

Cook Islands: Mutual Assistance in Criminal Matters Act 2003

COOK ISLANDS

MUTUAL ASSISTANCE IN CRIMINAL MATTERS ACT 2003, No. 9

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2003, No. 9

An Act to make provision for mutual assistance in criminal matters

(7 May 2003)

BE IT ENACTED by the Parliament of the Cook Islands in Session assembled, and by the authority of the same, as follows:

PART 1
PRELIMINARY

1. Short title and commencement - (1) This Act may be cited as the Mutual Assistance in Criminal Matters Act 2003.

(2) This Act comes into force on a date to be determined by the Queen's Representative by Order in Executive Council.

2. Objects of Act - The objects of this Act are -

(a) to regulate the provision by the Cook Islands of international assistance in criminal matters when a request is made by a foreign country for any of the following:

(i) the taking of evidence, or the production of a document or other article, for a proceeding in the foreign country;

(ii) the issue of a search warrant and seizure of any thing relevant to a proceeding or investigation in the foreign country;

(iii) the forfeiture or confiscation of property for the commission of a serious offence against the law of the foreign country;

- (iv) the restraining of dealings in property that may be forfeited or confiscated because of the commission of a serious offence against the law of the foreign country; and
- (b) to facilitate the Cook Islands providing international assistance in criminal matters when a request is made by a foreign country to make arrangements for a person who is in the Cook Islands to travel to the foreign country -
 - (i) to give evidence in a proceeding; or
 - (ii) to give assistance for an investigation; and
- (c) to facilitate the Cook Islands obtaining similar international assistance in criminal matters.

3. Definitions - In this Act, unless the context otherwise requires, -

“Attorney-General” means the Minister responsible for the Crown Law Office;

“authorised officer” for a provision of this Act, means a person or a person in a class of persons, designated, in writing, by the Attorney-General as an authorised officer for the provision;

“Court” means the High Court of the Cook Islands and its appellate courts;

“criminal matter” means an offence against a provision of -

- (a) any law of the Cook Islands, for which the maximum penalty is imprisonment for a term of up to 12 months or a fine of up to \$5,000;
- (b) a law of a foreign country, in relation to acts or omissions, which had they occurred in the Cook Islands, would have constituted an offence for which the maximum penalty is imprisonment for a term of up to 12 months, or a fine of up to \$5,000;

“document” has the same meaning given by section 3(1) of the Proceeds of Crime Act;

“facsimile copy” means a copy obtained or sent by facsimile transmission;

“foreign forfeiture order” means an order, made under the law of a foreign country, for the forfeiture of property because of an offence against the law of that country;

“foreign law immunity certificate” means a certificate given, or a declaration -

- (a) made by a foreign country or under a law of a foreign country; and
- (b) stating that, under the law of the foreign country, persons generally or a specified person could or could not, either generally or in specified proceedings and either generally or in specified circumstances, be required:
 - (i) to answer a specified question; or
 - (ii) to produce a specified document;

“foreign pecuniary penalty order” means an order made under the law of a foreign country for a person to pay to the foreign country an amount representing the value (or part of the value) of what the person gained from an offence against the law of that country;

“foreign prisoner” 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 country; but does not include a person who is at large after having escaped from lawful custody;

“foreign restraining order” means an order made under the law of a foreign country, about an offence against the law of that country, restraining a particular person, or all persons, from dealing with property;

“forfeiture order” has the same meaning given by section 3(1) of the Proceeds of Crime Act;

“Judge” means a Judge of the Court;

“Justice” means a Justice of the Peace for the Cook Islands appointed under Article 62 of the Constitution of the Cook Islands;

“pecuniary penalty order” has the same meaning given by section 3(1) of the Proceeds of Crime Act;

“prison” includes a jail, lock-up or other place of detention;

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

“proceeding” or “proceedings” has the same meaning given to the term “proceedings” in section 3(1) of the Proceeds of Crime Act;

“proceeds” has the same meaning given by section 3(1) of the Proceeds of Crime Act;

“Proceeds of Crime Act” means the Proceeds of Crime Act 2003;

“property” has the same meaning given by section 3(1) of the Proceeds of Crime Act;

“property-tracking document” has the same meaning given by section 3(1) of the Proceeds of Crime Act;

“restraining order” has the same meaning given by section 3(1) of the Proceeds of Crime Act;

“serious offence” has the same meaning given by section 3(1) of the Proceeds of Crime Act;

“tainted property” has the same meaning given by section 3(1) of the Proceeds of Crime Act;

“trial”, for an offence in a foreign country, includes a proceeding to determine whether a person should be convicted of the offence;

“video or internet link” means a system, including an internet connection, that lets persons assembled in a place see, hear and talk to persons assembled in another place.

4. Act does not limit other provision of assistance - This Act does not prevent the provision or obtaining of international assistance in criminal matters other than assistance of a kind that may be provided or obtained under this Act.

5. Application of Act - This Act applies for all foreign countries.

PART 2 **REQUESTS FOR ASSISTANCE GENERALLY**

6. Requests by the Cook Islands for assistance generally - A request for international assistance in a criminal matter that the Cook Islands is authorised to make under this Act may be made only by the Attorney-General.

7. Requests by foreign countries for assistance generally - (1) Under this Act a request by a foreign country for international assistance in a criminal matter may be made to the Attorney-General.

(2) A request must be in writing or by e-mail and must include, or be accompanied by, the following information -

(a) the name of the authority concerned with the criminal matter to which the request relates;

- (b) a description of the nature of the criminal matter and a statement setting out a summary of the relevant facts and laws;
- (c) a description of the purpose of the request and of the nature of the assistance being sought;
- (d) any information that may assist in giving effect to the request.

(3) Failure to comply with subsection (2) is not a ground for refusing the request, but the Attorney-General is not obliged to consider the request until that subsection is complied with.

(4) If a foreign country makes a request to the Court for international assistance in a criminal matter, -

- (a) the Court must refer the request to the Attorney-General; and
- (b) the request is then taken, for this Act, to have been made to the Attorney-General.

8. Assistance may be provided in whole or in part and subject to conditions - Assistance under this Act may be provided to a foreign country in whole or in part and subject to any conditions that the Attorney-General determines.

9. Refusal or postponement of assistance - The Attorney-General may, in respect of any request from a foreign country for mutual assistance in any investigation commenced or proceeding instituted in that foreign country relating to a serious offence -

- (a) refuse the request, in whole or in part, on the ground that to grant the request would be likely to prejudice the sovereignty, security or other essential public interest of the Cook Islands; or
- (b) after consulting with the relevant authority of the foreign country, postpone the request, in whole or in part, on the ground that granting the request immediately would be likely to prejudice the conduct of an investigation or proceeding in the Cook Islands.

PART 3 **ASSISTANCE WITH TAKING EVIDENCE AND** **PRODUCTION OF DOCUMENTS OR OTHER ARTICLES**

10. Requests by the Cook Islands for assistance with evidence - (1) The Attorney-General may request the appropriate authority of a foreign country to arrange, for a proceeding or investigation in a criminal matter in the Cook Islands, for -

- (a) evidence to be taken in the foreign country under the law of that country; or
- (b) a document or other article in the foreign country to be produced under the law of that country.

(2) When making a request under subsection (1), the Attorney-General may also request that an opportunity be given for the person giving the evidence, or producing the document or other article, to be examined or cross-examined, through a video or internet link, from the Cook Islands by -

- (a) a party to the proceeding, or the party's legal representative; or
- (b) a person being investigated, or the person's legal representative.

11. Requests by foreign countries for assistance with evidence - (1) If a foreign country (the "requesting country") asks that evidence be taken in the Cook Islands for a proceeding or investigation in a criminal matter in the requesting country or another foreign country, the Attorney-General may authorise -

- (a) the taking of the evidence; and
- (b) the transmission of the evidence to the requesting country.

(2) If the requesting country asks that a document or other article in the Cook Islands be produced for a proceeding or investigation in a criminal matter in the requesting country or another foreign country, the Attorney-General may authorise -

- (a) the production of the documents or articles; and
- (b) their transmission to the requesting country.

12. Taking evidence - (1) If the Attorney-General authorises the taking of evidence under section 11(1), a Judge or Justice may take, on oath, the evidence of each witness in the matter, and the Judge or Justice who takes that evidence must -

- (a) cause the evidence to be put in writing and certify that he or she took the evidence; and
- (b) send the evidence and certificate to the Attorney-General.

(2) The evidence of a witness may be taken in the presence or absence of the person to whom the proceeding in the requesting country relates or in the presence or absence of his or her legal representative (if any).

(3) A certificate issued by a Judge or Justice under paragraph (1) (a) must state whether, when the evidence was taken, any of the following persons were present -

- (a) the person to whom the proceeding in the requesting country relates or his or her legal representative (if any);
- (b) any other person giving evidence or his or her legal representative (if any).

13. Production - (1) If the Attorney-General authorises the production of a document under section 11(2), a Judge or Justice -

- (a) may require the document to be produced to him or her; and
- (b) if it is produced, must send it, or a copy of it certified by the Judge or Justice to be a true copy, to the Attorney-General.

(2) If the Attorney-General authorises the production of an article (other than a document) under section 11(2), a Judge or Justice -

- (a) may require it to be produced to him or her; and
- (b) if the article is produced, must send it to the Attorney-General.

14. Conduct of proceedings - (1) The Judge or Justice conducting a proceeding under section 11, 12 or 13 may permit any of the following to have legal representation at the proceeding -

- (a) the person to whom the proceeding in the requesting country relates;
- (b) any other person giving evidence or producing a document or other article at the proceeding before the Judge or Justice;
- (c) the relevant authority of the requesting country.

(2) If the requesting country has so requested, the Judge or Justice may permit examination or cross-examination, through a video or internet link from the requesting country, of any person giving evidence or producing a document or other article at the proceeding by -

- (a) any person to whom the proceeding in the requesting country relates or by that person's legal representative; or
- (b) the legal representative of the relevant authority of the requesting country.

15. Exceptions to compulsion - (1) The laws of the Cook Islands about -

- (a) compelling a person to attend before; a Judge or Justice; and
- (b) giving evidence, answering questions and producing documents or other articles,

on the hearing of a charge against a person for an offence against the law of the Cook Islands, apply, so far as they are capable of applying, to the compelling of a person under this Part -

- (c) to attend before a Judge or Justice; and
- (d) to give evidence, answer questions and produce documents or other articles.

(2) However, for this Part, -

- (a) the person to whom the proceeding in the requesting country relates is competent, but not compellable, to give evidence; and
- (b) the person is not compellable to answer a question or to produce a document or article if the person would not be compellable to do so in the requesting country or other foreign country to which the request relates.

16. Foreign law immunity certificates - A foreign law immunity certificate is admissible in proceedings under this Part as evidence of the matters stated in the certificate.

PART 4 **ASSISTANCE FOR SEARCH AND SEIZURE**

17. Requests by the Cook Islands for search and seizure - (1) This section applies to a proceeding or investigation for a criminal matter involving a serious offence against the law of the Cook Islands if the Attorney-General believes, on reasonable grounds, that a thing relevant to the proceeding or investigation may be located in a foreign country.

(2) The Attorney-General may request the appropriate authority of the foreign country to obtain a warrant or other instrument that, under the law of the foreign country, authorises -

- (a) a search for a thing relevant to the proceeding or investigation; and
- (b) if that a thing or any other thing that is or may be relevant to the proceeding or investigation is found as a result of the search, the seizure of that thing.

(3) A thing that -

- (a) is relevant to the proceeding or investigation; and
- (b) has been obtained by the appropriate authority of the foreign country by a process authorised by the law of that country other than the issue (as requested by the Cook Islands) of a warrant or other instrument authorising the seizure of the thing,

may be admissible in evidence in the proceeding or used in the investigation despite having been obtained otherwise than in accordance with the request.

18. Requests by foreign countries for search and seizure - (1) The Attorney-General may direct an authorised officer to apply to a Judge or Justice for a search warrant if -

- (a) a proceeding or investigation for a criminal matter involving a serious offence has commenced in a foreign country; and
- (b) the Attorney-General believes, on reasonable grounds, that a thing relevant to the investigation or proceeding is located in the Cook Islands; and

(c) the foreign country requests the Attorney-General to arrange for the issue of a search warrant for that thing.

(2) The authorised officer may apply to the Court for the issue of a warrant to search land or premises in the Cook Islands for a thing relevant to the proceeding or investigation.

19. Search warrants - (1) If an application is made under section 18 for a warrant for a thing relevant to an investigation or proceeding in a foreign country, the Court may issue the warrant authorising the authorised officer, with any assistance, and by any force, that is necessary and reasonable -

- (a) to enter the land or premises; and
- (b) to search the land or premises for that thing and to seize it.

(2) A warrant issued under this section must include -

- (a) a statement of the purpose for which the warrant is issued, including a reference to the nature of the relevant offence; and
- (b) a description of the kind of thing authorised to be seized; and
- (c) a time at which the warrant ceases to have effect; and
- (d) a statement as to whether entry is authorised at any time or at specified times.

(3) If, in the course of searching under a warrant issued under section 18 for a thing of a kind specified in the warrant, an authorised officer finds another thing, the warrant is taken to authorise the authorised officer to seize the other thing if the officer believes, on reasonable grounds, the other thing -

- (a) to be relevant to the proceeding or investigation in the foreign country or to provide evidence about the commission of a criminal offence in the Cook Islands; and
- (b) to be likely to be concealed, lost or destroyed if it is not seized.

20. Custody of things seized - (1) If an authorised officer seizes a thing under this Part, the officer must deliver the thing into the custody and control of the Commissioner of Police.

(2) If a thing is delivered into the custody and control of the Commissioner of Police under subsection (1), the Commissioner of Police must tell the Attorney-General that the thing has been so delivered and arrange for the thing to be kept in safe custody.

(3) The Attorney-General may give to the Commissioner of Police a direction in writing (including a direction that the thing be sent to an authority of a foreign country) about how the thing must be dealt with.

PART 5

ARRANGEMENTS FOR PERSONS TO GIVE EVIDENCE OR ASSIST INVESTIGATIONS

21. Requests for removal of certain persons to the Cook Islands - (1) The Attorney-General may request a foreign country to authorise the attendance at a hearing, for a proceeding that has commenced in the Cook Islands, of a person who is in the foreign country if -

- (a) the proceeding relates to a criminal matter; and
- (b) the Attorney-General is of the opinion that the person -
 - (i) is a foreign prisoner; and
 - (ii) is capable of giving evidence relevant to the proceeding; and has consented to being removed to the Cook Islands to give evidence in the proceeding.

(2) The Attorney-General may request a foreign country to authorise removal of a person who is in the foreign country to the Cook Islands to give assistance investigation that has commenced in the Cook Islands if -

- (a) the investigation relates to a criminal matter; and
- (b) the Attorney-General is of the opinion that the person:
 - (i) is a foreign prisoner; and
 - (ii) is capable of giving assistance in the investigation; and
 - (iii) has consented to being removed to the Cook Islands to give assistance in the investigation.

(3) If the Attorney-General makes a request under subsection (1) or (2), the Attorney-General may arrange with an appropriate authority of the foreign country for -

- (a) the removal of the person to the Cook Islands; and
- (b) the custody of the person while in the Cook Islands; and
- (c) the return of the person to the foreign country; and
- (d) Other relevant matters.

22. Custody of certain persons - (1) This section applies -

- (a) to a person who is to be brought to the Cook Islands from a foreign country in response to a request under section 21; and
- (b) if the foreign country requests that the person be kept in custody while he or she is in the Cook Islands.

(2) The person must be kept in the custody that the Attorney-General directs, in writing, while the person is in the Cook Islands, or travelling to or from the Cook Islands, under the request.

23. Immunities - (1) This section applies to a person who is in the Cook Islands -

- (a) because of a request under section 21; or
- (b) to give evidence in a proceeding, or to give assistance in an investigation, because of a request made by the Attorney-General (except a request under section 21) for international assistance in a criminal matter.

(2) The person must not -

- (a) be detained, prosecuted or punished in the Cook Islands for any offence committed, or alleged to have been committed, before he or she left the foreign country in response to the request; or
- (b) be subjected to any civil suit for any act or omission of the person that occurred, or is alleged to have occurred, before he or she left the foreign country under the request, being a civil suit to which the person could not be subjected if the person were not in the Cook Islands; or
- (c) be required to give evidence in any proceeding in the Cook Islands other than any proceeding to which the request relates; or
- (d) be required, in any proceeding to which the request relates, to answer any question that the person would not be required to answer in a proceeding relating to a criminal matter in the foreign country; or
- (e) be required, in any proceeding to which the request relates, to produce any document or article that the person would not be required to produce in a proceeding in the foreign country relating to a criminal matter.

(3) A foreign law immunity certificate is admissible in proceedings of the matter stated in the certificate.

(4) Subsection (2) ceases to apply to a person -

- (a) when the person leaves the Cook Islands; or

(b) if the person has had the opportunity of leaving the Cook Islands and has remained in the Cook Islands otherwise than -

- (i) for the purpose to which the request relates; or
- (ii) to give evidence in a proceeding in the Cook Islands certified by the Attorney-General, in writing, to be a proceeding in which it is desirable that the person give evidence; or
- (iii) to give assistance in an investigation in the Cook Islands certified by the Attorney-General, in writing, to be an investigation in which it is desirable that the person give assistance.

(5) A certificate given by the Attorney-General for subparagraph (4) (b) (ii) or (iii) has effect from the day specified in it (which may be a day before the day on which the certificate is given).

24. Status of person prosecuted for offence committed after leaving foreign country - (1) This section applies to a person who has come to the Cook Islands in response to a request under section 21.

(2) For this Act, the person is taken to be in the Cook Islands because of the request during any period when he or she remains in the Cook Islands to be tried for a criminal offence against the law of the Cook Islands that he or she is alleged to have committed after he or she left the foreign country.

(3) Without limiting subsection (2), the person must be kept in the custody that the Attorney-General directs under section 22.

25. Limitation on use of evidence given by certain persons - (1) This section applies to a person who is in the Cook Islands to give evidence in a proceeding or assistance in an investigation -

(a) either

- (i) because of a request under section 21; or
 - (ii) because of a request (other than a request under that section) made by the Attorney-General for international assistance in a criminal matter; and
- (b) if the person has given the evidence or assistance in the proceeding to which the request related or in a proceeding certified by the Attorney-General, in writing, to be a proceeding in which it is desirable that the person give evidence.

(2) The evidence must not be admitted or otherwise used in a prosecution of the person for an offence against Cook Islands law, other than for perjury in giving that evidence.

(3) Anything the person says or does when giving the assistance may not be admitted or otherwise used in any prosecution of the person for an offence against Cook Islands law.

26. Conditions of imprisonment - For a person who is in the Cook Islands because of a request under section 21 and who has been kept in custody in the Cook Islands under a direction of the Attorney-General under section 22, the laws of the Cook Islands about the following matters apply (so far as they are capable of application) -

- (a) the conditions of imprisonment of persons imprisoned for offences against the law of the Cook Islands; and
- (b) the treatment of the persons during imprisonment.

27. Release of certain persons on request by foreign country - The Attorney-General must direct that a person be released from custody if -

- (a) the person is kept in custody under a direction of the Attorney-General under section 22; and
- (b) the foreign country from which the person has been brought requests the release of the person from custody.

28. Arrest of person who has escaped from custody - (1) Any police officer may arrest a person without warrant if the officer believes, on reasonable grounds, that the person -

- (a) has been brought to the Cook Islands in response to a request under section 21; and
- (b) has escaped from lawful custody while in the Cook Islands.

(2) The police officer must take the person before the Court as soon as practicable.

(3) If the Court is satisfied that the person has escaped from lawful custody, the Court may issue a warrant authorising any police officer to return the person to lawful custody.

29. Aiding person to escape etc. - The laws of the Cook Islands about aiding a prisoner to escape from custody, rescuing a prisoner from custody, permitting escape and harbouring a prisoner who has escaped from custody apply to a person who is in custody in the Cook Islands because of a request to a foreign country by the Cook Islands under this Act.

30. Requests forgiving of evidence at hearings in foreign countries - This section and sections 31 to 33 apply if -

- (a) a proceeding or an investigation about a criminal matter has commenced in a foreign country; and
- (b) the foreign country makes a request for the removal of a prisoner who is in the Cook Islands (whether or not in custody) to the foreign country to attend at the proceeding or to assist in the investigation; and
- (c) the Attorney-General believes, on reasonable grounds, that the prisoner is capable of giving evidence relevant to the proceeding or assistance relevant to the investigation; and
- (d) the Attorney-General is satisfied that -
 - (i) the prisoner has consented to giving evidence or assistance in the foreign country; and
 - (ii) the foreign country has given adequate (whether or not unqualified) undertakings about the matters mentioned in section 32.

31. Travel of prisoner or person - (1) If the prisoner is being held in custody, the Attorney-General may make a transfer order and that order-

- (a) must set out the name of the prisoner person and his or her current place of confinement; and
- (b) must order the person who has custody of the prisoner to deliver him or her into the custody of a person who is designated in the order or who is a member of a class of persons that are designated; and
- (c) must order the person receiving the prisoner into custody to take him or her to the foreign country and, on return of the prisoner to the Cook Islands, to return the prisoner to a place of confinement in the Cook Islands specified in the order, or to any other place of confinement as the Attorney-General may notify to the foreign country; and
- (d) must state the reasons for the transfer; and
- (e) must fix the period of time at or before the expiration of which the prisoner must be returned, unless varied, for the purposes of the request by the Attorney-General.

(2) The time spent in custody by a prisoner under a transfer order counts towards any sentence required to be served by that prisoner, as long as the prisoner remains in custody and is of good behaviour.

(3) If the prisoner has been released from custody on a parole or other order or licence to be at large, the Attorney-General may -

- (a) approve the travel of the prisoner to the foreign country to give evidence or assistance and obtain any necessary approvals, authorities, permissions or variations to the order or, licence; and
- (b) subject to obtaining the approvals, authorities, permissions or variations, arrange for the prisoner to travel to the foreign country.

(4) The Attorney-General may arrange for a person (other than a prisoner) who is in the Cook Islands to travel to a foreign country if -

- (a) a proceeding or an investigation about a criminal matter has commenced in the foreign country; and
- (b) the foreign country requests that the person travel to the foreign country to give evidence at the proceeding or assistance at the investigation; and
- (c) the Attorney-General believes, on reasonable grounds, that the person is capable of giving evidence relevant to the proceeding or assistance relevant to the investigation; and
- (d) the Attorney-General is satisfied that-
 - (i) the person has consented to travel to the foreign country to give evidence or assistance; and
 - (ii) the foreign country has given adequate (whether or not unqualified) undertakings about: the matters mentioned in section 32.

32. Undertakings to be given - (1) For section 30(d)(ii) and section 31(4)(d)(ii), this section sets out the matters about which undertakings are to be given.

(2) The person will not -

- (a) be detained, prosecuted or punished for an offence against the law of the foreign country committed, or alleged to have been committed, before the person's departure from the Cook Islands; or
- (b) be subjected to any civil suit for any act or omission of the person that occurred, or is alleged to have occurred, before the person's departure from the Cook Islands, being a civil suit to which the person could not be subjected if the person were not in the foreign country; or
- (c) be required to give evidence in a proceeding in the foreign country other than the proceeding to which the request relates,

unless:

- (d) the person has left the foreign country; or
- (e) the person has had the opportunity of leaving the foreign country and has remained in that country for a purpose other than giving evidence in the proceeding to which the request relates.

(3) Evidence given by the person in the proceeding to which the request relates will be inadmissible or otherwise disqualified from use in the prosecution of the person for an offence against a law of the foreign country other than for perjury in giving that evidence.

(4) The person will be returned to the Cook Islands under arrangements agreed to by the Attorney-General.

(5) If the person is being kept in custody in the Cook Islands and the Attorney-General requests the foreign country to make arrangements to keep the person in custody while the person is in the foreign country, -

- (a) appropriate arrangements will be made for that purpose; and
- (b) the person will not be released from custody in the foreign country unless the Attorney-General notifies an appropriate authority of the foreign country that the person is entitled to be released from custody under Cook Islands law; and
- (c) if the person is released in the foreign country after notice by the Attorney-General under paragraph (b), the foreign country will pay for the person's accommodation and expenses pending the completion of the proceeding to which the request relates.

(6) The Attorney-General may require undertakings about any other matters that he or she thinks appropriate.

33. Effect of removal to foreign country on prisoner's term of imprisonment - (1) This section applies to a prisoner who -

- (a) is serving a term of imprisonment for an offence against a law of the Cook Islands; and
 - (b) is released from a prison because of a request by a foreign country under section 31(4) (b).
- (2) The prisoner is taken, while in custody because of the request (including custody outside the Cook Islands), to be continuing to serve the term of imprisonment.

PART 6

CUSTODY OF PERSONS IN TRANSIT

34. Transit - (1) Subsection (2) applies to a person who is to be taken in custody from a foreign country through the Cook Islands to another foreign country to give evidence in a proceeding or assistance in an investigation in a criminal matter in the other foreign country.
- (2) The person -
- (a) may be taken through the Cook Islands in the custody of another person; and
 - (b) if an aircraft or ship on which the person is a passenger lands or calls at a place in the Cook Islands, must be kept in custody as the Attorney-General directs, in writing, until the person's journey is continued.
- (3) The Attorney-General may direct that the person be taken in custody to the foreign country from which the person was first taken if -
- (a) the person is being held in custody because of a direction under paragraph (2)(b); and
 - (b) the person's journey is not, in the opinion of the Attorney-General, continued within a reasonable time.
35. Arrest of person in transit - (1) A police officer may arrest a person without warrant if the police officer believes, on reasonable grounds, that the person was being kept in custody under a direction under section 34(2)(b) and has escaped from that custody.
- (2) The police officer must take the person before the Court as soon as practicable.
- (3) If the Court is satisfied that the person has escaped from lawful custody, the Court may issue a warrant authorising any police officer to return the person to lawful custody.

PART 7

ASSISTANCE REGARDING PROCEEDS OF CRIME

36. Requests for enforcement of orders made in the Cook Islands - (1) The Attorney-General may request an appropriate authority of a foreign country to make arrangements for the enforcement of -
- (a) a forfeiture order for a serious offence, made in the Cook Islands, against property that is believed to be located in the foreign country; or
 - (b) a pecuniary penalty order for a serious offence, made in the Cook Islands, if some or all of the property available to satisfy the order is believed to be located in the foreign country; or
 - (c) a restraining order for a serious offence, made in the Cook Islands, against property that is believed to be located in that foreign country.
- (2) The Attorney-General may enter an arrangement with the foreign country to share with the country the amount forfeited under paragraph (1)(a) or paid under paragraph (1)(b).
37. Requests for issue of orders in foreign countries - If a proceeding or investigation has commenced in the Cook Islands for a serious offence, the Attorney-General may ask an appropriate authority of a foreign country for the issue, for the offence, of an instrument similar in nature to any of the following instruments under the Proceeds of Crime Act -

- (a) a search warrant for tainted property;
- (b) a restraining order;
- (c) a production order for a property-tracking document;
- (d) a search warrant for a property-tracking document.

38. Requests for enforcement of foreign orders - (1) Subsection (2) applies if-

- (a) a foreign country requests the Attorney-General to make arrangements for the enforcement of -
 - (i) a foreign forfeiture order, for a serious offence, against property that is believed to be located in the Cook Islands; or
 - (ii) a foreign pecuniary penalty order, for a serious offence, if some or all of the property available to satisfy the order is believed to be located in the Cook Islands; and
- (b) the Attorney-General is satisfied that -
 - (i) a person has been convicted of the offence; and
 - (ii) the conviction and the order are not subject to further appeal in the foreign country.

(2) The Attorney-General may apply for the registration of the order in the Court.

(3) If a foreign country requests the Attorney-General to make arrangements for the enforcement of a foreign restraining order for a serious offence against property that is believed to be located in the Cook Islands, the Attorney-General may apply for the registration of the order in the Court.

39. Registration of foreign orders - If the Attorney-General applies to the Court for registration of a foreign order under section 38, the Court must register the order accordingly.

40. Effect of registration - (1) A foreign forfeiture order registered in the Court under section 39 has effect, and may be enforced, as if it were a forfeiture order made by the Court under the Proceeds of Crime Act at the time of registration.

(2) A foreign pecuniary penalty order registered in the Court under section 39 has effect, and may be enforced, as if it were a pecuniary penalty order made by the Court under the Proceeds of Crime Act at the time of registration and requiring the payment to the Crown of the amount payable under the order.

(3) The Attorney-General may enter an arrangement with a foreign country to share with that country the amount forfeited under subsection (1) or paid under subsection (2).

(4) A foreign restraining order registered in the Court under section 39 has effect, and may be enforced, as if it were a restraining order made by the Court under the Proceeds of Crime Act at the time of registration.

41. Amendment of orders - If a foreign pecuniary penalty order or a foreign restraining order is registered in the Court under section 39, -

- (a) a copy of any amendments to the order (whether before or after registration) may be registered in the same way as the order; and
- (b) the amendments do not, for this Act and the Proceeds of Crime Act, have effect until they are registered.

42. How an order is registered - (1) An order or an amendment of an order may be registered in the Court by registering a copy of-

- (a) the appropriate order or amendment sealed by the Court or the authority that made the order or amendment; or
- (b) the order or amendment authenticated under section 59.

(2) A facsimile copy of a sealed or authenticated copy of an order or an amendment of an order must be treated as if it were a sealed or authenticated copy.

(3) However, registration effected by facsimile copy ceases to have effect at the end of 21 days unless a sealed or authenticated copy of the order has been registered within that time.

43. Cancellation of registration - (1) The Attorney-General may apply to the Court for cancellation of the registration of a foreign pecuniary penalty order or a foreign restraining order that has been registered in the Court.

(2) If the Attorney-General applies to the Court for the cancellation of a registration under subsection (1), the Court must cancel the registration accordingly.

44. Requests for search and seizure warrants for tainted property - The Attorney-General may direct an authorised officer to apply to the Court under the Proceeds of Crime Act for a search warrant for property if -

- (a) a proceeding or investigation has commenced in a foreign country for a serious offence; and
- (b) the Attorney-General believes, on reasonable grounds, that tainted property for the offence is located in the Cook Islands; and
- (c) the foreign country requests the Attorney-General to obtain the issue of a search warrant for the property

45. Requests for restraining orders - The Attorney-General may apply to the Court for a restraining order under the Proceeds of Crime Act against property for a serious offence if-

- (a) a proceeding has commenced, or the Attorney-General believes, on reasonable grounds, that a proceeding is about to commence, in a foreign country for the offence; and
- (b) the Attorney-General believes, on reasonable grounds, that property at may be made or is about to be made the subject of a foreign restraining order is located in the Cook Islands; and
- (c) the foreign country requests the Attorney-General to obtain the issue of a restraining order against the property.

46. Requests for information gathering orders - (1) Subsection (2) applies if -

- (a) a proceeding or investigation has commenced in a foreign country for a serious offence; and
- (b) a property-tracking document for the offence is reasonably believed to be located in the Cook Islands; and
- (c) the foreign country requests the Attorney-General to obtain the issue of
 - (i) an order requiring the documents to be produced or made available for inspection under the law of the Cook Islands; or
 - (ii) a search warrant for the offence.

(2) The Attorney-General may direct an authorised officer to apply to the Court for a production order under the Proceeds of Crime Act for the offence to obtain possession of the property-tracking document; or, a search warrant under that Act for the property-tracking document.

PART 8 **REQUESTS BY ATTORNEY-GENERAL FOR A DEFENDANT**

47. Requests by Attorney-General for defendant - (1) Subsection (2) applies if a defendant in a proceeding (the “original proceeding”) in the Cook Islands for a criminal matter thinks that it is necessary for the proceeding that -

- (a) evidence be taken in a foreign country; or
 - (b) a document or other article in a foreign country be produced; or
 - (c) a thing located in a foreign country be seized; or
 - (d) arrangements be made for a person who is in a foreign country to come to the Cook Islands to give evidence relevant to the proceeding.
- (2) The defendant may apply to the Court for a certificate stating that it would be in the interests of justice for the Attorney-General to make an appropriate request to the foreign country under Part 3, 4 or 5 so that -
- (a) the evidence may be taken; or
 - (b) the document or article may be produced; or
 - (c) the thing may be seized; or
 - (d) the arrangements may be made.
- (3) Before making a decision on the application, the Court must give an opportunity to appear before the Court and be heard on the merits of the application to -
- (a) all parties to the original proceeding; and
 - (b) the Attorney-General.
- (4) In deciding whether to issue a certificate, the Court must have regard to the interests of justice generally and, in particular, to the following matters:
- (a) whether the foreign country is likely to grant a request by the Attorney-General;
 - (b) the extent to which the material (whether it is evidence, a document, an article or a thing) that the defendant seeks to obtain from the foreign country would not otherwise be available;
 - (c) whether the Court hearing the original proceeding would be likely to admit the material into evidence in the proceeding;
 - (d) the likely probative value of the material, if it were admitted into evidence in the proceeding, for any issue likely to be determined in the proceeding;
 - (e) whether the defendant would be unfairly prejudiced if the material were not available to the Court.
- (5) Subsection (4) does not prevent the Court from having regard to any other relevant matter.
- (6) If the Court issues a certificate, -
- (a) the Court must send a copy of the certificate to the Attorney-General; and
 - (b) the Attorney-General must, in accordance with the certificate, request the foreign country for international assistance.
48. Certificate by Attorney-General if foreign country refuses request made under section 47 - (1) If a foreign country refuses a request made under section 47(6), the Attorney-General must give a certificate in writing to that effect.
- (2) A certificate under subsection (1) is evidence of the facts stated in it.

PART 9

ADMISSIBILITY OF FOREIGN EVIDENCE

49. Definitions for Part 9 - In this Part, -

- “civil proceeding” means a proceeding other than a criminal proceeding;
- “Court” means -
- (a) the High Court of the Cook Islands and its appellate courts; or

(b) a Judge or arbitrator acting under Cook Islands law; or
(c) a person or body authorised by a Cook Islands law, or by consent of parties, to hear, receive and examine evidence;

“criminal proceeding” includes -

- (a) a prosecution for an offence; and
- (b) a proceeding for the committal of a person for trial for an offence; and
- (c) a proceeding for the sentencing of a person convicted of an offence;

“foreign law” means a law (whether written or unwritten) of, or in force in, a country other than the Cook Islands;

“foreign material” means -

- (a) the testimony of a person that -
 - (i) was obtained as a result of a request for foreign material made under this Part; and
 - (ii) complies with section 51; and
- (b) any exhibit annexed to the testimony; and
- (c) any part of the testimony or exhibit.

“related civil proceedings”, for a criminal proceeding, means civil proceedings arising from the same subject matter from which the criminal proceeding arose.

50. Application of this Part - This Part applies to -

- (a) a proceeding, before a Court, that is -
 - (i) a criminal proceeding for an offence against the law of the Cook Islands; or
 - (ii) a related civil proceeding; and
- (b) testimony obtained as a result of a request made by or for the Solicitor-General to a foreign country for the testimony of a person; and
- (c) any exhibit annexed to the testimony.

51. Requirements for testimony - (1) The testimony must be taken before the Court-

- (a) on oath or affirmation; or
- (b) under any caution or admonition that would be accepted, by courts in the foreign country concerned, for giving testimony in proceedings before those courts.

(2) The testimony may be taken in closed court.

52. Form of testimony - (1) The testimony may be recorded in any of the following ways -

- (a) in writing;
- (b) on audio tape;
- (c) on video tape.

(2) The testimony need not -

- (a) be in the form of an affidavit; or
- (b) constitute a transcript of a proceeding in a foreign court.

(3) The testimony must be endorsed with, or be accompanied by, a certificate to the effect that it is an accurate record of the evidence given.

(4) The certificate must -

- (a) purport to be signed or certified by a judge, magistrate or judicial officer in or of the foreign country to which the request was made; and
- (b) purport to bear an official or public seal of, -

- (i) the country; or
- (ii) an authority of the country responsible for matters relating to justice (that is, a Minister of State, a Ministry or Department of Government, or an officer of the Government).

53. Foreign material may be adduced as evidence - Foreign material may be adduced as evidence in a proceeding to which this Part applies unless, -

- (a) at the hearing of the proceeding, it appears to the Court's satisfaction that the person who gave the testimony concerned is present in the Cook Islands and is able to testify at the hearing; or
- (b) the evidence would not have been admissible if it had been given by the person at the hearing; or
- (c) in the proceeding the Court directs, under section 54, that the foreign material must not be adduced as evidence.

54. Direction to prevent foreign material being adduced - (1) The Court may direct that foreign material may not be adduced as evidence if it appears to the Court's satisfaction that the interests of justice would be better served if the foreign material were not adduced as evidence.

(2) Without limiting the matters that the Court may take into account in deciding whether to give such a direction, it must take into account -

- (a) the extent to which the foreign material provides evidence that would not otherwise be available; and
- (b) the probative value of the foreign material for any issue that is likely to be determined in the proceedings; and
- (c) the extent to which statements contained in the foreign material could, at the time they were made, be challenged by questioning the persons who made there; and
- (d) whether exclusion of the foreign material would cause undue expense or delay; and
- (e) whether exclusion of the foreign material would prejudice -
 - (i) the defence in criminal proceedings; or
 - (ii) a party to related civil proceedings.

55. Certificates relating to foreign material - (1) The Attorney-General may certify that specified foreign material was obtained as a result of a request made to a foreign country by the Attorney-General.

(2) It is presumed (unless evidence to the contrary is adduced sufficient to raise reasonable doubt) that the foreign material specified in the certificate was obtained as a result of that request.

56. Effect of this Part on right to examine witnesses - (1) Nothing in this Part limits a right of the defendant in criminal proceedings to which this Part applies to examine, in person or by his or her legal representative, a witness whose testimony is admitted in evidence in those proceedings.

(2) If the defendant requests that the person who gave the testimony be present at the hearing in the Cook Islands to be cross-examined, the Court must warn the defendant that he or she may be ordered to pay any expenses incurred by the Crown in making the person available before the Court.

(3) The Court may order the defendant to pay any expenses incurred by the Crown in obtaining the attendance of a person as a witness if, -

- (a) as a result of the request, the person appears before the Court as a witness; and
- (b) it appears to the Court that the cross-examination of the person was unnecessary, trivial or irrelevant to the matters in issue in the proceedings.

(4) A certificate signed by the Attorney-General is evidence of the expenses incurred by the Crown under subsection (3).

(5) An amount payable by a person to the Crown under an order made under subsection (3) is a civil debt

due by the person to the Crown.

(6) An order against a person made under subsection (3) may be enforced as if it were an order made in civil proceedings instituted by the Crown against the person to recover a debt due by the person to the Crown; and the debt arising from the order is taken to be a judgment debt.

57. Operation of other laws - This Part does not limit the ways in which a matter may be proved, or evidence may be adduced, under any other law.

PART 10 **MISCELLANEOUS**

58. Delegation - The Attorney-General may delegate to the Attorney-General all or any of his or her powers under this Act.

59. Authentication of documents - (1) In a proceeding under this Act or under the Proceeds of Crime Act arising directly or indirectly from a request made under this Act, any document that is authenticated is admissible in evidence.

(2) A document is authenticated if -

(a) it purports to be signed or certified by a Judge, magistrate or judicial officer in or of a foreign country; and

(b) it purports to be sealed with an official or public seal of the foreign country or of a Minister of State, or of a Ministry or Department of the Government or an officer of the Government, of the foreign country.

(3) Nothing in this section prevents the proof of any matter, or the admission in evidence of any document, under any other law.

60. Restriction on use of information, etc. - (1) Any material (whether it is evidence, a document, an article or a thing) that is sent to the Cook Islands by a foreign country -

(a) because of a request made by the Attorney-General under this Act; and

(b) for a proceeding or investigation in a criminal matter,

must not be used intentionally for any other purpose without the approval of the Attorney-General.

(2) The material is inadmissible in evidence in any proceeding other than the proceeding for which it was obtained unless the Attorney-General approves its use for that other proceeding.

(3) Any information, document, article or thing obtained directly or indirectly from a person by making use of the material -

(a) otherwise than for the proceeding or investigation for which it was obtained; and

(b) without the approval of the Attorney-General,

is inadmissible in evidence in any other proceeding and may not be used for any other investigation.

(4) A person who contravenes sub-section (1) or (3) is guilty of an offence punishable by,-

(a) if the person is a natural person, a fine of up to \$10,000 or a term of imprisonment up to 2 years, or both; or

(b) if the person is body corporate, a fine of up to \$50,000.

(5) For this section, disclosure of any material is taken to be a use of that material.

61. Requests for international assistance must not be disclosed - (1) Subsection (2) applies to a person who, because of his or her office or employment, has knowledge of -

- (a) the contents of a request for international assistance made by a foreign country to the Cook Islands under this Act; or
- (b) the fact that a request has been made; or
- (c) the fact that a request has been granted or refused.

(2) The person must not intentionally disclose those contents or that fact unless-

- (a) it is necessary to do so in the performance of his or her duties; or
- (b) the Attorney-General has given his or her approval to the disclosure of those contents or that fact.

(3) A person who contravenes subsection (2) is guilty of an offence punishable by-

- (a) if the person is a natural person, a fine of up to \$10,000 or a term of imprisonment of up to 2 years, or both; or
- (b) if the person is a body corporate, a fine of up to \$50,000.

62. Regulations - (1) The Queen's Representative may, from time to time, by Order in Executive Council, make regulations for all or any of the following purposes -

- (a) prescribing the forms of applications, notices, certificates and other documents for the purposes of this Act;
- (b) prescribing the procedure to be followed in dealing with requests made pursuant to this Act, and providing for notification of the results of action taken pursuant to any request;
- (c) prescribing the procedures for obtaining evidence, or producing documents pursuant to a request made under section 11;
- (d) providing for the payment of fees, travelling allowances, and expenses to any person in the Cook Islands who gives or produces evidence or assistance pursuant to a request made under this Act;
- (e) prescribing conditions for the protection of any property sent to or by a foreign country pursuant to a request made under this Act; and making provision for the return of the property to the Cook Islands pursuant to a request;
- (f) providing for any other matters that are contemplated by or are necessary for giving full effect to this Act and for its administration.

This Act shall be administered by the Crown Law Office