

NO. 5 OF 2000

VIRGIN ISLANDS

**DRUG TRAFFICKING OFFENCES
(AMENDMENT) ACT, 2000**

ARRANGEMENT OF SECTIONS

Section

1. Short title.
2. Amendment of section 2 of Act No. 5 of 1992.
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4. Section 5 amended.
5. Insertion of section 5A.
6. Section 6 amended.
7. Section 7 amended.
8. Insertion of section 7A.
9. Section 8 amended.
10. Insertion of sections 8A, 8B, 8C, and 8E.
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12. Section 10 amended.
13. Section 11 amended.
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25. Section 20 amended.
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28. Insertion of section 38A.

I Assent
Francis J. Savage,
CMG, LVO, OBE,
Governor.
19th June, 2000

VIRGIN ISLANDS

No. 5 of 2000

An Act to amend the Drug Trafficking Offences Act, 1992 (No. 5 of 1992).

[Gazetted 13th July, 2000]

ENACTED by the Legislature of the Virgin Islands as follows:

Short title.

1. This Act may be cited as the Drug Trafficking Offences (Amendment) Act, 2000.

Amendment of
section 2 of
Act No. 5 of 1992.

2. Section 2 of the Drug Trafficking Offences Act, 1992 (hereinafter referred to as “the principal Act”) is amended

(a) in subsection (1)

(i) by inserting in the appropriate alphabetical order the following definitions:

“**confiscation order**” means an order

made under section 5 and includes, in particular, an order under that section which is made by virtue of section 8A, 8C or 8D;

“**defendant**” means a person against whom proceedings have been instituted for a drug trafficking offence, whether or not he has been convicted;”;

(ii) by inserting after paragraph (c) of the definition of “drug trafficking” the following:

“(cc) manufacturing or supplying a scheduled substance within the meaning of section 9 of the

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Criminal Justice (International Co-operation) Act, 1993 where the manufacturer or supply is an offence under that section or would be such

an offence if it took place in the Territory ;”;

(iii) by adding after paragraph (d) of the definition of “drug trafficking” the following:

“(e) acquiring, having possession of or using property in circumstances which amount to the commission of an offence under section 23A or which would be such an offence if it took place in the Territory;

(f) conduct which is an offence under section 11 of the Criminal Justice (International Co-operation) Act, 1993 or which would be such an offence if it took place in the Territory;

(g) using a ship for illicit traffic in controlled drugs in circumstances which amount to the commission of an offence under section 15 of the Criminal Justice (International Co-operation) Act, 1993;”;

(iv) by inserting after paragraph (c) of the definition of “drug trafficking offence” the following:

“(cc) an offence under section 23A;”;

(b) in subsection (2) by repealing the entries relating to a “Confiscation order” and a “defendant”;

(c) in subsection (6) by repealing paragraph (f) and

(i) substituting therefor the following:

“(f) Proceeding for a drug trafficking offence are concluded:

(i) when the defendant is acquitted on all counts or, as the case may be, every charge against him is dismissed;

(ii) if he is convicted on one or more counts but the Court decides not to make a

confiscation order against him, when the Court makes That decision;

(iii) if he is sentenced without the Court having considered whether or not to proceed under section 5 in his case, when he is sentenced; or

(iv) if a confiscation order is made against him in those proceedings when the order is satisfied;”; and

(ii) adding immediately after paragraph (f) the following:

“(g) An application under section 8A, 8C or 8D is concluded

(i) if the Court decides not to make a confiscation order against the defendant, when it makes that decision;

(ii) if a confiscation order is made against the defendant as a result of that application, when the order is satisfied; or

(iii) if the application is withdrawn, when the prosecutor notifies the withdrawal of the application to the court to which it was made;

(h) An application under section 13 of the Criminal Justice

No. 8 of 1993

(International Co-operation) Act, 1993
or section 8E is concluded

(i) if the Court decides not to vary the confiscation order in question, when it makes that decision; or

(ii) if the Court varies the confiscation order as a result of the application, when the order is satisfied;

(i) A confiscation order is satisfied when no amount is due under it;

(j) For the purposes of section 18, a confiscation order is also satisfied when the defendant in respect of whom it was made has served a term of imprisonment in default of payment of the amount due under the order.”

Section 4 amended.

3. Section 4 of the principal Act is amended in subsection (3) by deleting the words “sections 7 and 8” and substituting therefor the words “this Act”.

Section 5 Amended.

4. Section 5 of the principal Act is amended

(a) in the opening paragraph of subsection (1) by deleting the words “the Court shall act as follows” and substituting therefor the following:

“then

(a) if the prosecutor asks it is to proceed under this section, or

(b) if the Court considers that, even though the prosecutor has not asked

it to do so, it is appropriate for it to proceed under this section,

it shall act as follows";

- (b) in subsection (1) (c) by deleting the word "or" at the end of sub-paragraph (ii) (a) and inserting after that sub-paragraph the following:

"(aa) making an order involving any payment by him, other than an order under section 27 of the Criminal Code, 1997; or";

- (c) by inserting after subsection (2) the following:

"(2A) The standard of proof required

to determine any question arising under this Act as to

(a) whether a person has benefitted from drug trafficking, or

(b) the amount to be recovered in his case by virtue of this section,

shall be that applicable in civil proceedings.";

- (d) by repealing subsection (3).

Insertion of section 5A.

5. The principal Act is amended by inserting after section 5 the following:

requires

"Postponed determinations.

5A. (1) Where the Court is acting under section 5 but considers that it

further information before determining

(a) whether the defendant has benefitted from drug trafficking, or

(b) the amount to be recovered in the defendant's case,

it may, for the purpose of enabling that information to be obtained, postpone making that determination for such period as it may specify.

(2) More than one postponement may be made under subsection (1) in relation

to the same case.

(3) Unless it is satisfied that there are exceptional circumstances, the Court shall not specify a period under subsection (1) which by itself or, where there have been one or more previous postponements under subsection (1) or (4), when taken together with the earlier specified period or periods, exceeds six months beginning with the date of conviction.

(4) Where the defendant appeals against his conviction, the Court may, on that account,

(a) postpone making any of the determinations mentioned in subsection (1) for such period as it may specify; or

(b) where it has already exercised its powers under this section to postpone, extend the specified period.

(5) A postponement or extension under subsection (1) or (4) may be made

(a) on application by the defendant or the prosecutor; or

(b) by the Court of its own motion.

(6) Unless the Court is satisfied that there are exceptional circumstances, any postponement or extension under subsection (4) shall not exceed the period ending three months after the date on which the appeal is determined or otherwise disposed of.

(7) Where the Court exercises its power under subsection (1) or (4), it may nevertheless proceed to sentence, or otherwise deal with, the defendant in respect of the offence or any of the offences concerned.

(8) Where the Court proceeds under subsection (7), section 5 shall have effect as if

(a) in subsection (1) (b) thereof, the words

from “,” before sentencing” to “offences concerned,” were omitted; and

- (b) in subsection (1) (c) (iii) thereof, after “determining” there were inserted the words “in relation to any offence in respect of which he has not been sentenced or otherwise dealt with”.

(9) In sentencing, or otherwise dealing with, the defendant in respect of the offence, or any of the offences, concerned at any time during the specified period, the Court shall not

- (a) impose any fine on him; or
- (b) make any such order as is mentioned in section 5 (1) (c) (ii) (aa) or (b).

(10) In this section, a reference to

- (a) an appeal includes a reference to an application under section 162 of the Magistrate’s Code of Procedure Act;
- (b) the date of conviction means
 - (i) the date on which the defendant was convicted; or
 - (ii) where the defendant appeared to be sentenced in respect of more than one conviction, and those convictions were not all on the same date,

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the date of the latest of those convictions.”.

Section 6 amended.

6. Section 6 of the principal Act is amended

- (a) in subsection (2) by substituting “shall” for the word “may” and substituting “required assumption” for the words “following” to the end of the subsection;
- (b) by inserting after subsection (2) the following:

“(2A) The Court shall not make any required assumption 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 his case if the assumption were to be made.

“(2B) Where the Court does not apply one or more of the required assumptions, it shall state its reasons.”;

- (c) in subsection (3) by substituting “The required” for the word “Those” and in paragraph (a) (i) thereof by substituting “the defendant” for the word “him”;
- (d) in subsection (4) by adding after “23” the words “or 23A or section 11 of the Criminal Justice (International Co-operation) Act, 1993”.

Section 7 amended.

7. Section 7 of the principal Act is amended

- (a) by repealing subsections (1) and (2) thereof and substituting the following:

“(1) Where the prosecutor asks the Court to proceed under section 5 or applies to the Court under section 8A, 8C, 8D or 8E he shall give the Court, within such period as it may direct, a statement of matters which he considers relevant in connection with

- (a) determining whether the defendant has benefitted from drug trafficking; or

(b) assessing the value of the defendant's proceeds of drug trafficking.

(1A) In this section such a statement is referred to as a "prosecutor's statement".

(1B) Where the Court proceeds under section 5 without the prosecutor having asked it to do so, it may require him to give it a prosecutor's statement, within such period as it may direct.

(1C) Where the prosecutor has given a prosecutor's statement,

(a) he may at any time give the Court a further such statement; and

(b) the Court may at any time require him to give it a further such statement, within such period as it may direct.

(1D) Where any prosecutor's statement has been given and the Court is satisfied that a copy of the statement has been served on the defendant, it may require the defendant

(a) to indicate to it, within such period as it may direct, the extent to which he accepts each allegation 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;

(1E) Where the Court has given a direction under this section, it may at any time vary it by giving a further direction.

(2) Where the defendant accepts to any extent any allegation in any prosecutor's statement, the Court may, for the purposes of

(a) determining whether the defendant has benefited from drug trafficking, or

(b) assessing the value of the defendant's proceeds of drug trafficking,

treat his acceptance as conclusive of the matters to which it relates.”;

- (b) in subsection (3) by substituting “(1D)” for “(2)” and substituting “prosecutor’s statement in question” for “statement”;
- (c) by repealing subsection (5) and substituting therefor the following:

“(5) An allegation may be accepted, or particulars of any matter may be given, for the purposes of this section in such manner as may be prescribed by the rules of court or as the Court may direct.”.

Insertion of section 7A.

8. The principal Act is amended by inserted after section 7 the following:

- | | |
|---|---|
| “Provision of information by defendant. | <p>7A. (1) This section applies where</p> <ul style="list-style-type: none"> (a) the prosecutor has asked the Court to proceed under section 5 or has applied to the Court under section 8C, 8D or 8E; or (b) no such request has been made but the Court is nevertheless proceeding, or considering whether to proceed, under section 5. |
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(2) For the purpose of obtaining information to assist it in carrying out its functions, the Court may at any time order the defendant to give it such information as may be specified in the order.

(3) An order under subsection (2) may require all, or any specified part, of the required information to be given to the Court in such manner, and before such date, as may be specified in the order.

(4) Rules of court may make provision as to the maximum or minimum period that may be allowed under subsection (3).

(5) 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.

(6) Where the prosecutor accepts to any extent any allegation made by the defendant in giving to the Court information required by an order under this section, the Court may treat that acceptance as conclusive of the matters to which it relates.

(7) For the purpose of this section, an allegation may be accepted in such manner as may be prescribed by rules of court or as the Court may direct.”

Section 8 amended.
by

9. Section 8 of the principal Act is amended in subsection (3)

deleting the words “the amount appearing” up to the end of the subsection and adding the following paragraphs:

- “(a) the amount appearing to the Court to be the amount that might be so realised; or
- “(b) a nominal amount, where it appears to the Court (on the information available to it at the time) that the amount that might be so realised is nil.”

Insertion of sections
8A, 8B, 8C, 8D
and 8E.

10. The principal Act is amended by inserting after section 8 the following:

“Powers to be
exercised where
drug
defendant has
died or absconded.

8A. (1) Subsection (2) applies where a person has been convicted of one or more trafficking offences.

(2) If the prosecutor asks it to proceed under this section, the Court may make a confiscation order against the defendant if satisfied that the defendant has died or absconded.

(3) Subsection (4) applies where proceedings for one or more drug trafficking offences have been instituted against a person but have not been concluded.

(4) If the prosecutor asks it to proceed under this section, the Court may make a confiscation order against the defendant if satisfied that the defendant has absconded.

(5) The power conferred by subsection (4) may not be exercised at any time before the end of the period of two years beginning with the date which is, in the opinion of the Court, the date on which the defendant absconded.

(6) In any proceedings on an

application under this section -

- (a) sections 6 (2) and 7 (1D), (2) and (3) shall not apply;
- (b) the Court shall not make a confiscation order against a person who has absconded unless it is satisfied that the prosecutor has taken reasonable steps to contact him; and
- (c) any person appearing to the Court to be likely to be affected by the making of a confiscation order by the Court shall be entitled to appear before the Court and make representations.

Effect of conviction where the Court has
acted under
section 8A. 8B.(1) Where the Court has made a
confiscation order by virtue of section 8A, it
shall,
in respect to the offence or any of the
offences
concerned,

- (a) take account of the order before
 - (i) imposing any fine on him;
 - (ii) making any order involving any payment by him; or
 - (iii) making any order under section 29 of the Drugs (Prevention of Misuse) Act; and
- (b) subject to paragraph (a), leave the order out of account in determining the appropriate sentence or other manner of

dealing with the defendant.

(2) Where the Court has made a confiscation order by virtue of section 8A and the defendant subsequently appears before the Court to be sentenced in respect of one or more of the offences concerned, section 5(1) shall not apply so far as his appearance is in respect of that offence or those offences.

Reconsideration
of case where
be
Court has not
proceeded under
section 5.

8C. (1) This section applies where the defendant has appeared before the Court to be sentenced in respect of one or more drug trafficking offences but the Court has not proceeded under section 5.

(2) If the prosecutor has evidence

(a) which was not available to him when the defendant appeared to be sentenced (and accordingly was not considered by the Court), but

(b) which the prosecutor believes would have had led the Court to determine that the defendant had benefited from drug trafficking if

(i) the prosecutor had asked the Court to proceed under section 5, and

(ii) the evidence had been considered by the Court,

he may apply to the Court for it to consider the evidence.

(3) The Court shall proceed under section 5 if, having considered the evidence, it is satisfied that it is appropriate to do so.

(4) In considering whether it is

appropriate to proceed under section 5, the Court shall have regard to all the circumstances of the case.

(5) Where, having decided to proceed under section 5, the Court proposes to make a confiscation order against the defendant, it shall order the payment of such amount as it thinks just in all the circumstances of the case.

(6) In considering the circumstances of any case the Court shall have regard, in particular, to the amount of any fine imposed on the defendant in respect of the offence or offences in question.

(7) Where the Court is proceeding under section 5, by virtue of this section, subsection (1) (b) of that section shall have effect as if the words "before sentencing or otherwise dealing with him in respect of the offence or, as the case may be, any of the offences concerned," were omitted.

(8) The Court may take into account any payment or other reward received by the defendant on or after the date of conviction, but only if the prosecutor shows that it was received by the defendant in connection with drug trafficking carried on by the defendant or another on or before that date.

(9) In considering any evidence under this section which relates to any payment or reward to which subsection (8) applies, the Court shall not make the assumptions which would otherwise be required by section 6.

(10) No application shall be entertained by the Court under this section if it is made after the end of the period of six years beginning with the date of conviction.

(11) In this section "the date of conviction" means

(a) the date on which the defendant was convicted; or

(b) where he appeared to be sentenced in respect of more than one conviction, and those convictions

were not all on the same date, the date of the latest of those convictions.

Re-assessment of whether defendant has benefited from drug trafficking. not

8D. (1) This section applies where the Court has made a determination (referred to in this section as “the original determination) under section 5 (1) (a) that the defendant has not benefited from drug trafficking.

(2) If the prosecutor has evidence

(a) which was not considered by the Court in making the original determination, but

(b) which the prosecutor believes would have led the Court to determine that the defendant had benefited from drug trafficking if it had been considered by the Court,

he may apply to the Court for it to consider that evidence.

(3) If, having considered the evidence, the Court is satisfied that it would have determined that the defendant had benefited from drug trafficking if that evidence had been available to it, the Court

(a) shall

(i) make a fresh determination under section 5 (1) (a);

(ii) make a determination under subsection (1) (b) of that section of the amount to be recovered by virtue of that section; and

(b) may make an order under that section.

(4) Where the Court is proceeding under section 5, by virtue of this section, subsection (1) (b) of that section shall have effect as if the words "before sentencing or otherwise dealing with him in respect of the offence or, as the case may be, any of the offences concerned" were omitted.

(5) The Court may take into account any payment or other reward received by the defendant on or after the date of the original determination, but only if the prosecutor shows that it was received by the defendant in connection with drug trafficking carried on by the defendant or another on or before that date.

(6) In considering any evidence under this section which relates to any payment or reward to which subsection (5) applies, the Court shall not make the assumptions which would otherwise be required by section 6.

(7) Where the Court

(a) has been asked to proceed under section 8A in relation to a defendant who has absconded, but

(b) has decided not to make a confiscation order against him,

this section shall not apply at any time while he remains an absconder.

(8) No application shall be entertained by the Court under this section if it is made after the end of the period of six years beginning with

(a) the date on which the defendant was convicted; or

(b) where he appeared to be sentenced in respect of more than one conviction, and those convictions were not all on the same date, the date of

the latest of those convictions.

Revision of assessment of proceeds of drug trafficking.

8E. (1) This section applies where the Court has made a determination (referred to in this section as “the current determination”) under section 5 (1) (b) of the amount to be recovered in a particular case by virtue of that section.

(2) Where the prosecutor is of the opinion that the real value of the defendant’s proceeds of drug trafficking was greater than their assessed value, the prosecutor may apply to the Court for the evidence on which the prosecutor has formed his opinion to be considered by the Court.

(3) In subsection (2),

“assessed value” means the value of the defendant’s proceeds of drug trafficking as assessed by the Court under section 8 (1); and

“real value” means the value of the defendant’s proceeds of drug trafficking which took place

(a) in the period by reference to which the current determination was made; or

(b) in any earlier period.

(4) If, having considered the evidence, the Court is satisfied that the real value of the defendant’s proceeds of drug trafficking is greater than their assessed value (whether because the real value was higher at the time of the current determination than was thought or because the value of the proceeds in question has subsequently increased), the Court shall make a fresh determination under section 5 (1) (b) of the amount to be recovered by virtue of that section.

(5) Where the Court is proceeding under section 5, by virtue of this section, subsection (1) (b) of that section shall have effect as if the words “before sentencing or otherwise dealing with him in respect of the offence or, as the case may be, any of the offences concerned” were omitted.

(6) Any determination under section 5 (1) (b), by virtue of this section, shall be by reference to the amount that might be realised at the time when the determination is made.

(7) For any determination under section 5 (1) (b), by virtue of this section, section 6 (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.

(8) In relation to any such determination

(a) section 4 (7), 7 (4) (a) and 8 (2) shall have effect as if for "confiscation order" there were substituted "determination";

(b) section 8 (3) shall have effect as if for "confiscation order is made" there were substituted "determination is made"; and

(c) section 4 (3) shall have effect as if for "a confiscation order is made against the defendant" there were substituted "of the determination".

(9) The Court may take into account any payment or other reward received by the defendant on or after the date of the current determination, but only if the prosecutor shows that it was received by the defendant in connection with drug trafficking carried on by the defendant or another on or before that date.

(10) In considering any evidence under this section which relates to any payment or reward to which subsection (9) applies, the Court shall not make the assumptions which would otherwise be required by section 6.

(11) If, as a result of making the fresh determination required by subsection (4), 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 which was made by reference to the current determination such greater amount as it thinks just in all the circumstances of the case.

(12) Where a confiscation order has been made in relation to the defendant by virtue of section 8A, this section shall not apply at any time while he is an absconder.

(13) No application shall be entertained by the Court under this section if it is made after the end of the period of six years beginning with

(a) the date on which the defendant was convicted; or

(b) where he appeared to be sentenced in respect of more than one conviction, and those convictions were not all on the same date, the date of the latest of those convictions.”.

Section 9 amended.

11. Section 9 of the principal Act is amended by adding after subsection (4) the following:

“(5) Where the 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.”.

Section 10 amended.

12. Section 10 of the principal Act is amended

(a) by repealing subsections (1) and (2) and substituting therefor the following:

“(1) The powers conferred on the Court by sections 11 and 12 are exercisable where.

(a) proceedings have been instituted in the Territory against the defendant for a drug trafficking offence or an application has been made by the prosecutor in respect of the defendant under

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section 13 of the
Criminal Justice
(International
Co-operation) Act,
1993 or section 8A,
8C, 8D, or 8E;

(b) the proceedings have not, or the application has not, been concluded; and

(c) the Court is satisfied that there is reasonable cause to believe,

(i) in the case of an application under section 8E or section 13 of the Criminal Justice (International Co-operation) Act, 1993, that the Court will be satisfied as mentioned in section 8E or, as the case may be, section 13 (2) of that Act; or

(ii) in any other case, that the defendant has benefited from drug trafficking.

(2) The powers conferred on the Court by sections 11 and 12 are also exercisable where

(a) the Court is satisfied that, whether by the laying of an information or otherwise, a person is to be charged with a drug trafficking offence or that an application of a kind mentioned in

subsection (1) (a) is to be made in respect of the defendant; and

(b) the Court is also satisfied as mentioned in subsection (1) (c).”;

(b) by adding after subsection (4) the following:

“(5) Where the Court has made an order under section 11 (1) or 12 (1) in relation to a proposed application by virtue of subsection (2) herein, the Court shall discharge the order if

the application is not made within such time as the Court considers reasonable.

(6) The Court shall not exercise the powers under section 11 (1) or 12 (1) by virtue of subsection (1) herein, if it is satisfied that

(a) there has been undue delay in continuing the proceedings or application in question; or

(b) the prosecutor does not intend to proceed.”.

Section 11 amended.

13. Section 11 of the principal Act is amended in subsection (5) by repealing paragraph (b) and substituting therefor the following:

“(b) shall be discharged on the conclusion of the proceedings or of the application in question.”.

Section 12 amended.

14. Section 12 of the principal Act is amended by repealing subsection (7) and substituting therefor the following:

“(7) In relation to a charging order, the Court

(a) may make an order discharging or varying it; and

(b) shall make an order discharging it

(i) on the conclusion of the proceedings or of the application in question; or

(ii) on payment into Court of the amount payment of which is secured by the charge.”.

Section 14 amended.

15. Section 14 of the principal Act is amended by repealing subsection (1) and substituting therefor the following:

“(1) Where a confiscation order

- (a) has been made under this Act,
- (b) is not satisfied, and
- (c) is not subject to appeal,

the Court may, on application by the prosecutor, exercise the powers conferred by subsections (2) to (6).”

Section 17 amended.

16. Section 17 of the principal Act is amended

- (a) in subsections (1) by inserting after “defendant” the words “or a receiver appointed under section 11 or 14, or in pursuance of a charging order, made”;
- (b) in subsection (3) by substituting “person who applied for it” for the word “defendant”;
- (c) by adding after subsection (4) the following:

“(5) Rules of court may make provision

- (a) for the giving of notice of any application under this section; and
- (b) for any person appearing to the Court to be likely to be affected by any exercise of its powers under this section to be given an opportunity to make representations to the Court.”.

Section 18 amended.

17. Section 18 of the principal Act is amended in subsection (5) by repealing paragraphs (a) and (b) and substituting therefor the following:

“(a) no order shall be made under section 28 or 44
Cap. 8 of the Bankruptcy Act in respect of the making of the gift at any time when

- (i) proceedings for a drug trafficking offence have been instituted against him and have not been concluded;
- (ii) an application has been made in

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respect of the defendant under section 8A, 8C, 8D or 8E or section 13 of the Criminal Justice (International Co-operation) Act, 1993 and has not been concluded; or

- (b) any order made under section 28 or 44 of the Bankruptcy Act after the conclusion of the proceedings or of the application shall take into account any realisation under this Act of property held by the person to whom the gift was made.”.

Section 22 amended.

18. Section 22 of the principal Act is amended

- (a) in paragraph (a) of subsection (2) by deleting the words “, and that, but” up to “contained”;
- (b) by inserting after subsection (2) the following:

“(2A) The Court shall not order compensation to be paid in any case where it appears to the Court that the proceedings would have been instituted or continued if the serious default had not occurred.”.

Insertion of sections
22A, 22B and 22C.

19. The principal Act is amended by inserting after section 22 the following:

- “Compensation, etc. 22A. (1) This section applies where the defendant abscondered or is acquitted.
- (a) the Court has made a confiscation order by virtue of section 8A (4); and

- (b) the defendant is subsequently tried for the offence or offences concerned and acquitted on all counts.

(2) The Court acquitting the defendant shall cancel the confiscation order.

(3) The Court may, on the application of a person who held property which was realisable property, order compensation to be paid to the applicant if it is satisfied that the applicant has suffered loss as a result of the making of the confiscation order.

(4) The amount of compensation to be paid under this section shall be such as

the Court considers just in all the circumstances of the case.

(5) Rules of court may make provision

(a) for the giving of notice of any application under this section; and

(b) for any person appearing to the Court to be likely to be affected by any exercise of its powers under this section to be given an opportunity to make representations to the Court.

(6) Any compensation under this section shall be paid out of the Consolidated Fund.

(7) Where the Court cancels a confiscation order under this section, it may make such a consequential or incidental order as it considers appropriate in connection with the cancellation.

Power to discharge
confiscation order
and order
compensation
where absconder
returns.

22B. (1) This section applies where

(a) the Court has made a confiscation order by virtue of section 8A (4) in relation to an absconder;

(b) the defendant has ceased to be an absconder; and

(2) The Court may, on the application of the defendant, cancel the confiscation order if it is satisfied that

(a) there has been undue delay in continuing the proceedings in respect of which the power under section 8A (4) was exercised; or

(b) the prosecutor 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 the applicant if it is satisfied that the applicant has suffered loss as a result of the making of the confiscation order.

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

(5) Rules of court may make provision

(a) for the giving of notice of any application under this section; and

(b) for any person appearing to the Court to be likely to be affected by any exercise of its powers under this section to be given an opportunity to make representations to the Court.

(6) Any compensation under this section shall be paid out of the Consolidated Fund.

(7) Where the Court cancels a confiscation order under this section, it may make such consequential or incidental order it considers appropriate in connection with the cancellation.

Variation of
confiscation orders
made by virtue of
section 8A.

22C. (1) This section applies where
(a) the Court has made a
confiscation order by
virtue of section 8A
(4); and

(b) the defendant has
ceased to be an
absconder.

(2) If the defendant alleges that

(a) the value of his
proceeds of drug

trafficking in the period by reference to which the determination in question was made (“the original value”), or

- (b) the amount that might have been realised at the time the confiscation order was made,

was less than the amount ordered to be paid under the confiscation order, he may apply to the Court for it to consider his evidence.

(3) If, having considered that evidence, the Court is satisfied that the defendant’s allegation is correct, it

- (a) shall make a fresh determination under section 5 (4); and

- (b) may, if it considers it just in all the circumstances, vary the amount to be recovered under the confiscation order.

(4) For any determination under section 5 by virtue of this section, section 6 (5) shall not apply in relation to any of the defendant’s proceeds of drug trafficking taken into account in determining the original value.

(5) Where the Court varies a confiscation order under this section,

- (a) it shall (if necessary) substitute the appropriate term of imprisonment in accordance with the provisions of section 9; and

- (b) on the application of a person who held property which was realisable property, it may order compensation to be paid to the applicant if

- (i) it is satisfied

that the applicant has suffered loss as a result of the making of the confiscation order; and

(ii) having regard to all the circumstances of the case, the Court considers it to be appropriate.

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

(7) Rules of court may make provision

(a) for the giving of notice of any application under this section; and

(b) for any person appearing to the Court to be likely to be affected by any exercise of its powers under this section to be given an opportunity to make representations to the Court.

(8) Any compensation under this section shall be paid out of the Consolidated Fund.

(9) No application shall be entertained by the Court under this section if it is made after the end of the period of six years beginning with the date on which the confiscation order was made.

Section 23 amended.

20. Section 23 of the principal Act is amended

(a) in paragraph (a) of subsection (3) by substituting "statute or otherwise" for the word "contract";

(b) by inserting after subsection (4) the following:

“(4A) In the case of a person who was in employment at the relevant time, subsections (3) and (4) shall have effect in relation to disclosures, and intended disclosures, to the appropriate person in accordance with the procedure established by his employer for the making of such disclosures, and intended disclosures, to a police officer.

(4B) A police officer may disclose any information received under this section in relation to drug trafficking

- (a) to any law enforcement agency in the Territory;
 - (b) to the Reporting Authority, established pursuant to section 27 of the Proceeds of Criminal Conduct Act, 1997, in connection with any offence that may be committed under that Act or for the purposes of facilitating an investigation under that Act;
 - (c) to any law enforcement agency in any other country, in order
 - (i) to report the possible commission of an offence;
 - (ii) to initiate a criminal investigation respecting the matter disclosed;
 - (iii) to assist with any investigation or criminal proceedings respecting the matter disclosed; or
 - (iv) to generally
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give effect to the purposes of this Act.”.

Insertion of sections 23A, 23B, 23C and 23D.

21. The principal Act is amended by inserting after section 23 the following:

“Acquisition, possession or use of property representing proceeds of drug trafficking.

23A. (1) A person is guilty of an offence if, knowing that any property is, or in whole or in part directly represents, another person’s proceeds of drug trafficking, he acquires or uses that property or has possession of it.

(2) 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 acquires property for inadequate consideration if the value of the consideration is significantly less than the value of the property; and

(b) a person uses or has possession of property for inadequate 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 drug trafficking shall not be treated as consideration for the purposes of subsection (2).

(5) Where a person discloses to a police officer a suspicion or belief that any property is, or in whole or in part directly or indirectly represents, another person’s proceeds of drug trafficking, or discloses to a police officer 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

(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 concerned and the act is done with the consent of the police officer; or

(ii) the disclosure is made after he does the act, but 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 suspicion, belief or matter as is mentioned in subsection (5), but

(b) there is reasonable excuse for his failure to make the disclosure in accordance with

paragraph (b) of that subsection.

(8) In the case of a person who was in employment at the relevant time, subsections (5) and (7) shall have effect in relation to disclosures, and intended disclosures, to the appropriate person in accordance with the 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.

(9) A police officer may disclose any information received under this section in relation to drug trafficking

(a) to any law enforcement agency in the Territory;

(b) to the Reporting Authority, established pursuant to section 27 of the Proceeds of Criminal Conduct Act, 1997, in connection with any offence that may be committed under that Act or for the purposes of facilitating an investigation under that Act;

(c) to any law enforcement agency in another country, in order

(i) to report the possible commission of an offence;

(ii) to initiate a criminal investigation respecting the matter disclosed;

(iii) to assist with any investigation or criminal proceedings respecting the

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matter
disclosed; or

(iv) to generally give effect to the purposes of this Act.

(10) A person guilty of an offence under this section is liable

(a) on summary conviction, to a fine not exceeding fifty thousand dollars or imprisonment for a term not exceeding fifteen years or both.

(11) No police officer or other person shall be guilty of 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 enactment relating to drug trafficking or the proceeds of such trafficking.

Concealing or
transferring
property
representing
proceeds of
drug trafficking.

23B. (1) A person is guilty of 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 drug trafficking, or

(b) converts or transfers that property or removes it from the Territory,

for the purpose of avoiding prosecution for an offence under this Act or the making or enforcement in his case of a confiscation order.

(2) A person is guilty of an offence if, knowing or having reasonable grounds to suspect that any property is, in whole or in part directly or indirectly represents, another person's proceeds of drug trafficking, he

(a) conceals or disguises that property, or

- (b) converts or transfers that property or removes it from the Territory,

for the purpose of assisting any person to avoid prosecution for an offence under this Act or the making or enforcement in his case of a confiscation order.

(3) In subsections (1) and (2), 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.

(4) A person who is guilty of an offence under this section is liable

- (a) on summary conviction, to a fine not exceeding ten thousand dollars or imprisonment for a term not exceeding six months or both; or

- (b) on conviction on indictment, to a fine not exceeding fifty thousand dollars or imprisonment for a term not exceeding fourteen years or both.

Failure to disclose knowledge or suspicion of money laundering.	23C. (1) if	A person is guilty of an offence if
		(a) he knows, or suspects, that another person is engaged in drug money laundering;
		(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.

(2) Subsection (1) 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.

(3) 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.

(4) Where a person discloses to a police officer

- (a) his suspicion or belief that another person is engaged in drug money laundering, or
- (b) any information or other matter on which that suspicion or belief is based,

that disclosure shall not be treated as a breach of any restriction imposed by statute or otherwise.

(5) Without prejudice to subsection (3) or (4), in the case of a person who was in employment at the relevant time, it is a defence to a charge of committing an offence under this section that he disclosed the information or other matter in question to the appropriate person in accordance with the procedure established by his employer for the making of such disclosures.

(6) A disclosure to which subsection (5) applies shall not be treated as a breach of any restriction imposed by statute or otherwise.

(7) In this section, "drug money laundering" means doing any act which constitutes an offence under

- (a) section 23 or 23A, or
- (b) section 11 of the Criminal Justice (International Co-operation) Act, 1993,

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or, in the case of an act done otherwise than in the Territory, would constitute such an offence if done in the Territory.

(8) For the purposes of subsection (7), having possession of any property shall be taken to be doing an act in relation to it.

(9) 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.

(10) 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.

(11) A person guilty of an offence under this section shall be liable

- (a) on summary conviction, to a fine not exceeding ten thousand dollars or imprisonment not exceeding three years or both; or
- (b) on conviction on indictment, to a fine not exceeding twenty-five thousand dollars or imprisonment for a term not exceeding five years or both.

Tipping-off. 23D. (1) A person is guilty of an offence if

- (a) he knows or suspects that a police officer or other person is acting, or is proposing to act, in connection with an investigation which is being, or is about to be, conducted into drug money laundering; 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 is guilty of an offence if

- (a) he knows or suspects that a disclosure ("the disclosure") has been made to a police officer under section 23, 23A or 23C; and

(b) he discloses to any other person information or any other matter which is likely to prejudice any investigation which might be conducted following disclosure.

(3) A person is guilty of an offence if

(a) he knows or suspects that a disclosure ("the disclosure") of a kind mentioned in section 23 (4A), 23A (8) or 23C (5) has been made; and

(b) he discloses to any person information or any other matter which is likely to prejudice any investigation which might be conducted following the disclosure.

(5) Subsection (4) does not apply in relation to any information or other matter which is disclosed with a view to furthering any criminal purpose.

(6) In proceedings against a person for an offence under subsection (1), (2) or (3), it is a defence to prove that he did not know or suspect that the disclosure was likely to be prejudicial in the way mentioned in that subsection.

(7) In this section "drug money laundering" has the same meaning as in section 23C or, in the case of an act done otherwise than in the Territory, would constitute such an offence if done in the Territory.

(8) A person guilty of an offence under this section shall be liable

(a) on summary conviction, to a fine not exceeding fifty thousand dollars or imprisonment for a term not exceeding five years or both; or

(b) on conviction on indictment, to a fine not exceeding one hundred thousand dollars or imprisonment for a term not exceeding fifteen years or both.

(9) No police officer or other person shall be guilty of 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 enactment relating to drug trafficking or the proceeds of such trafficking.

Section 24
amended.

22. Section 24 of the principal Act is amended by inserting after subsection (3) the following:

“(3A) The power to make an Order under this section includes the power to modify (whether by additions, alterations, omissions or otherwise) this Act in such a way as to confer power on a person to exercise a discretion.”.

Section 25
amended.

23. Section 25 of the principal Act is amended in subsection (3) by placing a full-stop after the words “under it” and repealing the words that follow thereafter.

Section 26
amended.

24. Section 26 of the principal Act is amended

(a) in subsection (7) by substituting in the opening paragraph “subsection (1)” for the words “this section”;

(b) by adding after subsection (7) the following:

“(8) An application under subsection (1) or (5) may be made *ex parte* to a judge in chambers.”.

Section 30
amended.

25. Section 30 of the principal Act is amended by deleting “(1)”.

Section 33
amended.

26. Section 33 of the principal Act is amended by inserting after subsection (2) the following:

“(2A) Nothing in subsection (1) makes it an offence for a professional legal adviser to disclose 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.

(2B) Subsection (2A) does not apply in relation to any information or other matter which is disclosed with a view to furthering any criminal purpose.”.

Section 35
amended.

27. Section 35 of the principal Act is amended in subsection (3) by substituting “in” for the word “is” where it first occurs.

Insertion of
section 38A.

28. The principal Act is amended by inserting after section 38
the
following:

“Regulations. 38A. The Governor in Council may make
Regulations for the effective carrying out of
the provisions of this Act.”.

Passed by the Legislative Council this 6th day of June, 2000.

REUBEN VANTERPOOL,
Speaker.

OLEANVINE MAYNARD,
Ag. Clerk of the Legislative Council.