

**The Criminal Justice (Proceeds of Crime)  
(Bailiwick of Guernsey)  
(Enforcement of Overseas Confiscation Orders)  
Ordinance, 1999**

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**The Criminal Justice (Proceeds of Crime) (Bailiwick of  
Guernsey)  
(Enforcement of Overseas Confiscation Orders)  
Ordinance, 1999**

THE STATES, in pursuance of their Resolution of the 1st day of August 1997<sup>a</sup> in exercise of the powers conferred on them by section 35 of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999<sup>b</sup>, hereby order:-

**Designation of and application of the Law to countries and territories.**

1. (1) Each of the countries and territories specified in Schedule 1 to this Ordinance is hereby designated for the purposes of sections 35 and 36 of the Law.

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

**Proof of orders and judgments of court in a designated country.**

2. (1) For the purposes of sections 35 and 36 of the Law, and of the other relevant provisions of the Law, as applied under section 1(2) of this Ordinance -

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<sup>a</sup> Article XXII of Billet d'État No. XVI of 1997.

<sup>b</sup> Order in Council No. VIII of 1999.

- (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 subsection 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.**

3. (1) For the purposes of sections 35 and 36 of the Law and of the other relevant provisions of the Law as applied under section 1(2) of this Ordinance, 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) in a case to which section 37(2) of the Law, as modified by Schedule 2 to this Ordinance applies, that the defendant has been notified as specified in that subsection;
- (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 criminal conduct or their value;

shall, in any proceedings in the Royal 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 subsection (2) above 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 section shall prejudice the admission of any evidence, whether contained in any document or otherwise, which is admissible apart from this section.

**Certificate as to appropriate authority of a designated country.**

4. Where in relation to any designated country no authority is specified in Schedule 1 to the Ordinance, a certificate made by Her Majesty's Procureur to the effect that the authority specified therein is the appropriate authority for the purposes of sections 35 and 36 of the Law and of the other relevant provisions of the Law as applied by section 1(2) of this Ordinance shall be sufficient evidence of that fact.

**Representation of government of a designated country.**

5. A request for assistance sent to Her Majesty's Procureur by the appropriate authority of a designated country shall, unless the contrary is shown, be deemed to constitute the authority of that country for Her Majesty's Procureur to act on its behalf in any proceedings in the Royal Court under

section 36 of the Law or any other provision of the Law as applied by section 1(2) of this Ordinance.

**Satisfaction of confiscation order in a designated country.**

6. (1) Where -

- (a) a confiscation order has been made under section 2 of the Law; and
- (b) a request has been sent by Her Majesty's Procureur 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 section and without prejudice to the admissibility of any evidence which may be admissible apart from this subsection, a certificate purporting to be issued by or on behalf of the appropriate authority of a designated country stating that property has been recovered there in execution of a request by Her Majesty's Procureur, stating the value of the property so recovered and the date on which it was recovered shall, in any proceedings in a court in the Bailiwick, be admissible as evidence of the facts so stated.

**Currency conversion.**

7. (1) Where the value of property recovered as described in section 6(1) of this Ordinance is expressed in a currency other than that of the United Kingdom, the extent to which the amount payable under the confiscation order is to be reduced under that paragraph 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.

(2) Where an amount of money payable or remaining to be paid under an external confiscation order registered in the Royal Court under section 36 of the Law is expressed in a currency other than that of the United Kingdom, for the purpose of any action taken in relation to that order under the Law as applied under section 1(2) of this Ordinance the amount shall be converted into the currency of the United Kingdom on the basis of the exchange rate prevailing on the date of registration of the order.

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

**Interpretation.**

8. In this Ordinance -

**"appropriate authority of a designated country"** means -

- (a) the authority specified opposite that country in the First Schedule to this Ordinance;
- (b) where no such authority is specified, the authority appearing to the court to be the

appropriate authority of that country for the purposes of sections 35 and 36 of the Law and of the other relevant provisions of this Law as applied under section 1(2) of this Ordinance;

**"a 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 section 1(1) of this Ordinance.

**"Her Majesty's Procureur"** includes **"Her Majesty's Comptroller"**;

**"the Law"** means the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999;

**Citation and commencement.**

9. This Ordinance may be cited as the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999 and shall come into force on 1st January, 2000.

## SCHEDULE 1

Section 1(1)

### DESIGNATED COUNTRIES AND TERRITORIES

<i>Designated country</i>	<i>Appropriate authority</i>
Antigua and Barbuda	
Australia	the Attorney General's department
Austria	
Belgium	
Bulgaria	
Canada	the Minister of Justice or officials designated by that Minister
Colombia	the Fiscalía General de la Nación
Cyprus	
The Czech Republic	
Denmark	
Finland	
France	
Germany	
Hong Kong	the Department of Justice Special Administrative Region
Iceland	
India	the Ministry of Home Affairs
Ireland	
Isle of Man	Her Majesty's Attorney General for the Isle of Man
Italy	the Ministry of Justice
Jersey	Her Majesty's Attorney General for

	the Bailiwick of Jersey
Lithuania	
Netherlands	Afdeling Internationale Rechtshulp
Nigeria	the Attorney General of the Federation of the Republic of Nigeria
Norway	
Portugal	
Romania	
Slovenia	
Spain	the Ministerio de Justicia, Madrid
Sweden	the Ministry for Foreign Affairs
Switzerland	Office federal de la police
Thailand	
Trinidad and Tobago	the Attorney General or a person designated by him
Ukraine	The Office of the General Prosecutor and the Ministry of Justice
United Kingdom-	
England and Wales	Her Majesty's Attorney General for England and Wales
Northern Ireland	Her Majesty's Attorney General for Northern Ireland
Scotland	Her Majesty's Lord Advocate for Scotland
United Mexican States	the Office of the Attorney General
United States of America	the Attorney General of the United States of America



## SCHEDULE 2

### Section 1(2)

#### MODIFICATIONS OF THE CRIMINAL JUSTICE (PROCEEDS OF CRIME) (BAILIWICK OF GUERNSEY) LAW, 1999 IN ITS APPLICATION TO EXTERNAL CONFISCATION ORDERS

1. For section 2 there shall be substituted the following section:

##### "External confiscation orders"

2. (1) An order made by a court in a designated country for the purpose of recovering payments or other rewards received in connection with criminal conduct or their value is referred to in the Law 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."

2. Sections 3 to 5 shall be omitted.

3. In section 6 -

- (a) subsection (1) shall be omitted;
- (b) for subsection (2) there shall be substituted the following subsection:

"(2) In this Law "realisable property" means, subject to subsection (3) below -

- (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 Law.";
- (c) subsection (4) shall be omitted.

**4.** In section 8, in subsection (1) for the words "commencement of this Law" there shall be substituted the words "commencement of the Criminal Justice (Proceeds of Crime) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999".

**5.** Sections 9 to 24 shall be omitted.

**6.** In section 25 -

- (a) for subsection (1)(a) there shall be substituted the following:

- "(a) proceedings have been instituted against the defendant in a designated country;"
- (b) in subsection (1)(b) the words "or the application has not" shall be omitted;
- (c) for subsection (1)(c) there shall be substituted:
- "(c) either an external confiscation order has been made in the proceedings or it appears to the Court that there are reasonable grounds for believing that such an order may be made in them";
- (d) for subsection (2) there shall be substituted:
- "(2) The powers mentioned in subsection (1) above are also exercisable where it appears to the 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.";
- (e) subsection (3) shall be omitted;
- (f) in subsection (4) for "(2)(a)", wherever appearing, substitute "(2)";
- (g) in subsection 5(a) after "Her Majesty's Procureur" insert the words "on behalf of the government of a designated

country or, where an external confiscation order has been registered under section 36 of this Law on behalf of Her Majesty's Sheriff;"

(h) for subsection 5(c) there shall be substituted:

(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 Court may direct, and";

(i) in subsection (6)(b)(i) the words after "proceedings" shall be deleted and "in relation to which the order was made are concluded;" substituted;

(j) in subsection (8) for "27 and 28" there shall be substituted "27, 27A and 28".

7. In section 26 -

for subsection (2) there shall be substituted:

"(2) A restraint order may apply-

(a) where an application under section 25(5) 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."

**8.** In section 27 -

- (a) for subsection (1) there shall be substituted:

"(1) The Court may make a realty charging order in respect of realisable property consisting of real property situate in the Bailiwick for securing payment to the Crown-

- (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.";

- (b) in subsection (4) for the words " a confiscation order" there shall be substituted "an external confiscation order".

9. After section 27 insert the following -

**"Applications for restraint and charging orders**

27A. Notwithstanding anything in Rules of Court, an application under section 25(5) shall be supported by an affidavit, which shall -

- (a) state, where applicable, the grounds for believing that an external confiscation order may be made in the proceedings instituted or to be instituted in the specified 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 in which section 25(2) applies, indicate when it is intended that proceedings should be instituted in the specified country concerned,

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

**10.** In section 28(1) for "a confiscation order" there shall be substituted "an external confiscation order".

**11.** In section 29 (1)-

(a) for the words from "Where" to "appeal", there shall be substituted "Where an external confiscation order has been registered under section 36"; and

(b) for "the Court" there shall be substituted "the Royal Court ("the Court")".

**12.** In section 30 -

(a) in subsection (1) for the words "confiscation order", there shall be substituted "external confiscation order";

(b) in subsection (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".

**13.** In section 31 -

(a) for subsection (2) there shall be substituted-

"(2) Subject to subsections (3) to (6) the powers shall be exercised with a view to -

- (a) recovering property which is liable to be recovered under an external confiscation order registered under section 36; or
- (b) 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.";

(b) in subsection (6) for the words "confiscation order" there shall be substituted "external confiscation order".

**14.** Section 35 shall be omitted.

**15.** In section 37 -

- (a) in subsection (1) the words "of this Part" shall be deleted;
- (b) for subsection (2) there shall be substituted the following subsection:

"(2) 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 criminal conduct by the defendant;

- (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 criminal conduct; 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.";

- (c) for subsection (3) there shall be substituted the following subsection:

"(3) 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.";

(d) subsections (4) and (5) shall be omitted;

(e) for subsection (6), there shall be substituted the following subsection -

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

(f) subsection (7) shall be omitted; and

(g) in subsection (8), before the word "order" the first time that it appears there shall be inserted the words "external confiscation".

16. Sections 38 to 49 shall be omitted.

17. In section 51(1) for the definition of "defendant" there shall be substituted the following definition:

" **"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;"

18. For section 52 there shall be substituted the following section:

**52.** In this Law the expressions listed below are defined by, or otherwise fall to be construed in accordance with, the provisions of this Law indicated below -

**"Alderney company"** (section 51(1));

**"Alderney Land Register"** (section 51(1));

**"Bailiwick"** (section 51(1));

**"Bailiwick company"** (section 51(1));

**"charging order"** (section 51(1));

**"collective investment scheme"** (section 51(1));

**"conclusion of proceedings in a designated country"** (section 37(3));

**"the Court"** (section 29(1));

**"criminal conduct"** (section 1(1));

**"defendant"** (section 51(1));

**"drug trafficking"** (section 1(2));

**"drug trafficking offence"** section 1(2));

**"external confiscation order"** (section 2(1));

**"gift caught by this Law"** (section 8(1));

**"held"**, in relation to property (section 50(4)(a) and (5)(a));

**"Her Majesty's Procureur"** (section 51(1));

**"institution of proceedings in a designated country"** (section 37(2));

**"interest"**, in relation to property (section 50(3));

**"making a gift"** (section 8(2));

**"personalty charging order"** section 28);

**"property"** (section 50(1));

**"realisable property"** (section 6(2));

**"realty charging order"** (section 27(2));

**"restraint order"** (section 26(1));

**"satisfied"**, in relation to an external confiscation order (section 37(6)and(7));

**"subject to appeal"**, in relation to an external confiscation order (section 37(8));

**"transferred"**, in relation to property (section 50(5)(b));

**"value of property"** (section 7(1))."

**19.** After section 53 there shall be inserted the Appendix set out at the end of this Schedule.

**20.** Sections 54 and 55 shall be omitted.

**21.** The Schedule shall be omitted.

APPENDIX

Section 37(2)

INSTITUTION OF PROCEEDINGS

<i>Designated country</i>	<i>Point at which proceedings are instituted</i>
Australia	(a) when an information has been laid before a justice of the peace; (b) when a person is charged with an offence after having been taken into custody without a warrant; (c) when a bill of indictment is preferred.
Germany	when a person is notified that he is accused of an offence and will be brought before a court.
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 is charged  
with 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) when 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  
an 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.

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.

Romania

(a) when the start of a criminal pursuit is ordered;

(b) when penal proceedings start in respect of an offender.

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.
Trinidad and Tobago	<ul style="list-style-type: none"> <li>(a) when an information or complaint is laid before the magistrate;</li> <li>(b) when a person is charged with an offence;</li> <li>(c) when a bill of indictment is preferred;</li> <li>(d) when a warrant of arrest is executed against a person.</li> </ul>
Ukraine	when a criminal case is brought.
United Kingdom	<ul style="list-style-type: none"> <li>(a) when an information has been laid before a justice of the peace;</li> </ul>

- (b) when a person is charged with an offence;
- (c) when a bill of indictment is preferred;
- (d) when a petition warrant is granted.

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.