



SAINT VINCENT AND THE GRENADINES

ACT NO. 18 OF 2017

I ASSENT

[ L.S. ]

DR. FREDERICK BALLANTYNE  
Governor-General  
4th August, 2017.

AN ACT to amend the Proceeds of Crime Act 2013 (No. 38 of 2013).

[ 4th August, 2017. ]

**BE IT ENACTED** by the Queen's Most Excellent Majesty, by and with the advice and consent of the House of Assembly of Saint Vincent and the Grenadines and by the authority of the same, as follows:

1. This Act may be cited as the Proceeds of Crime (Amendment) Act, 2017. Short title

2. The provisions and schedule of the Proceeds of Crime Act 2013, and provisions to be inserted therein, specified in column 1 of the Schedule to this Act are dealt with in the manner set out in relation thereto in column 2 of the Schedule. Amendment to Proceeds of Crime Act 2013, No. 38 of 2013

## SCHEDULE

(section 2)

## AMENDMENTS TO THE PROCEEDS OF CRIME ACT 2013

Column 1	Column 2
Section 2	<ol style="list-style-type: none"> <li>1. Insert immediately after the definition of “criminal conduct”, the following definition:  <p>“criminal investigation” means an investigation into whether a person should be charged with an offence;</p> </li> <li>2. Delete the definition of “criminal recovery investigation” and insert the following definition:  <p>“criminal recovery investigation” means:</p> <ol style="list-style-type: none"> <li>(a) an investigation into whether a person has benefitted from his criminal conduct or the extent or whereabouts of his benefit from his criminal conduct; or</li> <li>(b) an investigation into the extent or whereabouts of realisable property available for satisfying a confiscation order made in respect of a person;</li> </ol> </li> <li>3. Insert immediately after the definition of “defendant”, the following definition:  <p>“detained cash investigation” means an investigation into whether cash detained under section 110, or part of such cash, is recoverable cash;</p> </li> <li>4. Delete the definition of “offence”.</li> <li>5. In the definition of “property”: <ol style="list-style-type: none"> <li>(1) delete the word “and” appearing in paragraph (b) after the semi-colon;</li> <li>(2) insert the word “and” in paragraph (c) after the semi-colon; and</li> <li>(3) add after paragraph (c) the following paragraph as paragraph (d):  <p>“(d) legal documents or instruments in any form, including electronic or digital title to or interest in property referred to in paragraph (a), (b) or (c).</p> </li> </ol> </li> </ol>

Section 7 (2) (e)	Delete paragraph (e) and insert the following paragraph as paragraph (e): “(e) sections 27 to 37 of the Anti-Terrorist Financing and Proliferation Act 2015.”.
Section 16 (1)	<ol style="list-style-type: none"> <li>1. In paragraph (a), delete the word “or” appearing after the semi colon.</li> <li>2. In paragraph (b), delete the full stop and insert the words “; or”.</li> <li>3. Add after paragraph (b) the following paragraph as paragraph (c): “(c) an offence committed over a period of at least six months and the defendant has benefited from the conduct which constitutes the offence.”.</li> </ol>
Section 20	<p>Delete section 20 and insert the following section as section 20:</p> <p>“Time for payment      20. (1) Unless subsection (2) applies, the full amount to be paid under a confiscation order shall be paid on the day on which the order is made.</p> <p>                                 (2) If the Court making the confiscation order is satisfied that the defendant is unable to pay the full amount on that day, the Court may make an order requiring whatever cannot be paid on that day to be paid:</p> <p style="padding-left: 40px;">(a) in a specified period; or</p> <p style="padding-left: 40px;">(b) in specified periods each of which relates to a specified amount.</p> <p style="padding-left: 40px;">(3) A specified period:</p> <p style="padding-left: 80px;">(a) shall start with the day on which the confiscation order is made; and</p> <p style="padding-left: 80px;">(b) shall not exceed three months.</p> <p style="padding-left: 40px;">(4) If:</p> <p style="padding-left: 80px;">(a) within any specified period the defendant applies to the Court for that period to be extended; and</p> <p style="padding-left: 80px;">(b) the Court is satisfied that, despite having made all reasonable efforts, the defendant is unable to pay the amount to which the specified period relates within that period,</p> <p style="padding-left: 40px;">the Court may make an order extending the period (for all or any part or parts of the amount in question).</p>

	<p>(5) An extended period:</p> <ul style="list-style-type: none"> <li>(a) shall start with the day on which the confiscation order is made; and</li> <li>(b) shall not exceed six months.</li> </ul> <p>(6) An order under subsection (4):</p> <ul style="list-style-type: none"> <li>(a) may be made after the end of the specified period to which it relates; but</li> <li>(b) shall not be made after the end of the period of six months starting with the day on which the confiscation order is made.</li> </ul> <p>(7) Periods specified or extended under this section shall be such that, where the Court believes that a defendant will by a particular day be able:</p> <ul style="list-style-type: none"> <li>(a) to pay the amount remaining to be paid; or</li> <li>(b) to pay an amount towards what remains to be paid,</li> </ul> <p>that amount is required to be paid no later than that day.</p> <p>(8) The Court shall not make an order under subsection (2) or (4) unless it gives the Director of Public Prosecutions an opportunity to make representations.”.</p>
<p>New sections 20A, 20B, 20C</p>	<p>After section 20, insert the following new sections:</p> <p>“Order for securing compliance with confiscation order</p> <p>20A. (1) This section applies where the Court makes a confiscation order.</p> <p>(2) The Court may make such an order as it believes is appropriate for the purpose of ensuring that the confiscation order is effective.</p> <p>(3) The Court shall consider whether to make a compliance order:</p> <ul style="list-style-type: none"> <li>(a) on the making of the confiscation order; or</li> <li>(b) if it does not make a compliance order then, at any later time (while the confiscation order is still in effect) on the application of the Director of Public Prosecutions.</li> </ul>

	<p>(4) In considering whether to make a compliance order, the Court shall, in particular, consider whether any restriction or prohibition on the defendant's travel outside Saint Vincent and the Grenadines ought to be imposed for the purpose mentioned in subsection (2).</p> <p>(5) The Court may discharge or vary a compliance order on an application made by:</p> <ul style="list-style-type: none"> <li>(a) the Director of Public Prosecutions; or</li> <li>(b) any person affected by the compliance order.</li> </ul> <p>Appeal against order under section 20A</p> <p>20B. (1) If on an application under 20A (3) (b), the Court decides not to make a compliance order, the Director of Public Prosecutions may appeal to the Court of Appeal against the decision.</p> <p>(2) The following persons may appeal to the Court of Appeal in respect of the Court's decision to make, discharge or vary a compliance order:</p> <ul style="list-style-type: none"> <li>(a) the Director of Public Prosecutions; or</li> <li>(b) any person affected by the compliance order.</li> </ul> <p>(3) On an appeal under subsection (1) or (2), the Court of Appeal may:</p> <ul style="list-style-type: none"> <li>(a) confirm the decision; or</li> <li>(b) make such order as it believes appropriate.</li> </ul> <p>Court may order payment by financial institution</p> <p>20C. (1) This section applies to money which:</p> <ul style="list-style-type: none"> <li>(a) is held by a person;</li> <li>(b) is held in an account maintained by a person with a financial institution.</li> </ul> <p>(2) This section applies if the following conditions are satisfied:</p> <ul style="list-style-type: none"> <li>(a) a confiscation order is made against the person by whom the money is held; and</li> </ul>
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	<p>(b) a receiver has not been appointed under section 48.</p> <p>(3) In such a case, the Court may order the financial institution to pay the money to the Court on account of the amount payable under the confiscation order.</p> <p>(4) If a financial institution fails to comply with an order under subsection (3), the financial institution commits an offence and is liable on summary conviction to a fine of \$50,000.</p> <p>(5) For the purposes of this section, “financial institution” means:</p> <p>No. 4 of 2015 (a) a bank licensed under the Banking Act 2015;</p> <p>Cap. 99 (b) an international banking business licensed under the International Banks Act;</p> <p>Cap. 450 (c) a building society registered under the Building Societies Act;</p> <p>No. 12 of 2012 (d) a credit union registered under the Co-operative Societies Act 2012; or</p> <p>(e) a trust company, finance company or deposit taking company recognised by the Minister as such.”.</p>
Section 23	<p>Add after subsection (6) the following subsections:</p> <p>“(7) A confiscation order shall not be set aside only on the ground that there was a defect or omission in the procedure connected with the application for or the granting of a postponement.</p> <p>(8) Subsection (7) does not apply if before it made the confiscation order the Court:</p> <p>(a) imposed a fine on the defendant; or</p> <p>(b) made an order falling under section 22 (1) (b) or (c).”.</p>
Section 33 (1) (b)	<p>Insert before the words “the Magistrate’s Court Clerk” the words “the Registrar of the Court or”</p>
Section 42 (4) (b)	<p>Delete the words “section 4 (2)” and insert the words “section 14 (2)”.</p>
Section 43	<ol style="list-style-type: none"> <li>Delete subsection (5).</li> <li>Add after subsection (7), the following subsections:</li> </ol> <p>“(8) Subsection (9) applies if :</p>

	<p>(a) the Court makes a restraint order; and</p> <p>(b) the applicant for the restraint order applies to the Court to proceed under subsection (9) (whether as part of the application for the restraint order or at any time afterwards).</p> <p>(9) The Court may make such order it believes is appropriate for the purpose of ensuring the restraint order is effective.”.</p>
Section 47	<p>Add after subsection (6), the following subsection:</p> <p>“(7) Subsection (6), so far as relating to the power mentioned in subsection (2) (b), does not apply to property which :</p> <p>(a) is perishable; or</p> <p>(b) ought to be disposed of before its value diminishes.”.</p>
Section 48	<p>Add after subsection (6), the following subsection:</p> <p>“(7) Subsection (6), so far as relating to the power mentioned in subsection (2) (b), does not apply to property which:</p> <p>(a) is perishable; or</p> <p>(b) ought to be disposed of before its value diminishes.”.</p>
Section 50 (6)	Delete the words “treated as if it were a fine imposed by the Court” and insert the words “paid into the Fund”.
Section 57 (5)	Delete the words “the Magistrates Act” and insert the words “the Criminal Procedure Code”.
Section 62 (1)	Delete the definition of “suitably qualified person”.
New section 64A	<p>After section 64 and before the heading “Recoverable Property and Associated Property” insert the following new section:</p> <p>“Conditions for appointment as trustee for civil recovery or receiver</p> <p>64A. Before appointing a person as a trustee for civil recovery or a receiver, as the case may be, the Court shall satisfy itself that the person has the qualifications and experience to carry out the functions of a trustee for civil recovery or a receiver, as the case may be.”.</p>

Section 74 (3) (c)	Delete the words “suitably qualified”.
Section 79 (3)	Delete the words “suitably qualified”.
Section 91 (1)	Delete the words “suitably qualified”.
Section 105 (1)	Delete the words “twelve years” and insert the words “twenty years”.
Section 107 (1)	<p>Delete subsection (1) and insert the following subsection:</p> <p>“(1) For the purposes of sections 108 to 117, “recoverable cash” means:</p> <p style="padding-left: 40px;">(a) cash which is recoverable property; or</p> <p style="padding-left: 40px;">(b) cash which is intended by any person for use in unlawful conduct.”.</p>
Section 128 (1) (a)	<ol style="list-style-type: none"> <li>1. In subparagraph (ii), delete the word “or” appearing after the comma.</li> <li>2. In subparagraph (iii), delete the word “and” appearing after the semi-colon and insert the word “or”.</li> <li>3. Add after subparagraph (iii) the following subparagraph: “(iv) a detained cash investigation; and”</li> </ol>
Section 133 (2) (a)	Insert after the words “civil recovery investigation” and before the semi-colon, the words “or a detained cash investigation”.
Section 134 (1) (a)	<p>Add after subparagraph (iii) the following subparagraph:</p> <p>“(iv) in the case of a detained cash investigation, that the cash, or part of it, is recoverable cash;”</p>
Section 136	<ol style="list-style-type: none"> <li>1. In subsection (6) delete the words “subsection (1)” and insert the words “section 133 (1)”.</li> <li>2. Add after subsection (7) the following subsection: “(8) Nothing in the Mutual Assistance in Criminal Matters Act shall limit an application under section 133 (1) or 137 (1) to Commonwealth countries only.”.</li> </ol>
Section 137 (2) (a)	Insert after the words “civil recovery investigation” and before the semi-colon, the words “or a detained cash investigation”.



Section 138 (2) (a)	<ol style="list-style-type: none"> <li>1. In subparagraph (ii), delete the word “or” appearing after the comma.</li> <li>2. In subparagraph (iii) delete the fullstop and insert the words “; or”.</li> <li>3. Add after subparagraph (iii) the following subparagraph:  “(iv) in the case of a detained cash investigation, that the cash, or part of it, is recoverable cash;”</li> </ol>
New Subheading	<p>After section 146 insert the following new subheading:  “<i>Disclosure Orders</i>”</p>
New sections as sections 146A, 146B	<p>After the new subheading “Disclosure Orders” and before the subheading “General” insert the following new sections:</p> <p>“Application for disclosure order</p> <p>146A. (1) Application may be made by a law enforcement officer to a judge or master of the Court for a disclosure order under section 146B.</p> <p>(2) No application for a disclosure order may be made in relation to a detained cash investigation.</p> <p>(3) An application for a disclosure order shall state that:</p> <ol style="list-style-type: none"> <li>(a) a person specified in the application is subject to a criminal recovery investigation or that property specified in the application is subject to a civil recovery investigation and a person specified in the application appears to hold the property; and</li> <li>(b) the order is sought for the purposes of the investigation.</li> </ol> <p>(4) A disclosure order is an order authorising the law enforcement officer specified in the order to give any person the law enforcement officer considers has relevant information, notice in writing requiring him to do, with respect to any matter relevant to the investigation for the purposes of which the order is sought, any of the following:</p>

	<p>(a) answer any question, either at a time specified in the notice or at once, at a place specified;</p> <p>(b) provide information specified in the notice, by a time and in a manner so specified;</p> <p>(c) produce documents, or documents of a description, specified in the notice, either at or by a time so specified or at once, and in a manner so specified.</p> <p>(5) Relevant information is information (whether or not contained in a document) which the law enforcement officer considers to be relevant to the investigation.</p> <p>(6) A person is not bound to comply with a requirement imposed by a notice given under a disclosure order unless evidence of authority to give the notice is produced to him.</p> <p>(7) Documents so produced may be retained for so long as it is necessary to retain them (as opposed to a copy of them) in connection with the investigation for the purposes of which the order was made.</p> <p>(8) Where a law enforcement officer has reasonable grounds for believing that –</p> <p>(a) the documents may need to be produced for the purposes of any legal proceedings; and</p> <p>(b) they might otherwise be unavailable for those purposes,</p> <p>they may be retained until the proceedings are concluded.</p> <p>Disclosure order      146B. (1) On an application under section 146A, a judge or master may make a disclosure order if he is satisfied that:</p>
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	<p>(a) in the case of a criminal recovery investigation, there are reasonable grounds to believe the person specified in the application as being subject to the investigation has benefitted from his criminal conduct; and</p> <p>(b) in the case of a civil recovery investigation, the property specified in the application as being subject to the investigation is recoverable property or associated property.</p> <p>(2) In the case of a criminal recovery investigation or a civil recovery investigation, the judge or master shall not make a disclosure order unless he is satisfied that:</p> <p>(a) there are reasonable grounds for believing that information which may be provided in compliance with the order is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the order is sought; and</p> <p>(b) there are reasonable grounds for believing that it is in the public interest for the information to be provided, having regard to the benefit likely to accrue to the investigation if the information is obtained.”.</p>
Section 147	<p>1. In subsection (1) delete the words “a customer information order or an account monitoring order” and insert the words “a customer information order, an account monitoring order or a disclosure order”.</p>

	<p>2. In subsection (2) (a), delete the words “customer information orders and account monitoring orders” and insert the words “customer information orders, account monitoring orders and disclosure orders.”</p>
Section 148	Delete the words “a customer information order and an account monitoring order” and insert the words “a customer information order, an account monitoring order and a disclosure order”.
Section 160 (2)	<p>1. Delete paragraph (a) and insert the following paragraph:</p> <p>“(a) all money recovered under:</p> <p>(i) a confiscation order;</p> <p>(ii) a forfeiture order under the Anti-Terrorist Financing and Proliferation Act 2015;</p> <p>(iii) a forfeiture order under section 28 of the Drugs (Prevention of Misuse) Act;”</p> <p>2. In paragraph (c), delete the words “section 16 of the United Nations (Anti-Terrorism Measures) Act” and insert the words “section 33 of the Anti-Terrorist Financing and Proliferation Act 2015”.</p>
Section 162 (1)	<p>Delete subsection (1) and insert the following subsection:</p> <p>“(1) The financial year of the Fund is the twelve month period beginning on the 1<sup>st</sup> day of January and ending on the 31<sup>st</sup> day of December in any year.”.</p>
Section 169 (2)	<p>Delete subsection (2) and insert the following subsection:</p> <p>“(2) A Code may:</p> <p>(a) make different provision in relation to different persons, circumstances or cases;</p> <p>(b) prescribe offences against the Code and prescribe a term of imprisonment not exceeding two years or a fine not exceeding \$100,000 or both in respect of any one offence; and</p> <p>(c) include such transitional provisions as the Committee considers necessary or expedient.”.</p>

Schedule 7	<ol style="list-style-type: none"><li>1. Delete item 1.</li><li>2. Delete item 2 and insert the following item: “2. Offences under the Anti-Terrorist Financing and Proliferation Act 2015.”.</li></ol>
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Passed in the House of Assembly this 31st day of July, 2017.

NICOLE HERBERT  
Clerk of the House of Assembly.

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