

CHAPTER 3.04 PROCEEDS OF CRIME ACT

Revised Edition

Showing the law as at 31 December 2023

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• Act • Subsidiary Legislation •

ACT

(Acts 10 of 1993, 36 of 1999, 4 of 2010, 15 of 2011, 16 of 2012, 14 of 2013 and 18 of 2023 and Statutory Instrument 11/2004 and 55/2004)

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GENERAL NOTE: Please note that Act 18 of 2023 deletes the words “a criminal conduct” wherever it appears and substitutes the words “criminal conduct”.

CHAPTER 3.04 PROCEEDS OF CRIME Act

AN ACT to provide for the forfeiture or confiscation of the proceeds of certain crimes and for connected matters.

Commencement [8 June 1995]

PART 1 PRELIMINARY

1. Short title

This Act may be cited as the Proceeds of Crime Act.

2. Interpretation

In this Act—

“**anti-crime initiative**” includes a crime prevention proposal, law enforcement proposal and other proposals with respect to national security; *(Inserted by Act 18 of 2023)*

“**applicant**” means a Government Agency; *(Inserted by Act 18 of 2023)*

“**application**” means an application under section 59N; *(Inserted by Act 18 of 2023)*

“**artistic work**” has the meaning assigned under the Copyright Act; *(Inserted by Act 18 of 2023)*

“**associated property**” includes property held by the defendant which is not itself recoverable property—

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

(Inserted by Act 18 of 2023)

“**benefit**” falls to be construed in accordance with section 3(1);

“**Chairperson**” means the Chairperson of the Committee under section 59H(1); *(Inserted by Act 18 of 2023)*

“**civil recovery investigation**” means an investigation into—

- (a) whether property is recoverable property or associated property;

- (b) who holds the recoverable property or associated property; or
- (c) the extent and location of the recoverable property or associated property;

(Inserted by Act 18 of 2023)

"Commissioner" means the Commissioner of Police;

"Committee" means the Property Disposal Committee appointed under section 59B; *(Inserted by Act 18 of 2023)*

"confiscation order" means an order made by the Court under section 17(1);

"Court" means the High Court;

"criminal conduct" has the meaning assigned under the Money Laundering (Prevention) Act; *(Inserted by Act 4 of 2010 and substituted by Act 18 of 2023)*

"Deputy Chairperson" means the Deputy Chairperson of the Committee under section 59H(2); *(Inserted by Act 18 of 2023)*

"document", in relation to criminal conduct, means any written or printed thing and includes— *(Amended by Act 4 of 2010)*

- (a) any map, plan, graph or drawing;
- (b) any photograph;
- (c) any disc, tape, sound track or other device in which sound or other data (not being visual images) are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced; and
- (d) any film, negative, tape or other device in which one or more visual images are embodied so as to be capable (as aforesaid) of being reproduced;

"excepted joint owner" means a person who obtains property in circumstances in which it may not be recoverable property; *(Inserted by Act 18 of 2023)*

"face-value voucher" means a voucher in physical form that represents a right to receive goods or services to the value of an amount stated on the voucher; *(Inserted by Act 18 of 2023)*

"financial institution" has the meaning assigned under the Money Laundering (Prevention) Act; *(Inserted by Act 18 of 2023)*

"Financial Intelligence Authority" means the Financial Intelligence Authority continued under section 4 of the Money Laundering (Prevention) Act; *(Inserted by Act 18 of 2023)*

"forfeiture order" means an order made by the Court under section 9(1);

"Fund" means the Anti-Crime Initiative Fund under section 22 of the Public Finance Management Act; *(Inserted by Act 18 of 2023)*

"gazetted officer" means any police officer of or above the rank of assistant superintendent;

"gift caught by this Act" falls to be construed in accordance with sections 3(12) and 3(14);

"Government Agency" has the meaning assigned under the Public Finance Management Act; *(Inserted by Act 18 of 2023)*

"interest" in relation to property, means—

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

"Land Register" has the meaning assigned under the Land Registration Act; *(Inserted by Act 18 of 2023)*

"listed asset" includes—

- (a) a precious metal;
- (b) a precious stone;
- (c) a watch;
- (d) an artistic work;
- (e) a computer and other electronics;
- (f) a face-value voucher;
- (g) a postage stamp;

(Inserted by Act 18 of 2023)

"police officer" means a member of the Royal Saint Lucia Police Force;

"precious metal" means gold, silver or platinum, whether in an unmanufactured or a manufactured state; *(Inserted by Act 18 of 2023)*

"precious stone" means diamond, ruby, sapphire or emerald, whether in an untreated or a treated state; *(Inserted by Act 18 of 2023)*

"proceeds" means any property that is derived, obtained or realised, directly or indirectly, by any person from the commission of criminal conduct; *(Amended by Act 4 of 2010)*

"proceeds of crime" means—

- (a) proceeds of criminal conduct; or *(Amended by Act 4 of 2010)*
- (b) any property or benefits derived, obtained or realised, directly or indirectly, by any person from any act or omission that occurred outside Saint Lucia, and would, if it had occurred in Saint Lucia, have constituted criminal conduct; *(Amended by Act 4 of 2010)*

"production order" means an order made by the Court under section 41;

"property" includes money and all other property, real or personal, including things in action and other intangible or incorporeal property;

"realisable property" falls to be construed in accordance with section 3(3) and 3(4);

"recoverable property" means—

- (a) property obtained through criminal conduct;
- (b) property obtained through tainted property;
- (c) property that is intended to be used in, or in connection with criminal conduct;
- (d) property that has been used in, or in connection with criminal conduct; or
- (e) property specified under paragraphs (a), (b) or (c) that has been disposed of and is held by a person into whose hands the property may be followed;

(Inserted by Act 18 of 2023)

"Registrar" means the Registrar of Lands appointed in accordance with the Land Registration Act;

"relevant application period", in relation to a person's conviction of criminal conduct, means the period of 12 months after— *(Amended by Act 4 of 2010)*

- (a) where the person is to be taken to have been convicted of the offence by reason of section 3(2)(a), the day on which the person was convicted of the offence;
- (b) where the person is to be taken to have been convicted of the offence by reason of section 3(2)(b), the day on which the person was discharged without conviction;
- (c) where the person is to be taken to have been convicted of the offence by reason of section 3(2)(c), the day on which the Court took the offence into account in passing sentence for the other offence referred to in that paragraph;

"relevant offence"

- (a) means—
 - (i) any indictable offence or an offence triable both summarily or on indictment in Saint Lucia;
 - (ii) an offence listed in the Schedule;
- (b) includes—
 - (i) an offence of conspiring to commit any of those offences;
 - (ii) an offence of aiding, abetting, counselling or procuring, or being in any way knowingly concerned in, the commission of any of those offences;
 - (iii) an offence of attempting to commit any of those offences;
 - (iv) an offence of inciting another to commit any of those offences;

(Inserted by Act 4 of 2010)

“restraining order” means an order made by the Court under section 31(1);

“Secretary” means the Secretary to the Committee appointed under section 59K; *(Inserted by Act 18 of 2023)*

“suitably qualified person” means a person or company with qualifications and experience to carry out the functions of a trustee or receiver and is—

- (a) nominated by the Attorney General; and
- (b) appointed by the Court;

(Inserted by Act 18 of 2023)

“Supreme Court Rules” means the Eastern Caribbean Supreme Court Civil Procedure Rules; *(Inserted by Act 18 of 2023)*

“tainted property”—

- (a) in relation to an application for a forfeiture order or confiscation order on conviction, means—
 - (i) property used in, or in connection with, the commission of an offence, or
 - (ii) property derived, obtained or realized, directly or indirectly, from the commission of an offence;
- (b) in relation to civil asset recovery, means property that—
 - (i) has been used in, or in connection with, criminal conduct, or
 - (ii) is intended to be used in, or in connection with, criminal conduct;
 - (iii) unlawful activity;

(Amended by Act 4 of 2010 and substituted by Act 18 of 2023)

“unlawful activity” means an act or omission that constitutes an offence against a law in force in Saint Lucia or against a law of any other country.

3. Definition of certain terms

(1) In this Act—

- (a) “a benefit” includes any property, service or advantage, whether direct or indirect;
- (b) “to benefit” has a corresponding meaning;
- (c) a reference to a benefit derived or obtained by, or otherwise accruing to, a person (“A”) includes a reference to a benefit derived or obtained by , or otherwise accruing to, another person at A’s request or direction.

(2) For the purposes of this Act, a person is to be taken to be convicted of criminal conduct if— *(Amended by Act 4 of 2010)*

- (a) he or she is convicted, whether summarily or on indictment, of the offence;
- (b) he or she is charged with the offence and is found guilty but is discharged without conviction; or
- (c) a court with his or her consent takes the criminal conduct, of which he or she has not been found guilty, into account in sentencing him or her for another offence. (*Amended by Act 4 of 2010*)

(3) In this Act, “**realisable property**” means, subject to subsection (4)—

- (a) any property held by a person who has been convicted of, or charged with, criminal conduct; and (*Amended by Act 4 of 2010*)
- (b) any property held by a person to whom a person so convicted or charged has directly or indirectly made a gift caught by this Act.

(4) Property is not realisable property if—

- (a) there is in force in respect of that property, a forfeiture order under this Act or under any other enactment;
- (b) a forfeiture order is proposed to be made against that property under this Act or any other enactment.

(5) For the purposes of sections 19 and 20 the amount that might be realised at the time a confiscation order is made against a person is the total of the values at that time of all the realisable property held by the person, less the total amounts payable under an obligation, where there is an obligation having priority at that time, together with the total of the values at that time of all gifts caught by this Act.

(6) For the purposes of subsection (5), an obligation has priority at any time if it is an obligation of the person to—

- (a) pay an amount due in respect of a fine, or other order of a court, imposed or made on conviction of an offence where the fine was imposed or the order was made before the confiscation order;
- (b) pay an amount due in respect of any tax, rate, duty, cess or other impost payable under any enactment in force; or
- (c) pay any other civil obligation as may be determined by the Court.

(7) Subject to subsections (8) and (9), for the purposes of this Act, the value of property (other than cash) in relation to a person holding the property—

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

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

- (a) the value of the property to the recipient when he or she receives it adjusted to take account of subsequent changes in the value of money; or
- (b) where subsection (9) applies, the value there mentioned, whichever is the greater.

(9) Where at the material time the recipient holds—

- (a) the property which he or she received (not being cash); or

- (b) property which, in whole or in part, directly or indirectly represents in his or her hands the property which he or she received, the value referred to in subsection (7)(b) is the value to him or her 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 represents the property which he or she received.

(10) Subject to subsection (14), a reference to the value at any time ("the material time") of a gift is a reference to—

- (a) the value of the gift to the recipient when he or she received it adjusted to take account of subsequent changes in the value of money; or
- (b) the value there mentioned, where subsection (11) applies;
whichever is the greater.

(11) Subject to subsection (14), where at the material time a person holds—

- (a) property which he or she received, not being cash; or
- (b) property which, in whole or in part, directly or indirectly represents in his or her hands the property which he or she received, the value referred to in subsection (10) is the value to him or her at the material time of the property mentioned in paragraph (a) or the value of the property mentioned in paragraph (b) so far as it so represents the property which he or she received.

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

- (a) it was made by the person convicted or charged at any time after the commission of the offence or, if more than one, the earliest of the offences to which the proceedings relate; and the Court considers it appropriate in all the circumstances to take the gift into account;
- (b) it was made by the person convicted or charged at any time and was a gift or property—
 - (i) received by the person in connection with the commission of criminal conduct committed by him or her or another, or (*Amended by Act 18 of 2023*)
 - (ii) which in whole or in part directly or indirectly represented in the person's hands property received by him or her in that connection.

(13) The reference in subsection (12) to "an offence to which the proceedings relate" includes where the proceedings have resulted in the conviction of the person, a reference to any offence which the Court takes into consideration when determining sentence.

(14) For the purposes of this Act—

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

PART 2
FORFEITURE ORDERS, CONFISCATION ORDERS
AND RELATED MATTERS

General

4. Application for forfeiture order or confiscation order on conviction

(1) Despite the provisions of section 38 of the Drugs (Prevention of Misuse) Act and subject to subsection (2), where a person is convicted of criminal conduct committed after the coming into force of this Act, the Director of Public Prosecutions shall apply to the Court for one or both of the following orders—

- (a) a forfeiture order against property that is tainted property in respect of the criminal conduct; *(Amended by Act 4 of 2010)*
- (b) a confiscation order against the person in respect of benefits derived by the person from the commission of the criminal conduct. *(Amended by Act 4 of 2010)*

(Amended by Act 4 of 2010 and by Act 18 of 2023)

(2) The Director of Public Prosecutions shall not make an application after the end of the relevant application period in relation to the conviction or in any case where forfeiture has been effected under the provisions of the Drugs (Prevention of Misuse) Act.

(3) An application under this section may be made in respect of one or more than one criminal conduct. *(Amended by Act 4 of 2010)*

(4) Where an application under this section is finally determined, no further application for a forfeiture order or a confiscation order may be made in respect of the offence for which the person was convicted unless the Court gives leave for the making of a new application on being satisfied—

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

(4A) A request for leave under subsection (4) shall be refused, by the Court, after 6 years has elapsed from the date of making the forfeiture order or confiscation order. *(Inserted by Act 18 of 2023)*

5. Notice of application

(1) Where the Director of Public Prosecutions applies for a forfeiture order against property in respect of a person's conviction of criminal conduct— *(Amended by Act 4 of 2010)*

- (a) the Director of Public Prosecutions must give no less than 14 days written notice of the application to the person and to any other person who the Director of Public Prosecutions has reason to believe may have an interest in the property;
- (b) the person, and any other person who claims an interest in the property, may appear and adduce evidence at the hearing of the application; and
- (c) the Court may, at any time before the final determination of the application, direct the Director of Public Prosecutions—
 - (i) to give notice of the application to any person who, in the opinion of the Court, appears to have an interest in the property;
 - (ii) to publish in the Gazette and in a newspaper published and circulating in Saint Lucia notice of the application in the manner and containing such particulars and within the time that the Court considers appropriate.

(2) Where the Director of Public Prosecutions applies for a confiscation order against a person—

- (a) the Director of Public Prosecutions must give the person no less than 14 days written notice of the application; and
- (b) the person may appear and adduce evidence at the hearing of the application.

6. Amendment of application

(1) The Court hearing an application under section 4(1) may, before final determination of the application, and on the application of the Director of Public Prosecutions, amend the application to include any other property or benefit, as the case may be, upon being satisfied that—

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

(2) Where the Director of Public Prosecutions applies to amend an application for a forfeiture order and the amendment would have the effect of including additional property in the application for the forfeiture order he or she must give no less than 14 days written notice of the application to amend to any person who he or she has reason to believe may have an interest in the property to be included in the application for the forfeiture order.

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

(4) Where the Director of Public Prosecutions applies to amend an application for a confiscation order against a person and the effect of the amendment would be to include an additional benefit in the application for the confiscation order he or she must give the person no less than 14 days written notice of the application to amend.

7. Procedure on application

(1) Where an application is made to the Court for a forfeiture order or a confiscation order in respect of a person's conviction of criminal conduct whether in the magistrates' court or in the court, the court may, in determining the application, have regard to the transcript of any proceedings against the person for the offence. *(Amended by Act 18 of 2023)*

(2) Where an application is made for a forfeiture order or a confiscation order to the Court before which the person was convicted, and the Court has not, when the application is made, passed sentence on the person for the offence, the Court may, if it is satisfied that it is reasonable to do so in all the circumstances, defer passing sentence until it has determined the application for the order.

8. Application for in rem forfeiture order on abscondence

(1) Where a person absconds in connection with criminal conduct committed after the coming into force of this Act, the Director of Public Prosecutions may apply to the Court for a forfeiture order under section 16 in respect of any tainted property. *(Amended by Act 4 of 2010)*

(2) For the purposes of this section, a person is considered to have absconded in connection with criminal conduct if— *(Amended by Act 4 of 2010)*

- (a) an information is laid alleging the commission of the offence by the person;
- (b) a warrant for the arrest of the person is issued in relation to that information; and

- (c) reasonable attempts to arrest the person under the warrant are unsuccessful during the period of 6 months commencing on the day the warrant was issued,

and the person is considered to have so absconded on the last day of that period of 6 months.

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

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

Forfeiture Orders

9. Forfeiture order on conviction

(1) Where the Director of Public Prosecutions applies to the Court for a forfeiture order against property in respect of a person's conviction for criminal conduct and the Court is satisfied that the property is tainted property in respect of the offence, the Court may order that the property or such of the property as is specified by the Court in the order be forfeited to the Crown. *(Amended by Act 4 of 2010)*

(2) In determining whether property is tainted property the Court may infer—

- (a) that the property was used in, or in connection with the commission of the offence, where the evidence establishes that the property was in the person's possession at the time of, or immediately after, the commission of the offence for which the person was convicted;
- (b) that the property was derived, obtained or realised as a result of the commission by the person of the criminal conduct for which the person was convicted, where the evidence establishes that property, and in particular money, was found in the person's possession or under his or her control in a building, vehicle, receptacle or place during the course of investigations conducted by the police before or after the arrest and charge of the person for the criminal conduct for which the person was convicted; *(Amended by Act 4 of 2010)*
- (c) that the value of the increase represents property which was derived, obtained or realised by the person directly or indirectly from the commission of the criminal conduct for which the person was convicted, where the evidence establishes that the value, after the commission of the criminal conduct, of all ascertainable property of a person convicted of the criminal conduct exceeds the value of all ascertainable property of that person prior to the commission of that offence, and the Court is satisfied that the income of that person from sources unrelated to criminal activity of that person cannot reasonably account for the increase in value. *(Amended by Act 4 of 2010)*

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

(4) In considering whether a forfeiture order should be made under subsection (1), the Court shall have regard to—

- (a) the rights and interests, if any, of third parties in the property;
- (b) the gravity of the offence concerned;

- (c) any hardship that may reasonably be expected to be caused to any person, by the operation of the order; and
 - (d) the use that is ordinarily made of the property, or the use to which the property was intended to be put.
- (5) Where the Court makes a forfeiture order the Court may give such directions as are necessary or convenient for giving effect to the order.

10. Effect of forfeiture order

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

(2) Where property directed by a forfeiture order to be forfeited is registrable property—

- (a) the property vests in the Crown provisionally but does not vest absolutely in the Crown at law until the applicable registration requirements have been complied with;
- (b) the Crown is entitled to be registered as owner of the property;
- (c) the Attorney General has power on behalf of the Crown to do, or authorise the doing of, anything necessary or convenient to obtain the registration of the Crown as owner, including the execution of any instrument required to be executed by a person transferring an interest in property of that kind.

(3) Where the Court makes a forfeiture order against property—

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

(4) Without limiting the generality of subsection (3)(b) the directions that may be given under that subsection include a direction that property is to be disposed of in accordance with the provisions of any enactment specified in the direction.

(5) In this section—

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

“relevant appeal date” used in relation to a forfeiture order made in consequence of a person’s conviction of criminal conduct, means— (*Amended by Act 4 of 2010*)

- (a) the date on which the period allowed by the rules of court for the lodging of an appeal against a person’s conviction or for the lodging of an appeal against the making of a forfeiture order expires without an appeal having been lodged, whichever is the later; or
- (b) where an appeal against a person’s conviction or against the making of a forfeiture order is lodged, the date on which the appeal lapses in accordance with the rules of court or is finally determined, whichever is the later.

11. Voidable transfers

The Court may—

- (a) before making a forfeiture order; and

- (b) in the case of property in respect of which a restraining order was made, where the order was served in accordance with section 34, (*Amended by Act 18 of 2023*)

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

12. Protection of third parties

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

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

- (a) that he or she was not in any way involved in the commission of the offence; and
- (b) where he or she acquired the interest during or after the commission of the offence, that he or she 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 or she acquired it, property that was tainted property,

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

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

(4) A person who—

- (a) had knowledge of the application for the forfeiture order before the order was made; or
 - (b) appeared at the hearing of that application,
- shall not be permitted to make an application under subsection (3), except with the leave of the Court.

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

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

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

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

13. Discharge of forfeiture order on appeal and quashing of conviction

(1) Where the Court makes a forfeiture order against property in reliance on a person's conviction of criminal conduct and the conviction is subsequently quashed, the quashing of the conviction discharges the order. *(Amended by Act 4 of 2010)*

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

(3) On receipt of an application under subsection (2) the Registrar shall—

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

(4) In the exercise of his or her powers under this section and section 12 the Registrar shall have the power to do or authorise the doing of anything necessary or convenient to effect the transfer or return of property, including the execution of any instrument and the making of an application for the registration of an interest in the property on any appropriate registrar.

14. Payment instead of forfeiture order

Where the Court is satisfied that a forfeiture order should be made in respect of the property of a person convicted of criminal conduct but that the property or any part thereof or interest therein cannot be made subject to such an order and, in particular— *(Amended by Act 4 of 2010)*

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

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

15. Application of procedure for enforcing fines

(1) Where the Court orders a person to pay an amount under section 14 that amount shall be treated as if it were a fine imposed upon him or her in respect of a conviction of criminal conduct and the Court shall— *(Amended by Act 4 of 2010)*

- (a) despite anything contained in section 20 of the Interpretation Act, impose, in default of the payment of that amount, a term of imprisonment—
 - (i) of 18 months, where the amount does not exceed \$10,000,
 - (ii) of 2 years, where the amount exceeds \$10,000 but does not exceed \$20,000,
 - (iii) of 3 years, where the amount exceeds \$20,000 but does not exceed \$50,000,

- (iv) of 5 years, where the amount exceeds \$50,000 but does not exceed \$100,000,
- (v) of 7 years, where the amount exceeds \$100,000 but does not exceed \$200,000,
- (vi) of 10 years, where the amount exceeds \$200,000 but does not exceed \$1,000,000,
- (vii) of 15 years, where the amount exceeds \$1,000,000;
- (b) direct that the term of imprisonment imposed under paragraph (a), in the case of conviction for an offence against the Drug (Prevention of Misuse) Act be served consecutively to any other form of imprisonment imposed on the person, or that the person is then serving;
- (c) direct that the Prisons Act and any regulations made under it or other law regarding the remission of sentences of prisoners serving a term of imprisonment shall not apply in relation to a term of imprisonment imposed on a person under paragraph (a) in the case of a conviction for an offence against the Drug (Prevention of Misuse) Act.

16. Forfeiture order on abscondence

(1) Subject to section 8(3), where an application is made to the Court under section 8(1) for a forfeiture order against any tainted property in consequence of a person's abscondence in connection with criminal conduct and the Court is satisfied that— (*Amended by Act 4 of 2010*)

- (a) any property is tainted property in respect of the offence;
- (b) proceedings in respect of criminal conduct committed in relation to that property were commenced; and (*Amended by Act 4 of 2010*)
- (c) the accused charged with the offence referred to in paragraph (b) has absconded,

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

(2) The provisions of sections 9(2), 9(3), 9(4) and 9(5), 10, 11 and 12 apply with such modifications as are necessary to give effect to this section.

Confiscation Orders

17. Confiscation order on conviction

(1) Subject to this section, where the Director of Public Prosecutions applies to the Court for a confiscation order against a person in respect of that person's conviction of criminal conduct the Court shall, if it is satisfied that the person has benefited from that offence order him or her to pay to the Crown an amount equal to the value of his or her benefits from the offence or such lesser amount as the Court certifies in accordance with section 20 to be the amount that might be realised at the time the confiscation order is made. (*Amended by Act 4 of 2010*)

(1A) The Court shall determine a question arising under subsection (1) on a balance of probabilities. (*Inserted by Act 18 of 2023*)

(2) The Court shall assess the value of the benefits derived by a person from the commission of an offence in accordance with sections 18 to 21.

(3) The Court shall not make a confiscation order under this section—

- (a) until the period allowed by the rules of court for the lodging of an appeal against conviction has expired without such an appeal having been lodged; or

- (b) where an appeal against convictions has been lodged, until the appeal lapses in accordance with the rules of court or is finally determined, whichever is the later date.

18. Rules for determining benefit and assessing value

(1) Where a person obtains property as the result of, or in connection with the commission of, criminal conduct, his or her benefit is the value of the property so obtained. *(Amended by Act 4 of 2010)*

(2) Where a person derives an advantage as a result of or, in connection with the commission of criminal conduct, his or her advantage shall be deemed to be a sum of money equal to the value of the advantage so derived. *(Amended by Act 4 of 2010)*

(3) The Court, in determining whether a person has benefited from the commission of criminal conduct or from that offence taken together with other criminal conduct and, if he or she has, in assessing the value of the benefit, shall unless the contrary is proved, consider— *(Amended by Act 4 of 2010)*

- (a) all property appearing to the Court to be held by the person on the day on which the application is made; and
- (b) all property appearing to the Court to be held by the person at any time—
 - (i) within the period between the day the criminal conduct, or the earliest offence, was committed and the day on which the application is made, or *(Amended by Act 4 of 2010)*
 - (ii) within the period of 6 years immediately before the day on which the application is made,

whichever is longer, to be property that came into the possession or under the control of the person by reason of the commission of that criminal conduct or those criminal conducts for which the person was convicted; *(Amended by Act 4 of 2010)*
- (c) any expenditure by the person since the beginning of that period to be expenditure met out of payments received by him or her as a result of, or in connection with, the commission of that criminal conduct or those criminal conduct; and *(Amended by Act 4 of 2010)*
- (d) any property received or considered to have been received by the person at any time as a result of, or in connection with, the commission by him or her of that criminal conduct, or those criminal conduct as property received by him or her free of any interests therein. *(Amended by Act 4 of 2010)*

(4) Where a confiscation order has previously been made against a person, in assessing the value of any benefit derived by him or her from the commission of the criminal conduct, the Court shall leave out of account any of his or her benefits that are shown to the Court to have been taken into account in determining the amount to be recovered under that order. *(Amended by Act 4 of 2010)*

(5) If evidence is given at the hearing of the application that the value of the person's property at any time after the commission of the criminal conduct exceeded the value of the person's property before the commission of the offence, then the Court shall, subject to subsection (6), treat the value of the benefits as being not less than the amount of the excess. *(Amended by Act 4 of 2010)*

(6) If, after evidence of the kind referred to in subsection (5) is given, the person satisfies the Court that the whole or part of the excess was due to causes unrelated to the commission of the criminal conduct, subsection (5) does not apply to the excess or, as the case may be, that part. *(Amended by Act 4 of 2010)*

**19. Statements relating to benefits from commission of Criminal Conduct
(Amended by Act 4 of 2010)**

(1) Where—

- (a) a person is convicted of criminal conduct and the Director of Public Prosecutions tenders to the Court a statement as to any matters relevant— *(Amended by Act 4 of 2010)*
 - (i) to determining whether the person has benefited from the offence or from any other criminal conduct of which he or she is convicted in the same proceedings or which is taken into account in determining his or her sentence, or *(Amended by Act 4 of 2010)*
 - (ii) to an assessment of the value of the person's benefit from the offence or any other criminal conduct of which he or she is so convicted in the same proceedings or which is so taken into account; and
- (b) the person accepts to any extent an allegation in the statement, *(Amended by Act 4 of 2010)*

the Court may, for the purposes of so determining or making that assessment, treat his or her acceptance as conclusive of the matters to which it relates.

(2) Where—

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

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

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

- (a) an allegation in respect of which he or she has complied with the requirement; and
- (b) an allegation that he or she has benefited from the criminal conduct or that any property or advantage was obtained by him or her as a result of, or in connection with the commission of the offence. *(Amended by Act 4 of 2010)*

(4) Where—

- (a) the person tenders to the Court 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 Director of Public Prosecutions accepts to any extent any allegation in the statement,

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

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

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

(6) An acceptance by a person under this section that he or she received any benefits from the commission of criminal conduct is admissible in any proceedings for any offence. *(Amended by Act 4 of 2010)*

20. Amount to be recovered under confiscation order

(1) Subject to subsection (2), the amount to be recovered in the person's case under a confiscation order is the amount which the Court assesses to be the value of the person's benefit from the criminal conduct or if more than one, all the offences in respect of which the order may be made. *(Amended by Act 4 of 2010)*

(2) Where the Court is satisfied as to any matter relevant for determining the amount which might be realised at the time the confiscation order is made (whether by an acceptance under section 19 or otherwise) the Court may issue a certificate giving the Court's opinion as to the matters concerned, and shall do so if satisfied that amount that might be realised at the time the confiscation order is made is less than the amount that the Court assesses to be the value of the person's benefit from the offence, or if more than one, all the offences in respect of which the confiscation order may be made.

21. Variation of confiscation orders

(1) Where—

- (a) the Court makes a confiscation order against a person in relation to criminal conduct; *(Amended by Act 4 of 2010)*
- (b) in calculating the amount of the confiscation order, the Court took into account a forfeiture of the property or a proposed forfeiture of the property or a proposed forfeiture order in respect of the property; and
- (c) an appeal against the forfeiture or forfeiture order is allowed or the proceedings for the proposed forfeiture order terminate without the proposed forfeiture order being made,

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

(2) Where—

- (a) the Court makes a confiscation order against a person in relation to criminal conduct; *(Amended by Act 4 of 2010)*
- (b) in calculating the amount of the confiscation order, the Court took into account, in accordance with sections 3(5) and 3(6) an amount of tax paid by the person; and *(Amended by Act 18 of 2023)*
- (c) an amount is repaid or refunded to the person in respect of that tax,

the Director of Public Prosecutions may apply to the Court for a variation of the confiscation order to increase the order by the amount repaid or refunded and the Court may, if it considers it appropriate to do so, vary the order accordingly.

21A. Time for payment under a confiscation order

(1) The full amount ordered to be paid under a confiscation order must be paid on the date on which the confiscation order is made.

(2) Where the Court making the confiscation order is satisfied that a person is unable to pay the full amount on the date on which the confiscation order is made, the Court may make an order requiring that the amount which cannot be paid on that date, be paid within a specified period and on other terms specified by the Court.

(3) The Court may make an order extending the specified period for payment of the unpaid amount if—

- (a) the defendant applies to the Court within the specified period in an order under subsection (2) for the time to be extended; and
- (b) the Court is satisfied that, despite having made all reasonable efforts, the defendant is unable to pay the amount within 3 months.

(4) A specified period under subsection (2)—

- (a) must begin with the date on which the confiscation order is made; and
- (b) must not exceed 3 months.

(5) An order extending the specified period for payment of the unpaid amount under subsection (3)—

- (a) must begin after the specified period under subsection (2); and
- (b) must not exceed 6 months.

(6) The Court must be satisfied that the specified period under subsection (2) or the extended period under subsection (3) allows the defendant, by a particular date—

- (a) to pay the unpaid amount; or
- (b) to pay the amount towards the remaining amounts to be paid.

(7) The Court shall not make an order under subsection (2) or (3) unless the Director of Public Prosecutions is given an opportunity to make a representation.

(Inserted by Act 18 of 2023)

21B. Interest on amount unpaid under a confiscation order

(1) Where the amount ordered to be paid by a person under a confiscation order is not paid by the specified date under section 21A(2) or (3), the person shall pay interest on the amount unpaid for the period from which it remains unpaid at the rate applied in a civil judgment of debt.

(2) The amount of interest payable under subsection (1) forms part of the amount to be paid under the confiscation order.

(Inserted by Act 18 of 2023)

21C. Considerations of the Court after making a confiscation order

(1) Where the Court makes a confiscation order, the Court shall consider the confiscation order before—

- (a) imposing a fine on that person;
- (b) making another order involving a payment by that person;
- (c) making an order for confiscation or compensation under another enactment.

(2) The Court may disregard the confiscation order in deciding the appropriate sentence for the defendant.

(Inserted by Act 18 of 2023)

21D. Court may order payment by a person through a financial institution

(1) Where a person holds money in an account maintained with a financial institution, and a confiscation order is made against that person, the Court may order

the financial institution to pay from the money maintained, to the Court, on account of the amount payable under the confiscation order.

(2) A financial institution that contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding \$200,000.

(Inserted by Act 18 of 2023)

21E. Variation of order where amount available to defendant is inadequate

(1) The Court may, after determining that a defendant is unable to pay an amount remaining to be paid under the confiscation order, vary the order by substituting for the amount required to be paid a smaller amount.

(2) Where a person is adjudicated bankrupt or his or her estate is sequestrated, or if an order for the liquidation of a company is made, the Court shall take into account the extent to which realizable property held by that person or company may be distributed among creditors.

(3) The Court may disregard an inadequacy which it believes is attributable, wholly or partly, to anything done by the defendant for the purpose of concealing realizable property.

(Inserted by Act 18 of 2023)

21F. Discharge of a confiscation order

The Court may discharge a confiscation order where—

- (a) a person is adjudicated bankrupt;
- (b) the Court determines it is just to do so, after considering all the circumstances of the case.

(Inserted by Act 18 of 2023)

22. Court may lift corporate veil

(1) In assessing the value of benefits derived by a person from the commission of criminal conduct, the Court may treat as property of the person any property that, in the opinion of the Court, is subject to the effective control of the person whether or not he or she has— *(Amended by Act 4 of 2010)*

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

(2) Without prejudice to the generality of subsection (1) the Court may have regard to—

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

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

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

- (a) the order may be enforced against the property as if the property were property of the person against whom the order is made; and
 - (b) a restraining order may be made in respect of the property as if the property were property of the person against whom the order is made.
- (5) Where the Director of Public Prosecution applies for an order under subsection (3) that property is available to satisfy a confiscation order against a person—
- (a) the Director of Public Prosecutions shall give written notice of the application to the person and to any person who the Director of Public Prosecutions has reason to believe may have an interest in the property; and
 - (b) the person and any person who claims an interest in the property may appear and adduce evidence at the hearing.

23. Enforcement of confiscation orders

Where the Court orders a person to pay an amount under a confiscation order the provisions of section 15 shall apply with such modifications as the Court may determine for the purpose of empowering the Court to impose a term of imprisonment on a person in default of compliance by him or her of a confiscation order.

PART 2A **CIVIL RECOVERY** *(Inserted by Act 18 of 2023)*

23A. Civil recovery: General

- (1) This Part has effect for the purposes of—
- (a) enabling the Attorney General to recover in civil proceedings before the Court, property which is, or represents—
 - (i) property obtained through criminal conduct, or
 - (ii) property that is used in, or in connection with, or is intended to be used in, or in connection with, criminal conduct; and
 - (b) enabling the Attorney General to forfeit, in civil proceedings before the Court, property which is, or represents—
 - (i) property obtained through criminal conduct, or
 - (ii) property that is used, or in connection with, or is intended to be used in, or in connection with, criminal conduct.
- (2) The powers conferred under this Part are exercisable, *in rem*, in relation to property, whether proceedings are brought against a person for criminal conduct in connection with the property.
- (3) In relation to investigating and preserving property that is subject to an action for civil recovery, Part 3 applies with the necessary modifications.

(Inserted by Act 18 of 2023)

Action for Civil Recovery

23B. Parallel proceedings against a person

- (1) Where a person is charged with or is under investigation for his or her criminal conduct, nothing in this Act or another enactment prevents the commencing or continuing of civil proceedings against the person with respect to the person's recoverable property or to his or her criminal conduct.

(2) The Attorney General may commence or maintain a civil asset recovery proceedings against a person whether acquitted or convicted of criminal conduct.

(Inserted by Act 18 of 2023)

23C. Supreme Court Rules

(1) Where the Supreme Court Rules do not contain a provision for exercising a right or procedure with respect to this Act, the Court, a judge or the Registrar of the Court may adopt a procedure that is not inconsistent with the Supreme Court Rules or this Act.

(2) A person may make an application to the Court, a judge or the Registrar of the Court to request directions as to the procedure adopted under subsection (1).

(Inserted by Act 18 of 2023)

23D. Standard of proof in civil recovery

The Court shall decide on a balance of probabilities whether—

- (a) a matter alleged to be criminal conduct has occurred;
- (b) a person used or intended to use, property in or in connection with criminal conduct.

(Inserted by Act 18 of 2023)

Recoverable Property and Associated Property

23E. Following recoverable property

(1) Where recoverable property is disposed of since it was obtained, it continues to be recoverable property if it is held by a person into whose hands it may be followed.

(2) Recoverable property may be followed into the hands of—

- (a) in the case of property obtained through criminal conduct, the person who, through the conduct, obtained the property;
- (b) in the case of tainted property, a person who had possession of the property for the purposes, or with the intent, of using the property for criminal conduct.

(Inserted by Act 18 of 2023)

23F. Tracing property

(1) Where property obtained through criminal conduct is or has been recoverable property, property which represents the original property is considered to be recoverable property.

(2) Where a person enters into a transaction for the disposal of recoverable property, whether it is the original property or property representing the original property and obtained other property in its place, the other property represents the original property.

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

(Inserted by Act 18 of 2023)

23G. Mixing property

(1) Where a person's recoverable property is commingled with other property, whether the property is his or her property or another person's property, the portion of the mixed property which is attributable to the recoverable property represents the property obtained through criminal conduct or the tainted property.

(2) In subsection (1), recoverable property is mixed with other property if it is used—

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

(Inserted by Act 18 of 2023)

23H. Recoverable property accruing profits

Where a person holding recoverable property obtains additional property as a result of profits accruing in respect of the recoverable property, the additional property is treated as representing the property obtained through criminal conduct or the tainted property.

(Inserted by Act 18 of 2023)

23I. Granting interests

(1) Where a person grants an interest in his or her recoverable property, the question whether the interest is recoverable property must be determined by the Court in a like manner with respect to the disposal of recoverable property.

(2) On granting an interest in recoverable property under subsection (1)—

- (a) in the case of that property is obtained through criminal conduct, the interest is treated as obtained through that criminal conduct;
- (b) in the case of property that represents in his or her hands property obtained through criminal conduct, the interest is treated as representing in his or her hands the property obtained through that criminal conduct.

(Inserted by Act 18 of 2023)

23J. Exceptions relating to recoverable property

(1) Where recoverable property is disposed of and obtained by a person in good faith for value and without notice, that recoverable property ceases to be recoverable property—

- (a) if it is vested, forfeited or otherwise disposed of pursuant to powers conferred under this Act;
- (b) where a respondent makes a payment to a claimant in a judgment under civil proceedings.

(2) Property is not recoverable—

- (a) while a restraining order applies to it, if made under this Act or another enactment; or
- (b) if—

- (i) in pursuance to a judgment in civil proceedings, whether in or outside Saint Lucia the respondent makes a payment to a claimant or a claimant otherwise obtains property from the defendant,
- (ii) the claim of the claimant is based on the criminal conduct of the respondent,
- (iii) apart from this subsection, the sum received or the property obtained by the claimant would be recoverable property.

(Inserted by Act 18 of 2023)

Property Freezing Order, Appointment, Functions and Powers of Receiver in Connection with Property Freezing Order, Receiving Order

23K. Application for property freezing order

(1) The Attorney General may, before the grant of a recovery order, make an application to the Court, by way of a fixed date claim, for a property freezing order.

(2) An application for a property freezing order under subsection (1) may be made without notice where a notice of application prejudices the right of the Attorney General to obtain a recovery order with respect to property.

(3) The Court may make a property freezing order if it is satisfied there is a good arguable case that—

- (a) the property to which the application for the property freezing order relates is or includes recoverable property;
- (b) there is a real risk that the recoverable property will be disposed of, dissipated or otherwise dealt with; and
- (c) property that is not recoverable property is associated property.

(4) In making a property freezing order under subsection (3), the Court may—

- (a) exclude specified property from the property freezing order; and
- (b) otherwise make exclusions from the prohibition on dealing with or disposing the property.

(5) An exclusion under subsection (4) may be made subject to conditions as the Court considers appropriate and make provision for the purpose of enabling a person to—

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

(6) Subject to this section, a property freezing order shall not continue in force for a period of more than 6 months after the time of making of the order, unless before the expiration of that period, the Attorney General applies to the Court that made the order for an extension of the period of operation of the order.

(7) Where the Attorney General applies to the Court under subsection (6) for an extension of period of operation of a property freezing order and the Court is satisfied that the property freezing order may be made in respect of the property or part of the property, the Court may extend, for a specified period, the period of operation of the property freezing order and make another order as it considers appropriate in relation to the operation of the property freezing order.

(Inserted by Act 18 of 2023)

23L. Effect of a property freezing order

A property freezing order under section 23K, prohibits a person, whose property is described in the property freezing order from dealing in any way with the property.

(Inserted by Act 18 of 2023)

23M. Varying and setting aside a property freezing order

(1) The Court may vary or set aside a property freezing order.

(2) Where the Court decides that property to which a property freezing order applies is not recoverable property, the Court must vary the property freezing order to exclude that property.

(3) The Court shall give the parties to the proceedings and a person who may be affected by its decision an opportunity to make a representation before varying or setting aside a property freezing order.

(Inserted by Act 18 of 2023)

23N. Stay of proceedings relating to a property freezing order

(1) While a property freezing order has effect—

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

(2) Where the Court is satisfied that a property freezing order is applied for or made in respect of property to which proceedings are pending, the Court may stay the proceedings or allow the proceedings to continue on terms the Court imposes.

(3) Where a property freezing order applies to a tenancy of any premises, a landlord or other person to whom rent is payable may not exercise the right of forfeiture in relation to the premises in respect of a failure by the tenant to comply with a term or condition of the tenancy, except with the leave of the Court and subject to any terms the Court imposes.

(4) Before exercising a power conferred under this section, the Court must give the parties to the proceedings and a person who may be affected by the Court's decision an opportunity to make a representation.

(Inserted by Act 18 of 2023)

23O. Appointment of receiver relating to a property freezing order

(1) The Court may, on an application by the Attorney General, appoint a receiver in respect of property to which the property freezing order applies.

(2) In an application under subsection (1), the Attorney General shall—

- (a) nominate a suitably qualified person for appointment as a receiver; and
- (b) provide for the remuneration, if any, and expenses of a receiver appointed under subsection (1).

(Inserted by Act 18 of 2023)

23P. Directions of the Court with respect to the functions of a receiver relating to a property freezing order

(1) An application to the Court for directions with respect to the exercise of the functions of a receiver appointed under section 23O may be made by—

- (a) the receiver;
- (b) a party to the proceedings for the appointment of the receiver or the property freezing order;

- (c) a person who is affected or may be affected by an action taken or proposed to be taken by the receiver.

(2) Before giving directions under subsection (1), the Court must give an opportunity to make a representation to a person who makes an application under subsection (1).

(Inserted by Act 18 of 2023)

23Q. Powers of receiver relating to a property freezing order

(1) Where the Court appoints a receiver under section 23O, the Court may, by order—

- (a) authorize or require the receiver to take steps the Court thinks appropriate in connection with the management of the property, including, securing the detention, custody or preservation of the property;
- (b) require a person in respect of whose property the receiver is appointed, where applicable—
 - (i) to bring the property to a place specified by the receiver or to place it in the custody of the receiver, and
 - (ii) to do anything he or she is reasonably required to do by the receiver for the preservation of the property,
 - (iii) to bring a document relating to the property which is in his or her possession or control to a place specified by the receiver or to place the document in the custody of the receiver.

(2) A prohibition, on dealing with or disposing of property, imposed by a property freezing order does not prevent a person from complying with a requirement imposed under this section.

(3) A receiver is not liable with respect to any loss or damage resulting from his or her dealing with or disposing of the property, except so far as the loss or damage is caused by his or her negligence if—

- (a) the receiver deals with property which is not property in respect of which he or she is appointed; and
- (b) at the time he or she deals with the property he or she believes on reasonable grounds that he or she is entitled to do so by virtue of his or her appointment.

(Inserted by Act 18 of 2023)

23R. Varying and setting aside the appointment, powers and functions of a receiver relating to a property freezing order

(1) The Court may vary or set aside the appointment of a receiver under section 23O, the directions under section 23P and the powers of a receiver under section 23Q.

(2) Before varying or setting aside an appointment, directions or powers under subsection (1), the Court shall give an opportunity to make a representation to—

- (a) the receiver;
- (b) the parties to the proceedings for the appointment of the receiver;
- (c) the parties to the proceedings for the property freezing order; and
- (d) a person who may be affected by the decision of the Court.

(Inserted by Act 18 of 2023)

*Receiving order, reporting requirements of a receiver relating
to a receiver order and prohibition or restriction on land,
lease of charge*

23S. Receiving order

(1) Where the Attorney General institutes proceedings for a recovery order, the Attorney General may apply to the Court for a receiving order, whether before or after instituting the proceedings for a recovery order.

(2) A receiving order under subsection (1) contains a request for the—

- (a) detention, custody or preservation of property; and
- (b) appointment of a receiver.

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

(4) The Court may make a receiving order if—

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

(5) The Attorney General shall, in his or her application for a receiving order, nominate a suitably qualified person for appointment a receiver.

(6) The Attorney General shall serve, within 10 days of the order being made, a copy of the receiving order on any person who holds any property to which the order relates or who may otherwise be affected by the receiving order.

(Inserted by Act 18 of 2023)

23T. Reporting requirement for a receiver relating to a receiving order

(1) A receiver shall immediately inform the Court and the Attorney General if he or she believes that—

- (a) property to which the order applies is not recoverable property;
- (b) property to which the order does not apply is recoverable property;
- (c) property to which the order applies is held by a person who is different from the person it is claimed holds the property;
- (d) associated property is not associated property;
- (e) there has been a material change.

(2) A receiver shall—

- (a) report his or her findings to the Court; and
- (b) serve copies of his or her report on the Attorney General and on a person who holds property to which the receiving order applies or who may otherwise be affected by the report.

(Inserted by Act 18 of 2023)

23U. Prohibition or restriction on land, lease or charge relating to a property freezing order

(1) Where the Attorney General has applied for a property freezing order or a receiving order, he or she is treated as a person interested in any registered land, lease or charge to which the application relates, or to which a property freezing order or a receiving order made on the application relates, and he or she may make an application to the Registrar of Lands to prohibit or restrict dealings with the land, lease or charge.

(2) The Registrar of Lands shall, on an application made under subsection (1), enter a prohibition or restriction on the Land Register.

(Inserted by Act 18 of 2023)

In Rem Recovery Order, Appointment and Functions of a Trustee relating to an In Rem Recovery Order and Rights of Pre-Emption and Other Similar Rights

23V. Application for an in rem recovery order

(1) The Attorney General may make an application to the Court, by way of a fixed date claim under the Supreme Court Rules, for an *in rem* recovery order against a person who holds recoverable property.

(2) An application under subsection (1) must—

- (a) identify, by particularizing or by a general description, the property with respect to which the Attorney General seeks a recovery order;
- (b) specify in relation to each item or description of property identified in the claim—
 - (i) whether it is alleged that the property is recoverable property or associated property,
 - (ii) who is alleged to hold the property, or where the Attorney General is unable to identify who holds the property, the steps that have been taken to establish the owner's identity; and
- (c) nominate a suitably qualified person for appointment by the Court as a trustee for civil recovery.

(3) The Attorney General shall, unless the Court dispenses with service, on any other person who is believed to hold associated property which the Attorney General wishes to be subject to the *in rem* recovery order, serve a claim under subsection (1) on the respondent.

(Inserted by Act 18 of 2023)

23W. Making an in rem recovery order

(1) Subject to subsection (2), an *in rem* recovery order may be made by the Court in respect of—

- (a) property wherever situated;
- (b) a person wherever domiciled, resident or present.

(2) An *in rem* recovery order may not be made by the Court in respect of property that is outside of Saint Lucia unless there is or has been a connection between the case and Saint Lucia.

(3) The Court shall not make an *in rem* recovery order with respect to recoverable property if—

- (a) a condition under subsection (4) is satisfied; and

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

(4) The conditions referred to under subsection (3)(a) are that—

- (a) the respondent obtained the recoverable property in good faith;
- (b) the respondent took an action, or omitted to take an action—
 - (i) after obtaining the property which he or she would not have taken, or omitted to take, if he or she had not obtained the property, or
 - (ii) before obtaining the property which he or she would not have taken, or omitted to take, if he or she had not believed he or she was going to obtain it;
- (c) when he or she took, or omitted to take, the action under paragraph (b), he or she did not have notice that the property was recoverable;
- (d) where an *in rem* recovery order is made in respect of the property, the *in rem* recovery order is, by reason of his or her action or omission detrimental to him or her.

(5) In deciding whether it is just and equitable to make the provision in the *in rem* recovery order where the conditions under subsection (4) are met, the Court shall consider—

- (a) the degree of detriment to be suffered by the respondent if the provision is made;
- (b) the Attorney General's interest in receiving the realized proceeds of the recoverable property.

(6) An *in rem* recovery order may sever any property interest.

(7) An *in rem* recovery order—

- (a) may impose conditions as to the manner in which the trustee may deal with any property vested by the order for the purpose of realizing it; and
- (b) may provide for payment of reasonable legal expenses that a person has reasonably incurred, or may reasonably incur, in respect of—
 - (i) the proceedings under this Part in which the *in rem* recovery order is made, or
 - (ii) any related proceedings under this Part.

(Inserted by Act 18 of 2023)

Associated Property and joint property

23X. Agreements with respect to associated property and joint property

(1) Where the Attorney General and a person who holds the associated property or who is the excepted joint owner agree, the *in rem* recovery order may instead of vesting the recoverable property in the trustee, require the person who holds the associated property or who is the excepted joint owner to make a payment to the trustee.

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

(3) The amount of the payment is the amount which the Attorney General and that person agree represents the value of the recoverable property less the value of the excepted joint owner's share.

(4) The amount of the payment may be reduced by an amount the Attorney General and that person agree is reasonable, if—

- (a) a property freezing order or a receiving order applies to the associated property or joint ownership; and
- (b) the Attorney General agrees that the person has suffered loss as a result of the property freezing order or receiving order;
- (c) there are any other relevant circumstances.

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

(Inserted by Act 18 of 2023)

23Y. Default of agreement with respect to associated property and joint property

(1) Where there is a default with respect to an agreement under section 23X, the Court may make an *in rem* recovery order.

(2) An *in rem* recovery order under subsection (1) may provide—

- (a) for the associated property to vest in the trustee or for the excepted joint owner's interest to be extinguished; or
- (b) in the case of an excepted joint owner, for the severance of his or her interest;
- (c) for the trustee to pay an amount to the person who holds the associated property or is an excepted joint owner;
- (d) for the creation of interests in favour of that person, or the imposition of liabilities or conditions, in relation to the property vested in the trustee;
- (e) make provision for recoverable property to cease to be recoverable.

(3) In making a provision in an *in rem* recovery order under subsection (2), the Court shall consider—

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

(Inserted by Act 18 of 2023)

23Z. Limitation on instituting proceedings for an in rem recovery order

(1) Proceedings shall not be brought for an *in rem* recovery order in respect of any recoverable property after the expiration of 12 years from—

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

(2) For the purposes of subsection (1), proceedings for an *in rem* recovery order are brought when an application is made to the Court under section 23V.

(3) Subject to sections 29A and 49A, proceedings for an *in rem* recovery order may not be taken—

- (a) in respect of cash found at any place in Saint Lucia unless the proceedings are taken in respect of property other than cash which is property of the same person;
- (b) against the Attorney General in respect of any recoverable property held by the Attorney General;
- (c) against any person in respect of any recoverable property which he or she holds by reason of his or her acting or having acted as a receiver in bankruptcy or as trustee appointed by, or supervised by the Court.

(Inserted by Act 18 of 2023)

23AA. Appointment of trustee relating to an in rem recovery order

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

(2) Where an *in rem* recovery order is made, the recoverable property is transferred from a receiver and vests in the person appointed by the Court to be a trustee.

(Inserted by Act 18 of 2023)

23BB. Functions of a trustee relating to an in rem recovery order

(1) The functions of a trustee are—

- (a) to secure the detention, custody or preservation of recoverable property vested in him or her by the Court;
- (b) to realize the value of the recoverable property for the benefit of the Attorney General;
- (c) to otherwise give effect to the recovery order; and
- (d) to perform any other functions conferred on him or her under this Part.

(2) In performing his or her functions, a trustee acts on behalf of the Attorney General and shall comply with any directions given to him or her by the Attorney General.

(3) A trustee shall realize the value of property vested in him or her by the *in rem* recovery order, so far as practicable, in the manner best calculated to maximize the amount payable to the Attorney General.

(Inserted by Act 18 of 2023)

23CC. Right of pre-emption and other similar rights

(1) An *in rem* recovery order has effect in relation to property notwithstanding a provision which may prevent, penalize or restrict the vesting of the property.

(2) A right of pre-emption, right of return or other similar right does not operate or become exercisable as a result of the vesting of property under an *in rem* recovery order.

(3) Where property is vested under an *in rem* recovery order, any right is to have effect as if the person in whom the property is vested were the same person in law as the person who held the property and as if no transfer of the property had taken place.

(4) In this section, “**right of return**” means a right under a provision for the return or reversion of property in specified circumstances.

(Inserted by Act 18 of 2023)

23DD. Stay of proceedings relating to an in rem recovery order

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

(2) An order under subsection (1) may stay the proceedings and—

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

(Inserted by Act 18 of 2023)

23EE. Application of realized proceeds relating to an in rem recovery order

(1) A trustee may, with respect to sums which represent the realized proceeds of property which was vested in the trustee by an *in rem* recovery order or which he or she obtained pursuant to an *in rem* recovery order make out of the sums—

- (a) first, a payment required to be made by him or her to an excepted joint owner;
- (b) second, a payment of legal expenses under section 23W(7)(b);
- (c) third, fees payable to a liquidator of a company appointed or supervised by the Court; and
- (d) sums which remain to be paid to the Attorney General.

(2) The Attorney General may apply a sum received by him or her under subsection (1) in making payment of the remuneration and expenses of—

- (a) a trustee;
- (b) a receiver appointed in, or in anticipation of, the proceedings for the *in rem* recovery order; or
- (c) a forensic accountant appointed in or in anticipation of the civil proceedings for the *in rem* recovery order.

(3) Any sum remaining, after payments made in accordance with subsection (2), and any accrued interest on that sum, shall be paid into the Fund after—

- (a) the period permitted to lodge an application for compensation has expired or the application for compensation has been determined or disposed of; or
- (b) the period within which an appeal may be made.

(Inserted by Act 18 of 2023)

Exemptions

23FF. Application for declaration relating to an in rem recovery order

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

(2) The Court may make a declaration under subsection (1) if the Court is satisfied that—

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

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

(Inserted by Act 18 of 2023)

Enforcement of an in rem recovery order abroad

23GG. Enforcement abroad before an in rem recovery order

(1) The Attorney General may make a request for assistance to the government of a receiving country if—

- (a) a property freezing order is in effect in relation to the property;
- (b) the property is not property to which an in rem recovery order applies; and
- (c) the Attorney General or a receiver believes that the property is in a country outside Saint Lucia.

(2) A request for assistance under this subsection (1) may contain a request to the government of the receiving country—

- (a) to secure that a person is prohibited from dealing with or disposing of the property;
- (b) for assistance in connection with the management of the property, including with securing its detention, custody or preservation.

(3) A request for assistance under subsection (1) must comply with the Mutual Legal Assistance in Criminal and Related Matters Act.

(Inserted by Act 18 of 2023)

23HH. Enforcement abroad after an in rem recovery order

(1) The Attorney General may make a request for assistance to the government of the receiving country in relation to the property if—

- (a) a recovery order made by the Court has effect in relation to property; and
- (b) the Attorney General or the trustee believes that the property is in a country outside Saint Lucia.

(2) A trustee may send a request for assistance in relation to the property to the Attorney General with a view to it being forwarded under this section to the government of the receiving country.

(3) Where a trustee sends a request for assistance to the Attorney General under this section the Attorney General shall forward the request for assistance from the trustee to the government of the receiving country.

(4) A request for assistance under subsection (1) is a request to the government of the receiving country for assistance in connection with the management and disposal of the property and contains a request to the government of the receiving country—

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

- (b) in the case of money, to secure and ensure that the money is applied in accordance with the law of the receiving country;
- (c) in the case of property other than money, to secure that the property is realized and the proceeds are applied in accordance with the law of the receiving country.

(5) A certificate purporting to be issued by or on behalf of the government of the receiving country is admissible as evidence of the facts it states—

- (a) that property has been realized in pursuance of a request under this section;
- (b) the date of realization; and
- (c) the proceeds of realization.

(6) A request for assistance under subsection (1) must be in compliance with the Mutual Legal Assistance in Criminal and Related Matters Act.

(Inserted by Act 18 of 2023)

Compensation

23II. Compensation order relating to a property freezing order or a receiving order

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

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

- (a) has made a declaration in respect of the property under section 23FF; or
- (b) makes an order to stay the proceedings under section 23DD.

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

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

(5) Where the Court is satisfied that the owner of the property has suffered loss as a result of the property freezing order or the receiving order, the Court may require the Attorney General to pay compensation to the owner of the property.

(6) Where, subject to section 23Z, a right operates in favour of, or becomes exercisable by a person, he or she may make an application to the Court for compensation.

(7) An application for compensation under subsection (6) must be made within the period of 3 months of the date on which the property is vested.

(8) Where the Court is satisfied that the right under section 23Z cannot subsequently operate in favour of the applicant or, become exercisable by him or her, the Court may require the Attorney General to pay compensation to the owner of the property.

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

(Inserted by Act 18 of 2023)

Appeals relating to an in rem recovery order

23JJ. Appeal to the court after an in rem recovery order

(1) A party to the proceedings in which an *in rem* recovery order is made may, before the end of the period of 30 days beginning with the date on which the *in rem* recovery order is made, appeal to the Court.

(2) An appeal under subsection (1) must be by way of a hearing *de novo*, and the Court may make an order as it considers appropriate.

(Inserted by Act 18 of 2023)

PART 3

**PROVISIONS FOR FACILITATING POLICE INVESTIGATIONS AND PRESERVING
PROPERTY LIABLE TO FORFEITURE AND CONFISCATION ORDERS**

Powers of Search and Seizure

24. Warrant to search land for tainted property

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

(2) Where an application is made under subsection (1) for a search warrant, the magistrate may, subject to section 25, issue a warrant authorising a police officer (whether named in the warrant or not) with such assistance and by such force as is necessary and reasonable—

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

25. Restrictions on issue of search warrants

A magistrate shall not issue a warrant under section 24 unless—

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

26. Matters to be included in search warrant

A warrant issued under section 24 shall include—

- (a) a statement of the purpose for which the warrant is issued, and a reference to the nature of the criminal conduct; *(Amended by Act 4 of 2010)*
- (b) a description of the kind of property to be seized;
- (c) a time, not being later than 28 days, upon which the warrant ceases to have effect; and

- (d) a statement as to whether entry is authorised to be made at any time of the day or night or during specified hours of the day or night.

27. Police may seize other tainted property

Where in the course of a search under a warrant issued under section 24 for tainted property in relation to criminal conduct, a police officer finds— (*Amended by Act 4 of 2010*)

- (a) property that he or she believes, on reasonable grounds, to be—
 - (i) tainted property in relation to the offence, although not of a kind specified in the warrant, or
 - (ii) tainted property in relation to another criminal conduct; or (*Amended by Act 4 of 2010*)
- (b) anything that he or she believes, on reasonable grounds will afford evidence as to the commission of a criminal offence,

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

28. Record of property seized

- (1) A police officer who executes a warrant issued under this Part shall—

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

- (2) A magistrate shall, on application, provide a copy of the report—

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

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

29. Return of property seized

(1) Where property has been seized under section 27, otherwise than because it may afford evidence of the commission of criminal conduct, any person who claims an interest in the property may apply to the Court for an order that the property be returned to him or her. (*Amended by Act 4 of 2010*)

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

- (a) the person is entitled to possession of the property;
- (b) the property is not tainted property in relation to the criminal conduct; and (*Amended by Act 4 of 2010*)
- (c) the person in respect of whose conviction, charging or proposed charging the seizure of the property was made has no interest in the property,

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

(3) Where—

- (a) at the time when the property was seized, an information had not been laid in respect of criminal conduct; (*Amended by Act 4 of 2010*)
- (b) property has been seized under section 27, otherwise than because it may afford evidence as to the commission of an offence;
- (c) at the end of the period of 48 hours after the time when the property was seized, an information has not been laid in respect of criminal conduct, (*Amended by Act 4 of 2010*)

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

(4) Where—

- (a) property is seized under section 27, otherwise than because it may afford evidence as to the commission of criminal conduct; (*Amended by Act 4 of 2010*)
- (b) either of the following conditions is satisfied, that is to say—
 - (i) before the property is seized, a person was convicted of criminal conduct or an information had been laid in respect of criminal conduct; or (*Amended by Act 4 of 2010*)
 - (ii) before the property is seized, an information was not laid in respect of criminal conduct, but an information was laid in respect of criminal conduct within 48 hours after the time when the property seized; and (*Amended by Act 4 of 2010*)
- (c) no forfeiture order is made against the property within the period of 14 days after the property was seized,

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

(5) Where—

- (a) property is seized under section 27, otherwise than because it may afford evidence as to the commission of criminal conduct; (*Amended by Act 4 of 2010*)
- (b) but for this subsection, the Commissioner would be required to arrange for the property to be returned to a person as soon as practicable after the end of a particular period; and
- (c) before the end of that period, a restraining order is made in relation to the property,

the Commissioner shall—

- (i) arrange for the property to be given to the Registrar in accordance with the restraining order, if the restraining order directs the Registrar to take custody and control of the property;
- (ii) arrange for the property to be kept until it is dealt with in accordance with any other provision of this Act, if the Court that made the restraining order has made an order under subsection (6) in relation to the property.

(6) Where—

- (a) property has been seized under section 27, otherwise than because it may afford evidence as to the commission of criminal conduct; *(Amended by Act 4 of 2010)*
- (b) a restraining order is made in relation to the property; and
- (c) at the time when the restraining order is made, the property is in the possession of the Commissioner,

the Commissioner may apply to the Court that made the restraining order for an order that he or she retain possession of the property, and the Court may, if satisfied that there are reasonable grounds for believing that the property may afford evidence as to the commission of criminal conduct or any other offence, make an order that the Commissioner retain the property for so long as the property is so required as evidence as to the commission of that offence. *(Amended by Act 4 of 2010)*

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

(8) Where—

- (a) property has been seized under section 27, otherwise than because it may afford evidence as to the commission of criminal conduct; *(Amended by Act 4 of 2010)*
- (b) an application is made for a restraining order or a forfeiture order in respect of the property;
- (c) the application is refused; and
- (d) at the time when the application is refused, the property is in the possession of the Commissioner,

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

(9) Where—

- (a) property is seized under section 27; and
- (b) while the property is in the possession of the Commissioner a forfeiture order is made in respect of the property,

the Commissioner shall deal with the property as directed by the order.

29A. Seizure and detention of cash

(1) A police officer, of the rank of corporal or above, or a financial investigator of the Financial Intelligence Authority, may seize and detain, in accordance with this Part, any cash in Saint Lucia if the officer or investigator 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. *(Substituted by Act 14 of 2013)*

(2) Cash seized by virtue of this section must not be detained for more than seventy two hours unless its continued detention is authorized by an order made by a Magistrate; and no such order must be made unless the Magistrate is satisfied—

- (a) that there are reasonable grounds for the suspicion mentioned in subsection (1); and
- (b) that continued detention of the cash is justified while its origin or derivation is further investigated or consideration is given to the

institution, whether in Saint Lucia or elsewhere, of criminal proceedings against any person for an offence with which the cash is connected.

(Substituted by Act 14 of 2013)

(3) Any order under subsection (2) must authorize 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 Court of summary jurisdiction, if satisfied as to the matters mentioned in that subsection, may thereafter from time to time by order authorize the further detention of the cash except that—

- (a) no period of detention specified in such an order must exceed three months beginning with the date of the order; and
- (b) the total period of detention must 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 of the rank of corporal or above or a financial investigator of the Financial Intelligence Authority. *(Substituted by Act 14 of 2013)*

(5) At any time while cash is detained by virtue of this section—

- (a) a Court of summary jurisdiction may direct its release if satisfied—
 - (i) on an application made by the person from whom it was seized or a person by or on whose behalf it was being imported or exported, that there are no, or are no longer, any such grounds for its detention as are mentioned in subsection (2); or
 - (ii) on an application made by any other person, that detention of the cash is not for that or any other reason justified; and
- (b) the Commissioner of Police or any police officer authorized by him or her or the Director of the Financial Intelligence Authority may release the cash, if satisfied that its detention is no longer justified and shall first notify the magistrate or a court of summary jurisdiction under whose order it is being detained. *(Substituted by Act 18 of 2023)*

(6) Cash detained by virtue of this section must not be released until any proceedings pursuant to the application or, as the case may be, the proceedings for that offence have been concluded.

(Inserted by Act 15 of 2011)

29B. Search for listed assets

(1) A police officer not below the rank of corporal or a financial investigator of the Financial Intelligence Authority who is lawfully on any premises and who has reasonable grounds for suspecting that there is a listed asset on the premises, may search for the listed asset on the premises.

(2) The powers conferred under subsection (1) are exercisable if—

- (a) the police officer or a financial investigator of the Financial Intelligence Authority has reasonable grounds for suspecting that there is a seizable listed asset in a vehicle;
- (b) it appears to the police officer or a financial investigator of the Financial Intelligence Authority that the vehicle is under the control of a person who is in or in the vicinity of the vehicle; and
- (c) the vehicle is in a place referred to under subsection (3).

(3) The place under subsection (2)(c) is—

- (a) a place to which, at the time of the proposed exercise of the powers, the public or a section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission; and

- (b) any other place to which at that time people have ready access and is not a dwelling.

(4) Where a vehicle is in a garden, yard or other land occupied with and used for the purposes of a dwelling, the police officer not below the rank of corporal or a financial investigator of the Financial Intelligence Authority may exercise the powers conferred under subsection (5) if he or she has reasonable grounds for believing—

- (a) that the suspect does not reside in the dwelling; and
- (b) that the vehicle is not in the place in question with the express or implied permission of a person who resides at the dwelling.

(5) The powers conferred under subsection (4) are to require the suspect to permit—

- (a) entry to the vehicle,
- (b) a search of the vehicle;
- (c) detention of the vehicle for so long as is necessary to conduct an investigation.

(6) Where a police officer not below the rank of corporal or a financial investigator of the Financial Intelligence Authority has reasonable grounds for suspecting that a person is carrying a seizable listed asset, he or she may—

- (a) so far as he or she thinks necessary or expedient, require the suspect—
 - (i) to permit a search of any article he or she has with him or her, and
 - (ii) to permit a search of his or her person; and
- (b) for the purposes of exercising his or her power under paragraph (a)(ii), detain the person for a period that is reasonably necessary for the exercise of that power.

(7) The powers under subsection (6) are exercisable so far as reasonably required for the purpose of finding a seizable listed asset and this section does not require a person to submit to an intimate search.

(8) Where a power under this section is being exercised in respect of more than one seizable listed asset, this section applies as if the value of each asset or part of an asset is equal to the aggregate value of all of the assets or parts.

(9) In this section, “**seizable listed asset**” means—

- (a) all or part of it is recoverable property that is intended by any person to be used in criminal conduct; and
- (b) the value or the part of the listed asset, that falls within paragraph (a), that is not less than the minimum value of \$10,000.

(Inserted by Act 18 of 2023)

29C. Seizure of property

(1) A police officer not below the rank of corporal or a financial investigator of the Financial Intelligence Authority may seize an item of property if he or she has reasonable grounds for suspecting that—

- (a) it is a listed asset;
- (b) it is recoverable property or intended by a person for use in criminal conduct;
- (c) that part of the item is recoverable property or intended by any person for use in criminal conduct;

- (d) that the value of the part to which the suspicion relates is not less than the minimum value of ten thousand dollars; and
- (e) it is not reasonably practicable to seize only that part.

(2) Where the powers under this section are being exercised by a police officer not below the rank of corporal or a financial investigator of the Financial Intelligence Authority in respect of more than one item of property, this section applies as if the value of each item is equal to the aggregate value of all of the items.

(3) A reference under subsection (2) to the value of an item is a reference including references to the value of part of an item where the power is exercised under subsection (1).

(Inserted by Act 18 of 2023)

29D. Initial detention of property

Property seized under section 29C may be detained initially for a period of 72 hours.

(Inserted by Act 18 of 2023)

29E. Further detention of property

(1) Where a police officer not below the rank of corporal or a financial investigator of the Financial Intelligence Authority continues to have reasonable grounds for suspicion in relation to property described under section 29C(1) or (2), he or she may make an application to the Court for an order to extend the period to detain the property seized under 29C or any part of that property.

(2) An order under subsection (1) may not authorize the detention of any property—

- (a) beyond the end of the period of 3 months beginning with the date of the order; and
- (b) in the case of any further order under this section, beyond the end of the period of 2 years beginning with the date of the first order.

(3) The Court may make an order under subsection (1) if satisfied, in relation to the item of property to be further detained, that—

- (a) it is a listed asset;
- (b) the value of it is not less than the minimum value of \$10,000;
- (c) its continued detention is justified while its derivation is further investigated or consideration is given to bringing in Saint Lucia or elsewhere, proceedings against a person for an offence with which the property is connected;
- (d) proceedings against a person for an offence with which the listed asset is connected have been commenced and have not been concluded; or
- (e) its continued detention is justified while its intended use is further investigated or consideration is given to bringing in Saint Lucia or elsewhere proceedings against a person for an offence with which the property is connected.

(4) Where an application for an order under subsection (1) relates to an item of property seized under section 29C, the Court may make the order if satisfied that—

- (a) any of the conditions in subsections 3(a) to (e) are satisfied; and
- (b) it is not reasonably practicable to detain only that part of the property.

(5) Where an application for an order under subsection (1) is made in respect of 2 or more items of property that were seized at the same time and by the same person, this section applies as if the value of each item is equal to the aggregate value of all of the items.

(6) An order under subsection (1) must provide for notice to be given to persons affected by it.

(Inserted by Act 18 of 2023)

29F. Testing and safekeeping of property seized

(1) A police officer not below the rank of corporal or a financial investigator of the Financial Intelligence Authority may carry out or arrange for the carrying out of tests on an item of property seized under section 29C for the purpose of establishing whether it is a listed asset.

(2) A police officer not below the rank of corporal or a financial investigator of the Financial Intelligence Authority must arrange for an item of property seized under section 29C to be safely stored throughout the period during which it is detained.

(Inserted by Act 18 of 2023)

29G. Release of detained property

(1) The Court may direct the release of the whole or any part of the property if the Court is satisfied on an application by the person from whom the property was seized, that the conditions under section 29E(3) for the detention of the property are no longer met in relation to the property to be released.

(2) The Commissioner of Police or the Director of the Financial Intelligence Authority may, after notifying the Court under whose order the property is being detained, release the whole or any part of it if satisfied that the detention of the property to be released is no longer justified.

(Inserted by Act 18 of 2023)

29H. Forfeiture of property

(1) While property is seized or detained under section 29C or 29D, an application for the forfeiture of the whole or any part of the property may be made to the Court by a police officer or a financial investigator of the Financial Intelligence Authority.

(2) The Court may order the forfeiture of the property or any part of it if satisfied that—

- (a) the property is a listed asset; and
- (b) the property to be forfeited is recoverable property or intended by any person for use in criminal conduct.

(Inserted by Act 18 of 2023)

Associated property and joint property

29I. Associated and joint property

(1) Sections 29J and 29K apply where—

- (a) an application is made under section 29H in respect of property seized or detained under section 29C or 29D;
- (b) the Court is satisfied that the property is a listed asset;
- (c) the Court is satisfied that all or part of the property is recoverable property or intended by any person for use in criminal conduct;

- (d) there exists property that is associated with the property in relation to which the court is satisfied under paragraph (c); and
- (e) the property in relation to which the Court is satisfied under paragraph (c) belongs to joint tenants and one of the tenants is an excepted joint owner.

(2) In this section and sections 29J and 29K, “**associated property**” means property, with respect to listed assets, of any of the following descriptions that is not itself the forfeitable property—

- (a) an interest in the forfeitable property;
- (b) any other interest in the property in which the forfeitable property subsists;
- (c) if the forfeitable property is a tenancy in common, the tenancy of the other tenant;
- (d) if the forfeitable property is part of a larger property, but not a separate part, the remainder of that property.

(Inserted by Act 18 of 2023)

29J. Agreements with respect to associated property and joint property

(1) Where a person applies for an order under section 29H and another person who holds the associated property or who is the excepted joint owner agree, the Court may, without prejudice to an order under section 29H, make an order requiring the person who holds the associated property or who is the excepted joint owner to make a payment to a person identified in the order.

(2) The amount of the payment under subsection (1)—

- (a) is the amount which the persons under subsection (1) agree represents—
 - (i) the value of the forfeitable property,
 - (ii) is the value of the forfeitable property less the value of the excepted joint owner’s share;
- (b) may be reduced if the person who applied for the order under section 29H agrees that the other party to the agreement has suffered loss as a result of the seizure of the forfeitable property and any associated property and its subsequent detention.

(3) The reduction that is permissible under subsection (3) is an amount as the parties to the agreement agree is reasonable, having regard to the loss suffered and an other relevant circumstances.

(4) An order under subsection (1) may, so far as required for giving effect to the agreement, include provision for vesting, creating or extinguishing an interest in property.

(5) Where there is more than one item of associated property or more than one excepted joint owner, the total amount to be paid under subsection (1), and the part of that amount which is to be provided by each person who holds associated property or is an excepted joint owner, is to be agreed between both and the person who applied for the order under section 29H.

(6) An amount received under an order under subsection (1) must be applied—

- (a) first, in payment or reimbursement of reasonable costs incurred in storing or insuring the forfeitable property and any associated property whilst detained;
- (b) second, in payment by the Court, into the Fund.

(Inserted by Act 18 of 2023)

29K. Default of agreement with respect to associated and joint property

(1) The Court may, if it thinks it is just and equitable, make an order providing for—

- (a) an interest to be extinguished; or
- (b) an excepted joint owner's interest to be severed.

(2) An order under subsection (1) must provide for the payment of an amount to the person who holds the associated property or is an excepted joint owner.

(3) In making an order under subsection (1) the Court must have regard to—

- (a) the rights of a person who holds the associated property or who is an excepted joint owner and the value to that person of that property or of that person's share; and
- (b) the interest of the person who applied for the order under section 29H in realizing the value of the forfeitable property.

(4) Where the Court is satisfied that—

- (a) the person who holds the associated property or is an excepted joint owner has suffered loss as a result of the seizure of the forfeitable property and any associated property and its subsequent detention; and
- (b) the circumstances are exceptional,

an order under subsection (1) may require the payment of compensation to that person.

(5) The amount of compensation to be paid under subsection (4) is the amount the Court thinks reasonable, having regard to the loss suffered and any other relevant circumstances.

(Inserted by Act 18 of 2023)

29L. Appeal against forfeiture with respect to property or against an order with respect to associated property or joint property

(1) A party to proceedings for an order for the forfeiture of property under section 29H may appeal to the Court against—

- (a) the making of an order under section 29H;
- (b) the making of an order under section 29K(1);
- (c) a decision not to make an order under section 29H;
- (d) a decision not to make an order under section 29K(1).

(2) An appeal under subsection (1) must be—

- (a) made before the end of the period of 30 days commencing on the date on which the order was made;
- (b) by way of rehearing by the Court which may make any order that it considers appropriate.

(3) Where the Court upholds an appeal against an order forfeiting property, it may order the release of the whole or any part of the property.

(Inserted by Act 18 of 2023)

29M. Realization of property forfeited

(1) Subject to subsection (2), where property is forfeited under sections 29H or 29K, the Attorney General shall realize the property or make arrangements for its realization.

(2) Property is not realized under subsection (1)—

- (a) before the end of the period within which an appeal is made; or
- (b) if an appeal is made within that period, before the appeal is determined or otherwise disposed.

(3) The realization of property under subsection (1) must be carried out, so far as practicable, in the manner best calculated to maximize the amount obtained for the property.

(Inserted by Act 18 of 2023)

29N. Application of realized proceeds relating to property forfeited

(1) The proceeds of property realized under section 29M must be applied—

- (a) first, in making any payment required to be made under section 29K;
- (b) second, in payment or reimbursement of reasonable costs incurred in storing or insuring the property whilst detained and in realizing the property; and
- (c) third, any balance after payments made under paragraphs (a) and (b) must be paid by the Court into the interest bearing account under section 49B(1).

(2) Where the sums realized under section 29M represents part of an item of property seized and detained, the reference under subsection (1)(b) is a reference to costs incurred in storing or insuring the whole of the item of property.

(Inserted by Act 18 of 2023)

29O. Application for release of property

(1) A person who claims that property detained, or any part of it, belongs to him or her may make an application to the Court for the property or part of the property to be released.

(2) An application under subsection (1) may be made in the course of proceedings or at any other time.

(3) The Court may order the property to which the application relates to be released to the applicant if it appears to the Court that—

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

(4) The Court may order the property to which the application relates to be released to the applicant or to the person from whom it was seized where—

- (a) the applicant is not the person from whom the property to which the application relates was seized;
- (b) it appears to the Court that the property belongs to the applicant;
- (c) the Court is satisfied that the release condition is met in relation to that property; and
- (d) no objection to the making of an order has been made by the person from whom that property was seized.

(Inserted by Act 18 of 2023)

29P. compensation relating to property detained

(1) Where an order is not made under section 29O, the person to whom the property belongs or from whom it was seized may make an application to the Court for compensation.

(2) Where the Court is satisfied that the applicant has suffered loss as a result of the detention of the property and that the circumstances are exceptional, and the Court may order compensation to be paid to the applicant.

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

(Inserted by Act 18 of 2023)

Account freezing order

29Q. Application for an account freezing order

(1) The Director of Public Prosecutions may make an application to the Court for an account freezing order in relation to an account in which the money is held if a police officer not below the rank of corporal or a financial investigator of the Financial Intelligence Authority has reasonable grounds for suspecting that money held in an account maintained with a financial institution—

(a) is recoverable property; or

(b) is intended by any person for use in criminal conduct.

(2) An application for an account freezing order under subsection (1) may be made without notice if the circumstances of the case are that notice of the application may prejudice the taking of any steps to forfeit money that is recoverable property or intended by any person for use in criminal conduct.

(3) The money referred to under subsection (1) may be all or part of the credit balance of the account.

(4) An account freezing order, subject to any exclusions under section 29V, prohibits each person by or for whom the account to which the order applies is operated from making withdrawals or payments from the account.

(5) An account is operated under subsection (2) by or for a person if the person is an account holder or a signatory or identified as a beneficiary in relation to the account.

(Inserted by Act 18 of 2023)

29R. Minimum amount to be seized in an account freezing order

(1) The minimum amount to be seized in an account freezing order is EC\$10,000.

(2) The Attorney General may, by Regulations, amend the amount specified under subsection (1).

(3) The amount of money held in a financial institution account in a currency other than Eastern Caribbean Dollars must be taken to be its Eastern Caribbean Dollar equivalent, calculated in accordance with the prevailing rate of exchange.

(Inserted by Act 18 of 2023)

29S. Making an account freezing order

(1) The Court may make an account freezing order if satisfied that there are reasonable grounds for suspecting that money held in the account whether all or part of the credit balance of the account—

(a) is recoverable property; or

(b) is intended by a person for use in criminal conduct.

(2) The period specified by the Court in an order made under subsection (1) may not exceed a period of 2 years, starting with the date on which the account freezing order is made.

(3) An account freezing order must provide for notice to be given to a person affected by the order.

(4) An account freezing order ceases to have effect at the end of the period specified in the order.

(Inserted by Act 18 of 2023)

29T. Variation and setting aside of an account freezing order

(1) The Court may vary or set aside an account freezing order on an application made by—

- (a) the Director of Public Prosecutions; or
- (b) any person affected by the account freezing order.

(2) Before varying or setting aside an account freezing order the Court must give an opportunity to a person who may be affected by its decision.

(Inserted by Act 18 of 2023)

29U. Stay on proceedings relating to an account freezing order

(1) Where a Court in which proceedings are pending in respect of an account maintained with a financial institution is satisfied that an account freezing order has been applied for or made in respect of the account, the Court may stay the proceedings or allow the proceedings to continue on any terms the Court thinks fit.

(2) Before exercising the power under subsection (1), the Court shall give the parties to the proceedings and a person who may be affected by the Court's decision, an opportunity to make a representation.

(Inserted by Act 18 of 2023)

29V. Exclusions

(1) The power to vary an account freezing order includes the power to make exclusions from the prohibition on making withdrawals or payments from the account to which the order applies.

(2) Exclusions from the prohibition may also be made when the account freezing order is made.

(3) An exclusion may make provision for the purpose of enabling a person by or from whom the account is operated—

- (a) to meet the person's reasonable living or legal expenses; or
- (b) to carry on a trade, business, profession or occupation.

(4) An exclusion may be made subject to conditions.

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

- (a) is limited to reasonable legal expenses that the person has reasonably incurred or that the person reasonably incurs;
- (b) specifies the total amount that may be released for legal expenses in pursuance of the exclusion.

(6) The power to make exclusions must, be exercised with a view to ensuring, so far as practicable, that there is not undue prejudice to taking any steps to forfeit money that is recoverable property or intended by any person for use in criminal conduct.

(Inserted by Act 18 of 2023)

Account forfeiture notice and lapse of an account forfeiture notice

29W. Account forfeiture notice

(1) Where an account freezing order made by the Court has effect, a police officer or a financial investigator of the Financial Intelligence Authority shall issue an account forfeiture notice for the purpose of forfeiting money if satisfied that the money—

- (a) is recoverable property; or
- (b) is used in, or in connection with or is intended to be used in or in connection with, by a person in criminal conduct.

(2) An account forfeiture notice under subsection (1) must—

- (a) state the amount of money held in the frozen account which it is proposed be forfeited;
- (b) confirm that the police officer or a financial investigator of the Financial Intelligence Authority is satisfied as under subsection (1);
- (c) specify a period for objecting to the proposed forfeiture and an address to which any objections must be sent; and
- (d) explain that the money will be forfeited by an order of the Court, unless an objection is received at the address under paragraph (c) within the period for objecting.

(3) The period for objecting under subsection (2)(c) is within 30 days starting with the date after the forfeiture notice is issued.

(4) Where an objection is not made within the period specified under subsection (3), and the notice has lapsed under section 29X, the District Court may make a forfeiture order under section 29Y that—

- (a) the amount of money stated in the notice is forfeited;
- (b) the financial institution with which the frozen account is maintained must transfer that amount of money into the Fund; and
- (c) immediately after the transfer has been made, the account freezing order made in relation to the frozen account ceases to have effect.

(5) An objection to a forfeiture order made under section 29Y may be made by a person—

- (a) in writing and sent to the address specified in the notice;
- (b) is made when it is received at the address specified in the forfeiture notice.

(6) An objection under subsection (5) does not prevent the forfeiture of the money held in a frozen account under section 29Y.

(Inserted by Act 18 of 2023)

29X. Lapse of account forfeiture notice

(1) An account forfeiture notice lapses if—

- (a) an objection is made within the period for objecting specified in the notice;
- (b) an application is made under section 29Y for the forfeiture of money held in the frozen account; or
- (c) an order is made under section 29T setting aside the relevant account freezing order.

(2) Where an account forfeiture notice lapses under subsection (1)(a), the account freezing order ceases to have effect at the end of the period of 72 hours starting with the making of the objection.

(3) Where within the 72 hour period an application is made—

- (a) for a variation of the account freezing order under section 29T so as to extend the period specified in the order; or
 - (b) for forfeiture of money held in the frozen account under section 29Y,
- the order continues to have effect until the relevant time.

(4) In subsection (3), “**relevant time**” means—

- (a) if an extension is granted, the time determined under section 29S(4); or
- (b) if an extension is not granted, the time when the application is determined or otherwise disposed.

(5) Where within the 72 hour period it is decided that no application is made under subsection (3), a police officer or financial investigator of the Financial Intelligence Authority shall, as soon as possible, notify the financial institution with which the account is maintained of that decision.

(6) Where the financial institution is notified under subsection (5) before the expiry of the 72 hour period, the account freezing order ceases to have effect on the financial institution being notified.

(Inserted by Act 18 of 2023)

Forfeiture Order, Application to set aside a Forfeiture Order and Payment and Non-Payment of Money into the Fund

29Y. Forfeiture order

(1) Where an account freezing order has effect, an application for the forfeiture of money held in the frozen account may be made to the Court by a police officer or financial investigator of the Financial Intelligence Authority.

(2) The Court may order the forfeiture of the money or any part of the money if satisfied that the money or part of the money—

- (a) is recoverable property; or
- (b) is intended by a person for use in criminal conduct.

(3) In the case of recoverable property which belongs to joint tenants, one of whom is an excepted joint owner, an order the Court may not apply to so much of it as the Court thinks is attributable to the excepted joint owner’s share.

(4) Where an application is made under subsection (1), an account freezing order continues to have effect until the time specified in the order.

(5) Where money held in a frozen account is ordered to be forfeited under this section—

- (a) the financial institution with which the frozen account is maintained shall transfer that amount of money into the Fund; and

- (b) immediately after the transfer under paragraph (a) has been made, the account freezing order ceases to have effect.

(Inserted by Act 18 of 2023)

29Z. Application to set aside a forfeiture order

(1) A person aggrieved by the forfeiture of money may make an application to the Court for an order setting aside the forfeiture of the money or any part of the money.

(2) An application under subsection (1) must be made before the end of the period of 30 days commencing from the date on which the period for objecting ended.

(3) The Court may give permission for an application to be made after the specified period under subsection (2) has ended if it thinks that there are exceptional circumstances to explain that the applicant—

- (a) failed to object to the forfeiture within the period for objecting; and
- (b) failed to make an application within the period under subsection (2).

(4) On an application under subsection (1), the Court shall consider whether the money to which the application relates must be forfeited under section 29Y.

(5) Where the Court is satisfied that the money to which the application relates or any part of it could not be forfeited under section 29Y, the Court must set aside the forfeiture of that money or part of the money.

(6) Where the court sets aside the forfeiture of any money—

- (a) it must order the release of that money; and
- (b) the money is to be treated as not being forfeited.

(Inserted by Act 18 of 2023)

29AA. Payment and non-payment of money forfeited into the Fund

(1) Subject to subsection (2), money forfeited under section 29Y must be paid into the Fund.

(2) Money forfeited under section 29Y must not to be paid into the Fund—

- (a) before the end of the period within which an application to set aside the order under section 29Z may be made; or
- (b) if an application is made within the period under paragraph (a), before the application is determined or otherwise disposed.

(Inserted by Act 18 of 2023)

Appeal against decision on forfeiture of money

29BB. Appeal against decision on forfeiture of money

(1) A party to proceedings for an order for the forfeiture of money under section 29Y who is aggrieved by an order under that section or by the decision of the Court not to make an order may appeal to the Court.

(2) An appeal under subsection (1) must be—

- (a) made before the end of the period of 30 days commencing from the date on which the Court makes the order or decision;
- (b) by way of a rehearing by the Court, which may make any order it thinks appropriate.

(3) Where the Court grants an appeal against an order forfeiting the money, it may order the release of the whole or any part of the money.

(Inserted by Act 18 of 2023)

29CC. Continuation of account freezing order pending appeal

(1) This section applies where, on an application under section 29Y in relation to an account to which an account freezing order applies, the Court decides—

- (a) to make an order under section 29Y in relation to part only of the money to which the application related; or
- (b) not to make an order under section 29Y.

(2) A person who made an application under section 29Y may make an application without notice, to the Court that made a decision for an order that the account freezing order continues to have effect.

(3) Where the Court makes an order under subsection (2) the account freezing order continues to have effect until—

- (a) the end of the period of 72 hours starting with the making of the order under subsection (2); or
- (b) if within the period specified under paragraph (a) an appeal is brought against the decision under subsection (2), the time when the appeal is determined or otherwise disposed.

(Inserted by Act 18 of 2023)

Compensation

29DD. Compensation relating to an account freezing order

(1) This section applies if—

- (a) an account freezing order under section 29S is made; and
- (b) the money held in the account to which the order applies is not forfeited under an account forfeiture notice.

(2) A person by or for whom the account to which the account freezing order applies, may make an application to the Court for compensation.

(3) Where the Court is satisfied that the person making the application has suffered loss as a result of the making of an account freezing order and that the circumstances are exceptional, the Court may order compensation to be paid to that person.

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

(5) Compensation is to be paid from the Fund.

(Inserted by Act 18 of 2023)

Restraining Orders

30. Application for restraining order

(1) Where a person, (in this section and section 31 called “the defendant”)—

- (a) is convicted of criminal conduct; or *(Amended by Act 4 of 2010)*
- (b) is charged with criminal conduct, *(Amended by Act 4 of 2010)*

the Director of Public Prosecutions may apply to the Court for a restraining order against any realisable property held by the defendant or specified realisable property held by a person other than the defendant.

(2) An application for restraining order may be made *ex parte* and shall be in writing and be accompanied by an affidavit stating—

- (a) where the defendant is convicted of criminal conduct, the criminal conduct for which the defendant is convicted, the date of the conviction, the Court before which the conviction is obtained and whether an appeal is lodged against the conviction; (*Amended by Act 4 of 2010*)
- (b) where the defendant is not convicted of criminal conduct, the criminal conduct for which he or she is charged and the grounds for believing that the defendant committed the offence; (*Amended by Act 4 of 2010*)
- (c) a description of the property in respect of which the restraining order is sought;
- (d) the name and address of the person who is believed to be in possession of the property;
- (e) the grounds for the belief that the property is tainted property in relation to the offence;
- (f) the grounds for the belief that the defendant derived a benefit directly or indirectly from the commission of the offence;
- (g) where the application seeks a restraining order against property of a person, other than the defendant, the grounds for the belief that the property is tainted property in relation to the offence and is subject to the effective control of the defendant;
- (h) the grounds for the belief that a forfeiture order or a confiscation order may be or is likely to be made under this Act in respect of the property.

31. Restraining Orders

(1) Subject to this section, where the Director of Public Prosecutions applies to the Court for a restraining order against property and the Court is satisfied that—

- (a) the defendant is convicted of criminal conduct, or is charged with criminal conduct; (*Amended by Act 4 of 2010*)
- (b) there are reasonable grounds for believing that the defendant committed the offence, where the defendant has not been convicted of criminal conduct; (*Amended by Act 4 of 2010*)
- (c) there is reasonable cause to believe that the property is tainted property in relation to an offence or that the defendant derived a benefit directly or indirectly from the commission of the offence;
- (d) there are reasonable grounds for believing that the property is tainted property in relation to an offence and that the property is subject to the effective control of the defendant, where the application seeks a restraining order against property of a person other than the defendant; and
- (e) there are reasonable grounds for believing that a forfeiture order or a confiscation order is likely to be made under this Act in respect of the property, the Court may make an order;
- (f) prohibiting the defendant or any person from disposing of, or otherwise dealing with, the property or such part thereof or interest therein as is specified in the order, except in such manner as may be specified in the order; and
- (g) at the request of the Director of Public Prosecutions, where the Court is satisfied that the circumstances so require—

- (i) directing the Registrar or such other person as the Court may appoint to take custody of the property or such part thereof as is specified in the order and to manage or otherwise deal with all or any part of the property in accordance with the directions of the Court, and
- (ii) requiring any person having possession of the property to give possession thereof to the Registrar or to the person appointed under subparagraph (i) to take custody and control of the property.

(2) An order under subsection (1) may be made subject to such conditions as the Court thinks fit and, without limiting the generality of this section, may make provision for meeting, out of the property or a specified part of the property, all or any of the following—

- (a) the person's reasonable living expenses (including the reasonable living expenses of the persons dependants, if any) and reasonable business expenses;
- (b) the person's reasonable expenses in defending the criminal charge and any proceedings under this Act; or *(Amended by Act 18 of 2023)*
- (c) enabling a person to carry on a trade, business, profession or occupation. *(Inserted by Act 18 of 2023)*

(2A) A restraining order under subsection (1) may apply—

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

(Inserted by Act 18 of 2023)

(2B) A restraining order under subsection (1) does not affect property subject to a charging order under another enactment. *(Inserted by Act 18 of 2023)*

(2C) Where the Court makes a restraining order under subsection (1), a police officer not below the rank of corporal, an officer of the Financial Intelligence Authority or a customs officer may, for the purpose of preventing any property to which the order applies from being removed from Saint Lucia, seize the property. *(Inserted by Act 18 of 2023)*

(3) In determining whether there are reasonable grounds for believing that property is subject to the effective control of the defendant the Court may have regard to the matters referred to in section 22(2).

(4) Where the Registrar or other person appointed under subsection (1)(g)(i) is given a direction in relation to any property, the Registrar or that other person may apply by summons to the Court for directions on any question respecting the management or preservation of the property under this control.

(5) An application under subsection (4) shall be served upon all persons interested in the application or such of them as the Court thinks expedient and all such persons shall be at liberty to appear at the hearing and be heard.

(6) The Registrar or other person appointed under subsection (1)(g)(i) in acting on directions given by the Court is considered to have discharged his or her duty in the subject matter of the application.

31A. Hearsay evidence

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

- (a) for a restraining order;
- (b) for an application to discharge or vary a restraining order; or

- (c) on an appeal against a restraining order or an order discharging or varying a restraining order.

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

(Inserted by Act 18 of 2023)

31B. Restriction or prohibition on land, lease or charge relating to a restraining order

(1) Where the Director of Public Prosecutions has applied for a restraining order, he or she shall be treated as a person interested in land, lease or charge to which the application relates, or to which a restraining order made on the application relates, and he or she may make an application to the Registrar of Lands to prohibit or restrict dealings with the land, lease or charge.

(2) The Registrar of Lands shall, on an application made under subsection (1), enter a restriction or prohibition on the Land Register.

(Inserted by Act 18 of 2023)

31C. Appointment of management receiver

(1) Where the Court makes a restraining order, it may, on the application of the Director of Public Prosecutions, whether as part of the application for the restraining order or at any time afterwards, appoint a management receiver in respect of any realizable property to which the restraining order applies.

(2) The Court may, by order, give the management receiver in relation to realizable property to which the restraining order applies one or more of the following powers—

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

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

(4) The Court—

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

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

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

- (c) incurring capital expenditure in respect of the property.

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

(7) Subsection (6), so far as it relates to the power under subsection (2)(b), does not apply to property which—

- (a) is perishable; or
- (b) ought to be disposed of before its value diminishes.

(Inserted by Act 18 of 2023)

31D. Effect of restraining order

(1) Where a restraining order is made, or a management receiver is appointed, no distress may be levied against any realizable property to which the order applies except with the leave of the Court and subject to any terms the Court imposes.

(2) Where the restraining order applies to, or the management receiver is appointed in respect of, a tenancy of any premises, a landlord or other person to whom rent is payable may not exercise a right of forfeiture by peaceable re-entry in relation to the premises in respect of any failure by the tenant to comply with any term or condition of the tenancy, except with the leave of the Court and subject to any terms the Court imposes.

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

(4) Before exercising a power under subsection (3), the Court shall give an opportunity to make a representation to—

- (a) the Director of Public Prosecutions; and
- (b) the management receiver or, in the case of a restraining order, any receiver appointed in respect of the property.

(Inserted by Act 18 of 2023)

31E. Application of proceeds of realization and other sums

(1) Subject to subsection (2), the following sums in the hands of a management receiver, that is—

- (a) the proceeds of the realization of any property; and
- (b) any other sums in which the defendant holds an interest,

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

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

- (a) among those who held property which has been realized under this Act; and
- (b) in proportions, as the Court directs after giving a reasonable opportunity for a person to make a representation to the Court.

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

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

(5) The Registrar of the Court shall, after making any payment under subsection (4), next apply the balance in his or her hands in payment of the outstanding amount of the compensation order.

(6) The balance in the hands of the Registrar of the Court after he or she has made all payments under this section must be paid into the Fund.

(Inserted by Act 18 of 2023)

31F. Further provisions with respect to a management receiver

(1) Where a management receiver—

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

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

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

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

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

(Inserted by Act 18 of 2023)

31G. Discharge and variation of an order giving directions for the exercise of powers of a management receiver

(1) An application to the Court to vary or discharge an order made under section 31F may be made by—

- (a) the receiver;
- (b) the Director of Public Prosecutions; or
- (c) a person affected by the order.

(2) On an application under subsection (1), the Court may discharge or vary the order giving directions for the exercise of the powers of a management receiver.

(Inserted by Act 18 of 2023)

31H. Winding up of company holding realizable property

(1) Where realizable 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 are not exercisable in relation to—

- (a) property subject to a restraining order made before the time of winding up; and
- (b) any proceeds of property in the hands of a receiver appointed under this Act.

(2) Where, in the case of a company, an order has been made or a resolution has been passed, the powers conferred on the Court shall not be exercised in relation to any realizable property held by the company in relation to which the functions of the liquidator are exercisable—

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

(3) Subsection (2) does not affect the enforcement of a charging order made before the time of winding up or on property which was subject to a restraining order at the time of winding up.

(Inserted by Act 18 of 2023)

31I. Compensation relating to proceedings instituted for an offence

(1) Where proceedings are instituted against a person for an offence to which this Act applies and—

- (a) the proceedings do not result in his or her conviction for an offence, or
- (b) where he or she is convicted of one or more offences—
 - (i) the conviction is quashed, or
 - (ii) he or she is pardoned in respect of the conviction,

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

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

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

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

(4) The amount of compensation to be paid under this section is an amount the Court thinks just in all the circumstances of the case.

(Inserted by Act 18 of 2023)

31J. Enforcement abroad: restraining order

(1) Where the Director of Public Prosecutions believes that realizable property is situated in a country or territory outside Saint Lucia, the Director of Public

Prosecutions shall send a request for assistance to the Attorney General for it to be forwarded under this section.

(2) In a case where a confiscation order or a forfeiture order has not been made, a request for assistance is a request to the government of the receiving country to secure that any person is prohibited from dealing with or disposing realizable property.

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

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

(4) A request for assistance may not be made for the purposes of this section in a case where a confiscation order or forfeiture order is made and is satisfied, discharged or set aside.

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

(6) Where property is realized pursuant to a request under subsection (3) the amount ordered to be paid must be taken to be reduced by an amount equal to the proceeds of realization.

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

- (a) that property has been realized pursuant to a request under subsection (3);
- (b) the date of realization; and
- (c) the proceeds of realization.

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

(Inserted by Act 18 of 2023)

32. Undertakings by Crown

(1) Before making an order under section 31, the Court may require the Crown to give such undertakings as the Court considers appropriate with respect to the payment of damages or costs, or both, in relation to the making and execution of the order.

(2) For the purposes of this section, the Director of Public Prosecutions may, after consultation with the Attorney General, on behalf of the Crown, give to the Court such undertakings with respect to the payment of damages or costs, or both, as are required by the Court.

33. Notice of application for restraining order

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

34. Service of restraining order

A copy of a restraining order shall be served on a person affected by the order in such manner as the Court directs or as may be prescribed by rules of court.

35. Registration of restraining order

(1) A copy of a restraining order which affects land, its appurtenances and dependencies, in Saint Lucia, shall be registered with the Registrar of the High Court in accordance with the Civil Code, Part 3rd, Book Eighteenth, and with the Registrar.

(2) A restraining order is of no effect with respect to registered land unless it is registered as a charge or hypothec under the Land Registration Act.

(3) Where particulars of a restraining order are recorded or registered, as the case may be, in accordance with the Civil Code or the Land Registration Act, a person who subsequently deals with the property, for the purposes of section 36, is considered to have notice of the order at the time of the dealing.

36. Contravention of restraining orders

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

- (a) a fine of \$500,000 or imprisonment for a period of 5 years or both, in the case of a natural person; or
- (b) a fine of \$1 million, in the case of a body corporate.

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

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

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

37. Duration of restraining order

A restraining order remains in force until—

- (a) it is revoked or varied under section 38;
- (b) it ceases to be in force under section 39;
- (c) a forfeiture order or a confiscation order, as the case may be, is made in respect of property which is the subject of the order; or
- (d) the property which is the subject of the order is forfeited to the Crown under any other enactment.

38. Review of search warrants and restraining orders

(1) A person who has an interest in property that was seized under a warrant issued under section 24 or in respect of which a restraining order was made may, at any time, apply to the Court—

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

(2) An application under subsection (1) shall not be heard by the Court unless the applicant gives to the Director of Public Prosecutions at least 3 days clear notice in writing of the application.

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

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

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

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

- (a) that a warrant should not have been issued under section 24 or a restraining order should not have been made, in respect of that property; or
- (b) that the applicant is the lawful owner of, or lawfully entitled to possession of, the property and appears innocent of any complicity in criminal conduct or of any collusion in relation to such an offence; and (*Amended by Act 4 of 2010*)
- (c) that the property will no longer be required for the purpose of any investigation or as evidence in any proceedings.

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

39. Automatic expiry of restraining orders

(1) Subject to this section, where a restraining order is made in relation to property, the restraining order shall not continue in force for a period of more than 6

months after the time of the making of the order unless before the expiration of that period, the Director of Public Prosecutions applies to the Court that made the order for an extension of the period of operation of the order.

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

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

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

40. Disposal of property seized or dealt with

Subject to this section, where the Court is satisfied that property will no longer be required for the purposes of section 9, 16 or 17 or any enactment providing for forfeiture or for the purpose of any investigation or as evidence in any proceeding, the Court shall, on the application of Director of Public Prosecutions or any person having an interest in the property or on the Court's own motion—

- (a) where a restraining order is made in relation to any property, revoke the order;
- (b) where a recognizance has been entered into under section 38, cancel the recognizance; and
- (c) where property has been seized under a warrant issued under section 24 or where the property is under the control of a person appointed under section 31(1)(g)—
 - (i) if possession of it by the person from whom it was taken is lawful, order that it be returned to that person,
 - (ii) if possession of it by the person from whom it was taken is unlawful and the lawful owner or person who is lawfully entitled to its possession is known, order that it be returned to the lawful owner or the person who is lawfully entitled to its possession, or
 - (iii) if possession of it by the person from whom it was taken is unlawful and the lawful owner or person who is lawfully entitled to its possession is not known, may order that it be forfeited to the Crown, to be disposed of or otherwise dealt with in accordance with the law.

40A. Application for a restraining order by an overseas authority

(1) The Court may, on the application of the Director of Public Prosecutions on behalf of an overseas authority, make a restraining order where the Court is satisfied that—

- (a) property in Saint Lucia is identified in the external request;
- (b) proceedings for an offence have been commenced in the country from which the external request was made, and not concluded; and
- (c) there is reasonable cause to believe that the defendant named in the request has benefited from his or her criminal conduct.

(2) An application for a restraining order may be made on an *ex parte* application to a judge in chambers.

(Inserted by Act 18 of 2023)

40B. Restraining order with respect to an external request

(1) Where the Court is satisfied as to the matters under section 40A, it may make a restraining order prohibiting a specified person from dealing with or disposing relevant property which is identified in the external request and specified in the restraining order.

(2) A restraining order—

(a) may make provision—

- (i) for reasonable living expenses and reasonable legal expenses in connection with the proceedings seeking a restraint order or the registration of an external order, and
- (ii) for the purpose of enabling a person to carry on a trade, business, profession or occupation; and

(b) may be made subject to conditions as the Court considers fit.

(3) Where the Court makes a restraining order it may, on the application of the Director of Public Prosecutions, make an order as it believes is appropriate for the purpose of ensuring that the restraining order is effective.

(4) For the purposes of this section, dealing with or disposing property includes removing it from Saint Lucia.

(Inserted by Act 18 of 2023)

40C. Discharge and variation of a restraining order

(1) An application to discharge or vary a restraining order may be made to the Court by—

- (a) the Director of Public Prosecutions; or
- (b) a person affected by the restraining order.

(2) On an application made under subsection (1), the Court may—

- (a) discharge the restraining order; or
- (b) vary the restraining order.

(3) The Court shall discharge the restraining order if—

- (a) at the conclusion of the proceedings for an offence with respect to which the restraining order was made, an external order is not made; or
- (b) within a reasonable time, an external order is not registered.

(Inserted by Act 18 of 2023)

40D. Appeals relating to a restraining order

(1) Where, on an application for a restraining order, the Court decides not to make a restraining order, the Director of Public Prosecutions may make an appeal to the Court of Appeal against the decision.

(2) Where an application is made under section 40C(1), in relation to a restraining order, the Director of Public Prosecutions or a person affected by the restraining order may make an appeal to the Court of Appeal in respect of the Court's decision on the application.

(3) On an appeal under subsection (1) or (2), the Court of Appeal may—

- (a) confirm the decision; or
- (b) make an order as it considers appropriate.

(Inserted by Act 18 of 2023)

40E. Seizure of property subject to restraining order

(1) Where a restraining order is in force, a law enforcement officer may seize any property which is specified in the restraining order to prevent its removal from Saint Lucia.

(2) Property seized under subsection (1) must be dealt with in accordance with the directions of the Court which made the restraining order.

(Inserted by Act 18 of 2023)

40F. Hearsay evidence in proceedings with respect to a restraining order

(1) Without prejudice to the Evidence Act, evidence shall not be excluded in proceedings for a restraining order on the ground that it is hearsay evidence.

(2) Proceedings under subsection (1), includes proceedings—

- (a) for a restraining order;
- (b) for the discharge or variation of a restraining order;
- (c) on an appeal under section 40D.

(Inserted by Act 18 of 2023)

40G. Appointment of receiver relating to a restraining order

(1) Where the Court makes a restraining order, on the application of the Director of Public Prosecutions, the Court may by order appoint a receiver in respect of any property which is specified in the restraining order.

(2) On the application of the Director of Public Prosecutions, the Court may, in relation to any property which is specified in the restraining order, by order, confer on a receiver appointed under subsection (1), one or more of the following powers—

- (a) the power to take possession of the property;
- (b) the power to manage or otherwise deal with the property;
- (c) the power to start, carry on or defend any legal proceedings in respect of the property;
- (d) the power to realize so much of the property as is necessary to meet the receiver's remuneration and expenses;
- (e) the power to enter premises in Saint Lucia and to do any of the following—
 - (i) search for or inspect anything authorized by the Court,
 - (ii) make or obtain a copy, photograph or other record of anything so authorized under subparagraph (i),
 - (iii) remove anything which the receiver is required or authorized to take possession of pursuant to an order of the Court;
- (f) the power to order—
 - (i) any person who has possession of property which is specified in the restraining order to give possession of the property to the receiver,
 - (ii) a person holding an interest in property which is specified in the restraining order to make to the receiver such payment as the Court

specifies in respect of a beneficial interest held by the defendant or the recipient of a tainted gift,

(iii) to transfer, grant or extinguish an interest in the property.

(3) The Court may by order authorize the receiver to do one or more of the following for the purpose of the exercise of his or her powers—

- (a) hold property;
- (b) enter into contracts;
- (c) sue and be sued;
- (d) employ agents;
- (e) execute powers of attorney, deeds or other instruments;
- (f) take other steps the Court thinks appropriate.

(4) The Court shall not, unless it gives persons holding interests in the property a reasonable opportunity to make a representation to it—

- (a) confer the power under subsection (2)(b) or (d) in respect of property; or
- (b) exercise the power conferred on it under subsection (2)(f)(ii) and (iii) in respect of property.

(5) Subsection (4) does not apply to property which—

- (a) is perishable; or
- (b) ought to be disposed of before its value diminishes.

(6) The Court may order that a power conferred by an order under this section is subject to conditions and exceptions.

(Inserted by Act 18 of 2023)

40H. Restrictions relating to a restraining order

(1) Where the Court makes a restraining order—

- (a) no distress may be levied against any property which is specified in the restraining order except with the leave of the Court and subject to any terms the Court imposes; and
- (b) if the restraining order applies to a tenancy of any premises, no landlord or other person to whom rent is payable may exercise a right of forfeiture by peaceable re-entry in relation to the premises in respect of a failure by the tenant to comply with a term or condition of the tenancy, except with the leave of the Court and subject to the terms the Court imposes.

(2) Where proceedings are pending before the Court in respect of property and the Court is satisfied that a restraining order has been applied for or made in respect of the property, the Court may stay the proceedings or allow the proceedings to continue.

(3) Before exercising a power under section 40G, the Court shall give an opportunity to make a representation to—

- (a) the Director of Public Prosecutions; and
- (b) a receiver appointed in respect of the property.

(Inserted by Act 18 of 2023)

40I. Application to give effect to an external order

(1) The Director of Public Prosecutions may make an application to the Court, on behalf of an overseas authority, to give effect to an external order in Saint Lucia.

(2) An application under subsection (1) may be made by an *ex parte* application to a judge in chambers.

(Inserted by Act 18 of 2023)

40J. Conditions for Court to give effect to an external order

(1) The Court shall give effect to an external order by registering the external order where it is satisfied that—

- (a) the external order was made consequent on the conviction of the person named in the external order and no appeal is outstanding in respect of that conviction;
- (b) the external order is in force and no appeal is outstanding in respect of the external order.

(2) In subsection (1), “**appeal**” includes—

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

(Inserted by Act 18 of 2023)

40K. Registration of an external order

(1) Where the Court decides to give effect to an external order, it shall—

- (a) register the order in the Court;
- (b) provide for notice of the registration to be given to a person affected by it; and
- (c) appoint the Director of Public Prosecutions as the enforcement authority for the order.

(2) An external order registered by the Court must be implemented under this section.

(3) The Court may cancel the registration of the external order, or vary the order to which it applies, on an application by the Director of Public Prosecutions or a person affected by it.

(4) The Court shall cancel the registration of an external order, on an application by the Director of Public Prosecutions or a person affected by the external order, if it appears to the Court that the order has been satisfied—

- (a) in the case of an order for the recovery of a sum of money specified in the external order, by payment of the amount due under the external order;
- (b) in the case of an order for the recovery of specified property, by the surrender of the property; or
- (c) by any other means.

(5) Where the registration of an external order is cancelled or varied under subsection (3) or (4), the Court shall cause notice of this to be given to the Director of Public Prosecutions and a person affected by the external order.

(Inserted by Act 18 of 2023)

40L. Appeal to Court of appeal relating to an external order

(1) Where on application for the Court to give effect to an external order by registering it, the Court decides not to do so, the Director of Public Prosecutions may make an appeal to the Court of Appeal against the decision of the Court.

(2) Where an application is made under subsection (1) in relation to the registration of an external order, the Director of Public Prosecutions or a person affected by the registration may make an appeal to the Court of Appeal in respect of the Court's decision on the application.

(3) On an appeal, the Court of Appeal may—

- (a) confirm or set aside the decision to register; or
- (b) direct the Court to register the external order, or so much of it as it relates to the property.

(Inserted by Act 18 of 2023)

40M. Sums in currency other than dollars

(1) This section applies where the external order which is registered specifies a sum of money.

(2) Where the sum of money which is specified is expressed in a currency other than Eastern Caribbean Dollars, the sum of money to be recovered is to be taken to be the dollar equivalent calculated in accordance with the rate of exchange prevailing at the end of the working day immediately preceding the date when the Court registered the external order.

(3) The dollar equivalent shall be calculated by the Director of Public Prosecutions.

(Inserted by Act 18 of 2023)

40N. Time for payment under an external order

(1) This section applies where the external order is for the recovery of a specified sum of money.

(2) Subject to subsections (3) to (6), the amount ordered to be paid under an external order must be paid on the date on which the external order is made.

(3) Where the Court making the external order is satisfied that a person is unable to pay the full amount on that date, the Court may make an order requiring that the amount which cannot be paid on that date, to be paid—

- (a) within a specified period;
- (b) on terms the Court considers fit.

(4) A specified period under subsection (3)—

- (a) must begin with the date on which the external order is made; and
- (b) must not exceed 3 months.

(5) Where within the specified period the person affected by an external order applies to the Court for the period to be extended and the Court believes that there are exceptional circumstances, the Court may make an order extending the period.

(6) The extended period under subsection (5)—

- (a) must start with the date on which the notice was delivered to the person affected by the external order or the date under subsection (3); and
- (b) must not exceed 6 months.

(7) An order under subsection (5)—

- (a) may be made after the end of the specified period; and
- (b) must not be made after the end of the extended period.

(8) The Court shall not make an order under subsection (5) or (7) unless it gives the Director of Public Prosecutions an opportunity to make representations.

(Inserted by Act 18 of 2023)

400. Appointment of receiver relating to an external order

Where an external order is registered, is not satisfied, and, in the case of an external order for the recovery of a specified sum of money, any period specified by the external order has expired, the Court, on the application of the Director of Public Prosecutions may appoint a receiver in respect of —

- (a) in the case of an external order for the recovery of a specified sum of money, realizable property; or
- (b) in the case of an external order for the recovery of specified property, that property.

(Inserted by Act 18 of 2023)

40P. Powers of a receiver with respect to a monetary external order

(1) Where the Court appoints a receiver, it may, on the application of the Director of Public Prosecutions, where the external order is for the recovery of a specified sum of money, by order, confer on the receiver the following powers in relation to any realizable property—

- (a) power to take possession of the property;
- (b) power to manage or otherwise deal with the property;
- (c) power to realize the property, in a manner as the Court specifies; and
- (d) power to start, carry on or defend any legal proceedings in respect of the property.

(2) Where there is an appeal and a sum falls to be paid when the appeal has been determined or withdrawn, the duty to pay is delayed until the date on which the appeal is determined or withdrawn.

(3) Where the person affected by an external order which has been registered shows that he or she needs time to pay the amount ordered to be paid, the Court may make an order allowing payment to be made in a specified period, which—

- (a) must begin with the date on which the notice was delivered to the person affected by the order or the date under subsection (2); and
- (b) must not exceed 3 months.

(4) The Court may by order confer on the receiver power to enter a premises in Saint Lucia and to do any of the following—

- (a) search for or inspect anything authorized by the Court;
- (b) make or obtain a copy, photograph or other record, of anything so authorized; and
- (c) remove anything which the receiver is required or authorized to take possession of pursuant to an order of the Court.

(5) The Court may, by order, authorize the receiver to do any of the following for the purposes of the exercise of his or her powers—

- (a) hold property;

- (b) enter into contracts;
- (c) sue and be sued;
- (d) employ agents;
- (e) execute powers of attorney, deeds or other instruments; and
- (f) take any other steps the Court thinks appropriate.

(6) The Court may order a person who is in possession of realizable property to give possession of the realizable property to the receiver.

(7) The Court—

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

(8) The Court shall not—

- (a) confer the power under subsection (1)(b) or (c) in respect of property; or
- (b) exercise the power under subsection (6) in respect of property, unless it gives persons holding interests in the property a reasonable opportunity to make a representation to it.

(9) Subsection (8), does not apply to property which—

- (a) is perishable; or
- (b) ought to be disposed before its value diminishes.

(10) The Court may make an order that a power conferred under an order under this section not be subject to for conditions and exceptions.

(Inserted by Act 18 of 2023)

40Q. Powers of a receiver with respect to an external order for the recovery of specified property

(1) Where the Court appoints a receiver under section 40O, it may act under this section on the application of the Director of Public Prosecutions where the external order is for the recovery of property.

(2) The Court may by order, confer on the receiver the following powers in relation to the specified property—

- (a) power to take possession of the property;
- (b) power to manage or otherwise deal with the property;
- (c) power to realize the property, in such manner as the Court specifies;
- (d) power to start, carry on or defend any legal proceedings in respect of the property.

(3) The Court may by order, confer on the receiver power to enter any premises in Saint Lucia and to do any of the following—

- (a) search for or inspect anything authorized by the Court;
- (b) make or obtain a copy, photograph or other record of anything so authorized under paragraph (a); and
- (c) remove anything which the receiver is required or authorized to take possession of pursuant to an order of the Court.

(4) The Court may by order, authorize the receiver to do any of the following for the purposes of the exercise of his or her functions—

- (a) hold property;
- (b) enter into contracts;
- (c) sue and be sued;
- (d) employ agents;
- (e) execute powers of attorney, deeds or other instruments; and
- (f) take any other steps the Court thinks appropriate.

(5) The Court may order any person who has possession of the specified property to give possession of it to the receiver.

(6) The Court—

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

(7) The Court shall not—

- (a) confer the power under subsection (2)(b) or (c) in respect of property; or
- (b) exercise the power conferred on it under subsection (6) in respect of property, unless it gives persons holding interests in the property a reasonable opportunity to make a representation to it.

(8) Subsection (7)(a) does not apply to property which—

- (a) is perishable; or
- (b) ought to be disposed of before its value diminishes.

(9) The Court may order that a power conferred by an order under this section is subject to such conditions and exceptions as it specifies.

(Inserted by Act 18 of 2023)

40R. Application of sums by a receiver

(1) This section applies to sums which are in the hands of a receiver appointed if the sums are—

- (a) the proceeds of the realization of property;
- (b) sums, other than the sums under paragraph (a) in which the defendant holds an interest.

(2) The sums under subsection (1) must be applied—

- (a) first, to make any payments directed by the Court; and
- (b) second, on the defendant's behalf towards satisfaction of the external order.

(3) Where the amount payable under the external order has been fully paid and any sums remain in the receiver's hands he or she shall distribute the sums—

- (a) among such persons who held interests in the property as the Court directs; and
- (b) in such proportions as the Court directs.

(4) Before making a direction under subsection (3)(a) the Court shall give persons who hold interests in the property a reasonable opportunity to make a representation to it.

(5) For the purposes of subsections (3) and (4) the property is—

- (a) the property represented by the proceeds under subsection (1)(a);
- (b) the sums under subsection (1)(b).

(6) The receiver applies sums under subsection (2) by paying the sums to the Director of Public Prosecutions on account of the amount payable under the order.

(Inserted by Act 18 of 2023)

40S. Sums received by the Director of Public Prosecutions

(1) Where the Director of Public Prosecutions receives sums on account of the amount payable under a registered external order or the value of the property specified in the order, his or her receipt of the sums reduces the amount payable under the order, and he or she shall apply the sums received in payment of the remuneration and expenses of a receiver appointed by the Court.

(2) Sums which remain after the Director of Public Prosecutions has made any payments under subsection (1) must be paid into the Fund.

(Inserted by Act 18 of 2023)

40T. Satisfaction of an external order

(1) A registered external order is satisfied when no amount is due under the external order.

(2) Where an external order authorizes the recovery of property specified in it, no further amount is due under the external order when all of the specified property has been sold.

(Inserted by Act 18 of 2023)

40U. Restrictions relating to a receiver with respect to realizable property

(1) Where the Court makes an order appointing a receiver in respect of any realizable property or specified property—

- (a) no distress may be levied against the property except with the leave of the Court and subject to any terms the Court imposes; and
- (b) if the receiver is appointed in respect of a tenancy of any premises, no landlord or other person to whom rent is payable may exercise a right of forfeiture by peaceable re-entry in relation to the premises in respect of any failure by the tenant to comply with any term or condition of the tenancy, except with the leave of the Court and subject to any terms the Court imposes.

(2) Where proceedings are pending before the Court in respect of property and the Court is satisfied that a restraining order has been applied for or made in respect of the property, the Court may stay the proceedings or allow the proceedings to continue on terms it thinks fit.

(3) Where the Court is satisfied that an order appointing a receiver in respect of the property has been applied for or made, the Court may stay the proceedings or allow the proceedings to continue on any terms it thinks fit.

(4) Before exercising a power under subsection (3), the Court shall give an opportunity to make a representation to—

- (a) the Director of Public Prosecutions; and

- (b) the receiver, if the order under section 40N has been made.

(Inserted by Act 18 of 2023)

40V. Protection of a receiver

Where a receiver—

- (a) takes action in relation to property which is not realizable property or the specified property;
- (b) is entitled to take the action if it were realizable property or the specified property; and
- (c) believes on reasonable grounds that he or she is entitled to take the action,

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

(Inserted by Act 18 of 2023)

40W. Application by a receiver for directions in exercise of powers

(1) A receiver may make an application to the Court for an order giving directions as to the exercise of his or her powers.

(2) The following persons may apply to the Court—

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

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

(Inserted by Act 18 of 2023)

40X. Discharge and variation of an order to appoint a receiver

(1) An application to the Court to vary or discharge an order appointing a receiver may be made by—

- (a) the receiver;
- (b) the Director of Public Prosecutions; or
- (c) a person affected by the order.

(2) On an application under this section, the Court may—

- (a) vary the order; or
- (b) discharge the order; or
- (c) a person affected by the order.

(Inserted by Act 18 of 2023)

40Y. Discharge of a receiver

(1) Where a receiver is appointed in respect of property which is identified in the restraining order, and the Court appoints another receiver the Court shall order the first receiver to transfer to the second receiver all property held by him or her by virtue of the powers conferred on him or her.

(2) Where the first receiver complies with an order under subsection (1), he or she is discharged.

(Inserted by Act 18 of 2023)

40Z. Appeal to Court of Appeal with respect to a receiver

(1) Where, on an application for an order under sections 40P, 40Q and 40X the Court decides not to make an order, the person who applied for the order may appeal to the Court of Appeal against the decision.

(2) Where the Court makes an order under subsection (1), the following persons may appeal to the Court of Appeal in respect of the Court's decision—

- (a) the person who applied for the order in respect of which the application was made;
- (b) a person affected by the Court's decision; and
- (c) the receiver.

(3) On an appeal under this section the Court of Appeal may—

- (a) confirm the decision; or
- (b) make such order as it considers is appropriate.

(Inserted by Act 18 of 2023)

Production Orders, and other Information gathering powers

41. Production and Inspection orders

(1) Where—

- (a) a person has been convicted of criminal conduct and a police officer has reasonable grounds for suspecting that a person has possession or control of— *(Amended by Act 4 of 2010)*
 - (i) a document relevant to identifying, locating or quantifying property of the person who committed the offence or to identifying or locating a document necessary for the transfer of property of the person who committed the offence,
 - (ii) a document relevant to identifying, locating or quantifying tainted property in relation to the offence or to identifying or locating a document necessary for the transfer of tainted property in relation to the offence; or
- (b) a police officer has reasonable grounds for suspecting that a person has committed criminal conduct and that a person has possession or control of any document referred to in paragraph (a), *(Amended by Act 4 of 2010)*

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

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

(3) Where a police officer applies for an order under subsection (5) in respect of criminal conduct and includes in the affidavit a statement to the effect that the officer has reasonable grounds to believe that— *(Amended by Act 4 of 2010)*

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

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

(4) In determining whether to treat a document relevant to identifying, locating or quantifying property referred to in subsection (3) as a document in respect of which an order may be issued under subsection (5), the judge may have regard to the matters referred to in section 22(2).

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

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

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

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

- (a) the applicant or some other person has given the judge, either orally or by affidavit, such information as the judge requires concerning the grounds on which the order is sought; and
- (b) the judge is satisfied that there are reasonable grounds for making the order.

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

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

42. Scope of police powers under production order

(1) Where a document is produced to a police officer under an order under section 41, the police officer may—

- (a) inspect the document;
- (b) take extracts from the document;
- (c) make copies of the document; or
- (d) retain the document if, and for so long as, retention of the document is reasonably necessary for the purposes of this Act.

(2) Where a police officer retains a document under an order under section 41, the police officer shall—

- (a) give the person to whom the order was addressed a copy of the document certified by the police officer in writing to be a true copy of the document retained; and
- (b) unless the person received a copy of the document under paragraph (a), permit the person to—

- (i) inspect the document,
- (ii) take extracts from the document, or
- (iii) make copies of the document.

(3) Documents produced in compliance with a production order may be retained for as long as it is necessary to retain it in connection with the investigation for the purposes of which the order was made. *(Inserted by Act 18 of 2023)*

(4) Where a police officer has reasonable grounds for believing that—

- (a) documents may need to be produced for the purposes of legal proceedings; and
- (b) documents may become unavailable for the purposes under paragraph (a),

the documents may be retained until the proceedings are concluded.

(Inserted by Act 18 of 2023)

43. Evidential value of information

(1) Where a person produces or makes available a document under an order under section 41 the production or making available of the document, or an information, document or thing obtained as a direct or indirect consequence of the production or making available of the document, is not admissible against the person in any criminal proceedings except a proceeding for an offence against section 45.

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

(3) A person is not excused from producing or making available a document when required to do so by an order under section 41 on the grounds that—

- (a) the production or making available of the document might tend to incriminate the person or make the person liable to a penalty; or
- (b) the production or making available of the document would be in breach of an obligation, whether imposed by enactment or otherwise, of the person not to disclose the existence or contents of the document.

44. Variation of production order

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

45. Failure to comply with production order

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

- (a) contravenes the order without reasonable excuse; or
- (b) in purported compliance with the order produces or makes available a document known to the person to be false or misleading in a material particular without—

- (i) indicating to the police officer to whom the document is produced or made available that the document is false or misleading and the respect on which the document is false or misleading, and
 - (ii) providing correct information to the police officer if the person is in possession of, or can reasonably acquire, the correct information.
- (2) An offence against subsection (1) is punishable upon summary conviction by—
- (a) a fine of \$50,000 or imprisonment for a period of 2 years, or both, where the offender is a natural person;
 - (b) a fine of \$100,000, where the offender is a body corporate.

46. Search warrant to facilitate investigations

(1) Where—

- (a) a person is convicted of criminal conduct and a police officer has reasonable grounds for suspecting that there is in any premises any document of the type specified in section 41; or (*Amended by Act 4 of 2010*)
- (b) a police officer has reasonable grounds for suspecting that a person has committed criminal conduct and there is in any premises any document of the type specified in section 41, (*Amended by Act 4 of 2010*)

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

(2) Where an application is made under subsection (1) for a search warrant, the judge may, subject to subsections (3) and (4), issue a warrant authorising a police officer (whether or not named in the warrant) with such assistance and by such force as is necessary and reasonable—

- (a) to enter the premises;
- (b) to search the premises for documents of the kind referred to in subsection (1);
- (c) to seize and retain any document found in the course of the search that in the opinion of the police officer is likely to be of substantial value (whether by itself or together with other documents) to the investigation in respect of which the application is made.

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

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

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

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

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

- (a) the purpose for which the warrant is issued, including a reference to the criminal conduct that has been, or is believed to have been, committed; (*Amended by Act 4 of 2010*)
- (b) whether entry is authorised to be made at any time of the day or night or during specified hours of the day or night;
- (c) a description of the kind of documents authorised to be seized; and
- (d) the date, not being later than 28 days after the day of issue of the warrant, upon which the warrant ceases to have effect.

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

- (a) any document, other than items subject to legal privilege, which is likely to be of substantial value (whether by itself or together with other documents) to the investigation for the purpose of which the warrant was issued; and
- (b) anything that the police officer believes, on reasonable grounds, will afford evidence as to the commission of a criminal offence.

(7) In this section—

“item subject to legal privilege” means—

- (a) communications between an attorney-at-law and his or her client; and
- (b) communications made in connection with or in contemplation of legal proceedings and for the purposes of these proceedings, being communications which would in legal proceedings be protected from disclosure by virtue of any rule of law relating to the confidentiality of communications;

“premises” includes any place and in particular any building, receptacle or vehicle.

Monitoring Orders

47. Monitoring orders

(1) A gazetted police officer may apply to a judge in chambers in accordance with subsection (2) for an order (in this section called a “monitoring order”) directing a financial institution to give information to a police officer.

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

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

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

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

- (a) has committed, or is about to commit criminal conduct; (*Amended by Act 4 of 2010*)
- (b) was involved in the commission, or is about to be involved in the commission of criminal conduct; or (*Amended by Act 4 of 2010*)
- (c) has benefited directly or indirectly, or is about to benefit directly or indirectly, from the commission of criminal conduct. (*Amended by Act 4 of 2010*)

(6) A monitoring order shall specify—

- (a) the name or names in which the account is believed to be held;
- (b) the class of information that the institution is required to give; and
- (c) the name or names of the police officer to whom the information is to be given and the manner in which the information is to be given.

(7) Where a financial institution is, or has been, subject to a monitoring order, the fact that the monitoring order is made shall be disregarded for the purposes of the application of sections 60 and 61 in relation to the institution.

(8) Where a financial institution that has been given notice of a monitoring order knowingly—

- (a) contravenes the order; or
- (b) provides false or misleading information in purported compliance with the order,

the institution commits an offence against this subsection and is liable on summary conviction to a fine of \$ 1 million.

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

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

(10) An account monitoring order has effect irrespective of any restriction on the disclosure of information. (*Inserted by Act 18 of 2023*)

48. Monitoring orders not to be disclosed

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

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

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

- (a) disclose the existence or operation of the order except to another person referred to in the said subsection (1) for the purposes of—
 - (i) the performance of that person's duties, if the disclosure is made by the Commissioner or a police officer,
 - (ii) ensuring that the order is complied with or obtaining legal advice or representation in relation to the order, if the disclosure is made by an officer or agent of the institution, or
 - (iii) giving legal advice or making representation in relation to the order, if the disclosure is made by an attorney-at-law; or
- (b) make a record of, or disclose, the existence of the operation of the order in any circumstances, even when he or she ceases to be a person referred to in subsection (1).

(3) Subsection (2) does not prevent the disclosure by a person referred to in subsection (1)(c) of the existence or operation of a monitoring order—

- (a) for the purposes of, or in connection with, legal proceedings; or
- (b) in the course of proceedings before a Court.

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

(5) A person who contravenes subsection (1) or (2) commits an offence and is liable on summary conviction to—

- (a) a fine of \$20,000 or imprisonment for a period of 3 years or both, in the case of a natural person; or
- (b) a fine of \$100,000 in the case of a body corporate.

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

Obligations of Financial Institutions

49. Retention of records financial institutions

(1) Subject to this section, and to section 50, a financial institution shall retain, in its original form for the minimum retention period applicable to the document—

- (a) a document that relates to a financial transaction carried out by the institution in its capacity as a financial institution and, without limiting the generality of this, includes a document that relates to—
 - (i) the opening or closing by a person of an account with the institution,
 - (ii) the operation by a person of an account with the institution,
 - (iii) the opening or use by a person of a deposit box held by the institution,
 - (iv) the telegraphic or electronic transfer of funds by the institution on behalf of a person to another person,
 - (v) the transmission of funds between Saint Lucia and a foreign country or between foreign countries on behalf of a person, or
 - (vi) an application by a person for a loan from the institution, where a loan is made to the person under the application; and

- (b) a document that relates to a financial transaction carried out by the institution in its capacity as a financial institution that is given to the institution by or on behalf of the person, whether or not the document is signed by or on behalf of the person.

(2) For the purposes of this section, the expression "**minimum retention period**" means—

- (a) where the document relates to the opening of an account with the institution, the period of 7 years after the day on which the account is closed;
- (b) where the document relates to the opening by a person of a deposit box held by the institution, the period of 7 years after the day on which the deposit box ceases to be used by the person; and
- (c) in any other case, the period of 7 years after the day on which the transaction takes place.

(3) Subsection (1) does not apply to a financial transaction document that relates to a single deposit, credit, withdrawal, debit or transfer of an amount of money that does not exceed \$5,000 or such larger amount as may be prescribed for purposes of this subsection.

(4) A financial institution required to retain documents under this section shall retain them on microfilm or in such other manner that makes retrieval of the information contained in the documents or the documents as the case may be reasonably practicable.

(5) A financial institution that contravenes subsection (1) or (4) commits an offence against this section and is liable, on summary conviction, to a fine of \$50,000.

(6) This section does not limit any other obligation of a financial institution to retain documents.

49A. Forfeiture order for cash

(1) A court of summary jurisdiction may make an order ordering the forfeiture of any cash which has been seized under section 29A if satisfied, on an application made by a police officer not below the rank of corporal, or a financial investigator of the Financial Intelligence Authority, 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, the commission of criminal conduct. *(Amended by Act 15 of 2011 and substituted by Act 14 of 2013)*

(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 30 days beginning with the date on which it is made, appeal to the Court.

(4) An appeal under this section must be by way of a hearing *de novo*, and the Court may make such order as it considers appropriate and, in particular, may order the release of the cash together with any accrued interest. *(Substituted by Act 14 of 2013)*

(5) *(Inserted by Act 4 of 2010 and deleted by Act 14 of 2013)*

49B. Interest on cash forfeited

(1) Cash consisting of coins and bank-notes seized under this Part and detained for more than seventy two hours is where practicable, unless required as evidence of an offence, to be held in an interest-bearing account, and the interest accruing on any cash must be added to that cash on its forfeiture or release. *(Substituted by Act 14 of 2013)*

(2) An order under section 49A must 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 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.

(Inserted by Act 4 of 2010)

49C. Cash defined

For the purposes of sections 29A, 49A, and 49B, “cash” means—

- (a) coins and bank-notes in any currency; and
- (b) bearer negotiable instruments. *(Substituted by Act 14 of 2013)*

(Inserted by Act 4 of 2010 and amended by Act 15 of 2011)

50. Register of original documents

(1) Where a financial institution is required by law to release the original of a document before the end of the minimum retention period applicable to the document, the institution shall retain a complete copy of the document until the period has ended or the original document is returned, whichever occurs first.

(2) A financial institution shall maintain a register of documents released under subsection (1).

(3) A financial institution that contravenes subsection (1) or (2) commits an offence and is liable, on summary conviction, to a fine of \$50,000.

51. Communication of information to law enforcement authorities

(1) Where a financial institution has information about an account held with the institution and the institution has reasonable grounds for believing that—

- (a) the information may be relevant to an investigation of, or the prosecution of, a person for an offence; or
 - (b) the information would otherwise be of assistance in the enforcement of this Act or any regulations made thereunder,
- the institution may give the information to a gazetted officer or the Director of Public Prosecutions.

(2) An action, suit or proceedings does not lie against—

- (a) a financial institution; or
 - (b) an officer, employee or agent of a financial institution acting in the course of the person’s employment or agency,
- in relation to an action taken by the institution or person under subsection (1).

52. Protection for financial institution

Where a financial institution, or a person who is an officer, employee or agent of the institution, gives the information under section 51(1) as soon as practicable after forming the belief referred to in that subsection, the institution shall be taken for the purposes of sections 60 and 61 not to have been in possession of that information at any time.

53. Interpretation

For the purposes of sections 47 to 52, “**financial institution**” means—

- (a) a bank licensed under the Banking Act;
- (b) a building society registered under the Building Societies Act;
- (c) a credit union registered under the Co-operative Societies Act;
- (d) a trust company, finance company or deposit taking company, recognised by the Minister responsible for finance as such.

Order for Disclosure of Income Tax Information

54. Application for disclosure of income tax information

(1) The Director of Public Prosecutions may for the purposes of an investigation in relation to criminal conduct apply to a judge in accordance with subsection (2) for an order for disclosure of information under section 55. (*Amended by Act 4 of 2010*)

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

- (a) the criminal conduct under investigation; (*Amended by Act 4 of 2010*)
- (b) the person in relation to whom the information or documents referred to in paragraph (c) are required;
- (c) the type of information or book, record, writing, return or other document in the possession of the Comptroller of Inland Revenue to which access is sought or that is proposed to be examined or communicated; and
- (d) the facts relied on to justify the belief, on reasonable grounds, that the person referred to in paragraph (b) has committed or benefited from the commission of an offence referred to in paragraph (c) are likely to be of substantial value, whether alone or together with other material, to the investigation for the purpose of which the application is made.

55. Order for disclosure

(1) Despite any provision in any other law, where the judge to whom an application under section 54 is made is satisfied—

- (a) of the matters referred to in section 54(2)(d); and
- (b) that there are reasonable grounds for believing that it is in the public interest to allow access to the information or documents to which the application relates, having regard to the benefit likely to accrue to the investigation if the access is obtained,

the judge may, subject to such conditions as the judge considers advisable in the public interest, order the Comptroller of Inland Revenue—
- (c) to allow the Director of Public Prosecutions or any other person named in the order access to all such information and documents and to examine them; or

- (d) where the judge considers it necessary in the circumstances to produce all such information and documents to a person referred to in paragraph (c) above and allow such person to remove the information and documents from the possession of that person, within such period as the judge may specify after the expiration of 7 days following the service of the order on the Comptroller of Inland Revenue under subsection (2).

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

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

56. Objection to disclosure of information

(1) The Comptroller of Inland Revenue may object to the disclosure of any information or document in respect of which an order under section 55 has been made by certifying in writing that the information or document should not be disclosed on the grounds that—

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

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

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

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

57. Evidential value of copies

Where any information or document is examined or provided under an order under section 55, the person by whom it is examined or to whom it is provided or any officer or person authorised by the Comptroller of Inland Revenue for the purpose, may make or cause to be made one or more copies and any copy purporting to be certified by the Comptroller of Inland Revenue to be a copy made under this section is evidence of the nature and content of the original information or document and has the same probative force as the original information or document would have had if it had been proved in the ordinary way.

58. Further disclosure of information and documents

A person to whom information or documents are disclosed or provided under an order under section 55 shall not further disclose the information or documents except

for the purposes of the investigation in relation to which the order was made, and proceedings under this Act.

Access to specified information and documents held by Government departments

59. Disclosure of information and documents held by Government departments

Despite any provision in this or in any other law the Court may on the application by the Director of Public Prosecutions order the person in charge of any Government department or statutory body to produce or furnish to the Director of Public Prosecutions or any other person specified in the order any document or information which is in his or her possession or under his or her control or to which he or she may reasonably have access (not being a document readily available to the public) which the Court considers relevant to any investigation into, or proceedings, relating to criminal conduct alleged or suspected to have been committed by any person.
(Amended by Act 4 of 2010)

PART 3A ANTI-CRIME INITIATIVE

(Inserted by Act 18 of 2023)

Property Disposal Committee

59A. Interpretation for this Part

In this Part, “**an applicant**” means the—

- (a) Attorney General;
- (b) Director of Public Prosecutions;
- (c) Commissioner of Police;
- (d) Comptroller of Customs;
- (e) the Director of the Financial Intelligence Authority.

(Inserted by Act 18 of 2023)

59B. Appointment of the Committee

The Attorney General may, with the approval of Cabinet, appoint persons as members of a Property Disposal Committee.

(Inserted by Act 18 of 2023)

59C. Composition of the Committee

The Committee comprises—

- (a) a representative of and nominated by the Attorney General;
- (b) a representative of and nominated by the Minister responsible for national security;
- (c) the Director of the Financial Intelligence Authority or his or her nominee.

(Inserted by Act 18 of 2023)

59D. Functions of the Committee

The functions of the Committee are to—

- (a) review an application referred to it under section 59O;
- (b) make a recommendation under section 59Q;
- (c) report on the number of applications reviewed under section 59T;
- (d) perform any other function assigned by the Attorney General.

(Inserted by Act 18 of 2023)

59E. Powers of the Committee

(1) The Committee has the power to do all things necessary or convenient for or in connection with the performance of its functions.

(2) Without limiting the generality of subsection (1), the Committee has the power to—

- (a) require an applicant to undertake an interview;
- (b) co-opt a person to attend a meeting of the Committee.

(Inserted by Act 18 of 2023)

59F. Temporary appointment of members on the Committee

(1) Where a person under section 59C is unable to perform his or her functions, the Attorney General may, with the approval of Cabinet, appoint a temporary member on the Committee.

(2) A person appointed must have qualifications and experience in—

- (a) finance;
- (b) crime prevention;
- (c) public administration; or
- (d) law enforcement.

(Inserted by Act 18 of 2023)

59G. Disqualification of a member of the Committee

A person is disqualified from being a member of the Committee if he or she—

- (a) is declared by a court to be a bankrupt;
- (b) is declared by a court to be physically or mentally incapacitated;
- (c) has been convicted of a criminal offence, except where the offence is a minor traffic offence or has been spent under the Criminal Records (Rehabilitation of Offenders) Act;
- (d) breaches the Oath or Affirmation of Secrecy under section 59M.

(Inserted by Act 18 of 2023)

59H. Chairperson and Deputy Chairperson

(1) The Attorney General shall designate a member of the Committee as the Chairperson.

(2) The members of the Committee shall, at the first meeting of the Committee, designate a person from the members of the Committee as the Deputy Chairperson.

(3) Where the Chairperson is absent, the Deputy Chairperson shall have all the powers of the Chairperson.

(Inserted by Act 18 of 2023)

59I. Tenure of the Committee

(1) The Committee is appointed for a term of 2 years.

(2) The Attorney General may, with the approval of Cabinet, renew the appointment of a member of the Committee.

(3) The Attorney General shall, by Notice published in the *Gazette*, provide the names of the members of the Committee as first constituted and any changes to the members of the Committee.

(Inserted by Act 18 of 2023)

59J. Meetings of the Committee

The Committee shall meet at least once a month and at other times as may be necessary or expedient at a place and time and on a date as the Chairperson determines.

(Inserted by Act 18 of 2023)

59K. Secretary

(1) The Chairperson shall, with the approval of the Attorney General, appoint a person other than a member of the Committee to be the Secretary of the Committee.

(2) The Secretary shall keep minutes of each meeting of the Committee, which must be confirmed by the Committee at a subsequent meeting.

(3) A copy of the confirmed minutes of each meeting of the Committee must be submitted to the Attorney General.

(Inserted by Act 18 of 2023)

59L. Committee to regulate its own procedure

Subject to this Act, the Committee shall regulate its own procedures.

(Inserted by Act 18 of 2023)

59M. Oath of secrecy and confidentiality

(1) A member of the Committee, the Secretary or a person co-opted by the Committee shall—

- (a) take the prescribed Oath or Affirmation of Secrecy;
- (b) not disclose—
 - (i) the documents that he or she may come into possession of; or
 - (ii) the information that he or she may have knowledge of as a result of performing a function under this Act.

(2) A member of the Committee, the Secretary or a person co-opted by the Committee who contravenes subsection (1)(b), commits an offence and is liable on summary conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 6 months or to both.

(Inserted by Act 18 of 2023)

Application for Money to Execute an Anti-Crime Initiative

59N. Application for money from the Fund to execute an anti-crime initiative

(1) An applicant may make an application, in writing, to the Attorney General for money from the Fund to execute an anti-crime initiative.

(2) An application under subsection (1) must—

(a) contain information regarding—

- (i) the name of the Government Agency proposing the anti-crime initiative,
- (ii) the person responsible for undertaking the anti-crime initiative,
- (iii) a description of the proposed anti-crime initiative, including—
 - (A) the purpose;
 - (B) the intended benefit;
 - (C) the persons involved and level of participation;
 - (D) the cost to be incurred;

(b) be supported by evidence regarding the cost of the proposed anti-crime initiative, including, a quotation or invoice.

(3) An applicant is responsible for the accuracy of the information disclosed in an application under subsection (1).

(Inserted by Act 18 of 2023)

59O. Referral of an application to the Committee

On receipt of an application, the Attorney General shall refer the application to the Committee for consideration.

(Inserted by Act 18 of 2023)

59P. Consideration of an application by the Committee

In considering an application under section 59N, the Committee shall review and assess the application to determine if the application is for an anti-crime initiative.

(Inserted by Act 18 of 2023)

59Q. Recommendation of the Committee

(1) The Committee shall, after considering an application under section 59P, make a recommendation to the Attorney General to approve of an application or refuse an application.

(2) A recommendation under subsection (1) must be accompanied by the confirmed minutes of the meeting of the Committee.

(3) A recommendation made by the Committee is not binding on the Attorney General and may be considered by the Attorney General in making a decision for the purpose of providing funding for an anti-crime initiative.

(Inserted by Act 18 of 2023)

59R. Approval of an application

(1) The Attorney General may, within 30 days of receipt of the recommendation of the Committee under section 59Q, approve an application.

(2) The Attorney General shall notify an applicant of his or her decision to approve an application in writing.

(Inserted by Act 18 of 2023)

59S. Refusal of an application

(1) The Attorney General may, within 30 days of receipt of the recommendation of the Committee under section 59Q, refuse an application.

(2) The Attorney General shall notify the applicant of his or her decision to refuse of an application and give reasons for the refusal in writing.

(Inserted by Act 18 of 2023)

59T. Reporting requirements

(1) The Committee shall submit a report to the Permanent Secretary of the Attorney General's Chambers.

(2) A report under subsection (1) must include—

- (a) the number of applications reviewed and considered;
- (b) the number of applications with a recommendation for approval;
- (c) the number of applications with a recommendation for refusal.

(3) The Permanent Secretary of the Attorney General's Chambers shall, at the end of each month submit to the Attorney General, a report on all applications reviewed by the Committee.

(Inserted by Act 18 of 2023)

PART 4 MISCELLANEOUS

60. Power to make rewards

(Repealed by Act 27 of 2003)

61. Amendment of Schedule

(Repealed by Act 27 of 2003)

62. Standard of proof

(1) Proceedings under Part 2 and under section 49A are considered civil, not criminal, for the purpose of determining the burden or standard of proof.

(2) In determining whether or not cash is derived directly or indirectly from criminal conduct or is a benefit from or is intended for use in criminal conduct, the standard of proof required is on a balance of probabilities

(Repealed by Act 27 of 2003 and re-inserted by Act 14 of 2013)

63. External forfeiture orders and confiscation orders

(Repealed by Act 27 of 2003)

64. Compensation

(1) Where upon the making of an application for a forfeiture order or a confiscation order the Court declines to make such an order, the Court shall on the application of a person who held realisable property order compensation to be paid to him or her if the requirements of subsection (2) are fulfilled.

(2) The Court shall order compensation to be paid if the Court is satisfied—

- (a) that there has been some serious default in the investigation or conduct of the matter and that, but for that default, the application would not have been instituted or continued; and
- (b) that the applicant has suffered substantial loss in consequence of anything done in relation to the property by or under an order of the Court under section 31.

(3) The amount of compensation to be paid under this section is such amount as the Court thinks just in all the circumstances.

(4) Compensation payable under this section shall be paid out of the Consolidated Fund.

64A. Guidelines

The Attorney General may issue guidelines for giving effect to Part 3A.

(Inserted by Act 18 of 2023)

65. Regulations

(1) The Attorney General may make regulations prescribing matters—

- (a) required or permitted by this Act to be prescribed;
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Regulations made under subsection (1) shall be subject to negative resolution of the House of Assembly and the Senate.

66. Costs

(1) Where—

- (a) a person brings, or appears at, proceedings under this Act before the Court in order—
 - (i) to prevent a forfeiture, confiscation or restraining order from being made against any property of that person, or
 - (ii) to have property of that person excluded from a forfeiture, confiscation or restraining order;
- (b) the person is successful in those proceedings; and
- (c) the Court is satisfied that that person was not involved in any way in the commission of the offence in respect of which the forfeiture, confiscation or restraining order was sought or made, the Court may order the Crown to pay all costs reasonably incurred by that person in connection with the proceedings or such part of those costs as is determined by the Court.

67. Non-liability of Registrar

The Registrar is not personally liable for anything done or omitted to be done by him or her in the course of the performance of his or her functions under this Act.

68. Operation of other laws not affected

This Act does not prejudice, limit or restrict—

- (a) the operation of any other law which provides for the forfeiture of property or the imposition of penalties or fines;
- (b) the remedies available to the Crown apart from this Act, for the enforcement of its rights and the protection of its interests; or

- (c) any power of search or any power to seize or detain property which is exercisable by a police officer apart from this Act.

Schedule

*(AMENDED BY ACTS 36 OF 1999, 27 OF 2003, AND S.I.S 11/2004 AND 55/2004,
SUBSTITUTED BY ACT 4 OF 2010, AMENDED BY ACT 16 OF 2012 AND DELETED BY
ACT 18 OF 2023)*

CHAPTER 3.04 PROCEEDS OF CRIME Act

SUBSIDIARY LEGISLATION

No Subsidiary Legislation
