

No. of 2020

VIRGIN ISLANDS

ASSET SEIZURE AND FORFEITURE ACT, 2020

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I Assent

Governor
, 2020

VIRGIN ISLANDS

No. of 2020

A BILL for

An Act respecting the management of certain property seized or restrained in connection with certain offences, the disposition of certain property on the forfeiture thereof and the sharing of the proceeds of disposition therefrom in certain circumstances and to provide for connected matters.

[Gazetted , 2020]

ENACTED by the Legislature of the Virgin Islands as follows:

Short title and commencement.

1. (1) This Act may be cited as the Asset Seizure and Forfeiture Act, 2020.

(2) The provisions of this Act shall come into force on such date as the Minister may, by Notice published in the *Gazette*, appoint.

Interpretation.

2. In this Act unless the context otherwise requires,

“Attorney General” means the Attorney General of the Virgin Islands;

“asset” includes any corporeal or incorporeal property that is the subject of seizure or forfeiture under or pursuant to an enactment or a court order, and includes proceeds of crime;

“designated offence” means an offence specified in Schedule 1;

Schedule 1

“Fund” means the Asset Seizure and Forfeiture Fund established under section 14(1);

“management order” means an order made under subsection 7(1);

“Minister” means the Minister responsible for Finance;

“offence-related property” means any property, within or outside the Virgin Islands

- (a) by means of or in respect of which a designated offence is committed;
- (b) that is used in any manner in connection with the commission of a designated offence; or
- (c) that is intended for use for the purpose of committing a designated offence;

“prescribed” means prescribed by the regulations;

“proceeds of crime” means

- (a) proceeds of a serious offence;
- (b) any property that is derived, directly or indirectly, by any person from any act or omission that occurred outside the Virgin Islands and would, if it had occurred in the Virgin Islands have constituted a serious offence;

“proceeds of disposition” means, in the case of forfeited property other than money, the proceeds of sale on the disposition of the property, and in the case of forfeited property that is money, the amount of the forfeited money;

“restrained property” means any property that is the subject of a restraint order made under any of the enactments specified in Schedule 1;

Schedule 1

“serious offence” means any offence triable on indictment or hybrid offences from which a person has benefited including any of the offences specified in Schedule 1;

“seized property” means any property seized under the authority of any of the enactments specified in Schedule 2, in connection with any serious offence.

Schedule 2

Purposes of Act.

3. The purposes of this Act are

- (a) to authorise the Committee to provide consultative and other services to law enforcement agencies in relation to the seizure or restraint of property in connection with designated offences, or property that is or may be proceeds of crime or offence-related property;
- (b) to authorise the Committee to manage certain property seized or restrained pursuant to a restraint order made under any of the enactments specified in Schedule 1 or any other enactment;
- (c) to authorise the Committee to manage and dispose of property referred to in paragraph (b), and property that is proceeds of crime or offence-related property, when such property is forfeited to the Crown; and
- (d) where property referred to in paragraph (c) is forfeited to the Crown and is disposed of, to provide authority for the sharing, in certain circumstances, of the proceeds of disposition therefrom with the law enforcement agencies that participated in the investigations of the offences which led to the forfeiture or the imposition of a fine.

Establishment of the Asset Seizure and Forfeiture Management Committee and its functions.

4. (1) There is established by this Act an Asset Seizure and Forfeiture Management Committee (in this Act referred to as the “Committee”).

(2) The Committee shall comprise the following persons:

- (a) a Chairperson, who shall be the Financial Secretary;
- (b) the Managing Director of the Financial Services Commission;
- (c) the Commissioner of Police;
- (d) the Commissioner of Customs;
- (e) the Director of the Financial Investigation Agency;
- (f) the Director of the International Tax Authority; and
- (e) Permanent Secretary, Office of the Premier.

- (3) The Committee shall be responsible for
- (a) providing advice to the Minister in respect of the carrying out by the Minister of any of his functions under this Act;
 - (b) ensuring that any assets provided under the Act are used in accordance with the purposes and functions outlined in the Act and accounted for in a clear and transparent manner; the Committee may require such reports and accounts as it considers necessary for the purposes of ensuring its proper oversight with respect to the funds provided;
 - (c) reviewing and making determinations in relation to financial statements prepared and presented by the Financial Secretary; the Financial Secretary shall present the financial statements to the Asset Seizure and Forfeiture Committee for its review and advice; and
 - (d) performing such other functions as would be consistent with the provisions of the Act and the objectives and purpose of the Fund.

(4) Schedule 3 shall have effect with respect to the meetings of the Committee. Schedule 3

5. (1) In addition to the responsibilities of the Committee under section 4, the Committee, on taking possession or control property that is forfeited to the Crown, shall be responsible for the custody and management of all that property Committee to be responsible for management of property.

(2) Where property referred to in subsection (1) that is in the possession or under the control of the Committee is forfeited to the Crown, the Committee shall continue to be responsible for the custody and management thereof until the property is disposed of.

(3) In addition to being responsible for the custody and management of property referred to in subsections (1) and (2), the Committee shall be responsible, until the property is disposed of, for the custody and management of all proceeds of crime, offence-related property and property that was the subject of an application under any enactment that were forfeited to the Crown and that were not in the possession or under the control of the Committee prior to their forfeiture.

6. (1) Every person who has control of any property that is subject to a management order issued under section 8 (1) shall, as soon as practicable after the order is issued, transfer the control of the property to the Committee, except Transfer of property.

for any property or any part of the property that is needed as evidence or is necessary for the purposes of an investigation.

(2) Where the Committee takes control of property pursuant to subsection (1) and detains the property in a location the Committee shall prepare a report in the prescribed form identifying the location of the property and cause the report to be filed in the prescribed manner with the clerk of the court that issued the warrant.

Application for management order.

7. (1) The Attorney General, or any other person with the written consent of the Attorney General, may apply to any judge for a management order in respect of any seized property.

Schedule 1

(2) An application for a management order in respect of any seized property may be heard at the same time as an order is sought under any of the enactments specified in Schedule 1, in respect of the seized property.

Management order.

8. (1) Where an application for a management order is made, the judge hearing the application shall make an order allowing the Committee to take possession and control of, and to manage or otherwise deal with, the seized property referred to in the order if the judge is of the opinion that the seized property may be required for the purposes of any provision respecting forfeiture in any of the enactments specified in Schedule 1.

Schedule 1

(2) The power of the Committee in respect of any seized property that is the subject of a management order includes

- (a) in the case of perishable or rapidly depreciating property, the power to make an interlocutory sale of that property; and
- (b) in the case of property that has little or no value, the power to destroy that property.

Application for destruction order.

9. (1) Before the Committee destroys property that has little or no value, the Committee shall apply to a court for a destruction order.

(2) Before making a destruction order in relation to any property, a court shall require notice in accordance with subsection (3) to be given to, and may hear, any person who, in the opinion of the court, appears to have a valid interest in the property.

(3) A notice shall

- (a) be given or served in the manner that the court directs or that may be specified in the rules of the court; and

(b) be of any duration that the court considers reasonable or that may be specified in the rules of the court.

(4) A court may order that the property be destroyed if it is satisfied that the property has little or no value, whether financial or other.

(5) A management order ceases to have effect when the property that is the subject of the management order is returned in accordance with the law to an applicant therefor or forfeited to the Crown.

10. (1) A management order may be subject to such conditions as the judge making the order thinks fit.

Conditions.

(2) The Asset Seizure and Forfeiture Management Committee may at any time apply to a judge to cancel or vary any condition to which a management order is subject.

11. In carrying out the purposes of this Act, the Committee may

Powers of the Committee.

(a) provide consultative and other services to law enforcement agencies in relation to the seizure or restraint of any property in connection with designated offences, or any property that is or may be proceeds of crime or offence-related property;

(b) subject to any other Act, manage any property referred to in any of section 5(1) to (3) in such manner as the Committee considers appropriate including, without restricting the generality of the foregoing, by advancing money at a commercial rate of interest to

(i) maintain the ongoing operation of the property;

(ii) satisfy the terms of any order to which the property is subject; or

(iii) make improvements to the property to preserve the property and its economic worth;

(c) dispose of any property referred to in section 4 that is forfeited to the Crown;

(d) where property referred to in section 5 is forfeited to the Crown, share the proceeds of disposition therefrom in accordance with this Act, regulations and any agreement entered into pursuant to section 12 or 13;

- (f) at the request of the Attorney General, receive from foreign governments all moneys that are to be transferred to the Virgin Islands pursuant to any agreement entered into pursuant to section 13 and share those moneys in accordance with this Act or regulations;
- (g) contract for the services of any person; and
- (h) do any other thing that the Committee may consider to be incidental to, or necessary or expedient for, carrying out the purposes of this Act.

Sharing within the Virgin Islands.

12. Where a law enforcement agency in the Virgin Islands has participated in the investigation of an offence that leads to the forfeiture to the Crown of property that is or was the subject of a management order issued under section 8(1), the Committee shall make recommendation to Cabinet to increase the Agency's share from the Cabinet's percentage allocation in Schedule 2 of the Act.

Sharing outside the Virgin Islands

13. The Attorney General may, with the approval of the Cabinet and in accordance with the regulations, enter into an agreement with the government of any foreign state respecting the reciprocal sharing of the proceeds or disposition of property forfeited to the Crown and the proceeds arising from the disposition of property by that foreign state and, if law enforcement agencies of that foreign state, or of the Virgin Islands, as the case may be, have participated in the investigation of the offence or offences that led to the forfeiture of the property or if the law enforcement agencies' participation led to the forfeiture of the property.

Asset Seizure and Forfeiture Fund.

14. (1) There is established a Fund to be known as the Asset Seizure and Forfeiture Fund which Fund shall be under the administration and control of the Committee.

- (2) There shall be paid into the Fund
 - (a) proceeds of disposition of forfeited property or any amount recovered as the proceeds of disposition of that forfeited property;
 - (b) money paid to the Government of the Virgin Islands by a foreign jurisdiction in respect of confiscated assets, whether under an agreement or arrangement providing for mutual assistance in criminal matters or otherwise.
- (3) There shall be deducted from all deposits to the Fund
 - (a) any administrative fee legally and duly payable to any person; and

- (b) any sums payable under section 13.
- (4) All monies standing in the account of the Fund shall be divided as specified in Schedule 2 and shall be used only for the purpose for which they were received. Schedule 2
- 15.** Subject to the regulations, the Committee may indemnify any person referred to in section 11(g) against any claim made against the person in respect of anything done, or omitted to be done, in good faith by the person in relation to any property referred to in any of sections 5(1) to (3) that is in the possession or under the control of the Committee. Indemnity.
- 16.** The Committee shall establish, with one or more authorised deposit taking institutions, such accounts as it thinks appropriate for the funds received from the disposal of assets seized and or forfeited. Committee to establish accounts.
- 17.** The Auditor General shall, with the facilitation of the Committee, examine the records of account, books or other records of the Committee in respect of any financial year or other period. Auditor General to examine accounts, books or other records.
- 18.** The Minister may, by order published in the *Gazette*, amend the Schedules. Amendment of Schedules.
- 19.** The Minister, with the approval of Cabinet, may make regulations Regulations.
- (a) respecting the disposal by the Committee of any property referred to in sections 5(1) to (3) on the forfeiture thereof;
- (b) respecting, for the purposes of sections 12 and 13, the sharing of the proceeds of disposition of any property referred to in sections 5(1) to (3) that is forfeited to the Crown, including, without restricting the generality of the foregoing, regulations respecting the amounts to be shared, or the manner of determining those amounts, and the times at which and the manner in which those amounts shall be shared;
- (c) determining, for the purposes of paragraph 14(2)(a), the amounts that may be deducted from the proceeds of disposition of property for the purpose of calculating the net proceeds thereof, and the manner of determining those amounts;
- (d) respecting the indemnity that may be granted pursuant to section 15 and the terms and conditions under which that indemnity may be granted;

- (e) prescribing anything that by this Act is to be prescribed;
and
- (f) generally, for the better carrying out the purposes of this Act.

SCHEDULE 1

[Sections 2, 7 and 8]

Designated offences

Drug Trafficking Offences Act, 1992

Proceeds of Criminal Conduct Act, 1997

Drug (Prevention and Misuse) Act, 1991

Criminal Justice (International Cooperation) Act, 1993

Financial Investigation Agency Act, 2003

The Police Act CAP 165, 1991 (rev.)

The Criminal Code, 1997

Customs Duties and Management Act, 2010

The Post Office Act CAP 169, 1991

Post Office Offences Act CAP 56, 1991

Aviation Security Act, 1982 (U.K.)

Air Navigation Overseas Territories Order

Civil Aviation Act, 1949 (U.K.)

The Fisheries Act, 1997

The Fisheries Regulations, 2001

Mutual Legal Assistance Tax Matters Act, 2003

Mutual Legal Assistance (USA) Act, 1990

The Terrorist Asset-Freezing etc. Act 2010 (Overseas Territories) Order 2011

The Anti-terrorism (Financial and Other Measures) (Overseas Territories) Order 2002

SCHEDULE 2

[Section 14]

Law Enforcement Agencies:	
Royal virgin Islands Police Force	5%
Financial Investigation Agency	5%
Customs	5%
Legal and Court Sector	15%
Education	20%
Health Services	
Asset Seizure and Management Committee	10%
Any other category (including the Financial Services Commission in cases where the Commission has participated in investigation resulting in confiscation) as Cabinet may in its discretion determine	20%

SCHEDULE 3

[Section 4(4)]

PROVISIONS RELATING TO THE MEETINGS OF THE ASSET SEIZURE AND FORFEITURE MANAGEMENT COMMITTEE

1. (1) The Committee shall meet at least once every quarter at such place and time as may be designated by the Chairperson.

Meetings of the Board.

(2) At every meeting of the Committee, the Chairperson shall preside.

(3) The quorum of the Committee shall be three.

(4) At any meeting for the conduct of its business, the Committee shall take its decision by a majority vote of the members present and in the event of a tie the Chairperson shall have a casting vote.

(5) The Chairperson shall at any time convene a special meeting of the Committee upon receipt of a request signed by at least three members calling upon him to do so, and such meeting shall be held not later than fourteen days after receipt of the request.

(6) No act or proceeding of the Committee shall be invalid by reason only of the existence of a vacancy among its members or of any defect in the appointment of a member.

(7) Notwithstanding anything contained in this paragraph, the Chairperson may, in any matter he or she considers exceptional, make arrangements for a decision of the Committee to be taken on such matter through a process of consultation without the need for an actual meeting.

(8) Subject to the provisions of this Act, the Committee shall establish its own rules of procedure for the purposes of the conduct of its meetings.

2. The Committee may establish such committees, which may include persons who are not members of the Committee, as it thinks fit on such terms and conditions as the Minister, with the approval of Cabinet, may determine, to assist in the performance of its functions.

Ad hoc committees.

Passed by the House of Assembly this day of , 2020.

Speaker.

Clerk of the House of Assembly.

OBJECTS AND REASONS

This Bill seeks to make provision respecting the management of certain property seized or restrained in connection with certain offences, the disposition of certain property on the forfeiture thereof and the sharing of the proceeds of disposition therefrom in certain circumstances and to provide for connected matters.

Clauses 1 and 2 would concern the short title, commencement and the definition of the terms used in the Bill.

Clause 3 would concern the purposes of this Act which would include the authorisation of the Minister to provide consultative and other services to law enforcement agencies in relation to the seizure or restraint of property in connection with designated offences, or property that is or may be proceeds of crime or offence-related property.

By clause 4, the Minister would be responsible for the custody and management of property that is forfeited to the Crown and shall be so responsible until the property is fully disposed of.

By clause 5, every person who has control of any property that is subject to a management order under the Act would be required, as soon as practicable after the order is issued, to transfer the control of the property to the Minister, except for any property or any part of the property that is needed as evidence or is necessary for the purposes of an investigation.

Clauses 6 and 7 would concern the obtaining of a management order and the taking of possession and control of, and the management or otherwise dealing with, the seized property referred to in the order, by Minister.

Clause 8 would concern the making of an application to court (a destruction order) for the destruction of property that has little or no value and, before making a destruction order in relation to any property, a court would require notice to be given to, and may hear, any person who, in the opinion of the court, appears to have a valid interest in the property.

Clause 9 would concern conditions that the court may attach to a management order and, clause 10 would concern the Minister's powers under the Act.

Clauses 11 and 12 would concern the sharing of the proceeds from the seized property by law enforcement agents whether in or outside the Virgin Islands and, the powers of the Attorney General, with the approval of the Cabinet to enter into agreements with the governments of foreign state or territories for the reciprocal sharing of the proceeds or disposition of property forfeited to the Crown.

By clause 13, there is established a Fund to be known as the Seized Property Fund which Fund shall be under the administration and control of the Minister and into which shall be paid proceeds of disposition of forfeited property or any amount

recovered as the proceeds of disposition of that forfeited property and money paid to the Government of the Virgin Islands by a foreign jurisdiction in respect of confiscated assets. There shall be deducted from all deposits to the Fund any administrative fee legally and duly payable to any person and any sums payable under clauses 11 and 12. All monies standing in the account of the Fund shall be divided as specified in Schedule 2.

Clauses 14 would concern the establishment of an Asset Seizure and Forfeiture Fund. Clause 15 would concern the indemnity of persons in respect of anything done, or omitted to be done, in good faith by those persons under the Bill.

Clause 16 concerns the establishment of accounts in a banking institution for the funds received from the disposal of assets seized and or forfeited.

Clause 17 would concern the Auditor General examination of the records of accounts, books or other records of the Committee.

Clause 18 would concern the powers of the Minister to amend the Schedules and clause 19 concerns the power of the Minister to make regulations, with the approval of Cabinet.

Minister for Finance