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Statutory Rules 1990 No. 41

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Mutual Assistance in Criminal Matters (Republic of Austria) Regulations

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

Dated 24 September 1990.

BILL HAYDEN

Governor-General

By His Excellency's Command,

Michael Duffy.

Attorney-General

Citation

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

Commencement

2. These Regulations commence on 1 December 1990.

Interpretation

3. In these Regulations, unless the contrary intention appears:
"the Act" means the *Mutual Assistance in Criminal Matters Act 1987*.

Application of Act

4. The Act applies to the Republic of Austria subject to such limitations, conditions, exceptions or qualifications as are necessary to give effect to the Treaty between Australia and the Republic of Austria on Mutual Assistance in Criminal Matters done at Vienna on 20 October 1988 (being the treaty a copy of the English text of which is set out in the Schedule).

SCHEDULE

Regulation 4

**TREATY BETWEEN AUSTRALIA AND THE REPUBLIC OF AUSTRIA
 ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS**

Australia and the Republic of Austria.

DESIRING to extend to each other the widest measure of co-operation to combat crime,

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 Treaty, the widest measure of mutual assistance in investigations and proceedings 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. Mutual assistance shall include the:
 - (a) obtaining of evidence of accused persons, witnesses or experts;
 - (b) production, search and seizure of property, records and documents;
 - (c) location, freezing and confiscation of proceeds and profits of offences;
 - (d) making persons available to assist in investigations or to give evidence;
 - (e) service of documents; and
 - (f) other assistance consistent with the objects of this Treaty mutually acceptable to the Contracting States.
3. Unless provided otherwise by its law and except for the service of documents, the Requested State shall not afford assistance in respect of an offence which would not be punishable by its judicial authorities if the offence had been committed in that State.

ARTICLE 2

FISCAL OFFENCES

1. Mutual assistance in fiscal offences shall not be refused on the ground that the law of the Requested State does not impose the same kind of tax or duty or does not contain tax, duty, customs or exchange regulations of the same kind as the law of the Requesting State.
2. Information received by way of mutual assistance in fiscal offences shall be used only in the criminal proceedings for which mutual assistance was requested and directly related proceedings in respect of offences connected with tax, duty, customs or exchange regulations. Any further use shall require the consent of the Requested State.

ARTICLE 3

GROUND FOR REFUSAL

1. Assistance may be refused if:
 - (a) the request concerns an offence which the Requested State considers a political offence or an offence only under military law;
 - (b) the request relates to an offence in respect of which the offender has been finally acquitted or pardoned or has served the sentence imposed;
 - (c) the Requested State considers that execution of the request is likely to prejudice its sovereignty, security, public order or other essential interests;

SCHEDULE—continued

- (d) there are substantial grounds for believing that the request for assistance has been made to facilitate the prosecution of a person on account of the person's race, sex, religion, nationality, association with a particular ethnic group or political opinions or that that person's position may be prejudiced for any of those reasons; or
 - (e) the assistance requested relates to an offence which is committed outside the territory of the Requesting State and the law of the Requested State would not provide for the punishment of an offence committed outside its territory in similar circumstances.
2. For the purposes of sub-paragraph (c) of paragraph 1 the Requested State may include in its consideration of essential interests whether the provision of assistance could prejudice an investigation or proceeding in that State, prejudice the safety of any person or impose an excessive burden on the resources of that State.

ARTICLE 4

MAKING AND TRANSMISSION OF REQUESTS

1. Authorities authorized to make requests for assistance are, in the case of Australia, courts, prosecutors and authorities responsible for investigations and prosecutions related to criminal matters; in the case of the Republic of Austria courts and prosecutors.
2. Requests for assistance shall be transmitted through the Federal Attorney-General's Department in Australia and the Federal Ministry of Justice in Austria and shall be returned through the same channel.
3. In cases of urgency, requests for assistance may be transmitted through the International Criminal Police Organisation (INTERPOL).

ARTICLE 5

CONTENTS OF REQUESTS

1. A request for assistance shall include:
 - (a) the authority making the request;
 - (b) the object of and the reason for the request;
 - (c) where possible, the identity and the nationality of the person concerned;
 - (d) where necessary, the name and address of the person to be served;
 - (e) the nature of the offence and a summary of the facts;
 - (f) the details of any particular procedure or requirement that the Requesting State wishes to be followed;
 - (g) the requirements, if any, of confidentiality and the reasons therefor; and
 - (h) such other information as is necessary for the proper carrying out of the request.
2. The request as well as any supporting documents shall be accompanied by a translation into the language of the Requested State.
3. If the Requested State considers that the information contained in the request is not sufficient in accordance with this Treaty to enable the request to be dealt with, that State may request that additional information be furnished.

ARTICLE 6

CARRYING OUT OF REQUESTS

1. The Requested State shall apply its law in carrying out requests for assistance. As far as its law permits, the Requested State shall carry out the request in the manner specified therein.

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SCHEDULE—continued

2. The Requested State may delay the handing over of any property, records or documents if it requires the said property, records or documents for pending criminal or civil proceedings. In such a case the Requested State shall, upon request, provide certified copies.
3. Any property, original records or documents furnished in execution of the request shall be returned by the Requesting State to the Requested State as soon as possible unless the Requested State waives the return thereof.
4. Reasons shall be given promptly for refusal of, or delay in, assistance.
5. If necessary, the Requested State may make the granting of assistance dependent on conditions. The Requesting State shall comply with such conditions.
6. On the request of the Requesting State, the Requested State shall advise the date and place of execution of the request for assistance. Officials and interested persons may be present if the Requested State consents.

ARTICLE 7

CERTIFICATION

Documents or records transmitted pursuant to this Treaty shall not require any form of certification unless so requested by the Requesting State. In such cases, and subject to the law of the Requested State, the certification shall be in the form requested by the Requesting State.

ARTICLE 8

APPEARANCE OF PERSONS IN CUSTODY

1. A person in custody may, with his or her consent, be temporarily transferred from the Requested State to the Requesting State to give evidence or to assist in investigations.
2. Compliance with the request may be delayed if the continued presence of the person in custody in the Requested State is necessary for the purpose of an investigation or proceeding in that State.
3. The person temporarily transferred shall be held in custody and returned as soon as the person's presence is no longer required.
4. Where the custody of a person expires during the period of transfer the transferred person shall be released and entitled to such expenses, including return travel costs, as a person referred to in Article 9.

ARTICLE 9

APPEARANCE OF OTHER PERSONS

1. Any person in the Requested State may be summoned to be heard in criminal proceedings in the Requesting State or requested to assist in investigations in that State.
2. The Requested State shall invite the person named in the summons or request to comply with it and shall inform the Requesting State of the person's answer.
3. A person named in a summons or request may require the Requesting State to advance money to cover travelling and related expenses.

SCHEDULE—continued

ARTICLE 10

SAFE CONDUCT

1. A person made available to give evidence in proceedings or to assist in investigations in the Requesting State shall not be detained, prosecuted or punished in the Requesting State, or be subject to any civil suit being a civil suit to which the person could not be subjected if the person were not in the Requesting State, in respect of any act or omission which preceded that person's departure from the Requested State. That person shall not be required to give evidence in any legal proceeding other than the proceeding to which the request relates.
2. Paragraph 1 of this Article shall cease to apply if that person, not being detained as a prisoner transferred under Article 8, has not left the Requesting State within the period of thirty days after the person has either given evidence or has been officially notified that his or her appearance is no longer required.
3. The evidence given by a person made available to give evidence in proceedings in the Requesting State shall be inadmissible or otherwise disqualified from use in the prosecution of that person for an offence against a law of the Requesting State other than the offence of perjury in relation to the giving of that evidence.
4. A person who does not answer a summons to appear as a witness or expert shall not by reason thereof be liable to any penalty or be subjected to any coercive measures notwithstanding any contrary statement in the summons.

ARTICLE 11

SEARCH AND SEIZURE AND PROCEEDS OF CRIME

The Requested State shall, subject to its law, carry out requests for search and seizure of property, records or documents relating to an offence as well as requests for the location, freezing or confiscation of the proceeds or profits of offences.

ARTICLE 12

EXPENSES

The Requested State shall meet the cost of fulfilling the request for assistance except that the Requesting State shall bear:

- (a) the fees, allowances and expenses relating to the travel of persons pursuant to Article 9, and expenses relating to the conveying and custody of prisoners pursuant to Article 8;
- (b) the allowances and expenses incurred in conveying custodial or escorting officers;
- (c) the expenses associated with experts; and
- (d) where required by the Requested State, exceptional expenses in fulfilling the request for which the authorities of that State are liable to third parties.

ARTICLE 13

ENTRY INTO FORCE AND TERMINATION

1. This Treaty shall enter into force on the first day of the third month following the month in which the Contracting States have notified each other in writing through the diplomatic channel that their respective requirements for entry into force have been fulfilled.
2. This Treaty shall apply to requests whether or not the relevant offences occurred prior to the entry into force of this Treaty.

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SCHEDULE—continued

3. Either Contracting State may terminate this Treaty by notice in writing at any time and it shall cease to be in force on the first day of the third month following the month in which notice is given.

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

DONE in duplicate at Vienna on the 20th day of October One thousand nine hundred and eighty-eight in the English and German languages, both texts being equally authentic.

For Australia:

Lionel Bowen

For the Republic
of Austria:

Egmont Foregger

NOTE

1. Notified in the *Commonwealth of Australia Gazette* on L 1990.

28 September |