

COMMONWEALTH OF DOMINICA

ACT NO. 2 OF 2014

I assent**CHRALES A. SAVARIN**
*President*31st March, 2014**AN ACT TO AMEND THE PROCEEDS OF CRIME
ACT, CHAP. 12:29.***(Gazetted 3rd April, 2014.)*BE IT ENACTED by the Parliament of the Commonwealth of
Dominica as follows:**1.** This Act may be cited as the -

Short title.

PROCEEDS OF CRIME (AMENDMENT) ACT, 2014.**2.** In this Act, the Proceeds of Crime Act is referred to as
“the Act”.Interpretation.
Chap. 12:29.

Amendment of section 2.

3. Section 2 of the Act is amended -

(a) by inserting the following definitions in the proper alphabetical order -

““cash” includes coins, notes in any currency, postal orders, travellers cheques, bank drafts, and other negotiable instruments;

“Code of Practice” means the Anti-money Laundering and Suppression of Financing of Terrorism Code of Practice issued under section 60(1);

“document” includes any map, diagram, photograph, film, microfilm, video-tape, sound recording, any machine readable record and any transaction record which is capable of being produced from a machine-readable record by means of equipment or a programme, or a combination of both;

“money” includes cash;” and

(b) by deleting the definition of “financial institution” and substituting therefor the following -

““financial institution” means a person -

(a) whose regular occupation or business is the carrying on of any financial activity listed in Part I of Schedule II; or

(b) that is engaged in a relevant non-financial business activity listed in Part II of Schedule II;”.

Amendment of section 59A.

4. Section 59A of the Act is amended by inserting the following new subsections (4) and (5) after subsection (3):

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

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

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

5. The Act is amended by inserting the following new sections 59NNA to 59NNF immediately after section 59NN:

Insertion of new sections
59NNA to 59NNF.

Scope of
Powers.

59NNA (1) Subject to subsection (2), the Court may make an order under this Part -

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

(2) The Court shall not make an order in respect of property that is outside Dominica unless there is or has been a connection between the case and Dominica.

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

Enforcement
abroad before
recovery
order:
Attorney
General.

59NNB (1) This section applies if -

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

(2) The property freezing conditions are the conditions in section 59M(4) and for the purposes of this subsection, the references in those provisions to property to which the application for the order relates are to be read as references to the property mentioned in subsection (1)(a).

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

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

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

- (a) to secure that any person is prohibited from dealing with the property;

- (b) for assistance in connection with the management of the property, including with securing its detention, custody or preservation.

Enforcement
abroad before
recovery order:
receiver.

59NNC (1) This section applies if -

- (a) a property freezing order made by the Court has effect in relation to property; and
- (b) the receiver appointed under section 59Q in respect of the property believes that it is in a country outside Dominica (the receiving country).

(2) This section also applies if -

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

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

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

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

country -

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

Evidence
overseas:
interim
receiver.

59NND (1) This section applies if -

- (a) an interim receiving order made by the Court has effect in relation to property; and
- (b) the order requires the interim receiver to take steps to establish a matter described in section 59U(2)(a), (b) or (c) .

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

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

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

(4) The assistance that may be requested under

this section is assistance in obtaining, from a country outside Dominica, relevant evidence specified in the request.

(5) Relevant evidence is evidence as to a matter described in section 59U(2)(a), (b) and (c) .

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

- (a) to a court or tribunal which is specified in the request and which exercises jurisdiction in the place where the evidence is to be obtained;
- (b) to the government of the country concerned; or
- (c) to an authority recognised by the government of the country concerned as the appropriate authority for receiving requests for assistance of that kind.

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

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

(9) In this section and section 59NNE, “evidence” includes documents, information in any other form and material.

Evidence
overseas:
restrictions on
use.

59NNE (1) This section applies to evidence obtained by means of a request for assistance under section 59NND.

(2) Subject to subsection (4) the evidence must not be used for any purpose other than -

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

(3) The property referred to in subsection (2) is -

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

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

Enforcement
abroad: after
recovery order.

59NNF (1) This section applies if -

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

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

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

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

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

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

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

- (a) that property has been realised in

pursuance of a request under this section;

- (b) the date of realisation; and
- (c) the proceeds of realisation.”.

Amendment of Part IV.

6. Part IV of the Act is amended by -

- (a) renumbering section 60 as section 60B; and
- (b) inserting immediately before section 60B the following new sections as sections 60 and 60A:

“Issuing of
Code of Practice
Act No. 18 of
2008.
Act No. 18
of 2011.

Act No. 3 of
2003.

60. (1) Without prejudice to anything that may be contained in the Financial Services Unit Act 2008, the Money Laundering (Prevention) Act 2011 and Regulations made thereunder or the Suppression of the Financing of Terrorism Act 2003, the Minister of Finance may, on the recommendation of the Financial Services Unit, issue a Code of Practice for the purpose of -

- (a) giving practical guidance on issues relating generally to money laundering and the financing of terrorism;
- (b) providing guidance regarding adherence to the requirements of this Act and any other enactment relating to money laundering and the financing of terrorism;
- (c) preventing, detecting and dealing with money laundering and terrorist financing activities;
- (d) implementing, consistent with the provisions of this Act and any other

enactment relating to money laundering and terrorist financing, internationally established standards for the prevention and detection of money laundering and terrorist financing activities; and

- (e) providing such other things as are necessary, relevant or incidental to the matters outlined in paragraphs (a) to (d).

(2) The Financial Services Unit shall, prior to making recommendations to the Minister under subsection (1), consult with the Joint Anti-Money Laundering and Suppression of Terrorist Financing Advisory Committee established under section 60A.

(3) A Code of Practice issued pursuant to subsection (1) shall apply to -

- (a) persons that are regulated by the Unit;
- (b) persons not regulated by the Unit but are identified by the Caribbean Financial Action Task Force and the Financial Action Task Force as forming a link in the fight against money laundering and the financing of terrorism;
- (c) persons (whether public or private), not falling under paragraph (b), that are not regulated by the Unit but which the Unit designate, by a Notice published in the *Gazette*, as vulnerable to activities of money laundering and the financing of terrorism; and
- (d) professionals who may be engaged in preparing or carrying out transactions

for their clients concerning -

- (i) the buying and selling of real estate;
- (ii) managing client monies, securities or other assets;
- (iii) the management of bank , savings or securities accounts;
- (iv) the organisation of contributions for the creation, operation or management of companies;
- (v) the creation, operation or management of legal person or arrangements;
- (vi) the buying and selling of business entities; and
- (vii) any other activity relating or incidental to any of the matters outlined in subparagraphs (i) to (vi).

(4) A Code of Practice issued pursuant to subsection (1) shall -

- (a) be published in the *Gazette*; and
- (b) be subject to a negative resolution of the House.

(5) Where a person fails to comply with or contravenes a provision of a Code of Practice, the

person commits an offence and is liable on summary conviction to a fine not exceeding one hundred and fifty thousand dollars or to a term of imprisonment not exceeding two years or both.

(6) Where a body corporate commits an offence under subsection (5), every director, partner or other senior officer of the body corporate shall, subject to subsection (7), be proceeded against as if the director, partner or other senior officer committed the offence and is liable on summary conviction to the penalty prescribed in subsection (5).

(7) A director, partner or other senior officer of a body corporate does not commit an offence under subsection (6) if the director, partner or other senior officer can show that he neither knew nor connived in the commission of the offence.

(8) Notwithstanding subsection (5), a Code of Practice may in specific cases of noncompliance with or contravention of the provisions of the Code of Practice create offences and impose penalties to be enforced by the Unit as administrative penalties, but no penalty imposed shall exceed seventy-five thousand dollars.

(9) An administrative penalty collected by the Unit by virtue of subsection (8) shall be paid into the Asset Forfeiture Fund established under section 36 (1) of the Money Laundering (Prevention) Act 2011.

Act No. 8 of
2011.

Joint Anti-
Money
Laundering and
Suppression of
Terrorist
Financing
Advisory
Committee

60A. (1) The Anti-Money Laundering Advisory Committee established under section 15(1) of the Money Laundering (Prevention) Act 2011 and referred to in section 9A of the Suppression of the Financing of Terrorism Act, 2003 is established as the Joint

Anti-Money Laundering and Suppression of Terrorist Financing Advisory Committee.

(2) The Committee shall have the responsibility of advising the Unit on initiatives for the prevention and detection of money laundering and terrorist financing activities in order to -

- (a) ensure the stability of the financial sector of the State;
- (b) assist the Unit in formulating an appropriate approach in developing a Code of Practice under section 60;
- (c) keep persons, whether or not regulated by the Unit but considered essential to the State's fight against money laundering and terrorist financing activities, compliant with anti-money laundering and suppressing of terrorist financing measures established locally, regionally and internationally; and
- (d) keep the State attuned to developments on international cooperation as they relate or are incidental to anti-money laundering and terrorist financing activities.

(3) The Committee may on its own motion provide such other advice as it considers essential to the State's efforts to effectively combat money laundering and terrorist financing activities.

(4) The Committee may make its own rules of procedure.

Act No. 18 of
2008.

(5) For the purpose of sections 60 and this section, “Unit” means the Financial Services Unit established under section 3 of the Financial Services Unit Act 2008.”.

7. Part V of the Act is amended by inserting immediately after section 72 the following new section as section 72A:

Amendment of Part V.

“Trusts and
non-profit
organisations.

72A. (1) For the purpose of preventing misuse of trusts and non-profit organisations for money laundering and terrorist financing, the Attorney General may, by Regulations, provide for -

- (a) the designation of a person or body as the registration and supervisory body for trusts and non-profit organisations;
- (b) the functions, duties and powers of the Trusts and Non-Profit Organisation Supervisor, including with respect to supervision, the gathering of information and the disclosure of information to the Money Laundering Supervisory Authority and law enforcement authorities in Dominica;
- (c) the registration of trusts and non-profit organisations including the submission, by electronic means or otherwise, of particulars of incorporation respecting non-profit companies to the Trusts and Non-Profit Organisation Supervisor;
- (d) enforcement actions that may be taken by the Trusts and Non-Profit Organisation Supervisor for failure by a trust or non-profit organisation to comply with the Regulations and the Code of Practice;

- (e) the maintenance of records by trusts and non-profit organisations;
- (f) the monitoring by the Trusts and Non-Profit Organisation Supervisor of the compliance of trusts and non-profit organisations with the Regulations and the Code of Practice; and
- (g) the circumstances in which the Trusts and Non-Profit Organisation Supervisor may conduct, or employ an examiner to conduct, an investigation of a trust or a non-profit organisation.

(2) Regulations made under this section -

- (a) may provide for the exemption of trusts or non-profit organisations from the application of this Act;
- (b) shall be subject to negative resolution of the House.

(3) The Minister may make regulations prescribing penalties to be imposed on summary conviction for contravention of a regulation made under this section and a penalty prescribed shall not exceed a fine of fifty thousand dollars .

(4) For the purposes of this section -

“non-profit company” has the meaning assigned to it in section 326 of the Companies Act, 1994;

Act No. 21 of 1994.

“non-profit organisation” means a legal person

or an arrangement or an organisation that primarily engages in raising or disbursing funds for purposes such as charitable, religious, cultural, educational, social, fraternal purposes, or for the carrying out of works of a similar nature;

“Trusts and Non-Profit Organisation Supervisor” means the person or body designated as Supervisor for trusts and non-profit organisations by Regulations made under paragraph (2)(a); and

“organisation” includes -

- (a) persons acting as trustees of a trust;
- (b) a body of persons (whether incorporated or corporated);
- (c) any legal entity; and
- (d) any structure or arrangement equivalent or similar to a structure or an arrangement referred to in paragraph (a), (b), (c) or (d).”.

8. The Act is amended in sections 47(7) and 52 by deleting the words “sections 60” appearing before the words “and 61” and substituting the words “sections 60B”.

Amendment of Part V.

9. Schedule II to the Act is repealed and the following is substituted therefor:

Repeal and replacement of Schedule II.

“SCHEDULE II

*ACTIVITIES OF FINANCIAL INSTITUTIONS AND
OTHER RELEVANT NON-FINANCIAL BUSINESSES*

PART I

- | | |
|---------------------|---|
| Act No. 16 of 2005. | 1. “Banking business” and “business of a financial nature” as defined in the Banking Act 2005. |
| Act No. 8 of 1996. | 2. “Banking business” as defined in the Offshore Banking Act 1996; |
| | 3. Venture risk capital; |
| | 4. Money transmission services; |
| | 5. Issuing and administering means of payments (e.g. credit cards, travellers’ cheques and bankers’ drafts); |
| | 6. Guarantees and commitments; |
| | 7. Trading for own account of customers in- |
| | <i>(a)</i> money market instruments (e.g. cheques, bills, certificates of deposits, commercial paper, etc); |
| | <i>(b)</i> foreign exchange; |
| | <i>(c)</i> financial and commodity-based derivative instruments(e.g. options, interests rate and Foreign exchange instruments etc); |
| | <i>(d)</i> transferable or negotiable instruments; |
| | 8. Money Broking; |

-
9. Money Lending and Pawning;
 10. Money Exchange (e.g. casa de cambio);
 11. Mutual Funds;
 12. Credit Unions;
 13. Building Societies;
 14. Trust Business;
 15. Insurance Business;
 16. Securities Exchange.

PART II

1. Real Estate Business;
2. Car dealerships;
3. Casinos (gaming houses);
4. Courier services;
5. Jewellery Business;
6. Internet Gaming and wagering services;
7. Management companies;
8. Asset management and advice-custodial services;
9. Nominee service;
10. Registered agents;

11. Any business transaction conducted at a post office involving money orders;
12. Securities brokerage;
13. Telecommunications companies;
14. Utility companies;
15. Dominica Social Security;
16. Inland Revenue Division;
17. Lawyers and accountants when they prepare for or carry out transactions for a client in relation to the following activities -
 - (a) buying and selling of real estate;
 - (b) managing client money, securities or other assets;
 - (c) managing bank, savings or securities accounts;
 - (d) organization of contributions for the creation, operation or management of companies;
 - (e) creation, operation or management of legal persons or arrangements, and buying and selling of business entities.”.

Insertion of Schedule V.

10. The Act is amended by inserting the following new Schedule V after Schedule IV:

“SCHEDULE V

CONNECTION WITH DOMINICA

Unlawful conduct

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

Tainted property

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

Property

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

4. There is a connection where there is other property in Dominica that is recoverable property in relation to the unlawful conduct, or tainted property.

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

Person

6. (1) There is or has been a connection where a person described in subparagraph (2) -

(a) is linked to Dominica;

(b) was linked to Dominica at a time when the property became tainted property;

(c) has been linked to Dominica at any time since the

property became tainted property;

(d) was linked to Dominica at a time when the unlawful conduct, or some of the unlawful conduct, was taking place; or

(e) has been linked to Dominica at any time since that conduct took place.

(2) Those persons are -

(a) a person whose conduct was, or was part of, the unlawful conduct;

(b) a person who was deprived of property by the unlawful conduct;

(c) a person who holds the property in question;

(d) a person who has held the property in question, but only if it was recoverable property in relation to the unlawful conduct, or tainted property, at the time;

(e) a person who holds other property that is recoverable property in relation to the unlawful conduct, or tainted property; or

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

(3) A person is linked to Dominica if the person is -

(a) a citizen of Dominica;

(b) a body incorporated or constituted under the law of Dominica; or

(c) a person domiciled, resident or present in Dominica.

Property held on trust

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

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

(2) A person is linked to Dominica if the person falls within paragraph 6(3).

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

Interpretation

8. In this Schedule "the unlawful conduct" means -

- (a) in a case in which the property in question was obtained through unlawful conduct, that conduct;
- (b) in a case in which the property in question represents property obtained through unlawful conduct, that conduct; or
- (c) in a case in which it is shown that the property in

question was obtained through unlawful conduct of one of a number of kinds or represents property so obtained (see section 59A(5)(b)), one or more of those kinds of conduct.”.

Consequential amendments of the Customs Act and Companies Act. Act No. 20 of 2010. Act No. 21 of 1994.

11. (1) The Customs Act, 2010 is amended in section 2 -

(a) by inserting the following definitions in the proper alphabetical order -

“cash” includes coins, notes in any currency, postal orders, travellers cheques, bank drafts, and other negotiable instruments;” and

(b) by deleting the word “currency” from the definition of “goods” and substituting therefor the word “cash”.

(2) The Companies Act, 1994 is amended in section 328 by inserting the following new subsection (4) immediately after subsection (3) -

“(4) The Registrar shall, immediately upon acceptance for filing of the articles of a non-profit organisation, forward, by electronic means or otherwise, a copy of the articles to the Trusts and NPO Supervisor referred to in section 72A of the Proceeds of Crime Act.”.

Passed in the House of Assembly this 19th day of March, 2014.

VERNANDA RAYMOND (MRS.)
Clerk of the House of Assembly