



# LAWS AND REGULATIONS

## PROMULGATED TO GIVE EFFECT TO THE PROVISIONS OF THE INTERNATIONAL TREATIES ON NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES

*In accordance with the relevant articles of the international treaties on narcotic drugs and psychotropic substances, the Secretary-General has the honour to communicate the following legislative texts.*

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Communicated by the Government of Peru

### NOTE BY THE SECRETARIAT

- (a) Some editing of texts may be done by the Secretariat in the interest of clarity. In this connection, words in square brackets [ ] have been added or changed by the Secretariat.
- (b) Only passages directly relevant to the control of narcotic drugs or psychotropic substances have been reproduced in this document. Non-relevant parts of laws and regulations have been deleted by the Secretariat; such deletions are indicated by [...].

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MINISTRY OF JUSTICE ENACTS PROVISIONS FOR THE RETURN OF GOODS CONFISCATED  
FROM PERSONS TRIED FOR THE OFFENCE OF ILLICIT DRUG TRAFFICKING

Supreme Decree No. 041-81-JUS  
of 15 December 1981

The President of the Republic,

Considering:

That article 66 of Decree Law No. 22,095, 1/ amended by Decree Law No. 22,926, 2/ orders the confiscation both of the movable and immovable property used in the illicit production, manufacture, transport and distribution of drugs if this property belongs to those who committed the offence or to their accomplices or abettors, or to persons who knew of the offence but did not report it immediately, and also of the money used or acquired in the commission of this offence, which money shall be deposited in the Bank of the Nation to be paid into the Public Treasury,

That article 69 of said Decree Law No. 22,095, also superseded by Decree Law No. 22,926, provides that the property seized or confiscated during the police investigations or court proceedings shall be placed at the disposal of the Executive Office for Drug Control, which shall allocate it for the official use of public departments, with the latter to be responsible for its use, and that, in the event of an acquittal by the court, the property shall be returned to its owner, with payment of suitable compensation for its use,

That article 8, final paragraph, of Decree Law No. 22,926 requires that "in the event of an acquittal by the court the money confiscated shall be returned",

That, furthermore, article 1 of the Penal Code contains the universal legal guarantee that "the privation or restriction of rights as a penalty may be imposed only on the basis of a conviction", a principle taken up in the Political Constitution currently in force, which in article 2, paragraph 20, subparagraph (f) states that "all persons are considered innocent until they have been pronounced responsible by a court",

That, moreover, article 46 of the Penal Code provides that "all criminal convictions shall result in the loss of the proceeds of the offence and of the instruments used to commit it. Both shall be confiscated unless they belong to a third party without responsibility",

That, notwithstanding the clarity of the legal provisions cited above, it is desirable that articles 66 and 69 of Decree Law No. 22,095, as amended by Decree Law No. 22,926 and article 8 of the latter, should be regulated,

That, in accordance with article 4, paragraph (k), of Legislative Decree No. 117, the Organic Law of the Ministry of Justice, one of the objectives of that Ministry is to "uphold the rule of law and justice",

Decrees:

Article 1. In the event of a final acquittal by the court in a case involving the offence of illicit drug trafficking, the movable goods, vehicles and other property confiscated from the person tried shall be immediately returned to him by the Executive Office for Drug Control, or by the public department to which they were assigned for use, in the same condition in which they were at the time they were confiscated or received, respectively. The user, for his part, shall also pay an appropriate compensation for such use as he may have made of this property.

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1/ Note by the Secretariat: E/NL.1978/60.

2/ Note by the Secretariat: E/NL.1980/88.

Article 2. In the case of real estate, the compensation for use shall be a sum equivalent to the legally established rent based on the owner's own valuations and the period of use. In the case of movable property, the compensation shall be equivalent to the sum of the monthly indicators for the rise in the cost of living in Lima Province, based on the number of months the property was in use, with these indicators to be applied to the unit value assigned to the property by the Executive Office for Drug Control at the time the property was assigned for use.

Article 3. Confiscated money shall be returned in the same currency in which it was confiscated, or in national currency at the rate of exchange prevailing on the day it is returned.

Done at Government House, Lima, this fifteenth day of December of the year one thousand nine hundred and eighty-one.

Fernando Belaúnde Terry, Constitutional President of the Republic

Enrique Elias Laroza, Minister of Justice

E/NL.1985/95

PROVISIONS REGARDING VEHICLES AND OTHER MOVABLE PROPERTY THAT  
HAVE BEEN CONFISCATED DURING POLICE INVESTIGATIONS  
OR COURT PROCEEDINGS IN CASES INVOLVING  
THE OFFENCE OF DRUG TRAFFICKING

Supreme Decree No. 051-82-JUS  
of 30 August 1982

The President of the Republic,

Considering:

That Supreme Decree No. 041-81-JUS of 15 December 1981 lays down the regulations governing articles 66 and 69 of Decree Law No. 22,095, as amended by Decree Law No. 22,926, with regard to the return, in the event of a definitive acquittal by the court to persons tried for the offence of illicit drug trafficking of whatever movable and immovable property may have been confiscated from them, and with regard to their appropriate compensation,

That the regulatory Supreme Decree referred to above does not expressly cover vehicles and other movable goods sold in instalments and subject to recording at the Instalment Sales Registry Office in accordance with Laws Nos. 6,565 and 6,847 and other relevant legal provisions,

That Law No. 6,565, in its articles 2, 3 and 4, provides that there is no transfer of the ownership of movable goods delivered under contracts recorded at the Instalment Sales Registry Office until the conditions stipulated in these contracts have been fulfilled, and that third parties who receive an item of this kind without obtaining the certificate or other documents issued by the Registry Office shall be required to return it to the original seller,

That, in accordance with these legal provisions, the Civil Code, in its article 890, excepts goods that are the object of instalment sales authorized by the relevant law from the general rule according to which the item in question becomes the property of whoever, acting in good faith and as the owner, takes possession of it from another; and, in its article 1426, declares that in a credit sale an agreement is valid under which the seller retains the ownership of the item sold until the price has been paid in full, even though the item may have been delivered to the buyer,

That, furthermore, under Decree Law No. 23,192 enterprises legally constituted or authorized to provide public passenger and freight transport service are authorized to conclude transport collateral contracts on their freely disposable land transport units by a public instrument entitling the creditor, subject to the recording of the contract at the Public Registry Office for Transport Collateral, to recover his loan on a preferential basis from the Ministry of Transport and Communication,

That under Supreme Decree No. 007-82-TC of 17 February 1982 regulations were approved governing the Public Registry Office for Transport Collateral, according to which (article 4)

there are to be recorded at that Office, in addition to the collateral contracts, their modifications, enlargements and cancellations, court-ordered attachments on the rights of the creditor holding the collateral, as well as court rulings with a special bearing on the contract, the collateral or the encumbered property and other acts or contracts liable to affect the transport units encumbered as collateral, and (article 17) the provisions regarding collateral contained in the Code of Commerce and the Civil Code apply in a subsidiary way to transport collateral,

That, in accordance with articles 988 and 989 of the Civil Code, a third party holding the collateral is required to maintain it as if it were his own and to abstain from using it without the consent of the owner, and, in the case of misuse, is responsible for its loss or damage,

That article 66 of Decree Law No. 22,095, amended by Decree Law No. 22,926, provides that vehicles used to distribute or transport the drugs shall be confiscated if they belong to the offenders, their accomplices or accessories after the fact or to any persons who knew of the offence but did not immediately report it,

That, in addition, the Penal Code, in its articles 70, 73 and 74, establishes the joint and several liability of the participants in the punishable act for civil compensation, the priority of the injured party or his heirs over all the convicted party's creditors holding mortgages - and, therefore, collateral - in respect of obligations contracted after the commission of the offence, and the voidableness of transactions concluded or obligations contracted following the offence to the degree that they diminish the convicted party's estate or render it insufficient for payment of compensation,

That, in accordance with Legislative Decree No. 117, article 4, paragraph (k), one of the objectives of the Ministry of Justice is to "uphold the rule of law and justice",

Decrees:

Article 1. Vehicles and other movable property that may have been confiscated during police investigations or judicial proceedings in connection with drug trafficking offences shall be returned to the original seller, provided that he is able to demonstrate by means of the appropriate certificate issued by the Instalment Sales Registry Office that the buyer did not acquire the ownership of the confiscated item. Only in the event that the original seller was expressly involved in the court proceedings as a natural person or, if a juristic person (body corporate), through the intermediary of his legal representatives, shall the confiscation continue until the ruling barring it is upheld or executed. This ruling shall result in the obligation to return the item in question immediately and in the same condition in which it was confiscated.

Article 2. A creditor holding transport collateral recorded at the appropriate Public Registry Office before the commission of the offence of illicit drug trafficking that resulted in the confiscation of the vehicle serving as collateral has the right to require of the authority that has confiscated the vehicle that it maintain custody of it, without making it available to the Executive Office for Drug Control and without using it, until the creditor has been paid the full amount of his loan.

Done at Government House, Lima, this thirty-first day of August of the year one thousand nine hundred and eighty-two.

Fernando Belaúnde Terry, Constitutional President of the Republic.

Armando Buendía Gutiérrez, Minister of Justice.

E/NL.1985/96

PROVISIONS FOR CONTROLLING THE MARKETING OF CHEMICAL  
INPUTS USED IN THE PRODUCTION OF DRUGS. AGREED TEXT  
OF SUPREME DECREE No. 059-82-EFC AS AMENDED BY  
SUPREME DECREE No. 546-84-EFC OF 25 OCTOBER 1984

The President of the Republic,

Considering:

That article 42 of Decree Law No. 22,095 - the Law on the Suppression of Illicit Drug Trafficking - stipulates that industrial products or inputs used in the production of drugs, the list of which is to be approved by Supreme Decree, are subject to control,

That the policy guidelines approved by the Multisectoral Drugs Control Committee refer to the need to draw up a list of the industrial inputs used in the production of drugs subject to control, and to regulate all aspects connected with the Special Sales Register of the importers and manufacturers of controlled inputs and of the dealers in these inputs,

That the Directorate-General for Internal Commerce of the Ministry of Economic Affairs, Finance and Commerce has, in co-ordination with the Directorate-General for Industries of the Ministry of Industry, Tourism and Integration, identified the products or inputs capable of being used in the production of drugs,

That it is necessary to monitor the marketing and use of these inputs in order to avoid their abuse,

Decrees:

Article 1. The purpose of this Supreme Decree is to regulate and control the marketing and use of domestically manufactured or imported chemical products or inputs capable of being used in the production of drugs.

Article 2. Whatever their designation or manner of presentation, the chemical products or inputs to be subject to the control referred to in article 1 are:

Sulphuric acid,

Sodium carbonate,

Ethyl ether or sulphuric ether,

Acetone, and

Hydrochloric acid.

Article 3 (amended by Supreme Decree No. 456-84-EFC of 22 October 1984). The manufacturers and importers of the products and inputs indicated in article 2, as well as the wholesale and retail dealers in these products and inputs, shall maintain a legally certified Special Sales Register. In this Register they shall indicate the invoice number, sales date, input and quantity sold expressed in kilogrammes; the purchaser's full name or firm name as well as his Tax Book [Libreta Tributaria] number and his commercial or real address; the place to which the merchandise has been delivered and the full name and Electoral Book [Libreta Electoral] number of the person taking delivery of the input.

Article 4. Acetone and hydrochloric acid, the latter commercially known as muriatic acid, for domestic use, shall be sold only at retail establishments, in packaging that conforms with the existing legal norms and in units of up to 30 c.c. in the case of acetone and of up to 1,000 c.c. in the case of hydrochloric or muriatic acid. In this case only is there no obligation to maintain a Special Sales Register.

Article 5 (amended by Supreme Decree No. 456-84-EFC of 22 October 1984). Every month and in the form of a sworn declaration, the manufacturers of chemical products and inputs shall report to the Directorate for Chemical Industries of the Directorate-General for Industries or to the Directorates for Industries of the Departmental Directorates of the Ministry of Industry, Tourism and Integration the activity recorded in the Special Sales Register. Importers as well as wholesale and retail dealers shall report to the Directorate for Internal Commerce Norms of the Directorate-General for Internal Commerce or to the Sub-Directorates for Internal Commerce of the Departmental Directorates for Commerce of the Ministry of Economic Affairs, Finance and Commerce. This information must be submitted within the first ten working days following the end of each month.

The dealers referred to in article 4 are exempt from the requirement of submitting this information.

Article 6 (amended by Supreme Decree No. 456-84-EFC of 22 October 1984). The following represent infractions of this Supreme Decree:

(a) The failure to record in the Special Sales Register all the information required under article 3, or the recording of it inaccurately; the failure to transmit the monthly information within the time period specified in article 5; the omission of information or the transmission of inaccurate information;

(b) The failure to maintain a legally certified Special Sales Register.

Article 7 (amended by Supreme Decree No. 456-84-EFC of 22 October 1984). The Directorate for Chemical Industries of the Directorate-General for Industries or the Directorates for Industry of the Departmental Directorates for the Ministry of Industry, Tourism and Integration, as appropriate, represent the first administrative level for the imposition of penalties on the manufacturers of chemical inputs.

The Directorate for Internal Commerce Norms of the Directorate-General for Internal Commerce or the Sub-Directorates for Internal Commerce of the Departmental Directorates for Commerce of the Ministry of Economic Affairs, Finance and Commerce, as appropriate, represent the first administrative level for the imposition of penalties on the importers of chemical inputs and on the dealers in these inputs.

The penalties shall be the following:

(a) A fine equivalent to ten (10) times the minimum monthly wage in Lima Province for the highest paid economic activity, in the case of the infractions described in article 6, paragraph (a), of this Supreme Decree;

(b) A fine equivalent to fifteen (15) times the minimum monthly wage in Lima Province for the highest paid economic activity, in the case of the infraction described in article 6, paragraph (b), of this Supreme Decree.

Article 8. Repeat offenders under article 6, paragraph (a), of the present Law shall be penalized with a fine equivalent to twenty (20) times the minimum monthly wage in Lima Province for the highest paid economic activity. In the case of the infraction described in article 6, paragraph (b), repeat offenders, in addition to their monetary fine and the closing of their establishments, shall be reported to the judicial authorities as guilty of the offence of illicit drug trafficking contemplated in article 57 of Legislative Decree No. 122. Their establishments shall be closed by the Ministry of the Interior once the judicial authorities have pronounced a definitive convicting judgement. Any one who within three years from the imposition of his last penalty commits a new infraction shall be considered a repeat offender.

Article 9. Once the judgements ordering the penalties referred to in this Law have been upheld or executed, they shall be reported to the Bank of the Nation in order that the latter may proceed in accordance with Decree Law No. 17,355.

The proceeds of the fine shall be paid into the Public Treasury and shall be subject to the provisions of Supreme Decree No. 006-80-IN.

Article 10. For the application of article 8, the Directorate-General for Industries or the Directorate-General for Internal Commerce or the Regional Directorates of the Ministry of Industry, Tourism and Integration or of the Ministry of Economic Affairs, Finance and Commerce, as appropriate, shall proceed in conformity with the provisions of articles 83 and 84 of Decree Law No. 22,095.

Article 11. The Peruvian Investigation Police shall be responsible for monitoring the use of the chemical products or inputs referred to in article 2 at the manufacturer, importer, dealer and user levels. To this end, in Lima and Callao the Directorate-General for Industries of the Ministry of Industry, Tourism and Integration and the Directorate-General for Internal Commerce of the Ministry of Economic Affairs, Finance and Commerce, as appropriate, shall on a monthly basis transmit to the Illicit Drug Traffic Intelligence Directorate (DINTID) the information specified in article 5.

In the rest of the country, the Regional Directorates of the Ministry of Industry, Tourism and Integration and the Regional Directorates of the Ministry of Economic Affairs, Finance and Commerce, as appropriate, shall transmit this information to the Drug Intelligence Territorial Units (UTID) of the Peruvian Investigation Police.

Article 12. Under a Supreme Resolution approved by the Ministers of Economic Affairs, Finance and Commerce and of Industry, Tourism and Integration, supplementary provisions shall be enacted for the more effective application of the present Law.

Article 13. The present Supreme Decree shall be approved by the Ministers of Economic Affairs, Finance and Commerce; of Industry, Tourism and Integration; and of the Interior.

#### Transitional provision

Sole provision. The natural and juristic persons who manufacture, import or trade in the inputs that are the subject of this Law shall be required to bring themselves into compliance with its provisions within a maximum period of thirty (30) days from the date the Law comes into force.

Done at Government House, Lima, on this seventeenth day of February of the year one thousand nine hundred and eighty-two.

Fernando Belaúnde Terry, Constitutional President of the Republic.

Manuel Ulloa Elfas, Minister of Economic Affairs, Finance and Commerce.

Roberto Persivale Serrano, Minister of Industry, Tourism and Integration.

José Gagliardi Schiaffino, Minister of the Interior.