

VIRGIN ISLANDS

CRIMINAL JUSTICE (INTERNATIONAL CO-OPERATION) (ENFORCEMENT OF OVERSEAS FORFEITURE ORDERS) ORDER, 2017

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VIRGIN ISLANDS

STATUTORY INSTRUMENT 2017 NO. 44

**The Criminal Justice (International Co-operation)
Act, 1993
(No. 8 of 1993)**

**Criminal Justice (International Co-operation) (Enforcement of Overseas
Forfeiture Orders) Order, 2017**

[Gazetted 20th July, 2017]

The Cabinet in exercise of the powers conferred by section 7 of the Criminal Justice (International Co-operation) Act, 1993 makes the following Order:

Citation. **1.** This Order may be cited as the Criminal Justice (International Co-Operation) (Enforcement of Overseas Forfeiture Orders) Order, 2017.

Interpretation. **2.** (1) In this Order, unless the context otherwise requires,

"a court of a requesting country" includes a court of any state or territory of a requesting country;

"appropriate authority of a requesting country" means

Schedule 2
Schedule 3

- (a) the authority specified opposite that country in Schedule 2 or as the case may be Schedule 3, or
- (b) where no authority is so specified, the authority appearing to the court to be the appropriate authority for the purposes of this Order; or
- (c) where there is no country specified and consequently no such authority specified, the authority appearing to the court to be the appropriate authority for the purposes of this Order.

"police officer" includes a person authorised by the Commissioner of Customs;

"drug trafficking offence" means any offence corresponding to or similar to

Cap. 178

- (a) an offence under section 6(1) or (2) or 7(2) of the Drugs (Prevention of Misuse) Act, 1988;
- (b) an offence under section 21 of that Act;

- (c) an offence under any customs enactment in respect of the evasion of duty on the importation or exportation of prohibited or restricted goods;
- (d) an offence under section 10, 11 or 15 of the 1993 Act; No. 8 of 1993
- (e) conspiracy to commit any of the offences in paragraphs (a) to (d);
- (f) attempting to commit any of those offences;
- (g) an offence of inciting another to commit any of those offences, whether under section 20 of the Drugs (Prevention of Misuse) Act, 1988 or at common law; and Cap. 178
- (h) aiding, abetting, counselling or procuring the commission of any of those offences;

"offence to which this Order applies" means a drug trafficking offence or any offence corresponding or similar to an indictable offence which part III of the Criminal Justice (International Co-operation) Act, 1993 applies;

"property" includes money and all other property, real or personal, heritable or moveable, including things in action and other intangible or incorporeal property;

"requesting country" means a country or territory making a request under section 4;

"the 1993 Act" means the Criminal Justice (International Co-operation) Act, 1993.

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

(3) The following provisions shall have effect for the interpretation of this Order:

- (a) property is held by any person if he holds any interest in it;
- (b) proceedings are instituted in a requesting country when,
 - (i) under the law of the requesting country concerned one of the steps specified in relation to that country in the right-hand column of Schedule 1 has been taken there in respect of an alleged offence to which this order applies;

Schedule 1

- (ii) where no steps have been specified in relation thereto as mentioned in paragraph (a), the defendant has been notified in writing in accordance with the laws of the requesting country that the competent authorities of that country have begun proceedings against him in respect of an offence, or
- (iii) an application has been made to a court in a requesting country for an external forfeiture order,

and where the application of this paragraph 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 items;

Schedule 1

- (c) where a requesting country is not specified in Schedule I and consequently no steps are specified, proceedings shall be deemed to be instituted in that requesting country when the defendant has been notified in writing in accordance with the laws of the requesting country that the competent authorities of that country have begun proceedings against him in respect of an offence.

(4) 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).

(5) 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.

External forfeiture orders.

3. (1) An order made by a court in a requesting country for the forfeiture and destruction or forfeiture and other disposal, of anything in respect of which an offence to which this Order applies has been committed or which was used or intended for use in connection with the commission of such an offence is referred to in this Order as an "external forfeiture order".

(2) In subsection (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 order being made have been, or are to be, instituted in a court in a requesting country, is referred to as "the defendant".

4. (1) For the purposes of section 7 of the 1993 Act and for the purposes of the application of this Order Requests.

(a) to drug trafficking offences,

(b) to any other offence to which this Order applies,

the Attorney General shall comply with a request for assistance from the appropriate authority of requesting country, relating to any matter for which assistance may be requested or provided under the 1993 Act or this Order.

(2) Schedules 2 and 3 shall have effect with respect to the specification of the appropriate authority in relation to each country specified in those Schedules. Schedule 2
Schedule 3

(3) Where a requesting country is not specified in Schedule 2 or 3, and consequently no such authority is specified, the authority appearing to the court to be the appropriate authority for the purposes of this Order shall be deemed to be the appropriate authority for that country.

5. (1) The High Court may in accordance with this subsection by an order (referred to in this Order as a "restraint order") prohibit any person, subject to the conditions and exceptions that 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 order could be made in the proceedings referred to in subsections (2) or (3). Restraint orders.

(2) A restraint order may be made where,

(a) proceedings have been instituted against the defendant in a requesting 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 High Court that there are reasonable grounds for believing that an external forfeiture order may be made in them.

- (3) A restraint order may also be made where,
 - (a) it appears to the High Court that proceedings are to be instituted against the defendant in a requesting 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 subsection (1) by virtue of subsection (3), the court shall discharge the order if the proposed proceedings are not instituted within the time 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 requesting country or, in a case where an external forfeiture order has been registered under section 10 of this Order, by a crown prosecutor or a person authorised in that behalf by the Commissioner of Customs,
 - (b) may be made on an *ex parte* application to a judge in chambers, and
 - (c) notwithstanding anything in Order 11 of the Rules of the Supreme Court, may provide for service on or the provision of notice to, persons affected by the order in a manner the High 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 High 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 the exceptions and conditions that may be specified by the court, and may require any person having possession of property in respect to which a receiver is appointed under this section to give possession of it to the receiver.

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

(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 Territory seize the property.

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

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

Application for restraint orders.

- (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 requesting 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 the property, and
- (c) in a case to which section 5(3) applies, indicate when it is intended that proceedings should be instituted in the requesting 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 the High Court under section 10, the High Court may, on the application of a crown prosecutor or a person authorised in that behalf by the Commissioner of Customs, order the forfeiture of the property specified in the external forfeiture order.

Disposal of forfeited property.

(2) Property forfeited under subsection (1) shall be disposed of in accordance with the court's directions.

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

Exercise of powers by High Court or receiver.

8. (1) This section applies to the powers conferred on the High Court by sections 5 and 7 or on a receiver appointed under section 5.

(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 High Court under section 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.

Receivers: Supplementary provisions.

9. (1) Where a receiver appointed under section 5 takes any action

- (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 that 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 requesting country, the High Court may register an external forfeiture 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 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 Territory 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 stay of execution.

(3) The High 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.

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

(a) any order made or judgment given by a court in a requesting 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 requesting country shall be deemed without further proof to be a true copy.

Proof of orders and judgment court in a requesting country.

(2) A document purporting to be a copy of any order made or judgment given by a court in a requesting country is duly authenticated for the purposes of subsection (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 requesting 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 requesting 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 2 (5) (b) applies, that the defendant has been notified as specified in that subsection,

(c) that an external forfeiture order is in force and is not subject to appeal,

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

- (d) that property recoverable in the requesting country under an external forfeiture order remains unrecoverable there,
- (e) that any person has been notified of any proceedings in accordance with the law of the requesting country, or
- (f) that an order (however described) made by a court of the requesting country is for the forfeiture and destruction or the forfeiture and other disposal of anything in respect of which an offence to which this order applies has been committed or which was used or intended for use in connection with the commission of such an offence, shall, in any proceedings in the High Court, be admissible as evidence of the facts so stated.

(2) In those 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 requesting country, shall be admissible as evidence of any fact stated therein.

(3) A document is duly authenticated for the purposes of subsection (2) if it purports to be certified by any person in his capacity as judge, magistrate or officer of the court in the requesting country, or by or on behalf of the appropriate authority of the requesting 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 of appropriate authority.

13. Where in relation to any requesting country no authority is specified in Schedule 2, a certificate made by the Governor 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 requesting country.

14. A request for assistance sent to the Governor by the appropriate authority of a requesting country shall, unless the contrary is shown, be deemed to constitute the authority of the government of that country for the crown prosecution service or the Commissioner of Customs to act on its behalf in any proceedings in the High Court under section 10 or any other provision of this Order.

15. The Criminal Justice (International Co-Operation) (Enforcement of Overseas Forfeiture Orders) Order, 1996 is revoked.

Revocation.
S. I. 1996 No. 66

SCHEDULE 1

[Section 2(3)]

INSTITUTION OF PROCEEDINGS

NB: With respect to a requesting country not specified in this Schedule and consequently no steps are specified, proceedings shall be deemed to be instituted in that requesting country when the defendant has been notified in writing in accordance with the laws of the requesting country that the competent authorities of that country have begun proceedings against him in respect of an offence.

Requesting 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
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	(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
The Bahamas	(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
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
Bermuda	when an information is laid charging a person with an offence
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; or
	(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
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 1980, 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;
Jersey continued	(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
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
United Kingdom	(a) when an information is laid before a justice of the peace;
	(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
Uruguay	when criminal proceedings are instituted by a judicial authority

SCHEDULE 2

[Section 4]

REQUESTING COUNTRIES - DRUG TRAFFICKING OFFENCES

NB: Where a requesting country is not specified in this Schedule and consequently no appropriate authority is specified, the authority appearing to the court to be the appropriate authority for the purposes of this Order shall be deemed to be the appropriate authority for that country.

Requesting country	Appropriate authority
Afghanistan	
Algeria	
Anguilla	the Attorney General of Anguilla
Antigua and Barbuda	
Argentina	the Ministry of Foreign Affairs
Armenia	
Australia	the Attorney General's Department
Azerbaijan	
The Bahamas	the Attorney General of the Bahamas
Bahrain	the Ministry of the Interior
Bangladesh	
Barbados	the Attorney General
Belarus	
Bermuda	the Attorney General of Bermuda

Bhutan

Bolivia

Bosnia and Herzegovina

Brazil

Bulgaria

Burkina Faso

Burma

Burundi

Cameroon

Canada the Minister of Justice or officials requesting
by that Minister

Cayman Islands the Attorney General of the Cayman Islands

Chad

Chile

China

Colombia the Fiscalia General de la Nacion

Costa Rica

Croatia

Cyprus

Czech Republic

Denmark

Dominica

Dominican Republic

Ecuador Consejo Nacional de Control de Sustancias
Estupefacientes y Psicotropicas (CONSEP)

Egypt

El Salvador	
Ethiopia	
Fiji	
Finland	
France	
Germany	
Ghana	
Gibraltar	the Attorney General of Gibraltar
Greece	
Grenada	
Guatemala	
Guernsey	Her Majesty's Attorney General for the Bailiwick of Guernsey
Guinea	
Guyana	the Permanent Secretary, Ministry of Home Affairs
Honduras	
Hong Kong	the Attorney General of Hong Kong
India	the Ministry of Home Affairs
Iran	
Isle of Man	Her Majesty's Attorney General for the Isle of Man
Italy	the Ministry of Justice
Ivory Coast	
Japan	

Jersey	Her Majesty's Attorney General for the Bailiwick of Jersey
Jordan	
Kenya	
Kyrgyzstan	
Latvia	
Lesotho	
Luxembourg	
Macedonia	
Madagascar	
Malaysia	the Inspector General of Police, Malaysia
Mauritania	
Moldova	
Monaco	
Montserrat	the Attorney General of Montserrat
Morocco	
Myanmar	
Nepal	
Netherlands	Afdeling International Rechtahulp
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

Peru

Poland

Portugal

Qatar

Romania

The Russian Federation

St. Kitts and Nevis

St. Lucia

St. Vincent and the Grenadines

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

Sweden	the Ministry for Foreign Affairs
Switzerland	Office federal de la police
Syria	
Togo	
Trinidad and Tobago	
Tunisia	
Turks and Caicos Islands	
Uganda	
Ukraine	
United Arab Emirates	
United Kingdom	the Home Office
United Mexican States	the Office of the Attorney General
United States of America	the Attorney General of the United States of America
Uruguay	the Ministry of Education and Culture
Uzbekistan	
Venezuela	
Yugoslavia	
Zambia	
Zimbabwe	

SCHEDULE 3

[Section 4]

NB: Where a requesting country is not specified in this Schedule and consequently no appropriate authority is specified, the authority appearing to the court to be the appropriate authority for the purposes of this Order shall be deemed to be the appropriate authority for that country.

REQUESTING COUNTRIES – OTHER OFFENCES

Requesting country	Appropriate authority
Bulgaria	
Canada	the Minister of Justice or officials requesting by that Minister
India	the Minister of Home Affairs
Isle of Man	Her Majesty's Attorney General for the Isle of Man
Italy	the Ministry of Justice
Netherlands	Afdeling Internationale Rechtsulp
Nigeria	the Attorney General of the Federation of republic of Nigeria
Sweden	the Ministry of Foreign Affairs
Switzerland	Office federal de la police
United Kingdom	the Home Office
United States of America	the Attorney General of the United States of America

Made by the Cabinet this 14th day of July, 2017.

(Sgd) Sandra Ward,
Cabinet Secretary.