

LEGAL NOTICE NO. 64

REPUBLIC OF TRINIDAD AND TOBAGO

THE MUTUAL ASSISTANCE IN CRIMINAL MATTERS ACT, 1997

ORDER

MADE BY THE ATTORNEY GENERAL UNDER SECTION 40 OF THE
MUTUAL ASSISTANCE IN CRIMINAL MATTERS ACT, 1997

THE MUTUAL ASSISTANCE (AGREEMENT BETWEEN
TRINIDAD AND TOBAGO AND THE UNITED KINGDOM)
ORDER, 2000

1. This Order may be cited as the Mutual Assistance (Agreement ^{Citation}
between Trinidad and Tobago and the United Kingdom) Order, 2000.

2. The Agreement between the Government of the Republic of ^{Agreement}
Trinidad and Tobago and the Government of the United Kingdom of
Great Britain and Northern Ireland concerning Mutual Assistance in
relation to crime, specified in the Schedule, shall have the force of Law ^{Schedule}
in Trinidad and Tobago.

SCHEDULE

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF
TRINIDAD AND TOBAGO AND THE GOVERNMENT OF THE
UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN
IRELAND CONCERNING MUTUAL ASSISTANCE IN RELATION TO
CRIME

The Government of the Republic of Trinidad and Tobago and the Government
of the United Kingdom of Great Britain and Northern Ireland;

Desiring to intensify their collaboration in the investigation, prosecution and
suppression of serious crime through co-operation and mutual legal assistance in
criminal matters;

Have agreed as follows:

Article 1

SCOPE OF APPLICATION

1. The parties shall, in accordance with this Agreement, grant to each other
assistance in investigations and proceedings in respect of crime including the
tracing, restraint and confiscation of the proceeds and instruments of crime.

2. This Agreement shall be without prejudice to other obligations between
the Parties pursuant to other agreements and shall not prevent the Parties or
their law enforcement agencies from providing assistance to each other pursuant
to other agreements or formal or informal arrangements.

Article 2

DEFINITIONS

For the purposes of this Agreement:

- (a) "confiscation" means any measure resulting in the final deprivation of property including forfeiture and "confiscation order" includes a forfeiture order;
- (b) "instruments of crime" means any property which is or is intended to be used in connection with the commission of an offense;
- (c) "proceeds of crime" means any property derived or realized, directly or indirectly, by any person as a result of criminal activity, or the value of any such property;
- (d) "property" includes money and all kinds of moveable or immovable and tangible or intangible property, and includes any interest in such property;
- (e) "restraint of property" means any legal measure for the prevention of dealing in or transfer or disposal of property;
- (f) "order" includes any order, decree, direction or judgement of a court, or any part thereof, however described.

Article 3

CENTRAL AUTHORITIES

1. Requests for assistance under this Agreement shall be made through the Central Authorities of the Parties.
2. In the Republic of Trinidad and Tobago the Central Authority is the Attorney General or a person designated by him. In the United Kingdom the Central Authority is the Secretary of State for the Home Department or a person designated by him.

Article 4

CONTENTS OF REQUESTS

1. Requests shall be made in writing. In urgent circumstances, or where otherwise permitted by the Requested Party, requests may be made by facsimile transmission or other electronic method but shall be confirmed in writing as soon as possible thereafter.
2. Requests for assistance shall include a statement of:
 - (a) the name of the competent authority conducting the investigation or proceedings to which the request relates;
 - (b) the matters, including the relevant facts and laws, to which the investigation or proceedings relate;
 - (c) the purpose for which the request is made and the nature of the assistance sought;
 - (d) details of any particular procedure or requirement that the Requesting Party wishes to be followed;
 - (e) any time limit within which compliance with the request is desired;
 - (f) the identity, nationality and location of the person or persons who are the subject of the investigation or proceedings.

3. If the Requested Party considers that the Information contained in the request is not sufficient to enable the request to be dealt with, that Party may request that additional information be furnished by the Requesting Party.

Articles 5

EXECUTION OF REQUESTS

1. A request shall be executed as permitted by and in accordance with the domestic law or the Requested Party and, to the extent not incompatible with such law, in accordance with any requirements specified in the request.

2. The Requested Party shall inform the Requesting Party of any circumstances which are likely to cause a significant delay in responding to the request.

3. The Requested Party shall inform the Requesting Party of a decision of the Requested Party not to comply in whole or in part with a request for assistance and the reason for the decision.

4. The Requesting Party shall inform the Requested Party of any circumstances which may affect the request or its execution or which may make it inappropriate to proceed with giving effect to it.

5. Any action taken under this Article shall be carried out as promptly as possible.

Article 6

REFUSAL OF ASSISTANCE

1. Assistance may be refused if:

- (a) the Requested Party is of the opinion that the request, if granted, would seriously impair its sovereignty, security, national interest or would be unreasonable on other grounds; or
- (b) provision of the assistance sought could prejudice an investigation or proceedings in the territory of the Requested Party, prejudice the safety of any person or impose an excessive burden on the resources of that Party; or
- (c) the action sought is contrary to principles of the law of the Requested Party; or
- (d) the request concerns restraint or confiscation of proceeds or instruments of an activity which, had it occurred within the jurisdiction of the Requested Party, would not have been an activity in respect of which a confiscation order could be made; or
- (e) the request relates to an offense in respect of which the person has been finally acquitted, pardoned, or made subject to an amnesty; or
- (f) the request relates to a confiscation order which has been satisfied.

2. Before refusing to grant a request for assistance, the Requested Party shall consider whether assistance may be granted subject to such conditions as it deems necessary. If the Requesting Party accepts assistance subject to conditions, it shall comply with such conditions.

Article 7

CONFIDENTIALITY AND RESTRICTING USE OF EVIDENCE AND INFORMATION

1. The Requested Party shall, to any extent requested, keep confidential a request for assistance, its contents and any supporting documents, and the fact of granting such assistance except to the extent that disclosure is necessary to execute the request. If the request cannot be executed without breaching confidentiality, the Requested Party shall so inform the Requesting Party which shall then determine the extent to which it wishes the request to be executed.

2. The Requesting Party shall, if so requested, keep confidential any evidence and information provided by the Requested Party, except to the extent that its disclosure is necessary for the proceeding described in the request.

3. The Requesting Party shall not use for purposes other than those stated in a request evidence or information obtained as a result of such a request, without the prior consent of the Requested Party.

Article 8

INFORMATION AND EVIDENCE

1. The Parties may make requests for information and evidence for the purpose of an investigation or proceedings including the tracing, restraint and confiscation of the proceeds and instruments of crime.

2. Assistance which may be given under this Article includes but is not limited to:

- (a) providing information and documents or copies thereof;
- (b) taking evidence or statements of witnesses or other persons and producing documents, records, or other material for transmission to the Requesting Party;
- (c) searching for, seizing and delivering to the Requesting Party any relevant material, and providing such information as may be required by the requesting party concerning the place of seizure, the circumstances of seizure and the subsequent custody of the material seized prior to delivery;
- (d) the transfer of persons, including persons in custody, for the purpose of assisting in investigations or giving evidence in proceedings.

3. The Parties shall consult to determine the terms and conditions under which a persons shall be transferred pursuant to paragraph (2)(d) above.

4. A person requested to testify and produce documents, records or objects in the territory of the Requested Party shall be compelled, if necessary, to appear and testify and produce such documents, records or objects, to the extent permitted by the law of the Requested Party.

5. The Requested Party may postpone the delivery of material requested if such material is required for proceedings in respect of criminal or civil matters in its territory. The Requested Party shall, upon request, provide certified copies of documents.

6. Where required by the Requested Party the Requesting Party shall return material provided under this Article when no longer needed for the purpose for which it was supplied.

Article 9

RESTRAINT

1. In accordance with the provisions of this Article, a Party may request the restraint of property to ensure that it is available for the purpose of enforcement of a confiscation order which has been or may be made.

2. In addition to the requirements of Article 4(2), a request made under this Article shall include:

- (a) (i) in the case of a request from the Republic of Trinidad and Tobago, a certificate issued by the Central Authority stating that an information or complaint has been laid before a magistrate, or that a person has been charged with an offence, or a bill of indictment has been preferred, or a warrant of arrest has been executed against a person, or that one of these measures is to be taken and, if so, when;
- (ii) in the case of a request from the United Kingdom, a certificate issued by the Central Authority stating that an information has been laid before a Justice of the Peace, or a person has been charged with an offence, or a bill of indictment has been preferred, or a petition warrant has been granted, or that one of these measures is to be taken and, if so, when;
- (b) either:
 - (i) where a confiscation order has not been made, a summary of the facts of the case (including, to the extent known, the date, place and circumstances of the offence and information about proceeds derived from it), a copy of the relevant enactments of the Requesting Party under which a confiscation order may be made in the case, and a copy of any relevant restraint order; or
 - (ii) where a confiscation order has been made, a certified copy of that order;
- (c) to the extent possible, a description of the property in respect of which restraint is sought or which is believed to be available for restraint;
- (d) details of the person or persons holding the property;
- (e) the the connection between the property and the person against whom the proceedings have been or are to be instituted;
- (f) where known, details of any link between the property held in the territory of the Requested Party and the proceeds of criminal conduct;
- (g) where known, details of interests in the property of any person other than the person against whom the proceedings have been or are to be instituted; and
- (h) where appropriate, a statement of the amount which it is desired to restrain and the grounds on which this amount is estimated.

3. Each Party shall advise the other promptly of any appeal or variation made in respect of any restraint action requested or taken.

4. The Requested Party may impose a condition limiting the duration of the restraint. The Requested Party shall notify the Requesting Party promptly of any such condition, and the reason for it.

Article 10

ENFORCEMENT OF CONFISCATION ORDERS

1. This Article applies to an order, made by a court of the Requesting Party, for the purpose of confiscation the proceeds or instruments of crime.

2. In addition to the requirements of Article 4(2), a request for assistance in enforcing such an order shall be accompanied by an original order or by a copy of the order, certified by a judge or officer of the court that made the order or by the Central Authority, and shall contain information indicating:

- (a) that the order is enforceable in the territory of the Requesting Party;
- (b) that no appeal is pending in respect of the order or any conviction to which that order may relate;
- (c) that the person against whom the order was made appeared in the court proceedings or, if not, received notice thereof, in accordance with the law of the Requesting Party, in sufficient time to defend them;
- (d) where appropriate, property available for enforcement or the property in respect of which assistance is sought, details of the person or persons holding that property and the relationship between that property and the person against whom the order has been made;
- (e) where appropriate, and where known, the interest in the property of any person other than the person against whom the order has been made;
- (f) where appropriate, the amount which it is desired to realize as a result of such assistance; and
- (g) where known, details of any link between the property held in the territory of the Requested Party and the proceeds of criminal conduct.

3. Where the law of the Requested Party does not permit effect to be given to a request in full, the Requested Party shall give effect to it insofar as it is able to do so, and shall inform the Requesting Party accordingly.

4. Property obtain by the Requested Party in the enforcement of an order to which this Article applies shall remain with that Party, unless otherwise agreed between the Parties.

5. In the case of property which represents the proceeds of drug trafficking, the Parties undertake to consult with each other to determine whether a share of that property may be returned to the Requesting Party.

Article II

COSTS

The Requested Party shall bear any costs arising within its territory as a result of action taken upon the request of the Requesting Party. Extraordinary costs may be subject to special agreement between the Parties.

Article 12

AUTHENTICATION

Unless otherwise required under national law, and without prejudice to Article 10(2), documents certified by a Central Authority shall not require further certification, authentication or legalization for the purposes of this Agreement.

Article 13

TERRITORIAL APPLICATION

This Agreement shall apply:

(a) to the Republic of Trinidad and Tobago; and

(b) in relation to the United Kingdom:

(i) to England and Wales, Scotland and Northern Ireland;

(ii) to any territory for the international relations of which the United Kingdom is responsible and to which this Agreement shall have been extended, subject to any modifications agreed, by agreement between the Parties. Such extension may be terminated by either party by giving six months' written notice to the other through the diplomatic channel.

Article 14

FINAL PROVISIONS

1. Each Party shall notify the other of the completion of the Constitutional formalities required by its laws for the entry into force of this Agreement. This Agreement shall enter into force on the first day of the month following the expiration of one calendar month after the date of the latter of the two notifications.

2. This Agreement may be terminated by either Party by giving written notice to the other Party through the diplomatic channel. It shall cease to be in force six months after the date of receipt of such notice.

IN WITNESS WHEREOF the undersigned being duly authorized thereto by their respective Governments have signed this Agreement.

DONE in duplicate at PORT-OF-SPAIN this 5th day of January, 1998.

RAMESH MAHARAJ
ATTORNEY GENERAL
For the Government of the
Republic of Trinidad and
Tobago

IRVINE LAING
LORD CHANCELLOR
For the Government of the
United Kingdom of Great Britain
and Northern Ireland

Made this 27th day of January, 2000.

R. L. MAHARAJ
Attorney General

*Mutual Assistance (Agreement between Trinidad and Tobago
and the United Kingdom) Order, 2000*

Laid in the House of Representatives this 4th day of February,
2000.

J. SAMPSON-JACENT
Clerk of the House

Laid in the Senate this 8th day of February, 2000.

N. COX
Clerk of the Senate