



**THE FOLLOWING LEGISLATION
HAS BEEN REPEALED
BY**

ACT NO. 4 OF 2018

CHAPTER 93

PROCEEDS OF CRIME

LIST OF AUTHORISED PAGES

1 – 2	LRO 1/2008
3 – 4	LRO 1/2006
5 – 6	LRO 1/2008
7 – 14	Original
15 – 16	LRO 1/2002
17 – 30	Original
31 – 32	LRO 1/2002
33 – 46	Original
47 – 48	LRO 1/2008
49 – 50	LRO 1/2006
51 – 52	LRO 1/2002
53 – 60	Original
61 – 62	LRO 1/2006

ARRANGEMENT OF SECTIONS

**PART I
PRELIMINARY**

Introductory

SECTION

1. Short title.
2. Application.

Interpretation

3. Meaning of “drug trafficking”, “relevant offence”, “criminal conduct”.
4. Meaning of “property”, “realisable property”, etc.
5. Value of property.
6. Gift caught by this Act.
7. Other definitions.
8. Institution and conclusion of proceedings.

**PART II
CONFISCATION ORDERS**

Confiscation orders

9. Confiscation orders, drug trafficking.
10. Confiscation orders, relevant offences.
11. Assessing proceeds of drug trafficking.
12. Statements.

13. Avoidance of contracts.
14. Provision of information by defendant.

Subsequent Proceedings

15. Protection of third party rights.
16. Reconsideration of case.
17. Revised assessment of proceeds of criminal conduct.
18. Reconsideration, etc., supplementary.
19. Increase in realisable property.
20. Inadequacy of realisable property.

Absconded Persons, etc.

21. Confiscation order where defendant has absconded or died.
22. Variation of order made against absconder.

**PART III
ENFORCEMENT OF CONFISCATION ORDERS**

Default Powers

23. Imprisonment in default.
24. Interest on unpaid sums.

Restraint and Charging Orders

25. Cases in which restraint and charging orders may be made.
26. Restraint orders.
27. Charging orders.
28. Charging orders, supplementary.

Realisation of Property

29. Realisation of property.
30. Application of proceeds of realisation, etc.
31. Exercise of powers for the realisation of property.
32. Receivers supplementary.

Insolvency

33. Bankruptcy of defendant.
34. Winding up of company holding realisable property.

**PART IV
INFORMATION GATHERING POWERS**

35. Production orders.
36. Failure to comply with production order.

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37. Search warrants.
 38. Disclosure of information by Government Departments.
 39. Monitoring order.

**PART V
MONEY LAUNDERING**

Offences

40. Concealing, transferring or dealing with the proceeds of criminal conduct.
41. Assisting another to conceal proceeds of criminal conduct.
42. Acquisition, possession or use of proceeds of criminal conduct.
43. Disclosure of knowledge or suspicion of money laundering.
44. Tipping-off.

Penalties

45. Penalties for money laundering, etc.

**PART VI
SEIZURE OF CASH**

46. Seizure and detention of cash.
47. Forfeiture orders and appeals.
48. Seizure supplementary.

**PART VII
MISCELLANEOUS AND SUPPLEMENTAL**

Foreign Orders, etc.

49. Enforcement of external confiscation orders.
50. Registration of external confiscation orders.
51. Evidence of corresponding law.

Offences and Police Powers, etc.

52. Confiscated Assets Fund.
53. Administration of the Fund.
54. Offences by bodies corporate.
55. Police powers, etc.
56. Police officer's duty of confidentiality.

Procedure

- 57. Compensation.
- 58. Costs.
- 59. Civil standard of proof.
- 60. Appeals.

Supplemental

- 61. Regulations.
- 62. Crown application.

SCHEDULE.

CHAPTER 93

PROCEEDS OF CRIME

An Act to empower the Police, Customs and the Courts in relation to money laundering, search, seizure and confiscation of the proceeds of crime and for connected purposes.

*44 of 2000
S.I. 128/2001
25 of 2004
14 of 2007*

[Commencement 29th December, 2000]

**PART I
PRELIMINARY**

Introductory

- 1. This Act may be cited as the Proceeds of Crime Act. Short title.
- 2. This Act shall apply to any property, whether or not situated in The Bahamas. Application.

Interpretation

- 3. In this Act —
 - “criminal conduct” means —
 - (a) drug trafficking, or
 - (b) any relevant offence;
 - “drug trafficking” means doing or being concerned in, whether in The Bahamas or elsewhere, any act constituting—
 - (a) a drug trafficking offence, or
 - (b) an offence punishable under a corresponding law, and includes entering into or being otherwise concerned in, whether in The Bahamas or elsewhere, a drug trafficking arrangement;Meaning of drug trafficking, relevant offence, criminal conduct.

“drug trafficking arrangement” means an arrangement whereby —

- (a) the retention or control by or on behalf of another person of the proceeds of drug trafficking is facilitated; or
- (b) the proceeds of drug trafficking are to be used to secure funds to be placed at that other person’s disposal or are used to acquire property for that other person’s benefit;

“drug trafficking offence” means any of the following —

- Ch. 228. (a) an offence of cultivating, trading or importing raw opium, coca leaves, Indian hemp and other controlled drugs under Parts II, III and IV of the Dangerous Drugs Act;
- Ch. 228. (b) an offence of manufacturing, selling or using prepared opium under section 8(a) of the Dangerous Drugs Act or in contravention of any rule made under section 10 of the Dangerous Drugs Act;
- Ch. 228. (c) an offence of exporting or importing a dangerous drug contrary to section 14(7) or 15(6) of the Dangerous Drugs Act;
- Ch. 228. (d) an offence of possession with the intent to supply under section 22(1) or supplying under section 23(2) of the Dangerous Drugs Act;
- Ch. 293. (e) an offence relating to dangerous drugs under section 115 or 116(e) of the Customs Management Act;
- S.I. 128/2001.* (f) an offence under section 40, 41 or 42 of this Act (money laundering) which relates to the proceeds of drug trafficking;
- (g) aiding, abetting, counselling or procuring the commission of any of the offences in paragraph (a) to (e);
- Ch. 228. (h) an offence under section 29(5) or 30 of the Dangerous Drugs Act or attempting, soliciting, inciting or conspiring, to commit any of the offences in paragraphs (a) to (e);

“proceeds of criminal conduct”, in relation to a person who has benefited from criminal conduct, means that benefit and includes a reference to any property which in whole or in part directly or indirectly represents the proceeds of criminal conduct;

“relevant offence” means an offence described in the Schedule.

Schedule.

4. (1) In this Act —

“property” means money and all other property, movable or immovable, including things in action and other intangible or incorporeal property; and

Meaning of property, realisable property, etc.

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

(2) For the purposes of this Act —

(a) property is held by any person if he holds any interest in it;

(b) references to property held by a person include a reference to property vested in his trustee in bankruptcy or liquidator;

(c) references to a beneficial interest held in property by a person includes a reference to any beneficial interest which would have been held by him if the property were not vested in a liquidator or in trustee in bankruptcy; and

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

(3) In this Act, “realisable property” means —

(a) any property held by the defendant (other than property in respect of which there is in force a forfeiture order under section 33 of the Dangerous Drugs Act, 2000 or an order under section 262 of the Criminal Procedure Code Act); and

Ch. 228.

Ch. 91.

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

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

(a) the total value of all the realisable property held by the defendant less the total amount payable in

pursuance of any obligation having priority to the confiscation order; and

(b) the total value of all gifts caught by this Act.

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

(a) to pay an amount due in respect of a fine, or other order of a court, imposed or made on conviction of an offence, where the fine was imposed or order made before the confiscation order; or

(b) to pay any sum which would be included among the preferential debts in the defendant's bankruptcy commencing on the date of the confiscation order or winding up under an order of the court made on that date.

(6) For the purposes of subsection (5)(b), “preferential debts” —

(a) in relation to bankruptcy, means the debts to be paid in priority under section 30 of the Bankruptcy Act (assuming the date of the confiscation order to be the date of the receiving order); and

(b) in relation to winding up, means the debts to be paid in priority in accordance with section 257 of the Companies Act and section 161 of the International Business Companies Act (assuming the date of the confiscation order to be the date of the winding up).

Ch. 69.

Ch. 308.
Ch. 309.

Value of
property.

5. (1) Subject to the following subsections and section 6, for the purposes of this Act, the value of property (other than cash) in relation to any person holding the property shall be its market value, except that where any other person holds an interest in the property, the value shall be the market value of the first-mentioned person's beneficial interest in the property, less the amount required to discharge any incumbrance (other than a charging order) on that interest.

(2) Subject to section 6(3), references in this Act to the value at any time (referred to in subsection (3) as the “material time”) of a gift caught by this Act are references 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) where subsection (3) applies, the value mentioned therein,

whichever is the greater.

(3) Subject to section 6(3), if 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 (2)(b) shall be the value to him at the material time of the property mentioned in paragraph (a) or as the case may be, of the property mentioned in paragraph (b) so far as it so represents the property which he received, but disregarding in either case any charging order.

6. (1) In relation to a drug trafficking offence, a gift derived from drug trafficking (including a gift made before the commencement of this Act) is caught by this Act if —

Gift caught by this Act.

- (a) it was made by the defendant at any time since the beginning of the period of six years ending —
 (i) when the proceedings for the drug trafficking offence were instituted against him; or
 (ii) where no such proceedings have been instituted, when an application for a restraint order or a charging order is made under section 26 or 27; or
 (b) it was made by the defendant at any time and was a gift of property —
 (i) received by the defendant in connection with drug trafficking carried on by him or another person; or
 (ii) which in whole or in part directly or indirectly represented in the defendant's hands property received by him in that connection.

(2) In relation to a relevant offence a gift derived from the commission of a relevant offence (including a gift made before the commencement of this Act) is caught by this Act if it was made by the defendant at any time since the

commission of the relevant offence, or, if more than one, the earliest of the offences to which the proceedings relate (including any offence which the court takes into consideration in determining his sentence).

- (3) For the purposes of this Act —
- (a) the circumstances in which the defendant is to be treated as making a gift include those where he transfers property to another person directly or indirectly, for a consideration which is significantly less than the value of the property; and
- (b) in those circumstances, this section and section 5 shall apply as if the defendant had made a gift of such share in the property as bears to the whole property the same proportion as the difference between the values referred to in paragraph (a) bears to the value of the property.

7. In this Act —

“Central Bank” means the Central Bank of The Bahamas established under section 3 of the Central Bank of The Bahamas Act;

“confiscation order” means an order made under section 9 or 10 (including such an order made by virtue of section 16 or 21);

“Confiscated Assets Fund” means the Fund established under section 52;

“corresponding law” means —

- (a) in relation to proceedings under the Dangerous Drugs Act, 2000 has the meaning given in that Act; and
- (b) in any other case, means a law which corresponds with a provision of Bahamian law which creates a relevant offence;

“the court” means unless the context otherwise requires the Supreme Court;

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

“items subject to legal privilege” means —

- (a) communications between a counsel and attorney and his client made in connection with the giving of legal advice to the client; and

Other definitions.

Ch. 351.

Ch. 228.

- (b) communications between a counsel and attorney and his client or between such counsel and attorney and any other person made in connection with or in contemplation of legal proceedings and for the purpose of such proceedings,

when they are in the possession of a person who is entitled to possession of them; but items held resulting from criminal conduct or with the intention of furthering a criminal purpose are not items subject to legal privilege:

Provided that the legal privilege shall not extend to information regarding the identity and address of the client or principal;

“material” includes any book, document or other record in any form whatsoever, and any container or article relating thereto;

“money laundering” means doing any act —

- (a) which constitutes an offence under section 40, 41 or 42; or
- (b) which would constitute such an offence if done in The Bahamas,

and for these purposes, having possession of any property shall be taken to be doing an act in relation to it;

“premises” includes any place and in particular includes —

- (a) any building, vehicle, vessel, aircraft, or offshore structure; and
- (b) any tent or movable structure;

“prescribe” means prescribe by regulations made under section 61.

8. (1) For the purposes of this Act —

- (a) proceedings for an offence are instituted in The Bahamas when a complaint has been made or a formal charge has been laid before a Magistrate in accordance with section 54 of the Criminal Procedure Code Act;

Institution and conclusion of proceedings.

Ch. 91.

- (b) proceedings in The Bahamas for an offence are concluded on the occurrence of one of the following events —

- (i) the conviction of the defendant;

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- (ii) the discontinuance of the proceedings;
 - (iii) the acquittal of the defendant;
 - (iv) the quashing of the defendant's conviction for the offence;
 - (v) the satisfaction of a confiscation order made in the proceedings;
- (c) an application under section 16, 17, 19 or 21 is concluded —
- (i) if the court decides not to make or vary (as the case may be) a confiscation order against the defendant, when it makes that decision; or
 - (ii) if a confiscation order is made or varied as a result of that application, when the order is satisfied;
- (d) a confiscation order is satisfied when no amount is due under it.

(2) For the purposes of this Act an order is subject to appeal until an appeal is heard and determined or (disregarding any power of a court to grant leave to appeal out of time) the period of time fixed by law for such appeal has expired without an appeal having been lodged.

PART II CONFISCATION ORDERS

Confiscation orders

Confiscation orders, drug trafficking.

9. (1) Upon conviction for one or more drug trafficking offences committed after the coming into operation of this Act, a person shall, in addition to any penalty prescribed by any law for that offence, be liable at the time of sentencing in respect of that conviction to have a confiscation order made against him relating to the proceeds of drug trafficking including any property representing such proceeds and all gifts made under section 6(1).

(2) The court shall first determine whether the defendant has benefited from drug trafficking.

(3) For the purposes of this Act, a person has benefited from drug trafficking if he has at any time —

- (a) since the date of commencement of this Act; or

- (b) since the beginning of the period of six years ending when proceedings were instituted against him,

received any payment or other reward in connection with drug trafficking carried on by him or another person.

(4) If the court determines that he has so benefited, it shall in addition to sentencing or otherwise dealing with him in respect of the offence or (as the case may be) any of the offences concerned, make a confiscation order and determine the amount to be recovered in his case under the order.

(5) The court shall then, in respect of the offence or offences concerned —

- (a) order the defendant to pay the amount of the confiscation order within such period as it may specify; and
- (b) make a forfeiture order under section 33 of the Dangerous Drugs Act, 2000.

Ch. 228.

(6) For the purposes of this section “court” means the court before which the defendant was convicted.

10. (1) Upon conviction for one or more relevant offences committed after the coming into operation of this Act, a person shall, in addition to any penalty prescribed by any law for that offence be liable at the time of sentencing in respect of that conviction or at any time thereafter to have a confiscation order made against him relating to property obtained from the commission of such relevant offence and all gifts made under subsection 6(1).

Confiscation orders, relevant offences.

(2) Before making a confiscation order the court shall first determine whether the defendant has benefited from —

- (a) the offence or offences for which he is to be sentenced (“the principal offences”); and
- (b) any relevant offences which the court will be taking into consideration in determining his sentence for the principal offence.
- (3) For the purposes of this Act —
- (a) a person benefits from a relevant offence if he obtains property as a result of or in connection with its commission and his benefit is the value of any property so obtained; and

(b) if he derives a pecuniary advantage as a result of or in connection with its commission and his benefit is the amount of or the value of the pecuniary advantage of an offence, he is to be treated as if he had obtained instead a sum of money equal to the value of the pecuniary advantage.

(4) If the court determines that the defendant has benefited from the offences mentioned in subsection (2), it shall make a confiscation order and determine the amount to be recovered under the order.

(5) The court shall —

(a) order the defendant to pay the amount of the confiscation order within such period as it may specify; and

(b) order to be forfeited to the Crown any money, aircraft or vessel or other thing including premises which has been used in the commission of or in connection with an offence under this Act and any money or other property received or possessed by any person as a result of an offence under this Act.

(6) For the purposes of this section “court” means the court before which the defendant was convicted.

11. (1) For the purposes of this Act —

(a) any payments or other rewards received by a person at any time —

(i) since the date of commencement of this Act; or

(ii) since the beginning of the period of six years, ending when proceedings were instituted against him,

in connection with drug trafficking carried on by him or another person are his proceeds of drug trafficking; and

(b) the value of his proceeds of drug trafficking is the aggregate of the value of the payments or other rewards.

Assessing
proceeds of drug
trafficking.

(2) Subject to subsections (4) and (5), the court shall make the required assumptions for the purpose —

- (a) of determining whether the defendant has benefited from drug trafficking; and
- (b) if he has, of determining the value of his proceeds of drug trafficking.

(3) The required assumptions are —

- (a) that any property shown to the court —
 - (i) to have been held by the defendant; or
 - (ii) to have been transferred to him at any time since the beginning of the period of six years ending when the proceeding was instituted against him,

was received by him as a payment or reward in connection with drug trafficking carried on by him;

S.I. 128/2001.

- (b) that any expenditure of his since the beginning of that period was met out of payments received by him in connection with drug trafficking carried on by him;
- (c) that, for the purpose of valuing any property received or assumed to have been received by him at any time as such a reward, he received the property free of other interests in it.

(4) The court shall not make any of the required assumptions in relation to any particular property or expenditure if that assumption is shown to be incorrect in the defendant's case and where the court by virtue of this subsection does not make one of the required assumptions it shall state its reasons in writing.

(5) Subsection (2) does not apply if the only offence in respect of which the defendant appears before the court for sentencing is an offence under section 40, 41 or 42 relating to the proceeds of drug trafficking.

(6) For the purpose of assessing the value of the proceeds derived by the defendant from drug trafficking in a case where a confiscation order has previously been made against him (under this Act) the court shall leave out of account any such proceeds that are shown to the court to have been taken into account in determining the amount to be recovered under the previous order.

(7) For the purposes of this Act, a person has benefited from drug trafficking if he has at any time —

- (a) since the date of commencement of this Act; or
- (b) since the beginning of the period of six years ending when proceedings were instituted against him,

received any payment or other reward in connection with drug trafficking carried on by him or another person.

(8) For the purposes of this section “court” means the court before which the defendant was convicted.

Statements.

12. (1) Where the court proceeds under section 9 or 10 the Police or the Attorney-General shall give the court a statement (a “prosecutor’s statement”) of matters which he considers relevant in connection with assessing the value of the defendant’s proceeds of drug trafficking or the benefit from any relevant offence.

(2) Where any prosecutor’s statement has been given the court may require the defendant, within such period as it may direct —

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

and the court may for the purposes of the determination and assessment mentioned in subsection (1) treat any acceptance by the defendant as conclusive of the matters to which it relates.

(3) To the extent that the defendant fails in any respect to comply with a requirement under subsection (2), he may be treated for the purposes of this section as accepting every allegation in the statement.

(4) Where —

- (a) there is tendered to the court by the defendant a statement as to any matters relevant to determining the amount that might be realised at the time the confiscation order is made; and
- (b) the Police or the Attorney-General accepts to any extent any allegation in the statement,

the court may, for the purposes of that determination, treat that as conclusive of the matters to which it relates.

(5) An allegation may be accepted or a matter indicated for the purposes of this section either orally before the court or in writing.

(6) No acceptance by the defendant under this section that proceeds have been derived by him from drug trafficking or from any relevant offence shall be admissible in evidence in any other proceedings for an offence.

(7) For the purposes of this Act, a person has benefited from drug trafficking if he has at any time —

- (a) since the date of commencement of this Act; or
- (b) since the beginning of the period of six years ending when proceedings were instituted against him,

received any payment or other reward in connection with drug trafficking carried on by him or another person.

(8) For the purposes of this section “court” means the court before which the defendant was convicted.

13. A court may —

- (a) prior to making a confiscation order under sections 9 and 10; and
- (b) in the case of property in respect of which a restraint order was made under section 26 and served on persons affected by the order in accordance with section 26(4),

Avoidance of contracts.

set aside any conveyance or transfer of the property that occurred after the seizure of the property or the service of notice of the order on persons affected by the order under section 26(4), unless the conveyance or transfer was for valuable consideration to a person acting in good faith and without notice.

14. (1) For the purpose of obtaining information to assist it in carrying out its functions in relation to making a confiscation order, the court may order the defendant to give it such information in such manner and before such date as may be specified in the order.

Provision of information by defendant.

(2) If the defendant fails to comply with any order under this section, the court may draw such inference from that failure as it considers appropriate.

(3) Where the Police or the Attorney-General accepts to any extent any allegation made by the defendant in giving to the court information required under this section the court may treat that acceptance as conclusive of the matters to which it relates.

(4) For the purposes of this section “court” means the court before which the defendant was convicted.

Subsequent Proceedings

Protection of
third party
rights.

15. (1) Where an application is made for a confiscation order, a person who asserts an interest in any property subject to that order may apply to the court before the confiscation order is made, for an order under subsection (2).

(2) If a person applies to the court for an order under this subsection in respect of his interest in realisable property and the court is satisfied —

- (a) that he was not in any way involved in the defendant’s criminal conduct; and
- (b) 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 involved in or was the proceeds of criminal conduct,

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

(3) Subject to subsection (4), where a confiscation order has already been made, a person who asserts an interest in the property may apply under this subsection to the court for an order under subsection (2).

(4) Except with the leave of the court, an application shall not be made under subsection (3) —

- (a) by a person —
 - (i) who had knowledge of the application for a confiscation order before the order was made; or

- (ii) who appeared at the hearing of that application; or
- (b) later than 28 days beginning with the day on which the confiscation order was made.

(5) A person who makes an application under subsection (1) or (3) shall give not less than seven days' written notice of the making of the application to the Attorney-General who shall be a party to any proceedings on the application.

(6) For the purposes of this section "court" means the court before which the defendant was convicted.

16. (1) This section applies where a defendant has appeared before a court to be sentenced in respect of one or more drug trafficking or relevant offences but the court has not made a confiscation order under section 9 or 10.

Reconsideration of case.

(2) If the Attorney-General has evidence which was not previously available but which he believes would have led the court to determine that the defendant had benefited from drug trafficking or from any relevant offence he may make an application to the court.

(3) On such an application the court shall consider the evidence and if satisfied that the defendant had so benefited, the court shall make a confiscation order and order the payment of such as it thinks just in all the circumstances of the case, including in particular the amount of any fine or other orders for payment imposed on the defendant in respect of the offence or offences in question.

(4) For the purposes of this section "court" means the court before which the defendant was convicted.

17. (1) This section applies where the court has made a determination of the amount to be recovered under a confiscation order ("the current determination").

Revised assessment of proceeds of criminal conduct.

(2) Where the Attorney-General is of the opinion that the real value of the defendant's proceeds of drug trafficking or benefit from any relevant offence was greater than their assessed value, he may apply to the court for the evidence on which he has formed his opinion to be considered by the court.

(3) If, having considered the evidence, the court is satisfied that the real value of the defendant's proceeds of drug trafficking or benefit from any relevant offences is greater than their assessed value (whether because the real value at the time of the current determination was higher than was thought or because the value of the proceeds or benefit in question has subsequently increased), the court shall make a fresh determination of the amount to be recovered under a confiscation order.

(4) In subsections (2) and (3) —

“assessed value” means the value of the defendant's proceeds of drug trafficking or benefit from any relevant offence as assessed by the court; and

“real value” means —

- (a) the value of the defendant's proceeds of drug trafficking which took place in the period by reference to which the current determination was made or in any earlier period; or
- (b) the value of his benefit from any of the relevant offences mentioned in section 10(2).

(5) Any determination by virtue of this section shall be by reference to the amount that might be realised at the time when the determination is made.

(6) For the avoidance of doubt, section 11(6) shall not apply in relation to any of the defendant's proceeds of drug trafficking taken into account in respect of the current determination.

(7) If, as a result of making the fresh determination required by subsection (3), the amount to be recovered exceeds the amount set by the current determination, the court may substitute for the amount to be recovered under the confiscation order such greater amount as it thinks just in all the circumstances of the case.

(8) Where the court varies a confiscation order by virtue of this section it shall substitute for the term of imprisonment in default fixed under section 23(1) in respect of the amount to be recovered under the order such longer term as may be determined in accordance with that section in respect of the greater amount to be recovered under the order as varied.

(9) For the purposes of this section “court” means the court before which the defendant was convicted.

18. (1) On an application under section 16 or 17, the court may take into account any payment or other reward received by the defendant or any property obtained by the defendant on or after the date —

Reconsideration,
etc.,
supplementary.

- (a) of the conviction;
- (b) of the subsection (2) determination (in the case of an application under section 16);
- (c) of the current determination (in the case of an application under section 17),

but only if the Attorney-General shows that it was by the defendant in connection with drug trafficking carried on or with any relevant offence committed, on or before that date.

(2) In considering any evidence which relates to any payment or reward in relation to drug trafficking to which subsection (1) applies, the court shall not make the assumptions which would otherwise be required by section 11.

(3) No application shall be entertained by the court under section 16 or 17 if it is made after the end of the period of six years beginning with the date on which the defendant was convicted, or where the application relates to more than one conviction, the date of the latest conviction.

(4) Sections 12 and 14 apply, with such modifications as may be necessary, in relation to applications under sections 16 and 17 as they apply in relation to proceedings under sections 9 and 10.

19. (1) This section applies where, the amount which a person is ordered to pay under a confiscation order is less than the amount assessed to be his proceeds of drug trafficking or benefit from relevant offences (as the case may be).

Increase in
realisable
property.

- (2) If on an application made —
 - (a) by the Police or the Attorney-General; or
 - (b) by a receiver appointed under section 26 or 29 in relation to the realisable property of the person in question,

the court is satisfied that the amount that might be realised in the case of the person in question is greater than the amount taken into account in making the confiscation order (whether it was greater than was thought when the order was made or has subsequently increased), the court shall issue a certificate to that effect giving its reasons.

(3) Where a certificate has been issued the Attorney-General may apply to the court for an increase in the amount to be recovered under the confiscation order; and on that application the court may —

- (a) substitute for that amount such amount not exceeding the amount assessed as the value referred to in subsection (1) as appears to the court to be appropriate having regard to the amount now shown to be realisable; and
- (b) increase the term of imprisonment fixed in respect of the confiscation order under section 23(1) if the effect of the substitution is to increase the maximum period applicable in relation to the order under that section.

Inadequacy of
realisable
property.

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

- (a) by the defendant; or
- (b) by a receiver appointed under section 26 or 29,

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

- (2) For the purposes of subsection (1) —
 - (a) in the case of realisable property held by a person who has been adjudged bankrupt, the court shall take into account the extent to which any property held by him may be distributed among creditors; and
 - (b) the court may disregard any inadequacy in the realisable property which appears to the court to be attributable wholly or partly, to anything done by the defendant for the purpose of preserving any property held by a person to whom the defendant had, directly or indirectly, made a gift caught by this Act from any risk of realisation under this Act.

(3) Where a certificate has been issued under subsection (1), the person who applied for it may apply to the court which made the confiscation order for the amount to be recovered under the order to be reduced.

(4) The court shall, on an application under subsection (3) —

- (a) substitute for the amount to be recovered under the order such lesser amount as the court thinks just in all the circumstances of the case; and
- (b) substitute for the term of imprisonment in default fixed under section 23(1) in respect of the amount to be recovered under the order a shorter term if such is determined in accordance with that section in respect of the lesser amount to be recovered under the order as varied.

(5) Any person appearing to the court to be likely to be affected by any exercise of its powers under this section shall be entitled to appear before the court and make representations.

Absconded Persons, etc.

21. (1) Where a person has been convicted of one or more drug trafficking or relevant offences, on the application of the Attorney-General the court may make a confiscation order against him if satisfied that he has absconded or died.

Confiscation order where defendant has absconded or died.

(2) Where proceedings for one or more drug trafficking or relevant offences have been instituted but not concluded, on the application of the Attorney-General the court may make a confiscation order against the defendant if satisfied that he has absconded, but shall not do so until after the period of six months beginning with the date which is, in the opinion of the court, the date on which the defendant absconded.

- (3) In any proceedings under this section —
 - (a) section 11(2) shall not apply;
 - (b) section 12 shall apply with the omission of subsections (2) to (6):

- (c) the court shall not make a confiscation order against a defendant unless it is satisfied that the Attorney-General has taken reasonable steps to contact him; and
- (d) any person appearing to the court to be likely to be affected by the making of a confiscation order shall be entitled to appear before the court and make representations.

(4) Where an application has been made to the court under this section in relation to a defendant who has absconded and the court has decided not to make a confiscation order against him, section 16 shall not apply at any time while he remains an absconder.

Variation of
order made
against
absconder.

22. (1) Where a confiscation order is made by virtue of section 21(2) and the defendant ceases to be an absconder, he may apply to the court for a variation of the amount to be recovered under the order.

(2) If on such an application the court is satisfied that the value of the defendant's proceeds of drug trafficking in the period by reference to which the determination in question was made, or the value of his benefit from relevant offences, or the amount that might have been realised at the time the order was made, was less than the amount ordered to be paid under the confiscation order, the court —

- (a) may if it considers it just in all the circumstances reduce the amount to be recovered under the confiscation order; and
- (b) if it does so, shall reduce the term of imprisonment in default in accordance with section 23(1).

(3) Where the court reduces the amount to be recovered under a confiscation order it may, on the application of a person who held property which was realisable property, order compensation to be paid to him if satisfied that he has suffered loss as a result of the making of the confiscation order and if, having regard to all the circumstances of the case, it considers it appropriate to do so.

(4) No application shall be entertained by the court if it is made after the end of six months beginning on the day on which the confiscation order was made.

PART III
ENFORCEMENT OF CONFISCATION ORDERS

Default Powers

23. (1) Notwithstanding section 223 of the Criminal Procedure Code Act where the court orders the defendant to pay an amount under a confiscation order it shall in addition direct him to be imprisoned in default of payment of any amount under the confiscation order as follows —

Imprisonment in default.
Ch. 91.

- (a) if the amount does not exceed \$20,000 for a term not exceeding 2 years;
- (b) if the amount exceeds \$20,000 but does not exceed \$50,000, for a term not exceeding 3 years;
- (c) if the amount exceeds \$50,000 but does not exceed \$100,000, for a term not exceeding 4 years: and
- (d) if the amount exceeds \$100,000, for a term not exceeding 5 years.

(2) Where —

- (a) a warrant to commit the defendant to prison is issued for a default in payment of an amount ordered to be paid under a confiscation order in respect of an offence or offences; and
- (b) at the time the warrant is issued the defendant is liable to serve any term of imprisonment in respect of the offence or offences,

the term of imprisonment to be served, in default of payment of the amount shall not begin to run until after the term mentioned in paragraph (b).

(3) Where a defendant serves a term of imprisonment in default of paying any amount due under a confiscation order, his serving that term does not prevent the confiscation order from continuing to have effect, so far as any other method of enforcement is concerned.

(4) For the purposes of this section “court” means the court before which the defendant was convicted.

24. (1) If any sum required to be paid by a person under a confiscation order is not paid when it is required to be paid, that person shall be liable to pay interest on that

Interest on unpaid sums.

sum for the period for which it remains unpaid; and the amount of interest shall for the purposes of enforcement, be treated as part of the amount to be recovered from him under the confiscation order.

(2) The court may, on the application of the Attorney-General, increase the term of imprisonment fixed in respect of the confiscation order if the effect of subsection (1) is to increase the maximum period applicable in relation to the order under section 23(1).

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

(4) For the purposes of this section “court” means the court before which the defendant was convicted.

Restraint and Charging Orders

Cases in which restraint and charging orders may be made.

25. (1) The powers conferred on the court by section 26 to make a restraint order and by section 27 to make a charging order are exercisable where —

- (a) proceedings have been instituted against the defendant for a drug trafficking or relevant offence or an application has been made in respect of the defendant under section 16, 17, 19 or 21;
- (b) the proceedings have not, or the application has not been concluded;
- (c) the court is satisfied that there is reasonable cause to believe —
 - (i) in the case of an application under section 17 or 19 of this Act, that the court will be satisfied as mentioned in section 17(3) or 19(2); or
 - (ii) in any other case, that the defendant has benefited from drug trafficking or from any relevant offence (as the case may be).

(2) The court shall not exercise the powers referred to in subsection (1) if it is not intended to proceed with the prosecution.

(3) The court may also exercise the powers referred to in subsection (1) where —

(a) a person is to be charged with a drug trafficking or relevant offence or an application as mentioned in subsection (1)(a.) is to be made; and

(b) the court is satisfied as mentioned in subsection (1)(c).

(4) For the purposes of sections 26 and 27, at any time when those powers are exercisable before proceedings have been instituted —

(a) references in this Act to the defendant shall be construed as references to the person referred to in subsection (3)(a); and

(b) references in this Act to realisable property shall be construed as if, immediately before that time, proceedings had been instituted against the person referred to in subsection (2) for a drug trafficking or relevant offence.

(5) Where the court has made a restraint or charging order by virtue of subsection (3), the court shall discharge the order if proceedings in respect of the offence are not instituted, or if the application is not made, within such time as the court considers reasonable.

26. (1) The court may make a restraint order to prohibit any person from dealing with any realisable property, subject to such conditions and exceptions as may be specified in the order.

Restraint orders.

(2) A restraint order may apply —

(a) to all realisable property held by a specified person, whether the property is described in the order or not; and

(b) to realisable property held by a specified person, being property transferred to him after the making of the order.

(3) This section shall not have effect in relation to any property for the time being subject to a charge under section 27 of this Act.

(4) An application for a restraint order —

(a) shall be made by the Police or the Attorney-General;

(b) shall be made on an *ex-parte* application to a Judge in chambers; and

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- (c) shall provide for notice of the order to be served on persons affected by the order.
 - (5) A restraint order —
 - (a) may, on the application of any person affected by the order be discharged or varied in relation to any property; and
 - (b) shall be discharged when proceedings for the offence are concluded.
 - (6) Where the court has made a restraint order, the court —
 - (a) may at any time appoint a receiver —
 - (i) to take possession of any realisable property; and
 - (ii) in accordance with the directions of the court, to manage or otherwise deal with any property in respect of which he is appointed,

subject to such exceptions and conditions as may be specified by the court; and
 - (b) may require any person having possession of property in respect of which the receiver is appointed under this section to give possession of it to the receiver.
 - (7) For the purposes of this section, dealing with property held by any other person includes (without prejudice to the generality of the expression)
 - (a) where a debt is owed to that person, making a payment to any person in reduction of the amount of the debt; and
 - (b) removing the property from The Bahamas.
 - (8) Where the court has made a restraint order, a police officer may seize any realisable property for the purpose of preventing its removal from The Bahamas; and property so seized shall be dealt with in accordance with the directions of the court.

Charging orders.

27. (1) For the purposes of this Act, a charging order is an order made under this section imposing on any such realisable property as may be specified in the order a charge for securing the payment of money to the Crown.

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- (2) The court may make a charging order —
- (a) where a confiscation order has been made of an amount not exceeding the amount payable under the confiscation order; and
 - (b) where a confiscation order has not been made, of an amount equal to the value from time to time of the property charged.
- (3) A charging order —
- (a) shall only be made on an application by the Police or the Attorney-General; and
 - (b) shall be made on an *ex-parte* application to a Judge in chambers.
- (4) Subject to subsection (6), a charge may be imposed by a charging order only on —
- (a) any interest in realisable property, which is an interest held beneficially by the defendant or by a person to whom the defendant has directly or indirectly made a gift caught by this Act —
 - (i) in any chargeable asset; or
 - (ii) under any trust; or
 - (b) any interest in realisable property held by a person as trustee of a trust if the interest is in a chargeable asset or is an interest under another trust and a charge may, by virtue of paragraph (a), be imposed by a charging order on the whole beneficial interest under the first-mentioned trust.
- (5) In this section —
- (a) “chargeable asset” means any of the following situated in The Bahamas or outside The Bahamas —
 - (i) any land or premises;
 - (ii) any relevant securities;
 - (iii) any motor vehicle;
 - (iv) any vessel;
 - (v) any aircraft;
 - (vi) any monies held by or deposited with a bank or other financial institution;

- (vii) any other type of asset which the Minister of Finance may prescribe for the purposes of this section; and
- (b) “relevant securities” means any of the following —
- (i) securities of any government or of any public authority;
 - (ii) stock of any body corporate;
 - (iii) stock of any body incorporated outside The Bahamas or of any country outside The Bahamas;
 - (iv) options in relation to stock described in subparagraph (ii) or (iii);
 - (v) a debt instrument;
 - (vi) shares in any mutual fund.

(6) In any case where a charge is imposed by a charging order on any interest in any relevant security, the court may provide for the charge to extend to any interest or dividend payable in respect of them.

(7) Where the court has made a charging order, the court may give such directions to such person as the court thinks fit to safeguard the assets under the charging order.

- (8) The court —
- (a) may, on the application of any person affected by the charging order, make an order discharging or varying it; and
 - (b) shall make an order discharging the charging order if the proceedings for the offence are concluded or on payment into court of the amount which is secured by the charge.

Charging orders,
supplementary.

28. (1) A charging order may be made either absolutely or subject to conditions including in particular conditions —

- (a) as to notifying any person holding any interest in the property to which the order relates; or
- (b) as to the time when the charge is to become enforceable.

(2) Notice of any confiscation or charging order made under the provisions of this Act or of any forfeiture order made under the provisions of the Dangerous Drugs Act, 2000 shall be deposited in the office of the Registrar General for recording and registration in accordance with section 3 of the Registration of Records Act.

S.I. 128/2001.

Ch. 228.

Ch. 187.

(3) Subject to any provision made under section 29, a charge imposed by a charging order shall have the like effect and shall be enforceable in the same manner as an equitable charge created by the person holding the beneficial interest or, as the case may be, the trustees by writing under their hand.

Realisation of Property

29. (1) The court may, on an application by the Attorney-General, exercise the powers conferred by this section, where a confiscation order has been made and it is neither satisfied nor subject to appeal.

Realisation of property.

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

(3) The court may empower the receiver appointed under this section or section 26 or in pursuance of a charging order —

- (a) to enforce any charge imposed under section 27 on realisable property or on interest or dividends payable in respect of such property; and
- (b) in relation to any realisable property other than property for the time being subject to a charge under section 27, to take possession of the property subject to such conditions or exceptions as may be specified by the court.

(4) The court may order any person having possession of realisable property to give possession of it to the receiver.

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

(6) The court —

- (a) may order any person holding an interest in realisable property to make such payment to the receiver in respect of any beneficial interest held by the defendant or, as the case may be, the recipient of a gift caught by this Act as the court may direct; and

(b) may, on the payment being made, by order transfer, grant or extinguish any interest in the property.

(7) Subsections (4) to (6) shall not apply to property for the time being subject to a charge under section 27 of this Act.

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

(9) Where any property is of a perishable or depreciable nature the court may direct that such property be sold forthwith, either by public auction or by private treaty and that the proceeds of the sale be retained in a bank account until such time as the matter has been dealt with.

Application of
proceeds of
realisation, etc.

30. (1) The following sums in the hands of the receiver pursuant to section 26 or 29 or in pursuance of a charging order —

- (a) the proceeds of the enforcement of any charge imposed under section 27;
- (b) the proceeds of the realisation, other than by the enforcement of such a charge, of any property under section 26 or 29; and
- (c) any other sums being property held by the defendant,

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

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

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

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

31. (1) This section shall apply to the powers conferred on the court by sections 26 to 30 or on the receiver pursuant to section 26 or 29 or in pursuance of a charging order.

Exercise of powers for the realisation of property.

(2) Subject to subsections (3) to (6), the powers shall be exercised with a view to making available for satisfying the confiscation order or (as the case may be) any confiscation order that may be made in the defendant's case, the value for the time being of realisable property held by any person by the realisation of such property.

(3) In the case of realisable property held by a person to whom the defendant has, directly or indirectly, made a gift caught by this Act, the powers shall be exercised with a view to realising no more than the value for the time being of the gift.

(4) The powers shall be exercised with a view to allowing any person other than the defendant or the recipient of any such gift to retain or recover the value of any property held by him.

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

32. (1) Where a receiver appointed under section 26 or 29 or in pursuance of a charging order —

Receivers supplementary.

- (a) takes any action in relation to property which is not realisable property, being action which he would be entitled to take if it were such property; and
- (b) believes and has reasonable grounds for believing, that he is entitled to take that action in relation to that property,

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

(2) Any amount due in respect of the remuneration and expenses of a receiver so appointed shall be paid out of the Consolidated Fund or the Confiscated Assets Fund.

Insolvency

Bankruptcy of
defendant.

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

- (a) property for the time being subject to a restraint order made before the order adjudging him bankrupt; and
- (b) any proceeds of property realised by virtue of section 26(6) or 29(5) or (6) for the time being in the hands of a receiver appointed under section 26 or 29,

Ch. 69.

shall be excluded from the bankrupt's estate for the purposes of the Bankruptcy Act.

Ch. 69.

(2) Where a person has been adjudged bankrupt, the powers conferred on the court by sections 26 to 30 or on a receiver shall not be exercised in relation to property for the time being comprised in the property of the bankrupt for the purposes of the Bankruptcy Act.

Ch. 69.

(3) Nothing in the Bankruptcy Act shall be taken as restricting, or enabling the restriction of, the exercise of those powers referred to in subsection (2).

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

- (a) made before the order adjudging the person bankrupt; or
- (b) on property which was subject to a restraint order when the order adjudging him bankrupt was made.

Ch. 69.

(5) Where, in the case of a debtor, the receiver constituted by virtue of section 11 of the Bankruptcy Act or an interim receiver stands appointed and any property of the debtor is subject to a restraint order —

- (a) the powers conferred on the receiver by virtue of that Act shall not apply to property for the time being subject to the restraint order; and
- (b) any such property in the hands of the receiver shall, subject to a lien for any expenses (including his remuneration) properly incurred in respect of the property, be dealt with in such manner as the court may direct.

(6) Where a person is adjudged bankrupt and has directly or indirectly made a gift caught by this Act —

(a) no order shall be made by virtue of section 71 of the Bankruptcy Act in respect of the making of the gift at any time when — Ch. 69.

(i) proceedings for the drug trafficking or relevant offence have been instituted against him and have not been concluded;

(ii) an application has been made in respect of the defendant under section 18, 19, 21 or 22 of this Act and has not been concluded; or

(iii) property of the person to whom the gift was made is subject to a restraint order or a charging order; and

(b) any order made by virtue of section 71 of the Bankruptcy Act after the conclusion of the proceedings shall take into account any realisation under this Act of property held by the person to whom the gift was made. Ch. 69.

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

(a) property for the time being subject to a restraint order made before the relevant time; and

(b) any proceeds of property realised by virtue of section 26(6) or 29(5) or (6) for the time being in the hands of a receiver appointed under section 26 or 29,

but there shall be payable out of such property any expenses (including the remuneration of the liquidator) properly incurred in the winding up in respect of the property.

(2) Where, in the case of a company such an order has been made or such a resolution has been passed, the powers conferred on the court by sections 26 to 30 or on a receiver so appointed shall not be exercised in relation to any realisable property held by the company in relation to which the functions of the liquidator are exercisable —

- (a) so as to inhibit him from exercising those functions for the purpose of distributing any property held by the company to the company's creditors; or
- (b) so as to prevent the payment out of any property of expenses (including the remuneration of the liquidator) properly incurred in the winding up in respect of the property.

Ch. 308.
Ch. 309.

(3) Nothing in the Companies Act or the International Business Companies Act shall be taken as restricting, or enabling the restriction of, the exercise of those powers referred to in subsection (2).

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

(5) In this section —

Ch. 308.
Ch. 309.

“company” means any company which may be wound up under the Companies Act or the International Business Companies Act;

“liquidator” includes any person appointed to the office of liquidator (whether provisionally or otherwise) under the Companies Act;

Ch. 308.

“the relevant time” means —

- (a) where no order for the winding up of the company has been made, the time of the passing of the resolution for voluntary winding up;
- (b) where —
 - (i) such an order has been made; but
 - (ii) before the presentation of the petition for the winding up of the company by court order, such a resolution had been passed by the company,

the time of the passing of the resolution; and

- (c) in any other case where such an order has been made the time of the making of the order.

Ch. 54.

(6) Notwithstanding the Magistrates Act and any other law, a Magistrate's Court shall have the power to make a confiscation order relating to property under Parts II and III of this Act.

PART IV
INFORMATION GATHERING POWERS

- 35.** (1) For the purpose of an investigation into — Production orders.
- (a) drug trafficking;
 - (b) whether any person has benefited from criminal conduct; or
 - (c) the whereabouts of any proceeds of criminal conduct,

a police officer of or above the rank of Inspector may apply to a Stipendiary and Circuit Magistrate for an order under subsection (2) (a “production order”) in relation to particular material or material of a particular description.

(2) Where a Stipendiary and Circuit Magistrate is satisfied by evidence on oath that there is reasonable cause to believe that any person is in possession of material in respect of which a drug trafficking offence or relevant offence has been committed he may grant an order (a “production order) to such police officer ordering such person to produce such material immediately or at such place and time as the Magistrate may specify in the order and, if necessary, such police officer may enter and search for such material at any place in any part of The Bahamas, by force if necessary, at any time by day or night.

(3) If such material be produced or found, such police officer shall bring the same and the person or persons in whose possession such place or places then may be, or any person in any such place reasonably suspected of being privy to such material being therein, before the Magistrate appointed to preside over the court having jurisdiction in the district in which such production order was executed.

(4) Where the material, to which an application under this section relates consists of information contained in or accessible by means of a computer a production order under subsection (2) shall have effect as an order to produce the material in a form in which it can be taken away and in which it is visible and legible.

- (5) A production order —
- (a) shall not confer any right to production of, or access to, items subject to legal privilege;
 - (b) shall have effect notwithstanding any obligation as to confidentiality or other restriction upon the

Ch. 316. disclosure of information imposed by the Banks and
 Ch. 351. Trust Companies Regulation Act, the Central Bank
 of The Bahamas Act, any other statute or otherwise
 and shall not give rise to any civil liability; and
 (c) may be made in relation to material in the
 possession of a Government Department
 (excluding the Financial Intelligence Unit):

Ch. 316. Provided however that where a production
 Ch. 351. order requires information which is restricted
 under the Banks and Trust Companies
 Regulations Act and the Central Bank of The
 Bahamas Act, application shall be made *ex-*
parte to a Judge in chambers.

(6) A police officer may photograph or make copies
 of any material produced or to which access is given under
 this section.

Ch. 105. (7) Where the investigation into whether a person
 has benefited from criminal conduct or the whereabouts of
 the proceeds of criminal conduct relates to a relevant
 offence which was not committed in The Bahamas, an
 application under subsection (1) shall not be made unless
 the provisions of section 6 of the Criminal Justice
 (International Co-operation) Act, 2000 have been complied
 with.

Ch. 105. (8) Section 6 of the Criminal Justice (International
 Co-operation) Act, 2000 shall apply for the purposes of
 this section and section 39.

(9) A production order shall be admissible in any
 court as proof of the contents therein.

Failure to
 comply with
 production
 order.

36. (1) Where a person is required by a production
 order to produce any material to a police officer or give a
 police officer access to any material, the person shall be
 guilty of an offence under this section if he —

- (a) contravenes the order; or
- (b) in purported compliance with the order produces
 or makes available any material known to the
 person to be false or misleading in a material
 particular without —
 - (i) indicating to the police officer to whom
 the material is produced or made available
 that the material is false or misleading and
 the respect in which the material 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 guilty of an offence under this section shall be liable on summary conviction to imprisonment for three years or a fine of \$25,000 or both.

37. (1) For the purpose of an investigation into — Search warrants.

- (a) drug trafficking;
- (b) whether any person has benefited from criminal conduct; or
- (c) the whereabouts of any proceeds of criminal conduct,

a police officer may apply to the Magistrate's Court for a warrant under this section in relation to specified premises.

(2) On such an application, the court may issue a warrant authorising a police officer to enter and search the premises if the court is satisfied —

- (a) that a production order made in relation to material on the premises has not been complied with;
- (b) that the conditions in subsection (3) are fulfilled; or
- (c) that the conditions in subsection (4) are fulfilled.

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

- (a) that there are reasonable grounds for suspecting that a specified person has carried on drug trafficking or has benefited from criminal conduct;
- (b) that the conditions in section 35(4) are fulfilled in relation to any material on the premises; and
- (c) that it would not be appropriate to make an order under that section in relation to the material because —

- (i) it is not practicable to communicate with any person entitled to produce the material;

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

(5) Where a police officer has entered premises in the execution of a warrant issued under this section, he may seize and retain any material, which is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the warrant was issued.

(6) A police officer may photograph or make copies of any material seized under this section.

(7) A person who hinders or obstructs a police officer in the execution of a warrant issued under this section is guilty of an offence and liable on summary conviction to imprisonment for two years or a fine of \$10,000 or both.

(8) Where the investigation into whether a person has benefited from criminal conduct or the whereabouts of the proceeds of criminal conduct relates to a relevant offence which was not committed in The Bahamas an application under subsection (1) shall not be made unless the provisions of section 6 of the Criminal Justice (International Co-operation) Act, 2000 have been complied with.

Ch. 105.

38. (1) Subject to subsection (4), a court may, on an application by the Attorney-General, order any material mentioned in subsection (3) which is in the possession of a Government Department to be produced to the court within such period as the court may specify.

Disclosure of information by Government Departments.

(2) The power to make an order under subsection (1) is exercisable if —

- (a) the powers conferred on the court to make a restraint order or a charging order are exercisable by virtue of section 25(1); or
- (b) those powers are exercisable by virtue of section 25(3) and the court has made a restraint or charging order which has not been discharged,

but where the power to make an order under subsection (1) is exercisable by virtue only of paragraph (b), section 25(4) shall apply for the purposes of this section as it applies for the purposes of sections 26 and 27.

(3) The material referred to in subsection (1) is any material which —

- (a) has been submitted to an officer of a Government Department by the defendant or by a person who has at any time held property which was realisable property;

-
- (b) has been made by an officer of a Government Department in relation to the defendant or such a person; or
 - (c) is correspondence which passed between an officer of a Government Department and the defendant or such a person,

and an order under that subsection may require the production of all such material or of a particular description of such material, in the possession of the body concerned.

(4) An order under subsection (1) shall not require the production of any material unless it appears to the court that the material is likely to contain information that would facilitate the exercise of the powers conferred on the court by section 26, 27 or 29 or on a receiver appointed under section 26 or 29 or in pursuance of a charging order.

(5) The court may by order authorise the disclosure to such a receiver of any material produced under subsection (1) or any part of such material but the court shall not make an order under this subsection unless a reasonable opportunity has been given for an officer of the Government Department to make representations to the court.

(6) Material disclosed in pursuance of an order under subsection (5) may, subject to any conditions contained in the order, be further disclosed for the purposes of the functions under this Act of the receiver or the court.

(7) The court may by order authorise the disclosure to a police officer of any material produced under subsection (1) or any part of such material but the court shall not make an order under this subsection unless —

- (a) a reasonable opportunity has been given for an officer of the Government Department to make representations to the court; and
- (b) it appears to the court that the material is likely to be of substantial value in exercising functions relating to criminal conduct.

(8) Material disclosed in pursuance of an order under subsection (7) may, subject to any conditions contained in the order, be further disclosed for the purposes of functions relating to criminal conduct.

(9) Material may be produced or disclosed in pursuance of this section notwithstanding any obligation as to confidentiality or other restriction upon the disclosure of information imposed by statute or otherwise.

(10) An order under subsection (1) and, in the case of material in the possession of a Government Department, a production order, may require any officer of the Government Department (whether named in the order or not) who may for the time being be in possession of the material concerned to comply with it, and such an order shall be served as if the proceedings were civil proceedings against the Department.

(11) For the purposes of this section “Government Department” includes —

- (a) a government corporation or any other statutory body;
- (b) such other bodies as the Minister responsible for the Police may prescribe for the purposes of this section.

(12) The provision of information under this section shall not be treated as a breach of any restriction upon the disclosure of information imposed by the Banks and Trusts Companies Regulation Act, the Central Bank of The Bahamas Act, any other statute or otherwise and shall not give rise to any civil liability.

Ch. 316.
Ch. 351.

39. (1) A police officer may apply to a Judge in chambers on an *ex-parte* application for an order (a “monitoring order”) directed to any police officer of or above the rank of Inspector directing a bank or trust company to give to such officer information obtained by the institution in respect of transactions conducted through an account or accounts held by such person with the institution.

Monitoring
order.

(2) A Judge shall make a monitoring order where he is satisfied by evidence on oath that there is reasonable cause to believe that a person —

- (a) has committed or is about to commit a drug trafficking offence or a relevant offence;
 - (b) was involved in the commission or is about to be involved in the commission of such an offence;
- or

- (c) has benefited directly or indirectly or is about to benefit directly or indirectly from the commission of such an offence.

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

- (4) A monitoring order shall specify —
 - (a) the name or names in which the account is believed to be held if available;
 - (b) the nature and extent of the information which the institution is required to give; and
 - (c) the manner in which the information is to be given.
- (5) A person who knowingly —
 - (a) contravenes a monitoring order; or
 - (b) provides false or misleading information in purported compliance with the order,

shall be guilty of an offence and liable on summary conviction to imprisonment for three years or a fine of \$25,000 or both.

- (6) 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) to the transfer of an amount so deposited or any part of it at the end of the term; and
 - (c) to the existence or use of a deposit box held by the institution.

(7) The provision of information to a police officer by virtue of a monitoring order shall not be treated as a breach of any restriction upon the disclosure of information imposed by the Banks and Trust Companies Regulation Act, the Central Bank of The Bahamas Act, any other statute or otherwise and shall not give rise to any civil liability.

- (8) In this section “banking institution” includes —
 - (a) any bank licensed under the Banks and Trust Companies Regulation Act;

Ch. 316.
Ch. 351.

Ch. 316.

(b) any person or body of persons referred to in section 3 of the Financial Transactions Reporting Act, 2000; and Ch. 368.

(c) such other institutions as the Minister of Finance may prescribe for the purposes of this section.

(9) A monitoring order shall be admissible in any court as proof of the contents therein.

(10) A monitoring order may be varied or discharged by the court on application made by the banking institution to which such order is directed.

PART V MONEY LAUNDERING

Offences

40. (1) A person is guilty of an offence of money laundering if he —

(a) uses, transfers, sends or delivers to any person or place any property which, in whole or in part directly or indirectly represents his proceeds of criminal conduct; or

(b) disposes, converts, alters or otherwise deals with in any manner and by any means that property,

with the intent to conceal or disguise such property.

(2) A person is guilty of an offence of money laundering if, knowing, suspecting or having reasonable grounds to suspect that any property in whole or in part directly or indirectly represents, another person's proceeds of criminal conduct, he —

(a) uses, transfers, sends or delivers to any person or place that property; or

(b) disposes of or otherwise deals with in any manner by any means that property,

with the intent to conceal or disguise such property.

(3) In this section the references to concealing or disguising any property include references to concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it.

Concealing,
transferring or
dealing with the
proceeds of
criminal conduct.

Assisting another
to conceal
proceeds of
criminal conduct.

41. (1) Subject to subsection (3), a person is guilty of an offence if he enters into or is otherwise concerned in an arrangement whereby —

- (a) the retention or control by or on behalf of another persons (“A”) of A’s proceeds of criminal conduct is facilitated (whether by concealment, removal from the jurisdiction, transfer to nominees or otherwise); or
- (b) A’s proceeds of criminal conduct —
 - (i) are used to secure that funds are placed at A’s disposal; or
 - (ii) are used for A’s benefit to acquire property,

and he knows, suspects, or has reasonable grounds to suspect that A is a person who is or has been engaged in or has benefited from criminal conduct.

(2) Where a person discloses in good faith to a police officer a suspicion or belief that any funds or property are derived from or used in connection with criminal conduct, or any matter on which such a suspicion or belief is based —

- (a) the disclosure shall not be treated as a breach of any restriction upon the disclosure of information imposed by statute or otherwise and shall not give rise to any civil liability; and
- (b) if he does any act in contravention of subsection (1) and the disclosure relates to the arrangement concerned, he does not commit an offence under this section if —
 - (i) the disclosure is made before he does the act concerned and the act is done with the consent of the police officer; or
 - (ii) the disclosure is made after he does the act, but is made on his initiative and as soon as it is reasonable for him to make it.

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

- (a) that he did not know, suspect or have reasonable grounds to suspect that the arrangement related to any person’s proceeds of criminal conduct;
- (b) that he did not know, suspect or have reasonable grounds to suspect that by the arrangement the

retention or control by or on behalf of A of any property was facilitated or, as the case may be, that by the arrangement any property was used as mentioned in subsection (1)(b); or

(c) that —

(i) he intended to disclose to a police officer such a suspicion, belief or matter as is mentioned in subsection (2) in relation to the arrangement; but

(ii) there is reasonable excuse for his failure to make any such disclosure in the manner mentioned in subsection (2)(b).

(4) In the case of a person who was in employment at the time in question, subsections (2) and (3) shall have effect in relation to disclosures and intended disclosures to the appropriate person in accordance with any procedure established by his employer for the making of such disclosures as they have effect in relation to disclosures, and intended disclosures, to a police officer.

42. (1) A person is guilty of an offence if, knowing, suspecting or having reasonable grounds to suspect that any property is, or in whole or in part directly or indirectly represents, another person's proceeds of criminal conduct, he acquires or uses that property or has possession of it.

Acquisition,
possession or use
of proceeds of
criminal conduct.
14 of 2007.

(2) Where a person discloses information to a police officer in good faith that any property is, or in whole or in part directly or indirectly represents the proceeds of criminal conduct —

14 of 2007, s.2.

(a) the disclosure shall not be treated as a breach of any restriction upon the disclosure of information by statute or otherwise and shall not give rise to any civil liability; and

(b) if he does any act in relation to the property in contravention of subsection (1), he does not commit an offence under this section if —

(i) the disclosure is made before he does the act in question and the act is done with the consent of the police officer; or

(ii) the disclosure is made after he does the act, but is made on his initiative and as soon as it is reasonable for him to make it.

14 of 2007, s. 2.

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

14 of 2007, s. 2.

(4) In proceedings against a person for an offence under this section, it is a defence to prove that he intended to disclose to a police officer such a belief or matter as is mentioned in subsection (2) and there is reasonable excuse for his failure to make any such disclosure in the manner mentioned in subsection (2)(b).

(5) In the case of a person who was in employment at the time in question, subsections (2) and (4) shall have effect in relation to disclosures and intended disclosures, to the appropriate person in accordance with any procedure established by his employer as they have effect in relation to disclosures, and intended disclosures, to a police officer.

(6) No police officer or other person shall be guilty of an offence under this section in respect of anything done by him in the course of acting in connection with the enforcement, or intended enforcement, of any provision of this Act or of any other statutory provision relating to drug trafficking or relevant offences or the proceeds of criminal conduct.

43. (1) Where a person in good faith discloses to a police officer —

Disclosure of knowledge or suspicion of money laundering.

- (a) his suspicion or belief that another person is engaged in money laundering; or
- (b) any information or other matter on which that suspicion or belief is based,

the disclosure shall not be treated as a breach of any restriction upon the disclosure of information imposed by statute or otherwise and shall not give rise to any civil liability.

(2) A person is guilty of an offence if —

- (a) he knows, suspects or has reasonable grounds to suspect and fails to disclose to the Financial Intelligence Unit or to a police officer that another person is engaged in money laundering which relates to any proceeds of drug trafficking or any relevant offence;
- (b) the information, or other matter, on which that knowledge or suspicion is based came to his attention in the course of his trade, profession, business or employment; and
- (c) he does not disclose the information or other matter to a police officer as soon as is reasonably practicable after it comes to his attention.

(3) A person shall not be required under subsection (2) to disclose information or to produce a document which he would be entitled to refuse to disclose or to produce on the grounds of legal professional privilege except that a counsel and attorney may be required to provide the name and address of his client or principal.

(4) It is a defence to a charge of committing an offence under this section that the person charged had a reasonable excuse for not disclosing the information or other matter in question.

(5) Any disclosure made by a person who was in employment at the time in question to the appropriate person in accordance with any procedure established by his employer shall be treated, for the purposes of this section, as a disclosure to a police officer.

(6) For the purposes of this section, any information or other matter comes to a counsel and attorney in privileged circumstances if it is communicated or given to him —

- (a) by, or by a representative of, a client of his in connection with the giving by the counsel and attorney of legal advice to the client;
- (b) by, or by a representative of, a person seeking legal advice from the counsel and attorney; or
- (c) by any person —
 - (i) in contemplation of, or in connection with, legal proceedings; and
 - (ii) for the purpose of those proceedings;

but no information or other matter shall be treated as coming to a counsel and attorney in privileged circumstances if it relates to criminal conduct or is communicated or given with a view to furthering any criminal purpose.

Tipping-off.

- 44.** (1) A person is guilty of an offence if —
- (a) he knows, suspects or has reasonable grounds to suspect that a police officer is acting, or is proposing to act, in connection with an investigation which is being, or is about to be, conducted into money laundering; and
 - (b) he discloses to any other person information or any other matter which is likely to prejudice that investigation or proposed investigation.
- (2) A person is guilty of an offence if —
- (a) he knows, suspects or has reasonable grounds to suspect that a disclosure has been made to a police officer or to an appropriate person under section 41, 42 or 43; and
 - (b) he discloses to any other person information or any other matter which is likely to prejudice any investigation which might be conducted following such a disclosure.
- (3) Nothing in subsection (1) or (2) makes it an offence for a counsel and attorney to disclose any information or other matter —
- (a) to, or to a representative of, a client of his in connection with the giving of advice by the counsel and attorney to the client; or
 - (b) to any person —
 - (i) in contemplation of, or in connection with, legal proceedings; and

(ii) for the purpose of those proceedings, but this subsection does not apply in relation to any information or other matter which is disclosed relating to criminal conduct or with a view to furthering any criminal purpose.

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

- (a) that he did not know or suspect that the disclosure was likely to prejudice the investigation; or
- (b) that he had lawful authority or reasonable excuse for making the disclosure.

(5) No police officer or other person shall be guilty of an offence under this section in respect of anything done by him in the course of acting in accordance with the enforcement, or intended enforcement, of any provision of this Act or of any other statutory provision relating to criminal conduct or the proceeds of criminal conduct.

Penalties

45. (1) A person guilty of an offence under section 40, 41 or 42 (money laundering) shall be liable —

Penalties for money laundering, etc.

- (a) on summary conviction, to imprisonment for five years or a fine of \$100,000 or both; and
- (b) on conviction on information, to imprisonment for twenty years or an unlimited fine or both.

(2) A person guilty of an offence under section 43 or 44 shall be liable —

- (a) on summary conviction, to imprisonment for three years or a fine of \$50,000 or both; or
- (b) on conviction on information, to imprisonment for ten years or an unlimited fine or both.

(3) The court shall on conviction of an offence under sections 40, 41 and 42 order the property be forfeited to the Crown.

PART VI
SEIZURE OF CASH

Seizure and
detention of cash.
S.I.128/2001.

46. A police officer may seize and detain, in accordance with this Part, any cash if the officer has reasonable grounds for suspecting that it directly or indirectly represents any person's proceeds of criminal conduct or is intended by any person for use in any criminal conduct and any such person shall be charged with being in possession of such cash.

(2) Cash seized by virtue of this section shall not be detained by the police for more than ninety-six hours unless its continued detention is authorised by an order made by a Stipendiary and Circuit Magistrate and no such order shall be made unless the Stipendiary and Circuit Magistrate is satisfied —

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

(3) Any order under subsection (2) shall authorise the continued detention of the cash 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 a Stipendiary and Circuit Magistrate if satisfied as to the matters mentioned in that subsection may thereafter from time to time by order authorise the further detention of the cash but 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 (2).

(4) Any application for an order under subsection (2) or (3) shall be made by a police officer.

(5) At any time while cash is detained by virtue of this section a Stipendiary and Circuit Magistrate may direct its release if satisfied —

- (a) 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 (2); or
- (b) on an application made by any other person, that detention of the cash is not for that or any other reason justified:

Provided however that a police officer may release the cash before ninety-six hours if he is satisfied that its detention is no longer justified.

(6) If at a time when any cash is being detained by virtue of this section —

- (a) an application for its forfeiture is made under section 47; or
- (b) proceedings are instituted (whether in The Bahamas, or elsewhere) against any person for an offence with which the cash is connected,

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

47. (1) A Stipendiary and Circuit Magistrate may make an order (a “forfeiture order”) ordering the forfeiture of any cash which has been seized under section 46 if satisfied, on an application made by a police officer while the cash is detained under that section that the cash directly or indirectly represents any person’s proceeds of, or benefit from, or is intended by any person for use in criminal conduct.

Forfeiture orders
and appeals.

(2) An order may be made under subsection (1) whether or not proceedings are brought against any person for an offence with which the cash in question is connected.

(3) Any party to the proceedings in which a forfeiture order is made (other than the applicant) may, before the end of the period of thirty days beginning with the date on which it is made, appeal to the Supreme Court.

(4) An appeal under this section shall be by way of rehearing, and the Supreme Court may make such order as it considers appropriate and, in particular, may order the release of the cash (or any remaining cash) together with any accrued interest.

Seizure
supplementary.

48. (1) Cash consisting of coins and bank-notes seized under this Part and detained for more than ninety-six hours shall where practicable, unless required as evidence of an offence, be held in an interest-bearing account, and the interest accruing on any such cash shall be added to that cash on its forfeiture or release.

(2) An order under section 46(2) shall provide for notice to be given to persons affected by the order.

(3) Without prejudice to the generality of any existing power to make rules, provision may be made by rules of court —

- (a) with respect to applications to any court under this Part;
- (b) for the giving of notice of such applications to persons affected;
- (c) for the joinder of persons as parties; and
- (d) generally with respect to the procedure under this Part before any court.

(4) In this Part —

“cash” means —

- (a) coins and bank-notes in any currency; and
- (b) negotiable instruments.

PART VII MISCELLANEOUS AND SUPPLEMENTAL

Foreign Orders, etc.

Enforcement of
external
confiscation
orders.

49. (1) The Minister responsible for the Police may, by order —

- (a) direct in relation to a country outside The Bahamas designated by the order (a “designated country”) that, subject to such modifications as may be specified, this Act shall apply to external confiscation orders and to proceedings which have been or are to be instituted in the designated country and may result in an external confiscation order being made there;

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- (b) make —
- (i) such provision in connection with the taking of action in the designated country with a view to satisfying a confiscation order;
 - (ii) such provision as to evidence or proof of any matter for the purposes of this section and section 50; and
 - (iii) such incidental, consequential and transitional provision,
as appears to him to be expedient; and
- (c) without prejudice to the generality of this subsection direct that, in such circumstances as may be specified, proceeds arising out of action taken in the designated country with a view to satisfying a confiscation order and which are retained there shall nevertheless be treated as reducing the amount payable under the order to such extent as may be specified.

(2) An order under this section may make different provision for different cases or classes of cases.

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

(4) In this section and section 50 —

“external confiscation order” means an order made by a court in a designated country for the purpose —

- (a) of recovering property, or the value of such property, obtained as a result of or in connection with —
 - (i) drug trafficking; or
 - (ii) any offence listed in the Schedule to this Act; or
- (b) of depriving a person of a pecuniary advantage so obtained;

Schedule.

“modifications” includes additions, alterations and omissions.

(5) An order under this section is subject to the negative resolution procedure.

Registration of
external
confiscation
orders.

50. (1) On an application made by or on behalf of the Government of a designated country, the Supreme Court may register an external confiscation order made there if —

- (a) it is satisfied that at the time of registration the order is in force and not subject to appeal;
- (b) it is satisfied, where the person affected by the order did not appear in the proceedings, that he received notice of the proceedings in sufficient time to enable him, to defend them; and
- (c) it is of the opinion that enforcing the order in The Bahamas would not be contrary to the interests of justice.

(2) A confiscation order registered by the Supreme Court under subsection (1) shall be enforceable in The Bahamas in the same manner as a confiscation order made by a court in The Bahamas.

(3) In subsection (1)(a), “appeal” includes —

- (a) any proceedings by way of discharging or setting aside a judgment; and
- (b) an application for a new trial or a stay of execution.

(4) The court shall cancel the registration of an external confiscation order if it appears to the court that the order has been satisfied by payment of the amount due under it.

Evidence of
corresponding
law.

51. A document purporting to be issued by or on behalf of the Government of a country and purporting to state the terms of a corresponding law in force in that country shall be admitted in evidence, in proceedings under this Act, on its production by the prosecution without further proof and such document shall be conclusive evidence that —

- (a) it is issued by or on behalf of the Government of that country;
- (b) the terms of such law are as stated in the document;
- (c) any facts stated in the document to constitute an offence under such law do constitute such offence.

Offences and Police Powers, etc.

52. (1) There shall be established a fund to be known as the Confiscated Assets Fund (“the Fund”).

Confiscated
Assets Fund.

(2) There shall be paid into the Fund —

(a) proceeds of criminal conduct recovered under a confiscation order;

(b) cash forfeited under Part VI;

(c) money forfeited under section 33 of the Dangerous Drugs Act, 2000;

Ch. 228.

(d) money paid to the Government of The Bahamas by a foreign jurisdiction in respect of confiscated assets, whether under a treaty or arrangement providing for mutual assistance in criminal matters or otherwise.

(3) The Minister of Finance may authorise payments to be made out of the Fund —

(a) for purposes related to —

(i) law enforcement, including in particular the investigation of suspected cases of drug trafficking and money laundering;

(ii) treatment and rehabilitation of drug addicts; and

(iii) public education in relation to drug addiction;

(b) to satisfy an obligation of the Government of The Bahamas to a foreign jurisdiction in respect of confiscated assets, whether under a treaty or arrangement providing for mutual assistance in criminal matters or otherwise;

(c) to meet the remuneration and expenses of a receiver appointed under this Act;

(d) to pay compensation or costs awarded under this Act;

(e) to cover costs associated with administration of the Fund.

53. (1) The moneys paid into the Fund shall be invested in accordance with the Financial Administration and Audit Act and the income earned from such investments shall be paid into the Fund.

Administration
of the Fund.
Ch.359

(2) The financial year of the Fund shall end on 30 June in each year.

(3) The Minister of Finance shall cause proper accounts, and proper records in relation to the accounts, of the Fund to be kept, and shall cause to be prepared in respect of each financial year a statement of the accounts of the Fund in such form as the Minister may direct.

(4) Within three months after the end of each financial year, the Minister shall send to the Auditor-General a copy of the statement of accounts for that financial year.

(5) The Auditor-General shall examine every statement of accounts received by him under this section and shall make a report in writing on the statement to the Minister.

(6) The Minister shall lay before each House of Parliament a copy of the Auditor-General's report.

Offences by
bodies corporate.

54. Where a body corporate is guilty of an offence under this Act and that offence is proved to have been committed with the consent or connivance of any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Police powers,
etc.

55. (1) For the purposes of section 46, "police officer" includes any officer of the Customs Department at any port of entry or departure in The Bahamas.

(2) A police officer may arrest without warrant any person whom he reasonably believes has committed an offence under this Act.

(3) An officer of the Customs Department may, in any case relating to the commission of an offence under this Act, exercise all or any of the powers in relation to investigations into an offence which is arrestable without warrant conferred on a police officer by the Criminal Procedure Code Act.

Ch. 91.

Police officer's
duty of
confidentiality.

56. (1) Except for the purpose of the performance of his duties or the exercise of his functions or when lawfully required to do so by any court or under the provisions of any enactment, no police officer shall disclose any

information or matter which has been obtained by him in the performance of his duties or the exercise of his functions under this Act.

(2) Any person who contravenes this section shall be guilty of an offence and shall be liable on summary conviction to imprisonment for one year or a fine of \$2,000 or both.

Procedure

57. (1) If following upon an investigation against a person for a drug trafficking or relevant offence or offences and any of the following circumstances occur — Compensation.

- (a) proceedings are instituted against that person but do not result in his conviction for any drug trafficking or relevant offence; or
- (b) proceedings are instituted against that person and he is convicted of one or more drug trafficking offence or relevant offence, but —
 - (i) the conviction or convictions concerned are quashed; or
 - (ii) he is granted a pardon in respect of the conviction or convictions concerned,

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

(2) The court shall not order compensation to be paid unless it is satisfied —

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

(3) The court shall not order compensation to be paid in any case where it appears to the court that the proceedings could have resulted in a conviction if the serious default had not occurred.

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- (4) Without prejudice to subsection (1), where —
 - (a) a disclosure is made by any person in accordance with section 41 (2) in relation to any property;
 - (b) in consequence of the disclosure and for the purposes of an investigation or prosecution in respect of a drug trafficking offence or offences any act is done or omitted to be done in relation to that property; and
 - (c) no restraint order or charging order is made in relation to that property,

the court may, on application by a person who held the property, order compensation to be paid to the applicant if, having regard to all the circumstances, it considers it appropriate to make such an order.

(5) The court shall not order compensation to be paid under subsection (4) unless it is satisfied —

- (a) that there has been some serious default on the part of any person concerned in the investigation or prosecution of the offence or offences concerned and that, but for that default, the act or omission referred to in subsection (4)(b) would not have occurred; and
- (b) the applicant has, in consequence of the act or omission referred to in subsection (4)(b), suffered loss in relation to the property.

(6) The amount of compensation to be paid under this section shall be such as the court thinks just in all the circumstances of the case and in any case should not exceed \$100,000.

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

Costs.

- 58.** (1) Where —
- (a) a person brings, or appears at, court proceedings under this Act and endeavours —
 - (i) to prevent a confiscation order or a restraint order or a charging order from being made against property of his; or
 - (ii) to have property of his excluded from such an order; and

- (b) that person is successful in that endeavour; and
- (c) the court is satisfied that he was not in any way involved in criminal conduct,

then the court may by order declare that he is entitled to be paid all reasonable costs incurred by him in connection with those proceedings, or such part of those costs as the court determines.

(2) Costs payable by the Crown by virtue of a declaration made by the court under subsection (1) shall be paid out of the Confiscated Assets Fund.

59. Any question of fact to be decided by the Supreme Court or the magistrate court in proceedings under this Act, except any question of fact that is for the prosecution to prove in any proceedings for an offence under this Act, shall be decided on a balance of probabilities.

Civil standard of proof.

60. Any decision of a court in proceedings under this Act except for proceedings under section 47 in relation to any offence committed under this Act, shall lie to the Court of Appeal.

Appeals.

Supplemental

61. (1) Regulations may be made for prescribing anything which is required to be prescribed under this Act and generally for carrying out the purposes and provisions of this Act —

Regulations.

- (a) by the Minister of Finance in relation to Part V; and
- (b) by the Minister responsible for the Police, in any other case.

(2) Regulations made under this section shall be subject to the negative resolution procedure.

62. This Act binds the Crown, but not so as to make the Crown capable of any criminal offence.

Crown application.

SCHEDULE (Section 3)

(1) An offence under the Prevention of Bribery Act, Chapter 88.

(2) An offence under section 40, 41 or 42 of this Act (Money Laundering).

25 of 2004.

(3) An offence under the Anti-Terrorism Act, Chapter 107.

(4) An offence which may be tried on information in The Bahamas other than a drug trafficking offence.

(5) An offence committed anywhere that, if it had occurred in The Bahamas, would constitute an offence in The Bahamas as set out in this Schedule.