

ANTIGUA AND BARBUDA



MUTUAL ASSISTANCE IN CRIMINAL MATTERS (AMENDMENT) BILL, 2020

No. of 2020

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AN ACT to amend the Mutual Assistance in Criminal Matters Act 1993 No.2 of 1993 to make provision to apply the Act to a country other than one included in the definition of Commonwealth country in section 3(1).

ENACTED by the Parliament of Antigua and Barbuda as follows:

1. Short title

This Act may be cited as the Mutual Assistance in Criminal Matters (Amendment) Act, 2020.

2. Interpretation

In this Act—

“**principal Act**” means the Mutual Assistance in Criminal Matters Act, 1993 No.2 of 1993.

3. Repeal and Substitution of Part IV

Part IV of the principal Act is repealed and the substituted by the following-

**“PART IV-APPLICATION OF ACTS TO COUNTRIES OTHER THAN
COMMONWEALTH COUNTRIES”**

29. Definitions for purposes of paragraph IV

In this Part

“country” means a country other than one included in the definition of Commonwealth country in section 3(1) and referred to in this Part as a “foreign country”.

“tainted property” means any property that has wholly or in part been acquired as a result of criminal activity, or directly derived from criminal activity.

“treaty” has the same meaning as defined in section 2 of the Ratification of treaties Act, Cap. 364.

30. Application and Enforcement of Treaties as law

(1) Any treaty ratified by an Act of Parliament in accordance with section 3(3) of the Ratification of Treaties Act, Cap. 364 shall be come, or be enforceable as part of the law of Antigua and Barbuda.

(2) The Attorney may by regulation-

(a) apply the provisions of this Act to implement and enforce the provisions of any treaty so ratified in the manner provided by section 3(3) of the Ratification of Treaties Act.

(b) extend the application of any other Act to a foreign country requesting desistance under treaty specified in Scheduled II.

(3) Regulations made pursuant to subsection (1) may be subject to such limitations, conditions, exceptions or qualifications as may be necessary to enable Antigua and Barbuda meet its obligations under the treaty.

(4) The Attorney General may, from time to time, amend Schedule II by adding to the Schedule a treaty ratified in the manner provided under section 3(3) of the Ratification of Treaties Act Cap. 364, or remove from that Schedule a treaty which Antigua and Barbuda has ceased to be a party.

“30- Enforcement of Treaties as Law

(1) The Attorney General may-

(a) make regulations to apply the provisions of this Act to enable the enforcement of the treaties specified in Schedule II.

(b) extend the application of any other Act so as to enable a request by a foreign country for assistance under this Act to be to be executed.

(2) Regulations made pursuant to subsection (1) may be subject to such limitations, conditions, exceptions or qualifications as may be necessary to enable Antigua and Barbuda execute a request for assistance by a foreign country under this Act.

(3) Regulations made under this section shall be approved by affirmative resolution of the Legislature.

“30A- Request for assistance

(1) A request by Antigua and Barbuda for assistance under this Part shall be made by the Attorney General.

(2) Every request to Antigua and Barbuda for assistance in criminal matters under this Part shall be made by the appropriate authority of a foreign country to the Attorney General or to a person authorised by the Attorney General in writing to receive the request.

- (3) If a foreign country requests assistance under this Part, the Attorney General must consider the following matters before deciding whether the request must be dealt with under this Part:
- (a) any assurance given by that country that it will entertain a similar request by Antigua and Barbuda for assistance in criminal matters;
 - (b) the seriousness of the offence to which the request relates;
- (4) In addition to the matters referred to in subsection (3), the Attorney General must also consider whether the request is in relation to assistance concerning the following matters.
- (a) the identification and location of persons charged with offences, or suspected on reasonable grounds, to have committed such offences;
 - (b) the obtaining of evidence, documents, or other articles;
 - (c) the production of documents and articles;
 - (d) the making of arrangements for persons to give evidence or assist in investigation;
 - (e) the service of documents
 - (f) the execution of a request for search and seizure; and
 - (g) the forfeiture of-
 - (i) Eainted property; and
 - (ii) property of persons who have unlawfully benefited from criminal activity and
 - (iii) instrument of crime, and
 - (iv) property that will satisfy all or part of a foreign pecuniary penalty order,
 - (h) the location of property that may be forfeited;
 - (i) the recovery of property to satisfy foreign pecuniary penalty orders,
 - (j) the restraining of dealing with property or the freezing of assets, that may be forfeited”

4. Miscellaneous Provisions amended

The principal Act is amended by the insertion after section 36 of the following-

“37. Ratifications of treaties specified in Schedule II

The Treaties specified in Schedule II are hereby ratified in accordance with section 3(3) of the Ratification of treaties Act, Cap. 364.

38. Executed requests prior to commencement of Act deemed appropriate.

All requests executed by the Competent Authority prior to the commencement of this Act are deemed to have been executed in accordance with this Act.”

5. Insertion of Schedule II

The principal Act is amended by—

- (a) renumbering the Schedule as “ Schedule 1,” and
- (b) inserting after Schedule I the following new Schedule.

SCHEDULE II

1. Mutual Legal Assistance in Criminal Matters Treaty (Done at St. John’s 31st October, 1996).
2. United Nations Convention Against Transnational Organized Crime, Done at New York on the 15th November, 2000.
3. Inter American Convention on Mutual Assistance in Criminal Matters.
4. United nations Convention against Corruption, adopted 31 October, 2003
5. The United Nations Convention Against Transnational Organised Crime, done at New York on 15th November, 2000.
6. The Protocol Against Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Conventions against Transnational Crime, done at New York on 15th November, 2000.
7. International Convention for the Suppression of the Financing of Terrorism adopted by the General Assembly of the United Nations at New York on 9th December, 1999.
8. Inter American Convention on Extradition done at Caracas, done at Curacao, Venezuela on February 25, 1981.
9. InterAmerican Convention on Mutual Assistance in Criminal Matters done at Nassau Commonwealth of Bahamas on 23rd May, 1992.
10. Inter American Convention Against Corruption, adopted on 29th March 1996.

Passed the House of Representatives on the day of , 2020.

Passed the Senate on the day of , 2020.

.....
Speaker.

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President.

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Clerk to the House of Representatives.

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Clerk to the Senate.

EXPLANATORY MEMORANDUM

This Bill seeks to amend the Mutual Assistance in Criminal Matters Act, 1993 No. 2 of 1993 to provide for a procedure to incorporate treaties enforceable as law in Antigua and Barbuda.

2. The amendment to the Mutual Assistance in Criminal Matters Act is necessitated by the requirement under the Ratification of Treaties Act to enforce treaties in Antigua and Barbuda as law only when such treaties have been enacted as law by an Act of Parliament.

3. The amendment proposes to provide a procedure in compliance with the provisions of section 3(3) of the Ratification of treaties Act, Cap. 364. The amendment proposes in clause to create a second Schedule in which would be specified treaties ratified by an Act of Parliament for the purpose of becoming, or be enforceable as part of the law of Antigua and Barbuda. The Bill would also authorise the Attorney General to amend Schedule II by regulation for the purpose of adding new treaties or removing treaties to which Antigua and Barbuda has ceased to be a party.

4. The amendment further authorises the Attorney General to accept for assistance, requests by a foreign country, if such request is in relation to the provision of assistance concerning the matters prescribed in section 30A (4)