

# **THE PROCEEDS OF CRIME ACT 2007**

- **An Act to Provide for the investigation, identification and recovery of the proceeds of crime and for connected matters.**

# **Appointed Date**

- **The Act came into operation on**
- **May 30, 2007**

# **“Authorized Officer”**

- **Constable**
- **Customs Officer**
- **An officer of the Agency**
- **Any other person so designated by the Minister**

# **Criminal Lifestyle**

- **A Defendant is taken to have a criminal lifestyle if the offence concerned:**
- **Is specified in the Second Schedule**

## **Second schedule – Sects from**

- **Dangerous Drugs Act**
- **Offences Against the Person Act**
- **Firearms Act**
- **Forgery Act**
- **Intellectual property**
- **Larceny Act**
- **Terrorism Prevention Act**

# **criminal lifestyle cont'd**

- **conduct forming part of a course of criminal activities, from which the defendant has benefited**

**OR**

- **Is committed over .... at least one month and the defendant has benefited from the conduct that constitutes the offence**

# **Course of Criminal Activity**

- **in the proceedings in which he was convicted, he was also convicted of at least one other offence consisting of conduct from which he has benefited; or**
- **Within ten (10) years ending when the proceedings were started (the earliest day after conviction) he was convicted on at least two separate occasions of an offence consisting of conduct from which he has benefited**

# **Criminal Lifestyle Assumptions**

- **If the Court determines that the defendant has a criminal lifestyle it shall make assumptions for the purpose of determining benefit from that general criminal conduct; and**
- **Identify the benefit from that conduct**

**Sec 8 (1)**



# **Assumptions are made**

**On:**

- **Any property transferred to the defendant at any time after the relevant day or after the date conviction was obtained by him as a result of his general criminal conduct; and**
- **At the earliest time the defendant appeared to have held it.**

# Cont'd

- any expenditure incurred by the defendant .. after the relevant day was met from property obtained by him as a result of his general criminal conduct;  
and
- for the purpose of valuing any property obtained, or assumed to have been obtained, ... he obtained the property free of any other interests in it.

# **Hearsay Evidence**

**Shall not be excluded in  
restraint proceedings**

**Sec (37) (1)**

# **Part IV**

- **Civil Recovery of Proceeds**
- **Balance of Probability**

# **Unlawful Conduct**

- **Conduct that occurs in, and is unlawful under the criminal laws of Jamaica; or**
- **Conduct that occurs in a foreign country contrary to their criminal laws; and if occurred in Jamaica would be unlawful under our criminal laws.**

# **Criminal Conduct**

- **Direct & Circumstantial evidence**
- **Accomplice Evidence**
- **Admissions**
- **Expert Evidence**
- **Audit Trails**

# **Cont'd**

- **Unlikelihood of legitimate origin**
- **Absence of Commercial or Domestic Logic**
- **Evidence of Bad Character**
- **Contamination of Cash**
- **Packaging of Proceeds**

# **Cont'd**

- **Denomination of Notes**
- **Lies by the defendant**
- **False Identities, addresses, documents etc.**
- **Overall criminal enterprise**



# **Recoverable Property**

- **Is the portion of mixed property that represents property obtained through unlawful criminal conduct;**
- **Is property accrued in respect of the recoverable property**

# Tracing

Property can be traced into other property if the original property is sold and new property bought and it can be traced into the hands of third parties where it represents recoverable property. However, it will cease to be recoverable property if the person buying the property does so in good faith and is ignorant of the fact it was recoverable property. (Mens Rea is important)

# **Cash**

- **Cash means the following items found at any place in Jamaica:**
  - Notes and coins in any currency;**
  - Postal Orders;**
  - Cheques of any kind including travellers' cheques;**
  - Bankers' drafts;**
  - Bearer bonds and bearer shares;**
  - Monetary instruments of any kind designated by the Minister.**

# **Search for cash**

- **If an authorized officer has grounds for suspecting that a person is carrying cash may so far as he thinks necessary or expedient require the person suspected of carrying the cash-**
- **To permit a search of his person or any article in his possession**

# **Detention of Person**

- **The authorized officer may detain the person who is to be searched so long as it is necessary for the exercise of those powers (search person)**

- **NB. The personal search is exercisable as far as is required for the purpose of finding the cash (5)**

# Cash Seizure

- **An authorized officer may seize any cash if he has reasonable grounds for suspecting that the cash is -**
  - **Recoverable property; or**
  - **Intended by any person for use in unlawful conduct**
  - **(in the case of commingling of funds the whole of the cash may be seized)**

# **Cross Border**

## **Movements of Cash**

- **Persons who transport or causes the transportation of cash or bearer instruments above or equal to US \$10,000 must report before hand to the designated authority.**
- **Its an offence to fail to so do (J\$10,000 /3mts. or both)**

# **Forfeiture of Detained Cash**

- **Whilst detained the authorized officer may apply for forfeiture in the RM Court of the whole or part there of**
- **If satisfied the RM may order forfeiture (consolidated fund)**
- **Aggrieved party can appeal within 30 days of the order**



<b>Year</b>	<b>J\$</b>	<b>US\$</b>	<b>CAD\$</b>	<b>Sterling</b>
<b>June - Dec 2007</b>	JMID 4,436,758	\$3,557,831	CAD 85,850	£183,756
<b>2008</b>	JMID 1,158,500	\$1,435,270	Nil	£65,260
<b>2009 (6/10/09)</b>	JMID 18,964,386	\$614,213	CAD 24,920	£159,245
<b>Total</b>	<b>JMID 24,559,644</b>	<b>\$5,607,314</b>	<b>CAD 110,770</b>	<b>£408,261</b>

# Currently 179 pending

- J \$23M
- US \$436K
- CAN \$24K
- Sterling £144K
- Euro €46.6k
- BAR \$38K
- TT \$3278

## **Categories for Civil Recovery**

- **Deceased Defendants**
- **Acquitted Defendants**
- **Failed Confiscation Hearings**
- **Defendants not within the Jurisdiction**
- **Property whose Owner is Uncertain**
- **Defendants Unprosecutable due to Insufficient Evidence**

**Disclosure Orders**

**Customer Information**

**Account Monitoring Order**

# **Visual Identification Unit**

- **E Fit artists impressions**
- **Video Identification**
- **Witness Albums**
- **Custody database**

# **Locations**

- **Kingston Central**
- **St Catherine (Linstead/Portmore)**
- **Mandeville**
- **Ocho Rios**

**To follow early 2010**

- **Freeport, Montego Bay**

# Video Parade