

MUTUAL ASSISTANCE IN CRIMINAL MATTERS

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Mutual Assistance in Criminal Matters Act 2004

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TABLE OF AMENDMENTS

The Mutual Assistance in Criminal Matters Act 2004 No 16 was certified and commenced on 3 November 2004 (GN No 319/2004; Gaz 92/2004).

Amending Legislation	Certified	Date of Commencement
Revised Written Laws Act 2021 No 7	1 June 2021	1 June 2021

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An Act to make provision for mutual international assistance in criminal matters.

Enacted by the Parliament of Nauru as follows:

PART 1 — PRELIMINARY

1 Short title and commencement

- (1) This Act may be cited as the *Mutual Assistance in Criminal Matters Act 2004*.
- (2) This Act comes into force on certification by the Speaker and came into effect on 3 November 2004.

2 Objectives

The objectives of this Act are:

- (a) to regulate the provision by the Republic 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; and
 - (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;
- (b) to facilitate the Republic 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 Republic 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 Republic obtaining similar international assistance in criminal matters.

3 Definitions

In this Act:

‘authorised officer’ for a provision of this Act, means a person or a person in a class of persons, designated, in writing, by the Minister as an authorised officer for the provision;

‘court’ means the District Court established under the *District Court Act 2018*;

‘criminal matter’ means an offence against a provision of:

- (a) any law of the Republic for which the penalty is imprisonment for a term not less than 12 months or a fine of no less than \$5,000;

- (b) a law of a foreign country, in relation to acts or omissions, which had they occurred in the Republic, would have constituted an offence for which the penalty is imprisonment for a term not less than 12 months or a fine of no less than \$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 Resident Magistrate or a Justice of Appeal;

'Minister' means the Minister for Justice;

'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 Republic, 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 2004*;

'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*;

'Republic' means the Republic of Nauru;

'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*;

'State' means the Republic of Nauru;

'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; and

'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 this Act

This Act applies to all foreign countries.

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PART 2 — REQUESTS FOR ASSISTANCE GENERALLY

6 Requests by the Republic for assistance generally

A request for international assistance in a criminal matter that the Republic is authorised to make under this Act may be made only by the Minister.

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 Minister.
- (2) A request shall be in writing or by electronic mail and shall 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; and
 - (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 Minister is not obliged to consider the request until that subsection is complied with.
- (4) Where a foreign country makes a request to the court for international assistance in a criminal matter:
 - (a) the court shall refer the request to the Minister; and
 - (b) the request is then taken, for this Act, to have been made to the Minister.

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 Minister determines.

9 Refusal or postponement of assistance

The Minister 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 Republic; 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 Republic.

[The next page is 151,001]

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

10 Requests by the Republic for assistance with evidence

- (1) The Minister may request the appropriate authority of a foreign country to arrange, for a proceeding or investigation in a criminal matter in the Republic, 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 Minister 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 Republic 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) Where a foreign country (the *'requesting country'*) asks that evidence be taken in the Republic for a proceeding or investigation in a criminal matter in the requesting country or another foreign country, the Minister may authorise:
 - (a) the taking of the evidence; and
 - (b) the transmission of the evidence to the requesting country.
- (2) Where the requesting country asks that a document or other article in the Republic be produced for a proceeding or investigation in a criminal matter in the requesting country or another foreign country, the Minister may authorise:
 - (a) the production of the documents or other articles; and
 - (b) their transmission to the requesting country.

12 Taking evidence

- (1) Where the Minister authorises the taking of evidence under Section 11(1), a Judge may take, on oath, the evidence of each witness in the matter, and the Judge who takes that evidence shall:
 - (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 Minister.
- (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.
- (3) A certificate issued by a Judge under subsection (1)(a) shall 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; or
 - (b) any other person giving evidence or his or her legal representative.

13 Production

- (1) Where the Minister authorises the production of a document under Section 11(2), a Judge:
 - (a) may require the document to be produced to him or her; and
 - (b) if it is produced, shall send it, or a copy of it certified by the Judge or the Registrar of Courts to be a true copy, to the Minister.
- (2) Where the Minister authorises the production of an article other than a document under Section 11(2), a Judge:
 - (a) may require it to be produced to him or her; and
 - (b) if the article is produced, shall send it to the Minister.

14 Conduct of proceedings

- (1) The Judge 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
 - (c) the relevant authority of the requesting country.
- (2) Where the requesting country has so requested, the Judge 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 Republic about:
 - (a) compelling a person to attend before a Judge; 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 Republic, apply, so far as they are capable of applying, to the compelling of a person under this Part:
 - (i) to attend before a Judge; and
 - (ii) to give evidence, answer questions and produce documents or other articles.
- (2) For the purposes of 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.

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PART 4 — ASSISTANCE FOR SEARCH AND SEIZURE

17 Requests by the Republic for search and seizure

- (1) This Section applies to a proceeding or investigation for a criminal matter involving a serious offence against the laws of the Republic if the Minister believes, on reasonable grounds, that a thing relevant to the proceeding or investigation may be located in a foreign country.
- (2) The Minister 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 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 Republic 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 Request by foreign countries for search and seizure

- (1) The Minister may direct an authorised officer to apply to a Judge for a search warrant, if:
 - (a) a proceeding or investigation for a criminal matter involving a serious offence has commenced in a foreign country;
 - (b) the Minister believes, on reasonable grounds, that a thing relevant to the investigation or proceeding is located in the Republic; and
 - (c) the foreign country requests the Minister 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 Republic for a thing relevant to the proceeding or investigation.

19 Search warrants

- (1) Where 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 shall include:
 - (a) a statement of the purpose for which the warrant is issued, including a reference to the nature of the relevant offence;

- (b) a description of the kind of thing authorised to be seized;
 - (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) Where, 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 Republic; and
 - (b) to be likely to be concealed, lost or destroyed if it is not seized.

20 Custody of things seized

- (1) Where an authorised officer seizes a thing under this Part, the officer shall deliver the thing into the custody and control of the Commissioner of Police.
- (2) Where a thing is delivered into the custody and control of the Commissioner of Police under subsection (1), the Commissioner of Police shall tell the Minister that the thing has been so delivered and arrange for the thing to be kept in safe custody.
- (3) The Minister 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 shall be dealt with.

[The next page is 151,401]

**PART 5 — ARRANGEMENTS FOR PERSONS TO GIVE EVIDENCE OR
ASSIST INVESTIGATIONS**

21 Requests for removal of certain persons to the Republic

- (1) The Minister may request a foreign country to authorise the attendance at a hearing, for a proceeding that has commenced in the Republic, of a person who is in the foreign country if:
 - (a) the proceeding relates to a criminal matter; and
 - (b) the Minister 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 Republic to give evidence in the proceeding.
- (2) The Minister may request a foreign country to authorise removal of a person who is in the foreign country to the Republic to give assistance investigation that has commenced in the Republic if:
 - (a) the investigation relates to a criminal matter; and
 - (b) the Minister is of the opinion that the person:
 - (i) is a foreign prisoner;
 - (ii) is capable of giving assistance in the investigation; and
 - (iii) has consented to being removed to the Republic to give assistance in the investigation.
- (3) Where the Minister makes a request under subsection (1) or (2), the Minister may arrange with an appropriate authority of the foreign country for:
 - (a) the removal of the person to the Republic;
 - (b) the custody of the person while in the Republic;
 - (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 Republic 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 Republic.
- (2) The person shall be kept in the custody that the Minister directs, in writing, while the person is in the Republic, or travelling to or from the Republic, under the request.

23 Immunities

- (1) This Section applies to a person who is in the Republic:
 - (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 Minister except a request under Section 21, for international assistance in a criminal matter.

- (2) The person shall not:
 - (a) be detained, prosecuted or punished in the Republic for any offence committed, or alleged to have been committed, before he or she left the foreign country in response to the request;
 - (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 Republic;
 - (c) be required to give evidence in any proceeding in the Republic other than any proceeding to which the request relates;
 - (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 Republic; or
 - (b) if the person has had the opportunity of leaving the Republic and has remained in the Republic otherwise than:
 - (i) for the purpose to which the request relates;
 - (ii) to give evidence in a proceeding in the Republic certified by the Minister, 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 Republic certified by the Minister, in writing so be an investigation in which it is desirable that the person give assistance.
- (5) A certificate given by the Minister for subsection (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 Republic in response to a request under Section 21.
- (2) For the purposes of this Act, the person is taken to be in the Republic because of the request during any period when he or she remains in the Republic to be tried for a criminal offence against the law of the Republic that he or she is alleged to have committed after he or she left the foreign country.
- (3) Without limiting subsection (2), the person shall be kept in the custody that the Minister 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 Republic 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 Minister 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 Minister, in writing, to be a proceeding in which it is desirable that the person give evidence.
- (2) The evidence shall not be admitted or otherwise used in a prosecution of the person for an offence against the written laws of the Republic, 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 the written laws of the Republic.

26 Conditions of imprisonment

For a person who is in the Republic because of a request under Section 21 and who has been kept in custody in the Republic under a direction of the Minister under Section 22, the written laws of the Republic 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 written laws of the Republic; and
- (b) the treatment of the persons during imprisonment.

27 Release of certain persons on request by foreign country

The Minister shall direct that a person be released from custody if:

- (a) the person is kept in custody under a direction of the Minister under Section 22; and
- (b) the foreign country from which the person has been brought request the release of the person from custody.

28 Arrest of person who has escaped from custody

- (1) A police officer may arrest a person without warrant if the officer believes, on reasonable grounds, that the person:
 - (a) has been brought to the Republic in response to a request under Section 21; and
 - (b) has escaped from lawful custody while in the Republic.
- (2) The police officer shall take the person before the court as soon as practicable.
- (3) Where 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 written laws of the Republic 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 Republic because of a request to a foreign country by the Republic under this Act.

30 Requests for giving 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;
- (b) the foreign country makes a request for the removal of a prisoner who is in the Republic, whether or not in custody, to the foreign country to attend at the proceeding or to assist in the investigation;
- (c) the Minister 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 Minister 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 in Section 32.

31 Travel of prisoner or person

- (1) Where the prisoner or person is being held in custody, the Minister may make a transfer order and that order shall:
 - (a) set out the name of the prisoner or person and his or her current place of confinement;
 - (b) order the person who has custody of the prisoner or person to deliver him or her into the custody of a prisoner or person who is designated in the order or who is a member of a class of persons that are designated;
 - (c) order the person receiving the prisoner or person into custody to take him or her to the foreign country and, on return of the prisoner to the Republic, to return the prisoner to a place of confinement in the Republic specified in the order, or to any other place of confinement as the Minister may notify to the foreign country;
 - (d) state the reasons for the transfer; and
 - (e) fix the period of time at or before the expiration of which the prisoner shall be returned, unless varied, for the purposes of the request by the Minister.
- (2) The time spent in custody by a prisoner or person under a transfer order counts towards any sentence required to be served by that prisoner or person, as long as the prisoner or person remains in custody and is of good behaviour.
- (3) Where the prisoner or person has been released from custody on a parole or other order or licence to be at large, the Minister may:
 - (a) approve the travel of the prisoner or person 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 Minister may arrange for a person, other than a prisoner, who is in the Republic to travel to a foreign country if:
 - (a) a proceeding or an investigation about a criminal matter has commenced in the foreign country;

- (b) the foreign country requests that the person travel to the foreign country to give evidence at the proceeding or assistance at the investigation;
- (c) the Minister 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 Minister 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 the purposes of 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 Republic;
 - (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 Republic, 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:
 - (i) the person has left the foreign country; or
 - (ii) 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 Republic under arrangements agreed to by the Minister.
- (5) Where the person is being kept in custody in the Republic and the Minister 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;
 - (b) the person will not be released from custody in the foreign country unless the Minister notifies an appropriate authority of the foreign country that the person is entitled to be released from custody under the law of the Republic; and
 - (c) if the person is released in the foreign country after notice by the Minister 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 Minister 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 Republic; 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 Republic, to be continuing to serve the term of imprisonment.

[The next page is 151,601]

PART 6 — CUSTODY OF PERSONS IN TRANSIT

34 Transit

- (1) Subsection (2) applies to a person who is to be given in custody from foreign country through the Republic 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 Republic 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 Republic, shall be kept in custody as the Minister directs, in writing, until the person's journey is continued.
- (3) The Minister 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 subsection (2)(b); and
 - (b) the person's journey is not, in the opinion of the Minister, 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 shall take the person before the court as soon as practicable.
- (3) Where 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.

[The next page is 151,801]

PART 7 — ASSISTANCE REGARDING PROCEEDS OF CRIME

36 Requests for enforcement of orders made in the Republic

- (1) The Minister 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 Republic, against property that is believed to be located in the foreign country;
 - (b) a pecuniary penalty order for a serious offence, made in the Republic, 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 Republic, against property that is believed to be located in that foreign country.
- (2) The Minister may enter an arrangement with the foreign country to share with the country the amount forfeited under subsection (1)(a) or paid under subsection (1)(b).

37 Requests for issue of orders in foreign countries

Where a proceeding or investigation has commenced in the Republic for a serious offence, the Minister 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; or
- (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 Minister 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 Republic; 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 Republic; and
 - (b) the Minister 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 Minister may apply for the registration of the order in the court.
- (3) Where a foreign country requests the Minister 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 Republic, the Minister may apply for the registration of the order in the court.

39 Registration of foreign orders

Where the Minister applies to the court for registration of a foreign order under Section 38, the court shall 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 Republic of the amount payable under the order.
- (3) The Minister 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

Where 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 the:
 - (a) appropriate order or amendment sealed by the court or the authority that made the order or amendment; or
 - (b) 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 shall be treated as if it were a sealed or authenticated copy.
- (3) The 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 Minister 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) Where the Minister applies to the court for the cancellation of a registration under subsection (1), the court shall cancel the registration accordingly.

44 Requests for search and seizure warrants for tainted property

The Minister 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;
- (b) the Minister believes, on reasonable grounds, that tainted property for the offence is located in the Republic; and
- (c) the foreign country requests the Minister to obtain the issue of a search warrant for the property.

45 Requests for restraining orders

The Minister 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 Minister believes on reasonable grounds that a proceeding is about to commence, in a foreign country for the offence;
- (b) the Minister 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 Republic; and
- (c) a foreign country requests the Minister 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;
 - (b) a property-tracking document for the offence is reasonably believed to be located in the Republic; and
 - (c) the foreign country requests the Minister to obtain the issue of:
 - (i) an order requiring the documents to be produced or made available for inspection under the law of the Republic; or
 - (ii) a search warrant for the offence.
- (2) The Minister 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.

[The next page is 152,001]

PART 8 — REQUESTS BY MINISTER FOR A DEFENDANT

47 Requests by Minister for defendant

- (1) Subsection (2) applies if a defendant in a proceeding (the '*original proceeding*') in the Republic for a criminal matter thinks that it is necessary for the proceeding that:
 - (a) evidence be taken in a foreign country;
 - (b) a document or other article in a foreign country be produced;
 - (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 Republic 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 Minister to make an appropriate request to the foreign country under Part 3, 4 or 5 so that:
 - (a) the evidence may be taken;
 - (b) the document or article may be produced;
 - (c) the thing may be seized; or
 - (d) the arrangements may be made.
- (3) Before making a decision on the application, the court shall 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 Minister.
- (4) In deciding whether to issue a certificate, the court shall 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 Minister;
 - (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; and
 - (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) Where the court issues a certificate:
 - (a) the court shall send a copy of the certificate to the Minister; and
 - (b) the Minister shall, in accordance with the certificate, request the foreign country for international assistance.

48 Certificate by Minister if foreign country refuses request made under Section 47

- (1) Where a foreign country refuses a request made under Section 47(6), the Minister shall give a certificate in writing to that effect.
- (2) A certificate under subsection (1) is evidence of the facts stated in it.

[The next page is 152,201]

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 District Court; or
- (b) a Resident Magistrate acting under the laws of the Republic;

'criminal proceeding' includes a:

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

'foreign law' means a law of, or in force in, a country other than the Republic;

'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;
- (b) any exhibit annexed to the testimony; and
- (c) any part of the testimony or exhibit; and

'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 Republic; or
 - (ii) a related civil proceeding;
- (b) testimony obtained as a result of a request made by or for the Minister 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 shall 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; or

- (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 shall 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 shall:
 - (a) purport to be signed or certified by a Judge, Resident 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 Republic and is able to testify at the hearing;
- (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 shall 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 shall take into account:
 - (a) the extent to which the foreign material provides evidence that would not otherwise be available;
 - (b) the probative value of the foreign material for any issue that is likely to be determined in the proceedings;
 - (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;
 - (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 proceeding.

55 Certificates relating to foreign material

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

- (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) Where the defendant requests that the person who gave the testimony be present at the hearing in the Republic to be cross-examined, the court shall warn the defendant that he or she may be ordered to pay any expenses incurred by the State in making the person available before the court.
- (3) The court may order the defendant to pay any expenses incurred by the State 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 Minister is evidence of the expenses incurred by the State under subsection (3).
- (5) An amount payable by a person to the State under an order made under subsection (3) is a civil debt due by the person to the State.
- (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 State against the person to recover a debt due by the person to the State 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.

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PART 10 — MISCELLANEOUS

58 Delegation

The Minister may delegate to the Secretary for Justice all or any of his or her powers under this Act.

59 Authentication of document

- (1) In a proceeding under this Act or an order 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 it purports to be:
 - (a) signed or certified by a Judge, Resident Magistrate or Judicial officer in or of a foreign country; and
 - (b) 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) A material, whether it is evidence, a document, an article or a thing, that is sent to the Republic by a foreign country:
 - (a) because of a request made by the Minister under this Act; and
 - (b) for a proceeding or investigation in a criminal matter,shall not be used intentionally for any other purpose without the approval of the Minister.
- (2) The material is inadmissible in evidence in any proceeding other than the proceeding for which it was obtained unless the Minister 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 Minister,is inadmissible in evidence in any other proceeding and may not be used for any other investigation.
- (4) A person who contravenes subsection (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 to both; or
 - (b) if the person is body corporate, a fine of up to \$50,000.
- (5) For the purposes of this Section, disclosure of any material is taken to be a use of that material.

61 Requests for international assistance shall not be disclosed

- (1) Subsection (2) applies to a person who, because of his or her office or employment, has knowledge of the:
 - (a) contents of a request for international assistance made by a foreign country to the Republic under this Act;
 - (b) fact that a request has been made; or
 - (c) fact that a request has been granted or refused.
- (2) The person shall 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 Minister 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 to both; or
 - (b) if the person is a body corporate, a fine of up to \$50,000.

62 Regulations

The Cabinet may, from time to time, 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 Republic 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 Republic pursuant to a request; and
- (f) providing for any other matters that are contemplated by or are necessary for giving full effect to this Act and for its administration.

63 Administration of this Act

This Act shall be administered by the Department of Justice.

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Mutual Assistance in Criminal Matters Regulations 2023

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23	Forms and procedure
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FORM 21 — REGISTER OF REQUESTS MADE BY THE MINISTER
TO FOREIGN COUNTRIES FOR INTERNATIONAL
ASSISTANCE IN CRIMINAL MATTERS

FORM 22 — REGISTER OF REQUESTS FROM FOREIGN
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NAURU FOR INTERNATIONAL ASSISTANCE IN
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Mutual Assistance in Criminal Matters Regulations 2023

TABLE OF AMENDMENTS

The Mutual Assistance in Criminal Matters Regulations 2023 SL 35 were notified and commenced on 7 October 2023 (GN No 1110/2023; Gaz 218/2023).

Amending Legislation	Notified	Date of Commencement
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[The next page is 157,401]

The Cabinet makes the following Regulations under Section 62 of the *Mutual Assistance in Criminal Matters Act 2004*:

1 Citation

These Regulations may be cited as the *Mutual Assistance in Criminal Matters Regulations 2023*.

2 Commencement

These Regulations commence on the day they are notified in the Gazette.

3 Interpretation

‘*Minister*’ means the Minister for Justice; and

‘*Secretary*’ means the Secretary for Justice.

4 Request by Republic or assistance generally

Where the Republic needs any international assistance in a criminal matter, the Minister shall under Section 6, make such request in Form 1.

5 Request by foreign countries for general assistance

Where a foreign country requests international assistance in a criminal matter, the country shall under Section 7, make such request to the Minister, in Form 2.

6 Request by the Republic for assistance in evidence or production of documents or articles

(1) A request by the Republic for taking any evidence in a criminal matter in a foreign country under the law of that country, shall be made by the Minister under Section 10(1)(a), in Form 3.

(2) A request by the Republic for the production of any documents or articles in a foreign country under the law of that country, shall be made by the Minister under Section 10(1)(b) in Form 4.

7 Request by the foreign country for assistance with evidence

(1) A request by a foreign country for taking evidence in the Republic shall be made under Section 11(1) to the Minister, in Form 5.

(2) Where the Minister accepts the request of the foreign country, the Minister shall under Section 11(1), authorise the taking of evidence and transmission of the evidence to the requesting foreign country in Form 6.

8 Production of documents or articles

(1) A request by a foreign country for the production of any documents or articles in the Republic shall be made under Section 11(2) to the Minister, in Form 7.

- (2) Where the Minister accepts the request of the foreign country, the Minister shall under Section 11(2) authorise the taking of evidence and transmission of the evidence to the requesting foreign country in Form 8.

9 Request by the Republic for search and seizure in a foreign country

With regard to a request by the Republic for search and seizure under Section 17 of the Act in a criminal matter against the laws of the Republic in a foreign country, the Minister may request the authority in the foreign country to obtain a warrant or any other instrument for the search and seizure in Form 9.

10 Request by foreign country for search and seizure

- (1) A request by a foreign country for search and seizure under Section 18(1)(c), shall be made to the Minister in Form 10.
- (2) Where the Minister accepts the request, he or she shall under Section 18(1) issue a direction to a police officer or any other authorised officer in the Republic to apply to the court for a warrant in Form 11.

11 Request for enforcement orders made in the Republic

A request by the Republic for an order made in the Republic for enforcement in a foreign country shall be made under Section 36 by the Minister, in Form 12.

12 Request for issue of orders in foreign countries

A request for an order under Section 37 in relation to an instrument issued under the *Proceeds of Crime 2004* shall be made by the Minister, in Form 13.

13 Request for registration and enforcement of foreign orders

Where a foreign country requests the Minister to make arrangements for the registration and enforcement of a foreign order under Section 38, the Minister may apply for an order in court in Form 14.

14 Cancellation of registration of order

Where the Minister requests a cancellation of registration of a foreign pecuniary penalty order or a foreign restraining order, he or she shall apply under Section 43 to the court, in Form 15.

15 Request for search and seizure or warrant for tainted property

The Minister may direct a police officer, authorised officer or any other law enforcement officer under the *Proceeds of Crimes Act 2004*, to apply to the court for a search warrant under Section 44, in Form 16.

16 Minister requesting restraining orders

- (1) The Minister may under Section 45, apply to the court, for a restraining order under the *Proceeds of Crime Act 2004* in Form 17 or any other procedure permitted under the *Criminal Procedure Act 1972*.
- (2) Where appropriate, the Minister may for the purposes of Section 45 require the Secretary to apply to the court for a restraining order by way of civil proceedings under the *Civil Procedure Act 1972*.

17 Minister may direct application for production order

The Minister may under Section 46, direct a police officer to apply to the court under the *Proceeds of Crime Act 2004* for the purposes of an offence to obtain:

- (a) search warrant for the property tracking-document, in Form 18;
- (b) production order for the production of the property-tracking document, in Form 19; or
- (c) both, a search warrant and production order.

18 Forms or the order made by court

- (1) Where an application or order of the court is required, the application or the order shall be made in Form 20 or where forms are available under the *Criminal Procedure Act 1972*, *Civil Procedure Act 1972* or any other written law.
- (2) The strict compliance of the form of the application or an order shall not invalidate any application or order, provided the substance contained in the application or order is capable of being understood and clear.

19 Register of requests

The Secretary shall be responsible for establishing and maintaining a Register of requests:

- (a) of mutual assistance in criminal matters made by the Republic to a foreign country in Form 21; and
- (b) for mutual assistance in criminal matters received by the Republic from a foreign country in Form 22.

20 Conviction as a pre-requisite for any request or order

- (1) For any request, application or order, unless the Act or any other written law expressly requires a conviction of a person, any person authorised or the court may accede to such application, request or order without the conviction of that person.
- (2) Where a request is made to the Minister for the purposes of furthering any investigation or inquiry for that offence, it is deemed that there is no conviction for that particular offence.

21 Urgent applications

- (1) Where a request is made urgently, the Minister, court or any other person authorised under the Act or written law may direct any person or authority to summarily deal with the substance of the applications be attended to without the requirement to follow all the intricate procedures provided in this Act or the written law.
- (2) Where the summary procedure in subregulation (1) is applied, any person carrying out any statutory responsibilities under the Act or other written law shall ensure that:
 - (a) the person affected is given the right to be heard at a later stage; and
 - (b) any properties seized or restrained are properly accounted for by way of an inventory and preserved until such time the Minister, court or any authorised person is able to consider the application on merits.

- (3) Subject to subregulation (2), an action taken for the purposes of this Regulation shall not invalidate any decisions, orders or directions made or given, which may not have been in strict compliance with the Act or any other written law.
- (4) The ordinary cooperation amongst the relevant authorities of different countries for the purposes of any investigation, inquiry, collating of evidence or other incidental matters shall continue in urgent or appropriate circumstances of an investigation or inquiry shall supplement the procedures and requirements to ensure the intended purpose of the Act or other written laws is fulfilled.

22 Application of *Foreign Judgments (Reciprocal Enforcement) Act 1973*

The *Foreign Judgments (Reciprocal Enforcement) Act 1973* applies *mutatis mutandis* to the process under the Act and these Regulations.

23 Forms and procedure

- (1) Where there are no specific forms or procedures prescribed, any proceeding so filed under these Regulations shall be conducted in accordance with existing written laws, including Rules of the court or Practice Directions issued by the Chief Justice.
- (2) An appeal from one hierarchy of a court to another shall be instituted and heard in the same manner as is undertaken in other causes or matters as prescribed in the *District Court Act 2018*, *Supreme Court Act 2018* and the *Nauru Court of Appeal Act 2018* respectively.
- (3) The enforcement of an order shall be undertaken in accordance with existing procedures under any written law including, the *Administration of Justice Act 2018*.

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SCHEDULE

FORM 1

[Section 6; Regulation 4]



IN THE MATTER OF Section 6 of *Mutual Assistance in Criminal Matters Act 2004*;

AND in the matter of a request by Minister for Justice for obtaining general information in respect of *[state the criminal matter]*

AND the request being made to *[authority]* of *[Country]* for the provision of information in respect of criminal matter contained herein.

Request by the Republic for assistance generally

- 1 I *[Minister]* make this general request for international assistance in criminal matters from *[Country]* under *Section 6* of the *Mutual Assistance in Criminal Matters Act 2004*.
- 2 This request relates to *[criminal matter*¹*]* concerning *[describe the subject of the criminal matter.]*

Dated at: *[place, date]*

Signature

¹ Describe the general particulars of the criminal matter.

FORM 2

[Section 7; Regulation 5]

IN THE MATTER OF Section 7 of *Mutual Assistance in Criminal Matters Act 2004*;

AND in the matter of a request by [Country] for obtaining general information in respect of [state the criminal matter]

AND the request being made to the Minister for Justice of the Republic of Nauru, for the provision of information in respect of criminal matter contained herein.

Request from a foreign country for assistance generally

- 1 The [authority¹] of [Country] makes this international request for assistance in criminal matters generally.
- 2 This request relates to [criminal matter²].
- 3 The [purpose³] of the request in relation to the criminal matter.

Dated at: [place, date]

Signature

Note: *This Form should be accompanied with a formal diplomatic note or letter to the respective Minister or if not sure, to the Secretary for Foreign Affairs—Department of Foreign Affairs and Trade, Yaren District, Nauru.*

¹ Name of the authority concerned with the criminal matter.

² Description of the nature of the criminal matter and a statement setting out a summary of the relevant facts and laws.

³ Description of the purpose of the request and of the nature of the assistance being sought and any other information that may assist in giving effect to the request.

FORM 3*[Section 10; Regulation 6(1)]*

IN THE MATTER OF Section 10 of *Mutual Assistance in Criminal Matters Act 2004*;

AND in the matter of a request by the Minister for Justice to [Country] for assistance in the taking of evidence in respect of [*state the criminal matter*];

AND the request being made to [authority] of [Country] for the provision of information in respect of criminal matter contained herein.

Request by the Minister for assistance with evidence

- 1 I [*Minister*] make this request for international assistance to [Country] under *Section 10* of the *Mutual Assistance in Criminal Matters Act 2004* for the taking of evidence in the matter of [*criminal matter*¹] concerning [*describe the subject of the criminal matter*] by video or internet link.
- 2 The evidence requested to be taken:
 - (a) [*particular of evidence*];
- 3 I also request that [*name of person giving evidence*] be made available to be [*examined/cross examined*] for the purpose of the [*criminal matter*] by:
 - (a) [*party to the proceeding/party's legal representative*];
 - (b) [*person being investigated/person's legal representative.*]

Dated at: [*place, date*]

Signature

¹ Describe the general particulars of the criminal matter.

FORM 4*[Section 10; Regulation 6(2)]*

IN THE MATTER OF Section 10 of *Mutual Assistance in Criminal Matters Act 2004*;

AND in the matter of a request by the Minister for Justice to *[Country]* for the production of documents or articles in respect of *[state the criminal matter]*;

AND the request being made to *[authority]* of *[Country]* for the provision of information in respect of criminal matter contained herein.

Request by the Minister for assistance with production of documents or articles

- 1 I *[Minister]* make this request for international assistance to *[Country]* under *Section 10* of the *Mutual Assistance in Criminal Matters Act 2004* for the production of documents or articles in the matter of *[criminal matter¹]* concerning *[describe the subject of the criminal matter.]*.
- 2 The evidence requested to be taken:
 - (a) *[particular of document]*; and
 - (b) *[particular of articles]*.
- 3 I also request that *[name of person giving evidence]* who will be producing the above mentioned documents or articles, to be made available to be *[examined/cross examined]* for the purpose of the *[criminal matter]* by:
 - (a) *[party to the proceeding/party's legal representative]*;
 - (b) *[person being investigated/person's legal representative.]*

Dated at: *[place, date]*

Signature

¹ Describe the general particulars of the criminal matter.

FORM 5

[Section 11; Regulation 7(1)]

IN THE MATTER OF Section 11 of *Mutual Assistance in Criminal Matters Act 2004*;

AND in the matter of a request by [Country] for the taking of evidence in respect of [state the criminal matter]

AND the request being made to the Minister for Justice of the Republic of Nauru, for the provision of information in respect of criminal matter contained herein.

Request by the foreign country for assistance with evidence

- 4 I [authority] of [Country] makes this request for international assistance to the Republic of Nauru under *Section 11* of the *Mutual Assistance in Criminal Matters Act 2004* for the taking of evidence in the matter of [criminal matter¹] concerning [describe the subject of the criminal matter].
- 5 The evidence requested to be taken:
- (a) [particular of evidence];
- 6 I also request that [name of person] who the evidence shall be taken from, to be made available to be [examined/cross examined] for the purpose of the [criminal matter] by:
- (a) [party to the proceeding/party's legal representative];
- (b) [person being investigated/person's legal representative.]

Dated at: [place, date]

Signature

¹ Describe the general particulars of the criminal matter.

FORM 6*[Section 11; Regulation 7(2)]*

IN THE MATTER OF Section 11 of *Mutual Assistance in Criminal Matters Act 2004*;

AND in the matter of a request by [Country] for obtaining general information in respect of [state the criminal matter]

AND the request being made to the Minister for Justice of the Republic of Nauru, for the provision of information in respect of criminal matter contained herein.

Authorisation to take evidence

- 1 I have received a request from [Country] under *Section 11* of the *Mutual Assistance in Criminal Matters Act 2004*, to make arrangements for the evidence set out in the Schedule to this authority to be taken in Nauru.
- 2 I am satisfied—
 - (a) that the request relates to criminal proceedings in that foreign country; and
 - (b) that there are reasonable grounds for believing that the evidence can be taken Nauru.
- 3 In my opinion nothing in the *Mutual Assistance in Criminal Matters Act 2004* precludes the granting of this request.
- 4 Pursuant to *Section 11(1)* of the *Mutual Assistance in Criminal Matters Act 2004*, I hereby authorise the taking of the evidence and the transmission of such evidence to [Country].

Dated at: [place, date]

Signature

Schedule

[Annex evidence – documents, videos, pictures, photographs, etc.]

FORM 7

[Section 11(2); Regulation 8(1)]

IN THE MATTER OF Section 11 of *Mutual Assistance in Criminal Matters Act 2004*;

AND in the matter of a request by [Country] for the production of documents in respect of [state the criminal matter]

AND the request being made to the Minister for Justice of the Republic of Nauru, for the provision of information in respect of criminal matter contained herein.

Request by foreign country for assistance with production of documents or articles

- 1 I [authority] of [Country] makes this request for international assistance to the Republic of Nauru under *Section 11(2)* of the *Mutual Assistance in Criminal Matters Act 2004* for the productions of documents or articles in the matter of [criminal matter¹] concerning [describe the subject of the criminal matter] and to be transmitted to [Country].
- 2 The evidence requested to be taken:
 - (a) [particular of documents];
 - (b) [particular of articles]; and
 - (c) [Annex documents, photograph of articles, videos, pictures, photographs, etc.]
- 3 I also request that [name of person] who will be producing the above mentioned documents or articles, to be made available to be [examined/cross examined] for the purpose of the [criminal matter] by:
 - (a) [party to the proceeding/party's legal representative];
 - (b) [person being investigated/person's legal representative.]

¹ Describe the general particulars of the criminal matter.

FORM 8*[Section 11; Regulation 8(2)]*

IN THE MATTER OF Section 11 of *Mutual Assistance in Criminal Matters Act 2004*;

AND in the matter of a request by *[Country]* for obtaining general information in respect of *[state the criminal matter]*

AND the request being made to the Minister for Justice of the Republic of Nauru, for the provision of information in respect of criminal matter contained herein.

Authorisation to produce documents or articles

- 1 I have received a request from *[Country]* under *Section 11* of the *Mutual Assistance in Criminal Matters Act 2004*, to make arrangements for the production of documents or articles set out in the Schedule to this authority to be taken in Nauru.
- 2 I am satisfied—
 - (a) that the request relates to criminal proceedings in that foreign country; and
 - (b) that there are reasonable grounds for believing that the documents or articles can be produced in Nauru.
- 3 In my opinion nothing in the *Mutual Assistance in Criminal Matters Act 2004* precludes the granting of this request.
- 4 Pursuant to *Section 11(2)* of the *Mutual Assistance in Criminal Matters Act 2004*, I hereby authorise the taking of documents and articles and the transmission of such evidence to *[authority]* of *[Country]*.

Dated at: *[place, date]*

Signature

Schedule

[Annex evidence – documents, videos, pictures, photographs, etc.]

FORM 9*[Section 17; Regulation 9]*

IN THE MATTER OF Section 17 of *Mutual Assistance in Criminal Matters Act 2004*;

AND in the matter of a request by the Minister to [Country] for obtaining general information in respect of [*state the criminal matter*]

AND the request being made by the Minister for Justice of the Republic of Nauru, for the provision of information in respect of criminal matter contained herein.

Request by the Minister for Assistance with Search and Seizure

- 1 I [*Minister*] make this request for international assistance to [Country] under *Section 17* of the *Mutual Assistance in Criminal Matters Act 2004* for search and seizure in the matter of [*criminal matter*¹] concerning [*describe the subject of the criminal matter*].
- 2 The Minister requests obtaining a [*warrant/instrument authorising*] the search and seizure of [*particulars of item to be obtained*] and any other item found during the search that may be [*relevant*²] to the criminal matter to be seized.

Dated at: [*place, date*]

Signature

¹ Describe the general particulars of the criminal matter.

² For description of item that is relevant, refer to *Section 17(3)*

FORM 10

[Section 18; Regulation 10(1)]

IN THE MATTER OF Section 18 of *Mutual Assistance in Criminal Matters Act 2004*;

AND in the matter of a request by [Country] for obtaining general information in respect of [state the criminal matter]

AND the request being made to the Minister for Justice of the Republic of Nauru, for the provision of information in respect of criminal matter contained herein.

Request by foreign country for assistance with search and seizure

- 1 The [authority¹] of [Country] makes this request for international assistance to the Republic of Nauru for the purpose of *Section 18* of the *Mutual Assistance in Criminal Matters Act 2004* for search and seizure in the matter of [criminal matter²] concerning [describe the subject of the criminal matter.]
- 2 The [authority] requests obtaining a [warrant/instrument authorising] the search and seizure of [particulars of item to be obtained] and any other item found during the search that may be [relevant³] to the criminal matter to be seized.

Dated at: [place, date]

Signature

¹ Name of the authority concerned with the criminal matter.

² Describe the general particulars of the criminal matter.

³ For description of item that is relevant, refer to *Section 17(3)*

FORM 11

[Section 18; Regulation 10(2)]



IN THE MATTER OF Section 18 of *Mutual Assistance in Criminal Matters Act 2004*;

AND in the matter of a request by [Country] for obtaining general information in respect of [state the criminal matter]

AND the request being made to the Minister for Justice of the Republic of Nauru, for the provision of information in respect of criminal matter contained herein.

Direction to apply for search warrant

To [full name], police officer (or authorised officer).

- 1 I have received a request from [Country] for the purpose of *Section 18* of the *Mutual Assistance in Criminal Matters Act 2004*, to assist in obtaining [briefly describe the item or thing] by search and seizure.
- 2 I am satisfied—
 - (a) that the request relates to a criminal matter in that foreign country in respect of the offence of [specify offence], being an offence punishable by imprisonment for a term of 2 years or more; and
 - (b) that there are reasonable grounds for believing that the item (or thing) is relevant to those proceedings and is located in the Republic of Nauru.
- 3 In my opinion nothing in the *Mutual Assistance in Criminal Matters Act 2004*, precludes the granting of this request.
- 4 I hereby direct you to apply to the court for a search warrant in accordance with *Section 18(2)* of the *Mutual Assistance in Criminal Matters Act 2004*, in respect of that item (or thing).

Dated at: [place, date]

Signature

FORM 12

[Section 36; Regulation 11]



IN THE MATTER OF Section 36 of *Mutual Assistance in Criminal Matters Act 2004*;

AND in the matter of a request by the Minister to [Country] for the enforcement of orders in [Country] in respect of [state the criminal matter]

AND the request being made by the Minister for Justice of the Republic of Nauru, for the enforcement of orders in respect of criminal matter contained herein.

Request by the Minister for assistance with enforcement of order made in the Republic of Nauru

I [Minister] make this request for international assistance to [Country] under *Section 36* of the *Mutual Assistance in Criminal Matters Act 2004* for the enforcement of the order attached in the Schedule, in the matter of [criminal matter¹] concerning [describe the subject of the criminal matter].

Dated at: [place, date]

Signature

Schedule

[Annex forfeiture order, pecuniary penalty order or restraining order]

¹ Describe the general particulars of the criminal matter.

FORM 13*[Section 37; Regulation 12]*

IN THE MATTER OF Section 37 of *Mutual Assistance in Criminal Matters Act 2004*;

AND in the matter of a request by the Minister to *[Country]* for the enforcement of similar orders in respect of *[state the criminal matter]*

AND the request being made by the Minister for Justice of the Republic of Nauru, for the provision of information in respect of criminal matter contained herein.

Request by the Minister for assistance with issuance of order similar to such issued under *Proceeds of Crime Act 2004*

- 1 I *[Minister]* make this request for international assistance to *[Country]* under *Section 37* of the *Mutual Assistance in Criminal Matters Act 2004* for the issuance of orders, in the matter of *[criminal matter¹]* concerning *[describe the subject of the criminal matter]*.
- 2 The order referred to are such that are similar in nature as those issued under the *Proceeds of Crime Act 2004* such as:
 - (a) *search warrant for tainted property;
 - (b) *restraining order;
 - (c) *production order for a property tracking document; or
 - (d) *search warrant for a property tracking document.

Dated at: *[place, date]*

Signature

¹ Describe the general particulars of the criminal matter.

* Delete if not applicable

FORM 14*[Section 38; Regulation 13]*

IN THE MATTER OF Section 38 of *Mutual Assistance in Criminal Matters Act 2004*;

AND in the matter of a request by [*Country*] for registration and enforcement of foreign order in respect of [*state the criminal matter*]

AND the request being made to the Minister for Justice of the Republic of Nauru, for the enforcement of an order in respect of criminal matter contained herein.

**Statement of the Minister
in support of an application for enforcement of the foreign order**

- 1 In my capacity as the Minister for Justice, I make this application for the registration of a foreign [*particulars of order*] in Nauru.
- 2 I have received an application under *Section 38* for the enforcement of the order in Nauru in the matter of [*criminal matter*].
- 3 In my opinion, nothing in the *Mutual Assistance in Criminal Matters Act 2004* precludes the granting of this request.
- 4 I am satisfied that the person named in the order has been convicted of the offence and the conviction and order are not subject to further appeal in the [*Country*].
- 5 The order for which this request is sought is [*particulars of order*] and attached to the Schedule.

Dated at: [*place, date*]

Signature

Schedule

[Annex type of foreign order to be enforced]

FORM 15*[Section 43; Regulation 14]*

IN THE MATTER OF Section 43 of *Mutual Assistance in Criminal Matters Act 2004*;

AND in the matter of a request by *[Country]* for cancellation of foreign order in respect of *[state the criminal matter]*

AND the request being made to the Minister for Justice of the Republic of Nauru, for the cancellation of an order in respect of criminal matter contained herein.

Application by Minister for the cancellation of registration of foreign order

- 1 I make this application for the cancellation of the registration of the foreign *[particulars of order]* in Nauru which was by order of the court registered under *Section 39* on *[date]*.
- 2 In my opinion, nothing in the *Mutual Assistance in Criminal Matters Act 2004* precludes the granting of this request.
- 3 The order for which this request is sought is *[particulars of order]* and attached to the Schedule.

Dated at: *[place, date]*

Signature

Schedule

[Annex order]

FORM 16*[Section 44; Regulation 15]*

IN THE MATTER OF Section 44 of *Mutual Assistance in Criminal Matters Act 2004*;

AND in the matter of a request by [Country] for cancellation of foreign order in respect of [state the criminal matter]

AND the request being made to the Minister for Justice of the Republic of Nauru, for the cancellation of an order in respect of criminal matter contained herein.

Direction to apply for a search warrant under *Proceeds of Crime Act 2004*

To [full name], a police officer (or authorised officer).

- 1 I have received a request from [Country] under *Section 44* of the *Mutual Assistance in Criminal Matters Act 2004*, to obtain the issue of a search warrant in respect of [criminal matter].
- 2 I am satisfied that in relation to the criminal matter—
 - (a) a proceeding or investigation has commenced in [Country] for a serious offence; and
 - (b) the tainted property for the offence is located in the Republic.
- 3 In my opinion nothing in the *Mutual Assistance in Criminal Matters Act 2004* precludes the granting of the request.
- 4 Therefore I hereby direct you to apply under *Section 85* of the *Proceeds of Crime Act 2004* for a search warrant so requested.

Dated at: [place, date]

Signature

FORM 17

[Section 45; Regulation 16(1)]



IN THE MATTER OF Section 45 of *Mutual Assistance in Criminal Matters Act 2004*;

AND in the matter of a request by [Country] for obtaining general information in respect of [state the criminal matter]

AND the request being made to the Minister for Justice of the Republic of Nauru, for the cancellation of an order in respect of criminal matter contained herein.

Application for restraining order under *Proceeds of Crime Act 2004*

- 1 I make this application for a restraining order [particulars of order] against the [particulars of property] of [name of owner of property] under Section 45(a) of the *Mutual Assistance in Criminal Matters Act 2004*.
- 2 I have received a request from [Country] under Section 45(c) of the *Mutual Assistance in Criminal Matters Act 2004*, to obtain the issuance of a restraining order for the [particulars of property] respect of [criminal matter].
- 3 I make this application:
 - (a) [on the grounds that proceedings have commenced/on reasonable belief that proceedings are about to commence] in the [Country] for the serious offence; or/and
 - (b) [on reasonable belief that property may be made or is about to be made the subject of a foreign restraining order located in the Republic].
- 4 In my opinion, nothing in the *Mutual Assistance in Criminal Matters Act 2004* precludes the granting of this request.

Dated at: [place, date]

Signature

FORM 18

[Section 46; Regulation 17(a)]



IN THE MATTER OF Section 46 of *Mutual Assistance in Criminal Matters Act 2004*;

AND in the matter of a request by [Country] for [state the criminal matter]

AND the request being made to the Minister for Justice of the Republic of Nauru, for the issuance of a search warrant in respect of criminal matter contained herein.

Direction to apply for a search warrant under *Proceeds of Crime Act 2004*

To [full name], a police officer (or authorised officer).

- 1 I have received a request from [Country] under *Section 46* of the *Mutual Assistance in Criminal Matters Act 2004*, to obtain the issue of a search warrant in respect of [criminal matter] for the [property tracking document¹].
- 2 I am satisfied that in relation to the criminal matter—
 - (a) a proceeding or investigation has commenced in [Country] for a serious offence; and
 - (b) a property tracking document for the serious offence is reasonably believed to be located in the Republic.
- 3 In my opinion nothing in the *Mutual Assistance in Criminal Matters Act 2004* precludes the granting of the request.
- 4 Therefore, I hereby direct you to apply under *Section 85* of the *Proceeds of Crime Act 2004* for a search warrant so requested.

Dated at: [place, date]

Signature

¹ Provide particulars of the property tracking document

FORM 19

[Section 46; Regulation 17(b)]



IN THE MATTER OF Section 46 of *Mutual Assistance in Criminal Matters Act 2004*;

AND in the matter of a request by [Country] for [state the criminal matter]

AND the request being made to the Minister for Justice of the Republic of Nauru, for the issuance of a search warrant in respect of criminal matter contained herein.

Direction to apply for a production order under *Proceeds of Crime Act 2004*

To [full name], a police officer (or authorised officer).

- 1 I have received a request from [Country] under *Section 46* of the *Mutual Assistance in Criminal Matters Act 2004*, to obtain the issue of a production order in respect of [criminal matter] for the [property tracking document¹].
- 2 I am satisfied that in relation to the criminal matter—
 - (a) a proceeding or investigation has commenced in [Country] for a serious offence; and
 - (b) a property tracking document for the serious offence is reasonably believed to be located in the Republic.
- 3 In my opinion nothing in the *Mutual Assistance in Criminal Matters Act 2004* precludes the granting of the request.
- 4 Therefore, I hereby direct you to apply under *Section 79* of the *Proceeds of Crime Act 2004* for a production order so requested.

Dated at: [place, date]

Signature

¹ Provide particulars of the property tracking document

FORM 20*[Regulation 18]***IN THE DISTRICT COURT****MUTUAL ASSISTANCE IN CRIMINAL MATTERS
JURISDICTION**

Mutual Assistance in Criminal Matter Number: /20.

District Court Case Number: /20.

IN THE MATTER OF *[Section] of Mutual Assistance in Criminal Matters Act 2004;***AND** in the matter of an order sought by the *[Country]* for *[particular of order]* of *[state the criminal matter]*;**AND** the request being made to the Minister for Justice of the Republic of Nauru, for the issuance of an *[particular of order]* in respect of criminal matter contained herein.**ORDER****BEFORE THE RESIDENT MAGISTRATE, HONOURABLE MR/MADAM.ON
.DAY OF20.****UPON THE APPLICATION** of *[Minister/police officer/authorised officer]* and **UPON HAVING READ** the Affidavit of the Applicant **AND UPON HEARING** the Applicant in person and the Legal Representative of the Respondent:**AND IT APPEARING THAT** the Applicant has filed the necessary requirements for the Application:

AND IT IS HEREBY ORDERED THAT:—

- (a) State particulars of the order

.....
RESIDENT MAGISTRATE OF THE DISTRICT COURT
Court Seal

FORM 21**REGISTER OF REQUESTS MADE BY THE MINISTER TO FOREIGN COUNTRIES
FOR INTERNATIONAL ASSISTANCE IN CRIMINAL MATTERS***[Regulation 19(a)]*

Register of requests made by the Minister to foreign countries for international assistance in criminal matters						
Country	Date of making Request	Purpose of Request	Actions taken as a result of request		Notes	Date of Close of file for request
			Date	Action taken		

FORM 22**REGISTER OF REQUESTS FROM FOREIGN COUNTRIES RECEIVED BY THE
REPUBLIC OF NAURU FOR INTERNATIONAL ASSISTANCE IN CRIMINAL
MATTERS***[Regulation 19(b)]*

Register of requests from foreign countries received by the Republic of Nauru for international assistance in criminal matters						
Country	Date of receiving Request	Purpose of Request	Actions taken as a result of request		Notes	Date of Close of file for request
			Date	Action taken		

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