes a disclosure to the relevant Money Laundering Reporting Officer, the consent of the relevant Money Laundering Reporting Officer to do the prohibited act; or
  - (b) where a person makes a disclosure to the Unit, the consent of the Unit to do the prohibited act.
- (6) A person is deemed to have the appropriate consent if—
  - (a) he makes an authorised disclosure to the Unit;

- (b) either—
  - (i) the Unit does not, on or before the last day of the notice period, notify the person that consent to doing the prohibited act is refused, or
  - (ii) on or before the last day end of the notice period he receives notice from the Unit that consent to the doing of the prohibited act is refused and the moratorium period has expired.
- (7) For the purposes of subsection (5)—
  - (a) the notice period is the period of 7 working days commencing with the first working day after the person makes the disclosure; and
  - (b) the moratorium period is the period of 30 days commencing with the day on which the person receives notice that consent to the doing of the prohibited act is refused.
- (8) A Money Laundering Reporting Officer shall not consent to the doing of a prohibited act unless—
  - (a) he has made a disclosure that property is criminal property to the Unit; and
  - (b) the Unit gives consent to the doing of the prohibited act.
- (9) A person who is a Money Laundering Reporting Officer is guilty of an offence if—
  - (a) he gives consent to the doing of a prohibited act where the Unit has not consented to the doing of the act; and
  - (b) he knows or suspects that the act is a prohibited act.
- (10) A Money Laundering Reporting Officer guilty of an offence under this section is liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding \$50,000 or to both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine not exceeding \$100,000 or to both.

*(Act 38/2020, s. 33)*

### **Concealing, disguising, converting, transferring and removing criminal property**

**119.** (1) Subject to subsection (2), a person is guilty of an offence if he—

- (a) conceals criminal property;
- (b) disguises criminal property;
- (c) converts criminal property;
- (d) transfers criminal property; or

(e) removes criminal property from Anguilla.

(2) A person is not guilty of an offence under subsection (1) if—

- (a) he makes an authorised disclosure and, if the disclosure is made before he does the act specified in subsection (1), he has the appropriate consent;
- (b) he intended to make such a disclosure but had a reasonable excuse for not doing so; or
- (c) the act he does is done in carrying out a function he has relating to the enforcement of any provision of this Act or of any other law relating to criminal conduct or benefit from criminal conduct.

*(Act 3/2013, s. 10)*

(3) Concealing or disguising criminal property includes 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 not exceeding 5 years or to a fine not exceeding \$200,000 or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 14 years or to a fine without limit or to both.

## Arrangements

**120.** (1) Subject to subsection (2), a person is guilty of an offence if he enters into or becomes concerned in an arrangement which he knows or suspects facilitates, by whatever means, the acquisition, retention, use or control of criminal property by or on behalf of another person.

(2) A person is not guilty of an offence under subsection (1) if—

- (a) he makes an authorised disclosure and, if the disclosure is made before he does the act specified in subsection (1), he has the appropriate consent;
- (b) he intended to make such a disclosure but had a reasonable excuse for not doing so; or
- (c) the act he does is done in carrying out a function he has relating to the enforcement of any provision of this Act or of any other law relating to criminal conduct or benefit from criminal conduct.

*(Act 3/2013, s. 11)*

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

- (a) on summary conviction, to imprisonment for a term not exceeding 5 years or to a fine not exceeding \$200,000 or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 14 years or to a fine without limit or to both.

**Acquisition, use and possession**

**121.** (1) Subject to subsection (2), a person is guilty of an offence if he—

- (a) acquires criminal property;
- (b) uses criminal property; or
- (c) has possession of criminal property.

(2) A person is not guilty of an offence under subsection (1) if—

- (a) he makes an authorised disclosure and, if the disclosure is made before he does the act specified in subsection (1), he has the appropriate consent;
- (b) he intended to make such a disclosure but had a reasonable excuse for not doing so;
- (c) he acquired or used or had possession of the property—
  - (i) for adequate consideration, and
  - (ii) without knowing or suspecting that the property was criminal property; or
- (d) the act he does is done in carrying out a function he has relating to the enforcement of this Act or of any other law relating to criminal conduct or benefit from criminal conduct.

*(Act 3/2013, s. 12)*

(3) For the purposes of this section—

- (a) a person acquires property for inadequate consideration if the value of the consideration is significantly less than the value of the property;
- (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 the use or possession of the property; and
- (c) the provision by a person of goods or services which he knows or suspects may help another to carry out criminal conduct is not consideration.

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

- (a) on summary conviction, to imprisonment for a term not exceeding 5 years or to a fine not exceeding \$200,000 or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 14 years or to a fine without limit or to both.

**Duty to disclose knowledge or suspicion of money laundering****122. (1) Where—**

- (a) a person knows or suspects, or has reasonable grounds for knowing or suspecting, that another person is engaged in money laundering, terrorist financing or criminal activity; or
- (b) a person knows or suspects, or has reasonable grounds for knowing or suspecting that a particular non-profit organisation—
  - (i) is involved in terrorist financing abuse or is a front for fundraising by a terrorist organisation,
  - (ii) is being exploited as a conduit for terrorist financing, including for the purpose of escaping asset freezing measures, or other forms of terrorist support, or
  - (iii) is concealing or obscuring the clandestine diversion of funds intended for legitimate purposes, but redirected for the benefit of terrorists or terrorist organisations; and
- (c) the information or other matter on which that person's knowledge or suspicion is based, or which gives reasonable grounds for such knowledge or suspicion, came to him in the course of a relevant business;

he shall promptly disclose the information or other matter after it comes to him to the relevant Money Laundering Reporting Officer, to the Unit or to the NPO Supervisor, in order to take preventative or investigative actions.

*(Act 12/2022, s. 9)*

(2) A disclosure under subsection (1) to the Unit shall be in the form and manner, if any, that may be required by the Unit.

*(Act 38/2020, s. 33)*

(3) Subject to subsection (4), a person who does not disclose any information or other matter as required by subsection (1) is guilty of an offence.

(4) A person is not guilty of an offence under subsection (3) if—

- (a) he has a reasonable excuse for not disclosing the information or other matter;
- (b) he is a professional legal advisor and the information or other matter came to him in privileged circumstances; or
- (c) he is a trainee, paralegal, legal secretary or any other person who is employed by, or is in partnership with, a professional legal adviser to provide the adviser with assistance or support and the information or other matter—
  - (i) came to him in connection with the provision of such assistance or support; and
  - (ii) came to the professional legal adviser in privileged circumstances.

(5) Without limiting paragraph (4)(a), a person has a reasonable excuse for not disclosing information or other matter under subsection (1) if—

- (a) he does not know or suspect that another person is engaged in money laundering; and
- (b) he has not been provided by his employer with anti-money laundering training as required by the Anti-money Laundering and Terrorist Financing Regulations.

(6) Subject to subsection (7), for the purposes of this section, any information or other matter comes to a professional legal advisor in privileged circumstances if it is communicated or given to him—

- (a) by, or by a representative of, a client of his in connection with the giving by the advisor of legal advice to the client;
- (b) by, or by a representative of, a person seeking legal advice from the advisor; or
- (c) by a person in connection with legal proceedings or contemplated legal proceedings.

(7) Subsection (6) does not apply to any information or other matter which is communicated or given with the intention of furthering a criminal purpose.

(8) For the purposes of subsection (1), a person makes a disclosure to the relevant Money Laundering Reporting Officer if he makes the disclosure in the course of his employment and in accordance with the procedures established by his employer for the purpose.

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

- (a) on summary conviction, to imprisonment for a term not exceeding 2 years or to a fine not exceeding \$75,000 or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 10 years or to a fine not exceeding \$250,000 or to both.

### **Duty to disclose: Money Laundering Reporting Officer of service provider**

**123.** (1) Where the Money Laundering Reporting Officer of a service provider—

- (a) knows or suspects, or has reasonable grounds for knowing or suspecting, that another person is engaged in money laundering; and
- (b) the information or other matter on which his knowledge or suspicion is based, or which gives reasonable grounds for such knowledge or suspicion, came to him in consequence of a disclosure made under section 122;

he shall promptly disclose the information or other matter as soon as is practicable after it comes to him to the Unit.

*(Act 38/2020, s. 33 and Act 12/2022, s. 10(a))*

(2) A disclosure under subsection (1) to the Unit shall be in the form and manner, if any, that may be prescribed in the Anti-money Laundering and Terrorist Financing Regulations.

*(Act 38/2020, s. 33)*

(3) Subject to subsection (4), a person who does not promptly disclose any information or other matter as required by subsection (1) is guilty of an offence.

*(Act 12/2022, s. 10(a))*

(4) A person is not guilty of an offence under subsection (3) if he has a reasonable excuse for not promptly disclosing the information or other matter.

*(Act 12/2022, s. 10(b))*

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

- (a) on summary conviction, to imprisonment for a term not exceeding 2 years or to a fine not exceeding \$75,000 or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 10 years or to a fine not exceeding \$250,000 or to both.

#### **Duty to disclose: Money Laundering Reporting Officer**

**124.** (1) Where the Money Laundering Reporting Officer of a person carrying on relevant business—

- (a) knows or suspects that another person is engaged in money laundering; and
- (b) the information or other matter on which his knowledge or suspicion is based, or which gives reasonable grounds for such knowledge or suspicion, came to him in consequence of an authorised or protected disclosure;

he shall promptly disclose the information or other matter as soon as is practicable after it comes to him to the Unit.

*(Act 38/2020, s. 33 and Act 12/2022, s. 11(a))*

(2) A disclosure under subsection (1) to the Unit shall be in the form and manner, if any, that may be specified by the Unit.

*(Act 38/2020, s. 33)*

(3) Subject to subsection (4), a person who does not promptly disclose any information or other matter as required by subsection (1) is guilty of an offence.

*(Act 12/2022, s. 11(a))*

(4) A person is not guilty of an offence under subsection (3) if he has a reasonable excuse for not promptly disclosing the information or other matter.

*(Act 12/2022, s. 11(b))*

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

- (a) on summary conviction, to imprisonment for a term not exceeding 2 years or to a fine not exceeding \$75,000 or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 10 years or to a fine not exceeding \$250,000 or to both.



**Prejudicing an investigation**

**125.** (1) Subject to section 127, a person is guilty of an offence if—

- (a) he knows or suspects that the Unit, a police officer, the Civil Recovery Authority or any other authorised person is acting, or is proposing to act, in connection with—
  - (i) a criminal recovery investigation,
  - (ii) a civil recovery investigation, or
  - (iii) a money laundering investigation; and  
(*Act 38/2020, s. 33*)
- (b) he—
  - (i) makes a disclosure that is likely to prejudice that investigation, or proposed investigation, or
  - (ii) falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of, documents which are relevant to the investigation.

(2) A person guilty of an offence under this section shall be liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 5 years or a fine not exceeding \$200,000 or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 14 years or a fine without limit or to both.  
(*Act 3/2013, s. 13*)

**Tipping off**

**126.** (1) For the purposes of this section, “relevant disclosure” means a disclosure made by a person under or in accordance with this Part to—

- (a) the Unit; or  
(*Act 38/2020, s. 33*)
- (b) the person’s relevant Money Laundering Reporting Officer,

and includes, but is not limited to, an authorised disclosure and a protected disclosure and information disclosed that is related to the disclosure.

(2) Subject to section 127, a person is guilty of an offence if—

- (a) he knows or suspects that a relevant disclosure is being or has been made, whether by himself or another person;
- (b) he discloses the fact that a relevant disclosure is being or has been made;

- (c) his disclosure is likely to prejudice any investigation that might be conducted following the relevant disclosure referred to in subsection (2); and
  - (d) the information concerning the relevant disclosure came to him in the course of a relevant business.
- (3) Subject to section 127, a person is guilty of an offence if—
- (a) the person discloses that an investigation into allegations that a money laundering offence has been committed, is being contemplated or is being carried out;
  - (b) the disclosure is likely to prejudice that investigation; and
  - (c) the information on which the disclosure is based came to him in the course of a relevant business.
- (4) A person guilty of an offence under this section shall be liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 5 years or a fine not exceeding \$200,000 or to both; or
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 14 years or a fine without limit or to both.

*(Act 3/2013, s. 14)*

#### **Circumstances in which offence under sections 125 and 126 not committed**

**127.** (1) Nothing in section 125 makes it an offence for a person to make a disclosure to a professional legal adviser for the purposes of legal advice or for a professional legal adviser to make a disclosure—

- (a) to, or to a representative of, a client of his in connection with the giving by the legal adviser of legal advice to the client; or
- (b) to any person—
  - (i) in contemplation of, or in connection with, legal proceedings; and
  - (ii) for the purpose of those proceedings.

(2) Subsection (1) does not apply to a disclosure made with the intention of furthering any criminal purpose.

(3) In proceedings against a person for an offence under section 125 or section 126, it is a defence to prove that he did not know or suspect that the disclosure was likely to be prejudicial in the way specified in section 125(1)(b)(i), 126(2)(c) or 126(3)(b), as the case may be.

*(Act 3/2013, s. 15(a), (b))*

(4) A person is not guilty of an offence under section 125(1)(b)(ii) if—

- (a) he does not know or suspect that the documents are relevant to the investigation; or

- (b) he does not intend to conceal any facts disclosed by the documents from any person carrying out the investigation.

(5) No member of the Unit, police officer or other person is guilty of an offence under section 125 or section 126 in respect of anything done by him in the course of acting in connection with the enforcement, or intended enforcement, of any provision of this Act or of any other law relating to criminal conduct or benefit from criminal conduct or in compliance with a requirement imposed under or by virtue of this Act.

*(Act 3/2013, s. 15(c) and Act 38/2020, s. 33)*

(6) The regulations may specify circumstances in which a person making a disclosure that falls within section 126(2) or (3) is not guilty of an offence.

*(Act 3/2013, s. 15(d))*

### **Protection in relation to protected and authorised disclosures**

**128.** (1) A disclosure is a protected disclosure if—

- (a) the information or other matter disclosed came to the person making the disclosure in the course of his trade, profession, business or employment;
- (b) the information or other matter disclosed causes the person making the disclosure to know or suspect, or gives him reasonable grounds for knowing or suspecting, that another person is engaged in money laundering, terrorist financing or criminal activity; and
- (c) the disclosure is made to the Unit or the relevant Money Laundering Reporting Officer, as soon as is reasonably practicable after the information or other matter comes to the person making the disclosure.

*(Act 3/2013, s. 16(a), (b), Act 38/2020, s. 33 and Act 12/2022, s. 12)*

(2) Where a person makes a protected disclosure or an authorised disclosure, the disclosure—

- (a) shall not be treated as a breach of any law, rule of law or agreement restricting the disclosure of information; and
- (b) shall not give rise to criminal or civil proceedings.

(3) For the avoidance of doubt, where a director, officer or employee of a service provider makes a protected disclosure or an authorised disclosure—

- (a) the director, officer or employee of the service provider, shall not be treated as having breached any law, rule of law or agreement restricting the disclosure of information; and
- (b) no criminal or civil proceedings may be taken against the director, officer or employee of a service provider, or against the service provider, by reason of the disclosure.

*(Act 3/2013, s. 16(c))*

**PART 5**  
**INVESTIGATIONS**

**Division 1**

*General*

**Meaning of privileged material**

- 129.** (1) For the purposes of this Part, “privileged material” 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) material 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.

- (2) Material held with the intention of furthering a criminal purpose is not privileged material.

**Division 2**

*Production orders*

**Application for production order**

- 130.** (1) Application may be made to a judge for a production order under section 131 by—
- (a) a senior police officer; or
  - (b) a police officer who is authorised in writing to make the particular application by a senior police officer.
- (2) An application for a production order shall state that—
- (a) a person specified in the application is subject to a criminal recovery investigation or a money laundering investigation or that the property specified in the application is subject to a civil recovery investigation;
  - (b) the order is sought—
    - (i) for the purposes of the investigation, and

- (ii) in relation to material, or material of a description, specified in the application; and
- (c) a person specified in the application appears to be in possession or control of the material.

### **Production order**

**131.** (1) On an application made under section 130, a judge may make a production order if he is satisfied that—

- (a) there are reasonable grounds for suspecting that—
    - (i) in the case of a criminal recovery investigation, the person specified in the application as being subject to the investigation has benefited from his criminal conduct,
    - (ii) in the case of a civil recovery investigation, the property specified in the application as being subject to the investigation is recoverable property or associated property,
    - (iii) in the case of a money laundering investigation, the person specified in the application as being subject to the investigation has committed a money laundering offence;
  - (b) there are reasonable grounds for believing that—
    - (i) the person specified in the application as appearing to be in possession or control of the specified material is in possession or control of it, and
    - (ii) there are reasonable grounds for believing that the material is likely to be of substantial value, whether by itself or together with other material, to the investigation for the purposes of which the order is sought; and
  - (c) there are reasonable grounds for believing that it is in the public interest for the material to be produced or for access to be given to it having regard to—
    - (i) the benefit likely to accrue to the investigation if the material is obtained, and
    - (ii) the circumstances under which the person the application specifies as appearing to be in possession or control of the material holds it.
- (2) A production order is an order—
- (a) requiring the person specified in the order as appearing to be in possession or control of material to produce it to a senior police officer, or the applicant for the order, for him to take away; or
  - (b) requiring that person to give a senior police officer, or the applicant for the order, access to it;

within the period stated in the order.

(3) The period specified in a production order shall be seven days commencing on the date that the order is made, unless it appears to the judge that a longer or shorter period would be appropriate in the particular circumstances.

(4) A production order does not require a person to produce, or give access to, privileged material.

### **Order to grant entry**

**132.** Where the judge makes a production order in relation to material on any premises he may, on the application of a senior police officer or a police officer who is authorised in writing to make the particular application by a senior police officer, order any person who appears to a senior police officer to be entitled to grant entry to the premises to allow him to enter the premises to obtain access to the material.

### **Further provisions relating to production orders**

**133.** (1) Where any material specified in an application for a production order consists of information contained in a computer—

- (a) an order under section 131 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 section 131 shall have effect as an order to give access to the material in a form in which it is visible and legible.

(2) A senior police officer, or the applicant for the order, may take copies of any material which is produced, or to which access is given, in compliance with a production order.

(3) Material produced in compliance with a production order may be retained for so long as it is necessary to retain it, as opposed to copies of it, in connection with the investigation for the purposes of which the order was made.

(4) If a senior police officer, or the applicant for the order, has reasonable grounds for believing that—

- (a) the material may need to be produced for the purposes of any legal proceedings; and
- (b) it might otherwise be unavailable for those purposes;

it may be retained until the proceedings are concluded.

## **Division 3**

### *Search and seizure warrants*

#### **Application for search and seizure warrant**

**134.** (1) Application may be made to a judge for a search and seizure warrant under section 135 by—

- (a) a senior police officer; or

- (b) a police officer who is authorised in writing to make the particular application by a senior police officer.
- (2) An application for a search and seizure warrant shall state that—
  - (a) a person specified in the application is subject to a criminal recovery investigation or a money laundering investigation or that property specified in the application is subject to a civil recovery investigation; and
  - (b) the warrant is sought—
    - (i) for the purposes of the investigation,
    - (ii) in relation to the premises specified in the application, and
    - (iii) in relation to material specified in the application, or that there are reasonable grounds for believing that there is material falling within section 134(5), (6) or (7) on the premises.
- (3) A search and seizure warrant is a warrant authorising a senior police officer, or the applicant for the order—
  - (a) to enter and search the premises specified in the application for the warrant; and
  - (b) to seize and retain any material found there which is likely to be of substantial value, whether by itself or together with other material, to the investigation for the purposes of which the application is made.

### **Search and seizure warrant**

**135.** (1) On an application made under section 134, a judge may issue a search and seizure warrant if he is satisfied that—

- (a) a production order in relation to material has not been complied with and there are reasonable grounds for believing that the material is on the premises specified in the application for the warrant; or
  - (b) subsection (2) applies and either—
    - (i) the conditions specified in subsection (3) are fulfilled, or
    - (ii) the conditions specified in subsection (4) are fulfilled .
- (2) This subsection applies for the purposes of paragraph (1)(b) if there are reasonable grounds for suspecting that—
  - (a) in the case of a criminal recovery investigation, the person specified in the application for the warrant has benefited from his criminal conduct;
  - (b) in the case of a civil recovery investigation, the property specified in the application for the warrant is recoverable property or associated property; or

- (c) in the case of a money laundering investigation, the person specified in the application for the warrant has committed a money laundering offence.
- (3) The conditions referred to in subparagraph (1)(b)(i) are—
- (a) that there are reasonable grounds for believing that—
    - (i) any material on the premises specified in the application for the warrant 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 is sought, and
    - (ii) it is in the public interest for the material to be obtained, having regard to the benefit likely to accrue to the investigation if the material is obtained; and
  - (b) that it would not be appropriate to make a production order—
    - (i) that it is not practicable to communicate with any person against whom the production order could be made,
    - (ii) that it is not practicable to communicate with any person who would be required to comply with an order to grant entry to the premises, or
    - (iii) that the investigation might be seriously prejudiced unless a police officer is able to secure immediate access to the material.
- (4) The conditions referred to in subparagraph (1)(b)(ii) are—
- (a) there are reasonable grounds for believing that there is material on the premises specified in the application for the warrant and that—
    - (i) in the case of a criminal recovery investigation, the material falls within subsection (5),
    - (ii) in the case of a civil recovery investigation, the material falls within subsection (6), or
    - (iii) in the case of a money laundering investigation, the material falls within subsection (7);
  - (b) there are reasonable grounds for believing that it is in the public interest for the material to be obtained, having regard to the benefit likely to accrue to the investigation if the material is obtained; and
  - (c) one of the following apply—
    - (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 might be seriously prejudiced unless a police officer arriving at the premises is able to secure immediate entry to them.



(5) In the case of a criminal recovery investigation, material falls within this subsection if it cannot be identified at the time of the application but it—

- (a) relates to the person specified in the application, the question whether he has benefited from his criminal conduct or any question as to the extent or whereabouts of his benefit from his criminal conduct; and
- (b) 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 is sought.

(6) In the case of a civil recovery investigation, material falls within this subsection if it cannot be identified at the time of the application but it—

- (a) relates to the property specified in the application, the question whether it is recoverable property or associated property, the question as to who holds any such property, any question as to whether the person who appears to hold any such property holds other property which is recoverable property, or any question as to the extent or whereabouts of any property mentioned in this paragraph; and
- (b) 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 is sought.

(7) In the case of a money laundering investigation, material falls within this subsection if it cannot be identified at the time of the application but it—

- (a) relates to the person specified in the application or the question whether he has committed a money laundering offence; and
- (b) 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 is sought.

(8) A search and seizure warrant does not confer the right to seize privileged material.

#### **Division 4**

##### *Customer information orders*

##### **Customer information to be specified in regulations**

**136.** The regulations shall specify types or categories of information that are “customer information” for the purposes of sections 137 to 138.

##### **Application for customer information order**

**137.** (1) Application may be made to a judge for a customer information order under section 138 by—

- (a) a senior police officer; or
- (b) a police officer who is authorised in writing to make the particular application by a senior police officer.

- (2) An application for a customer information order shall state that—
- (a) a person specified in the application is subject to a criminal recovery investigation or a money laundering investigation or that property specified in the application is subject to a civil recovery investigation and a person specified in the application appears to hold the property;
  - (b) the order is sought for the purposes of the investigation; and
  - (c) the order is sought against the regulated person or regulated persons specified in the application.
- (3) An application for a customer information order may specify—
- (a) all regulated persons;
  - (b) a particular description, or particular descriptions, of regulated persons; or
  - (c) a particular regulated person or particular regulated persons.

### Customer information order

**138.** (1) On an application made under section 137, a judge may make a customer information order if he is satisfied that—

- (a) there are reasonable grounds for suspecting that—
  - (i) in the case of a criminal recovery investigation, the person specified in the application has benefited from his criminal conduct,
  - (ii) in the case of a civil recovery investigation, the property specified in the application is recoverable property or associated property and the person specified in the application holds all or some of the property, or
  - (iii) in the case of a money laundering investigation, the person specified in the application has committed a money laundering offence;
- (b) there are reasonable grounds for believing that customer information which may be provided in compliance with the order is likely to be of substantial value, whether by itself or together with other information, to the investigation for the purposes of which the order is sought; and
- (c) there are reasonable grounds for believing that it is in the public interest for the customer information to be provided, having regard to the benefit likely to accrue to the investigation if the information is obtained.

(2) A customer information order is an order that a regulated person covered by the application for the order shall, on being required to do so by notice in writing given by an appropriate officer, provide any such customer information as it has relating to the person specified in the application.

(3) A regulated person which is required to provide information under a customer information order shall provide the information to an appropriate officer in such manner, and at or by such time, as an appropriate officer requires.

(4) If a regulated person on which a requirement is imposed by a notice given under a customer information order requires the production of evidence of authority to give the notice, it is not bound to comply with the requirement unless evidence of the authority has been produced to it.

(5) A customer information order shall have effect notwithstanding any obligation as to confidentiality or other restriction upon the disclosure of information imposed by any law, rule of law or otherwise.

*(Act 3/2013, s. 17)*

### **Offences**

**139.** (1) A regulated person is guilty of an offence if—

- (a) without reasonable excuse, it fails to comply with a requirement imposed on it under a customer information order; or
- (b) in purported compliance with a customer information order, it—
  - (i) makes a statement which it knows to be false or misleading in a material particular, or
  - (ii) recklessly makes a statement which is false or misleading in a material particular.

(2) A regulated person guilty of an offence under subsection (1)(a) is liable—

- (a) on summary conviction, to a fine not exceeding \$100,000;
- (b) on conviction on indictment to a fine not exceeding \$250,000.

(3) A regulated person guilty of an offence under subsection (1)(b) is liable—

- (a) on summary conviction, to a fine not exceeding \$100,000;
- (b) on conviction on indictment to a fine not exceeding \$250,000.

### **Protection of statements**

**140.** (1) Subject to subsection (2), a statement made by a regulated person in response to a customer information order may not be used in evidence against it in criminal proceedings.

(2) Subsection (1) does not apply—

- (a) in the case of proceedings under Part 2;
- (b) on a prosecution for an offence under section 139; or
- (c) on a prosecution for some other offence where, in giving evidence, the regulated person makes a statement inconsistent with the statement mentioned in subsection (1).

(3) A statement may not be used by virtue of paragraph (2)(c) against a regulated person unless—

- (a) evidence relating to it is adduced; or
- (b) a question relating to it is asked;

by or on behalf of the regulated person in the proceedings arising out of the prosecution.

## **Division 5**

### *Account monitoring orders*

#### **Application for account monitoring order**

**141.** (1) Application may be made to a judge for an account monitoring order under section 142 by—

- (a) a senior police officer; or
- (b) a police officer who is authorised in writing to make the particular application by a senior police officer.

(2) An application for an account monitoring order shall state that—

- (a) a person specified in the application is subject to a criminal recovery investigation or a money laundering investigation or that property specified in the application is subject to a civil recovery investigation and a person specified in the application appears to hold the property;
- (b) the order is sought for the purposes of the investigation; and
- (c) the order is sought against the regulated person specified in the application in relation to account information of the description specified.

(3) An application for an account monitoring order may specify information relating to—

- (a) all accounts held by the person specified in the application at the regulated person so specified;
- (b) a particular description, or particular descriptions, of accounts so held; or
- (c) a particular account or particular accounts so held.

#### **Account monitoring order**

**142.** (1) On an application made under section 141, a judge may make an account monitoring order if he is satisfied that—

- (a) in the case of a confiscation investigation, there are reasonable grounds for suspecting that the person specified in the application for the order has benefited from his criminal conduct;

- (b) in the case of a civil recovery investigation, there are reasonable grounds for suspecting that—
    - (i) the property specified in the application for the order is recoverable property or associated property, and
    - (ii) the person specified in the application holds all or some of the property;
  - (c) in the case of a money laundering investigation, there are reasonable grounds for suspecting that the person specified in the application for the order has committed a money laundering offence.
- (2) In the case of any investigation, the judge shall not make an account monitoring order unless he is satisfied that—
- (a) there are reasonable grounds for believing that account information which may be provided in compliance with the order is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the order is sought; and
  - (b) there are reasonable grounds for believing that it is in the public interest for the account information to be provided, having regard to the benefit likely to accrue to the investigation if the information is obtained.
- (3) If on an application under section 141 the judge is satisfied that the conditions specified in this section are fulfilled, he may make an order that the regulated person specified in the application shall, for the period stated in the order, which shall not exceed 90 days, provide account information of the description specified in the order to a senior police officer, or to the applicant for the order, in the manner, and at or by the time or times, stated in the order.
- (4) For the purposes of subsection (3), “account information” is information relating to an account or accounts held at the regulated person specified in the order by the person specified in the order, whether solely or jointly with one or more other persons.
- (5) An order under subsection (3) may specify account information relating to—
- (a) all accounts held by the person and at the regulated person specified in the order;
  - (b) a particular description, or particular descriptions, of accounts so held; or
  - (c) a particular account, or particular accounts, so held.

### Statements

**143.** (1) Subject to subsection (2), a statement made by a regulated person in response to an account monitoring order may not be used in evidence against it in criminal proceedings.

- (2) Subsection (1) does not apply—
- (a) in the case of proceedings under Part 2;
  - (b) in the case of proceedings for contempt of court; or

- (c) on a prosecution for an offence where, in giving evidence, the regulated person makes a statement inconsistent with the statement mentioned in subsection (1).

(3) A statement may not be used by virtue of paragraph (2)(c) against a regulated person unless—

- (a) evidence relating to it is adduced; or
- (b) a question relating to it is asked;

by or on behalf of the regulated person in the proceedings arising out of the prosecution.

### Disclosure of information

**144.** An account monitoring order has effect in spite of any restriction on the disclosure of information (however imposed).

## Division 6

### General

### Procedure

**145.** (1) An application for a production order, a customer information order or an account monitoring order may be made *ex parte* to a judge in chambers.

(2) Rules of Court may make provision as to—

- (a) the practice and procedure in connection with proceedings relating to production orders, orders to grant entry under section 132, customer information orders and account monitoring orders; and
- (b) applications for the discharge and variation of such orders and proceedings relating to such applications.

(3) An order of a judge under this Part shall have effect as if it were an order of the Court.

(4) A production order, a customer information order and an account monitoring order shall have effect notwithstanding any obligation as to confidentiality or other restriction upon the disclosure of information imposed by any law, rule of law or otherwise.

*(Act 3/2013, s. 18)*

## PART 6

## COOPERATION

**Interpretation**

**146.** In this Part, and Schedule 3—

- (a) an external order is an order which—
  - (i) is made by an overseas court where property is found or believed to have been obtained as a result of or in connection with criminal conduct, and
  - (ii) is for the recovery of specified property or a specified sum of money;
- (b) an external request is a request by an overseas authority to prohibit dealing with relevant property which is identified in the request;
- (c) an overseas money laundering offence is an act carried out in a country outside Anguilla, which if carried out in Anguilla, would—
  - (i) constitute an offence under section 119, 120 or 121,
  - (ii) constitute an attempt, conspiracy or incitement to commit an offence specified in subparagraph (i), or
  - (iii) constitute aiding, abetting, counselling or procuring the commission of an offence specified in subparagraph (i);
- (d) property is “relevant property” if there are reasonable grounds to believe that it may be needed to satisfy an external order which has been or which may be made;
- (e) an overseas court is a court of a country outside Anguilla; and
- (f) an overseas authority is an authority which has responsibility in a country outside Anguilla for making a request to an authority in another country (including Anguilla) to prohibit dealing with relevant property.

**External requests and orders**

**147.** Schedule 3 applies to external requests and the enforcement of external orders.

## PART 7

## REGULATION, SUPERVISION AND ENFORCEMENT

**Division 1***Service providers***Supervisory authorities**

**148.** (1) The Commission is the supervisory authority for regulated service providers and for externally regulated service providers.

(2) The Anti-money Laundering and Terrorist Financing Regulations shall designate—

- (a) a person or body, which may be the Commission, as the sole supervisory authority for all non-regulated service providers; or
- (b) different persons or bodies, which may include the Commission, as the supervisory authority for different types of non-regulated service provider.

**Objective, functions and powers of the supervisory authorities**

**149.** (1) The objective of a supervisory authority is to supervise relevant service providers in relation to their AML/CFT obligations and to enforce compliance with those obligations.

(2) The functions of a supervisory authority are—

- (a) to monitor the compliance of relevant service providers with their AML/CFT obligations;
- (b) to take appropriate enforcement action against relevant service providers for breaches of, or non-compliance with, their AML/CFT obligations;
- (c) in the case of a supervisory authority for externally regulated or non-regulated service providers, to—
  - (i) determine applications for registration in accordance with the ENRSP Regulations, and
  - (ii) to take appropriate action against relevant service providers who carry on relevant business without being registered in accordance with the ENRSP Regulations; and
- (d) to perform such other functions, and exercise such powers—
  - (i) as may be assigned to the supervisory authority by this Act, any regulations made under this Act or any other law, or
  - (ii) that are ancillary to its objective.



(3) In implementing its objective and in performing its functions, a supervisory authority has—

- (a) in the case of the Commission when acting as the supervisory authority for regulated service providers, the information gathering, enforcement and other powers provided for in the Financial Services Commission Act; and
- (b) in the case of—
  - (i) the Commission, when acting as the supervisory authority for externally regulated service providers, and
  - (ii) a supervisory authority for non-regulated service providers,

the information gathering, enforcement and other powers provided for in Schedule 4.

(4) In determining the enforcement action to be taken against a relevant service provider for a breach of, or failure to comply with, its AML/CFT obligations, a supervisory authority must have regard for the need to ensure that enforcement action taken is effective, proportionate and dissuasive.

(5) Where a breach of a service provider's AML/CFT obligations constitutes an offence, the taking of enforcement action by a supervisory authority does not prevent the service provider being also prosecuted for the offence.

#### **Duty to cooperate**

**150.** (1) A supervisory authority shall take such steps as it considers appropriate to co-operate with—

- (a) the Unit;  
*(Act 38/2020, s. 33)*
- (b) law enforcement agencies in Anguilla; and
- (c) any other supervisory authorities.

(2) Co-operation may include the sharing of documents and information which the supervisory authority is not prevented by this or any other law from disclosing.

#### **Limitation of liability of supervisory authorities**

**151.** (1) No person or body to whom this section applies is liable in damages for anything done or omitted in the discharge or purported discharge of any function under, or authorised by or under, this Act unless it is proved that the act or omission was in bad faith.

(2) This section applies to—

- (a) each supervisory authority; and
- (b) any member of a supervisory authority or any person who is, or is acting as, a board member, director, officer, employee or agent of the supervisory authority or who is performing any duty or exercising any power on behalf of the supervisory authority.

**Prohibition on carrying on relevant business if not registered**

**152.** (1) Subject to subsection (2), a person shall not carry on any type of relevant business in or from within Anguilla unless that person has been registered for that type of relevant business by the appropriate supervisory authority in accordance with the ENRSP Regulations.

(2) Subsection (1) does not apply to a regulated service provider.

(3) A person who contravenes subsection (1) is guilty of an offence and is liable—

- (a) on summary conviction, to imprisonment for a term of 12 months or to a fine of \$50,000 or to both; or
- (b) on conviction on indictment, to imprisonment for a term of 5 years or to a fine of \$100,000 or to both.

**Regulations, externally regulated and non-regulated service providers**

**153.** (1) The Governor in Council shall make regulations providing for—

- (a) the registration of externally regulated and non-regulated service providers;
- (b) the de-registration of externally regulated and non-regulated service providers;
- (c) the imposition by relevant supervisory authorities of administrative penalties—
  - (i) in an amount not exceeding \$100,000 against externally regulated and non-regulated service providers for any contravention of their AML/CFT obligations, and
  - (ii) in an amount not exceeding \$50,000 against the directors or senior managers of an externally regulated and non-regulated service provider where the externally regulated and non-regulated service provider contravenes its AML/CFT obligations and where the contravention was committed with the consent or connivance of the director or senior manager;  
*(Act 12/2022, s. 13(a))*
- (d) the payment of fees to the relevant supervisory authorities by externally regulated and non-regulated service providers, including the categories of fee payable and the basis for assessment of the amount of those fees, and the imposition of late payment penalties when fees are not timely paid; and
- (e) such other matters relating to externally regulated and non-regulated service providers as this Act may require or permit.

(2) For the purposes of subsection (1), a person is deemed to be a director of a company if the person occupies in relation to that company, the position of a director by whatever name called, or is a person in accordance with whose directions or instructions (not being directions or instructions in a professional capacity only) the directors and the company, or any of them, act.

*(Act 12/2022, s. 13(b))*

- (3) Without limiting subsection (1), the regulations made under this section may provide for—
- (a) types or levels of registration;
  - (b) applications for registration;
  - (c) the criteria for determining applications for registration;
  - (d) the grant or refusal of an application for registration; and
  - (e) such other matters as the Governor in Council considers appropriate generally for giving effect to this Division or to Schedule 4.
- (4) The regulations made under this section may—
- (a) make different provision in relation to different persons, circumstances or cases; and
  - (b) prescribe offences against the regulations and prescribe a term of imprisonment not exceeding 2 years, a fine not exceeding \$100,000 or both in respect of any offence.
- (5) Fees and penalties paid to a relevant supervisory authority under regulations made in accordance with subsection (1) shall be used by the supervisory authority for the purposes of undertaking its functions.

## **Division 2**

### *Non-profit organisations*

#### **Supervisory authority for non-profit organisations**

**154.** The Non-Profit Organisations Regulations shall designate a person or body, which may be the Commission, as the supervisory authority for non-profit organisations.

#### **Non-Profit Organisations Regulations**

**155.** (1) The Governor in Council shall make regulations—

- (a) designating a person or body as the supervisory authority for non-profit organisations;
- (b) providing for—
  - (i) the registration of non-profit organisations,
  - (ii) the functions, duties and powers of the NPO Supervisor, including with respect to supervision, the gathering of information and the disclosure of information to the Unit and law enforcement authorities in Anguilla and for such other matters relating to non-profit organisations as this Act may require or permit,  
(Act 38/2020, s. 33)
  - (iii) the issuance by the NPO Supervisor of a NPO Anti-money Laundering and Terrorist Financing Code setting out measures, not inconsistent with this Act, the

Regulations made under this section and the terrorist financing laws, for the prevention and detection of money laundering and terrorist financing,

- (iv) enforcement actions that may be taken by the NPO Supervisor for failure to comply with the Regulations and the NPO Code, if issued, including the imposition of administrative penalties in an amount not exceeding \$50,000, the basis for fixing those penalties and the manner in which those penalties may be paid,
- (v) the maintenance of records by non-profit organisations,
- (vi) the monitoring by the NPO Supervisor of the compliance of non-profit organisations with the Regulations and the NPO Code, if issued,
- (vii) the circumstances in which the NPO Supervisor may conduct, or employ an examiner to conduct, an investigation of a NPO,
- (viii) the payment of fees to the NPO Supervisor by non-profit organisations, including the categories of fee payable and the basis for assessment of the amount of those fees, and
- (ix) such other matters relating to non-profit organisations as this Act may require or permit.

(2) Without limiting paragraph (1)(b), the regulations made under this section may provide for—

- (a) types or levels of registration;
- (b) applications for registration;
- (c) the criteria for determining applications for registration;
- (d) the grant or refusal of an application for registration; and
- (e) such other matters as the Governor in Council considers appropriate generally for giving effect to this Division.

(3) The regulations made under this section may—

- (a) make different provision in relation to different persons, circumstances or cases; and
- (b) prescribe offences against the regulations and prescribe a fine not exceeding \$50,000 in respect of any offence.

(4) Fees and penalties paid to the NPO Supervisor under regulations made in accordance with subsection (1) shall be used by the NPO Supervisor for the purposes of undertaking its functions.

**Division 3***Appeals***Appeals**

**156.** (1) Subject to subsection (2), a person who is aggrieved by a decision of a supervisory authority or the NPO Supervisor made under this Act or under any regulations made or Code issued under this Act may, within 28 days of the date of the decision, apply to the Court for leave to appeal against the decision.

(2) Unless the Court otherwise determines, an application for leave to appeal, an appeal and an application for judicial review, does not operate as a stay of the decision of the relevant supervisory authority or the NPO Supervisor in relation to which the application or appeal is made.

(3) Upon hearing an appeal, the Court may—

- (a) dismiss the appeal; or
- (b) remit the matter back to the relevant supervisory authority, or the NPO Supervisor, for further consideration with such directions as it considers fit.

*(Act 3/2013, s. 19)*

**PART 8****MISCELLANEOUS****Application of procedure for enforcing payment under this Act**

**157.** (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 the defendant 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—

<b>Column 1</b>	<b>Column 2</b>
SUM IN DEFAULT	MAXIMUM PERIOD
\$10,000 or less .....	12 months
More than \$10,000 but not more than \$20,000 .....	18 months
More than \$20,000 but not more than \$75,000 .....	2 years
More than \$75,000 but not more than \$200,000 .....	3 years
More than \$200,000 but not more than \$500,000 .....	4 years
More than \$500,000 but not more than \$750,000 .....	5 years

More than \$750,000 but not more than \$1,000,000 .....	6 years
More than \$1,000,000 but not more than \$4,000,000 .....	8 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) If, under a power granted by this Act, the Court varies a confiscation order and the effect is to reduce the maximum period of imprisonment specified in this section—

- (a) if, as a result, the maximum period of imprisonment is less than the term of imprisonment imposed by the Court, the Court shall impose a reduced term of imprisonment; or
- (b) if paragraph (a) does not apply, the Court may amend the term of imprisonment imposed.

(5) If, under a power granted by this Act, the Court varies a confiscation order and the effect is to increase the maximum period of imprisonment specified in this section, the Court may on the application of the prosecutor, amend the term of imprisonment imposed.

(6) 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.

(7) 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 the Court and the reference in subsection (1) to the Court shall be construed accordingly.

### **National Forfeiture Fund**

**158.** (1) There shall be established a fund to be known as the National Forfeiture Fund.

(2) There shall be paid into the Fund—

- (a) all money recovered under a confiscation order or a under a forfeiture order made under the Anti-terrorist Financing Order;
- (b) all money recovered under a recovery order;
- (c) all cash forfeited under section 112 or under the Anti-terrorist Financing Order; and

- (d) all money paid to the Government by a foreign jurisdiction in respect of confiscated or forfeited assets.
- (3) The Governor may, on the recommendation of the Unit, authorise payments to be made out of the Fund—
- (a) for purposes relating to—
    - (i) law enforcement, including in particular, the investigation of money laundering and other financial crime, terrorist financing and drug trafficking,
    - (ii) training and public awareness with respect to money laundering, terrorist financing and drug trafficking,
    - (iii) training and public awareness with respect to drug addiction and the treatment and rehabilitation of persons with a drug addiction,
    - (iv) the rehabilitation of offenders, and
    - (v) the administration of the Fund;
  - (b) to meet the costs and expenses of the Unit;
  - (c) to satisfy any obligation of the Government to a foreign Government or with respect to confiscated asset;
  - (d) to meet the costs and expenses of a receiver appointed under this Act;
  - (e) to meet the costs of special investigations into the misuse of the financial system for money laundering or other financial crime or terrorist financing; and
  - (f) to pay compensation or costs awarded under this Act.
- (Act 38/2020, s. 33)*

### Administration of the Fund

**159.** (1) The Fund shall be held and administered by the Unit.

(2) The Unit shall open and maintain an account with a bank in Anguilla which holds a licence granted under the Banking Act<sup>†††</sup>, into which all monies payable to the Fund shall be paid.

(3) The Unit may, with the approval of the Governor in Council, invest monies of the Fund that, at any time are not required to be paid out the Fund under section 158(3).

(4) Income earned from investments made under subsection (3) shall be part of the Fund.

*(Act 38/2020, s. 33)*

### Preparation of financial statements

**160.** (1) The financial year of the Fund ends on December 31 in each year.

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<sup>†††</sup> Banking Act, 2015 (Act 6/2015) *repealed* the Banking Act, R.S.A. c. B11.

- (2) The Unit shall—
- (a) keep proper records of the money paid into and out of the Fund and of investments made pursuant to section 159(3); and
  - (b) ensure that—
    - (i) all money received is properly brought to account,
    - (ii) all payments are correctly made and properly authorised, and
    - (iii) adequate control is maintained over the assets of the Fund.
- (Act 38/2020, s. 33)*
- (3) The financial records kept under subsection (2) shall—
- (a) be sufficient to show and explain all transactions relating to the Fund;
  - (b) enable the financial position of the Fund to be determined with reasonable accuracy at any time; and
  - (c) be sufficient to enable financial statements to be prepared and audited in accordance with this section.
- (4) Within 2 months after the end of each financial year, the Unit shall prepare—
- (a) financial statements containing—
    - (i) a statement of the assets of the Fund at the end of the financial year, and
    - (ii) a statement of the money received into the Fund and the payments made out of the Fund during the financial year;
  - (b) such other financial statements for the financial year as may be specified by the Governor; and
  - (c) proper and adequate explanatory notes to the financial statements prepared under paragraphs (a) and (b).

*(Act 38/2020, s. 33)*

#### **Audit of financial statements and annual report**

**161.** (1) The Unit shall cause the financial statements prepared under section 160 to be audited and certified by an auditor to be appointed annually by the Governor after consultation with the Unit within 3 months after the end of the financial year.

*(Act 38/2020, s. 33)*

(2) The auditor appointed under subsection (1) may be the Chief Auditor or such other suitably qualified person.



(3) The auditor shall prepare a report of his audit of the financial statements of the Fund which shall include statements as to whether, in his opinion—

- (a) he has obtained all the information and explanations necessary for the purposes of the audit; and
- (b) to the best of his information and according to the explanations given to him, the financial statements give a true and fair view of—
  - (i) the assets of the Fund as at the end of the financial year, and
  - (ii) the money received into the Fund and the payments made out of the Fund during the financial year.

(4) Within 6 months after the end of each financial year, the Unit shall prepare and submit to the Minister a copy of the audited financial statements, which shall include the report of the auditor on the financial statements.

*(Act 38/2020, s. 33)*

(5) The Minister shall, as soon as reasonably practicable after their receipt, lay a copy of the audited financial statements, together with the auditor's report, before the House of Assembly.

## **Regulations**

**162.** (1) The Governor shall make regulations—

- (a) in relation to the prevention of the use of the financial system for money laundering and terrorist financing; and
- (b) providing for the giving of directions by the Commission to financial businesses in certain specified circumstances, where there is, or the Commission reasonably believes, there is a risk of money laundering or terrorist financing or of the proliferation of weapons of mass destruction.

*(Act 3/2013, s. 20)*

(2) The Governor may make such other regulations as the Governor considers appropriate generally for giving effect to this Act and specifically in respect of anything required or permitted to be prescribed by this Act.

(3) The regulations made under this section may—

- (a) make different provision in relation to different persons, circumstances or cases; and
- (b) prescribe offences against the regulations and prescribe a term of imprisonment not exceeding 2 years, a fine not exceeding \$100,000 or both in respect of any one offence.

(4) In this section, "Governor" means—

- (a) in relation to international financial services, the Governor acting in his discretion;
- (b) in relation to national banking and domestic financial services, the Governor in Council.

(5) In deciding whether a person has committed an offence under the Regulations issued pursuant to subsection (1), the Court shall consider whether the person followed any guidance issued by the Commission under section 163(9).

### Issuance of Codes and guidance

**163.** (1) Subject to subsection (4), the Commission shall, after consulting with the Governor, by publication in the *Gazette*, issue one or more Codes setting out measures, not inconsistent with this Act, the Anti-money Laundering and Terrorist Financing Regulations and the terrorist financing laws, for the prevention and detection of money laundering and terrorist financing.

*(Act 18/2009, s. 7(a) and Act 3/2013, s. 21)*

(2) A Code may—

- (a) make different provision in relation to different persons, circumstances or cases; and
- (b) include such transitional provisions as the Commission considers necessary or expedient.

(3) Subject to subsection (4), the Commission may, after consulting with the Governor, by publication in the *Gazette*, issue a notice of amendment of a Code.

*(Act 18/2009, s. 7(c))*

(4) Before issuing a Code, or a notice of amendment of a Code, the Commission shall—

- (a) publish a draft of the Code, replacement Code or proposed amendment to the Code, in such manner as the Commission considers appropriate for bringing it to the notice of service providers and other persons who will be affected by it;
- (b) consider such written representations as it receives.

(5) A Code issued under this section—

- (a) is subordinate legislation and has full legislative effect; and
- (b) comes into operation on such date or dates as are specified in the Code.

(6) An amendment to a Code comes into effect on the date specified in the notice which, provided that it does not take effect prior to the commencement of the Code, may be retroactive.

(7) A Code, and any amendment to a Code, shall be subject to annulment by resolution of the House of Assembly.

(8) In the event that a Code or notice of amendment is annulled in accordance with subsection (7), the Code or notice of amendment shall be of no force or effect from the date on which the resolution annulling it is made, without prejudice to anything done or suffered under the Code or notice of amendment.

(9) The Commission may issue guidance concerning compliance with the requirements of this Act, the Anti-money Laundering and Terrorist Financing Regulations and the Codes and concerning such other matters as it considers relevant to its functions.

*(Act 18/2009, s. 7(b) and Act 3/2013, s. 22)*

**Review of Act**

**164.** Every 5 years beginning on 16 July 2009, the administration and operation of this Act shall be reviewed by the Committee of the House of Assembly that is designated for that purpose by the Speaker of the House of Assembly.

**Amendment of Schedules**

**165.** The Governor may, by order, amend the Schedules to this Act in such manner as he considers necessary or appropriate.

**Liability of directors and senior managers for offences by company**

**166.** (1) Where an offence under this Act, or Regulations made under this Act, is committed by a company and it is proved to have been committed with the consent or connivance of—

- (a) a person who is a director or senior manager of the company; or
- (b) any person purporting to act in any such capacity;

the person shall also be guilty of the offence and liable in the same manner as the company to the penalty provided for that offence.

(2) Where the affairs of a company are managed by its members, subsection (1) shall apply in relation to acts and defaults of a member in connection with the functions of management as if the member were a director of the company.

(3) For the purposes of this section, a person is deemed to be a director of a company if the person occupies in relation to that company, the position of a director by whatever name called, or is a person in accordance with whose directions or instructions (not being directions or instructions in a professional capacity only) the directors and the company, or any of them, act.

*(Act 12/2022, s. 14)*

**Transitional provisions and savings**

**167.** (1) The transitional provisions and savings in Schedule 5 have effect.

(2) The Governor, after consultation with Executive Council, may make such transitional regulations, not inconsistent with Schedule 5, as he considers appropriate and may make them retroactive to 16 July 2009.

**Citation**

**168.** This Act may be cited as the Proceeds of Crime Act, Revised Statutes of Anguilla, Chapter P98.

**SCHEDULE 1**

(Sections 79(1) and 82(1))

**POWERS OF INTERIM RECEIVER****Seizure**

1. The receiver has the power to seize property to which the order applies.

**Information**

2. (1) The receiver has the power to obtain information or to require a person to answer any question.
- (2) A requirement imposed in the exercise of the power has effect in spite of any restriction on the disclosure of information (however imposed).
- (3) An answer given by a person in pursuance of such a requirement may not be used in evidence against him in criminal proceedings, other than proceedings for an offence of perjury or any equivalent offence.

**Entry, search, etc.**

3. (1) The receiver has the power to enter any premises in Anguilla to which the interim order applies, and to—
- (a) carry out a search for or inspection of anything described in the order;
  - (b) make or obtain a copy, photograph or other record of anything so described; and
  - (c) remove anything which he is required to take possession of in pursuance of the order or which may be required as evidence in the proceedings under Part 3.
- (2) The order may describe anything generally, whether by reference to a class or otherwise.

**Supplementary**

4. (1) An order making any provision under section 2 or 3 must make provision in respect of legal professional privilege.
- (2) An order making any provision under section 3 may require any person—
- (a) to give the interim receiver access to any premises which he may enter in pursuance of section 3; and
  - (b) to give the interim receiver any assistance he may require for taking the steps mentioned in that section.

**Management**

5. (1) The receiver has the power to manage any property to which the order applies.
- (2) Managing property includes—
- (a) selling or otherwise disposing of assets comprised in the property which are perishable or which ought to be disposed of before their value diminishes;
  - (b) where the property comprises assets of a trade or business, carrying on, or arranging for another to carry on, the trade or business; and

- (c) incurring capital expenditure in respect of the property.
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**SCHEDULE 2**

(Section 91(4))

**POWERS OF TRUSTEE****Sale**

1. The trustee has the power to sell the property or any part of it or interest in it.

**Expenditure**

2. The trustee has the power to incur expenditure for the purpose of—
- (a) acquiring any part of the property, or any interest in it, which is not vested in him; or
  - (b) discharging any liabilities, or extinguishing any rights, to which the property is subject.

**Management**

3. (1) The trustee has the power to manage property.
- (2) Managing property includes—
- (a) selling or otherwise disposing of assets comprised in the property which are perishable or which ought to be disposed of before their value diminishes;
  - (b) where the property comprises assets of a trade or business, carrying on, or arranging for another to carry on, the trade or business; and
  - (c) incurring capital expenditure in respect of the property.

**Legal proceedings**

4. The trustee has the power to start, carry on or defend any legal proceedings in respect of the property.

**Compromise**

5. The trustee has the power to make any compromise or other arrangement in connection with any claim relating to the property.

**Supplementary**

6. (1) For the purposes of, or in connection with, the exercise of any of his powers, the trustee has the power—
- (a) by his official name, to—
    - (i) hold property,
    - (ii) enter into contracts,
    - (iii) sue and be sued,
    - (iv) employ agents, and
    - (v) execute a power of attorney, deed or other instrument; and
  - (b) to do any other act which is necessary or expedient.

**SCHEDULE 3**

(Section 147)

**EXTERNAL REQUESTS AND ORDERS***Restraint Orders***External request to be made to Attorney General**

1. An external request shall be made to the Attorney General.

**Application for restraint order**

2. (1) The Court may, on the application the Attorney General on behalf of an overseas authority, make a restraint order under section 3 where it is satisfied that—

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

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

**Restraint order**

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

- (2) A restraint order—

- (a) may make provision—
  - (i) for reasonable living expenses and reasonable legal expenses in connection with the proceedings seeking a restraint order or the registration of an external order, and
  - (ii) for the purpose of enabling any person to carry on any trade, business, profession or occupation; and

- (b) may be made subject to such conditions as the Court considers fit.

- (3) Where the Court makes a restraint order it may, on the application of the Attorney General, (whether as part of the application for the restraint order or at any time afterwards) make such order as it believes is appropriate for the purpose of ensuring that the restraint order is effective.

- (4) For the purposes of this section, dealing with property includes removing it from Anguilla.

**Discharge and variation of restraint order**

4. (1) An application to discharge or vary a restraint order or an order under section 3(3) may be made to the Court by—

- (a) the Attorney General; or

- (b) any person affected by the order.
- (2) On an application made under subsection (1), the Court may—
  - (a) discharge the order; or
  - (b) vary the order.
- (3) The Court shall discharge the restraint order if—
  - (a) at the conclusion of the proceedings for an offence with respect to which the order was made, no external order has been made; or
  - (b) within a reasonable time an external order has not been registered under section 12.

### **Appeal**

5. (1) If on an application for a restraint order the Court decides not to make one, the Attorney General may appeal to the Court of Appeal against the decision.
- (2) If an application is made under section 4(1), in relation to a restraint order or an order under section 3(3), the Attorney General or any person affected by the order may appeal to the Court of Appeal in respect of the Court's decision on the application.
- (3) On an appeal under sub-section (1) or (2), the Court of Appeal may—
  - (a) confirm the decision; or
  - (b) make such order as it believes is appropriate.

### **Seizure of property subject to restraint order**

6. (1) If a restraint order is in force, a police officer or a customs officer may seize any property which is specified in it to prevent its removal from Anguilla.
- (2) Property seized under subsection (1) shall be dealt with in accordance with the directions of the Court which made the order.

### **Hearsay evidence in restraint proceedings**

7. (1) Evidence shall not be excluded in restraint proceedings on the ground that it is hearsay (of whatever degree).
- (2) For the purposes of subsection (1), restraint proceedings are proceedings—
  - (a) for a restraint order;
  - (b) for the discharge or variation of a restraint order;
  - (c) on an appeal under section 5.
- (3) Nothing in this section affects the admissibility of evidence which is admissible apart from this section.



**Appointment of receiver**

**8.** (1) If the Court makes a restraint order, on the application of the Attorney General (whether made as part of the application for the restraint order or at any time afterwards), the Court may by order appoint a receiver in respect of any property which is specified in the restraint order.

(2) On the application of the Attorney General, the Court may, by order confer on a receiver appointed under subsection (1), any of the following powers in relation to any property which is specified in the restraint order—

- (a) power to take possession of the property;
- (b) power to manage or otherwise deal with the property;
- (c) power to start, carry on or defend any legal proceedings in respect of the property;
- (d) power to realise so much of the property as is necessary to pay the receiver's remuneration and expenses.

(3) The Court may by order confer on the receiver power to enter any premises in Anguilla and to do any of the following—

- (a) search for or inspect anything authorised by the Court;
- (b) make or obtain a copy, photograph or other record of anything so authorised;
- (c) remove anything which the receiver is required or authorised to take possession of pursuant to an order of the Court.

(4) The Court may by order authorise the receiver to do any one or more of the following in the exercise of his functions—

- (a) hold property;
- (b) enter into contracts;
- (c) sue and be sued;
- (d) employ agents;
- (e) execute powers of attorney, deeds or other instruments;
- (f) take such other steps the Court thinks appropriate.

(5) The Court may order any person who has possession of property which is specified in the restraint order to give possession of it to the receiver.

(6) The Court—

- (a) may order a person holding an interest in property which is specified in the restraint order to make to the receiver such payment as the Court specifies in respect of a beneficial interest held by the defendant or the recipient of a tainted gift;
- (b) may (on the payment being made) by order transfer, grant or extinguish any interest in the property.

(7) The Court shall not—

- (a) confer the power mentioned in section (2)(b) or (d) in respect of property; or
- (b) exercise the power conferred on it by section (6) in respect of property;

unless it gives persons holding interests in the property a reasonable opportunity to make representations to it.

(8) The Court may order that a power conferred by an order under this section is subject to such conditions and exceptions as it specifies.

### **Restrictions relating to restraint orders**

9. (1) Where the Court makes a restraint order—

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

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

(3) Before exercising any power conferred by subsection (2), the Court shall give an opportunity to be heard to—

- (a) the Attorney General; and
- (b) any receiver appointed in respect of the property under this Schedule.

### *External Orders*

#### **Applications to give effect to external orders**

10. (1) The Attorney General may apply to the Court, on behalf of an overseas authority, to give effect to an external order in Anguilla.

(2) No application to give effect to such an order may be made otherwise than under subsection (1).

(3) An application under subsection (1) may be made on an *ex parte* basis to a judge in chambers.

#### **Conditions for Court to give effect to external orders**

11. (1) The Court shall give effect to an external order by registering it where it is satisfied—

- (a) the external order was made consequent on the conviction of the person named in the order and no appeal is outstanding in respect of that conviction;
- (b) the external order is in force and no appeal is outstanding in respect of it;

- (c) in the case of an external order which authorises the confiscation of property other than money that is specified in the order, the specified property shall not be subject to a charge under any of the following provisions—
  - (i) section 11 of the Drug Trafficking Offences Act, R.S.A. c. D50; *(repealed)* , or
  - (ii) section 18 of the Proceeds of Criminal Conduct Act, R.S.A. c. P100 *(repealed)*.
- (2) In subsection (1) “appeal” includes—
  - (a) any proceedings by way of discharging or setting aside the order; and
  - (b) an application for a new trial or stay of execution.

### Registration of external orders

12. (1) Where the Court decides to give effect to an external order, it shall—
- (a) register the order in the Court;
  - (b) provide for notice of the registration to be given to any person affected by it; and
  - (c) appoint the Attorney General as the enforcement authority for the order.
- (2) Only an external order registered by the Court may be implemented under this Schedule.
- (3) The Court may cancel the registration of the external order, or vary the property to which it applies, on an application by the Attorney General or any person affected by it if, or to the extent that, the Court is of the opinion that any of the conditions in section 11 is not satisfied.
- (4) The Court shall cancel the registration of the external order, on an application by the Attorney General or any person affected by it, if it appears to the Court that the order has been satisfied—
- (a) in the case of an order for the recovery of a sum of money specified in it, by payment of the amount due under it;
  - (b) in the case of an order for the recovery of specified property, by the surrender of the property; or
  - (c) by any other means.
- (5) Where the registration of an external order is cancelled or varied under subsection (3) or (4), the Court shall provide for notice of this to be given to the Attorney General and any person affected by it.

### Appeal to Court of Appeal concerning external orders

13. (1) If on an application for the Court to give effect to an external order by registering it, the Court decides not to do so, the Attorney General may appeal to the Court of Appeal against the decision.
- (2) If an application is made under section 12(3) or (4) in relation to the registration of an external order, the Attorney General or any person affected by the registration may appeal to the Court of Appeal in respect of the Court’s decision on the application.
- (3) On an appeal under subsection (1) or (2), the Court of Appeal may—
- (a) confirm or set aside the decision to register; or

- (b) direct the Court to register the external order, or so much of it as relates to property other than to which section 11(1)(c) applies.

### **Sums in currency other than dollars**

**14.** (1) This section applies where the external order which is registered under section 12 specifies a sum of money.

(2) If the sum of money which is specified is expressed in a currency other than dollars, the sum of money to be recovered is to be taken to be the dollar equivalent calculated in accordance with the rate of exchange prevailing at the end of the working day immediately preceding the day when the Court registered the external order under section 12.

(3) The dollar equivalent shall be calculated by the Attorney General.

(4) The notice referred to in sections 12(1)(b) and 12(5) shall set out the amount in dollars which is to be paid.

### **Time for payment**

**15.** (1) This section applies where the external order is for the recovery of a specified sum of money.

(2) Subject to subsections (3) to (6), the amount ordered to be paid under—

- (a) an external order that has been registered under paragraph 12, or
- (b) where section 14(2) applies, the notice under section 12(1)(b),

shall be paid on the date on which the notice under section 12(1)(b) is delivered to the person affected by it.

(3) Where there is an appeal under section 13 and a sum falls to be paid when the appeal has been determined or withdrawn, the duty to pay is delayed until the day on which the appeal is determined or withdrawn.

(4) If the person affected by an external order which has been registered shows that he needs time to pay the amount ordered to be paid, the Court may make an order allowing payment to be made in a specified period, which—

- (a) shall start with the day on which the notice under section 12(1)(b) was delivered to the person affected by the order or the day referred to in subsection (3), as the case may be; and
- (b) shall not exceed 6 months.

(5) If within the specified period the person affected by an external order applies to the Court for the period to be extended and the Court believes that there are exceptional circumstances, it may make an order extending the period.

(6) The extended period—

- (a) shall start with the day on which the notice under section 22(1)(b) was delivered to the person affected by it or the day referred to in subsection (3), as the case may be; and
- (b) shall not exceed 12 months.

(7) An order under subsection (5)—

- (a) may be made after the end of the specified period; but

- (b) shall not be made after the end of the extended period.

(8) The Court shall not make an order under subsection (5) or (7) unless it gives the Attorney General an opportunity to make representations.

### **Appointment of receivers**

**16.** If an external order is registered, is not satisfied, and, in the case of an external order for the recovery of a specified sum of money, any period specified by order under section 15 has expired, the Court, on the application of the Attorney General may appoint a receiver in respect of—

- (a) where the external order is for the recovery of a specified sum of money, realisable property; or
- (b) where the external order is for the recovery of specified property, that property.

### **Powers of receivers in respect of monetary external orders**

**17.** (1) If the Court appoints a receiver under section 16, it may, on the application of the Attorney General, where the external order is for the recovery of a specified sum of money by order confer on the receiver the following powers in relation to any realisable property—

- (a) power to take possession of the property;
- (b) power to manage or otherwise deal with the property;
- (c) power to realise the property, in such manner as the Court may specify; and
- (d) power to start, carry on or defend any legal proceedings in respect of the property.

(2) The Court may by order confer on the receiver power to enter any premises in Anguilla and to do any of the following—

- (a) search for or inspect anything authorised by the Court;
- (b) make or obtain a copy, photograph or other record, of anything so authorised; and
- (c) remove anything which the receiver is required or authorised to take possession of pursuant to an order of the Court.

(3) The Court may by order authorise the receiver to do any of the following in the exercise of his functions—

- (a) hold property;
- (b) enter into contracts;
- (c) sue and be sued;
- (d) employ agents;
- (e) execute powers of attorney, deeds or other instruments; and
- (f) take any other steps the Court thinks appropriate.

(5) The Court may order any person who has possession of realisable property to give possession of it to the receiver.

(6) The Court—

- (a) may order a person holding an interest in realisable property to make to the receiver such payment as the Court specifies in respect of a beneficial interest held by the defendant or the recipient of a tainted gift; and
- (b) may (on payment being made) by order transfer, grant or extinguish any interest in the property.

(7) Subsections (2), (5) and (6) do not apply to property for the time being subject to a charge under any of these provisions—

- (a) section 11 of the Drug Trafficking Offences Act, R.S.A. c. D50 (*repealed*); or
- (b) section 18 of the Proceeds of Criminal Conduct Act, R.S.A. c. P100 (*repealed*).

(8) The Court shall not—

- (a) confer the power mentioned in subsection (2)(b) or (c) in respect of property; or
- (b) exercise the power conferred on it by subsection (6) in respect of property, unless it gives persons holding interests in the property a reasonable opportunity to make representations to it.

(9) The Court may order that a power conferred by an order under this section is subject to such conditions and exceptions as it specifies.

#### **Powers of receivers in respect of external orders for the recovery of specified property**

**18.** (1) If the Court appoints a receiver under section 17, it may act under this section on the application of the Attorney General where the external order is for the recovery of property specified in the order (“the specified property”).

(2) The Court may by order confer on the receiver the following powers in relation to the specified property—

- (a) power to take possession of the property;
- (b) power to manage or otherwise deal with the property;
- (c) power to realise the property, in such manner as the Court may specify;
- (d) power to start, carry on or defend any legal proceedings in respect of the property.

(3) The Court may by order confer on the receiver power to enter any premises in Anguilla and to do any of the following—

- (a) search for or inspect anything authorised by the Court;
- (b) make or obtain a copy, photograph or other record of anything so authorised; and
- (c) remove anything which the receiver is required or authorised to take possession of pursuant to an order of the Court.

(4) The Court may by order authorise the receiver to do any of the following for the purposes of the exercise of his functions—

- (a) hold property;
- (b) enter into contracts;
- (c) sue and be sued;
- (d) employ agents;
- (e) execute powers of attorney, deeds or other instruments; and
- (f) take any other steps the Court thinks appropriate.

(5) The Court may order any person who has possession of the specified property to give possession of it to the receiver.

(6) The Court—

- (a) may order a person holding an interest in the specified property to make to the receiver such payment as the Court specifies in respect of a beneficial interest held by the defendant or the recipient of a tainted gift; and
- (b) may (on the payment being made) by order transfer, grant or extinguish any interest in the property.

(7) The Court shall not—

- (a) confer the power mentioned in subsection (2)(b) or (c) in respect of property; or
- (b) exercise the power conferred on it by subsection (6) in respect of property;

unless it gives persons holding interests in the property a reasonable opportunity to make representations to it.

(8) The Court may order that a power conferred by an order under this section is subject to such conditions and exceptions as it specifies.

#### **Meaning of “managing or otherwise dealing with property”**

**19.** For the purposes of sections 8 and 17, managing or otherwise dealing with property includes—

- (a) selling the property or any part of it or interest in it;
- (b) carrying on or arranging for another person to carry on any trade or business the assets of which are or are part of the property; or
- (c) incurring capital expenditure in respect of the property.

#### **Application of sums by receiver**

**20.** (1) This section applies to sums which are in the hands of a receiver appointed under section 16 if they are—

- (a) the proceeds of the realisation of property under section 17 or 18;

- (b) where section 17 applies, sums (other than those mentioned in paragraph (a)) in which the defendant holds an interest.
- (2) The sums shall be applied as follows—
  - (a) first, they shall be applied in making any payments directed by the Court; and
  - (b) second, they shall be applied on the defendant's behalf towards satisfaction of the external order.
- (3) If the amount payable under the external order has been fully paid and any sums remain in the receiver's hands he shall distribute them—
  - (a) among such persons who held (or hold) interests in the property concerned as the Court directs; and
  - (b) in such proportions as it directs.
- (4) Before making a direction under subsection (3) the Court shall give persons who held (or hold) interests in the property concerned a reasonable opportunity to make representations to it.
- (5) For the purposes of subsections (3) and (4) the property concerned is—
  - (a) the property represented by the proceeds mentioned in subsection (1)(a);
  - (b) the sums mentioned in subsection (1)(b).
- (6) The receiver applies sums as mentioned in subsection (2)(c) by paying them to the Attorney General on account of the amount payable under the order.

#### **Sums received by Attorney General**

- 21.** (1) Where the Attorney General receives sums on account of the amount payable under a registered external order or the value of the property specified in the order, his receipt of the sums reduces the amount payable under the order, but he shall apply the sums received as follows—
- (a) first, he shall apply them in payment of the remuneration and expenses of a receiver appointed under section 8 to the extent that they have not been met by virtue of the exercise by that receiver of a power conferred under section 8(2)(d); and
  - (b) second, in payment of the remuneration and expenses of the receiver appointed under section 16.
- (2) Any sums which remain after the Attorney General has made any payments required by the preceding provisions of this section shall be paid into the National Forfeiture Fund.

#### **Satisfaction of external order**

- 22.** (1) A registered external order is satisfied when no amount is due under it.
- (2) Where such an order authorises the recovery of property specified in it, no further amount is due under the order when all of the specified property has been sold.



**Restrictions relating to receivers**

**23.** (1) Where the Court makes an order under section 16 appointing a receiver in respect of any realisable property or specified property—

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

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

(3) If the Court is satisfied that an order under section 16 appointing a receiver in respect of the property has been applied for or made, the Court may either stay the proceedings or allow them to continue on any terms it thinks fit.

(4) Before exercising any power conferred by subsection (4), the Court shall give an opportunity to be heard to—

- (a) the Attorney General; and
- (b) the receiver, if the order under section 16 has been made.

**Protection of receiver appointed under sections 8 or 16**

**24.** If a receiver appointed under sections 8 or 16—

- (a) takes action in relation to property which is not realisable property or, as the case may be, the specified property;
- (b) would be entitled to take the action if it were realisable property or, as the case may be, the specified property; and
- (c) believes on reasonable grounds that he is entitled to take the action;

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

**Further applications by receivers**

**25.** (1) A receiver appointed under section 8 or 16 may apply to the Court for an order giving directions as to the exercise of his powers.

(2) The following persons may apply to the Court—

- (a) any person affected by action taken by a receiver appointed under section 8 or 16; or
- (b) any person who may be affected by action such a receiver proposes to take.

(3) On an application under this section the Court may make such order as it believes is appropriate.

**Discharge and variation of receiver orders**

**26.** (1) The following persons may apply to the Court to vary or discharge an order made under section 8 or paragraphs 16 to 18—

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

(2) On an application under this section, the Court—

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

**Discharge of receivers appointed under section 8**

**27.** (1) If a receiver is appointed under section 8 in respect of property which is identified in the restraint order (the first receiver), and the Court appoints a receiver under section 16 (the second receiver), the Court shall order the first receiver to transfer to the second receiver all property held by him by virtue of the powers conferred on him by section 8.

(2) Sub-paragraph (1) does not apply to property which the first receiver holds by virtue of the exercise by him of his power under section 8(2)(d).

(3) If the first receiver complies with an order under subsection (1) he is discharged—

- (a) from his appointment under section 8;
- (b) from any obligation under this Schedule arising from his appointment.

(4) If this section applies the Court may make such a consequential or incidental order as it believes is appropriate.

**Appeal to Court of Appeal about receivers**

**28.** (1) If on an application for an order under any of sections 8 or 16 to 18 the Court decides not to make one, the person who applied for the order may appeal to the Court of Appeal against the decision.

(2) If the Court makes an order under any of sections 8 or 16 to 18, the following persons may appeal to the Court of Appeal in respect of the Court's decision—

- (a) the person who applied for the order;
- (b) any person affected by the order.

(3) If on an application for an order under section 25 the Court decides not to make one, the person who applied for the order may appeal to the Court of Appeal against the decision.

(4) If the Court makes an order under section 25, the following persons may appeal to the Court of Appeal in respect of the Court's decision—

- (a) the person who applied for the order;

- (b) any person affected by the order;
- (c) the receiver.

(5) The following persons may appeal to the Court of Appeal against a decision of the Court on an application under section 26—

- (a) the person who applied for the order in respect of which the application was made;
  - (b) any person affected by the Court's decision; and
  - (c) the receiver.
- (6) On an appeal under this section the Court of Appeal may—
- (a) confirm the decision, or
  - (b) make such order as it believes is appropriate.

*Interpretation for this Schedule*

**Tainted gifts**

**29.** (1) For the purposes of section 10 of this Act, a gift is tainted if it was made by the defendant at any time after—

- (a) the date on which the offence to which the external order or external request relates was committed; or
- (b) if his criminal conduct consists of 2 or more such offences and they were committed on different dates, the date of the earliest.

(2) For the purposes of subsection (1), an offence which is a continuing offence is committed on the first occasion when it is committed.

(3) A gift may be a tainted gift even if it was made before 16 July 2009.

**Specified property**

**30.** In this Schedule, “specified property” means property specified in an external order, other than an order that specifies a sum of money.

**SCHEDULE 4**

(Section 149(3)(b))

**POWERS AND DUTIES OF SUPERVISORY AUTHORITIES IN RELATION TO  
EXTERNALLY REGULATED AND NON-REGULATED SERVICE PROVIDERS****Scope of this Schedule****1.** This Schedule—

- (a) sets out the powers and duties of—
  - (i) the Commission as the supervisory authority for externally regulated service providers, and
  - (ii) the supervisory authority, or if more than one, each supervisory authority, of non-regulated service providers, and
- (b) has no application to the Commission as the supervisory authority for regulated service providers.

**Interpretation****2.** (1) In this Schedule—

“affiliate” has the meaning specified in the Financial Services Commission Act;

“director” has the meaning specified in the Financial Services Commission Act;

“former relevant service provider” means a person who at any time has been a relevant service provider, but who has ceased to be a relevant service provider;

“registered service provider” means a service provider who is registered under the ENRSP Regulations;

“parent” has the meaning specified in the Financial Services Commission Act;

“subsidiary” has the meaning specified in the Financial Services Commission Act;

“supervisory authority” means—

- (a) the Commission as the supervisory authority for externally regulated service providers; or
- (b) the supervisory authority, or where there is more than one, each supervisory authority, for non-regulated service providers;

“undertaking” has the meaning specified in the Financial Services Commission Act; ,

“unregistered service provider” means a service provider who is not registered under the ENRSP Regulations.

**Power to require information and production of documents**

**3.** (1) Where reasonably required for the discharge of its functions under this Act, the Anti-money Laundering and Terrorist Financing Regulations or a Code issued under this Act, a supervisory authority may, by written notice given to a person specified in subsection (2), require the person—

- (a) to provide specified information or information of a specified description; or

- (b) to produce specified documents or documents of a specified description.
- (2) A notice under subsection (1)—
  - (a) may be issued to—
    - (i) a relevant service provider,
    - (ii) a former relevant service provider,
    - (iii) an affiliate of a relevant service provider or a former relevant service provider,
    - (iv) a director of a relevant service provider or a former relevant service provider that is an undertaking,
    - (v) a partner of a relevant service provider or a former relevant service provider that is a partnership,
    - (vi) a senior employee of a person specified in subparagraph (i), (ii), (iii), (iv) or (v), or
    - (vii) in the case of a notice requiring the production of documents, any person who the supervisory authority reasonably believes is in possession, or has control, of the documents;
  - (b) may require that the information is to be provided to, or the documents are to be produced to, such person as may be specified in the notice; and
  - (c) must specify the place where, and the period within which, the information or documents must be provided or produced.
- (3) A supervisory authority may—
  - (a) require—
    - (i) any information provided or documents produced under this paragraph to be provided or produced in such form as it may specify,
    - (ii) any information provided or document produced under this paragraph to be verified or authenticated in such manner as it may reasonably specify, and
    - (iii) that the information is to be provided to, or the documents are to be produced to, a person specified in the notice; and
  - (b) take copies or extracts of any document produced under this paragraph.
- (4) Where a person claims a lien on a document, its production under this paragraph is without prejudice to his lien.

#### **Search warrant**

4. (1) The Magistrate may issue a search warrant under this section if satisfied on information on oath or affirmation given on behalf of a supervisory authority that there are reasonable grounds for believing that one or more of the conditions specified in subsection (2) have been satisfied.

(2) The conditions referred to in subsection (1) are—

- (a) that a person has failed to fully comply with a notice of a supervisory authority issued under section 3(1) within the time period specified in the notice and that on the premises specified in the warrant—
  - (i) there are documents that have been required to be produced, or
  - (ii) there is information that has been required to be provided;
- (b) that—
  - (i) a notice could be issued by a supervisory authority under section 3(1) against a person,
  - (ii) there are documents, or there is information, on the premises specified in the warrant in respect of which a notice under paragraph 3(1) could be issued, and
  - (iii) if a notice under section 3(1) was to be issued, it would not be fully complied with or the documents or information to which the notice related would be removed, tampered with or destroyed; or
- (c) that—
  - (i) an offence under this Act, any other law relating to money laundering or the financing of terrorism, the Anti-money Laundering and Terrorist Financing Regulations or the ENRSP Regulations has been, is being or may be committed by a person,
  - (ii) there are documents, or there is information, on the premises specified in the warrant that evidence the commission of the offence, and
  - (iii) if a notice under section 3(1) was to be issued, it would not be complied with or the documents or information to which the notice related would be removed, tampered with or destroyed.

(3) A warrant issued under this paragraph shall authorise a named representative of the supervisory authority, together with a police officer and any other person named in the warrant—

- (a) to enter the premises specified in the warrant at any time within 1 week from the date of the warrant;
- (b) to search the premises and take possession of any documents or information appearing to be documents or information of a type in respect of which the warrant was issued or to take, in relation to such documents or information, any other steps which appear to be necessary for preserving or preventing interference with them;
- (c) to take copies of, or extracts from, any documents or information appearing to be documents or information of a type in respect of which the warrant was issued;
- (d) to require any person on the premises to provide an explanation of any document or information appearing to be documents or information of a type in respect of which the warrant was issued or to state where such documents or information may be found; and
- (e) to use such force as may be reasonably necessary to execute the warrant.

(4) Unless the Magistrate, on the application of a supervisory authority, otherwise orders, any document of which possession is taken under this paragraph may be retained—

- (a) for a period of 3 months; or
- (b) if, within a period of 3 months, proceedings for a criminal offence to which the document is relevant are commenced against any person, until the conclusion of those proceedings.

(5) In this section, “premises” includes a vehicle, vessel or aircraft.

### **Compliance visits**

**5.** (1) A supervisory authority may, for the purposes of monitoring, assessing and enforcing compliance by a relevant service provider with its AML/CFT obligations—

- (a) enter and inspect any premises, whether in or outside Anguilla, owned, occupied or used by the service provider or any subsidiary or parent of the service provider;
- (b) review and inspect the business and activities of the service provider, including its policies, procedures, systems and controls;
- (c) examine and make copies of documents belonging to or in the possession or control of the service provider, or any subsidiary or parent of the service provider, that, in the opinion of a supervisory authority, are relevant to the service provider’s business or to its AML/CFT obligations; and
- (d) seek information and explanations from the officers, employees, agents and representatives of the service provider, whether orally or in writing, and whether in preparation for, during or after a compliance visit.

(2) Subject to subsection (3), a supervisory authority shall give reasonable notice to a relevant service provider of its intention to exercise its powers under subsection (1).

(3) Where it appears to a supervisory authority that the circumstances so justify, the supervisory authority may exercise its powers under subsection (1) without giving notice of its intention to do so.

(4) A relevant service provider and its subsidiaries and parents shall permit any employee of a supervisory authority, or person appointed by the supervisory authority for the purpose, to have access during reasonable business hours to any premises specified in paragraph (1)(a) to enable that person to undertake a compliance visit.

(5) A person who contravenes subsection (4) is guilty of an offence and is liable—

- (a) on summary conviction, to imprisonment for a term of 12 months or to a fine of \$25,000 or to both; or
- (b) on conviction on indictment, to imprisonment for a term of 3 years or to a fine of \$50,000 or to both.

### **Privileged information**

**6.** (1) A person shall not be required to disclose information or produce, or permit the inspection of, a document under this Schedule if the information or document is privileged material within the meaning of section 129.

(2) Notwithstanding subsection (1), a professional legal adviser may be required, pursuant to a power under this Schedule, to provide the name and address of his client.

### **Admissibility of statements**

7. (1) Subject to subsection (2), a statement made by a person in compliance with a request made by a supervisory authority under paragraph 3 is admissible in evidence in any proceedings, provided that it also complies with any requirements governing the admissibility of evidence in the circumstances in question.

(2) A statement made by a person in compliance with a requirement imposed under this Schedule may only be used in evidence against him in criminal proceedings if—

- (a) that person has himself introduced the statement in evidence; or
- (b) the prosecution of that person relates to—
  - (i) a failure or refusal by that person to produce documents or give assistance in accordance with this Act,
  - (ii) an omission by that person to disclose material which should have been disclosed or the provision by that person of false or misleading information, or
  - (iii) an untruthful statement by that person.

### **Protection for disclosure**

8. A person, including a director, officer or employee of a relevant service provider, who discloses information or produces documents to a supervisory authority, as permitted or required by this Schedule, is deemed not to be in contravention of any law, rule of law, agreement or professional code of conduct to which that person is subject and no civil, criminal or disciplinary proceedings shall lie against him, or against the service provider, in respect thereof.

### **Offences**

9. (1) A person is guilty of an offence if, without reasonable excuse he fails to comply with a notice issued under section 3(1).

(2) A person who, in purported compliance with a notice issued by a supervisory authority under section 3(1)—

- (a) provides information which he knows to be false or misleading in a material respect; or
- (b) recklessly provides information which is false or misleading in a material respect;

is guilty of an offence.

(3) A person who, for the purpose of obstructing or frustrating compliance with a notice issued by a supervisory authority under section 3(1) destroys, mutilates, defaces, hides or removes a document is guilty of an offence.

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

- (a) on summary conviction, to imprisonment for a term of 2 years or to a fine of \$30,000 or to both; or



- (b) on conviction on indictment, to imprisonment for a term of 5 years or to a fine of \$100,000 or to both.

### Enforcement action

**10.** A supervisory authority is entitled to take enforcement action under this Schedule against a registered relevant service provider if, in the opinion of the supervisory authority, the relevant service provider—

- (a) has contravened or is in contravention of any of its AML/CFT obligations;
- (b) has failed to comply with a directive given to it by the supervisory authority under section 11;
- (c) is in breach of any term or condition of its registration;
- (d) has provided the supervisory authority with any false, inaccurate or misleading information, whether on making application for registration or subsequent to its registration;
- (e) has refused or failed to co-operate with the supervisory authority on a compliance visit under section 4;
- (f) has refused or failed to co-operate with an investigator appointed under section 12; or
- (g) is carrying on any type of relevant business without being registered for that type of relevant business under the ENRSP Regulations.

### Directives

**11.** (1) Where a relevant supervisory authority is entitled to take enforcement action against a service provider, it may by written notice issue such directives to the relevant service provider as it considers appropriate.

(2) Without limiting subsection (1), a directive may—

- (a) require the service provider to take, or not to take, such action or measures as the supervisory authority considers appropriate;
- (b) impose a prohibition, restriction or limitation on the business or activities of the service provider;
- (c) require that any director, key employee or person having functions in relation to the service provider be removed and replaced by another person acceptable to the supervisory authority; or
- (d) require that any individual—
  - (i) not perform a specified function or functions for,
  - (ii) not engage in specified employment by,
  - (iii) not hold a specified position in the business of,the service provider.

(3) A directive issued under this section may be of unlimited duration or of a duration specified in the notice of the directive.

(4) The power to issue a directive under this section includes the power, whether on the application of the relevant service provider or on the volition of the relevant supervisory authority, to vary or withdraw any directive.

(5) A notice of a directive must—

- (a) specify the reasons for giving the directive; and
- (b) specify when the directive is to take effect.

(6) In the case of an externally regulated service provider, the Commission shall consult with the applicable external supervisor before issuing a directive to an externally regulated service provider unless the Commission considers that the circumstances otherwise justify.

(7) A service provider who, fails to comply with a directive issued under this section is guilty of an offence and is liable on summary conviction, to imprisonment for a term of 12 months or to a fine of \$25,000 or to both.

### **Appointment of investigator**

**12.** (1) A supervisory authority may appoint one or more competent persons as investigators to conduct an investigation on its behalf—

- (a) with respect to a relevant service provider—
  - (i) if it appears to the supervisory authority on reasonable grounds that there are, or may be, grounds for taking enforcement action, or
  - (ii) the supervisory authority is of the opinion that it is desirable to appoint an investigator to undertake a money laundering and terrorism financing risk assessment in relation to the service provider; and
- (b) with respect to a former relevant service provider, if the supervisory authority would have been entitled to appoint an investigator under paragraph (a), but for the person ceasing to be a service provider.

(2) An investigator appointed under subsection (1) shall be appointed to investigate one or more of the following in respect of the person being investigated—

- (a) the current or past compliance of the service provider with its AML/CFT obligations;
- (b) the money laundering and terrorism financing risks to which the service provider is exposed;
- (c) the capacity and willingness of the service provider to identify, mitigate and manage the money laundering and terrorism financing risks to which the service provider is exposed; and
- (d) whether there are grounds for the taking of enforcement action against the service provider.

(3) Subject to subsection (4) and as far as reasonably required to conduct his investigation, an investigator appointed under this paragraph has the powers of the supervisory authority—

- (a) to require the provision of information or documents under section 3;
- (b) to apply to the Magistrate under section 4 for a search warrant; and
- (c) under paragraphs (a) to (d) of section 5(1).

(4) A supervisory authority may give directions to the investigator—

- (a) limiting the powers of the investigator; and
- (b) concerning any one or more of the following—
  - (i) the scope of the investigation,
  - (ii) the period for the conduct of the investigation, and
  - (iii) the manner in which the investigator shall report to the supervisory authority.

(5) An investigator appointed under subsection (1) may, if he considers it necessary for the purposes of his investigation, on giving written notice to the person concerned, also investigate the business of any person who is, or at any relevant time has been—

- (a) an affiliate of the person under investigation; or
- (b) a partnership of which the person under investigation is a member.

(6) An investigator shall submit a report of his investigation to the supervisory authority that appointed him.

(7) A supervisory authority may direct that the service provider pay the costs, or such part of the costs as it may specify, of an investigation conducted under this paragraph.

(8) The ENRSP Regulations may provide for—

- (a) the notice to be given to a person to be investigated under this paragraph;
- (b) the conduct of an investigation; and
- (c) the payment of remuneration to the investigator.

(9) A person who fails to provide all assistance reasonably required by an investigator appointed under this paragraph is guilty of an offence and is liable—

- (a) on summary conviction, to imprisonment for a term of 2 years or to a fine of \$30,000 or to both; or
- (b) on conviction on indictment, to imprisonment for a term of 5 years or to a fine of \$100,000 or to both.

### **Public statements**

**13.** (1) Subject to subsection (5), a supervisory authority may issue a public statement in such manner as it considers fit setting out enforcement action that the supervisory authority intends to take, or has taken, against a relevant service provider or a former relevant service provider.

(2) A public statement issued under subsection (1) may include such information as the supervisory authority considers appropriate, including—

- (a) the reasons for the enforcement action taken or to be taken; and
- (b) the nature of the enforcement action taken or to be taken.

(3) Where it considers it in the public interest to do so, a supervisory authority may issue a public statement in such manner as it considers fit with respect to—

- (a) any person who the supervisory authority has reasonable grounds to believe is carrying on, has carried on, intends to carry on or is likely to carry on any type of relevant business without being registered under the ENRSP Regulations in respect of that type of relevant business; and
- (b) any matter relating to the risks of money laundering or terrorist financing.

(4) Subject to subsection (5), where a public statement is to be issued under this section in relation to a relevant service provider or a former relevant service provider, the supervisory authority shall give the service provider 7 days written notice of its intention to issue the public statement and the reasons for the issue of the statement.

(5) If the supervisory authority is of the opinion that it is in the public interest that subsection (4) should not have effect or that the period referred to in that subsection should be reduced, the supervisory authority may issue the public statement without notice to the relevant service provider or a former relevant service provider or with such shorter period as it considers appropriate.

#### **Restrictions on disclosure of information**

**14.** (1) Subject to paragraph 15, for the purposes of this paragraph, “protected information” means information which—

- (a) relates to the business or other affairs of any person; and
- (b) is acquired by a person falling within subsection (2), for the purposes of, or in the discharge of, his or its functions under this Act or under any regulations made or Code issued under this Act.

(2) Paragraph (1)(b) applies to the following persons—

- (a) a supervisory authority;
- (b) an officer or employee of a supervisory authority;
- (c) any person acting under the authority of the service provider; and
- (d) an officer or employee of a person specified in paragraph (c).

(3) Information is not protected information—

- (a) if the information is or has been available to the public from any other source; or
- (b) where the information is disclosed in a summary or in statistics expressed in a manner that does not enable the identity of particular persons to whom the information relates to be determined.

(4) Subject to section 6, protected information shall not be disclosed by a recipient of that information, whether the recipient of the information is a person specified in subsection (2) or a person who has directly or indirectly received the protected information from a person specified in subsection (2), without the consent of—

- (a) the person from whom he obtained the information; and
- (b) if different, the person to whom it relates.

(5) For the avoidance of doubt, the Confidential Relationships Act does not apply to a service provider with respect to any protected information.

- (6) A person who contravenes subsection (4) is guilty of an offence and is liable—
- (a) on summary conviction, to a fine of \$10,000; or
  - (b) on conviction on indictment, to a fine of \$50,000 or to imprisonment for a term of 3 years or to both.

**Gateways for the disclosure of information**

**15.** Section 14 does not apply to a disclosure—

- (a) by any person where the disclosure is—
  - (i) required or permitted by, and made in accordance with, an order of any Court of competent jurisdiction in Anguilla,
  - (ii) required or permitted by this Act or any other law,
  - (iii) made to the Attorney General,
  - (iv) made to the Unit,
  - (v) made to a law enforcement agency in Anguilla,
  - (vi) made to the Commission as the supervisory authority for regulated service providers,
  - (vii) made to another supervisory authority,
  - (viii) in the case of a disclosure that relates to an externally regulated service provider, made to the appropriate external supervisor, or
  - (ix) in the case of a disclosure that relates to a service provider, made to—
    - (A) a professional body or association, whether in or outside Anguilla, of which the service provider is a member,
    - (B) a supervisor or self-regulatory organisation, whether in or outside Anguilla, that has responsibility for the supervision of the service provider;
- (b) by a person specified in section 14(2), where the disclosure is made to any person for the purpose of discharging any function or exercising any power under this Act or a financial services enactment, in either case, whether the function or power is of the person disclosing the information or of the supervisory authority; or
- (c) by a person, other than a supervisory authority, where the disclosure—
  - (i) is made with the written consent of the supervisory authority, and
  - (ii) could lawfully have been made by the supervisory authority.

*(Act 3/2013, s.23 and Act 38/2020, s. 33)*

**SCHEDULE 5**

(Section 167)

**TRANSITIONAL PROVISIONS AND SAVINGS****Interpretation**

1. (1) In this Schedule, “former legislation” means—
- (a) the Drug Trafficking Offences Act, R.S.A. c. D50 (*repealed*);
  - (b) the Proceeds of Criminal Conduct Act, R.S.A. c. P100 (*repealed*); and
  - (c) sections 13, 14 and 15 and Part 4 (all repealed) of the Criminal Justice (International Co-operation) (Anguilla) Act.

(2) Where an offence is committed over a period of 2 or more days, or at some time during a period of 2 or more days, for the purposes of this Schedule, it shall be taken to have been committed on the earliest of those days.

**Confiscation**

2. (1) The provisions of this Act specified in column 1 shall not have effect where the offence, or any of the offences, referred to in the provision specified in column 2, was committed before 16 July 2009.

**Column 1****Column 2**

Section 13 [confiscation order]

Section 13(1)(a)

Section 35 [defendant convicted or committed absconds]

Section 35(1)(a)

Section 36 [defendant neither convicted nor acquitted absconds]

Section 36(1)(a)

Section 56 [committal by Magistrate’s Court]

Section 56(1)(a)

- (2) Sections 42 [restraint order] and 59 [enforcement abroad] of this Act shall not have effect where—

- (a) the powers specified in those sections would be exercisable by virtue of section 41(1)(a) or (b) being satisfied; and
- (b) the offence referred to in section 41(1)(a) or (b), as the case may be, was committed before 16 July 2009.

- (3) Where the Court is determining whether section 14 applies to a defendant—

- (a) conduct shall not form part of a course of criminal conduct where any of the offences referred to in section 14(2)(a) was committed before 16 July 2009; and
- (b) conduct shall form part of a course of criminal conduct, notwithstanding that any of the offences of which the defendant was convicted on at least 2 separate occasions in the period referred to in section 14(2)(b) were committed before 16 July 2009.

(4) Where subsection (1) or (2) applies with respect to an offence or offences, the confiscation provisions in the Drug Trafficking Offences Act, R.S.A. c. D50 (*repealed*) or the Proceeds of Criminal Conduct Act, R.S.A. c. P100 (*repealed*) (as appropriate for the offence concerned) have full effect, notwithstanding their repeal.

(5) For the avoidance of doubt, where Part 2 of this Act applies with respect to an offence or offences, the confiscation provisions of the former legislation shall not apply with respect to that offence or those offences.

### **Cash seizure**

3. (1) Sections 106 to 116 of this Act have no application with respect to cash seized prior to 16 July 2009 under Part 4 (*repealed*) of the Criminal Justice (International Co-operation) (Anguilla) Act.

(2) Where subsection (1) applies, Part 4 (*repealed*) of the Criminal Justice (International Co-operation) (Anguilla) Act continues to apply to the cash seized notwithstanding its repeal.

### **Money laundering**

4. (1) Sections 119, 120 and 121 of this Act shall not have effect where the conduct that constitutes an offence under those sections commenced prior to 16 July 2009 and ended after 16 July 2009 and the equivalent provisions in the former legislation shall continue to have effect with respect to such conduct, notwithstanding their repeal.

(2) Section 128 shall not have effect where the information or other matter on which the knowledge or suspicion that another person is involved in money laundering is based, or which gives reasonable grounds for such knowledge or suspicion, came to a person before 16 July 2009 and the equivalent provisions in the former legislation continue to apply in such circumstances.

*(Act 18/2009, s. 10)*

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