

Administrative Services
Department
1996B02320



Statutory Rules 1994 No. *L*¹

84/

Mutual Assistance in Criminal Matters (Finland) Regulations

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Mutual Assistance in Criminal Matters Act 1987*.

Dated *L* 1994.

Governor-General

29 March
L **BILL HAYDEN**

By His Excellency's Command,

Attorney-General

M. LAVARCHE

Citation

1. These Regulations may be cited as the Mutual Assistance in Criminal Matters (Finland) Regulations.

Commencement

2. These Regulations commence on 30 April 1994.

Interpretation

3. In these Regulations, unless the contrary intention appears:

“the Act” means the *Mutual Assistance in Criminal Matters Act 1987*.

Application of the Act

4. (1) The Act applies in relation to Finland subject to such limitations, conditions, exceptions or qualifications as are necessary to give effect to the Treaty between Australia and Finland on Mutual Assistance in Criminal Matters done at Canberra in Australia on 22 June 1992.

(2) A copy of the English text of the Treaty is set out in the Schedule.

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SCHEDULE

Regulation 4

**TREATY BETWEEN AUSTRALIA AND FINLAND ON
MUTUAL ASSISTANCE IN CRIMINAL MATTERS**

Australia and Finland,

DESIRING to extend to each other the widest measure of co-operation in criminal matters,

HAVE AGREED as follows:

ARTICLE 1

Scope of application

1. The Contracting States undertake to afford each other, in accordance with the provisions of this Agreement, the widest measure of mutual assistance in proceedings or investigations in respect of offences the punishment of which, at the time of the request for assistance, falls within the jurisdiction of the judicial authorities of the Requesting State.

2. Authorities on whose behalf requests may be made are courts and prosecutors as well as authorities responsible for investigations related to criminal matters.

3. Criminal matter includes matters connected with offences against a law relating to taxation, customs duties, foreign exchange control and other revenue matters.

4. Such assistance may consist of:

- (a) taking of evidence and obtaining of statements of persons including the execution of letters rogatory;
- (b) provision of documents and other records;
- (c) location and identification of persons;
- (d) execution of requests for search and seizure;
- (e) inviting persons to be available to give evidence or to assist in investigations in the Requesting State;
- (f) service of documents; and

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(g) other assistance consistent with the objects of this Agreement which is not inconsistent with the law of the Requested State.

5. Assistance shall not include:

- (a) the extradition of any person;
- (b) the execution in the Requested State of criminal judgments imposed in the Requesting State; and
- (c) the transfer of persons in custody to serve sentences.

ARTICLE 2

Central authority

1. Requests for assistance shall be made through the Central Authorities.

2. For the purposes of this Agreement the Central Authority of Australia shall be the Attorney-General's Department, Canberra and the Central Authority of Finland shall be the Ministry of Justice, Helsinki. The Contracting States shall advise each other of any change of Central Authorities.

ARTICLE 3

Refusal of assistance

1. Assistance may be refused if:

- (a) the request relates to the prosecution or punishment of a person for an offence that is regarded by the Requested State as:
 - (i) an offence of a political character; or
 - (ii) an offence under military law of the Requested State which is not also an offence under the ordinary criminal law of the Requested State;
- (b) the request relates to the prosecution or punishment of a person for an offence in respect of which the offender has been finally acquitted or pardoned or has served the sentence imposed;

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- (c) there are substantial grounds for believing that a consequence of providing assistance would be prejudice to any person on account of that person's race, sex, religion, nationality or political opinions or to the safety of any person;
- (d) the Requested State is of the opinion that the request, if granted, would prejudice its sovereignty, security, national interest or other essential interests;
- (e) the request relates to the prosecution or punishment of a person for an offence where the acts or omissions alleged to constitute that offence would not, if they had taken place in similar circumstances within the jurisdiction of the Requested State, have constituted an offence;
- (f) the request relates to the prosecution or punishment of a person for an offence which is committed outside the territory of the Requesting State and the law of the Requested State does not provide for the punishment of an offence committed outside its territory in similar circumstances;
- (g) the request relates to the prosecution or punishment of a person for an offence which, had it been committed in the Requested State, could no longer be prosecuted by reason of lapse of time or any other reason;
- (h) the provision of the assistance sought could prejudice an investigation or proceeding in the Requested State or impose an excessive burden on the resources of that State;
- (i) there are substantial grounds for believing that the evidence or information sought is to be used by the Requesting State for purposes other than those stipulated in the request; or
- (j) there are substantial grounds for believing that a person whose presence is sought as a witness or expert in the Requesting State will be required, without that person's consent, to give evidence or assist in investigations other than those specified in the request.

2. Before refusing to grant a request for assistance the Requested State shall consider whether assistance may be granted

SCHEDULE—continued

subject to such conditions as it deems necessary. If the Requesting State accepts assistance subject to conditions, it shall comply with those conditions.

ARTICLE 4

Contents of requests

1. Requests for assistance shall include:
 - (a) the name of the competent authority on whose behalf the request is made;
 - (b) a description of the nature of the criminal matter including a statement of the relevant laws;
 - (c) except in cases of requests for service of documents, a description of the acts or omissions or matters alleged to constitute the offence;
 - (d) the purpose of the request and a description of the assistance sought;
 - (e) details of any particular procedure or requirement that the Requesting State wishes to be followed, including whether sworn or affirmed evidence or statements are required;
 - (f) the requirements, if any, of confidentiality and the reasons therefore; and
 - (g) specification of any time limit within which compliance with the request is desired.

2. Requests for assistance, to the extent necessary and insofar as possible, shall also include:
 - (a) the identity, nationality and location of the person or persons who are the subject of, or who may have information relevant to, the investigation or proceeding;
 - (b) a description of the information, statement or evidence sought, including any questions to be put;
 - (c) a description of the documents, records or articles of evidence to be produced as well as a description of the appropriate person to be asked to produce them; and

SCHEDULE—continued

- (d) information as to the allowances and expenses to which witnesses or experts appearing in the Requesting State would be entitled.

3. If the Requested State considers that the information contained in the request is not sufficient in accordance with this Agreement to enable the request to be dealt with, that State may request additional information.

ARTICLE 5

Language

Requests, supporting documents and other communications made pursuant to this Agreement shall be made in a language of the Requesting State and accompanied by a translation into an official language of the Requested State.

ARTICLE 6

Execution of requests

1. Requests for assistance shall be carried out promptly in accordance with the law of the Requested State and, insofar as it is not incompatible with that law, in the manner requested by the Requesting State.

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

3. The Requested State shall promptly inform the Requesting State of circumstances, when they become known to the Requested State, which are likely to cause a significant delay in responding to the request.

4. The Requested State shall promptly inform the Requesting State of any decision of the Requested State not to comply in whole or in part with a request for assistance or to require

SCHEDULE—continued

compliance with conditions for the granting of assistance and the reasons for any such decision.

ARTICLE 7

Return of material to Requested State

The Requesting State shall return to the Requested State any material, including any original records and documents, furnished under this Agreement as soon as possible unless the Requested State waives the return thereof.

ARTICLE 8

Protecting confidentiality and restricting use of evidence and information

1. The Requesting State may request the Requested State to keep confidential the application for assistance, the contents of the request and its supporting documents, and the fact of granting of such assistance. If the request cannot be executed without breaching confidentiality, the Requested State shall so inform the Requesting State which shall then determine whether the request should nevertheless be executed.

2. The Requesting State, to the extent permitted by its law and if so requested, shall keep confidential evidence and information provided by the Requested State.

ARTICLE 9

Service of documents

1. The Requested State shall effect service of documents which are transmitted to it for this purpose by the Requesting State.

2. A request to effect service of a document requiring the appearance of a person shall be made to the Requested State not less than 45 days before the date on which the appearance is required. In urgent cases, the Requested State may waive this requirement.

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3. The Requested State shall forward to the Requesting State a certificate stating the time, place and method of service as well as the name of the person to whom the document was delivered. If service cannot be effected, the Requesting State shall be so informed and advised of the reasons.

ARTICLE 10

Taking of evidence

1. The Requested State shall, upon request, take the evidence of witnesses or experts for transmission to the Requesting State.

2. For the purposes of this Agreement, the giving or taking of evidence shall include the production of documents, records or other material.

3. The Requested State shall, if requested, advise the Requesting State of the date and place for the evidence to be taken.

4. The parties to the relevant proceedings in the Requesting State, their legal representatives and representatives of the Requesting State may, subject to the law of the Requested State, appear and question the person being examined.

ARTICLE 11

Obtaining of statements of persons

The Requested State shall, upon request, endeavour to obtain statements of persons for the purpose of an investigation or a proceeding in relation to a criminal matter in the Requesting State.

ARTICLE 12

Availability of persons to give evidence or assist investigations

1. The Requesting State may request the assistance of the Requested State in inviting a person to:

SCHEDULE—continued

- (a) appear as a witness in proceedings in relation to a criminal matter in the Requesting State unless that person is the person charged; or
- (b) assist investigations in relation to a criminal matter in the Requesting State.

2. The Requested State shall, if satisfied that satisfactory arrangements for that person's security will be made by the Requesting State, invite the person to consent to appear as a witness or expert in proceedings or to assist in the investigation.

ARTICLE 13

Safe conduct

1. Subject to paragraph 2, where a person is in the Requesting State pursuant to a request made under Articles 9 or 12 that person shall not be detained, prosecuted or punished or subjected to any other restriction of personal liberty, in respect of any act or omission which preceded the person's departure from the Requested State.

2. Where a person is in the Requesting State in answer to a summons served pursuant to Article 9 of this Agreement and is the person suspected or accused, that person may, except where he or she consents, be prosecuted and punished only for the acts or omissions constituting the offence specified in the summons.

3. Paragraph 1 of this Article shall cease to apply if that person, being free to leave, has not left the Requesting State within a period of thirty days after that person has been officially notified that that person's presence is no longer required or, having left, has returned.

4. A person appearing in the Requesting State pursuant to a request made under Articles 9 or 12 shall be subject to the laws of that State relating to contempt, perjury and the making of false declarations.

5. A person who does not consent to a request pursuant to Articles 9 or 12 shall not, by reason thereof, be liable to any penalty

SCHEDULE—continued

or be subjected to any coercive measure notwithstanding any contrary statement in the request or in any document accompanying the request.

ARTICLE 14

Refusal to give evidence

1. A witness or expert who appears before a court of either Contracting State pursuant to a request for assistance under this Agreement is entitled to refuse to give evidence or make a statement in so far as the person has a privilege or duty to refuse to give evidence or make a statement under the law of either the Requesting or Requested State.

2. A request seeking the evidence of a witness or expert in either State shall include a statement of the rights referred to in paragraph 1.

ARTICLE 15

Provision of publicly available and official documents

1. The Requested State shall provide copies of documents and records that are open to public access or that are available for purchase by the public.

2. The Requested State may provide copies of any official document or record in the same manner and under the same conditions as such document or record may be provided to its own law enforcement and judicial authorities.

ARTICLE 16

Certification and authentication

1. Documents or materials supporting a request for assistance involving the use of compulsory measures shall be authenticated in accordance with paragraph 2. Documents or materials furnished in response to a request shall be similarly authenticated if requested.

SCHEDULE—continued

2. Documents and materials are authenticated for the purposes of this Agreement if:
 - (a) they purport to be signed or certified by a judge, magistrate or other officer in or of the State sending the document; and
 - (b) they purport to be sealed with an official seal of the State sending the document or of a Minister of State, or of a Department or officer of the Government, of that State.
3. No legalisation or similar formality shall be required in the context of this Agreement.

ARTICLE 17

Search and seizure

1. The Requested State shall, insofar as its law permits, carry out requests for search and seizure and delivery of material to the Requesting State provided the information supplied, including additional information requested pursuant to paragraph 3 of Article 4, if any, would justify such action under the law of the Requested State.
2. The Requested State shall provide such information as may be required by the Requesting State concerning the result of any search, the place of seizure, the circumstances of seizure, and the subsequent custody of the material seized.
3. The Requesting State shall observe any conditions imposed by the Requested State in relation to any seized material which is delivered to the Requesting State.

ARTICLE 18

Representation and expenses

1. Unless otherwise provided in this Agreement the Requested State shall make all necessary arrangements for the representation of the Requesting State in any proceedings arising out of a request for assistance.

SCHEDULE—continued

2. The Requested State shall meet the cost of fulfilling 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, and any fees, allowances or expenses payable to that person whilst in the Requesting State pursuant to a request under Articles 9 or 12; and
 - (b) where required by the Requested State, exceptional expenses in fulfilling the request.

ARTICLE 19

Other assistance

This Agreement does not preclude the Contracting States giving each other wider assistance pursuant to other agreements or arrangements or as permitted by their respective laws.

ARTICLE 20

Entry into force and termination

1. This Agreement shall enter into force thirty days after the date on which the Contracting States have notified each other in writing that their respective constitutional requirements for the entry into force of this Agreement have been complied with.
2. This Agreement shall apply to requests made pursuant to it whether or not the relevant acts or omissions occurred prior to this Agreement entering into force.
3. Either Contracting State may terminate this Agreement by notice in writing at any time and it shall cease to be in force on the one hundred and eightieth day after the day on which notice is given.

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

SCHEDULE—continued

DONE in duplicate at Canberra on the twenty-second day of June,
One thousand nine hundred and ninety-two in the English and
Finnish languages, both texts being equally authentic.

FOR AUSTRALIA:

FOR FINLAND:

MICHAEL TATE

CHARLES MURTO

NOTE

1. Notified in the *Commonwealth of Australia Gazette* on

L 1994.

7 April