

Republic of Trinidad and Tobago
Act No. 39 of 1997
Mutual Assistance in Criminal Matters Act

An Act to make provision with respect to the Scheme relating to Mutual Assistance in Criminal Matters within the Commonwealth and to facilitate its operation in Trinidad and Tobago and to make provision concerning mutual assistance in criminal matters between Trinidad and Tobago and countries other than Commonwealth countries.

[Assented to 4th december, 1997]

Enactment ENACTED by the Parliament of Trinidad and Tobago as follows:-

PART I

Preliminary

1. (1) This Act may be cited as the Mutual Assistance in Criminal Matters Act, 1997.

(2) This Act shall come into operation on such date as the President may appoint by Proclamation.

2. (1) In this Act-

“Central Authority” means the person or authority designated as the Central Authority for Trinidad and Tobago in pursuance of section 3;

“central authority”, in relation to any Commonwealth country means the person or authority designated by that country for the purpose of transmitting and receiving requests for assistance under the Scheme;

“Commonwealth country” means a sovereign and independent country within the Commonwealth, other than Trinidad and Tobago, together with any dependent territory which that country designates;

“criminal proceedings” means-

(a) for the purposes of Part II, proceedings, including restraint, confiscation and forfeiture proceedings certified by the Central Authority to be criminal proceedings which have been instituted or in which investigations have commenced in Trinidad and Tobago; or

(b) for the purposes of Part III, proceedings, including restraint, confiscation and forfeiture 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 instituted or in which investigations have commenced in that country, in respect of an offence committed, or suspected on reasonable grounds to have been committed, against the laws of Trinidad and Tobago 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 government departments or agencies or prosecution authorities;

“property” means any movable or immovable property, and includes-

(a) any right, interest, title, claim, chose in action, power, privilege, whether present or future and whether vested or contingent, in relation to any property, or which is otherwise of value;

(b) any conveyance executed for conveying, assigning, appointing, surrendering or otherwise transferring or disposing of immovable property whereof the person executing the conveyance is

proprietor or possessed or wherein he is entitled to a contingent right, either for his whole interest or for any lesser interest;

(c) any monetary instrument;

(d) any other instrument or securities;

(e) any business; and

(f) any other tangible or intangible property;

“Scheme” means the Scheme for Mutual Assistance in Criminal Matters within the Commonwealth as agreed by Law Ministers at their 1986 Meeting in Harare and endorsed by the Commonwealth Heads of Government at their 1987 Meeting in Vancouver and any amendment thereof;

“serious offence” means-

(a) in relation to Trinidad and Tobago, an offence against the laws of Trinidad and Tobago for which a sentence of death, or imprisonment for a minimum term of not less than one year, may be, or is required to be, imposed; or

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

(i) for which a sentence such as is specified in paragraph (a) 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 not less than such amount as is prescribed by or under the law of that country;

“transmitted”, in relation to a request, means-

(a) in Part II, transmitted by the Central Authority 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.

(2) A reference in this Act to the laws of a Commonwealth country means the laws in force in that country or a part thereof.

(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 that country.

(4) For the purposes of this Act, a person shall be deemed to have been charged with a serious offence in Trinidad and Tobago 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.

3. (1) Subject to subsection (2), the Attorney General shall be the Central Authority.

(2) The Attorney General may delegate to a public officer, any of his functions under this Act.

(3) Nothing in this section shall be construed as delegating to the officer referred to in subsection (2), a power to make Regulations under section 39.

4. The Attorney General may, by Order, 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.

5. Nothing in this Act derogates from existing forms of co-operation or prevents the development of other forms of co-operation, whether formal or informal, in respect of criminal matters between Trinidad and

Tobago or any enforcement agencies or prosecuting authorities in Trinidad and Tobago and the International Criminal Police Organisation or any such agencies or authorities outside of Trinidad and Tobago.

6. Nothing in this Act authorises the extradition, or the arrest or detention of any person for the purpose of extradition.

PART II

Requests Made By Trinidad and Tobago To Commonwealth Countries For Assistance

7. 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) information is provided;
- (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,

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

8. 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 that country in locating that person or, if his identity is unknown, in identifying and locating him.

9. 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 that country in obtaining, by search and seizure, if necessary the article or thing.

10. 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 that country in arranging the attendance of the person in Trinidad and Tobago to give or provide such evidence or assistance but such attendance may be secured only with the signed consent of that person.

11. (1) The appearance in or transfer to Trinidad and Tobago of a person referred to in section 10 shall require, if the person or the Commonwealth country so requests prior to such appearance or transfer, that Trinidad and Tobago grant safe conduct under which the person, while in Trinidad and Tobago, shall not-

- (a) be detained or prosecuted for offences committed prior to his departure from the Commonwealth country;
- (b) be required to make a statement or to give testimony in proceedings not specified in the request; or
- (c) be detained or prosecuted on the basis of any statement he makes, except in case of contempt of court or perjury.

(2) The safe conduct specified in subsection (1) shall cease if the person voluntarily prolongs his stay in Trinidad and Tobago for more than ten days after his presence is no longer necessary as communicated to him and the Commonwealth country.

12. (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 that country to transfer the prisoner to Trinidad and Tobago to give or provide such evidence or assistance.

(2) The Central Authority shall 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 that country or the person waives their observance.

(3) A request under subsection (1) shall specify-

- (a) the subject matter upon which it is desired to examine the prisoner; and
- (b) the reasons for which the personal appearance of the prisoner is required.

(4) Where any conditions require that a prisoner be kept in custody while in Trinidad and Tobago, the prisoner shall, while in Trinidad and Tobago or travelling to or from Trinidad and Tobago pursuant to the request, be kept in such custody as the Attorney General directs in writing and shall be returned when his presence as a witness in Trinidad and Tobago is no longer required even if the prisoner is a national of Trinidad and Tobago.

(5) Nothing in this section shall preclude the release in Trinidad and Tobago without return to the Commonwealth country of any person transferred where the two countries and the person concerned agree.

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

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

13. (1) Where there are reasonable grounds to believe that a person who is a prisoner in Trinidad and Tobago could give or provide evidence or assistance relevant to any criminal proceedings in a Commonwealth country, a request may be entertained by the Central Authority to transfer the prisoner to the Commonwealth country to give or provide such evidence or assistance.

(2) The Central Authority shall refuse to comply with a request for the transfer of a person in custody if he does not consent in writing to the transfer.

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

(4) A person in custody whose transfer is the subject of a request under this section and who does not consent to the transfer shall not by reason thereof be liable to any penalty or measure of compulsion in Trinidad and Tobago.

(5) Where a person in custody is transferred, the Commonwealth country to which he is transferred shall notify the Central Authority of-

- (a) the date upon which he is due under the law of the Commonwealth country to be released from custody; and
- (b) the date by which the Commonwealth country requires his return.

(6) The period during which the person transferred is in custody in the Commonwealth country is deemed to be service in Trinidad and Tobago of an equivalent period of custody in Trinidad and Tobago for all purposes.

14. Where, for the purpose 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 seeking the assistance of that country in effecting such service.

15. (1) Where a request has been made under section 14, the Central Authority-

(a) may, if the document is required in connection with proceedings in Trinidad and Tobago, postpone its transmission, and in such a case shall provide the Commonwealth country with certified copies of the document pending transmission of the original; or

(b) may require the Commonwealth country to agree to terms and conditions to protect third party interests in the document to be transmitted and may refuse to transmit any such document pending such agreement.

(2) The Central Authority shall authenticate all documents transmitted under section 14.

16. Any-

(a) evidence or information obtained or, as the case may be, given or provided, by any person pursuant to a request made in section 7, 10, 12 or 14; or

(b) article or thing obtained pursuant to a request made in section 9,

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

17. (1) Subject to subsection (2), a person who is in Trinidad and Tobago consequent upon a request made under section 10 or 12-

(a) is not liable to be detained prosecuted or punished in Trinidad and Tobago for any offence that is alleged to have been committed or was committed, before the person's 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 Trinidad and Tobago; 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 relates.

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

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

(b) who has been notified by the Central Authority that his presence is no longer required for the purposes of the request and who then remains in Trinidad and Tobago for more than ten days after the first date on which he had a reasonable opportunity to leave Trinidad and Tobago.

(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.

18. Where-

(a) a person has been charged with or convicted of a serious offence or is suspected on reasonable grounds of having committed such an offence in Trinidad and Tobago; and

(b) property derived or obtained, directly or indirectly, by that person from the commission of such an offence is suspected on reasonable grounds to be located in a Commonwealth country a request may be transmitted requesting that assistance be given by that country in identifying, locating or assessing the value or amount of such property.

19. (1) Where-

(a) in Trinidad and Tobago-

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

(ii) a confiscation order or a forfeiture order has been made confiscating or forfeiting property derived or obtained, directly or indirectly, by a person from the commission of a serious offence;

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

(b) property to which the restraining order would apply, or which is available for the satisfaction of the forfeiture or confiscation order or pecuniary penalty imposed under the 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 laws of that country, and seeking the assistance of that country to that end.

(2) In any case where a request to a Commonwealth country under this section has been accepted, the Central Authority shall inform the central authority for that country if the confiscation order or forfeiture order or restraint 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 amount specified in the order or the total value of property required to satisfy the order or the pecuniary penalty under the order should be less than twenty-five thousand dollars or such other amount as may be prescribed.

20. Where-

(a) in Trinidad and Tobago-

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

(ii) a confiscation order or a forfeiture order has been, or is likely to be, made confiscating or forfeiting the property or benefits derived or obtained, directly or indirectly, by that person from the commission of the serious offence; and

(b) property or benefits so derived or obtained are 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 that country restraining dealings with identified property or benefits.

PART III

Requests By Commonwealth Countries To Trinidad and Tobago For Assistance

21. (1) Subject to subsection (2), a request for assistance under this Act made by a Commonwealth country shall comply with the conditions set out in the First Schedule.

(2) Subsection (1) does not apply to an informal request for assistance under this Act where it 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 considers it reasonable; and

(b) it is deemed to have been withdrawn if it is not transmitted in writing within such period as the Central Authority considers reasonable.

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

(2) Such a request shall be refused if, in the opinion of the Central Authority-

(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, had it occurred in Trinidad and Tobago, would have constituted a criminal offence under any law giving effect to a state of emergency, but if the conduct alleged would have amounted to a criminal offence under any other law of Trinidad and Tobago, this paragraph shall not apply;

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

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

(g) the request is for the transfer of a prisoner under section 27(1) but the prisoner does not consent to his transfer;

(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;

(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;

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

(k) the request relates to a criminal offence under the tax laws of a Commonwealth country, save that the assistance may be granted if the offence is committed by way of an intentionally incorrect statement, whether oral or written, or by way of an intentional failure to declare income derived from any other offence covered by the Inter-American Convention on Mutual Assistance in Criminal Matters; or

(1) it would be contrary to the laws of Trinidad and Tobago.

(3) A request for assistance made by a Commonwealth country may be refused, in whole or in part, if in the opinion of the Central Authority-

(a) the request relates to the prosecution or punishment of a person in respect of conduct that, had it occurred in Trinidad and Tobago, would not have constituted an offence against the laws of Trinidad and Tobago;

(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 Commonwealth country making the request, and similar conduct occurring outside Trinidad and Tobago in similar circumstances would not have constituted an offence against the laws of Trinidad and Tobago;

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

(d) the request was made by a special or *ad hoc* tribunal;

(e) the provision of the assistance would impose an excessive burden on the resources of Trinidad and Tobago;

(f) any conditions, exceptions or qualifications imposed pursuant to section 4 in relation to the Commonwealth country, prevent the request from being accepted;

(g) the request does not meet the requirements of the First Schedule; or

(h) there are other reasonable grounds for doing so.

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

(5) If a request for assistance made by a Commonwealth country other than an informal one, is refused, the fact of, and the grounds for, the refusal shall be given by the Central Authority 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 Trinidad and Tobago 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.

23. (1) This section applies where a request is transmitted seeking assistance from Trinidad and Tobago 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) A person, from whom evidence is taken in Trinidad and Tobago 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 laws of Trinidad and Tobago;

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

(iii) to answer the question would constitute the commission by the person of an offence against the laws 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.

(3) Where the request for assistance under this section is for evidence or information relating to the matters set out in section 7(c), copies of such records not publicly available may be produced or examined, only to the extent that they could be produced or examined in accordance with the laws of Trinidad and Tobago.

24. (1) This section applies where a request is transmitted seeking assistance from Trinidad and Tobago in locating or identifying and locating, a person believed to be in Trinidad and Tobago, 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 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.

25. (1) This section applies where a request is transmitted seeking assistance from Trinidad and Tobago in obtaining, by search and seizure if necessary, an article or thing in Trinidad and Tobago 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 Attorney General shall, unless the article or thing concerned is otherwise lawfully obtained, authorize in writing the Commissioner of Police to apply to a magistrate for a search warrant in respect of the article or thing.

(3) The Commissioner of Police 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 authorization given to the Commissioner of Police pursuant to subsections (2) and (3) may be executed on his behalf by any member of the Police Force.

(5) The laws of Trinidad and Tobago with respect to-

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

(b) the execution of a search warrant,

apply to an application under subsection (3) and to the execution of any warrant issued pursuant to any such application.

(6) The Central Authority 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.

(7) Where this section applies, the Attorney General may in writing, authorize the removal of any article or thing obtained pursuant to a request, to the Commonwealth country making the request.

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

(2) Where this section applies, the Central Authority 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.

27. (1) This section applies where a request is transmitted seeking the Central Authority to secure the transfer of a prisoner in Trinidad and Tobago to the Commonwealth country for giving or providing evidence or assistance relevant to any criminal proceedings in that country.

(2) The Central Authority 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.

(3) 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 time served in custody in Trinidad and Tobago.

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

28. (1) This section applies where a request is transmitted seeking assistance of Trinidad and Tobago in effecting the service of a document on a person or an authority in Trinidad and Tobago 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 shall-

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

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

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

(3) A person served with a document under this section who fails to comply with the summons shall not be liable to any penalty or measure of compulsion not withstanding any contrary statement in the summons.

29. (1) This section applies where-

(a) the Attorney General of a Commonwealth country gives a certificate to the effect that a person in that country-

(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 person from the commission of that offence is suspected, on reasonable grounds, to be in Trinidad and Tobago;

(c) a request is transmitted seeking assistance by Trinidad and Tobago 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-

(a) shall use its best endeavors 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.

30. (1) This section applies where-

(a) an order is made in a Commonwealth country-

(i) confiscating or forfeiting property derived or obtained, directly or indirectly, from the commission of a specified serious offence;

(ii) 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

(iii) 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 of the pecuniary penalty under the order, or to which the order would apply is suspected on reasonable grounds, to be in Trinidad and Tobago;

(c) a request is transmitted requesting that the order concerned be enforced in accordance with the laws of Trinidad and Tobago and to that end Trinidad and Tobago give appropriate assistance; and

(d) the request is accepted.

(2) Where this section applies, the Attorney General shall cause an application to be made to the Supreme Court in accordance with the Rules of the Supreme Court for the registration of the order concerned.

(3) On application made under subsection (2), the Registrar of the Supreme Court shall register the order if he is satisfied-

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

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

(i) 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;

(ii) the order is not subject to appeal; and

(iii) that enforcing the order in Trinidad and Tobago would not be contrary to the interest of justice.

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

(5) An order or an amendment of an order shall be registered by the registration, in accordance with the Rules of the Supreme 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 35(2)(a).

(6) The Supreme Court shall, after appropriate notice has been given to the Central Authority cancel the registration of an external confiscation order or an external forfeiture order if-

(a) it appears to the court that the order has been satisfied whether by payment of the amount due under the order or by the serving of a term of imprisonment by the person against whom the order is made; or

(b) after appropriate notice has been given to the Central Authority, it appears to the court that the order has ceased to have effect in the Commonwealth country that made the request for assistance.

(7) 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.

31. (1) This section applies where-

(a) the Central Authority of a Commonwealth country transmits to the Central Authority a certificate to the effect that-

(i) a named person has been, or is likely to be charged with, or has been convicted of, a specified serious offence; and

(ii) an order has been, or is likely to be made that has or, will have, the effect under the laws of that country-

(A) of confiscating or forfeiting 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;

(b) property so derived or obtained, or which would be available to satisfy a pecuniary penalty under the confiscation order, or, under such an order if made, is suspected on reasonable grounds to be in Trinidad and Tobago;

(c) a request is transmitted requesting that an order be made, in accordance with the laws of Trinidad and Tobago, restraining dealings with property and that Trinidad and Tobago give the appropriate assistance; and

(d) the request is accepted.

(2) Where this section applies the Attorney General shall cause an application to be made to the Supreme Court in accordance with the rules of the Supreme Court to secure the making of an appropriate order.

(3) The provisions of subsections (2) to (6) of section 30, shall apply *mutatis mutandis* with respect to the implementation of a request under this section.

PART IV

Application of Act to Countries Other Than Commonwealth Countries

32. In this Part-

“non-commonwealth country” means a country other than one included in the definition of “Commonwealth country” in section 2(1);

“treaty” includes a convention, protocol, agreement or arrangement.

33. (1) Where a treaty has been entered into between Trinidad and Tobago and a non-commonwealth country providing for mutual assistance in a criminal matter then upon the application of that country for assistance, the Attorney General may, by Order, subject to negative resolution of Parliament, declare that country to be a country to which this Act applies.

(2) An Order made under subsection (1) may provide that this Act applies subject to such limitations, conditions, exceptions or qualifications as may be prescribed in the Order, and where such Order so provides, this Act shall apply in relation to that country subject to such limitations, conditions, exceptions or qualifications.

PART V

Miscellaneous

34. Where he is satisfied, the Attorney General may give a certificate in such form as he determines, certifying, in relation to a request for assistance made by a Commonwealth country under this Act, the following facts, namely, that:

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

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

35. (1) In any relevant proceedings-

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

(b) a relevant certificate shall be received as conclusive proof of the matters certified in the certificate.

(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 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 written laws of Trinidad and Tobago.

(4) In this section-

“relevant certificate” means a certificate given-

(a) by the central authority for a Commonwealth country for the purpose of criminal proceedings instituted in or property derived or obtained from a serious offence in that country;

(b) by the Attorney General of a Commonwealth country for the purposes of section 29(1)(a), 31(1)(a) or paragraph 8(d) of the First Schedule; or

(c) by the Attorney General for the purposes of section 34;

“relevant proceedings” means a proceeding 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.

36. (1) Where a person is to be transported in custody from a Commonwealth country through Trinidad and Tobago 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 Trinidad and Tobago 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 port in Trinidad and Tobago, 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.

37. Any person who escapes from lawful while in Trinidad and Tobago pursuant to a request under section 10, or while being kept in custody pursuant to a direction under section 36(1)(b), is guilty of an offence and is liable on conviction to a fine of twenty thousand dollars and to imprisonment for five years.

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

(a) has been brought to Trinidad and Tobago pursuant to a request under section 10, or was being kept in custody pursuant to a direction under section 36(1)(b); and

(b) has escaped from lawful custody while in Trinidad and Tobago 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 this Act.

39. (1) The Attorney 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;

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

(d) prescribing conditions to be imposed for the protection of any interest in any property to be sent to a requesting country pursuant to a request;

(e) prescribing conditions for the protection of any property sent to or by a Commonwealth country and making provision for the return of property in Trinidad and Tobago 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 under this Act to be implemented or any assistance so requested to be given;

(b) any order registered pursuant to section 30 to be enforced; or

(c) an order to be made pursuant to a request for assistance under section 30 and, if made, to be enforced.

(3) Regulations made for the purposes of section 22(2) may include procedures for, and powers in relation to, the taking of evidence in Trinidad and Tobago by commissioners from, or nominated by the Commonwealth country concerned.

40. (1) Where a treaty has been concluded whether before or after the commencement of this Act between Trinidad and Tobago and any other territory in relation to the provision of mutual assistance in the detection, investigation, suppression or prosecution of drug trafficking offences committed in Trinidad and Tobago or such other territory, the Attorney General may, by Order subject to negative resolution of Parliament, declare that the treaty shall have the force of law in Trinidad and Tobago subject to such limitations, conditions, exceptions or qualifications as may be specified in the Order.

(2) An Order shall not be made under subsection (1) unless the treaty provides for its determination by either party to it.

(3) An Order made under subsection (1) shall recite or embody the terms of the treaty and shall not remain in force for any longer period than the treaty.

(4) In this section "treaty" means any convention, treaty, agreement or arrangement for the time being in force between Trinidad and Tobago and any other territory.

(5) In this section, "drug trafficking offence" means any of the following:

(a) an offence under section 5(4) and (7) and section 47 of the Dangerous Drugs Act, 1991;

(b) an offence of conspiracy to commit any of the offences referred to in paragraph (a);

(c) an offence of attempting, inciting, aiding, abetting, counselling or procuring the commission of any of the offences referred to in paragraph (a) or (b).

41. The written Law referred to in column 1 of the Second Schedule is amended as correspondingly set out in column 2 of that Schedule.

FIRST SCHEDULE

(Section 21)

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) be initiated by a judge, magistrate, the Director of Public Prosecutions or a law enforcement agency;

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

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

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

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

(g) 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 2; 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 23 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 24 is made Commonwealth country, the request shall identify the article or thing which is to be obtained and, so far as is reasonably , 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 Trinidad and Tobago for any necessary warrant or authorization to effect a seizure of that or thing.

5. Where a request such as is referred to in section 26, is made 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 28 is made 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 29 is made Commonwealth country, the request shall-

- (a) be accompanied by the certificate given by the Attorney General;
- (b) give details of the specified serious offence; and
- (c) state the grounds for suspecting that the relevant property is in Trinidad and Tobago 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 30 is made by a Commonwealth country, the request shall-

- (a) be accompanied by the certificate given by the Attorney General;
- (b) 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 35(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 31(1)(a)(ii)(A) or (B), be accompanied by a certificate given by the Attorney General to the effect 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 Trinidad and Tobago 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 order.

9. Where a request such as is referred to in section 31 is made by a Commonwealth country, the request shall-

(a) be accompanied by the certificate given by the Attorney General;

(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 35(2)(a), and identify the law under which the order was made;

(c) if relevant, state the grounds for believing that a 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 Trinidad and Tobago 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 Authority may require the central authority for that , to furnish further information relative to the request ,and*

if that information is not furnished within such period as the Authority considers reasonable, the request shall be deemed to have been withdrawn.

SECOND SCHEDULE

(Section 41)

FIRST COLUMN SECOND COLUMN

Written Law Amendment

The Strategic Services Agency Paragraph (c) of Section 6(2) Act, No. 24 of 1995 deleted.

Passed in the Senate this 14th day of October, 1997

N. COX

Clerk of the Senate

Passed in the House of Representatives this 6th day of November, 1997.

J. SAMPSON

Clerk of the House

House of Representatives amendments agreed to by the Senate this 7th day of November, 1997.

N. COX
Clerk of the Senate