

Mutual Assistance in Criminal Matters Act, 1993

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SAINT VINCENT AND THE GRENADINES

ACT NO. 46 1993

DAVID E. JACK

[.S.] I ASSENT Governor-General

28th December, 1993

**AN ACT** to make provisions with respect to the scheme Relating to Mutual Assistance in Criminal Matters within the Commonwealth and to facilitate its operation in Saint Vincent and the Grenadines; and to make provision concerning mutual assistance in criminal matters between Saint Vincent and the Grenadines and countries other than Commonwealth countries.

[8th December, 1993 ]

**BE IT ENACTED** by the Queen's Most Excellent Majesty, by and with the advice and consent of the House of Assembly of, Saint Vincent and the Grenadines, and by the authority of the same, as follows:-

**PART I - PRELIMINARY**

**1. Short Title**

This Act may be cited as the Mutual Assistance in Criminal Matters Act, 1993.

**2. Commencement**

This Act shall come into effect on a day appointed by the Governor-General by Proclamation published in the Gazette.

### 3. Interpretation

(1) In this Act, unless the context otherwise requires -

"central authority"

means -

(a) in relation to this State, the person or authority designated pursuant to section 4; or

(b) in relation to any Commonwealth country, the person or authority designated by that country for the purpose of transmitting and receiving requests under the Scheme;

"confiscation order"

means such an order made under the Drug Trafficking Offences Act, 1993;

"Commonwealth country"

means -

(a) a sovereign and independent country within the Commonwealth, other than Saint Vincent and the Grenadines, together with any dependent territories which the country designates; and

(b) territory within the Commonwealth which, though not sovereign and independent, is not designated as provided in paragraph (a);

"criminal proceedings"

means -

(a) for the purposes of Part II, proceedings certified by the central authority for this State to be criminal proceedings which have been, or could be, instituted in this State; or

(b) for the purposes of Part III, proceedings certified by the central authority for any Commonwealth country making a request for assistance under this Act to be criminal proceedings which have been, or could be, instituted in that country,

in respect of an offence committed, or suspected on reasonable grounds to have been committed, against the law of Saint Vincent and the Grenadines or, as the case may be, of the Commonwealth country making the request for assistance;

"judicial records"

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

"official records"

means documents held by the government departments or agencies or prosecution authorities;

"property" i

ncludes money and all other property, real or personal, immovable or movable, including things in action and other intangible or incorporeal property;

"regulations"

means regulations made under section 36;

"restraining order"

means such an order made under the Drug Trafficking Offences Act 1993.

"Scheme"

means the Scheme Relating to Mutual Assistance in Criminal Matters within the Commonwealth, the text of which is set out in the Second Schedule;

"serious offence"

means -

(a) in relation to this State, an offence against the law of Saint Vincent and the Grenadines which is an indictable offence -

(i) for which a sentence of death, or imprisonment for a term of not less than 3 years, may be, or is required to be, imposed; or

(ii) the value of the property derived or obtained from the commission of which is, or is likely to be, not less than \$20,000, or such greater amounts as may be prescribed; or

(b) in relation, to a Commonwealth country, an offence against the law of the country -

(i) for which a sentence such as is specified in paragraph (a)(i) may be, or is required to be, imposed; or

(ii) the value of the property derived or obtained from the commission of which is certified by the central authority for the country to be, or to be likely to be, not less than such amount as is prescribed by or under the law of the country;

"this State"

means Saint Vincent and the Grenadines;

"transmitted"

, in relation to a request, means -

(a) in Part II, transmitted by the central authority for this state to the central authority for the Commonwealth country from which assistance is requested; or

(b) in part III, transmitted by the central authority for the Commonwealth country, making a request for assistance, to the central authority for this State.

(2) A reference in this Act to the law of a Commonwealth country includes a reference to the law of a part of, or the law in force in a part of, the country.

(3) For the purposes of this Act, a ship or aircraft of, or registered in, a Commonwealth country shall be deemed to be part of the country.

(4) For the purposes of this Act, a person shall be deemed to have been charged with a serious offence in this State or, as the case may be, in a Commonwealth country, if any information has been laid against the person for the offence, whether or not -

(a) a summons to require the attendance of the person to answer to the information; or

(b) a warrant for the apprehension of the person,

has been issued.

#### **4. Central authority for Saint Vincent and the Grenadines**

The Governor-General may, by order published in the Gazette, designate any person or authority as the central authority for this State.

#### **5. Application of act**

(1) Subject to subsection (2), this Act, other than Part IV, shall apply in relation to all Commonwealth countries.

(2) The Governor-General may, by order published in the Gazette, direct that the application of this Act in relation to a particular Commonwealth country shall be subject to such conditions, exceptions or qualifications as are specified in the order, and in that event this Act shall apply accordingly.

## **6. Restrictions with respect to operation of Act**

(1) Nothing in this Act derogates from, or prevents the development of, other forms of co- to operation (whether formal or informal) in respect of criminal matters, between this State and any commonwealth country, or between this State, or any organisation in this State, and the International Criminal Police Organisation or any other organisation.

(2) Nothing in this Act authorizes the extradition, or the arrest or detention with a view to extradition, of any person.

## **PART II - REQUESTS TO COMMONWEALTH COUNTRIES FOR ASSISTANCE**

### **Division 1. - General assistance**

#### **7. Assistance in obtaining evidence**

Where there are reasonable grounds to believe that evidence or information relevant to any criminal proceedings may be obtained if, in a Commonwealth country, -

(a) evidence is taken from any person;

(b) any -

(i) person, or sample, specimen or other item from, or provided by, a person; or

(ii) remains which are, or may be, human,

is or are subjected to any examination or test;

(c) judicial records, official records or other records, or documents or other articles, are produced or examined;

(d) samples of any matter or thing are taken, examined or tested;

(e) any building, place or thing is viewed or photographed,

a request may be transmitted requesting that assistance be given by the country in so obtaining the evidence or information.

### **8. Assistance in locating or identifying person**

Where there are reasonable grounds to believe that a person who -

(a) is or might be concerned in or affected by; or

(b) could give or provide evidence or assistance relevant to,

any criminal proceedings, is in a Commonwealth country, a request may be transmitted requesting that assistance be given by the country in locating that person or, if his identity is unknown, in identifying and locating him.

### **9. Assistance in obtaining article or thing, by search and seizure if necessary**

Where there are reasonable grounds to believe that an article or thing is in a Commonwealth country and would, if produced, be relevant to any criminal proceedings, a request may be transmitted requesting that assistance be given by the country in obtaining, by search and seizure if necessary, the article or thing.

### **10. Assistance in arranging attendance of person**

Where there are reasonable grounds to believe that a person in a Commonwealth country could give or provide evidence or assistance relevant to any criminal proceedings, a request may be transmitted requesting that assistance be given by the country in arranging the attendance of the person in this State to give or provide that evidence, or, as the case may be, assistance.

### **11. Assistance in securing transfer of prisoner**

(1) Where there are reasonable grounds to believe that a person who is a prisoner in a Commonwealth country could give or provide evidence or assistance relevant to any criminal proceedings, a request may be transmitted requesting the country to secure the transfer of the prisoner to this State to give or provide that evidence or, as the case may be, assistance.

(2) The central authority for this State shall, to the extent that it is able to do so, ensure that any conditions, subject to which a prisoner is transferred from any Commonwealth country pursuant to a request under subsection (1), are observed, unless and to the extent that country waives their observance.

(3) Where any conditions such as are referred to in subsection (2) require that a prisoner be kept in custody while in this State, the prisoner shall, subject to



subsection (4), while in this State or travelling to or from this State pursuant to the request, be kept in such custody as the Attorney General directs in writing.

(4) A prisoner, in this State pursuant to a request made under this section, may, if both central authorities and the prisoner so agree, be released in this State without first having been returned to the Commonwealth country to which the request was made.

(5) Nothing in this section shall be construed as conferring rights on a prisoner.

(6) In this section, "prisoner", in relation to a Commonwealth country, means a person who is being held in custody pending trial for, or sentence for, or is under a sentence of imprisonment for, an offence against the law of that country, or is subject to any limitation on his personal liberty pursuant to that law.

## **12. Assistance in serving documents**

Where, for the purposes of, or in connection with, any criminal proceedings, it is necessary or desirable to serve any document on a person or an authority in a Commonwealth country, a request may be transmitted requesting that assistance be given by the country in effecting the service.

## **13. Restriction on use of evidence, etc.**

Any -

(a) evidence or information obtained or, as the case may be, given or provided, by any person pursuant to a request such as is referred to in section 7, 10 or 11; or

(b) article or thing obtained pursuant to a request such as is referred to in section 9,

shall be used, by or on behalf of this State, only for the purposes of, or in connection with, the criminal proceedings to which the request related, unless the Commonwealth country, to which the request was made, consents to it being otherwise used by or on behalf of this State.

## **14. Immunities and privileges**

(1) Subject to subsection (2), a person in this State pursuant to a request such as is referred to in section 10 or 11 -

(a) is not liable to be detained, prosecuted or punished in this State for any offence that is alleged to have been committed, or that was committed, before the persons' departure, pursuant to the request, from the Commonwealth country to which the request was made;

(b) may refuse to answer any questions or to produce any record or thing if the refusal is based on the law of Saint Vincent and the Grenadines; and

(c) shall not be compelled to give or provide evidence or assistance for the purposes of, or in connection with, any criminal proceedings other than those to which the request related.

(2) Subsection (1)(a) or (c) does not apply in relation to a person -

(a) if he leaves this State and then returns otherwise than pursuant to the same or another request; or

(b) who has been notified by the central authority for this State that his presence is no longer required for the purposes of the request and who then remains in this State for more than 15 days after the first date on which he had a reasonable opportunity to leave it.

(3) For the purposes of subsection (1)(a), an offence shall be treated as having been committed only on the date when the conduct constituting the offence was complete, notwithstanding that the offence concerned may be a continuing offence.

## **Division 2. - Assistance in connection with serious offences**

### **15. Assisting in tracing, property, etc.**

Where -

(a) in this State a person -

(i) has been charged with, or convicted of, a serious offence; or

(ii) is suspected, on reasonable grounds, of having committed such an offence; and

(b) property derived or obtained, directly or indirectly, by a person from the commission of an offence is suspected, on reasonable grounds, to be in a Commonwealth country,

a request may be transmitted requesting that assistance be given by the Commonwealth country in identifying, locating or assessing the value or amount of any such property.

### **16. Assisting in relation to certain orders**

(1) Where

(a) in this State -

(i) a restraining order has been made restraining dealings with identified property which is, or is suspected on reasonable grounds of being, property derived or obtained, directly or indirectly, from the commission of a serious offence; or

(ii) a confiscation order has been made imposing on a person a pecuniary calculated by reference to the value of property derived or obtained, directly or indirectly, by the person from the commission of a serious offence; and

(b) property to which a restraining order would apply or, as the case may be, which is available for the satisfaction of a pecuniary penalty under a confiscation order, is suspected, on reasonable grounds, to be in a Commonwealth country,

then, subject to subsection (3), a request may be transmitted requesting that the order concerned be enforced in accordance with the law of the Commonwealth country and that, to that end, the country give appropriate assistance.

(2) In any case where a request to a Commonwealth country under this section has been accepted, the central authority for this state shall inform the central authority for that country if the confiscation order or restraining order concerned is thereafter varied or ceases to have effect.

(3) A request shall not be made under this section for the enforcement of a confiscation order if the value of the property required to satisfy the pecuniary under the order would be less than \$20,000, or such other amount as may be prescribed.

## **17. Assistance in obtaining order in nature if restraining order**

Where -

(a) in this State -

(i) a person has been charged with, or convicted of, a serious offence; and

(ii) a confiscation order has been, or is likely to be, made imposing on that person a pecuniary penalty calculated by reference to property derived or obtained, directly or indirectly, by that person from the commission of the serious offence; and

(b) property derived or obtained from the commission of a serious offence is suspected, on reasonable grounds, to be in a Commonwealth country,

a request may be transmitted requesting that an order be made, in accordance with the law of the Commonwealth country, restraining dealings with identified property and that, to that end, the country give appropriate assistance.

## **PART III - REQUESTS BY COMMONWEALTH COUNTRIES FOR ASSISTANCE**

### **Division 1. - Form and acceptance or refusal of requests**

#### **18. Form of requests**

(1) Subject to subsection (2), the First Schedule applies in relation to a request for assistance under this Act made by a Commonwealth country.

(2) Subsection (1) does not apply in relation to an informal request for assistance under this Act which is transmitted orally, but in the event that such a request is accepted -

(a) it is required to be implemented only to the extent that the central authority for this State considers reasonable; and

(b) it shall be deemed to have been withdrawn if a request in accordance with subsection (1) for the assistance concerned is not transmitted within such period as that central authority considers reasonable.

#### **19. Acceptance or refusal of request, etc.**

(1) Subject to this section, a request or assistance under this Act duly made by a Commonwealth country shall be accepted.

(2) A request for assistance under this Act made by a Commonwealth country shall be refused if, in the opinion of the central authority for this State,

(a) the request relates to the prosecution or punishment of a person for an offence that is, or is by reason of the circumstances in which it is alleged to have been committed or was committed, an offence of a political character;

(b) there are substantial grounds for believing that the request has been made with a view to prosecuting or punishing a person for an offence of a political character;

(c) there are substantial grounds for believing that the request was made for the purpose of prosecuting, punishing or otherwise causing prejudice to a person on account of the person's race, sex, religion, nationality, place of origin or political opinions;

(d) the request relates to the prosecution or punishment of a person in respect of conduct that, if it had occurred in this State, would have constituted an offence under the military law but not also under the ordinary criminal law of this State;

(e) the granting of the request would be contrary to the Constitution of this State, or would prejudice the security, international relations or any substantial interest related to national security or other essential public policy of this State;

(f) the request relates to conduct by a person which constitutes an offence in respect of which the person has already been convicted or acquitted by a court or tribunal in this State;

(g) the prisoner is not prepared to give his consent to the transfer in the case of a request such as is referred to in section 24(1);

(h) the request is for assistance of a kind which cannot be given under this Act, or would require steps to be taken for its implementation that could not be lawfully taken; or

(i) the implementation of the request would require an individual to act, or refrain from acting, in a certain way and the individual is not willing to do so and cannot be lawfully compelled to do so.

(3) A request for assistance under this Act made by a Commonwealth country may be refused if, in the opinion of the central authority for his State, -

(a) the request relates to the prosecution or punishment of a person in respect of conduct that, if it had occurred in this State, would not have constituted an offence against the law of this State;

(b) the request relates to the prosecution or punishment of a person in respect of conduct that occurred, or is alleged to have occurred, outside the country making the request and similar conduct occurring outside this State in similar circumstances would not have constituted an offence against the law of this State;

(c) the request relates to the prosecution or punishment of a person in respect of conduct where, if it had occurred in this State at the same time and had constituted an offence against the law of this State, the person responsible could no longer be prosecuted by reason of lapse of time or for any other reason;

(d) the provision of the assistance would impose an excessive burden on the resources of this State;

(e) the conditions, exceptions or qualifications imposed pursuant to section 5(2) in relation to the country, prevent the request being accepted;

(f) the request, not being one such as is referred to in section 18(2), does not meet the requirements of the First Schedule; or

(g) there are reasonable grounds for doing so in the case of a request such as is referred to in section 24(1).

(4) If, in the opinion of the central authority for this State, the expense involved in complying with a request for assistance under this Act made by a Commonwealth country, and accepted, would be of an extraordinary nature, the central authority for this State shall consult with the central authority for the country as to the terms and conditions under which compliance with the request may continue and, in the absence of agreement in that regard, the central authority for this State may refuse to continue further with the request.

(5) If a request for assistance under this Act made by a Commonwealth country, other than an informal one made pursuant to section 18(2), is refused, the fact of, and the grounds for, the refusal shall be given by the central authority for this state to the central authority for that country.

(6) For the purposes of this section, an offence is not an offence of a political character if it is an offence within the scope of any international convention to which both this State and the Commonwealth country making the request are parties and which imposes on the parties thereto an obligation to afford mutual assistance in criminal matters relating to the offence.

## **Division 2. - General assistance**

### **20. Assistance to country in obtaining evidence**

(1) This section applies where a request is transmitted requesting assistance by this State in obtaining, by any of the means stated in section 7, evidence or information relevant to any criminal proceedings in the Commonwealth country making the request, and the request is accepted.

(2) Subject to this section, where this section applies evidence or information to which a request relates shall be obtained under and in accordance with prescribed procedures.

(3) A person, from whom evidence is taken in this State pursuant to a request for assistance under this section by a Commonwealth country -

(a) may refuse to answer any question if -

(i) the refusal is based on the law of this State;

(ii) to require the person to answer the question would constitute a breach of a privilege recognised by the law of the Commonwealth country; or

(iii) to answer the question would constitute the commission by the person or an offence against the law of the Commonwealth country; and

(b) shall not be compelled to give evidence for the purposes of, or in connection with, any criminal proceedings other than those to which the request relates.

(4) Where the request for assistance under this section is to the effect that evidence or information be obtained by the means stated in section 7(c), copies of records, not publicly available, may be produced or examined only to the extent that they could be produced to, or examined by, enforcement agencies or prosecuting or judicial authorities in this State.

## **21. Assistance to country in obtaining article or thing, by search and seizure if necessary**

(1) This section applies where a request is transmitted requesting assistance by this State in locating, or identifying and locating, a person, believed to be in this State, who -

(a) is or might be concerned in or affected by; or

(b) could give or provide evidence or assistance relevant to,

any criminal proceedings in the Commonwealth country making the request, and the request is accepted.

(2) Where this section applies, the central authority for this State shall use its best endeavours to have the person located or, as the case may be identified and located, and shall inform the central authority for the Commonwealth country making the request as to the outcome of those endeavours.

## 22.

(1) This section applies where a request is transmitted requesting assistance by this State in obtaining, by search and seizure if necessary, an article or thing in this State for the purposes of, or in connection with, any criminal proceedings in the Commonwealth country making the request, and the request is accepted.

(2) Where this section applies, the Director of Public Prosecutions shall, unless the article or thing concerned is otherwise lawfully obtained, authorize in writing a police officer to apply to a magistrate for a search warrant in respect of the article or thing.

(3) A police officer authorized under subsection (2) may apply for the issue of a search warrant to a magistrate having jurisdiction in the area where the article or thing is believed to be located.

(4) The laws of this State with respect to -

(a) the making and disposal of an application for a search warrant; and

(b) the execution of a search warrant,

apply, so far as they are capable of applying, to an application under subsection (3) and to the execution of any warrant issued pursuant to any such application.

(5) The central authority for this State shall provide such certification as may be required by the central authority for the Commonwealth country making the request concerning the result of any search, the place and circumstances of any seizure, and the subsequent custody of any property seized.

### **23. Assistance to country in arranging attendance of person**

(1) This section applies where a request is transmitted requesting that assistance be given by this State in arranging the attendance, in the Commonwealth country making the request, of a person in this State to give or provide evidence or assistance relevant to any criminal proceedings in that Commonwealth country, and the request is accepted.

(2) Where this section applies, the central authority for this State shall -

(a) inquire whether or not the person concerned is willing to attend as requested;

(b) inform the central authority for the Commonwealth country making the request as to the outcome of the inquiry; and

(c) if the person is willing to attend as requested, make appropriate arrangements to facilitate that attendance.

### **24. Assistance to country in securing transfer of prisoner**

(1) This section applies where a request is transmitted requesting this State to secure the transfer of a prisoner in this State to the Commonwealth country making the request to give or provide evidence or assistance relevant to any criminal proceedings in that Commonwealth country, and the request is accepted.

(2) Where this section applies, the Attorney General shall cause a prisoner to be transferred to the Commonwealth country making the request for the purpose of giving effect to the request.



(3) The central authority for this State may state, and inform the central authority for the Commonwealth country making the request as to, conditions subject to which a prisoner is to be transferred, including conditions with respect to the custody, release or return of the prisoner.

(4) Any period during which a prisoner is in custody in a Commonwealth country, pursuant to a request, shall be deemed, for all purposes, to be on time served in custody in this State.

(5) In this section, "prisoner" means a person who is being held in custody pending trial for, or sentence for, or is under imprisonment for, and offence, or is subject to any limitation on his personal liberty pursuant to any law.

## **25. Assistance to country in serving documents**

(1) This section applies where a request is transmitted requesting assistance by this State in effecting the service of a document on a person or an authority in this State for the purposes of, or in connection with, any criminal proceedings in the Commonwealth country making the request, and the request is accepted.

(2) Where this section applies, the central authority for this State shall -

(a) use its best endeavours to have the document served -

(i) in accordance with procedures proposed in the request; or

(ii) if those procedures proposed would be unlawful or inappropriate, or no procedures are so proposed, in accordance with the law of this State; and

(b) if the document -

(i) is served, transmit to the central authority for the Commonwealth country making the request a certificate as to service; or

(ii) is not served, transmit to that central authority a statement of the reasons which prevented the service.

## **Division 3. -Assistance in connection with serious offences in Commonwealth countries**

### **26. Assistance to country in tracing property, etc.**

(1) This section applies where -

(a) the Attorney-General or Director of Public Prosecutions of a Commonwealth country gives a certificate to the effect that in the country a named person -

- (i) has been charged with, or convicted of, a specified serious offence; or
  - (ii) is suspected, on reasonable grounds, of having committed such a specified offence;
- (b) property derived or obtained, directly or indirectly, by the named person from the commission of that offence is suspected, on reasonable grounds, to be in this State;
- (c) a request is transmitted requesting assistance by this State in identifying, locating or assessing the value or amount of that property; and
- (d) the request is accepted.
- (2) Where this section applies, the central authority for this State -
- (a) shall use its best endeavours to give the assistance requested and, in doing so, may invoke such powers and procedures as may be prescribed for the purposes of this section; and
  - (b) shall inform the central authority for the Commonwealth country making the request as to the outcome of those endeavours.

## **27. Assistance to country in relation to certain orders**

- (1) This section applies where -
- (a) the Attorney-General or Director of Public Prosecutions of a Commonwealth country gives a certificate to the effect -
    - (i) that an identified order has been made in accordance with the law of the country;
    - (ii) that the order has the effect under that law -
      - (A) of confiscating property derived or obtained, directly or indirectly, by the person, against whom the order is made, from the commission of a specified serious offence;
      - (B) of imposing on the person, against whom the order is made, a pecuniary penalty calculated by reference to the value of property so derived or obtained; or
      - (C) of restraining dealings with property which is, or is suspected on reasonable grounds of being, property so derived or obtained;

(b) property available for the satisfaction of the order or the pecuniary penalty under the order, or to which the order would apply, as the case may be, is suspected, on reasonable grounds, to be in this State;

(c) a request is transmitted requesting that the order concerned be enforced in accordance with the law of this State and that, to that end, this State give appropriate assistance; and

(d) the request is accepted.

(2) Where this section applies, the Director of Public Prosecutions shall cause an application to be made to the High Court in accordance with the rules of the High Court for the registration of the order concerned.

(3) On application made pursuant to subsection (2), the High Court shall register the order if it is satisfied -

(a) that at the time of registration the order is in force; and

(b) that, in the case of an order such as is referred to in subsection (1) (a) (ii) (A) or (1) (a) (ii) (B) -

(i) that the person against whom the order was made appeared in the proceedings or, if he did not do so, that he received notice of the proceedings in sufficient time to enable him to defend them; and

(ii) that the order is not subject to appeal.

(4) Where an order is registered in accordance with this section, a copy of any amendments made to the order (whether before or after registration) may be registered in the same way as the order and the amendments do not, for the purposes of this Act, have effect until they are registered.

(5) An order or an amendment of an order shall be registered by the registration, in accordance with the rules of the High Court, of -

(a) a copy of the order or amendment sealed by the court or other authority making the order or amendment; or

(b) a copy of the order or amendment duly authenticated in accordance with section 32(2)(a).

(6) The High Court shall, after appropriate notice has been given to the central authority for this State, cancel the registration of an order made in accordance with this section if it appears to the court to have ceased to have effect in the Commonwealth country that made the request for assistance.

(7) The regulations may make provision for and with respect to the enforcement in this State of an order registered in accordance with this section.

(8) In this section, "appeal" includes any proceedings by way of discharging or setting aside a judgment or an application for a new trial or stay of execution.

## **28. Assistance to country in obtaining restraining order**

(1) This section applies where -

(a) the Attorney-General or Director of Public Prosecutions of a Commonwealth country gives a certificate to the effect that -

(i) in the country, a named person has been charged with, or convicted of, a specified serious offence; and

(ii) in the country, an order has been, or is likely to be, made that has or, as the case may be, will have, the effect under the law of the country -

(A) of confiscating property derived or obtained, directly or indirectly, by that person from the commission of the serious offence; or

(B) of imposing on that person a pecuniary penalty calculated by reference to the value of the property so derived or obtained by him;

(b) property so derived or obtained is suspected, on reasonable grounds, to be in this State;

(c) a request is transmitted requesting that an order be made, in accordance with the law of this State, restraining dealings with identified property and that, to that end, this State give appropriate assistance; and

(d) the request is accepted.

(2) The regulations may make provision for and with respect to the implementation of a request under this section.

## **PART IV - APPLICATION OF ACT TO COUNTRIES OTHER THAN COMMONWEALTH COUNTRIES**

### **29. Definitions for purposes of Part IV**

In this Part -

"country"

means a country other than one included in the definition of "Commonwealth country" in section 3(1);

"treaty"

includes a convention, protocol, agreement or arrangement.

### **30. Implementation of treaty**

(1) Regulations may make provisions to give effect to a treaty, set out in the regulations, for bilateral mutual assistance in criminal matters between this State and a country specified in the regulations.

(2) For that purpose, the regulations may, in particular, -

(a) direct that this Act shall apply in relation to the country so specified as if it were a Commonwealth country, subject to such limitations, conditions, exceptions or qualifications (if any) as may be prescribed; or

(b) extend, as provided in section 36(2), the application of any other Act in relation to the country so specified,

and this Act or, as the case may be, the other Act shall apply accordingly.

## **PART V - MISCELLANEOUS**

### **31. Certificates given by the Attorney-General**

Where he is satisfied that it is the case, given by the Attorney-General may give a certificate in such Attorney-form as he determines, certifying, in relation to a General request for assistance under this Act made by a Commonwealth country, either, or both of the following facts, namely, that -

(a) the request meets the requirements of this Act;

(b) the acceptance of the request was duly made under and in accordance with this Act.

### **32. Proof**

(1) In any relevant proceedings -

(a) a document that is duly certified is admissible in evidence; and

(b) a relevant certificate shall be received as sufficient proof of the matters certified in the certificate unless the contrary is proved.

(2) A document is duly authenticated for the purposes of subsection (1)(a) if it purports to be -

(a) signed or certified by a Judge or magistrate of a Commonwealth country making a request;

(b) authenticated by the oath of a witness, or of a public officer of a Commonwealth country making a request; or

(c) sealed with an official or public seal of a Minister of State, or of a department or public office of the Government, of such a country.

(3) Nothing in this section operates to prevent the proof of any matter, or the admission of any document, in accordance with the regulations or any other law.

(4) In this section -

"relevant certificate" means a certificate purporting to be given -

(a) by the central authority for a Commonwealth country for the purposes of -

(i) paragraph (b) of the definition in section 3(1) of "criminal proceedings"; or

(ii) paragraph (b)(ii) of the definition in section 3(1) of "serious offence";

(b) by the Attorney-General or Director of Public Prosecutions of a Commonwealth country for the purposes of section 27(1)(a), or 28(1)(a), or paragraph 8(d) of the First Schedule; or

(c) by the Attorney-General for the purpose of section 31;

"relevant proceedings" means proceedings under or pursuant to this or any other Act arising directly or indirectly from a request for assistance under this Act made by a Commonwealth country.

### **33. Transit**

(1) Where a person is to be transported in custody from a Commonwealth country through this State to another Commonwealth country pursuant to a request for assistance, of the kind referred to in the Scheme, by the other Commonwealth country, the person -

(a) may be transported through this State in the custody of another person; and

(b) if an aircraft or ship by which the person is being transported lands or calls at a place in this State, shall be kept in such custody as the Attorney-General directs in writing until the person's transportation is continued.

(2) Where a person is being held in custody pursuant to a direction under subsection (1)(b) and the person's transportation is not, in the opinion of the attorney General, continued within a reasonable time, the Attorney General may direct that the person be transported in custody to the Commonwealth country from which the person was first transported.

### **34. Escaping**

Any person who escapes from lawful custody while in this State pursuant to a request under section 11, or while being kept in custody pursuant to a direction under section 33(1)(b), is guilty of an offence and liable on summary conviction to imprisonment or two years.

### **35. Arrest of person who has escaped from custody**

(1) Any police officer may, without warrant, arrest a person, if the police officer has reasonable grounds to believe that the person -

(a) has been brought to this State pursuant to a request under section 11, or was being kept in custody pursuant to a direction under section 33(1) (b); and

(b) has escaped from lawful custody while in this State pursuant to the request, or while being so kept in custody.

(2) A person who has been arrested pursuant to subsection (1) shall be returned to custody in accordance with the Act.

### **36. Regulations**

(1) The Governor-General may make regulations prescribing any matter necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, -

(a) making provision as to evidence or proof of any matter for the purposes of this Act;

(b) prescribing the procedures for obtaining evidence pursuant to a request to do so under section 20;

(c) prescribing expenses and allowances payable to any person in this State pursuant to a request;

(d) prescribing conditions for the protection of any property sent to or by a Commonwealth country pursuant to a request, and making provision for the return of property in this State pursuant to a request.

(2) The regulations may, with such limitations, conditions, exceptions or qualifications (if any) as may be prescribed, extend the application of any Act so as to enable -

(a) any request by a Commonwealth country for assistance so requested to be given;

(b) any order registered pursuant to section 27 to be enforced; or

(c) an order to be made pursuant to a request for assistance under section 28 and, if made, to be enforced,

and the Act shall apply accordingly.

(3) Regulations made for the purposes of section 20(2) may include procedures for, and powers in relation to, the taking of evidence in this State by commissioners from, or nominated by, the Commonwealth country concerned.

### **37. This Act to take precedence**

The provisions of this Act shall take pre-effect notwithstanding any provision of any other Act to the contrary, to the intent that any such provision of any other Act shall be deemed to have been hereby amended to the extent required to ensure compliance with the relevant provisions of this Act.

### **Request for assistance made by Commonwealth countries**

1. A request for assistance under this Act made by a Commonwealth country shall -

(a) specify the assistance requested;

(b) identify the person, agency or authority that initiated the request;

(c) state any wishes of the country concerning the confidentiality of the request and the reasons for those wishes;

(d) state any period within which the country wishes the request to be complied with;

(e) if the request would involve travel by any person from this State to the country, give details of allowances and accommodation to which the person would be entitled; and



(f) contain such information as is available to the central authority for the country as will facilitate compliance with the request.

2. Where the assistance requested by a Commonwealth country is for the purposes of criminal proceedings, the request -

(a) shall be accompanied by the certificate, in relation to the criminal proceedings, that is referred to in paragraph (b) of the definition of "criminal proceedings" in section 3(1); and

(b) shall -

(i) give details of the proceedings and the offence concerned, including a summary of the known facts;

(ii) give the identity, if known, of the person to whom the proceedings relate or would relate; and

(iii) if the proceedings have been instituted, state the stage reached in the proceedings and, where applicable, identify the court exercising jurisdiction.

3. Where a request such as is referred to in section 20 is made by a Commonwealth country, the request shall -

(a) give details of the procedure that the country wishes to be followed in giving effect to the request, including details of the manner and form in which any evidence or information is to be supplied to that country;

(b) where relevant, indicate whether any person, from whom evidence is to be taken, is to be examined -

(i) orally or in writing;

(ii) under oath;

(iii) in the presence of his legal representative; or

(iv) in the presence of the person to whom any relevant proceedings in that country relate;

(c) where evidence is to be taken from a person, specify the questions to be put to the person or the subject-matter about which the person is to be examined;

(d) where evidence is to be taken from a person, give details of any special requirements of the country as to the manner of taking evidence relevant to its admissibility in the country; and

(e) give details of any privileges or exemptions under the law of the country in relation to obtaining evidence or information by the means proposed in the request.

4. Where a request such as is referred to in section 22 is made by a Commonwealth country, the request shall identify the article or thing which is to be obtained and, so far as is reasonably practicable, shall contain all information available to the central authority for the country which may be required to be adduced in an application under the law of this State for any necessary warrant or authorization to effect a seizure of that article or thing.

5. Where a request such as is referred to in section 24 is made by a Commonwealth country, the request shall identify the subject on which evidence or information is to be provided and state the reasons for requiring the personal appearance of the prisoner.

6. Where a request such as is referred to in section 25 is made by a Commonwealth country, the request shall -

(a) be accompanied by the document to be served; and

(b) where that document relates to the attendance of any person in the country, give such notice as that country is able to provide of outstanding warrants or other judicial orders in criminal matters against that person.

7. Where a request such as is referred to in section 26 is made by a Commonwealth country, the request shall -

(a) be accompanied by the certificate given by the Attorney-General or Director of Public Prosecutions thereof;

(b) give details of the specified serious offence; and

(c) state the grounds for suspecting that the relevant property is in this State and give any information in the possession of the country which will assist in identifying or locating that property.

8. Where a request such as is referred to in section 27 is made by a Commonwealth country, the request shall -

(a) be accompanied by the certificate given by the Attorney-General or Director of Public Prosecutions thereof;

(b) be accompanied by a copy of the identified order made in the country -

(i) sealed by the court that made the order; or

(ii) duly authenticated in accordance with section 32(2)(a), and identify the relevant law under which the order was made;

(c) give details of the specified serious offence;

(d) in the case of an order such as is referred to in section 27(1) (a) (ii)(A) or 27(1) (a)(ii) (B), be accompanied by a certificate given by the Attorney-General to the effect -

(i) that the order is not subject to appeal, as defined in section 27(8); and

(ii) that the person against whom the order was made appeared in the proceedings or, if he did not do so, that he received the notice of the proceedings specified in the certificate;

(e) state the grounds for suspecting that the relevant property is in this State and give any information in the possession of the country which will assist in identifying or locating the property; and

(f) give particulars of any amount paid or recovered under the identified order.

9. Where a request such as is referred to in section 28 is made by a Commonwealth country, the request shall -

(a) be accompanied by the certificate given by the Attorney- General or Director of Public prosecutions thereof;

(b) if relevant, be accompanied by a copy of the order made in the country -

(i) sealed by the court that made the order; or

(ii) duly authenticated in accordance with section 32(2)(a), and identify the law under which the order was made;

(c) if relevant, state the grounds for believing that an order is likely to be made;

(d) give details of the serious offence in respect of which the order was or, as the case may be, is likely to be, made; and

(e) state the grounds for suspecting that the relevant property is in this State and give any information in the possession of the country which will assist in identifying the property.

10. After giving preliminary consideration to a request for assistance under this Act made by a Commonwealth country, the central authority for this State may require the central authority for that country to furnish further information relative to the request and if that

information is not furnished within such period as the central authority for this state considers reasonable, the request shall be deemed to have been withdrawn.

## **Text of the Scheme Relating to Mutual Assistance in Criminal Matters within The Commonwealth**

### **PURPOSE AND SCOPE**

(1) The purpose of this Scheme is to increase the level and scope of assistance rendered between Commonwealth Governments in criminal matters. It augments, and in no way derogates from existing forms of cooperation, both formal and informal; nor does it preclude the development of enhanced arrangements in other fora.

(2) This Scheme provides for the giving of assistance by the competent authorities of one country (the requested country) in respect of criminal matters arising in another country (the requesting country).

(3) Assistance in criminal matters under this Scheme includes assistance in

- (a) identifying and locating persons;
- (b) serving documents;
- (c) examining witnesses;
- (d) search and seizure;
- (e) obtaining evidence;
- (f) facilitating the personal appearance of witnesses;
- (g) effecting a temporary transfer of persons in custody to appear as a witness;
- (h) obtaining production of judicial or official records; and
- (i) tracing, seizure and forfeiting the proceeds of criminal activities.

### **2 MEANING OF COUNTRY**

For the purposes of this Scheme, each of the following is a separate country, that is to say

- (a) each sovereign and independent country within the Commonwealth together with any dependent territories which that country designates; and

(b) each country within the Commonwealth which, though not sovereign and independent, is not designated for the purposes of the preceding sub-paragraph.

### **3 CRIMINAL MATTER**

(1) for the purposes of this Scheme, a criminal matter arises in a country if the Central Authority of that country certifies that criminal proceedings have been instituted in a court exercising jurisdiction in that country or that there is a reasonable cause to believe that an offence in respect of which such proceedings could be instituted has been committed.

(2) "Offence", in the case of a federal country or a country having more than one legal system, includes an offence under the law of the country or any part thereof.

### **4 CENTRAL AUTHORITIES**

Each country shall designate a Central Authority to transmit and to receive requests for assistance under this Scheme.

### **5 ACTION IN THE REQUESTING COUNTRY**

(1) A request for assistance under this Scheme may be initiated by any law enforcement agency or public prosecution or judicial authority competent under the law of the requesting country.

(2) The Central Authority of the requesting country shall, if it is satisfied that the request can properly be made under this Scheme, transmit the request to the Central Authority of the requested country and shall ensure that the request contains all the information required by the provisions of this Scheme.

(3) The Central Authority of the requesting country shall provide as far as practicable additional information sought by the Central Authority of the requested country.

### **6 ACTION IN THE REQUESTED COUNTRY**

(1) Subject to the provisions of this Scheme, the requested country shall grant the assistance requested as expeditiously as practicable.

(2) The Central Authority of the requested country shall, subject to the following provisions of this paragraph, take the necessary steps to ensure that the competent authorities of that country comply with the request.

(3) If the Central Authority of the requested country considers

(a) that the request does not comply with the provisions of this Scheme, or,

(b) that in accordance with the provisions of this Scheme the request for assistance is to be refused in whole or in part, or

(c) that the request cannot be complied with, in whole or in part, or

(d) that there are circumstances which are likely to cause a significant delay in complying with the request,

it shall promptly inform the Central Authority of the requesting country, giving reasons.

## **7 REFUSAL OF ASSISTANCE**

(1) The requested country may refuse to comply in whole or in part with a request for assistance under this Scheme if the criminal matter appears to the Central Authority of that country to concern

(a) conduct which would not constitute an offence under the law of that country; or

(b) an offence or proceedings of a political character; or

(c) conduct which in the requesting country is an offence only under military law or a law relating to military obligations; or

(d) conduct in relation to which the person accused or suspected of having committed an offence has been acquitted or convicted by a court in the requested country.

(2) The requested country may refuse to comply in whole or in part with a request for assistance under this Scheme

(a) to the extent that it appears to the Central Authority of that country that compliance would be contrary to the Constitution of that country, or would prejudice the security, international relations or other essential public interests of that country; or

(b) where there are substantial grounds leading the Central Authority of that country to believe that compliance would facilitate the prosecution or punishment of any person on account of his race, religion, nationality or political opinions or would cause prejudice for any of these reasons to any person affected by the request.

(3) The requested country may refuse to comply in whole or in part with a request for assistance to the extent that the steps required to be taken in order to comply

with the request cannot under the law of that country be taken in respect of criminal matters arising in that country.

(4) An offence shall not be an offence of a political character for the purposes of this paragraph if it is an offence within the scope of any international convention to which both the requesting and requested countries are parties and which imposes on the parties thereto an obligation either to extradite or prosecute a person accused of the commission of the offence.

8

(1) The competent authorities of the requested country shall in complying with a request under this Scheme use only such measures of compulsion as are available under the law of that country in respect of criminal matters arising in that country.

(2) Where under the law of the requested country measures of compulsion cannot be applied to any person to take the steps necessary to secure compliance with a request under this Scheme but the person concerned is willing to act voluntarily in compliance or partial compliance with the terms of the request, the competent authorities of the requested country shall make available the necessary facilities.

## **9 SCHEME NOT TO COVER ARREST OR EXTRADITION**

Nothing in this Scheme is to be construed as authorizing the extradition, or the arrest or detention with a view to extradition, of any person.

## **10 CONFIDENTIALITY**

The Central Authorities and the competent authorities of the requesting and requested countries shall use their best efforts to keep confidential a request and its contents and the information and materials supplied in compliance with a request except for disclosure in criminal proceedings and where otherwise authorised by the Central Authority of the other country.

## **11 LIMITATION OF USE OF INFORMATION OR EVIDENCE**

The requesting country shall not use any information or evidence obtained in response to a request for assistance under this Scheme in connection with any matter other than the criminal matter specified in the request without the prior consent of the Central Authority of the request country.

12

(1) Except as provided in the following provisions of this paragraph, compliance with a request under this Scheme shall not give rise to any claim against the

requesting country for expenses incurred by the Central Authority or other competent authorities of the requested country.

(2) The requesting country shall be responsible for the travel and incidental expenses of witnesses travelling to the requesting country, including those of accompanying officials, for fees of experts, and for the costs of any translation required by the requesting country.

(3) If in the opinion of the requested country the expenses required in order to comply with the request are of an extraordinary nature, the Central Authority of the requested country shall consult with the Central Authority of the requesting country as to the terms and conditions under which compliance with the request may continue, and in the absence of agreement the requested country may refuse to comply further with the request.

### **13 CONTENTS OF REQUEST FOR ASSISTANCE**

(1) A request under the Scheme shall

(a) specify the nature of the assistance requested;

(b) contain the information appropriate to the assistance sought as specified in the following provisions of this Scheme;

(c) indicate any time-limit within which compliance with the request is desired, stating reasons;

(d) contain the following information:

(i) the identity of the agency or authority initiating the request;

(ii) the nature of the criminal matter; and

(iii) whether or not criminal proceedings have been instituted;

(e) where criminal proceedings have been instituted, contain the following information:

(i) the court exercising jurisdiction in the proceedings;

(ii) the identity of the accused person;

(iii) the offences of which he stands accused, and a summary of the facts;

(iv) the stage reached in the proceedings; and



(v) any date fixed for further stages in the proceedings;

(f) where criminal proceedings have not been instituted, state the offence which the Central Authority of the requesting country has reasonable cause to believe to have been committed, with a summary of the known facts.

(2) A request shall normally be in writing, and if made orally in case of urgency shall be confirmed in writing forthwith.

#### **14 IDENTIFYING AND LOCATING PERSONS**

(1) A request under this Scheme may seek assistance in identifying or locating persons believed to be within the requested country.

(2) The request shall indicate the purposes for which the information is requested and shall contain such information as is available to the Central Authority of the requesting country as to the whereabouts of the person concerned and such other information as it possesses as may facilitate the identification of that person.

#### **15 SERVICE OF DOCUMENTS**

(1) A request under this Scheme may seek assistance in the service of documents relevant to a criminal matter arising in the requesting country.

(2) The request shall be accompanied by the documents to be served and, where those documents relate to attendance in the requesting country, such notice as the Central Authority of that country is reasonably able to provide of outstanding warrants or other judicial orders in criminal matters against the person to be served.

(3) The Central Authority of the requested country shall endeavour to have the documents served

(a) by any prescribed method stated in the request, unless such method is incompatible with the law of that country; or

(b) by any method prescribed by the law of that country for the service of documents in criminal proceedings.

(4) The requested country shall transmit to the Central Authority of the requesting country a certificate as to the service of the documents or, if they have not been served, as to the reasons which have prevented service.

#### **16 EXAMINATION OF WITNESSES**

- (1) A request under this Scheme may seek assistance in the examination of witnesses in, the requested country.
- (2) The request shall specify, as appropriate and so far as the circumstances of the case permit:
  - (a) the names and addresses or the official designations of the witnesses to be examined;
  - (b) the questions to be put to the witnesses or the subject-matter about which they are to be examined;
  - (c) whether it is described that the witnesses be examined orally or in writing;
  - (d) whether it is desired that the oath be administered to the witnesses (or, as the law of the requested country allows, that they be required to make their solemn affirmation);
  - (e) any provisions of the law of the requesting country as to privilege or exemption from giving evidence which appear especially relevant to the request; and
  - (f) any special requirements of the law of the requesting country as to the manner of asking evidence and to its admissibility in that country.
- (3) The request may ask that, so far as the law of the requested country permits, the accused person or his legal representative may attend the examination of the witness and ask questions of the witness.

17

- (1) A request under this Scheme may seek assistance in the search for and seizure of property in the requested country.
- (2) The request shall specify the property to be searched for and seized and shall contain, so far as reasonably practicable, all information available to the Central Authority of the requesting country which may be required to be adduced in an application under the law of the requested country for any necessary warrant or authorisation to effect the search and seizure.
- (3) The requested country shall provide such certification as may be required by the requesting country concerning the result of any search, the place and circumstances of seizure, and the subsequent custody of the property seized.

## **18 OTHER ASSISTANCE IN OBTAINING EVIDENCE**

- (1) A request under this Scheme may seek other assistance in obtaining evidence.
- (2) The request shall specify, as appropriate and so far as the circumstances of the case permit:
  - (a) the documents, records or property to be inspected, preserved, photographed, copied or transmitted;
  - (b) the samples of any property to be taken, examined or transmitted; and
  - (c) the site to be viewed or photographed.

## **19 PRIVILEGE**

- (1) No person shall be compelled in response to a request under this Scheme to give any evidence in the requested country which he could not be compelled to give
  - (a) in criminal proceedings in that country; or
  - (b) in criminal proceedings in the requesting country.
- (2) For the purposes of this paragraph any reference to giving evidence includes references to answering any question and to producing any document.

## **20 PRODUCTION OF JUDICIAL OR OFFICIAL RECORDS**

- (1) A request under this Scheme may seek the production of judicial or official records relevant to a criminal matter arising in the requesting country.
- (2) For the purposes of this paragraph "Judicial records" means judgments, orders and decisions of courts and other documents held by judicial authorities and "official records" means documents held by government departments or agencies or prosecution authorities.
- (3) The requested country shall provide copies of judicial or official records which are publicly available.
- (4) The requested country may provide copies of Judicial or official records not publicly available, to the same extent and under the same conditions as apply to the provision of such records to its own law enforcement agencies or prosecution or judicial authorities.

## **21 TRANSMISSION AND RETURN OF MATERIAL**

(1) Where compliance with a request under this Scheme would involve the transmission to the requesting country of any document, record or property, the requested country

(a) may postpone the transmission of the material if it is required in connection with proceedings in that country, and in such a case shall provide certified copied of a document or record pending transmission of the original;

(b) may require the requesting country to agree to terms and conditions to protect third party interests in the material to be transmitted and may refuse to effect such transmission pending such agreement.

(2) Where any document, record or property is transmitted to the requesting country in compliance with a request under this Scheme, it shall be returned to the requested country when it is no longer in connection with the criminal matter specified in the request unless that country has indicated that its return is not desired.

## **22 AUTHENTICATION**

(1) The requested country shall authenticate material that is to be transmitted by that country.

(2) Authentication shall be by a stamp or seal of a Minister, ministry, government department or Central Authority of the requested country.

## **23 PERSONAL APPEARANCE OF WITNESSES IN THE REQUESTING COUNTRY**

(1) A request under this Scheme may seek assistance in facilitating the personal appearance of witnesses before a court exercising jurisdiction in the requesting country.

(2) The request shall specify

(a) the subject matter upon which it is desired to examine the witnesses;

(b) the reasons for which the personal appearance of the witnesses is required; and.

(c) details of the travelling, subsistence and other expenses payable by the requesting country in respect of the personal appearance of the witnesses.

(3) The competent authorities of the requested country shall invite persons whose appearance as witnesses in the requesting country is desired; and

(a) ask whether they agree to appear;

(b) inform the Central Authority of the requesting country of their answer; and

(c) if they are willing to appear, make appropriate arrangements to facilitate the personal appearance of the witnesses.

## **24 PERSONAL APPEARANCE OF PERSONS IN CUSTODY**

(1) A request under this Scheme may seek the temporary transfer of persons in custody in the requested country to appear as witnesses before a court exercising jurisdiction in the requesting country.

(2) The request shall specify

(a) the subject matter upon which it is desired to examine the witnesses;

(b) the reasons for which the personal appearance, of the witnesses is required;

(3) The requested country shall refuse to comply with a request for the transfer of persons in custody if the persons concerned do not consent to the transfer.

(4) The requested country may refuse to comply with a request for the transfer of persons in custody and shall be under no obligation to inform the requesting country of the reasons for such refusal.

(5) Where persons in custody are transferred, the requested country shall notify the requesting country of

(a) the dates upon which the persons are due under the law of the requested country to be released from custody and

(b) the dates by which the requested country requires the return of the persons

and shall notify any variations in such dates.

(6) The requesting country shall keep the persons transferred in custody, and shall return the persons to the requested country when their presence as witnesses in the requesting country is no longer required, and in any case by the earlier of the dates notified under subparagraph (5).

(7) The obligation to return the persons transferred shall subsist notwithstanding the fact that they are nationals of the requesting country.

(8) The period during which the persons transferred are in custody in the requesting custody shall be deemed to be service in the requested country of an equivalent period of custody in that country for all purposes.

(9) Nothing in this paragraph shall preclude the release in the requesting country without return to the requested country of any person transferred where the two countries and the person concerned agreed.

## **25 IMMUNITY OF PERSONS APPEARING**

(1) Subject to the provisions of paragraph 24, witnesses appearing in the requesting country in response to a request under paragraph 23 or persons transferred to that country in response to a request under paragraph 24 shall be immune in that country from prosecution, detention or any other restriction of personal liberty in respect of criminal acts, omissions or convictions before the time of their departure from the requested country.

(2) The immunity provided for in that paragraph shall cease

(a) in the case of witnesses appearing in response to a request under paragraph 23, when the witnesses having had, for a period of 15 consecutive days from the dates when they were notified by the competent authority of the requesting country that their presence was no longer required by the court exercising jurisdiction in the criminal matter, an opportunity of leaving have nevertheless remained in the requesting country, or having left that country have returned to it;

(b) in the case of persons transferred in response to a request under paragraph 24 and remaining in custody when they have been returned to the requested country.

## **26 TRACING THE PROCEEDS OF CRIMINAL ACTIVITIES**

(1) A request under this scheme may seek assistance in identifying, locating and assessing the value of property believed to be the proceeds of criminal activities and to be within the requested country.

(2) The request shall contain such information as is available to the Central Authority of the requesting country as to the nature and location of the property and as to any person in whose possession or control the property is believed to be.

## **27 SEIZURE AND FORFEITURE OF THE PROCEEDS OF CRIMINAL ACTIVITIES**

(1) A request under this Scheme may seek assistance in the seizure and forfeiture of the proceeds of criminal activities in the requested country.

(2) The request shall contain, so far as is reasonably practicable, all information available to the Central Authority of the requesting country which may be required to support an application under the law of the requested country for any necessary order, warrant or authorisation to effect the seizure or forfeiture.

(3) "Seizure" in this paragraph includes the taking of measures to prevent any dealing in, transfer or disposal of, or the creation of any charge over, property pending the determination or proceedings for the forfeiture of the proceeds of criminal activities.

(4) The law of the requested country shall apply to determine the disposal of any proceeds of criminal activities forfeited as a result of a request under this paragraph.

## **28 CONFIRMATION AND ENFORCEMENT OF ORDERS FOR FORFEITURE OF THE PROCEEDS OF CRIMINAL ACTIVITIES**

(1) A request under this Scheme may seek assistance in invoking procedures in the requested country leading to the recognition or review and confirmation and the enforcement of an order for the forfeiture of the proceeds of criminal activities made by a court or other authority in the requesting country.

(2) The request shall be accompanied by a certified copy of the order and shall contain, so far as reasonably practicable, all information available to the Central Authority of the requesting country which may be required in connection with the procedures to be followed in the requested country.

(3) The law of the requested country shall apply to determine the circumstances and manner in which an order may be recognised, confirmed or enforced.

## **29 MEANING OF "THE PROCEEDS OF CRIMINAL ACTIVITIES"**

In this Scheme, "the proceeds of criminal activities" refers to any property derived or realised, directly or indirectly, by a person convicted of an offence in the requesting country or against whom criminal proceedings have been instituted in that country, as a result:

(a) of the commission of the offence, or

(b) of any part of a course of conduct by the person convicted or charged, alone or in association with other persons, having as its purpose the carrying out or furtherance of criminal activities, and of which the Commission of the offence is shown to be part.

## **30 CONSULTATION**

The Central Authorities of the requested and requesting countries shall consult promptly, at the request of either, concerning matters arising under this Scheme.

## **31 OTHER ASSISTANCE**

After consultation between the requesting and the requested countries assistance not within the scope of this Scheme may be given in respect of a criminal matter on such terms and conditions as may be agreed by those countries.

### **32 NOTIFICATION OF DESIGNATIONS**

Designations of dependent territories under paragraph 2 and of Central Authorities under paragraph 4 be notified to the Commonwealth Secretary-General.

Passed in the House of Assembly this 16th day of December, 1993.

J. THERESA ADAMS

Clerk of the House of Assembly