

SAINT LUCIA**No. 18 of 2023****ARRANGEMENT OF SECTIONS***Section*

1. Short title
2. Interpretation
3. Amendment of section 2
4. Amendment of section 3
5. Amendment of section 4
6. Amendment of section 7
7. Amendment of section 11
8. Amendment of section 17
9. Amendment of section 21
10. Insertion of new sections 21A, 21B, 21C, 21D, 21E and 21F
11. Insertion of new Part 2A
12. Amendment of section 29A
13. Insertion of new sections 29B, 29C, 29D, 29E, 29F, 29G, 29H, 29I, 29J, 29K, 29L, 29M, 29N, 29O, 29P, 29Q, 29R, 29S, 29T, 29U, 29V, 29W, 29X, 29Y, 29Z, 29AA, 29BB, 29CC and 29DD
14. Amendment of section 31
15. Insertion of new sections 31A, 31B, 31C, 31D, 31E, 31F, 31G, 31H, 31I and 31J
16. Insertion of new sections 40A, 40B, 40C, 40D, 40E, 40F, 40G, 40H, 40I, 40J, 40K, 40L, 40M, 40N, 40O, 40P, 40Q, 40R, 40S, 40T, 40U, 40V, 40W, 40X, 40Y and 40Z
17. Amendment of section 42
18. Amendment of section 47
19. Insertion of new Part 3A
20. Insertion of new section 64A
21. Repeal of Schedule
22. Amendment of the principal Act

I Assent

[L.S.]

ERROL CHARLES,
Acting Governor-General.

July 25, 2023.

SAINT LUCIA

No. 18 of 2023

AN ACT to amend the Proceeds of Crime Act, Cap. 3.04.

[31st July, 2023]

BE IT ENACTED by the King's Most Excellent Majesty, by and with the advice and consent of the House of Assembly and the Senate of Saint Lucia, and by the authority of the same, as follows:

Short title

1. This Act may be cited as the Proceeds of Crime (Amendment) Act, 2023.

Interpretation

2. In this Act, “principal Act” means the Proceeds of Crime Act, Cap. 3.04.

Amendment of section 2

3. Section 2 of the principal Act is amended —

(a) by deleting the definition for —

(i) “criminal conduct” and by substituting the following

—

“criminal conduct” has the meaning assigned under the Money Laundering (Prevention) Act, Cap. 12.20,

(ii) “tainted property” and by substituting the following —

“ “tainted property” —

(a) in relation to an application for a forfeiture order or confiscation order on conviction, means —

(i) property used in, or in connection with, the commission of an offence, or

(ii) property derived, obtained or realized, directly or indirectly, from the commission of an offence;

(b) in relation to civil asset recovery, means property that —

(i) has been used in, or in connection with, criminal conduct, or

(ii) is intended to be used in, or in connection with, criminal conduct;

(iii) “unlawful activity”;

(b) by inserting the following new definitions in the correct alphabetical sequence —

“anti-crime initiative” includes a crime prevention proposal, law enforcement proposal and other proposals with respect to national security;

“applicant” means a Government Agency;

“application” means an application under section 59N;

“artistic work” has the meaning assigned under the Copyright Act, Cap. 13.07;

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

(a) any interest in the recoverable property;

(b) any other interest in the property in which the recoverable property subsists;

(c) if the recoverable property is a tenancy in common, the tenancy of the other tenant;

(d) if the recoverable property is part of a larger property but not a separate part the remainder of that property;

“Chairperson” means the Chairperson of the Committee under section 59H(1);

“civil recovery investigation” means an investigation into —

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

(b) who holds the recoverable property or associated property; or

(c) the extent and location of the recoverable property or associated property;

“Committee” means the Property Disposal Committee appointed under section 59B;

“Deputy Chairperson” means the Deputy Chairperson of the Committee under section 59H(2);

“excepted joint owner” means a person who obtains property in circumstances in which it may not be recoverable property;

“face-value voucher” means a voucher in physical form that represents a right to receive goods or services to the value of an amount stated on the voucher;

“financial institution” has the meaning assigned under the Money Laundering (Prevention) Act, Cap. 12.20;

“Financial Intelligence Authority” means the Financial Intelligence Authority continued under section 4 of the Money Laundering (Prevention) Act, Cap. 12.20;

“Fund” means the Anti-Crime Initiative Fund under section 22 of the Public Finance Management Act, Cap. 15.01;

“Government Agency” has the meaning assigned under the Public Finance Management Act, Cap. 15.01;

“financial institution” has the meaning assigned under the Money Laundering (Prevention) Act, Cap. 12.20;

“Land Register” has the meaning assigned under the Land Registration Act, Cap. 5.01;

“listed asset” includes —

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

“precious metal” means gold, silver or platinum, whether in an unmanufactured or a manufactured state;

“precious stone” means diamond, ruby, sapphire or emerald, whether in an untreated or a treated state;

“recoverable property” means —

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

“Secretary” means the Secretary to the Committee appointed under section 59K;

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

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

“Supreme Court Rules” means the Eastern Caribbean Supreme Court Civil Procedure Rules.

Amendment of section 3

4. Section 3(12)(b)(i) of the principal Act is amended by deleting the words “a schedule offence” and by substituting the words “criminal conduct”.

Amendment of section 4

5. Section 4 of the principal Act is amended —

- (a) in subsection (1), by deleting the words “section 28” and by substituting the words “section 38”;

(b) by inserting immediately after subsection (4), the following new subsection (4A) —

“(4A) A request for leave under subsection (4) shall be refused, by the Court, after six years has elapsed from the date of making the forfeiture order or confiscation order.”.

Amendment of section 7

6. Section 7(1) of the principal Act is amended by deleting the words “of a schedule offence” and by substituting the words “of criminal conduct.”.

Amendment of section 11

7. Section 11(b) of the principal Act is amended by deleting the words “section 32” and by substituting the words “section 34”.

Amendment of section 17

8. Section 17 of the principal Act is amended by inserting, immediately after subsection (1), the following new subsection (1A) —

“(1A) The Court shall determine a question arising under subsection (1) on a balance of probabilities.”.

Amendment of section 21

9. Section 21 of the principal Act is amended in subsection (2) by deleting the word “subsections” and by substituting the words “sections”.

Insertion of new sections 21A, 21B, 21C, 21D, 21E and 21F

10. The principal Act is amended by inserting immediately after section 21, the following new sections 21A, 21B, 21C, 21D, 21E, and 21F —

“Time for payment under a confiscation order

21A.—(1) The full amount ordered to be paid under a confiscation order must be paid on the date on which the confiscation order is made.

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

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

(a) the defendant applies to the Court within the specified period in an order under subsection (2) for the time to be extended; and

(b) the Court is satisfied that, despite having made all reasonable efforts, the defendant is unable to pay the amount within three months.

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

(a) must begin with the date on which the confiscation order is made; and

(b) must not exceed three months.

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

(a) must begin after the specified period under subsection (2); and

(b) must not exceed six months.

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

(a) to pay the unpaid amount; or

(b) to pay the amount towards the remaining amounts to be paid.

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

Interest on amount unpaid under a confiscation order

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

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

Considerations of the Court after making a confiscation order

21C.—(1) Where the Court makes a confiscation order, the Court shall consider the confiscation order before

—

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

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

Court may order payment by a person through a financial institution

21D.—(1) Where a person holds money in an account maintained with a financial institution, and a confiscation order is made against that person, the Court may order the financial institution to pay from the money maintained, to the Court, on account of the amount payable under the confiscation order.

(2) A financial institution that contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding two hundred thousand dollars.

Variation of order where amount available to defendant is inadequate

21E.—(1) The Court may, after determining that a defendant is unable to pay an amount remaining to be paid under the confiscation order, vary the order by substituting for the amount required to be paid a smaller amount.

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

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

Discharge of a confiscation order

21F. The Court may discharge a confiscation order where —

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

Insertion of new Part 2A

11. The principal Act is amended by inserting immediately after Part 2, the following new Part 2A —

**“PART 2A
CIVIL RECOVERY**

Civil recovery: General

23A.—(1) This Part has effect for the purposes of —

- (a) enabling the Attorney General to recover in civil proceedings before the Court, property which is, or represents —
 - (i) property obtained through a criminal conduct, or
 - (ii) property that is used in, or in connection with, or is intended to be used in, or in connection with, a criminal conduct; and
- (b) enabling the Attorney General to forfeit, in civil proceedings before the Court, property which is, or represents —
 - (i) property obtained through a criminal conduct, or

(ii) property that is used, or in connection with, or is intended to be used in, or in connection with, a criminal conduct.

(2) The powers conferred under this Part are exercisable, *in rem*, in relation to property, whether proceedings are brought against a person for criminal conduct in connection with the property.

(3) In relation to investigating and preserving property that is subject to an action for civil recovery, Part 3 applies with the necessary modifications.

Action for Civil Recovery

Parallel proceedings against a person

23B.—(1) Where a person is charged with or is under investigation for his or her criminal conduct, nothing in this Act or another enactment prevents the commencing or continuing of civil proceedings against the person with respect to the person's recoverable property or to his or her criminal conduct.

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

Supreme Court Rules

23C.—(1) Where the Supreme Court Rules do not contain a provision for exercising a right or procedure with respect to this Act, the Court, a judge or the Registrar of the Court may adopt a procedure that is not inconsistent with the Supreme Court Rules or this Act.

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

Standard of proof in civil recovery

23D. The Court shall decide on a balance of probabilities whether

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

*Recoverable Property and Associated Property***Following recoverable property**

23E.—(1) Where recoverable property is disposed of since it was obtained, it continues to be recoverable property if it is held by a person into whose hands it may be followed.

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

—

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

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

Tracing property

23F.—(1) Where property obtained through criminal conduct is or has been recoverable property, property which represents the original property is considered to be recoverable property.

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

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

Mixing property

23G.—(1) Where a person's recoverable property is commingled with other property, whether the property is his or her property or another person's property, the portion of the mixed property which is attributable to the recoverable property represents the property obtained through criminal conduct or the tainted property.

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

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

Recoverable property accruing profits

23H. Where a person holding recoverable property obtains additional property as a result of profits accruing in respect of the recoverable property, the additional property is treated as representing the property obtained through criminal conduct or the tainted property.

Granting interests

23I. (1) Where a person grants an interest in his or her recoverable property, the question whether the interest is recoverable property must be determined by the Court in a like manner with respect to the disposal of recoverable property.

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

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

Exceptions relating to recoverable property

23J.—(1) Where recoverable property is disposed of and obtained by a person in good faith for value and without notice, that recoverable property ceases to be recoverable property —

- (a) if it is vested, forfeited or otherwise disposed of pursuant to powers conferred under this Act;

(b) where a respondent makes a payment to a claimant in a judgment under civil proceedings.

(2) Property is not recoverable —

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

(b) if —

(i) in pursuance to a judgment in civil proceedings, whether in or outside Saint Lucia the respondent makes a payment to a claimant or a claimant otherwise obtains property from the defendant,

(ii) the claim of the claimant is based on the criminal conduct of the respondent,

(iii) apart from this subsection, the sum received or the property obtained by the claimant would be recoverable property.

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

Application for property freezing order

23K.—(1) The Attorney General may, before the grant of a recovery order, make an application to the Court, by way of a fixed date claim, for a property freezing order.

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

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

(a) the property to which the application for the property freezing order relates is or includes recoverable property;

(b) there is a real risk that the recoverable property will be disposed of, dissipated or otherwise dealt with; and

(c) property that is not recoverable property is associated property.

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

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

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

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

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

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

Effect of a property freezing order

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

Varying and setting aside a property freezing order

23M.—(1) The Court may vary or set aside a property freezing order.

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

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

Stay of proceedings relating to a property freezing order

23N.—(1) While a property freezing order has effect —

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

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

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

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

Appointment of receiver relating to a property freezing order

23O.—(1) The Court may, on an application by the Attorney General, appoint a receiver in respect of property to which the property freezing order applies.

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

- (a) nominate a suitably qualified person for appointment as a receiver; and

- (b) provide for the remuneration, if any, and expenses of a receiver appointed under subsection (1).

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

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

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

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

Powers of receiver relating to a property freezing order

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

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

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

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

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

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

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

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

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

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

Receiving order

23S.—(1) Where the Attorney General institutes proceedings for a recovery order, the Attorney General may apply to the Court for a receiving order, whether before or after instituting the proceedings for a recovery order.

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

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

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

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

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

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

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

Reporting requirement for a receiver relating to a receiving order

23T.—(1) A receiver shall immediately inform the Court and the Attorney General if he or she believes that —

- (a) property to which the order applies is not recoverable property;

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

(2) A receiver shall —

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

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

23U.—(1) Where the Attorney General has applied for a property freezing order or a receiving order, he or she is treated as a person interested in any registered land, lease or charge to which the application relates, or to which a property freezing order or a receiving order made on the application relates, and he or she may make an application to the Registrar of Lands to prohibit or restrict dealings with the land, lease or charge.

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

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

Application for an *in rem* recovery order

23V.—(1) The Attorney General may make an application to the Court, by way of a fixed date claim under the Supreme Court Rules, for an *in rem* recovery order against a person who holds recoverable property.

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

- (a) identify, by particularizing or by a general description, the property with respect to which the Attorney General seeks a recovery order;

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

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

Making an *in rem* recovery order

23W.—(1) Subject to subsection (2), an *in rem* recovery order may be made by the Court in respect of —

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

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

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

- (a) a condition under subsection (4) is satisfied; and
- (b) it is not just and equitable to do so.

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

- (a) the respondent obtained the recoverable property in good faith;

- (b) the respondent took an action, or omitted to take an action —
 - (i) after obtaining the property which he or she would not have taken, or omitted to take, if he or she had not obtained the property, or
 - (ii) before obtaining the property which he or she would not have taken, or omitted to take, if he or she had not believed he or she was going to obtain it;
 - (c) when he or she took, or omitted to take, the action under paragraph (b), he or she did not have notice that the property was recoverable;
 - (d) where an *in rem* recovery order is made in respect of the property, the *in rem* recovery order is, by reason of his or her action or omission detrimental to him or her.
- (5) In deciding whether it is just and equitable to make the provision in the *in rem* recovery order where the conditions under subsection (4) are met, the Court shall consider —
- (a) the degree of detriment to be suffered by the respondent if the provision is made;
 - (b) the Attorney General’s interest in receiving the realized proceeds of the recoverable property.
- (6) An *in rem* recovery order may sever any property interest.
- (7) An *in rem* recovery order —
- (a) may impose conditions as to the manner in which the trustee may deal with any property vested by the order for the purpose of realizing it; and
 - (b) may provide for payment of reasonable legal expenses that a person has reasonably incurred, or may reasonably incur, in respect of —
 - (i) the proceedings under this Part in which the *in rem* recovery order is made, or
 - (ii) any related proceedings under this Part.

*Associated property and joint property***Agreements with respect to associated property and joint property**

23X.—(1) Where the Attorney General and a person who holds the associated property or who is the excepted joint owner agree, the *in rem* recovery order may instead of vesting the recoverable property in the trustee, require the person who holds the associated property or who is the excepted joint owner to make a payment to the trustee.

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

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

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

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

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

Default of agreement with respect to associated property and joint property

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

- (2) An *in rem* recovery order under subsection (1) may provide —
- (a) for the associated property to vest in the trustee or for the excepted joint owner's interest to be extinguished; or
 - (b) in the case of an excepted joint owner, for the severance of his or her interest;
 - (c) for the trustee to pay an amount to the person who holds the associated property or is an excepted joint owner;
 - (d) for the creation of interests in favour of that person, or the imposition of liabilities or conditions, in relation to the property vested in the trustee;
 - (e) make provision for recoverable property to cease to be recoverable.
- (3) In making a provision in an *in rem* recovery order under subsection (2), the Court shall consider —
- (a) the rights of a person who holds the associated property or is an excepted joint owner and the value to him or her of that property or his or her share, including any value which cannot be assessed in terms of money; and
 - (b) the Attorney General's interest in receiving the realized proceeds of the recoverable property.

Limitation on instituting proceedings for an *in rem* recovery order

23Z.—(1) Proceedings shall not be brought for an *in rem* recovery order in respect of any recoverable property after the expiration of twelve years from —

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

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

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

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

Appointment of trustee relating to an *in rem* recovery order

23AA.—(1) Where, in proceedings under this Part, the Court determines that property is recoverable property, the Court shall make an *in rem* recovery order and appoint a suitably qualified person as the trustee for civil recovery to give effect to the *in rem* recovery order.

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

Functions of a trustee relating to an *in rem* recovery order

23BB.—(1) The functions of a trustee are —

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

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

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

Right of pre-emption and other similar rights

23CC.—(1) An *in rem* recovery order has effect in relation to property notwithstanding a provision which may prevent, penalize or restrict the vesting of the property.

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

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

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

Stay of proceedings relating to an *in rem* recovery order

23DD.—(1) The Court may make an order to stay proceedings for an *in rem* recovery order on terms agreed by the parties for the disposal of the proceedings if each person to whose property the proceedings, or the agreement, relates is a party to the proceedings and the agreement.

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

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

Application of realized proceeds relating to an *in rem* recovery order

23EE.—(1) A trustee may, with respect to sums which represent the realized proceeds of property which was vested in the trustee by an *in rem* recovery order or which he or she obtained pursuant to an *in rem* recovery order make out of the sums —

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

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

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

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

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

*Exemptions***Application for declaration relating to an *in rem* recovery order**

23FF.—(1) In proceedings for an *in rem* recovery order, a person who claims that any property alleged to be recoverable property, or any part of the property, belongs to him or her may make an application for a declaration to that effect under this section.

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

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

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

Enforcement of an in rem recovery order abroad

Enforcement abroad before an *in rem* recovery order

23GG.—(1) The Attorney General may make a request for assistance to the government of a receiving country if —

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

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

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

(3) A request for assistance under subsection (1) must comply with the Mutual Legal Assistance in Criminal and Related Matters Act, Cap. 3.03.

Enforcement abroad after an *in rem* recovery order

23HH.—(1) The Attorney General may make a request for assistance to the government of the receiving country in relation to the property if —

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

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

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

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

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

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

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

(6) A request for assistance under subsection (1) must be in compliance with the Mutual Legal Assistance in Criminal and Related Matters Act, Cap. 3.03.

Compensation

Compensation order relating to a property freezing order or a receiving order

23II.—(1) Where, in the case of property to which a property freezing order or a receiving order has at any time applied, the Court does not in the course of the proceedings decide that the property is recoverable property or associated property, the owner of the property may make an application to the Court for a compensation order.

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

(a) has made a declaration in respect of the property under section 23FF; or

(b) makes an order to stay the proceedings under section 23DD.

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

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

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

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

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

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

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

Appeals relating to an in rem recovery order

Appeal to the Court after an *in rem* recovery order

23JJ.—(1) A party to the proceedings in which an *in rem* recovery order is made may, before the end of the period of thirty days beginning with the date on which the *in rem* recovery order is made, appeal to the Court.

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

Amendment of section 29A

12. Section 29A(5) of the principal Act is amended by deleting paragraph (b) and by substituting the following —

“(b) the Commissioner of Police or any police officer authorized by him or her or the Director of the Financial Intelligence Authority may release the cash, if satisfied that its detention is no longer justified and shall first notify the magistrate or a court of summary jurisdiction under whose order it is being detained.”.

Insertion of new sections 29B, 29C, 29D, 29E, 29F, 29G, 29H, 29I, 29J, 29K, 29L, 29M, 29N, 29O, 29P, 29Q, 29R, 29S, 29T, 29U, 29V, 29W, 29X, 29Y, 29Z, 29AA, 29BB, 29CC and 29DD

13. The principal Act is amended by inserting immediately after section 29A, the following new sections 29B, 29C, 29D, 29E, 29F, 29G, 29H, 29I, 29J, 29K, 29L, 29M, 29N, 29O, 29P, 29Q, 29R,

29S, 29T, 29U, 29V, 29W, 29X, 29Y, 29Z, 29AA, 29BB, 29CC
and 29DD —

“Search for listed assets

29B.—(1) A police officer not below the rank of corporal or a financial investigator of the Financial Intelligence Authority who is lawfully on any premises and who has reasonable grounds for suspecting that there is a listed asset on the premises, may search for the listed asset on the premises.

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

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

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

- (a) a place to which, at the time of the proposed exercise of the powers, the public or a section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission; and
- (b) any other place to which at that time people have ready access and is not a dwelling.

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

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

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

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

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

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

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

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

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

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

Seizure of property

29C.—(1) A police officer not below the rank of corporal or a financial investigator of the Financial Intelligence Authority may seize an item of property if he or she has reasonable grounds for suspecting that —

- (a) it is a listed asset;
- (b) it is recoverable property or intended by a person for use in criminal conduct;
- (c) that part of the item is recoverable property or intended by any person for use in criminal conduct;
- (d) that the value of the part to which the suspicion relates is not less than the minimum value of ten thousand dollars; and
- (e) it is not reasonably practicable to seize only that part.

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

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

Initial detention of property

29D. Property seized under section 29C may be detained initially for a period of seventy-two hours.

Further detention of property

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

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

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

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

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

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

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

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

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

Testing and safekeeping of property seized

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

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

Release of detained property

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

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

Forfeiture of property

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

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

(a) the property is a listed asset; and

(b) the property to be forfeited is recoverable property or intended by any person for use in criminal conduct.

*Associated property and joint property***Associated and joint property**

29I.—(1) Sections 29J and 29K apply where —

- (a) an application is made under section 29H in respect of property seized or detained under section 29C or 29D;
- (b) the Court is satisfied that the property is a listed asset;
- (c) the Court is satisfied that all or part of the property is recoverable property or intended by any person for use in criminal conduct;
- (d) there exists property that is associated with the property in relation to which the court is satisfied under paragraph (c); and
- (e) the property in relation to which the Court is satisfied under paragraph (c) belongs to joint tenants and one of the tenants is an excepted joint owner.

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

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

Agreements with respect to associated property and joint property

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

- (2) The amount of the payment under subsection (1) —
- (a) is the amount which the persons under subsection (1) agree represents —
 - (i) the value of the forfeitable property,
 - (ii) is the value of the forfeitable property less the value of the excepted joint owner's share;
 - (b) may be reduced if the person who applied for the order under section 29H agrees that the other party to the agreement has suffered loss as a result of the seizure of the forfeitable property and any associated property and its subsequent detention.
- (3) The reduction that is permissible under subsection (3) is an amount as the parties to the agreement agree is reasonable, having regard to the loss suffered and an other relevant circumstances.
- (4) An order under subsection (1) may, so far as required for giving effect to the agreement, include provision for vesting, creating or extinguishing an interest in property.
- (5) Where there is more than one item of associated property or more than one excepted joint owner, the total amount to be paid under subsection (1), and the part of that amount which is to be provided by each person who holds associated property or is an excepted joint owner, is to be agreed between both and the person who applied for the order under section 29H.
- (6) An amount received under an order under subsection (1) must be applied —
- (a) first, in payment or reimbursement of reasonable costs incurred in storing or insuring the forfeitable property and any associated property whilst detained;
 - (b) second, in payment by the Court, into the Fund.

Default of agreement with respect to associated and joint property

29K.—(1) The Court may, if it thinks it is just and equitable, make an order providing for —

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

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

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

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

(4) Where the Court is satisfied that —

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

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

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

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

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

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

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

- (a) made before the end of the period of thirty days commencing on the date on which the order was made;

(b) by way of rehearing by the Court which may make any order that it considers appropriate.

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

Realization of property forfeited

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

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

(a) before the end of the period within which an appeal is made; or

(b) if an appeal is made within that period, before the appeal is determined or otherwise disposed.

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

Application of realized proceeds relating to property forfeited

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

(a) first, in making any payment required to be made under section 29K;

(b) second, in payment or reimbursement of reasonable costs incurred in storing or insuring the property whilst detained and in realizing the property; and

(c) third, any balance after payments made under paragraphs (a) and (b) must be paid by the Court into the interest bearing account under section 49B(1).

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

Application for release of property

29O.—(1) A person who claims that property detained, or any part of it, belongs to him or her may make an application to the Court for the property or part of the property to be released.

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

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

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

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

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

Compensation relating to property detained

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

(2) Where the Court is satisfied that the applicant has suffered loss as a result of the detention of the property and that the

circumstances are exceptional, and the Court may order compensation to be paid to the applicant.

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

Account freezing order

Application for an account freezing order

29Q.—(1) The Director of Public Prosecutions may make an application to the Court for an account freezing order in relation to an account in which the money is held if a police officer not below the rank of corporal or a financial investigator of the Financial Intelligence Authority has reasonable grounds for suspecting that money held in an account maintained with a financial institution —

(a) is recoverable property; or

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

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

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

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

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

Minimum amount to be seized in an account freezing order

29R.—(1) The minimum amount to be seized in an account freezing order is Ten Thousand Eastern Caribbean Dollars.

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

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

Making an account freezing order

29S.—(1) The Court may make an account freezing order if satisfied that there are reasonable grounds for suspecting that money held in the account whether all or part of the credit balance of the account —

(a) is recoverable property; or

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

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

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

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

Variation and setting aside of an account freezing order

29T.—(1) The Court may vary or set aside an account freezing order on an application made by —

(a) the Director of Public Prosecutions; or

(b) any person affected by the account freezing order.

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

Stay on proceedings relating to an account freezing order

29U.—(1) Where a Court in which proceedings are pending in respect of an account maintained with a financial institution is satisfied that an account freezing order has been applied for or made in respect of the account, the Court may stay the proceedings or allow the proceedings to continue on any terms the Court thinks fit.

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

Exclusions

29V.—(1) The power to vary an account freezing order includes the power to make exclusions from the prohibition on making withdrawals or payments from the account to which the order applies.

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

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

(a) to meet the person's reasonable living or legal expenses;
or

(b) to carry on a trade, business, profession or occupation.

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

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

(a) is limited to reasonable legal expenses that the person has reasonably incurred or that the person reasonably incurs;

(b) specifies the total amount that may be released for legal expenses in pursuance of the exclusion.

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

Account forfeiture notice and lapse of an account forfeiture notice

Account forfeiture notice

29W.—(1) Where an account freezing order made by the Court has effect, a police officer or a financial investigator of the

Financial Intelligence Authority shall issue an account forfeiture notice for the purpose of forfeiting money if satisfied that the money —

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

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

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

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

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

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

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

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

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

Lapse of account forfeiture notice

29X.—(1) An account forfeiture notice lapses if —

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

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

(3) Where within the seventy-two hour period an application is made —

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

the order continues to have effect until the relevant time.

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

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

(5) Where within the seventy-two hour period it is decided that no application is made under subsection (3), a police officer

or financial investigator of the Financial Intelligence Authority shall, as soon as possible, notify the financial institution with which the account is maintained of that decision.

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

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

Forfeiture order

29Y.—(1) Where an account freezing order has effect, an application for the forfeiture of money held in the frozen account may be made to the Court by a police officer or financial investigator of the Financial Intelligence Authority.

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

(a) is recoverable property; or

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

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

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

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

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

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

Application to set aside a forfeiture order

29Z.—(1) A person aggrieved by the forfeiture of money may make an application to the Court for an order setting aside the forfeiture of the money or any part of the money.

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

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

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

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

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

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

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

Payment and non-payment of money forfeited into the Fund

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

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

- (a) before the end of the period within which an application to set aside the order under section 29Z may be made; or

- (b) if an application is made within the period under paragraph (a), before the application is determined or otherwise disposed.

Appeal against decision on forfeiture of money

Appeal against decision on forfeiture of money

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

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

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

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

Continuation of account freezing order pending appeal

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

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

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

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

- (a) the end of the period of seventy-two hours starting with the making of the order under subsection (2); or

- (b) if within the period specified under paragraph (a) an appeal is brought against the decision under subsection (2), the time when the appeal is determined or otherwise disposed.

Compensation

Compensation relating to an account freezing order

29DD.—(1) This section applies if —

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

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

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

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

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

Amendment of section 31

14. Section 31 of the principal Act is amended —

(a) in subsection (2) —

(i) under paragraph (b), by deleting the full stop and by substituting a semicolon and the word “or” ,

(ii) by inserting immediately after paragraph (b), the following new paragraph (c) —

“(c) enabling a person to carry on a trade, business, profession or occupation.”;

(b) by inserting immediately after subsection (2), the following new subsections (2A), (2B) and (2C) —

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

—

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

(b) to realizable property transferred to the person specified in the restraining order after the restraining order is made.

(2B) A restraining order under subsection (1) does not affect property subject to a charging order under another enactment.

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

Insertion of new sections 31A, 31B, 31C, 31D, 31E, 31F, 31G, 31H, 31I and 31J

15. The principal Act is amended by inserting immediately after section 31, the following new sections 31A, 31B, 31C, 31D, 31E, 31F, 31G, 31H, 31I and 31J —

“Hearsay evidence

31A.—(1) Evidence shall not be excluded on the ground that it is hearsay, of whatever degree, in proceedings —

(a) for a restraining order;

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

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

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

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

31B.—(1) Where the Director of Public Prosecutions has applied for a restraining order, he or she shall be treated as a person interested in land, lease or charge to which the application relates, or to which a restraining order made on the application relates, and he or she may make an application to the Registrar of Lands to prohibit or restrict dealings with the land, lease or charge.

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

Appointment of management receiver

31C.—(1) Where the Court makes a restraining order, it may, on the application of the Director of Public Prosecutions, whether as part of the application for the restraining order or at any time afterwards, appoint a management receiver in respect of any realizable property to which the restraining order applies.

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

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

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

(4) The Court —

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

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

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

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

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

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

Effect of restraining order

31D.—(1) Where a restraining order is made, or a management receiver is appointed, no distress may be levied against any realizable property to which the order applies except with the leave of the Court and subject to any terms the Court imposes.

(2) Where the restraining order applies to, or the management receiver is appointed in respect of, a tenancy of any premises, a landlord or other person to whom rent is payable may not exercise a right of

forfeiture by peaceable re-entry in relation to the premises in respect of any failure by the tenant to comply with any term or condition of the tenancy, except with the leave of the Court and subject to any terms the Court imposes.

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

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

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

Application of proceeds of realization and other sums

31E.—(1) Subject to subsection (2), the following sums in the hands of a management receiver, that is —

- (a) the proceeds of the realization of any property; and
- (b) any other sums in which the defendant holds an interest, shall, after the payment, if any, as the Court directs have been made out of those sums, be applied on the defendant's behalf towards the satisfaction of the confiscation order.

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

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

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

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

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

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

Further provisions with respect to a management receiver

31F.—(1) Where a management receiver —

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

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

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

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

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

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

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

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

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

Winding up of company holding realizable property

31H.—(1) Where realizable property is held by a company and an order for the winding up of the company has been made or a resolution has been passed by the company for the voluntary winding up, the functions of the liquidator are not exercisable in relation to —

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

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

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

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

Compensation relating to proceedings instituted for an offence

31I.—(1) Where proceedings are instituted against a person for an offence to which this Act applies and —

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

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

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

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

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

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

Enforcement abroad: restraining order

31J.—(1) Where the Director of Public Prosecutions believes that realizable property is situated in a country or territory outside Saint Lucia, the Director of Public Prosecutions shall send a request for assistance to the Attorney General for it to be forwarded under this section.

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

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

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

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

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

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

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

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

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

Insertion of new sections 40A, 40B, 40C, 40D, 40E, 40F, 40G, 40H, 40I, 40J, 40K, 40L, 40M, 40N, 40O, 40P, 40Q, 40R, 40S, 40T, 40U, 40V, 40W, 40X, 40Y and 40Z

16. The principal Act is amended by inserting immediately after section 40, the following new sections 40A, 40B, 40C, 40D, 40E, 40F, 40G, 40H, 40I, 40J, 40K, 40L, 40M, 40N, 40O, 40P, 40Q, 40R, 40S, 40T, 40U, 40V, 40W, 40X, 40Y and 40Z —

Application for a restraining order by an overseas authority

40A.—(1) The Court may, on the application of the Director of Public Prosecutions on behalf of an overseas authority, make a restraining order where the Court is satisfied that —

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

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

Restraining order with respect to an external request

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

(2) A restraining order —

- (a) may make provision —
 - (i) for reasonable living expenses and reasonable legal expenses in connection with the proceedings seeking a restraint order or the registration of an external order, and
 - (ii) for the purpose of enabling a person to carry on a trade, business, profession or occupation; and
- (b) may be made subject to conditions as the Court considers fit.

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

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

Discharge and variation of a restraining order

40C.—(1) An application to discharge or vary a restraining order may be made to the Court by —

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

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

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

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

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

Appeals relating to a restraining order

40D.—(1) Where, on an application for a restraining order, the Court decides not to make a restraining order, the Director of Public Prosecutions may make an appeal to the Court of Appeal against the decision.

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

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

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

Seizure of property subject to restraining order

40E.—(1) Where a restraining order is in force, a law enforcement officer may seize any property which is specified in the restraining order to prevent its removal from Saint Lucia.

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

Hearsay evidence in proceedings with respect to a restraining order

40F.—(1) Without prejudice to the Evidence Act, Cap. 4.15, evidence shall not be excluded in proceedings for a restraining order on the ground that it is hearsay evidence.

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

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

Appointment of receiver relating to a restraining order

40G.—(1) Where the Court makes a restraining order, on the application of the Director of Public Prosecutions, the Court may by order appoint a receiver in respect of any property which is specified in the restraining order.

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

- (a) the power to take possession of the property;
- (b) the power to manage or otherwise deal with the property;
- (c) the power to start, carry on or defend any legal proceedings in respect of the property;
- (d) the power to realize so much of the property as is necessary to meet the receiver's remuneration and expenses;
- (e) the power to enter premises in Saint Lucia and to do any of the following —

- (i) search for or inspect anything authorized by the Court,
 - (ii) make or obtain a copy, photograph or other record of anything so authorized under subparagraph (i),
 - (iii) remove anything which the receiver is required or authorized to take possession of pursuant to an order of the Court;
- (f) the power to order —
- (i) any person who has possession of property which is specified in the restraining order to give possession of the property to the receiver,
 - (ii) a person holding an interest in property which is specified in the restraining order to make to the receiver such payment as the Court specifies in respect of a beneficial interest held by the defendant or the recipient of a tainted gift,
 - (iii) to transfer, grant or extinguish an interest in the property.
- (3) The Court may by order authorize the receiver to do one or more of the following for the purpose of the exercise of his or her powers —
- (a) hold property;
 - (b) enter into contracts;
 - (c) sue and be sued;
 - (d) employ agents;
 - (e) execute powers of attorney, deeds or other instruments;
 - (f) take other steps the Court thinks appropriate.
- (4) The Court shall not, unless it gives persons holding interests in the property a reasonable opportunity to make a representation to it —
- (a) confer the power under subsection (2)(b) or (d) in respect of property; or
 - (b) exercise the power conferred on it under subsection (2)(f) (ii) and (iii) in respect of property.

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

(a) is perishable; or

(b) ought to be disposed of before its value diminishes.

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

Restrictions relating to a restraining order

40H.—(1) Where the Court makes a restraining order —

(a) no distress may be levied against any property which is specified in the restraining order except with the leave of the Court and subject to any terms the Court imposes; and

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

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

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

(a) the Director of Public Prosecutions; and

(b) a receiver appointed in respect of the property.

External Orders

Application to give effect to an external order

40I.—(1) The Director of Public Prosecutions may make an application to the Court, on behalf of an overseas authority, to give effect to an external order in Saint Lucia.

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

Conditions for Court to give effect to an external order

40J.—(1) The Court shall give effect to an external order by registering the external order where it is satisfied that —

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

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

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

Registration of an external order

40K.—(1) Where the Court decides to give effect to an external order, it shall —

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

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

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

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

- (a) in the case of an order for the recovery of a sum of money specified in the external order, by payment of the amount due under the external order;

- (b) in the case of an order for the recovery of specified property, by the surrender of the property; or
- (c) by any other means.

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

Appeal to Court of Appeal relating to an external order

40L.—(1) Where on application for the Court to give effect to an external order by registering it, the Court decides not to do so, the Director of Public Prosecutions may make an appeal to the Court of Appeal against the decision of the Court.

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

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

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

Sums in currency other than dollars

40M.—(1) This section applies where the external order which is registered specifies a sum of money.

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

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

Time for payment under an external order

40N.—(1) This section applies where the external order is for the recovery of a specified sum of money.

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

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

(a) within a specified period;

(b) on terms the Court considers fit.

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

(a) must begin with the date on which the external order is made; and

(b) must not exceed three months.

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

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

(a) must start with the date on which the notice was delivered to the person affected by the external order or the date under subsection (3); and

(b) must not exceed six months.

(7) An order under subsection (5) —

(a) may be made after the end of the specified period; and

(b) must not be made after the end of the extended period.

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

Appointment of receiver relating to an external order

40O. Where an external order is registered, is not satisfied, and, in the case of an external order for the recovery of a specified sum of money, any period specified by the external order has expired, the Court, on the application of the Director of Public Prosecutions may appoint a receiver in respect of —

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

Powers of a receiver with respect to a monetary external order

40P.—(1) Where the Court appoints a receiver, it may, on the application of the Director of Public Prosecutions, where the external order is for the recovery of a specified sum of money, by order, confer on the receiver the following powers in relation to any realizable property —

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

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

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

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

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

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

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

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

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

(7) The Court —

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

(8) The Court shall not —

- (a) confer the power under subsection (1)(b) or (c) in respect of property; or

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

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

(a) is perishable; or

(b) ought to be disposed before its value diminishes.

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

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

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

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

(a) power to take possession of the property;

(b) power to manage or otherwise deal with the property;

(c) power to realize the property, in such manner as the Court specifies;

(d) power to start, carry on or defend any legal proceedings in respect of the property.

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

(a) search for or inspect anything authorized by the Court;

(b) make or obtain a copy, photograph or other record of anything so authorized under paragraph (a); and

(c) remove anything which the receiver is required or authorized to take possession of pursuant to an order of the Court.

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

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

(5) The Court may order any person who has possession of the specified property to give possession of it to the receiver.

(6) The Court —

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

(7) The Court shall not —

- (a) confer the power under subsection (2)(b) or (c) in respect of property; or
- (b) exercise the power conferred on it under subsection (6) in respect of property, unless it gives persons holding interests in the property a reasonable opportunity to make a representation to it.

(8) Subsection (7)(a) does not apply to property which —

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

(9) The Court may order that a power conferred by an order under this section is subject to such conditions and exceptions as it specifies.

Application of sums by a receiver

40R.—(1) This section applies to sums which are in the hands of a receiver appointed if the sums are —

- (a) the proceeds of the realization of property;
- (b) sums, other than the sums under paragraph (a) in which the defendant holds an interest.

(2) The sums under subsection (1) must be applied —

- (a) first, to make any payments directed by the Court; and
- (b) second, on the defendant's behalf towards satisfaction of the external order.

(3) Where the amount payable under the external order has been fully paid and any sums remain in the receiver's hands he or she shall distribute the sums —

- (a) among such persons who held interests in the property as the Court directs; and
- (b) in such proportions as the Court directs.

(4) Before making a direction under subsection (3)(a) the Court shall give persons who hold interests in the property a reasonable opportunity to make a representation to it.

(5) For the purposes of subsections (3) and (4) the property is —

- (a) the property represented by the proceeds under subsection (1)(a);
- (b) the sums under subsection (1)(b).

(6) The receiver applies sums under subsection (2) by paying the sums to the Director of Public Prosecutions on account of the amount payable under the order.

Sums received by the Director of Public Prosecutions

40S.—(1) Where the Director of Public Prosecutions receives sums on account of the amount payable under a registered external order or the value of the property specified in the order, his or her receipt of the sums reduces the amount payable under

the order, and he or she shall apply the sums received in payment of the remuneration and expenses of a receiver appointed by the Court.

(2) Sums which remain after the Director of Public Prosecutions has made any payments under subsection (1) must be paid into the Fund.

Satisfaction of an external order

40T.—(1) A registered external order is satisfied when no amount is due under the external order.

(2) Where an external order authorizes the recovery of property specified in it, no further amount is due under the external order when all of the specified property has been sold.

Restrictions relating to a receiver with respect to realizable property

40U.—(1) Where the Court makes an order appointing a receiver in respect of any realizable property or specified property —

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

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

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

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

- (a) the Director of Public Prosecutions; and
- (b) the receiver, if the order under section 40N has been made.

Protection of a receiver

40V. Where a receiver —

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

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

Application by a receiver for directions in exercise of powers

40W.—(1) A receiver may make an application to the Court for an order giving directions as to the exercise of his or her powers.

(2) The following persons may apply to the Court —

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

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

Discharge and variation of an order to appoint a receiver

40X.—(1) An application to the Court to vary or discharge an order appointing a receiver may be made by —

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

- (2) On an application under this section, the Court may —
- (a) vary the order; or
 - (b) discharge the order; or

Discharge of a receiver

40Y.—(1) Where a receiver is appointed in respect of property which is identified in the restraining order, and the Court appoints another receiver the Court shall order the first receiver to transfer to the second receiver all property held by him or her by virtue of the powers conferred on him or her.

(2) Where the first receiver complies with an order under subsection (1), he or she is discharged.

Appeal to Court of Appeal with respect to a receiver

40Z.—(1) Where, on an application for an order under sections 40P, 40Q and 40X the Court decides not to make an order, the person who applied for the order may appeal to the Court of Appeal against the decision.

(2) Where the Court makes an order under subsection (1), the following persons may appeal to the Court of Appeal in respect of the Court’s decision —

- (a) the person who applied for the order in respect of which the application was made;
- (b) a person affected by the Court’s decision; and
- (c) the receiver.

(3) On an appeal under this section the Court of Appeal may —

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

Amendment of section 42

17. Section 42 of the principal Act is amended by inserting immediately after subsection (2), the following new subsections (3) and (4) —

“(3) Documents produced in compliance with a production order may be retained for as long as it is necessary to retain it in

connection with the investigation for the purposes of which the order was made.

(4) Where a police officer has reasonable grounds for believing that —

(a) documents may need to be produced for the purposes of legal proceedings; and

(b) documents may become unavailable for the purposes under paragraph (a),

the documents may be retained until the proceedings are concluded.”.

Amendment of section 47

18. Section 47 of the principal Act is amended by inserting immediately after subsection (9) the following new subsection (10) —

“(10) An account monitoring order has effect irrespective of any restriction on the disclosure of information.”.

Insertion of new Part 3A

19. The principal Act is amended by inserting immediately after Part 3 the following new Part 3A —

“PART 3A
ANTI-CRIME INITIATIVE
Property Disposal Committee

Interpretation for this Part

59A. In this Part, “an applicant” means the —

(a) Attorney General;

(b) Director of Public Prosecutions;

(c) Commissioner of Police;

(d) Comptroller of Customs;

(e) the Director of the Financial Intelligence Authority.

Appointment of the Committee

59B. The Attorney General may, with the approval of Cabinet, appoint persons as members of a Property Disposal Committee.

Composition of the Committee

59C. The Committee comprises —

- (a) a representative of and nominated by the Attorney General;
- (b) a representative of and nominated by the Minister responsible for national security;
- (c) the Director of the Financial Intelligence Authority or his or her nominee.

Functions of the Committee

59D. The functions of the Committee are to —

- (a) review an application referred to it under section 59O;
- (b) make a recommendation under section 59Q;
- (c) report on the number of applications reviewed under section 59T;
- (d) perform any other function assigned by the Attorney General.

Powers of the Committee

59E.—(1) The Committee has the power to do all things necessary or convenient for or in connection with the performance of its functions.

(2) Without limiting the generality of subsection (1), the Committee has the power to —

- (a) require an applicant to undertake an interview;
- (b) co-opt a person to attend a meeting of the Committee.

Temporary appointment of members on the Committee

59F.—(1) Where a person under section 59C is unable to perform his or her functions, the Attorney General may, with the approval of Cabinet, appoint a temporary member on the Committee.

(2) A person appointed must have qualifications and experience in —

- (a) finance;
- (b) crime prevention;

- (c) public administration; or
- (d) law enforcement.

Disqualification of a member of the Committee

59G. A person is disqualified from being a member of the Committee if he or she —

- (a) is declared by a court to be a bankrupt;
- (b) is declared by a court to be physically or mentally incapacitated;
- (c) has been convicted of a criminal offence, except where the offence is a minor traffic offence or has been spent under the Criminal Records (Rehabilitation of Offenders) Act, Cap. 3.13;
- (d) breaches the Oath or Affirmation of Secrecy under section 59M.

Chairperson and Deputy Chairperson

59H.—(1) The Attorney General shall designate a member of the Committee as the Chairperson.

(2) The members of the Committee shall, at the first meeting of the Committee, designate a person from the members of the Committee as the Deputy Chairperson.

(3) Where the Chairperson is absent, the Deputy Chairperson shall have all the powers of the Chairperson.

Tenure of the Committee

59I.—(1) The Committee is appointed for a term of two years.

(2) The Attorney General may, with the approval of Cabinet, renew the appointment of a member of the Committee.

(3) The Attorney General shall, by Notice published in the *Gazette*, provide the names of the members of the Committee as first constituted and any changes to the members of the Committee.

Meetings of the Committee

59J. The Committee shall meet at least once a month and at other times as may be necessary or expedient at a place and time and on a date as the Chairperson determines.

Secretary

59K.—(1) The Chairperson shall, with the approval of the Attorney General, appoint a person other than a member of the Committee to be the Secretary of the Committee.

(2) The Secretary shall keep minutes of each meeting of the Committee, which must be confirmed by the Committee at a subsequent meeting.

(3) A copy of the confirmed minutes of each meeting of the Committee must be submitted to the Attorney General.

Committee to regulate its own procedure

59L. Subject to this Act, the Committee shall regulate its own procedures.

Oath of secrecy and confidentiality

59M.—(1) A member of the Committee, the Secretary or a person co-opted by the Committee shall —

- (a) take the prescribed Oath or Affirmation of Secrecy;
- (b) not disclose —
 - (i) the documents that he or she may come into possession of; or
 - (ii) the information that he or she may have knowledge of as a result of performing a function under this Act.

(2) A member of the Committee, the Secretary or a person co-opted by the Committee who contravenes subsection (1)(b), commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding six months or to both.

*Application for Money to Execute an Anti-Crime Initiative***Application for money from the Fund to execute an anti-crime initiative**

59N.—(1) An applicant may make an application, in writing, to the Attorney General for money from the Fund to execute an anti-crime initiative.

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

(a) contain information regarding —

(i) the name of the Government Agency proposing the anti-crime initiative,

(ii) the person responsible for undertaking the anti-crime initiative,

(iii) a description of the proposed anti-crime initiative, including —

(A) the purpose;

(B) the intended benefit;

(C) the persons involved and level of participation;

(D) the cost to be incurred;

(b) be supported by evidence regarding the cost of the proposed anti-crime initiative, including, a quotation or invoice.

(3) An applicant is responsible for the accuracy of the information disclosed in an application under subsection (1).

Referral of an application to the Committee

59O. On receipt of an application, the Attorney General shall refer the application to the Committee for consideration.

Consideration of an application by the Committee

59P. In considering an application under section 59N, the Committee shall review and assess the application to determine if the application is for an anti-crime initiative.

Recommendation of the Committee

59Q.—(1) The Committee shall, after considering an application under section 59P, make a recommendation to the Attorney General to approve of an application or refuse an application.

(2) A recommendation under subsection (1) must be accompanied by the confirmed minutes of the meeting of the Committee.

(3) A recommendation made by the Committee is not binding on the Attorney General and may be considered by the Attorney General in making a decision for the purpose of providing funding for an anti-crime initiative.

Approval of an application

59R.—(1) The Attorney General may, within thirty days of receipt of the recommendation of the Committee under section 59Q, approve an application.

(2) The Attorney General shall notify an applicant of his or her decision to approve an application in writing.

Refusal of an application

59S.—(1) The Attorney General may, within thirty days of receipt of the recommendation of the Committee under section 59Q, refuse an application.

(2) The Attorney General shall notify the applicant of his or her decision to refuse of an application and give reasons for the refusal in writing.

Reporting requirements

59T.—(1) The Committee shall submit a report to the Permanent Secretary of the Attorney General's Chambers.

(2) A report under subsection (1) must include —

- (a) the number of applications reviewed and considered;
- (b) the number of applications with a recommendation for approval;
- (c) the number of applications with a recommendation for refusal.

(3) The Permanent Secretary of the Attorney General’s Chambers shall, at the end of each month submit to the Attorney General, a report on all applications reviewed by the Committee.”.

Insertion of new section 64A

20. The principal Act is amended by inserting immediately after section 64 the following new section 64A —

“Guidelines

64A. The Attorney General may issue guidelines for giving effect to Part 3A.”.

Repeal of the Schedule

21. The principal Act is amended by deleting the Schedule.

Amendment of the principal Act

22. The principal Act is amended by deleting the words “a criminal conduct” wherever the words appear in the Act and by substituting the words “criminal conduct”.

Passed in the House of Assembly this 19th day of July, 2023.

CLAUDIUS J. FRANCIS,
Speaker of the House of Assembly.

Passed in the Senate this 20th day of July, 2023.

ALVINA REYNOLDS,
President of the Senate.