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Second Session Eighth Parliament Republic of
Trinidad and Tobago



REPUBLIC OF TRINIDAD AND TOBAGO

Act No. 14 of 2004

[L.S.]

AN ACT to amend the Mutual Assistance in Criminal
Matters Act, 1997

[Assented to 28th April, 2004]

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

PART I

PRELIMINARY

1. This Act may be cited as the Mutual Assistance in Short title
Criminal Matters (Amendment) Act, 2004.

- Commencement **2.** This Act shall come into force on a date to be fixed by the President by Proclamation.
- Interpretation Act
No. 39 of 1997 **3.** In this Act, “the Act” means the Mutual Assistance in Criminal Matters Act, 1997.
- Section 2 amended **4.** The Act is amended in section 2(1) by inserting in their appropriate alphabetical order the following new definitions:
- “civil offence” has the same meaning assigned to it in section 78(2) of the
Chap. 14:01 Defence Act;
- “dangerous drug” has the same meaning assigned to it in section 3(1) of the
Act No. 38 Dangerous Drugs Act, 1991;
of 1991
- “oath” includes affirmation or declaration;
- “Rules Committee” has the same meaning assigned to it in section 77 of the
Chap. 4:01 Supreme Court of Judicature Act.”.
- Section 25 amended **5.** Section 25(4) of the Act is amended by deleting the word “Force” and substituting the word “Service”.
- 5A.** The Act is amended by deleting the words “Central Authority” and substituting the words “central authority”.
- Part V renumbered
and new Part V
inserted **6.** The Act is amended by renumbering Part V as Part VI, and inserting after Part IV the following new Part:
- “PART V**
CRIMINAL PROCEEDINGS AND INVESTIGATIONS
Mutual Service of Process
- 33A. (1)** This section shall apply where the Central Authority receives from the central authority of a Commonwealth country or such similar authority of a non-commonwealth country—
- (a) a summons or other process requiring a person to appear as a
- Service of
overseas
process in
Trinidad and
Tobago

defendant or attend as a witness in criminal proceedings in the Commonwealth or non-commonwealth country; or

- (b) a document issued by a court exercising criminal jurisdiction in the Commonwealth or non-commonwealth country and recording a decision of the court made in the exercise of that jurisdiction,

together with a request for that process or document to be served on a person in Trinidad and Tobago.

(2) The Central Authority shall cause the process or document to be served by post or, if the request is for personal service, direct the Commissioner of Police to cause it to be personally served on the person concerned.

(3) Service of a process or document under this section shall not impose any obligation on any person under the law of Trinidad and Tobago to comply with it.

(4) A process or document served under this section shall be accompanied by a notice—

- (a) stating the effect of subsection (3);
- (b) indicating that the person on whom it is to be served may seek legal advice as to the possible consequence if he fails to comply with the process under the law of the Commonwealth or non-commonwealth country where it was issued; and

(c) indicating that under that law he may not, as a witness, be accorded the same rights and privileges as would be accorded to him in criminal proceedings in Trinidad and Tobago.

(5) Where, under this section, the Commissioner of Police is directed to cause any process or document to be served, he shall use his best endeavours to have it served and immediately transmit to the Central Authority if the process or document is—

- (a) served, an affidavit or other certificate of service, stating how and when it was served; or
- (b) not served, an affidavit or other certificate of service, stating that fact and the reason.

Service of
process
issued in
Trinidad and
Tobago
overseas

33B. (1) Notwithstanding that a person in question is outside Trinidad and Tobago, a process requiring him to—

- (a) appear before a court in Trinidad and Tobago if he is charged with an offence; or
- (b) attend before a court in Trinidad and Tobago for the purpose of giving evidence in criminal proceedings,

may be issued or made and served in a Commonwealth or non-commonwealth country in accordance with arrangements made by the Central Authority.

(2) Service of any process in a Commonwealth or non-commonwealth country by virtue of this section shall not impose any obligation under the law of Trinidad and Tobago to comply with it and accordingly failure to comply shall not constitute contempt of any court nor is it a ground for issuing a warrant to secure the attendance of the person in question.

(3) Subsection (2) is without prejudice to the service of any process, with the normal legal consequences for non-compliance, on the person in question if subsequently effected in Trinidad and Tobago.

(4) For the purpose of this section, “process” includes a summons, order, subpoena or other similar document issued by a court requiring a person to attend the court in relation to criminal proceedings.

Mutual Provision of Evidence

Overseas
evidence for
use in
Trinidad and
Tobago

33C. (1) On an application by the Director of Public Prosecutions, a Judge or Magistrate may issue a letter of request requesting assistance in obtaining such evidence as is specified in the letter of request for use in the investigation or prosecution of an offence.

(2) Upon the grant of the letter of request under subsection (1), the Director of Public Prosecutions shall forward it to the Central Authority for transmission to the central authority of the Commonwealth country or such similar authority of the non-commonwealth country as specified in the letter.

(3) Evidence obtained by virtue of a letter of request under this section shall not, without the consent of the central authority of the Commonwealth country or such similar authority of the non-commonwealth country, be used for any purpose other than that specified in the letter.

(4) When any evidence obtained pursuant to a letter of request is no longer required for that purpose, or for any other purpose for which such consent has been obtained, it shall be returned to an authority as is mentioned in subsection (2), unless that authority indicates that the evidence need not be returned.

(5) In this section and section 33D, “evidence” includes documents and other articles.

Trinidad and
Tobago
evidence for
use overseas

33D. (1) This section shall apply where the Central Authority receives from the central authority of a Commonwealth country or such similar authority of a non-commonwealth country a request for assistance in obtaining evidence in Trinidad and Tobago in connection with criminal proceedings that have been instituted, or a criminal investigation that is being carried on, in that country.

(2) If the Central Authority is satisfied—

(a) that an offence under the law of the country in question has been committed or that there are reasonable grounds for suspecting that such an offence has been committed; and

(b) that proceedings in respect of that offence have been instituted in that country or that an investigation into that offence is being carried on there,

it may make a request in writing to the Chief Justice, who may nominate and direct a court in Trinidad and Tobago to take the evidence to which the request relates.

(3) For the purpose of satisfying itself as to the matters mentioned in subsection (2), the Central Authority shall regard as conclusive a certificate issued by the central authority of the Commonwealth country or such similar authority of the non-commonwealth country, in the country in question as appears to it to be appropriate.

Third
Schedule

(4) The Third Schedule shall have effect with respect to the proceedings before a nominated court in pursuance of a direction made under subsection (2), where that court is a Magistrates' Court.

Form of
testimony

33E. (1) For the purpose of this Part, evidence may be taken or recorded—

- (a) in writing;
- (b) on audio tape;
- (c) on video tape;
- (d) by any other electronic or mechanical means; or
- (e) by means of technology that permits the virtual presence of the person in Trinidad and Tobago.

(2) Evidence taken or recorded under this Part may be taken or recorded *in camera*.

(3) Where evidence is taken or recorded in writing under this Part, it need not be in the form of an affidavit.

(4) Where the evidence has been made by means of video or other means which permits the virtual presence of the person in a Commonwealth or non-commonwealth country that evidence is deemed to have been given in Trinidad and Tobago.

(5) For the avoidance of doubt, a person mentioned in subsection (4) may be cross-examined and re-examined and all the evidence shall form part of the evidence under subsection (1).

(6) The evidence shall be endorsed with, or accompanied by, a certificate to the effect that it is an accurate record of the evidence given and it was taken in a manner specified by the laws of the Commonwealth or non-commonwealth country.

(7) The certificate shall be signed or certified by a Judge, Magistrate or court officer of the Commonwealth or non-commonwealth country to which the request was made.

(8) Evidence taken or recorded in accordance with this section is admissible in any court in Trinidad and Tobago without proof of the signature, seal or due authorization and such evidence shall be effectual as if taken or recorded or done by or before any lawful authority in Trinidad and Tobago.

Admission of
foreign
evidence

33F. (1) Where evidence is received upon a request made under this Act and is certified by a Judge, Magistrate or court officer of the Commonwealth or non-commonwealth country, such evidence is admissible in any court in Trinidad and Tobago without proof of the due certification and shall be effectual as if recorded or taken by or before any lawful authority in Trinidad and Tobago.

(2) Nothing in this section shall prejudice the admission in evidence of any document that is admissible in evidence apart from this section.

Supplementary

Rules
of Court

33G. (1) The Rules Committee may make rules of court that it considers necessary or expedient to give effect to the purpose of this Part.

(2) Rules made for the purpose of this Part may, in particular, make provision with respect to the persons entitled to appear or take part in the proceedings to which this Part applies for excluding the public from any such proceedings.

(3) This section is without prejudice to the generality of any existing power to make rules.

Application to
proceedings
involving
defence
personnel

33H. Section 33B applies also to a summons requiring a person charged with a civil offence to appear before a court-martial or to attend before such a court for the purpose of giving evidence in proceedings for such an offence.”.

Section 35 amended

7. The Act is amended in section 35(2) by—

- (a) deleting the word “or” in paragraph (b);
- (b) deleting the full stop in paragraph (c) and inserting the words “; or” ; and
- (c) inserting after paragraph (c) the following new paragraph:
 - “(d) proved by an affidavit sworn, or statutory declaration made, before a commissioner or person authorized to take affidavits or statutory declarations in such country.”.

7A. The Act is amended in Section 37 by deleting the word “10” and substituting the word “12”.

Third Schedule
inserted

8. The Act is amended by inserting after the Second Schedule the following new Schedule:

“THIRD SCHEDULE

[Sec. 33D(4)]

TRINIDAD AND TOBAGO EVIDENCE FOR
USE OVERSEAS:

PROCEEDINGS OF NOMINATED COURT

Securing attendance of witnesses

1. The court shall have the same powers for securing the attendance of a witness for the purpose of the proceedings before it as it has for the purpose of other proceedings before it.

Power to administer oaths

2. The court may, in the proceedings, take evidence on oath, and both the questions and answers shall be recorded.

Privilege of witnesses

3.(1) A person shall not be compelled to give, in the proceedings, any evidence which he could not be compelled to give—

- (a) in criminal proceedings in Trinidad and Tobago;
- or

(b) subject to subparagraph (2), in criminal proceedings in the Commonwealth or non-commonwealth country from which the request for the evidence has come.

(2) Subparagraph (1)(b) shall not apply unless the claim of the person questioned to be exempt from giving the evidence is conceded by the central authority of a Commonwealth country or such similar authority of a non-commonwealth country that made the request.

(3) Where, under subparagraph (2), a claim is made by a person and it is not conceded, he may, subject to this paragraph, be required to give the evidence to which the claim relates, but the evidence shall not be transmitted to the central authority of the Commonwealth country or such similar authority of the non-commonwealth country which requested it, if on an application to a court in the country in question, that court upholds the claim.

(4) Without prejudice to subparagraph (1), a person shall not be compelled under this Schedule to give any evidence if his doing so would be prejudicial to the security of Trinidad and Tobago and a certificate signed by or on behalf of the Minister of National Security to the effect that it would be so prejudicial for that person to do so shall be conclusive evidence of that fact.

(5) Without prejudice to subparagraph (1), a person shall not be compelled under this Schedule to give any evidence in his capacity as a public officer or an officer of the State.

(6) In this paragraph reference to giving evidence includes reference to answering any question and to producing any document or other article and the reference in subparagraph (3) to the transmission of evidence given by a person shall be construed accordingly.

4. (1) The evidence taken or received by the court shall be furnished to the Director of Public Prosecutions who shall forward it to the Central Authority for transmission to the central authority of the Commonwealth country or such similar authority of the non-commonwealth country that made the request.

(2) If in order to comply with the request it is necessary for the evidence to be accompanied by a certificate, affidavit or other verifying documents, the court shall also furnish for transmission such document of that nature as may be specified in the notice nominating the court.

(3) Where the evidence consists of a document the original or a copy shall be transmitted, and where it consists of any other article, the article itself or a description, photograph or other representation of it shall be transmitted, as may be necessary in order to comply with the request.

Supplementary

5. For the avoidance of doubt, sections 29 and 30 of the Evidence Act shall not apply to these proceedings.

6. No order for costs shall be made in the proceedings.”.

Passed in the Senate this 6th day of April, 2004.

D. DOLLY
Clerk of the Senate

Passed in the House of Representatives this 23rd day of April, 2004.

J. SAMPSON-JACENT
Clerk of the House