

COMMONWEALTH OF DOMINICA

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 17.
7. Amendment of section 18.
8. Amendment of section 19.
9. Amendment of section 20.
10. Amendment of section 22.
11. Insertion of new sections 23A and 23B.
12. Amendment of section 30.
13. Amendment of section 31.
14. Insertion of Part IIIA.
15. Repeal and replacement of section 64.
16. Repeal and replacement of section 65.
17. Repeal and replacement of section 66.
18. Repeal and replacement of section 67.
19. Repeal and replacement of section 68.
20. Insertion of new sections 68A to 68F.
21. Amendment of section 70.
22. Amendment of Schedule I.
23. Insertion of new Schedule III and Schedule IV.

COMMONWEALTH OF DOMINICA

ACT No. 7 of 2013

I assent**E.T. WILLIAMS**
*President*21st May, 2013**AN ACT TO AMEND THE PROCEEDS OF CRIME
ACT, CHAP 12:29.***(Gazetted 23rd May, 2013.)*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, 2013.**

Interpretation.
Chap. 12:29.

Amendment of section 2.

2. In this Act “the Act” means the Proceeds of Crime Act .

3. Section 2 of the Act is amended -

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

Act No. 8 of
2011.

““Asset Forfeiture Fund” means the Asset Forfeiture Fund established under section 36 of the Money Laundering (Prevention) Act 2011;

“criminal conduct” means conduct which constitutes an offence or would constitute an offence if it had occurred in Dominica;”

“defendant” means a person convicted of, charged or who is about to be charged with or is being investigated for a scheduled offence;”;

(b) in the definition of “forfeiture order” by deleting the figure “65(1)” and substituting the figure “68A”;

(c) in the definition of “tainted property” by -

(i) deleting the word “or” appearing after the word “offence;” in paragraph (a);

(ii) inserting the word “or” after the word “offence;” in paragraph (b); and

(iii) inserting the following paragraph after paragraph (b)-

“(c) property intended for use in any manner in the commission of the offence;”

4. Section 3 of the Act is amended by deleting subsection (3) and substituting the following –

Amendment of section 3.

“(3) In this Act “realisable property” means –

- (a) any property held by a person who has been convicted of, charged or who is about to be charged with or is being investigated for a scheduled offence; and
- (b) any property held by a person to whom a person referred to in paragraph (a) has directly or indirectly made a gift.”.

5. Section 4 of the Act is amended by deleting subsection (1) and substituting the following new subsection (1) -

Amendment of section 4.

“(1) Where a person is convicted of a scheduled offence committed after the coming into force of this Act, on the application of the Director of Public Prosecutions or if the Court considers it appropriate to do so, the Court may make one or both of the following orders –

- (a) a forfeiture order against property that is tainted property in respect of a scheduled offence;
- (b) a confiscation order against the person in respect of benefits derived by the person from the commission of a scheduled offence or any other criminal conduct.”.

6. Section 17 of the Act is amended by –

Amendment of section 17.

- (a) deleting subsection (1) and substituting the following new subsection (1) -

“(1) Subject to this section, where the Director of Public Prosecutions applies to the Court for a confiscation order against a person in respect of that person’s conviction for a scheduled offence, the Court shall, if it is satisfied that the person has benefited from the scheduled offence or any other criminal conduct, order him to pay to the State an amount equal to the value of the benefits, or such lesser amount as the Court certifies in accordance with section 20 to be the amount that might be realised at the time the confiscation order is made.”.

Amendment of
section 18.

7. Section 18 of the Act is amended –

- (a) by deleting subsection (3) and substituting the following new subsection (3) -

“(3) The Court, in determining whether a person has benefited from a scheduled offence or any other criminal conduct and, if so, in assessing the value of that benefit shall, unless the contrary is proven, or there would be a serious risk of injustice if the assumption were made, deem –

- (a) all property that appears to the Court to be held by the person on the day on which the application is made; and
- (b) all property that appears to the Court to be held by the person at any time after the relevant day, to be property that

came into the possession or under the control of the person by reason of the commission of a scheduled offence or any other criminal conduct;

- (c) any expenditure incurred by the person at any time after the relevant day to be expenditure met from property obtained by him as a result of or in connection with the scheduled offence or any other criminal conduct; and
 - (d) any property received or deemed to have been received by the person at any time as a result of or in connection with the commission by him of the scheduled offence or any other criminal conduct, as property received by him free of any interests.”;
- (b) in subsection (4) by inserting the words “or any other criminal conduct” immediately after the words “the scheduled offence”.
- (c) by inserting immediately after subsection (6) the following new subsection (7) –

“(7) In this section “relevant day” means the first day of the period of six years ending with –

- (a) the day the person is charged with an offence or if they are charged with two or more offences on different days, the earliest of those days; or

- (b) the day a warrant or summons is issued in respect of the offence.”.

Amendment of
section 19.

8. Section 19 of the Act is amended –

- (a) by deleting subsection (1) and substituting the following new subsection (1) –

“(1) Where a person has been convicted of a scheduled offence, the Director of Public Prosecutions shall tender to the Court a statement as to any matters relevant –

- (a) to determining whether the person has benefited from the scheduled offence or any other criminal conduct; and
- (b) to an assessment of the value of the person’s benefit from the scheduled offence or any other criminal conduct.”;

- (b) by inserting immediately after subsection (1) the following new subsection (1A) -

“(1A) Where –

- (a) the Director of Public Prosecutions tenders a statement under subsection (1); and
- (b) the person accepts to any extent an allegation in the statement,

the Court may, for the purposes of so determining or

making that assessment, treat his acceptance as conclusive of the matters to which it relates.”;

(c) in subsection (3) by deleting paragraph (b) and substituting the following -

“(b) an allegation that he has benefited from the scheduled offence or any other criminal conduct, or that any property or advantage was obtained by him as a result of or in connection with the scheduled offence or any other criminal conduct.”;

(d) in subsection (6) by inserting the words ‘or any other criminal conduct’ immediately after the words “a scheduled offence”.

9. Section 20 of the Act is amended -

Amendment of
section 20.

(a) in subsection (1) by deleting the words “or if more than one, all of the offences in respect of which the order may be made” and substituting the words ‘or any other criminal conduct’;

(b) by inserting immediately after subsection (2) the following new subsections (3) to (9) -

“(3) Subject to this section, the amount to be recovered under a confiscation order shall be paid on the making of the order.

(4) Where the defendant shows that he needs time to pay the amount ordered to be paid, the Court making the confiscation order may make an order allowing payment to be made in a specified period.

(5) The specified period under subsection (4) –

(a) must commence with the day on which the confiscation order is made; and

(b) must not exceed six months.

(6) The defendant may apply within the specified period to the High Court for the period to be extended and if the Court believes there are exceptional circumstances, the Court may make an order extending the period.

(7) The extended period under subsection (6) –

(a) must commence with the day on which the confiscation order is made; and

(b) must not exceed twelve months.

(8) An order under subsection (6) may be made after the end of the specified period but must not be made after the end of the period of twelve months starting with the day on which the confiscation order is made.

(9) The Court shall not make an order under subsection (4) or (6) unless the Court gives the Director of Public Prosecutions an opportunity to be heard.”.

Amendment of
section 22.

10. Section 22 of the Act is amended in subsection (1) by inserting the words “or any other criminal conduct” immediately after the words “a scheduled offence”.

11. The Act is amended by inserting immediately after section 23 the following new sections 23A and 23B -

Insertion of new sections
23A and 23B.

“Compensation. **23A.** (1) Where proceedings were commenced against a person for a scheduled offence and the proceedings did not result in the person’s conviction or the conviction is subsequently quashed or pardoned, the Court may, on the application of a person who held property which was realisable property, or if, having regard to all the circumstances, it appears to the Court to be appropriate to do so, make a compensation order.

(2) The Court shall not order compensation to be paid in any case -

- (a) unless the court is satisfied that -
 - (i) there has been some serious default on the part of a person in the investigation or prosecution of an offence; and
 - (ii) the applicant has suffered loss in consequence of anything done in relation to the property by or pursuant to a confiscation order;
- (b) where it appears to the court that the proceedings would have been instituted or continued even if the serious default had not occurred.

(3) The amount of compensation to be paid under this section shall be such as the court considers just in all the circumstances of the case.

Committal by
Magistrates'
Court.

23B. (1) Where a defendant is convicted of an offence by the Magistrates' Court, the Director of Public Prosecutions may apply to the Magistrates' Court to commit the defendant to the Court with a view to a confiscation order being considered.

(2) Where an application is made under subsection (1) the Magistrates' Court -

- (a) shall commit the defendant to the Court in respect of the offence; and
- (b) may commit the defendant to the Court in respect of any other offence if the defendant has been convicted by the Magistrates' Court and the Magistrates' Court has power to deal with the defendant in respect of the offence.

(3) Where a committal is made under this section in respect of an offence section 17 applies and the committal operates as a committal of the defendant to be dealt with by the Court under this section.

(4) A committal under this section may be in custody or on bail.

(5) Subject to subsection (6), the Attorney General may make Regulations to provide for the making of a confiscation order by the Magistrates' Court.

(6) The regulations shall not enable the Magistrates' Court to make a confiscation order in respect of an amount exceeding one hundred thousand dollars.

(7) The provisions of this Act relating to confiscation orders shall apply with respect to confiscation proceedings before, and confiscation

orders made by, the Magistrates' Court, subject to such modifications as may be provided for in the regulations.

(8) Where a defendant is committed to the Court under this section in respect of an offence, the Court -

- (a) shall inquire into the circumstances of the case; and
- (b) may deal with the defendant in any way in which the Magistrates' Court could deal with him if it had just convicted him of the offence.”.

12. Section 30 of the Act is amended by deleting subsection (1) and substituting the following -

Amendment of
section 30.

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

13. Section 31 of the Act is amended in subsection (1), by deleting paragraph (a) and substituting the following paragraph (a) -

Amendment of
section 31

- “(a) the defendant has been convicted of a scheduled offence, or is to be charged or has been charged with a scheduled offence;”.

14. The Act is amended by inserting immediately after section 59 the following new Part IIIA -

Insertion of Part IIIA

“PART IIIA**CIVIL RECOVERY**

Interpretation in Part IIIA. **59A.** (1) In this Part -

“associated property” means property of any of the following descriptions, including property held by the respondent, which is not itself the recoverable property -

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

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

“document” means a document in any form and includes -

- (a) any writing or printing on any material;
- (b) any record of information or data, however compiled, and whether stored in paper, electronic, magnetic or any non-paper based form;

-
- (c) any storage medium, including discs and tapes;
 - (d) books and drawings;
 - (e) a photograph, film, tape, negative or other medium in which one or more visual images are embodied so as to be capable, with or without the aid of equipment, of being reproduced; and
 - (f) any court application, order and other legal process;

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

“interim receiving order” means an order made by the court under section 59T;

“property freezing order” means an order made under section 59M;

“recoverable property” means –

- (a) property obtained through unlawful conduct and tainted property;
- (b) property obtained through unlawful conduct that has been disposed of since it was obtained through unlawful conduct or tainted property that has been disposed

of since it became tainted property, if it is held by a person into whose hands it may be followed;

“recovery order” means an order made under section 59CC;

“respondent” means -

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

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

“tainted property” means, subject to subsection (2), property that -

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

“trustee” means the trustee for civil recovery appointed by the Court under section 59CC(1);

“unlawful conduct” means conduct which -

- (a) if it occurs in Dominica, is unlawful under the criminal law of Dominica; or
- (b) if it occurs in a country outside Dominica -
 - (i) is unlawful under the criminal law applying in that country; and
 - (ii) if it occurred in Dominica, would be unlawful under the criminal law of Dominica;

“value” means market value.

(2) Property belonging to a person is not tainted property if the unlawful conduct is not the unlawful conduct of the owner.

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

Purpose.

59B.(1) The purposes of this Part are to -

- (a) enable the Attorney General to recover in civil proceedings before the Court, property which is, or represents property -
 - (i) obtained through unlawful conduct; or
 - (ii) that has been used in, or in

connection with, or is intended to be used in, or in connection with, unlawful conduct; and

- (b) enable cash which is, or represents, property obtained through unlawful conduct, or which is intended to be used in unlawful conduct, to be forfeited in civil proceedings before the Magistrates' Court;
- (c) ensure that the powers conferred by this Part which are exercisable in relation to any property, including cash, are exercisable whether or not any proceedings have been brought for an offence in connection with the property.

Unlawful conduct
standard of proof.

59C. The Court, or in respect of proceedings for the recovery of cash, the Magistrates' Court, shall decide on a balance of probabilities whether it is proved that any -

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

Recoverable property and associated property

Following
recoverable
property.

59D. (1) Property obtained through unlawful conduct, or tainted property, is recoverable property

but if the property obtained through unlawful conduct or the tainted property has been disposed of since it was obtained, it is recoverable property only 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 person obtaining it on a disposal -

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

Tracing property.

59E.(1) Where property obtained through unlawful conduct or tainted property is or has been recoverable property, property which represents the original property is also recoverable property.

(2) Where a person enters into a transaction by which he -

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

the other property represents the original property.

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

Mixing property. **59F.** (1) Where the recoverable property of a person is mixed with other property, whether the property is his property or property of another, the portion of the mixed property which is attributable to the recoverable property represents the property obtained through unlawful conduct or the tainted property, as the case may be.

(2) Without limiting 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.

Accruing profit. **59G.** (1) This section applies where a person who has recoverable property obtains further property consisting of profits accruing in respect of the recoverable property.

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

General exceptions. **59H.**(1) Where -

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

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

(2) Recoverable property ceases to be recoverable -

- (a) where it is vested, forfeited or otherwise
disposed of pursuant to powers conferred
under this Part;
- (b) where -
 - (i) pursuant to a judgement in civil
proceedings, whether in Dominica
or elsewhere, the defendant makes
a payment to the plaintiff or the
plaintiff otherwise obtains property
from the defendant;
 - (ii) the plaintiff's claim is based on
the defendant's unlawful conduct;
and
 - (iii) apart from this paragraph, the
sum received, or the property
obtained, by the plaintiff would
be recoverable property; or
- (c) a payment is made to a person under a
compensation order and, apart from this
paragraph, the sum received would be
recoverable property.

(3) Property is not recoverable -

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

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

(5) Where -

- (a) a person enters into a transaction to which section 59E(2) applies; and
- (b) the disposal is one to which subsection (1) or (2)(a) applies,

this section does not affect the recoverability, by virtue of section 59E(2), of any property obtained on the transaction in place of the property disposed of.

(6) For the purposes of subsection (2), "plaintiff" includes "claimant".

Other exemptions. **59I.**(1) The Minister may make Regulations to provide that property is not recoverable or, as the case may be, associated property if it is -

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

(2) The regulations under subsection (1) may provide that if property is disposed of pursuant to a prescribed enactment or an enactment of a prescribed description, it is treated for the purposes of section 59P as if it had been disposed of pursuant to a recovery order.

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

Granting interests. **59J.**(1) Where a person grants an interest in his recoverable property, the question whether the interest is also recoverable is to be determined in the same manner as it is on any other disposal of recoverable property.

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

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

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

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

Obtaining and disposing of property.

59K.(1) References to a person disposing of his property include a reference to -

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

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

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

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

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

Recovery orders and property freezing orders

Application for
recovery order.

59L.(1) The Attorney General may apply to the Court for a recovery order against any person who the Attorney General believes holds recoverable property.

(2) The Attorney General shall serve an application under subsection (1) -

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

(3) The Attorney General shall, in the application -

- (a) identify, by particularizing or by a general description, the property in relation to which the Attorney General seeks a recovery order:
- (b) state, in relation to each item or description of property identified in the application -
 - (i) whether it is alleged that the property is recoverable property or associated property; and
 - (ii) either who is alleged to hold the property or where the Attorney General is unable to identify who holds the property, the steps that have been taken to establish their identity; and

- (c) nominate a suitably qualified person for appointment by the Court as the trustee for civil recovery.

Application for
property
freezing order.

59M.(1) Where the Attorney General may take proceedings for a recovery order in the Court, the Attorney General may apply to the Court for a property freezing order, whether before or after instituting the proceedings.

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

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

(4) The Court may make a property freezing order if it is satisfied that -

- (a) there is a good arguable case that -
- (i) the property to which the application for the order relates is or includes recoverable property; and
 - (ii) if any of the property is not recoverable property, it is associated property; and
- (b) if the property to which the application for the order relates includes property

alleged to be associated property, and the Attorney General has not established the identity of the person who holds it, the Attorney General has taken all reasonable steps to do so.

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

Variation and setting aside of freezing order.

59N. (1) The Court may at any time vary or set aside a property freezing order.

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

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

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

Exclusions.

59O.(1) The power to make or vary a property freezing order includes the power to -

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

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

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

(3) Where the Court exercises the power to make an exclusion for the purpose of enabling a person to meet reasonable legal expenses that he has incurred, or may incur, in respect of proceedings under this Part, the Court shall ensure that the exclusion -

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

(4) Notwithstanding subsection (2) or (3), the power to make exclusions must be exercised with a

view to ensuring, so far as practicable, that the satisfaction of any right of the Attorney General to recover the property obtained through unlawful conduct or the tainted property is not unduly prejudiced.

Restriction on
proceedings and
remedies.

59P.(1) While a property freezing order remains in force -

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

(2) Where the Court is satisfied that a property freezing order has been applied for or made in respect of any property in respect of which proceedings are pending, the Court may stay the proceedings or allow the proceedings to continue on such terms as appear to the Court to be necessary.

(3) Where a property freezing order applies to a tenancy of any premises, no landlord or other person to whom rent is payable may exercise the right of forfeiture in relation to the premises in respect of any failure by the tenant to comply with any term or condition of the tenancy, except with the leave of the Court and subject to such terms as appear to the Court to be necessary or desirable.

(4) Before exercising any power conferred by

this section, the Court shall give the parties to any of the proceedings concerned and any person who may be affected by the decision of the Court an opportunity to be heard.

Receivers in connection with property freezing orders.

59Q.(1) The Court may appoint a receiver in respect of any property to which the property freezing order relates if the -

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

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

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

(4) The Attorney General may apply a sum received by him under section 59LL(3) in making payment of the remuneration, if any, and expenses of a receiver appointed under this section.

Powers of receivers appointed under section 59Q.

59R.(1) Where the Court appoints a receiver under section 59Q on an application by the Attorney General, the Court may, on the application of the Attorney General, make an order, authorizing or requiring the receiver to -

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

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

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

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

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

(5) Where -

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

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

Supervision of
receiver and
variations.

59S.(1) Any of the following persons may at any time apply to the Court for directions as to the exercise of the functions of a receiver appointed under section 59Q -

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

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

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

(3) The Court may at any time vary or set aside the appointment of a receiver under section 59Q, any order under section 59R or any directions under this section.

(4) Before exercising any power under subsection (3), the Court shall give an opportunity to be heard to —

- (a) the receiver;
- (b) the parties to the proceedings for the appointment of the receiver, for the order under section 59R or for the directions under this section, as the case may be;
- (c) the parties to the proceedings for the property freezing order; and
- (d) any person who may be affected by the decision of the Court.

Interim receiving order

Interim
receiving
order.

59T.(1) Where the Attorney General may take proceedings for a recovery order, the Attorney General

may apply to the Court for an interim receiving order, whether before or after instituting the proceedings.

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

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

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

(4) The Court may make an interim receiving order if -

- (a) it is satisfied there is a good arguable case that -
 - (i) the property to which the application for the order relates is or includes recoverable property; and
 - (ii) if any of it is not recoverable property, it is associated property; and
- (b) the property to which the application for the order relates includes property alleged to be associated property; and

- (c) the Attorney General has not established the identity of the person who holds it and, the Attorney General has taken all reasonable steps to do so.

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

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

Functions of
interim receiver.

59U.(1) An interim receiving order may authorize or require the interim receiver to -

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

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

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

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

(3) Where -

- (a) the interim receiver deals with any property which is not property to which the order relates; and
- (b) at the time he deals with the property he believes on reasonable grounds that he is entitled to do so pursuant to the order,

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

Duty of person to whose property the order relates.

59V. An interim receiving order may require any person to whose property the order relates to bring -

- (a) the property to such place as may be specified by the interim receiver or to place the property in the custody of the interim receiver and to do anything he is

reasonably required to do by the interim receiver for the preservation of the property; and

- (b) any documents relating to the property which are in his possession or control to such place as may be specified by the interim receiver or to place them in the custody of the interim receiver.

Requirements on person to whose property the order relates.

59W.(1) The interim receiver, any party to the proceedings and any person affected by any action taken by the interim receiver, or who may be affected by any action proposed to be taken by him, may at any time apply to the Court for directions as to the exercise of the functions of the interim receiver.

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

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

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

Restrictions
on dealing
etc. with
property.

59X.(1) Subject to subsection (2), an interim receiving order -

- (a) shall prohibit any person to whose property the order relates from dealing with the property; and
- (b) may be made subject to such conditions as the Court considers appropriate.

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

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

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

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

Restriction on
proceedings
and remedies.

59Y.(1) While an interim receiving order remains in force -

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

(2) Where any Court in which proceedings are pending in respect of any property is satisfied that an interim receiving order has been applied for or made in respect of the property, the Court may stay the proceedings or allow the proceedings to continue on such terms as appear to the Court to be necessary or desirable.

(3) Where the interim receiving order applies to a tenancy of any premises, no landlord or other person to whom rent is payable may exercise any right of forfeiture by peaceable re-entry in relation to the premises in respect of any failure by the tenant to comply with any term or condition of the tenancy, except with the leave of the Court and subject to such terms as appear to the Court to be necessary or desirable.

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

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

Exclusion of
property
which is not
recoverable.

59Z.(1) Where the Court determines that any property to which an interim receiving order relates is neither recoverable property nor associated property, the Court shall vary the order to exclude that property.

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

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

Reporting.

59AA. (1) An interim receiving order shall require the interim receiver to inform the Attorney General and the Court as soon as reasonably practicable if the interim receiver thinks that -

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

(d) any property to which the order relates is held by a person who is different from the person it is claimed holds it; or

(e) there has been any other material change of circumstances.

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

(a) report his findings to the Court; and

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

Registration of
interim receiving
order.

Chap 56:50.

59BB. (1) Where the Attorney General has applied for a property freezing order or an interim receiving order, he shall be treated for the purposes of section 114 of the Title by Registration Act, as a person entitled to stay the registration of dealing with land to which the application relates, or to which a property freezing order or an interim receiving order made on the application relates.

(2) A property freezing order or an interim receiving order is of no effect with respect to registered land unless it is registered as a charge under the Title by Registration Act.

Vesting and realisation of recoverable property

Recovery orders.

59CC. (1) Where in proceedings under this

Part the Court is satisfied that any property is recoverable property, the Court shall make a recovery order and shall appoint a suitably qualified person as the trustee for civil recovery to give effect to the recovery order.

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

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

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

(4) An order under subsection (3)(a) shall not make any provision in respect of any recoverable property if the Court is satisfied -

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

-
- (c) that when the respondent took, or omitted to take, the action referred to in paragraph (b), he had no notice that the property was recoverable;
- (d) that if a recovery order were made in respect of the property, it would, by reason of the action or omission of the respondent be unduly detrimental to him.

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

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

(6) A recovery order may sever any property.

(7) A recovery order may -

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

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

(8) This section is subject to sections 59FF to 59JJ.

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

Functions of the trustee.

59DD. (1) The functions of the trustee are -

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

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

(3) The trustee shall realise the value of property

vested in him by the recovery order, so far as practicable, in the manner best calculated to maximize the amount payable to the Attorney General.

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

(5) References in this section to a recovery order include a consent order made under section 59II and references to property vested in the trustee by a recovery order include property vested in him pursuant to a consent order.

Rights of pre-emption.

59EE. (1) A recovery order remains in force in relation to any property despite any provision, of whatever nature, which would otherwise 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 any property under a recovery order.

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

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

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

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

Associated and joint property.

59FF. Sections 59 GG and 59 HH apply where the Court makes a recovery order in respect of any recoverable property, if -

- (a) the property to which the proceedings relate includes property which is associated with the recoverable property and is specified or described in the application; and
- (b) the associated property is not the property of the respondent, the application has been served on the person whose property it is or the Court has dispensed with service; or
- (c) the recoverable property belongs to joint owners; and
- (d) one of the owners is an excepted joint owner.

Agreements about associated and joint property.

59GG.(1) Where -

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

the Court may, instead of vesting the recoverable property in the trustee, require the person who holds the associated property or who is the excepted joint owner to make a payment to the trustee.

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

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

- (a) in the circumstances specified in section 59FF(1)(a), the value of the recoverable property; or
- (b) in a case within section 59 FF(1)(b), the value of the recoverable property less the value of the share of the excepted joint owner.

(4) Where -

- (a) a property freezing order or an interim receiving order applied at any time to the associated property or joint ownership; and
- (b) the Attorney General agrees that the person has suffered loss as a result of the property freezing order or interim receiving order,

the amount of the payment may be reduced by any amount the Attorney General and that person agree is reasonable, having regard to that loss and to any other relevant circumstances.

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

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

Associated and joint property: default of agreement.

59HH.(1) Where this section applies, the Court may make the following provision if -

- (a) there is no agreement under section 59GG; and
- (b) the Court thinks it just and equitable to do so.

(2) The recovery order may provide -

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

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

- (a) for the trustee to pay an amount to the

person who holds the associated property or who is an excepted joint owner;

- (b) for the creation of interests in favour of that person, or the imposition of liabilities or conditions, in relation to the property vested in the trustee.

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

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

(5) Where -

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

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

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

Consent orders.

59II. (1) The Court may make an order staying any proceedings for a recovery order on terms agreed by the parties for the disposal of the proceedings if each person to whose property the proceedings, or the agreement, relates is a party both to the proceedings and the agreement.

(2) An order under subsection (1) may -

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

(3) Section 59LL applies to property vested in the trustee, or money paid to him, pursuant to the agreement as it applies to property vested in him by a recovery order or money paid under section 59GG.

Limit on recovery.

59JJ.(1) This section applies where the Attorney General seeks a recovery order in respect of -

-
- (a) both property which is or represents property obtained through unlawful conduct, or tainted property, and related property; or
- (b) property which is or represents property obtained through unlawful conduct, or tainted property, where such an order, or an order under section 59II, has previously been made in respect of related property.

(2) For the purposes of this section -

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

(3) The Court is not to make a recovery order if it thinks that the right of the Attorney General to recover the original property has been satisfied by a previous recovery order or an order under section 59II.

(4) Subject to subsection (3), the Court may act under subsection (5) if it thinks that –

- (a) a recovery order may be made in respect of two or more related items of recoverable property; but

- (b) the making of a recovery order in respect of both or all of them is not required in order to satisfy the right of the Attorney General to recover the original property.

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

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

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

(7) Where -

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

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

(8) Where -

-
- (a) pursuant to a judgement in civil proceedings, whether in Dominica or elsewhere, the plaintiff has obtained property from the defendant;
 - (b) the claim was based on the defendant having obtained the judgement property or related property through unlawful conduct; and
 - (c) the Attorney General subsequently seeks a recovery order in respect of property which is related to the judgement property,

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

(9) For the purposes of subsection (8), “plaintiff” includes “claimant”.

(10) Where -

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

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

(11) In subsection (10), a confiscation order includes an order under an equivalent enactment.

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

Limits on
recovery,
supplementary.

59KK. (1) Where -

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

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

(2) Where -

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

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

(3) In this section -

“part disposal” means a disposal to which section 59K(1) applies;

“original property” has the same meaning as in section 59JJ (2).

Applying realised proceeds.

59LL. (1) The trustee is to make out of the sums -

- (a) which represent the realised proceeds of property which was vested in the trustee by a recovery order or which he obtained pursuant to a recovery order; and
- (b) vested in the trustee by a recovery order or obtained by him pursuant to a recovery order,

the payments specified under subsection (2).

(2) The trustee shall -

- (a) first, make any payment required to be made by him under section 59HH;
- (b) next, make any payment of legal expenses which are payable under this subsection in pursuance of provision under section 59CC(7)(b) pursuant to the recovery order;
- (c) pay any fees payable to a liquidator of a company appointed by or supervised by the Court; and
- (d) pay any sum which remains to the Attorney General.

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

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

(4) The remaining sum, after payments made pursuant to subsection (3), and any accrued interest on it, shall be paid into the Asset Forfeiture Fund after -

- (a) the period permitted under section 5900 to lodge an application for compensation has expired or the application for compensation has been determined or disposed of; or
- (b) the period within which an appeal may be made or, if a person appeals, after the appeal has been determined or disposed of,

whichever comes later.

(5) In this section, “company” means any company which may be liquidated under the Companies Act 1994, including a company that has given notice of its inability to pay claims under the International Business Companies Act 1996 and a foundation which may be dissolved.

Exemptions etc.

Victims of
theft, etc.

59MM.(1) In proceedings for a recovery order, a person who claims that any property alleged to be recoverable property, or any part of the property,

belongs to him may apply for a declaration to that effect under this section.

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

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

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

Other
exemptions.

59NN. (1) The Minister may make regulations to provide that proceedings for a recovery order shall not be taken -

- (a) against any person in circumstances of a prescribed description and the circumstances may relate to the person himself, to the property or to any other matter;
- (b) in respect of cash found at any place in Dominica unless the proceedings are also taken in respect of property other than cash which is property of the same person;
- (c) against the Attorney General in respect of any recoverable property held by the Attorney General; or

Chap. 9:90.

- (d) against any person in respect of any recoverable property which he holds by reason of his acting, or having acted, as trustee in bankruptcy appointed under the Bankruptcy Act, or as liquidator of a company appointed by, or supervised by the Court.

(2) In this section, “company” means any company which may be liquidated under the Companies Act 1994, including a company that has given notice of its inability to pay claims under the International Business Companies Act 1996 and a foundation which may be dissolved.

General

Compensation:
property
freezing order
or interim
receiving
order.

5900. (1) Where, in the case of any property to which a property freezing order or an interim receiving order has at any time applied, the Court does not in the course of the proceedings decide that the property is recoverable property or associated property, the person whose property it is may make an application to the Court for compensation.

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

- (a) has made a declaration in respect of the property under section 59MM; or
- (b) makes a consent order under section 59II.

(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 -

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

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

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

(6) Where, but for section 59EE(2), any right mentioned there would have operated in favour of, or become exercisable by, any person, he 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 beginning with the vesting referred to in section 59EE(2).

(8) Where the Court is satisfied that, in consequence of the operation of section 59EE, the right in question cannot subsequently operate in favour of the applicant or become exercisable by him, the Court may require the Attorney General to pay compensation to the applicant, as the case may be.

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

Financial
threshold.

59PP. (1) The Attorney General shall not start proceedings for a recovery order unless the Attorney General reasonably believes that the aggregate value of the recoverable property which the Attorney General wishes to be subject to a recovery order is equal to or greater than ten thousand dollars.

(2) Where the Attorney General applies for a property freezing order or an interim receiving order before starting the proceedings, subsection (1) applies to the application for the property freezing order or interim receiving order instead of to the start of the proceedings.

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

Limitation.

59QQ.(1) Proceedings shall not be brought for a 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 unlawful 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 unlawful conduct which it represents is so obtained.

(2) For the purposes of subsection (1), proceedings for a recovery order are brought when -

- (a) an application is filed with the Court under section 59L; or
- (b) an application is made for an interim receiving order.

Property acquired before commencement date.

59RR. For the purposes of determining whether property was recoverable at any time, including times before the commencement date, this Part is deemed to have been in force at that time and at any other relevant time.

15. The Act is amended by repealing section 64 and replacing it with the following -

Repeal and replacement of section 64.

“Search.

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

(2) Where a law enforcement officer has reasonable grounds for suspecting that a person is carrying recoverable cash, the law enforcement officer may if he believes on reasonable grounds that it is necessary or expedient -

- (a) require the person to permit a search of any article he has with him; and
- (b) require the person to permit a search of his person and for the purposes of exercising this power, detain the person for so long as is necessary for the exercise of that power.

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

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

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

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

- (a) where no cash is seized or any cash seized is not detained for more than a period of seventy-two hours, and that the powers were exercisable; and

- (b) that it was not practicable to obtain the prior approval of a senior law enforcement officer.”.

16. The Act is amended by repealing section 65 and replacing it with the following -

Repeal and replacement of section 65.

“Seizure of cash. **65.** Where a law enforcement officer finds property that he believes, on reasonable grounds, to be recoverable cash or part of the cash is recoverable cash and it is not reasonably practicable to seize only that part, he may seize the cash.”.

17. The Act is amended by repealing section 66 and replacing it with the following -

Repeal and replacement of section 66.

“Detention of seized cash. **66.** (1) Where recoverable cash has been seized under section 65 and a law enforcement officer continues to have reasonable grounds for his belief, the law enforcement officer may detain the cash for a period of seventy-two hours.

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

(3) Where a law enforcement officer applies under subsection (2) for an extension of the period of detention of cash and the Magistrates’ Court is satisfied that there are reasonable grounds for suspecting that the cash is recoverable cash or the cash is intended to be used in unlawful conduct and that either -

- (a) its continued detention is justified while its intended use is further investigated or consideration is given to bringing

proceedings, whether in or outside
Dominica, against any person for an
offence with which the cash is connected;
or

- (b) proceedings against any person for an
offence with which the cash is connected
have been started and have not been
concluded,

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

(4) An order under subsection (3) must not
authorize the detention of any of the cash -

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

(5) The court shall require notice of the order to
be given to any persons affected by it.

Repeal and replacement
of section 67.

18. The Act is amended by repealing section 67 and
replacing it with the following -

“Interest.

67. (1) Where cash is detained under section 66
for more than a period of seventy-two hours, the law
enforcement officer shall, as soon as practicable, pay

the cash into an interest bearing account and the cash shall be held there, and the interest accruing on it shall be added to it on its forfeiture or release.

(2) Where part of the cash detained under section 66 is recoverable cash, the law enforcement officer, shall as soon as practicable after paying the cash seized into an interest bearing account, release the part of the cash which is not recoverable cash.

(3) Subsection (1) does not apply if the cash or, as the case may be, the part which is not recoverable, is required as evidence of an offence or evidence in proceedings relating to the seized cash under this Part.”.

19. The act is amended by repealing section 68 and replacing it with the following -

Repeal and replacement of section 68.

“Release of detained cash.

68. (1) A person from whom cash was seized may apply to the Magistrates’ Court for the release of the whole or any part of the cash detained under section 66.

(2) The Magistrates’ Court shall, on an application made by any person under subsection (1) and if the Magistrates’ Court is satisfied, that the grounds for the detention of the cash specified in section 66 are no longer satisfied in relation to the cash to be released, direct the release of the whole or any part of the cash detained under section 66.

(3) The Commissioner of Police, Comptroller of Customs, Director of the Financial Intelligence Unit or their designate may, if satisfied that the detention of the cash to be released is no longer justified and after notifying the Magistrates’ Court under whose

order the cash is being detained, release the whole or any part of the cash.

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

(5) An application under subsection (4) may be made in the course of detention or forfeiture proceedings or at any other time.

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

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

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

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

- (a) the applicant under subsection (4) is not

the person from whom the cash to which the application relates was seized;

- (b) it appears to the Magistrates' Court that the cash belongs to the applicant;
- (c) the Magistrates' Court is satisfied that the grounds specified in section 66 for the detention of the cash are no longer satisfied or, if an application has been made under section 68A, and the Magistrates' Court does not make an order under that section in relation to the cash; and
- (d) no objection to the making of an order under this subsection has been made by the person from whom the cash was seized.”.

20. The Act is amended by inserting immediately after section 68 the following new sections 68A to 68F -

Insertion of new sections
68A to 68F.

“Forfeiture.

68A. (1) A law enforcement officer may apply to the Magistrates' Court for the forfeiture of the whole or any part of cash detained under section 66.

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

- (a) is recoverable cash; or
- (b) is intended by any person for use in unlawful conduct,

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

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

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

Appeal against forfeiture.

68B. (1) Any party to proceedings in which a forfeiture order is made who is aggrieved by the order may appeal to the Court.

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

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

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

Payment of forfeited cash into Asset Forfeiture Fund.

68C. Cash forfeited under section 68A, and any accrued interest on it, shall be paid into the Asset Foreiture Fund after the period within which an appeal under section 68B may be made or, if a person appeals under that section, after the appeal has been determined or disposed of.

Application for
compensation.

68D. (1) Where the Magistrates' Court does not make a forfeiture order, the person to whom the cash belongs or from whom it was seized may apply to the Magistrates' Court for compensation.

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

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

(4) If the Magistrates' Court is satisfied that, taking account of any interest to be paid under section 65 or any amount to be paid under subsection (2), the applicant has suffered loss as a result of the detention of the cash and that the circumstances are exceptional, the Magistrates' Court may order compensation, or additional compensation, to be paid to him.

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

(6) Compensation is to be paid from the Asset Forfeiture Fund.

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

Application. **68E.** Sections 64 to 68C apply only to cash found anywhere in Dominica.

Interpretation in sections 64 to 68D. **68F.** (1) In sections 64 to 68D –

“cash” includes -

- (a) notes and coins in any currency;
- (b) postal orders;
- (c) cheques of any kind, including travellers’ cheques;
- (d) bankers’ drafts;
- (e) bearer bonds and bearer shares; and
- (f) any other monetary instrument that is prescribed as cash;

Act No.7 of 2011.

“Financial Intelligence Unit” means the Financial Intelligence Unit established under section 3 of the Financial Intelligence Unit Act 2011;

“intimate forensic procedure” is to be construed in accordance with the Police Act;

Chap 14:01.

“law enforcement officer” means a police officer, customs officer or officer of the Financial Intelligence Unit;

“period of seventy-two hours” does not include a bank holiday or **government holiday**;

“premises” include any -

- (a) place;
- (b) vehicle, vessel, air craft or hovercraft;
- (c) offshore installation;
- (d) tent or removeable structure;

“recoverable amount” means the amount that the Court determines should be recovered from a defendant under a confiscation order;

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

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

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

21. Section 70 of the Act is amended by deleting the words -

- (a) “the Court” and substituting the words “a court”;

Amendment of
section 70.

(b) “beyond a reasonable doubt” and substituting the words “on a balance of probabilities”.

Amendment of Schedule I.

22. Schedule I of the Act is amended by inserting the following paragraph -

“22. Piracy”.

Insertion of new
Schedule III and
Schedule IV.

23. The Act is amended by inserting immediately after Schedule II the following new Schedule III and Schedule IV -

“SCHEDULE III

(Section 59U(1)(a))

POWERS OF INTERIM RECEIVERS

Seizure.

1. Power to seize property to which the order applies.

Information.

2.1 Power to obtain information or to require a person to answer any question.

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

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

Entry, search, etc.

3.1 Power to enter any premises in Dominica to which the order applies, and to -

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

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

Supplementary

4.1 An order making any provision under paragraph 2 or 3 must make provision in respect of legal professional privilege.

4.2 An order making any provision under paragraph 3 may require any person -

- (a) to give the receiver access to any premises which he may enter in pursuance of paragraph 3; and
- (b) to give the receiver any assistance he may require for taking the steps mentioned in that paragraph.

Management

5.1 Power to manage any property to which the order applies.

5.2 Managing property includes -

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

SCHEDULE IV

(Section 59DD(4))

POWERS OF TRUSTEE**Sale**

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

Expenditure

2. Power to incur expenditure for the purpose of -

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

Management

3.1 Power to manage property.

3.2 Managing property includes -

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

Legal proceedings

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

Compromise

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

Supplementary

6. For the purposes of, or in connection with, the exercise of any of his powers -

(a) power, in his official name to -

(i) hold property;

(ii) enter into contracts;

(iii) sue and be sued;

(iv) employ agents; and

(v) execute a power of attorney, deed or other instrument; and

(b) power to do any other act which is necessary or expedient.”.

Passed in the House of Assembly this 16th day of May, 2013.

VERNANDA RAYMOND (MRS.)

Clerk of the House of Assembly (Ag.)

DOMINICA

Printed by the Government Printer at the Government Printery, Roseau

(Price \$15.20 cents)