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Statutory Rules 1991 No. 1

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Mutual Assistance in Criminal Matters (Kingdom of the Netherlands) 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 18 April 1991.

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 (Kingdom of the Netherlands) Regulations.

Commencement

2. These Regulations commence on 1 June 1991.

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 Kingdom of the Netherlands subject to such limitations, conditions, exceptions or qualifications as are necessary

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to give effect to the Treaty between Australia and the Kingdom of the Netherlands on Mutual Assistance in Criminal Matters done at Canberra on 26 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 KINGDOM OF THE NETHERLANDS
ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS

AUSTRALIA
AND THE KINGDOM OF THE NETHERLANDS

DESIRING to extend to each other the widest measure of cooperation to combat crime,

HAVE AGREED as follows:

ARTICLE 1

SCOPE OF APPLICATION

1. The Contracting Parties shall, in accordance with this Treaty, grant to each other assistance in investigations or proceedings in respect of criminal matters.
2. Such assistance shall consist of:
 - (a) taking of evidence and obtaining of statements of persons;
 - (b) provision of documents and other records;
 - (c) location and identification of persons;
 - (d) execution of requests for search and seizure;
 - (e) making prisoners available to give evidence or assist investigations;
 - (f) making other persons available to give evidence or assist investigations;
 - (g) service of documents;
 - (h) measures to locate, restrain and forfeit the proceeds of crime; and
 - (i) other assistance consistent with the objects of this Treaty which is not inconsistent with the law of the Requested State.
3. Assistance shall not include:
 - (a) the arrest or detention of any person with a view to extradition;
 - (b) the execution in the Requested State of criminal judgments imposed in the Requesting State except to the extent permitted by the law of the Requested State and this Treaty; and
 - (c) the transfer of prisoners to serve sentences.

ARTICLE 2

OTHER COOPERATION

This Treaty shall not derogate from obligations subsisting between the Contracting Parties whether pursuant to other treaties or arrangements nor prevent the Contracting Parties providing assistance to each other pursuant to other treaties or arrangements.

SCHEDULE—continued

ARTICLE 3

CENTRAL OFFICES

1. The Contracting Parties shall each appoint a Central Office to transmit and receive requests for the purpose of this Treaty. Until the relevant Contracting Party designates another authority, the Central Office of Australia shall be the Attorney-General's Department, Canberra and the Central Offices for the Kingdom of the Netherlands shall be:

- | | |
|---------------------------------|--|
| — for the Kingdom in Europe: | The Ministry of Justice, The Hague; |
| — for the Netherlands Antilles: | The Ministry of Justice, Willemstad,
Curacao; and |
| — for Aruba: | The Ministry of Justice, Oranjestad,
Aruba. |

2. Requests for assistance shall be made through the Central Offices which shall arrange for the prompt carrying out of such requests.

ARTICLE 4

REFUSAL OF ASSISTANCE

1. Assistance shall be refused if:
 - (a) the request relates to an offence that is regarded by the Requested State as 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 an offence in respect of which the offender has been finally acquitted or pardoned, has served the sentence imposed, or in respect of which the Requested State has decided to refrain from prosecution;
 - (c) there are substantial grounds for believing that the request for assistance has been made to facilitate the prosecution of a person on account of that person's race, sex, religion, nationality or political opinions or that that person's position may be prejudiced for any of these reasons; or
 - (d) the Requested State is of the opinion that the request, if granted, would seriously impair its sovereignty, security, national interest or similar essential interests.
2. Assistance may be refused if:
 - (a) the request relates to an offence that is regarded by the Requested State as an offence of a political character;
 - (b) the request relates to an offence where the acts or omissions alleged to constitute that offence would not, if they had taken place within the jurisdiction of the Requested State, have constituted an offence; or
 - (c) the provision of the assistance sought could prejudice an investigation or criminal or civil proceeding in the Requested State, prejudice the safety of any person or impose an excessive burden on the resources of that State.
3. Before refusing to grant a request for assistance the Requested State shall consider whether assistance may be granted subject to such conditions as it deems necessary. If the Requesting State accepts assistance subject to these conditions, it shall comply with the conditions.

ARTICLE 5

CONTENTS OF REQUESTS

1. Requests for assistance shall include:
 - (a) the name of the competent authority conducting the investigation or proceedings to which the request relates;

SCHEDULE—continued

- (b) a description of the nature of the criminal matter including a statement of the relevant law;
 - (c) except in cases of requests for service of documents, other than summonses, a description of the essential acts, or omissions or matters alleged or sought to be ascertained;
 - (d) the purpose for which the request is made and the nature of the assistance sought;
 - (e) details of any particular procedure or requirement that the Requesting State wishes to be followed;
 - (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 the investigation or proceedings;
 - (b) a statement as to whether sworn or affirmed evidence or statements are required;
 - (c) a description of the information, statement or evidence sought;
 - (d) 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, to the extent not otherwise provided for, the form in which they should be reproduced and authenticated; and
 - (e) information as to the allowances and expenses to which a person appearing in the Requesting State will be entitled.
3. A request and any supporting documents submitted by Australia shall be in English or shall be translated into Dutch. A request and any supporting documents submitted by the Kingdom of the Netherlands shall be in, or translated into, English.
4. 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

EXECUTION OF REQUESTS

1. To the extent permitted by its law, the Requested State shall provide assistance in accordance with the requirements specified in the request and shall respond to the request as soon as practicable after it has been received.
2. The Requested State may postpone the delivery of material requested if such material is required for any proceedings in that State. The Requested State shall, upon request, provide authenticated 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 a decision of the Requested State not to comply in whole or in part with a request for assistance and the reason for that decision.

SCHEDULE—continued

ARTICLE 7

RETURN OF MATERIAL TO REQUESTED STATE

Where required by the Requested State, the Requesting State, after the completion of the proceedings, shall return to the Requested State material provided by the Requested State in fulfilment of the request.

ARTICLE 8

**PROTECTING CONFIDENTIALITY AND RESTRICTING
USE OF EVIDENCE AND INFORMATION**

1. The Requested State shall, to any extent requested, keep a request for assistance, the contents of a request and supporting documents, and the fact of granting of such assistance, confidential. If the request cannot be executed without breaching confidentiality, the Requested State shall so inform the Requesting State which shall then determine the extent to which it wishes the request to be executed.
2. The Requesting State shall, if so requested, keep confidential evidence and information provided by the Requested State, except to the extent that the evidence and information is needed for the investigation and proceeding described in the request.
3. The Requesting State shall not use evidence obtained, nor information derived therefrom, for purposes other than those stated in a request without the prior consent of the Requested State.

ARTICLE 9

SERVICE OF SUMMONSES

A request to effect service of a summons shall be made to a Requested State not less than 45 days before the date on which the personal appearance of any person in the Requesting State is scheduled. In urgent cases, the Requested State may waive this requirement.

ARTICLE 10

TAKING OF EVIDENCE

1. Where a request is made for the purpose of a proceeding in relation to a criminal matter in the Requesting State the Requested State shall, upon request, take sworn or affirmed evidence of witnesses for transmission to the Requesting State.
2. For the purposes of this Article, the giving or taking of evidence may include the production of documents, records or other material.
3. For the purposes of requests under this Article the Requesting State shall specify any particular questions to be put to the witnesses or the subject matter about which they are to be examined.
4. Where, pursuant to a request for assistance, a person is to give evidence for the purpose of proceedings in the Requesting State, the parties to the relevant proceedings in the Requesting State, their legal representatives or representatives of the Requesting State may, subject to the law of the Requested State, appear and question the person giving that evidence.

SCHEDULE—continued

5. A person who is required to give evidence in the Requested State pursuant to a request for assistance may decline to give evidence where either:
- (a) the law of the Requested State would permit or require that person to decline to give evidence in similar circumstances in proceedings which originated in the Requested State; or
 - (b) where the law of the Requesting State would permit or require that person to decline to give evidence in such proceedings in the Requesting State.
6. If any person claims that there is a right or requirement to decline to give evidence under the law of the Requesting State, the Requested State shall with respect thereto rely on a certificate of the Central Office of the Requesting State.

ARTICLE 11

OBTAINING OF STATEMENTS OF PERSONS

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

ARTICLE 12

AVAILABILITY OF PRISONERS TO GIVE EVIDENCE

OR ASSIST INVESTIGATIONS

1. A prisoner in the Requested State may at the request of the Requesting State be temporarily transferred to the Requesting State to give evidence or to assist investigations.
2. The Requested State shall not transfer a prisoner to the Requesting State unless the prisoner consents.
3. While the original sentence of a prisoner in the Requested State has not expired, the Requesting State shall hold the prisoner in custody and shall return that prisoner in custody to the Requested State as soon as possible.
4. Where the sentence imposed on a person transferred under this Article expires whilst the person is in the Requesting State, that person shall thereafter be released and be treated as a person referred to in Article 13.

ARTICLE 13

AVAILABILITY OF OTHER PERSONS TO GIVE EVIDENCE OR ASSIST INVESTIGATIONS

1. The Requesting State may request the assistance of the Requested State in making a person available to appear as a witness in proceedings in relation to a criminal matter in the Requesting State unless that person is the person charged, or to 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 appear as a witness or assist in the investigations and advise the person of the conditions and protections relating to his or her attendance in the Requesting State.

SCHEDULE—continued

ARTICLE 14

SAFE CONDUCT

1. A person who consents to give evidence or assist an investigation in the Requesting State under Articles 12 or 13 shall not whilst in the Requesting State pursuant to a request:
 - (a) be detained, prosecuted or punished in that State for any offence, or be subject to any civil suit, to which the person could not otherwise be subjected, in respect of any act or omission which preceded the person's departure from the Requested State; or
 - (b) without that person's consent, be required to give evidence in any 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 12, and being free to leave, has not left the Requesting State within a period of thirty days after that person has been officially notified that his or her presence is no longer required or, having left, has returned.
3. A person appearing before an authority in a Requesting State pursuant to a request under Articles 12 or 13 shall not be subject to prosecution based on the testimony given except in relation to perjury under the law of that State.
4. A person who does not consent to a request pursuant to Article 12 or Article 13 shall not by reason thereof be liable to any penalty or be subjected to any coercive measure notwithstanding any contrary statement in the request.
5. A person who appears as a witness in the Requesting State pursuant to a request for assistance may decline to give evidence if the person has, under the law of the Requested State, an obligation to do so.
6. If any person claims to be under an obligation to decline to give evidence under the law of the Requested State, the Requesting State shall with respect thereto rely on a Certificate of the Central Office of the Requested State.

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 as part of a public register or otherwise, or that are available for purchase by the public.
2. The Requested State may in its discretion 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

AUTHENTICATION

1. Each Contracting State shall, upon request, authenticate any documents or other material to be transmitted to the other State under this Treaty.
2. A document or other material is authenticated for the purposes of this Treaty if:
 - (a) it purports to be signed or certified by a judge, magistrate or other officer in or of the State sending the document; and
 - (b) it purports to be authenticated by an official seal of a minister of state, or of a department or officer of the Government, of the State sending the document.

SCHEDULE—continued

ARTICLE 17

SEARCH AND SEIZURE

1. The Requested State shall insofar as its law permits carry out requests for search, seizure and delivery of any material to the Requesting State provided the request contains information that 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 property seized.
3. The Requesting State shall observe any conditions imposed by the Requested State in relation to any seized property which is delivered to the Requesting State.

ARTICLE 18

PROCEEDS OF CRIME

1. The Requested State shall, upon request, endeavour to ascertain whether any proceeds of the crime alleged are located within its jurisdiction and shall notify the Requesting State of the results of its inquiries. In making the request, the Requesting State shall notify the Requested State of the basis of its belief that such proceeds may be located in its jurisdiction.
2. The Requested State shall give effect to a confiscation order relating to the proceeds of crime or any other measure having similar effect made or imposed by a Court of the Requesting State.
3. Where the Requesting State notifies its intention to seek the enforcement of a confiscation order or a similar measure the Requested State shall take such measures consistent with its law to prevent any dealing in, transfer or disposal of, the property which is or may be affected by those orders.
4. Proceeds confiscated pursuant to this Treaty shall be retained by the Requested State unless otherwise mutually decided in a particular case.
5. In the application of this Article the rights of bona fide third parties shall be respected.

ARTICLE 19

SUBSIDIARY ARRANGEMENTS

The Central Offices of the Contracting Parties may enter into subsidiary arrangements with each other to facilitate the operation of this Treaty to the extent that such arrangements are consistent with the laws of both Contracting Parties.

ARTICLE 20

EXPENSES

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 12 or 13;
- (b) the expenses associated with conveying custodial or escorting officers; and
- (c) where required by the Requested State, exceptional expenses in fulfilling the request.

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SCHEDULE—continued

ARTICLE 21

CONSULTATION

The Contracting Parties shall consult promptly, at the request of either, concerning the interpretation, the application or the carrying out of this Treaty either generally or in relation to a particular case.

ARTICLE 22

ENTRY INTO FORCE

1. This Treaty shall enter into force on the first day of the second month following the date on which the Contracting Parties shall have notified each other that their legal requirements have been complied with.

2. This Treaty shall apply to requests made pursuant to it whether or not the relevant acts or omissions occurred prior to the Treaty entering into force.

ARTICLE 23

TERRITORIAL APPLICATION

1. Subject to paragraph 2 of this Article as regards the Kingdom of the Netherlands, this Treaty shall apply to the territory of the Kingdom as a whole.

2. This Treaty shall not apply to assistance provided for in Article 18 as between Australia and those parts of the Kingdom of the Netherlands outside Europe until the Kingdom of the Netherlands notifies Australia to the contrary.

ARTICLE 24

TERMINATION

1. Either Contracting Party may terminate this Treaty at any time by written notification to the other Party. The termination shall be effective six months after the date of receipt of such notice.

2. Termination of this Treaty by the Kingdom of the Netherlands may be limited to one of its constituent parts.

DONE at Canberra on the twenty-sixth day of October One thousand nine hundred and eighty-eight in English and Dutch, both texts being equally authentic.

FOR AUSTRALIA

Michael Tate

FOR THE KINGDOM OF THE
NETHERLANDS

Hans van den Broek

NOTE

1. Notified in the *Commonwealth of Australia Gazette* on 1991. 26 April