

THE MUTUAL ASSISTANCE (CRIMINAL
MATTERS) ACT

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THE MUTUAL ASSISTANCE (CRIMINAL MATTERS) ACT

[14th July, 1995.]

Acts
5 of 1995,
28 of 1996,
18 of 2005
2nd Sch,
4 of 2007
S. 140,
3 of 2010
S. 22.

PART I. *Preliminary*

1. This Act may be cited as the Mutual Assistance (Criminal Matters) Act. . . Short title.

2. In this Act—

Interpreta-
tion.

“Central Authority” means the Minister responsible for justice or any person designated by him for the purpose of performing such functions or duties of the Central Authority as may be specified in the instrument of designation;

“criminal investigation” means an investigation into an offence;

“criminal matter” includes a criminal matter relating to—

- (a) revenue;
- (b) the forfeiture or confiscation of property in respect of a prescribed offence;
- (c) the imposition or recovery of a pecuniary penalty in respect of a prescribed offence;
- (d) the restraining of dealings in property or the freezing of assets that may be forfeited or confiscated, or that may be needed to satisfy a pecuniary penalty imposed in respect of a prescribed offence;

“criminal proceeding” in relation to an offence, means—

- (a) a trial of a person for the offence;
- (b) any proceeding to determine whether any person should be tried for an offence; or

(c) the preferment of a voluntary bill of indictment;

“designated Commonwealth state” means a Commonwealth state designated by the Minister in an order made under section 31 (1) for the purposes of this Act;

“foreign forfeiture order” means an order made under the law of a relevant foreign state for the forfeiture or confiscation of property in respect of a prescribed offence;

“foreign inmate” means a person who is being held in custody pending trial or sentence for, or is under a sentence of imprisonment for, an offence against a law of a foreign state, but does not include a person who is at large after having escaped from lawful custody;

“foreign pecuniary penalty order” means an order made under the law of a relevant foreign state, imposing a pecuniary penalty in respect of a prescribed offence;

“foreign state” means—

(a) a designated Commonwealth state; or

(b) a treaty state;

“inmate” means—

(a) any person whether convicted or not, under detention in any adult correctional centre or remand centre, as defined in the Corrections Act;

(b) any person who, though serving a term of imprisonment in an adult correctional centre, is permitted pursuant to the Corrections Act to be temporarily absent from such centre; or

(c) any parolee as defined in the Parole Act;

“judicial records” means judgments, orders and decisions of courts and other documents held by judicial authorities;

“offence” means an offence against the law of Jamaica or the law of a relevant foreign state;

“official records” means documents held by agencies or departments of government;

“police officer” means a member of the Jamaica Constabulary Force;

“prescribed offence” means—

- (a) a prescribed offence as defined in the Proceeds of Crime Act; 4/2007
S. 140
(1)(a).
- (b) an offence against the law of a relevant foreign state which involves—
 - (i) the production, manufacture, supply of or other dealings in dangerous drugs;
 - (ii) the transportation, storage, importation ~~or~~ export of dangerous drugs;
 - (iii) money laundering, 28/1996
S. 2(b).

and aiding, abetting, counselling, procuring or conspiring as to, the commission of any such offence;
- (c) a terrorism offence as defined by section 2 of the Terrorism Prevention Act; 18/2005
2nd Sch.

“realizable property” has the same meaning as in the Proceeds of Crime Act; 4/2007
S.140(1)(a).

“record” means any material on which data are recorded or marked and which is capable of being read or understood by a person or a computer system or other device;

“relevant foreign state” means a foreign state which makes a request to Jamaica or to which Jamaica makes a request;

“relevant treaty” means— 18/2005
2nd Sch.

Second
Schedule.

(a) a treaty, convention or other international agreement (whether made before or after the 14th day of July, 1995) that is in force and to which Jamaica is a party, the purpose of which is to provide for mutual legal assistance in criminal matters;

(b) any of the Conventions set out in the Second Schedule.

“restraint order” means an order made pursuant to section 29 in relation to property located in Jamaica, the owner of which has been charged with or convicted of a prescribed offence;

“tainted property” means—

(a) property used in, or in connection with, the commission of a prescribed offence; or

(b) property derived, obtained or realized directly by the person convicted from the commission of a prescribed offence;

“treaty state” means a state that is a party to a relevant treaty and in respect of which an order under section 31 (2) is in force.

Preservation
of informal
arrangements.

3. Nothing in this Act shall be construed so as to abrogate or derogate from any arrangement or practice respecting co-operation between Jamaica and a foreign state or organization, as the case may be.

PART II. *Requests by Jamaica*

Requests by
Jamaica.

4.—(1) The Central Authority may request the assistance of a foreign state in respect of investigations and proceedings in relation to a criminal matter.

(2) Assistance as referred to in subsection (1) is solely for the criminal law enforcement authorities.

5.—(1) Where, pursuant to a request under this Act by the Central Authority for assistance, any evidence or information is obtained or any documents or other articles are produced—

Restriction of use of evidence or information obtained or documents or articles produced.

- (a) the evidence or information so obtained shall not, without the prior consent of the relevant foreign state, be admitted or otherwise used for any purposes other than those stated in the request;
- (b) the documents or other articles so produced shall not, without the prior consent of the relevant foreign state, be used for any purposes other than those stated in the request.

(2) The restriction specified in subsection (1) (a) shall not apply in the case of the prosecution of a person for the offence of perjury in relation to the giving of the evidence referred to in that subsection.

6. A person who—

- (a) pursuant to a request by the Central Authority under this Act, is served with a summons to appear as a witness in Jamaica; and

Effect of service of document pursuant to request by Jamaica.

- (b) fails to comply with the summons,

shall not, by reason of such failure, be liable to any penalty or measure of compulsion in Jamaica notwithstanding any contrary statement in the summons.

7.—(1) Where a criminal proceeding has commenced in Jamaica and the Central Authority is of the opinion that a foreign inmate is capable of giving evidence relevant to the proceeding, the Central Authority may request the foreign state in which the inmate is being held to authorize the attendance of that inmate at a hearing in connection with the proceeding.

Request by Jamaica for appearance of foreign inmate as witness in Jamaica.

(2) Where an investigation relating to a criminal matter has commenced in Jamaica and the Central Authority is of the opinion that a foreign inmate is capable of giving assistance in relation to the investigation, the Central Authority may request the foreign state in which the foreign inmate is being held to authorize the removal of that inmate to Jamaica for the purpose of giving assistance in relation to the investigation.

(3) Where the Central Authority makes a request under subsection (1) or (2), the Central Authority may make arrangements with the appropriate authority of the relevant foreign state for the purposes of—

- (a) the removal of the person to Jamaica;
- (b) the custody of the person while in Jamaica;
- (c) the return of the person to the relevant foreign state; and
- (d) such other matters as may be relevant.

Warrant for
and custody
of foreign
inmate.

8.—(1) Where the Central Authority is satisfied that arrangements are being made with the appropriate authority of a relevant foreign state in respect of a foreign inmate for the purposes specified in paragraphs (a) to (d) of section 7 (3), the Central Authority may apply in the prescribed manner to a Resident Magistrate for the issue of a warrant under this section.

(2) No warrant may be issued under this section in respect of a foreign inmate unless that inmate has consented to being removed to Jamaica for the purposes stated in the request.

(3) The effect of the warrant shall be to authorize—

- (a) the bringing of the foreign inmate to Jamaica;
- (b) the taking of the foreign inmate to, and the detention in custody of that inmate at, such place or

- places in Jamaica as are specified in the warrant;
- (c) the return of the foreign inmate to the relevant foreign state.

(4) Where a warrant has been issued in respect of a foreign inmate under this section, that inmate shall be deemed to be in legal custody at any time when the inmate is being taken under the warrant to or from Jamaica or being kept in custody under the warrant.

(5) A person authorized by or for the purpose of the warrant to take the foreign inmate to or from any place or to keep that inmate in custody shall have all the powers, authority, protection and privileges of a constable under any law in force in Jamaica.

(6) If the foreign inmate escapes or is unlawfully at large, that inmate may be arrested without warrant by a constable and taken to any place to which he may be taken under the warrant issued under this section.

(7) The Central Authority shall return a person brought to Jamaica pursuant to a request under section 7 to the relevant foreign state—

- (a) if the person is serving a sentence, no later than the date immediately preceding the date of expiration of the sentence; or
- (b) in any other case, no later than the date of expiration of the period in respect of which arrangements were made for him to be kept in custody in Jamaica.

9.—(1) Subject to subsection (2), where a person is in Jamaica pursuant to a request under section 7 or to give evidence in a criminal proceeding or to give assistance in relation to an investigation pursuant to a request (other than a request under section 7) by the Central Authority for assistance under this Act, that person shall not—

Immunities and privileges re persons brought to Jamaica.

- (a) be detained, prosecuted or punished in Jamaica for any offence that is alleged to have been committed, or that was committed, before the person's departure from the relevant foreign state pursuant to the request; or
 - (b) be subjected to any civil suit in respect of any act or omission of the person that is alleged to have occurred or that occurred, before the person's departure from the relevant foreign state pursuant to the request, being a civil suit to which the person could not be subjected if the person were not in Jamaica; or
 - (c) be required to give evidence in any proceeding or to assist in any investigation in Jamaica other than the proceeding or investigation to which the request relates; or
 - (d) be required, in the proceeding to which the request relates (if any)—
 - (i) to answer any question; or
 - (ii) to produce any document or article, that the person would not be required to answer or to produce in a proceeding in the relevant foreign state or in Jamaica relating to a criminal matter.
- (2) Subsection (1) shall cease to apply to a person if—
- (a) during a period of ten days from the date on which the person has been notified in writing that his presence is no longer required in Jamaica or such other period as may be prescribed in relation to a relevant foreign state, the person has had the opportunity of leaving Jamaica and has remained in Jamaica otherwise than for the purpose to which the request relates; or
 - (b) the person returns voluntarily to Jamaica after having left.

10.—(1) Where a person has come to Jamaica pursuant to a request under section 7, then for purposes of this Act, the person shall be taken to be in Jamaica pursuant to the request for any period during which the person remains in Jamaica for the purpose of being tried for a criminal offence in Jamaica that the person is alleged to have committed after the person's departure from the relevant foreign state.

Status of person prosecuted after departure from relevant foreign state.

(2) Without limiting the generality of subsection (1), the person shall be kept in such custody as is specified in a warrant issued under section 8.

11. Where—

- (a) a person is being held in custody in accordance with a warrant issued under section 8; and
- (b) the relevant foreign state from which the person was brought requests in writing the release of that person from custody,

Release of certain persons upon request by foreign state.

the Central Authority shall in writing direct that the person be released from custody and the person shall be released in accordance with such direction.

12.—(1) A police officer may, without warrant, arrest a person if the police officer has reasonable grounds for believing that the person—

Arrest of person who escaped from custody.

- (a) has been brought to Jamaica pursuant to a request under section 7; and
- (b) has escaped from lawful custody while in Jamaica pursuant to the request.

(2) A person who is arrested pursuant to subsection (1) shall be returned to custody.

Requests by
Jamaica for
making or
enforce-
ment of
forfeiture
orders, etc.

13.—(1) The Central Authority may, in its discretion, request an appropriate authority of a foreign state to make arrangements for the enforcement of—

- (a) an order made by a court in Jamaica under a law in force in Jamaica with regard to the forfeiture of property that is believed to be located in the foreign state;
- (b) a pecuniary penalty order or other order made by a court in Jamaica under the Proceeds of Crime Act where some or all of the property available to satisfy the order is believed to be located in the foreign state;
- (c) a restraint order made by a court in Jamaica against property that is believed to be located in the foreign state.

4/2007
S. 140(1)(a).

(2) Where a person has been convicted of a prescribed offence in Jamaica, the Central Authority may, in its discretion, request an appropriate authority of a foreign state to—

- (a) obtain, on behalf of the Central Authority, the issue of an order similar to an order referred to in sub-section (1) (a) or (b), in relation to property that is believed to be located in that foreign state; and
- (b) make arrangements for the enforcement of any order so made.

Request by
Jamaica for
issue of
orders in
foreign
state.

14. Where a criminal proceeding has commenced in Jamaica in relation to a criminal offence, the Central Authority may, in its discretion, request an appropriate authority of a foreign state to obtain the issue, in respect of the offence, of a warrant, order or other instrument similar in nature to—

- (a) a search warrant for property specified in the request;
- (b) a restraint order in respect of property;
- (c) a warrant for the interception of communications; or
- (d) a notice requiring the disclosure of communications data within the meaning of the Interception of Communications Act.

3/2010
S. 22.

PART III. *Requests by Foreign States*

15.—(1) Assistance may be provided to a foreign state, on request, in accordance with this Part.

Provision of
assistance
under this
Part.

(2) Assistance provided under this Part shall be in respect of investigations and proceedings in relation to a criminal matter and such assistance may be provided as aforesaid—

- (a) to the foreign state which makes a request for the purposes only of the criminal law enforcement authorities in that state; and
- (b) only if criminal proceedings have been instituted in that state or if there is reasonable cause to believe that an offence in respect of which such proceedings could be instituted, has been or is likely to be committed.

(3) Assistance under this Part may be provided in relation to—

- (a) the location and identification of persons and objects;
- (b) the examination and taking of testimony of witnesses;
- (c) the production of—
 - (i) documents and other records, including judicial or official records; and
 - (ii) other articles;
- (d) the making of arrangements for persons to give evidence or assist investigations;

- (e) the temporary transfer of persons in custody for the giving of testimony;
- (f) the carrying out of search and seizure;
- (g) the service of documents;
- (h) the restraining of dealings in property, or the freezing of assets that may be forfeited or that may be needed to satisfy orders which are similar to pecuniary penalty orders imposed in respect of a prescribed offence;
- (i) the tracing, seizure and forfeiture of property that may be subject to a forfeiture order in force for the time being in relation to a prescribed offence in the foreign state which makes a request;
- (j) the interception of communications in accordance with the Interception of Communications Act;
- (k) the disclosure of communications data in accordance with the provisions of the Interception of Communications Act;
- (l) such other matters as may be included in an agreement or arrangement in force between Jamaica and a foreign state.

3/2010
S. 22(d).

3/2010
S. 22(d).

First
Schedule.
18/2005
2nd Sch.

Grounds for
refusal of
assistance.

(4) Requests made by a foreign state shall be made in writing to the Central Authority and shall contain such of the particulars set out in the First Schedule as the Central Authority may require, but without prejudice to the requirement for such additional information as may be considered necessary for the purpose of giving effect to the request.

16.—(1) A request for assistance under this Act made by a foreign state—

- (a) shall be refused if, in the opinion of the Central Authority—
 - (i) compliance with the request would contravene the provisions of the Constitution, or prejudice the security, international relations or other essential public interests of Jamaica;

- (ii) there are substantial grounds for believing that compliance with the request would facilitate the prosecution or punishment of a person affected by the request on account of the person's race, religion, nationality or political opinions or, for any of the foregoing reasons, would cause prejudice to such person;
 - (iii) the request relates to an offence under military law only or under a law relating to military obligations;
 - (iv) the request relates to conduct in respect of which the person accused or suspected of having committed an offence has been convicted or acquitted by a court in Jamaica;
 - (v) the steps required to be taken in order to comply with the request cannot be legally taken in Jamaica in respect of criminal matters arising in Jamaica;
 - (vi) the request relates to an offence or proceedings of a political character not being an offence included in any relevant treaty to which Jamaica and the relevant foreign state are parties and which imposes on the parties thereto an obligation either to extradite or prosecute a person accused of that offence;
 - (vii) any confidentiality requested in relation to information or evidence furnished by Jamaica would not be protected by the relevant foreign state;
- (b) may be refused if, in the opinion of the Central Authority—
- (i) the request relates to conduct which would

not constitute an offence under any law in force in Jamaica;

- (ii) the use of information or evidence furnished by Jamaica would not be restricted by the relevant foreign state to the purposes stated in the request.

(2) The Central Authority shall forthwith notify the relevant foreign state of the refusal of a request and of the ground under subsection (1) on which the request was refused.

Assistance
in part or
subject to
conditions.

17. Assistance in response to a request may be provided—

- (a) in relation to the whole request or such part thereof as the Central Authority may determine; or
- (b) subject to such conditions as the Central Authority may determine.

Postpone-
ment of
execution
of requests.

18.—(1) The Central Authority may postpone the execution of a request if such execution is likely to interfere with an investigation or proceeding in Jamaica or for any other reason which, in the opinion of the Central Authority, justifies such postponement.

(2) The relevant foreign state shall be notified forthwith of any postponement referred to in subsection (1) and of the proposed date of execution.

Execution
of requests.

19.—(1) Subject to the provisions of this Act, requests to Jamaica shall be executed in accordance with the relevant laws in force in Jamaica and the procedures applicable under those laws.

(2) Where a request contains particulars of procedures to be followed in the execution of a request, those

procedures shall be followed to the extent possible under the relevant laws in force in Jamaica.

20.—(1) Subject to the provisions of this Act, where a request is made to Jamaica for—

- (a) the taking of evidence; or
- (b) the production of documents (other than judicial or official records referred to in section 22) or other articles,

Assistance
in relation
to taking
of testi-
mony and
production
of docu-
ments.

the Central Authority may, in its discretion, in writing authorize the taking of the evidence or the production of the documents or other articles, and the transmission of the evidence, documents or other articles to the relevant foreign state.

(2) Where the Central Authority authorizes the taking of evidence or the production of documents or other articles under subsection (1), a Judge of the Supreme Court or a Resident Magistrate—

- (a) in the case of a request for the taking of evidence, may take the evidence on oath of each witness appearing before the Judge or Resident Magistrate to give evidence in relation to the matter; and shall—
 - (i) cause any evidence so taken to be put in writing and certify that it was so taken; and
 - (ii) cause the writing so certified to be sent to the Central Authority;
- (b) may, in the case of a request for the production of documents or other articles, require such production and shall send to the Central Authority any articles so produced or any such documents or copies thereof, and shall certify that—
 - (i) the documents or articles so sent are the documents or articles produced to the

[The inclusion of this page is authorized by L.N. 95/1997]

Judge or Resident Magistrate; or

- (ii) any copies of documents are true copies of documents so produced.

(3) The Judge of the Supreme Court or the Resident Magistrate conducting a proceeding under subsection (2)—

- (a) may, subject to section 22, order any person to attend the proceeding and to give evidence or to produce any documents or other articles at that proceeding;
- (b) may permit—
 - (i) the relevant foreign state;
 - (ii) the person to whom the proceeding in that state relates; and
 - (iii) any other person giving evidence or producing documents or other articles at the proceeding,

to have legal representation during the proceeding;

- (c) shall afford to the person referred to in paragraph (b) (ii) facilities to examine in person or by his legal representative, any person giving evidence at that proceeding.

(4) A certificate by the Judge of the Supreme Court or the Resident Magistrate under subsection (2) shall state whether, when the evidence was taken or the documents or other articles were produced, any of the following persons was present—

- (a) the person to whom the proceeding in the relevant foreign state relates or any legal representative of that person;
- (b) any other person giving evidence or producing documents or other articles or any legal representative of that person.

(5) Where compliance with a request relating to the production of documents or articles requires the transmission of such documents or articles to the relevant foreign state, the Central Authority may, subject to subsection (6)—

- (a) postpone such transmission if the documents or articles are required in connection with any proceeding in Jamaica;
- (b) require the relevant foreign state to agree to such terms and conditions as the Central Authority shall specify in order to protect the rights of third parties in relation to such documents or articles.

(6) The Central Authority—

- (a) shall, where transmission of documents is postponed, provide certified copies thereof pending transmission of the original; or
- (b) may refuse to effect such transmission pending the conclusion of an agreement referred to in subsection (5) (b).

21. No person shall be compelled, in relation to a request referred to in section 20, to give evidence or to produce documents or other articles which he could not be compelled to give or produce in criminal proceedings in Jamaica or in the relevant foreign state.

Privileges
of witnesses.

22. Where a request relates to the production of judicial or official records relevant to a criminal matter arising in the relevant foreign state, the Central Authority—

Requests
for produc-
tion of
judicial or
official
records.

- (a) shall provide copies of such records which are publicly available;
- (b) may provide copies of such records which are not publicly available to the like extent and under like conditions as apply in the case of the production

of such records to law enforcement agencies or prosecution or judicial authorities in Jamaica.

Requests by
a relevant
foreign
state for
search and
seizure.

23.—(1) Where—

- (a) a proceeding or investigation relating to a criminal matter has commenced in a relevant foreign state;
- (b) there are reasonable grounds for believing that an article (not being tainted property) relevant to the proceeding or investigation is located in Jamaica; and
- (c) the relevant foreign state requests the Central Authority to arrange for the issue of a search warrant under this section in relation to that article,

the Central Authority may authorize a police officer to apply to a Resident Magistrate for the search warrant requested by the relevant foreign state.

(2) Where a police officer authorized under subsection (1) has reason to believe that the articles to which the request relates is, or will, at a specified time be—

- (a) on a person or in his possession or under his control; or
 - (b) upon any land or upon or in any premises,
- the police officer may lay before a Resident Magistrate an information on oath setting out the grounds for that belief and apply for the issue of a warrant under this section to search the person, land or premises for that article.

(3) A Resident Magistrate may, on an application under subsection (2), issue a warrant authorizing a police officer named in the warrant with such assistance as may be necessary—

- (a) to search the person;
- (b) to enter upon the land or upon or into the premises;
- (c) to search the land and premises for the article; and

- (d) to seize any article found in the course of the search that the police officer believes, on reasonable grounds, to be relevant to the proceeding or investigation.

(4) A Resident Magistrate shall not issue a warrant under this section unless—

- (a) the informant or some other person has given to the Resident Magistrate either orally under oath or by affidavit, such further information (if any) as the Resident Magistrate requires concerning the grounds on which the issue of the warrant is sought; and
- (b) the Resident Magistrate is satisfied that there are reasonable grounds for issuing the warrant.

(5) There shall be stated in a warrant issued under this section—

- (a) the purpose for which the warrant is issued, including a reference to the nature of the criminal matter in relation to which the search is authorized;
- (b) whether the search is authorized at any time of the day or night or during specified hours of the day or night;
- (c) a description of the kind of articles authorized to be seized; and
- (d) the date, not being later than twenty-eight days after the issue of the warrant, on which it ceases to have effect.

(6) Where a police officer finds, as a result of a search in accordance with a warrant issued under this section, an article which the police officer seizes because he believes on reasonable grounds that it is relevant to the proceeding or investigation in the relevant foreign state, the

police officer shall deliver the article to the custody and control of the Commissioner of Police.

(7) Where an article is delivered into the custody and control of the Commissioner of Police under subsection (6), the Commissioner shall arrange for the article to be kept for a period not exceeding twenty-eight days from the day on which the article was seized pending a direction in writing by the Central Authority as to the manner in which the article is to be dealt with.

(8) A police officer who executes a search warrant issued under this section shall, as soon as practicable thereafter, give to the person or the owner or occupier of the premises or leave in a conspicuous position on the land or at the premises, as the case may require, a notice stating—

- (a) the police officer's name and rank;
- (b) the name of the Resident Magistrate who issued the warrant and the date of such issue; and
- (c) a description of any articles seized and removed in accordance with the warrant.

(9) A person may only be searched under a warrant issued under this section by a person of the same sex.

(10) Where a police officer is authorized by a warrant issued under this section to search a person, the officer may also search—

- (a) the clothing that is being worn by the person; and
- (b) any property in, or apparently in, the person's immediate control.

(11) Nothing in this section shall be taken to authorize a police officer, in executing a warrant under this section, to carry out a search by way of an examination of a body cavity of a person.

24.—(1) Where assistance is provided to a foreign state in relation to the provision of information or evidence, the Central Authority may, subject to subsection (2), require that such information or evidence be kept confidential in accordance with such conditions as the Central Authority may specify.

Confidentiality of information or evidence, etc.

(2) Subsection (1) shall not apply in any case where the information or evidence is required for the purpose of any criminal proceedings in the relevant foreign state.

25.—(1) Where a proceeding relating to a criminal matter has commenced in a relevant foreign state and—

Requests for giving of evidence by inmate at hearing in foreign state.

- (a) that state requests the attendance of an inmate at a hearing in connection with the proceeding;
- (b) there are reasonable grounds for believing that the inmate is capable of giving evidence relevant to the proceeding; and
- (c) the Central Authority is satisfied that—
 - (i) the inmate has consented to giving such evidence in the relevant foreign state; and
 - (ii) that state has given adequate undertakings in respect of the matters specified in subsection (3),

the Central Authority may, in its discretion, make arrangements for the inmate's travel to the relevant foreign state in the custody of a police officer or correctional officer designated by the Central Authority for the purpose and shall notify that state of such arrangements.

(2) Where a proceeding relating to a criminal matter has commenced in a relevant foreign state and—

- (a) that state requests the attendance at a hearing in connection with the proceeding of a person (other than an inmate) who is in Jamaica;

- (b) there are reasonable grounds for believing that the person is capable of giving evidence relevant to the proceeding; and
- (c) the Central Authority is satisfied that—
 - (i) the person has consented to giving evidence in the relevant foreign state; and
 - (ii) that state has given adequate undertakings in respect of the matters referred to in subsection (3),

the Central Authority may, in its discretion, make arrangements for the person to travel to the relevant foreign state and shall notify that state of such arrangements.

(3) The matters in relation to which undertakings are to be given by a relevant foreign state for the purpose of a request under this section are as follows—

- (a) the person shall not—
 - (i) be detained, prosecuted or punished for any offence against the law of the relevant foreign state that is alleged to have been committed, or that was committed, before the person's departure from Jamaica;
 - (ii) be subjected to any civil suit in respect of any act or omission of the person that is alleged to have occurred or that occurred before the person's departure from Jamaica, being a civil suit to which the person could not be subjected if the person were not in the relevant foreign state; or
 - (iii) be required to give evidence in any proceeding in the relevant foreign state other than a proceeding to which the request relates,

unless the person has voluntarily returned to the

relevant foreign state after having left it or has had the opportunity of so leaving and has remained in that state otherwise than for the purpose of giving evidence in the proceedings to which the request relates;

- (b) any evidence given by the person in the proceeding to which the request relates will not, without the prior consent of the Central Authority, be used for any purposes other than those stated in the request, so, however, that this restriction shall not apply to the prosecution of the person for the offence of perjury in relation to the giving of that evidence;
- (c) the person will be returned to Jamaica in accordance with arrangements agreed between the Central Authority and the relevant foreign state;
- (d) in a case where the person is an inmate in Jamaica and the Central Authority requests the relevant foreign state to make arrangements for the keeping of the person in custody while the person is in that state—
 - (i) appropriate arrangements will be made for that purpose;
 - (ii) the person will not be released from custody in the relevant foreign state unless the Central Authority notifies the appropriate authority of that state that the person is entitled to be released from custody under Jamaican law; and
 - (iii) if the person is released in the relevant foreign state as mentioned in sub-paragraph (ii), the person's accommodation and expenses pending the completion of the proceeding in question will be paid for by the relevant foreign state; and

- (e) such other matters (if any) as the Central Authority thinks appropriate including, in the case of an inmate, an undertaking that the inmate will be released from custody at the time when the Central Authority advises the relevant foreign state that the person is entitled under Jamaican law to be so released.

Requests for
assistance
re investiga-
tions in
relevant
foreign
state.

26.—(1) Where an investigation relating to a criminal matter has commenced in a relevant foreign state and—

- (a) that state requests the removal of an inmate to the relevant foreign state for the purpose of giving assistance in relation to the investigation;
- (b) there are reasonable grounds for believing that the inmate is capable of giving such assistance; and
- (c) the Central Authority is satisfied that—
 - (i) the inmate has consented to being removed to the relevant foreign state for the purpose of giving such assistance as aforesaid; and
 - (ii) the relevant foreign state has given adequate undertakings in respect of the matters referred to in subsection (3),

the Central Authority may, in its discretion, make arrangements for the inmate's travel to the relevant foreign state in the custody of a police officer or correctional officer designated by the Central Authority for the purpose and shall notify that state of such arrangements.

(2) Where an investigation relating to a criminal matter has commenced in a relevant foreign state and—

- (a) that state requests that a person (other than an inmate) who is in Jamaica travel to the relevant foreign state to give assistance in relation to the investigation;

- (b) there are reasonable grounds for believing that the person is capable of giving such assistance; and
- (c) the Central Authority is satisfied that—
 - (i) the person has consented to travel to the relevant foreign state for the purpose of giving such assistance; and
 - (ii) the relevant foreign state has given adequate undertakings in respect of the matters referred to in subsection (3),

the Central Authority may, in its discretion, make arrangements for the person's travel to the relevant foreign state.

(3) The matters in relation to which undertakings are to be given by a relevant foreign state for the purpose of a request that a person be removed to, or travel to, that state for the purpose of giving assistance in relation to an investigation are—

- (a) that the person shall not—
 - (i) be detained, prosecuted or punished for any offence against the law of the relevant foreign state that is alleged to have been committed, or that was committed, before the person's departure from Jamaica; or
 - (ii) be subjected to any civil suit in respect of any act or omission of the person that is alleged to have occurred or that occurred before the person's departure from Jamaica, being a civil suit to which the person could not be subjected if the person were not in the relevant foreign state,

unless the person has voluntarily returned to the relevant foreign state after having left it or has had the opportunity of leaving that state and has remained in that state otherwise than for the pur-

pose of giving assistance in relation to the investigation to which the request relates;

- (b) that the person will be returned to Jamaica in accordance with arrangements agreed between the Central Authority and the relevant foreign state;
- (c) that, in a case where the person is an inmate in Jamaica and the Central Authority requests the relevant foreign state to make arrangements for the keeping of the inmate in custody while the inmate is in the relevant foreign state—
 - (i) appropriate arrangements will be made for that purpose;
 - (ii) the person will not be released from custody in the relevant foreign state unless the Central Authority notifies the appropriate authority of the relevant foreign state that the person is entitled to be released from custody under Jamaican law; and
 - (iii) if the person is released in the relevant foreign state as mentioned in sub-paragraph (ii), the person's accommodation and expenses pending the completion of the investigation to which the request relates will be paid for by the relevant foreign state; and
- (d) such other matters (if any) as the Central Authority thinks appropriate including, in the case of an inmate, an undertaking that the inmate will be released from custody at the time when the Central Authority advises the relevant foreign state that the person is entitled under Jamaican law to be so released.

27.—(1) Where a relevant foreign state requests the Central Authority to make arrangements for the enforcement of—

Request by foreign state for enforcement and issue of orders.

- (a) a foreign forfeiture order against tainted property that is believed to be located in Jamaica; or
- (b) a foreign pecuniary penalty order, where some or all of the property available to satisfy the order is believed to be located in Jamaica,

and the Central Authority is satisfied that—

- (c) a person has been convicted of an offence to which the foreign forfeiture order or foreign pecuniary penalty order relates, being an offence in respect of which, if it had been committed in Jamaica, a forfeiture order or pecuniary penalty order could be made by a court in Jamaica; and
- (d) the conviction and the order are not subject to further appeal in the relevant foreign state,

the Central Authority may, in its discretion, apply for the registration of the order in the Supreme Court.

(2) Where a relevant foreign state requests the Central Authority to make arrangements for the enforcement of a foreign restraint order, made in respect of a criminal offence against property that is believed to be located in Jamaica, the Central Authority may, in its discretion, apply for the registration of the order in the Supreme Court.

(3) Where the Central Authority applies to the Supreme Court for registration of a foreign order in accordance with this section, the Court may register the order accordingly if it is satisfied that the circumstances so warrant.

(4) A foreign forfeiture order, foreign pecuniary penalty order or foreign restraint order registered in the Supreme Court in accordance with this section has effect,

and may be enforced, as if it were a forfeiture order, pecuniary penalty order or restraint order made by a court in Jamaica in respect of a prescribed offence.

(5) The Central Authority may, in its discretion, apply to the Supreme Court for cancellation of the registration of a foreign forfeiture order, foreign pecuniary penalty order or foreign restraint order, as the case may be.

(6) Without prejudice to the generality of subsection (5), the Central Authority may make an application under that subsection if the Central Authority is satisfied that—

- (a) the order to which the application relates has ceased to have effect in the relevant foreign state in which that order was made;
- (b) cancellation of the registration of the order is appropriate having regard to the arrangements entered into between Jamaica and the relevant foreign state in relation to the enforcement of orders of that kind.

(7) Where the Central Authority applies to the Supreme Court for cancellation of the registration of an order referred to in subsection (5), the Court shall, if satisfied as to the matters specified in paragraphs (a) and (b) of subsection (6), cancel the registration accordingly.

(8) Upon a request by a foreign state the Central Authority may in its discretion and on behalf of that state—

- (a) apply to the Supreme Court for a forfeiture order or pecuniary penalty order under the Proceeds of Crime Act in relation to property that is believed to be located in Jamaica; and
- (b) make arrangements for the enforcement of any order so made.

28.—(1) Where a criminal proceeding or criminal investigation has commenced in a foreign state in respect of a prescribed offence and—

Request by foreign state for warrants for search and seizure in respect of tainted property.

- (a) the Central Authority has reasonable grounds for believing that tainted property in relation to the offence is located in Jamaica; and
- (b) the foreign state requests the Central Authority to obtain the issue of a search warrant in relation to the tainted property,

the Central Authority may, in its discretion, authorize a police officer to apply to a Resident Magistrate for the search warrant so requested.

(2) A Resident Magistrate may, on an application made under this section, issue a warrant authorizing a police officer named in the warrant, with such assistance and by such force as is necessary and reasonable to—

- (a) enter upon the premises specified in the warrant;
- (b) search the premises for tainted property;
- (c) seize property found in the course of the search that the police officer believes, on reasonable grounds, to be tainted property.

(3) A warrant issued under this section shall include—

- (a) a statement of the purpose for which the warrant is issued, and a reference to the nature of the prescribed offence;
- (b) description of the kind of property to be seized;
- (c) a time, not being later than twenty-eight days after the issue thereof, upon the expiration of which the warrant ceases to have effect; and
- (d) a statement as to whether entry is authorized to be made at any time of the day or night or during specified hours of the day or night.

(4) A police officer who executes a warrant issued under this section shall—

- (a) detain the property seized, taking reasonable care to ensure that it is preserved so that it may be dealt with in accordance with this Act;
- (b) upon the execution of the warrant, prepare a list of the property seized and give a copy thereof to the owner or occupier of the premises who is present at the time of the seizure; and
- (c) as soon as is practicable after the execution of the warrant, but within a period of seventy-two hours thereafter, prepare a written report identifying the property seized and the location where the property is being detained and send a copy of the report to the Clerk of Courts in that location.

(5) The Clerk of Courts referred to in subsection (4) shall furnish a copy of the report to—

- (a) the person from whom the property was seized;
- (b) any other person who appears to the Clerk of Courts to have an interest in the property.

(6) Where property is seized under this section otherwise than because it may afford evidence as to the commission of a prescribed offence, any person who claims an interest in the property may apply to the Resident Magistrate who issued the search warrant for an order that the property be returned to that person.

(7) Where an application is made under subsection (6), the Resident Magistrate referred to in that subsection shall order the return of the property to the applicant if the Resident Magistrate is satisfied that—

- (a) the applicant is entitled to possession of the property;
- (b) the property is not tainted property in relation to

the prescribed offence referred to in the warrant;
and

- (c) the person in respect of whose conviction, charging or proposed charging the seizure was made, has no interest in the property.

29.—(1) Where a criminal proceeding has commenced in a foreign state in respect of a prescribed offence and—

Request by
foreign
state for
restraint
order.

- (a) the Central Authority has reasonable grounds to believe that property that may be made the subject of a foreign restraint order is located in Jamaica being property which—

- (i) is liable to forfeiture under the law of the foreign state; and
(ii) would be liable to forfeiture under the law of Jamaica had the offence been committed in Jamaica; and

- (b) the foreign state requests the Central Authority to obtain the issue of a restraint order against the property,

the Central Authority may, in its discretion, apply to the Supreme Court for the issue of the restraint order requested by the relevant foreign state and the Supreme Court may, subject to subsection (2), issue the order if it is satisfied, having regard to the information specified in the request, that the order should be so issued.

(2) Before issuing a restraint order under this section the Supreme Court may require notice to be given to, and may hear, any person who, in the opinion of the Court, appears to have an interest in the property unless the Court is of the opinion that giving such notice before making the order would result in the disappearance, dissipation or reduction in the value of the property.

[The inclusion of this page is authorized by L.N. 95/1997]

(3) A copy of a restraint order issued under this section shall be served on a person affected by the order in such manner as the Court directs or as may be prescribed by rules of Court.

(4) A copy of a restraint order issued under this section which affects registered land in Jamaica shall be registered with the Registrar of the Supreme Court and with the Registrar of Titles who shall record the particulars of the order in the Register Book of Titles.

(5) A restraint order issued under this section is of no effect with respect to registered land unless it is so registered.

(6) Where particulars of a restraint order are registered as required by this section, a person who subsequently deals with the property concerned shall be deemed to have notice of the order at the time of the dealing.

Service of
documents.

30.—(1) Where a foreign state requests the Central Authority to arrange for the service in Jamaica of a process relating to a criminal matter in the relevant foreign state, the Central Authority may, in its discretion and subject to subsection (3), arrange for the service of the process.

(2) Service of such process may be proved by affidavit of the person who served it.

(3) The Central Authority may refuse to execute a request for the service of any process—

- (a) which requires the attendance of a person before a court or tribunal in the relevant foreign state; or
- (b) in relation to which, under the law of the relevant foreign state, there is a penalty or other criminal sanction for non-compliance with the requirements of such document.

PART IV. *General*

31.—(1) The Minister may, by order, designate a Commonwealth country as a designated Commonwealth state for the purpose of this Act, subject to such exceptions, adaptations or modifications as are specified in the order.

Application of the provisions of this Act to foreign state.

(2) Where any relevant treaty has been made with any foreign state, the Minister may, by order, declare that the provisions of this Act shall apply in respect of such foreign state, subject to such exceptions, adaptations or modifications, as the Minister, having due regard to the terms of such treaty, may deem expedient to specify in the order for the purposes of implementing such terms.

(3) The Minister may from time to time, by order, compile and publish in the *Gazette* a list of foreign states with which relevant treaties binding on Jamaica are in force; and, without prejudice to any other form of proof of the existence of such a treaty, such a list shall, in any proceedings, be conclusive evidence that a relevant treaty is in force between Jamaica and each foreign state named in the list.

(4) An order made under this section shall be subject to affirmative resolution.

32. Subject to section 33, the Minister may make regulations generally for giving effect to the purposes and provisions of this Act.

Regulations.

33. Rules of Court may be made dealing generally with all matters of practice and procedure in proceedings under this Act.

Rules of Court.

34. The Evidence by Commission Act, 1859 (of the United Kingdom) and the Foreign Tribunals Act, 1856 (of the United Kingdom) shall cease to have effect in Jamaica after the 14th day of July, 1995.

Repeals (for Jamaica).
22 Vict. C. 20, 19 and 20 Vict. C. 113.

MUTUAL ASSISTANCE (CRIMINAL MATTERS)

FIRST SCHEDULE

(Section 15 (4))

Particulars to be included in request by a foreign state

1. *General Requirements*

(1) Every request for assistance shall specify—

- (a) the nature of the assistance requested;
- (b) the agency or authority initiating the request;
- (c) the time limit for compliance with the request;
- (d) the subject-matter and nature of the investigation or proceeding and a summary of the relevant facts;
- (e) the purpose for which the assistance is being sought; and
- (f) in the case of a request by—
 - (i) Jamaica: or
 - (ii) a relevant foreign state,

details of the procedure that Jamaica or the relevant foreign state, as the case may be, wishes to be followed in giving effect to the request, including details of the manner and form in which any information, document or thing is to be supplied to Jamaica or the relevant foreign state, as the case may be, pursuant to the request.

(2) Where criminal proceedings have been instituted, every request for assistance shall specify—

- (a) the court exercising jurisdiction in the proceedings or any other law enforcement agency or authority conducting such proceedings;
- (b) the identity of the accused person unless prohibited by the law of the relevant foreign state;
- (c) the offences to which the request relates and a summary of the relevant facts;
- (d) the stage reached in the proceedings and dates fixed for further stages.

(3) Where criminal proceedings have not been instituted, every request for assistance shall specify the offence which is believed by—

- (a) the Central Authority, in the case of a request by Jamaica: or
- (b) the appropriate authority of the relevant foreign state,

to have been committed or to be likely to be committed.

2. *Requests for identification and location of persons and objects*

Every such request shall contain such information as is available to the relevant foreign state in respect of the identification and whereabouts of the person or object concerned.

3. *Requests relating to the examination and taking of testimony of witnesses and production of documents*

Every such request shall specify—

- (a) the names and addresses of official designations of witnesses;
- (b) the subject-matter in relation to which witnesses are to be examined;
- (c) the questions to be put to witnesses;
- (d) the manner in which any testimony is to be taken and recorded;
- (e) whether it is desired that witnesses give evidence on oath or on affirmation;
- (f) any provisions of the law of—
 - (i) Jamaica, in the case of a request by Jamaica; or
 - (ii) the relevant foreign state, in the case of a request by that state,

relating to privilege or exemption from giving evidence, which, in the opinion of the Central Authority or, as the case may be, the appropriate authority of the relevant foreign state, is relevant to the request;

- (g) such special requirements of the law of—
 - (i) Jamaica, in the case of a request by Jamaica; or
 - (ii) the relevant foreign state, in the case of a request by that state,

in relation to the manner of taking evidence as may be relevant to its admissibility in Jamaica or the relevant foreign state, as the case may be.

4. *Request for facilitating the appearance of witnesses in Jamaica or the relevant foreign state*

Every such request shall specify—

- (a) the subject-matter in relation to which the witness is to be examined;
- (b) the reasons for which the appearance of the witness is required and the importance of such appearance;
- (c) details as to the kinds and amounts of allowances and expenses payable in respect of the appearance of the witness in Jamaica or the relevant foreign state, as the case may be.

5. *Requests for the transfer of persons in custody for testimonial purposes*

Every such request shall specify—

- (a) the subject-matter in relation to which the witness is to be examined;
- (b) the reasons for which the transfer of the person is being sought and the importance of such transfer.

6. *Requests for search and seizure*

Every such request shall contain—

- (a) a precise description of the place to be searched and things to be seized;
- (b) all such information as is available to—
 - (i) the Central Authority in the case of a request by Jamaica; or
 - (ii) the relevant foreign state in the case of a request by that state,

which is required to be adduced under the law of the relevant foreign state or the law of Jamaica, as the case may be, for any necessary warrant or authorization of the carrying out of the search and seizure;

- (c) a description of any particular procedure to be followed in executing the request.

7. *Request for production of judicial or official records*

Every such request shall contain a description of the records to be produced.

8. *Requests for service of documents*

Every such request shall contain a statement of any particular method of service desired.

9. *Requests for enforcement of foreign forfeiture orders or foreign pecuniary penalty order*

Every such request shall contain—

- (a) a description of the order to be enforced;
- (b) a description of the property, located in Jamaica, to which the order relates;
- (c) particulars of the offence to which the order relates and the date of the conviction in the foreign state;
- (d) information as to whether the conviction or order is subject to any further appeal in the foreign state.

10. Requests for issue of restraint order

Every such request shall contain—

- (a) a description and the location of the property to be restrained;
- (b) particulars of the offence which is the subject-matter of the criminal proceeding in the foreign state;
- (c) whether any person has been charged with, or convicted of, the offence and whether an appeal has been lodged against the conviction;
- (d) the name and address of the person who is believed to be in possession of the property;
- (e) the grounds for believing that the property should be made the subject of a restraint order;
- (f) the grounds for believing that a person charged with, or convicted of, the offence derived a benefit directly or indirectly from the commission of the offence;
- (g) the grounds for believing that the property in question is subject to the effective control of the person charged with, or convicted of, the offence.

SECOND SCHEDULE

(Section 2)

18/2005
2nd Sch.

1. The Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on December 14, 1973.

2. The International Convention Against the Taking of Hostages, adopted by the General Assembly of the United Nations on December 17, 1979.

3. The International Convention for the Suppression of Terrorist Financing, adopted by the General Assembly of the United Nations on December 9, 1999.

4. The Convention on the Physical Protection of Nuclear Material, adopted at Vienna on October 26, 1979.

5. The Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation and the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on March 10, 1988.

6. The International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on December 15, 1997.

7. The Convention for the Suppression of Unlawful Seizure of Aircraft, signed at the Hague on December 16, 1970.

8. The Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on September 23, 1971, and the Protocol to that Convention, done at Montreal on February 24, 1988.