



Jersey

**CIVIL ASSET RECOVERY
(INTERNATIONAL CO-OPERATION)
(JERSEY) LAW 2007**

Revised Edition

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Jersey

CIVIL ASSET RECOVERY (INTERNATIONAL CO-OPERATION) (JERSEY) LAW 2007

Arrangement

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Jersey

CIVIL ASSET RECOVERY (INTERNATIONAL CO-OPERATION) (JERSEY) LAW 2007

A **LAW** to enable Jersey to co-operate with other countries in external civil asset recovery proceedings and investigations and for related purposes

Commencement [[see endnotes](#)]

PART 1

INTRODUCTORY PROVISIONS

1 Interpretation

(1) In this Law –

“document” includes information recorded in any form and, in relation to information recorded otherwise than in legible form, references to its production include references to producing a copy of the information in legible form;

“evidence” includes documents and other articles;

“external civil asset recovery order” means an order or other judicial authority, that –

- (a) is made, other than in the course of criminal proceedings, by an external decision-making body in a country or territory outside Jersey; and
- (b) specifies that property specified in the order is tainted property, or specifies an amount of money to be money to be forfeited or recovered in lieu of tainted property;

“external civil asset recovery proceedings” means proceedings –

- (a) which are judicial in nature but are not criminal proceedings; and
- (b) in which external civil asset recovery orders may be made;

“external decision-making body” means a court or tribunal, or other body or person, who or which is authorized, under a law of a country or territory outside Jersey, to make external civil asset recovery orders;

“items subject to legal professional privilege” shall have the same meaning as is given to the expression “items subject to legal privilege” by Article 1(1) of the Proceeds of Crime (Jersey) Law 1999¹;

“Minister” means the Minister for Treasury and Resources;

“premises” includes any place and, in particular, includes –

- (a) any vehicle, vessel, aircraft or hovercraft;
- (b) any offshore installations; and
- (c) any tent or movable structure;

“property” means all property whether movable or immovable, vested or contingent and whether situated in Jersey or elsewhere;

“property restraint order” means an order made under Article 7;

“recoverable property” means any property in respect of which an external civil asset recovery order has been, or could be, made in external civil asset recovery proceedings;

“respondent” means a person against whom, or against whose property, an external civil asset recovery order has been made or against whom, or against whose property, external civil asset recovery proceedings have been, or are to be, instituted;

“responsible authority” means –

- (a) an external decision-making body;
- (b) a person or body who or which –
 - (i) is authorized under a law of a country or territory outside Jersey to conduct investigations on behalf of the country or territory in relation to external civil asset recovery proceedings that are or may be instituted, and
 - (ii) is conducting such an investigation; and
- (c) any other authority in a country or territory which appears to the Attorney General to have the function of making requests, in relation to external civil asset recovery proceedings, of the kind to which Article 2 or 3 applies;

“tainted property” means property that has been found by an external decision-making body to have been –

- (a) used in, or intended to be used in, unlawful conduct; or
- (b) obtained in the course of, from the proceeds of, or in connection with, unlawful conduct;

“unlawful conduct” means the commission of an offence against a law of a country or territory, including Jersey.²

- (2) For the purposes of this Law, external civil asset recovery proceedings are instituted in a country or territory outside Jersey when an application

has been made to an external decision-making body in the other country or territory for an external civil asset recovery order.

- (3) For the purposes of this Law, external civil asset recovery proceedings are concluded in a country or territory outside Jersey –
 - (a) when (disregarding any power of an external decision-making body to grant leave to appeal out of time) there is no further possibility of an external civil asset recovery order being made in the proceedings; or
 - (b) on the satisfaction of an external civil asset recovery order made in the proceedings, whether by forfeiture, recovery, or realisation, of all property liable to be forfeited, recovered, realised or otherwise dealt with under the order.
- (4) An external civil asset recovery order is subject to appeal until (disregarding any power of an external decision-making body or 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.

2 Service of external civil asset recovery process in Jersey

- (1) If the Attorney General receives from the government of, or a responsible authority in, a country or territory outside Jersey –
 - (a) a summons or other process requiring a person to appear as a respondent, or to attend as a witness, in external civil asset recovery proceedings in that country or territory; or
 - (b) a document issued by an external decision-making body in that country or territory as part of external civil asset recovery proceedings and recording a decision of the body made in the course of those proceedings,together with a request for it to be served on a person in Jersey, the Attorney General may cause the process or document to be served by post, or, if the request is for personal service, instruct the Viscount to cause it to be personally served.
- (2) Service by virtue of this Article of any process mentioned in paragraph (1)(a) shall not impose an obligation under the law of Jersey to comply with it.
- (3) A process served by virtue of this Article shall be accompanied by a notice –
 - (a) stating the effect of paragraph (2);
 - (b) indicating that the person on whom it is served may wish to seek advice as to the possible consequences of the person's failing to comply with the process under the law of the country or territory where it was issued; and
 - (c) indicating that under that law the person may not, as a witness, be accorded the same rights and privileges as would be accorded to the person as a witness in civil proceedings in Jersey.

- (4) If the Viscount is instructed under this Article to cause a process or document to be served, the Viscount shall –
- (a) if it has been served, inform the Attorney General as soon as practicable when and how it was served and (if possible) provide the Attorney General with a receipt signed by the person on whom it was served; or
 - (b) if he or she has been unable to cause the process or document to be served, inform the Attorney General as soon as practicable of that fact and of the reason he or she has been unable to cause the process to be served.

PART 2

EVIDENCE IN RELATION TO EXTERNAL CIVIL ASSET RECOVERY PROCEEDINGS

3 Evidence for, and assistance in relation to, external civil asset recovery proceedings

- (1) This Article applies in relation to a request if –
- (a) the Attorney General receives from a responsible authority a request for assistance in obtaining evidence in Jersey in connection with –
 - (i) external civil asset recovery proceedings that have been instituted in a country or territory, or
 - (ii) an investigation for the purpose of external civil asset recovery proceedings that are being, or may be, instituted in a country or territory; and
 - (b) the Attorney General is satisfied that there are reasonable grounds to suspect that the evidence is, or relates to, property that –
 - (i) has been used in, or is intended to be used in, unlawful conduct, or
 - (ii) has been, or was intended to be, obtained in the course of, from the proceeds of, or in connection with, unlawful conduct.
- (2) If this Article applies in relation to a request, the Attorney General may issue a notice in writing to a person specifying any of, or any combination of, the following requirements –
- (a) that the person is required to give to the Attorney General, by the date specified in the notice, documents, or other articles, which are specified in the notice and that may constitute evidence for the purposes of the request;
 - (b) that the person –
 - (i) is required to give, to a court or the Viscount (as specified in the notice) documents, or other articles, which are specified

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- in the notice and that may constitute evidence for the purposes of the request, and
- (ii) may be required by a court or the Viscount (as specified in the notice) to attend and to give evidence in proceedings before the court specified or the Viscount in relation to that evidence;
 - (c) that the person may be required by a court or the Viscount (as specified in the notice) to attend and to give evidence in proceedings before the court specified or the Viscount in relation to the request.
- (3) A person shall not, without reasonable excuse, fail to comply with a requirement of a notice given to the person under paragraph (2) that is a requirement of the kind specified in sub-paragraph (a) of that paragraph, in relation to evidence that the person may, under Article 4, be compelled to give in proceedings under this Article.
- (4) A person who contravenes paragraph (3) commits an offence and shall be liable to a fine of level 3 on the standard scale.³
- (5) A court shall have the same powers for securing the attendance of –
- (a) a person to whom a notice has been given under paragraph (2) specifying a requirement of the kind that is specified in sub-paragraph (b) or (c) of that paragraph; or
 - (b) any other witness,
- for the purpose of proceedings under this Article as it has for the purpose of other proceedings before it.
- (6) The Viscount shall have the same powers for securing the attendance of –
- (a) a person to whom a notice has been given under paragraph (2) specifying a requirement of the kind that is specified in sub-paragraph (b) or (c) of that paragraph; or
 - (b) any other witness,
- for the purposes of proceedings before the Viscount under this Article as the Royal Court has for the purposes of any proceedings before it.
- (7) A court or the Viscount, as the case may be, may in proceedings before it or him or her under this Article, take evidence on oath.
- (8) An order for costs shall not be made in proceedings before a court or the Viscount under this Article.
- (9) For the avoidance of doubt it is declared that the Bankers' Books Evidence (Jersey) Law 1986⁴ applies to any proceedings before a court or the Viscount under this Article as it applies to other proceedings before the court or, in the case of the Viscount, would apply to proceedings before the Royal Court.
- (10) The Bankers' Books Evidence (Jersey) Law 1986 applies to the giving to the Attorney General, in pursuance of a requirement of a kind that is referred to in sub-paragraph (a) of paragraph (2) and that is specified in a notice given under that paragraph, of any evidence to which that Law

applies, as if the giving of the evidence to the Attorney General took place in proceedings before a court.

4 Giving of evidence in proceedings under Article 3

- (1) A person shall not be compelled to give in proceedings under Article 3 any evidence which the person could not be compelled to give –
 - (a) in civil proceedings in Jersey; or
 - (b) subject to paragraph (2), in civil proceedings in the country or territory from which the request under Article 3(1) has come.
- (2) Paragraph (1)(b) does not apply unless the claim of the person questioned to be exempt from giving the evidence is conceded by the responsible authority which made the request under Article 3(1).
- (3) If the claim made by a person is not conceded in accordance with paragraph (2) –
 - (a) the person may (subject to the other provisions of this Article) be required to give the evidence to which the claim relates; and
 - (b) the evidence shall not be transmitted to the responsible authority which requested it if a court in the country or territory in question, on the matter being referred to it, upholds the claim.
- (4) In this Article, references to giving evidence include references to answering any question and to producing any document or other article and the references in paragraph (3) to the transmission of evidence given by a person shall be construed accordingly.
- (5) In this Article, references to giving evidence in proceedings under Article 3 shall include the giving of evidence to the Attorney General pursuant to a requirement that is specified in a notice given under Article 3(2) and that is of a kind that is specified in sub-paragraph (a) of Article 3(2).

5 Transmission of evidence received in proceedings under Article 3

- (1) The evidence received by a court or the Viscount, as the case may be, under Article 3 shall be provided to the Attorney General for transmission to the responsible authority which made the request under that Article.
- (2) If, in order to comply with the request, it is necessary for the evidence to be accompanied by any certificate, affidavit or other verifying document, the court or the Viscount, as the case may be, shall also provide for transmission by the Attorney General of any document of that nature as may be specified in the notice nominating the court or Viscount.
- (3) The Attorney General may transmit to the responsible authority which made the request under Article 3 any evidence that is provided to him or her pursuant to a notice given to a person under that Article in relation to the request.
- (4) If the evidence consists of a document the original or a copy may be transmitted, and if it consists of any other article the article itself or a

description, photograph or other representation of it may be transmitted, as may be necessary in order to comply with the request.

PART 3

ENFORCEMENT OF EXTERNAL CIVIL ASSET RECOVERY ORDERS

6 Making of property restraint order

- (1) The Attorney General may apply to the Royal Court to make a property restraint order under this Article in respect of recoverable property specified in the application.
- (2) An application under paragraph (1) may also be made on an *ex parte* application to the Bailiff in Chambers.
- (3) After receiving an application under paragraph (1), the Royal Court may –
 - (a) make a property restraint order in respect of any recoverable property specified in the application; and
 - (b) give directions in relation to the management or dealing with the property, other than directions to dispose of, or realise, the property (other than perishable property).
- (4) The Royal Court may only make a property restraint order if the application is made on behalf of the government of a country or territory outside Jersey and if the requirements of either paragraph (5) or (6) have been complied with.
- (5) The requirements of this paragraph are that –
 - (a) external civil asset recovery proceedings that relate to property in Jersey have been instituted in a country or territory outside Jersey;
 - (b) the proceedings have not been concluded; and
 - (c) it appears to the Royal Court that there are reasonable grounds for believing that an external civil asset recovery order may be made in the proceedings.
- (6) The requirements of this paragraph are that –
 - (a) it appears to the Royal Court that external civil asset recovery proceedings that may relate to property in Jersey are to be instituted in a country or territory outside Jersey; and
 - (b) it appears to the Royal Court that there are reasonable grounds for believing that an external civil asset recovery order may be made in the proceedings.
- (7) A property restraint order –
 - (a) shall specify the respondent, if any, to whom it relates;
 - (b) shall specify the recoverable property to which it relates;

- (c) shall provide for service on, or the provision of notice to, persons affected by it in the manner that the Royal Court may direct; and
 - (d) may be made subject to conditions or restrictions specified in the order.
- (8) If the Royal Court has made a property restraint order, it shall discharge it if any proposed external civil asset recovery proceedings to which it relates are not instituted within the time that the Court considers reasonable.

7 Effect, and discharge of, property restraint order

- (1) Subject to paragraph (3), on the making of a property restraint order –
- (a) all the recoverable property that is specified in the order shall vest in the Viscount;
 - (b) any specified person may be prohibited from dealing with any recoverable property held by that person that is specified in the order;
 - (c) any specified person may be prohibited from dealing with any recoverable property that is specified in the order and that is transferred to the person after the making of the order; and
 - (d) any specified person having possession of any recoverable property that is specified in the order may be required to give possession of it to the Viscount.
- (2) Subject to paragraph (3), on the making of a property restraint order the Viscount shall take possession of, and, in accordance with the directions of the Royal Court under Article 6(3), manage or otherwise deal with, any recoverable property that is specified in the order.
- (3) Any property vesting in the Viscount pursuant to paragraph (1)(a) shall so vest subject to all *hypothecs* and security interests with which the property was burdened before it was so vested.
- (4) A property restraint order –
- (a) may be discharged or varied in respect of any property to which the external civil asset recovery proceedings in respect of which the order was made may relate; and
 - (b) shall be discharged on satisfaction of an order made under Article 10.
- (5) An application for the discharge or variation of a property restraint order may be made to the Bailiff in Chambers by any person affected by it and the Bailiff may rule upon the application or may, at the Bailiff's discretion, refer it to the Royal Court for adjudication.
- (6) If it appears to the Royal Court that any property restraint order, or any variation or discharge of such an order, made by it may affect immovable property situate in Jersey, it shall order the registration of the order in the Public Registry.
- (7) If it appears to the Bailiff that any variation or discharge of a property restraint order made by him or her pursuant to paragraph (5) affects

immovable property situate in Jersey, the Bailiff shall order the registration of the order in the Public Registry.

- (8) For the purposes of this Article, 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 Jersey.
- (9) If the Royal Court has made a property restraint order, a police officer may, for the purpose of preventing any recoverable property to which the property restraint order relates being removed from Jersey, seize the property.
- (10) Property seized under paragraph (9) shall be dealt with in accordance with directions of the Royal Court.

8 Liability and costs of Viscount

- (1) If the Viscount takes any action under a property restraint order in relation to property which is not liable to be dealt with under an external civil asset recovery order, the Viscount shall not be liable to any person in respect of any loss or damage resulting from the Viscount's action (except in so far as the loss or damage is caused by the Viscount's negligence) if –
 - (a) the action taken was action which the Viscount would be entitled to take if the property were property which is liable to be dealt with under an external civil asset recovery order; and
 - (b) the Viscount believed, and had reasonable grounds for believing, that the Viscount was entitled to take that action in relation to that property.
- (2) The Viscount shall be entitled –
 - (a) to be remunerated for managing property that has vested in him or her under this Law; and
 - (b) to be paid any expenses he or she has reasonably incurred in managing property that has vested in him or her under this Law.

9 Registration of external civil asset recovery orders

On an application made on behalf of the government of a country or territory outside Jersey, the Royal Court may register an external civil asset recovery order made in the country or territory if –

- (a) it is satisfied that at the time of registration the order is in force and not subject to appeal;
- (b) where the respondent in relation to the order did not appear in the proceedings in which the order was made, it is satisfied that he or she received notice of the proceedings in sufficient time to enable him or her to defend them; and

- (c) it is of the opinion that enforcing the order in Jersey would not be contrary to the interests of justice.

10 Recovery of property

- (1) If an external civil asset recovery order has been registered in the Royal Court under Article 9, the Court may, on the application of the Attorney General, order that –
- (a) so much of the property, specified in the order, as is not subject to a property restraint order, shall vest in the Viscount and may, in accordance with the directions of the Court, be managed, dealt with, or realised, by the Viscount; and
- (b) any property specified in the order that is subject to a property restraint order may, in accordance with the directions of the Court, be managed, dealt with, or realised, by the Viscount.
- (2) The Royal Court shall not exercise the powers conferred by paragraph (1) in respect of any property unless a reasonable opportunity has been given for persons holding any interest in the property to make representations to the Court.
- (3) Subject to paragraph (4), on the making of an order under paragraph (1) the Viscount shall take possession of, and, in accordance with directions of the Royal Court under paragraph (1), manage or otherwise deal with, the recoverable property that is specified in the order.
- (4) Any property vesting in the Viscount pursuant to paragraph (1) shall so vest subject to all *hypothecs* and security interests with which the property was burdened before it was so vested.
- (5) If it appears to the Royal Court that any order made by it under paragraph (1)(a) may affect immovable property situate in Jersey, it shall order the registration of the order in the Public Registry.

11 Civil Asset Recovery Fund

- (1) There shall be established a fund to be called the Civil Asset Recovery Fund.
- (2) The Civil Asset Recovery Fund shall be managed and controlled by the Minister.
- (3) Any money that is –
- (a) obtained by the Viscount under Article 10, including by the realisation of property to which an order under that Article relates; or
- (b) obtained under an asset sharing agreement,
- shall be paid into the Civil Asset Recovery Fund.
- (4) Except as required by paragraph (9), money that is paid into the Civil Asset Recovery Fund is not required to be credited to the consolidated fund.

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- (5) The Civil Asset Recovery Fund shall be a special fund for the purposes of the Public Finances (Jersey) Law 2005⁵.
- (6) The Minister shall apply monies in the Civil Asset Recovery Fund –
- (a) to discharge Jersey’s obligations under any asset sharing agreement;
 - (b) to pay to the Viscount –
 - (i) any amount required under Article 8(2), and
 - (ii) any amount required to be paid to the Viscount under any other enactment pursuant to which money recovered by any process is required to be paid into the Fund;
 - (c) to meet the expenses reasonably incurred by the Minister in administering the Fund;
 - (d) to meet the expenses reasonably incurred by the Attorney General in the discharge of his or her functions under –
 - (i) this Law, and
 - (ii) any other enactment pursuant to which money recovered by any process is required to be paid into the Fund.
- (7) At the end of each financial year, the Minister shall pay into the consolidated fund so much of the amount of money standing to the account of the Civil Asset Recovery Fund as has not been applied or is not required to be applied, to discharge the obligation described in paragraph (6)(a), or to pay the remuneration for, and meet the expenses incurred, in the year, in accordance with paragraph (6)(b) to (d).
- (8) Monies paid into the Civil Asset Recovery Fund, while not applied for any of the purposes mentioned in paragraph (6) or not required to be paid into the consolidated fund under paragraph (7), shall be held by the Treasurer of the States.
- (9) In this Article –
- “asset sharing agreement” means any agreement or arrangement made by or on behalf of Jersey with a country or territory outside Jersey for the sharing of the proceeds of unlawful conduct that, as a result of mutual assistance in proceedings (other than criminal proceedings), have been confiscated or forfeited either in Jersey or elsewhere;
- “consolidated fund” has the meaning assigned to it in the Public Finances (Jersey) Law 2005.

12 Representation of governments of other countries or territories

- (1) In any proceedings pursuant to Article 7 or 9, the government of a country or territory outside Jersey shall be represented by the Attorney General.
- (2) In any proceedings pursuant to Article 7 or 9, a request for assistance sent to the Attorney General by a responsible authority of a country or territory outside Jersey shall, unless the contrary is shown, be deemed to

constitute the authority of the government of that country or territory for the Attorney General to act on its behalf.

PART 4

CONCLUDING PROVISIONS

13 Application in event of death or disappearance of person

- (1) A notice that may be given by a person under this Law to another person who is deceased shall be deemed to have been given if it is given to the personal representatives of the other person's estate or, if none, his or her heirs.
- (2) If a person's whereabouts is unknown, or a person has absconded, the Royal Court shall not make an order in relation to the person, or in relation to the property of the person, unless it is satisfied that the Attorney General has taken reasonable steps to contact the person.
- (3) Where –
 - (a) a notice is or may be issued under Article 3(2) in relation to external civil asset recovery proceedings, or investigations for the purpose of such proceedings, that are being, or may be, instituted; and
 - (b) the person, if any, to whom the proceedings relate, or who has possession of evidence to which the notice may relate, dies,then, despite that death, Part 2 shall continue to apply in relation to –
 - (i) any evidence; and
 - (ii) any person who may be required to give any evidence under that Part in relation to the proceedings or investigations,if the proceedings or investigations may, under the law of the country or territory in which they are or may be instigated, continue despite the death of the deceased.
- (4) The death of a person in relation to whom external civil asset recovery proceedings are or may be instigated shall not prevent the making of, or the continuance in force of, a property restraint order, or an order under Article 10, in respect of property to which the external civil asset recovery proceedings relates or may relate, if the proceedings may, under the law of the country or territory in which the proceedings are or may be instigated, continue, despite the death of the person.
- (5) The death of a person in relation to whom an external civil asset recovery order is made, shall not prevent the making of, or the continuance in force of, a property restraint order, or an order under Article 10, in respect of recoverable property to which the external civil asset recovery order relates.
- (6) The death of a person who has an interest in property in Jersey in relation to which a property restraint order, or an order under Article 10, may be

made shall not prevent such an order being made or continuing in force in relation to the property.

14 Right of person affected to make representation to Royal Court

Any person appearing to the Royal Court to be likely to be affected by the making of an order under this Law by the Court shall be entitled to appear before the Court and make representations.

15 Rules of Court

- (1) The power to make Rules of Court under Article 13 of the Royal Court (Jersey) Law 1948⁶ shall include a power to make Rules for the purposes of giving effect to, and regulating the procedure under, this Law.
- (2) Rules made for the purposes of giving effect to, and regulating the procedure under this Law, may, in particular, make provision with respect to the persons entitled to appear or take part in proceedings, before a court or the Viscount, to which this Law applies and for excluding the public from any such proceedings.

16 Regulations

- (1) The States may by Regulations make such provision as to the evidence or proof of any matter for the purposes of this Law as appears to the States to be necessary or expedient.
- (2) The States may by Regulations make provision for the issue of, and the powers conferred by, warrants for the search of premises, of persons on such premises, and of articles on such premises or persons, where –
 - (a) external civil asset recovery proceedings have been issued; or
 - (b) where investigations are being, or have been, undertaken for the purpose of determining whether to institute external civil asset recovery proceedings.
- (3) Regulations made under paragraph (2) may further provide for the keeping, use and onward transmission of any evidence seized pursuant to such a warrant.
- (4) Regulations made by the States under this Article may include such incidental, consequential and transitional provisions as appear to the States to be necessary or expedient.

17 Transitional provisions

This Law shall apply to and in relation to –

- (a) external civil asset recovery proceedings;
- (b) investigations for the purpose of external criminal asset recovery proceedings that are being, or may be, conducted; and

- (c) any order or other judicial authority, or document or evidence, whether or not –
- (i) the proceedings or investigations began before or after the commencement of this Law; or
 - (ii) any order or other judicial authority, or document or evidence was made, or came into existence, before or after the commencement of this Law.

18 Citation

This Law may be cited as the Civil Asset Recovery (International Co-operation) (Jersey) Law 2007.

ENDNOTES

Table of Legislation History

Legislation	Year and No	Commencement
Civil Asset Recovery (International Co-operation) (Jersey) Law 2007	L.39/2007	28 December 2007
Proceeds of Crime and Terrorism (Miscellaneous Provisions) (Jersey) Law 2014	L.7/2014	4 August 2014 (R&O.102/2014)
Criminal Justice (Miscellaneous Provisions) (Jersey) Law 2016	L.1/2016	20 September 2016 (R&O.98/2016)

Table of Renumbered Provisions

Original	Current
18(1)	18
18(2)	Spent, omitted

Table of Endnote References

¹	<i>chapter 08.780</i>
² Article 1(1)	<i>amended by L.7/2014</i>
³ Article 3(4)	<i>amended by L.1/2016</i>
⁴	<i>chapter 08.040</i>
⁵	<i>chapter 24.900</i>
⁶	<i>chapter 07.770</i>