

EASTERN CARIBBEAN SUPREME COURT

CIVIL PROCEDURE RULES

PRACTICE DIRECTION

No. 6 of 2020

CIVIL RECOVERY PROCEEDINGS

This Practice Direction is made pursuant to Rule 4.2(2) of the Eastern Caribbean Supreme Court Civil Procedure Rules 2000 and is applicable to **Saint Vincent and the Grenadines**.

1. Introduction

1.1 Section I of this practice direction contains general provisions about proceedings in the High Court under Part III of the *Proceeds of Crime Act No. 38 of 2013, Chapter 180, Laws of Saint Vincent and the Grenadines Revised Edition*, as amended by the *Proceeds of Crime (Amendment) Act, No. 18 of 2017*.

1.2 Section II of this practice direction contains provisions about applications to the High Court under Part III of the Act for –

- (a) a recovery order;
- (b) a property freezing order;
- (c) an interim receiving order;
- (d) receiver in connection with a property freezing order; and
- (e) the registration of external orders

1.3 Section III of this practice direction contains provisions about applications to the High Court under Part V of the Act for any of the following types of order or warrant in connection with a civil recovery investigation –

- (a) a production order;

- (b) a search and seizure warrant;
- (c) a disclosure order;
- (d) a customer information order; and
- (e) an account monitoring order.

1.4 Section IV of this practice direction contains further provisions about applications for each of the specific types of order and warrant listed in paragraph 1.3 above.

1.5 In this practice direction –

- (1) ‘the Act’ means the Proceeds of Crime Act No. 38 of 2013 as amended by the Proceeds of Crime (Amendment) Act, No. 18 of 2017;
- (2) ‘CPR’ means the Eastern Caribbean Supreme Court Civil Procedure Rules 2000 and any amendments thereto;
- (3) ‘civil recovery proceedings’ means proceedings under Part III of the Act;
- (4) ‘external order’ means an order generated by another country or jurisdiction outside of St. Vincent and the Grenadines;
- (5) ‘interim receiving order’ has the meaning set out in section 82(2) of the Act;
- (6) ‘law enforcement officer’ has the meaning set out in section 2(1) of the Act;
- (7) ‘property freezing order’ has the meaning set out in section 75(2) of the Act;
- (8) ‘receiver in connection with a property freezing order’ means an order to appoint a receiver under section 79 of the Act;

(9) 'Statement of assets' means a witness statement which sets out all the property which the maker of the statement owns, holds or controls, or in which he has an interest, giving the value, location and details of all such property; and

1.6 In this practice direction, other expressions used have the same meaning as defined in the Act.

SECTION I

GENERAL PROVISIONS

2. Venue

An application made to the High Court under Part III of the Act must be made in the Civil Division.

SECTION II

CIVIL RECOVERY PROCEEDINGS UNDER PART III OF THE ACT

3. Application for a recovery order

3.1 A claim by the Attorney General for a recovery order must be made –

- (a) using the CPR Part 8 procedure; and
- (b) by way of a fixed date claim form, pursuant to Rule 8.1(5)

3.2 In a claim for a recovery order based on an external order, the claim must include an application to register the external order.

3.3 The fixed date claim form must –

- (1) identify the property in relation to which a recovery order is sought;

(2) specify, in relation to each item or description of the property -

(a) whether the property is alleged to be recoverable property or associated property; and

(b) either -

(i) who is alleged to hold the property; or

(ii) where the Recovery Authority is unable to identify who holds the property, the steps that have been taken to try to establish their identity;

(3) set out the matters relied upon in support of the claim;

(4) give details of the person nominated by the Recovery Authority to act as trustee for civil recovery in accordance with section 91(1) of the Act.

3.4 The evidence in support of the claim must include the signed affidavit of the person nominated by the Recovery Authority, consenting to act as trustee for civil recovery, if appointed by the court.

3.5 In a claim which includes an application to register an external order, where -

(1) the sum specified in the external order is expressed in a currency other than Eastern Caribbean Dollars; and

(2) there are not funds held in Saint Vincent and the Grenadines in the currency in which the sum specified is expressed sufficient to satisfy the external order,

the claim form, or particulars of claim if served subsequently, must state the Eastern Caribbean Dollar equivalent of the sum specified.

3.6 Paragraph 14(2) of Schedule 3 provides that the Eastern Caribbean Dollar equivalent is to be calculated in accordance with the exchange rate

prevailing at the end of the working day immediately preceding the day when the Court registered the external order under paragraph 12.

4. Application for property freezing order, interim receiving order or order for a receiver in relation to property freezing order.

4.1 An application for a property freezing order, an interim receiving order, or an order for a receiver in relation to a property freezing order, must be made-

(1) to a judge of the Civil Division of the High Court; and

(2) in accordance with CPR Part 11.

4.2 CPR rule 11.16(2) and CPR Part 17 do not apply to applications for property freezing orders, interim receiving orders or orders for receivers in relation to a property freezing order.

4.3 The application may be made without notice in the circumstances set out in -

(1) section 75 (3) and paragraph 10 (3) of Schedule 3 of the Act;

(2) section 82 (3) and paragraphs 16 - 20 of Schedule 3 of the Act; or

(3) section 79 (2) and paragraphs 16 - 20 of Schedule 3 of the Act.

4.4 An application for a property freezing order must be supported by an affidavit which must -

(1) set out the grounds on which the order is sought; and

(2) give the details of each item or a description of property in respect of which the order is sought, including -

(a) an estimate of the value of the property; and

(b) the additional information referred to in paragraph 4.5(2).

4.5 CPR Part 51 (appointment of receiver) applies to an application for the appointment of an interim receiving order or an order for a receiver in relation to a property freezing order with the following modifications -

(1) CPR Rule 51.8 does not apply.

(2) the Recovery Authority's written evidence must, in addition to the matters required by paragraph 4.4 of this practice direction, also state in relation to each item or description of property in respect of which the order is sought -

(a) whether the property is alleged to be -

(i) recoverable property; or

(ii) associated property,

and the facts relied upon in support of that allegation; and

(b) in the case of any associated property -

(i) who is believed to hold the property; or

(ii) if the Recovery Authority is unable to establish who holds the property, the steps that have been taken to establish their identity.

4.6 Where an application is made for an interim receiving order or an order in relation to a property freezing order, a draft of the order which is sought must be filed with the application. The draft order should be supplied to the Court in an electronic format using the Microsoft Word processing software which is being used by the Court.

5. Property freezing order or interim receiving order made before commencement of claim for recovery order

A property freezing order or interim receiving order which is made before a claim for a recovery order has been commenced will -

(1) specify a period within which the Recovery Authority must either start the claim or apply for the continuation of the order while he carries out his investigation; and

(2) provide that the order will lapse if the Recovery Authority does not start the claim or apply for its continuation before the end of that period.

6. Exclusions when making property freezing order or interim receiving order

6.1 When the court makes a property freezing order or interim receiving order on an application without notice, it will normally make an initial exclusion from the order for the purpose of enabling the respondent to meet his reasonable legal costs so that he may –

(1) take advice in relation to the order;

(2) prepare a statement of assets if requested; and

(3) if so advised, apply for the order to be varied or set aside.

The total amount specified in the initial exclusion will not normally exceed \$10,000 Eastern Caribbean Dollars.

6.2 When the court makes a property freezing order or interim receiving order before a claim for a recovery order has been commenced, the court may also make an exclusion to enable the respondent to meet his reasonable legal costs so that (for example) when the claim is commenced –

(1) the respondent may file an acknowledgment of service and any written evidence on which he intends to rely; or

(2) the respondent may apply for a further exclusion for the purpose of enabling him to meet his reasonable costs of the proceedings.

6.3 Paragraph 9 of this Practice Direction provides the general provisions about exclusions made for the purpose of enabling a person to meet his reasonable legal costs.

7. Interim receiving order or order for a receiver in relation to a property freezing order: application for directions

7.1 An application for directions as to the exercise of the functions of –

(1) the interim receiver under section 83, schedule 1, and schedule 3 of the Act; or

(2) the receiver appointed in relation to a property freezing order under section 80, schedule 1, and schedule 3 of the Act may be made at any time by –

(a) the interim receiver or receiver appointed in relation to a property freezing order, as appropriate;

(b) any party to the proceedings; and

(c) any person affected by any action taken, or proposed to be taken, by the interim receiver or receiver appointed in respect of a property freezing order.

7.2 The application must be served on –

(1) the interim receiver or receiver in relation to a property freezing order, as appropriate, (unless he is the applicant);

(2) every party to the proceedings; and

(3) any other person who it is known that they may be interested in the application.

8. Application to vary or set aside an order

8.1 An application to vary or set aside a property freezing order, an interim receiving order or an order for a receiver in relation to a property

freezing order (including an application for, or relating to, an exclusion from the order) may be made at any time by –

- (1) the Recovery Authority; or
- (2) any person affected by the order.

8.2 Unless the court otherwise directs or exceptional circumstances apply, a copy of the application must be served on –

- (1) every party to the proceedings;
- (2) in the case of an application to vary or set aside an interim receiving order or an order for a receiver in relation to a property freezing order, the interim receiver or the receiver in relation to the property freezing order (as appropriate); and
- (3) any other person who may be affected by the court's decision.

8.3 The evidence in support of an application for an exclusion from a property freezing order or interim receiving order for the purpose of enabling a person to meet his reasonable legal costs must –

- (1) contain full details of the stage or stages in the civil recovery proceedings in respect of which the costs in question have been or will be incurred;
- (2) include an estimate of the costs which the person has incurred and will incur in relation to each stage to which the application relates;
- (3) include a statement of assets;
- (4) explain why the person's costs will exceed the amount specified in the exclusion for that stage where the court has previously made an exclusion in respect of any stage to which the application relates; and
- (5) state whether the terms of the exclusion have been agreed with the Recovery Authority.

9. Exclusions for the purpose of meeting legal costs: general provisions

9.1 Subject to paragraph 9.3, when the court makes an order or gives directions in civil recovery proceedings it will at the same time consider whether it is appropriate to make or vary an exclusion for the purpose of enabling any person affected by the order or directions to meet his reasonable legal costs.

9.2 The court may order a party to file an estimate of legal costs (unless the person has previously filed such an estimate in the same civil recovery proceedings and there has been no material change in the facts set out in that estimate) in order to enable the court to consider whether it is appropriate to make or vary an exclusion.

9.3 The court will not make an exclusion for the purpose of enabling a person to meet his reasonable legal costs, other than an exclusion to meet the costs of taking any of the steps referred to in paragraph 6.1, unless that person has made and filed a statement of assets.

9.4 Information given in a statement of assets under this practice direction will be used only for the purpose of the civil recovery proceedings.

9.5 The court –

(1) will not make an exclusion for the purpose of enabling a person to meet his reasonable legal costs (including an initial exclusion under paragraph 6.1); and

(2) may set aside any exclusion which it has made for that purpose or reduce any amount specified in such an exclusion,

if it is satisfied that the person has property from which he may meet these costs to which the property freezing order or interim receiving order does not apply.

9.6 The court may refer to a Judge or Master of the High Court any question relating to the amount which an exclusion should allow for reasonable legal costs in respect of proceedings or a stage in the proceedings.

9.7 Attention is drawn to section 77 (in relation to exclusions from property freezing orders) and to section 88 (in relation to exclusions from interim receiving orders).

9.8 An exclusion made for the purpose of enabling a person to meet his reasonable legal costs will specify –

- (1) the stage or stages in civil recovery proceedings to which it relates;
- (2) the maximum amount which may be released in respect of legal costs for each specified stage; and
- (3) the total amount which may be released in respect of legal costs pursuant to the exclusion.

9.9 A person who becomes aware that his legal costs –

- (1) in relation to any stage in civil recovery proceedings have exceeded or will exceed the maximum amount specified in the exclusion for that stage; or
- (2) in relation to all the stages to which the exclusion relates have exceeded or will exceed the total amount that may be released pursuant to the exclusion,

should apply for a further exclusion or a variation of the existing exclusion as soon as reasonably practicable.

10. Assessment of costs where recovery order is made

10.1 Where the court –

- (1) makes a recovery order in respect of property which was the subject of a property freezing order or an interim receiving order; and
- (2) had made an exclusion from the property freezing order or interim receiving order for the purpose of enabling a person to meet his reasonable legal costs,

the recovery order will make provision under section 91(7) for the payment of those costs.

10.2 Where the court makes a recovery order which provides for the payment of a person's reasonable legal costs in respect of civil recovery proceedings, it may at the same time order the detailed assessment of those costs by a Master of the High Court.

SECTION III – APPLICATIONS UNDER PART V OF THE ACT IN RESPECT OF CIVIL RECOVERY INVESTIGATIONS

11. How to apply for an order or warrant

11.1 An application for an order or warrant under Part V of the Act, in connection with a civil recovery investigation must be made –

(1) to a High Court Judge or Master; and

(2) by filing an application.

11.2 The application may be made without notice and filed as an ex parte application.

12. Confidentiality of court documents

12.1 When an application is issued, the court file will be sealed and marked 'Not for disclosure' and, unless a High Court Judge grants permission, the court records relating to the application (including the application, documents filed in support, and any order or warrant that is made) will not be made available by the court for any person to inspect or copy, either before or after the hearing of the application.

12.2 An application for permission under paragraph 12.1 must be made on notice to the Recovery Authority.

13. Application notice and evidence

13.1 The application must be supported by written evidence, which must be filed with the application.

13.2 The evidence must set out all the matters on which the Law Enforcement Officer relies in support of the application, including any matters required to be stated by the relevant sections of the Act, and all material facts of which the court should be made aware.

13.3 There must also be filed with the application a draft of the order which is being sought. A copy of the order should also be provided to the court in an electronic format utilizing the Microsoft Word processing software or other word processing software which is specified by the Court.

14. Hearing of the application

The application will be heard and determined in chambers, unless the Judge or Master hearing the matter directs otherwise.

15. Variation or discharge of order or warrant

15.1 An application to vary or discharge an order or warrant may be made by –

(1) the Law Enforcement Officer; or

(2) any person served with a copy of the order or warrant.

15.2 An application under paragraph 15.1 to stop an order or warrant from being executed must be made within seven (7) days of it being served.

15.3 A person applying to vary or discharge a warrant must first inform the Law Enforcement Officer that he is making the application.

15.4 The application should be made to the court and the application must be heard by the Judge or Master who made the order or issued the warrant or, if he is not available, to another High Court Judge or Master.

SECTION IV - FURTHER PROVISIONS ABOUT SPECIFIC APPLICATIONS UNDER PART 8 OF THE ACT

16. Production order

16.1 The application must name as a respondent the person believed to be in possession or control of the material in relation to which a production order is sought.

16.2 The application must specify -

- (1) the relevant matters set out in 133(2) and section 134 of the Act;
- (2) the material, or description of material, in relation to which the order is sought; and
- (3) the person who is believed to be in possession or control of the material.

16.3 An application under section 135 of the Act for an order to grant entry may be made either -

- (1) together with an application for a production order; or
- (2) by separate application, after a production order has been made.

16.4 An application for an order to grant entry must -

- (1) specify the premises in relation to which the order is sought; and
- (2) be supported by an Affidavit explaining why the order is needed.

16.5 Where appropriate, a production order, or an order to grant entry, may contain a statement of the right to apply to vary or discharge the order of any person affected by the order.

17. Search and seizure warrant

17.1 The application should name as the respondent the occupier of the premises to be subject to the warrant, if known.

17.2 The evidence in support of the application must state –

(1) the matters relied on by the Law Enforcement Officer to show that one of the requirements in section 138 of the Act for the issue of a warrant is satisfied;

(2) details of the premises to be subject to the warrant, and of the possible occupier or occupiers of those premises; and

(3) the name of the Law Enforcement Officer who it is intended will execute the warrant.

17.3 There must be filed with the application drafts of –

(1) the warrant; and

(2) a written undertaking by the person who is to execute the warrant to comply with paragraph 17.7 of this practice direction.

17.4 A search and seizure warrant must –

(1) specify the statutory power under which it is issued and, unless the court orders otherwise, give an indication of the nature of the investigation in respect of which it is issued;

(2) state the address or other identification of the premises to be subject to the warrant;

(3) state the name of the Law Enforcement Officer who is authorised to execute the warrant;

(4) set out the action which the warrant authorises the person executing it to take under the relevant sections of the Act;

(5) give the date on which the warrant is issued;

(6) include a statement that the warrant continues in force until the end of the period of one month beginning with the day on which it is issued; and

(7) where appropriate, contain a statement of the right of any person affected by the order to apply to discharge or vary the order.

17.5 CPR Rule 42.4 applies to a search and seizure warrant. CPR rule 42.4 requires every judgment or order to state the name and judicial title of the person making it, to bear the date on which it is given or made, and to be sealed by the court.

17.6 Upon the issue of a warrant the court will provide to the Law Enforcement Officer –

(1) the sealed warrant; and

(2) a copy of it for service on the occupier or person in charge of the premises subject to the warrant.

17.7 A person attending premises to execute a warrant must, if the premises are occupied, produce the warrant on arrival at the premises, and as soon as possible thereafter personally serve a copy of the warrant and an explanatory notice on the occupier or the person appearing to him to be in charge of the premises.

17.8 The person executing the warrant must also comply with any order which the court may make for service of any other documents relating to the application.

18. Disclosure order

18.1 The application should normally name as respondents the persons on whom the appropriate officer intends to serve notices under the disclosure order sought.

18.2 A disclosure order must –

(1) give an indication of the nature of the investigation for the purposes of which the order is made;

(2) set out the action which the order authorises the Law Enforcement Officer to take in accordance with section 146A of the Act; and

(3) where appropriate, contain a statement setting out the right of any person affected by the order to apply to discharge or vary the order.

18.3 Where, pursuant to a disclosure order, the appropriate officer gives to any person a notice under section 146A(4) of the Act, he must also at the same time serve on that person a copy of the disclosure order.

19. Customer information order

19.1 The application should normally (unless it is impracticable to do so because they are too numerous) name as respondents the financial institution or institutions to which it is proposed that an order should apply.

19.2 A customer information order must –

(1) specify the financial institution, or description of financial institutions, to which it applies;

(2) state the name of the person in relation to whom customer information is to be given, and any other details to identify that person; and

(3) where appropriate, contain a statement setting out the right of any person affected by the order to apply to discharge or vary the order.

19.3 Where, pursuant to a customer information order, the Law Enforcement Officer gives to a financial institution a notice to provide

customer information, he must also at the same time serve a copy of the order on that institution.

20. Account monitoring order

20.1 The application must name as a respondent the financial institution against which an account monitoring order is sought

20.2 The application must –

(1) state the matters required by section 144(2) and (3) of the Act; and

(2) give details of –

(a) the person whose account or accounts the application relates to;

(b) each account or description of accounts in relation to which the order is sought, including if known the number of each account and the branch at which it is held;

(c) the information sought about the account or accounts;

(d) the period for which the order applies and for which the information is being sought;

(e) the manner in which, and the frequency with which, it is proposed that the financial institution should provide account information during that period.

20.3 Where appropriate, an account monitoring order shall contain a statement setting out the right of any person affected by the order to apply to vary or discharge the order.

21. Effective Date

This Practice Direction shall come into effect on the 7th day of July 2020.

Dated the 6th day of July, 2020.

**Dame Janice M. Pereira, DBE
Chief Justice**