

**MUTUAL ASSISTANCE IN CRIMINAL
MATTERS ACT**

CHAPTER 11:24

Act

39 of 1997

Amended by

7 of 2001

14 of 2004

*26 of 2005 (By implication)

*See Note on page 2

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LAWS OF TRINIDAD AND TOBAGO

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**MUTUAL ASSISTANCE IN CRIMINAL
MATTERS ACT**

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CHAPTER 11:24

MUTUAL ASSISTANCE IN CRIMINAL
MATTERS ACT

39 of 1997. **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.**

Commencement.
51/1999.

[2ND APRIL 1999]

PART I

PRELIMINARY

Short title.

1. This Act may be cited as the Mutual Assistance in Criminal Matters Act.

Interpretation.
[14 of 2004].

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;

Ch. 14:01.

“civil offence” has the same meaning assigned to it in section 78(2) of the Defence Act;

“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;

“dangerous drug” has the same meaning assigned to it in section 3(1) of the Dangerous Drugs Act;

Ch. 11:25.

“judicial records” means judgments, orders and decisions of Courts, and other records held by judicial authorities;

“oath” includes affirmation or declaration;

“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;

Ch. 4:01.

“Rules Committee” has the same meaning assigned to it in section 77 of the Supreme Court of Judicature Act;

“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.

Central Authority for Trinidad and Tobago. [7 of 2001].

(2) The Attorney General may delegate any of his functions under this Act to any public officer or legal officer employed in the Ministry of the Attorney General and Legal Affairs.

(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.

Application of Act.

5. Nothing in this Act derogates from existing forms of co-operation or prevents the development of other forms of

Act not to derogate from other forms of co-operation.

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.

Act not to authorise extradition.

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

PART II

REQUESTS BY TRINIDAD AND TOBAGO TO COMMONWEALTH COUNTRIES FOR ASSISTANCE

Assistance in obtaining evidence.

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,

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

Assistance in locating or identifying person.

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.

Assistance in obtaining article or thing, by search and seizure.

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.

Assistance in arranging attendance of 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—

Safe conduct.

- (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

Assistance in securing transfer of prisoner to Trinidad and Tobago.

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.

Assistance in securing transfer of prisoner from Trinidad and Tobago.

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.

Assistance in serving documents.

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

Transmission and return of document.

- (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;

- (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.

Restriction on use of evidence, etc.

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.

Immunities and privileges.

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,

Assistance in tracing property, etc.

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

Assistance in relation to certain orders.

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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,

Assistance in obtaining restraining order.

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.

Form of request.

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;
- (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.

Acceptance or refusal of request, etc.

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(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
- (l) 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.

First Schedule.

(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.

Assistance to country in obtaining evidence.

(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.

Assistance to country in locating or identifying person.

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.

Assistance to country in obtaining article or thing, by search and seizure. [14 of 2004].

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, authorise 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 authorised 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 authorisation given to the Commissioner of Police pursuant to subsections (2) and (3) may be executed on his behalf by any member of the Police Service.

- (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, authorise 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.

Assistance to country in arranging attendance of person.

(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

Assistance to country in securing transfer of prisoner.

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.

Assistance to
country in
serving
documents.

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 endeavours 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 notwithstanding 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 endeavours 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.

Assistance to
country in
tracing
property, etc.

Assistance to
country in
relation to
certain orders.

- 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.

Assistance to
country in
obtaining
restraining
order.

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.

Interpretation
for purposes of
Part IV.

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.

Implementation
of treaty.

(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

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—

Service of
overseas process
in Trinidad
and Tobago.
[14 of 2004].

- (a) a summons or other process requiring a person to appear as a 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.

- 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,

Service of process issued in Trinidad and Tobago overseas. [14 of 2004].

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

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.

Overseas evidence for use in Trinidad and Tobago. [14 of 2004].

(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.
[14 of 2004].

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.

(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.

Third
Schedule.

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

Form of
testimony.
[14 of 2004].

- (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 authorisation 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.
[14 of 2004].

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.
[14 of 2004].

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.
[14 of 2004].

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.

PART VI

MISCELLANEOUS

Certificate given
by the Attorney
General.

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.

Proof.
[14 of 2004].

(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;
- (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; or
- (d) proved by an affidavit sworn, or statutory declaration made, before a commissioner or person authorised to take affidavits or statutory declarations in such 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.

Transit.

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.

Escaping.
[14 of 2004].

37. Any person who escapes from lawful custody while in Trinidad and Tobago pursuant to a request under section 12, 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.

Arrest of person
who has
escaped from
custody.

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—

Regulations.

- (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

Coming into
force of
Treaties.
[7 of 2001].

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.

(1A) Where a treaty has been concluded, whether before or after the commencement of this Act, between Trinidad and Tobago and any other territory, providing for mutual assistance in any criminal matter arising or criminal offence committed in Trinidad and Tobago or such other territory, not including a criminal offence referred to in subsection (1), 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, exceptions or qualifications as may be specified in the Order.

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

(3) An Order made under subsection (1) or subsection (1A) 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 sections 5(4), (7) and 47 of the Dangerous Drugs Act;
- (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).

Ch. 11:25.

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 by a Commonwealth country, the request shall identify the article or thing which is to be obtained and, 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 Trinidad and Tobago for any necessary warrant or authorisation to effect a seizure of that article or thing.

5. Where a request such as is referred to in section 26 is made by a 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 by a 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 by a 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 an 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 Central Authority may require the central authority for that country to furnish further information relative to the request and if that information is not furnished within such period as the Central Authority considers reasonable, the request shall be deemed to have been withdrawn.

SECOND SCHEDULE

(This Schedule contained an amendment to Act No. 24 of 1995 which has been incorporated in that Act)

THIRD SCHEDULE

[Sec. 33D(4)
14 of 2004].

**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

Ch. 7:02.

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.

SUBSIDIARY LEGISLATION

MUTUAL ASSISTANCE (AGREEMENT BETWEEN TRINIDAD AND TOBAGO AND CANADA) ORDER 41/2003.

made under section 40(1A)

1. This Order may be cited as the Mutual Assistance (Agreement between Trinidad and Tobago and Canada) Order. Citation.

2. The Agreement between the Government of Canada and the Government of the Republic of Trinidad and Tobago on mutual assistance in criminal matters referred to in the Schedule, shall have the force of Law in Trinidad and Tobago. Agreement to have force of law.

SCHEDULE

TREATY BETWEEN THE GOVERNMENT OF CANADA AND THE GOVERNMENT OF THE REPUBLIC OF TRINIDAD AND TOBAGO ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

The Government of Canada and the Government of the Republic of Trinidad and Tobago.

Desiring to improve the effectiveness of both countries in the investigation, prosecution and suppression of crime through co-operation and mutual legal assistance in criminal matters. Have agreed as follows:

PART I

GENERAL PROVISIONS

ARTICLE 1

Obligation to Provide Mutual Legal Assistance

1. The Contracting Parties shall, in accordance with this Treaty, provide each other with the widest measure of mutual legal assistance in criminal matters.

2. Mutual legal assistance is any assistance given by the Requested State in respect of investigations or proceedings in the Requesting State in a criminal matter irrespective of whether the assistance is sought or to be provided by a Court or some other authority.

3. Criminal matters mean, for the Republic of Trinidad and Tobago investigations or proceedings relating to any offence contrary to the law of the Republic of Trinidad and Tobago and, for Canada, investigations or proceedings relating to any offence created by Parliament or by the legislature of a province.

4. Criminal matters include investigations or proceedings relating to offences concerning taxation, duties and customs.

5. Assistance includes—

- (a) locating and identifying persons and objects;
- (b) serving documents, including documents seeking the attendance of persons;
- (c) providing information, documents and records;
- (d) providing objects, including lending exhibits;
- (e) search and seizure;
- (f) taking evidence and obtaining statements;
- (g) authorising the presence of persons from the Requesting State at the execution of requests;
- (h) making detained persons available to give evidence or assist investigations;
- (i) facilitating the appearance of witnesses or the assistance of persons in investigations;
- (j) taking measures to locate, seize, restrain, confiscate and forfeit the proceeds of crime; and
- (k) providing other assistance consistent with the objects of this Treaty.

ARTICLE 2

Execution of Requests

1. Requests for assistance shall be executed promptly in accordance with the law of the Requested State and, in so far as not prohibited by that law, in the manner specified by the Requesting State.

2. The Requested State shall, upon request, inform the Requesting State of the date and place of execution of the request for assistance.

3. Subject to paragraph (1) the Requested State shall not refuse to execute a request on the ground of bank secrecy.

ARTICLE 3

Refusal of Postponement of Assistance

1. Assistance may be refused if, the execution of the request would be contrary to the law of the Requested State or in the opinion of the Requested State, the execution of the request would impair its sovereignty, security, public order, essential public interest, prejudice the safety of any person or be unreasonable on other grounds.

2. Assistance may be postponed by the Requested State if the immediate execution of the request would interfere with an ongoing investigation or prosecution in the Requested State.

3. The Requested State shall promptly inform the Requesting State of a decision of the Requested State not to comply in whole or in part with a request for assistance, or to postpone execution, and shall give reasons for that decision.

4. Before refusing a request for assistance or before postponing the execution of a request, the Requested State shall consider whether assistance may be provided subject to such conditions as it deems necessary. If the Requesting State accepts assistance subject to these conditions, it shall comply with them.

PART II

SPECIFIC PROVISIONS

ARTICLE 4

Locating and Identifying Persons and Objects

The competent authorities of the Requested State shall make best efforts to ascertain the location and identity of persons and objects specified in the request.

ARTICLE 5

Service of Documents

1. The Requested State shall serve any document transmitted to it for the purpose of service.

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2. The Requesting State shall transmit a request for the service of a document pertaining to a response or appearance in the Requesting State within a reasonable time before the scheduled date of response or appearance.

3. The Requested State shall return a proof of service in the manner required by the Requesting State.

ARTICLE 6

Provision of Information, Documents, Records and Objects

1. The Requested State shall provide copies of publicly available information, documents and records of government departments and agencies.

2. The Requested State may provide any information, documents, records and objects in the possession of a government department or agency, but not publicly available, to the same extent and under the same conditions as would be available to its own law enforcement and judicial authorities.

3. The Requested State may provide certified true copies of documents or records, unless the Requesting State expressly requests originals.

4. Original documents, records or objects provided to the Requesting State shall be returned to the Requested State as soon as possible, upon request, unless the latter waives its rights to the return thereof.

5. In so far as not prohibited by the law of the Requested State documents, records or objects shall be provided in a form or accompanied by such certification as may be specified by the Requesting State in order to make them admissible according to the law of the Requesting State.

ARTICLE 7

Search and Seizure

1. The Requested State shall execute a request for search and seizure.

2. The competent authority that has executed a request for a search and seizure shall provide such information as may be required by the Requesting State concerning, but not limited to, the identity, condition, integrity and continuity of possession of the documents, records or objects seized and the circumstances of the seizure.

3. The Requested State may refuse to provide to the Requesting State any item seized unless the Requesting State has agreed to such terms and conditions as may be required by the Requested State.

ARTICLE 8

Taking Evidence in the Requested State

1. A person requested to testify and produce documents, records or objects in the Requested State shall be compelled, if necessary, to appear and testify and produce such documents, records or objects, in accordance with the law of the Requested State.

2. To the extent not prohibited by the law of the Requested State officials of the Requesting State and other persons specified in the request shall be permitted to be present at the execution of the request and to participate in the proceedings in the Requested State.

3. The right to participate in the proceedings shall include the right of any person present to pose questions. The persons present at the execution of a request shall be permitted to make a verbatim record of the proceedings. The use of technical means to make such a verbatim record shall be permitted.

ARTICLE 9

Presence of Persons at the Execution of Request

To the extent not prohibited by the law of the Requested State, persons specified in the request shall be permitted to be present at the execution of the request.

ARTICLE 10

*Making Detained Persons Available to give Evidence
or Assist in Investigations*

1. Upon request, a person serving a sentence in the Requested State shall be temporarily transferred to the Requesting State to assist investigations or to testify, provided that the person consents.

2. When the person transferred is required to be kept in custody under the law of the Requested State, the Requesting State shall hold that person in custody and shall return the person in custody to the Requested State at the conclusion or the execution of the request.

3. When the sentence imposed expires, or where the Requested State advises the Requesting State that the transferred person is no longer required to be held in custody, that person shall be set at liberty and be treated as a person present in the Requesting State pursuant to a request seeking that person's attendance.

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ARTICLE 11

*Providing Evidence or Assisting Investigations in
the Requesting State*

1. Upon request, the Requested State shall invite a person to assist in an investigation or to appear as a witness in the Requesting State and shall seek that person's consent. In seeking that consent, the Requesting State shall inform the person of any expenses payable.
2. The Requested State shall promptly notify the Requesting State of the response to the invitation.

ARTICLE 12

Safe Conduct

1. Subject to Article 10(2), a person present in the Requesting State in response to a request shall not be prosecuted, detained or subjected to any other restriction of personal liberty in that State for any acts or omissions which preceded that person's departure from the Requested State, nor shall that person be obliged to give evidence in any proceeding other than that to which the request relates.
2. Paragraph 1 of this Article shall cease to apply if a person, being free and able to leave the Requesting State, has not left within thirty days after receiving official notification that the person's attendance is no longer required or, having left, has voluntarily returned.
3. A person who fails to appear in the Requesting State shall not be subjected to any sanction or compulsory measure in the Requested or Requesting State.

ARTICLE 13

Proceeds of Crime

1. The Requested State shall, upon request, endeavour to ascertain whether any proceeds of a crime are located within its jurisdiction and shall notify the Requesting State of the results of its inquiries.
2. When, pursuant to paragraph 1 of this Article, suspected proceeds of crime are found, the Requested State shall take such measures as are permitted by its law to seize, restrain, confiscate and forfeit these proceeds.

3. Proceeds confiscated or forfeited pursuant to this Treaty shall accrue to the Requested Party, unless otherwise agreed.

ARTICLE 14

Restitution and Fine Enforcement

The Requested State shall, to the extent permitted by its law, provide assistance concerning restitution to the victims of crime and the collection of fines imposed as a sentence in a criminal prosecution.

PART III

PROCEDURE

ARTICLE 15

Contents of Requests

1. In all cases requests for assistance shall indicate—
 - (a) the competent authority conducting the investigation or proceedings to which the request relates;
 - (b) the nature of the investigation or proceedings, and include a summary of the facts and a copy of the applicable law;
 - (c) the purpose of the request and the nature of the assistance sought;
 - (d) the degree of confidentiality required and the reasons therefor; and
 - (e) any time limit within which the request should be executed.
2. In the following cases requests for assistance shall include:
 - (a) in the case of requests for the taking of evidence, search and seizure, or the location, restraint, confiscation or forfeiture of proceeds of crime, a statement indicating the basis for belief that evidence or proceeds may be found in the Requested State;
 - (b) in the case of requests to take evidence from a person, an indication as to whether sworn or affirmed statements are required and a description of the subject matter of the evidence or statement sought;
 - (c) in the case of lending of exhibits, the current location of the exhibits in the Requested State and an indication of the person or class of persons who will have custody of the exhibits in the Requesting State, the place to which the exhibit is to be removed, any tests to be conducted and the date by which the exhibit will be returned;

(d) in the case of making detained persons available, an indication of the person or class of persons who will have custody during the transfer, the place to which the detained person is to be transferred and the date of that person's return.

3. If necessary and where possible requests for assistance shall include—

(a) the identity, nationality and location of the person or persons who are the subject of the investigation or proceedings; and

(b) details of any particular procedure or requirement that the Requesting State wishes to be followed and the reasons therefor.

4. If the Requested State considers that the information is not sufficient to enable the request to be executed, it may request additional information.

5. A request shall be made in writing. In urgent circumstances, a request may be made orally but shall be confirmed in writing promptly thereafter.

ARTICLE 16

Central Authorities

1. The Central Authority for Canada shall be the Minister of Justice or an official designated by that Minister; the Central Authority for the Republic of Trinidad and Tobago shall be the Attorney General of Trinidad and Tobago or an official designated by the Attorney General.

2. The Central Authorities shall transmit and receive all requests for the purposes of this treaty.

ARTICLE 17

Confidentiality

1. The Requested State may require, after consultation with the Requesting State that information or evidence furnished or the source of such information or evidence be kept confidential, or be disclosed or used only subject to such terms and conditions as it may specify.

2. The Requesting State may require that the request, its contents, supporting documents and any action taken pursuant to the request be kept confidential. If the request cannot be executed without breaching the confidentiality requirement, the Requested State shall so inform the Requesting State prior to executing the request and the latter shall then determine whether the request should nevertheless be executed.

ARTICLE 18

Limitation of Use

The Requesting State shall not disclose or use information or evidence furnished for purposes other than those stated in the request without the prior consent of the Central Authority of the Requested State.

ARTICLE 19

Authentication

Documents, records or objects transmitted pursuant to this Treaty shall not require any form of authentication, except as specified in Article 6.

ARTICLE 20

Language

Requests and supporting documents shall be in the official language, or one of the official languages of the Requested State.

ARTICLE 21

Expenses

1. The Requested State shall meet the cost of executing the request for assistance, except that the Requesting State shall bear—

- (a) the expenses associated with conveying any person to or from the territory of the Requested State at the request of the Requesting State and any expenses payable to that person while in the Requesting State pursuant to a request under Article 10 or 11 of this Treaty;
- (b) the expenses and fees or experts in the Requested State or the Requesting State; and
- (c) the expenses of translation, interpretation and transcription.

2. If it becomes apparent that the execution of the request requires expenses of an extraordinary nature, the Contracting Parties shall consult to determine the terms and conditions under which the requested assistance can be provided.

PART IV

FINAL PROVISIONS

ARTICLE 22

Other Assistance

This Treaty shall not derogate from obligations subsisting between the Contracting Parties whether pursuant to other treaties, arrangements or otherwise,

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or prevent the Contracting Parties from providing or continuing to provide assistance to each other pursuant to other treaties, arrangements or otherwise.

ARTICLE 23

Consultations

1. The Contracting Parties shall consult promptly, at the request of either Party, concerning the interpretation and the application of this Treaty.

2. The Contracting Parties agree to consult, as appropriate, to develop other specific agreements or arrangements, formal or informal, on mutual legal assistance.

ARTICLE 24

Entry into Force and Termination

1. This Treaty shall enter into force thirty (30) days after the date on which the Contracting Parties have notified each other in writing, through diplomatic channels, that their respective requirements for entry into force of this Treaty have been complied with.

2. This Treaty shall apply to any request presented after its entry into force even if the relevant acts or omissions occurred before that date.

3. Either Contracting Party may terminate this Treaty. The termination shall take effect one year from the date on which it was notified to the other Contracting Party.

**MUTUAL ASSISTANCE (AGREEMENT BETWEEN
TRINIDAD AND TOBAGO AND THE UNITED STATES
OF AMERICA) ORDER**

46/2003.
[178/2005].

made under section 40(1A)

1. This Order may be cited as the Mutual Assistance Citation.
(Agreement between Trinidad and Tobago and the United States
of America) Order.

2. The Agreement between the Government of the United Agreement to
States of America and the Government of the Republic of have force
Trinidad and Tobago on Mutual Assistance in Criminal Matters, of law.
referred to in the Schedule, shall have the force of Law in Schedule.
Trinidad and Tobago.

SCHEDULE

**TREATY BETWEEN THE GOVERNMENT OF
THE REPUBLIC OF TRINIDAD AND TOBAGO AND
THE GOVERNMENT OF THE UNITED STATES
OF AMERICA ON MUTUAL LEGAL ASSISTANCE
IN CRIMINAL MATTERS**

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The Government of the Republic of Trinidad and Tobago and the Government of the United States of America, hereunder referred to as the Contracting Parties.

Desiring to improve the effectiveness of the Law Enforcement Authorities of both countries in the investigation, prosecution and prevention of crime through co-operation and mutual legal assistance in criminal matters. Have agreed as follows:

ARTICLE 1

Scope of Assistance

1. The Contracting Parties shall provide mutual assistance, in accordance with the provisions of this Treaty, in connection with the investigation, prosecution, and prevention of offences, and in proceedings related to criminal matters.

2. Assistance shall include:

- (a) taking the testimony or statements of persons;
- (b) providing documents, records, and articles of evidence;
- (c) locating or identifying persons;
- (d) serving documents;
- (e) transferring persons in custody for testimony or other purposes;
- (f) executing requests for searches and seizures;
- (g) assisting in proceedings related to restraint, confiscation, forfeiture of assets, restitution, and collection of fines;
- (h) examining objects and sites; and

- (i) any other form of assistance not prohibited by the laws of the Requested State.

3. Assistance shall be provided without regard to whether the conduct which is the subject of the investigation, prosecution, or proceeding in the Requested State would constitute an offence under the laws of the Requested State. However, the Requesting State may, in its discretion, refuse to comply in whole or in part with a request for assistance under this Treaty to the extent that it appears to the Central Authority of the Requested State to concern conduct which would not constitute an offence under the laws of the Requested State.

4. The Treaty is intended solely for mutual legal assistance between the Parties. The provisions of this Treaty shall not give rise to a right on the part of any private person to obtain, suppress or exclude any evidence, or to impede the execution of a request.

ARTICLE 2

Central Authorities

1. There shall be a Central Authority for each Contracting Party.
2. For the United States of America, the Central Authority shall be the Attorney General or a person designated by that Attorney General. For the Government of the Republic of Trinidad and Tobago, the Central Authority shall be the Attorney General or a person designated by the Attorney General.
3. The Central Authorities shall communicate directly with one another for the purposes of this Treaty.

ARTICLE 3

Limitations on Assistance

1. The Central Authority of the Requested State may deny assistance if—
 - (a) the request relates to an offence under military law which would not be an offence under ordinary criminal law;
 - (b) the execution of the request would prejudice the security or similar essential interest of the Requested State; or
 - (c) the request is not made in conformity with the Treaty.
2. Before denying assistance pursuant to this Article, the Central Authority of the Requested State shall consult with the Central Authority of the Requesting State to consider whether assistance can be given subject to such conditions as it deems necessary. If the Requesting State accepts assistance subject to these conditions, it shall comply with the conditions.

3. If the Central Authority of the Requested State denies assistance, it shall inform the Central Authority of the Requesting State of the reasons for the denial.

ARTICLE 4

Form and Contents of Requests

1. A request for assistance shall be in writing except that the Central Authority of the Requested State may accept a request in another form in emergency situations. In any such case, the request shall be confirmed in writing within ten days thereafter unless the Central Authority of the Requested State agrees otherwise. The request shall be in the language of the Requested State unless otherwise agreed.

2. The request shall include the following:

- (a) the name of the authority conducting the investigation, prosecution, or proceeding to which the request relates;
- (b) a description of the subject matter and nature of the investigation, prosecution, or proceeding, including the specific criminal offences, which relates to the matter, and a summary of the facts and the laws which form the basis thereof;
- (c) a description of the evidence, information, or other assistance sought; and
- (d) a statement of the purpose for which the evidence, information, or other assistance is sought.

3. To the extent necessary and possible, a request shall also include—

- (a) information on the identity, including, where available, full name, date of birth, address, and location of any person from whom evidence is sought;
- (b) information on the identity, including, where available, full name, date of birth, address, and location of a person to be served, that person's relationship to the proceedings, and the manner in which service is to be made;
- (c) information on the identity, including, where available, full name, date of birth, address, and whereabouts of a person to be located;
- (d) a precise description of the place or person to be searched and of the articles to be seized;
- (e) a description of the manner in which any testimony or statement is to be taken and recorded;
- (f) a list of questions to be asked of a witness;
- (g) a description of any particular procedure to be followed in executing the request;

- (h) information as to the allowances and expenses to which a person asked to appear in the Requesting State will be entitled;
- (i) any time limit within which compliance with the request is desired, stating reasons; and
- (j) any other information which may be brought to the attention of the Requested State to facilitate its execution of the request.

ARTICLE 5

Execution of Requests

1. The Central Authority of the Requested State shall promptly execute the request or, when appropriate, shall transmit it to the authority having jurisdiction to do so. The competent authorities of the Requested State shall do everything in their power to execute the request. The Courts of the Requested State shall have authority to issue subpoenas, search warrants, or other orders necessary to execute the request.

2. The Central Authority of the Requested State shall make all necessary arrangements for and meet the costs of the representation in the Requested State of the Requesting State in any proceedings arising out of a request for assistance.

3. Requests shall be executed in accordance with the laws of the Requested State except to the extent that this Treaty provides otherwise. However, the method of execution specified in the request shall be followed except in so far as it is prohibited by the laws of the Requested State.

4. If the Central Authority of the Requested State determines that execution of a request would interfere with an ongoing criminal investigation, prosecution, or proceeding in that State, it may postpone execution, or make execution subject to conditions determined to be necessary after consultations with the Central Authority of the Requesting State. If the Requesting State accepts the assistance subject to the conditions, it shall comply with the conditions.

5. The Requested State shall use its best efforts to keep confidential a request and its contents if such confidentiality is requested by the Central Authority of the Requesting State. If the request cannot be executed without breaching such confidentiality, the Central Authority of the Requested State shall so inform the Central Authority of the Requesting State, which shall then determine whether the request should nevertheless be executed.

6. The Central Authority of the Requested State shall respond to reasonable inquiries by the Central Authority of the Requesting State concerning progress toward execution of the request.

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7. The Central Authority of the Requested State shall promptly inform the Central Authority of the Requesting State of the outcome of the execution of the request. If the request is denied, the Central Authority of the Requested State shall inform the Central Authority of the Requesting State of the reasons for the denial.

ARTICLE 6

Costs

The Requested State shall pay all costs relating to the execution of the request, except for the fees of expert witnesses, the cost of translation, interpretation, and transcription, and the allowances and expenses related to travel of persons pursuant to Articles 10 and 11, which costs, fees, allowances, and expenses shall be paid by the Requesting State.

ARTICLE 7

Limitations on Use

1. The Central Authority of the Requested State may request that the Requesting State not use any information or evidence obtained under this Treaty in any investigation, prosecution, or proceeding other than that described in the request without the prior consent of the Central Authority of the Requested State. In such cases, the Requesting State shall comply with the conditions.

2. The Central Authority of the Requested State may request that information or evidence furnished under this Treaty be kept confidential or be used only subject to terms and conditions it may specify. If the Requesting State accepts the information or evidence subject to such conditions, the Requesting State shall use its best efforts to comply with the conditions.

3. Nothing in this Article shall preclude the use or disclosure of information to the extent that there is an obligation to do so under the Constitution of the Requesting State in a criminal prosecution. The Requesting State shall notify the Requested State in advance of any such proposed disclosure.

4. Information or evidence which has been made public in the Requesting State in accordance with paragraph 1 or 2 may thereafter be used for any purpose.

ARTICLE 8

Testimony or Evidence in the Requested State

1. A person in the Requested State from whom testimony or evidence is requested pursuant to this Treaty shall be compelled, if necessary, to appear and testify or produce items, including documents, records, and articles of evidence.

2. Upon request, the Central Authority of the Requested State shall furnish information in advance about the date and place of the taking of the testimony or evidence pursuant to this Article.

3. The Requested State shall permit the presence of such persons as specified in the request during the execution of the request, and shall allow such persons to question the person giving the testimony or evidence.

4. If the person referred to in paragraph 1 asserts a claim of immunity, incapacity or privilege under the laws of the Requesting State, the testimony or evidence shall nonetheless be taken and the claim made known to the Central Authority of the Requesting State for resolution by the authorities of that State.

5. Evidence produced in the Requested State pursuant to this Article or which is the subject of testimony taken under this Article may be authenticated by an attestation, including, in the case of business records, authentication in the manner indicated in Form A appended to this Treaty. Documents authenticated by Form A shall be admissible in evidence in the Requesting State.

ARTICLE 9

Records of Government Agencies

1. The Requested State shall upon request provide the Requesting State with copies of publicly available records, including documents or information in any form, in the possession of government departments and agencies in the Requested State.

2. The Requested State may provide copies of any documents, records, or information which are in the possession of a government department or agency in that State, but which are not publicly available, to the same extent and under the same conditions as such copies would be available to its own law enforcement or judicial authorities. The Requested State may in its discretion deny a request pursuant to this paragraph entirely or in part.

3. Official records produced pursuant to this Article may be authenticated by the official in charge of maintaining them through the use of Form B appended to this Treaty. No further authentication shall be necessary. Documents authenticated under this paragraph shall be admissible in evidence in the Requesting State.

ARTICLE 10

Testimony in Requesting State

1. When the Requesting State requests the appearance of a person in that State, the Requested State shall invite the person to appear before the appropriate

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authority in the Requesting State. The Requesting State shall indicate the extent to which the expenses will be paid. The Central Authority of the Requested State shall promptly inform the Central Authority of the Requesting State of the response of the person.

2. The Central Authority of the Requesting State may, in its discretion, determine that a person appearing in the Requesting State pursuant to this article shall not be subject to service of process, or be detained or subjected to any restriction of personal liberty, by reason of any acts or convictions which preceded his departure from the Requested State.

3. The safe conduct provided for by this Article shall cease seven days after the Central Authority of the Requesting State has notified the Central Authority of the Requested State that the person's presence is no longer required, or when the person, having left the Requesting State, voluntarily returns. The Central Authority of the Requesting State may, in its discretion, extend this period for up to fifteen days if it determines that there is good cause to do so.

ARTICLE 11

Transfer of Persons in Custody

1. A person in the custody of the Requested State whose presence in the Requested State is sought for purposes of assistance under this Treaty shall be transferred from the Requested State to the Requesting State for that purpose if the person consents and if the Central Authorities of both States agree.

2. A person in the custody of the Requesting State whose presence in the Requested State is sought for purposes of assistance under this Treaty may be transferred from the Requesting State to the Requested State if the person consents and if the Central Authorities of both States agree.

3. For purposes of this Article—

- (a) the receiving State shall have the authority and the obligation to keep the person transferred in custody unless otherwise authorised by the sending State;
- (b) the receiving State shall return the person transferred to the custody of the sending State as soon as circumstances permit or as otherwise agreed by both Central Authorities;
- (c) the receiving State shall not require the sending State to initiate extradition proceedings for the return of the person transferred; and
- (d) the person transferred shall receive credit for service of the sentence imposed in the sending State for time served in the custody of the receiving State.

ARTICLE 12

Location or Identification of Persons or Items

The Requested State shall use its best efforts to ascertain the location or identity of persons or items specified in the request.

ARTICLE 13

Service of Documents

1. The Requested State shall use its best efforts to effect service of any document relating, in whole or in part, to any request for assistance made by the Requesting State under the provisions of this Treaty.

2. The Requesting State shall transmit any request for the service of a document requiring the appearance of a person before an authority in the Requesting State a reasonable time before the scheduled appearance.

3. The Requested State shall return a proof of service in the manner specified in the Request.

ARTICLE 14

Search and Seizure

1. The Requested State shall execute a request for the search, seizure, and delivery of any item to the Requesting State if the request includes the information justifying such action under the laws of the Requested State.

2. Upon request, every official who has custody of a seized item shall certify, through the use of Form C appended to this Treaty, the continuity of custody, the identity of the item, and the integrity of its condition. No further certification shall be required. The certificates shall be admissible in evidence in the Requesting State.

3. The Central Authority of the Requested State may require that the Requesting State agree to the terms and conditions deemed to be necessary to protect *bona fide* third party interests in the item to be transferred.

ARTICLE 15

Return of Items

The Central Authority of the Requested State may require that the Central Authority of the Requesting State return any items, including documents, records, or articles of evidence furnished to it in execution of a request under this Treaty as soon as possible.

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ARTICLE 16

Assistance in Forfeiture Proceedings

1. If the Central Authority of one Contracting Party becomes aware of proceeds or instrumentalities of offences which are located in the territory of the other Party and may be restrainable, forfeitable, or otherwise subject to seizure under the laws of that Party, it may so inform the Central Authority of the other Party. If that other Party has jurisdiction in this regard, it may present this information to its authorities for a determination whether any action is appropriate. These authorities shall issue their decision in accordance with the laws of their country, and shall, through their Central Authority, report to the other Party on the action taken.

2. The Contracting Parties shall assist each other to the extent permitted by their respective laws in proceedings relating to restraint, forfeiture, and confiscation of the proceeds and instrumentalities of offences, restitution to the victims of crime, and the collection of fines imposed as sentences in criminal prosecutions. This may include action to temporarily restrain the proceeds or instrumentalities pending further proceedings.

3. The Party that has custody over proceeds or instrumentalities of offences shall dispose of them in accordance with its laws. Either Party may transfer all or part of such assets, or the proceeds of their sale, to the other Party, to the extent permitted by the transferring Party's laws or as otherwise agreed and upon such terms as it deems appropriate.

ARTICLE 17

Compatibility with other Treaties

Assistance and procedures set forth in this Treaty shall not prevent either Contracting Party from granting assistance to the other Party through the provisions of other applicable international agreements, or through the provisions of its national laws. The Parties may also provide assistance pursuant to any bilateral arrangement, agreement, or practice which may be applicable.

ARTICLE 18

Consultations

The Central Authorities of the Contracting Parties shall consult, at times mutually agreed to by them, to promote the most effective use of this Treaty. The Central Authorities may also agree on such practical measures as may be necessary to facilitate the implementation of this Treaty.

ARTICLE 19

Ratification, Entry into Force and Termination

1. This Treaty shall enter into force when both Parties have notified each other through an exchange of diplomatic notes of the completion of their respective requirements for entry into force.

2. Either Party may terminate this Treaty by means of written notice to the other Party. Termination shall take effect six months following the date of notification.

MUTUAL ASSISTANCE (AGREEMENT BETWEEN TRINIDAD AND TOBAGO AND THE UNITED KINGDOM) ORDER 53/2003.

made under section 40(1A)

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

2. The 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, specified in the Schedule, shall have the force of Law in Trinidad and Tobago. Agreement to have force of law. Schedule.

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[Subsidiary]

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

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 instrument 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 of formal or informal arrangement.

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) “instrument of crime” means any property which is or is
intended to be used in connection with the commission of
an offence;

- (c) “proceeds of crime” means any property derived or realised, 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 judgment 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.

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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.

ARTICLE 5

Execution of Requests

1. A request shall be executed as permitted by and in accordance with the domestic law of 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 offence 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 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

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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 person 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 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 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 of the proceeds or instruments of crime.

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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 realise 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. When 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 in so far as it is able to do so, and shall inform the Requesting Party accordingly.

4. Property obtained 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 11

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 legalisation 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.