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**THE BLACKLISTING OF ST. VINCENT AND THE GRENADINES BY THE
FATF AS A NON-COOPERATIVE COUNTRY IN THE FIGHT AGAINST
MONEY LAUNDERING AND THE CATEGORISATION BY THE OECD AS
AN UNCOOPERATIVE TAX HAVEN- JUSTIFIED OR UNJUSTIFIED?**

Volumes 1 and 2

Volume 2

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13. (1) Save as otherwise provided in this Act, no tax or impost shall be levied or collected by Saint Vincent and the Grenadines in respect of any profits or gains of an international banking company or other international company which has been duly registered under this Act—

Advantages
of
registration.

- (a) on any dividends, earnings or other returns attributable to the shares or securities of any such company;
- (b) in relation to the transfer of all or any part of its securities or other assets to another registered international company or to a trust registered under the Trust Authority Act hereinafter referred to as a registered trust;
- (c) in respect of any assets managed by the company if the dividends, interests and other returns are in respect of shares, securities or other returns owned by an international company; or
- (d) in respect of shares, securities or assets owned by an international banking company or other international company duly registered for the relevant period.

(2) Where shareholders of a registered international company transfer shares to another registered international company or to a registered trust, such transfer shall be exempt from payment of any tax, duty or other impost.

(3) For the purpose of this section, the exemption from tax, duty or other impost shall include exemption from inheritance, succession, or other tax or duty in relation to the shares, securities or assets of an international banking company or other international company.

(4) The exemption from tax, duty or other impost shall be applicable to any international company or international banking company only so long as the company remains registered under this Act, and be applicable in respect of the distribution of the income to shareholders only to those shareholders who are not resident, ordinarily resident or domiciled in Saint Vincent and the Grenadines.

(5) The provisions of this section and section 14 shall have effect notwithstanding anything contained in any other law.

14. (1) The funds of a superannuation fund distributed to the beneficiaries who are neither resident, ordinarily resident or domiciled in Saint Vincent and the Grenadines shall be exempt from liability in respect of tax on the income from, and the amount of the distribution of, those funds which are, and

Exemption
of super-
annuation
fund.

(2) The Minister, may, by order in the Gazette, vary the fees specified in the Second Schedule so however that the amount payable on any item in that Schedule shall not be increased to more than double that specified in this Act.

Form of
memo-
randum
and articles
of
association.

20. (1) The memorandum of every international company shall be in the form set out in the Third Schedule.

(2) The articles of association of every international company to which this Act is applicable shall be in the form set out in the Fourth Schedule, unless any other form of articles of association has been prescribed for registration purposes.

Certificate of
registration.

21. The form of certificate of registration—

(a) of an international company (other than a superannuation fund) shall be as in Form A of the Fifth Schedule; and

(b) of a superannuation fund shall be as set out in Form B of the said Schedule.

Alteration of
memo-
randum and
articles of
association.

22. (1) Notwithstanding anything contained in any law, an international company may, by special resolution, alter or modify its memorandum and articles of association, and whenever it has been done a copy of the memorandum and articles of association as so amended, together with such particulars as may be necessary to understand the scope of the amendments, shall be delivered to the Registrar within fifteen days of the passing of the special resolution.

(2) Where, by reason of any alteration or modification under subsection (1) made to the memorandum and articles of association, the certificate of registration of an international company is affected, it shall be incumbent on the international company to apply to the Authority for a fresh certificate of registration incorporating the change, and the current certificate of registration shall also be surrendered to the Authority for the purpose.

(3) The Registrar may, after considering the report of the Authority and other relevant matters, modify the certificate of registration incorporating the change in such manner and to such extent as he may deem fit.

(4) Where it comes to the notice of the Registrar that there has been a mistake on the original certificate, amended certificate or fresh certificate, he may recall the certificate, and make such rectification as he may deem fit or cancel the certificate and issue a fresh one in its place:

Provided that where there is any material alteration envisaged by the Registrar or where he proposes to cancel the

his case, and where it has been rejected an application an appeal shall lie to the Minister whose order thereon shall be final.

(5) Every person who acquires, amalgamates or otherwise takes control of a registered international banking company without obtaining the previous approval of the Authority as required by this section is guilty of an offence and liable to a fine of seventyfive thousand dollars.

16. (1) The Comptroller of Inland Revenue may require the local representative of an international banking company or other international company to furnish him with such information as he deems necessary to enable the determination of the question whether the company is entitled to exemption from tax under this Act.

Powers of
Comptroller
of Inland
Revenue to
require
information.

(2) If within twenty days (or such longer period as the Comptroller of Inland Revenue may in any particular case allow) after service of a notice in writing under subsection (1), the local representative fails—

- (a) to furnish the information called for; or
- (b) furnishes information which, according to the Comptroller of Inland Revenue, is insufficient or inadequate,

the Comptroller may, by order, declare that the provisions relating to exemption from tax or duty under this Act shall not apply in relation to the concerned international banking company or other international company, as the case may be, until such time as the Comptroller may deem necessary, or until the furnishing of information to the satisfaction of the Comptroller whichever is earlier.

17. The dividends, royalties, interests, foreign securities, funds, gains and other assets generated or managed by every registered international company shall be exempt from the laws relating to exchange control save in so far as they are made expressly applicable to them by any such law.

Exemption
from
exchange
control
restrictions.

18. Any notice or other document to be served under this Act shall be deemed to have been properly served if it was served on the local representative or left at the last known address of the local representative or of the international company.

Manner of
service of
notice.

19. (1) There shall be paid to the Registrar, by or on behalf of an international company to which this Act is applicable, the fees specified against them in the Second Schedule in respect of matters referred to therein.

Fees payable.

would be but for the provisions of this section, liable to tax under the Income Tax Act:

Provided that the exemption from tax shall be in respect of funds received, held and properly payable at any time whilst a superannuation fund remains duly registered under this Act and be applicable, in respect of the distribution of income to the beneficiaries, only to those beneficiaries who are not resident or domiciled in Saint Vincent and the Grenadines.

Acquisition
and amalga-
mation.

15. (1) No international banking company registered under this Act shall be amalgamated or otherwise acquired or parted with save with the previous approval of the Authority.

(2) Any change in ownership or control or management of the registered international banking company shall be deemed to fall within the prohibition of subsection (1).

(3) Application for approval under subsection (1) shall be made to the Authority at least sixty days before the proposed amalgamation, acquisition or other transfer, and the applicant shall furnish the following, namely—

- (a) the identity and business background;
- (b) entry of business activities and experience;
- (c) financial status for the last five years;
- (d) the managerial structure;
- (e) evidence of police record status;
- (f) evidence supporting banking experience and knowledge;
- (g) particulars of any legal action by or against the company;
- (h) particulars of the plans for amalgamation or acquisition or other transfer;
- (i) the source of the funds and the amount or other consideration for the acquisition, amalgamation or other transfer; and
- (j) full particulars of the arrangements, agreement and other undertaking regarding the amalgamation or acquisition or other transfer.

(4) The Authority shall notify the applicant, within ninety days of the filing of all the particulars referred to in subsection (3), stating whether the acquisition or amalgamation has been approved or rejected, and, where an application has been approved, the applicant shall be required to pay all the expenses the Authority may specify as having been incurred in relation to the amalgamation or acquisition or transfer:

Provided that an application shall not be rejected by the Authority unless it gives an opportunity to the applicant to state

certificate, he shall give the company an opportunity to make representation before issuing or amending or cancelling the certificate.

23. (1) Every existing international company shall make an application within sixty days of the commencement of this Act for registration and for the issue of a fresh certificate in accordance with the provisions of this Act:

Existing international companies to register afresh.

Provided that an international company registered under the International Companies Act, 1976, on or after the commencement of that Act, shall not be required to make an application for registration under this section or to pay the registration fee and annual fee to the extent they were already paid under that Act:

Act 32 of 1976.

Provided further that, when the Authority is satisfied that any company could not make the application in time for reasons beyond its control, it may extend the period of sixty days aforesaid.

(2) For the purpose of subsection (1), "existing international company" means any company which, at or before the commencement of this Act, was doing business as an international company or as an international banking company whether it was registered or not under the International Companies Act, 1976 or under the Companies Act.

(3) Where an existing international company fails to make an application in accordance with the provisions of subsection (1), the Registrar may, after the expiry of the period aforesaid, strike out the name of the company from the register and cause a notice to that effect to be published in the Gazette and in such other manner as he may deem fit.

(4) Where any existing international company fails to apply for registration within the time specified in subsection (1)—

- (a) it shall forthwith cease to do any business whatsoever as an international company;
- (b) the Authority shall be competent to make such order or to issue such directions or to take such action as may be necessary to stop the operation of the company.

(5) Where any existing international company operates in contravention of subsection (3) or fails to obey any order made or direction issued thereunder, the company and every one of its directors and anyone else concerned with the conduct of the business of the company in any manner is guilty of an offence and liable to a fine of seventyfive thousand dollars and to imprisonment for six months and, where the offence is con-

tinued, to a further fine of fifteen hundred dollars for every day during which the offence is continued.

(6) Where before the launching of any prosecution, an existing international company has satisfied the Authority and the Registrar, on application made in this behalf, that the failure to register was due to reasons beyond its control, then the existing international company may be allowed to get itself registered subject to the payment of a compounding fee not exceeding twenty thousand dollars.

Authority to
have
supervisory
power.

24. The Authority shall have the power to assess the operations of every registered international company, and to conduct such periodic examination of its operations as it may deem necessary and to conduct investigations into complaints and reports of its operations.

Cancellation
of
registration.

25. (1) Where the Registrar has reason to believe that any international company which has been registered under this Act—

- (a) has conducted its business in a fraudulent or corrupt manner or is guilty of any other improper conduct;
- (b) has failed to comply with any provision of this Act or any direction issued thereunder;
- (c) has failed to display its licence;
- (d) has failed to commence, in the case of an international banking company, the business of banking within three months of the grant of the licence;
- (e) has carried on its business in such a way as to adversely affect the reputation of Saint Vincent and the Grenadines, or has otherwise acted in a manner detrimental to the public interest of Saint Vincent and the Grenadines; or
- (f) where the Authority makes a complaint in writing to the Registrar to the effect that the continuance of operations of the international company is not conducive to the national interest or to the security of Saint Vincent and the Grenadines,

the Registrar shall, after making such enquiry as he may deem fit, cancel the registration and recall the certificate, if he is satisfied that the international company falls under any of the foregoing paragraphs.

(2) The Registrar shall cancel the registration of an international company—

- (a) if the company has ceased to exist;

- (b) upon the written request of the international company, where the Registrar is satisfied of the *bona fides* of the request;
- (c) if the international company defaults in making payment of the dues within sixty days of the due date or such longer period as the Registrar may in any particular case allow; or
- (d) if he is satisfied that the certificate of registration was obtained by fraud or mistake.

(3) An order shall not be made by the Registrar under this section unless he has caused a notice to be issued by the Authority to the international company and, if so requested, given the company an opportunity to be heard:

Provided that in the case of an international company which has ceased to exist or in the case of a company which is avoiding notice, it shall be sufficient if the notice is affixed to the last known place of business and the same shall be deemed to be sufficient compliance with the provisions of this subsection.

(4) A copy of every order made by the Registrar under this section shall be sent by registered post to the local office of the company or to its local representative.

(5) Any international company aggrieved by the order of the Registrar under this section may appeal within twentyone days of the order to the High Court.

26. (1) Where any international company or any director, local representative or employee of an international company makes an advertisement or issues any statement, within or outside Saint Vincent and the Grenadines, which is likely to mislead anyone concerning—

Misleading
advertisement
an offence.

- (a) the true nature of the organisation;
- (b) the relationship of the organisation with Saint Vincent and the Grenadines or any department or officer thereof;
- (c) the true position of the management of its investments, or
- (d) the true state of its financial standing or commitments;

the company and every director, local representative, agent or employee of the organisation who is aware of, or is a party to, the contravention is guilty of an offence and liable to a fine of fifteen thousand dollars.

(2) No international company shall use the expression "Bank" in relation to the company unless it is licensed to carry on the business of banking under this Act and every company

or person violating the provisions of this subsection is guilty of an offence and liable to a fine of eight thousand dollars.

Winding up. **27.** (1) No international banking company shall voluntarily wind up its business unless previous permission in that behalf has been obtained from the Authority on an application made for the purpose.

(2) The Authority may refuse to grant the permission to wind up if it is of the opinion that the winding up would be against the public interest.

(3) Where permission has been accorded by the Authority, the company shall cease to do any further business and shall do everything necessary to repay depositors and other creditors and for the winding up of its operations.

**Revival in
certain cases.**

28. Where an international company has defaulted in making payment of annual fee, it may, subject to such conditions (including conditions as to payment of a fee for revival or arrears of annual fee) as the Registrar may deem fit to impose, be revived on the order of the Registrar made in that behalf:

Provided that no order of revival shall be made by the Registrar except with the concurrence of the Authority and in every case where revival is allowed a fresh certificate mentioning the default and revival shall be given in lieu of the earlier one which shall be withheld.

**Forfeiture of
deposit.**

29. Where an international banking company is guilty of an offence under this Act, the court may, while convicting the company or any director or representatives, direct that in addition to the punishment for the offence, the whole or any part of the deposit made under section 5 (12) shall be forfeited to the Authority, and the Authority may utilise the same in such manner as the court may deem fit.

**Black list to
be kept.**

30. (1) The Authority shall maintain a list of international companies whose licences or registrations have been suspended or cancelled, and of international companies against whom action has been taken under this Act, giving short particulars.

(2) The list maintained under subsection (1) shall be open for public inspection.

**Supervisory
powers of
Attorney-
General.**

31. (1) The Attorney-General may—

(a) in any case where the Authority has been acting as local representative or as resident representative of an international company—

- (i) call for any relevant records for inspection by him;
 - (ii) give such directions, including the directions to discontinue such representation with regard to any international company, as he may consider necessary for the better implementation of the provisions of this Act or of the Trust Authority Act; and
 - (iii) if he is of opinion that the Authority or its manager has acted in violation of the provisions of this Act, or has committed any offence punishable under the Act, take appropriate action in that behalf;
- (b) in any case where the shareholders of an international company or the members of a trust registered under the relevant Act includes any person resident or ordinarily resident or domiciled in Saint Vincent and the Grenadines (whether in conjunction with others or not)—
 - (i) call for any records, relating to the company or trust, as the case may be, for inspection by him;
 - (ii) if he finds that the licence was wrongly issued or registration was wrongly made, he shall after giving all opportunity to the international company or the trust concerned to show cause, cancel the licence or registration;
 - (iii) if he has reason to believe that the said international company or trust has been formed or is functioning with a view to deprive Saint Vincent and the Grenadines of its revenue and that the same is not in keeping with the purposes of this Act, forward all the records to the Registrar and direct the Registrar to enquire into the matter, and if the Registrar is satisfied, after giving a reasonable opportunity to the international company or trust to show cause, that its objects include tax avoidance contrary to the purposes of the Act, he may, by order, cancel the registration or licence of the company or the trust and where it is so cancelled such company or trust shall cease to have any claim for tax exemption under this Act;
- (c) in any case where it appears to him that the manager of the Authority or the Registrar has acted improperly or without authority in the discharge of their

respective duties under this Act or under the Trust Authority Act, recommend suitable action to the chairman of the Authority.

(2) Where an order of cancellation of licence or registration has been made under subsection (1), an appeal shall lie to the High Court within twentyone days of the said order.

(3) The provisions of this section shall have effect notwithstanding anything contained in this Act or in the Trust Authority Act.

Immunity of
Registrar
and
Authority.

32. Notwithstanding anything contained in any other law, no action shall lie against the Registrar or against the Authority or any person acting for or under instructions from the Registrar or the Authority, in relation to anything done or purported to be done in the *bona fide* exercise of any power conferred by or under this Act.

Power to
remove
difficulties.

33. If, in giving effect to the provisions of this Act, any difficulty or doubt arises, the Minister may, having regard to the purposes of this Act, make such order as he may deem fit, to remove the difficulty.

Rules by
Governor-
General.

34. The Governor-General may make rules or issue directions for the carrying out of the provisions of this Act, and without prejudice to the generality of the power the rules or directions may provide for any matter (including procedure for appeal or supervision) having regard to the purposes of this Act.

Saving.

35. Notwithstanding that the International Companies Act, 1976, has been repealed, any proceedings commenced, or any penalty or liability incurred, under that Act before the 20th April, 1982, may be continued or levy collected as if such Act had not been repealed.

FIRST SCHEDULE

Section 3

MODIFICATIONS OF THE COMPANIES ACT IN RELATION TO
INTERNATIONAL COMPANIES

<i>Provision</i>	<i>Modification</i>
Sections 1 to 3 inclusive	Delete
Section 4	Delete the word "seven" and substitute the word "two"
Section 5	Delete and substitute— "Liability of 5. The liability of the members of a members to company formed 'under this Act be limited shall be limited to the amount of par value of the shares held by each of them respectively."
Section 6	Insert immediately after subsection (5) and before the expression "subject to the following regulations" three new subsections as follows— " (6) The names and addresses of each of the members of the first board of directors, which shall consist of not less than three members, and full particulars of the authority given to each director to sign on behalf of the company; (7) The name and address of the local representative; (8) In respect of every individual, other than a member of the board of directors, to whom authority is given to sign on behalf of the company, "his name and address and full particulars of his authority;"
Section 9	Insert the following provision at the end— "Provided that in the case of a company which has been registered under the International Companies Act, the power to change the directors, the officers, local representative or to modify the extent of their power or Authority."
Section 13	Insert in subsection (1), immediately after the word "printed", the words "or typewritten."
Section 14	Delete subsection (2).
Section 15	In subsection (3), delete the word "incorporation" and substitute therefor the word "registration".

<i>Provision</i>	<i>Modification</i>
Section 18	Delete
Section 25	Delete
Section 26	Delete
Section 27	Delete
Section 28	Delete
Section 35	Delete clause (a) of subsection (1) and subsection (2).
Sections 36 to 38 inclusive	Delete
Section 40	Delete
Section 41	In subsection (2), for "at least five members" substitute "a member"; and delete subsection (4).
Section 42	For the words "In default of any regulations as to voting, every" substitute the word "Every".
Section 45	In subsection (1) insert, immediately after the word "printed", the words "or typewritten".
Section 46	In subsection (2), delete the words "in print".
Sections 63 to 69 inclusive	Delete
Section 70	Delete subsection (3).
Sections 138 and 139	Delete
First Schedule	Delete
Second Schedule	Delete

SECOND SCHEDULE

Section 19

FEES PAYABLE TO REGISTRAR THROUGH THE AUTHORITY

1. All international companies other than an international insurance company or a superannuation fund shall pay—

- (a) for registration a fee of five hundred dollars or one-tenth per centum of the authorised share capital, whichever is the greater,

- (b) for registration of any increase of capital — a fee of one-tenth per centum of such increase of capital;
- (c) an annual fee of one-tenth per centum of the registered capital or five hundred dollars, whichever is the greater—
 - (i) payable on registration in respect of the period between the date of registration and the 1st January of the next succeeding year and calculated at the rate of one-twelfth of the annual fee for each month or any part of a month;
 - (ii) payable in full not later than the 1st January of each succeeding year after the date of registration;
- (d) for registering any document required or authorised to be registered under the Companies Act as modified by the First Schedule — a fee of twenty dollars;
- (e) for making a record of any fact required or authorised to be recorded by the Registrar under the Companies Act as modified by the First Schedule — a fee of twenty dollars;
- (f) for a certified copy of a certificate of registration or any other document — a fee of twenty dollars;
- (g) for filing documents for change of control — a fee of twenty dollars per document.

2. All international banking companies—

- (a) for granting of a licence — a fee of ten thousand dollars;
- (b) for annual renewal of a licence — a fee of five thousand dollars;
- (c) for filing a copy of the licence — a fee of twenty dollars;
- (d) for filing of any document or for certified copy of any document — a fee of twenty dollars.

3. International shipping companies—

- (a) for registration of each ship — a fee of two dollars and fifty cents per net ton of such ship, payable on or before registration;
- (b) an additional annual fee of twenty cents per net ton for each ship—
 - (i) payable on registration in respect of the period between the date of registration and the 1st January of the next succeeding year and calculated at the rate of one-twelfth of the annual fee for each month or any part of a month;
 - (ii) payable in full not later than 1st January of each successive year after the date of registration.

4. International insurance companies—

- (a) for registration — a fee of one thousand dollars or one-tenth per centum of the registered capital, whichever is the greater;

- (b) an annual fee of one-tenth per centum of the registered capital or one thousand dollars, whichever is the greater—
 - (i) payable on registration in respect of the period between the date of registration and the 1st January of the next succeeding year and calculated at the rate of one-twelfth of the annual fee for each month or any part of a month;
 - (ii) payable in full not later than the 1st January of each successive year after the date of registration.

5. Superannuation funds—

- (a) for registration — a fee of six hundred dollars;
- (b) an annual fee of four hundred dollars—
 - (i) payable on registration in respect of the period between the date of registration and the 1st July of the next succeeding year and calculated at the rate of one-twelfth of the annual fee for each month or any part of a month;
 - (ii) payable in full not later than the 1st July of each successive year after the date of registration.

6. The fees specified in this Schedule are expressed in dollars issued by the East Caribbean Currency Authority but may, as occasion requires, be quoted or paid from outside Saint Vincent and the Grenadines in any foreign currency as the Minister of Finance may specify for the purpose.

THIRD SCHEDULE

Section 20

MEMORANDUM OF ASSOCIATION

Name:

The name of the Company is—

Limited

2. Address of registered office:

The address of the registered office shall be the address of the local representative, namely
 Saint Vincent and the Grenadines,
 West Indies.

3. Purpose:

The purpose of the company is—

.....
.....
.....

4. Liability limited. The liability of the members shall be limited.

5. Capital.

The authorised capital of the company is
dollars divided into shares of
dollars par value each.

6. Directors and chairman of the board:

The first directors shall be—

	Designation	Name	First Address	Nationality	Authority to sign
		name			
Chairman					
Other					
Directors					

*NOTE—

Insert as appropriate
“I” for Individual Authority to sign;
“JA2” for Joint Authority to sign with any other signatory;
“SA” for Special Arrangement, in which case specify the special arrange-
ment below—
.....
.....
.....
.....

7. Local representative:

The local representative shall be—

(Name)
(Address)

8. Officers:

The first officers shall be—

Designation	Name	First Address	Nationality	Authority to sign

*NOTE—

Insert as appropriate

"I" for Individual Authority to sign;

"JA2" for Joint Authority to sign with any other signatory;

"SA" for Special Arrangement, in which case specify the special arrangement below—

.....

.....

.....

Subscribers—

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company in pursuance of the memorandum of association and the articles annexed hereto, and we respectively agree to take the number of shares in the capital of the company set opposite to our respective names.

Name and Address	Signature	Number of shares taken by each subscriber

.....

.....

.....

Total number of shares

Dated this day of 19

Witness to the above signature—

(Name)

(Address)

(Signature)

FOURTH SCHEDULE

Section 20

ARTICLES OF ASSOCIATION

Regulations for management of a company limited by shares.

Shares

1. If several persons are registered as joint holders of any share, any one of such persons may give effectual receipts for any dividend payable in respect of such share.

2. Every member shall be entitled to a certificate under the common seal of the company specifying the share or shares held by him.

Transfer of Shares

3. Shares may be transferred by an instrument of transfer executed in writing by the transferor, but the transferor shall be deemed to remain a holder of such share until the name of the transferee is entered in the register book in respect thereof.

4. The company may decline to register any transfer of shares made by a member who is indebted to it.

Transmission of Shares

5. The executors or administrators of a deceased member shall be the only persons recognised by the company as having any title to his share.

6. Any person becoming entitled to a share in consequence of the death, bankruptcy or insolvency of any member, may be registered as a member upon such evidence being produced as may from time to time be required by the company.

7. Any person who has become entitled to a share in consequence of the death, bankruptcy, or insolvency of any member may, instead of being registered himself, elect to have some other person to be named by him registered as a transferee of such share.

8. The person so becoming entitled shall signify his election to transfer a share by executing to his nominee an instrument of transfer of such share.

Increase in Capital

9. The directors may by special resolution of the company increase its capital by the issue of new shares, such increase to be of such amount in aggregate, and to be divided into shares of such respective amounts, as the company directs.

10. Subject to any direction to the contrary that may be given by the meeting that sanctions the increase of capital, all new shares shall be offered to the members in proportion to the existing shares paid by them, and such offer shall be made by notice specifying the number of shares to which the member is entitled, and limiting a time within which the offer, if not accepted, will be deemed to be declined and after the expiration of such time or on the receipt of any intimation from the member to whom such notice is given that he declines to accept the shares offered, the directors may dispose of the same in such manner as they think most beneficial to the company.

General Meeting

11. Ordinary general meetings shall be held annually within six months after the closing of the business year at such time and place as may be prescribed by the directors.

12. All other general meetings shall be called extraordinary general meetings.

13. The directors may, whenever they think fit, and shall upon a requisition made in writing by not less than one-fifth in number of the members of the company, convene an extraordinary general meeting.

14. Any requisition made by the members shall express the object of the meeting proposed to be called, and shall be left at the registered office of the company.

15. Upon receipt of such requisition, the directors shall forthwith proceed to convene an extraordinary general meeting. If they do not proceed to convene the same within twentyone days from the date of the requisition, the requisitioners, or any other members amounting to the required number, may themselves convene an extraordinary general meeting.

Proceedings at General Meetings

16. Seven days' notice at least, specifying the place, the day, and the hour and the agenda of the meeting shall be given to the members, but the non-receipt of such notice by any member shall not invalidate the proceedings at any general meeting.

17. No business shall be transacted at any general meeting except the declaration of a dividend, unless a quorum of not less than half of the share holders representing not less than fifty per centum of the voters is present or represented thereat.

18. The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company.

19. If there is no such chairman, or if at any meeting he is not present, the members present shall choose one of their number to be the chairman.

20. In the event of an equality of votes at any general meeting, the chairman shall be entitled to a second or casting vote.

Votes of Members

21. Every member shall have one vote for every share.

22. If one or more persons are jointly entitled to a share or shares, the member whose name stands first in the register of members as one of the holders of such share or shares, and no other, shall be entitled to vote in respect of the same.

23. Votes may be given either personally or by proxy.

24. The instrument appointing a proxy shall be in writing, signed by the appointer or, if such appointer is a corporation, under its common seal.

Directors

25. There shall be three or more directors.

26. The original number of the directors, the names of the first directors, the chairman of the board and the authority of each director to sign shall be determined by the subscribers of the memorandum of association.

27. Subsequent general meetings of the company shall elect the directors and the chairman of the board by special resolution for a tenure of office of three years.

28. The remuneration of the directors, and their remuneration for services performed previously to the general meeting, shall be determined by the company in general meeting.

29. The company, in general meeting, may by special resolution remove any director before the expiration of his period of office.

30. A retiring director shall be eligible for re-election.

Powers and Duties of Directors

31. The business of the company shall be managed by the directors, who may pay all expenses incurred in getting up and registering the company, and may exercise all such powers of the company as are not by the Companies Act, or by these Articles, required to be

exercised by the company in general meeting, subject nevertheless to any regulations of these Articles, to the provisions of the Companies Act and to such regulations, being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the company in general meeting; but no regulations made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if such regulation had not been made.

Proceedings of Directors

32. (1) The directors may meet together for the dispatch of business, adjourn, and otherwise regulate their meetings as they think fit, and the quorum necessary for the transaction of business shall be the majority of the directors.

(2) Questions arising at any meeting shall be decided by a majority of votes.

(3) In case of an equality of votes the chairman shall have a second or casting vote.

(4) A director may at any time summon a meeting of the directors.

33. If at any meeting the chairman is not present the directors present shall choose one of their number to be chairman of such meeting.

34. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit. Any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on them by the directors.

35. A committee may elect a chairman of their meetings; if no such chairman is elected, or if he is not present at the time appointed for holding the same the members present shall choose one of their number to be the chairman of such meeting.

36. A committee may meet and adjourn as it thinks proper; questions arising at any meeting shall be determined by a majority of votes of the members present:

Provided the majority of the committee members are present, and in the event of an equality of votes the chairman shall have a second or casting vote.

Officers other than Directors

37. (1) The names of the first officers, if any, and the authority of each such officer to sign shall be determined by the subscribers and stated in the memorandum of association.

(2) Thereafter the officers, if any, and the authority of each such officer to sign shall be determined by a special resolution.

38. (1) The name of the first local representative, who may be a director or officer of the company, shall be determined by the subscribers and stated in the memorandum of association.

(2) Thereafter the name of the local representative shall be determined by special resolution.

Dividends and Reserves

39. The directors may, with the sanction of the company in general meeting, declare a dividend to be paid to the members in proportion to their shares.

40. No dividend shall be payable except out of the profits arising from the business of the company.

41. The directors may, before recommending any dividend, set aside out of the profits of the company such sum as they think proper as a reserve fund to meet the contingencies, or for equalising dividends, or for repairing or maintaining the works connected with the business of the company, or any part thereof; and the directors may invest the sum so set apart as a reserve fund upon such securities as they may select.

42. The directors may deduct from the dividend payable to any member all such sums of money as may be due from him to the company.

43. Notice of any dividend that may have been declared shall be given to each member and all dividends unclaimed for three years, after having been declared, may be forfeited by the directors for the benefit of the company.

44. No dividend shall bear interest as against the company.

45. (1) The directors shall cause true accounts to be kept.

(2) The books of accounts shall be kept at the registered office of the company or such other place as the company may determine, and, subject to any reasonable restrictions as to the time and manner of inspecting the same that may be imposed by the company in general meeting, shall be open to the inspection of the members during the hours of business.

46. Once at least in every year the directors shall lay before the company in ordinary general meeting a statement of the income and expenditure for the past year made up to date not more than six months before such meeting.

47. A balance sheet shall be made out in every year and laid before the company in general meeting and such balance sheet shall contain a summary of the property and liabilities of the company.

48. A printed copy of such balance sheet shall, seven days prior to such meeting, be served on every member.

Audit

49. The company may instruct the directors to have the accounts of the company examined, and the correctness of the balance sheet ascertained, by one or more auditor or auditors to be appointed by the company in general meeting.

50. The auditors may be members of the company but no person may be an auditor who is interested otherwise than as a member in any transaction of the company, and no director or other officer of the company is eligible during his continuance in office to be an auditor.

51. The auditors shall make a report to the members upon the balance sheet and accounts, and in every report they shall state whether in their opinion the balance sheet is a full and true balance sheet, properly drawn up so as to exhibit a true and correct view of the state of the company's affairs, and in case they have called for explanation or information from the directors whether such explanations or information have been given by the directors, and whether they have been satisfactory.

Notices

52. A notice may be served by the company upon any member either personally or by sending through the post in a prepaid letter addressed to such member at the registered place of abode.

53. All notices directed to be given to the members shall, with respect to any share to which persons are jointly entitled, be given to whichever of such persons is named first in the register of members; and notice so given shall be sufficient notice to all holders of such share.

54. Any notice, if served by post, shall be deemed to have been served seven days after delivery to the post office, and in proving such service it shall be sufficient to prove that the letter containing the notice was properly addressed and put into the post office.

FIFTH SCHEDULE

Section 21

FORM A

Certificate of Registration

International Company

Registration No.								
File No.	Type of Company		Date of Registration			Date of Cancellation		
Entry No.	Name	Entry No.	Domicile	Entry No.	Address	Entry No.	Authorised Share Capital	Shares
Entry No.	Purpose of Company		Entry No.	Directors and Officers				
				Names Citizenship Address			Function	Authority to sign
Entry No.	Name and address of local representative			Date, Signature and Seal of the Registrar of Companies			Date, Signature and Seal of the Saint Vincent and the Grenadines Trust Authority	

Entries		Documents		Abbreviation (see overleaf)																					
No.	Date	No.	Designation	Date	*Function																				
					Insert as appropriate: (i) in conjunction with "Director" CH — Chairman of the Board MD — Managing Director T — Treasurer S — Secretary (ii) in conjunction with "Manager" M — Manager AM — Assistant Manager (iii) in general LR — Local Representative **Authority to Sign Insert as appropriate I — individual authority to sign JS — authority to sign jointly with another director or officer LTD — authority to sign limited to the amount shown NS — no authority to sign																				
					Other particulars For internal use only																				
					Annual fee paid																				
					<table><tr><td>77</td><td>78</td><td>79</td><td>80</td><td>81</td><td>82</td><td>83</td><td>84</td><td>85</td><td>86</td></tr><tr><td>87</td><td>88</td><td>89</td><td>90</td><td>91</td><td>92</td><td>93</td><td>94</td><td>95</td><td>96</td></tr></table>	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96
77	78	79	80	81	82	83	84	85	86																
87	88	89	90	91	92	93	94	95	96																

FORM B

Certificate of Registration
Superannuation Fund

Registration No.							
File No.	Date of Registration	Date of Cancellation					
Entry No.	Name	Entry No.	Domicile	Entry No.	Address		
Entry No.	Particulars	Entry No.	Trustees				
			Name	Citizenship	Address	Function	Authority to sign
			Date, Signature and Seal of the Registrar of Trusts		Date, Signature and Seal of Saint Vincent and the Grenadines Trust Authority		

Entries		Documents		Abbreviation (see overleaf)										
No.	Date	No.	Designation	Date	*Function Insert as appropriate:									
					CH — Chairman of the Board of Trustees R — Resident Trustee **Authority to Sign Insert as appropriate I — individual authority to sign JS — authority to sign jointly with another trustee LTD — authority to sign limited to the amount shown NS — no authority to sign									
					Other particulars For internal use only									
					Annual fee paid									
					77	78	79	80	81	82	83	84	85	86
					87	88	89	90	91	92	93	94	95	

MUTUAL ASSISTANCE IN CRIMINAL MATTERS

ACT 1993

SAINT VINCENT AND THE GRENADINES

ARRANGEMENT OF CLAUSES

PART I - PRELIMINARY

Clause

1. Short Title
2. Commencement
3. Interpretation
4. Central authority for Saint Vincent and the Grenadines
5. Application of Act
6. Restrictions with respect to operation of Act

PART II - REQUESTS TO COMMONWEALTH COUNTRIES FOR ASSISTANCE

Division 1. - General assistance

7. Assistance in obtaining evidence
8. Assistance in locating or identifying person
9. Assistance in obtaining article or thing, by search and seizure if necessary
10. Assistance in arranging attendance of person
11. Assistance in securing transfer of prisoner
12. Assistance in serving documents
13. Restriction on use of evidence, etc.
14. Immunities and privileges

Division 2. - Assistance in connection with serious offences

15. Assistance in tracing property, etc.
16. Assistance in relation to certain orders
17. Assistance in obtaining order in nature of restraining order

PART III - REQUESTS BY COMMONWEALTH COUNTRIES
FOR ASSISTANCE

Division 1. - Form and acceptance or refusal of requests

18. Form of requests
19. Acceptance or refusal of requests, etc.

Division 2. - General assistance

- 20. Assistance to country in obtaining evidence
- 21. Assistance to country in locating or identifying person
- 22. Assistance to country in obtaining article or thing, by search and seizure if necessary
- 23. Assistance to country in arranging attendance of person
- 24. Assistance to country in securing transfer of prisoner
- 25. Assistance to country in serving documents

Division 3. - Assistance in connection with serious offences in Commonwealth countries

- 26. Assistance to country in tracing property, etc.
- 27. Assistance to country in relation to certain orders
- 28. Assistance to country in obtaining restraining order

PART IV - APPLICATION OF ACT TO COUNTRIES OTHER THAN COMMONWEALTH COUNTRIES

- 29. Definitions for purposes of Part IV
- 30. Implementation of treaty

PART V - MISCELLANEOUS

- 31. Certificates given by the Attorney-General
- 32. Proof
- 33. Transit
- 34. Escaping
- 35. Arrest of person who has escaped from custody
- 36. Regulations
- 37. This Act to take precedence

FIRST SCHEDULE - Requests for assistance made by Commonwealth countries

SECOND SCHEDULE - Text of the Commonwealth Scheme



SAINT VINCENT AND THE GRENADINES

ACT No. 46 ' 1993

[L.S.]

I ASSENT

DAVID E. JACK
Governor-General
28th December, 1993

AN ACT to make provisions with respect to the scheme Relating to Mutual Assistance in Criminal Matters within the Commonwealth and to facilitate its operation in Saint Vincent and the Grenadines; and to make provision concerning mutual assistance in criminal matters between Saint Vincent and the Grenadines and countries other than Commonwealth countries.

[28th December, 1993]

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

PART I - PRELIMINARY

- Short Title 1. This Act may be cited as the Mutual Assistance in Criminal Matters Act, 1993.
- Commencement 2. This Act shall come into effect on a day appointed by the Governor-General by Proclamation published in the Gazette.
- Interpretation 3. (1) In this Act, unless the context otherwise requires -
- "central authority" means -
- (a) in relation to this State, the person or authority designated pursuant to section 4; or
- (b) in relation to any Commonwealth country, the person or authority designated by that country for the purpose of transmitting and receiving requests under the Scheme;

"confiscation order" means such an order made under the Drug Trafficking Offences Act, 1993;

"Commonwealth country" means -

- (a) a sovereign and independent country within the Commonwealth, other than Saint Vincent and the Grenadines, together with any dependent territories which the country designates; and
- (b) a territory within the Commonwealth which, though not sovereign and independent, is not designated as provided in paragraph (a);

"criminal proceedings" means -

- (a) for the purposes of Part II, proceedings certified by the central authority for this State to be criminal proceedings which have been, or could be, instituted in this State; or
- (b) for the purposes of Part III, proceedings certified by the central authority for any Commonwealth country making a request for assistance under this Act to be criminal proceedings which have been, or could be, instituted in that country,

in respect of an offence committed, or suspected on reasonable grounds to have been committed, against the law of Saint Vincent and the Grenadines or, as the case may be, of the Commonwealth country making the request for assistance;

"judicial records" means judgments, orders and decisions of courts, and other records held by judicial authorities;

"official records" means documents held by the government departments or agencies or prosecution authorities;

"property" includes money and all other property, real or personal, immovable or movable, including things in action and other intangible or incorporeal property;

"regulations" means regulations made under section 36;

"restraining order" means such an order made under the Drug Trafficking Offences Act 1993.

"Scheme" means the Scheme Relating to Mutual Assistance in Criminal Matters within the Commonwealth, the text of which is set out in the Second Schedule;

"serious offence" means -

- (a) in relation to this State, an offence against the law of Saint Vincent and the Grenadines which is an indictable offence -
 - (i) for which a sentence of death, or imprisonment for a term of not less than 3 years, may be, or is required to be, imposed; or
 - (ii) the value of the property derived or obtained from the commission of which is, or is likely to be, not less than \$20,000, or such greater amounts as may be prescribed; or
- (b) in relation to a Commonwealth country, an offence against the law of the country -

- (i) for which a sentence such as is specified in paragraph (a)(i) may be, or is required to be, imposed; or
- (ii) the value of the property derived or obtained from the commission of which is certified by the central authority for the country to be, or to be likely to be, not less than such amount as is prescribed by or under the law of the country;

"this State" means Saint Vincent and the Grenadines;

"transmitted", in relation to a request, means -

- (a) in Part II, transmitted by the central authority for this state to the central authority for the Commonwealth country from which assistance is requested; or
- (b) in part III, transmitted by the central authority for the Commonwealth country, making a request for assistance, to the central authority for this State.

(2) A reference in this Act to the law of a Commonwealth country includes a reference to the law of a part of, or the law in force in a part of, the country.

(3) For the purposes of this Act, a ship or aircraft of, or registered in, a Commonwealth country shall be deemed to be part of the country.

(4) For the purposes of this Act, a person shall be deemed to have been charged with a serious offence in this State or, as the case may be, in a Commonwealth country, if any information has been laid against the person for the offence, whether or not -

(a) a summons to require the attendance of the person to answer to the information; or

(b) a warrant for the apprehension of the person,

has been issued.

Central
authority for
Saint Vincent
and the
Grenadines

4. The Governor-General may, by order published in the Gazette, designate any person or authority as the central authority for this State.

Application
of Act

5. (1) Subject to subsection (2), this Act, other than Part IV, shall apply in relation to all Commonwealth countries.

(2) The Governor-General may, by order published in the Gazette, direct that the application of this Act in relation to a particular Commonwealth country shall be subject to such conditions, exceptions or qualifications as are specified in the order, and in that event this Act shall apply accordingly.

Restrictions
with respect
to operation
of Act

6. (1) Nothing in this Act derogates from, or prevents the development of, other forms of co-operation (whether formal or informal) in respect of criminal matters, between this State and any Commonwealth country, or between this State, or any organisation in this State, and the International Criminal Police Organisation or any other organisation.

(2) Nothing in this Act authorizes the extradition, or the arrest or detention with a view to extradition, of any person.

PART II - REQUESTS TO COMMONWEALTH COUNTRIES FOR ASSISTANCE

Division 1. - General assistance

Assistance
in obtaining
evidence

7. Where there are reasonable grounds to believe that evidence or information relevant to any criminal proceedings may be obtained if, in a Commonwealth country, -

(a) evidence is taken from any person;

(b) any -

(i) person, or sample, specimen or other item from, or provided by, a person; or

(ii) remains which are, or may be, human, is or are subjected to any examination or test;

(c) judicial records, official records or other records, or documents or other articles, are produced or examined;

(d) samples of any matter or thing are taken, examined or tested;

(e) any building, place or thing is viewed or photographed, a request may be transmitted requesting that assistance be given by the country in so obtaining the evidence or information.

Assistance in locating or identifying person

8. Where there are reasonable grounds to believe that a person who -

(a) is or might be concerned in or affected by; or

(b) could give or provide evidence or assistance relevant to, any criminal proceedings, is in a Commonwealth country, a request may be transmitted requesting that assistance be given by the country in locating that person or, if his identity is unknown, in identifying and locating him.

Assistance in obtaining article or thing, by search and seizure if necessary

9. Where there are reasonable grounds to believe that an article or thing is in a Commonwealth country and would, if produced, be relevant to any criminal proceedings, a request may be transmitted requesting that assistance be given by the country in obtaining, by search and seizure if necessary, the article or thing.

**Assistance
in arranging
attendance of
person**

10. Where there are reasonable grounds to believe that a person in a Commonwealth country could give or provide evidence or assistance relevant to any criminal proceedings, a request may be transmitted requesting that assistance be given by the country in arranging the attendance of the person in this State to give or provide that evidence, or, as the case may be, assistance.

**Assistance in
securing
transfer of
prisoner**

11. (1) Where there are reasonable grounds to believe that a person who is a prisoner in a Commonwealth country could give or provide evidence or assistance relevant to any criminal proceedings, a request may be transmitted requesting the country to secure the transfer of the prisoner to this State to give or provide that evidence or, as the case may be, assistance.

(2) The central authority for this State shall, to the extent that it is able to do so, ensure that any conditions, subject to which a prisoner is transferred from any Commonwealth country pursuant to a request under subsection (1), are observed, unless and to the extent that country waives their observance.

(3) Where any conditions such as are referred to in subsection (2) require that a prisoner be kept in custody while in this State, the prisoner shall, subject to subsection (4), while in this State or travelling to or from this State pursuant to the request, be kept in such custody as the Attorney General directs in writing.

(4) A prisoner, in this State pursuant to a request made under this section, may, if both central authorities and the prisoner so agree, be released in this State without first having been returned to the Commonwealth country to which the request was made.

(5) Nothing in this section shall be construed as conferring rights on a prisoner.

(6) In this section, "prisoner", in relation to a Commonwealth country, means a person who is being held in custody pending trial for, or sentence for, or is under a sentence of imprisonment for, an offence against the law of that country, or is subject to any limitation on his personal liberty pursuant to that law.

**Assistance in
serving
documents**

12. Where, for the purposes of, or in connection with, any criminal proceedings, it is necessary or desirable to serve any document on a person or an authority in a Commonwealth country, a request may be transmitted requesting that assistance be given by the country in effecting the service.

**Restriction
on use of
evidence, etc.**

13. Any -

(a) evidence or information obtained or, as the case may be, given or provided, by any person pursuant to a request such as is referred to in section 7, 10 or 11; or

(b) article or thing obtained pursuant to a request such as is referred to in section 9, shall be used, by or on behalf of this State, only for the purposes of, or in connection with, the criminal proceedings to which the request related, unless the Commonwealth country, to which the request was made, consents to it being otherwise used by or on behalf of this State.

**Immunities
and
privileges**

14. (1) Subject to subsection (2), a person in this State pursuant to a request such as is referred to in section 10 or 11 -

(a) is not liable to be detained, prosecuted or punished in this State for any offence that is alleged to have been committed, or that was committed, before the persons' departure, pursuant to the request, from the Commonwealth country to which the request was made;

(b) may refuse to answer any questions or to produce any record or thing if the refusal is based on the law of Saint Vincent and the Grenadines; and

(c) shall not be compelled to give or provide evidence or assistance for the purposes of, or in connection with, any

criminal proceedings other than those to which the request related.

(2) Subsection (1)(a) or (c) does not apply in relation to a person -

- (a) if he leaves this State and then returns otherwise than pursuant to the same or another request; or
- (b) who has been notified by the central authority for this State that his presence is no longer required for the purposes of the request and who then remains in this State for more than 15 days after the first date on which he had a reasonable opportunity to leave it.

(3) For the purposes of subsection (1)(a), an offence shall be treated as having been committed only on the date when the conduct constituting the offence was complete, notwithstanding that the offence concerned may be a continuing offence.

Division 2. - Assistance in connection with serious offences

Assistance in tracing property, etc.

15. Where -

- (a) in this State a person -
 - (i) has been charged with, or convicted of, a serious offence; or
 - (ii) is suspected, on reasonable grounds, of having committed such an offence; and
- (b) property derived or obtained, directly or indirectly, by a person from the commission of an offence is suspected, on reasonable grounds, to be in a

Commonwealth country,
a request may be transmitted requesting
that assistance be given by the
Commonwealth country in identifying,
locating or assessing the value or amount
of any such property.

Assistance in
relation to
certain orders

16. (1) Where -

(a) in this State -

(i) a restraining order has
been made restraining
dealings with identified
property which is, or is
suspected on reasonable
grounds of being,
property derived or
obtained, directly or
indirectly, from the
commission of a serious
offence; or

(ii) a confiscation order has
been made imposing on a
person a pecuniary
calculated by reference
to the value of property
derived or obtained,
directly or indirectly,
by the person from the
commission of a serious
offence; and

(b) property to which a restraining
order would apply or, as the
case may be, which is available
for the satisfaction of a
pecuniary penalty under a
confiscation order, is
suspected, on reasonable
grounds, to be in a
Commonwealth country,
then, subject to subsection (3), a
request may be transmitted requesting
that the order concerned be enforced in
accordance with the law of the
Commonwealth country and that, to that
end, the country give appropriate
assistance.

(2) In any case where a request to a Commonwealth country under this section has been accepted, the central authority for this state shall inform the central authority for that country if the confiscation order or restraining order concerned is thereafter varied or ceases to have effect.

(3) A request shall not be made under this section for the enforcement of a confiscation order if the value of the property required to satisfy the pecuniary under the order would be less than \$20,000, or such other amount as may be prescribed.

Assistance in
obtaining
order in
nature of
restraining
order

17. Where -

(a) in this State -

(i) a person has been charged with, or convicted of, a serious offence; and

(ii) a confiscation order has been, or is likely to be, made imposing on that person a pecuniary penalty calculated by reference to property derived or obtained, directly or indirectly, by that person from the commission of the serious offence; and

(b) property derived or obtained from the commission of a serious offence is suspected, on reasonable grounds, to be in a Commonwealth country,
a request may be transmitted requesting that an order be made, in accordance with the law of the Commonwealth country, restraining dealings with identified property and that, to that end, the country give appropriate assistance.

PART III - REQUESTS BY COMMONWEALTH COUNTRIES FOR ASSISTANCE**Division 1. - Form and acceptance or refusal of requests****Form of requests**

18. (1) Subject to subsection (2), the First Schedule applies in relation to a request for assistance under this Act made by a Commonwealth country.

(2) Subsection (1) does not apply in relation to an informal request for assistance under this Act which is transmitted orally, but in the event that such a request is accepted -

- (a) it is required to be implemented only to the extent that the central authority for this State considers reasonable; and
- (b) it shall be deemed to have been withdrawn if a request in accordance with subsection (1) for the assistance concerned is not transmitted within such period as that central authority considers reasonable.

Acceptance or refusal of request, etc.

19. (1) Subject to this section, a request for assistance under this Act duly made by a Commonwealth country shall be accepted.

(2) A request for assistance under this Act made by a Commonwealth country shall be refused if, in the opinion of the central authority for this State,

- (a) the request relates to the prosecution or punishment of a person for an offence that is, or is by reason of the circumstances in which it is alleged to have been committed or was committed, an offence of a political character;
- (b) there are substantial grounds for believing that the request has been made with a view to prosecuting or punishing a person for an offence of a political character;

- (c) there are substantial grounds for believing that the request was made for the purpose of prosecuting, punishing or otherwise causing prejudice to a person on account of the person's race, sex, religion, nationality, place of origin or political opinions;
- (d) the request relates to the prosecution or punishment of a person in respect of conduct that, if it had occurred in this State, would have constituted an offence under the military law but not also under the ordinary criminal law of this State;
- (e) the granting of the request would be contrary to the Constitution of this State, or would prejudice the security, international relations or any substantial interest related to national security or other essential public policy of this State;
- (f) the request relates to conduct by a person which constitutes an offence in respect of which the person has already been convicted or acquitted by a court or tribunal in this State;
- (g) the prisoner is not prepared to give his consent to the transfer in the case of a request such as is referred to in section 24(1);
- (h) the request is for assistance of a kind which cannot be given under this Act, or would require steps to be taken for its implementation that could not be lawfully taken; or

- (i) the implementation of the request would require an individual to act, or refrain from acting, in a certain way and the individual is not willing to do so and cannot be lawfully compelled to do so.

(3) A request for assistance under this Act made by a Commonwealth country may be refused if, in the opinion of the central authority for this State, -

- (a) the request relates to the prosecution or punishment of a person in respect of conduct that, if it had occurred in this State, would not have constituted an offence against the law of this State;
- (b) the request relates to the prosecution or punishment of a person in respect of conduct that occurred, or is alleged to have occurred, outside the country making the request and similar conduct occurring outside this State in similar circumstances would not have constituted an offence against the law of this State;
- (c) the request relates to the prosecution or punishment of a person in respect of conduct where, if it had occurred in this State at the same time and had constituted an offence against the law of this State, the person responsible could no longer be prosecuted by reason of lapse of time or for any other reason;
- (d) the provision of the assistance would impose an excessive burden on the resources of this State;
- (e) the conditions, exceptions or qualifications imposed pursuant

to section 5(2) in relation to the country, prevent the request being accepted;

(f) the request, not being one such as is referred to in section 18(2), does not meet the requirements of the First Schedule; or

(g) there are reasonable grounds for doing so in the case of a request such as is referred to in section 24(1).

(4) If, in the opinion of the central authority for this State, the expense involved in complying with a request for assistance under this Act made by a Commonwealth country, and accepted, would be of an extraordinary nature, the central authority for this State shall consult with the central authority for the country as to the terms and conditions under which compliance with the request may continue and, in the absence of agreement in that regard, the central authority for this State may refuse to continue further with the request.

(5) If a request for assistance under this Act made by a Commonwealth country, other than an informal one made pursuant to section 18(2), is refused, the fact of, and the grounds for, the refusal shall be given by the central authority for this state to the central authority for that country.

(6) For the purposes of this section, an offence is not an offence of a political character if it is an offence within the scope of any international convention to which both this State and the Commonwealth country making the request are parties and which imposes on the parties thereto an obligation to afford mutual assistance in criminal matters relating to the offence.

Division 2. - General assistance

Assistance to
country in
obtaining
evidence

20. (1) This section applies where a request is transmitted requesting assistance by this State in obtaining, by any of the means stated in section 7, evidence or information relevant to any criminal

proceedings in the Commonwealth country making the request, and the request is accepted.

(2) Subject to this section, where this section applies evidence or information to which a request relates shall be obtained under and in accordance with prescribed procedures.

(3) A person, from whom evidence is taken in this State pursuant to a request for assistance under this section by a Commonwealth country -

(a) may refuse to answer any question if -

(i) the refusal is based on the law of this State;

(ii) to require the person to answer the question would constitute a breach of a privilege recognised by the law of the Commonwealth country; or

(iii) to answer the question would constitute the commission by the person or an offence against the law of the Commonwealth country; and

(b) shall not be compelled to give evidence for the purposes of, or in connection with, any criminal proceedings other than those to which the request relates.

(4) Where the request for assistance under this section is to the effect that evidence or information be obtained by the means stated in section 7(c), copies of records, not publicly available, may be produced or examined only to the extent that they could be produced to, or examined by, enforcement agencies or prosecuting or judicial authorities in this State.

Assistance to
country in
locating or
identifying
person

21. (1) This section applies where a request is transmitted requesting assistance by this State in locating, or identifying and locating, a person, believed to be in this State, who -

(a) is or might be concerned in or affected by; or

(b) could give or provide evidence or assistance relevant to, any criminal proceedings in the Commonwealth country making the request, and the request is accepted.

(2) Where this section applies, the central authority for this State shall use its best endeavours to have the person located or, as the case may be identified and located, and shall inform the central authority for the Commonwealth country making the request as to the outcome of those endeavours.

Assistance to
country in
obtaining
article or
thing, by
search and
seizure if
necessary

22. (1) This section applies where a request is transmitted requesting assistance by this State in obtaining, by search and seizure if necessary, an article or thing in this State for the purposes of, or in connection with, any criminal proceedings in the Commonwealth country making the request, and the request is accepted.

(2) Where this section applies, the Director of Public Prosecutions shall, unless the article or thing concerned is otherwise lawfully obtained, authorize in writing a police officer to apply to a magistrate for a search warrant in respect of the article or thing.

(3) A police officer authorized under subsection (2) may apply for the issue of a search warrant to a magistrate having jurisdiction in the area where the article or thing is believed to be located.

(4) The laws of this State with respect to -

(a) the making and disposal of an application for a search warrant; and

(b) the execution of a search warrant,

apply, so far as they are capable of applying, to an application under subsection (3) and to the execution of any warrant issued pursuant to any such application.

(5) The central authority for this State shall provide such certification as may be required by the central authority for the Commonwealth country making the request concerning the result of any search, the place and circumstances of any seizure, and the subsequent custody of any property seized.

**Assistance to
country in
arranging
attendance of
person**

23. (1) This section applies where a request is transmitted requesting that assistance be given by this State in arranging the attendance, in the Commonwealth country making the request, of a person in this State to give or provide evidence or assistance relevant to any criminal proceedings in that Commonwealth country, and the request is accepted.

(2) Where this section applies, the central authority for this State shall -

- (a) inquire whether or not the person concerned is willing to attend as requested;
- (b) inform the central authority for the Commonwealth country making the request as to the outcome of the inquiry; and
- (c) if the person is willing to attend as requested, make appropriate arrangements to facilitate that attendance.

**Assistance to
country in
securing
transfer of
prisoner**

24. (1) This section applies where a request is transmitted requesting this State to secure the transfer of a prisoner in this State to the Commonwealth country making the request to give or provide evidence or assistance relevant to any criminal proceedings in that Commonwealth country, and the request is accepted.

(2) Where this section applies, the Attorney General shall cause a prisoner to be transferred to the Commonwealth country making the request for the purpose of giving effect to the request.

(3) The central authority for this State may state, and inform the central authority for the Commonwealth country making the request as to, conditions subject to which a prisoner is to be transferred, including conditions with respect to the custody, release or return of the prisoner.

(4) Any period during which a prisoner is in custody in a Commonwealth country, pursuant to a request, shall be deemed, for all purposes, to be on time served in custody in this State.

(5) In this section, "prisoner" means a person who is being held in custody pending trial for, or sentence for, or is under imprisonment for, and offence, or is subject to any limitation on his personal liberty pursuant to any law.

**Assistance to
country in
serving
documents**

25. (1) This section applies where a request is transmitted requesting assistance by this State in effecting the service of a document on a person or an authority in this State for the purposes of, or in connection with, any criminal proceedings in the Commonwealth country making the request, and the request is accepted.

(2) Where this section applies, the central authority for this State shall -

(a) use its best endeavours to have the document served -

(i) in accordance with Procedures proposed in the request; or

(ii) if those procedures Proposed would be unlawful or inappropriate, or no procedures are so proposed, in accordance with the law of this State; and

(b) if the document -

(i) is served, transmit to the central authority for the Commonwealth country making the request a

certificate as to
service; or

- (ii) is not served, transmit
to that central authority
a statement of the
reasons which prevented
the service.

**Division 3. - Assistance in connection with serious offences
in Commonwealth countries**

**Assistance to
country in
tracing
property, etc.**

26. (1) This section applies where -

- (a) the Attorney-General or
Director of Public Prosecutions
of a Commonwealth country gives
a certificate to the effect
that in the country a named
person -

(i) has been charged with, or
convicted of, a specified
serious offence; or

(ii) is suspected, on
reasonable grounds, of
having committed such a
specified offence;

- (b) property derived or obtained,
directly or indirectly, by the
named person from the
commission of that offence is
suspected, on reasonable
grounds, to be in this State;

(c) a request is transmitted
requesting assistance by this
State in identifying, locating
or assessing the value or
amount of that property; and

(d) the request is accepted.

(2) Where this section applies, the
central authority for this State -

- (a) shall use its best endeavours
to give the assistance

requested and, in doing so, may invoke such powers and procedures as may be prescribed for the purposes of this section; and

- (b) shall inform the central authority for the Commonwealth country making the request as to the outcome of those endeavours.

Assistance to
country in
relation to
certain orders

27 (1) This section applies where -

- (a) the Attorney-General or Director of Public Prosecutions of a Commonwealth country gives a certificate to the effect -

(i) that an identified order has been made in accordance with the law of the country;

(ii) that the order has the effect under that law -

(A) of confiscating property derived or obtained, directly or indirectly, by the person, against whom the order is made, from the commission of a specified serious offence;

(B) of imposing on the person, against whom the order is made, a pecuniary penalty calculated by reference to the value of property so derived or obtained; or

(C) of restraining dealings with property which is,

or is suspected on reasonable grounds of being, property so derived or obtained;

- (b) property available for the satisfaction of the order or the pecuniary penalty under the order, or to which the order would apply, as the case may be, is suspected, on reasonable grounds, to be in this State;
- (c) a request is transmitted requesting that the order concerned be enforced in accordance with the law of this State and that, to that end, this State give appropriate assistance; and
- (d) the request is accepted.

(2) Where this section applies, the Director of Public Prosecutions shall cause an application to be made to the High Court in accordance with the rules of the High Court for the registration of the order concerned.

(3) On application made pursuant to subsection (2), the High Court shall register the order if it is satisfied -

- (a) that at the time of registration the order is in force; and
- (b) that, in the case of an order such as is referred to in subsection (1)(a)(ii)(A) or (1)(a)(ii)(B) -
 - (i) that the person against whom the order was made appeared in the proceedings or, if he did not do so, that he received notice of the proceedings in sufficient time to enable him to defend them; and
 - (ii) that the order is not subject to appeal.

(4) Where an order is registered in accordance with this section, a copy of any amendments made to the order (whether before or after registration) may be registered in the same way as the order and the amendments do not, for the purposes of this Act, have effect until they are registered.

(5) An order or an amendment of an order shall be registered by the registration, in accordance with the rules of the High Court, of -

(a) a copy of the order or amendment sealed by the court or other authority making the order or amendment; or

(b) a copy of the order or amendment duly authenticated in accordance with section 32(2)(a).

(6) The High Court shall, after appropriate notice has been given to the central authority for this State, cancel the registration of an order made in accordance with this section if it appears to the court to have ceased to have effect in the Commonwealth country that made the request for assistance.

(7) The regulations may make provision for and with respect to the enforcement in this State of an order registered in accordance with this section.

(8) In this section, "appeal" includes any proceedings by way of discharging or setting aside a judgment or an application for a new trial or stay of execution.

Assistance to
country in
obtaining
restraining
order

28. (1) This section applies where -

(a) the Attorney-General or Director of Public Prosecutions of a Commonwealth country gives a certificate to the effect that -

(i) in the country, a named person has been charged with, or convicted of, a specified serious offence; and

(ii) in the country, an order has been, or is likely to be, made that has or, as the case may be, will have, the effect under the law of the country -

(A) of confiscating property derived or obtained, directly or indirectly, by that person from the commission of the serious offence; or

(B) of imposing on that person a pecuniary penalty calculated by reference to the value of the property so derived or obtained by him;

(b) property so derived or obtained is suspected, on reasonable grounds, to be in this State;

(c) a request is transmitted requesting that an order be made, in accordance with the law of this State, restraining dealings with identified property and that, to that end, this State give appropriate assistance; and

(d) the request is accepted.

(2) The regulations may make provision for and with respect to the implementation of a request under this section.

PART IV - APPLICATION OF ACT TO COUNTRIES OTHER THAN COMMONWEALTH COUNTRIES

Definitions for purposes of Part IV

29. In this Part -

"country" means a country other than one included in the definition of "Commonwealth country" in section 3(1);

"treaty" includes a convention, protocol, agreement or arrangement.

Implement-
ation of
treaty

30. (1) Regulations may make provisions to give effect to a treaty, set out in the regulations, for bilateral mutual assistance in criminal matters between this State and a country specified in the regulations.

(2) For that purpose, the regulations may, in particular, -

(a) direct that this Act shall apply in relation to the country so specified as if it were a Commonwealth country, subject to such limitations, conditions, exceptions or qualifications, (if any) as may be prescribed; or

(b) extend, as provided in section 36(2), the application of any other Act in relation to the country so specified,

and this Act or, as the case may be, the other Act shall apply accordingly.

PART V - MISCELLANEOUS

Certificates
given by the
Attorney-
General

31. Where he is satisfied that it is the case, the Attorney-General may give a certificate in such form as he determines, certifying, in relation to a request for assistance under this Act made by a Commonwealth country, either or both of the following facts, namely, that -

(a) the request meets the requirements of this Act;

(b) the acceptance of the request was duly made under and in accordance with this Act.

Proof

32. (1) In any relevant proceedings -

(a) a document that is duly certified is admissible in evidence; and

- (b) a relevant certificate shall be received as sufficient proof of the matters certified in the certificate unless the contrary is proved.

(2) A document is duly authenticated for the purposes of subsection (1)(a) if it purports to be -

- (a) signed or certified by a Judge or magistrate of a Commonwealth country making a request;
- (b) authenticated by the oath of a witness, or of a public officer of a Commonwealth country making a request; or
- (c) sealed with an official or public seal of a Minister of State, or of a department or public office of the Government, of such a country.

(3) Nothing in this section operates to prevent the proof of any matter, or the admission of any document, in accordance with the regulations or any other law.

(4) In this section -

"relevant certificate" means a certificate purporting to be given -

- (a) by the central authority for a Commonwealth country for the purposes of -
 - (i) paragraph (b) of the definition in section 3(1) of "criminal proceedings"; or
 - (ii) paragraph (b)(ii) of the definition in section 3(1) of "serious offence";
- (b) by the Attorney-General or Director of Public Prosecutions of a Commonwealth country for

the purposes of section 26(1)(a), 27(1)(a), or 28(1)(a), or paragraph 8(d) of the First Schedule; or

- (c) by the Attorney-General for the purpose of section 31;

"relevant proceedings" means proceedings under or pursuant to this or any other Act arising directly or indirectly from a request for assistance under this Act made by a Commonwealth country.

Transit

33. (1) Where a person is to be transported in custody from a Commonwealth country through this State to another Commonwealth country pursuant to a request for assistance, of the kind referred to in the Scheme, by the other Commonwealth country, the person -

- (a) may be transported through this State in the custody of another person; and
- (b) if an aircraft or ship by which the person is being transported lands or calls at a place in this State, shall be kept in such custody as the Attorney-General directs in writing until the person's transportation is continued.

(2) Where a person is being held in custody pursuant to a direction under subsection (1)(b) and the person's transportation is not, in the opinion of the attorney General, continued within a reasonable time, the Attorney General may direct that the person be transported in custody to the Commonwealth country from which the person was first transported.

Escaping

34. Any person who escapes from lawful custody while in this State pursuant to a request under section 11, or while being kept in custody pursuant to a direction under section 33(1)(b), is guilty of an offence and liable on summary conviction to imprisonment or two years.

**Arrest of
person who
has escaped
from custody**

35. (1) Any police officer may, without warrant, arrest a person, if the police officer has reasonable grounds to believe that the person -

- (a) has been brought to this State pursuant to a request under section 11, or was being kept in custody pursuant to a direction under section 33(1)(b); and
- (b) has escaped from lawful custody while in this State pursuant to the request, or while being so kept in custody.

(2) A person who has been arrested pursuant to subsection (1) shall be returned to custody in accordance with the Act.

Regulations

36. (1) The Governor-General may make regulations prescribing any matter necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, -

- (a) making provision as to evidence or proof of any matter for the purposes of this Act;
- (b) prescribing the procedures for obtaining evidence pursuant to a request to do so under section 20;
- (c) prescribing expenses and allowances payable to any person in this State pursuant to a request;
- (d) prescribing conditions for the protection of any property sent to or by a Commonwealth country pursuant to a request, and making provision for the return of property in this State pursuant to a request.

(2) The regulations may, with such limitations, conditions, exceptions or qualifications (if any) as may be prescribed, extend the application of any Act so as to enable -

- (a) any request by a Commonwealth country for assistance so requested to be given;
- (b) any order registered pursuant to section 27 to be enforced; or
- (c) an order to be made pursuant to a request for assistance under section 28 and, if made, to be enforced,

and the Act shall apply accordingly.

(3) Regulations made for the purposes of section 20(2) may include procedures for, and powers in relation to, the taking of evidence in this State by commissioners from, or nominated by, the Commonwealth country concerned.

This Act to
take pre-
cedence

37. The provisions of this Act shall take effect notwithstanding any provision of any other Act to the contrary, to the intent that any such provision of any other Act shall be deemed to have been hereby amended to the extent required to ensure compliance with the relevant provisions of this Act.

(Sec.18(1))

FIRST SCHEDULE

Request for assistance made by Commonwealth countries

1. A request for assistance under this Act made by a Commonwealth country shall -

- (a) specify the assistance requested;
- (b) identify the person, agency or authority that initiated the request;
- (c) state any wishes of the country concerning the confidentiality of the request and the reasons for those wishes;
- (d) state any period within which the country wishes the request to be complied with;
- (e) if the request would involve travel by any person from this State to the country, give details of allowances and accommodation to which the person would be entitled; and
- (f) contain such information as is available to the central authority for the country as will facilitate compliance with the request.

2. Where the assistance requested by a Commonwealth country is for the purposes of criminal proceedings, the request -

- (a) shall be accompanied by the certificate, in relation to the criminal proceedings, that is referred to in paragraph (b) of the definition of "criminal proceedings" in section 3(1); and
- (b) shall -
 - (i) give details of the proceedings and the offence concerned, including a summary of the known facts;
 - (ii) give the identity, if known, of the person to whom the proceedings relate or would relate; and
 - (iii) if the proceedings have been instituted, state the stage reached in the proceedings and, where applicable, identify the court exercising jurisdiction.

3. Where a request such as is referred to in section 20 is made by a Commonwealth country, the request shall -

- (a) give details of the procedure that the country wishes to be followed in giving effect to the request, including details of the manner and form in which any evidence or information is to be supplied to that country;
- (b) where relevant, indicate whether any person, from whom evidence is to be taken, is to be examined -
 - (i) orally or in writing;
 - (ii) under oath;
 - (iii) in the presence of his legal representative; or
 - (iv) in the presence of the person to whom any relevant proceedings in that country relate;
- (c) where evidence is to be taken from a person, specify the questions to be put to the person or the subject-matter about which the person is to be examined;
- (d) where evidence is to be taken from a person, give details of any special requirements of the country as to the manner of taking evidence relevant to its admissibility in the country; and
- (e) give details of any privileges or exemptions under the law of the country in relation to obtaining evidence or information by the means proposed in the request.

4. Where a request such as is referred to in section 22 is made by a Commonwealth country, the request shall identify the article or thing which is to be obtained and, so far as is reasonably practicable, shall contain all information available to the central authority for the country which may be required to be adduced in an application under the law of this State for any necessary warrant or authorization to effect a seizure of that article or thing.

5. Where a request such as is referred to in section 24 is made by a Commonwealth country, the request shall identify the subject on which evidence or information is to be provided and state the reasons for requiring the personal appearance of the prisoner.

6. Where a request such as is referred to in section 25 is made by a Commonwealth country, the request shall -

- (a) be accompanied by the document to be served; and

- (b) where that document relates to the attendance of any person in the country, give such notice as that country is able to provide of outstanding warrants or other judicial orders in criminal matters against that person.
7. Where a request such as is referred to in section 26 is made by a Commonwealth country, the request shall -
- (a) be accompanied by the certificate given by the Attorney-General or Director of Public Prosecutions thereof;
 - (b) give details of the specified serious offence; and
 - (c) state the grounds for suspecting that the relevant property is in this State and give any information in the possession of the country which will assist in identifying or locating that property.
8. Where a request such as is referred to in section 27 is made by a Commonwealth country, the request shall -
- (a) be accompanied by the certificate given by the Attorney-General or Director of Public Prosecutions thereof;
 - (b) be accompanied by a copy of the identified order made in the country -
 - (i) sealed by the court that made the order; or
 - (ii) duly authenticated in accordance with section 32(2)(a), and identify the relevant law under which the order was made;
 - (c) give details of the specified serious offence;
 - (d) in the case of an order such as is referred to in section 27(1)(a)(ii)(A) or 27(1)(a)(ii)(B), be accompanied by a certificate given by the Attorney-General to the effect -
 - (i) that the order is not subject to appeal, as defined in section 27(8); and
 - (ii) that the person against whom the order was made appeared in the proceedings or, if he did not do so, that he received the notice of the proceedings specified in the certificate;
 - (e) state the grounds for suspecting that the relevant property is in this State and give any information in the possession of the country which will assist in identifying or locating the property; and

- (f) give particulars of any amount paid or recovered under the identified order.

9. Where a request such as is referred to in section 28 is made by a Commonwealth country, the request shall -

- (a) be accompanied by the certificate given by the Attorney-General or Director of Public prosecutions thereof;
- (b) if relevant, be accompanied by a copy of the order made in the country -
 - (i) sealed by the court that made the order; or
 - (ii) duly authenticated in accordance with section 32(2)(a), and identify the law under which the order was made;
- (c) if relevant, state the grounds for believing that an order is likely to be made;
- (d) give details of the serious offence in respect of which the order was or, as the case may be, is likely to be, made; and
- (e) state the grounds for suspecting that the relevant property is in this State and give any information in the possession of the country which will assist in identifying the property.

10. After giving preliminary consideration to a request for assistance under this Act made by a Commonwealth country, the central authority for this State may require the central authority for that country to furnish further information relative to the request and if that information is not furnished within such period as the central authority for this state considers reasonable, the request shall be deemed to have been withdrawn.

(sec. 3(1))

SECOND SCHEDULE

**Text of the Scheme Relating to Mutual
Assistance in Criminal Matters within
The Commonwealth**

PURPOSE AND SCOPE

- (1) The purpose of this Scheme is to increase the level and scope of assistance rendered between Commonwealth Governments in criminal matters. It augments, and in no way derogates from existing forms of cooperation, both formal and informal; nor does it preclude the development of enhanced arrangements in other fora.
- (2) This Scheme provides for the giving of assistance by the competent authorities of one country (the requested country) in respect of criminal matters arising in another country (the requesting country).
- (3) Assistance in criminal matters under this Scheme includes assistance in
 - (a) identifying and locating persons;
 - (b) serving documents;
 - (c) examining witnesses;
 - (d) search and seizure;
 - (e) obtaining evidence;
 - (f) facilitating the personal appearance of witnesses;
 - (g) effecting a temporary transfer of persons in custody to appear as a witness;
 - (h) obtaining production of judicial or official records; and
 - (i) tracing, seizure and forfeiting the proceeds of criminal activities.

MEANING OF COUNTRY

- 2 For the purposes of this Scheme, each of the following is a separate country, that is to say

- (a) each sovereign and independent country within the Commonwealth together with any dependent territories which that country designates; and
- (b) each country within the Commonwealth which, though not sovereign and independent, is not designated for the purposes of the preceding sub-paragraph.

CRIMINAL MATTER

- 3 (1) for the purposes of this Scheme, a criminal matter arises in a country if the Central Authority of that country certifies that criminal proceedings have been instituted in a court exercising jurisdiction in that country or that there is a reasonable cause to believe that an offence in respect of which such proceedings could be instituted has been committed.
- (2) "Offence", in the case of a federal country or a country having more than one legal system, includes an offence under the law of the country or any part thereof.

CENTRAL AUTHORITIES

- 4 Each country shall designate a Central Authority to transmit and to receive requests for assistance under this Scheme.

ACTION IN THE REQUESTING COUNTRY

- 5 (1) A request for assistance under this Scheme may be initiated by any law enforcement agency or public prosecution or judicial authority competent under the law of the requesting country.
- (2) The Central Authority of the requesting country shall, if it is satisfied that the request can properly be made under this Scheme, transmit the request to the Central Authority of the requested country and shall ensure that the request contains all the information required by the provisions of this Scheme.
- (3) The Central Authority of the requesting country shall provide as far as practicable additional information sought by the Central Authority of the requested country.

ACTION IN THE REQUESTED COUNTRY

- 6 (1) Subject to the provisions of this Scheme, the requested country shall grant the assistance requested as expeditiously as practicable.
- (2) The Central Authority of the requested country shall, subject to the following provisions of this paragraph, take the necessary steps to ensure that the competent authorities of that country comply with the request.
- (3) If the Central Authority of the requested country considers
- (a) that the request does not comply with the provisions of this Scheme, or,
 - (b) that in accordance with the provisions of this Scheme the request for assistance is to be refused in whole or in part, or
 - (c) that the request cannot be complied with, in whole or in part, or
 - (d) that there are circumstances which are likely to cause a significant delay in complying with the request,
- it shall promptly inform the Central Authority of the requesting country, giving reasons.

REFUSAL OF ASSISTANCE

- 7 (1) The requested country may refuse to comply in whole or in part with a request for assistance under this Scheme if the criminal matter appears to the Central Authority of that country to concern
- (a) conduct which would not constitute an offence under the law of that country; or
 - (b) an offence or proceedings of a political character; or
 - (c) conduct which in the requesting country is an offence only under military law or a law relating to military obligations; or
 - (d) conduct in relation to which the person accused or suspected of having committed an offence has been acquitted or convicted by a court in the requested country.
-

- (2) The requested country may refuse to comply in whole or in part with a request for assistance under this Scheme
 - (a) to the extent that it appears to the Central Authority of that country that compliance would be contrary to the Constitution of that country, or would prejudice the security, international relations or other essential public interests of that country; or
 - (b) where there are substantial grounds leading the Central Authority of that country to believe that compliance would facilitate the prosecution or punishment of any person on account of his race, religion, nationality or political opinions or would cause prejudice for any of these reasons to any person affected by the request.
 - (3) The requested country may refuse to comply in whole or in part with a request for assistance to the extent that the steps required to be taken in order to comply with the request cannot under the law of that country be taken in respect of criminal matters arising in that country.
 - (4) An offence shall not be an offence of a political character for the purposes of this paragraph if it is an offence within the scope of any international convention to which both the requesting and requested countries are parties and which imposes on the parties thereto an obligation either to extradite or prosecute a person accused of the commission of the offence.
- 8
- (1) The competent authorities of the requested country shall in complying with a request under this Scheme use only such measures of compulsion as are available under the law of that country in respect of criminal matters arising in that country.
 - (2) Where under the law of the requested country measures of compulsion cannot be applied to any person to take the steps necessary to secure compliance with a request under this Scheme but the person concerned is willing to act voluntarily in compliance or partial compliance with the terms of the request, the competent authorities of the requested country shall make available the necessary facilities.

SCHEME NOT TO COVER ARREST OR EXTRADITION

- 9 .
- Nothing in this Scheme is to be construed as authorising the extradition, or the arrest or detention with a view to extradition, of any person.

CONFIDENTIALITY

- 10 The Central Authorities and the competent authorities of the requesting and requested countries shall use their best efforts to keep confidential a request and its contents and the information and materials supplied in compliance with a request except for disclosure in criminal proceedings and where otherwise authorised by the Central Authority of the other country.

LIMITATION OF USE OF INFORMATION OR EVIDENCE

- 11 The requesting country shall not use any information or evidence obtained in response to a request for assistance under this Scheme in connection with any matter other than the criminal matter specified in the request without the prior consent of the Central Authority of the request country.
- 12 (1) Except as provided in the following provisions of this paragraph, compliance with a request under this Scheme shall not give rise to any claim against the requesting country for expenses incurred by the Central Authority or other competent authorities of the requested country.
- (2) The requesting country shall be responsible for the travel and incidental expenses of witnesses travelling to the requesting country, including those of accompanying officials, for fees of experts, and for the costs of any translation required by the requesting country.
- (3) If in the opinion of the requested country the expenses required in order to comply with the request are of an extraordinary nature, the Central Authority of the requested country shall consult with the Central Authority of the requesting country as to the terms and conditions under which compliance with the request may continue, and in the absence of agreement the requested country may refuse to comply further with the request.

CONTENTS OF REQUEST FOR ASSISTANCE

- 13 (1) A request under the Scheme shall
- (a) specify the nature of the assistance requested;
- (b) contain the information appropriate to the assistance sought as specified in the following provisions of this Scheme;

- (c) indicate any time-limit within which complicate with the request is desired, stating reasons;
 - (d) contain the following information:
 - (i) the identity of the agency or authority initiating the request;
 - (ii) the nature of the criminal matter; and
 - (iii) whether or not criminal proceedings have been instituted;
 - (e) where criminal proceedings have been instituted, contain the following information:
 - (i) the court exercising jurisdiction in the proceedings;
 - (ii) the identity of the accused person;
 - (iii) the offences of which he stands accused, and a summary of the facts;
 - (iv) the stage reached in the proceedings; and
 - (v) any date fixed for further stages in the proceedings;
 - (f) where criminal proceedings have not been instituted, state the offence which the Central Authority of the requesting country has reasonable cause to believe to have been committed, with a summary of the known facts.
- (2) A request shall normally be in writing, and if made orally in case of urgency shall be confirmed in writing forthwith.

IDENTIFYING AND LOCATING PERSONS

- 14 (1) A request under this Scheme may seek assistance in identifying or locating persons believed to be within the requested country.
- (2) The request shall indicate the purposes for which the information is requested and shall contain such information as is available to the Central Authority of the requesting country as to the whereabouts of the person concerned and such other information as it possesses as may facilitate the identification of that person.

SERVICE OF DOCUMENTS

- 15 (1) A request under this Scheme may seek assistance in the service of documents relevant to a criminal matter arising in the requesting country.
- (2) The request shall be accompanied by the documents to be served and, where those documents relate to attendance in the requesting country, such notice as the Central Authority of that country is reasonably able to provide of outstanding warrants or other judicial orders in criminal matters against the person to be served.
- (3) The Central Authority of the requested country shall endeavour to have the documents served
- (a) by any prescribed method stated in the request, unless such method is incompatible with the law of that country; or
- (b) by any method prescribed by the law of that country for the service of documents in criminal proceedings.
- (4) The requested country shall transmit to the Central Authority of the requesting country a certificate as to the service of the documents or, if they have not been served, as to the reasons which have prevented service.

EXAMINATION OF WITNESSES

- 16 (1) A request under this Scheme may seek assistance in the examination of witnesses in the requested country.
- (2) The request shall specify, as appropriate and so far as the circumstances of the case permit:
- (a) the names and addresses or the official designations of the witnesses to be examined;
- (b) the questions to be put to the witnesses or the subject-matter about which they are to be examined;
- (c) whether it is described that the witnesses be examined orally or in writing;
- (d) whether it is desired that the oath be administered to the witnesses (or, as the law of the requested country allows, that they be required to make their solemn affirmation);

- (e) any provisions of the law of the requesting country as to privilege or exemption from giving evidence which appear especially relevant to the request; and
 - (f) any special requirements of the law of the requesting country as to the manner of asking evidence and to its admissibility in that country.
- (3) The request may ask that, so far as the law of the requested country permits, the accused person or his legal representative may attend the examination of the witness and ask questions of the witness.
- 17 (1) A request under this Scheme may seek assistance in the search for and seizure of property in the requested country.
- (2) The request shall specify the property to be searched for and seized and shall contain, so far as reasonably practicable, all information available to the Central Authority of the requesting country which may be required to be adduced in an application under the law of the requested country for any necessary warrant or authorisation to effect the search and seizure.
- (3) The requested country shall provide such certification as may be required by the requesting country concerning the result of any search, the place and circumstances of seizure, and the subsequent custody of the property seized.

OTHER ASSISTANCE IN OBTAINING EVIDENCE

- 18 (1) A request under this Scheme may seek other assistance in obtaining evidence.
- (2) The request shall specify, as appropriate and so far as the circumstances of the case permit:
- (a) the documents, records or property to be inspected, preserved, photographed, copied or transmitted;
 - (b) the samples of any property to be taken, examined or transmitted; and
 - (c) the site to be viewed or photographed.

PRIVILEGE

- 19 (1) No person shall be compelled in response to a request under this Scheme to give any evidence in the requested country which he could not be compelled to give
- (a) in criminal proceedings in that country; or
 - (b) in criminal proceedings in the requesting country.
- (2) For the purposes of this paragraph any reference to giving evidence includes references to answering any question and to producing any document.

PRODUCTION OF JUDICIAL OR OFFICIAL RECORDS

- 20 (1) A request under this Scheme may seek the production of judicial or official records relevant to a criminal matter arising in the requesting country.
- (2) For the purposes of this paragraph "judicial records" means judgments, orders and decisions of courts and other documents held by judicial authorities and "official records" means documents held by government departments or agencies or prosecution authorities.
- (3) The requested country shall provide copies of judicial or official records which are publicly available.
- (4) The requested country may provide copies of judicial or official records not publicly available, to the same extent and under the same conditions as apply to the provision of such records to its own law enforcement agencies or prosecution or judicial authorities.

TRANSMISSION AND RETURN OF MATERIAL

- 21 (1) Where compliance with a request under this Scheme would involve the transmission to the requesting country of any document, record or property, the requested country
- (a) may postpone the transmission of the material if it is required in connection with proceedings in that country, and in such a case shall provide certified copied of a document or record pending transmission of the original;
 - (b) may require the requesting country to agree to terms and conditions to protect third party interests in the material to be transmitted and may

refuse to effect such transmission pending such agreement.

- (2) Where any document, record or property is transmitted to the requesting country in compliance with a request under this Scheme, it shall be returned to the requested country when it is no longer in connection with the criminal matter specified in the request unless that country has indicated that its return is not desired.

AUTHENTICATION

- 22 (1) The requested country shall authenticate material that is to be transmitted by that country.
- (2) Authentication shall be by a stamp or seal of a Minister, ministry, government department or Central Authority of the requested country.

PERSONAL APPEARANCE OF WITNESSES IN THE REQUESTING COUNTRY

- 23 (1) A request under this Scheme may seek assistance in facilitating the personal appearance of witnesses before a court exercising jurisdiction in the requesting country.
- (2) The request shall specify
 - (a) the subject matter upon which it is desired to examine the witnesses;
 - (b) the reasons for which the personal appearance of the witnesses is required; and,
 - (c) details of the travelling, subsistence and other expenses payable by the requesting country in respect of the personal appearance of the witnesses.
- (3) The competent authorities of the requested country shall invite persons whose appearance as witnesses in the requesting country is desired; and
 - (a) ask whether they agree to appear;
 - (b) inform the Central Authority of the requesting country of their answer; and

- (c) if they are willing to appear, make appropriate arrangements to facilitate the personal appearance of the witnesses.

PERSONAL APPEARANCE OF PERSONS IN CUSTODY

- 24
- (1) A request under this Scheme may seek the temporary transfer of persons in custody in the requested country to appear as witnesses before a court exercising jurisdiction in the requesting country.
 - (2) The request shall specify
 - (a) the subject matter upon which it is desired to examine the witnesses;
 - (b) the reasons for which the personal appearance of the witnesses is required;
 - (3) The requested country shall refuse to comply with a request for the transfer of persons in custody if the persons concerned do not consent to the transfer.
 - (4) The requested country may refuse to comply with a request for the transfer of persons in custody and shall be under no obligation to inform the requesting country of the reasons for such refusal.
 - (5) Where persons in custody are transferred, the requested country shall notify the requesting country of
 - (a) the dates upon which the persons are due under the law of the requested country to be released from custody and
 - (b) the dates by which the requested country requires the return of the persons and shall notify any variations in such dates.
 - (6) The requesting country shall keep the persons transferred in custody, and shall return the persons to the requested country when their presence as witnesses in the requesting country is no longer required, and in any case by the earlier of the dates notified under subparagraph (5).
 - (7) The obligation to return the persons transferred shall subsist notwithstanding the fact that they are nationals of the requesting country.

- (8) The period during which the persons transferred are in custody in the requesting custody shall be deemed to be service in the requested country of an equivalent period of custody in that country for all purposes.
- (9) Nothing in this paragraph shall preclude the release in the requesting country without return to the requested country of any person transferred where the two countries and the person concerned agreed.

IMMUNITY OF PERSONS APPEARING

- 25 (1) Subject to the provisions of paragraph 24, witnesses appearing in the requesting country in response to a request under paragraph 23 or persons transferred to that country in response to a request under paragraph 24 shall be immune in that country from prosecution, detention or any other restriction of personal liberty in respect of criminal acts, omissions or convictions before the time of their departure from the requested country.
- (2) The immunity provided for in that paragraph shall cease
 - (a) in the case of witnesses appearing in response to a request under paragraph 23, when the witnesses having had, for a period of 15 consecutive days from the dates when they were notified by the competent authority of the requesting country that their presence was no longer required by the court exercising jurisdiction in the criminal matter, an opportunity of leaving have nevertheless remained in the requesting country, or having left that country have returned to it;
 - (b) in the case of persons transferred in response to a request under paragraph 24 and remaining in custody when they have been returned to the requested country.

TRACING THE PROCEEDS OF CRIMINAL ACTIVITIES

- 26 (1) A request under this scheme may seek assistance in identifying, locating and assessing the value of property believed to be the proceeds of criminal activities and to be within the requested country.
- (2) The request shall contain such information as is available to the Central Authority of the requesting country as to the nature and location of the property and as to any person in whose possession or control the property is believed to be.

SEIZURE AND FORFEITURE OF THE PROCEEDS OF CRIMINAL ACTIVITIES

- 27 (1) A request under this Scheme may seek assistance in the seizure and forfeiture of the proceeds of criminal activities in the requested country.
- (2) The request shall contain, so far as is reasonably practicable, all information available to the Central Authority of the requesting country which may be required to support an application under the law of the requested country for any necessary order, warrant or authorisation to effect the seizure or forfeiture.
- (3) "Seizure" in this paragraph includes the taking of measures to prevent any dealing in, transfer or disposal of, or the creation of any charge over, property pending the determination or proceedings for the forfeiture of the proceeds of criminal activities.
- (4) The law of the requested country shall apply to determine the disposal of any proceeds of criminal activities forfeited as a result of a request under this paragraph.

CONFIRMATION AND ENFORCEMENT OF ORDERS FOR FORFEITURE OF THE PROCEEDS OF CRIMINAL ACTIVITIES

- 28 (1) A request under this Scheme may seek assistance in invoking procedures in the requested country leading to the recognition or review and confirmation and the enforcement of an order for the forfeiture of the proceeds of criminal activities made by a court or other authority in the requesting country.
- (2) The request shall be accompanied by a certified copy of the order and shall contain, so far as reasonably practicable, all information available to the Central Authority of the requesting country which may be required in connection with the procedures to be followed in the requested country.
- (3) The law of the requested country shall apply to determine the circumstances and manner in which an order may be recognised, confirmed or enforced.

MEANING OF "THE PROCEEDS OF CRIMINAL ACTIVITIES"

- 29 In this Scheme, "the proceeds of criminal activities" refers to any property derived or realised, directly or indirectly, by a person convicted of an offence in the requesting country or against whom criminal proceedings have been instituted in that country, as a result:

- (a) of the commission of the offence, or
- (b) of any part of a course of conduct by the person convicted or charged, alone or in association with other persons, having as its purpose the carrying out or furtherance of criminal activities, and of which the commission of the offence is shown to be part.

CONSULTATION

- 30 The Central Authorities of the requested and requesting countries shall consult promptly, at the request of either, concerning matters arising under this Scheme.

OTHER ASSISTANCE

- 31 After consultation between the requesting and the requested countries assistance not within the scope of this Scheme may be given in respect of a criminal matter on such terms and conditions as may be agreed by those countries.

NOTIFICATION OF DESIGNATIONS

- 32 Designations of dependent territories under paragraph 2 and of Central Authorities under paragraph 4 be notified to the Commonwealth Secretary-General.

Passed in the House of Assembly this 16th day of December. 1993.

J. THERESA ADAMS
Clerk of the House of Assembly

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SAINT VINCENT AND THE GRENADINES

ACT NO. 12 OF 1997

I ASSENT

[L.S.]

DENNISTON BOBB
Deputy Governor-General
19th November, 1997

AN ACT to provide for the forfeiture or confiscation of the proceeds of certain crimes and for connected or related matters.

[By Proclamation]

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

PART I

PRELIMINARY

1. This Act may be cited as the Proceeds of Crime Act, 1997 and shall come into operation on such date as the Governor-General may by Proclamation appoint.

Short title

2. (1) In this Act—

Interpretation

“benefit” includes any property service or advantage whether direct or indirect, and “to benefit” has a corresponding meaning: any reference to a benefit derived or obtained by or otherwise accruing to a person includes a reference to a benefit derived or obtained by or otherwise accruing to another person at the first person's request or direction;

“Commissioner” means the Commissioner of Police;

“Comptroller” means Comptroller of Inland Revenue;

“confiscation order” means an order made by the Court pursuant to section 3 (b);

"Court" means the High Court;

"document" in relation to a scheduled offence, means any written or printed thing and includes —

- (a) any map, plan, graph or drawing;
- (b) any photograph;
- (c) any disc, tape, sound track or other device in which sound or other data (not being visual images) are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced; and
- (d) any film, negative, tape or other device in which one or more visual images are embodied so as to be capable of being reproduced;

"forfeiture order" means an order made by the Court pursuant to section 3 (a);

"gift caught by this Act" is construed in accordance with section 2 (10);

"interest" in relation to property, means —

- (a) a legal or equitable interest in the property; or
- (b) a right, power or privilege in connection with the property;

"premises" include land;

"police officer" means a member of the Royal Saint Vincent and the Grenadines Police Force;

"proceeds" means any property that is derived, obtained or realized, directly or indirectly, by any person from the commission of a scheduled offence;

"proceeds of crime" means —

- (a) proceeds derived from the commission of a scheduled offence; or
- (b) any property or benefits derived, obtained or realized, directly or indirectly, by any person from any act or omission that occurred outside Saint Vincent and the Grenadines and would, if it had occurred in Saint Vincent and the Grenadines, have constituted a scheduled offence;

“production order” means an order made by the Court pursuant to section 40;

“property” includes money and all other property, real or personal, things in action and other intangible property;

“realizable property” means –

- (a) any property held by a person who has been convicted of, or charged with, a scheduled offence, and
- (b) any property held by a person to whom a person so convicted or charged has directly or indirectly made a gift caught by this Act

but does not include property if under this Act or other enactment –

- (i) there is in force a forfeiture order in respect of that property;
- (ii) it is proposed to make a forfeiture order against that property.

“Registrar” means the Registrar of the Supreme Court;

“relevant application period” in relation to the conviction of a person for a scheduled offence means the period of twelve months –

- (a) after the day on which the person was convicted where the person is to be taken to have been convicted by reason of subsection (2) (a);
- (b) after the day on which the court took the offence into account in passing sentence for some other offence where the person is to be taken to have been convicted by reason of subsection (2) (b);

“restraining order” means an order made by the Court pursuant to section 30 (1);

“scheduled offence” means an offence specified in the Schedule and includes –

- (a) conspiring to commit any of those offences;
- (b) aiding, abetting, counselling or procuring, or being in any way knowingly concerned in, the commission of any of those offences;
- (c) attempting to commit any of those offences;

(d) inciting another to commit any of those offences;

“tainted property”, in relation to a scheduled offence, means –

- (a) property used in, or in connection with, the commission of the offence or
- (b) property derived, obtained or realized, directly or indirectly, from the commission of the offence;

“unlawful activity” means an act or omission that constitutes an offence against a law in force in Saint Vincent and the Grenadines or against a law of any other country.

(2) For the purposes of this Act, a person is convicted of a scheduled offence if –

- (a) he is convicted, summarily or on indictment;
- (b) a court with his consent takes any scheduled offence, of which he is guilty, into account in sentencing him for another offence.

(3) For the purposes of sections 18 and 19 the amount realizable at the time a confiscation order is made is the aggregate of –

- (a) the total value of all the realizable property held, less the total amount payable in pursuance of any obligation having priority; and
- (b) the total of the values of all gifts caught by this Act,

reckoned at the material time.

(4) For the purposes of subsection (3), an obligation has priority at any time if it is an obligation of the person to pay –

- (a) an amount due in respect of a fine or other order of a court imposed or made prior to the confiscation order; or
- (b) an amount due in respect of any tax, rate, duty, cess or other impost payable under any enactment for the time being in force;
- (c) any other civil obligation as may be determined by the Court.

(5) Subject to subsections (6) and (7), for the purposes of this Act, the value of property (other than cash) in relation to a person holding the property –

- (a) where any other person has an interest in the property,

is the market value of the beneficial interest of the owner in the property, less the amount required to discharge any encumbrance on that interest; or

(b) in any other case, the market value of the property.

(6) References in this Act to the value at "the material time" of the transfer of any property are references to —

(a) the value of the property at the time of receipt adjusted to take account of subsequent changes in the value of money; or

(b) where subsection (9) applies, the value there mentioned,

whichever is the greater.

(7) Where at the material time the recipient holds —

(a) the property which he received (not being cash); or

(b) property which, in whole or in part, directly or indirectly represents in his hands the property which he received;

the value referred to in subsection (5) (b) is the value to him at the material time of the property mentioned in paragraph (a) or, as the case may be, of the property mentioned in this paragraph, so far as it represents the property which he received.

(8) Subject to subsection (12), a reference to the value at any time "the material time" of a gift is a reference to —

(a) the value of the gift to the recipient at the time of receipt, adjusted to take account of subsequent changes in the value of money; or

(b) where subsection (9) applies, the value there mentioned,

whichever is the greater.

(9) Subject to subsection (12) where at the material time a person holds —

(a) property which he received, (not being cash); or

(b) property which, in whole or in part, directly or indirectly represents in his hands the property which he received,

the value referred to in subsection (8) is the value to him at the material time of the property mentioned in paragraph (a) or the value of the property mentioned in paragraph (b) so far as it so represents the property which he received.

(10) A gift, whether made before or after the commencement of this Act, is caught by the Act where –

- (a) it was made by the person convicted or charged
 - (i) at any time after the commission of the offence or,
 - (ii) if more than one offence, the earliest of such offences to which the proceedings for the time being relate;
 - (iii) the Court considers it appropriate in all the circumstances to take the gift into account;
- (b) it was made by the person convicted or charged and was a gift of property –
 - (i) received by the person in connection with the commission of a scheduled offence by him or another; or
 - (ii) which in whole or in part directly or indirectly represented in the hands of that person property received by him in that connection.

(11) The reference in subsection (10) (a) (ii) to an offence to which the proceedings relate includes, where the proceedings result in the conviction of the person, a reference to any offence which the Court takes into consideration when determining sentence.

(12) For the purposes of this Act –

- (a) the circumstances in which a person is to be treated as making a gift include those where the person transfers property to another person directly or indirectly for a consideration the value of which is significantly less than the value of the consideration provided by the person; and
- (b) in these circumstances, the preceding provisions of this section shall apply as if the person had made a gift of such share in the property as bears to the whole property, the same proportion as the difference between the values referred to in paragraph (a) bears to the value of the consideration provided by the person.

PART II
FORFEITURE ORDERS, CONFISCATION
ORDERS AND RELATED MATTERS

3. (1) Subject to subsection (2), where a person is convicted of an offence specified in the Schedule committed after the coming into force of this Act, the Director of Public Prosecutions shall apply to the Court for one or both of the following orders –

Application for
forfeiture order or
confiscation order
on conviction

Schedule

(a) a forfeiture order against property that is tainted property in respect of the scheduled offence;

(b) a confiscation order against the person in respect of benefits derived by the person from the commission of the scheduled offence.

(2) The Director of Public Prosecutions shall not make an application after the end of the relevant application period in relation to the conviction.

(3) An application under this section may be made in respect of one or more than one scheduled offence.

(4) Where an application under this section is finally determined, no further application for a forfeiture order or a confiscation order may be made in respect of the offence for which the person was convicted unless the Court gives leave for the making of a new application on being satisfied –

(a) that the property, or benefit to which the new application relates, was identified after the previous application was determined; or

(b) that necessary evidence became available after the previous application was determined; or

(c) that it is in the interest of justice that the new application be made.

4. (1) Where the Director of Public Prosecutions applies for a forfeiture order against property in respect of the conviction of a person of a scheduled offence –

Notice of
application for
forfeiture or
confiscation
order.

(a) the Director of Public Prosecutions shall give not less than seven days written notice of the application to the person and to any one who he has reason to believe may have an interest in the property;

(b) the person, and any one who claims an interest in the property, may appear and adduce evidence at the

hearing of the application; and

- (c) the Court may, at any time before the final determination of the application, direct the Director of Public Prosecutions
 - (i) to give notice of the application to any person who, in the opinion of the Court, appears to have an interest in the property;
 - (ii) to publish in the Gazette and in a local newspaper, notice of the application in a manner and containing such particulars and within such time as the Court considers appropriate.

(2) Where the Director of Public Prosecutions applies for a confiscation order against a person he shall give the person no less than seven days written notice of the application and the person may appear and adduce evidence at the hearing of the application.

Amendment of
application

5. (1) The Court hearing an application under section 3 (1) may, before final determination, and on the application of the Director of Public Prosecutions, amend the application to include any other property or benefit, upon being satisfied that –

- (a) the property or benefit was not reasonably capable of identification when the application was originally made; or
- (b) necessary evidence became available only after the application was originally made.

(2) Where the Director of Public Prosecutions applies to amend an application for a forfeiture order and the amendment would be to include additional property he shall give no less than seven days written notice to any person who he has reason to believe may have an interest in the additional property.

(3) Any person who claims an interest in the additional property may appear and adduce evidence at the hearing of the application to amend.

(4) Where the Director of Public Prosecution applies to amend an application for a confiscation order and the amendment would be to include an additional benefit he shall give the person concerned no less than seven days written notice of the application to amend.

Procedure on
application

6. (1) Where an application is made to the Court for a forfeiture order or a confiscation order in respect of the conviction of a person, whether in the Magistrates' Court or in the High Court, for a scheduled

offence the court may, in determining the application, have regard to the transcript of any proceedings against the person for the offence.

(2) Where an application is made for a forfeiture order or a confiscation order to the Court before which a person is convicted and the Court has not at the time when the application is made, passed sentence on the person for the offence, the Court may, if it is satisfied that it is reasonable to do so in all the circumstances, defer passing sentence until the application for the order has been determined.

7. (1) Where a person absconds in connection with a scheduled offence committed after the coming into force of this Act, the Director of Public Prosecutions may apply to the Court for a forfeiture order under section 15 in respect of any tainted property.

Application for
in rem forfeiture
order on
absconding

(2) For the purposes of this section, a person shall be deemed to have absconded in connection with a scheduled offence if –

- (a) an information has been laid against him alleging the commission of an offence; and
- (b) a warrant for his arrest has been issued in relation to that information; and
- (c) reasonable attempts to arrest him pursuant to the warrant have been unsuccessful during the period of three months commencing on the day the warrant was issued,

and he shall be deemed to have absconded on the last day of that period of three months.

(3) Where the Director of Public Prosecutions applies under this section for a forfeiture order against any tainted property the Court may before hearing the application –

- (a) require notice of the application to be given to any person who, in the opinion of the Court appears to have an interest in the property;
- (b) direct that a notice of the application be published in the Gazette and in a local newspaper, such notice to contain such particulars and to be for such duration as the Court may specify.

Forfeiture Orders

8. (1) Where the Director of Public Prosecutions applies to the court for a forfeiture order against property in respect of the conviction of a person for a scheduled offence and the Court is satisfied that the property is tainted property, the Court may order that the property or

Forfeiture order
on conviction

such portion thereof as is specified by the Court in the order be forfeited to the Crown.

(2) In determining whether property is tainted property the Court may infer –

- (a) that the property was used in, or in connection with, the commission of the offence, where the evidence establishes that the property was in the possession of the person at the time of, or immediately after, the commission of the offence for which the person was convicted;
- (b) that the property was derived, obtained or realized as a result of the commission by the person of the scheduled offence for which he was convicted, where the evidence establishes that property, and in particular money, was found in the possession of the person or under his control in a building, vehicle, receptacle or place during the course of investigations conducted by the police before or after his arrest and charge for the scheduled offence;
- (c) that the value of the increase represents property which was derived, obtained or realized by the person directly or indirectly from the commission of the scheduled offence for which he was convicted, where the evidence establishes that the value, after the commission of the scheduled offence, of all ascertainable property exceeds the value of all ascertainable property prior to the commission of that offence, and the Court is satisfied that his income from sources unrelated to criminal activity cannot reasonably account for the increase in value.

(3) Where the Court orders that property, other than money, be forfeited to the Crown, the Court shall specify in the order the amount that it considers to be the value of the property at the time when the order is made.

(4) In considering whether a forfeiture order should be made under subsection (1), the Court shall have regard to –

- (a) the rights and interests, if any, of third parties in the property;
- (b) the gravity of the offence concerned;
- (c) any hardship that may reasonably be expected to be caused to any person, by the operation of the order; and

(d) the use that is ordinarily made of the property, or the use to which the property was intended to be put.

(5) Where the Court makes a forfeiture order the Court may give such directions as are necessary or convenient for giving effect to the order.

9. (1) Subject to subsection (2), where the Court makes a forfeiture order against any property, the property vests absolutely in the Crown by virtue of the order.

Effect of
forfeiture order

(2) Where property directed by a forfeiture order to be forfeited is registerable property—

- (a) the property vests in the Crown provisionally until the applicable registration requirements have been complied with;
- (b) the Crown is entitled to be registered as owner of the property;
- (c) the Attorney-General has power on behalf of the Crown to do, or authorized the doing of, anything necessary or convenient to obtain the registration of the Crown as owner, including the execution of any instrument required to be executed by a person transferring an interest in property of that kind.

(3) Where the Court makes a forfeiture order against property—

- (a) the property shall not, except with the leave of the Court and in accordance with any direction of the Court, be disposed of or otherwise dealt with by or on behalf of the Crown, before the relevant appeal date; and
- (b) if, after the relevant appeal date the order has not been discharged, the property may be disposed of and the proceeds applied or otherwise dealt with in accordance with the direction of the Governor-General.

(4) Without limiting the generality of subsection (3) (b) the directions that may be given pursuant to that subsection include a direction that property is to be disposed of in accordance with the provisions of any enactment specified in the direction.

(5) In this section—

“registerable property” means property the title to which is passed by registration;

“relevant appeal date” used in relation to a forfeiture order made in consequence of the conviction of a person for a scheduled offence, means –

- (a) the date on which the period allowed by the Rules of Court for the lodging of an appeal against the conviction of a person or for the lodging of an appeal against the making of a forfeiture order, expires without an appeal having been lodged, whichever is the later; or
- (b) where an appeal against the conviction of a person or against the making of a forfeiture order is lodged, the date on which the appeal lapses in accordance with the Rules of Court or is finally determined, whichever is the later.

Voidable
transfers.

10. The Court may –

- (a) before making a forfeiture order; and
- (b) in the case of property in respect of which a restraining order was made, where the order was served in accordance with section 33,

set aside any conveyance or transfer of the property that occurred after the seizure of the property or the service of the restraining order, unless the conveyance or transfer was made for valuable consideration to a person acting in good faith and without notice.

Protection of
third parties

11, (1) Where an application is made for a forfeiture order against property, a person who claims an interest in the property may apply to the Court, before the forfeiture order is made, for an order under subsection (2).

(2) If a person applies to the Court for an order under this section in respect of his interest in property and the Court is satisfied on a balance of probabilities –

- (a) that he was not in any way involved in the commission of the offence; and
- (b) where he acquired the interest during or after the commission of the offence, that he acquired the interest –
 - (i) for sufficient consideration; and
 - (ii) without knowing, and in circumstances which did not arouse a reasonable suspicion that the property was, at the time he acquired it, property that was tainted property,

the Court shall make an order declaring the nature, extent and value (as at the time the order is made) of his interest.

(3) Subject to subsection (4), where a forfeiture order has already been made in respect of property, a person who claims an interest in the property may before the end of the period of six months commencing on the day on which the forfeiture order is made, apply under this subsection to the Court for an order under subsection (2).

(4) A person who –

(a) had knowledge of the application for the forfeiture order before the order was made: or

(b) appeared at the hearing of that application,

shall not be permitted to make an application under subsection (3), except with the leave of the Court.

(5) A person who makes an application under subsection (2) or (3) shall give no less than seven days written notice of the making of the application to the Director of Public Prosecutions, who shall be a party to any proceedings in the application.

(6) An applicant or the Director of Public Prosecutions may in accordance with the Rules of Court, appeal to the Court of Appeal from an order made under subsection (2).

(7) The Registrar shall, on application made by any person who has obtained an order under subsection (2), and where the period allowed by the Rules of Court with respect to the making of appeals has expired and any appeal from that order taken under subsection (6) has been determined –

(a) direct that the property or the part thereof to which the interest of the applicant relates be returned to the applicant; or

(b) direct that an amount equal to the value of the interest of the applicant, as declared in the order, be paid to the applicant.

12. (1) Where the Court makes a forfeiture order against property in reliance on a conviction for a scheduled offence and the conviction is subsequently quashed, the quashing of the conviction discharges the order.

Discharge of
forfeiture order
by quashing of
conviction.

(2) Where a forfeiture order against property is discharged as provided for in subsection (1) or by the Court hearing an appeal against the making of the order, any person who claims to have an interest in the property immediately before the making of the forfeiture order may

apply to the Registrar in writing for the transfer of the interest to him.

(3) On receipt of an application under subsection (2) the Registrar shall –

- (a) if the interest is vested in the Crown, direct that the property or the part thereof to which the interest of the applicant relates be transferred to the applicant; or
- (b) in any other case, direct that an amount equal to the value of the interest at the time the order is made be paid to the applicant.

(4) In the exercise of his powers under this section the Registrar shall have the power to do or authorize the doing of anything necessary or convenient to effect the transfer or return of property, including the execution of any instrument and the making of an application for the registration of an interest in the property.

Payment instead
of forfeiture order

13. Where the Court is satisfied that a forfeiture order should be made in respect of the property of a person convicted of a scheduled offence but that the property or any part thereof or interest therein cannot be made subject to such an order and, in particular –

- (a) cannot on the exercise of due diligence, be located;
- (b) has been transferred to a third party in circumstances which do not give rise to a reasonable inference that the title or interest was transferred for the purpose of avoiding the forfeiture of the property;
- (c) is located outside Saint Vincent and the Grenadines;
- (d) has been substantially diminished in value or rendered worthless; or
- (e) has been commingled with other property that cannot be divided without difficulty,

the Court may, instead of ordering the property or part thereof or interest therein to be forfeited, order the person to pay to the Crown an amount equal to the value of the property, part thereof or the interest therein.

Application of
procedure for
enforcing fines

14. (1) Where the Court orders a person to pay an amount under section 13 that amount shall be treated as if it were a fine imposed upon him in respect of a conviction of a scheduled offence and the Court shall notwithstanding anything contained in section 29 of the Criminal Code (Cap. 124) –

- (a) impose, in default of the payment of that amount, a term of imprisonment –

- (i) not exceeding 18 months, where the amount does not exceed \$10,000;
- (ii) not exceeding 2 years, where the amount exceeds \$10,000 but does not exceed \$20,000;
- (iii) not exceeding 3 years, where the amount exceeds \$20,000 but does not exceed \$50,000;
- (iv) not exceeding 5 years, where the amount exceeds \$50,000, but does not exceed \$100,000;
- (v) not exceeding 7 years, where the amount exceeds \$100,000 but does not exceed \$500,000;
- (vi) not exceeding 10 years, where the amount exceeds \$500,000 but does not exceed \$1,000,000;
- (vii) not exceeding 15 years, where the amount exceeds \$1,000,000.

15. (1) Subject to section 8 (3), where an application is made to the Court under section 8 (1) for a forfeiture order against any tainted property in consequence of a person absconding in connection with a scheduled offence and the Court is satisfied that –

Forfeiture order
on absconding.

- (a) any property is tainted property in respect of the offence;
- (b) proceedings in respect of a scheduled offence committed in relation to that property were commenced; and
- (c) the accused charged with the offence referred to in paragraph (b) has absconded,

the Court may order that the property or such of the property as is specified by the Court in the order be forfeited to the Crown.

(2) The provisions of sections 8 (2), (3) (4) and (5), 9, 10 and 11 shall apply with such modifications as are necessary to give effect to this section.

Confiscation Orders

16. (1) Where the Director of Public Prosecutions applies to the Court for a confiscation order against a person in respect of the conviction of that person for a scheduled offence the Court shall, if it is satisfied that the person has benefitted from the proceeds of the offence, order him to pay to the Crown an amount equal to the value of his benefits from the offence or such lesser amount as the Court certifies in accordance with section 19 to be the amount that might

Confiscation
order on
conviction.

be realized at the time the confiscation order is made.

(2) The Court shall assess the value of the benefits derived by a person from the commission of an offence in accordance with sections 17 to 20.

(3) The Court shall not make a confiscation order under this section —

- (a) until the period allowed by the Rules of Court for the lodging of an appeal against conviction has expired; or
- (b) where an appeal against convictions has been lodged, until the appeal lapses in accordance with the Rules of Court or is finally determined, whichever is the later date.

Rules for
determining
benefit and
assessing value

17. (1) Where a person obtains property as the result of, or in connection with the commission of a scheduled offence, his benefit is the value of the property so obtained.

(2) Where a person derives a benefit as a result of or, in connection with the commission of a scheduled offence, his benefit shall be deemed to be a sum of money equal to the value of the benefit so derived.

(3) The court, in determining whether a person has benefitted from the commission of a scheduled offence or from that offence taken together with other scheduled offences, shall in assessing the value of the benefit, unless the contrary is proved —

- (a) deem all property appearing to the Court to be held by the person on the day on which the application is made; and
- (b) all property appearing to the Court to be held by the person at any time —
 - (i) within the period between the day the scheduled offence, or the earliest offence, was committed and the day on which the application is made; or
 - (ii) within the period of six years immediately before the day on which the application is made; whichever is longer,

to be property that came into the possession or under the control of the person by reason of the commission of that scheduled offence or those scheduled offences for which the person was convicted.

(4) The Court may also in pursuance of section 3 —

- (a) deem any expenditure by the person since the beginning of that period to be expenditure met out of payments received by him as a result of, or in connection with, the commission of that scheduled offence; and
- (b) deem 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 that scheduled offence, as property received by him free of any interest therein.

(5) Where a confiscation order has previously been made against a person, in assessing the value of any benefit derived by him from the commission of the scheduled offence, the Court shall leave out of account any of his benefits that are shown to the Court to have been taken into account in determining the amount to be recovered under the previous order.

(6) If evidence is given at the hearing of the application that the value of the property of the person at any time after the commission of the scheduled offence exceeded the value of his property before the commission of the offence, then the Court shall, subject to subsection (7), treat the value of the benefits as being not less than the amount of the excess.

(7) If, after evidence of the kind referred to in subsection (6) is given, the person satisfies the Court that the whole or part of the excess was due to causes unrelated to the commission of the scheduled offence, subsection (6) does not apply to the excess or, as the case may be, that part.

18. (1) Where –

- (a) a person has been convicted of a scheduled offence and the Director of Public Prosecutions tenders to the Court a statement as to any matters relevant –
 - (i) to determine whether the person has benefitted from the offence or from any other scheduled offence of which he is convicted in the same proceedings or which is taken into account in determining his sentence, or
 - (ii) to an assessment of the value of the benefit derived from the offence or any other scheduled offence of which he is so convicted in the same proceedings or which is so taken into account, and

Statements relating to benefits from commission of scheduled offences.

- (b) the person accepts to any extent the truth of such 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.

(2) If a statement is tendered under subsection (1) (a), and the Court is satisfied that a copy of that statement has been served on the person, the Court may

- (a) require the person to indicate to what extent he accepts the truth of each allegation in the statement and,
- (b) so far as he does not accept any such allegation, to indicate any matters he proposes to rely on.

(3) If the person fails in any respect to comply with a requirement under subsection (2), he may be treated for the purposes of this section as having accepted the truth of every allegation in the statement, other than —

- (a) an allegation in respect of which he has complied with the requirement; and
- (b) an allegation that he has benefitted from the scheduled offence or that any property or advantage was obtained by him as a result of, or in connection with, the commission of the offence.

(4) in the event that —

- (a) the person tenders to the Court a statement as to any matters relevant to determining the amount that might be realized at the time the confiscation order is made; and
- (b) the Director of Public Prosecutions accepts to any extent any allegation in the statement,

the Court may, for the purposes of that determination, treat the acceptance of the Director of Public Prosecutions as conclusive of the matters to which it relates.

(5) An allegation may be accepted or a matter indicated for the purposes of this section either —

- (a) orally before the Court; or
- (b) in writing in accordance with Rules of Court.

(6) An acceptance by a person under this section that he

received any benefits from the commission of a scheduled offence is admissible as evidence in any proceedings for any related scheduled offence.

19. (1) Subject to subsection (2), the amount to be recovered under a confiscation order shall be the amount which the Court assesses to be the value of the benefit from the scheduled offence or if more than one, all the offences in respect of which the order may be made.

Amount to be recovered under confiscation order

(2) Where the Court is satisfied as to any matter relevant to the determination of the amount which might be realized at the time the confiscation order is made (whether by an acceptance under section 18 or otherwise) the Court may issue a certificate giving the opinion of the Court as to the matters concerned, and shall do so if satisfied that the amount that may be realized at the time the confiscation order is made is less than the amount that the Court assesses to be the value of the benefit of the person from the offence, in respect of which the confiscation order is made.

20. (1) Where —

Variation of confiscation orders.

- (a) the Court makes a confiscation order against a person in relation to a scheduled offence; and
- (b) in calculating the amount of the confiscation order, the Court took into account a forfeiture or a proposed forfeiture order in respect of the property; and
- (c) an appeal against the forfeiture or forfeiture order is allowed or the proceedings for the proposed forfeiture order terminate without the proposed forfeiture order being made —

the Director of Public Prosecutions may apply to the Court for a variation of the confiscation order to increase the amount of the order by the value of the unrealized property which was taken into account at (b) and the Court may, if it considers it appropriate to do so, vary the order accordingly.

(2) Where —

- (a) the Court makes a confiscation order against a person in relation to a scheduled offence;
- (b) in calculating the amount of the confiscation order, the Court took into account, in accordance with section 2(3) and (4) an amount of tax paid by the person; and
- (c) an amount is repaid or refunded to the person in respect of that tax,

Property
controlled
subject to
investigation

the Director of Public Prosecutions may apply to the Court for a variation of the confiscation order to increase the order by the amount repaid or refunded and the Court may, if it considers it appropriate to do so, vary the order accordingly.

21. (1) In assessing the value of benefits derived by a person from the commission of a scheduled offence, the Court may treat as the property of the person any property that, in the opinion of the Court, is subject to the effective control of the person whether or not he has –

- (a) any legal or equitable interest in the property; or
- (b) any right, power or privilege in connection with the property.

(2) Without prejudice to the generality of subsection (1) the Court may have regard to –

- (a) shareholdings in, debenture over or directorships in any company that has an interest, whether direct or indirect in the property, and for this purpose the Court may order the investigation and inspection of the books of a named company;
- (b) any trust that has any relationship to the property;
- (c) any relationship between persons having an interest in the property or in companies referred to in paragraph (a) or trusts referred to in paragraph (b), and any other person.

(3) Where the Court, for the purposes of making a confiscation order against a person, treats particular property as the property of that person pursuant to subsection (1), the Court may, on application by the Director of Public Prosecutions, make an order declaring that the property is available to satisfy the order.

(4) Where the Court declares that property is available to satisfy a confiscation order –

- (a) the order may be enforced against the property as if the property were property of the person against whom the order is made; and
- (b) a restraining order may be made in respect of the property as if the property were property of the person against whom the order is made.

(5) Where the Director of Public Prosecutions makes an application for an order under subsection (3) and that property is available to satisfy a confiscation order –

- (a) the Director of Public Prosecutions shall give written notice of the application to the person and to any person whom he has reason to believe may have an interest in the property; and
- (b) the persons referred to at (a) may appear and adduce evidence at the hearing.

22. Where the Court orders a person to pay an amount under a confiscation order the provisions of section 14 shall apply with such modifications as the Court may determine for the purpose of empowering the Court to impose a term of imprisonment in default of compliance by him with a confiscation order.

Enforcement of
confiscation
orders.

PART III

PROVISIONS FOR FACILITATING POLICE INVESTIGATIONS AND PRESERVING PROPERTY LIABLE TO FORFEITURE AND CONFISCATION ORDERS

Powers of Search and Seizure

23. (1) Where a police officer has reasonable grounds for suspecting that there is or that there may be within the next following seventy-two hours, tainted property upon or in any premises he may lay before a Magistrate an information on oath setting out these grounds and apply for the issue of a warrant to search the premises.

Warrant to
search premises
etc., for tainted
property.

(2) Where an application is made for a search warrant under subsection (1) the Magistrate may, subject to section 24, issue a warrant authorizing a police officer (whether named in the warrant or not) with such assistance and by such force as is necessary and reasonable —

- (a) to enter upon or into the premises;
- (b) to search the premises for tainted property; and
- (c) to seize property found in the course of the search that the police officer believes on reasonable grounds, to be tainted property.

24. A Magistrate shall not issue a warrant under section 23 unless —

Restrictions on
issue of search
warrants

- (a) the informant or some other person has given to the Magistrate, either on oath or by affidavit, any further information that the Magistrate may require concerning the grounds on which the issue of the warrant is sought;

Matters to be
included in
search warrant

- (b) the Magistrate is satisfied that there are reasonable grounds for issuing the warrant.

25. A warrant issued under section 23 shall include –

- (a) a statement of the purpose for which the warrant is issued, and a reference to the nature of the scheduled offence;
- (b) a description of the kind of property to be seized;
- (c) a time, not being later than two months, upon which the warrant ceases to have effect; and
- (d) a statement as to whether entry is authorized to be made at any time of the day or night or during specified hours of the day or night.

Police may seize
other tainted
property

26. Where in the course of a search under a warrant issued pursuant to section 23 for tainted property in relation to a scheduled offence, a police officer finds –

- (a) property that he believes, on reasonable grounds, to be –
 - (i) tainted property in relation to the offence, although not of a kind specified in the warrant; or
 - (ii) tainted property in relation to another scheduled offence; or
- (b) anything that he believes, on reasonable grounds will afford evidence as to the commission of a criminal offence,

and the police officer believes, on reasonable grounds that it is necessary to seize that property or thing in order to prevent its concealment, loss or destruction or its use in committing, continuing or repeating the offence or any other offence, the warrant shall be deemed to authorize the police officer to seize that property or thing.

Record of
property seized

27. (1) A police officer who executes a warrant issued under this Part shall –

- (a) detain the property seized, taking reasonable care to ensure that the property is preserved so that it may be dealt with in accordance with the law;
- (b) as soon as practicable after the execution of the warrant, but within a period of seventy-two hours thereafter, prepare a written report, identifying the

property seized and the location where the property is being detained and forward a copy of the report to the Magistrate in the magisterial district where the property is being detained.

(2) A Magistrate shall, on application, provide a copy of the report —

- (a) to the person from whom the property was seized; and
- (b) to any other person who appears to the Magistrate to have an interest in the property.

(3) A request under subsection (2) by a person, other than the person from whom the property was seized, shall be in writing and supported by affidavit sworn to by the person making the request,

28. (1) Where property has been seized under section 26, otherwise than because it may afford evidence of the commission of a scheduled offence, any person who claims an interest in the property may apply to the Court for an order that the property be returned to him.

Return of
property seized

(2) Where a person makes an application under subsection (1) and the Court is satisfied that —

- (a) the person is entitled to possession of the property;
- (b) the property is not tainted property in relation to the scheduled offence; and
- (c) the person in respect of whose conviction, charging or proposed charging the seizure of the property was made has no interest in the property,

the Court shall order the Commissioner to return the property to the person, and the Commissioner shall arrange for the property to be returned.

(3) Where —

- (a) at the time when the property was seized, an information had not been laid in respect of a scheduled offence;
- (b) the property has been seized under section 26, otherwise than because it may afford evidence as to the commission of an offence;
- (c) at the end of the period of seventy-two hours after the time when the property was seized, an information

has not been laid in respect of a scheduled offence, the Commissioner shall, subject to subsections (5) and (6), arrange for the property to be returned to the person from whose possession it was seized as soon as practicable after the end of that period.

(4) Where –

- (a) property has been seized under section 26, otherwise than because it may afford evidence as to the commission of a scheduled offence;
- (b) before the period was seized either –
 - (i) a person had been convicted of a scheduled offence or an information had been laid in respect of a scheduled offence; or
 - (ii) an information had not been laid in respect of a scheduled offence, but an information was laid in respect of a scheduled offence within forty-eight hours after the time when the property was seized; and
- (c) no forfeiture order has been made against the property within the period of fourteen days after the property was seized,

the Commissioner shall, subject to subsections (5) and (6), arrange for the property to be returned to the person from whose possession it was seized as soon as practicable after the end of that period.

(5) Where –

- (a) property had been seized under section 26, otherwise than because it may afford evidence as to the commission of a scheduled offence; and
- (b) the Commissioner would be required to arrange for the property to be returned to a person as soon as practicable after the end of a particular period; and
- (c) before the end of that period, a restraining order is made in relation to the property,

the Commissioner shall arrange for the property to be given to the Registrar in accordance with the restraining order, if the restraining order directs the Registrar to take custody and control of the property, or arrange for the property to be kept until it is dealt with in accordance with any other provision of this Act, if the Court that made the restraining order has made an order under subsection (6) in relation to the property.

(6) Where —

- (a) property has been seized under section 26, otherwise than because it may afford evidence as to the commission of a scheduled offence;
- (b) a restraining order is made in relation to the property; and
- (c) at the time when the restraining order is made, the property is in the possession of the Commissioner,

the Commissioner may apply to the Court that made the restraining order for an order to retain possession of the property, and the Court may, if satisfied that there are reasonable grounds for believing that the property may afford evidence as to the commission of a scheduled offence or any other offence, make an order that he retain the property for as long as the property is required as evidence as to the commission of that offence.

(7) Where the Commissioner applies to the Court for an order under subsection (6), a witness shall not be required to answer any question or to produce any document if the Court is satisfied that the answering of the question or the production of the document may prejudice the investigation or the prosecution of a person for an offence.

(8) Where —

- (a) property has been seized under section 26, otherwise than because it may afford evidence as to the commission of scheduled offence; and
- (b) an application is made for a restraining order or a forfeiture order in respect of the property at (a);
- (c) application under paragraph (b) is refused; and
- (d) at the time when the application, is refused, the property at (a) is in the possession of the Commissioner,

the Commissioner shall arrange for the property to be returned to the person from whose possession it was seized as soon as practicable after the refusal.

(9) Where —

- (a) property has been seized under section 26; and
- (b) while the property is in the possession of the Commissioner a forfeiture order is made in respect of the property,

the Commissioner shall deal with the property as directed by the order.

Restraining Orders

Application for
restraining order

29. (1) Where a person, (in this section and section 30 called "the defendant")—

- (a) has been convicted of a scheduled offence; or
- (b) has been charged with a scheduled offence,

the Director of Public Prosecutions may apply to the Court for a restraining order against any realizable property held by the defendant or specified realizable property held by a person other than the defendant.

(2) An application for a restraining order may be made *ex parte* and shall be in writing and be accompanied by an affidavit stating—

- (a) where the defendant has been convicted of a scheduled offence;
 - (i) the scheduled offence for which the defendant was convicted,
 - (ii) the date of the conviction,
 - (iii) the Court before which the conviction was obtained and whether an appeal has been lodged against the conviction;
- (b) where the defendant has not been convicted of a scheduled offence,
 - (i) the scheduled offence for which he is charged and
 - (ii) the grounds for believing that the defendant committed the offence;
- (c) a description of the property in respect of which the restraining order is sought;
- (d) the name and address of the person who is believed to be in possession of the property;
- (e) the grounds for the belief that the property is tainted property in relation to the offence;
- (f) the grounds for the belief that the defendant derived a benefit directly or indirectly from the commission of the offence;

- (g) where the application seeks a restraining order against property of a person, other than the defendant, the grounds for the belief that the property is tainted property in relation to the offence and is subject to the effective control of the defendant;
- (h) the grounds for the beliefs that a forfeiture order or a confiscation order may be or is likely to be made under this Act in respect of the property.

30. (1) Subject to this section, where the Director of Public Prosecutions applies to the Court for a restraining order against property and the Court is satisfied that –

Restraining
Orders.

- (a) the defendant has been convicted of a scheduled offence, or has been charged with a scheduled offence;
- (b) there are reasonable grounds for believing that
 - (i) the defendant committed the offence, where the defendant has not been convicted of a scheduled offence;
 - (ii) the property is tainted property in relation to an offence or that the defendant derived a benefit directly or indirectly from the commission of the offence;
 - (iii) the property is tainted property in relation to an offence and that the property is subject to the effective control of the defendant, where the application seeks a restraining order against property of a person other than the defendant; and
 - (iv) a forfeiture order or a confiscation order is likely to be made under this Act in respect of the property,

the Court may make an order prohibiting the defendant or any person from disposing of, or otherwise dealing with, the property or such specified part thereof or interest therein except in such manner as may be stated in the order.

(2) At the request of the Director of Public Prosecutions, where the Court is satisfied that the circumstances so warrant the Court may make an order –

- (a) directing the Registrar or such other person as the Court may appoint to take custody of the property or

such part thereof as is specified in the order and to manage or otherwise deal with all or any such part in accordance with the directions of the Court; and

- (b) requiring any person having possession of the property to give possession thereof to the Registrar or other person appointed to take custody and control of the property under paragraph (a).

(3) An order under subsection (1) or (2) may be made subject to such conditions as the Court thinks fit and, without limiting the generality may make provision for meeting, out of the property or a specified part of the property, all or any of the following –

- (a) the reasonable living expenses of the person including –
 - (i) the reasonable living expenses of his dependants (if any); and
 - (ii) his reasonable business expenses;
- (b) the reasonable expenses of the person in defending the criminal charge and any proceedings under this Act.

(4) In determining whether there are reasonable grounds for believing that property is subject to the effective control of the defendant the Court may have regard to the matters referred to in section 21 (2).

(5) Where the Registrar or other person appointed under subsection (2) (a) is given a direction in relation to any property, the Registrar or that other person may apply by summons to the Court for directions on any question respecting the management or preservation of the property under his control.

(6) An application under subsection (5) shall be served upon all persons interested in the application or each of them as the Court thinks expedient and such person shall be at liberty to appear at the hearing and be heard.

(7) The Registrar or other person appointed under subsection (2) (a) in acting on directions given by the Court shall be deemed to have discharged his duty in the subject matter of the application.

Undertakings by
Crown

31. (1) Before making an order under section 30, the Court may require the Crown to give such undertakings as the Court may consider appropriate with respect to the payment of damages or costs, or both, in relation to the making and execution of the order.

(2) For the purposes of this section, the Director of Public Prosecutions may, on behalf of the Crown, after consultation with the

Attorney-General give to the Court such undertakings with respect to the payment of damages or costs, or both, as are required by the Court.

32. (1) Before making a restraining order, the Court may require notice to be given to, and may hear, any person who, in the opinion of the Court, appears to have an interest in the property.

Notice of
application for
restraining order

(2) No notice shall be given under subsection (1) if the Court is of the opinion that giving such notice before making the order would result in the disappearance, dissipation or reduction in the value of the property.

33. A copy of a restraining order shall be served on a person affected by the order in such manner as the Court directs or as may be prescribed by Rules of Court.

Service of
restraining order

34. (1) A copy of a restraining order which affects lands in Saint Vincent and the Grenadines shall be registered with the Registrar of the Supreme Court in accordance with the Registration of Documents Act (Cap. 93).

Registration of
restraining order

(2) Where particulars of a restraining order are registered, in accordance with the Registration of Documents Act (Cap. 93) a person who subsequently deals with the property shall, for the purposes of section 35, be deemed to have notice of the order at the time of the dealing.

35. (1) A person who knowingly contravenes a restraining order by disposing of, or otherwise dealing with property that is subject to the restraining order commits an indictable offence punishable upon conviction by –

Contravention of
restraining orders

(a) a fine not exceeding five hundred thousand dollars or imprisonment for a period not exceeding five years or both such fine and imprisonment; or

(b) a fine not exceeding one million dollars in the case of a body corporate.

(2) Where a restraining order is made against property and –

(a) the property is disposed of, or otherwise dealt with, in contravention of the restraining order, and

(b) the disposition or dealing was not for sufficient consideration or not in favour of a person who acted in good faith and without notice,

the Director of Public Prosecutions may apply to the Court that made the restraining order for an order that the disposition or dealing be set aside.

(3) Where the Director of Public Prosecutions makes an application under subsection (2) in relation to a disposition or dealing, the Court may make an order –

- (a) setting aside the disposition or dealing as from the day on which the disposition or dealing took place; or
- (b) setting aside the disposition or dealing as from the day of the order under this subsection and declare the respective rights of any person who acquired an interest in the property on, or after the day on which the disposition or dealing took place and before the date of the order under this subsection.

Duration of
restraining order

36. A restraining order remains in force until –

- (a) it is revoked or varied under section 37;
- (b) it ceases to be in force under section 38; or
- (c) a forfeiture order or a confiscation order, as the case may be is made in respect of property which is the subject of the order; or
- (d) the property which is the subject of the order becomes forfeited to the Crown under any other enactment.

Review of Search Warrants and Restraining Orders

Review of search
warrants and
restraining orders

37. (1) A person who has an interest in property seized under a warrant issued pursuant to section 23 or in respect of which a restraining order was made may at any time apply to the Court –

- (a) for a order under subsection (4); or
- (b) for permission to examine the property.

(2) An application under subsection (1) shall not be heard by the Court unless the applicant has given to the Director of Public Prosecutions at least seven clear days notice in writing of the application.

(3) The Court may require notice of the application to be given to, and may hear any person who, in the opinion of the Court, appears to have an interest in the property.

(4) On an application made under subsection (1) (a) in respect of any property, the Court may, after hearing the applicant, the Director of Public Prosecutions and any other person to whom notice was given pursuant to subsection (3), order that the property or any part thereof be returned to the applicant or, in the case of a

restraining order, revoke or vary the order to exclude the property or any interest therein or any part thereof from the application of the order, or make the order subject to such conditions as the Court thinks fit –

- (a) if the applicant enters into a recognizance before the Court, with or without sureties, in such amount and with such conditions, as the Court directs and, where the Court considers it appropriate, deposits with the Court such sum of money or other valuable security as the Court directs;
- (b) if the conditions referred to in subsection (5) are satisfied; or
- (c) for the purpose of –
 - (i) meeting the reasonable living expenses of the person who was in possession of the property at the time the warrant was executed or the order was made or any person who, in the opinion of the Court has an interest in the property and of the dependants of that person; or
 - (ii) meeting the reasonable business or legal expenses of a person referred to in subparagraph (i).

(5) An order under subsection (4) (b) in respect of property may be made by the Court if the Court is satisfied –

- (a) that a warrant should not have been issued pursuant to section 23 or a restraining order should not have been made, in respect of that property; or
- (b) that the applicant is the lawful owner of, or lawfully entitled to possession of, the property and appears innocent of any complicity in a scheduled offence or of any collusion in relation to such an offence; and
- (c) that the property will no longer be required for the purpose of any investigation or as evidence in any proceedings.

(6) On an application made to the Court under subsection (1) (b), the Court may order that the applicant be permitted to examine the property subject to such terms as may appear to the Court to be necessary or desirable to ensure that the property is safeguarded and preserved for the purpose for which it may subsequently be required.

Automatic
expiry of
restraining orders

38. (1) Where a restraining order has been made in relation to property, it shall not continue in force for a period of more than nine months after the time of its making unless before the expiration of that period, the Director of Public Prosecutions applies to the Court that made the order for an extension of the period.

(2) Where the Director of Public Prosecutions applies under subsection (1) for an extension of the period of operation of a restraining order and the Court is satisfied –

- (a) that a forfeiture order may be made in respect of the property or part thereof; or
- (b) that a confiscation order may be made against a person in relation to property which is the subject of a restraining order,

the Court may extend for a specific period the period of operation of the restraining order and make such other order as it considers appropriate in relation to the operation of the restraining order and the Court may on the application of the Director of Public Prosecutions grant such further extensions and make such further orders as it considers appropriate in relation to the operation of the restraining order.

Disposal of
property seized
or deal with

39. Where the Court is satisfied that property will no longer be required for the purposes of section 8, 15 or 16 or for any other enactment providing for forfeiture or for the purpose of any investigation or as evidence in any proceedings, the Court shall, on the application of the Director of Public Prosecutions or any person having an interest in the property or on the Court's own motion –

- (a) where a restraining order has been made in relation to any property, revoke the order;
- (b) where a recognizance has been entered into pursuant to section 37, cancel the recognizance; and
- (c) order where property has been seized under a warrant issued pursuant to section 23 or where the property is under the control of a person appointed pursuant to section 30 (2) (a) that –
 - (i) if possession by the person from whom it was taken is lawful it be returned to that person;
 - (ii) if possession by the person from whom it was taken is unlawful and the owner or other person lawfully entitled to its possession is known it be returned to the owner or other person lawfully entitled to its possession;

- (iii) if possession by the person from whom it was taken is unlawful and the owner or other person lawfully entitled to its possession is not known it be forfeited to the Crown, to be disposed of or otherwise dealt with in accordance with the law.

**Production Orders, and other information
gathering powers**

40. (1) Where —

Production and
inspection orders.

- (a) a person has been convicted of a scheduled offence and a police officer has reasonable grounds for suspecting that a person has possession or control of —
 - (i) a document relevant to identifying, locating or quantifying property of the person who committed the offence or documents necessary for the transfer of property of the person who committed the offence,
 - (ii) a document relevant to identifying locating or quantifying tainted property in relation to the offence or to identifying or locating a document necessary for the transfer of tainted property in relation to the offence, or
- (b) a police officer has reasonable grounds for suspecting that a person has committed a scheduled offence and that a person has possession or control of any document referred to in paragraph (a),

the police officer may apply to a Judge in Chambers in accordance with subsection (2) for an order under subsection (5) against the other person suspected of having possession or control of a document of the kind referred to in paragraph (a) or against the other person referred to in paragraph (b).

(2) An application under subsection (1) shall be made *ex parte* and shall be in writing and be accompanied by an affidavit.

(3) Where a police officer applies for an order under subsection (5) in respect of a scheduled offence and includes in the affidavit a statement to the effect that he has reasonable grounds to believe that —

- (a) the person who was convicted of the offence or who is believed to have committed the offence, derived a benefit directly or indirectly from the commission of the offence; and

- (b) property specified in the affidavit is subject to the effective control of the person referred to in paragraph (a),

the Judge may treat any document relevant to identifying, locating or quantifying that property as a document in respect of which an order may be issued under subsection (5).

(4) In determining whether to treat a document relevant to identifying, locating or quantifying property referred to in subsection (3) as a document in respect of which an order may be issued under subsection (5) the Judge may have regard to the matters referred to in section 21 (2).

(5) Where an application is made under subsection (1) for an order against a person, the Judge may, subject to subsections (6) and (7) make an order requiring the person to –

- (a) produce to a police officer any document of the kind referred to in subsection (1) that are in the possession or control of that person; or
- (b) make available to a police officer for inspection, any documents of the kind referred to in subsection (1) that are in the possession or control of that person.

(6) An order under subsection (5) (a) shall not be made in respect of accounting records used in the ordinary business of banking including ledgers, day-books, cash books and account books.

(7) A Judge shall not make an order under this section unless –

- (a) the applicant or some other person has given the Judge, either orally or by affidavit, such information as the Judge requires concerning the grounds on which the order is sought; and
- (b) the Judge is satisfied that there are reasonable grounds for making the order.

(8) An order for a person to produce a document to a police officer shall specify the time and the place where, the document is to be produced.

(9) An order for a person to make a document available to a police officer for inspection shall specify the time when the document is to be made available.

41. (1) Where a document is made available to a police officer pursuant to an order under section 40, the police officer may –

Scope of police powers under production order, etc.

- (a) inspect the document;
- (b) take extracts from the document;
- (c) make copies of the document.

(2) Where a police officer retains a document pursuant to an order under section 40, the police officer shall —

- (a) give the person to whom the order was addressed a copy of the document certified by the police officer in writing to be a true copy of the document retained; and
- (b) permit the person to —
 - (i) inspect the document;
 - (ii) take extracts from the document; or
 - (iii) make copies of the document.

42. (1) Where a person produces or makes available a document pursuant to an order under section 40 the production or availability of the document, or an information, document or thing obtained as a direct or indirect consequence of the production or availability of the document, is not admissible against the person in any criminal proceedings except a proceeding for an offence against section 44.

Evidential value
of information

(2) For the purposes of subsection (1), proceedings on an application for a restraining order, a forfeiture order or a confiscation order are not criminal proceedings.

(3) A person is not excused from producing or making available a document when required to do so by an order under section 40 on the grounds that —

- (a) producing or making available the document might tend to incriminate the person or make the person liable to a penalty; or
- (b) producing or making available the document would be in breach of an obligation, whether imposed by enactment or otherwise, of the person not to disclose the existence or contents of the document.

43. Where a Judge makes a production order, requiring a person to produce a document to a police officer the person may apply to that Judge or another Judge for a variation of the order and if the Judge hearing the application is satisfied that the document to be produced is essential to the business activities of the person, the Judge may vary the order so that it requires the person to make the document available to a police officer for inspection only.

Variation of
production order

Failure to
produce
document

44. (1) Where a person is required by an order to produce a document to a police officer or make a document available to a police officer for inspection, the person commits an offence against this subsection if the person –

- (a) contravenes the order without reasonable excuse; or
- (b) in purported compliance with the order produces or makes available a document known to the person to be false or misleading in a material particular without –
 - (i) indicating to the police officer to whom the document is produced or made available that the document is false or misleading and in what respect the document is false or misleading;
 - (ii) providing correct information to the police officer if the person is in the possession of or can reasonably acquire, the correct information.

(2) An offence against subsection (1) is punishable upon summary conviction by –

- (a) a fine not exceeding fifty thousand dollars or imprisonment for a period not exceeding two years, or to both such fine and imprisonment;
- (b) a fine not exceeding one hundred thousand dollars where the offender is a body corporate.

Power of entry,
search and seizure

45. (1) Where –

- (a) a person is convicted of a scheduled offence and a police officer has reasonable grounds for suspecting that there is in any premises any document of the type specified in section 40; or
- (b) a police officer has reasonable grounds for suspecting that a person has committed a scheduled offence and there is in any premises any document of the type specified in section 40,

the police officer may apply to a Judge for a warrant under subsection (2) to search the premises.

(2) Where an application is made under subsection (1) for a search warrant, the Judge may, subject to subsections (3) and (4), issue a warrant authorizing a police officer (whether or not named in the warrant) with such assistance and by such force as is necessary and reasonable –

- (a) to enter the premises;
- (b) to search the premises for documents of the kind referred to in subsection (1);
- (c) to seize and retain any document found in the course of the search that in the opinion of the police officer is likely to be of substantial value (whether by itself or together with other documents) in the investigation in respect of which the application is made.

(3) A Judge shall not issue a search warrant under subsection (2) unless he is satisfied that –

- (a) a production order has been made in respect of the document and has not been complied with;
- (b) a production order would be unlikely to be effective because there are reasonable grounds to suspect that such an order would not be complied with;
- (c) the document involved cannot be identified or described with sufficient particularity to enable a production order to be made in respect of the document;
- (d) it is not practicable to communicate with any person having the power to grant entry to the premises; or
- (e) entry to the premises will not be granted unless a warrant is produced; or
- (f) the investigation for the purposes of which the application is made might be seriously prejudiced unless the police officer is granted immediate access to the document without notice to any person;
- (g) further information that the Judge requires concerning the grounds on which the search warrant is sought has been obtained from the applicant or some other person either orally or by affidavit;
- (h) there are reasonable grounds for issuing the search warrant.

(4) A search warrant issued under this section shall state –

- (a) the purpose for which the warrant is issued, including a reference to the scheduled offence that has been, or is believed to have been, committed;
- (b) whether entry is authorized to be made at any time of the day or night or during specified hours of the day or night;

- (c) a description of the kind of documents authorized to be seized; and
- (d) the date, not being later than two months after the day of issue of the warrant, upon which the warrant ceases to have effect.

(5) Where a police officer enters premises in execution of a warrant issued under this section, he may seize –

- (a) any document, other than items subject to legal privilege, which is likely to be of substantial value (whether by itself or together with other documents) to the investigation for the purpose of which the warrant was issued; and
- (b) anything that the police officer believes, on reasonable grounds, will afford evidence as to the commission of a criminal offence.

(6) In this section –

the expression “item subject to legal privilege” mean –

- (a) communications between a legal practitioner and his client; and
- (b) communications made in connection with or in contemplation of legal proceedings and for the purposes of those proceedings,

being communications which would in legal proceedings be protected from disclosure by virtue of any rule of law relating to the confidentiality of communications;

“premises” includes any place and in particular any building, receptacle or vehicle.

Monitoring Orders

Interpretation

46. For the purposes of section 47 to 52, “financial institution” means –

- (a) a bank licensed under the Banking Act (Cap. 63);
- (b) a building society registered under the Building Societies Act (Cap. 324);
- (c) a credit union registered under the Co-operative Societies Act (Cap. 325);
- (d) a trust company, finance company or deposit taking company, recognized by the Minister responsible for Finance as such.

47. (1) A police officer of or above the rank of Assistant Superintendent may apply to a Judge in Chambers in accordance with subsection (2) for an order (in this section called a "monitoring order") directing a financial institution to give information to a police officer.

(2) An application under subsection (1) shall be made *ex parte* and shall be in writing and be accompanied by an affidavit.

(3) A monitoring order shall direct a financial institution to disclose information obtained by the institution about transactions conducted through an account held by a particular person with the institution.

(4) A monitoring order shall apply in relation to transactions conducted during the period specified in the order.

(5) A Judge shall not make a monitoring order unless he is satisfied that there are reasonable grounds for suspecting that the person in respect of whose account the information is sought —

- (a) has committed, or is about to commit a scheduled offence;
- (b) was involved in the commission, or is about to be involved in the commission of a scheduled offence; or
- (c) has benefitted directly or indirectly, or is about to benefit directly or indirectly, from the commission of a scheduled offence.

(6) A monitoring order shall specify —

- (a) the name in which the account is believed to be held;
- (b) the class of information that the institution is required to give; and
- (c) the name of the police officer to whom the information is to be given and the manner in which the information is to be given.

(7) Where a financial institution is, or has been, subject to a monitoring order, the fact that the monitoring order has been made shall be disregarded for the purposes of the application of sections 59 and 60 in relation to the institution.

(8) Where a financial institution that has been given notice of a monitoring order knowingly —

- (a) contravenes the order; or

- (b) provides false or misleading information in purported compliance with the order,

the institution commits an offence against this subsection and is liable on conviction on indictment to a fine not exceeding one million dollars.

(9) A reference in this section to a transaction conducted through an account includes a reference to —

- (a) the making of a fixed term deposit;
- (b) in relation to a fixed term deposit, the transfer of the amount deposited or any part thereof, at the end of the term; and
- (c) the opening, existence or use of a deposit box held by the institution.

Monitoring orders
not to be
disclosed

48. (1) A financial institution that is, or has been, subject to a monitoring order shall not disclose the existence or the operation of the order to any person except —

- (a) an officer or agent of the institution, for the purpose of ensuring that the order is complied with; or
- (b) an attorney-at-law, for the purpose of obtaining legal advice or representation in relation to the order; or
- (c) the Commissioner or a police officer authorized in writing by the Commissioner to receive the information.

(2) A person referred to in subsection (1) to whom a disclosure of the existence or operation of a monitoring order has been made, shall not —

- (a) disclose the existence or operation of the order except to another person referred to in the said subsection (1) for the purpose of —
 - (i) the performance of that person's duties, if the disclosure is made by the Commissioner or a police officer;
 - (ii) ensuring that the order is complied with or obtaining legal advice or representation in relation to the order, if the disclosure is made by an officer or agent of the institution; or
 - (iii) giving legal advice or making representation in relation to the order; if the disclosure is made by an attorney-at-law; or

- (b) make a record of, or disclose, the existence or the operation of the order in any circumstances, even when he ceases to be a person referred to in subsection (1).

(3) Nothing in subsection (2) prevents the disclosure by a person referred to in subsection (1) (c) of the existence or operation of a monitoring order –

- (a) for the purposes of, or in connection with, legal proceedings; or
- (b) in the course of proceedings before a Court.

(4) A person referred to in subsection (1) (b) shall not be required to disclose to any Court the existence or operation of a monitoring order.

(5) A person shall not publish or aid or abet the publishing of any information tending to disclose the existence or operation of a monitoring order, unless authorized to do so by the Court.

(6) A person who contravenes subsection (1) or (2) commits an offence and is liable on conviction on indictment to –

- (a) a fine not exceeding twenty thousand dollars or imprisonment for a period not exceeding three years or to both such fine and imprisonment; or
- (b) a fine not exceeding one hundred thousand dollars in the case of a body corporate.

(7) A reference in this section to disclosing the existence or operation of a monitoring order to a person includes a reference to disclosing information to the person from which that person could reasonably be expected to infer the existence or operation of the monitoring order.

Obligation of Financial Institutions

49. (1) Subject to subsection (3), and to section 50, a financial institution shall retain, in its original form for the minimum retention period applicable to the document –

Retention of
records of
financial
institutions

- (a) a document that relates to a financial transaction carried out by the institution in its capacity as a financial institution and, without limiting the generality of the foregoing, includes a document that relates to –
 - (i) the opening or closing by a person of an account with the institution;

- (ii) the operation by a person of an account with the institution;
- (iii) the opening or use by a person of a deposit box held by the institution;
- (iv) the telegraphic or electronic transfer of funds by the institution on behalf of a person to another person;
- (v) the transmission of funds between Saint Vincent and the Grenadines and a foreign country on behalf of a person; or
- (iv) an application by a person for a loan from the institution, where a loan is made to the person pursuant to the application; and
- (b) a document that relates to a financial transaction carried out by the institution in its capacity as a financial institution that is given to the institution by or on behalf of the person, whether or not the document is signed by or on behalf of the person.

(2) For the purposes of this section, the expression "minimum retention period" means —

- (a) where the document relates to the opening of an account with the institution, the period of seven years after the day on which the account is closed;
- (b) where the document relates to the opening by a person of a deposit box held by the institution, the period of seven years after the day on which the deposit box ceases to be used by the person; and
- (c) in any other case, the period of seven years after the day on which the transaction takes place.

(3) Subsection (1) does not apply to a financial transaction document that relates to a single deposit, credit, withdrawal, debit or transfer of an amount of money that does not exceed five thousand dollars or such larger amount as may be prescribed for the purposes of this subsection.

(4) A financial institution required to retain documents under this section shall retain them on microfilm or in such other manner that makes retrieval of the information contained in the documents reasonably practicable.

(5) A financial institution that contravenes subsection (1) or

(4) commits an offence against this section and is liable, on summary conviction, to a fine not exceeding fifty thousand dollars.

(6) This section does not limit any other obligation of a financial institution to retain documents.

50. (1) Where a financial institution is required by law to release the original of a document before the end of the minimum retention period applicable to the document, the institution shall retain a complete copy of the document until the period has ended or the original document is returned, whichever occurs first.

Register of
original
documents

(2) A financial institution shall maintain a register of documents released under subsection (1).

(3) A financial institution that contravenes subsection (1) or (2) commits an offence against this section and is liable, on summary conviction, to a fine not exceeding fifty thousand dollars.

51. (1) Where a financial institution has information about an account held with the institution and the institution has reasonable grounds for believing that –

Communication
of information to
law enforcement
authorities.

- (a) the information may be relevant to an investigation of, or the prosecution of, a person for an offence; or
- (b) the information would otherwise be of assistance in the enforcement of this Act or any regulations made thereunder,

the institution may give the information to a police officer or the Director of Public Prosecutions.

(2) Notwithstanding any provision in any other law no action, suit or other legal proceedings shall lie against –

- (a) a financial institution; or
- (b) an officer, employee or agent of a financial institution acting in the course of his employment or agency,

in relation to an action taken by the institution or a person referred to at subsection (b) pursuant to subsection (1).

52. Where a financial institution, or a person who is an officer, employee or agent of the institution, gives the information pursuant to section 51 (1) as soon as practicable after forming the belief referred to in that subsection, the institution shall be taken for the purposes of section 59 and 60 not to have been in possession of that information at any time.

Protection for
financial
institution

Order for Disclosure of Income Tax Information

Application for disclosure of income tax information.

53. (1) The Director of Public Prosecutions may for the purposes of an investigation in relation to a scheduled offence apply to a Judge in accordance with subsection (2) for an order for disclosure of information under section 54.

(2) An application under subsection (1) may be made *ex parte* and shall be in writing and be accompanied by an affidavit sworn on the information and belief of the Director of Public Prosecutions or a person specially designated by the Director of Public Prosecutions for that purpose deposing the following matters –

- (a) the scheduled offence under investigation;
- (b) the person in relation to whom the information or documents referred to in paragraph (c) are required;
- (c) the type of information or book, record, writing, return or other document in the possession of the Comptroller to which access is sought or that is proposed to be examined or communicated; and
- (d) the facts relied on to justify the belief, on reasonable grounds –
 - (i) that the person referred to in paragraph (b) has committed or benefitted from the commission of an offence referred to in paragraph (a); and
 - (ii) that the information or documents referred to in paragraph (c) is likely to be of substantial value, whether alone or together with other material, to the investigation for the purpose of which the application is made.

Order for disclosure

54. (1) Notwithstanding any provisions in any other law, where the Judge to whom an application under section 53 is made is satisfied –

- (a) of the matters referred to in section 53 (2) (d); and
- (b) that there are reasonable grounds for believing that it is in the public interest to allow access to the information or documents to which the application relates, having regard to the benefit likely to accrue to the investigation if the access is obtained,

he may, subject to such conditions as he considers advisable in the public interest, order the Comptroller to allow the Director of Public Prosecutions or any other person named in the order access to all such

information and documents and to examine them.

(2) Where the Judge considers it necessary he may in the circumstances, order the Comptroller to produce all such information and documents to a person referred to in subsection (1) and allow such person to remove the information and documents from the possession of the Comptroller, seven days following the service of the order on the Comptroller pursuant to subsection (3).

(3) A copy of an order made by a Judge under this section shall be served on the Comptroller in such manner as the Judge directs.

(4) A Judge who makes an order under this section may, on application of the Comptroller or of the Director of Public Prosecutions, extend the period within which the order is to be complied with.

55. (1) The Comptroller may object to the disclosure of any information or document in respect of which an order under section 54 has been made by certifying in writing that the information or document should not be disclosed on the grounds that –

Objection to
disclosure of
information

- (a) the Comptroller is prohibited from disclosing the information or document by any bilateral or international treaty, convention or other agreement respecting taxation or exchange of information to which Saint Vincent and the Grenadines is signatory;
- (b) a privilege is attached by law to the information or document;
- (c) the information or document has been placed in a sealed package pursuant to law or order of a court of competent jurisdiction;
- (d) disclosure of the information or document would not be in the public interest.

(2) Where an objection to the disclosure of information or a document is made under subsection (1) the objection may be determined on application by the Comptroller or the Director of Public Prosecutions to a Judge in Chambers made not later than fourteen days from the date of the objection.

(3) A Judge who is to determine an objection pursuant to subsection (2) may, if he considers it necessary, examine the information or document in relation to which the objection is made and shall grant the objection and order that disclosure of the information or document be refused where he is satisfied as to any of the grounds mentioned in subsection (1).

(4) An appeal lies from a determination under subsection (2) to the Court of Appeal and shall be brought within fourteen days from the date of the determination appealed from or within such further time as the Court of Appeal considers appropriate in the circumstances.

Evidential value
of copies

56. Where any information or document is examined or provided pursuant to an order under section 54, the person by whom it is examined or to whom it is provided or any officer or person authorized by the Comptroller for the purpose, may make or cause to be made one or more copies thereof and any copy purporting to be certified by the Comptroller to be a copy made pursuant to this section is evidence of the nature and content of the original information or document and has the same probative force as the original information or document would have had if it had been proved in the ordinary way.

Limitation on
disclosure of
information and
documents

57. No person to whom information or documents have been disclosed or provided pursuant to an order under section 54 shall further disclose the information or documents except for the purposes of the investigation in relation to which the order was made, and proceedings under this Act.

Access to specified information and document held by Government departments etc.

Disclosure of
information and
documents held
by Government
departments

58. Notwithstanding any provision in this or in any other enactment the Court may on the application by the Director of Public Prosecutions order the person in charge of any government department or statutory body to produce or furnish to the Director of Public Prosecutions or any other person specified in the order any document or information which is in his possession or under his control or to which he may reasonably have access (not being a document readily available to the public) which the Court considers relevant to any investigation into, or proceedings, relating to a scheduled offence alleged or suspected to have been committed by any person.

PART IV

Offences

Money laundering

59. (1) In this section "transaction" includes the receiving or making of a gift.

(2) A person who, after the commencement of this Act, engages in money laundering commits an indictable offence and is liable on conviction, to —

- (a) a fine not exceeding five hundred thousand dollars or imprisonment for a period not exceeding twenty years, or both such fine and imprisonment; or
- (b) a fine not exceeding one million dollars in the case of a body corporate.

(3) A person shall be taken to engage in money laundering where -

- (a) the person engages, directly or indirectly, in a transaction that involves money or other property, that is the proceeds of crime; or
- (b) the person receives, possesses, conceals, disposes of, or brings into Saint Vincent and the Grenadines money or other property that is the proceeds of crime,

and the person knows or ought reasonably to know, that the money or other property is derived, obtained or realized, directly or indirectly from some form of unlawful activity.

60. (1) A person who, after the commencement of this Act, receives, possesses, conceals, disposes of, or brings into Saint Vincent and the Grenadines any money, or other property that he knows or ought reasonably to know to be the proceeds of crime commits an indictable offence and is liable, on conviction, to -

Possession of property derived from unlawful activity

- (a) a fine not exceeding two hundred and fifty thousand dollars or imprisonment for a period not exceeding five years or to both such fine and imprisonment; or
- (b) a fine not exceeding five hundred thousand dollars in the case of a body corporate.

(2) It is a defence to a charge for an offence against this section, if the person satisfies the Court that he did not know or had not reasonable grounds for knowing that the property referred to in the charge was derived or realized, directly or indirectly, from some form of unlawful activity.

61. (1) A person who engages in organized fraud commits an indictable offence and is liable on conviction, to -

Organised fraud

- (a) a fine not exceeding five hundred thousand dollars or imprisonment for a period not exceeding twenty five years, or to both such fine and imprisonment; or
- (b) a fine of one million dollars if a body corporate.

(2) A person shall be deemed to engage in organized fraud if he engages, after the commencement of this Act, in acts or omissions -

- (a) that constitute three or more public fraud offences; and
- (b) from which he derives benefit.

(3) Where a person is charged with a organized fraud under subsection (1) in relation to a number of public fraud offences and the jury is not satisfied that the person is guilty of the offence of organized fraud but is satisfied that the person is guilty of one or more of the public fraud offences, the jury shall acquit the person of the offence of organized fraud and shall find the person guilty of the public fraud offence or offences and that person shall be punishable accordingly.

(4) In this section "public fraud offence" means an offence of fraud committed by a public officer under Chapter V of the Criminal Code (Cap. 124).

Principal bound
by act of agent or
servant.

62. (1) For the purposes of this Act, any conduct engaged in on behalf of a body corporate -

(a) by a director, servant or agent of that body corporate within the scope of his actual or apparent authority; or

(b) by any other person at the direction or with the consent or agreement whether expressed or implied, of a director, servant or agent of that body corporate where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the director, servant or agent,

shall be deemed to have been engaged in by the body corporate.

(2) Where it is necessary for the purposes of this Act, to establish the state of mind of a person in relation to conduct deemed by subsection (3) to have been engaged in by that person, it is sufficient to show that a servant or agent of that person, being a servant or agent by whom the conduct was engaged in within the scope of his actual or apparent authority, had that state of mind.

(3) Conduct engaged in on behalf of a person, other than a body corporate -

(a) by a servant or agent of that person within the scope of his actual or apparent authority; or

(b) by any other person at the direction or with the consent or agreement whether expressed or implied, of a servant or agent of the first mentioned person, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the servant or agent,

shall be deemed, for the purposes of this Act, to have been engaged in by the first mentioned person.

(4) A reference in this section to the state of mind of a person includes a reference to the knowledge, intention, opinion, belief or purpose of that person and that person's reasons for his intention, opinion, belief or purpose.

PART V

MISCELLANEOUS

63. Cabinet on the recommendations of the Commissioner, may reward any person for any service performed in pursuance of this Act, including any information relating to any offence against this Act, which appears to him to merit reward.

Power to make rewards

64. The Attorney-General may by Order published in the *Gazette* amend the Schedule.

Amendment of Schedule

65. Save as otherwise provided in this Act, any question of fact to be decided by the Court in proceedings under this Act is to be decided beyond a reasonable doubt.

Standard of proof

66. (1) In this section -

External forfeiture order and confiscation orders.

(a) "external forfeiture order" or "external confiscation order", as the case may be, means an order made by a court of a designated country, after the coming into force of an order under this section, for the purposes of recovering proceeds of crime;

(b) "designated country" means a country or territory outside Saint Vincent and the Grenadines which is a party to the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic substances.

(2) The Attorney-General may by Order under this section apply this section to an external forfeiture order or external confiscation order of a description specified in the order.

(3) Subject to subsection (4), the Court may, on an application by or on behalf of the government of a designated country, register an external forfeiture order or an external confiscation order made there.

(4) The Court shall not register an external forfeiture order or an external confiscation order unless the Court is -

(a) satisfied that at the time of registration the order is in force in the designated country and is not subject to appeal there; and

(b) satisfied, where the person against whom the order was made did not appear in the proceedings in the designated country, that he received notice of those proceedings in sufficient time to enable him to defend them; and

(c) of the opinion that enforcing the order in Saint Vincent and the Grenadines would not be contrary to the interest of justice.

(5) In subsection (4), "appeal" includes proceedings by way of discharging or setting aside a judgement, an application for a new trial or for a stay of execution.

(6) The Court shall cancel the registration of an external forfeiture order or an external confiscation order if it appears to the Court that the order has been satisfied.

(7) In relation to an external forfeiture order or an external confiscation order registered under this section, section 29 to 36 shall have effect, subject to such modifications as may be specified in the order under this section, as they have effect in relation to a forfeiture order or a confiscation order.

(8) An order under this section may include such provision –

(a) as to evidence or proof of any matter for the purpose of this section; and

(b) as to the circumstances in which proceedings are to be treated for those purposes as instituted or concluded in a designated country,

as the Attorney-General considers appropriate.

(9) An order varying or revoking a previous order under this section may contain such incidental, consequential and transitional provisions as the Attorney-General considers appropriate.

(10) In the case where the Court is satisfied, on an application by or on behalf of the government of a designated country, that proceedings which might result in an external forfeiture order or an external confiscation order being made against a person have been instituted in that country and have not been concluded, section 29 and 30 shall have effect in relation to those proceedings –

(a) as they would have effect in relation to proceedings instituted in Saint Vincent and the Grenadines against that person for a scheduled offence which has not been concluded; and

- (b) as if references to a forfeiture order or a confiscation order were references to an external forfeiture order for an external confiscation order and references to an application by the Director of Public Prosecutions were references to an application by or on behalf of that government; and
- (c) subject to such other modification as may be specified in an order under this section.

(11) An order under this section is subject to negative resolution of the House of Assembly.

67. (1) Where upon the application for a forfeiture order or a confiscation order, the Court declines to make such an order, the Court may on the application of a person who held realizable property, order compensation to be paid to him if the requirement of subsection (2) are fulfilled.

Compensation

(2) The Court shall order compensation to be paid if the Court is satisfied —

- (a) that there has been some serious default in the investigation or conduct of the matter and that, but for the default, the application would not have been instituted or continued; and
- (b) that the applicant has suffered substantial loss in consequence of anything done in relation to the property by or in pursuance of an order of the court under section 30.

(3) The amount of compensation to be paid under this section is the equivalent of such amount of financial loss as the Court is able to ascertain.

(4) Compensation payable under this section shall be paid out of the Consolidated Fund.

68. The Governor-General may make Regulations prescribing matters —

Regulations

- (a) require or permitted by this Act to be prescribed;
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

69. (1) Where —

Costs

- (a) a person brings, or appears at, proceedings under this Act before the Court in order —

- (i) to prevent a forfeiture, confiscation or restraining order from being made against his property; or
- (ii) to have property excluded from a forfeiture, confiscation or restraining order;
- (b) the person is successful in those proceedings; and
- (c) the Court is satisfied that that person was not involved in any way in the commission of the offence in respect of which the forfeiture, confiscation or restraining order was sought or made, the Court may order the Crown to pay all costs reasonably incurred by that person in connection with the proceedings or such part of those costs as is determined by the Court.

Non-liability of
public officer

70. No public officer shall be personally liable for anything done or omitted to be done by him in good faith in the course of the performance of his functions under this Act.

Operation of
other laws not
affected

71. Nothing in this Act prejudices, limits or restricts –

- (a) the operation of any other law which provides for the forfeiture of property or the imposition of penalties or fines; or
- (b) the remedies available to the Crown apart from this Act, for the enforcement of its rights and the protection of its interests; or
- (c) any power of search or any power to seize or detain property which is exercisable by a police officer apart from this Act.

Application to
Drug Trafficking
offences

72. (1) This Act is *pari materia* with the Drug Trafficking Offences Act, 1993 and notwithstanding the provisions of section 5 (a) of the Drug Trafficking Offences Act 1993, the provisions of section 15 relative to the penalty for the enforcement of fines shall apply to that Act.

(2) The penalty provided under sections 59 and 60 relative to money laundering shall apply in respect of an indictable offence under section 22 (6) of the Drug Trafficking Offences Act, 1993 dealing with the like offence and vice versa, whichever Act carries the greater penalty.

SCHEDULE
LIST OF OFFENCES

(Section 3)

1. Money laundering contrary to section 59.
2. Possession of property derived from unlawful activity contrary to section 60.
3. Organised fraud contrary to section 61.

Passed in the House of Assembly this 28th day of August, 1997.

J. THERESA ADAMS
Clerk of the House Assembly.

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1997

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ST. VINCENT AND THE GRENADINES
PROCEEDS OF CRIME AND MONEY LAUNDERING
(PREVENTION) ACT 2001

ARRANGEMENT OF SECTIONS

**PART I
PRELIMINARY**

1. Short title and commencement and application
2. Interpretation
3. Value of property
4. Gifts caught by this Act
5. Institution and Conclusion of proceedings

**PART II
CONFISCATION ORDERS**

6. Confiscation orders drug trafficking
7. Confiscation orders relevant offences
8. Extended benefit
9. Postponed determinations
10. Assessing proceeds of drug trafficking
11. Statement of information by Director of Public Prosecutions
12. Provision of information by defendant
13. Amount to be recovered
14. Protection of third party rights

Subsequent proceedings

15. Reconsideration of case
16. Revised assessment of proceeds of criminal conduct
17. Reconsideration supplementary
18. Increase in realisable property
19. Inadequacy of realisable property

Absconder or deceased persons

- 20. Confiscation order where defendant has absconded or died
- 21. Variation of order made against absconder
- 22. Discharge of order where absconder acquitted

PART III

ENFORCEMENT OF CONFISCATION ORDERS

Default powers

- 23. Imprisonment in default
- 24. Interest on unpaid sums

Restraint and charging orders

- 25. Cases in which restraints and charging orders may be made
- 26. Restraint orders
- 27. Charging orders
- 28. Charging orders supplementary

Realisation of property

- 29. Realisation of property
- 30. Application of proceeds of realisation
- 31. Exercise of powers for realisation of property
- 32. Receivers supplementary

Insolvency

- 33. Bankruptcy of defendant
- 34. Winding up of company holding realisable property

PART IV

INFORMATION GATHERING POWERS

- 35. Production orders
- 36. Failure to comply with production order
- 37. Search warrants
- 38. Disclosure of information by Government Departments
- 39. Monitoring orders
- 40. Offence of prejudicing investigation

PART V
MONEY LAUNDERING

Offences

- 41. Concealing or transferring proceeds of criminal conduct
- 42. Arranging with another to retain proceeds of criminal conduct
- 43. Acquisition, possession or use of proceeds of criminal conduct
- 44. Disclosure of knowledge or suspicion of money laundering
- 45. Tipping-off
- 46. Record keeping and reporting of suspicious transactions
- 47. Penalties for money laundering

Prevention of money laundering

- 48. Establishment of Committee

PART VI
SEIZURE OF CASH

- 49. Seizure and detention of cash imported or exported
- 50. Forfeiture orders and appeals
- 51. Seizure supplementary

PART VII
MISCELLANEOUS & SUPPLEMENTARY

Foreign orders

- 52. Enforcement of external confiscation orders
- 53. Registration of external confiscation orders
- 54. Evidence of corresponding law
- 55. Confiscated Assets Fund
- 56. Administration of the Fund
- 57. Offences by bodies corporate
- 58. Police powers
- 59. Police officers duty of confidentiality

Procedure

- 60. Jurisdiction
- 61. Compensation
- 62. Costs
- 63. Civil standard of proof
- 64. Appeals

Supplemental

- 65. Application of Fugitive Offenders Act
- 66. Index of defined expressions
- 67. Regulations
- 68. Repeal and savings

SCHEDULE 1

SCHEDULE 2



SAINT VINCENT AND THE GRENADINES

ACT NO. 39 OF 2001

I ASSENT

CHARLES J ANTROBUS
Governor-General
18th December, 2001

[L.S.]

AN ACT to amend the Proceeds of Crime Act No. 12 of 1997 and to provide for the prevention of money laundering and any other related matters.

[18 December, 2001]

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

PART I

PRELIMINARY

1. (1) This Act may be cited as the Proceeds of Crime and Money Laundering (Prevention) Act, 2001 and shall come into operation on such day as the Governor-General may appoint by notice published in the *Gazette*.

Short title,
commencement
and application

(2) This Act shall apply to any property, whether or not situated in Saint Vincent and the Grenadines.

2. (1) In this Act—

Interpretation

“Committee” means the National Anti-Money Laundering Committee established under section 48 of this Act;

“confiscation order” means an order made under section 7 or 8 (including such an order made by virtue of section 14 or 19);

“court” means the High Court

“corresponding law”-

(a) in relation to proceedings relating to drug trafficking has the meaning given in section 2 of the Drug Trafficking Offences Act 1993 and;

No. 45 of 1993

- (b) in any other case, means a law which corresponds with a provision of Saint Vincent and the Grenadines law which creates a relevant offence.

"criminal conduct" means

- (a) drug trafficking, or
- (b) any relevant offence;

"defendant" means a person against whom proceedings have been instituted for an offence (whether or not he has been convicted);

"drug trafficking arrangement" means an arrangement whereby –

"drug trafficking" has the same meaning as defined under section 2 (1) of the Drug Trafficking Offences Act;

- (a) the retention or control by or on behalf of another person of that other person's proceeds of drug trafficking is facilitated; or
- (b) the proceeds of drug trafficking by another person are used to secure that those funds are placed at that other person's disposal or are used for that other person's benefit to acquire property by way of investment;

"drug trafficking offence" means

- (a) an offence as defined in the Drug Trafficking Offences Act;
- (b) under sections 41, 42 or 43 of this Act which relates to the proceeds of drug trafficking;

or an offence under the Criminal Code constituting an attempt, incitement or conspiracy to commit a drug trafficking offence;

"interest", in relation to property, includes right;

"items subject to legal privilege" means –

- (a) communications between a professional legal adviser and his client made in connection with the giving of legal advice to the client; and
- (b) communications between a professional legal adviser and his client or between such an adviser and any other person made in connection with or in contemplation of legal proceedings and for the purpose of such proceedings, this includes items when they are in the possession of a person who is

entitled to possession of them; but items held with the intention of furthering a criminal purpose are not items subject to legal privilege;

“material” includes any book, document or other record in any form whatsoever, and any container or article relating thereto;

“money laundering” means doing any act-

- (a) which constitutes an offence under section 43, 44 or 45; or
- (b) which would constitute such an offence if done in Saint Vincent and the Grenadines;

and for these purposes, having possession of any property shall be taken to be doing an act in relation to it;

“premises” includes any place and, in particular, includes-

- (a) any vehicle, vessel, aircraft, or structure in the coastal waters of Saint Vincent and the Grenadines; and
- (b) any tent or other moveable structure;

“prescribe” means prescribe by regulations made under section 67;

“property” means money and all other property, moveable or immovable, including things in action and other intangible or incorporeal property; and

“realisable property” means-

- (a) any property held by the defendant (other than property in respect of which there is in force a forfeiture order made under any other provision in Saint Vincent and the Grenadines);
- (b) any property held by a person to whom the defendant has, directly or indirectly, made a gift caught by this Act;

“relevant offence” means-

- (a) any indictable offence or an offence triable both summarily or on indictment in Saint Vincent and the Grenadines from which a person has benefited as defined in section 7(3) of this Act, other than a drug trafficking offence;

- (b) any offence listed in Schedule 2 to this Act;
- (c) any act or omission which, had it occurred in Saint Vincent and the Grenadines, would have constituted an offence as defined in paragraph (a) or paragraph (b);.

(2) For the purpose of this Act—

- (a) property is held by any person if he holds any interest in it;
- (b) references to property held by a person include a reference to property vested in his trustee in bankruptcy or liquidator;
- (c) references to an interest held in property by a person beneficially include a reference to an interest which would be held by him beneficially if the property were not so vested in his trustee in bankruptcy or liquidator; and
- (d) property is transferred by one person to another if the first person transfers or grants to the other any interest in the property.

(3) For the purposes of this Act, the amount that might be realised at the time a confiscation order is made against the defendant shall be the total of the values at that time of all the realisable property held by the defendant less any obligations having priority at that time together with the total of the values at that time of all gifts caught by this Act.

(4) For the purposes of subsection (3), an obligation has priority at any time if it is an obligation of the defendant—

- (a) to pay an amount due in respect of a fine, or other order imposed or made on conviction of an offence, where the fine was imposed or order made before the confiscation order; or
- (b) to pay any sum which would be included among the preferential debts in the defendant's bankruptcy commencing on the date of the confiscation order or winding up under an order of the court made on that date.

(5) For the purposes of subsection (4)(b), "preferential debts"—

- (a) in relation to bankruptcy, means the debts to be paid in priority under the Bankruptcy Act (assuming the date of the confiscation order to be the date of the receiving order); and

- (b) in relation to winding up, means the debts to be paid in priority in accordance with the Companies Act (assuming the date of the confiscation order to be the date of the winding up).

No. 8 of 1994

3. (1) Subject to the following subsections and section 4, for the purposes of this Act, the value of property (other than cash) in relation to any person holding the property shall be its market value, except that where any other person holds an interest in the property, the value shall be-

Value of property

- (a) the market value of the first-mentioned person's beneficial interest in the property, less
- (b) the amount required to discharge any incumbrance (other than a charging order) on that interest.

(2) Subject to section 4 (3), references in this Act to the value at any time (referred to in subsection (3) as the "material time") of a gift caught by this Act are references to-

- (a) the value of the gift to the recipient when he received it adjusted to take account of subsequent changes in the value of money; or
- (b) where subsection (3) applies, the value mentioned therein,

whichever is the greater.

(3) Subject to section 4 (3), if at the material time the recipient holds-

- (a) the property which he received (not being cash); or
- (b) property which, in whole or in part, directly or indirectly represents in his hands the property which he received,

the value referred to in subsection (2) (b) shall be the value to him at the material time of the property mentioned in paragraph (a) or as the case may be, of the property mentioned in paragraph (b) so far as it so represents the property which he received, but disregarding in either case any charging order.

4. (1) In relation to a drug trafficking offence, a gift (including a gift made before the commencement of this Act) is caught by this Act if-

Gifts caught by this Act

- (a) it was made by the defendant at any time since the beginning of the period of six years ending-

- (i) when the proceedings for the drug trafficking offence were instituted against him, or
- (ii) where no such proceedings have been instituted, when an application for a charging or restraint order is made under section 25 or 26; or
- (b) it was made by the defendant at any time and was a gift of property-
 - (i) received by the defendant in connection with drug trafficking carried on by him or another person, or
 - (ii) which in whole or in part directly or indirectly represented in the defendant's hands property received by him in that connection.

(2) In relation to a relevant offence, a gift (including a gift made before the commencement of this Act) is caught by this Act if-

- (a) it was made by the defendant at any time since the commission of the relevant offence, or, if more than one, the earliest of the offences to which the proceedings relate (including any offence which the court takes into consideration in determining his sentence); and
- (b) the court considers it appropriate in all the circumstances to take the gift into account.

(3) For the purposes of this Act-

- (a) the circumstances in which the defendant is to be treated as making a gift include those where he transfers property to another person, directly or indirectly, for a consideration the value of which is significantly less than the value of the consideration provided by the defendant; and
- (b) in those circumstances, this section and section 3 shall apply as if the defendant had made a gift of such share in the property as it bears to the whole property.

Institution and
conclusion of
proceedings

5. (1) For the purposes of this Act

- (a) proceedings for an offence are instituted in Saint Vincent and the Grenadines when information is laid charging a person with an offence;
- (b) proceedings in Saint Vincent and the Grenadines for an offence are concluded on the occurrence of one of the following events:

- (i) the discontinuance of the proceedings;
- (ii) the acquittal of the defendant;
- (iii) the quashing of the defendant's conviction for the offence;
- (iv) the satisfaction of a confiscation order made in the proceedings;
- (c) an application under section 14, 15, 17 or 19 is concluded
 - (i) if the court decides not to make or vary (as the case may be) a confiscation order against the defendant, when it makes that decision; or
 - (ii) if a confiscation order is made or varied as a result of that application, when the order is satisfied;
- (d) a confiscation order is satisfied when no amount is due under it.

(2) For the purposes of this Act, an order is subject to appeal until (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an appeal on which the order could be varied or set aside.

PART II

CONFISCATION ORDERS

6. (1) Where a defendant appears before the court to be sentenced for one or more drug trafficking offences, the court shall proceed under this section

Confiscation
orders
drug trafficking

- (a) on the application of the Director of Public Prosecutions, or
- (b) of its own motion where it considers it appropriate to do so.

(2) The court shall first determine whether the defendant has benefited from drug trafficking.

(3) For the purposes of this Act, a person has benefited from drug trafficking if he has at any time (whether before or after the commencement of this Act) received any payment or other reward in connection with drug trafficking carried on by him or another person.

(4) If the court determines that he has so benefited, it shall, before sentencing or otherwise dealing with him in respect of the offence



or (as the case may be) any of the offences concerned, make a confiscation order and determine in accordance with section 13 the amount to be recovered in his case under the order.

(5) The court shall then, in respect of the offence or offences concerned

- (a) order the defendant to pay the amount of the confiscation order within such period as it may specify; and
- (b) take into account the confiscation order before
 - (i) imposing any fine on him;
 - (ii) making any other order involving any payment by him; and
 - (iii) making a forfeiture order; but
- (c) subject to paragraph (b), leave the confiscation order out of account in determining the appropriate sentence or other manner of dealing with the defendant.

(6) Where a person is convicted of one or more drug trafficking offences before a magistrates' court and where

- (a) it appears to the magistrate that the person convicted may have benefited and has or may have realisable property; or
- (b) it appears to the Director of Public Prosecutions that the person may have benefited and has or may have realisable property, on application by the Director of Public Prosecutions,

the magistrate shall before passing sentence send the case to the court for determination as to whether a confiscation order should be made.

Confiscation
orders
relevant offences

7. (1) Where a defendant appears before the court to be sentenced for one or more relevant offences, the court shall proceed under this section

- (a) on the application of the Director of Public Prosecutions, or
- (b) of its own motion where it considers it appropriate to do so.

(2) The court shall first determine whether the defendant has benefited from

- (a) the offence or offences for which he is to be sentenced ("the principal offence"),
- (b) any other relevant offence of which he was convicted in the same proceedings as the principal offence, and
- (c) any relevant offences which the court will be taking into consideration in determining his sentence for the principal offence.

(3) For the purposes of this Act

- (a) a person benefits from an offence if he obtains property as a result of or in connection with its commission and his benefit is the value of any property so obtained; and
- (b) if he derives a pecuniary advantage as a result of or in connection with the commission of an offence, he is to be treated as if he had obtained instead a sum of money equal to the value of the pecuniary advantage.

(4) If the court determines that the defendant has benefited from the offences mentioned in subsection (2), it shall, before sentencing or otherwise dealing with him in respect of the principal offence, make a confiscation order and determine in accordance with section 13 the amount to be recovered in his case under the order.

(5) The court shall then in respect of the principal offence

- (a) order the defendant to pay the amount of the confiscation order within such period as it may specify; and
- (b) take into account the confiscation order before
 - (i) imposing any fine on him, or
 - (ii) making any other order involving any payment by him; but
- (c) subject to paragraph (a), leave the confiscation order out of account in determining the appropriate sentence or other manner of dealing with the defendant.

(6) Where a person is convicted of a relevant offence in any proceedings before a magistrates' court and where

- (a) it appears to the magistrate that the defendant may have benefited and has or may have realisable property; or

- (b) it appears to the Director of Public Prosecutions that the defendant may have benefited and has or may have realisable property, on application by the Director of Public Prosecutions,

the magistrate shall before passing sentence send the case to the court for determination as to whether a confiscation order should be made.

Extended benefit

8. (1) This section applies where a defendant is convicted in any proceedings before the court or a magistrates' court of a relevant offence other than drug trafficking where the Director of Public Prosecutions gives notice that the benefit is

- (a) one hundred thousand dollars or more, or
- (b) one hundred thousand dollars or more when taken with any benefit assessed in respect of any previous relevant offence other than drug trafficking in the preceding six years and that notice contains a declaration that it is in the opinion of the Director of Public Prosecutions that the case is one in which it is appropriate for the provisions of this section to be applied.

(2) When the Director of Public Prosecutions gives notice in accordance with subsection (1), the court shall, subject to subsection (4), make the assumptions specified in subsection (3) made for the purpose

- (a) of determining whether the defendant has benefited from the commission of the relevant offence;
- (b) if he has, the value of the defendant's benefit from the commission of the offence.

(3) The assumptions referred to in subsection (2) are

- (a) that any property appearing to the court
 - (i) to be held by the defendant at the date of conviction or at any time in the period between that date and the determination in question; or
 - (ii) to have been transferred to him at any time since the beginning of the relevant period, was received by him, at the earliest time when he appears to the court to have held it, as a result of or in connection with the commission of the relevant offence;
- (b) that any expenditure of his since the beginning of the relevant period was out of payments received by him as a result of or in connection with the commission of the relevant offence;

- (c) that for the purposes of valuing any benefit which he had or which he is assumed to have had at any time, he received the benefit free of any other interests in it.

(3) The court shall not make any assumptions in relation to any particular property or expenditure if

- (a) that assumption, so far as it relates to that property or expenditure, is shown to be incorrect in the defendant's case;
- (b) that assumption, so far as it relates, is shown to be correct in relation to a relevant offence, the defendant's benefit from which has been the subject of a previous confiscation order; or
- (c) the court is satisfied that there would be a serious risk of injustice in the defendant's case if the assumption were to be made in relation to that property or expenditure.

(4) Where the court does not make one or more of the required assumptions, it shall state its reasons.

(5) If the court determines that the defendant has benefited from the commission of a specified offence that is not drug trafficking in accordance with this section, it shall then

- (a) determine in accordance with section 13 the amount to be recovered in his case, and
- (b) make an order under this section ordering the defendant to pay that amount.

(6) Where a person is convicted of a relevant offence in any proceedings before a magistrates' court and where

- (a) it appears to the magistrate that the defendant may have benefited and has or may have realisable property; or
- (b) it appears to the Director of Public Prosecutions that the defendant may have benefited and has or may have realisable property, on application by the Director of Public Prosecution,

the magistrate shall before passing sentence send the case to the court for determination as to whether a confiscation order should be made.

9. (1) Where the court is proceeding under section 6 or 7, (as the case may be), but considers that it needs more information before

Postponed
determinations

- (a) determining whether the defendant has benefited as mentioned in the section in question, or

- (b) determining the amount to be recovered from him under a confiscation order,

it may, for the purpose of enabling that information to be obtained, postpone making the determination for such period as it may specify.

(2) More than one postponement may be made under subsection (1).

(3) Unless satisfied that there are exceptional circumstances, the court shall not specify a period under subsection (1) which, by itself or taken together with any other postponement under this section, exceeds one year from the date of conviction.

(4) Where the defendant appeals against his conviction, the court may on that account

- (a) postpone making either or both of the determinations mentioned in subsection (1) for such period as it may specify; or

- (b) where it has exercised its powers to postpone, extend the specified period.

(5) A postponement or extension under subsection (1) or (4) may be made on the application of the Director of Public Prosecutions or the defence or by the court of its own motion.

(6) Unless the court is satisfied there are exceptional circumstances, any postponement or extension under subsection (4) shall not extend beyond three months after the appeal is determined or otherwise disposed of.

(7) Where the court exercises its power under this section it may nevertheless proceed to sentence the defendant in respect of the offence in question or any such offences; and on making a postponed confiscation order by virtue of this section it may vary any fine or other order involving payment imposed on the defendant in accordance with subsection (5)(b) of section 6 or 7 (as the case may be).

Assessing
proceeds of drug
trafficking

10. (1) For the purposes of this Act

- (a) any payments or other rewards received by a person at any time (whether before or after the commencement of this Act) in connection with drug trafficking carried on by him or another person are his proceeds of drug trafficking; and
- (b) the value of his proceeds of drug trafficking is the aggregate of the values of the payments or other rewards.

(2) Subject to subsections (4) and (5), the court shall make the required assumptions for the purpose

- (a) of determining whether the defendant has benefited from drug trafficking, and
- (b) if he has, of determining the value of his proceeds of drug trafficking.

(3) The required assumptions are

- (a) that any property appearing to the court
 - (i) to have been held by the defendant at any time since his conviction, or
 - (ii) to have been transferred to him at any time since the beginning of the period of six years ending when the proceedings were instituted against him,

was received by him as a payment or reward in connection with drug trafficking carried on by him;

- (b) that any expenditure of his since the beginning of that period was met out of payments received by him in connection with drug trafficking carried on by him;
- (c) that, for the purpose of valuing any property received or assumed to have been received by him at any time as such a reward, he received the property free of other interest in it.

(4) The court shall not make any of the required assumptions in relation to any particular property or expenditure if

- (a) that assumption is shown to be incorrect in the defendant's case; or
- (b) the court is satisfied that there would be a serious risk of injustice in the defendant's case if that assumption were to be made;

and where the court, by virtue of this subsection, does not make one of the required assumptions it shall state its reasons.

(5) For the purpose of assessing the value of the proceeds derived by the defendant from drug trafficking in a case where a confiscation order has previously been made against him the court shall leave out of account any such proceeds that are shown to the court to have been taken into account in determining the amount to be recovered under the previous order.

Statement of
information by
the Director of
Public
Prosecutions

11. (1) Where the Director of Public Prosecutions asks the court to proceed under section 6 or 7 he shall give the court, within such period as it may direct, a statement (a "prosecutor's statement") of matters which he considers relevant in connection with

- (a) determining whether the defendant has benefited as mentioned in the section in question; or
- (b) assessing the value of his proceeds of drug trafficking or benefit from any relevant offences.

(2) Where the court proceeds under section 6 or 7 without the Director of Public Prosecutions having asked it to do so, it may require him to give it a prosecutor's statement, within such period as it may direct.

(3) Where a prosecutor's statement has been given

- (a) the Director of Public Prosecutions may at any time give the court a further statement; and
- (b) the court may at any time require him to give it a further statement, within the period as it may direct.

(4) Where any prosecutor's statement has been given and the court is satisfied that it has been served on the defendant, it may require the defendant, within such period as it may direct

- (a) to indicate the extent to which he accepts the allegations in the statement; and
- (b) so far as he does not accept any such allegation, to give particulars of any matters on which he proposes to rely;

and the court may for the purposes of the determination and assessment mentioned in subsection (1) treat any acceptance by the defendant as conclusive of the matters to which it relates.

(5) To the extent that the defendant fails in any respect to comply with a requirement under subsection (4), he may be treated for the purposes of this section as accepting every allegation in the statement.

(6) Where

- (a) there is tendered to the court by the defendant a statement as to any matters relevant to determining the amount that might be realised at the time the confiscation order is made; and
- (b) the Director of Public Prosecutions accepts to any extent any allegation in the statement,

the court may, for the purposes of that determination, treat that acceptance as conclusive of the matters to which it relates.

(7) An allegation may be accepted or a matter indicated for the purposes of this section either orally before the court or in writing.

(8) No acceptance by the defendant under this section that proceeds have been derived by him from drug trafficking or from any relevant offence shall be admissible in evidence in any proceedings for an offence.

12. (1) For the purpose of obtaining information to assist it in carrying out its functions in relation to making a confiscation order, the court may order the defendant to give it information in a manner and before a date as may be specified in the order.

Provision of
information by
defendant

(2) If the defendant fails without reasonable excuse to comply with any order under this section, the court may draw such inference from that failure as it considers appropriate.

(3) Where the Director of Public Prosecutions accepts to any extent any allegation made by the defendant in giving to the court information required under this section, the court may treat that acceptance as conclusive of the matters to which it relates.

13. (1) Subject to subsection (3), the amount to be recovered under a confiscation order shall be the amount the court assesses to be the value of the defendant's proceeds of drug trafficking or benefit from relevant offences (as the case may be).

Amount to be
recovered

(2) If the court is satisfied as to any matter relevant for determining the amount that might be realised at the time the confiscation order is made (whether by reason of the acceptance of an allegation made in a statement given under section 10 or made in the giving of information under section 11 or otherwise), the court may issue a certificate giving its opinion as to the matters concerned and shall do so if satisfied as mentioned in subsection (3).

(3) If the court is satisfied that the amount that might be realised at the time the confiscation order is made is less than the amount the court assesses to be the value of the defendant's proceeds of drug trafficking or benefit from relevant offences (as the case may be), the amount to be recovered under the confiscation order shall be the amount appearing to the court to be the amount that might be so realised.

14. (1) Where an application is made for a confiscation order, a person who asserts an interest in realisable property may apply to the court, before the confiscation order is made, for an order under subsection (2).

Protection of
third party rights

Cap. 98

(a) no order shall be made by virtue of section 33 or 45 of the Bankruptcy Act (avoidance of certain settlements in respect of the making of the gift at any time when-

(i) proceedings for the drug trafficking or relevant offence have been instituted against him and have not been concluded;

(ii) an application has been made in respect of the defendant under section 15, 16, 18 or 20 of this Act and has not been concluded; or

(iii) property of the person to whom the gift was made is subject to a restraint order or a charging order; and

Cap. 98

(b) any order made by virtue of section 33 or 45 of the Bankruptcy Act after the conclusion of the proceedings shall take into account any realisation under this Act of property held by the person to whom the gift was made.

Winding up of
company holding
realisable
property

34. (1) Where realisable property is held by a company and an order for the winding up of the company has been made or a resolution has been passed by the company for the voluntary winding up, the functions of the liquidator shall not be exercisable in relation to-

(a) property for the time being subject to a restraint order made before the relevant time; and

(b) any proceeds of property realised by virtue of section 26(6) or 29(5) or (6) for the time being in the hands of a receiver appointed under section 26 or 29,

but there shall be payable out of such property any expenses (including the remuneration of the liquidator) property incurred in the winding up in respect of the property.

(2) Where, in the case of a company, such an order has been made or such a resolution has been passed, the powers conferred on the court by sections 26 to 30 or on a receiver so appointed shall not be exercised in relation to any realisable property held by the company in relation to which the functions of the liquidator are exercisable

(a) so as to inhibit him from exercising those functions for the purpose of distributing any property held by the company to the company's creditors; or

(b) so as to prevent the payment out of any property of expenses (including the remuneration of liquidator) property incurred in the winding up in respect of the property.

(2) If a person applies to the court for an order under this subsection in respect of his interest in realisable property and the court is satisfied

- (a) that he was not in any way involved in the defendant's criminal conduct; and
- (c) that he acquired the interest
 - (i) for insufficient consideration; and
 - (ii) without knowing, and in circumstances that he would not have formed a reasonable suspicion, that the property was, at the time he acquired it, property that was involved in or was the proceeds of criminal conduct,

the court shall make an order declaring the nature, extent and value (as at the time the order is made) of his interest.

(3) Subject to subsection (4), where a confiscation order has already been made, a person who asserts an interest in the property may apply under this subsection to the court for an order under subsection (2).

(4) Except with the leave of the court, an application shall not be made under subsection (3)

- (a) by a person
 - (i) who had knowledge of the application for a confiscation order before the order was made, or
 - (ii) who appeared at the hearing of that application; or
- (b) later than 28 days beginning with the day on which the confiscation order was made.

(5) A person who makes an application under subsection (1) or (3) shall give not less than seven days written notice of the making of the application to the Director of Public Prosecutions who shall be a party to any proceedings on the application.

Subsequent proceedings

Reconsideration
of case

15. (1) This section applies where a defendant has appeared before the court to be sentenced in respect of one or more drug trafficking or relevant offences but the court has not made a confiscation order because either

- (a) it did not proceed under section 6 or 7, or
- (b) the court has made a determination under subsection (2) of section 6 or 7 or 8 ("a subsection (2) determination") that the defendant has not benefited from drug trafficking or from any relevant offence.

(2) If the Director of Public Prosecutions has evidence which was not previously available but which he believes would have led the court to determine that the defendant had benefited from drug trafficking or from any relevant offence he may make an application to the court.

(3) On such an application the court shall consider the evidence and if satisfied that the defendant had so benefited, the court shall make a confiscation order and order the payment of such amount as it thinks just in all the circumstances of the case, including in particular the amount of any fine or other orders for payment imposed on the defendant in respect of the offence or offences in question.

16. (1) This section applies where the court has made a determination of the amount to be recovered under a confiscation order ("the current determination").

Revised
assessment of
proceeds of
criminal conduct

(2) Where the Director of Public Prosecutions is of the opinion that the real value of the defendant's proceeds of drug trafficking or benefit from any relevant offences was greater than their assessed value, he may apply to the court for the evidence on which he has formed his opinion to be considered by the court.

(3) If, having considered the evidence, the court is satisfied that the real value of the defendant's proceeds of drug trafficking or benefit from any relevant offences is greater than their assessed value (whether because the real value at the time of the current determination was higher than was thought or because the value of the proceeds or benefit in question has subsequently increased), the court shall make a fresh determination of the amount to be recovered under a confiscation order.

(4) In subsections (2) and (3)

"assessed value" means the value of the defendant's proceeds of drug trafficking or benefit from any relevant offences as assessed by the court in accordance with section 13(1) of this Act; and

"real value" means-

- (a) the value of the defendant's proceeds of drug trafficking which took place in the period by reference to which the current determination was made or in any earlier period; or

(b) the value of his benefit from any of the relevant offences mentioned in section 7 (2).

(5) Any determination by virtue of this section shall be reference to the amount that might be realised at the time when the determination is made.

(6) For the avoidance of doubt, section 10(5) shall not apply in relation to any of the defendant's proceeds of drug trafficking taken into account in respect of the current determination.

(7) If, as a result of making the fresh determination requires by subsection (3), the amount to be recovered exceeds the amount set by the current determination, the court may substitute for the amount to be recovered under the confiscation order such greater amount as it thinks just in all the circumstances of the case.

(8) Where the court varies a confiscation order by virtue of this section it shall substitute for the term of imprisonment in default fixed under section 23(1) in respect of the amount to be recovered under the order such longer term as may be determined in accordance with that section in respect of the greater amount to be recovered under the order as varied.

Reconsideration
supplementary

17. (1) On an application under section 15 or 16, the court may take into account any payment or other reward received by the defendant on or after the date

- (a) of the conviction (in the case of an application under section 15 by virtue of subsection (1)(a);
- (b) of the subsection (2) determination (in the case of an application under section 15 by virtue of subsection (1)(b); or
- (c) of the current determination (in the case of an application under section 16);

but only if the Director of Public Prosecutions shows that it was received by the defendant in connection with drug trafficking carried on, or with any relevant offence committed, on or before that date.

(2) In considering any evidence which relates to any payment or reward in relation to drug trafficking to which subsection (1) applies, the court shall not make the assumptions which would otherwise be required by section 9.

(3) No application shall be entertained by the court under section 15 or 16 if it is made after the end of the period of six years beginning with the date on which the defendant was convicted, or where the application relates to more than one conviction, the date of the latest conviction.

(4) Sections 11 and 12 apply, with such modifications as may be necessary, in relation to applications under section 15 and 16 as they apply in relation to proceedings under sections 6 and 7.

18. (1) This section applies where, by virtue of section 13(3), the amount which a person is ordered to pay under a confiscation order is less than the amount assessed to be his proceeds of drug trafficking or benefit from relevant offences (as the case may be).

Increase in
realisable
property

(2) If, on an application made

- (a) by the Director of Public Prosecutions, or
- (b) by a receiver appointed under section 26 or 29 in relation to the realisable property of the person in question,

the court is satisfied that the amount that might be realised in the case of the person in question is greater than the amount taken into account in making the confiscation order (whether it was greater than was thought when the confiscation order was made or has subsequently increased), the court shall issue a certificate to that effect, giving its reasons.

(3) Where a certificate has been issued the Director of Public Prosecutions may apply to the court for an increase in the amount to the recovered under the confiscation order; and on that application the court may

- (a) substitute for the amount such amount not exceeding the amount assessed as the value referred to in subsection (1) as appears to the court to be appropriate having regard to the amount now shown to be realisable; and
- (b) increase the term of imprisonment fixed in respect of the confiscation order under section 23(1) if the effect of the substitution is to increase the maximum period applicable in relation to the order under that section.

19. (1) If, on an application made in respect of a confiscation order,

- (a) by the defendant; or
- (b) by a receiver appointed under section 26 or 29,

Inadequacy of
realisable
property

the court is satisfied that the realisable property is inadequate for the payment of any amount remaining to be recovered under the order, the court shall issue a certificate to that effect, giving its reasons.

(2) For the purposes of subsection (1)

- (a) in the case of realisable property held by a person who has been adjudged bankrupt, the court shall take into account the extent to which any property held by him may be distributed among creditors; and
- (b) the court may disregard any inadequacy in the realisable property which appears to the court to be attributable, wholly or partly, to anything done by the defendant for the purpose of preserving any property held by a person to whom the defendant had, directly or indirectly, made a gift caught by this Act from any risk of realisation under this Act.

(3) Where a certificate has been issued under subsection (1), the person who applied for it may apply to the court which made the confiscation order for the amount to be recovered under the order to be reduced.

(4) The court shall, on an application under subsection (3)-

- (a) substitute for the amount to be recovered under the order such lesser amount as the court thinks just in all the circumstances of the case; and
- (b) substitute for the term of imprisonment in default fixed under section 23(1) in respect of the amount to be recovered under the order a shorter term if such is determined in accordance with that section in respect of the lesser amount to be recovered under the order as varied.

(5) Any person appearing to the court to be likely to be affected by any exercise of its powers under this section shall be entitled to appear before the court and make representations.

Absconded or deceased persons

Confiscation
orders where
defendant has
absconded or died

20. (1) Where a person has been convicted of one or more drug trafficking or relevant offences, on the application of the Director of Public Prosecutions the court may make a confiscation order against him if satisfied that he has absconded or his personal representative or his estate, if satisfied that he has died.

(2) Where proceedings for one or more drug trafficking or relevant offences have been instituted but not concluded, on the application of the Director of Public Prosecutions the court may make a confiscation order

against the defendant if satisfied that he has absconded, but shall not do so until after the period of two years beginning with the date which is, in the opinion of the court, the date on which the defendant absconded.

(3) In any proceedings under this section-

- (a) section 10(2) shall not apply;
- (b) section 11 shall apply with the omission of subsections (4) to (6);
- (c) the court shall not make a confiscation order against a defendant unless it is satisfied that the Director of Public Prosecutions has taken reasonable steps to contact him; and
- (d) any person appearing to the court to be likely to be affected by the making of a confiscation order shall be entitled to appear before the court and make representations.

(4) Where an application has been made to the court under this section in relation to a defendant who has absconded and the court has decided not to make a confiscation order against him, section 15 shall not apply at any time while he remains an absconder.

21. (1) Where a confiscation order is made by virtue of section 20(2) and the defendant ceases to be an absconder, he may apply to the court for a variation of the amount to be recovered under the order.

Variation of order
made against
absconder

(2) If on such an application the court is satisfied that the value of the defendant's proceeds of drug trafficking in the period by reference to which the determination in question was made, or the value of his benefit from relevant offences, or the amount that might have been realised at the time the order was made, was less than the amount ordered to be paid under the confiscation order, the court

- (a) may if it considers it just in all the circumstances reduce the amount to be recovered under the confiscation order, and
- (b) if it does so, shall reduce the term of imprisonment in default in accordance with section 23(1).

(3) Where the court reduces the amount to be recovered under a confiscation order it may, on the application of a person who held property which was realisable property, order compensation to be paid to him if satisfied that he has suffered loss as a result of the making of the confiscation order and if, having regard to all the circumstances of the case, it considers it appropriate to do so.

(4) No application shall be entertained by the court if it is made after the end of six years beginning on the day on which the confiscation order was made.

Discharge of
order where
absconder
acquitted

22. (1) Where a confiscation order is made by virtue of section 20(2) and the defendant is subsequently tried for the offence or offences in question and acquitted on all counts, the court shall cancel the confiscation order.

(2) Where a confiscation order is made by virtue of section 20(2) against a person who ceases to be an absconder and subsection (1) of this section does not apply, the court may on the application of the defendant cancel the confiscation order if satisfied that

(a) there has been undue delay in continuing the proceedings in respect of which the power under section 20(2) of this Act was exercised; or

(b) the Director of Public Prosecutions does not intend to proceed with the prosecution.

(3) Where the court cancels a confiscation order under this section it may, on the application of a person who held property which was realisable property, order compensation to be paid to him if satisfied that he has suffered loss as a result of the making of the confiscation order and if, having regard to all the circumstances of the case it considers it appropriate to do so.

(4) Where the court cancels a confiscation order under this section it may make such consequential or incidental order as it thinks fit.

PART III

ENFORCEMENT OF CONFISCATION ORDERS

Default powers

Imprisonment in
default

23. (1) Where the court orders the defendant to pay an amount under a confiscation order it shall in addition direct him to be imprisoned in default of payment of any amount under the confiscation order as follows;

(a) if the amount does not exceed \$20,000, for a term not exceeding 2 years;

(b) if the amount exceeds \$20,000 but does not exceed \$50,000, for a term not exceeding 5 years;

(c) if the amount exceeds \$50,000 but does not exceed \$100,000, for a term not exceeding 7 years; and

- (d) if the amount exceeds \$100,000, for a term not exceeding 10 years.

(2) Where

- (a) a warrant to commit the defendant to prison is issued for a default in payment of an amount ordered to be paid under a confiscation order in respect of an offence or offences; and
- (b) at the time the warrant is issued, the defendant is liable to serve any term of imprisonment in respect of the offence or offences,

the term of imprisonment to be served in default of payment of the amount shall not begin to run until after the term mentioned in paragraph (b).

(3) Where a defendant serves a term of imprisonment in default of paying any amount due under a confiscation order, his serving that term does not prevent the confiscation order from continuing to have effect, so far as any other method of enforcement is concerned.

24. (1) If any sum required to be paid by a person under a confiscation order is not paid when it is required to be paid, that person shall be liable to pay interest on that sum for the period for which it remains unpaid; and the amount of interest shall for the purposes of enforcement, be treated as part of the amount to be recovered from him under the confiscation order.

Interest on unpaid sums

(2) The court may, on the application of the Director of Public Prosecutions, increase the term of imprisonment fixed in respect of the confiscation order if the effect of subsection (1) is to increase the maximum period applicable in relation to the order under section 23(1).

(3) The rate of interest under subsection (1) shall be that for the time being applying to a judgement debt.

Restraint and charging orders

25. (1) The powers conferred on the court by section 26 to make a restraint order and by section 27 to make a charging order are exercisable where

Cases in which restraint and charging orders may be made

- (a) proceedings have been instituted against the defendant for a drug trafficking or relevant offence or an application has been made in respect of the defendant under section 15, 16, 18 or 20;
- (b) the proceedings have not, or the application has not been concluded;

(c) the court is satisfied that there is reasonable cause to believe

(i) in the case of an application under section 16 or 18 of this Act, that the court will be satisfied as mentioned in section 16(3) or 18(2); or

(ii) in any other case, that the defendant has benefited from drug trafficking or from any relevant offence (as the case may be).

(2) The court shall not exercise those powers if it is satisfied that there has been undue delay in continuing the proceedings or application in question, or that it is not intended to proceed with the prosecution.

(3) Those powers are also exercisable where the court is satisfied-

(a) that a person is to be charged with a drug trafficking or relevant offence or an application as mentioned in subsection (1)(a) is to be made; and

(b) the court is satisfied as mentioned in subsection (1)(c).

(4) For the purposes of section 26 and 27, at any time when those powers are exercisable before proceedings have been instituted

(a) references in this Act to the defendant shall be construed as references to the person referred to in subsection (3)(a); and

(b) references in this Act to realisable property shall be construed as if, immediately before that time, proceedings had been instituted against the person referred to in subsection (2) for a drug trafficking or relevant offence.

(5) Where the court has made a restraint or charging order by virtue of subsection (3), the court shall discharge the order if proceedings in respect of the offence are not instituted, or if the application is not made, within such time as the court considers reasonable.

Restraint orders

26. (1) The court may make a restraint order to prohibit any person from dealing with any realisable property, subject to such conditions and exceptions as may be specified in the order.

- (2) A restraint order may apply
 - (a) to all realisable property held by a specified person, whether the property is described in the order or not; and
 - (b) to realisable property held by a specified person, being property transferred to him after the making of the order.
- (3) This section shall not have effect in relation to any property for the time being subject to a charge under section 27 of this Act.
- (4) A restraint order
 - (a) may be made only on an application by the Director of Public Prosecutions;
 - (b) may be made on an ex parte application to a Judge in chambers; and
 - (c) shall provide for notice to be given to persons affected by the order.
- (5) A restraint order -
 - (a) may, on the application of any person affected by the order, be discharged or varied in relation to any property; and
 - (b) shall be discharged when proceedings for the offence are concluded.
- (6) Where the court has made a restraint order, the court
 - (a) may at any time appoint a receiver
 - (i) to take possession of any realisable property; and
 - (ii) in accordance with the directions of the court, to manage or otherwise deal with any property in respect of which he is appointed,subject to such exceptions and conditions as may be specified by the court; and
 - (b) may require any person having possession of property in respect of which the receiver is appointed under this section to give possession of it to the receiver.
- (7) For the purposes of this section, dealing with property held by any person includes (without prejudice to the generality of the expression)

- (a) where a debt is owed to that person, making a payment to any person in reduction of the amount of the debt; and
- (b) removing the property from Saint Vincent and the Grenadines.

(8) Where the court has made a restraint order, a police officer may seize any realisable property for the purpose of preventing its removal from Saint Vincent and the Grenadines; and property so seized shall be dealt with in accordance with the directions of the court.

Charging orders

27. (1) For the purposes of this Act, a charging order is an order made under this section imposing on any such realisable property as may be specified in the order a charge for securing the payment of money to the Crown.

(2) The court may make a charging order on realisable property for securing the payment to the Crown-

- (a) where a confiscation order has been made, of an amount not exceeding the amount payable under the confiscation order; and
- (b) where a confiscation order has been made, of an amount equal to the value from time to time of the property charged.

(3) A charging order

- (a) may be made only on an application by the Director of Public Prosecutions; and
- (b) may be made on an ex parte application to a Judge in chambers.

(3) Subject to subsection (6), a charge may be imposed by a charging order only on

- (a) any interest in realisable property, which is an interest held beneficially by the defendant or by a person to whom the defendant has directly or indirectly made a gift caught by this Act
 - (i) in any chargeable asset; or
 - (ii) under any trust; or
- (b) any interest in realisable property held by a person as trustee of a trust if the interest is in a chargeable asset or is an interest under another trust and a charge may,

by virtue of paragraph (a), be imposed by a charging order on the whole beneficial interest under the first-mentioned trust.

(5) In this section:

(a) "chargeable asset" means any of the following;

- (i) land in Saint Vincent and the Grenadines;
- (ii) relevant securities;
- (iii) motor vehicle;
- (iv) vessel;
- (v) aircraft;
- (vi) any other type of asset which the Minister of Finance may by order prescribe for the purposes of this section; and

(b) "relevant securities" means any of the following:

- (i) securities of the government or of any public authority including the Eastern Caribbean Securities Commission;
- (ii) stock of any body incorporated in Saint Vincent and the Grenadines;
- (iii) stock of any body incorporated outside Saint Vincent and the Grenadines or of any country or territory outside Saint Vincent and the Grenadines, being stock registered in a register kept at any place within Saint Vincent and the Grenadines;
- (iv) options in relation to stock described in subparagraphs (ii) or (iii);
- (v) units of any unit trust in respect of which a register of the unit holders is kept at any place in Saint Vincent and the Grenadines.

(6) In any case where a charge is imposed by a charging order on any interest in any relevant securities, the court may provide for the charge to extend to any interest or dividend payable in respect of them.

(7) Where the court has made a charging order, the court may give such directions to such person as the court thinks fit to safeguard the assets under the charging order.

(8) The court

- (a) may, on the application of any person affected by the charging order, make an order discharging or varying it; and
- (b) shall make an order discharging the charging order if the proceedings for the offence are concluded or on payment into court of the amount which is secured by the charge.

Charging orders
supplementary

28. (1) A charging order may be made either absolutely or subject to conditions including in particular conditions

- (a) as to notifying any person holding any interest in the property to which the order relates; or
- (b) as to the time when the charge is to become enforceable.

(2) *Notice of any charging order shall be deposited in the High Court Registry for recording and registration in accordance with Part 48 of the Eastern Caribbean Supreme Court Civil Procedure Rules 2000.*

(3) Subject to any provision made under section 28, a charge imposed by a charging order shall have the like effect and shall be enforceable in the same manner as an equitable charge created by the person holding the beneficial interest or, as the case may be, the trustees by writing under their hand.

Realisation of property

Realisation of
Property

29. (1) The court may, on an application by the Director of Public Prosecutions, exercise the powers conferred by this section, where a confiscation order has been made and it is neither satisfied nor subject to appeal.

(2) The court may appoint a receiver in respect of realisable property.

(3) The court may empower the receiver appointed under this section or section 26 or in pursuance of a charging order-

- (a) to enforce any charge imposed under section 27 on realisable property or on interest or dividends payable in respect of such property; and
- (b) in relation to any realisable property other than property for the time being subject to a charge under section 27, to take possession of the property subject to such conditions or exceptions as may be specified by the court,

(4) The court may order any person having possession of realisable property to give possession of it to the receiver.

(5) The court may empower the receiver to realise any realisable property in such manner as the court may direct.

(6) The court

(a) may order any person holding an interest in realisable property to make such payment to the receiver in respect of any beneficial interest held by the defendant or, as the case may be, the recipient of a gift caught by this Act as the court may direct; and

(b) may, on the payment being made, by order transfer, grant or extinguish any interest in the property.

(7) Subsections (4) to (6) shall not apply to property for the time being subject to a charge under section 27 of this Act or any other Act in force in Saint Vincent and the Grenadines.

(8) The court shall not in respect of any property exercise the powers conferred by subsection (3)(a), (5) or (6) unless a reasonable opportunity has been given for persons holding any interest in the property to make representations to the court.

30. (1) The following sums in the hands of the receiver pursuant to section 26 or 29 or in pursuant of a charging order-

Application of
proceeds of
realisation etc

(a) the proceeds of the enforcement of any charge imposed under section 29;

(b) the proceeds of the realisation, other than by the enforcement of such a charge, of any property under section 26 or 29; and

(c) any other sums, being property held by the defendant,

shall, after such payments (if any) as the court may direct have been made out of those sums, be applied on the defendant's behalf towards the satisfaction of the confiscation order.

(2) If, after the amount payable under the confiscation order has been fully paid, any such sums remain in the hands of the receiver, he shall distribute those sums

(a) among such of those who held property which has been realised under this Act; and

(b) in such proportions,

as the court may direct after giving a reasonable opportunity for such persons to make representations to the court.

Exercise of
powers for the
realisation of
property

31. (1) This section shall apply to the powers conferred on the court by sections 26 to 30 or on the receiver pursuant to section 26 or 29 or in pursuance of a charging order.

(2) Subject to subsections (3) to (6), the powers shall be exercised with a view to making available for satisfying the confiscation order or (as the case may be) any confiscation order that may be made in the defendant's case, the value for the time being of realisable property held by any person by the realisation of such property.

(3) In the case of realisable property held by a person to whom the defendant has, directly or indirectly, made a gift caught by this Act, the powers shall be exercised with a view to realising no more than the value for the time being of the gift.

(4) The powers shall be exercised with a view to allowing any person other than the defendant or the recipient of any such gift to retain or recover the value of any property held by him.

(5) In exercising those powers, no account shall be taken of any obligations of the defendant or of the recipient of any such gift which conflict with the obligation to satisfy the confiscation order.

(6) An order may be made or other action taken in respect of a debt owed by the Crown.

Receivers
supplementary

32. (1) Where a receiver appointed under section 26 or 29 or in pursuance of a charging order

(a) takes any action in relation to property which is not realisable property, being action which he would be entitled to take if it were such property, and

(b) believes and has reasonable grounds for believing, that he is entitled to take that action in relation to that property,

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

(2) Any amount due in respect of the remuneration and expenses of a receiver so appointed shall be paid out of the Forfeiture Fund.

Insolvency

33. (1) Where a person who holds realisable property is adjudged bankrupt- Bankruptcy of defendant

(a) property for the time being subject to a restraint order made before the order adjudging him bankrupt; and

(b) any proceeds of property realised by virtue of section 26(6) or 29(5) or (6) for the time being in the hands of a receiver appointed under section 26 or 29,

shall be excluded from the bankrupt's estate for the purposes of the Bankruptcy Act.

(2) Where a person has been adjudged bankrupt, the powers conferred on the court by sections 26 to 30 or on a receiver shall not be exercised in relation to property for the time being comprised in the property of the bankrupt for the purpose of the Bankruptcy Act. Cap. 98

(3) Nothing in the Bankruptcy Act shall be taken as restricting, or enabling the restriction of, the exercise of those powers referred to in subsection (2). Cap. 98

(4) Subsection (2) shall not affect the enforcement of a charging order-

(a) made before the order adjudging the person bankrupt; or

(b) on property which was subject to a restraint order when the order adjudging him bankrupt was made.

(5) Where, in the case of a debtor, the receiver constituted by virtue of section 9 of the Bankruptcy Act or an interim receiver stands appointed under section 10 of the Bankruptcy Act, and any property of the debtor is subject to a restraint order- Cap. 98

(a) the powers conferred on the receiver by virtue of that Act shall not apply to property for the time being subject to the restraint order; and Cap. 98

(b) any such property in the hands of the receiver shall, subject to a lien for any expenses (including his remuneration) properly incurred in respect of the property, be dealt with in such manner as the court may direct.

(6) Where a person is adjudged bankrupt and has directly or indirectly made a gift caught by this Act-

Cap. 98

- (a) no order shall be made by virtue of section 33 or 45 of the Bankruptcy Act (avoidance of certain settlements in respect of the making of the gift at any time when-
 - (i) proceedings for the drug trafficking or relevant offence have been instituted against him and have not been concluded;
 - (ii) an application has been made in respect of the defendant under section 15, 16, 18 or 20 of this Act and has not been concluded; or
 - (iii) property of the person to whom the gift was made is subject to a restraint order or a charging order; and

Cap. 98

- (b) any order made by virtue of section 33 or 45 of the Bankruptcy Act after the conclusion of the proceedings shall take into account any realisation under this Act of property held by the person to whom the gift was made.

Winding up of
company holding
realisable
property

34. (1) Where realisable property is held by a company and an order for the winding up of the company has been made or a resolution has been passed by the company for the voluntary winding up, the functions of the liquidator shall not be exercisable in relation to-

- (a) property for the time being subject to a restraint order made before the relevant time; and
- (b) any proceeds of property realised by virtue of section 26(6) or 29(5) or (6) for the time being in the hands of a receiver appointed under section 26 or 29,

but there shall be payable out of such property any expenses (including the remuneration of the liquidator) property incurred in the winding up in respect of the property.

(2) Where, in the case of a company, such an order has been made or such a resolution has been passed, the powers conferred on the court by sections 26 to 30 or on a receiver so appointed shall not be exercised in relation to any realisable property held by the company in relation to which the functions of the liquidator are exercisable

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

(3) Nothing in the Companies Act or the International Business Companies Act shall be taken as restricting, or enabling the restriction of, the exercise of those powers referred to in subsection (2). No. 8 of 1994
No. 18 of 1996

(4) Subsection (2) shall not affect the enforcement of a charging order made before the relevant time or on property which was subject to a restraint order at the relevant time.

(5) In this section-

“company” means any company which may be wound up under the Companies Act or the International Business Companies Act; No. 8 of 1994
No. 18 of 1996

“liquidator” includes any person appointed to the office of liquidator (whether provisionally or otherwise) under the Companies Act 1994 or the International Business Companies Act 1996;

“the relevant time” means No. 8 of 1994

(a) where no order for the winding up of the company has been made, the time of the passing of the resolution for voluntary winding up; No. 8 of 1996

(b) where

(i) such an order has been made; but

(ii) before the presentation of the petition for the winding up of the company by court order, such a resolution had been passed by the company, the time of the passing of the resolution; and

(c) in any other case where such an order has been made, the time of the making of the order.

PART IV

INFORMATION GATHERING POWERS

35. (1) For the purpose of an investigation into Production orders
- (a) drug trafficking,
 - (b) a relevant offence,
 - (c) whether any person has benefited from criminal conduct, or

(d) the whereabouts of any proceeds of criminal conduct, the Director of Public Prosecutions may apply to the court for an order under subsection (2) in relation to particular material or material of a particular description.

(2) Subject to section 38 (10) the court may if it is satisfied on such an application that the conditions in subsection (4) are fulfilled, make a production order requiring the person who appears to the court to be in possession of the material to which the application relates

- (a) to produce it to a police officer for him to take away; or
- (b) to give a police officer access to it, within such period as the order may specify.

(3) The period to be specified in a production order shall be seven days unless it appears to the court that a longer or shorter period would be appropriate in the particular circumstances of the application.

(4) The conditions referred to in subsection (2) are

- (a) that there are reasonable grounds for suspecting that a specified person has carried on drug trafficking or has benefited from criminal conduct;
- (b) that there are reasonable grounds for suspecting that the material to which the application relates
 - (i) is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the application is made; and
 - (ii) does not consist of or include items subject to legal privilege; and
- (c) that there are reasonable grounds for believing that it is in the public interest, having regard
 - (i) to the benefit likely to accrue to the investigation if the material is obtained; and
 - (ii) to the circumstances under which the person in possession of the material holds it,

that the material should be produced or that access to it should be given.

(5) Where the court makes a production order under subsection (2)(b) in relation to material on any premises, it may, on the same or a subsequent application of the Director of Public Prosecutions, order any

person who appears to him to be entitled to grant entry to the premises to allow a police officer to enter the premises to obtain access to the material.

(6) An application under subsection (1) or (5) may be made ex parte to a judge in Chambers.

(7) Where the material, to which an application under this section relates, consists of information contained in or accessible by means of a computer

(a) a production order under subsection (2)(a) shall have effect as an order to produce the material in a form in which it can be taken away and in which it is visible and legible; and

(b) a production order under subsection (2)(b) shall have effect as an order to give access to the material in a form in which it is visible and legible.

(8) A production order

(a) shall not confer any right to production of, or access to, items subject to legal privilege;

(b) shall have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by statute or otherwise; and

(c) may be made in relation to material in the possession of a Government Department.

(9) A police officer may photograph or make copies of any material produced or to which access is given under this section.

(10) Rules of court may make provision as to

(a) the discharge and variation of production orders; and

(b) proceedings in relation to such orders.

(11) Where the investigation into whether a person has benefited from criminal conduct or the whereabouts of the proceeds of criminal conduct relates to a relevant offence which was not committed in Saint Vincent and the Grenadines, an application under subsection (1) shall not be made unless the provisions of section 20(1) of the Mutual Assistance in Criminal Matters Act as modified by subsection (12) have been complied with.

No. 46 of 1993

(12) Section 22(1) of the Mutual Assistance in Criminal Matters Act shall apply for the purposes of this section and section 36 with the following modifications

No. 46 of 1993

- (a) in subsection (1), for the words "criminal proceedings" to the end there shall be substituted "an investigation into whether a person has benefited from a relevant offence or the whereabouts of the proceeds of a relevant offence";
- (b) for the words "by a notice " to the end of subsection (2) there shall be substituted "the Director of Public Prosecutions may make an application for a production order under section 34 of this Act or for a search warrant under section 39 of the Mutual assistance in Criminal Matters Act."

No. 46 of 1993

Failure to comply
with production
order

36. (1) Where a person is required by a production order to produce any material to a police officer or give a police officer access to any material, the person commits an offence under this section if he

- (a) contravenes the order without reasonable excuse; or
- (b) in purported compliance with the order produces or makes available any material known to the person to be false or misleading in a material particular without
 - (i) indicating to the police officer to whom the material is produced or made available that the material is false or misleading and the respect in which the material is false or misleading; and
 - (ii) providing correct information to the police officer if the person is in possession of, or can reasonably acquire, the correct information.

(2) A person who commits an offence under this section shall be liable on summary conviction to imprisonment for two years or a fine of \$100,000 or both.

Search warrants

37. (1) For the purpose of an investigation into-

- (a) drug trafficking,
- (b) a relevant offence,
- (c) whether any person has benefited from criminal conduct, or
- (d) the whereabouts of any proceeds of criminal conduct,

a police officer may apply to the court for a warrant under this section in relation to specified premises.

(2) On such an application, the court may issue a warrant authorising a police officer to enter and search the premises if the court is satisfied

- (a) that a production order made in relation to material on the premises has not been complied with;
- (b) that the conditions in subsection (3) are fulfilled; or
- (c) that the conditions in subsection (4) are fulfilled.

(3) The conditions referred to in subsection (2)(b) are

- (a) that there are reasonable grounds for suspecting that a specified person has carried on drug trafficking or has benefited from criminal conduct;
- (b) that the conditions in section 34(4) (b) and (c) are fulfilled in relation to any material on the premises; and
- (c) that it would not be appropriate to make an order under that section in relation to the material because
 - (i) it is not practicable to communicate with any person entitled to produce the material;
 - (ii) it is not practicable to communicate with any person entitled to grant access to the material or entitled to grant entry to the premises on which the material is situated; or
 - (iii) the investigation for the purposes of which the application is made might be seriously prejudiced unless a police officer could secure immediate access to the material.

(4) The conditions referred to in subsection (2)(c) are

- (a) that there are reasonable grounds for suspecting that a specified person has carried on drug trafficking or has benefited from criminal conduct;
- (b) that there are reasonable grounds for suspecting that there is on the premises any such material relating
 - (i) to the specified person;
 - (ii) to drug trafficking;
 - (iii) to the question whether that person has benefited from criminal conduct; or

- (iv) to any question as to the extent or whereabouts of any proceeds of criminal conduct,

as is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose for which the application is made, but that the material cannot at the time of the application be particularised; and

(c) that

- (i) it is not practicable to communicate with any person entitled to grant entry to the premises;
- (ii) entry to the premises will not be granted unless a warrant is produced; or
- (iii) the investigation for the purposes of which the application is made might be seriously prejudiced unless a police officer arriving at the premises could secure immediate entry to them.

(5) Where a police officer has entered premises in the execution of a warrant issued under this section, he may seize and retain any material, other than items subject to legal privilege, which is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the warrant was issued.

(6) A police officer may photograph or make copies of any material seized under this section.

(7) A person who hinders or obstructs a police officer in the execution of a warrant issued under this section commits an offence and is liable on summary conviction to imprisonment for two years or a fine of \$100,000 or both.

(8) Where the investigation into whether a person has benefited from criminal conduct or the whereabouts of the proceeds of criminal conduct relates to a relevant offence which was not committed in Saint Vincent and the Grenadines, an application under subsection (1) shall not be made unless the provisions of section 20(1) of the Mutual Assistance in Criminal Matters Act, as modified by section 34(12) have been complied with.

No. 46 of 1993

Disclosure of
information by
Government
Departments

38. (1) Subject to subsection (4), the Court may, on an application by the Director of Public Prosecutions, order any material mentioned in subsection (3) which is in the possession of a Government Department to be produced to the court within such period as the court may specify.

(2) The power to make an order under subsection (1) is exercisable if

- (a) the powers conferred on the court to make a restraint order or a charging order are exercisable by virtue of section 25(1); or
- (b) those powers are exercisable by virtue of section 25(3) and the court has made a restraint or charging order which has not been discharged,

but where the power to make an order under subsection (1) is exercisable by virtue only of paragraph (b), section 25(4) shall apply for the purposes of this section as it applies for the purposes of sections 26 and 27.

(3) The material referred to in subsection (1) is any material which

- (a) has been submitted to an officer of a Government Department by the defendant or by a person who has at any time held property which was realisable property;
- (b) has been made by an officer of a Government Department in relation to the defendant or such a person; or
- (c) is correspondence which passed between an officer of a Government Department and the defendant or such a person,

and an order under that subsection may require the production of all such material, or of a particular description of such material, in the possession of the body concerned.

(4) An order under subsection (1) shall not require the production of any material unless it appears to the court that the material is likely to contain information that would facilitate the exercise of the powers conferred on the court by sections 26, 27 or 29 or on a receiver appointed under section 26 or 29 or in pursuance of a charging order.

(5) The court may by order authorise the disclosure to such a receiver of any material produced under subsection (1) or any part of such material; but the court shall not make an order under this subsection unless a reasonable opportunity has been given for an officer of the Government Department to make representations to the court.

(6) Material disclosed in pursuance of an order under subsection (5) may, subject to any conditions contained in the order, be further disclosed for the purposes of the functions under this Act of the receiver or the court.

(7) The court may by order authorise the disclosure to a police officer of any material produced under subsection (1) or any part of such

material; but the court shall not make an order under this subsection unless-

- (a) a reasonable opportunity has been given for an officer of the Government Department to make representations to the court; and
- (b) it appears to the court that the material is likely to be of substantial value in exercising functions relating to criminal conduct.

(8) Material disclosed in pursuance of an order under subsection (7) may, subject to any conditions contained in the order, be further disclosed for the purposes of functions relating to criminal conduct.

(9) Material may be produced or disclosed in pursuance of this section notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by statute or otherwise.

(10) An order under subsection (1) and, in the case of material in the possession of a Government Department, a production order, may require any officer of the Government Department (whether named in the order or not) who may for the time being be in possession of the material concerned to comply with it, and such an order shall be served as if the proceedings were civil proceedings against the department.

Monitoring orders

39. (1) The Director of Public Prosecutions may apply to the court for an order directing a financial institution to give to a police officer information obtained by the institution about transactions conducted by a particular person with the institution.

(2) An application for a monitoring order shall be made ex parte to a judge in Chambers and shall be supported by affidavit.

(3) A monitoring order shall apply in relation to transactions conducted during the period specified in the order, commencing not earlier than the day on which notice of the order is given to the financial institution and ending not later than three months after the day on which the order is made.

(4) A monitoring order shall not be made unless the court is satisfied that there are reasonable grounds for suspecting that the person in respect of whom the information is sought

- (a) has committed or is about to commit a drug trafficking offence or a relevant offence;
- (b) was involved in the commission, or is about to be involved in the commission, of such an offence; or

- (c) has benefited directly or indirectly or is about to benefit directly or indirectly from the commission of such an offence

(5) A monitoring order shall specify

- (a) the name or names in which the account is believed to be held;
- (b) the nature of the information which the institution is required to give; and
- (c) the manner in which the information is to be given.

(6) A person who knowingly

- (a) contravenes a monitoring order; or
- (b) provides false or misleading information in purported compliance with the order,

commits an offence and is liable on summary conviction to imprisonment for two years or a fine of \$100,000 or both.

(7) A reference in this section to a transaction includes a reference

- (a) to the making of a fixed term deposit;
- (b) to the transfer of an amount so deposited or any part of it at the end of the term; and
- (c) to the existence or use of a deposit box held by the institution.

(8) The provision of information to a police officer by virtue of a monitoring order shall not be treated as a breach of any restriction upon the disclosure of information imposed by statute or otherwise and shall not give rise to any criminal, civil or administrative liability.

40. (1) Where in relation to an investigation into criminal conduct

- (a) a production order has been made, or has been applied for and has not been refused;
- (b) a warrant under section 37 has been issued; or
- (c) a monitoring order has been made,

Offence of
prejudicing
investigation

a person commits an offence if, knowing or suspecting that the investigation is taking place, he makes any disclosure which is likely to prejudice the investigation or reveal the existence of the monitoring order.

(2) In proceedings against a person for an offence under this section, it is a defence to prove

- (a) that he did not know or suspect that the disclosure was likely to prejudice the investigation or reveal the existence of the monitoring order; or
- (b) that he had lawful authority or reasonable excuse for making the disclosure.

(3) Nothing in subsection (1) makes it an offence for a professional legal adviser to disclose any information or other matter

- (a) to, or to a representative of, a client of his in connection with the giving by the legal adviser of legal advice to the client; or
- (b) to any person
 - (i) in contemplation of, or in connection with, legal proceedings; and
 - (ii) for the purpose of those proceedings;

but this subsection does not apply in relation to any information or other matter which is disclosed with a view to furthering any criminal purpose.

(4) A person who commits an offence under this section shall be liable

- (a) on summary conviction to imprisonment for two years or a fine of \$50,000 or both; and
- (b) on conviction on indictment to imprisonment for five years or a fine of \$100,000 or both.

PART V

MONEY LAUNDERING

Offences

Concealing or
transferring
proceeds of
criminal conduct

41. (1) A person commits an offence if he

- (a) conceals or disguises any property which is, or in whole or in part directly or indirectly represents, his proceeds of criminal conduct, or
- (b) converts or transfers that property, brings it into or removes it from Saint Vincent and the Grenadines;

for the purpose of avoiding prosecution for a drug trafficking or relevant offence or the making or enforcement in his case of a confiscation order.

(2) A person commits an offence if, knowing or having reasonable grounds to suspect that any property is, or in whole or in part directly or indirectly represents, another person's proceeds of criminal conduct, he

- (a) conceals or disguises that property, or
- (b) converts or transfers that property, brings it into or removes it from Saint Vincent and the Grenadines;

for the purpose of assisting any person to avoid prosecution for a drug trafficking or relevant offence or the making or enforcement of a confiscation order.

(4) In this section the references to concealing or disguising any property include references to concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it.

42. (1) Subject to subsection (3), a person commits an offence if he enters into or is otherwise concerned in an arrangement whereby

Arranging with another to retain the proceeds of criminal conduct

- (a) the retention or control by or on behalf of another person ("A") of A's proceeds of criminal conduct is facilitated (whether by concealment, removal from the jurisdiction, transfer to nominees or otherwise); or
- (b) A's proceeds of criminal conduct
 - (i) are used to secure that funds are placed at A's disposal; or
 - (ii) are used for A's benefit to acquire property

and he knows or suspects that A is a person who is or has been engaged in or has benefited from criminal conduct.

(2) In this section, references to any person's proceeds of criminal conduct include a reference to any property which in whole or in part directly or indirectly represented in his hands his proceeds of criminal conduct.

(3) Where a person discloses in good faith to a police officer a suspicion or belief that any funds or investments are derived from or used in connection with criminal conduct, or any matter on which such a suspicion or belief is based

- (a) the disclosure shall not be treated as a breach of any restriction upon the disclosure of information imposed by statute or otherwise and shall not give rise to any civil liability; and
 - (b) if he does any act in contravention of subsection (1) and the disclosure relates to the arrangement concerned, he does not commit an offence under this section if
 - (i) the disclosure is made before he does the act concerned and the act is done with the consent of a police officer; or
 - (ii) the disclosure is made after he does the act, but is made on his initiative and as soon as it is reasonable for him to make it.
- (4) In proceedings against a person for an offence under this section, it is a defence to prove
- (a) that he did not know or suspect that the arrangement related to any person's proceeds of criminal conduct;
 - (b) that he did not know or suspect that by the arrangement the retention or control by or on behalf of A of any property was facilitated or, as the case may be, that by the arrangement any property was used as mentioned in subsection (1)(b); or
 - (c) that
 - (i) he intended to disclose to a police officer such a suspicion, belief or matter as is mentioned in subsection (3) in relation to arrangement, but
 - (ii) there is reasonable excuse for his failure to make any such disclosure in the manner mentioned in subsection (3)(b).
- (5) In the case of a person who was in employment at the time in question, subsections (3) and (4) shall have effect in relation to disclosures and intended disclosures to the appropriate person in accordance with any procedure established by his employer for the making of such disclosures as they have effect in relation to disclosures, and intended disclosures, to a police officer.

Acquisition,
possession or use
of proceeds of
criminal conduct

43. (1) A person commits an offence if, knowing that any property is, or in whole or in part directly or indirectly represents, another person's proceeds of criminal conduct, he acquires or uses that property or has possession of it.

(2) Subject to subsection (4) it is a defence to a charge of committing an offence under this section that the person charged acquired or used the property or had possession of it for adequate consideration.

(3) For the purposes of subsection (2) -

- (a) a person does not acquire property for adequate consideration if the value of the consideration is significantly less than the value of the property; and
- (b) a person does not use or have possession of property for adequate consideration if the value of the consideration is significantly less than the value of his use or possession of the property.

(4) The provision for any person of services or goods which are of assistance to him in criminal conduct shall not be treated as consideration for the purposes of subsection (2).

(5) Where a person discloses in good faith to a police officer a belief that any property is, or in whole or in part directly or indirectly represents, another person's proceeds of criminal conduct, or any matter on which such a belief is based

- (a) the disclosure shall not be treated as a breach of any restriction upon the disclosure of information imposed by statute or otherwise and shall not give rise to any criminal, civil or administrative liability; and
- (b) if he does any act in relation to the property in contravention of subsection (1), he does not commit an offence under this section if
 - (i) the disclosure is made before he does the act in question and the act is done with the consent of the police officer; or
 - (ii) the disclosure is made after he does the act, but is made on his initiative and as soon as it is reasonable for him to make it.

(6) For the purposes of this section, having possession of any property shall be taken to be doing an act in relation to it.

(7) In proceedings against a person for an offence under this section, it is a defence to prove that

- (a) he intended to disclose to a police officer such a belief or matter as is mentioned in subsection (5), but

- (b) there is reasonable excuse for this failure to make any such disclosure in the manner mentioned in subsection (5)(b).

(8) In the case of a person who was in employment at the time in question, subsections (5) and (7) shall have effect in relation to disclosures, and intended disclosures, to the appropriate person in accordance with any procedure established by his employer as they have effect in relation to disclosures, and intended disclosures, to a police officer.

(9) No police officer or other person commits an offence under this section in respect of anything done by him in the course of acting in connection with the enforcement, or intended enforcement, of any provision of this Act or of any other statutory provision relating to drug trafficking or relevant offences or the proceeds of criminal conduct.

Disclosure of
knowledge or
suspicion of
money
laundering

44. (1) Where a person in good faith discloses to a police officer-

- (a) his suspicion or belief that another person is engaged in money laundering, or
- (b) any information or other matter on which that suspicion or belief is based,

the disclosure shall not be treated as a breach of any restriction upon the disclosure of information imposed by statute or otherwise and shall not give rise to any criminal, civil or administrative liability.

(2) A person commits an offence if

- (a) he knows or suspects that another person is engaged in money laundering which relates to any proceeds of drug trafficking;
- (b) the information, or other matter, on which that knowledge or suspicion is based came to his attention in the course of his trade, profession, business or employment; and
- (c) he does not disclose the information or other matter to a police officer as soon as is reasonably practicable after it comes to his attention.

(3) Subsection (2) does not make it an offence for a professional legal adviser to fail to disclose any information or other matter which has come to him in privileged circumstances.

(4) It is a defence to a charge of committing an offence under this section that the person charged had a reasonable excuse for not disclosing the information or other matter in question.

(5) Any disclosure made by a person who was in employment at the time in question to the appropriate person in accordance with any procedure established by his employer shall be treated, for the purposes of this section, as a disclosure to a police officer.

(6) For the purposes of this section, any information or other matter comes to a professional legal adviser in privileged circumstances if it is communicated or given to him

- (a) by, or by a representative of, a client of his in connection with the giving by the adviser of legal advice to the client;
- (b) by, or by a representative of, a person seeking legal advice from the adviser; or
- (c) by any person-
 - (i) in contemplation of, or in connection with, legal proceedings; and
 - (ii) for the purpose of those proceedings;

but no information or other matter shall be treated as coming to a professional legal adviser in privileged circumstances if it is communicated or given with a view to furthering any criminal purpose.

45. (1) A person commits an offence if

Tipping-off

- (a) he knows or suspects that a police officer is acting, or is proposing to act, in connection with an investigation which is being, or is about to be, conducted into money laundering or the proceeds of criminal conduct; and
- (b) he discloses to any other person information or any other matter which is likely to prejudice that investigation or proposed investigation.

(2) A person commits an offence if

- (a) he knows or suspects that a disclosure has been made to a police officer or to an appropriate person under section 41, 42 or 43; or
- (b) he discloses to any other person information or any other matter which is likely to prejudice any investigation which might be conducted following such a disclosure.

(3) Nothing in subsection (1) or (2) makes it an offence for a professional legal adviser to disclose any information or other matter

- (a) to, or to a representative of, a client of his in connection with the giving by the adviser of legal advice to the client; or
- (b) to any person
 - (i) in contemplation of, or in connection with, legal proceedings; and
 - (ii) for the purpose of those proceedings;

but this subsection does not apply in relation to any information or other matter which is disclosed with a view to furthering any criminal purpose.

(4) In proceedings against a person for an offence under subsection (1) or (2), it is a defence to prove that he did not know or suspect that the disclosure was likely to be prejudicial in the way there mentioned.

(5) No police officer or other person commits an offence under this section in respect of anything done by him in the course of acting in accordance with the enforcement, or intended enforcement, of any provision of this Act or of any other statutory provision relating to criminal conduct or the proceeds of criminal conduct.

Record keeping
and reporting
suspicious
transactions

46. (1) Every financial institution or person engaged in a relevant business activity shall keep and retain records relating to financial activities in accordance with the Regulations made under section 67 of this Act.

(2) Every financial institution or person engaged in relevant business activity shall pay special attention to all complex, unusual or large transactions, whether completed or not, and to all unusual patterns of transactions, and to insignificant but periodic patterns of transactions, which have no apparent economic or lawful purpose.

(3) Upon suspicion that the transactions described in subsection (2) could constitute or be related to money laundering or the proceeds of criminal conduct, a financial institution or person engaged in a relevant business activity shall report the suspicious transactions to the Financial Intelligence Unit in a form specified in the Regulations, as soon as reasonably practicable, and in any event, within fourteen days of the date the transaction was deemed to be suspicious as relating to money laundering or the proceeds of criminal conduct.

(4) Failure to report a suspicious transaction as required by subsection (3) is an offence.

(5) When the report referred to in subsection (3) is made in good faith, the financial institutions or persons engaged in relevant business activities and their employees, staff, directors, owners or other

representatives as authorised by law, shall be exempted from criminal, civil or administrative liability as the case may be, for complying with this section or for breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, regardless of the result of the communication.

(6) Every financial institution or person engaged in a relevant business activity shall develop and implement a written compliance programme reasonably designed to ensure and monitor compliance with Regulations made under this Act.

(7) A compliance programme referred to in subsection (4) shall include

- (a) a system of internal controls to ensure ongoing compliance;
- (b) internal or external independent testing for compliance;
- (c) training of personnel in the identification of suspicious transactions; and
- (d) appointment of a staff member responsible for continual compliance with this Act and the Regulations.

47. (1) A person commits an offence under section 41, 42 or 43 (money laundering) and is liable

Penalties for
money laundering

- (a) on summary conviction, to imprisonment for five years or a fine of \$500,000 or both; and
- (b) on conviction on indictment, to imprisonment for twenty years or an unlimited fine or both.

(2) A person commits an offence under section 44, 45 or 46 (failure to disclose knowledge or suspicion, tipping off, failure to report a suspicious transaction) and is liable

- (a) on summary conviction, to imprisonment for three years or a fine of \$500,000 or both; or
- (b) on conviction on indictment, to imprisonment for ten years or an unlimited fine or both.

Prevention of money laundering

48. (1) There shall be established a Committee, to be known as the National Anti-Money Laundering Committee, for the purpose of

Establishment of
Committee

- (a) advising the Minister of Finance in relation to the detection and prevention of money laundering in Saint Vincent and the Grenadines;
- (b) issuing from time to time guidance to the Financial Intelligence Unit as to compliance with this Act and regulations made under this Act;
- (c) advising the Minister of Finance as to the participation of Saint Vincent and the Grenadines in the international effort against money laundering;
- (d) to receive reports from the Financial Intelligence Unit required to be submitted under the Financial Intelligence Unit Act and such reports as the Committee may require to be submitted by the Financial Intelligence Unit from time to time,

and the Committee shall meet as often as may be necessary to carry out its duties.

(2) The members of the Committee shall be

- (a) the Director General of Finance and Planning (who shall be Chairman),
- (b) the Director of Public Prosecutions,
- (c) the Attorney General,
- (d) the Commissioner of Police,
- (e) the Comptroller of Customs,
- (f) the Chairman of the Saint Vincent and the Grenadines Offshore Finance Authority,
- (g) such other persons as the Minister of Finance may from time to time appoint,

and the Committee may appoint a sub-committee, to assist in formulating the guidance in subsection (1)(b).

(3) The Minister of Finance may, after consulting the Committee, make such regulations as he thinks fit for the purposes of detecting and preventing money laundering.

(4) Without prejudice to the generality of subsection (3), such Regulations may in particular

- (a) require such financial and other institutions as may be prescribed to establish and maintain procedures relating to the identification of clients, the keeping of records, the making of reports and training;
- (b) create criminal offences of failing to comply with the Regulations; and
- (c) provide that in determining whether a person has complied with the regulations the trial court may take account of any current relevant guidance issued by the Committee.

PART VI

SEIZURE OF CASH

49. (1) A police officer not below the rank of inspector or a customs officer may seize and detain, in accordance with this Part, any cash which is being imported into or exported from Saint Vincent and the Grenadines if the officer has reasonable grounds for suspecting that it directly or indirectly represents any person's proceeds of criminal conduct or is intended by any person for use in any criminal conduct.

Seizure and
detention of
cash imported or
exported

(2) Cash seized by virtue of this section shall not be detained for more than forty-eight hours unless its continued detention is authorised by an order made by a magistrate; and no such order shall be made unless the magistrate is satisfied

- (a) that there are reasonable grounds for the suspicion mentioned in subsection (1); and
- (b) that continued detention of the cash is justified while its origin or derivation is further investigated or consideration is given to the institution (whether in Saint Vincent and the Grenadines or elsewhere) of criminal proceedings against any person for an offence with which the cash is connected.

(3) Any order under subsection (2) shall authorise the continued detention of the cash to which it relates for such period, not exceeding three months beginning with the date of the order, as may be specified in the order; and a court of summary jurisdiction, if satisfied as to the matters mentioned in that subsection, may thereafter from time to time by order authorise the further detention of the cash but so that

- (a) no period of detention specified in such an order shall exceed three months beginning with the date of the order; and

- (b) the total period of detention shall not exceed two years from the date of the order under subsection (2)
- (4) Any application for an order under subsection (2) or (3) shall be made by a police officer.
- (5) At any time while cash is detained by virtue of this section
 - (a) a court of summary jurisdiction may direct its release if satisfied
 - (i) on an application made by the person from whom it was seized or a person by or on whose behalf it was being imported or exported, that there are no, or are no longer, any such grounds for its detention as are mentioned in subsection (2); or
 - (ii) on an application made by any other person, that detention of the cash is not for that or any other reason justified; and
 - (b) a police officer may release the cash if satisfied that its detention is no longer justified but shall first notify the magistrate or court of summary jurisdiction under whose order it is being detained.
- (6) If at a time when any cash is being detained by virtue of this section
 - (a) an application for its forfeiture is made under section 50; or
 - (b) proceedings are instituted (whether in Saint Vincent and the Grenadines or elsewhere) against any person for an offence with which the cash is connected,

the cash shall not be released until any proceedings pursuant to the application or, as the case may be, the proceedings for that offence have been concluded.

**Forfeiture orders
and appeals**

50. (1) A court of summary jurisdiction may make an order ordering the forfeiture of any cash which has been seized under section 49 if satisfied, on an application made by a police officer while the cash is detained under that section, that the cash directly or indirectly represents any person's proceeds of, or benefit from, or is intended by any person for use in, criminal conduct.

(2) An order may be made under subsection (1) whether or not proceedings are brought against any person for an offence with which the cash in question is connected.

(3) Any party to the proceedings in which a forfeiture order is made (other than the applicant) may, before the end of the period of thirty days beginning with the date on which it is made, appeal to the Court.

(4) On an application made by an appellant to a court of summary jurisdiction at any time, that court may order the release of so much of the cash to which the forfeiture order relates as it considers appropriate to enable him to meet his legal expenses in connection with the appeal.

(5) An appeal under this section shall be by way of rehearing, and the court may make such order as it considers appropriate and, in particular, may order the release of the cash (or any remaining cash) together with any accrued interest.

51. (1) Cash consisting of coins and bank-notes seized under this Part and detained for more than forty-eight hours shall where practicable, unless required as evidence of an offence, be held in an interest-bearing account, and the interest accruing on any such cash shall be added to that cash on its forfeiture or release.

Seizure
Supplementary

(2) An order under section 50(2) shall provide for notice to be given to persons affected by the order.

(3) Without prejudice to the generality of any existing power to make rules, provision may be made by rules of court—

- (a) with respect to applications to any court under this Part;
- (b) for the giving of notice of such applications to persons affected;
- (c) for the joinder of persons as parties; and
- (d) generally with respect to the procedure under this Part before any court.

(4) In this Part—

"cash" means —

- (a) coins and bank-notes in any currency; and
- (b) negotiable instruments;

"exported", in relation to any cash, includes its being brought to any place in Saint Vincent and the Grenadines for the purpose of being exported.

PART VII
MISCELLANEOUS & SUPPLEMENTAL
Foreign orders etc

Enforcement of
external
confiscation
orders

52. (1) The Attorney General may, by order

- (a) direct in relation to a country or territory outside Saint Vincent and the Grenadines designated by the order that, subject to such modifications as may be specified, this Act shall apply to external confiscation orders and to proceedings which have been or are to be instituted in the designated country and may result in an external confiscation order being made there;
- (b) make
 - (i) such provision in connection with the taking of action in the designated country with a view to satisfy a confiscation order;
 - (ii) such provision as to evidence or proof of any matter for the purposes of this section and section 53; and
 - (iii) such incidental, consequential and transitional provision as appears to him to be expedient; and
- (c) without prejudice to the generality of this subsection, direct that, in such circumstances as may be specified, proceeds arising out of action taken in the designated country with a view to satisfying a confiscation order and which are retained there shall nevertheless be treated as reducing the amount payable under the order to such extent as may be specified.

(2) An order under this section may make different provision for the different cases or classes of cases.

(3) The power to make an order under this section includes power to modify this act in such a way as to confer power on a person to exercise a discretion.

(4) In this section and section 53—

"external confiscation order" means an order made by a court in a designated country for the purpose

- (a) of recovering property, or the value of such property, obtained as a result of or in connection with
 - (i) criminal conduct; or
 - (ii) any offence which would, if committed in Saint Vincent and the Grenadines, be an offence triable summarily or on indictment or triable either way; or
- (b) of depriving a person of a pecuniary advantage so obtained;

(5) An order under this section is subject to the negative resolution procedure.

53. (1) On an application made by or on behalf of the government of a designated country, the court may register an external confiscation order made there if

Registration of
external
confiscation
orders

- (a) it is satisfied that at the time of registration the order is in force and not subject to appeal;
- (b) it is satisfied, where the person affected by the order did not appear in the proceedings, that he received notice of the proceedings, in sufficient time to enable him to defend them; and
- (c) it is of the opinion that enforcing the order in Saint Vincent and the Grenadines would not be contrary to the interests of justice.

(2) In subsection (1)(a), "appeal" includes –

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

(3) The court shall cancel the registration of an external confiscation order if it appears to the court that the order has been satisfied by payment of the amount due under it.

54. A document purporting to be issued by or on behalf of the Government of a country or territory and purporting to state the terms of a corresponding law in force in that country or territory shall be admitted in evidence, in proceedings under this act, on its production by the

Evidence of
corresponding
law

prosecution without further proof, and such document shall be conclusive evidence that

- (a) it is issued by or on behalf of the Government of that country or territory;
- (b) the terms of such law are as stated in the document;
- (c) any facts stated in the document to constitute an offence under such law do constitute such offence.

Confiscated
Assets Fund

55. (1) There shall be established a fund to be known as the Confiscated Assets Fund ("the Fund").

(2) There shall be paid into the Fund –

- (a) proceeds of criminal conduct recovered under a confiscated order;
- (b) cash forfeited under Part VI;
- (c) money forfeited under section 37 of the Drugs (Prevention of Misuse) Act;
- (d) money paid to the Government of Saint Vincent and the Grenadines by a foreign jurisdiction in respect of confiscated assets, whether under a treaty or arrangement providing for mutual assistance in criminal matters or otherwise.

Cap. 219

(3) The Minister of Finance may, after consulting the National Anti-Money Laundering Committee and Cabinet, authorise payments to be made out of the Fund–

(a) for the purposes related to–

- (i) law enforcement, including the Financial Intelligence Unit and in particular the investigation of suspected cases of drug trafficking and money laundering;
- (ii) treatment and rehabilitation of drug addicts;
- (iii) public education in relation to drug addiction;
- (iv) activities of the Offshore Financial Authority;

- (b) to satisfy an obligation of the Government of Saint Vincent and the Grenadines to a foreign jurisdiction in respect of confiscated assets, whether under a treaty or arrangement providing for mutual assistance in criminal matters or otherwise;
- (c) to meet the expense of the National Anti-Money Laundering Committee;
- (d) to meet the remuneration and expenses of a receiver appointed under this Act;
- (e) to pay compensation or costs awarded under this act;
- (f) to cover costs associated with the administration of the Fund; and such other purposes as Parliament may from time to time determine.

56. (1) The moneys paid into the Fund shall be invested in accordance with the laws of Saint Vincent and the Grenadines, and the income earned from such investments shall be paid into the Fund.

Administration
of the Fund

(2) The financial year of the Fund shall end on 31st March in each year.

(3) The Director of Audit shall cause proper accounts, and proper records in relation to the accounts, of the Fund to be kept, and shall cause to be prepared in respect of each financial year a statement of the accounts of the Fund in such form as the Minister may direct.

(4) Within six months after the end of each financial year, the Minister shall send to the Director of Audit a copy of the statement of accounts for that financial year.

(5) The Director of Audit shall examine every statement of accounts received by him under this section and shall make a report in writing on the statement to the Minister.

(6) The Minister shall lay on the table in the House of Assembly a copy of the Director of Audit's report.

57. Where a body corporate commits an offence under this Act and that offence is proved to have been committed with the consent or connivance of any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he, as well as the body corporate, commits that offence and is liable to be proceeded against and punished accordingly.

Offences by
bodies corporate

Police Powers

58. (1) A police officer may arrest without warrant any person whom he reasonably believes has committed an offence under this Act.

Cap. 124

(2) A Customs Officer may, in any case relating to the commission of an offence under this act, exercise all or any of the powers in relation to investigations into an offence which is arrestable without warrant conferred on a police officer by the Criminal code.

Police officers
duty of
confidentiality

59. (1) Except for the purpose of the performance of his duties or the exercise of his functions or when lawfully required to do so by any court or under the provisions of any enactment, no police officer shall disclose any information or matter which has been obtained by him in the performance of his duties or the exercise of his functions under this Act.

(2) Any person who contravenes this section commits an offence and shall be liable on summary conviction to imprisonment for five years or a fine of \$500,000 or both.

Jurisdiction

60. Where a defendant is charged with criminal conduct which may be tried summarily or on indictment

Cap.25

(a) the power of the Director of Public Prosecutions to issue a certificate under section 11(4) of the Criminal Procedure Code requiring an offence to be tried on indictment may be exercised where the Director of Public Prosecutions intends to make an application for a confiscation order if the defendant is convicted; and

Cap.24

(b) the power of a court of summary jurisdiction to commit the defendant to the court for sentencing under section 26(1) of the Magistrates Act may be exercised where the court of summary jurisdiction is of the opinion that the defendant is one against whom the court may consider making a confiscation order.

Compensation

61. (1) If an investigation is begun against a person for criminal conduct or offences and any of the following circumstances occur;

- (a) no proceedings are instituted against that person;
- (b) proceedings are instituted against that person but do not result in his conviction for any criminal conduct; or
- (c) proceedings are instituted against that person and he is convicted of one or more criminal conduct, but
 - (i) the conviction or convictions concerned are quashed; or

- (ii) he is granted a pardon in respect of the conviction or convictions concerned,

the court may, on application by a person who held property which was realisable property, order compensation to be paid under subsection (4) unless it is satisfied

- (a) that there has been some serious default on the part of any person concerned in the investigation or prosecution of the offence or offences concerned and that, but for that default, the act or omission referred to in subsection (4)(b) would not have occurred; and
- (b) the applicant has, in consequence of the act or omission referred to in subsection (4)(b), suffered loss in relation to the property.

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

(7) Compensation ordered to be paid under this section and sections 20 and 21 shall be paid out of the Consolidated Fund.

62. (1) Where

Costs

- (a) a person brings, or appears at, court proceedings under this Act and endeavours
 - (i) to prevent a confiscation order or a restraint order or a charging order from being made against property of his, or
 - (ii) to have property of his excluded from such an order; and
- (b) that person is successful in that endeavour; and
- (c) the court is satisfied that he was not in any way involved in criminal conduct,

then the court may by order declare that he is entitled to be paid all reasonable costs incurred by him in connection with those proceedings, or such part of those costs as the court determines.

(2) The costs referred to in subsection (1) are not limited to costs of a kind that are normally recoverable by a successful party in civil proceedings.

(3) Costs payable by virtue of a declaration made by the court under subsection (1) shall be paid out of the Consolidated Fund.

Civil standard of proof

63. Any question of fact to be decided by a court in proceedings under this Act, except any question of fact that is for the prosecution to prove in any proceedings for an offence under this Act, shall be decided on the balance of probabilities.

Appeals

64. Any decision of a court in proceedings under this Act, except proceedings in relation to any offence committed under this Act, is a judgement of a court in a civil cause or matter within section 12 of the Eastern Caribbean Supreme Court (Saint Vincent and the Grenadines) Act.

Cap. 18

Supplemental

Application of Fugitive Offenders Acts
No. 48 of 1993
No. 12 of 1992

65. An offence under this Act, the Drug Trafficking Offences Act, and the Proceeds of Crime Act will for the purposes of the Fugitive Offenders Act be extraditable offences and this provision will apply whether or not there is an extradition treaty with the requesting State.

Index of defined expression

66. In this Act the expressions listed below are defined by, or otherwise fall to be construed in accordance with, the provisions of this Act:

amount that might be realised	section 4(4)
amount to be recovered	section 15
benefited from –	
drug trafficking	section 9(3)
relevant offence	section 10(3)
charging order	section 29
conclusion of application	section 8(1)
conclusion of proceedings	section 8(1)
confiscation order	section 7
corresponding law	section 55
criminal conduct	section 3

drug trafficking	section 3
drug trafficking arrangement	section 3
drug trafficking offence	section 3
external confiscation order	section 53
gift caught by this Act	section 6
held (in relation to property)	section 4(2)
institution of proceedings	section 8(1)
interest (in relation to property)	section 4(1)
items subject to legal privilege	section 7
material	section 7
money laundering	section 7 ..
monitoring order	section 41
police officer	section 57
premises	section 7
prescribed	section 7
proceeds of drug trafficking	section 12(1)(a)
production order	section 37
property	section 4(1), (2)
prosecutor's statement	section 13(4)
realisable property	section 4(3)
relevant offence	section 3 and Schedule
restraint order	section 28
subject to appeal	section 8(2)
transferred (in relation to property)	section 4(2)
value of gift	section 5(2)
value of proceeds of drug trafficking	section 12 (1)(b)
value of property	section 5(1)

Regulations

67. (1) Regulations may be made for prescribing anything which is required to be prescribed under this Act and generally for carrying out the purposes and provisions of this Act by the Minister of Finance.

(2) Regulations made under this section shall be subject to negative resolution in the House.

Repeal and saving
No. 12 of 1997

68. This Act repeals and replaces the Proceeds of Crime Act save and except the sections 59, 60 and 61.

SCHEDULE 1**(Section 2)****Financial Institution means**

A bank licensed under the Banking Act

A bank licensed under the International Banks Act 1996

A building society registered under the Building Societies Act

An insurance company registered under the Insurance Act

International insurance business licensed under the International Insurance Act 1996

Registered agents and trustees licensed under the Registered Agent and Trustee Licensing Act 1996

A Trust licensed under the International Trusts Act 1996

A person licensed to operate an exchange bureau

A person licensed as a dealer or investment adviser

A person who carries on cash remitting services

A person who carries on postal courier services

Mutual fund licensed under the Mutual Funds Act 1997

Credit Unions

Relevant Business Activities

Lending (including personal credits, factoring with or without recourse, financial or commercial transaction including forfeiting cheque cashing services)

Finance leasing

Venture risk capital

Money transmission services

Issuing and administering means of payment (e.g. credit cards, travellers' cheques and bankers' drafts)

Guarantees and commitments

Trading for own account of customers in:

- (a) money marked instruments (cheques, bills, certificates of deposit etc.)
- (b) foreign exchange
- (c) financial futures and options
- (d) exchange and interest rate instruments; and
- (e) transferable instruments

Underwriting share issues and the participation in such issues

Money broking

Investment business

Deposit taking

Bullion dealing

Financial intermediaries

Custody services

Securities broking and underwriting

Investment and merchant banking

Asset management services

Trusts and other fiduciary services

Company formation and management services

Collective investment schemes and mutual funds

Car dealerships

Jewellers

Real estate agents

Casinos

Internet gambling

Pool betting

Lottery agents

Barristers-at-Law and Solicitors

Accountants

SCHEDULE 2

(Section 2)

Customs Control and Management Act 14 of 1999

Copyright Act Cap 262

Merchandise Marks Act Cap 106

Patents Act Cap 110

Registration of Trade Marks Act Cap 113

Passed in the House of Assembly this 21st day of November, 2001.

J. THERESA ADAMS
Clerk of the House of Assembly.

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2001

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**SAINT VINCENT AND THE GRENADINES
THE REGISTERED AGENT AND TRUSTEE LICENSING ACT, 1996**

ARRANGEMENT OF SECTIONS

1. Short title and commencement

**PART I
PRELIMINARY**

2. Interpretation and definitions
3. Corporate relationships

**PART II
LICENCES**

4. Requirement for licence; exemptions
5. Application for licence
6. Capitalisation
7. Duration and scope of licence
8. Suspension of licence
9. Revocation of licence
10. Appeals
11. Change in particulars of license
12. Display of licence
13. Surrender of licence

**PART III
TRANSFER OF SHARES OR INTERESTS**

14. Transfer of shares or interests

**PART IV
ADMINISTRATION**

- 15. Offshore Finance Inspector
- 16. Restrictions in use of certain terms
- 17. Duties of licensee
- 18. Annual returns, etc.

**PART V
MISCELLANEOUS**

- 19. Insurance policy
- 20. Confidentiality
- 21. Immunity
- 22. Regulations
- 23. Directions
- 24. Offences
- 25. Existing business
- 26. Amendment of Schedule

SCHEDULE



SAINT VINCENT AND THE GRENADINES

ACT NO. 15 OF 1996

I ASSENT

CHARLES J. ANTROBUS

[L.S.]

Ag. Governor-General
7th October, 1996.

AN ACT to make provision for licensing and regulation of Offshore Representation, which includes acting as a company registered agent or manager, or as a trustee of a registered trusts in Saint Vincent and the Grenadines.

[By Proclamation]

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

1. This Act may be cited as The Registered Agent and Trustee Licensing Act, 1996, and comes into operation on such date as the Governor-General may publish by proclamation in the Gazette.

Short title and
commencement

**PART I
PRELIMINARY**

2. In this Act, unless the context otherwise requires-

Interpretation and
definitions.

"auditor" means a person who is licensed and in good standing as a member of an association of chartered or public accountants or other similar body approved by the Authority as a reputable auditing association;

"Authority" means the Saint Vincent Offshore Finance Authority created pursuant to the Saint Vincent Offshore Finance Authority Act, 1996;

"business of Offshore Representation" means the provision of services relating to Offshore Representation for profit or reward in or from or within the State;

"certificate of compliance" means the Certificate of Compliance issued under paragraph (c) of subsection (1) of section 18;

"Companies Act" means the Companies Act, 1994;

"court" means the High Court of the State, or a judge thereof;

"dollars" or "\$" means East Caribbean dollars;

"financial fiduciary" means and includes a licensee who engages or intends to engage in activities as a trustee, nominee, intermediary, or manager with respect to the money, securities or financial assets or instruments of a client or customer in the course of such licensee's business of Offshore Representation.

"International Companies Act" means the International Business Companies Act, 1996, as the same may be amended or supplemented from time to time;

"Inspector" means the Offshore Finance Inspector appointed under the Saint Vincent Offshore Finance Authority Act, 1996;

"licence" means a licence issued under Part II of this Act;

"licensee" means a person holding a current and valid licence to undertake the business of Offshore Representation under this Act;

"Minister" means the Minister for Finance of the State;

"Offshore Representation" means and includes one or more of the following acts or activities:

(a) acting as agent or representative in the establishment, registration, renewal or continuation of company under the International Companies Act or the registration of a trust pursuant to the Saint Vincent Trust Authority Act or the International Trusts Act, 1996;

(b) providing registered office or registered agent services in the State for companies incorporated, licensed or continued under the International Companies Act;

(c) providing or appointing nominee directors, nominee shareholders or nominee officers for companies incorporated under the International Companies Act or the International Banks Act, 1996; or

(d) acting as a local trustee or fiduciary for a trust that has or seeks exemption from taxation under the Saint Vincent Trust Authority Act or the International Trusts Act, 1996, whether or not such trust is registered or to be registered under either act;

providing that the following activities shall not constitute "Offshore Representation" for purposes of licensing under this Act:

(i) the activities of a barrister or solicitor who is admitted to practice law in the State in connection with the formation or professional representation of any entity referenced in the foregoing definition; or

(ii) the activities of an accountant or auditor licensed to do business as such in the state in connection with the formation or professional representation of an entity referenced in the foregoing definition.

"person" means a natural person, company or other corporation, partnership or limited partnership who or which is Resident;

"Resident" has the meaning ascribed to it in the Saint Vincent and the Grenadines Offshore Finance Authority Act, 1996;

"Saint Vincent Trust Authority Act" means the Saint Vincent and the Grenadines Trust Authority Act Cap 114, as amended; and

"State" means the State of Saint Vincent and the Grenadines.

(3) (1) For the purposes of this Act, a body corporate is controlled by a person if the shares of the body corporate carrying voting rights sufficient to elect a majority of the directors of the body corporate are, except by way of security only, held directly or indirectly by or on behalf of or for the benefit (on trust or otherwise) of that person.

Corporate
relationship

(2) For the purposes of this Act-

(a) a body corporate is the holding body corporate of another if that other body corporate is its subsidiary; and

(b) a body corporate is a subsidiary of another body corporate if it is controlled, directly or indirectly, by that other body corporate..

PART II LICENCES

Requirement
licence;
exemptions

for

4. (1) No person shall carry on any element of the business of Offshore Representation, directly or indirectly, in, for, from or within the State unless that person has obtained and holds a valid and subsisting licence to do so under this Act.

(2) The body corporate known as Saint Vincent Trust Authority Limited, originally created pursuant to the Saint Vincent Trust Authority Act and to be henceforth known as the "Saint Vincent Trust Agency Limited," shall not require a licence under this Act to undertake Offshore Representation from within the State, but in any such representation it shall otherwise be bound by the duties and responsibilities of a licensee hereunder.

(3) Notwithstanding any provision contained herein to the contrary, any company that is duly authorised by agreement with Saint Vincent Trust Authority Limited to carry on one or more aspects of the business of Offshore Representation or to represent the activities of the Saint Vincent Trust Authority outside of the State prior to the effective date of this Act shall continue to have the right to conduct the activities authorised under any such agreement, to have the exclusive right to maintain offices outside the State to engage in the business of Offshore Representation for the remaining initial effective period of the applicable agreement, and to maintain one or more agents or places of business in any jurisdiction outside the State during such period (notwithstanding any territorial restrictions to the contrary set forth in such agreement); provided, that at the expiration of the remaining initial period under any such agreement, such company shall cease such activities unless the agreement is renewed.

(4) Unless otherwise prohibited in whole or in part by this Act, a licensee hereunder may hold one or more other licences or authorisations to conduct businesses or professions other than the business of Offshore Representation, but any such other licences, business or professions must be disclosed in the application for a license hereunder.

5. (1) Subject to the discretion of the Authority, a licence may be issued to a natural person who is a citizen of the State or to a company that is incorporated and in good standing under the Companies Act, who or which makes proper application therefor to the Authority, and who or which provides the information and materials specified in the Schedule to this Act.

Application for
license.

(2) No company shall be issued a license under this Act unless that company is ultimately, beneficially owned or controlled by a citizen of the State.

(3) If the Authority, on advice from the Offshore Finance Inspector, is satisfied that an application for a licence meets the requirements of this act and that the applicant is qualified to carry on the business of Offshore Representation, it may grant the application and issue to the applicant a licence subject to such terms and conditions as it shall direct, if any.

(4) Any decision of the Authority refusing to issue, continue or renew a licence shall be subject to appeal as provided in section 10.

(5) The Authority shall cause notice of the issue of a licence to be published in the Gazette.

6. No licence shall be issued unless the applicant can show evidence of sufficient net worth, as set forth in the Schedule attached hereto or regulations promulgated hereunder.

Capitalisation.

7. (1) Subject to sections 8 and 9, a licence issued under this Act is valid until the 31st of December of the year in which it is issued, but is renewable during the month of January in the following year for a further period of one year upon payment of the prescribed annual fee as set forth in the regulations promulgated under this Act.

Duration and
scope of licence.

(2) A licence is renewable for an extended period of time not exceeding fifteen years, subject to terms and condition as may be specified by regulations promulgated under this Act.

(3) Except as expressly provided herein, no licensee shall have or be issued a licence to carry on a business of the Offshore Representation, or to act or hold itself out as an agent, affiliate or representative of a licensee hereunder, from a place of business outside of the State, save that this section shall not prohibit a licensee from (i) calling on its clients or customers located outside of the State;

(ii) attending meetings held outside of the State relating to the business of Offshore Representation conducted by the licensee; or (iii) distributing materials or information to clients or customers or potential clients or customers located outside of the State.

**Suspension of
license.**

8. (1) Where the Offshore Finance Inspector is of the opinion that a licensee-

(a) is carrying on the business of Offshore Representation in a manner detrimental to the public interest of the State, or of the companies or trusts or their respective shareholders or beneficiaries being managed or represented by such licensee; or

(b) has contravened a requirement of or condition attached to the licence, or a requirement made by or under this Act; or

(c) has ceased to carry on the business of Representation; or

(d) is insolvent;

the Offshore Finance Inspector may require that the licensee forthwith take such steps as the Offshore Finance Inspector may deem necessary to rectify the matter, and may forthwith suspend the licence pending the receipt of information or evidence that the matter has been rectified. The specific nature of the infraction shall be set forth in a writing from the Offshore Finance Inspector reasonably detailing the steps the licensee must take to rectify the matter.

(2) Upon suspension of the licence, the Offshore Finance Inspector shall immediately provide written notice of suspension to-

(a) the officers of the companies, and the co-trustees or beneficiaries of the trusts, in respect of whom the licence to carry on the Offshore Representation was issued (to the extent the same are a matter of public knowledge); and

(b) the licensee, who shall be afforded the opportunity to raise objections within 14 days of receipt of the notice or within 5 days before the end of the suspension period, whichever is the sooner, and the Offshore Finance Inspector shall consider any objections duly made.

(3) A suspension of a licence hereunder by the Offshore Finance Inspector shall not exceed 30 days, unless such suspension is extended from time to time by an order of the court on application of the Authority which shall specify-

(a) the grounds upon which the suspension should continue;

(b) the details of any objections made by the licensee; and

(c) the period of further suspension requested, such period not exceeding 30 days at any one time.

The suspended licensee, and the officers, co-trustees and/or beneficiaries specified in subsection (2)(a) above, shall be afforded reasonable written notice of any motion for such an order and an opportunity to contest the same.

(4) Notwithstanding the provisions of subsection (2) (a) above, the suspended licensee shall ensure that representatives or beneficiaries of all companies and trusts represented by the suspended licensee have notice of the suspension, and the failure to provide such notice shall be grounds for revocation of the licensee's licence.

(5) Upon suspension of a licence, the companies or trusts for which the licensee was providing Offshore Representation must soon as practicably possible provide to the Offshore Finance Inspector details of an alternate licensee to serve as their agent in the State under applicable law.

(6) Subject to the sub-section (5) above, a suspension of a licence hereunder shall not in itself result in the deregistration of a trust or company for which the licensee was providing Offshore Representation.

9. (1) The Authority may revoke a licence upon the occurrence of any of the following:

Revocation of
licence.

(a) voluntary or involuntary bankruptcy, liquidation or winding up of the licensee or a person controlling the licensee; or

(b) the conviction of the licensee or any person controlling the licensee of any crime involving moral turpitude; or

(c) the failure of the licensee to rectify the matter or matters causing the suspension of the licensee's licence within a reasonable time, and in any event in not more than 60 days, following a suspension under section 8.

2. The Authority shall, before it revokes a licence-

(a) give the licensee written notice of the ground or grounds on which it intends to so do;

(b) afford the licensee an opportunity to make written objections within 30 days after the mailing of the notice; and

(c) take any such objections into consideration.

And, if the Authority decides to revoke a licence, it shall cause the documents revoking the licence to be served on the licensee and the persons described in section 8(2)(a) above.

3. Subject to the provisions of section 10, the revocation of a licence takes effect on the expiration of the period of 21 days commencing on the date of service on the licensee of the document revoking the licence.

Appeals.

10. (1) An appeal lies to the court, by summons or on motion, from any decision of the Authority to suspend or revoke a licence under sections 8 or 9, or from a decision to refuse to grant or refuse to renew a licence under section 5.

(2) Any person described in subsection (1) may appeal to the court if the Authority-

(a) in the exercise of its powers under section 5 refuses to grant a licence to the said business; or

(b) in the exercise of his powers under subsection (1) of section 5 grants the person a licence subject to conditions.

(3) An appeal under this section must be brought within 14 days after mailing of the relevant notice or documentation to the person whose licence has been denied, not renewed, suspended or revoked, as the case may be.

(4) The decision of the court on appeal may be further appealed as provided under applicable law.

(5) The Authority shall cause notice of the court's decision to be published in the Gazette.

11. Where a change occurs in the particulars of a licensee as specified in the Schedule, the licensee shall, as soon as possible thereafter, inform the Offshore Finance Inspector in writing of the change.

Change in
particulars of
licence.

12. A licence issued under this Act shall be prominently displayed on each premises where the business of Offshore Representation is carried on.

Display of licence.

13. (1) A licensee who has ceased to carry on the business of Offshore Representation in respect of which the licence was granted may surrender his licence upon production of-

Surrender of
licence.

(a) in case of a licensee who is a natural person, evidence that he has repaid all deposits and has transferred all assets held or administered on behalf of companies or trusts or for which he has provided Offshore Representation; or

(b) in the case of a licensee which is a company or other entity, evidence that it is being wound-up voluntarily and that the company is solvent and is able on demand to repay all deposits held by it and all its other creditors, and has transferred all assets held or administered on behalf of companies or trusts managed by it or for which it has acted as trustee.

(2) In the case of a surrender of licence under paragraph (b) of subsection (1), the Attorney-General may apply to the court for an order that the licensee be wound-up either by the court or subject to the supervision of the court, and where the court so orders, the provisions of the Companies Act relating to the winding up of a company by or subject to the supervision of the court, apply *mutatis mutandis*.

PART III TRANSFER OF SHARES AND INTEREST

14. No shares or other interests, whether legal or equitable, in a company or partnership licensed under this Act shall be issued, transferred or otherwise disposed of without the prior written approval of the Offshore Finance Inspector, except that the Authority may exempt any company or partnership from the provisions of this section, subject to such terms and conditions as it thinks fit.

Transfer of shares
or interests.

**PART IV
ADMINISTRATION**

**Offshore Finance
Inspector.**

15. (1) The Offshore Finance Inspector shall be appointed and employed by the Authority, as provided in the Saint Vincent Offshore Finance Authority Act, for the purpose of ensuring the proper administration of this Act and of other laws relating to the registration and regulation of registered trusts and international companies.

(2) The functions of the Offshore Finance Inspector under this Act shall include:

(a) monitoring, in behalf and in the name of the Authority, the business of Offshore Representation conducted in the State and elsewhere;

(b) where he thinks fit or when required by the Authority, the examination in such manner as he considers necessary of the affairs or business of any licensee hereunder for the purpose of satisfying himself that the provisions of this Act are being complied with and that such licensee is in a sound financial position and is carrying on its business in a satisfactory manner;

(c) reporting to the Authority regarding the examination of any documents produced to the Offshore Finance Inspector in the course of the performance of his functions hereunder;

(d) examining and making recommendations to the Authority with respect to all applications for licences;

(e) undertaking all responsibilities and authority assigned to him under the laws and regulations of the State, including, without limitation, the Saint Vincent Offshore Finance Authority Act, the International Companies Act, the International Trusts Act, 1996 and the International Banks Act, 1996; and

(f) acting as the chief executive officer of the Saint Vincent Trust Agency Limited, to result from the reconstitution of the Saint Vincent Trust Authority Limited.

(3) In the performance of his duties under this Act, the Offshore Finance Inspector may at all reasonable times

(a) require a licensee to produce for examination such books, records and other documents that the licensee is required to maintain pursuant to section 18; and

(b) require a licensee to supply such information or explanation as the Inspector may reasonably require for the purpose of enabling him to perform his functions under this Act.

(4) Notwithstanding subsection (3), the Offshore Finance Inspector shall not have access to any document or other confidential information of a company managed by a licensee or of a trust for which the licensee shall serve as trustee or to any information, matter or thing relating to or concerning the affairs of any such company or trust except under the circumstances described in the Confidential Relationships Preservation (International Finance) Act, 1996 or without first having obtained

(a) the written consent of that company or of the beneficiaries or of each other trustee of a trust, as the case may be; or

(b) an order of the court made on the grounds that there are no other reasonable means of obtaining such document, information matter or thing.

(5) The Offshore Finance Inspector, with the written approval of the Authority, may authorised in writing any person to assist him in the performance of his functions under this Act.

(6) All activities of the Offshore Finance Inspector or his assistants shall be governed at all times by the confidentiality provisions contained in this Act and in the Confidential Relationship Preservation (International Finance) Act, 1996.

16. (1) No person other than a licensee shall

Restrictions in use
of certain terms.

(a) use any word, either in English or in any other language, in the description or title under which such person carries on business in or from or within the State or otherwise that, in the opinion of the Authority, suggest the business of Offshore Representation as described in this Act; or

(b) make any representation in any document or in any other manner that is likely to suggest that such person is licensed to carry on the business of Offshore Representation as described in this Act when he is not.

(2) Without limiting the provisions of section 4(2) or (3), the Authority may require a licensee who carries on the business of Offshore Representation under a name which is

Duties of licensee

(a) identical to that of any other person, whether within or outside the State, or which so nearly resembles that name as to be likely or calculated to deceive or create confusion as to the source of services rendered;

(b) calculated to suggest falsely the patronage of or connection with some person whether within or outside the State; or

(c) calculated to suggest falsely that he has special status in relation to or derived from the Government of the State or has the official approval of, or acts on behalf of, the Government of the State or of any of its departments or officials, forthwith to change the name, and in default of compliance the Authority may revoke the licence.

Duties of licensee.

17. A licensee shall maintain its principal place of business within the State and at or through such principal place of business shall maintain, in respect of its business of Offshore Representation,

(a) such books or records as accurately reflect the business of Offshore Representation of the licensee;

(b) to the extent expressly required to be maintained in the State pursuant to the International Companies Act, the International Trusts Act, 1996 or the International Banks Act, 1996, separate accounts in the books or records in respect of each company the licensee manages or represents and of each trust or registered trust of which the licensee acts as trustee; and

(c) if the licensee is engaged as a financial fiduciary, one or more separate bank accounts into which shall be deposited all moneys held on behalf of each company which the licensee represents or manages and of each trust for which it serves as trustee.

Annual returns, etc.

18. (1) A licensee shall within 6 months of the end of each calendar year-

(a) prepare annual accounts for its business of Offshore Representation in accordance with generally accepted accounting principles, and if the licensee is engaged in such business in any respect as a financial fiduciary, the accounts relating to such financial fiduciary activities shall be audited by an independent auditor;

(b) furnish to the Offshore Finance Inspector the annual accounts described in the preceding paragraph, which in the case of a licensee who or which is engaged as a financial fiduciary, shall be accompanied by a written confirmation from an independent auditor that the annual accounts have been prepared as required hereunder and which shall state whether or not the auditor's certificate for such accounts is unqualified and if qualified, the nature of the qualification; and

(c) furnish to the Offshore Finance Inspector a certificate of compliance issued by an independent auditor that the information set out in the application for a licence, as modified by any subsequent notification of change in accordance with section 11, remains correct and gives an accurate summary of the business of the licensee.

(2) A licensee shall, at any time if required by the Offshore Finance Inspector, furnish to the Offshore Finance Inspector a certificate of compliance issued in accordance with paragraph (c) of subsection (1), if applicable.

(3) A licensee shall, at any time if required by the Offshore Finance Inspector, produce to the Offshore Finance Inspector reasonable evidence as to the solvency or condition of the licensee's business of Offshore Representation and that the licensee has, in the case of a company or a partnership, maintained the required minimum paid-up capital.

PART V MISCELLANEOUS

19. (1) As a condition to the grant of a licence, the Authority shall require a licensee to maintain a policy of insurance or a bond with an approved insurance company against

Insurance policy.

(a) losses arising out of claims of negligence or breach of duty by the licensee or by its employees;

(b) the dishonesty of licensee employees or of the licensee; and

(c) loss or destruction of documents.

(2) The Authority may also require a licensee to maintain adequate insurance against such other risks as the Authority may stipulate, in such amount and of such nature as the Authority determines to be fit and proper, having due regard to the nature and type of business carried on by the licensee.

(3) In the event that the insurance or bond required under this section is withdrawn, cancelled or not renewed, the licensee shall immediately notify the Offshore Finance Inspector and shall cease to carry on its business of Offshore Representation until the insurance has been reinstated or replaced.

Confidentiality.

20. Except for the purpose of the performance or exercise of his duties or functions under this Act or when lawfully required to do so by the court under the circumstances described in the Confidential Relationships Preservation (International Finance) Act, 1996, neither the Offshore Finance Inspector nor any person or entity acting under his authority shall disclose, directly or indirectly, any information relating to any application under this Act, or to the affairs of a licensee or of a company managed or represented by a licensee or of a trust for which a licensee acts in Offshore Representation, which he has acquired, directly or indirectly, in the performance or exercise of such functions or otherwise.

Immunity.

21. No action, suit, prosecution or other proceedings shall be brought or instituted against the Governor-General, the Minister, the Offshore Finance Inspector, the Authority or its board members in respect of any acts undertaken or performed in good faith in the discharge of official functions described in this Act.

Regulations.

22. The Minister, on advice of the Authority, may make regulations generally for giving effect to the provisions of this Act and specifically

- (a) prescribing the fees to be charged under this Act;
- (b) exempting any person or business, or class of person or business, from any provision of this Act; and
- (c) Prescribing anything required to be prescribed by this Act.

23. Without limiting the provisions of section 22, the Offshore Finance Inspector may, from time to time, upon advice of the Authority, issue by publication in the Gazette, directions in relation to such matters as he thinks fit, and failure by any licensee to comply with such directions shall be taken into consideration when any action is proposed to be taken under sections 8 or 9 hereof.

Directions.

24. (1) Any person who with intent to deceive, or for any purpose of this Act makes any representation that he knows to be false or does not believe to be true is guilty of an offence and liable on summary conviction to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding one year or both.

Offences.

(2) Any person who

(a) assaults or obstructs the Offshore Finance Inspector or other person in the performance of his functions under this Act;

(b) by the offer of any gratuity, bribe or other material inducement prevents or attempts to prevent the Offshore Finance Inspector or other person from performing his functions under this Act; or

(c) contravenes any provision of this Act for which no penalty is specifically provided, is guilty of an offence and is liable on summary conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding one year or both.

(3) Where an offence is committed by a body corporate and a director or officer of that body corporate knowingly authorised, permitted, or acquiesced in the commission of the offence, the director or officer may also be guilty of the offence and liable on summary conviction to a fine of \$10,000 or to imprisonment for a term of 6 months or both.

25. Except as otherwise expressly set forth in section 4, any person who at the commencement of this Act is carrying on the business of Offshore Representation shall within twelve(12) months of that date, fully comply with the provisions of this Act.

Existing business.

26. The Governor-General may amend the Schedule to this Act by order published in the Gazette.

Amendment of
Schedule.

SCHEDULE

(Reference Section 5)

PARTICULARS TO BE SPECIFIED IN LICENSE APPLICATIONS

Every natural person, partnership or company applying for a licence under this Act shall furnish in writing to the Authority the following particulars which shall accompany the application:

- (1) Name of applicant.
- (2) Address in the State of the principal office of the applicant and, in the case of a company, its registered office.
- (3) In the Case of a company or partnership, the names and addresses of all partners or directors and their nationalities.
- (4) In case of a company or partnership, the names and addresses of all owners or shareholders and their nationalities.
- (5) In the case of a company or partnership, the names and addresses of all officers and managers, and of foreign agents or offices of the company or partnership, a description of any material contractual arrangements with such persons, and a written agreement by which such persons and their employees agree to be bound by the provisions of this Act and to submit to the jurisdiction of the court for purposes of enforcement of such agreement.
- (6) Names and addressed of solicitors, if any, of the applicant, together with a letter from such solicitors confirming that they act for the applicant.
- (7) Names and address of auditors of the applicant, together with a letter from auditors confirming that they act for the applicant.
- (8) In the case of a company or partnership,
 - (a) the name and address of one of its officers or partners who is the authorised agents resident in the State to accept on behalf of the applicant service of process and any notices required to be served on it; and
 - (b) The name and address of another of its officers who in the absence or inability to act of the officer named in subparagraph (a) is the authorised agent resident in the State of the applicant for the purposes of subparagraph (a).

(9) In the case of a company, evidence of the proper incorporation of the company in the State under the Companies Act or in the country of incorporation, as the case may be.

(10) Evidence in writing that the applicant himself or some person or company directly or indirectly connected with the applicant is possessed of solid and practical experience in the company management.

(11) The following:

(a) an undertaking in writing to provide and set apart a fully paid-up capital before or at the time it commences business, such as the Authority may in its absolute discretion determine, or by a guarantee under seal of such sum given by a holding or parent or other company approved by the Authority; and

(b) The guarantee referred to in subparagraph (a) shall expressly provide that its formal validity, its essential validity, its interpretation and effect and the rights and obligation of the parties to it are governed exclusively by the law of the State and that the court of the State shall be the exclusive forum and venue for these purposes.

(12) Character references in writing, together with such other evidence as the Authority may require, that neither the applicant nor, in the case of a company, any director or officer of the company has a criminal record either in the State or elsewhere.

(13) Annual accounts of its holding company, if any, for the preceding 3 years and thereafter annually duly audited and certified by an independent auditor.

(14) Names of all subsidiary companies of the applicant with addresses of their registered offices and names of their registered agents.

(15) In the case of a company, a copy of the act, charter, certificate of incorporation or memorandum and articles of association of the applicant, as may be appropriate, verified by an affidavit sworn by a director, or officer and duly authenticated as follows:

(a) in the case of a company incorporated in the State, notarised; and

(b) in the case of a foreign company, certified and authenticated under the public seal of the country, or place under the laws of which such company has been incorporated.

(16) References, including one from an internationally recognised bank or trust company.

(17) Statement of assets and liabilities at the end of the month prior to the submission of the application certified by a director or senior officer.

(18) Statement of capital of any other company held, directly or through a subsidiary, as an asset of the applicant.

(19) A statement describing the aspects of Offshore Representation the applicant will seek to undertake, and the experience of the application or its directors or employees in such business.

(20) Evidence that the net worth of the applicant exceeds \$75,000.

(21) Where the applicant intends to act as a financial fiduciary in connection with his business of Offshore Representation, a detailed statement of the nature of such activities and the applicant's experience as a financial fiduciary.

Passed in the House of Assembly this 27th day of June, 1996

J. THERESA ADAMS
Clerk of the House of Assembly

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Kingstown, Saint Vincent and the Grenadines

1996

[Price \$7.20]



SAINT VINCENT AND THE GRENADINES

ACT NO. 26 OF 1996

I ASSENT

CHARLES J. ANTROBUS

Governor-General

10th December, 1996.

[L.S.]

AN ACT to amend the Registered Agent and Trustee licensing Act 1996 (No. 15 of 1996).

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

1. This Act may be cited as the Registered Agent and Trustee Licensing (Amendment) Act 1996.

2. The Registered Agent and Trustee Licensing Act 1996 (No. 15 of 1996) is amended as follows:

(1) In Section 2-

(a) in paragraph (c) of the definition of "Offshore Representation" replace the semi colon after 1996 with a comma and add the following "companies continued in Saint Vincent and the Grenadines under the International Business Company Act 1996;"

(b) in paragraph (d) of the definition of "Offshore Representation" replace the semi colon after "act" with a comma and add the following "or trust settled elsewhere and which subsequently adopted the Saint Vincent and the Grenadines International Trust Law as the applicable law of the trust;"

(c) insert between the definition for "person" and the definition for "Resident" the following:

Short title

Amendment
to
Registered
Agent and Trustee
Licensing Act

"Private Trustee Licence" means a licence issued under Part II of this Act enabling a licensee to offer trusteeship services, act as trustee, trust protector or corporate settlor for a restricted number of family trusts involving, as settlors or beneficiaries, persons or corporations representing substantially the shareholders and beneficial owners of the licensee body corporate as defined in Section 3 subsection (1):

(2) In Section 4-

- (a) in subsection (3) delete the word "exclusive"**
- (b) add a new subsection as subsection (5) as follows:**

"(5) No person shall carry on any aspect of the business authorised by a Private Trustee Licence in or from within the State unless that person has obtained and holds a valid licence to do so under this Act."

(3) In Section 5 subsection (2)-

replace the fullstop at the end of the sentence with a comma and add the following "or by a foreign bank having a Saint Vincent and the Grenadines registered company banking licence under the Saint Vincent and the Grenadines Banking Act."

(4) In Section 7

subsection (3)- is repealed and replaced with the following three subsections:

"(3) Except as expressly provided in subsection (4) and subsection (5), no person shall have or be issued a licence to carry on a business of Offshore Representation, or to act or hold itself out as an agent, affiliate or representative of a licensee hereunder, from a place of business outside the State.

(4) A licensee may-

- (i) call on its clients or customers located outside of the State;**
- (ii) attend meetings held outside of the State relating to the business of the Offshore Representation conducted by the licensee;**
- (iii) distribute materials or information to clients or customers or potential clients or customers located outside of the State.**

- (5) Subject to approval by the Authority and the Minister a licensee whose office is in the State may promote its business outside the State, provided that such approval is first sought and obtained."
- (5) In Section 9 subsection (1) paragraph (b)- delete the words "involving moral turpitude" after "crime" and replace them with "for which the penalty is imprisonment for 2 years or more".
- (6) In Section 17 paragraph (c)-
between "accounts" and "into" the words "for each company or trust".

Passed in the House of Assembly this 19th day of September, 1996.

Clerk of the House of Assembly.

J. THERESA ADAMS
Clerk of the House of Assembly

Printed by the Government Printer at the Government Printing Office.
Kingstown, St. Vincent and the Grenadines.

1996

[Price \$1.20]

**SAINT VINCENT AND THE GRENADINES
OFFSHORE FINANCE AUTHORITY ACT, 1996**

Arrangement of Sections

Section

- 1. Short title and commencement**
- 3. Interpretation and definitions**
- 3. Establishment of Authority**
- 4. Status of Authority as body corporate**
- 5. Acts of the Authority**
- 6. Remuneration to Authority Board members**
- 7. Validity of Authority Acts, immunity and indemnification**
- 8. Duties and rights of the Authority**
- 9. Fee payable**
- 10. Rules**
- 11. Repeal of the Trust Authority Act and reconstitution of Saint Vincent Trust Authority Limited**



SAINT VINCENT AND THE GRENADINES

ACT NO 16 OF 1996

I ASSENT

CHARLES J. ANTROBUS

Ag. Governor-General

7th October, 1996

[L. S.]

AN ACT to establish The Saint Vincent and the Grenadines Offshore Finance Authority and to designate the duties and responsibilities thereof; to repeal The Saint Vincent and the Grenadines Trust Authority Act Cap 114, except to the extent such act shall continue to apply to certain trusts previously registered thereunder; and for purposes connected therewith and incident thereto.

[By Proclamation]

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

1. This Act may be cited as the Saint Vincent and the Grenadines Offshore Finance Authority Act, 1996 and comes into operation on such date as the Governor General may appoint by proclamation in the Gazette.

Short title and commencement

2. In this Act, unless the context otherwise requires -

Interpretation and definitions

"Authority" means the Saint Vincent and the Grenadines Offshore Finance Authority created pursuant to section 3(1);

"Authority Board" means the board of directors of the Authority appointed pursuant to section 3(2), which shall be responsible for making all decisions that fall to be made by the Authority;

"Companies Act" means the companies Act, 1994 and any amendments thereto;

"Comptroller" means the Comptroller of Inland Revenue appointed under section 3 of the Income Tax Act and includes any other government employee to whom the Comptroller may delegate his functions under this Act;

"Court" means the High Court of the State or a judge thereof;

"Gazette" means the Official Gazette of the State of Saint Vincent and the Grenadines;

"International Banks Act" means the International Banks Act, 1996, as the same may be amended from time to time;

"International Banking Company" means a company which is licensed to carry on an offshore banking business in the State pursuant to the International Banks Act or which is continued under that act or the International Business Companies Act;

"International Business Companies Act" means the International Business Companies Act, 1996, as the same may be amended from time to time;

"International Business Companies" means a company incorporated or continued under the International Business Companies Act, and each reference to an "international company" in this Act shall be a reference to an International Business Company;

"International Insurance Company" means an International Business Company which carries on the business of insurance entirely or in common with any other business;

"International Shipping Company" means an International Business Company which carries on the business of shipping entirely or in common with any other business;

"International Trust" means a trust registered (i) under the International Trusts Act, or (ii) under the Trust Authority Act and subsisting or continued under the International Trusts Act to the extent provided herein and therein;

"International Trusts Act" means the International Trusts Act, 1996, as the same may be amended from time to time;

"Minister" means the Minister for Finance of the State;

"Offshore Finance Inspector" means the person appointed pursuant to section 8(2) of this Act;

"Offshore Legislation" means and includes this Act, the Registered Agent and Trustee Licensing Act, the International Trusts Act, the International Business Companies Act, the International Banks Acts, the Confidential Relationships Preservation (International Finance) Act, 1996, regulations promulgated under any such Act, and any future laws or regulations of the State relating to the provision of offshore financial services or to the regulation of entities formed in the State to render such services;

"Registered Agent" means a person holding a valid and subsisting license to engage in the business of Offshore Representation pursuant to the Registered Agent and Trustee Licensing Act, and **"Registering Agent"** means a Registered Agent participating in the making of application for registration on behalf of a proposed International Trust or International Business Company.

"Registered Agent and Trustee Licensing Act" means the Registered Agent and Trustee Licensing Act, 1996, as the same may be amended from time to time;

"Registrar of International Business Companies" means the Registrar of International Business Companies appointed pursuant to the International Business Companies Act;

"Registrar of Trusts" means the Registrar of International Trusts appointed under the International Trusts Act;

"Resident" means, for purposes of this Act,

(1) a natural person who is ordinarily resident and subject to income tax in the State under general principles of State income taxation;

(2) a trust, company, partnership, limited partnership or other body, incorporated, established, formed or organised in the State under the laws of the State, the majority of shares or other ownership of which is legally or beneficially owned, directly or indirectly, by persons who are resident under the provisions of subparagraph (1) or (3) hereof, or by the State, and

(3) any other trust, corporation, partnership, limited partnership, or other entity who or which is a resident of, or ordinarily resident or domiciled in, the State under general principles of State income taxation;

provided that for purposes hereof the term "Resident" shall not include any International Trust that complies with the tax exemption provisions of the International Trusts Act, or if registered under the Trust Authority Act, the tax exemption provisions of that Act; or an International Business Company that complies with the tax exemption provisions of the International Business Companies Act; or an International Banking Company that complies with the tax exemption provisions of the International Banks Act; so long as and to the extent that such compliance continues under the provisions of the applicable Act;

"State" means the State of Saint Vincent and the Grenadines; and

"Trust Authority Act" means the Saint Vincent and the Grenadines Trust Authority Act Cap. 114.

**Establishment of
Authority**

3. (1) There shall be established for the purposes of this Act a new body corporate under the laws of the State to be known as "The Saint Vincent and the Grenadines Offshore Finance Authority." Except as may be provided elsewhere in the laws of the State, the Authority shall have primary responsibility for the efficient and responsible administration and supervision of Offshore Legislation.

(2) The Authority shall be governed in its activities in every respect by the Authority Board, a board of directors consisting of five members, four of whom shall be appointed by Cabinet in a writing signed by the Secretary to Cabinet, and one of whom shall be the Director General of Finance and Planning for the State; provided that:

(a) no member of the Authority Board shall be a member of the House of Assembly or a minister,

(b) each member of the Authority Board shall be a natural person and a citizen of the State at all times he is sitting on the Authority Board, and

(c) the Offshore Finance Inspector shall be an ex officio member of the Authority Board, but as such he shall have no right to vote in Authority affairs undertaken by the Authority Board.

(3) Nominations of persons to serve as members of the Authority Board may be received from persons registered under the Registered Agent and Trustee Licensing Act.

(4) Cabinet shall appoint a Chairman from among the members of the Authority Board, and the Authority Board shall appoint a secretary who shall not be a member of the Authority Board.

(5) A member of the Authority Board shall, subject to the provisions of subsections (7) and (8) of this section, hold the office of director for the period of 2 years, but such member shall be eligible for reappointment.

(6) Cabinet may, by instrument in writing, at any time revoke the appointment of any person serving on the Authority Board for cause, including excessive absences from board meetings, inattention to regular duties of board members, or a disability that inhibits such member from functioning as an Authority Board member for a continuous period of six months or more.

(7) Any member of the Authority Board may at any time resign his office in writing addressed to the Chairman, and upon receipt of such resignation such member shall cease to be a member of the Authority Board.

(8) The Chairman may likewise resign from the Authority Board in writing addressed to the Secretary of the Authority Board.

(9) The appointment, removal, death or resignation of a member of the Authority Board shall be the subject of notice to be published in the Gazette.

4. (1) The Authority shall be a body corporate having perpetual existence and a common seal. The rules and by-laws of the Authority Board shall be prepared by the Minister and approved by Cabinet. Such by-laws shall govern all meetings, functioning and operations of the Authority Board, and the provisions of such by-laws shall at all times be consistent with the provisions of this Act, with the procedures normally governing bodies corporate created by the State, and with the duties of the Authority contained herein and elsewhere in the laws of the State.

Status of
Authority as body
corporate

(2) Subject to the provisions of this Act, the decisions of the Authority shall be binding to the extent provided by law.

(3) The Authority may sue and be sued in its corporate name and may borrow such monies as it may reasonably need from time to time. Service upon the Authority of any notice, order or other document shall be executed by delivering the same to or sending it by registered post addressed to the Secretary of the Authority at the office of the Authority.

(4) All annual operating expenses of the Authority, including salaries to be paid to employees of the Authority and to Authority Board members (if any), shall be funded by the Government of the State pursuant to an annual budget provided to Cabinet by the Authority Board as a normal part of the annual Government budget process; provided, however, in the event the proposed operating expenses for a given year are greater than the anticipated (in the case of the first year of operation of the Authority) or the historical annual (after the first full year the Authority is in existence) gross revenues of the Government from fees paid to the State under the International Business Companies Act, the Registered Agent and Trustee Licensing Act, the International Banks Act, the International Trusts Act, and any other offshore or honorary citizenship laws of the State from time to time subsisting, Cabinet may meet the operating budget shortfall through other resources of the State.

Acts of the
Authority

5. (1) The seal of the Authority shall be kept in the custody of the Offshore Finance Inspector, and such seal may be affixed, in the presence of the Chairman and the Secretary, to instruments pursuant to resolutions duly adopted by the Authority Board.

(2) All documents, other than those required by law to be under seal, and all decisions of the Authority may be signified under the hand of the Offshore Finance Inspector.

(3) The Authority may call upon the State to aid it in the carrying out and enforcement of decisions, rulings and resolutions made in the normal course of its operation and in carrying out the duties and responsibilities set forth in this Act and specifically provided for elsewhere in the laws of the State.

Remuneration to
Authority Board
members

6. The Authority shall pay to each member of the Authority Board, in respect of his office as such, an amount of remuneration (if any) as Cabinet may determine, and shall reimburse reasonable, ordinary and necessary expenses attendant to approved Authority activities in the manner prescribed by the Authority. The amounts of such remuneration and anticipated reasonable expense allowances (if any) shall be included in the annual budget for the Authority submitted under section 4(4).

Validity of
Authority acts
immunity, and
indemnification

7. (1) No act done or proceedings taken under this Act shall be questioned on the ground –

(a) of the existence of any vacancy in the membership on the Authority Board, or any defect in the constitution of the Authority; or

(b) of any omission, defect or irregularity not affecting the merits of the case.

(2) No action, suit, prosecution or other proceedings shall be brought or instituted personally against any individual member of the Authority Board in respect of any act done bona fide in pursuance of, or in execution or intended execution of, this Act or of other official duties of the Authority as provided elsewhere in the laws of the State.

(3) Where any member of the Authority Board is exempt from liability by reason only of the provisions of this section, the Authority shall be liable to the extent that the member of the Authority Board would have been liable had he not been so exempt.

(4) The Authority may purchase a policy or policies of insurance, insuring the members of the Authority Board and the officers and employees of the Authority against liabilities as provided in the rules and by-laws of the Authority.

8. (1) Subject to the provisions of this Act which may require prior approval of certain decisions, the Authority shall have the duty, ultimate authority and exclusive right—

Duties and rights
of the Authority

(a) to administer and to oversee the process of licensing Registered Agents in accordance with the provisions of the Registered Agents and Trustee Licensing Act, to supervise and regulate the activities of Registered Agents hereunder and under the Registered Agent and Trustee Licensing Act, and to undertake all responsibilities delegated or reserved to the Authority under such Act;

(b) to administer and undertake the licensing of International Banking Companies under the provisions of the International Banks Act, to supervise and regulate the activities of International Banking Companies licenced under such Act, and to undertake all responsibilities delegated or reserved to the Authority under such Act;

(c) to appoint, and to supervise the activities of, the Offshore Finance Inspector, who shall be an employee of the Authority;

(d) to oversee the activities of the Registrar of International Business Companies and of the Registrar of Trusts, and to hear appeals from decisions of the Registrar of International Business Companies and of the Registrar of Trusts as to registrations of or continuations of International Trusts under the International Trusts Act

and as to matters relating to the incorporation and registration of International Business Companies under the International Business Companies Act;

(e) to represent and enhance the reputation of the State world-wide through the development of an international market for offshore financial services and opportunities offered by the State, at all times in co-ordination with the rights and effort of the holders of rights to market State offshore services outside the State under pre-existing contracts with the Authority; and

(f) to propose and implement regulations for the efficient administration of this Act and other Offshore Legislation from time to time.

(2) Subject to prior approval of Cabinet, the Authority may appoint any natural person to the position of Offshore Finance Inspector under terms and conditions of employment that the Authority deems proper and necessary. The Offshore Finance Inspector shall, subject to the supervision and control of the Authority Board, manage the day-to-day business of the Authority and of the Authority Board and be responsible for the proper discharge of the duties of the Authority that are delegated to him by the Authority under this Act and under other Offshore Legislation.

(3) The Authority, and the revenues and expenses of the State in connection with the activities provided for in Offshore Legislation, shall be subject to audit under normal State procedures for State agencies.

Fees payable

9. Each International Business Company, International Banking Company, Registered Agent of International Trust registered under Offshore Legislation shall pay all fees, fines and penalties due to be paid by it under the terms of any Offshore Legislation to the Consolidated General Fund, marked as received from offshore services, and the Registrar of International Business Companies and the Registrar of Trusts shall remit the same in such manner.

Rules

10. The Minister, after consultation with the Authority, may make rules for the better carrying into effect of the purposes and provisions of this Act.

11. (1) The Trust Authority Act, and every rule and regulation promulgated thereunder, is repealed in its entirety as of the effective date of this Act, and save only to the extent any such law, rule or regulation shall expressly remain applicable to a trust registered thereunder but continued for the period of time set forth in the International Trusts Act.

Repeal of the
Trust Authority
Act and
reconstitution of
Saint Vincent
Trust Authority
Limited

(2) Immediately upon the entering into force of this Act, the company established under the companies Act Cap 219 as "The Saint Vincent Trust Authority Limited" shall—

(i) immediately change its name, through public filings and changes in all corporate papers and marketing materials, to "Saint Vincent Trust Agency Limited" (the "Agency");

(ii) amend its Memorandum and Articles of Incorporation to reflect the repeal of the Trust Authority Act and to restrict its activities to acting as a Registered Agent under the Registered Agent and Trustee Licensing Act, provided that the Agency shall not conduct financial fiduciary-related services, as defined in the said Act, and

(iii) cease any and all activities not expressly authorised by this section.

(3) From the effective date of this Act, each and every reference in the laws of the State to the "Authority", the "Trusts Authority" or the "Saint Vincent Trust Authority" shall be deemed to be a reference to the Authority created under this Act, and the immunity provisions of section 7(2) herein shall be deemed and interpreted to apply to any acts or omissions of the Agency that occur, in whole or in part, prior to the effective date of this Act and that could be attributed to the Authority or the Authority Board.

12. There is hereby established the Saint Vincent and the Grenadines Trust Agency which shall replace the Saint Vincent and the Grenadines Trust Authority and assume its functions in so far as they relate to international representation.

Establishment of
Saint Vincent and
the Grenadines
Trust Agency

13. (1) All subsisting agreements made with the Saint Vincent and the Grenadines Trust Authority the Saint Vincent Trust Services Ltd. and Saint Vincent Trust Services AG. shall continue to subsist unless otherwise terminated as if the Saint Vincent and the Grenadines Trust Authority Act had not been repealed.

Savings

(2) All assets of the Saint Vincent Trust Authority shall be vested in the Saint Vincent Trust Agency.

(3) This Act shall not operate to the prejudice of any rights, privilege, obligation or liability acquired or incurred under the repealed Act.

Passed in the House of Assembly this 27th day of June, 1996.

J. THERESA ADAMS,
Clerk of the House of Assembly.

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LAWS OF SAINT VINCENT AND THE GRENADINES

REVISED EDITION 1990

CHAPTER 114

SAINT VINCENT AND THE GRENADINES TRUST AUTHORITY ACT

Act 31 of 1976
amended by
*S.R.O. 38 of 1980
Act 18 of 1982

Printed and published with the authority of the
Government of Saint Vincent and the Grenadines

Numbering of sections

<i>Original number</i>	<i>Comment</i>	<i>Present number</i>
1	—	1
2	a 18/82	2
3	—	3
4	a 18/82	4
4A	ins 18/82	5
5-6	—	6-7
7	a 18/82	8
8	—	9
9-11	a 18/82	10-12
12	r/r 18/82	13
13-14	a 18/82	14-15
15-17	—	16-18
18	spent/omitted	—
First Schedule	—	First Schedule
Second - Third Schedule	a 18/82	Second - Third Schedule

Index of subsidiary legislation

Nil

CHAPTER 114

**SAINT VINCENT AND THE GRENADINES
TRUST AUTHORITY ACT**

Arrangement of sections

1. Short title.
2. Interpretation.
3. Establishment of the Saint Vincent and the Grenadines Trust Authority.
4. General duties of the Authority.
5. Additional powers of the Authority.
6. Authority to apply for registration of trusts, etc.
7. Appointment of Registrar of Trusts.
8. Duties of Registrar of Trusts.
9. Qualifications for trust to be registered.
10. Exemption of registered trust from income tax.
11. Powers of Comptroller to require information.
12. Duties of Authority in relation to international companies.
13. International companies to comply with requirements.,
14. Fees payable to Registrar of Trusts.
15. Fees payable to local representatives and trustees.
16. Refusal and cancellation of registration.
17. Appeals.
18. Rules.
First Schedule.
Second Schedule.
Third Schedule.

AN ACT to establish the Saint Vincent and the Grenadines Trust Authority: to make provision for the registration of certain trusts on payment of specified fees in lieu of income tax, and for the purposes connected therewith are incidental thereto.

Commencement: 31st December 1976

1. This Act may be cited as the Saint Vincent and the Grenadines Trust Authority Act. Short title.

Interpretation. 2. In this Act, unless the context otherwise requires—
 “Authority” means the Saint Vincent and the Grenadines Trust Authority established under section 3;
 “Comptroller” means the Comptroller of Inland Revenue appointed under section 3 of the Income Tax Act and includes any other officer to whom the Comptroller may delegate his functions under this Act;
 “Court” means the High Court;
 “international company” means an international company, an international insurance company, an international banking company, an international shipping company and a superannuation fund to which the International Companies Act applies;
 “international insurance company” means an international company which carries on the business of insurance entirely or in common with any other business;
 “international shipping company” means an international company which carries on the business of shipping entirely or in common with any other business;
 “Minister” means the Minister for the time being responsible for tourism;
 “registered trust” means a trust registered in accordance with section 8;
 “Registrar” means the Registrar of the High Court;
 “Registrar of Trusts” means the Registrar of Trusts appointed under section 7;
 “local representative” means the Authority and any other person resident in Saint Vincent and the Grenadines by whom an international company is represented for the purposes of the International Companies Act;
 “superannuation fund” has the meaning assigned to that expression in the International Companies Act.

Establishment of the Saint Vincent and the Grenadines Trust Authority. 3. (1) There is hereby established an Authority, to be known as the Saint Vincent and the Grenadines Trust Authority, which shall be a body corporate with perpetual succession and a common seal and with power, in that name, to sue and be sued.
 (2) Within seven days from the 31st December, 1976, the Authority shall be incorporated in accordance with the provisions of the Companies Act and of this Act.
 (3) The board of directors of the Authority shall be appointed by the Governor-General, by notice in the Gazette, and shall consist of seven members one of whom shall be appointed as chairman.

4. (1) The Authority shall have the duty—

General
duties of the
Authority.

- (a) to administer all applications made for registration of trusts under this Act and of international companies under the International Companies Act;
- (b) to represent all trusts for the purposes of this Act, and all international companies for the purposes of the International Companies Act, where a trust or international company is not otherwise so represented;
- (c) to supervise, in accordance with any rules, the conduct and manner of representation afforded by persons other than the Authority;
- (d) to collect and remit all fees payable to the Registrar and the Registrar of Trusts under the International Companies Act, and this Act, respectively.

(2) The Authority shall appoint any person whom it considers suitable to function as its manager, and the manager shall, subject to the control of the board of directors, be responsible for the proper discharge of the duties of the Authority under this Act and the International Companies Act.

5. The Authority may exercise such additional powers and perform such additional duties as are assigned to it by or under the International Companies Act.

Additional
powers of
Authority.

6. (1) In relation to every trust in respect of which application for registration under this Act is made, the Authority shall—

Authority to
apply for
registration
of trusts, etc.

- (a) apply for registration to the Registrar of Trusts and lodge therewith all relevant trust documents and one copy thereof;
 - (b) ensure that all fees payable under this Act to the Registrar of Trusts are duly paid;
 - (c) if registration is effected, receive from the Registrar and transmit to the trustees concerned a certified true copy of all relevant trust documents together with the certificate of registration issued by the Registrar of Trusts.
- (2) The Authority shall—
- (a) keep the Registrar of Trusts informed as to all matters relevant to the application of this Act to a registered trust; and
 - (b) take all necessary steps to furnish the Registrar of Trusts with such information relating to a registered trust as he may require for the purposes of this Act.

Appointment
of Registrar
of Trusts.

7. The Governor-General shall, by notice in the Gazette, appoint a fit and proper person to be the Registrar of Trusts for the purposes of this Act.

Duties of the
Registrar of
Trusts.

8. (1) Subject to subsection (3), upon receipt of an application and all relevant trust documents together with a copy thereof, as required by section 6 (1) (a), from the Authority, and after the receipt of the appropriate fees payable under this Act, the Registrar of Trusts shall—

- (a) register the trust in respect of which application is made by entering particulars of the trust in a register to be kept by him;
- (b) open and maintain a file containing all the documents relevant to that trust (except the copy of the trust document) and all other documents received, relating to that trust; and
- (c) transmit to the Authority the copy of the trust document certified by him to be a true copy of the original, and a certificate of registration showing that the trust has been duly registered, and specifying the date upon which it was so registered, under this Act.

(2) Every certificate of registration shall be in the form set out in the First Schedule.

(3) If, for any reason, the Registrar of Trusts is of the opinion that a trust should not be registered, he shall inform the Authority in writing, giving the reason, and requiring the Authority, within four weeks or such longer period as he may in any particular case allow, to satisfy him that registration may properly be effected.

(4) The Registrar of Trusts shall, at all times during normal office hours, permit a trustee, local representative, or other authorised representative of a registered trust to inspect the entry in the register and the documents in the file relating to that trust, shall permit the making of copies thereof by any such person, and shall, if so required for the purpose of any legal proceedings, produce the file in court.

Qualifica-
tions for
trust to be
registered.

9. (1) A trust in respect of which registration is applied for under this Act shall be a trust the beneficiaries of which do not include any person resident, ordinarily resident, or domiciled, in Saint Vincent and the Grenadines.

(2) A registered trust shall not cease to be registered by reason only that a beneficiary becomes resident, ordinarily resident, or domiciled, in Saint Vincent and the Grenadines but

any such beneficiary shall, from the date upon which he becomes resident, ordinarily resident, or domiciled, in Saint Vincent and the Grenadines cease to be entitled to the exemption afforded by section 10.

(3) A trust may be registered under this Act only if at least one of the trustees is the Authority or a person who is resident in Saint Vincent and the Grenadines and possesses a professional qualification and status satisfactory, in the opinion of the Authority, to ensure the proper and efficient administration of the trust for the benefit of the beneficiaries and its representation in accordance with this Act.

10. (1) Subject to subsection (2), the funds of a registered trust distributed to beneficiaries who are neither resident, ordinarily resident nor domiciled in Saint Vincent and the Grenadines and payable in accordance with the provisions of the trust instrument shall be exempted from liability in respect of the tax on the income from, and the amount of the distribution of, those funds which is, and would but for the provisions of this section be, imposed by the Income Tax Act. Exemption of registered trust from income tax.

(2) The exemption afforded by subsection (1) shall be granted in respect of funds received, held and properly payable, at any time whilst a trust remains duly registered under this Act.

(3) Any registered trust may transfer its funds or other assets to an international company registered under the International Companies Act.

(4) Notwithstanding anything contained in any other law, every transfer which falls under subsection (3) shall be exempt from the payment of any tax, duty or other impost.

11. (1) The Comptroller may require the resident trustee of a trust to furnish him with such information as he deems necessary to enable him to determine whether or not the exemption afforded by section 10 should be granted or continued. Powers of Comptroller to require information.

(2) If within twentyeight days, or such longer period as the Comptroller may in any particular case allow, after service of a notice in writing for the purposes of subsection (1), served personally on or sent by registered post to the resident trustee, the Comptroller—

(a) is not satisfied that the information required to be given and specified in the notice is sufficient; or

(b) has not received that information,

the provisions of section 10 shall cease to be applicable in relation to the trust concerned until such time, if any, as the informa-

tion has been given to the satisfaction of the Comptroller, or the Comptroller is otherwise satisfied.

Duties of
Authority in
relation to
international
companies.

12. It shall be the duty of the Authority in relation to every international company in respect of which registration under the International Companies Act, is applied for—

- (a) to make application to the Registrar and lodge therewith all relevant documents;
- (b) if registration is effected, to receive from the Registrar and to transmit to the local representative a certificate of registration in the form set out in the Fifth Schedule to the International Companies Act;
- (c) to ensure the payment of all fees required to be paid by international companies to the Registrar as are specified in the Second Schedule to the International Companies Act;
- (d) to obtain from the local representative, and to furnish the Registrar with, such information relating to an international company as the Registrar may, under the International Companies Act, require;
- (e) to keep the Registrar informed as to all matters relevant to the application of the International Companies Act to any international company.

International
companies
to comply
with require-
ments.

13. No international company which has failed to comply with the provisions of the International Companies Act, or any other law that may be applicable to it, can claim the benefits under this Act as an international company.

Fees payable
to Registrar
of Trusts.

14. (1) There shall be paid to the Registrar of Trusts, through the Authority, by or on behalf of a trust, in respect of the matters specified in the Second Schedule, the fees respectively specified in relation thereto in that Schedule.

(2) The Minister may, by order in the Gazette, vary the fee specified in the Second Schedule so, however, that the amount payable on any item in that Schedule shall not be increased to more than double the amount specified in this Act.

(3) A resident trustee shall be personally liable for the payment of all fees payable by or on behalf of a registered trust relating to any matter specified in the Second Schedule, during the period of twelve months immediately preceding the date upon which such trust ceases to be registered under this Act, and if not paid to the Registrar within twentyeight days from

the end of that period such fees shall be recoverable from the resident trustee concerned as a civil debt owing to the Crown.

(4) For the purposes of this Act "resident trustee" means the Authority and any other person resident in Saint Vincent and the Grenadines by whom a trust is represented for the purpose of this Act.

15. (1) There shall be paid to local representatives and resident trustees respectively, by or on behalf of international companies and trusts, in respect of the services specified in the Third Schedule, the fees specified for those services in that Schedule. Fees payable to local representatives and trustees.

(2) A local representative or resident trustee, other than the Authority, at the same time as payment to the Authority is made by him of a fee for registration or an annual fee payable to the Registrar or Registrar of Trusts, shall remit to the Authority a sum equal to twenty per centum—

(a) in the case of a fee so payable for registration, of the amount of the appropriate fee specified for registration; and

(b) in the case of an annual fee so payable, of the amount of the appropriate fee specified for registration,

in the Third Schedule.

(3) A local representative or resident trustee may charge reasonable fees for services rendered to an international company or trust in connection with the operation or administration of the International Companies Act or this Act, being services rendered which are not specified in the Third Schedule.

(4) The Minister for Finance may, by order in the Gazette, vary the fee specified in the Third Schedule so, however, that the amount payable on any item in that Schedule shall not be increased to more than double the amount specified in this Act.

16. (1) The Registrar of Trusts may refuse the registration of a trust if he is not satisfied— Refusal and cancellation of registration.

(a) that an application is in conformity with the provisions of this Act;

(b) after the expiry of a period of notice given in accordance with section 8 (3), that registration may properly be effected; or

(c) that a trust is qualified in terms of section 9 (1) or (3).

(2) The Registrar of Trusts shall cancel the registration of a trust—

- (a) upon the written request of all the trustees;
- (b) if the trust has ceased to exist;
- (c) if he is satisfied that a certificate of registration issued by him in respect of the trust has been obtained by, or on account of, any fraud or mistake;
- (d) if the trust ceases to be qualified in terms of section 9 (3); or
- (e) in the event that he has not, within sixty days or such longer period as he may in any particular case allow, received the annual fee payable under the Second Schedule.

Appeals.

17. (1) An appeal to the Court shall lie from a refusal or cancellation of registration by the Registrar of Trusts under section 16.

(2) On an appeal under this section, the Court may make any order which it considers to be appropriate, including an order as to the costs of the appeal, and such order shall be final.

(3) The burden of proving that a trust is qualified for registration under this Act, or that a refusal or cancellation of registration was not justified, shall lie on the resident trustee who shall be the appellant.

Rules.

18. The Governor-General may make rules for the better carrying into effect of the purposes and provisions of this Act and, without prejudice to the generality of the foregoing power, such rules may provide the procedure for appeals under section 17.

FIRST SCHEDULE

CERTIFICATE OF REGISTRATION

[illegible]

Entries		Documents			Abbreviations (See Overleaf)
No.	Date	No.	Designation	Date	
					*CH = Chairman of the Board of Trustees R = Resident Trustees **I = Individual authority to sign JS = Authority to sign jointly with another trustee LTD. = Authority to sign limited to the amount shown NS = No authority to sign :

- (iv) of a ship owned by an international company, a fee of one thousand dollars or twenty cents per net ton of the ship, whichever is the greater.
- (b) For registration of any increase of capital—
 - (i) of an international company (other than a superannuation fund), a fee of one-quarter per centum of such increase of capital;
 - (ii) of a superannuation fund or a trust, a fee not exceeding two thousand dollars calculated on the basis of one-quarter per centum of the increased amount of the funds thereof.
- (c) For representation—
 - (i) of an international company (other than an international insurance company and a superannuation fund), an annual fee of five hundred dollars or one-quarter per centum of the registered capital, whichever is the greater;
 - (ii) of an international insurance company, an annual fee of one thousand dollars or one-quarter per centum of the registered capital, whichever is the greater;
 - (iii) of a superannuation fund or a trust, a fee of not less than five hundred dollars, calculated on the basis of one-quarter per centum of the total amount of the funds thereof.

2. The fees specified in this Schedule are expressed in dollars issued by the Eastern Caribbean Currency Authority but may, as occasion requires, be quoted, and paid from, outside Saint Vincent and the Grenadines in any foreign currency which the Minister for Finance may, by order, specify for the purpose.

SECOND SCHEDULE

Section 14

Fees payable to the Registrar of Trusts through the Authority

1.
 - (a) For registration, a fee of six hundred dollars.
 - (b) An annual fee of four hundred dollars—
 - (i) payable on registration in respect of the period between the date of registration and the 1st April of the next succeeding year and calculated at the rate of one-twelfth of the annual fee for each month and any part of a month;
 - (ii) payable in full not later than the 1st April of each successive year after the date of registration.
 - (b) For registering any document required to be lodged under section 6, a fee of twenty dollars.
 - (d) For recording any fact relating to a registered trust, a fee of twenty dollars.
 - (e) For a certified copy of a certificate of registration or any other document, a fee of twenty dollars.
2. The fees specified in this Schedule are expressed in dollars issued by the Eastern Caribbean Currency Authority but may, as occasion requires, be quoted and paid from outside Saint Vincent and the Grenadines in any foreign currency which the Minister for Finance may, by order, specify for the purpose.

THIRD SCHEDULE

Section 15

Fees payable to local representatives and resident trustees for services

1.
 - (a) For registration—
 - (i) of an international company (other than an international insurance company and a superannuation fund), a fee of seven hundred and fifty dollars or one-quarter per centum of the registered capital, whichever is the greater;
 - (ii) of an international insurance company, a fee of one thousand five hundred dollars or one-quarter per centum of the registered capital, whichever is the greater;
 - (iii) of a superannuation fund or a trust, a fee of not less than seven hundred and fifty dollars nor more than two thousand dollars, calculated on the basis of one-quarter per centum of the total amount of the funds thereof;

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CONTENTS

<i>List of Tables</i>	<i>viii</i>
<i>Table of Cases</i>	<i>ix</i>
<i>Table of Statutes and Regulations</i>	<i>xiv</i>
<i>Abbreviations</i>	<i>xxx</i>

Appendices

St. Vincent and the Grenadines	
Confidential Relationship Preservation (International Finance) Act 1996	342
International Companies Act 1982	351
Mutual Assistance in Criminal Matters Act 1993	389
The Proceeds of Crime Act 1997	438
The Proceeds of Crime and Money Laundering (Prevention) Act 2001	439
The Registered Agents and Trustee Licensing Act 1996	560
The St. Vincent and the Grenadines Offshore Finance Authority Act 1996	583
The St. Vincent and the Grenadines Trust Authority Act 1976	594

Bibliography	608

LIST OF TABLES

Table 1	-	Estimates of the Money Laundering Flows Around The World (USbn/year)	68
Table 2	-	The Top 20 Origins of Laundered Money	73
Table 3	-	Top 20 Flows of Laundered Money	74
Table 4	-	The Top 20 Destinations of Laundered Money	75

Table of Cases

A

Arawak Trust Co. Ltd. v Holder CA BVI, Civil Appeal No. 2 of 1994	207
A-G v Lockwood [1842] 9 M & N 378	184
A G of New ZeaLand v Ortiz [1984] AC 1	42, 206
A-G (UK) v Heinemann Publishers Australia Pty Ltd (No.2) [1988] 165 CLR 30	206
A-G (UK) v Wellington Newspapers Ltd [1988] 1 NZLR 129	206
Attorney General for Hong Kong v Lee Wong-Kut[1993] AC 951	245,248,251
Australian Telecommunications Commission v Kreg Enterprises Pty Ltd (1976) 27 FLR 400	233
Ayrshire Pullman Motor Service v IRC (1929) 14 TC 754	43, 208

B

Bahia and San Francisco Rly Co, Re (1868) LR 3 QB 584	160
BCCI(Overseas) Ltd. V Akindele [2000] 4 All ER 22 CA	241
Brokaw v Seatrain UK Ltd [1971] 2 QB 476	206
British Basic Slag Ltd Agreements, Re [1963] 2 All ER 807	237
Broughey v R (1986) 65 ALR 609	233

C

Clapham v Mesurier [1990-91] JLR 5	206
Congreve v IRC [1947] 1 All ER 168	226
Controller and A-G v Davison [1997] 2 NZLR 278	209
Cordas v Peerless Transportation Co 27 NYS 2d 198	190

D

Duke of Westminster v IRC [1935] 19 TC 490	43, 208

E

Egyptian Delta Land and Investment Co Ltd v Todd [1929] AC 1: [1928] 1KB 152: [1928] 14 TC 119	21
Evans Hewitt v Edwards [1940] Ch 629	235
Ensign Tankers (Leasing) Ltd v Stokes [1992] 1 AC 655	44
Euro-Diam Ltd v Bathurst [1990] 1 QB 1	207

Table of Cases

F

Fago Plumbing & Heating Supplies Ltd, Re [1972] 1 OR 259	226
Federal Comr of Taxation v Westgarth (1950) 81 CLR 396	230
Fitzwilliam v IRC [1993] STC 490	43

G

Government of India v Taylor [1955] AC 491: [1955] 1 All ER 292	206
G v S [1990-1991] CILR 341	207
Glicksman v Lancashire & General Assurance Co Ltd. [1927] AC 139	235

H

Hall [1985] Cr App R 260	190
Re the Matter of H [1996] CILR 237	209
Harvard Securities Ltd., Re [1997] 2 BCLC 369	160
Holman v Johnson [1775] 1 Comp 341 343	39, 42, 206, 207, 294
Hussein v Chong Fook Kam [1969] All ER1626	189

I

IRC v Brebner [1967] 43 TC 705	44, 208
In the Matter of Moody Jersey A Settlement [1990] JLR 264	208

J

John Shaw & Sons (Salford) Ltd v Shaw [1935] 2 KB 113	170

L

Lambert and Pinto, Re Sup Ct. Bahamas Case No: 962 Of 1986	206
London Assurance v Mansel (1879) 11 Ch D 363	235
Lord Cable, Re [1997] 1 WLR 7	206
Lyle & Scott Ltd. V Scotts Trustees [1959] 2 All ER 661	235

Table of Cases

M

Major and St. Mellons Rural District Council v Newsport Corp. [1950] 2 All ER 1226	188
Manning v Eastern Counties Rly Co (1843) 13 LJ EX 265	237
Moody Jersey A W Settlement [1990] JLR 264	208

N

Nakkuda Ali v Jayaratne [1951] AC 66	259

P

Panorama Developments (<i>Guilford</i>) Ltd v Fidelis Furnishing Fabrics Ltd [1971] 3 All ER 16 (CA)	170
Pepper v Hart [1993] AC 593	187, 188, 256
Pete Marwick v Davison [1996] JLR 264	209
Peter Buchanan Ltd and Macharg v Mc Vey [1955] AC 516	206

Q

Quazi v Quazi [1980] AC 744	184

R

R v Beedie [1998] QB 356	256
R v Boyesen [1982] 2 All ER 161	226
R v Carcass [2002] 1 WLR 1714	252
R v Charlton [1993] JLR 360	206
R v D.P.P <i>ex parte</i> Kebeline and Others [1999] 3 WLR 972	250, 251
R v Edwards [1975] QB 27 (CA)	248
R v Grange [1974] 1 All ER 928(CA)	240
R v Griffiths (1975) 60 Cr App Rep 14 CA	241, 242
R v Harris [1987] 84 Cr App Rep. 75	240
R v Harrison [1938] 3 All ER 134	259
R v Hunt [1987] AC 352	248
R v Lambert[2001] 3 All ER 577	248, 250, 252, 253
R v Oakes 26 DLR (4 th) 200	246, 250
R v Rintel (1991) 52 A Crim R 209	227
R v Schwartz (1988) 55 D.L.R (4 th) 1 Supp Ct. of Canada(SCC)	248
R v Whyte (1989) 51 DLR (4 th) 481	250, 252

Table of Cases

Regina v Iain Farquar MacMaster [1999] 1 CAR 402; [1999] Crim LR 310	104
River Wright Comr v Adamson (1877) 2 App Cas 743	184
Robertson v Canadian Imperial Bank of Commerce St. Vincent Civ App, No. 4 1990	271
Royal Bank of Canada v Apollo Development (1985) LRC(Comm) 66	208

S

Sheldrake v D.P.P [2003] EWHC 273	250
Salmon v A Salmon & Co Ltd. [1897] AC 22	186
Stack v Church Comrs [1952] 1 All ER 1352	235
State v Coetzee [1997] 2 LRC 593	249
State v Mbatha [1996] 2 LRC 208	249, 250, 251
State of Norways' Applications, Re (Nos. 1 & 2), Re [1990] 723 : [1989] 1 All ER 745	206
Stewart and Olivant and Seadons Contract [1896] 2 Ch 328	231
Stutts v Premier Benefit Capital Trust [1992-93] CILR 605	206

T

Tournier v National Provincial Bank [1924] 1 KB 461	271
Tucker a Bankrupt, Re [1987-1988] Manx LR 8	207

U

US v \$US 4, 255,625.39 (1982) 551 F Supp. 314	58
USA v Inkley [1989] QB 255	206

W

Warner v Metropolitan Police Comr [1968] 2 AC 256	226
Warrington v Leake (1835) 11 Exch 304	230
Walsh v Loughman [1991] 2 VR 351	189
Westminster City Council v Croyalrange [1986] 2 All ER 353	189, 242
Wilkinson v Rogers (1863) 12 WR 119	234
Williams and Humbert Ltd v W & H Trade Marks (Jersey) Ltd [1986] AC 368	206
Wilkinson v Rogers (1863) 12 WR 119	234, 235
Wings v Ellis [1984] 3 All ER 577	240
Woolmington v D.P.P [1935] AC 462	243
Wings Ltd. V Ellis	240

Z

Zamora, The [1921] 1 AC 801	241

Table of Cases

International

AMCO v Republic of Indonesia 89 ILR	284
Asylum Case, The ICJ Reports (1950)	293
Air Services Agreement of 27 th March, 1946 (United States v France), R.I.A.A	
Vol. XVII (1978) 417	309, 311
Barcelona Traction Case (Second Phase) ICJ Reports (1970), 3	288
Certain German Interests in Poland Upper Silesia (Merits) PCIJ Ser A. No. 7	283
Electronica Sicula S.p.A (ELSI) ICJ Reports (1989), 15	309
Fisheries Case ICJ Reports (1951), 191	286
Gabcikovo-Nagymaros Project (Hungary v Slovakia)	
ICJ Reports (1997) 7	37, 308, 309
Island of Palma Case (Netherland v United States) 2 R.I. A.A. (1928) 829	275, 309
Legality of the Use by a State of Nuclear Weapons in Armed Conflict,	
Advisory Opinion, ICJ Reports (1996), 78	279, 299
Nicaragua v United States of America, Merits and	
Judgment, ICJ Reports (1986), p. 14	37, 275, 276, 285, 287, 288, 293, 294
North Sea Continental Shelf ICJ Report (1969) 3	285, 286
Reparation for Injuries Suffered in the Service of the United Nations,	
Advisory Opinion, on the ICJ Reports (1949) 78	278, 279, 280, 281, 282
South Africa in Nambia (South West Africa), Advisory Opinion,	
ICJ Reports (1971) 16	315
South West Africa Cases ICJ Reports (1966) 248	290, 295, 313
SS Lotus Case (France v Turkey) P.C.I.J. Reports, Series A,	
No. 10 [1927] 18	12, 37, 286, 287, 288, 312
Western Sahara Advisory Opinion ICJ Reports (1975), 12	313

Table of Statutes, Treaties and International Instruments

Application of English Law Act 1989

s. 4(1)	12
s. 4(2)	12

Banking Act, cap 63 1990 Revised Laws of SVG

s. 4(2)	154
s. 4(3)	154
s. 4(4)	154

Building Societies Act 1941 (as amended)

s. 4	167
s. 5	167
s. 8	155
s. 26	167
s. 28	155
s. 30	155

Confidential Relationships Preservation (International Finance) Act 1996

s. 2	135
s. 3(1)	136
s. 3(2)	135, 136
s. 3(3)	136
s. 3(3)(b)(iii)	41, 42, 201, 203, 204, 205, 207, 220, 268, 331
s. 3(3)(b)(iv)	194
s. 3(4)	137
s. 4	165

Companies Act 1994

s. 29(2)	160

Cooperative Societies Act 1999

s. 2	155, 166
s. 5(1)	155
s. 5(2)	155
s. 10	166
s. 10(1)(a)(v)	167
s. 12(1)	167
s. 18(2)	168
s. 23(1)	167

Table of Statutes, Treaties and International Instruments

Criminal Code cap 124 of the 1990 Revised Laws of SVG

s. 32	107
s. 85	107
s. 86	107
s. 104	107

Criminal Procedure Code cap 125 of the 1990 Revised Laws of SVG

s. 30(1)(a)	192, 193
s. 30(1)(e)	264

Drug (Prevention Misuse Act) 1988

s. 17(1)	104, 115, 116, 118, 149, 150
s. 17(2)	104, 115, 116, 118
s. 21	104, 105
s. 22	115
s. 28(2)	149
s. 28(3)	150
s. 35 (1)	104, 105
s. 35(2)	104

Drug Trafficking Offences Act 1993

s. 5	110, 111, 116
s. 13(1)	111
s. 21	115, 116, 258
s. 21(1)	150, 180
s. 21(3)	180, 181, 182, 189, 192, 194, 215
s. 21(4)	181
s. 22	258
s. 22(1)	110, 115, 116, 150
s. 22(2)	110, 115, 116, 150, 182
s. 22(3)	110, 115, 116, 183
s. 22(6)	118, 181, 194
s. 25(1)	110
s. 26(1)	111
s. 30	176, 177, 178
s. 30 (1)	111
s. 30(2)	111
s. 31	177, 178
s. 32	176, 177

Table of Statutes, Treaties and International Instruments

Exchange of information Act 2002

s. 2	269
s. 3(2)	269
s. 3(5)	268, 270
s. 4(1)	270, 271
s. 4(2)	270
s. 7(1)	270
s. 7(4)	270
s. 5	270

Extradition Acts of 1870 to 1935 118

Financial Intelligence Unit Act 2001

s. 2(2)	220
s. 3	220
s. 3(1)	220
s. 4(1)	220
s. 4(2)(a)	220
s. 4(2)(b)	220
s. 4(2)(e)	220
s. 4(2)(f)	220

Fiscal Incentives Act 1982 cap 336 of the 1990 Revised Laws of SVG 38

Fugitive Offenders Act of 1970.

s. 31(1)	106, 118
s. 31(2)	106, 118
s. 31(3)	106, 118
s. 4(2)	118
s. 4(3)	119
s. 4(4)	118
s. 4 (5)	118
s. 5	106
s. 6	106

Hotel Aid Act 1969 cap 339 of the Revised Laws of SVG 38

Hotel Aid Act 1988 cap 340 of the Revised Laws of SVG 38

Table of Statutes, Treaties and International Instruments

Income Tax Act 1979

s. 86	174
s. 86(1)	174
s. 86(4)	174

Insurance Act 1970(as amended)

s. 6	155
s. 49	155
s. 63	155

International Banks Act 1996

s. 2	159, 161, 163, 219
s. 3(1)	125, 159
s. 4(2)	45, 132, 161
s. 4(2a)	153, 217, 218
s. 4(4)	132
s. 5	131
s. 5(2)	132
s. 6	163
s. 9	156
s. 10(2)(b)	126
s. 12	162, 163
s. 13	132, 201, 217
s. 13(2)	132
s. 13(3)	41, 165
s. 13(4)	41, 164, 202, 217, 218
s. 15(2)	158
s. 15(2c)	218
s. 17(2)	162, 163
s. 18(1)(g)	45
s. 20	209
s. 20(1)	175
s. 21	175
s. 22	201, 202, 218
s. 22(1)	201
s. 22(2)	201
s. 23(1)	163
s. 26	161
s. 28(1)	156

Table of Statutes, Treaties and International Instruments

International Business Companies Act 1996

s. 3	125, 195
s. 3(1)	195
s. 3(2)	195
s. 5(2)	46
s. 9	195
s. 11	196
s. 12	195
s. 12(1)	195
s. 12(2)	196
s. 12(3)	196
s. 12(4)	196
s. 18(2)	46
s.19 (1)	160
s. 22	70, 160
s. 22(1)	70
s. 22(2)	267
s. 22(4)	267
s. 25	46
s. 26	46
s. 28	125
s. 30(1)	196
s. 39(1)	198
s. 39(2)	198
s. 46	124
s. 71	176
s. 76	124
s. 99	124, 209
s. 99(1)	175
s. 100	209
s. 105	125
s. 105(1)	197
s. 106	125, 126
s. 106(1)	197
s. 112	119, 175
s. 113	175
s. 115	126

International Companies Act 1982(repealed)

s. 2	122, 123
s. 3(4)	120
s. 4	120
s. 4(4)	120

Table of Statutes, Treaties and International Instruments

s. 5(1)	123
s. 5(1)(8)	123
s. 5(1)(9)(e)	123
s. 5(6)	126
s. 5(8)	131
s. 5(2)	132
s. 6	121
s. 6(1)	123, 132
s. 6(2)	132
s. 8	121, 132
s. 9	121
s. 10	121, 131
s. 11	123
s. 12	121
s. 15	121
s. 23(3)	123
s. 24	121
s. 25	123
s. 31	121, 124

International Insurance Act 1998

s. 4	128
s. 7	130
s. 8	130
s. 9	130
s. 11(1)	127
s. 11(2)	127
s. 12(1)	171
s. 12(1)(a)	128
s. 12(1)(b)	128
s. 12(1)(d)	128
s. 12(1)(e)	128
s. 17	129
s. 22(3)	130, 173
s. 22(4)	130
s. 22(6)	130
s. 24	130

Table of Statutes, Treaties and International Instruments

s. 30	129
s. 33(1)	129
s. 35	130
s. 36(1)(a)	129
s. 36(1)(b)	129
s. 36(1)(c)	129
s. 36(1)(d)	129
s. 36(1)(f)	129
s. 42	41
s. 48	209
s. 48(1)	175
s. 49	129

Mutual Funds Act (amended and consolidated) 1998

s. 2	140, 141
s. 8	140, 141
s. 14(1)	141
s. 14(2)	141
s. 8	141
s. 9	141
s. 19	141
s. 22	141
s. 30	42
s. 39	209
s. 39(1)	175
s. 40	142

Mutual Legal Assistance in Criminal Matters Act 1993.

s. 2	145
s. 5(1)	112
s. 6	113, 114
s. 6(1)	137
s. 7	145
s. 8	113, 145
s. 9	113, 145
s. 10	113, 145
s. 11	113, 145
s. 15	113, 145
s. 16	113, 145

Table of Statutes, Treaties and International Instruments

s. 17	145
s. 30	113
s. 30(1)	143
s. 30(2)	143
s. 37	41,113, 114, 143, 144

International Trust Act 1996.

s. 2	133, 169, 170, 171
s. 4	133
s. 6	133
s. 8	133
s. 9	133
s. 9(1)	133
s. 9(2)	133
s. 10	133, 134
s. 11	134
s. 12	134
s. 14	133
s. 15	133
s. 16	133
s. 17	133
s. 21	134
s. 22	134
s. 27	134
s. 30	134
s. 32(1)(i)	134
s. 32(1)(e)	134
s. 32(1)(f)	134
s. 32(2)	134
s. 34(1)	135
s. 36(1)(a)	135
s. 36(1)(b)	135
s. 36(2)	135
s. 56(1)	133
s. 62	209
s. 62(1)	134, 175
s. 62(4)	134
s. 63(1)(b)	266
s. 64	41

Table of Statutes, Treaties and International Instruments

Proceeds of Crime Act 1997 (repealed)

s. 2	138, 139, 152, 258, 264
s. 3	139
s. 8	152
s. 8(1)	253
s.15	139
s. 16	139
s. 16	152
s. 22	139
s. 23	139
s. 28	139
s. 30	139
s. 39	139
s. 40	139
s. 45	139
s. 46	139, 187, 188, 189
s. 46(a)	186
s. 46(d)	184, 186
s. 47	184, 193
s. 47(1)	192
s. 47(2)	192, 193
s. 47(3)	192
s. 47(5)	193
s. 48	139
s. 48(1)	193
s. 49	153
s. 49(1)	138
s. 49(2)	138
s. 51	153, 182, 192, 222, 260, 262
s. 51(1)	139,
s. 51 (1) (am)	139, 182, 189, 190, 191, 192
s. 51(2)	139, 182, 189, 192, 215, 222
s. 51(3)	215
s. 52	184
s. 59	118, 137, 272
s. 59(1)	137
s. 59(2)	184, 257, 264
s. 59(3)	137, 152, 257, 258, 259, 263, 264
s. 60	118, 137, 138, 152, 271

Table of Statutes, Treaties and International Instruments

s. 61	118, 137, 138, 152, 183, 257, 258, 271
s. 61(1)	138, 152
s. 61(2)	138, 265
s. 72(1)	178

Proceeds of Crime and Money Laundering (Prevention) Act 2001

s. 2	225, 226, 228
s. 3	224
s. 6	224
s. 7(5)	255, 256
s. 34	224
s. 41	224, 234, 247, 258, 259, 265
s. 41(1)	224, 234, 235
s. 41(2)	224, 234, 235, 242
s. 41(3)	224
s. 42	225, 247, 258
s. 42(1)	224, 237
s. 42(3)	238, 238
s. 42(4)	237, 245, 246, 251
s. 43	224, 234
s. 43(1)	226, 229, 246, 259
s. 43(2)	227, 246
s. 43(3)	227
s. 43(4)	227
s. 43(5)	230, 246
s. 43(6)	226
s. 43(7)	230, 251
s. 44	225
s. 44(2)	224, 229, 231, 259
s. 44(3)	232
s. 44(4)	232, 247, 251
s. 44(6)	232
s. 45	225
s. 45(1)	232, 247
s. 45(2)	232, 233
s. 45(2)(a)	234, 247
s. 45(2)(b)	234, 247
s. 45(3)	232

Table of Statutes, Treaties and International Instruments

s. 45(4)	233, 234, 247
s. 45(5)	234
s. 46	225, 260, 261, 262, 265
s. 46(1)	238
s. 46(2)	238
s. 46(3)	228
s. 46(4)	239
s. 46(5)	261
s. 46(6)	239
s. 47	252
s. 49(1)	254
s. 50(1)	224, 254
s. 50(2)	254
s. 50(4)	255
s. 63	231, 243, 244, 248, 249, 252, 253, 265
s. 68	137, 263, 271

Registered Agents and Trustee Licensing Act 1996

s. 2	185, 197
s. 4	122
s. 4(2)	124
s. 4(5)	124
s. 5	122, 185
s. 5(1)	124
s. 5(2)	185, 189
s. 5(3)	185
s. 5(6)	124
s. 5(7)	124
s. 5(8)	124
s. 5(10)	124
s. 5(16)	124
s. 6(1)	124
s. 6(2)	124
s. 6(3)	124
s. 6(4)	124
s. 7	122
s. 8	123, 124
s. 9	123, 124
s. 10	124

Table of Statutes, Treaties and International Instruments

s. 11	122
s. 12	122
s. 13	122
s. 14	122
s. 15	124
s. 17	122
s. 18	122
s. 19	122
s. 23(3)	123
s. 24	124
s. 25	123
s. 26	124
s. 27	124
s. 29	124
s. 30	124

St. Vincent and the Grenadines Constitution 1979

s. 6(1)	254
s. 6(6)(ii)	254
s. 8(2)(a)	244, 252, 254
s. 8(5)	255, 256
s. 8(6)	255
s. 8(12)(a)	245, 248, 249, 252
s. 101	244

St. Vincent and the Grenadines Offshore Finance Authority Act 1996.

s. 3	120
s. 4(1)	204
s. 4(3)	203
s. 4(4)	204
s. 8	120, 121
s. 8(2)	158, 203
s. 9	121, 204
s. 10	121, 204
s. 11(1)	119, 120

Table of Statutes, Treaties and International Instruments

St. Vincent and the Grenadines Trust Authority Act 1976.

s. 2	120, 122, 124
s. 3	120
s. 6	120
s. 12	120
s. 24	124

Extradition Treaty 1996

art. 1	118
art. 2(1)	118
art. 2(2)	118

Maritime Counter Drug Operations (The Ship Rider Agreement) 1995

art. 1	116
art. 3	116
art. 8	116

Mutual Legal Assistance in Criminal Matters Treaty (MLAT) 1998.

art. 1	143, 145

Charter of Economic Rights and Duties of States

art. 1	306

UN Declaration of Human Rights 1948 50

Declaration on the Establishment of a New Economic Order

art. 4	275
art. 4(d)	306
art. 4(e)	306

United Nations Charter

art. 2(4)	307
art. 2(7)	275

Table of Statutes, Treaties and International Instruments

International Covenants on Civil and Political Rights 1966

art. 6	313
art. 14(7)	256

International Covenants on Economic Social and Cultural Rights 1966

art. 1	313, 314, 340
art. 4	306
art. 11	313

Single Convention On Narcotics Drugs 1961,

art. 4	104
art. 35	104

UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention)1988

art. 4	111, 114
art. 3	111, 114, 241
art. 5	114
art. 6	114
art. 7,	114

UN Convention Against Transnational Organised Crime 2000

art. 7	337
art. 18	337
art. 26	337
art. 27	337

UN Convention on the Law of Treaties 1969

art. 14	144
art. 2(1)(a)	283
art. 35	283
art. 36	283
art. 38	285
art. 53	314

Table of Statutes, Treaties and International Instruments

The International Law Commissions Articles on State Responsibility

art. 1	312
art. 13	305, 309, 310
art. 40(1)	311
art. 47(1)	312
art. 48	309
art. 49	312
art. 49(1)	309
art. 50	309
art. 50(1)	311
art. 51	309
art. 53	309

The General Agreements in Trades and Services

art. II(1)	315
art. xx	314

IMF Agreement

art. 1	317
art. VIII	320
art. VIII(2)	319, 320, 340
art. IV(3)	318
art. XII(7)	318
art. XII(8)	318
art. XXVI(2)(a)	318
art. XXVI(2)(b)	318
art. XXX(d)	318

The Montevideo Convention of the Rights and Duties of States 1933

art. 1	326

Statute of the International Court of Justice

art. 38	285

Table of Statutes, Treaties and International Instruments

ANTIGUA BARBUDA

Mutual Legal Assistance Treaty

art. 3 207

CAYMAN ISLANDS

Mutual Legal Assistance Treaty 1990

art. 19(3) 207

ENGLAND AND WALES

Drug Trafficking Offences Act 1994
s. 50 104

ST. KITTS AND NEVIS

Proceeds of Crime Act 2000

s. 34(1)(d) 207

Table of Abbreviations

<i>Ibid.</i>	same as above
AC	Appeal Cases
All ER	All England Reports
BCLC	Butterworths Company Law Cases
BSA	Banking Secrecy Act
CERDS	Charter of Economic Rights and Duties of State
CDB	Caribbean Development Bank
CFATF	Caribbean Financial Action Task Force
CIA	Central Intelligence Agency
CILR	Cayman Islands Law Reports
CLR	Commonwealth Law Reports
CRPA	Confidential Relationships Preservation Act
Ch.	Law Reports, Chancery
Crim. L. R.	Criminal Law Reports
CTR	Customer Transaction Reporting
DPMA	Drug (Prevention Misuse) Act
DTOA	Drug Trafficking Offences Act
ECCB	Eastern Caribbean Central Bank
EIA	Exchange of Information Act
EU	European Union
FATF	Financial Action Task Force
FBI	Federal Bureau of Investigation
FINCEN	Financial Crimes Enforcement Network
FIU	Financial Intelligent Unit
FIUA	Financial Intelligent Unit Act
GATS	General Agreement in Trades and Services
GATT	General Agreement in Trade and Tariffs
GDP	Gross Domestic Product
IA	Insurance Act
IBA	International Banks Act
IBC	International Business Company
IBCR	International Business Company Regulations
IBR	International Banks Regulation
IC	International Company
ICA	International Companies Act
ICCPR	International Covenant on Civil and Political Rights
ICESR	International Covenant on Economic, Social and Cultural Rights
ICTA	Income Tax Act
IIA	International Insurance Act
IJIL	Indian Journal of International Law
IMF	International Monetary Fund
ITA	International Trust Act
ITR	International Trust Regulations
ITO	International Tax Organisation

Table of Abbreviations

JIBL	Journal of International Banking Law
J Int P	Journal of International Planning
JLR	Jersey Law Reports
JMLC	Journal of Money Laundering Control
JPM	Journal of Policy Modelling
LLCs	Limited Liability Corporations
MACM	Mutual Assistance in Criminal Matters
MAI	Multilateral Agreement on Investment
MFA	Mutual Funds Act
MFR	Mutual Funds Regulations
MLAT	Mutual Legal Assistance in Criminal Matters Treaty
NCCT	Non-cooperative Countries and Territories
NZLR	New Zealand Law Reports
OECD	Organisation for Economic Cooperation and Development
OECS	Organisation of Eastern Caribbean States
OFA	Offshore Finance Authority
OFC	Offshore Finance Centre
OFSS	Offshore Financial Services Sector
OPEC	Oil Petroleum Exporting Countries
PCA	Proceeds of Crime Act
PCB	Proceeds of Crime Bill
PCIJ	Permanent Court of International Justice
PCMLA	Proceeds of Crime (Money Laundering) Act
PCMLB	Proceeds of Crime and Money Laundering Bill
PCMLR	Proceeds of Crime (Money Laundering) Regulations
QB	Law Reports, Queen's Bench
RATL	Registered Agent and Trustee Licensing
RIAA	Reports of International Arbitral Awards
SIE	Small Island Economies
SVG	St. Vincent and the Grenadines
TC	Reports of Tax Cases
UN	United Nations
UNCLOS	United Nations Conference on the Law of the Sea
UNODCCP	United Nations Office for Drug Control and Crime Prevention
UNTS	United Nations Treaty Series
WLR	Weekly Law Reports
WTO	World Trade Organisation

**CONFIDENTIAL RELATIONSHIPS PRESERVATION
(INTERNATIONAL FINANCE) ACT, 1996**

Arrangement of Sections

Section

- 1. Short Title and commencement**
- 2. Interpretation**
- 3. Policy, application and scope**
- 4. Directions regarding giving in evidence of confidential information**
- 5. Offences and penalties**
- 6. Regulations**
- 7. DPP approval for prosecution**



SAINT VINCENT AND THE GRENADINES

ACT NO 17 OF 1996

I ASSENT

CHARLES J. ANTROBUS

Ag. Governor-General

7th October, 1996.

[L.S.]

AN ACT to provide for the preservation and protection of confidential relationships and information in international finance.

[By Proclamation]

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

1. This Act may be cited as the Confidential Relationships Preservation (International Finance) Act, 1996 and shall come into operation on such date as the Governor-General may by Proclamation appoint in the Gazette.

Short title and commencement

2. (1) In this Act, unless the context otherwise requires -

Interpretation

“bank” and “financial institution” have the meanings ascribed to them in the Banking Act Cap 63 and for purposes of this Act include holders of licenses to carry on an offshore banking business under the International Banks Act, 1996.

“business of a professional nature” includes the professional or other business relationship between a professional person and a principal.

“confidential information” means and includes any and all information and data, whether contained in a

written document, electronic storage medium or otherwise, concerning any property or other thing of value in which the principal has a legal or beneficial interest, that would not be

generally known to the recipient thereof outside of his relationship with that principal.

"criminal" in relation to an offence means an offence country to a criminal law of the State.

"Court" means the High Court of the State or judge thereof.

"given in evidence" and its cognates means a statement, answer a written or oral interrogatory, or testify during or for the purposes of any proceedings.

"international business company" has the meaning ascribed to it the International Business Companies Act, 1996.

"normal course of business" means the ordinary and necessary routine involved in the efficient carrying out of the express or implied instructions of a principal, including compliance with such laws and legal processes of the State as arise out of and in connection therewith, so long as such compliance is not contrary to the public policy expressed in section 3, and the routine exchange of information between or among banks.

"person" means and includes a natural person, a company or other corporation, a trust, a general or limited partnership, an estate of a deceased person, an unincorporated association, or a court or tribunal.

"principal" means a person who has imparted to a professional person, either directly or indirectly, confidential information in the course of the transaction of business of a professional nature.

"proceeding" means any court proceeding, civil or criminal, and includes a preliminary or interlocutory matter leading to or arising out of a proceeding, and specifically includes an arbitration, mediation or similar alternative dispute resolution proceeding or enquiry.

"professional person" means and includes a public or government official, a bank or financial institution, a registered or authorised agent, a trust company, an international business company, a barrister, solicitor or other lawyer, an accountant, an estate agent, an insurer, a broker and every kind of commercial agent and adviser, whether or not answering to the above

descriptions and whether or not licensed or authorised to act in that capacity, and every person engaged by, subordinate to or in the employ or control of such person for the purpose of such persons professional activities.

"property" means and includes every present, inchoate, contingent or future interest or claim, direct or indirect, legal or equitable, positive or negative, in any money, money's worth, real property or personal property (movable or immovable), right (tangible or intangible), choses in action, and securities or charges thereof or with respect thereto, and all documents and things evidencing or embodying the same or relating thereto.

"registered agent" has the meaning ascribed to it in the Registered Agent and Trustee Licensing Act, 1996.

"State" means the State of Saint Vincent and the Grenadines.

3. (1) The public policy of the State is to protect and preserve the confidentiality, and to prevent the unauthorised disclosure, of all confidential information with respect to business of a professional nature which arises in or is created or disseminated within or is transported into the jurisdiction of the State.

(2) Subject to section 3(3), this Act has application to all confidential information with respect to business of a professional nature, which information arises or is held in or is created or disseminated within or is transported into the State (through whatever medium) and to all persons coming into possession of such information, under claim of right or otherwise, at any time thereafter whether they be within the jurisdiction of the State or outside thereof. Without limiting the foregoing, all confidential information shall remain subject to this Act no matter where it is located and regardless of the medium or media in which it is contained or transmitted.

(3) This Act has no application to the seeking, divulging or obtaining of confidential information –

(a) in compliance with the order of the Court pursuant to section 4, so long as such order is final;

(b) by or to –

- (i) any professional person acting in the normal course of business or with the express consent of the relevant principal; provided, any consent of a principal given under the compulsion or direction of a foreign court or other agency or authority shall not constitute consent for purposes of this Act;
- (ii) the Offshore Finance Inspector or a State police officer of the rank of Inspector or above in the ordinary course of an official investigation of an offence committed or alleged to have been committed within the State against the criminal laws of the State, so long as the confidential information sought, obtained or divulged is directly relevant to the investigation of that offence;
- (iii) the Offshore Finance Inspector or a State police officer of the rank of Inspector or above, specifically authorised by the Minister in that connection, investigating an offence against the criminal laws of another state, other than an offence under that other state's tax or revenue laws, committed or alleged to have been committed outside the State which offence, if it had been committed in the State would have been an offence against its criminal laws, so long as the confidential information sought, obtained or divulged is directly relevant to the investigation of that offence;
- (iv) a bank or financial institution in any proceedings, cause or matter (including alternative means of dispute resolution, such as arbitration) when and to the extent to which it is reasonably necessary for the protection of the bank's or financial institution's interest, either as against its customer or as against third parties in respect of transactions of the bank or financial institution for or with its customers; or

(4) In order to safeguard the confidentiality of a statement, answer, or testimony ordered to be given in evidence under section 4(3)(c), the Court may order—

- (a) divulgence of the statement, answer or testimony to be restricted to certain named persons;
- (b) evidence of the confidential information to be taken in camera; and
- (c) reference to the names, addresses and descriptions of any particular persons to be by alphabetical letters, numbers or symbols representing such persons, the key to which shall be restricted to persons named by him.

(5) Every person receiving confidential information by operation of section 4(2) shall be as fully bound by the provisions of this Act as if such information had been entrusted to him as a professional person, in confidence, by a principal, and if the Court otherwise permitting the disclosure of such information has reasonable grounds to believe that each person receiving the same will not observe those provisions, the Court shall prohibit the disclosure.

(6) In considering what order to make under this section, the Court shall weigh the strong public policy expressed in section 3(1) against the following —

- (a) whether such order would operate as a denial of the rights of any person in the enforcement of a just and meritorious claim;
- (b) any offer of compensation or indemnity made to any person desiring to enforce a claim by any person having an interest in the preservation of confidentiality under this Act;
- (c) in any criminal case, the requirements of the interest of justice;
- (d) whether the confidential information sought is directly relevant to an issue in the proceeding or is merely sought to lead to information that is so relevant; and

- (e) whether the proceeding in which the giving of evidence of confidential information is sought is *bona fide* or is ancillary or supplemental to a primary proceeding commenced or to be commenced elsewhere.

(7) The Court hearing an application for directions under this section shall not allow the giving in evidence of confidential information in connection with the enforcement or prosecution of the civil or criminal revenue or tax laws of another state, territory or other political jurisdiction.

(8) Any order rendered by the Court under this section may be appealed by the person originally applying for directions and an order hereunder, and during the pendency of any such appeal, any order or directions of the Court given under this section shall be suspended.

5. (1) Subject to the provisions of section 3(3), any professional person who - Offences and penalties

- (a) being in possession of confidential information however obtained -
 - (i) divulges it; or
 - (ii) attempts, offers or threatens to divulge it; or
- (b) wilfully obtains or attempts to obtain confidential information, or
- (c) gives such information in evidence other than as prescribed by the Court as provided in section 4(3),

shall be guilty of an offence and liable on summary conviction to a fine of fifty thousand dollars and to imprisonment for three years

(2) Whoever commits an offence under section 5(1) and receives or solicits on behalf of himself or another any reward for so doing shall be liable to double the penalty therein prescribed and to a further fine equal to the reward received plus the forfeiture of the reward.

(3) Whoever, being in possession of confidential information, clandestinely, or without the consent of the

principal, makes use thereof, directly or indirectly, for the benefit of himself or another, shall be guilty of an offence and liable on summary conviction to the penalty prescribed in section 5(2), and for that purpose any profit accruing to any person out of any relevant transaction shall be regarded as a reward.

(4) Whoever, being a licensed professional person entrusted as such with confidential information which is the subject of the offence, commits an offence under section 5 subsections (1), (2) or (3) shall be liable to double the penalty therein prescribed.

(5) For the removal of doubt it is declared that subject to section 3(3), a bank or financial institution which gives a credit reference in respect of a customer without first receiving the authorisation of that customer shall be guilty of an offence under section 5 subsections (1) and (4) of this section.

Regulations

6. The Minister for Finance may make regulations for the administration of this Act.

**DPP approval
for prosecution**

7. No prosecution shall be initiated under this Act without the prior approval of the Director of Public Prosecutions of the State.

Passed in the House of Assembly this 27th day of June, 1996.

J. THERESA ADAMS
Clerk of the House of Assembly.

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1996

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LAWS OF SAINT VINCENT AND THE GRENADINES

REVISED EDITION 1990

CHAPTER 104

INTERNATIONAL COMPANIES ACT

Act 12 of 1982
amended by
Act 3 of 1983
*Act 20 of 1987

Printed and published with the authority of the
Government of Saint Vincent and the Grenadines

Numbering of sections

<i>Original number</i>	<i>Comment</i>	<i>Present number</i>
1 – 3	—	1 – 3
4 – 5	a 3/83	4 – 5
6	—	6
7	a 3/83	7
8 – 22	—	8 – 22
23	a 3/83	23
24 – 30	—	24 – 30
31	a 3/83	31
32 – 35	—	32 – 35
First Schedule	—	First Schedule
Second – Fifth Schedules	a 3/83	Second – Fifth Schedules

Index of subsidiary legislation

Booklet 1 International Companies (Registration of Ships) Rules

CHAPTER 104**INTERNATIONAL COMPANIES ACT****Arrangement of sections**

1. Short title.
2. Interpretation.
3. Application of Act and other provisions.
4. Registration procedure.
5. Additional provisions relating to international banking companies.
6. Revocation of licence.
7. Confidentiality of information.
8. Balance sheet.
9. Extension of time limit.
10. Directions to local representative.
11. Refusal of registration.
12. Registrar may require information.
13. Advantages of registration.
14. Exemption of superannuation fund.
15. Acquisition and amalgamation.
16. Power of Comptroller of Inland Revenue to require information.
17. Exemption from exchange control restrictions.
18. Manner of service of notice.
19. Fees payable.
20. Form of memorandum and articles of association.
21. Certificate of registration.
22. Alteration of memorandum and articles of association.
23. Existing international companies to register afresh.
24. Authority to have supervisory power.
25. Cancellation.
26. Misleading advertisement an offence.
27. Winding up.
28. Revival in certain cases.
29. Forfeiture of deposit.
30. Black list to be kept.
31. Supervisory powers of Attorney-General.
32. Immunity of Registrar and Authority.
33. Power to remove difficulties.
34. Rules of Governor-General.
35. Saving.

First Schedule.
 Second Schedule.
 Third Schedule.
 Fourth Schedule.
 Fifth Schedule.

AN ACT to make provision for the formation, registration and regulation of international companies and for the payment of certain consolidated amounts by way of fees and for matters incidental thereto.

Commencement: 20th April 1982

Short title.	1. This Act may be cited as the International Companies Act.
Interpretation.	2. In this Act, unless the context otherwise requires—
Cap. 114.	“Authority” means the Saint Vincent and the Grenadines Trust Authority established under the Saint Vincent and the Grenadines Trust Authority Act; “business of banking” means the business of receiving from the general public in current savings, deposit or other forms of account, money which is repayable by cheque or order, and the funds of which may be invested by way of advances to customers or in any other manner;
Cap. 312.	“Comptroller of Inland Revenue” means the Comptroller appointed under section 3 of the Income Tax Act: Provided that the Comptroller may delegate all or any of his powers under this Act to any other officer, and where it is delegated such other officer shall be deemed to be the Comptroller in relation to the exercise of those powers; “international company” means a company incorporated as an international company or international insurance company or international banking company or an international shipping company and includes a superannuation fund to which the provisions of this Act are applicable; “international banking company” means an international company which carries on the business of banking entirely or in common with any other business; “international insurance company” means an international company which carries on the business of

insurance entirely or in common with any other business or reinsurance;

“international shipping company” means an international company which carries on the business of shipping entirely or in common with any other business;

“licence” means a licence issued or deemed to have been issued under this Act to any person, hereinafter referred to as the “licencee”;

“local representative” means any person by whom the international company is represented in Saint Vincent and the Grenadines for the purposes of this Act and any notice or order or other direction served on him shall be deemed to be a service on the company:

Provided that only a person who is resident in Saint Vincent and the Grenadines and possesses a qualification and status satisfactory in the opinion of the Authority to ensure proper and efficient representation of the international company concerned can be a local representative;

“Minister” means the Minister who is in charge of the portfolio of finance;

“Registrar” means Registrar of the High Court;

“superannuation fund” means a fund, established for the benefit of employees of an international company and their dependants, of which not more than one tenth of the sums payable out of the fund to the beneficiaries at any given time shall be receivable by or for the benefit of persons resident, ordinarily resident or domiciled in Saint Vincent and the Grenadines;

“Trust Authority Act” means the Saint Vincent and the Grenadines Trust Authority Act.

3. (1) The provisions of this Act relating to exemptions from tax shall not apply—

(a) to an international company or a registered trust under the Trust Authority Act if at any time the company or trust is required to distribute to any shareholder or director who is resident in Saint Vincent and the Grenadines more than one tenth of the total value of—

(i) its assets;

(ii) its issued share capital;

(iii) its issued loan capital; or

(iv) the interest, dividends or other consideration in respect of any loan or any preference share;

Application
of Act and
other
provisions.

(b) to any international company or trust engaged in any form or trade other than the business for which it is registered.

(2) An international company whose shares have all been issued to another trust registered under the Trust Authority Act shall not be denied the exemptions from tax by reason only of anything contained in subsection (1) (a).

Cap. 101.

(3) The provisions of the Companies Act shall, in relation to the international companies registered under this Act, apply subject to such modifications as are set out in the First Schedule.

Cap. 97.

(4) Nothing contained in the Assurance Companies Act shall apply with respect to an international insurance company registered under this Act.

Registration
procedure.

4. (1) Any international company may, on application, be registered in accordance with the provisions of this Act:

Provided that, in the case of an international banking company, it shall first obtain a licence and comply with the special provisions before an application for registration is made.

(2) Every application for registration shall be made to the Authority by the local representative of the international company in such form and containing such particulars as may be specified by the Authority and be accompanied by the appropriate fee for registration and the annual fee as specified in the Second Schedule, and in any case where the Authority rejects or returns the application it shall state the reasons for the rejection or the return.

(3) Every international company in respect of which an application for registration is made shall have an authorised capital of not less than ten thousand dollars which shall be arranged to be issued and subscribed, as soon as may be, after registration of the company:

Provided that in the case of an international banking company the provisions of section 5 (3) shall apply.

(4) If after perusal of the papers furnished, consideration of information on hand, and after such enquiry as he may deem fit to make, the Registrar is satisfied that the company may be registered as an international company, he may issue a certificate to that effect.

(5) Every international company registered under this Act shall maintain the principal office of the company in Saint Vincent and the Grenadines and have also a local representative in the country, and the certificate of registration referred to in subsection (4) shall specify the address and other particulars of

that office and of the local representative, and the same shall not be altered without the previous permission of the Registrar.

5. (1) Where it is proposed to form an international company to carry on the business of banking an application shall be made to the Governor-General, through the Authority, for a licence in that behalf, and any application for registration under section 4 (1) shall be made only after obtaining the licence.

Additional provisions relating to international banking companies.

(2) Every application for a licence under subsection (1) shall contain the following particulars—

- (a) name and address of the applicant;
- (b) name of the company;
- (c) name, addresses and nationalities of at least three proposed directors;
- (d) references as to the character and standing of all the proposed directors of the company;
- (e) evidence to support the financial soundness and standing of the applicant;
- (f) evidence to support the financial condition of the proposed directors;
- (g) evidence to support the knowledge and experience in banking of the proposed managing director;
- (h) particulars of the banking activities which the company would be undertaking;
- (i) declaration and evidence to indicate that there are no bad records in any manner incriminating all, or any, of the proposed directors.

(3) Every international banking company in respect of which a licence is applied for shall—

- (a) have an authorised capital of not less than one million dollars; and
- (b) have an issued capital of not less than five hundred thousand dollars which shall be arranged to be subscribed, as soon as may be, after the registration of the company.

(4) Every international banking company registered under this Act shall maintain a separate reserve of not less than five hundred thousand dollars.

(5) Where the application has been made for a licence in relation to an international banking company with a name, logo, trade mark or any other sign which may resemble those registered or used within or without Saint Vincent and the Grenadines, or where such name, logo, trade mark or other sign may wrongly suggest the patronage of, or connection with, some person or

authority within or without Saint Vincent and the Grenadines, the application for a licence shall be refused.

(6) No business of banking shall be transacted by an international banking company from within or without Saint Vincent and the Grenadines on the basis of authority purporting to have been obtained from Saint Vincent and the Grenadines unless—

- (a) the international banking company is in possession of a valid and subsisting licence issued by the Governor-General authorising the company to carry on such business; and
- (b) a certificate of registration has been issued by the Registrar.

(7) Where any international banking company contravenes the provisions of subsection (6), the applicant and his agents, the company and every person who is in charge of the affairs of the company (including the local representative if he is aware of or is a party to the contravention) and its directors, is guilty of an offence and liable to a fine of seventyfive thousand dollars and to imprisonment for three years and, in the case of a continuation of the offence, to a further fine of seven hundred and fifty dollars for each day during which the offence continues.

(8) Where the Governor-General is satisfied, on the report from the Authority or otherwise, that—

- (a) the licence was granted based on any wrong assumption or suppression of any material fact; or
- (b) the granting of the licence or continuation thereof is not conducive to the public interest.

he may, after notice to the international banking company to show cause, refuse to grant the licence or, in the event of its having been granted, withdraw the licence, whereupon the registration of the international company as well shall, unless the Governor-General otherwise directs, be deemed to have been cancelled.

(9) Every licence granted to an international banking company shall be subject to the following conditions, namely—

- (a) the licensee shall conduct the business of banking having due regard to established banking practices;
- (b) the licensee shall maintain a principal office in Saint Vincent and the Grenadines;
- (c) the licensee shall not solicit or receive funds or deposits—
 - (i) which originate from Saint Vincent and the Grenadines; or
 - (ii) from any person resident in Saint Vincent and the Grenadines;

- (d) the licensee shall, at the end of every year, submit a report signed by an approved auditor together with the annual balance sheet and accounts to the Authority;
- (e) it shall be an implied condition that the licence may be suspended or revoked by the Governor-General if there has been any contravention of the conditions of the licence or of the provisions made by or under this Act.

(10) The Authority shall, within a period of not later than three months from the date of receipt of the application, inform the applicant whether or not his application for a licence has been granted.

(11) Upon the grant or renewal of a licence and before the issue thereof, the applicant shall pay to the Authority the fee specified in the Second Schedule.

(12) Upon the issue of a licence, the applicant shall make a security deposit to the credit of the Accountant General the sum of—

- (a) two hundred and fifty thousand dollars where the authorised share capital of the proposed company does not exceed one million dollars; and
- (b) two hundred and fifty thousand dollars plus one percent of that part of the authorised share capital in excess of one million dollars where the share capital is so in excess:

Provided that every deposit made under this subsection shall carry the current fixed deposit interest rates.

(13) The amount available in security deposit in relation to every international banking company shall, in the event of the company ceasing to function without violating any provision of law, be refunded if—

- (a) the company gives notice of six months to the Authority and the Accountant General for the return of the deposit; and
- (b) the Authority and the Accountant General find that there is any balance amount in security deposit, after meeting all claims that the Government or the Authority or any other person may have against the company.

(14) A duplicate copy of every licence granted under this Act shall be filed in the records of the Registrar.

(15) Every international banking company to which a licence has been granted for doing the business of banking shall display its current licence prominently at its office where the business

is transacted.

(16) The address of the principal office of the licensee and such other particulars of the office as the Authority may, from time to time require, shall be furnished to the Authority.

(17) Every international banking company which has obtained a licence, shall, within three months of the grant of the licence, commence its business.

Revocation
of licence.

6. (1) The Minister may, after obtaining a report from the Authority, revoke any licence to do the business of banking granted to any international company under this Act—

- (a) if the licensee becomes bankrupt or goes into liquidation, or is otherwise dissolved;
- (b) if the licensee is carrying on, or does, any act in contravention of the terms of the licence which in the opinion of the Minister is detrimental to the public interest or the interest of the depositors or of other creditors, or contravenes the provisions of this Act or any other law that may be applicable to the international banking company whether the violation is committed within Saint Vincent and the Grenadines or outside it.

(2) The Authority may, pending the decision of the Minister on any recommendation made under subsection (1), suspend the licence after giving the licensee notice thereof:

Provided that before suspending the licence the licensee shall be given an opportunity to make representation and a copy of the suspension order (which shall spell out the grounds of suspension) shall be given to the licensee.

(3) The Authority shall be competent to issue such directives, or make such orders, as may be necessary to compel the licensee to rectify any violation of the terms of the licence or of any provision of this Act.

(4) Where the Governor-General has withdrawn any licence under section 5 (8), or the Minister has revoked any licence under subsection (1) of this section or where the licence has been cancelled under this Act or the Authority has suspended the licence under subsection (2), the Authority may cause notice thereof to be published in the Gazette, and in such other manner as it may deem appropriate.

(5) Where a licence granted to any international company has been suspended, withdrawn or revoked under any of the foregoing subsections, the licensee shall forthwith desist from carrying on any business as an international company and upon any failure to do so it is guilty of an offence and liable to a