

CHAPTER 105

**CRIMINAL JUSTICE INTERNATIONAL
CO-OPERATION**

**CRIMINAL JUSTICE (INTERNATIONAL
CO-OPERATION) (ENFORCEMENT OF
OVERSEAS FORFEITURE ORDERS) ORDER, 2002**

S.I. 61/2002
S.I. 9/2004
S.I. 76/2004

(SECTION 9)

[Commencement 29th April, 2002]

1. This Order may be cited as the Criminal Justice (International Co-operation) (Enforcement of Overseas Forfeiture Orders) Order, 2002. Citation.

2. (1) In this Order — Interpretation.

“appropriate authority of a designated country” means —

- (a) the authority specified opposite that country in the Second Schedule; or Second Schedule.
- (b) where no authority is so specified, the authority approved for the purposes of this Order under paragraph 13;

“a court of a designated country” includes a court of any state of a designated country;

“designated country” means a country designated under paragraph 4;

“the Act” means the Criminal Justice (International Co-operation) Act; Ch. 105.

“police officer” includes a customs officer employed in the Customs Department;

“property” includes money and all other property real or personal, heritable or moveable, including things in action and other intangible or incorporeal property.

(2) This Order applies to property whether it is situated in The Bahamas or elsewhere.

(3) Property is held by any person if he holds any interest in it.

(4) Proceedings are instituted in a designated country when —

(a) under the law of the designated country concerned one of the steps specified in relation to that country in the right hand column of the First Schedule has been taken there in respect of an alleged drug trafficking offence or an offence under the Proceeds of Crime Act; or

(b) an application has been made to a court in a designated country for an external forfeiture order;

and where the application of this subparagraph would result in there being more than one time for the institution of proceedings, they shall be taken to have been instituted at the earliest of those times.

(5) Proceedings are concluded —

(a) when (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of a forfeiture order being made in the proceedings;

(b) on the satisfaction of a forfeiture order made in the proceedings (whether by the recovery of all property liable to be recovered, or otherwise).

(6) An order is subject to appeal until (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an appeal on which the order could be varied or set aside.

3. (1) An order made by a court in a designated country for the forfeiture and destruction or forfeiture and other disposal, of anything in respect of which a drug trafficking offence or an offence relating to the proceeds of drug trafficking has been committed or any offence if committed in the designated country would constitute an offence under the Proceeds of Crime Act or anything which was used in connection with the commission of such an offence is referred to in this Order as an “external forfeiture order”.

(2) In subparagraph (1), the reference to an order includes any order, decree, direction or judgment, or any part thereof, however described.

(3) A person against whom an external forfeiture order has been made, or a person against whom proceedings which may result in an external forfeiture

First Schedule.

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External
forfeiture orders.

order being made have been, or are to be, instituted in a court in a designated country, is referred to as “the defendant”.

4. Each of the countries and territories specified in the Second Schedule is hereby designated for the purposes of section 9 of the Act.

Designation of countries and territories.
Second Schedule.

5. (1) The Supreme Court may in accordance with this section by an order (referred to in this Order as a “restraint order”) prohibit any person, subject to such conditions and exceptions as may be specified in the Order, from dealing with any property liable to forfeiture, that is to say, any property in respect of which an external forfeiture order has been made or in respect of which such an order could be made in the proceedings referred to in subparagraph (2) and (3).

Restraint Orders.

(2) A restraint order may be made where —

- (a) proceedings have been instituted against the defendant in a designated country;
- (b) the proceedings have not been concluded; and
- (c) either an external forfeiture order has been made in the proceedings or it appears to the Supreme Court that there are reasonable grounds for believing that such an order may be made in them.

(3) A restraint order may also be made where —

- (a) it appears to the Supreme Court that proceedings are to be instituted against the defendant in a designated country; and
- (b) it appears to the Court that there are reasonable grounds for believing that an external forfeiture order may be made in them.

(4) Where the Court has made an order under subparagraph (1) by virtue of subparagraph (3), the Court shall discharge the order if the proposed proceedings are instituted within such time as the Court considers reasonable.

(5) A restraint order —

- (a) may be made only on an application by or on behalf of the government of a designated country or, in a case where an external forfeiture order has been registered under paragraph 10, by the Attorney General;

- (b) may be made on an ex parte application to a Judge in Chambers; and
- (c) notwithstanding anything in rules of court, may provide for service on, or the provision of notice to, persons affected by the order in such manner as the Supreme Court may direct.

(6) A restraint order —

- (a) may be discharged or varied in relation to any property; and
- (b) shall be discharged when the proceedings in relation to which the order was made are concluded.

(7) An application for the discharge or variation of a restraint order may be made by any person affected by it.

(8) Where the Supreme Court has made a restraint order, the Court may at any time appoint a receiver —

- (a) to take possession of any property specified in the restraint order; and
- (b) in accordance with the Court's directions, to manage or otherwise deal with any property in respect of which he is appointed,

subject to such exceptions and conditions as may be specified by the Court, and may require any person having possession of property in respect of which a receiver is appointed under this section to give possession of it to the receiver.

(9) For the purpose of this section, dealing with property held by any person includes (without prejudice to the generality of the expression) removing the property from The Bahamas.

(10) Where a restraint order has been made, a police officer may for the purpose of preventing any property specified in the restraint order being removed from The Bahamas, seize the property.

(11) Property seized under subparagraph (10) shall be dealt with in accordance with the directions of the Court which made the order.

Application for
restraint orders.

6. An application under paragraph 5(5) shall be supported by an affidavit which shall —

- (a) state, where applicable, the grounds for believing that an external forfeiture order may

- be made in the proceedings instituted or to be instituted in the designated country concerned;
- (b) to the best of the deponent's ability, give particulars of the property in respect of which the order is sought and specify the person or persons holding such property;
 - (c) in a case to which paragraph 5(3) applies, indicate when it is intended that proceedings should be instituted in the designated country concerned;

and the affidavit may, unless the Court otherwise directs, contain statements of information or belief with the sources and grounds thereof.

7. (1) Where an external forfeiture order has been registered in a Supreme Court under paragraph 10, the Supreme Court may, on the application of the Attorney-General, order the forfeiture of the property specified in the external forfeiture order.

Disposal of
forfeited
property.

(2) The proceeds of any property forfeited under subparagraph (1) shall be paid into the Confiscated Assets Fund.

(3) The court shall not in respect of any property exercise the powers conferred by subparagraphs (1) and (2) unless a reasonable opportunity has been given for persons holding any interest in the property to make representations to the court.

8. (1) This paragraph applies to the power conferred on the Supreme Court by paragraph 5 or on a receiver appointed under paragraph 5.

Exercise of
powers by
Supreme Court
or receiver.

(2) The powers shall be exercised with a view to recovering property which is liable to be recovered under an external forfeiture order registered in the Supreme Court under paragraph 10 or, as the case may be, with a view to recovering property which may become liable to be recovered under any external forfeiture order which may be made in the defendant's case.

9. (1) Where a receiver appointed under paragraph 5 takes action —

Receivers
supplementary
provisions.

- (a) in relation to property which is not liable to recovery under an external forfeiture order, being action which he would be entitled to take if it were such property;

- (b) believing, and having reasonable grounds for believing, that he is entitled to take that action in relation to that property,

he shall not be liable to any person in respect of any loss or damage resulting from his action except in so far as the loss or damage is caused by his negligence.

(2) Any amount due in respect of the remuneration and expenses of a receiver so appointed shall be paid by the person on whose application the receiver was appointed.

Registration
of external
forfeiture orders.

10. (1) On an application made by or on behalf of the government of a designated country, the Supreme Court may register an external forfeiture order made there if —

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- (a) it is satisfied that at the time of registration the order is in force and not subject to appeal;
- (b) it is satisfied, where the person against whom the order is made did not appear in the proceedings, that he received notice of the proceedings in sufficient time to enable him to defend them; and
- (c) it is of the opinion that enforcing the order in The Bahamas would not be contrary to the interests of justice.

(2) In subsection (1) “appeal” includes —

- (a) any proceedings by way of discharging or setting aside a judgment; and
- (b) an application for a new trial or a stay of execution.

(3) The Supreme Court shall cancel the registration of an external forfeiture order if it appears to the court that the order has been satisfied by the forfeiture of the property liable to be recovered under the external forfeiture order or by any other means.

Proof of orders
and judgement of
court in a
designated
country.

11. (1) For the purposes of this Order —

- (a) any order made or judgment given by a court in a designated country purporting to bear the seal of that court, or to be signed by any person in his capacity as a judge, magistrate or officer of the court, shall be deemed without further proof to have been duly sealed or, as the case may be, to have been signed by that person; and

(b) a document, duly authenticated, which purports to be a copy of any order made or judgment given by a court in a designated country shall be deemed without further proof to be a true copy.

(2) A document purporting to be a copy of any order made or judgment given by a court in a designated country is duly authenticated for the purposes of subparagraph (1)(b) if it purports to be certified by any person in his capacity as a judge, magistrate or officer of the court in question or by or on behalf of the appropriate authority of the designated country.

12. (1) For the purposes of this Order, a certificate purporting to be issued by or on behalf of the appropriate authority of a designated country stating —

- (a) that proceedings have been instituted and have not been concluded, or that proceedings are to be instituted, there;
- (b) that an external forfeiture order is in force and is not subject to appeal;
- (c) that property recoverable in the designated country under an external forfeiture order remains un-recovered there;
- (d) that any person has been notified of any proceedings in accordance with the law of the designated country; or
- (e) that an order (however described) made by a court of the designated country for the forfeiture and destruction or the forfeiture and other disposal of anything in respect of which a drug trafficking offence or an offence under the Proceeds of Crime Act, has been committed or which was used in connection with the commission of such an offence,

Evidence in relation to proceedings and orders in a designated country.

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shall, in any proceedings in the Supreme Court or, as the case may be, a magistrate's court, be admissible as evidence of the facts so stated.

(2) In any such proceedings a statement contained in a document, duly authenticated, which purports to have been received in evidence or to be a copy of a document so received, or to set out or summarise evidence given in proceedings in a court in a designated country, shall be admissible as evidence of any fact stated therein.

(3) A document is duly authenticated for the purposes of sub-paragraph (2) if it purports to be certified by any person in his capacity as judge, magistrate or officer of the court in the designated country, or by or on behalf of the appropriate authority of the designated country, to have been received in evidence or to be a copy of a document so received, or, as the case may be, to be the original document containing or summarizing the evidence or a true copy of that document.

(4) Nothing in this section shall prejudice the admission of any evidence, whether contained in any document or otherwise, which is admissible apart from this paragraph.

Certificate of appropriate authority.
Second Schedule.

13. Where in relation to any designated country no authority is specified in the Second Schedule, a certificate made by the Governor-General to the effect that the authority specified therein is the appropriate authority for the purposes of this Order shall be sufficient evidence of that fact.

Representation of government of a designated country.

14. A request for assistance sent to the Attorney-General by the appropriate authority of a designated country shall, unless the contrary is shown, be deemed to constitute the authority of the government of that country for the Attorney-General to act on its behalf in any proceedings in the Supreme Court under paragraph 10 or any other provision of this Order.

**FIRST SCHEDULE (Paragraph 2(4))
INSTITUTION OF PROCEEDINGS**

Designated Country	Point at which Proceedings are Instituted
Anguilla	<ul style="list-style-type: none"> (a) when a summons or warrant is issued in respect of an offence; (b) when a person is charged with an offence after being taken into custody without a warrant; (c) when a bill of indictment is preferred.
Argentina	when a judge has ordered that a person be detained for the purpose of testifying in connection with the commission of an offence.

Australia	<ul style="list-style-type: none"> (a) when an information has been laid before a justice of the peace; (b) a person is charged with an offence after having been taken into custody without a warrant; (c) when a bill of indictment is preferred.
Barbados	<ul style="list-style-type: none"> (a) when an information has been laid before a magistrate; (b) when a person is charged with an offence; (c) when a bill of indictment is preferred.
Bermuda	when an information has been laid charging a person with an offence.
British Virgin Islands	<ul style="list-style-type: none"> (a) when a summons or warrant is issued in respect of an offence; (b) when a person is charged with an offence after being taken into custody without a warrant; (c) when an indictment is preferred.
The Cayman Islands	<ul style="list-style-type: none"> (a) when a charge has been signed under subsection (3) or (4) of section 13 of the Criminal Procedure Code in respect of the offences; (b) when a person is charged with the offence after being arrested without a warrant under subsection (5) of that section.
Ecuador	when a writ is issued by a judge initiating criminal proceedings.
Germany	when a person is notified that he is accused of an offence and will be brought before a court.
Gibraltar	when a person is charged with an offence, whether by the laying of an information or otherwise.

- Grenada
- (a) when an information has been laid before a justice of the peace;
 - (b) when a person is charged with an offence;
 - (c) when a bill of indictment is preferred.
- Guernsey
- when a person is charged with an offence.
- Guyana
- when a charge has been laid against a person for an offence.
- Special Administrative Region of Hong Kong
- (a) when a magistrate issues a warrant or summons;
 - (b) when a person is charged with an offence;
 - (c) when an indictment is preferred.
- India
- (a) when information relating to the commission of any crime is received by any law enforcement agency empowered to investigate such crime under the law for the time being in force and laid before a court of law;
 - (b) when any allegation is made orally or in writing to a court of law that a person has committed an offence;
 - (c) when a person is charged with an offence;
 - (d) when any investigation or inquiry into the commission of any offence is directed by a court of law.
- Isle of Man
- (a) where a justice of the peace issues a summons under section 4 of the Summary Jurisdiction Act 1989, when the complaint in relation to the offence is made to him;
 - (b) where a justice of the peace issues a warrant for the arrest of any person under that section, when the complaint in relation to the offence is made to him;
 - (c) where a person is charged with the offence after being taken into custody without a warrant, when he is taken into custody;

- (d) where an information is preferred by the Attorney-General in a case where there have been no committal proceedings, when the information is lodged in the General Registry in accordance with section 4(1) of the Criminal Code Amendment Act 1917.
- Italy
- (a) when a person is notified, in accordance with Article 369 of the Italian Code of Criminal Procedure, that a prosecution against him is in progress;
- (b) when a proposal for the application of a preventative measure (“misura di prevenzione”) is laid before a court.
- Jersey
- (a) when the Bailiff issues a warrant in respect of an offence for the arrest of a person which is out of the Island;
- (b) when a person is arrested and charged with an offence;
- (c) when a summons in respect of an offence is served on a person at the instance of the Attorney-General;
- (d) when a summons in respect of the offence is served on a person in accordance with the provisions of Article 8 of the Police Court (Miscellaneous Provisions) (Jersey) Law, 1949.
- Malaysia
- when a person is charged with an offence.
- Montserrat
- (a) when a judge issues a summons or warrant in respect of an offence;
- (b) when a person is charged with an offence after being taken into custody without a warrant.
- Netherlands
- (a) when a pre-trial financial investigation has been initiated;
- (b) when the provisional measure has been ordered by an investigating magistrate;

- (c) when a public prosecutor has requested a pre-trial criminal investigation by an investigating magistrate to be instituted;
 - (d) when a public prosecutor has laid an indictment.
- Panama when a person has been charged with an offence.
- Paraguay when a judge has ordered the restraint of property and a preventive detention order has been made.
- Romania
- (a) when the start of a penal pursuit is ordered;
 - (b) when penal proceedings start in respect of an offender.
- Saudi Arabia when an information has been laid before a judicial authority.
- South Africa
- (a) when a summons is issued in respect of an offence;
 - (b) when a person is charged with an offence;
 - (c) when a bill of indictment is preferred.
- Spain when by virtue of a judicial resolution it is decided to proceed against a person for an offence.
- Sweden when a public prosecutor has established that there are reasonable grounds to suspect that a person has committed an offence and accordingly is obliged under the Code of Judicial Procedure to notify the person of the suspicion.
- Switzerland when proceedings for an offence are brought before an examining magistrate.
- Thailand when a court or the Asset Examination Committee issues a restraint order.
- Turks & Caicos Islands
- (a) when a summons or warrant is issued in respect of an offence;
 - (b) when a person is charged with an offence after being taken into custody without a warrant.

Ukraine	when a criminal case is brought.
United Kingdom	when a summons or warrant is issued in respect of an offence, or a person is charged after being taken into custody without a warrant, or a bill of indictment is preferred.
United Mexican States	when criminal proceedings are instituted by a judicial authority.
United States of America	when an indictment, information or complaint has been filed against a person in respect of an offence.
Uruguay	when criminal proceedings are instituted by a judicial authority.

SECOND SCHEDULE (Paragraph 4)

*S.I. 111/2008.
S.I. 72/2009.*

Designated Country	Appropriate Authority
Afghanistan	
Algeria	
Anguilla	the Attorney-General of Anguilla
Antigua and Barbuda	
Argentina	
Armenia	
Australia	
Austria	
Azerbaijan	
Bahrain	
Bangladesh	
Barbados	
Belarus	

Belgium

Belize

Benin

Bermuda the Attorney-General of Bermuda

Bhutan

Bolivia

Boznia and
Herzegovina

Brazil

British Virgin Islands the Attorney-General of the British Virgin Islands

Brunei Darussalam

Bulgaria

Burkina Faso

Burundi

Cameroon

Canada

Cape Verde

The Cayman Islands the Attorney-General of the Cayman Islands

Chad

Chile

Colombia

Costa Rica

Croatia

Cuba

Cyprus

The Czech Republic

Denmark

Dominica

Dominican Republic

Ecuador

Egypt

El Salvador

Ethiopia

Fiji

Finland

France

Gambia

Germany

Ghana

Gibraltar the Attorney-General of Gibraltar

Greece

Grenada

Guatemala

Guinea-Bissau

Guernsey Her Majesty's Attorney-General for the Bailiwick of Guernsey

Guyana

Haiti

Honduras

Special Administrative Region of Hong Kong the Attorney-General of Hong Kong

Isle of Man Her Majesty's Attorney-General for the Isle of Man

Italy

Ivory Coast

Jamaica

Japan

Jordan

Kenya

Kyrgyzstan

Latvia

Lesotho

Luxembourg

Macedonia

Madagascar

Malawi

Malaysia

Mali

Malta

Mauritania

Moldova

Monaco

Montserrat the Attorney-General of Montserrat

Myanmar

Morocco

Nepal

Netherlands

Nicaragua

Niger

Nigeria

Norway

Oman

Pakistan

Panama

Paraguay

People's Republic of
China

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Peru

Poland

Portugal

Qatar

Republic of China

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Romania

The Russian Federation

St. Christopher and
Nevis

St. Lucia

St. Vincent and the
Grenadines

Sao Tome and Principe

Saudi Arabia

Senegal

Seychelles

Sierra Leone

Slovakia

Slovenia

South Africa

Spain

Sri Lanka

Sudan

Suriname

Swaziland

Sweden

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Syrian Arab
Republic

Syria

Tajikistan

Thailand the Attorney-General or a person
designated by him

Togo

Tonga

Trinidad &
Tobago

Tunisia

Uganda

Ukraine

United Arab
Emirates

United Kingdom
of Great Britain
and Northern
Ireland

United Mexican
States

United Republic
of Tanzania

United States of America Attorney-General or a person designated by him *Amended by S.I. 76/2004.*

Uruguay

Uzbekistan

Venezuela

Yemen

The Federal
Republic of
Yugoslavia,
Serbia and
Montenegro

Zambia

Zimbabwe