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I assent,

CUTHBERT M SEBASTIAN
Governor-General.
29th November, 2000.

SAINT CHRISTOPHER AND NEVIS

No. 16 of 2000

AN ACT to provide for the freezing, forfeiture, and confiscation of the proceeds of crime; to create new offences and procedures for the purpose of forestalling and preventing money laundering, and to enable the enforcement of overseas freezing, forfeiture, and confiscation orders; and to provide for related or incidental matters.

(as the Minister may, by Order, appoint.)

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the National Assembly of Saint Christopher and Nevis, and by the authority of the same, as follows:—

PART I – PRELIMINARY

1. This Act may be cited as the Proceeds of Crime Act, 2000, and shall come into force on such date as the Minister may, by Order, appoint.

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

“account” means a facility by which a regulated business

- (a) accepts deposits of money;
- (b) allows withdrawals or transfers of money;
- (c) pays or collects cheques or payment orders drawn on a regulated business by a person or on behalf of a person; or
- (d) supplies a safety deposit box;

“benefit” shall be construed in accordance with the provisions of subsection (1) of Section 3;

“business transaction” means

- (a) any activity or arrangement made or conducted by one or more persons for the

purpose of gain or advantage, profit or livelihood;

(b) any arrangement, including opening an account, between two or more persons where the purpose of the arrangement is to facilitate a financial transaction between the persons concerned; and

(c) includes

(i) any related transaction between any of the persons concerned and another person, and

(ii) the making of a gift.

“Commissioner” means the Commissioner of Police;

“confiscation order” means an order made under Section 52;

“Court” includes the High Court;

“document” includes

(a) a thing on which there is writing marks, figures, symbols or perforations, having a meaning for a person qualified to interpret them;

(b) a thing from which sounds, images or writings may be reproduced; and

(c) a map, a plan, drawing or photograph;

“drug trafficking” falls to be construed in accordance with the Drugs (Prevention of Misuse) Act;

“Financial Intelligence Unit” means the Financial Intelligence Unit as defined under the Financial Intelligence Unit Act;

“forfeiture” means the permanent deprivation of property by order of court or other competent authority;

“forfeiture order” means an order made under Section 43;

“freeze” means to temporarily prohibit the transfer, conversion, disposition or movement of property or to temporarily assume custody or control of property on the basis of an order of court or other competent authority;

“freezing order” means an order made under Section 14;

“gift” shall be construed in accordance with subsections (12) and (14) of Section 3;

“identification record” means

(a) documentary evidence to prove the identity of a person who is a nominee, agent, beneficiary or principal in relation to a transaction; or

(b) in the case where the person is a corporate body,

(i) incorporated in Saint Christopher and Nevis, the certificate of incorporation of that body,

(ii) incorporated outside Saint Christopher and Nevis, the authenticated certificate of incorporation or equivalent document of that body,

(iii) the most recent return to the Registrar of Companies, where the corporate body is incorporated abroad; or

(iv) documentary evidence to prove the identity of the corporate body;

“interest”, in relation to property, means

(a) a legal or equitable interest in property; or

(b) a right, power or privilege in connection with the property;

“joint account” means an account held by two or more persons;

“Minister” means the Minister responsible for Finance;

“money” means cash (that is to say, coins or notes in any currency) or negotiable instrument;

“money laundering” has the meaning assigned to it by Section 4 of this Act;

“person” includes a body corporate and unincorporated body;

“proceeds of crime” means

(a) proceeds of a serious offence;

(b) any property that is derived, directly or indirectly, by any person from any act or omission that occurred outside Saint Christopher and Nevis and would, if it had occurred in Saint Christopher and Nevis, have constituted a serious offence;

“production order” means an order made by the Court under Section 23;

“property” means all property, whether movable or immovable, or vested or contingent, and whether situated in Saint Christopher and Nevis or elsewhere;

“Public Trustee” means the Registrar of the High Court;

“realisable property” shall be construed in accordance with subsections (3) and (4) of Section 3;

“Regulator” means the Regulator for Saint Christopher or the Regulator for Nevis;

“regulated business activity” means any activity specified in the Schedule;

“relevant application period”, in relation to a person’s conviction of a serious offence, means a period of 12 months after,

(a) where the person is to be taken to be convicted by reason of Section 3(2)(a), the day on which the person was convicted of the offence;

(b) where the person is to be taken to have been convicted of the offence by reason of Section 3(2)(b), the day on which the person was discharged without conviction;

(c) where the person is to be taken to have been convicted of the offence by reason of Section 3(2)(c), the day on which the Court took the offence into account in passing sentence for the other offence referred to in that paragraph;

“requesting State” means a State which makes a request to Saint Christopher and Nevis pursuant to the Mutual Assistance in Criminal Matters Act, 1993;

“restraining order” means an order made by the Court under Section 14;

“serious offence” means any offence triable on indictment or hybrid offences from which a person has benefited;

“tainted property”, in relation to a serious offence, means

- (a) property used in, or in connection with, the commission of the offence; or
- (b) property derived, obtained or realised, directly or indirectly, from the commission of the offence;

“transaction” includes

- (a) opening of a joint account where the purpose of the account is to facilitate a transaction between the holders of that account;
- (b) a transaction between the holders of a joint account relating to the joint account; and
- (c) the making of a gift;

“transaction record” includes

- (a) the identification records of a person who is a party to a transaction;
- (b) a description of the transaction sufficient to identify its date, purpose, and method of execution;
- (c) the details of any account used for a transaction including the name of the financial institution, address, and sort code;
- (d) the total value of the transaction;
- (e) the name and address of the employee in the financial institution who prepared the transaction record;

“vessel” includes any ship, hovercraft or boat.

(2) A reference in this Act to a document includes a reference to part of the document, and a copy, reproduction or duplicate of the document.

3. (1) In this Act,

- (a) “a benefit” includes any property, service or advantage, whether direct or indirect;
- (b) “to benefit” has a corresponding meaning;

- (c) a reference to a benefit derived or obtained by, or otherwise accruing to, a person (“A”) includes a reference to a benefit derived or obtained by, or otherwise accruing to, another person at ‘A’s’ request or direction.
- (2) For the purposes of this Act, a person is to be taken to be convicted of a serious offence if:
- (a) he is convicted, whether summarily or on indictment, of the offence;
 - (i) a court with his consent takes the offences, of which he has not been found guilty, into account in sentencing him for another offence.
- (3) In this Act “realisable” means, subject to subsection (4)
- (a) any property held by a person who has been convicted of, or charged with, a serious offence; and
 - (b) any property held by a person to whom a person so convicted or charged has directly or indirectly made a gift caught by this Act.
- (4) Property is not realisable property if
- (a) there is in force in respect of that property, a forfeiture order under this Act or under any other enactment; or
 - (b) a forfeiture order is proposed to be made against that property under this Act or any other enactment.
- (5) For the purposes of Sections 54 and 55 the amount that might be realised at the time a confiscation order is made against a person is the total of the values at the time of all the realisable property held by the person, less the total amount payable in pursuance of an obligation, where there is an obligation having priority at the time, together with the total of the values at that time of all gifts caught by this Act.
- (6) For the purposes of subsection (5), an obligation has priority at any time if it is an obligation of the person to
- (a) pay an amount due in respect of a fine, or other order of a court, imposed or made on conviction of an offence where the fine was imposed or the order was made before the confiscation order, or
 - (b) pay an amount due in respect of any tax, rate, duty, cess or other impost payable under any enactment for the time being in force;
 - (c) pay any other civil obligation as may be determined by the Court.
- (7) Subject to subsections (8) and (9), for the purposes of this Act, the value of property (other than cash) in relation to a person holding the property,
- (a) where any other person holds an interest in the property, is,
 - (i) the market value of the first mentioned person’s beneficial interest in the property; less
 - (ii) the amount required to discharge any encumbrance on that interest; and
 - (b) in any other case, its market value.

(8) References in this Act to the value at anytime (“the material time”) of the transfer of any property are references to

- (a) the value of the property to the recipient when he receives it adjusted to take account of subsequent changes in the value of money; or
 - (b) where subsection (9) applies, the value there mentioned, whichever is the greater.
- (9) Where at the material time the recipient holds
- (a) the property which he received (not being cash); or
 - (b) property which, in whole or in part, directly or indirectly represents in his hands the property which he received,

the value referred to in subsection (7)(b) is the value to him at the material time of the property mentioned in paragraph (a) of this subsection or, as the case may be, of the property mentioned in paragraph (b) of this subsection, so far as it represents the property which he received.

(10) Subject to subsection (14), a reference to the value at anytime (“the material time”) of a gift is a reference to

- (a) the value of the gift to the recipient when he received it adjusted to take account of subsequent changes in the value of money; or
 - (b) the value there mentioned, where subsection (11) applies; whichever is the greater.
- (11) Subject to subsection (14), where at the material time a person holds
- (a) property which he received, not being cash; or
 - (b) property which, in whole or in part, directly or indirectly represents in his hands the property which he received,

the value referred to in subsection (10) is the value to him at the material time of the property mentioned in paragraph (a) of this subsection or the value of the property mentioned in paragraph (b) so far as it represents the property which he received.

(12) A gift, including a gift made before the commencement of this Act, is caught by this Act where

- (a) it was made by the person convicted or charged at anytime after the commission of the offence or, if more than one, the earliest of the offences to which the proceedings for the time being relate; and the Court considers it appropriate in all the circumstances to take the gift into account;
- (b) it was made by the person convicted or charged at anytime and was a gift of property
 - (i) received by the person in connection with the commission of a serious offence committed by him or another, or
 - (ii) which in whole or in part directly or indirectly represented in the person’s hands property received by him in that connection.

(13) The reference in subsection (12) to “an offence to which the proceedings for the time

being relate” include where the proceedings have resulted in the conviction of the person, a reference to an offence which the Court takes into consideration when determining sentence.

- (14) For the purposes of this Act,
 - (a) the circumstances in which a person is to be treated as making a gift include those when the person transfers property to another person directly or indirectly for a consideration the value of which is significantly less than the value of the consideration provided by the person; and
 - (b) in those circumstances, the preceding provisions of this section shall apply as if the person had made a gift of such share in the property as bears to the whole property the same proportions as the difference between the value referred to in paragraph (a) bears to the value of the consideration provided by the person.

PART II – MONEY LAUNDERING

4. (1) A person who engages in money laundering commits an indictable offence and shall be liable, on conviction,

(a) in case of a natural person, to a fine not exceeding two hundred and fifty thousand dollars, or imprisonment for a term not exceeding twenty years, or both;

(b) in case of a corporate body, to a fine not exceeding seven hundred thousand dollars.

(2) A person engages in money laundering where

(a) the person engages, directly or indirectly, in a transaction that involves money or other property that is proceeds of crime; or

(b) the person receives, possesses, conceals, disposes of, or brings into or transfers from Saint Christopher and Nevis, any money or other property that is proceeds of crime;

and the person knows or ought to reasonably have known, that the money or other property is derived, obtained, or realised, directly or indirectly, from some form of serious offence.

(3) In this section “transaction” includes the receiving or making of a gift.

(4) It shall be a defence to a charge under this section if the person satisfies the Court that he did not know or had no reasonable grounds for knowing that the property referred to in the charge was derived, directly or indirectly, from some form of serious offence.

5. A person who knows or suspects that an investigation into money laundering has been, is being, or is about to be made, divulges that fact or other information to another person whereby the disclosure of the fact or other information is likely to prejudice the investigation commits an offence, and shall be liable, on conviction, to a fine not exceeding one hundred thousand dollars and to imprisonment for a term not exceeding three years.

6. A person who falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction, disposal of any document or material which is or is likely to be relevant in an investigation into money laundering or to any order made in accordance with this Act commits an offence, and shall be liable, on conviction, to a fine not exceeding two hundred and fifty thousand dollars and to imprisonment for a term not exceeding five years.

**PART III – PROVISIONS FOR FACILITATING INVESTIGATIONS
AND PRESERVING PROPERTY LIABLE TO FORFEITURE AND CONFISCATION ORDERS;
RESTRICTION ON IMPORTATION
AND EXPORTATION OF CURRENCY, ETC.**

Restriction on importation and exportation of currency, etc.

7. (1) A Customs Officer or a member of the Police Force may seize, and in accordance with this section, detain any money which is being imported into or exported from Saint Christopher and Nevis of a value exceeding ten thousand dollars United States currency or its equivalent in Eastern Caribbean or other currency and he has reasonable grounds for suspecting that it directly or indirectly represents any person's proceeds of, or is intended by any person for use in, money laundering, drug trafficking or any other unlawful activity.

(2) On informing any person of the provisions of subsection (1), a Customs Officer or a member of the Police Force shall require the person to sign a declaration as to the amount of money being imported into or exported from Saint Christopher and Nevis.

(3) For the purposes of subsection (4), if the person who is importing or exporting the money signs a declaration under subsection (2) that is untrue in any material particular, a Magistrate shall receive the untrue declaration as prima facie evidence of the matters mentioned in paragraphs (a) and (b) of subsection (4).

(4) Money seized by virtue of this section shall not be detained for more than seventy-two hours unless its continued detention is authorised by the order of the Magistrate upon an application made by the Comptroller of Customs or a member of the Police Force, and no such order shall be made unless the Magistrate is satisfied

- (a) that there are reasonable grounds for the suspicion mentioned in subsection (1); and
- (b) that continued detention of the money is justified while its origin or derivation is further investigated or consideration is given to the institution, whether in Saint Christopher and Nevis or elsewhere, of criminal proceedings against any person for an offence with which the money is connected.

(5) Any order under subsection (4) shall authorise the continued detention of the money to which it relates for such period, not exceeding three months beginning with the date of the order, as may be specified in the order, and the Magistrate, if satisfied as to the matter mentioned in paragraphs (a) and (b) of that subsection, may thereafter from time to time by order authorise the further detention of the money so that

- (a) no period of detention specified in such an order shall exceed three months beginning with the date of the order; and
- (b) the total period of detention shall not exceed two years from the date of the order under subsection (4).

(6) No application to the Magistrate for an order under subsection (4) or (5) shall be made by the Comptroller of Customs or a member of the Police Force, except with the written approval of the Director of Public Prosecutions.

(7) At anytime while money is detained by virtue of the foregoing provisions of this section,

- (a) the Magistrate may direct its release if satisfied,
 - (i) on an application made by the person from whom it was seized or a person by or on whose behalf it was being imported or exported that there are no, or are no longer any such grounds for its detention as are mentioned in subsection (4); or
 - (ii) on an application made by any other person, that detention of the money is not for that or any other reason justified; and
- (b) a customs officer or police officer may release the money if satisfied that its detention is no longer justified but shall first notify the Magistrate under whose order it is being detained.

(8) If at anytime money being detained by virtue of the foregoing provisions of this section

- (a) an application for its forfeiture is made under Section 38; or

(b) proceedings are instituted, whether in Saint Christopher and Nevis or elsewhere, against any person for an offence with which the money is connected,

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

Search and Seizure

8. (1) Where a police officer has reasonable grounds to suspect that there is, or there may be within the next following 72 hours, tainted property upon any land or upon or in any premises the police officer may lay before a Magistrate an information on oath setting out the grounds and apply for the issue of a warrant to search the land or premises for tainted property.

(2) The Magistrate may, where an application is made under subsection (1), and subject to Section 9, issue a search warrant authorising the police officer, with such assistance and by such force as is necessary and reasonable,

- (a) to enter upon the land or upon or into the premises;
- (b) to search the land or premises for tainted property; and
- (c) to seize property found in the course of the search that the police officer believes on reasonable grounds to be tainted property.

9. A Magistrate shall not issue a search warrant under Section 8 unless

- (a) the informant or some other person has given to the Magistrate further information, either on oath or by affidavit, that the Magistrate may require concerning the grounds on which the issue of the warrant is sought; and
- (b) the Magistrate is satisfied that there are reasonable grounds for issuing the warrant.

10. A search warrant issued under Section 8 shall include the following information:

- (a) a statement of the purpose for which the warrant is issued, and a reference to the nature of the serious offence;

- (b) a description of the kind of property to be seized;
- (c) the time, not being later than twenty-eight days, upon which the warrant shall cease to have effect;
- (d) a statement as to whether entry is authorised to be made at anytime of the day or night, or during specified hours of the day or night.

11. Where a police officer finds, while conducting a search pursuant to a warrant issued under Section 8 property that he believes, on reasonable grounds, to be tainted property in relation –

- (a) to the offence, although not of the kind specified in the warrant, or
- (b) to another serious offence, or anything that he believes, on reasonable grounds, will afford evidence as to the commission of a criminal offence;

and the police officer believes, on reasonable grounds, that it is necessary to seize that property or thing in order to prevent its concealment, loss, or destruction, or its use in committing, or continuing or repeating the offence or any other offence, then the warrant shall be deemed to authorise the police officer to seize that property or thing.

12. (1) A police officer who executes a warrant under Section 8 shall

- (a) detain the seized property, taking reasonable care to ensure that the property is preserved, so that it may be dealt with in accordance with the law.
- (b) as soon as practicable after the execution of the warrant, but within a period of 48 hours thereafter, prepare a written report, identifying the seized property and the location where the property is being detained and forward a copy of the report to the Court in the magisterial district where the property is being detained.

(2) A Magistrate shall, upon application, provide a copy of the report to

- (a) the person from whom the property was seized; and
- (b) any other person who appears to the Magistrate to have an interest in the property.

(3) A request made under subsection (2) by a person, other than a person from whom the property was seized, shall be in writing and supported by affidavit sworn to by the person making the request.

13. (1) Where property is seized under Section 11, otherwise than because it may afford evidence of the commission of a serious offence, any person who claims an interest in the property may apply to the Magistrate Court for an order that the property be returned to him.

(2) Where a person makes an application under subsection (1) and the Court is satisfied that

- (a) the person is entitled to possession of the property;
- (b) the property is not tainted property in relation to the serious offence; and
- (c) the person in respect of whose conviction, charging or proposed charging the seizure of the property was made has no interest in the property;

the Court shall order the Commissioner to return the property to the person, and the Commissioner shall arrange for the property to be returned.

- (3) Where,
- (a) at the time when the property was seized, information had not been laid in respect of a serious offence;
 - (b) property has been seized under Section 11, otherwise than because it may afford evidence as to the commission of an offence;
 - (c) at the end of 48 hours after the time when the property was seized, information has not been laid in respect of a serious offence;

the Commissioner shall, subject to subsections (5) and (6), arrange for the return of the property to the person from whose possession it was seized, as soon as practicable.

- (4) Where,
- (a) property has been seized under Section 11, otherwise than because it may afford evidence as to the commission of a serious offence;
 - (b) either of the following conditions are satisfied, that is to say,
 - (i) before the property was seized, a person had been convicted of a serious offence or an information had been laid in respect of a serious offence, or
 - (ii) before the property was seized an information had been laid in respect of a serious offence, but the information was laid in respect of the serious offence within 48 hours after the time when the property was seized; and
 - (c) no forfeiture order has been made against the property within a period of 14 days after the property was seized;

the Commissioner shall, subject to subsections (5) and (6), arrange for the return of the property to the person from whose possession it was seized, as soon as practicable after the end of the 14 day period.

- (5) Where,
- (a) property has been seized under Section 11, otherwise that because it may afford evidence as to the commission of a serious offence;
 - (b) but for this subsection, the Commissioner would be required to arrange for the property to be returned to a person after the end of a particular period; and
 - (c) before the end of the particular period, a restraining order is made in relation to the property;

the Commissioner shall, if the restraining order directs the Public Trustee to take custody and control of the property, arrange for the property to be given to the Public Trustee, and if the Court that issued the order has made an order under subsection (6) in relation to property the Commissioner shall arrange for the property to be kept until it is dealt with in accordance with this Act.

- (6) Where,
- (a) property has been seized under Section 11, otherwise than because it may afford evidence as to the commission of a serious offence;

- (b) a restraining order is made in relation to the property; and
- (c) at the time the restraining order is made, the property is in the possession of the Commissioner;

the Commissioner may apply to the court that made the restraining order for an order that he retains possession of the property, and if the Court is satisfied that there are reasonable grounds for believing that the property may afford evidence as to the commission of a serious offence or any other offence, make an order that the Commissioner retains the property for as long as the property is required as evidence.

(7) Where the Commissioner applies for an order under subsection (6), a witness shall not be required to answer any question or to produce any document if the Court is satisfied that the question or production of the document may prejudice the investigation, or the prosecution of a person for an offence.

(8) Where,

- (a) property has been seized under Section 11, otherwise than because it may afford evidence as to the commission of a serious offence;
- (b) an application is made for a restraining order or a forfeiture order in respect of the property and the application is refused; and
- (c) at the time when the application is refused the property is in the possession of the Commissioner;

the Commissioner shall arrange for return of the property to the person from whose possession it was seized as soon as practicable after the refusal of the application.

(9) Where property is seized under Section 24, and while that property is in the possession of the Commissioner a forfeiture order is made in respect of the property, the Commissioner shall deal with the property as directed in the order.

Restraining Orders

14. (1) Subjects to this section, a Judge may, on an application made by the Director of Public Prosecutions, grant a restraining order, freezing any

- (a) realisable property of a person convicted of a serious offence, or charged, or about to be charged with a serious offence in Saint Christopher and Nevis or any other jurisdiction;
- (b) specified property of a person, other than the person referred to in paragraph (a), if the Judge is satisfied that the property is tainted property in relation to the serious offence referred to in paragraph (a).

(2) An application for a restraining order may be made *ex parte* and shall be in writing and be accompanied by an affidavit stating the following, that is to say,

- (a) where the person has been convicted of a serious offence;
 - (i) the serious offence for which he was convicted,
 - (ii) the date of conviction,
 - (iii) the court before which the conviction was obtained, and
 - (iv) whether an appeal has been lodged against the conviction;

- (b) in case of the person who has been charged and not yet convicted of a serious offence, the serious offence for which he is charged and the grounds for believing that he committed the offence;
- (c) in case of the person who is about to be charged, the serious offence for which he is to be charged and the grounds for believing that he committed the offence;
- (d) a description of the property in respect of which the restraining order is sought;
- (e) the name and address of the person who is believed to be in possession of the property;
- (f) the grounds for the belief that the property is tainted property;
- (g) the grounds for the belief that the person derived a benefit directly or indirectly from the commission of the offence;
- (h) where the application seeks a restraining order against property of a person, other than a person associated with the serious offence, the grounds for the belief that the property is tainted property in relation to the offence and is subject to the effective control of the person associated with the serious offence;
- (i) the grounds for the belief that a forfeiture order or a confiscation order may be or is likely to be made under this Act in respect of the property;
- (j) where a person is the subject of any police investigation.

(4) Where the Director of Public Prosecutions applies to a Court for a restraining order in respect of a person convicted of a serious offence in a jurisdiction, other than Saint Christopher and Nevis, and the Court grants the order, the person shall, within fourteen days of the making of the order, be notified of the order either by

- (a) service at his last known address;
- (b) service at, in the case of a body corporate, the registered or principal office of the body corporate;
- (c) publication in the *Gazette* in Saint Christopher and Nevis; or
- (d) publication in two consecutive issues of a local newspaper circulating in Saint Christopher and Nevis.

(5) If the person referred to in subsection (4)

- (a) does not respond within a period of one hundred and eighty days from the date of the making of the freeze order, the court shall order that the frozen property, frozen proceeds, or frozen instrumentalities be forfeited to the Government of Saint Christopher and Nevis;
- (b) provides, within a period of one hundred and eighty days from the date of the making of the freeze order, satisfactory evidence to the Court, the Court shall dismiss the charges on the grounds that the charges were filed for political purposes, or otherwise in bad faith, or are unfounded, and the Court shall immediately vacate the freeze order it issued;
- (c) provides, within a period of one hundred and eighty days from the date of the

making of the freeze order, evidence to the Court that he is challenging the charges, then the freeze order shall remain in force pending the outcome of the proceedings in the foreign jurisdiction; and

(d) is convicted of the money laundering offence, and has exhausted the opportunities of appeal available to him, then the frozen property, frozen proceeds, or frozen instrumentalities shall be forfeited to the Government of Saint Christopher and Nevis.

(6) Subject to subsection (7) the Court shall grant a restraining order if it is satisfied that

(a) the person has been convicted of a serious offence;

(b) there are reasonable grounds for believing that the person committed the offence, in case of a person who is not yet convicted or charged;

(c) there is reasonable cause to believe that the property is tainted property in relation to a serious offence or that the person derived a benefit directly or indirectly from the commission of the offence;

(d) there are reasonable grounds for believing that the property is tainted property in relation to a serious offence and that the property is subject to the effective control of the person associated with the serious offence, where the application seeks a restraining order against property of a person other than the one associated with the serious offence;

(e) there are reasonable grounds for believing that a forfeiture order or a confiscation order is likely to be made under this Act in respect of the property.

(7) The Court may, before granting a restraining order, require notice to be given to, and may hear, any person who, in the opinion of the Court, appears to have an interest in the property, unless the Court is of the opinion that giving the notice before granting the order would result in the disappearance, dissipation or reduction in value of the property.

(8) The Court may, in granting a restraining order freezing the property of the person, give directions as to the disposal of that property for the purpose of

(a) determining any dispute as to the ownership of the property or any part of the property;

(b) its proper administration during the period of freezing;

(c) the payment of debts due to creditors prior to the order;

(d) the payment of moneys to that person for the reasonable subsistence of that person and his family; and

(e) meeting the person's reasonable expenses in defending the criminal charge and any proceedings under this Act.

(9) Where a restraining order is granted a copy of the order shall be served on a person affected by the order in such manner as the Court may direct, or as may be prescribed by Rules of Court.

15. (1) Before a restraining order is granted under Section 12, the Court may require the Crown to give such undertakings as the Court may consider appropriate with respect to the payment of damages or costs, or both, in relation to the making and execution of the order.

(2) For the purposes of this section, the Director of Public Prosecutions may, after consultation

with the Attorney-General, on behalf of the Crown, give to the Court such undertakings with respect to the payment of damages or costs, or both, as are required by the Court.

16. The accused person shall, within fourteen days of the making of the restraining order, be accordingly notified of the order by the Director of Public Prosecutions either by

- (a) service at the business address of counsel, if any, acting on his behalf;
- (b) service at his last known address, or place of business within the jurisdiction;
- (c) the registered or principal office of the body corporate, in the case of a body corporate;
- (d) publication in the *Gazette* in Saint Christopher and Nevis; or
- (e) publication in two consecutive issues of a local newspaper circulating in Saint Christopher and Nevis.

17. (1) A copy of a foreign restraining order which affects lands, tenements or hereditaments in Saint Christopher and Nevis shall be registered with the Registrar of the Supreme Court in accordance with the Reciprocal Enforcement of Judgments Act.

(2) A restraining order shall be of no effect with respect to registered land unless it is registered as a charge under the Title by Registration Act.

(3) Where particulars of a restraining order are recorded or registered, as the case may be, in accordance with the Reciprocal Enforcement Judgments Act or the Title by Registration Act, a person who subsequently deals with the property shall, for the purposes of Section 31, be deemed to have notice of the order at the time of the dealing.

18 (1) A person who knowingly contravenes a restraining order by disposing of, or otherwise dealing with, property that is subject to the restraining order commits an indictable offence punishable upon conviction by

- (a) a fine not exceeding one hundred thousand dollars or imprisonment for a period not exceeding 5 years or both, in the case of a natural person; or
- (b) a fine not exceeding five hundred thousand dollars in the case of a body corporate.

(2) Where a restraining order is made against property and the property is disposed of, or otherwise dealt with, in contravention of the restraining order, and the disposition or dealing was not for sufficient consideration or not in favour of a person who acted in good faith and without notice, the Director of Public Prosecutions may apply to the Court that made the restraining order for an order that the disposition or dealing be set aside.

(3) Where the Director of Public Prosecutions makes an application under subsection (2) in relation to a disposition or dealing, the Court may

- (a) set aside the disposition or dealing as from the day on which the disposition or dealing took place; or
- (b) set aside the disposition or dealing as from the day of the order under this subsection and declare the respective rights of any person who acquired interests in the property on, or after the day on which the disposition or dealing took place, and before the day of the order under this subsection.

19. A restraining order granted under Section 14 shall cease to have effect

- (a) if it is revoked;
- (b) where a forfeiture order or a confiscation order is made in respect of the property which is the subject of the order; or
- (c) where the property which is the subject of the order becomes forfeited to the Crown under any other enactment.

Review of Search Warrants and Restraining Orders

20. (1) A person who has an interest in property that was seized under a warrant issued pursuant to Section 8 or in respect of which a restraining order was made may, at any time, apply to the Court

- (a) for an order under subsection (4); or
- (b) for permission to examine the property.

(2) An application under subsection (1) shall not be heard by the Court unless the applicant has given to the Director of Public Prosecutions at least three days clear notice in writing of the application.

(3) The Court may require notice of the application to be given to, and may hear, any person who, in the opinion of the Court appears to have an interest in the property.

(4) On an application made under subsection (1)(a) in respect of any property, the Court may, after hearing the applicant, the Director of Public Prosecutions, and any other person to whom notice was given pursuant to subsection (3), order that the property or any part thereof be returned to the applicant or, in the case of a restraining order, revoke the order or vary the order to exclude the property or any interest in the property or any part thereof from the application of the order, or make the order subject to such conditions as the Court thinks fit,

- (a) if the applicant enters into recognisance before the Court with or without sureties, in such amount and with such conditions, as the Court directs and, where the Court considers it appropriate, deposits with the Court such sum of money or other valuable security as the Court directs;
- (b) if the conditions referred to in subsection (5) are satisfied; or
- (c) for the purpose of
 - (i) meeting the reasonable living expenses of the person who was in possession of the property at the time the warrant was executed or the order was made or any person who, in the opinion of the Court, has an interest in the property and of the dependents of that person,
 - (ii) meeting the reasonable business or legal expenses of a person referred to in subparagraph (i)

(5) An order made under paragraph (b) of subsection 4 in respect of property may be made by the Court if the Court is satisfied

- (a) that a warrant should not have been issued pursuant to Section 12 or a restraining order should not have been made, in respect of that property; or
- (b) that the applicant is the lawful owner of, or lawfully entitled to possession of the property and appears innocent of any complicity in the commission of a serious offence

or of any collusion in relation to such an offence; and

- (c) that the property will no longer be required for the purpose of any investigation or as evidence in any proceedings.

(6) On an application made to the Court under paragraph (b) of subsection (1), the Court may order that the applicant be permitted to examine the property subject to such terms as appear to the Court to be necessary or desirable to ensure that the property is safeguarded and preserved for the purpose for which it may subsequently be required.

21. (1) Subject to this section, where a restraining order is made in relation to property, the restraining order shall not continue in force for a period of more than 6 months after the time of the making of the order unless before the expiration of that period, the Director of Public Prosecutions applies to the Court that made the order for an extension of the period of the operation of the order.

(2) Where the Director of Public Prosecutions applies under subsection (1) for an extension of the period of operation of a restraining order and the Court is satisfied

- (a) that a forfeiture order may be made in respect of the property or part thereof; or
- (b) that a confiscation order may be made against a person in relation to property which is the subject of a restraining order;

the Court may extend for a specific period of operation of the restraining order and make such other order as it considers appropriate in relation to the operation of the restraining order.

22. Subject to this section, where the Court is satisfied that property will no longer be required for the purposes of Section 41 or 59 of this Act or any other enactment providing for forfeiture or for the purpose of any investigation or as evidence in any proceedings, the Court shall, on the application of the Director of Public Prosecutions or any person having an interest in the property or on the Court's own motion,

- (a) where a restraining order has been made in relation to any property, revoke the order;
- (b) where a recognizance has been entered into pursuant to Section 20, cancel the recognizance; and
- (c) where property has been seized under a warrant issued pursuant to Section 8,
 - (i) if possession of it by the person from whom it was taken is lawful, order that it be returned to that person;
 - (ii) if possession of it by the person from whom it was taken is unlawful and the lawful owner or person who is lawfully entitled to its possession is known, order that it be returned to the lawful owner or the person who is lawfully entitled to its possession; or
 - (iii) if possession of it by the person from whom it was taken is unlawful and the lawful owner or person who is lawfully entitled to its possession is not known may order that it be forfeited to the Crown, to be disposed of or otherwise dealt with in accordance with law.

Production Orders, etc.

23. (1) Where,

- (a) a person is convicted of a serious offence and a police officer, on reasonable grounds, suspects that a person has possession or control of
 - (i) a document relevant to identifying, locating or quantifying property of the person who committed the offence or to identifying or locating a document necessary for the transfer of property of the person who committed the offence;
 - (ii) a document relevant to identifying, locating or quantifying tainted property in relation to the offence or to identifying or locating a document necessary for the transfer of tainted property in relation to the offence; or
- (b) a police officer, on reasonable grounds, suspects that a person has committed a serious offence and that a person has possession or control of any document referred to in paragraph (a);

the police officer may apply to a Judge in Chambers in accordance with subsection (2) for an order under subsection (5) against the person suspected of having possession or control of a document of the kind referred to in paragraph (a) or against the person referred to in paragraph (b)

(2) An application made under subsection (1) shall be made *ex parte* and shall be in writing and be accompanied by an affidavit.

(3) Where a police officer applies for an order under subsection (5) in respect of a serious offence and includes in the affidavit a statement that the officer, on reasonable grounds, believes that

- (a) the person who was convicted of the offence or who is believed to have committed the offence, derived a benefit directly or indirectly from the commission of the offence; and
- (b) property specified in the affidavit is subject to the effective control of the person referred to in paragraph (a);

the Judge may treat any document relevant to identifying, locating or quantifying that property as a document in respect of which an order may be issued under subsection (5).

(4) In determining whether to treat a document relevant to identifying, locating or quantifying property referred to in subsection (3) as a document in respect of which an order may be issued under subsection (5), the Judge may have regard to the matters referred to in Section 54(2).

(5) Where an application is made under subsection (1) for an order against a person, the Judge may, subject to subsections (6) and (7) make an order requiring the person to

- (a) produce to a police officer any documents of the kind referred to in subsection (1) that are in the person's possession or control; or
- (b) make available to a police officer for inspection, any documents of the kind referred to in subsection (1) that are in the person's possession or control.

(6) An order made under paragraph (a) of subsection (5) shall not be in respect of accounting records used in the ordinary business of banking including ledger, day-books, cash books and account books.

(7) A Judge shall not make an order under this section unless

- (a) the applicant or some other person has given the Judge, either orally or by affidavit, such information as the Judge requires concerning the grounds on which the order is

sought; and

(b) the Judge is satisfied that there are reasonable grounds for making the order.

(8) An order made to the effect that a person produces a document to a police officer shall specify the time when, and the place where, the document is to be produced.

(9) An order to the effect that a person makes a document available to a police officer for inspection shall specify the time or times when the document is to be made available.

24. (1) Where a document is produced to a police officer pursuant to an order made under Section 23, the police officer may

(a) inspect the document;

(b) take extracts from the document;

(c) make copies of the document; or

(d) retain the document if, and for so long as, retention of the document is reasonably necessary for the purposes of this Act.

(2) Where a document is made available to a police officer for inspection pursuant to an order made under Section 36, the police officer may

(a) inspect the document;

(b) take extracts from the document; or

(c) make copies of the document.

(3) Where a police officer retains a document pursuant to an order made under Section 27, the police officer shall

(a) give the person to whom the order was addressed a copy of the document certified by the police officer in writing to be a true copy of the document retained; and

(b) unless the person has received a copy of the document under paragraph (a), permit the person to

(i) inspect the document;

(ii) make copies of the document.

25. (1) Where a person produces or makes available a document pursuant to an order made under Section 23 the production or making available of the document, or any information, document or thing obtained as a direct or indirect consequence of the production or making available of the document, shall not be admissible against the person in any criminal proceeding except a proceeding for an offence against Section 27.

(2) For the purposes of subsection (1), proceedings on an application for a restraining order, a forfeiture order or a confiscation order are not criminal proceedings.

(3) A person shall not be excused from producing or making available a document when required to do so by an order under Section 32 on the grounds that

(a) the production or making available of the document might tend to incriminate the

person or make the person liable to a penalty; or

- (b) the production or making available of the document would be in breach of an obligation, whether imposed by enactment or otherwise, of the person not to disclose the existence or contents of the document.

26. Where a Judge makes a production order requiring a person to produce a document to a police officer, the person may apply to the Judge or another Judge for a variation of the order and if the Judge hearing the application is satisfied that the document is essential to the business activities of the person, the Judge may vary the production order so that it requires the person to make the document available to a police officer for inspection.

27. (1) Where a person is required by a production order to produce a document to a police officer or make a document available to a police officer for inspection, the person commits an offence against this subsection if the person,

- (a) contravenes the order without reasonable excuse; or
- (b) in purported compliance with the order produces or makes available a document known to the person to be false or misleading in a material particular without
 - (i) indicating to the police to whom the document is produced or made available that the document is false or misleading and the respect in which the document is false or misleading; and
 - (ii) providing correct information to the police officer if the person is in possession of, or can reasonably acquire, the correct information.

(2) A person convicted of an offence under subsection (1) shall be liable, on summary conviction,

- (a) where the offender is a natural person, to a fine not exceeding ten thousand dollars or imprisonment for a period not exceeding two years or both;
- (b) where the offender is a body corporate, to a fine not exceeding fifty thousand dollars.

28. (1) Where,

- (a) a person is convicted of a serious offence and a police officer has reasonable grounds for suspecting that there is in any premises any document of the type specified in Section 23; or
- (b) a police officer has reasonable grounds for suspecting that a person has committed a serious offence and there is in any premises any document of the type specified in Section 23,

the police officer may apply to a Judge for a warrant under subsection (2) to search the premises.

(2) Where an application is made under subsection (1) for a search warrant, the Judge may, subject to subsections (3) and (4), issue a warrant authorising the police officer with such assistance and by the use of such force as is reasonable

- (a) to enter the premises;
- (b) to search the premises for documents of the kind referred to in subsection (1); and

- (c) to seize and retain any document found in the course of the search that in the opinion of the police officer is likely to be of substantial value, whether by itself or together with other documents, to the investigation in respect of which the application is made.

(3) A Judge shall not issue a search warrant under subsection (2) unless the Judge is satisfied that

- (a) a production order has been made in respect of the document and has not been complied with;
- (b) a production order in respect of the document would be unlikely to be effective because there are reasonable grounds to suspect that such a production order would not be complied with;
- (c) the document involved cannot be identified or described with sufficient particularity to enable a production order to be made in respect of the document;
- (d) it is not practicable to communicate with any person having the power to grant entry to the premises; or
- (e) entry to the premises will not be granted unless a warrant is produced; or
- (f) the investigation for the purposes of which the application is made might be seriously prejudiced unless the police officer is granted immediate access to the document without notice of any person.

(4) A Judge shall not issue a search warrant under subsection (2) unless

- (a) the applicant or some other person has given the Judge, either orally or by affidavit, any further information that the Judge requires concerning the grounds on which the search warrant is sought; and
- (b) the Judge is satisfied that there are reasonable grounds for issuing the search warrant.

(5) A search warrant issued under this section shall state

- (a) the purpose for which the warrant is issued including a reference to the serious offence that has been, or is believed to have been committed;
- (b) whether entry is authorised to be made at anytime of the day or night or during specified hours of the day or night;
- (c) a description of the kind of documents authorised to be seized; and
- (d) the date, not being later than 28 days after the day of issue of the warrant upon which the warrant ceases to have effect.

(6) Where a police officer enters premises in execution of a warrant issued under this section, he may seize and retain

- (a) any document, other than items subject to legal privilege, which is likely to be of substantial value, whether by itself or together with other documents, to the investigation for the purpose of which the warrant was issued; and

- (b) anything that the police officer believes, on reasonable grounds, will afford evidence as to the commission of a criminal offence.

Property Tracking and Monitoring Orders

29. (1) The Financial Intelligence Unit shall, where there are reasonable grounds for believing that a person is committing, has committed or is about to commit a money laundering offence apply to the Judge for an order specified in subsection (3).

(2) The Financial Intelligence Unit shall, for the purpose of determining whether any property belongs to, is in the possession or under the control of any person, apply to the Judge for an order referred to in subsection (3).

(3) The Judge may, upon receipt of the application referred to in subsection (1) or (2) and on being satisfied that the order is necessary, make an order directing

- (a) that any document relevant to
 - (i) identifying, locating or quantifying any property; or
 - (ii) identifying or locating any document necessary for the transfer of any property;belonging to, or in the possession or under the control of that person, be delivered forthwith to the Intelligence Unit;
- (b) that a financial institution forthwith produces to the Intelligence Unit all information obtained by the institution about any business transaction conducted by or for that person with the institution during such period before or after the date of the order, as the Judge may direct.

30. (1) The Director of Public Prosecutions may apply to a Judge in Chambers in accordance with subsection (2) for a monitoring order directing a financial institution to give information to the police officer.

(2) An application under subsection (1) shall be made ex parte and shall be in writing and be accompanied by an affidavit.

(3) A monitoring order shall direct a financial institution to disclose information obtained by the institution about a transaction conducted through an account held by a particular person with the institution.

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

(5) A Judge shall not make a monitoring order unless he is satisfied that there are reasonable grounds for suspecting that the person in respect of whose account the information is sought

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

- (6) A monitoring order shall contain the following information, that is to say,
- (a) the name or names in which the account is believed to be held;
 - (b) the class of information that the institution is required to give; and
 - (c) the name or names of the police officer to whom the information is to be given and the manner in which the information is to be given.

(7) Where a financial institution is, or has been, subject to a monitoring order, the fact that the monitoring order has been made shall be disregarded for the purposes of the application of Section 4 in relation to the institution.

- (8) Where a financial institution that is given notice of the monitoring order knowingly
- (a) contravenes the order; or
 - (b) provides false or misleading information in purported compliance with the order; the institution commits an offence against this subsection and shall be liable, on summary conviction, to a fine not exceeding five hundred thousand dollars.

(9) A reference in this section to a transaction conducted through an account includes a reference

- (a) to the making of a fixed term deposit;
- (b) in relation to a fixed term deposit, the transfer of the amount deposited or any part thereof, at the end of the term; and
- (c) to the opening, existence or use of a deposit box held by the institution.

31. (1) A financial institution that is, or has been subject to a monitoring order shall not disclose the existence or the operation of the order to any person except

- (a) an officer or agent of the institution, for the purpose of ensuring that the order is complied with; or
- (b) an attorney-at-law, for the purpose of obtaining legal advice or representation in relation to the order; or
- (c) the Commissioner or a police officer authorised in writing by the Commissioner to receive the information.

(2) A person referred to in subsection (1) to whom a disclosure of the existence or operation of a monitoring order is made, whether in accordance with subsection (1) or a previous application of this subsection or otherwise, shall not

- (a) disclose the existence or operation of the order except to another person referred to in that subsection (1) for the purposes of
 - (i) the performance of that person's duties, if the disclosure is made by the Commissioner or a police officer,
 - (ii) ensuring that the order is complied with or obtaining legal advice or representation in relation to the order, if the disclosure is made by an officer or

agent of the institution, or

(iii) giving legal advice or making representation in relation to the order, if the disclosure is made by an attorney-at-law; or

(b) make a record of, or disclose, the existence of the operation of the order in any circumstances, even when he ceases to be a person referred to in subsection (1).

(3) Nothing in subsection (2) prevents the disclosure by a person referred to in paragraph (c) of subsection (1) of the existence or operation of a monitoring order

(a) for the purposes of, or in connection with, legal proceedings; or

(b) in the course of proceedings before a Court.

(4) A person referred to in paragraph (b) of subsection (1) shall not be required to disclose to any Court the existence or operation of a monitoring order.

(5) A person who contravenes subsection (1) or (2) commits an offence and shall be liable, on summary conviction,

(a) in the case of a natural person, to a fine not exceeding twenty thousand dollars or imprisonment for a period not exceeding 3 years or both; or

(b) in the case of a body corporate, to a fine not exceeding one hundred thousand dollars.

(6) A reference in this section to disclosing the existence or operation of a monitoring order to a person includes a reference to disclosing information to the person from which that person could reasonably be expected to infer the existence or operation of the monitoring order.

Order for Disclosure of Income Tax Information

32. (1) The Director of Public Prosecutions may, for the purposes of an investigation in relation to a serious offence, apply to a Judge in accordance with subsection (2) for an order for the disclosure of information under Section 33.

(2) An application made under subsection (1) shall be made *ex parte* and shall be in writing and be accompanied by an affidavit sworn on the information and belief of the Director of Public Prosecutions or a person specially designated by the Director of Public Prosecutions for that purpose deposing to the following matters, namely,

(a) the serious offence under investigation;

(b) the person in relation to whom the information or documents referred to in paragraph (c) are required;

(c) the type of information or book, record, writing, return or other document in the possession of the Comptroller of Inland Revenue to which access is sought or that is proposed to be examined or communicated; and

(d) the facts relied on to justify the belief, on reasonable grounds, that the person referred to in paragraph (b) has committed or benefited from the commission of an offence referred to in paragraph (a) and that the information or documents

referred to in paragraph (c) are likely to be of substantial value, whether alone or together with other material, to the investigation for the purpose of which the application is made.

33. (1) Notwithstanding any provision in any other law, where the Judge to whom an application under Section 32 is made is satisfied

- (a) of the matters referred to in paragraph (d) of subsection (2) of Section 32; and
- (b) that there are reasonable grounds for believing that it is in the public interest to allow access to the information or documents to which the application relates, having regard to the benefit likely to accrue to the investigation if the access is obtained,

the Judge may, subject to such conditions as the Judge considers advisable in the public interest, order the Comptroller of Inland Revenue as specified in subsection (2).

(2) For purposes of subsection (1), the Judge may order the Comptroller of Inland Revenue

- (a) to allow the Director of Public Prosecutions or any other person named in the order access to all such information and documents and to examine them; or
- (b) where the Judge considers it necessary in the circumstances to produce all such information and documents to a person referred to in paragraph (a) and allow such person to remove the information and documents from the possession of that person,

within such period as the Judge may specify after the expiration of 7 days following the service of the order on the Comptroller of Inland Revenue pursuant to subsection (3).

(3) A copy of an order made by a Judge under this section shall be served on the Comptroller of Inland Revenue in such manner as the Judge directs.

(4) A Judge who makes an order under this section may, on application of the Comptroller of Inland Revenue or of the Director of Public Prosecutions, extend the period within which the order is to be complied with.

34. (1) The Comptroller of Inland Revenue may object to the disclosure of any information or document in respect of which an order under Section 33 has been made by certifying in writing that the information or document should not be disclosed on the grounds that

- (a) the Comptroller of Inland Revenue is prohibited from disclosing the information or document by any bilateral or international treaty, convention or other agreement respecting taxation to which Saint Christopher and Nevis is a signatory;
- (b) a privilege is attached by law to the information or document;
- (c) the information or document has been placed in a sealed package pursuant to law or an order of a court of competent jurisdiction;
- (d) disclosure of the information or document would not for any other reason be in the public interest.

(2) Where an objection to the disclosure of information or a document is made under subsection (1) the objection may be determined on application by the Comptroller of Inland Revenue or the Director of Public Prosecutions to a Judge in Chambers made not later than 14 days from the date of the

objection.

(3) A Judge who is to determine an objection pursuant to subsection (2) may, if the Judge considers it necessary, examine the information or document in relation to which the objection is made and shall grant the objection and order that disclosure of the information or document be refused where the Judge is satisfied as to any of the grounds mentioned in subsection (1).

(4) An appeal shall lie from a determination under subsection (2) to the Court of Appeal and shall be brought within 14 days from the date of the determination appealed from within such further time as the Court of Appeal considers appropriate in the circumstances.

35. Where any information or document is examined or provided pursuant to an order under Section 33, the person by whom it is examined or to whom it is provided or any officer or person authorised by the Comptroller of Inland Revenue for the purpose may make or cause to be made one or more copies thereof and any copy made pursuant to this section is evidence of the nature and content of the original information or document would have had if it had been proved in the ordinary way.

36. No person to whom information or documents have been disclosed or provided pursuant to an order under Section 33 shall further disclose the information or documents except for the purposes of the investigation in relation to which the order was made, and proceedings under this Act.

***Access to specified information and documents held by
Government departments, etc.***

37. Notwithstanding any provision in this or in any other law the Court may, on an application by the Director of Public Prosecutions, order the person in charge of any Government department or statutory body to produce or furnish to the Director of Public Prosecutions or any other person specified in the order any document or information which is in his possession or under his control or to which he may reasonably have access, not being a document readily available to the public, which the Court considers relevant to any investigation into, or proceedings relating to a serious offence alleged or suspected to have been committed by any person.

PART IV – FORFEITURE ORDERS, CONFISCATION ORDERS AND RELATED MATTERS

General

38. (1) Where a person is convicted of a serious offence the Director of Public Prosecutions may apply to the Court for one or both of the following orders, that is to say,

- (a) a forfeiture order against tainted property;
- (b) a confiscation order against the person in respect of the benefits derived by the person from the commission of the serious offence.

(2) The Director of Public Prosecutions shall not make an application referred to in subsection (1) after the end of the relevant application period in relation to the conviction.

(3) An application made under subsection (1) may be in respect of one or more than one serious offence.

(4) Where an application under this section is finally determined, no further application for a forfeiture order or confiscation order shall be made in respect of the offence for which the person was convicted unless the Court is satisfied that

- (a) the property or benefit to which the new application relates was identified after the previous application was determined;
- (b) the necessary evidence became available after the previous application was determined;
or
- (c) it is in the interest of justice that the new application be made.

39. (1) Where the Director of Public Prosecutions applies for a forfeiture order against property in respect of a person's conviction of a serious offence

- (a) the Director of Public Prosecutions shall give fourteen days written notice to the convicted person and to any other person the Director of Public Prosecutions has reason to believe may have an interest in the property;
- (b) the convicted person, and any other person who claims to have an interest in the property, may appear and adduce evidence at the hearing of the application; and
- (c) the Court may, at anytime before the final determination of the application, direct the Director of Public Prosecutions
 - (i) to give notice of the application to any person who, in the opinion of the Court, appears to have an interest in the property;
 - (ii) to publish in the *Official Gazette* and in a newspaper published and circulating in Saint Christopher and Nevis notice of the application in the manner and containing such particulars and within the time that the Court considers appropriate.

40. (1) The Court hearing an application under Section 38(1) may, before final determination of the application, and on the application of the Director of Public Prosecutions, amend the application to include any other property or benefit, as the case may be, if the Court is satisfied that

- (a) the property or benefit was not reasonably capable of identification at the time the application was originally made;
- (b) the necessary evidence became available after the application was originally made.

(2) Where the Director of Public Prosecutions submits an application to the Court by virtue of subsection (1) he shall give fourteen days written notice to any person whom he has reason to believe may have an interest in the property, or benefit, as the case may be, that is to be included in the application for the forfeiture order, or confiscation order.

(3) A person who claims an interest in the property to be included in the application for the forfeiture order may appear and adduce evidence at the hearing of the amending application.

41. (1) Where an application is made to the Court for a forfeiture order or confiscation order in respect of a person's conviction of a serious offence, the Court shall, in determining the application, have regard to the transcript of any proceedings against the person for the offence he was convicted of.

(2) Where an application is made for a forfeiture order or confiscation order to the Court before which the accused person was convicted, that has not, at the time the application is made, imposed any sentence on the convicted person, the Court may, if it is satisfied that it is reasonable to do so having regard to all the circumstances defer passing sentence until it has determined the application for the order.

42. (1) The Director of Public Prosecutions may, where a person who has committed a serious offence absconds in relation to that offence, apply to the Court for a forfeiture order under Section 43 of this Act in respect of any tainted property.

(2) For the purposes of this section, a person shall be deemed to have absconded in relation to a serious offence if

- (a) an information has been laid alleging the commission of the offence by the person;
- (b) a warrant for the arrest of the person has been issued in relation to that information; and
- (c) reasonable attempts to arrest the person pursuant to the warrant have been unsuccessful during the period of six months commencing on the day the warrant was issued;

and the person shall be deemed to have absconded on the last day of the period of six months referred to in paragraph (c).

(3) Where the Director of Public Prosecutions applies under this section for a forfeiture order against any tainted property the Court shall, before hearing the application

- (a) require that notice of the application be given to any person who, in the opinion of the Court, appears to have an interest in the property;
- (b) direct that notice of the application be published in the *Official Gazette* and in a newspaper published and circulating in Saint Christopher and Nevis containing such particulars and for such time as the Court may require.

Forfeiture Orders

43. (1) When a person is convicted of a money laundering offence under the laws of Saint Christopher and Nevis and the court is satisfied that the property is tainted property, the Court shall, upon the application of the Director of Public Prosecutions, order that the property, proceeds, or instrumentalities derived from, or connected, or related to the offence be forfeited to the Government of Saint Christopher and Nevis.

(2) When a person is charged with a money laundering offence under the laws of Saint Christopher and Nevis and is notified of the charge either by

- (a) service at the business address of counsel, if any, acting on his behalf;
- (b) service at his last known address, or place of business within the jurisdiction;
- (c) the registered or principal office of the body corporate, in the case of a body corporate;
- (d) publication in the *Gazette* in Saint Christopher and Nevis; or
- (e) publication in two consecutive issues of a local newspaper circulating in Saint Christopher;

and one hundred and eighty days after the notification the preliminary inquiry of the trial does not take place because of his failure to appear at the preliminary inquiry, the court shall order that any property, proceeds, or instrumentalities derived from, connected with, or related to the offence, whenever they may be, be forfeited to the Government of Saint Christopher and Nevis.

(3) In determining whether property is tainted property the Court may infer any or all of the following, that is to say,

- (a) that the property was used in, or in connection with, the commission of the offence, where the evidence establishes that the property was in the person's possession at the time of, or immediately after the commission of the offence for which the person was convicted;
- (b) that the property was derived, obtained, or realised as a result of the commission by the person of the offence for which the person was convicted, where the evidence establishes that the property, in particular money, was found in the person's possession or under his control in a building, vehicle, receptacle or place during the course of investigations conducted by the police before or after the arrest and charging of the person for the serious offence for which the person was convicted;
- (c) that the value of the increase represents property which was derived, obtained, or realised by the person directly or indirectly from the commission of the serious offence for which the person was convicted, where the evidence establishes that the value, after the commission of a serious offence, of all ascertainable property of the person prior to the commission of the offence, and the Court is satisfied that the income of that person from sources unrelated to criminal activity of that person cannot reasonably account for the increase in value.

(4) Where the Court orders that property, other than money, be forfeited to the Crown, the Court shall specify in the order the amount that it considers to be the value of the property at the time the order is made.

(5) In considering whether a forfeiture order should be made under this section, the Court shall have regard to the following:

- (a) the rights and interests, if any, of third parties in the property;
- (b) the gravity of the offence concerned;
- (c) any hardship that may reasonably be expected to be caused to any person, by the operation of the order; and the use that is ordinarily made of the property, or the use to which the property was intended to be put.

(6) Where, as a result of any act or omission of the convicted person, any of the property, proceeds or instrumentalities described in subsection (1) cannot be forfeited, the Court shall make an order for the forfeiture of any other property of the convicted person, of an equivalent value, or shall order the convicted person to pay a fine of such value.

(7) In making a forfeiture order the Court may give such directions as are necessary or convenient for giving effect to the order, and may also give directions for the purpose of determining any dispute as to the ownership of the property or any part of the property.

44. (1) Subject to subsection (2), where the Court makes a forfeiture order against any property, the property shall vest absolutely in the Crown by virtue of the order.

- (2) Where the property to be forfeited is registerable property,
 - (a) the property shall vest in the Crown in equity but shall not vest in the Crown at law until the applicable registration requirements are complied with;
 - (b) the Crown shall be entitled to be registered as the owner of the property;
 - (c) the Attorney General shall have power, on behalf of the Crown, to do, or authorise the

doing of, anything necessary or convenient to obtain the registration of the Crown as the owner, including the execution of any instrument required to be executed by the person transferring an interest in property of that kind.

- (3) Where the Court makes a forfeiture against any property,
- (a) the property shall not, except with the leave of Court and in accordance with any directions of the Court, be disposed of, or otherwise dealt with, by or on behalf of the Crown, before the relevant appeal date; and
 - (b) if, after the relevant appeal date, the order has not been discharged, the property may be disposed of and the proceeds applied or otherwise dealt with in accordance with the directions of the “relevant authority”.

(4) For the purposes of subsection (3)(b) “relevant authority” means,

- (a) in relation to Saint Christopher, the Attorney General;
- (b) in relation to the Nevis Island Administration, the Minister responsible for Finance.

(5) Without limiting the generality of paragraph (b) of subsection (4) the directions that may be given pursuant to that paragraph may include a direction that property be disposed of in accordance with the provisions of any enactment specified in the direction.

(6) For the purposes of this section,

“registerable property” means property the title to which is passed by registration in accordance with the provisions of the Title by Registration Act;

“relevant appeal date”, used in relation to a forfeiture order made in consequence of a person’s conviction of a serious offence, means

- (a) the date on which the period allowed by rules of Court for the lodging of an appeal against the making of the order lapses in accordance with the rules of Court or is finally determined, whichever is the later; or
- (b) where an appeal against a person’s conviction or against the making of a forfeiture order is lodged, the date on which the appeal lapses in accordance with the rules of Court or is finally determined, whichever is later.

45. The Court may,

- (a) before making a forfeiture order; and
- (b) in the case of property in respect of which a restraining order was made and served in accordance with this Act;

set aside any conveyance or transfer of the property that occurred after the seizure of the property or the service of the restraining order, unless the conveyance or transfer was made for valuable consideration to a person acting in good faith and without notice.

46. (1) Where an application is made for a forfeiture order against property, a person who claims an interest in the property may apply to the Court, before the forfeiture order is made, for an order under subsection (2).

(2) If a person applies to the Court for an order under this section in respect of his interest in property and the Court is satisfied, on the balance of probabilities

- (a) that he was not in any way involved in the commission of the offence; and
- (b) where he acquired the interest during or after the commission of the offence, that he acquired the interest
 - (i) for sufficient consideration; and
 - (ii) without knowing, and in circumstances such as not to arouse a reasonable suspicion, that the property was, at the time he acquired it, property that was tainted property;

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

(3) Subject to subsection (4), where a forfeiture order has already been made directing the forfeiture of property, a person who claims an interest in the property may before the end of the period of 12 months commencing on the day on which the forfeiture order is made, apply under this subsection to the Court for an order under subsection (2).

- (4) A person who
 - (a) had knowledge of the application of the forfeiture order before the order was made; or
 - (b) appeared at the hearing of that application;

shall not be permitted to make an application under subsection (3), except with the leave of the Court.

(5) A person who makes an application under subsection (1) or (3) must give no less than 14 days written notice of the making of the application to the Director of Public Prosecutions, who shall be a party to any proceedings in the application.

(6) an applicant or the Director of Public Prosecutions may, in accordance with the rules of Court, appeal to the Court of Appeal from an order made under subsection (2).

(7) The Public Trustee shall, on application made by any person who has obtained an order under subsection (2), and where the period allowed by the rules of court with respect to the making of appeals has expired and any appeal from the order taken under subsection (6) has been determined,

- (a) direct that the property or the part thereof to which the interest of the applicant relates be returned to the applicant; or
- (b) direct that an amount equal to the value of the interest of the applicant, as declared in the order, be paid to the applicant.

47. (1) Where the Court makes a forfeiture order against any property in reliance on a person's conviction of a serious offence and the conviction is subsequently quashed, the quashing of the conviction shall discharge the forfeiture order.

(2) Where a forfeiture order against any property is discharged as provided for in subsection (1) any person who claims to have an interest in the property immediately before the making of the forfeiture order may apply to the Public Trustee, in writing, for the transfer of the interest to that person.

- (3) Upon receipt of an application under subsection (2) the Public Trustee shall,

- (a) if the interest is vested in the Crown, give directions that the property or part thereof to which the interest of the applicant relates be transferred to the person; or
- (b) in any other case, direct that there be payable to the person an amount equal to the value of the interest as at the time the order is made.

(4) In the exercise of his powers under this section the Public Trustee shall have power to do or to authorise the doing of anything necessary or convenient to effect the transfer or return of property.

48. Where the Court is satisfied that a forfeiture order should be made in respect of the property of the person convicted of a serious offence but that the property or any part thereof or interest therein cannot be made subject to such an order and, in particular,

- (a) cannot, on the exercise of due diligence, be located;
- (b) has been transferred to a third party in circumstances which do not give rise to a reasonable inference that the title or interest was transferred for the purpose of avoiding the forfeiture of the property;
- (c) is located outside Saint Christopher and Nevis;
- (d) has been substantially diminished in value or rendered worthless; or
- (e) has been commingled with other property that cannot be divided without difficulty,

the Court may, instead of ordering the property or part thereof or interest therein to be forfeited, order the person to pay to the Crown an amount equal to the value of the property, part or interest.

49. (1) Where the Court orders a person to pay an amount under Section 48 that amount shall be treated as if it were a fine upon him in respect of a conviction of a serious offence and the Court shall

- (a) notwithstanding anything contained in Section 33 of the Interpretation and General Clauses Act, impose, in default of the payment of that amount, a term of imprisonment
 - (i) not exceeding 18 months, where the amount does not exceed ten thousand dollars;
 - (ii) not exceeding 2 years, where the amount exceeds ten thousand dollars but does not exceed twenty thousand dollars;
 - (iii) not exceeding 3 years, where the amount exceeds twenty thousand dollars but does not exceed fifty thousand dollars;
 - (iv) not exceeding 5 years, where the amount exceeds fifty thousand dollars but does not exceed one hundred thousand dollars;
 - (v) not exceeding 7 years, where the amount exceeds one hundred thousand dollars but does not exceed two hundred thousand dollars;
 - (vi) not exceeding 10 years, where the amount exceeds two hundred thousand dollars but does not exceed one million dollars;
 - (vii) not exceeding 15 years, where the amount exceeds one million dollars;
- (b) direct that the term of imprisonment imposed pursuant to paragraph (a), in the case of

conviction for an offence against the Drugs (Prevention of Misuse) Act, be served consecutively to any form of imprisonment imposed on the person, or that the person is then serving;

- (c) direct that the prison Act and any regulations made thereunder regarding the remission of sentences of prisoners serving a term of imprisonment shall not apply in relation to a term of imprisonment imposed on a person pursuant to paragraph (a) in the case of a conviction for an offence against Drugs (Prevention of Misuse) Act.

50. (1) Subject to subsection (3) of Section 43, where an application is made to the Court under subsection (1) of Section 43 for a forfeiture order against any tainted property in consequence of a person's abscondence in connection with a serious offence and the Court is satisfied that

- (a) the property is tainted property in respect of the offence;
- (b) proceedings in respect of the offence committed in relation to that property were commenced;
- (c) the accused person charged with the offence referred to in paragraph (b) has absconded;

the Court may order that the property or such of the property as is specified by the Court in the order be forfeited to the Crown.

(2) The provisions of Sections 43(2), (3), (4) and (5), 44, 45, and 46 shall apply with such modifications as are necessary to give effect to this section.

51. The provisions of Sections 45 and 46 shall apply to all property possessed by, or under the control of, a person after the coming into force of this Act.

Confiscation Orders

52. (1) Subject to this section, where the Director of Public Prosecutions applies to the Court for a confiscation order against a person in respect of that person's conviction of a serious offence the Court shall, if it is satisfied that the person has benefited from that offence, order the person to pay to the Crown an amount equal to the value of his benefits from the offence or such lesser amount as the Court may certify in accordance with Section 59 to be the amount that might be realised at the time the confiscation order is made.

(2) The Court shall assess the value of the benefits derived by a person from the commission of the serious offence in accordance with Sections 53, 54, 55 and 56.

- (3) The Court shall not make a confiscation order under this section,
 - (a) where an appeal against conviction is not lodged, until the period allowed by the rules of court for lodging of an appeal against conviction has expired;
 - (b) where an appeal against conviction has been lodged, until the appeal lapses in accordance with the rules of court or is finally determined, whichever is the later date.

53. (1) Where a person obtains property as a result of, or in connection with, the commission of a serious offence his benefit is the value of property so obtained.

(2) Where a person derives an advantage as a result of, or in connection with, the commission of a serious offence his advantage shall be deemed to be a sum of money equal to the value of the advantage so derived.

(3) In determining whether a person has benefited from the commission of a serious offence or from that offence taken together with other serious offences and in assessing the value of the benefit the Court shall, unless the contrary is proved, deem

- (a) all property appearing to the Court to be held by the person on the day on which the application is made;
- (b) all property appearing to the Court to be held by the person at any time
 - (i) within the period between the day a serious offence, or the earliest offence, was committed and the day on which the application is made; or
 - (ii) within the period of six years immediately before the day on which the application is made, whichever is longer;to be property that came into the possession under the control of the person by reason of the commission of a serious offence;
- (c) any expenditure by the person since the beginning of the period referred to in paragraph (b) to be expenditure met out of payments received by him as a result of, or in connection with, the commission of a scheduled offence;
- (d) any property received or deemed to have been received by the person at any time as a result of, or in connection with, the commission of a scheduled offence.

(4) In assessing the value of any benefit derived by a person from the commission of a serious offence the Court shall leave out of account any benefits of that person that are shown to the Court to have been taken into account by a previous confiscation order made against that person.

(5) The Court shall, subject to subsection (6), treat the value of benefits derived by a person from the commission of a serious offence as being not less than the excess if evidence is given at the hearing of the application that the value of the person's property at any time after the commission of the serious offence exceeded the value of the person's property before the commission of the offence.

(6) Where the person satisfies the Court that the whole or part of excess was due to causes unrelated to the commission of the serious offence, subsection (6) shall not apply to the excess or part of the excess, as the case may be.

54. (1) For the purposes of determining whether a person benefited from a serious offence or assessing the value of benefit derived from the offence the Court may, where

- (a) a person is convicted of a serious offence and the Director of Public Prosecutions tenders to the court a statement as to any matters relevant to
 - (i) the determination of whether the person benefited from the offence or from any other serious offence of which he is convicted in the same proceedings or which is taken into account in determining his sentence, or
 - (ii) an assessment of the value of the person's benefit from the offence or other serious offence of which he is convicted in the same proceedings or which is so taken into account; and

- (b) the person accepts to any extent an allegation in the statement;

treat the person's acceptance as conclusive of the matters to which the acceptance relates.

(2) Where

- (a) a statement is tendered under paragraph (a) of subsection (1); and
- (b) the Court is satisfied that a copy of the statement has been served on the person;

the Court may require the person to indicate to what extent he accepts each allegation in the statement and, so far as he does not except any of the allegations, to indicate any matters he proposes to rely on.

(3) Where the person fails in any respect to comply with a requirement under subsection (2) he may, for the purposes of this section, be treated as having accepted every allegation in the statement, other than an allegation

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

(4) Where

- (a) the person tenders to the Court a statement as to any matters relevant to the determination of the amount that might be realised at the time the confiscation order is made; and
- (b) the Director of Public Prosecutions accepts to any extent any allegation in the statement;

the Court may, for the purposes of that determination, treat the acceptance of the Director of Public Prosecutions as conclusive of the matters to which the acceptance relates.

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

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

(6) An acceptance by a person under this section that he received any benefit from the commission of a serious offence shall be admissible in any proceedings for any offence.

55. (1) Subject to subsection (2), the amount to be recovered in the person's case under a confiscation order shall be the amount which the Court assesses to be the value of the person's benefits from the serious offence or if more than one, all the offences in respect of which the order may be made.

(2) Where the Court is satisfied as to any matter relevant to the determination of the amount which might be realised at the time the confiscation order is made, the Court may issue a certificate giving the Court's opinion as to the matters concerned, and shall do so if satisfied that the amount that might be realised at the time the confiscation order is made is less than the amount that the Court assesses to be the value of the person's benefits from the offence, or if more than one, all the offences in respect of which the confiscation order is made.

56. (1) The Director of Public Prosecutions may, where

- (a) the Court grants a confiscation order against a person in relation to a serious offence;
- (b) the Court, in calculating the amount of the confiscation order, took into account a forfeiture of property or a proposed forfeiture order in respect of property; and
- (c) an appeal against the forfeiture order is allowed or the proceedings for the proposed forfeiture order terminate without the proposed forfeiture order being made;

apply to the Court for a variation of the confiscation order to increase the amount of the order by the value of the property not so forfeited and the Court may, if it considers it appropriate to do so, vary the order accordingly.

(2) The Director of Public Prosecutions may, where

- (a) the Court grants a confiscation order against a person in relation to a serious offence;
- (b) in calculating the amount of the confiscation order the Court took into account, in accordance with Section 3(5) and (6) an amount of tax paid by the person; and
- (c) an amount is refunded to the person in respect of that tax

the Director of Public Prosecutions may apply to the Court for a variation of the confiscation order to increase the amount of the order by the value of the property not so forfeited and the Court may, if it considers it appropriate to do so, vary the order accordingly.

57. (1) In assessing the value of benefits derived by a person from the commission of a serious offence the Court may treat as property of the person any property that, in the opinion of the Court, is subject to the effective control of the person, whether or not he has any

- (a) legal or equitable interest in the property;
- (b) right, power, or privilege in connection with the property.

(2) Without prejudice to the generality of subsection (1), the Court may have regard to the following:

- (a) shareholdings in, debentures over or directorships in any company that has an interest, whether direct or indirect, in the property, and for this purpose the Court may order the investigation and inspection of the books of a named company;
- (b) any trust that has any relationship to the property;
- (c) any relationship between persons having an interest in the property or in companies of the kind referred to in paragraph (a) or trust of the kind referred to in paragraph (b), and any other persons.

(3) Where the Court, for the purposes of making a confiscation order against a person, treats particular property as the person's property pursuant to subsection (1), the Court may, on application by the Director of Public Prosecutions, make an order declaring that the property is available to satisfy the order.

(4) Where the Court declares that property is available to satisfy a confiscation order

- (a) the order may be enforced against the property if the property were property of the person against whom the order is made; and

(b) a restraining order may be made in respect of the property as if the property were property of the person against whom the order is made.

(5) Where the Director of Public Prosecutions makes an application for an order under subsection (3) that property shall be available to satisfy a confiscation order against a person, then the

(a) Director of Public Prosecutions shall give written notice of the application to the person and to any person who the Director of Public Prosecutions has reason to believe may have an interest in the property; and

(b) person and any person who claims an interest in the property may appear and adduce evidence at the hearing.

58. Where the Court orders a person to pay an amount under a confiscation order, the provisions of Section 49 shall apply with such modifications as the Court may determine for the purpose of empowering the Court to impose a term of imprisonment on a person in default of compliance by him of a confiscation order.

PART V – MISCELLANEOUS PROVISIONS

Corporation with Foreign Jurisdiction

59. (1) The Financial Intelligence Unit and the Director of Public Prosecutions shall cooperate with the competent authority of another State in matters relating to money laundering offences, in accordance with this Act and within the limits of that State's legal system.

(2) The Financial Intelligence Unit or the Director of Public Prosecutions may receive a request from the Court or other competent authority of another State to identify, trace, freeze, seize or forfeit the property, proceeds, or instrumentalities connected to money laundering offences, and may take such appropriate actions as may be necessary.

(3) A final judicial order or judgment that provides for the forfeiture of property, proceeds, or instrumentalities connected to money laundering offences, issued by the Court or other competent authority of another State, may be recognised as evidence that the property, proceeds, or instrumentalities referred to in the order or judgment may be subject to forfeiture in accordance with the laws of Saint Christopher and Nevis.

(4) The Financial Intelligence Unit or the Director of Public Prosecutions may take appropriate measures with respect to a request from a Court or other competent authority of another State for assistance related to a criminal investigation or prosecution involving money laundering offences or violations in that State or of any provision of this Act.

(5) The assistance referred to in this section may include providing original or certified copies of relevant documents and records, including those of financial institutions and government agencies, except that no information relating to a client account shall be disclosed unless the client is the subject of a criminal investigation involving a money laundering offence and the Court has, upon an application by the Director of Public Prosecutions, ordered that the information be disclosed.

(6) The Director of Public Prosecutions shall cooperate with the competent authority of another State for the purpose of

(a) obtaining testimony;

- (b) facilitating the voluntary presence or availability of persons, including those in custody, to give testimony locating or identifying persons;
- (c) service of documents;
- (d) examining objects and places;
- (e) executing searches and seizure;
- (f) providing information and evidentiary items; and
- (g) making provisional measures.

(7) Notwithstanding the provisions of subsections (1) to (6) the Financial Intelligence Unit or the Director of Prosecutions may cooperate with the competent authority of another State if that State's law has reciprocal provisions which are not less favourable to those that obtain in Saint Christopher and Nevis.

Determination of mens rea

60. (1) For the purposes of this Act, any conduct engaged in on behalf of a body corporate
- (a) by a director, servant or agent of that body corporate within the scope of his actual or apparent authority; or
 - (b) by any other person at the direction or with the consent or agreement, whether expressed or implied, of a director, servant or agent of that body corporate when the giving of the direction, consent or agreement is within the scope of the actual apparent authority of the director, servant or agent;

shall be deemed to have been engaged in by the body corporate.

(2) Where it is necessary, for the purposes of this Act, to establish the state of mind of a person in relation to conduct deemed by subsection (3) to have been engaged in by that person, it shall be sufficient to show that the servant or agent of that person, being a servant or agent by whom the conduct was engaged in within the scope of his actual or apparent authority, had that state of mind.

- (3) Conduct engaged in on behalf of a person, other than a body corporate,
- (a) by a servant or agent of that person within the scope of his actual or apparent authority; or
 - (b) by any other person at the direction or with the consent or agreement, whether expressed or implied, of a servant or agent of the first mentioned person, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the servant or agent;

shall, for the purposes of this Act, be deemed to have been engaged in by the first mentioned person.

(4) A person in this section to the state of mind of a person shall include a reference to the knowledge, intention, opinion, belief for purpose of that person and that person's reasons for his intention, opinion, and belief for purpose.

Forfeiture Fund

61. (1) There is established a Fund to be known as the Forfeiture Fund, which Fund shall be under the administration and control of the Financial Secretary in Saint Christopher and the Permanent Secretary in the Ministry of Finance in Nevis.

(2) All monies and proceeds from the sale of property forfeited or confiscated by virtue of this Act shall be deposited in the Fund.

(3) There shall be deducted from all deposits to the Fund

(a) 10 percent administrative fee to be deposited to the Consolidated Fund of Saint Christopher; and

(b) 10 percent administrative fee to be deposited to the Consolidated Fund of the Island of Nevis.

(4) The deductions referred to in subsection (3) shall be paid to the Government of Saint Christopher and Nevis or the Nevis Island Administration, as the case may be.

(5) All monies standing in the account of the Fund shall be divided equally between Saint Christopher and Nevis and used for the purpose of anti-money laundering activities in Saint Christopher and Nevis.

Overriding of Secrecy obligations

62. Subject to the provisions of the constitution, the provisions of this Act shall have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by any other enactment.

63. No prosecution in respect of a money laundering offence shall be instituted except by, or with the consent in writing of, the Director of Public Prosecutions.

64. Any prosecution, action, suit, or other proceeding brought for a money laundering offence, or for the recovery of any fine, penalty, or forfeiture under this Act or regulations made under this Act, shall be brought within a period of six years next after the date of the offence committed or the cause of action accrued.

65. A person who is convicted of a serious offence under this Act, whether in Saint Christopher and Nevis or elsewhere, shall not be eligible to or be licensed to carry on the business of a regulated business.

66. The Nevis Island Administration having requested that the provisions of this Act do apply to the Island of Nevis, in so far as it may be necessary to comply with Section 37(7) of the Constitution, consents to the provisions of this Act to apply to the Island of Nevis in respect of those matters over which it has exclusive jurisdiction.

67. (1) The Minister may, with the concurrence of the Premier of Nevis, generally make regulations to give effect to the provisions of this Act, and without prejudice to the generality of the foregoing he may, in particular, make regulations

(a) governing the obligations of a regulated business activity;

(b) prescribing the compliance duties of the Regulator;

(c) prescribing

- (i) identification procedures,
- (ii) record-keeping procedures,
- (iii) internal reporting procedures; and
- (iv) training procedures

to be maintained by any person carrying regulated business for the purposes of forestalling and preventing money laundering.

(2) Regulations made under this section shall be subject to negative resolution of the National Assembly of Saint Christopher and Nevis.

68. The Proceeds of Crime Act, 1993 is hereby repealed except that all proceedings in respect of offences committed or alleged to be committed against an enactment repealed by this Act may be commenced or continued as if this Act had not come into force.

SCHEDULE

(Section 2)

REGULATED BUSINESS ACTIVITY

1. Banking business carried on under the Banking Act;
2. Offshore banking carried on under the Nevis Offshore Banking Ordinance;
3. Trust business carried on under the Trust Act, and the Nevis International Trust Ordinance;
4. Business corporations under the Nevis Business Corporation Ordinance;
5. Finance business carried on under the Financial Services Regulations Order 1997;
6. Company business carried under the Company Act, and the Nevis Limited Liability Company Ordinance;
7. Insurance business carried on under the Insurance Act;
8. Venture risk capital;
9. Money transmission services;
10. Issuing and administering means of payment (eg., credit cards, travellers' cheques and bankers' drafts);
11. Guarentees and commitments;
12. Trading for own account or for account of customers in:
 - (a) money market instruments (eg., cheques, bills, certificates of deposits, commercial paper, etc.);

- (b) foreign exchange;
 - (c) financial and commodity-based derivative instruments (eg., futures, options, interests rate and foreign exchange instruments, etc.);
 - (d) transferable or negotiable instruments;
13. Money brokering;
 14. Money lending and pawning;
 15. Money exchange (eg. *casa de cambio*);
 16. Real property business;
 17. Credit unions;
 18. Building societies;
 19. an activity in which money belonging to a client is held or managed by
 - (i) a Barrister or a Solicitor;
 - (ii) an accountant or a person who, in the course of business, provides accounting services;
 20. the business of acting as company secretary of bodies corporate; and
 21. any other commercial activity in which there is a likelihood of an unusual or suspicious transaction being conducted.

WALFORD V GUMBS
Speaker

Passed by the National Assembly this 22nd day of November 2000.

JOSÉ LLOYD
Clerk of the National Assembly