

ANTIGUA AND BARBUDA



MUTUAL ASSISTANCE IN CRIMINAL MATTERS (AMENDMENT) BILL 2024

No. of 2024

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AN ACT to amend the Mutual Assistance in Criminal Matters Act 1993, No. 2 of 1993 to better provide for the rendering of mutual assistance to Non-Commonwealth countries and for other connected matters.

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 2024.

2. Interpretation

In this Act –

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

3. Amendment to Section 3 - Interpretation

The Principal Act is amended in section 3(1) as follows:

(a) by repealing paragraph (b) of the definition of “criminal matter” and replacing it with the following –

“(b) Part III in relation to Commonwealth Countries, and Part IV in relation to foreign countries –

- (i) an investigation certified by the central authority for that country to have commenced; or
- (ii) proceedings so certified to be criminal proceedings which have been instituted

in the country in respect of an offence committed, or suspected on reasonable grounds to have been committed, against the law of that country; and in any case includes forfeiture proceedings, proceedings to restrain dealing with property, proceedings for or suspected on reasonable grounds to have been committed,

against the law of that country; and in any case includes forfeiture proceedings, proceedings to restrain dealings with property, proceedings for the imposition of pecuniary penalties calculated by reference to the value of property, arising out of criminal proceedings whether such proceedings be characterised as criminal or civil proceedings;”

(b) by repealing paragraph (b) of the definition of “serious offence” and replacing it as follows –

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

- (i) for which a sentence such as is specified in paragraph (a)(i) may be, or is required to be imposed; or
- (ii) the value of the property derived or obtained from the commission of which is certified by the central authority for the country to be, or to be likely to be, not less than such amount as prescribed by or under the law of the country;”

4. Repeal and Substitution of Part IV

Part IV of the principal Act is repealed and substituted by the following –

“PART IV – REQUEST FOR ASSISTANCE IN RELATION TO FOREIGN COUNTRIES

29. Definitions for the purposes of Part IV

In this Part

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

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

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

30. Implementation of Treaty

(1) Assistance may be rendered under this Part to any Member State or territory that is a party to a treaty specified in Schedule II or to a foreign country from whom a request for assistance has been accepted by the competent authority in Antigua and Barbuda,

notwithstanding there is no formal treaty relation between Antigua and Barbuda and the requesting country.

(2) The Attorney General may, from time to time, amend Schedule II by adding a treaty to which Antigua and Barbuda has become a Party or by removing from the Schedule any treaty to which Antigua and Barbuda has, for whatever reason, ceased to be a party.”

30A. Request for assistance in relation to a foreign country

(1) Subject to the provisions of this section, Schedule III applies in relation to a request for assistance under this Part from a foreign country or by Antigua and Barbuda to a foreign country.

(2) A request for assistance may be made by the Attorney General for Antigua and Barbuda to the competent authority of a foreign country in relation to –

- (i) any matter for which Antigua and Barbuda may, under Part II of this Act, have requested assistance from a Commonwealth country;
- (ii) any matter contained in any Act bringing into effect a Treaty specified in Schedule II.

(3) The procedures outlined in this Act or any regulation for seeking request for assistance from a Commonwealth Country shall apply to a foreign country, with such modifications as may be necessary to fulfil the requirement of the law in the foreign country for rendering mutual assistance.

(4) A request for assistance by the competent authority of a foreign country shall be made to the Attorney General of Antigua and Barbuda for mutual assistance in respect of –

- (i) any matter for which a request for assistance may be made by a Commonwealth country to the competent authority in Antigua and Barbuda; or
- (ii) the enforcement of any matter provided for in any Act bringing into effect a treaty specified in Schedule II.

(5) Notwithstanding the provisions of subsection (3), the competent authority in Antigua and Barbuda may accept a request for assistance from a foreign country that is not a party to any treaty specified in Schedule II, provided the subject of the request is one for which Antigua and Barbuda would have been able to render assistance, if the foreign country was a Party to one of the specified treaties.

(6) 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;

(7) In addition to the matters referred to in subsection (5), the Attorney General must also consider whether the request is in relation to assistance concerning the following matter –

- (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) tainted property;
 - (ii) property of persons who have unlawfully benefited from criminal activity
 - (iii) instrument of crime, or
 - (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
- (k) whether Antigua and Barbuda is in a position to grant assistance without compromising national security and the welfare of its citizens.

(8) The Attorney General may, as provided in section 36(2), extend the application of any other Act in relation to a foreign country so specified, and this Act and, as the case may be, the other Act, shall apply accordingly.”

5. Amendment to section 31 – Certificates given by the Attorney General

The Principal Act is amended in section 31(1)(a) by inserting after the words “Commonwealth country” the words, “or foreign country”.

6. Repeal and Replacement of section 32 - Proof

The Principal Act is amended by repealing Section 32 and replacing it with the following –

“32. Proof

(1) In any relevant proceedings a document that is duly authenticated is admissible in evidence.

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

–

- (a) signed or certified by a Judge or Magistrate of a Commonwealth or foreign country making a request;
- (b) authenticated by the oath of a witness, or a public officer of a Commonwealth or foreign country making a request; or
- (c) Sealed with an official public seal of a Minister of State or of a department or public office of the Government of such a country.

(3) In any relevant proceedings, a certificate purporting to have been given –

- (a) by the central authority of a Commonwealth or foreign country certifying the matters referred to in –
 - (i) paragraph (b)(i) or (ii) of the definition of "criminal matter" in section 3 (1); or
 - (ii) paragraph (b) (ii) of the definition of "Serious offence" in section 3 (1); or
- (b) by a legally qualified person for the purposes of a request for assistance in either a Commonwealth or a foreign country,

shall be received as evidence of the matter duly certified by the certificate.

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

7. Repeal and replacement of Schedule II

The Principal Act is amended by repealing Schedule II and replacing it with the following –

SCHEDULE II*(Sections 30, 30A(3))***TREATIES UNDER WHICH MUTUAL ASSISTANCE MAY BE RENDERED**

A. Mutual legal assistance in criminal matters may be granted to any Member State or Territory that is a Party to any treaty specified below –

1. Inter-American Convention on Extradition done at Caracas, Venezuela on 25th February, 1981
2. Inter-American Convention on Mutual Assistance in Criminal Matters adopted at Nassau, Commonwealth of Bahamas on 23rd May, 1992
3. Inter-American Convention against Corruption, adopted on 29th March 1996
4. Mutual Legal Assistance in Criminal Matters Treaty done at St. John's, Antigua on 31st October, 1996
5. International Convention on the Suppression of the Financing of Terrorism adopted by the General Assembly of the United Nations at New York on 9th December, 1999
6. United Nations Convention against Transnational Organized Crime, done at New York on 15th November, 2000
7. 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
8. United Nations Convention against Corruption adopted 31st October 2003

B. The provisions of any Act, bringing into effect the obligations of any Treaty referred to in A above, shall be enforced under this Act in rendering mutual legal assistance to Commonwealth countries as well as foreign countries.

8. Insertion of Schedule III

The principal Act is amended by inserting after Schedule II the following new Schedule

SCHEDULE III

FORM OF REQUEST FOR ASSISTANCE IN RELATION TO A FOREIGN COUNTRY

(Section 30A)

1. (1) Assistance may be provided to a foreign country, on request, in accordance with these Regulations.
- (2) A request for assistance under this Act made by a foreign country shall:
 - (a) Specify the assistance requested;
 - (b) Identify the person, agency or authority that initiated the request;
 - (c) State any period within which the country wishes the request to be complied with;
 - (d) The subject-matter and nature of the investigation or proceeding and a summary of the relevant facts;
 - (e) The purpose for which the assistance is being sought;
 - (f) If the request would involve travel by any person from Antigua and Barbuda 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.
- (3) Where criminal proceedings have been instituted, every request for assistance shall specify:
 - (a) The court exercising jurisdiction in the proceedings or any other law enforcement agency or authority conducting such proceedings;
 - (b) The identity of the accused person unless prohibited by the law of the relevant foreign state;
 - (c) The offences to which the request relates and a summary of the relevant facts;
 - (d) The stage reached in the proceedings and dates fixed for further stages.
2. (1) Where the assistance requested by a foreign country is for the purposes of an investigation, the request
 - (a) Shall be accompanied by the certificate, in relation to the investigation, that is referred to in paragraph (b)(i) of the definition of “criminal matter” in section 2(1); and

- (b) shall state when the investigation commenced and the nature of the investigation.
 - (2) Where the assistance requested by a foreign country is for the purposes of proceedings, the request
 - (a) shall be accompanied by the certificate, in relation to the proceedings, that is referred to in paragraph (b)(i) of the definition of “criminal matter” in section 2(1); and
 - (b) Shall
 - (i) give details of the proceedings and the offence concerned, including a summary of the known facts;
 - (ii) give the identity, if known, of the person to whom the proceedings relate or would relate; and
 - (iii) state when the proceedings were instituted, the stage reached in the proceedings and, where applicable, identify the court exercising jurisdiction.
- 3. Where a request is made requesting assistance by Antigua and Barbuda in obtaining evidence or information relevant to any criminal matter in relation to the foreign country making the request, and the request is accepted, the request shall
 - (a) give details of the proceedings 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 or her 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 exceptions under the law of the country in relation to obtaining evidence or information by the means proposed in the request.
- 4. Where a request is made requesting assistance by Antigua and Barbuda in obtaining, by search and seizure if necessary, an article or thing in Antigua and Barbuda for the purposes of, or in connection with, any criminal matter in relation to the foreign country making the request, and the request is accepted, the request shall—
 - (a) Identify the article or thing which is to be obtained, and
 - (b) So far as is reasonably practicable, shall contain all information available to the central authority for the country which may be required to be adduced in an application under the law of Antigua and Barbuda for any necessary warrant or authorisation to effect a seizure of that article or thing.
- 5. Where a request is made requesting Antigua and Barbuda to transfer a prisoner in Antigua and Barbuda to the foreign country making the request to give or provide evidence or assistance relevant to any criminal matter in relation to that foreign country, and the request is accepted, 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 is made requesting assistance by Antigua and Barbuda in effecting the service of a document on a person or on an authority in Antigua and Barbuda for the purposes of, or in connection with, any criminal matter in relation to the foreign country making the request, and the request is accepted, 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. (1) This part applies where—
 - (a) the central authority for a foreign country transmits to the central authority for Antigua and Barbuda a certificate given, for the purposes of a request for assistance under this section, by a person legally qualified in the foreign country, to the effect that in the country a named person
 - (i) has been charged with, or convicted of a specified serious offence; or
 - (ii) is suspected, on reasonable grounds, of having committed such a specified offence;

- (b) property derived or obtained, directly or indirectly, from the commission of that offence is suspected, on reasonable grounds, to be in Antigua and Barbuda;
 - (c) a request is transmitted requesting assistance by Antigua and Barbuda in identifying, locating or assessing the value or amount of that property; and
 - (d) the request is accepted.
- (2) Where this section applies, the central authority for Antigua and Barbuda
 - (a) shall use its best endeavours to give the assistance requested and, doing so, shall invoke such powers and procedures as are available for that purpose; and
 - (b) shall inform the central authority for the foreign country making the request as to the outcome of those endeavours.
- (3) Where a request is made by a foreign country in accordance to this part, the request shall
 - (a) give details of the specified serious offence; and
 - (b) state the grounds for suspecting that the relevant property is in Antigua and Barbuda and give information in the possession;of that country which will assist in identifying or locating that property.

8. (1) This part applies where—

- (a) an order is made in a foreign country
 - (i) confiscating 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 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 or the pecuniary penalty under the order, or to which the order would apply, as the case may be, is suspected, on reasonable grounds, to be in Antigua and Barbuda;
 - (c) a request is transmitted requesting that the order concerned be enforced in accordance with the law of Antigua and Barbuda and that, to that end, Antigua and Barbuda give appropriate assistance; and
 - (d) the request is accepted.
- (2) Where this part applies, the Attorney General shall cause an application to be

made to the High Court in accordance with the rules of the Supreme Court for the registration of the order concerned.

- (3) On application made pursuant to subsection (2) the High Court shall register the order if it is satisfied
 - (a) that at the time of registration the order is in force; and
 - (b) in the case of an order such as is referred to in subsection (1) (a)(ii),
 - (i) that the person against whom the order was made appeared in the proceedings or, if he or she did not do so, that he or she received notice of the proceedings in sufficient time to enable him or her to defend them, or that he or she had died or absconded before such notice could be given to him or her; and
 - (ii) that the order is not subject to appeal.
- (4) Where an order is registered in accordance with this part, a copy of any amendments made to the order (whether before or after registration) may be registered in the same way as the order and the amendments do not, for the purpose of this Act, have effect until they are registered.
- (5) An order or an amendment of an order shall be registered by the registration, in accordance with the Rules of the 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 32 (2)(a).
- (6) The High Court shall, after appropriate notice has been given to the central authority for Antigua and Barbuda cancel the registration of an order in accordance with this part if it appears to the court to have ceased to have effect in the foreign country that made the request for assistance.
- (7) Where a request is made by a foreign country in accordance to this part, the request shall
 - (a) be accompanied by a copy of the relevant order made in the country
 - (i) sealed by the court that made the order; and
 - (ii) duly authenticated; and identify the law under which the order was made;
 - (b) give details of the specified serious offence;
 - (c) state the grounds for suspecting that the relevant property is in Antigua and Barbuda and give any information in the possession of the country which will assist in identifying or locating the property;
 - (d) give particulars of any amount paid or recovered under the relevant order.

9. (1) This part applies where—

- (a) The central authority for a foreign country may transmit to the central authority for Antigua and Barbuda a certificate given, for the purposes of a request for assistance, by a person legally qualified in the foreign country, to the effect that in the country
 - (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, as the case may be, will have, the effect under the law of the country of confiscating property derived or obtained, directly or indirectly, from the commission of the serious offence, or of imposing on that named person a pecuniary penalty calculated by reference to 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, as the case may be, under such an order if made, is suspected, on reasonable grounds, to be in Antigua and Barbuda;
 - (c) a request is transmitted requesting that an order be made, in accordance with the laws of Antigua and Barbuda, restraining dealings with property and that, to that end, Antigua and Barbuda give appropriate assistance; and
 - (d) the request is accepted.
- (2) Where this part applies, the Attorney General shall cause such application to be made as he or she deems necessary to secure the making of an order of the kind requested.
- (3) Where a request is made by a foreign country in accordance to this part, the request shall
- (a) 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; and identify the law under which the order was made;
 - (b) if relevant, state the grounds for believing that an order is likely to be made;
 - (c) give details of the serious offence in respect of which the order was or, as the case may be, is likely to be made;
 - (d) state the grounds for suspecting that the relevant property is in Antigua and Barbuda and give any information in the possession of the country which will assist in identifying or locating the property.

9. Pending requests for mutual assistance

Any pending requests for mutual assistance from Antigua and Barbuda shall be deemed to have been made in accordance with the provisions of this Act.

Passed by the House of Representatives
on the _____, 2024.

Passed by the Senate
on the _____, 2024

Speaker.

President.

Clerk to the House of Representatives.

Clerk to the Senate.

EXPLANATORY MEMORANDUM

This Bill seeks to amend the Mutual Assistance in Criminal Matters Act 1993, No. 2 of 1993 to better provide for the rendering of assistance to a foreign country.

The Bill contains 9 clauses as follows:

Clause 1 and 2 – Short title and Interpretation.

Clause 3 – Amendment of section 3 to include in the definition of “criminal matters” and “serious offence” a reference to proceedings in a foreign country.

Clause 4 – Repeal and Substitution of Part IV. This amendment is required to tighten the procedures for rendering assistance to a foreign country. The term foreign country is defined and refers to any country other than a Commonwealth country. This clause also introduces Schedule II list of Treaties under which Mutual Legal Assistance may be granted.

Clause 5 – Certificates given by the Attorney General has been amended to make the provision applicable to foreign countries.

Clause 6 Proof – This governs the conditions under which a document from a Commonwealth country and a foreign country may be considered authentic.

Clause 7 repeals and replaces the Scheduled List of Treaties under which request for Assistance can be requested. Any State that is a Party to any of the Treaty listed in Schedule II is to be treated as a Commonwealth Territory for the purpose of rendering mutual assistance. All of the Treaties mentioned have been ratified by Antigua and Barbuda.

Clause 8 Insertion of Schedule III – The newly inserted Schedule outlines the procedure that governs providing requests to a foreign country. It speaks to accepting a request, as well as, refusing a request for assistance from a foreign country.

Clause 9 pending requests for mutual assistance. This makes the amendment applicable to all pending requests from a foreign country to Antigua and Barbuda for mutual assistance.

Hon. Steadroy Benjamin
Minister of Justice, Legal Affairs, labour and Immigration