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SCHEDULE

No. 22 of 2002.

*Organised Crime (Prevention
and Control) Act, 2002.*

Saint Christopher
and Nevis.

I assent,



EDMUND LAWRENCE

Deputy Governor-General

6th December 2002.

SAINT CHRISTOPHER AND NEVIS

No. 22 of 2002

AN ACT to give effect to the Convention Against Transnational Organised Crime.

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. (1) This Act may be cited as the Organised Crime (Prevention Control Act, 2002.

Short title and commencement.

(2) This Act shall come into effect by Order made by the Minister of Legal Affairs.

2. In this Act,

Interpretation.

“benefit” means money, valuable consideration, office or employment;

“Fund” means the Criminal Assets Recovery Fund established in Part IV;

“judicial officer” means a judge or a magistrate;

“Minister” means the Minister responsible for legal affairs;

“organised criminal group” or “group” means a structured group that:

(a) consists of three or more persons in or outside of Saint Christopher and Nevis; and

(b) has as its primary purpose the commission of serious offences in order to obtain direct or indirect material or financial benefit for the group or any of the members of the group,

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but does not include a group that is formed randomly for the commission of a single offence;

“public office” means any office of emolument in the public service or any person or body performing a public duty;

“public officer” means the holder of any public office and includes any person appointed to act in any such office;

“related person” means a person who is a member of the family or household of a justice system, participant or a witness;

“serious crime” means an offence

- (a) for which the sentence is fixed by law; or
- (b) for which a person may, under or by virtue of any enactment, be sentenced to a term of imprisonment for at least four years.

PART II

ORGANISED CRIME, CORRUPTION AND OBSTRUCTION OF JUSTICE

Organised
criminal activity.

3. (1) A person engages in organised criminal activity where the person

- (a) acts in concert with other persons in the commission of a serious offence for the purpose of obtaining a material or financial benefit;
- (b) with knowledge of the purpose or general criminal activity of an organised criminal group engages in conduct preliminary to or takes part in:
 - (i) the criminal activity of the organised criminal group;
 - (ii) other activities which the person knows will contribute to a criminal purpose;
- (c) being one of the persons who is a member of a criminal organisation, knowingly instructs any person to commit an offence for the benefit of, at the direction of, or in association with, the criminal organisation;
- (d) knowingly advises, causes, encourages or recruits another person to become a member of an organised criminal group.

(2) The offence referred to in subsection (1) occurs only where it is committed

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- (a) in more than one country; or
- (b) in one country but a substantial part of the preparation, planning, direction or control takes place in another country; or
- (c) in one country but involves an organised criminal group that engages in criminal activities in more than one country; or
- (d) in one country but has substantial effect in another country.

4. A person engages in corruption where

Corruption.

- (a) the person directly or indirectly promises, offers or gives to a public officer a benefit;
- (b) the person, being a public officer, solicits or accepts whether directly or indirectly a benefit for himself or another;

in order to act or refrain from acting in his official capacity.

5. (1) A person commits the offence of obstruction of justice where, in relation to a witness, judicial or police officer in criminal proceedings to which this Act applies, the person:

Obstruction of justice re a witness.

- (a) uses physical force or threats;
- (b) intimidates or attempts to intimidate;
- (c) promises or offers a benefit;

for the purpose of interfering with the judicial process and in the case of a witness for the purposes specified in subsection (2).

(2) The purposes referred to in subsection (1) are:

- (a) inducing false testimony;
- (b) interfering with the giving of testimony; or
- (c) interfering with the production of evidence.

6. In the prosecution of an offence under section 3(1) (a) it is not necessary to prove that

Obstruction of justice system participant.

- (a) the accused had knowledge of the specific nature of an offence; or
- (b) the accused knew the identity of any of the members of the group.

7. The Court may, in determining whether an accused person has participated in or contributed to the activity of a group, consider, *inter alia* whether the accused

Prosecution of offences.

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- (a) admits to being a member of the group;
- (b) has been identified as a member of the group;
- (c) habitually associates with the members of the group;
- (d) adopts the name, colours, symbol or other representation that is associated with the group;
- (e) received any financial or material benefit from the group.

PART III**OFFENCES AND PENALTIES**

Offences of organised criminal activity.

8. (1) A person who engages in organised criminal activity commits an offence.

(2) A person who attempts or who aids, abets, counsels or procures the commission of, or who conspires to commit the offence of organised criminal activity commits an offence.

(3) A person found guilty of an offence under subsection (1) is liable,

- (a) on summary conviction, to a fine of \$200,000.00 or imprisonment for 5 years or both;
- (b) on conviction on indictment, to a fine of \$2,000,000.00 or to imprisonment for 25 years or both.

(4) A person found guilty of an offence under subsection (2) is liable,

- (a) on summary conviction, to a fine of \$150,000.00 or imprisonment for 5 years or both;
- (b) on conviction on indictment, to a fine of \$1,500,000.00 or imprisonment for 15 years or both.

Offence of corruption.

9. (1) A person who engages in corruption commits an offence.

(2) A person who is found guilty of an offence under subsection (1) is liable:

- (a) on summary conviction, to a fine of 150,000.00 or imprisonment for 5 years or both; and
- (b) on conviction on indictment, to a fine of \$1,500,000.00 or imprisonment for 15 years or both.

Offence of obstruction of justice.

10. A person who commits the offence of obstruction of justice is liable,

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- (a) on summary conviction, to a fine of \$150,000.00 or imprisonment for 5 years or both; and
- (b) on conviction on indictment, to a fine of \$1,500,000.00 or imprisonment for 15 years or both.

PART IV**CRIMINAL ASSETS RECOVERY FUND**

- 11. There is hereby established a Fund to be known as the Criminal Assets Recovery Fund. Establishment of Criminal Assets Recovery Fund.
- 12. The Fund shall consist of: Funding.
 - (a) all moneys derived from the confiscation and forfeiture of money and property under the Proceeds of Crime Act 1993, No. 5 of the Money Laundering (Prevention and Control) Act 2000, No. 16;
 - (b) any moneys voted for that purpose by Parliament;
 - (c) any moneys received from any other source.
- 13. (1) The Minister shall appoint a Board charged with the responsibility of the management of the Fund. Board.
- (2) The Schedule shall apply to the composition of the Board and related matters. Schedule.
- 14. The Board shall manage the moneys paid into the Fund and grant such awards as it thinks fit to persons who are victims of serious offences. Objects of Board.
- 15. The account of the Fund shall be audited at least once every financial year by the Director of audit. Auditing of the Fund.

PART V**MISCELLANEOUS**

- 16. (1) Where any provision of this Act is inconsistent with or where the exercise of any power conferred by or under this Act would be inconsistent with the exercise of a power under: Application and non-application of Acts.
 - (a) the Proceeds of Crime Act 2000, No. 16;
 - (b) the Extradition Act, Cap 105;
 - (c) the Mutual Assistance In Criminal Matters Act 1993, No. 7; or
 - (d) any legislation in respect of witness protection;

the provisions of this Act shall apply to the extent of the inconsistency and any power conferred by or under the

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Acts specified in paragraphs (a) to (d) cannot be exercised so as to limit or restrict the exercise of a power conferred by or under this Act.

(2) The Statute of Limitations shall not apply to offences committed under this Act.

Regulations.

17. The Minister may make Regulations for the purpose of giving effect to the provisions of this Act, and, in particular, for prescribing anything that this Act requires to be prescribed.

SCHEDULE

(Section 13)

Constitution and Procedure of the Board

Constitution of Board.

1. The Board shall consist of not less than 5 persons appointed by the Minister by instrument in writing from amongst persons appearing to him to have wide experience in the law, law enforcement, management and finance.

Appointment of Chairman.

2. The Minister shall appoint a member to be the Chairman of the Board.

Temporary appointment.

3. The Minister may, in accordance with paragraph 1, appoint any person to act temporarily in the place of any member who is absent from Saint Christopher and Nevis or is unable to act.

Tenure.

4. (1) A member holds office for a period of 3 years unless he resigns or his appointment is revoked before the end of that period.

(2) Every member is, on the expiration of the period of his appointment, eligible for re-appointment for a further period.

(3) Where a vacancy is created by the death, resignation or removal from office of a member, a person may be appointed in accordance with paragraph 1 to fill that vacancy but shall hold office only for the unexpired portion of the period of the former member.

Resignation of members.

5. A member, other than the Chairman, may at any time resign his office by instrument in writing addressed to the Minister and transmitted through the Chairman and, from the date of the receipt by the Minister of the instrument, the member ceases to be a member.

Registration of Chairman.

6. The Chairman may at any time resign his office by instrument in writing addressed to the Minister and, upon the receipt by the Minister of such instrument, the Chairman ceases to be Chairman and, if the instrument so specifies, also ceases to be a member.

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| <p>7. Any member who fails, without reasonable excuse, to attend 3 consecutive meetings of the Board ceases to be a member and is not eligible for appointment to the Board until the expiration of 3 years from the date when he ceases to be a member.</p> | <p>Non-attendance of meetings.</p> |
| <p>8. The Minister may at any time by instrument in writing revoke the appointment of any member.</p> | <p>Revocation.</p> |
| <p>9. The appointment and the cessation of appointment of a member shall be notified in the <i>Official Gazette</i>.</p> | <p>Publication of notice.</p> |
| <p>10. The Board shall meet at such times as may be necessary or expedient for the transaction of its business.</p> | <p>Meetings.</p> |
| <p>11. The Chairman may at any time call a meeting of the Board and shall call a meeting within 7 days</p> <ul style="list-style-type: none"> (a) of the receipt by him of a request for the purpose addressed to him in writing and signed by 3 other members; (b) of receiving a direction to that effect addressed to him in writing and signed by the Minister. | <p>Special meetings.</p> |
| <p>12. The Chairman shall preside at all meetings of the Board and, in case of his absence, the members present and constituting a quorum shall elect a temporary Chairman from among their number who shall preside at the meeting.</p> | <p>Presiding at meetings.</p> |
| <p>13. A majority of the members shall constitute a quorum.</p> | <p>Quorum.</p> |
| <p>14. The decisions of the Board shall be by a majority of votes and, in any case in which the voting is equal, the Chairman, or temporary Chairman presiding at the meeting has, in addition to an original vote, a second or casting vote.</p> | <p>Decisions.</p> |
| <p>15. Minutes in proper form of each meeting shall be kept by the Secretary or such officer as the Board appoints for the purpose and shall be confirmed in writing at the next meeting by the Chairman.</p> | <p>Minutes.</p> |
| <p>16. (1) The Chairman may invite any public officer to attend a meeting of the Board where the Board considers it necessary to do so.</p> <p>(2) A public officer referred to in sub-paragraph (1) may take part in the deliberations of the Board but shall not vote on any matter.</p> | <p>Attendance of public officer at meetings.</p> |
| <p>17. Any act done or proceedings taken by the Board under this Act or the Regulations shall not be questioned on the grounds of</p> <ul style="list-style-type: none"> (a) the existence of any vacancy in the membership of or any defect in the constitution of the Board; | <p>Validity of decisions of the Board.</p> |

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- (b) any omission, defect or irregularity that does not affect the merits of the case.

WALFORD V GUMBS
Speaker

Passed by the National Assembly this 23rd day of October 2002.

JOSÉ LLOYD
Clerk of the National Assembly