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GRENADA

ACT NO. 35 OF 2014

I assent,



LAWRENCE JOSEPH

Deputy to the Governor-General.

28th June, 2014.

AN ACT to amend the Proceeds of Crime Act, No. 6 of 2012.

[By Notice].

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Representatives of Grenada, and by the authority of the same as follows—

1. This Act may be cited as the

Citation and
Commencement.

PROCEEDS OF CRIME (AMENDMENT) NO. 2
ACT, 2014,

and shall come into force on such date as the Minister shall by notice published in the *Gazette* appoint.

2.—(1) In this Act—

Interpretation.

“principal Act” means the Proceeds of Crime Act, No. 6 of 2012.

Insertion of Part
IVA in principal
Act.

3. The principal Act is amended by inserting after Part IV the following new part—

“PART IVA

CIVIL RECOVERY

Purposes of Part IVA

31A.—(1) The purposes of this Part are to—

- (a) enable the Attorney-General to recover in civil proceedings before the Court, property which is, or represents property—
 - (i) obtained through unlawful conduct; or
 - (ii) that has been used in, or in connection with, or is intended to be used in, or in connection with, unlawful conduct; and
- (b) enable cash which is, or represents, property obtained through unlawful conduct, or which is intended to be used in unlawful conduct, to be forfeited in civil proceedings before the Magistrate’s Court.

(2) The powers conferred by this Part are exercisable in relation to any property, including cash, and are exercisable whether or not any proceedings have been brought for an offence in connection with the property.

Standard of proof

31B. The High Court, or in respect of proceedings for the recovery of cash, the Magistrate’s Court, shall

decide on a balance of probabilities whether it is proved that any—

- (a) matters alleged to constitute unlawful conduct have occurred;
- (b) person intended to use any cash in unlawful conduct; or
- (c) person used, or intended to use, any property in, or in connection with, unlawful conduct.

Recoverable property and associated property

Following recoverable property

31C.—(1) Subject to sub-section (2), property obtained through unlawful conduct and tainted property is recoverable property.

(2) Property obtained through unlawful conduct that has been disposed of since it was obtained through unlawful conduct, or tainted property that has been disposed of since it became tainted, is recoverable property only if it is held by a person into whose hands it may be followed.

(3) Recoverable property may be followed into the hands of a person obtaining it on a disposal—

- (a) in the case of property obtained through unlawful conduct, the person who through the conduct obtained the property;

- (b) in the case of tainted property, any person who had possession of the property for the purposes, or with the intent, of using the property for unlawful conduct; or
- (c) a person into whose hands it may, by virtue of this sub-section, be followed.

Tracing property

31D.—(1) Where property obtained through unlawful conduct or tainted property (“the original property”) is or has been recoverable property, property which represents the original property is also recoverable property.

(2) Where a person enters into a transaction by which he or she—

- (a) disposes of recoverable property, whether the original property or property which, by virtue of this Part, represents the original property; and
- (b) obtains other property in place of it,

the other property represents the original property.

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

Mixing property

31E.—(1) Where a person's recoverable property is mixed with other property, whether the property is his or her property or property of another, the portion of the mixed property which is attributable to the recoverable property represents the property obtained through unlawful conduct or the tainted property, as the case may be.

(2) Without limiting sub-section (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.

Accruing profits

31F.—(1) This section applies where a person who has recoverable property obtains further property consisting of profits accruing in respect of the recoverable property.

(2) The further property is treated as representing the property obtained through unlawful conduct or the tainted property, as the case may be.

General exceptions

31G. (1) Where—

- (a) a person disposes of recoverable property;
and
- (b) the person who obtains it on the disposal does so in good faith, for value and without notice that it was recoverable property,

the property may not be followed into that person's hands and, accordingly, it ceases to be recoverable.

(2) Recoverable property ceases to be recoverable—

- (a) where it is vested, forfeited or otherwise disposed of pursuant to powers conferred under this Part;
- (b) where—
 - (i) pursuant to a judgment in civil proceedings, whether in Grenada or elsewhere, the respondent makes a payment to the claimant, or the claimant otherwise obtains property from the respondent;
 - (ii) the claimant's claim is based on the respondent's unlawful conduct; and
 - (ii) apart from this paragraph, the sum received, or the property obtained, by the claimant would be recoverable property;

- (c) where a payment is made to a person under a compensation order and, apart from this paragraph, the sum received would be recoverable property.

(3) Property is not recoverable—

- (a) while a restraining order applies to it, whether made under this Act or under any enactment; or
- (b) where it has been taken into account in determining the amount of a person's benefit from criminal conduct for the purpose of making a confiscation order—
 - (i) under this Act; or
 - (ii) under any other enactment.

(4) In relation to an order in sub-section (3)(b)(ii), the reference to the amount of a person's benefit from criminal conduct is to be construed as a reference to the corresponding amount under the Act in question.

(5) Where—

- (a) a person enters into a transaction to which section 31D(2) applies; and
- (b) the disposal is one to which sub-section (1) or (2)(a) applies,

this section does not affect the recoverability, by virtue of section 31D(2), of any property obtained on the transaction in place of the property disposed of.

Other exemptions

31H.—(1) The Minister may make Regulations to provide that property is not recoverable property as the case may be, associated property if it is—

- (a) prescribed property; or
- (b) disposed of pursuant to a prescribed enactment or an enactment of a prescribed description.

(2) Regulations made under sub-section (1) may provide that if property is disposed of pursuant to a prescribed enactment or an enactment of a prescribed description, it is treated for the purposes of section 31II as if it had been disposed of pursuant to a recovery order.

(3) Regulations made under this section may apply to property, or a disposal of property, only in prescribed circumstances and the circumstances may relate to the property or disposal itself or to a person who holds or has held the property or to any other matter.

Granting interest

31I.—(1) Where a person grants an interest in his or her recoverable property, the question whether the interest is also recoverable is to be determined in the same manner as it is on any other disposal of recoverable property.

(2) Upon granting an interest in the property where the property in question—

- (a) is property obtained through unlawful conduct or is tainted property, the interest is also treated as obtained through that

conduct or as tainted property, as the case may be; and

- (b) represents in his or her hands property obtained through unlawful conduct or tainted property, the interest is also treated as representing in his or her hands the property so obtained or the tainted property, as the case may be.

Obtaining and disposing of property

31J.—(1) References to a person disposing of his or her property includes a reference to—

- (a) his or her disposing of a part of it;
- (b) his or her granting an interest in it; or
- (c) both disposing and granting under paragraphs (a) and (b),

and references to the property disposed of are to any property obtained on the disposal.

(2) A person who makes a payment to another person is treated as making a disposal of his or her property to the other person, whatever form the payment takes.

(3) Where a person's property passes to another person under a will or intestacy or by operation of law, it is treated as disposed of by him or her to the other person.

(4) A person is only treated as having obtained his or her property for value in a case where he or she gave unexecuted consideration if the consideration has become executed consideration.

Recovery orders and property freezing orders

Application for recovery order

31K.—(1) The Attorney-General may apply to the Court for a recovery order against any person who the Attorney-General reasonably believes holds recoverable property.

(2) The Attorney-General shall serve a claim under sub-section (1)–

- (a) on the respondent; and
- (b) unless the court dispenses with service, on any other person who the Attorney-General wishes to be subject to the recovery order.

(3) The Attorney-General shall, in the claim form–

- (a) identify, by particularizing or by a general description, the property in relation to which the Attorney-General seeks a recovery order;
- (b) state, in relation to each item or description of property identified in the claim form–

- (i) whether it is alleged that the property is recoverable property or associated property; and
 - (ii) either 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 their identity; and
- (c) nominate a suitably qualified person for appointment by the court as the trustee for civil recovery.

Application for property freezing order

31L.—(1) Where the Attorney-General may take proceedings for a recovery order in the High Court, the Attorney-General may apply to the High Court for property freezing order, whether before or after instituting the proceedings.

(2) A property freezing order is an order that, subject to any exclusions, prohibits any person whose property is specified or described in the order, from dealing with the property in anyway.

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

(4) The court may make a property freezing order if it is satisfied that—

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

(5) The Attorney-General shall serve within ten days of the order being made a copy of the property freezing order on any person deemed by the court at the application hearing to hold any property to which the order relates or who may otherwise be affected by the order.

Variation and setting aside of freezing order

31M.—(1) The Court may at any time vary or set aside a property freezing order.

(2) Where the Court makes an interim receiving order, the Court shall vary or set aside the property freezing order to exclude any property subject to the interim receiving order.

(3) Where the Court determines that any property to which a property freezing order relates is neither recoverable property nor associated property, the Court shall vary the order to exclude the property.

(4) Unless acting in accordance with sub-section (2), the Court shall give the parties to the proceedings and any person who may be affected by its decision an opportunity to be heard before varying or setting a property freezing order.

Exclusions

31N.—(1) The power to make or vary a property freezing order includes the power to—

- (a) exclude specified property, or property described in the order, from the order; and
- (b) otherwise make exclusions from the prohibition on dealing with the property to which the order relates.

(2) An exclusion may be made subject to such conditions as the Court considers appropriate and may, in particular, make provision for the purpose of enabling any person to—

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

(3) Where the Court exercises the power to make an exclusion for the purpose of enabling a person to

meet legal expenses that he or she has incurred, or may incur, in respect of proceedings under this Part, the Court shall ensure that the exclusion—

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

(4) Subject to sub-section (2) or (3), the power to make exclusions must be exercised with a view to ensuring, so far as practicable, that the satisfaction of any right of the Attorney-General to recover the property obtained through unlawful conduct or the tainted property is not unduly prejudiced.

Restriction on proceedings and remedies

31O.—(1) While a property freezing order has effect—

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

(2) Where a Court (whether a High Court or any other Court) is satisfied that a property freezing order has been applied for or made in respect of any property

in respect of which proceedings are pending, it may stay the proceedings or allow the proceedings to continue on such terms as may be specified by the Court.

(3) Where a property freezing order applies to a tenancy of any premises, no landlord or other person to whom rent is payable may exercise the right of forfeiture 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 such terms as appear to the Court to be necessary.

(4) Before exercising any power conferred by this section, the Court shall give the parties to any of the proceedings concerned, and any person who may be affected by the decision of the Court, an opportunity to be heard.

Receivers in connection with property freezing orders

31P.—(1) The Court may appoint a receiver in respect of any property to which the property freezing order relates if the—

- (a) Court makes a property freezing order on an application by the Attorney-General; and
- (b) Attorney-General applies to the Court for the appointment of a receiver, whether as part of the application for the property freezing order or at any time afterwards.

(2) An application for an order under this section may be made without notice if the circumstances are such that notice of the application would prejudice any right of the Attorney-General to obtain a recovery order in respect of any property.

(3) In an application for an order under this section, the Attorney-General shall nominate a suitably qualified person for appointment as a receiver.

(4) The Attorney-General may apply a sum received by him or her under section 31KK(3) in making payment of the remuneration, if any, and expenses of a receiver appointed under this section.

Power of receivers appointed under section 31P

31Q.—(1) Where the Court appoints a receiver under section 31P, it may, on the application of the Attorney-General, make an order, authorising or requiring the receiver to—

- (a) exercise any powers specified in section 5 of Schedule II in relation to any property in respect of which the receiver is appointed; and
- (b) take any other steps the Court considers appropriate in connection with the management of any such property, including securing the detention, custody or preservation of the property in order to manage it.

(2) The Court may make an order requiring any person in respect of whose property the receiver is appointed to—

- (a) bring the property to a place specified by the receiver or to place it in the custody of the receiver; and
- (b) do anything he or she is reasonably required to do by the receiver for the preservation of the property.

(3) The Court may make an order requiring any person in respect of whose property the receiver is appointed to bring any documents relating to the property which are in his or her possession or control to a place specified by the receiver or to place them in the custody of the receiver.

(4) Any prohibition on dealing with property imposed by a property freezing order does not prevent a person from complying with any requirements imposed by virtue of this section.

(5) Where—

- (a) the receiver deals with any 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,

the receiver is not liable to any person in respect of any loss or damage resulting from his or her dealing with the property except so far as the loss or damage is caused by his or her negligence.

Supervision of receiver and variations

31R.—(1) Any of the following persons may at any time apply to the Court for directions as to the exercise of the functions of a receiver appointed under section 31P—

- (a) the receiver;
- (b) any party to the proceedings for the appointment of the receiver or the property freezing order;
- (c) any person affected by any action taken by the receiver; and
- (d) any person who may be affected by any action proposed to be taken by the receiver.

(2) Before giving any directions under sub-section (1), the Court shall give an opportunity to be heard to—

- (a) the receiver;
- (b) the parties to the proceedings for the appointment of the receiver and for the property freezing order; and
- (c) any person who may be interested in the application under sub-section (1).

(3) The Court may, at any time, vary or set aside the appointment of a receiver under section 31P, any order under section 31Q or any directions under this section.

(4) Before exercising any power under sub-section (3), the Court must give an opportunity to be heard to—

- (a) the receiver;
- (b) the parties to the proceedings for the appointment of the receiver, for the order under section 31Q or for the directions under this section, as the case may be;
- (c) the parties to the proceedings for the property freezing order; and
- (d) any person who may be affected by the decision of the Court.

Interim receiving order

Interim receiving order

31S.—(1) Where the Attorney-General may take proceedings for a recovery order, the Attorney-General may apply to the Court for an interim receiving order, whether before or after instituting the proceedings.

(2) An interim receiving order is an order for the—

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

(3) An application for an interim receiving order may be made without notice if the circumstances are

such that notice of the application would prejudice any right of the Attorney-General to obtain a recovery order in respect of any property.

(4) The Court may make an interim receiving order—

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

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

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

Functions of interim receiver

31T.—(1) An interim receiving order may authorise or require the interim receiver to—

- (a) exercise any of the powers specified in Schedule II;
- (b) take any other steps the Court thinks appropriate,

for the purpose of securing the detention, custody or preservation of the property to which the order applies or of taking any steps under sub-section (2).

(2) An interim receiving order shall require the interim receiver to take any steps which the Court considers necessary to establish whether or not—

- (a) the property to which the order applies is recoverable property or associated property;
- (b) any other property is recoverable property, in relation to the same unlawful conduct and, if it is, who holds it; or
- (c) any other property is tainted property, in relation to the same unlawful conduct and, if it is, who holds it.

(3) Where—

- (a) the interim receiver deals with any property which is not property to which the order relates; 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 pursuant to the order,

the interim receiver is not liable to any person in respect of any loss or damage resulting from his or her dealing with the property except so far as the loss or damage is caused by his or her negligence.

Duty of person whose property the order relates

31U.—(1) An interim receiving order may require any person to whose property the order relates to bring—

- (a) the property to such place as may be specified by the interim receiver, or to place the property in the custody of the interim receiver, and to do anything he or she is reasonably required to do by the interim receiver for the preservation of the property; and
- (b) any documents relating to the property which are in his or her possession or control to such place as may be specified by the interim receiver or to place them in the custody of the interim receiver.

Requirements on person whose property the order relates

31V.—(1) The interim receiver, any party to the proceedings and any person affected by any action taken by the interim receiver, or who may be affected by any proposed action to be taken by him or her may at any time apply to the Court for directions as to the exercise of the functions of the interim receiver.

(2) The Court may, at any time, vary or set aside an interim receiving order.

(3) Before giving any directions under sub-section (1), or exercising any power to vary or set aside an interim receiving order, the Court shall give the following an opportunity to be heard—

- (a) the parties to the proceedings;
- (b) the interim receiver; and
- (c) any person who may be interested in an application under sub-section (1) or affected by the decision of the Court under sub-section (2), as the case may be.

Restrictions on dealing etc. with property

31W.—(1) Subject to sub-section (2), an interim receiving order—

- (a) shall prohibit any person to whose property the order relates from dealing with the property; and

- (b) may be made subject to such conditions as the Court considers appropriate.

(2) The Court may, when the interim receiving order is made or on an application to vary the order, make such exclusions from the order as it considers just, including making provision for the purpose of enabling any person to—

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

(3) If the excluded property is not specified in the order it shall be described in the order in general terms.

(4) The power to make exclusions shall be exercised with a view to ensuring, so far as practicable, that the satisfaction of any right of the Attorney-General to recover the property obtained through unlawful conduct or tainted property is not unduly prejudiced.

Restriction on proceedings and remedies

31X.—(1) While an interim receiving order remains in effect—

- (a) the Court may stay any action, execution or other legal process in respect of the property to which the order relates; and

- (b) no distress may be levied against the property to which the order relates except with the leave of the Court and subject to such terms as appear to the Court to be necessary.

(2) Where any Court in which proceedings are pending in respect of any property is satisfied that an interim receiving 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 such terms as may be necessary.

(3) Where the interim receiving order applies to a tenancy of any premises, no landlord or other person to whom rent is payable may exercise any 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 such terms as may appear to the Court to be necessary.

(4) Before exercising any power conferred by this section, the Court shall give the following the right to be heard—

- (a) the parties to any of the proceedings in question;
- (b) the interim receiver, if appointed; and
- (c) any person who may be affected by the decision of the Court.

Exclusion of property which is not recoverable

31Y.—(1) Where the Court determines that any property to which an interim receiving order relates is neither recoverable property nor associated property, it shall vary the order to exclude that property.

(2) The Court may vary an interim receiving order to exclude from the property to which the order relates any property which is alleged to be associated property, if it thinks that the satisfaction of any right of the Attorney-General to recover the property obtained through unlawful conduct or tainted property will not be prejudiced.

(3) The Court may exclude any property within sub-section (2) on such terms or conditions, applying while the interim receiving order remains in force, which the Court thinks necessary or expedient.

Reporting

31Z.—(1) An interim receiving order shall require the interim receiver to inform the Attorney-General and the Court as soon as reasonably practicable if the interim receiver thinks that—

- (a) any property to which the order relates by virtue of a claim that it is recoverable property is not recoverable property;
- (b) any property to which the order relates by virtue of a claim that it is associated property is not associated property;
- (c) any property to which the order does not relate is recoverable in relation to the same unlawful conduct or associated property;

- (d) any property to which the order relates is held by a person who is different from the person it is claimed holds it; or
- (e) there has been any other material change of circumstances.

(2) An interim receiving order shall require the interim receiver to—

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

Registration of interim receiving order

31AA. Where the Attorney-General has applied for a property freezing order or an interim receiving order, he or she shall be 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 an interim receiving order made on the application relates.

Vesting and realisation of recoverable property

Recovery orders

31BB.—(1) Where in proceedings under this Part the Court is satisfied that any property is recoverable property, the Court shall make a recovery order and shall appoint a suitably qualified person as the trustee for civil recovery to give effect to the recovery order.

(2) Where a recovery order is made, the recoverable property vests in the person appointed by the Court to be the trustee.

(3) The Court shall not make in a recovery order any provision in respect of any recoverable property if—

- (a) each of the conditions referred to in sub-section (4) is fulfilled; and
- (b) it would not be just and equitable to do so.

(4) The conditions referred to in sub-section (3)(a) are that:

- (a) the respondent obtained the recoverable property in good faith;
- (b) the respondent took any action, or omitted to take any action, 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 he or she took any action, or omitted to take any action, before obtaining the property which he or she would not have taken, or omitted to take, if he or she had not believed that he or she was going to obtain it;
- (c) when the respondent took, or omitted to take, the action referred to in paragraph

(b), he or she had no notice that the property was recoverable;

- (d) if a recovery order was made in respect of the property, it would, by reason of the action or omission of the respondent be detrimental to him or her.

(5) In determining whether it would be just and equitable to make the provision in the recovery order where the conditions in sub-section (4) are satisfied, the Court shall have regard to—

- (a) the degree of detriment that would be suffered by the respondent if the provision were made;
- (b) the interest of the Attorney-General in receiving the realized proceeds of the recoverable property.

(6) A recovery order may sever any property.

(7) A recovery order may—

- (a) impose conditions as to the manner in which the trustee may deal with any property vested by the order for the purpose of realising it; and
- (b) provide for payment of reasonable legal expenses that a person reasonably

incurred, or may reasonably incur, in respect of—

- (i) the proceedings under this Part in which the order is made; or
- (ii) any related proceedings under this Part.

(8) This section is subject to sections 31EE to 31II.

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

Functions of the trustee

31CC. (1) The functions of the trustees are—

- (a) to secure the detention, custody or preservation of any property vested in him or her by the recovery order;
- (b) in the case of property other than money, to realize the value of the 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 by virtue of this Part.

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

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

(4) The trustee has the powers specified in Schedule III.

(5) References in this section to a recovery order include a consent order made under section 31HH and references to property vested in the trustee by a recovery order include property vested in him or her in a consent order.

Rights of pre-emption

31DD.—(1) A recovery order remains in force in relation to any property despite any provision, of whatever nature, which would otherwise prevent, penalise 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 any property under a recovery order.

(3) Where property is vested under a recovery order, any such 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 any right under a provision for the return or reversion of property in specified circumstances.

(5) References to rights in sub-sections (2), (3) and (4) do not include any rights in respect of which the recovery order was made.

(6) This section applies in relation to the creation of interests, or the doing of anything else, by a recovery order as it applies in relation to the vesting of property.

Associated and joint property

31EE.—(1) Sections 31FF and 31GG apply where the Court makes a recovery order in respect of any recoverable property, and—

(a) if—

- (i) the property to which the proceedings relate includes property which is associated with the recoverable property and is specified or described in the application; and
- (ii) the associated property is not the property of the respondent, the application has been served on the person whose property it is or the Court has dispensed with service; or

(b) if—

- (i) the recoverable property belongs to joint owners; and

- (ii) one of the owners is an excepted joint owner.

Agreements about associated and joint property

31FF.—(1) Where—

- (a) this section applies; and
- (b) the Attorney-General (on the one hand) and the person who holds the associated property or who is the excepted joint owner (on the other) agreed,

the Court 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 payment to the trustee.

(2) A recovery order which makes any requirement under sub-section (1) may, so far as required for giving effect to the agreement, include provision for vesting, creating or extinguishing any interest in the property.

(3) The amount of the payment shall be the amount which the Attorney-General and that person agree represents—

- (a) in the circumstances specified in section 31EE (1) (a), the value of recoverable property; or
- (b) in a case within section 31EE(1)(b), the value of the recoverable property less the value of the share of the excepted joint owner.

(4) Where—

- (a) a property freezing order or an interim receiving order applied at any time 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 interim receiving order,

the amount of the payment may be reduced by any amount the Attorney-General and that person agree is reasonable, having regard to that loss and to 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 the amount which is to be provided by each person who holds any such associated property or who is an excepted joint owner, is to be agreed between both, or all of them and the Attorney-General.

(6) A recovery order which makes any requirement under sub-section (1) must make provision for any recoverable property to cease to be recoverable.

Associated and joint property: default of agreement

31GG.—(1) Where this section applies, the Court may make the following provision if—

- (a) there is no agreement under section 31FF; and

- (b) the Court thinks it just and equitable to do so.

(2) The recovery order may provide—

- (a) for the associated property to vest in the trustee or for the interest of the excepted joint owner to be extinguished, as the case may be; or
- (b) in the case of an excepted joint owner, for the severance of his or her interest.

(3) A recovery order making any provision by virtue of sub-section (2)(a) may provide for all or any of the following—

- (a) for the trustee to pay an amount to the person who holds the associated property or who is an excepted joint owner;
- (b) 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.

(4) In making any provision in a recovery order by virtue of sub-section (2) or (3), the Court shall have regard to—

- (a) the rights of any person who holds the associated property or who is an excepted joint owner and the value to

him or her of that property or of his or her share, including any value which cannot be assessed in terms of money, as the case may be; and

- (b) the interest of the Attorney-General in receiving the realized proceeds of the recoverable property.

(5) Where—

- (a) a property freezing order or an interim receiving order applied at any time to the associated property or joint ownership; and
- (b) the Court is satisfied that the person who holds the associated property or who is an excepted joint owner has suffered loss as a result of the property freezing order or interim receiving order,

a recovery order making any provision under sub-section (2) or (3) may require the Attorney-General to pay compensation to that person.

(6) The amount of compensation to be paid under sub-section (5) is the amount the Court thinks reasonable, having regard to the person's loss and to any other relevant circumstances.

Consent orders

31HH.—(1) The Court may make an order staying any proceedings for a 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 both to the proceedings and the agreement.

(2) An order under sub-section (1) may—

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

(3) Section 31KK applies to property vested in the trustee, or money paid to him or her, pursuant to the agreement as it applies to property vested in him or her by a recovery order or money paid under section 31FF.

Limit on recovery

31II.—(1) This section applies where the Attorney-General seeks a recovery order in respect of—

- (a) both property which is or represents property obtained through unlawful conduct, or tainted property, and related property; or
- (b) property which is or represents property obtained through unlawful conduct, or tainted property, where such an order, or an order under section 31HH, has previously been made in respect of related property.

(2) For the purposes of this section—

- (a) “original property” means the property obtained through unlawful conduct or the tainted property, as the case may be; and
- (b) the original property, and any items of property which represents the original property, are treated as related to each other.

(3) The Court is not to make a recovery order if it thinks that the right of the Attorney-General to recover the original property has been satisfied by a previous recovery order or an order under section 31HH.

(4) Subject to sub-section (3), the Court may act under sub-section (5) if it thinks that—

- (a) a recovery order may be made in respect of two or more related items of recoverable property; but
- (b) the making of a recovery order in respect of both or all of them is not required in order to satisfy the right of the Attorney-General to recover the original property.

(5) The Court may in order to satisfy that right to the extent required make a recovery order in respect of—

- (a) only some of the related items of property;

- (b) only a part of any of the related items of property; or
- (c) both items of property under paragraphs (a) and (b).

(6) Where the Court may make a recovery order in respect of any property, this section does not prevent the recovery of any profits which have accrued in respect of the property.

(7) Where—

- (a) a forfeiture order is made for the forfeiture of recoverable property; and
- (b) the Attorney-General subsequently seeks a recovery order in respect of related property,

the forfeiture order is treated for the purposes of this section as if it were a recovery order obtained by the Attorney-General in respect of the forfeited property.

(8) Where—

- (a) pursuant to a judgment in civil proceedings, whether in Grenada or elsewhere, the claimant has obtained property from the respondent;
- (b) the claim was based on the claimant having obtained the judgment property or related property through unlawful conduct; and

- (c) the Attorney-General subsequently seeks a recovery order in respect of property which is related to the judgment property,

the judgment is treated for the purposes of this section as if it were a recovery order obtained by the Attorney-General in respect of the judgment property.

(9) Where—

- (a) property has been taken into account in determining the amount a person benefited from criminal conduct for the purpose of making a confiscation order; and
- (b) the Attorney-General subsequently seeks a recovery order in respect of related property,

the confiscation order is treated for the purposes of this section as if it were a recovery order obtained by the Attorney-General in respect of the property referred to in paragraph (a).

(10) In sub-section (9), a confiscation order includes an order under an equivalent enactment.

(11) In relation to an order mentioned in subsection (10), the reference to the amount a person benefited from criminal conduct is to be read as a reference to the corresponding amount under the Act in question.

Limits on recovery, supplementary

31JJ.—(1) Where—

- (a) there is a disposal, other than a part disposal, of the original property; and
- (b) other property is obtained in its place,

the right of the Attorney-General to recover the original property is satisfied by the making of a recovery order in respect of either the original property or the other property.

(2) Where—

- (a) there is a part disposal of the original property; and
- (b) other property is obtained in place of the property disposed of,

the right of the Attorney-General to recover the original property is satisfied by the making of a recovery order in respect of the remainder of the original property together with either the other property or the property disposed of.

(3) In this section—

“part disposal” means a disposal to which section 31J(1) applies;

“original property” has the same meaning as in section 31II(2).

Applying realised proceeds

31KK.—(1) The trustee is to make out of the sums—

- (a) which represent the realised proceeds of property which was vested in the trustee by a recovery order or which he or she obtained pursuant to a recovery order; and
- (b) vested in the trustee by a recovery order or obtained by him or her pursuant to a recovery order, the payments specified under sub-section (2).

(2) The trustee shall—

- (a) first, make any payment required to be made by him or her under section 31GG;
- (b) next, make any payment of legal expenses which are payable under this sub-section in pursuance of provision under section 31BB(7)(b) pursuant to the recovery order;
- (c) pay any fees payable to a liquidator of a company appointed by or supervised by the Court; and
- (d) pay any sum which remains to the Attorney-General.

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

- (a) the trustee; or

- (b) any receiver appointed in, or in anticipation of, the proceedings for the recovery order.

(4) The remaining sum, after payments made pursuant to sub-section (3), and any accrued interest on it, shall be paid into the Confiscated Assets Fund after—

- (a) the period permitted under section 31TT 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 or, if a person appeals, after the appeal has been determined or disposed of, whichever comes later.

(5) In this section, “company” means any company which may be liquidated under the Companies Act, Cap. 58A, including a company that has given notice of its inability to pay claims under the International Companies Act Cap. 152 and a foundation which may be dissolved.

Exemptions etc.

Victims of theft, etc.

31LL.—(1) In proceedings for a 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 apply for a declaration to that effect under this section.

(2) The Court may make a declaration under sub-section (1) if it appears to the Court that the—

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

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

Other exemptions

31MM.—(1) Proceedings for a recovery order may not be taken—

- (a) in respect of cash found at any place in Grenada unless the proceedings are also 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; or
- (c) against any person in respect of any recoverable property which he holds by reason of his acting, or having acted, as

trustee in bankruptcy appointed under the Bankruptcy Act, or as liquidator of a company appointed by, or supervised by the Court.

(2) The Regulations may provide that proceedings for recovery order may not be taken against any person in circumstances of a prescribed description and the circumstances may relate to the person himself, to the property or to any other matter.

(3) In this section, “company” means any company which may be liquidated under the Companies Act, Cap. 58A including a company that has given notice of its inability to pay claims under the International Companies Act, Cap. 152 and a foundation which may be dissolved.

Scope of Powers

Scope of powers

31NN.—(1) An order under this Part may be made by the Court—

- (a) in respect of property wherever situated; and
- (b) in respect of a person wherever domiciled, resident or present subject to section (2).

(2) Such an order may not be made by the Court in respect of property that is outside of Grenada, unless there is or has been a connection between the case and Grenada.

(3) The circumstances in which there is or has been such a connection include those described in Schedule IV.

Establishment abroad before order: Attorney-General

3100.—(1) This section applies if—

- (a) the property freezing conditions are met in relation to property;
- (b) the property is not property to which a recovery order applies; and
- (c) the Attorney-General believes that the property is in a country outside of Grenada (the receiving country).

(2) This section also applies if—

- (a) an interim receiving order made by the Court has effect in relation to property; and
- (b) the interim receiver believes that the property is in a country outside of Grenada (the receiving country).

(3) The receiver may send a request for assistance in relation to the property to the Minister for Legal Affairs with a view to it being forwarded under this section.

(4) The Minister for Legal Affairs must forward the request for assistance to the Government of the receiving country.

(5) A request for assistance under this section is a request to the government of the receiving country—

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

**Enforcement abroad before recovery order:
Receiver**

31PP.—(1) This section applies if—

- (a) a property freezing order made by the Court has effect in relation to property; and
- (b) the receiver appointed under section 31P in respect of the property believes that it is in a country outside of Grenada (the receiving country).

(2) This section also applies if—

- (a) an interim receiving order made by the Court has effect in relation to property; and

- (b) the interim receiver believes that the property is in a country outside of Grenada (the receiving country).

(3) The receiver may send a request for assistance in relation to the property to the Minister for Legal Affairs with a view to it being forwarded under this section.

(4) The Minister for Legal Affairs must forward the request for assistance to the government of the receiving country.

(5) A request for assistance under this section is a request to the government of the receiving country—

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

Evidence overseas: Interim Receiver

31QQ.—(1) This section applies if—

- (a) an interim receiving order made by the Court has effect in relation to property; and
- (b) the order requires the interim receiver to take steps to establish a matter described in section 31T(2)(a), (b) or (c).

(2) The interim receiver may request assistance under this section if the interim receiver thinks that there is relevant evidence in a country outside of Grenada.

(3) A judge of the Court may request assistance under this section if—

- (a) an application is made by the interim receiver or by a person subject to investigation by the interim receiver; and
- (b) the judge thinks that there is relevant evidence in a country outside of Grenada.

(4) The assistance that may be requested under this section is assistance in obtaining outside of Grenada relevant evidence specified in the request.

(5) Relevant evidence is evidence as to a matter described in section 31T(2)(a), (b) and (c).

(6) A request for assistance under this section may be sent—

- (a) to a court or tribunal which is specified in the request and which exercises jurisdiction in the place where the evidence is to be obtained;
- (b) to the government of the country concerned; or

- (c) to an authority recognised by the government of the country concerned as the appropriate authority for receiving requests for assistance of that kind.

(7) Alternatively, a request for assistance under this section may be sent to the Minister for Legal Affairs with a view to it being forwarded to a court, tribunal, government or authority mentioned in sub-section (6).

(8) The Minister for Legal Affairs must forward the request for assistance to the court, tribunal, government or authority.

(9) “Evidence” includes documents, information in any other form and material.

Evidence overseas: Restrictions on use

31RR.—(1) This section applies to evidence obtained by means of a request for assistance under section 31QQ.

(2) The evidence must not be used for any purpose other than—

- (a) for the purposes of carrying out the functions of the interim receiver; or
- (b) for the purposes of proceedings under this Chapter of this Part in respect of property described in sub-section (3) or any proceedings arising out of such proceedings.

(3) That property is—

- (a) the property that is the subject of the interim receiving order; or
- (b) other property that is recoverable property in respect of the same unlawful conduct, or tainted property.

(4) Sub-section (2) does not apply if the court, tribunal, government or authority to whom the request for assistance was sent consents to the use.

Enforcement abroad: after recovery order

31SS.—(1) This section applies 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 of Grenada (the receiving country).

(2) The Attorney-General or trustee may send a request for assistance in relation to the property to the Minister for Legal Affairs with a view to it being forwarded under this section.

(3) The Minister for Legal Affairs may forward a request for assistance from the Attorney-General to the government of the receiving country.

(4) The Minister for Legal Affairs must forward a request for assistance from the trustee to the government of the receiving country.

(5) A request for assistance is a request to the government of the receiving country for assistance in connection with the management and disposal of the property and includes a request—

- (a) to secure the detention, custody or preservation of the property;
- (b) in the case of money, to secure that it is applied in accordance with the law of the receiving country;
- (c) in the case of property or other than money, to secure that the property is realised and the proceeds are applied in accordance with the law of the receiving country.

(6) 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 if it states—

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

General

Compensation: property freezing order or interim receiving order

31TT.—(1) Where, in the case of any property to which a property freezing order or an interim 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 person whose property it is may make an application to the Court for compensation.

(2) Sub-section (1) does not apply if the Court—

- (a) has made a declaration in respect of the property under section 31LL; or
- (b) makes a consent order under section 31HH.

(3) Where the Court decides that no recovery order could be made in respect of the property, the application for compensation shall be made within the period of three months—

- (a) beginning with the date of the decision;
- (b) if any application is made for leave of appeal, with the date on which the application is withdrawn or refused; or
- (c) if the application under paragraph (b) is granted, with the date on which any proceedings on appeal are finally concluded.

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

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

(6) Where, but for section 31DD(2), any right mentioned there would have operated in favour of, or become exercisable by, any person, he or she may make an application to the Court for compensation.

(7) An application for compensation under sub-section (6) must be made within the period of three months beginning with the vesting referred to in section 31DD (2).

(8) Where the Court is satisfied that, in consequence of the operation of section 31DD, the right question 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 applicant, as the case may be.

(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.

Financial threshold

31UU.—(1) The Attorney-General shall not commence proceedings for a recovery order unless the Attorney-General reasonably believes that the aggregate value of the recoverable property which the Attorney-General wishes to be subject to a recovery order is equal to or greater than ten thousand dollars.

(2) Where the Attorney-General applies for a property freezing order or an interim receiving order before commencing the proceedings, sub-section (1) applies to the application for the property freezing order or interim receiving order instead of to the commencement of the proceedings.

(3) This section does not affect the continuation of proceedings for a recovery order which have been properly commenced or the making or continuing effect of a property freezing order or an interim receiving order which has been properly applied for.

Limitation

31VV.—(1) Proceedings shall not be brought for a recovery order in respect of any recoverable property after the expiration of twelve years from, in the case of a recovery order in respect of—

- (a) property obtained through unlawful conduct, when the property was so obtained;
- (b) tainted property, when the property became tainted property; or
- (c) any other recoverable property, when the property obtained through unlawful conduct which it represents is so obtained.

(2) For the purpose of sub-section (1), proceedings for a recovery order are brought when an application is—

- (a) filed with the Court under section 31K; or
- (b) made for an interim receiving order.

Property acquired before commencement date

31WW. For the purposes of determining whether property was recoverable at any time, including times before the commencement date, this Part is deemed to have been in force at that time and at any other relevant time.

Definitions in this Part

31XX.—(1) In this Part—

“associated property” means property of any of the following descriptions including property held by the respondent which is not itself the 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 in common ownership, the share of the other owner;
- (d) if the recoverable property is part of a large property, but not a separate part, the remainder of that property;

“compensation order” means an order to pay compensation made under any enactment;

“excepted joint owner” means a person who obtained the property in circumstances in which it would not be recoverable as against him and references to the excepted joint owner’s share of the recoverable property are so much of the recoverable property as would have been his or hers if the joint ownership had been severed;

“interim receiving order” means an order made by the court under section 31S;

“property freezing order” means an order made under section 31L;

“recoverable property” means any–

- (a) property obtained through unlawful conduct and tainted property;
- (b) property obtained through unlawful conduct that has been disposed of or tainted property that has been disposed of since it became tainted property, if it is held by a person into whose hands it may be followed;

“recovery order” means an order made under section 31BB;

“respondent” means–

- (a) where proceedings are brought by the Attorney-General under this Part, the person against whom the proceedings are brought; and

- (b) where no such proceedings have been brought but the Attorney-General has applied for an interim receiving order, the person against whom the Attorney-General intends to bring such proceedings;

“suitably qualified person” means a person who holds an accounting qualification;

“tainted property” means, subject to sub-section (2), property that—

- (a) has been used in, or in connection with, unlawful conduct; or
- (b) is intended to be used in, or in connection with, unlawful conduct;

“trustee” means the trustee for civil recovery appointed by the Court under section 31BB;

“unlawful conduct” means conduct which—

- (a) if it occurs in Grenada, is unlawful under the criminal law of Grenada; or
- (b) if it occurs in a country outside of Grenada, is unlawful under the criminal law applying in that country.

(2) Property belonging to a person (“the owner”) is not tainted property if—

- (a) the unlawful conduct is not the unlawful conduct of the owner; and
- (b) where paragraph (a) applies, the owner does not give his consent, expressed or implied, to the property being used in, or in connection with, the unlawful conduct concerned.

(3) For the purposes of sub-section (2), the “unlawful conduct” is the unlawful conduct that the property is used in, or in connection with, or that property is intended to be used in, or in connection with.

(4) For the purpose of this Act a person obtains property through unlawful conduct (whether his own conduct or another’s) when they obtained property by or in return for the conduct.

(5) In deciding whether any property was obtained through unlawful conduct—

- (a) it is immaterial whether or not any money, goods or services were provided in order to put the person in question in a position to carry out the conduct;
- (b) it is not necessary to show that the conduct was of a particular kind if it is shown that the property was obtained through conduct of one of a number of kinds, each of which would have been unlawful conduct.

Amendment of
section 40 of
principal Act

4. Section 40 of the principal Act is amended as follows—

- (a) in sub-section (1) by inserting immediately after paragraph (d) the following paragraph—

“(e) recoverable property under a recovery order.”

- (b) by repealing sub-section (3) and substituting thereafter with the following—

“(3) The Minister may make payments out of the Fund in the following order—

- (a) to pay compensation or costs awarded under this Act;
- (b) to satisfy an obligation of the Government of Grenada to a foreign jurisdiction in respect of confiscated assets, whether under a treaty or arrangement providing for mutual assistance in criminal matters or otherwise;
- (c) to meet the remuneration and expenses of any forensic accountant appointed under this Act;
- (d) to meet the expenses of the Anti-Money Laundering and Combating Terrorism Financing Commission;
- (e) to cover costs associated with administration of the Fund.”

- (c) by inserting immediately after sub-section (3) the following—

“(4) After satisfaction of the payments prescribed in sub-section 3, the Minister may, on an annual basis, authorize payments to be made for the proper functioning of various departments and officers responsible for carrying out functions for the purposes of the Act.”

5. Section 58 of the principal Act is repealed and the following substituted therefor—

Amendment of
section 58 of
principal Act.

“Search

58.—(1) Where a law enforcement officer who is lawfully on any premises and who has reasonable grounds for suspecting that there is recoverable cash on the premises, he may search the premises for the recoverable cash.

(2) If a law enforcement officer has reasonable grounds for suspecting that a person is in possession of recoverable cash, he may—

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

(3) The powers conferred by this section are exercisable only so far as reasonably required for the purpose of finding cash and this section does not require a person to submit to an intimate forensic search.

(4) The powers conferred under this section may be exercised only with the prior approval of a senior law enforcement officer unless, in the circumstances, it is not practicable to obtain the approval before exercising the power.

(5) Where the powers conferred under this section are exercised without prior approval as required by sub-section (4), the law enforcement officer exercising the power shall make a written report to a senior officer as soon as is reasonably practicable.

(6) A written report made under sub-section (5) shall include particulars of the circumstances that led the law enforcement officer to suspect that a person is carrying recoverable cash—

- (a) where no cash is seized or any cash seized is not detained for more than a period of seventy-two hours, and that the powers were exercisable; and
- (b) that it was not practicable to obtain the prior approval of a senior law enforcement officer.”

6. Section 59 of the principal Act is repealed and the following substituted therefor—

Amendment of
section 59 of
principal Act.

“Seizure of cash

59. A law enforcement officer may seize cash if he has reasonable grounds for suspecting that

- (a) it is recoverable cash; or
- (b) part of cash is recoverable cash and it is not reasonably practicable to seize only that part.”

7. Section 60 of the principal Act is amended as follows—

Amendment of
section 60 of
principal Act.

- (a) by repealing section 60 and substituting the following therefor—

“Detention of seized cash

60.—(1) Where recoverable cash has been seized under section 59 and a law enforcement officer continues to have reasonable grounds for his or her belief, the law enforcement officer may detain the cash for a period of seventy-two hours.

(2) A law enforcement officer may apply to the Magistrates’ Court for the period for which the cash or any part of it to be detained to be extended.

(3) Where a law enforcement officer applies under sub-section (2) for an extension of the period of detention of cash and the

Magistrates' Court is satisfied that there are reasonable grounds for suspecting that the cash is recoverable cash or the cash is intended to be used in unlawful conduct and that either—

- (a) its continued detention is justified while its intended use is further investigated or consideration is given to bringing proceedings, whether in or outside Grenada, against any person for an offence with which the cash is connected; and
- (b) proceedings against any person for an offence with which the cash is connected have been commenced and have not been concluded,

the Court may extend the period of detention of the cash for a period and make such other order as it considers appropriate.

(4) An order under sub-section (3) may not authorise the detention of any of the cash—

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

(5) An application for an order under sub-section (3) may also be made in respect of any cash seized under 59 (b), and the Court may make the order if satisfied that—

- (a) either sub-section (3)(a) or (b) applies in respect of the cash; and
- (b) it is not reasonably practicable to detain only that part.

(6) The Court shall require notice of the order to be given to any affected by it.”

- (b) by inserting after section 60 the following new sections—

“Interest

60A.—(1) Where cash is detained under section 60 for more than a period of seventy-two hours, the law enforcement officer shall, as soon as practicable, pay the cash into an interest-bearing account and the cash shall be held there, and the interest accruing on it shall be added to it on its forfeiture or release.

(2) Where part of the cash detained under section 60 is recoverable cash, the law enforcement officer, shall as soon as practicable after paying the cash seized into an interest-bearing account, release the part of the cash which is not recoverable cash.

(3) Sub-section (1) does not apply if the cash or, as the case may be, the part to which the belief relates, is required as

evidence of an offence or evidence in proceedings relating to the seized cash under this Part.

Release of detained cash

60B.—(1) A person from whom cash was seized may apply to the Magistrates' Court for the release of the whole or any part of the cash detained under section 60.

(2) The Magistrates' Court shall, on an application made by any person under sub-section (1) and if the Magistrates' Court is satisfied that the grounds for the detention for the cash specified in section 60 are no longer satisfied, direct the release of the whole or any part of the cash detained under section 60.

(3) The Commissioner of Police, Comptroller of Customs, Director of the Financial Intelligence Unit, or their designate may, if satisfied that the detention of the cash to be released is no longer justified and after notifying the Magistrates' Court under whose order cash is being detained, release the whole or any part of the detained cash.

(4) While cash is detained under section 60 and proceedings are instituted (whether in Grenada or elsewhere) against any person for an offence with which the cash is connected, the cash shall not be released until the proceedings for that offence have been concluded.

(5) A person who claims that any cash, that is detained under this Part belongs to him or her, may apply to the Magistrates' Court for the cash or part of it to be released to him or her.

(6) An application under sub-section (4) may be made in the course of detention or forfeiture proceedings or at any other time.

(7) The Magistrates' Court shall, on the application made by any person under sub-section (4), and if it appears to the Magistrates' Court that—

- (a) the applicant was deprived of the cash to which the application relates, or of property which it represents, by unlawful conduct;
- (b) the property he or she was deprived of was not, immediately before he or she was deprived of it, recoverable property; and
- (c) the cash belongs to him or her,

order the cash to which the application relates to be released to the applicant.

(8) The Magistrates' Court may order the cash to which the application relates to be released to the applicant or to the person from whom it was seized if—

- (a) the applicant under sub-section (4) is not the person from whom the cash to which the application relates was seized;
- (b) it appears to the Magistrates' Court that the cash belongs to the applicant;
- (c) the Magistrates' Court is satisfied that the grounds specified in section 60 for the detention of the cash are no longer satisfied or, if an application has been made under section 60C, and the Magistrates' Court does not have to make an order under that section in relation to the cash; and
- (d) no objection to the making of an order under this sub-section has been made by the person from whom the cash was seized.

Forfeiture

60C.—(1) A law enforcement officer may apply to the Magistrates' Court for the forfeiture of the whole or any part of cash detained under section 60.

(2) Where a law enforcement officer applies to the Magistrates' Court for a forfeiture order and the Magistrates' Court is satisfied that the cash or part of it—

- (a) is recoverable cash; or

- (b) is intended by any person for use in unlawful conduct,

the Magistrates' Court may order the forfeiture of the cash, or any part of it.

(3) Where recoverable cash belongs to joint proprietors and one of the proprietors is an excepted joint owner, the order shall not apply to so much of it as the Magistrates' Court considers attributable to the excepted joint owner's share.

(4) Where a law enforcement officer applies to the Magistrates' Court for a forfeiture order, the cash is to be detained and shall not be released under any power conferred by this Part until any proceedings pursuant to the application including any proceedings on appeal are concluded.

Appeal against forfeiture

60D.—(1) Any party to proceedings in which a forfeiture order is made who is aggrieved by the order may appeal to the Court.

(2) An appeal under sub-section (1) shall be made within the period of thirty days commencing on the date on which the order is made.

(3) An appeal under sub-section (1) is to be by way of a rehearing by the Court which may make any order that it considers appropriate.

(4) On an application by a person from whom the cash was seized or any other person with an interest in the cash, a Magistrate's Court may order the release of so much of the cash to enable the person to meet his legal expenses in connection with the appeal.

(5) Where the Court upholds the appeal, it may order the release of the cash.

Payment of forfeited cash into fund

60E. Cash forfeited under section 60C, and any accrued interest on it, shall be paid into the Confiscated Assets Fund after the period within which an appeal under section 60D may be made or, if a person appeals under that section, after the appeal has been determined or disposed of.

Application for compensation

60F.—(1) Where the Magistrates' Court does not make a forfeiture order, the person to whom the cash belongs or from whom it was seized may apply to the Magistrates' Court for compensation.

(2) Where, for any period beginning with the first opportunity to place the cash in an interest-bearing account after the initial detention of the cash for a period of seventy-two hours, the cash was not held in an interest-bearing account while detained, the Magistrates' Court may order an

amount of compensation to be paid by the applicant.

(3) The amount of compensation to be paid under sub-section (2) is the amount that the Magistrates' Court determines would have been reasonably earned in interest in the period in question if the cash had been held in an interest-bearing account.

(4) If the Magistrates' Court is satisfied that, taking account of any interest to be paid under section 60 or any amount to be paid under sub-section (2), the applicant has suffered loss as a result of the detention of the cash and the circumstances are exceptional, the Magistrates' Court may order compensation to be paid to him or her.

(5) The amount of compensation to be paid under sub-section (4) is the amount the Magistrates' Court considers reasonable, having regard to the loss suffered and any other relevant circumstances.

(6) Compensation is to be paid from the Confiscated Assets Fund.

(7) Where the Court makes a forfeiture order in respect only of a part of any cash detained under this Act, this section has effect in relation to the other part.

Interpretation in sections 58 to 60F

60G.—(1) For the purpose of sections 58 to 60F—

“cash” includes—

- (a) notes and coins in any currency;
- (b) postal orders;
- (c) cheques of any kind, including travelers’ cheques;
- (d) bankers’ drafters;
- (e) bearer bonds and bearer shares; and
- (f) any other monetary instrument;

“intimate forensic” is to be construed in accordance with the Police Act, Cap. 244;

“period of seventy-two hours” in calculating a period of seventy-two hours no account shall be taken of—

- (a) any Saturday or Sunday;
- (b) any day that is an official public holiday; and
- (c) any other day on which the Magistrate’s Court may be closed;

“recoverable cash” means cash which is recoverable property or is intended by any person for use in unlawful conduct;

“senior law enforcement officer” means a police officer of the rank of Inspector or above, or a senior customs officer, or a senior officer of the Financial Intelligence Unit so designated by the Director of the Unit.

(2) The amount of cash held in a currency other than Eastern Caribbean dollars shall be its equivalent in the Eastern Caribbean dollars at the prevailing rate of exchange.”

8. Sub-section (1) of section 63 of the principal Act is amended in paragraphs (c) and (e) by inserting the words “and terrorist financing” after the word “money laundering” where it appears. Amendment of section 63 of principal Act.

9.—(1) The Schedule to the principal Act is hereby amended as follows— Amendment to Schedule of principal Act.

- (a) by inserting the number “1” after the heading “Schedule” where it appears;
- (b) by inserting immediately after “item no. 20” in Schedule I the following—

“21. Money Laundering

22. Inchoate offences.”

(2) The principal Act is amended by inserting after Schedule I the following Schedules—

“SCHEDULE II

(Sections 31Q(1)(a) and 31T)

POWERS OF INTERIM RECEIVERS

1. **Seizure.** Power to seize property to which the order supplies.

2. **Information.**—(1) Power to obtain information or to require a person to answer any question.

(2) A requirement imposed in the exercise of the power has effect in spite of any restriction on the disclosure of information.

(3) An answer given by a person in pursuance of such a requirement may not be used in evidence against him or her in criminal proceedings, other than proceedings for an offence of perjury or any equivalent offence.

3. **Entry, search, etc.**—(1) Power to enter any premises in Grenada to which the order applies, and to—

- (a) carry out a search for or inspection of anything described in the order;
- (b) make or obtain a copy, photograph or other record of anything so described;
- (c) remove anything which he or she is required to take possession of in pursuance of the order or which may be required as evidence in the proceedings under this Act.

(2) The order may describe anything generally, whether by reference to a class or otherwise.

4. **Supplementary.**—(1) An order making any provision under paragraph 2 or 3 must make provision in respect of legal professional privilege.

- (2) An order making any provision under paragraph 3 may require any person—
- (a) to give the receiver access to any premises which he or she may enter in pursuance of paragraph 3 and;
 - (b) to give the receiver any assistance he may require for taking the steps mentioned in that paragraph.

5. Management.—(1) Power to manage any property to which the order applies.

- (2) Managing property includes—
- (a) selling or otherwise disposing of assets comprised in the property which are perishable or which ought to be disposed of before their value diminishes;
 - (b) where the property comprises assets of a trade or business, carrying on, or arranging for another to carry on, the trade or business; and
 - (c) incurring capital expenditure in respect of the property.

SCHEDULE III

(Section 31CC(4))

POWERS OF TRUSTEE

1. Sale. Power to sell the property or any part of it or interest in it.

2. Expenditure. Power to incur expenditure for the purpose of—

- (a) acquiring any part of the property, or any interest in it, which is not vested in him or her; or
- (b) discharging any liabilities, or extinguishing any rights, to which the property is subject.

3. Management.—(1) Power to manage property.

- (2) Managing property includes—
- (a) selling or otherwise disposing of assets comprised in the property which are perishable or which ought to be disposed of before their value diminishes;

- (b) where the property comprises assets or a trade or business, carrying on, or arranging for another to carry on, the trade or business; and
- (c) incurring capital expenditure in respect of the property.

4. Legal proceedings. Power to start, carry on or defend any legal proceedings in respect of the property.

5. Compromise. Power to make any compromise or other arrangement in connection with any claim relating to the property.

6. Supplementary. For the purposes of, or in connection with, the exercise of any of his or her powers—

- (a) power, in his or her official name to—
 - (i) hold property;
 - (ii) enter into contracts;
 - (iii) sue and be sued;
 - (iv) employ agents; and
 - (v) execute a power of attorney, deed or other instrument; and
- (b) power to do any other act which is necessary or expedient.

SCHEDULE IV

(Section 31NN(3))

CONNECTION WITH THE STATE

1. Unlawful conduct. There is a connection where the unlawful conduct occurred entirely or partly in Grenada.

2. Tainted property. There is a connection where the property became tainted property due to unlawful conduct that occurred entirely or partly in Grenada.

3. Property.—(1) There has been a connection where the property in question has been in Grenada, but only if it was recoverable property in relation to the unlawful conduct, or tainted property, for some or all of the time it was there.

(2) There is a connection where there is other property in Grenada that is recoverable property in relation to the unlawful conduct, or tainted property.

(3) There has been a connection where, at any time, there has been other property in Grenada that, at the time, was recoverable property in relation to the unlawful conduct, or tainted property.

4. Person. —(1) There is or has been a connection where a person described in sub-paragraph (2)—

- (a) is linked to Grenada;
- (b) was linked to Grenada at a time when the property became tainted property;
- (c) has been linked to Grenada at any time since the property became tainted property;
- (d) was linked to Grenada at a time when the unlawful conduct, or some of the unlawful conduct, was taking place; or
- (e) has been linked to Grenada at any time since that conduct took place.

(2) Those persons are—

- (a) a person whose conduct was, or was part of, the unlawful conduct;
- (b) a person who was deprived of property by the unlawful conduct;
- (c) a person who holds the property in question;
- (d) a person who has held the property in question, but only if it was recoverable property in relation to the unlawful conduct, or tainted property, at the time;
- (e) a person who holds other property that is recoverable property in relation to the unlawful conduct, or tainted property; or

(f) a person who, at any time, has held other property that was recoverable property in relation to the unlawful conduct, or tainted property, at the time.

(3) A person is linked to Grenada if the person is—

- (a) a citizen of Grenada;
- (b) a body incorporated or constituted under the law of Grenada; or
- (c) a person domiciled, resident or present in Grenada.

5. Property held on trust.—(1) There is a connection where the property in question is property held on trust, or an interest in property held on trust, and—

- (a) the trust arises under the law of Grenada;
- (b) the trust is entirely or partly governed by the law of Grenada;
- (c) one or more of the trustees is linked to Grenada; or
- (d) one or more of the beneficiaries of the trust is linked to Grenada.

(2) A person is linked to Grenada if the person falls within paragraph 5(3).

(3) “Beneficiaries” includes beneficiaries with a contingent interest in the property and potential beneficiaries.

6. Interpretation. “The unlawful conduct” means—

- (a) in a case in which the property in question was obtained through unlawful conduct, that conduct;
- (b) in a case in which the property in question represents property obtained through unlawful conduct, that conduct; or
- (c) in a case in which it is shown that the property in question was obtained through unlawful conduct of one of a number of kinds or represents property so obtained (see section 31XX), one or more of those kinds of conduct.”

Passed by the House of Representatives this 16th day of May, 2014.

RAPHAEL DONALD
Acting Clerk to the House of Representatives.

Passed by the Senate this 11th day of June, 2014.

RAPHAEL DONALD
Acting Clerk to the Senate.

GRENADA
