

PART III**Subsidiary Legislation under the Proceeds of Crime Act,
2000****PROCEEDS OF CRIME (DESIGNATED COUNTRIES
AND TERRITORIES) ORDER****ARRANGEMENT OF ARTICLES**

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SI 6/2001
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**PROCEEDS OF CRIME (DESIGNATED COUNTRIES
AND TERRITORIES) ORDER, 2001**

(SECTION 49)

[Commencement 26th January, 2001]

Citation

1. This Order may be cited as the Proceeds of Crime (Designated Countries and Territories) Order, 2001.

Interpretation

2. In this Order —

“appropriate authority” of a designated country means —

- (a) the authority specified in relation to that country in the First Schedule;
- (b) where no authority is so specified, the authority appearing to the court to be the, appropriate authority of that country for

the purposes of sections 49 and 50 of the Act, and of the other relevant provisions of the Act as applied under article 3(2) of this Order;

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

“designated country” means a country or territory designated under article 3(1).

“the Act” means the Proceeds of Crime Act, 2000; Ch. 93.

“relevant provisions of the Act” are Parts I, III and VII of that Act.

3. (1) Each of the countries and territories specified in the First Schedule is hereby designated for the purposes of sections 49 and 50 of the Act. Designation of and application of the Act to countries and territories.

(2) In relation to a designated country, the relevant provisions of the Act shall apply, subject to the modifications specified in the Second Schedule, to external confiscation orders and to proceedings which have been or are to be instituted in the designated country and which may result in an external confiscation order being made there.

(3) Accordingly, in relation to such orders and such proceedings, the relevant provisions of the Act shall have effect as set out in the Third Schedule.

4. (1) For the purposes of sections 49 and 50 of the Act, and of the other relevant provisions of the Act, as applied under article 3(2) — Proof of orders and judgments of court in a designated country.

(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 purpose of paragraph (1)(b) above 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.

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

5. (1) For the purposes of sections 49 and 50 of the Act, and of the other relevant provisions of the Act as applied under article 3(2), 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 there and have not been concluded, or that proceedings are to be instituted there;
- (b) in a case to which section 8 of the Act (institution of proceedings), as modified by the Second Schedule, applies, that the defendant has been notified as specified in that paragraph;
- (c) that an external confiscation order is in force and is not subject to appeal;
- (d) that all or a certain amount of the sum payable under an external confiscation order remains unpaid in the designated country, or that other property recoverable under an external confiscation order remains unrecovered there;
- (e) that any person has been notified of any proceedings in accordance with the law of the designated country; or
- (f) that an order (however described) made or to be made by a court of the designated country has the purpose, or, as the case may be, will have the purpose, of recovering payments or other rewards received in connection with drug trafficking or relevant offences or their value,

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shall, in any proceedings in the Supreme 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 paragraph (2) if it purports to be certified by any person in his capacity as a judge, magistrate or officer of the court in a 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 summarising the evidence or a true copy of that document.

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

6. Where in relation to any designated country no authority is specified in the First Schedule, a certificate made by the Attorney-General to the effect that the authority specified therein is the appropriate authority for the purposes of sections 49 and 50 of the Act, and of the other relevant provisions of the Act as applied by article 3(2) of this Order shall be sufficient evidence of that fact.

Certificate as to appropriate authority of a designated country.

7. (1) Where the Attorney-General receives a written request from the appropriate authority of a designated country to register an external confiscation order under section 50 of the Act, and that request is accompanied —

Representation of government of a designated country.

- (a) by two copies of the external confiscation order with a translation into English where necessary; and
- (b) by a certificate issued by or on behalf of the appropriate authority stating —
 - (i) that the order is in force and not subject to appeal; and
 - (ii) where the person affected by the order did not appear in the proceedings, that he received notice of the proceedings in sufficient time to enable him to defend them,

the Attorney-General, if he is of the opinion that enforcing the order in The Bahamas would not be contrary to the interests of justice, shall lodge a copy of the request, the order and the certificate with the Registrar of the Supreme Court for registration in accordance with section 50 of the Act.

(2) A written 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 that country for the Attorney-General to act on its behalf in any proceedings in the Supreme Court under section 50 of the Act or any other provision of the Act as applied by article 3(2).

- (3) In paragraph (1)(b)(i), “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.

8. (1) Where —

- (a) a confiscation order has been made under section 9 or 10 of the Act; and
- (b) a request has been sent by the Attorney-General to the appropriate authority of a designated country for assistance in enforcing that order; and
- (c) in execution of that request property is recovered in that country,

the amount payable under the confiscation order shall be treated as reduced by the value of the property so recovered.

(2) For the purposes of this article, and without prejudice to the admissibility of any evidence which may be admissible apart from this article, a certificate purporting to be issued by or on behalf of the appropriate authority of a designated country stating —

- (a) that property has been recovered there in execution of a request by the Attorney-General;
- (b) the value of the property so recovered; and
- (c) the date on which it was recovered,

shall, in any proceedings in a court in The Bahamas, be admissible as evidence of the facts so stated.

9. (1) Where the value of property recovered as described in article 8(1) is expressed in a currency other than that of The Bahamas, the extent to which the amount payable under the confiscation order is to be reduced under that article shall be calculated on the basis of the exchange rate prevailing on the date on which the property was recovered in the designated country concerned.

Satisfaction of
confiscation
order in a
designated
country.

Currency
conversion.

(2) Where an amount of money payable or remaining to be paid under an external confiscation order registered in the Supreme Court under section 50 of the Act, is expressed in a currency other than that of The Bahamas, for the purpose of any action taken in relation to that order under the Act as applied under article 3(2), the amount shall be converted into the currency of The Bahamas on the basis of the exchange rate prevailing on the date of registration of the order.

(3) For the purposes of this article, a written certificate purporting to be signed by any person acting in his capacity as an officer of any bank in The Bahamas and stating the exchange rate prevailing on a specified date shall be admissible as evidence of the facts so stated.

FIRST SCHEDULE (Article 3(1))

APPROPRIATE AUTHORITY OF DESIGNATED COUNTRY

Country	Designated Appropriate Authority
Afghanistan	
Algeria	
Anguilla	The Attorney General of Anguilla
Antigua & Barbuda	The Attorney General of Antigua & Barbuda
Argentina	The Ministry of Foreign Affairs
Armenia	
Australia	The Attorney-General's Department
Austria	
Azerbaijan	
Bahrain	The Ministry of the Interior
Bangladesh	
Barbados	The Attorney General of Barbados
Belarus	
Belgium	
Belize	
Benin	
Bermuda	
Bhutan	
Bolivia	Secretaria Nacional de Defensa Social del Ministerio de Gobierno

Bosnia & Herzegovina	
Botswana	
Brazil	
British Virgin	The Attorney General of the Islands
	British Virgin Islands
Brunei	
Darussalam	
Bulgaria	
Burkina Faso	
Burundi	
Cameroon	
Canada	The Minister of Justice or officials
	designated by that Minister
Cape Verde	
Cayman Islands	The Attorney General of the Cayman
	Islands
Chad	
Chile	Ministerio del Interior
China	
Colombia	The Fiscalía General de la Nación and
	the Ministerio de Justicia del Derecho
Costa Rica	
Cote d'Ivoire	
Croatia	
Cuba	
Cyprus	
Czech Republic	
Denmark	
Dominica	
Dominican Republic	
Ecuador	Consejo Nacional del Control de
	Sustancias Estupefacientes y
	Psicotropicas (CONSEP)
Egypt	
El Salvador	
Ethiopia	
Fiji	
Finland	
France	
Gambia	
Germany	
Ghana	
Gibraltar	The Attorney General of Gibraltar

Greece	
Grenada	The Ministry of External Affairs
Guatemala	
Guernsey	Her Majesty’s Attorney General for the Bailiwick of Guernsey
Guinea	
Guinea-Bissau	
Guyana	The Permanent Secretary, Ministry of Home Affairs
Haiti	
Honduras	
Hong Kong	The Attorney General of Hong Kong
Hungary	
India	The Ministry of Home Affairs
Iran	
Ireland	
Isle of Man	Her Majesty’s Attorney General for the Isle of Man
Italy	The Ministry of Justice
Jamaica	
Japan	
Jersey	Her Majesty’s Attorney General for the Bailiwick of Jersey
Jordan	
Kazakhstan	
Kenya	
Kyrgyzstan	
Latvia	
Lesotho	
Lithuania	
Luxembourg	
Macedonia, Former	
Yugoslav Republic of	
Madagascar	
Malawi	
Malaysia	The Inspector-General of Police, Malaysia
Mali	
Malta	
Mauritania	
Moldova	
Monaco	
Montserrat	The Attorney General of Montserrat
Morocco	

Myanmar	
Nepal	
Netherlands	Afdeling Internationale Rechtshulp
Nicaragua	
Niger	
Nigeria	The Attorney General of the Federation of the Republic of Nigeria
Norway	
Oman	
Pakistan	
Panama	The Ministry of Government and Justice
Paraguay	National Anti-Drugs Secretariat of the Presidency of the Republic (SENAD)
Peru	
Poland	
Portugal	
Qatar	
Romania	The Ministry of the Interior and the Ministry of Justice
The Russian Federation	
Saint Kitts & Nevis	
Saint Lucia	
Saint Vincent & the Grenadines	
Sao Tome & Principe	
Saudi Arabia	The Ministry of the Interior
Senegal	
Seychelles	
Sierra Leone	
Slovakia	
Slovenia	
South Africa	The Department of Foreign Affairs
Spain	The Ministerio de Justicia, Madrid
Sri Lanka	
Sudan	
Suriname	
Swaziland	
Sweden	The Ministry for Foreign Affairs
Switzerland	Office fédéral de la police
Syrian Arab Republic	
Tajikistan	

Thailand	The Attorney General or a person designated by him
Togo	
Tonga	
Trinidad & Tobago	
Tunisia	
Turkey	
Turkmenistan	
Turks & Caicos Islands	
Uganda	
Ukraine	The Office of the General Prosecutor and the Ministry of Justice
United Arab Emirates	
United Kingdom	The Attorney General
United Mexican States	The Office of the Attorney General
United Republic of Tanzania	
United States of America	The Attorney General of the United States of America
Uruguay	The Ministry of Education and Culture
Uzbekistan	
Venezuela	
Yemen	
Yugoslavia,	
The Federal Republic of Zambia	
Zimbabwe	

SECOND SCHEDULE (Article 3(2))

MODIFICATIONS OF THE PROCEEDS OF CRIME ACT, 2000

1. Sections 1 and 2 of the Act shall be omitted.
2. Before section 3 there shall be inserted —

“External confiscation orders.

2A. (1) An order made by a court in a designated country for the purpose —

 - (a) of recovering property, or the value of such property, obtained as a result of or in connection with —
 - (i) drug trafficking; or
 - (ii) a relevant offence; or

(b) of depriving a person of a pecuniary advantage so obtained, is referred to in this Act as an ‘external confiscation order’.

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

3. In section 3, for the definition of “relevant offence” there shall be substituted —

“ ‘relevant offence’ means an offence listed in the Schedule to the Act and an offence which would, if committed in The Bahamas, be triable on indictment”.

4. (1) In section 4(3), for paragraphs (a) and (b) there shall be substituted —

“(a) in relation to an external confiscation order made in respect of specified property, the property which is specified in the order; and

(b) in any other case —

(i) any property held by the defendant; and

(ii) any property held by a person to whom the defendant has directly or indirectly made a gift caught by this Act.”

(2) Subsections (4) to (6) of section 4 shall be omitted.

5. In section 6(1) for the words “commencement of this Act” there shall be substituted “commencement of the Proceeds of Crime (Designated Countries and Territories) Order, 2001”.

6. (1) In section 7 —

(a) for the definition of “defendant” there shall be substituted —

“ ‘defendant’ means a person against whom an external confiscation order has been made, or a person against whom proceedings which may result in an external confiscation order being made have been or are to be, instituted in a court in a designated country.”; and

(b) at the end of the definition of “the court” there shall be added “or, as the case may be, a court of a designated country.”.

(2) In section 7, the definitions of “Central Bank”, “confiscation order”, “items subject to legal privilege”, “material” and “money laundering” shall be omitted.

7. For section 8 there shall be substituted —

“(1) 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 column 2 of the Appendix hereto has been taken there in respect of alleged drug trafficking or any relevant offence by the defendant; or

-
- (b) where no steps have been specified in relation thereto as mentioned in paragraph (a) above, the defendant has been notified in writing in accordance with the laws of the designated country that the competent authorities of that country have begun proceedings against him in respect of alleged drug trafficking; or
 - (c) an application has been made to a court in a designated country for an external confiscation order, and where the application of this subsection 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.

(2) Proceedings for an offence are concluded —

- (a) when (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an external confiscation order being made in the proceedings;
- (b) on the satisfaction of an external confiscation order made in the proceedings, whether by the recovery of all property liable to be recovered or the payment of any amount due.

(3) An external confiscation order is satisfied when no property remains liable to be recovered under it or no amount is due under it.

(4) An external confiscation 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.”

8. Sections 9 to 24 shall be omitted.

9. (1) In section 25 (1) —

- (a) for paragraph (a) there shall be substituted —
 - “(a) proceedings have been instituted against the defendant in a designated country for a drug trafficking or relevant offence;”;
- (b) in paragraph (b) the words “or the application has not” shall be omitted; and
- (c) for paragraph (c) there shall be substituted —
 - “(c) either an external confiscation 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.”

(2) Section 25(2) shall be omitted.

(3) For section 25(3) there shall be substituted —

“(3) The powers mentioned in subsection (1) above are also exercisable where it appears to the Supreme Court that proceedings are to be instituted against the defendant in a designated country and that there are reasonable grounds for believing that an external confiscation order may be made in them.”

(4) Section 25(4) shall be omitted.

(5) In section 25(5), for the words “proceedings in respect of the offence are not instituted or if the application is not made”, there shall be substituted “those proceedings are not instituted”.

10. (1) In section 26(2), for paragraphs (a) and (b) there shall be substituted —

“(a) where an application under subsection (4) relates to an external confiscation order made in respect of specified property, to property which is specified in that order; and

(b) in any other case —

(i) to all realisable property held by a specified person, whether the property is described in the restraint order or not; and

(ii) to realisable property held by a specified person, being property transferred to him after the making of the restraint order.”

(2) For section 26(5)(b) there shall be substituted —

“(b) shall be discharged when the proceedings in relation to which the order was made are concluded”.

11. For section 27(2) there shall be substituted —

“(2) The court may make a charging order on realisable property for securing the payment —

(a) where a fixed amount is payable under an external confiscation order, of an amount not exceeding the amount so payable; and

(b) in any other case, of an amount equal to the value from time to time of the property charged.”

12. After section 28 there shall be inserted —

“Applications for restraint and charging orders.

28A. An application under section 26(4) or 27(3) shall be supported by an affidavit which shall —

(a) state, where applicable, the grounds for believing that an external confiscation order has been or 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 realisable property in respect of which the order is sought and specify the person or persons holding such property;

(c) in a case to which section 25(3) of this Act applies, indicate when it is intended that proceedings should be instituted in the designated country concerned, and the affidavit may contain statements of information or belief with the sources and grounds thereof.”

13. (1) For section 29(1) there shall be substituted —

“(1) Where an external confiscation order has been registered in the Supreme Court under section 50 of this Act, the Supreme Court may, on the application of the Attorney-General, exercise the powers conferred by subsections (1A) to (6).

(1A) In respect of any sum of money payable under the external confiscation order the court may make a garnishee order as if the sum were due to the Crown in pursuance of a judgment or order of the Supreme Court, but any such order shall direct that the sum payable be paid to the Supreme Court.”.

(2) Section 29(7) shall be omitted.

14. (1) In section 30(1), for the words “be applied on the defendant’s behalf towards the satisfaction of the confiscation order” there shall be substituted “be paid to the Supreme Court and applied towards the satisfaction of the external confiscation order”.

(2) In section 30(2), for the words “If, after the amount payable under the confiscation order”, there shall be substituted “Where a fixed amount is payable under the external confiscation order and, after that amount”.

15. (1) In section 31(2), for the words “making available” to the end of the subsection there shall be substituted “recovering property which is liable to be recovered under an external confiscation order registered in the Court under section 50 of this Act or, as the case may be, with a view to making available for recovery property which may become liable to be recovered under any external confiscation order which may be made in the defendant’s case”.

(2) In section 31(5), for “confiscation order” there shall be substituted “external confiscation order”.

16. In section 32(2), for the words “out of the Consolidated Fund” there shall be substituted “by the person on whose application the receiver was appointed”.

17. In section 33(6) —

(a) sub-paragraphs (i) and (ii) of paragraph (a) shall be omitted; and

(b) in sub-paragraph (b), for the words “conclusion of the proceedings or of the application” there shall be substituted “discharge of the restraint or charging order”.

18. Sections 35 to 49 shall be omitted.

19. In section 50(4), after the word “satisfied” there shall be inserted “by the recovery of all property liable to be recovered under it or”.

20. Sections 57 to 60 shall be omitted.

21. Sections 61, 62 to 64 and the Schedule shall be omitted.

22. After section 60 there shall be inserted the Appendix set out at the end of the Third Schedule to this Order.

THIRD SCHEDULE (Article 3(3))

THE PROCEEDS OF CRIME ACT, 2000 AS MODIFIED

External
confiscation
orders.

2A. (1) An order made by a court in a designated country for the purpose —

- (a) of recovering property, or the value of such property, obtained as a result of or in connection with —
 - (i) drug trafficking; or
 - (ii) a relevant offence; or
- (b) of depriving a person of a pecuniary advantage so obtained, is referred to in this Act as an “external confiscation order”.

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

Meaning of drug
trafficking,
relevant offence,
criminal conduct.

3. In this Act —

“criminal conduct” means —

- (a) drug trafficking; or
- (b) any relevant offence;

“drug trafficking offence” means an offence —

- (a) under sections, 8(a), 10, 14(7), 15(6), 22,(1), 23(2), 29(5), 30 of the Dangerous Drugs Act (importation, production, possession with intent to supply or handling of controlled drugs and cultivation of cannabis);
- (b) under sections 40, 41 or 42 of this Act (money laundering) which relates to the proceeds of drug trafficking; or an offence under sections 82, 85 or 86 of the Criminal Procedure Code Act (attempt, incitement, conspiracy, etc.) deriving from such an offence;

“drug trafficking” means doing or being concerned in, whether in The Bahamas or elsewhere, any act constituting —

- (a) a drug trafficking offence; or
- (b) an offence punishable under a corresponding law,

and includes entering into or being otherwise concerned in, whether in The Bahamas or elsewhere, a drug trafficking arrangement;

“drug trafficking arrangement” means an arrangement whereby —

- (a) the retention or control by or on behalf of another person of that other person’s proceeds of drug trafficking is facilitated; or

- (b) the proceeds of drug trafficking by another person are used to secure that funds are placed at that other person’s disposal or are used for that other person’s benefit to acquire property by way of investment;

“relevant offence” means an offence which would, if committed in The Bahamas, be triable on indictment.

4. (1) In this Act —

“property” means money and all other property, movable or immovable, including things in action and other things in action and other intangible or incorporeal property; and

Meaning of property, realisable property, etc.

“interest”, in relation to property, includes right.

(2) For the purposes of this Act —

- (a) property is held by any person if he holds any interest in it;
- (b) references to property held by a person include a reference to property vested in his trustee in bankruptcy or liquidator;
- (c) references to an interest held in property by a person beneficially include a reference to an interest which would be held by him beneficially if the property were not so vested in his trustee in bankruptcy or liquidator; and
- (d) property is transferred by one person to another if the first person transfers or grants to the other any interest in the property.

(3) In this Act, “realisable property” means —

- (a) in relation to an external confiscation order made in respect of specified property, the property which is specified in the order; and
- (b) in any other case —
 - (i) any property held by the defendant; and
 - (ii) any property held by a person to whom the defendant has directly or indirectly made a gift caught by this Act.

5. (1) Subject to the following subsections and section 6, for the purposes of this Act, the value of property (other than cash) in relation to any person holding the property shall be its market value, except that where any other person holds an interest in the property, the value shall be —

Value of property.

- (a) the market value of the first-mentioned person’s beneficial interest in the property; less
- (b) the amount required to discharge any incumbrance (other than a charging order) on that interest.

(2) Subject to section 6(3), references in this Act to the value at any time (referred to in subsection (3) as the “material time”) of a gift caught by this Act are references to —

- (a) the value of the gift to the recipient when he received it adjusted to take account of subsequent changes in the value of money; or
- (b) where subsection (3) applies, the value mentioned therein, whichever is the greater.

(3) Subject to section 6(3), if at the material time the recipient holds —

- (a) the property which he received (not being cash); or
- (b) property which, in whole or in part, directly or indirectly represents in his hands the property which he received, the value referred to in subsection (2)(b) shall be the value to him at the material time of the property mentioned in paragraph (a) or as the case may be, of the property mentioned in paragraph (b) so far as it so represents the property which he received, but disregarding in either case any charging order.

Gifts caught by this Act.

6. (1) In relation to a drug trafficking offence, a gift (including a gift made before the commencement of the Proceeds of Crime (Designated Countries and Territories) Order, 2001 is caught by this Act if —

- (a) it was made by the defendant at any time since the beginning of the period of six years ending —
 - (i) when the proceedings for the drug trafficking offence were instituted against him; or
 - (ii) where no such proceedings have been instituted, when an application for a charging or restraint order is made under sections 26 or 27; or
- (b) it was made by the defendant at any time and was a gift of property —
 - (i) received by the defendant in connection with drug trafficking carried on by him or another person; or
 - (ii) which in whole or in part directly or indirectly represented in the defendant's hands property received by him in that connection.

(2) In relation to a relevant offence, a gift (including a gift made before the commencement of this Act) is caught by this Act if —

- (a) it was made by the defendant at any time since the commission of the relevant offence, or, if more than one, the earliest of the offences to which the proceedings relate (including any offence which the court takes into consideration in determining his sentence); and
- (b) the court considers it appropriate in all the circumstances to take the gift into account.

- (3) For the purposes of this Act —
 - (a) the circumstances in which the defendant is to be treated as making a gift include those where he transfers property to another person, directly or indirectly, for a consideration the value of which is significantly less than the value of the consideration provided by the defendant; and
 - (b) in those circumstances, this section and section 5 shall apply as if the defendant had made a gift of such share in the property as bears to the whole property the same proportion as the difference between the values referred to in paragraph (a) bears to the value of the consideration provided by the defendant.

7. In this Act —

Other definitions.

“corresponding law” means a law which corresponds with a provision of Bahamian law which creates a drug trafficking offence or a relevant offence.

“the court” means the Supreme Court or, as the case may be, a court of a designated country;

“defendant” means a person against whom an external confiscation order has been made, or a person against whom proceedings which may result in an external confiscation order being made have been or are to be, instituted in a court in a designated country;

“prescribe” means prescribe by regulations under section 61.

8. (1) Proceedings are instituted in a designated country when —

Institution and conclusion of proceedings.

- (a) under the law of the designated country concerned one of the steps specified in relation to that country in column 2 of the Appendix hereto has been taken there in respect of alleged drug trafficking or the commission of a relevant offence by the defendant; or
- (b) where no steps have been specified in relation thereto as mentioned in paragraph (a) above, the defendant has been notified in writing in accordance with the laws of the designated country that the competent authorities of that country have begun proceedings against him in respect of alleged drug trafficking or a relevant offence; or
- (c) an application has been made to a court in a designated country for an external confiscation order, and where the application of this subsection 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.

Proceedings for an offence are concluded —

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

(b) on the satisfaction of an external confiscation order made in the proceedings, whether by the recovery of all property liable to be recovered; or the payment of any amount due.

(3) An external confiscation order is satisfied when no property remains liable to be recovered under it or no amount is due under it.

(4) An external confiscation 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.

Cases in which Restraint and Charging Orders may be made

Restraint and
charging orders.

25. (1) The powers conferred on the Supreme Court by section 26 to make a restraint order and by section 27 to make a charging order are exercisable where —

- (a) proceedings have been instituted against the defendant in a designated country for a drug trafficking or relevant offence;
- (b) the proceedings have not been concluded;
- (c) either an external confiscation 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) The powers mentioned in subsection (1) are also exercisable where it appears to the Supreme Court that proceedings are to be instituted against the defendant in a designated country and that there are reasonable grounds for believing that an external confiscation order may be made in them.

(5) Where the court has made a restraint or charging order by virtue of subsection (3), the court shall discharge the order if those proceedings are not instituted within such time as the court considers reasonable.

Restraint orders.

26. (1) The court may make a restraint order to prohibit any person from dealing with any realizable property, subject to such conditions and exceptions as may be specified in the order.

(2) A restraint order may apply —

- (a) where an application under subsection (4) relates to an external confiscation order made in respect of specified property, to property which is specified in that order; and
- (b) in any other case —
 - (i) to all realisable property held by a specified person, whether the property is described in the restraint order or not; and
 - (ii) to realisable property held by a specified person, being property transferred to him after the making of the restraint order.

(3) This section shall not have effect in relation to any property for the time being subject to a charge under section 27 of this Act.

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- (4) A restraint order —
- (a) may be made only on an application by the Police or the Attorney-General; and
 - (b) may be made on an *ex parte* application to a Judge in chambers; and
 - (c) shall provide for notice to be given to persons affected by the order.
- (5) A restraint order —
- (a) may, on the application of any person affected by the order, 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.
- (6) Where the court has made a restraint order, the court —
- (a) may at any time appoint a receiver —
 - (i) to take possession of any realisable property; and
 - (ii) in accordance with the directions of the court, 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

- (b) may require any person having possession of property in respect of which the receiver is appointed under this section to give possession of it to the receiver.

(7) For the purposes of this section, dealing with property held by any person includes (without prejudice to the generality of the expression) —

- (a) where a debt is owed to that person, making a payment to any person in reduction of the amount of the debt; and
- (b) removing the property from The Bahamas.

(8) Where the court has made a restraint order, a police officer may seize any realisable property for the purpose of preventing its removal from The Bahamas; and property so seized shall be dealt with in accordance with the directions of the court.

27. (1) For the purposes of this Act, a charging order is an order made under this section imposing on any such realisable property as may be specified in the order a charge for securing the payment of money to the Crown.

Charging orders.

(2) The court may make a charging order on realisable property for securing the payment —

- (a) where a fixed amount is payable under an external confiscation order, of an amount not exceeding the amount so payable; and
- (b) in any other case, of an amount equal to the value from time to time of the property charged.

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- (3) A charging order —
- (a) may be made only on an application by the Police or the Attorney-General; and
 - (b) may be made on an *ex parte* application to a Judge in chambers.
- (4) Subject to subsection (6), a charge may be imposed by a charging order only on —
- (a) any interest in realisable property, which is an interest held beneficially by the defendant or by a person to whom the defendant has directly or indirectly made a gift caught by this Act —
 - (i) in any chargeable asset; or
 - (ii) under any trust; or
 - (b) any interest in realisable property held by a person as trustee of a trust if the interest is in a chargeable asset or is an interest under another trust and a charge may, by virtue of paragraph (a), be imposed by a charging order on the whole beneficial interest under the first mentioned trust.
- (5) In this section —
- (a) “chargeable asset” means any of the following —
 - (i) any land in The Bahamas;
 - (ii) any relevant securities;
 - (iii) any motor vehicle;
 - (iv) any vessel;
 - (v) any aircraft;
 - (vi) any monies held by or deposited with a bank or other financial institution;
 - (vii) any other type of asset which the Minister of Finance may prescribe for the purposes of this section; and
 - (b) “relevant securities” means any of the following —
 - (i) securities of the government or of any public authority;
 - (ii) stock of any body corporate;
 - (iii) stock of any body incorporated outside The Bahamas or of any country outside The Bahamas;
 - (iv) options in relation to stock described in subparagraphs (ii) or (iii);
 - (v) a debt instrument;
 - (vi) shares in any mutual fund.
- (6) In any case where a charge is imposed by a charging order on any interest in any relevant securities, the court may provide for the charge to extend to any interest or dividend payable in respect of them.

(7) Where the court has made a charging order, the court may give such directions to such person as the court thinks fit to safeguard the assets under the charging order.

(8) The court —

- (a) may, on the application of any person affected by the charging order, make an order discharging or varying it; and
- (b) shall make an order discharging the charging order if the proceedings for the offence are concluded or on payment into court of the amount which is secured by the charge.

28. (1) A charging order may be made either absolutely or subject to conditions including in particular conditions —

Charging orders supplementary

- (a) as to notifying any person holding any interest in the property to which the order relates; or
- (b) as to the time when the charge is to become enforceable.

(2) Notice of any confiscation or charging order made under the provisions of this Act of any forfeiture order made under the provisions of the Dangerous Drugs Act, 2000 shall be deposited in the office of the Registrar-General for recording and registration in accordance with section 3 of the Registration of Records Act.

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(3) Subject to any provision made under section 29, a charge imposed by a charging order shall have the like effect and shall be enforceable in the same manner as an equitable charge created by the person holding the beneficial interest or, as the case may be, the trustees by writing under their hand.

28A. An application under sections 26(4) or 27(3) of this Act shall be supported by an affidavit which shall —

Applications for and charging orders

- (a) state, where applicable, the grounds for believing that an external confiscation order has been or 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 realisable property in respect of which the order is sought and specify the person or persons holding such property;
- (c) in a case to which section 25(3) of this Act applies, indicate when it is intended that proceedings should be instituted in the designated country concerned, and the affidavit may contain statements of information or belief with the sources and grounds thereof.

Realisation of Property

29. (1) Where an external confiscation order has been registered in the Supreme Court under section 50 of this Act, the Supreme Court may, on the application of the Attorney-General, exercise the powers conferred by subsections (1A) to (6) below.

Realisation of property

(1A) In respect of any sum of money payable under the external confiscation order the court may make a garnishee order as if the sum were due to the Crown in pursuance of a judgment or order of the Supreme Court, but any such order shall direct that the sum payable be paid to the Supreme Court.

(2) The court may appoint a receiver in respect of realisable property.

(3) The court may empower the receiver appointed under this section or section 26 or in pursuance of a charging order —

- (a) to enforce any charge imposed under section 27 on realizable property or on interest or dividends payable in respect of such property; and
- (b) in relation to any realizable property other than property for the time being subject to a charge under section 27, to take possession of the property subject to such conditions or exceptions as may be specified by the court.

(4) The court may order any person having possession of realisable property to give possession of it to the receiver.

(5) The court may empower the receiver to realise any realisable property in such manner as the court may direct.

(6) The court —

- (a) may order any person holding an interest in realisable property to make such payment to the receiver in respect of any beneficial interest held by the defendant or, as the case may be, the recipient of a gift caught by this Act as the court may direct; and
- (b) may, on the payment being made, by order transfer, grant or extinguish any interest in the property.

(8) The court shall not in respect of any property exercise the powers conferred by subsections (3)(a), (5) or (6) unless a reasonable opportunity has been given for persons holding any interest in the property to make representations to the court.

Application of
proceeds of
realisation, etc.

30. (1) The following sums in the hands of the receiver pursuant to sections 26 or 29 or in pursuance of a charging order —

- (a) the proceeds of the enforcement of any charge under section 27;
- (b) the proceeds of the realisation, other than by the enforcement of such a charge, of any property under sections 26 or 29; and
- (c) any other sums, being property held by the defendant, shall, after such payments (if any) as the court may direct have been made out of those sums, be paid to the Supreme Court and applied towards the satisfaction of the external confiscation order.

(2) Where a fixed amount is payable under the external confiscation order and, after that amount has been fully paid, any such sums remain in the hands of the receiver, he shall distribute those sums —

- (a) among such of those who held property which has been realised under this Act; and
- (b) in such proportions, as the court may direct after giving a reasonable opportunity for such persons to make representations to the court.

31. (1) This section shall apply to the powers conferred on the court by sections 26 to 30 or on the receiver pursuant to sections 26 or 29 or in pursuance of a charging order.

Exercise of powers for the realisation of property.

(2) Subject to subsections (3) to (6), the powers shall be exercised with a view to recovering property which is liable to be recovered under an external confiscation order registered in the Court under section 50 of this Act or, as the case may be, with a view to making available for recovery property which may become liable to be recovered under any external confiscation order which may be made in the defendant's case.

(3) In the case of realisable property held by a person to whom the defendant has, directly or indirectly, made a gift caught by this Act, the powers shall be exercised with a view to realising no more than the value for the time being of the gift.

(4) The powers shall be exercised with a view to allowing any person other than the defendant or the recipient of any such gift to retain or recover the value of any property held by him.

(5) In exercising those powers, no account shall be taken of any obligations of the defendant or of the recipient of any such gift which conflict with the obligation to satisfy the external confiscation order.

(6) An order may be made or other action taken in respect of a debt owed by the Crown.

32. (1) Where a receiver appointed under sections 26 or 29 or in pursuance of a charging order —

Receivers supplementary.

- (a) takes any action in relation to property which is not realisable property, being action which he would be entitled to take if it were such property; and
- (b) believes and has 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.

Insolvency

- Bankruptcy of
defendant
- 33.** (1) Where a person who holds realisable property is adjudged bankrupt —
- (a) property for the time being subject to a restraint order made before the order adjudging him bankrupt; and
- (b) any proceeds of property realised by virtue of sections 26(6) or 29(5) or (6) for the time being in the hands of a receiver appointed under section 26 or 29,
- Ch 69 shall be excluded from the bankrupt's estate for the purposes of the Bankruptcy Act.
- (2) Where a person has been adjudged bankrupt, the powers conferred on the court by sections 26 to 30 or on a receiver shall not be exercised in relation to property for the time being comprised in the property of the bankrupt for the purposes of the Bankruptcy Act.
- Ch 69
- (3) Nothing in the Bankruptcy Act shall be taken as restricting, or enabling the restriction of, the exercise of those powers referred to in subsection (2).
- Ch 69
- (4) Subsection (2) shall not affect the enforcement of a charging order —
- (a) made before the order adjudging the person bankrupt; or
- (b) on property which was subject to a restraint order when the order adjudging him bankrupt was made.
- Ch 69
- (5) Where, in the case of a debtor, the receiver constituted by virtue of section 11 of the Bankruptcy Act or an interim receiver stands appointed under the Bankruptcy Act, and any property of the debtor is subject to a restraint order —
- (a) the powers conferred on the receiver by virtue of that Act shall not apply to property for the time being subject to the restraint order; and
- (b) any such property in the hands of the receiver shall, subject to a lien for any expenses (including his remuneration) properly incurred in respect of the property, be dealt with in such manner as the court may direct.
- (6) Where a person is adjudged bankrupt and has directly or indirectly made a gift caught by this Act —
- Ch 69
- (a) no order shall be made by virtue of section 71 of the Bankruptcy Act in respect of the making of the gift at any time when property of the person to whom the gift was made is subject to a restraint order or a charging order; and
- Ch 69
- (b) any order made by virtue of section 71 of the Bankruptcy Act after the discharge of the restraint or charging order shall take into account any realisation under this Act of property held by the person to whom the gift was made.

34. (1) Where realisable property is held by a company and an order for the winding up of the company has been made or a resolution has been passed by the company for the voluntary winding up, the functions of the liquidator shall not be exercisable in relation to —

Winding up of company holding realisable property

- (a) property for the time being subject to a restraint order made before the relevant time; and
- (b) any proceeds of property realised by virtue of sections 26(6), 29(5) or (6) for the time being in the hands of a receiver appointed under section 26 or 29,

but there shall be payable out of such property any expenses (including the remuneration of the liquidator) properly incurred in the winding up in respect of the property.

(2) Where, in the case of a company, such an order has been made or such a resolution has been passed, the powers conferred on the court by sections 26 to 30 or on a receiver so appointed shall not be exercised in relation to any realisable property held by the company in relation to which the functions of the liquidator are exercisable —

- (a) so as to inhibit him from exercising those functions for the purpose of distributing any property held by the company to the company’s creditors; or
- (b) so as to prevent the payment out of any property of expenses (including the remuneration of the liquidator) properly incurred in the winding up in respect of the property.

(3) Nothing in the Companies Act, 1992 shall be taken as restricting, or enabling the restriction of, the exercise of those powers referred to in subsection (2).

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(4) Subsection (2), shall not affect the enforcement of a charging order made before the relevant time or on property which was subject to a restraint order at the relevant time.

(5) In this section —

“company” means any company which may be wound up under the Companies Act, 1992 or the International Business Companies Act, 2000;

Ch 308

Ch 309

“liquidator” includes any person appointed to the office of liquidator (whether provisionally or otherwise) under the Companies Act, 1992;

Ch 308

“the relevant time” means —

- (a) where no order for the winding up of the company has been made, the time of the passing of the resolution for voluntary winding up;
- (b) where —
 - (i) such an order has been made; but

- (ii) before the presentation of the petition for the winding up of the company by court order, such a resolution had been passed by the company, the time of the passing of the resolution; and
- (c) in any other case where such an order has been made, the time of the making of the order.

Foreign Orders, etc.

Registration of external confiscation orders.

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

- (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 affected by the order 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)(a), “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 court shall cancel the registration of an external confiscation order if it appears to the court that the order has been satisfied by the recovery of all property liable to be recovered under it or by payment of the amount due under it.

Evidence of corresponding law.

51. A document purporting to be issued by or on behalf of the Government of a country and purporting to state the terms of a corresponding law in force in that country shall be admitted in evidence, in proceedings under this Act, on its production by the prosecution without further proof, and such document shall be conclusive evidence that —

- (a) it is issued by or on behalf of the Government of that country;
- (b) the terms of such law are as stated in the document;
- (c) any facts stated in the document to constitute an offence under such law do constitute such offence.

Offences and police powers, etc.

Offences by bodies corporate.

54. Where a body corporate is guilty of an offence under this Act and that offence is proved to have been committed with the consent or connivance of any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

55. (1) For the purposes of this Act, “police officer” includes any officer of the Customs Department at any port of entry or department in The Bahamas. Police powers etc.

(2) A police officer may arrest without warrant any person whom he reasonably believes has committed an offence under this Act.

(3) An officer of the Customs Department may, in any case relating to the commission of an offence under this Act, exercise all or any of the powers in relation to investigations into an offence which is arrestable without warrant conferred on a police officer by the Criminal Procedure Code Act. Ch. 91.

56. (1) Except for the purpose of the performance of his duties or the exercise of his functions or when lawfully required to do so by any court or under the provisions of any enactment, no police officer shall disclose any information or matter which has been obtained by him in the performance of his duties or the exercise of his functions under this Act. Police officers duty of confidentiality.

(2) Any person who contravenes this section shall be guilty of an offence and shall be liable on summary conviction to imprisonment for one year or a fine of \$2,000 or both.

Procedure

59. Any question of fact to be decided by a court in proceedings under this Act, except any question of fact that is for the prosecution to prove in any proceedings for an offence under this Act, shall be decided on the balance of probabilities. Civil standard of proof.

60. Any decision of a court in proceedings under this Act, except proceedings in relation to any offence committed under this Act, is a judgment of a court in a civil cause or matter within section 9 of the Court of Appeal Act. Appeals.

Supplemental

62. This Act binds the Crown, but not so as to make the Crown capable of any criminal offence. Crown application.

APPENDIX

INSTITUTION OF PROCEEDINGS

Designated Country Point at which Proceedings are Instituted

Anguilla —

- (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.

Antigua & Barbuda when a person has been charged with a scheduled offence.

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 when an information or a complaint has been laid before a justice of the peace or a magistrate, or a person has been charged with an offence, or an indictment or a presentment has been preferred.

Bahrain when a bill of indictment is lodged in court against any person for an offence.

Barbados —

- (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.

Bolivia when a warrant is issued by a competent judge or an order to institute proceedings, containing the preventive annotation of property liable to registration or the bank deposit of the monies, assets and property of the accused.

Bermuda —

- (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.

British Virgin 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;
- (c) when an indictment is preferred.

The Cayman Islands —

- (a) when a charge has been signed under subsection (3) or (4) of section 13 of the Criminal Procedure Code in respect of the offence;
- (b) when a person is charged with the offence after being arrested without a warrant under subsection (5) of that section.

Chile when an application for a decision from the competent judicial authority is made.

Columbia when a preliminary investigation or a formal process has begun and, in either case, a Resolution has been issued for a freezing or seizure order.

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.

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 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 who 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 police 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 preventative 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.

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.