



Mutual Assistance in Criminal Matters (United Arab Emirates) Regulations 2010¹

Select Legislative Instrument 2010 No. 37

I, QUENTIN BRYCE, 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 10 March 2010

QUENTIN BRYCE
Governor-General

By Her Excellency's Command

BRENDAN O'CONNOR
Minister for Home Affairs

1 Name of Regulations

These Regulations are the *Mutual Assistance in Criminal Matters (United Arab Emirates) Regulations 2010*.

2 Commencement

These Regulations commence on the day on which the Treaty between Australia and the State of the United Arab Emirates on Mutual Legal Assistance in Criminal Matters, done at Hobart in Australia on 26 July 2007, enters into force.

3 Definition

In these Regulations:

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

United Arab Emirates means the State of the United Arab Emirates.

4 Application of Act

For paragraph 7 (2) (a) of the Act, the Act applies to the United Arab Emirates subject to the Treaty between Australia and the State of the United Arab Emirates on Mutual Legal Assistance in Criminal Matters, done at Hobart in Australia on 26 July 2007, a copy of which is set out in Schedule 1.

**Schedule 1 Treaty between Australia and
the State of the United Arab
Emirates on Mutual Legal
Assistance in Criminal
Matters, done at Hobart in
Australia on 26 July 2007**
(regulation 4)

**TREATY BETWEEN AUSTRALIA AND THE STATE OF THE
UNITED ARAB EMIRATES
ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS**

Australia and The State of the United Arab Emirates (hereinafter referred
to as the States)

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 States shall, in accordance with this Treaty, grant to each
other assistance in investigations or proceedings in respect of criminal
matters.
2. Criminal matters include matters connected with offences against
a law relating to customs duties, foreign exchange control and other
revenue matters.
3. Such assistance shall consist of:
 - (a) taking evidence and obtaining statements of persons
including by video conference or television link;
 - (b) executing letters rogatory;
 - (c) providing documents and other records;
 - (d) locating and identifying persons as part of a wider request for
assistance;

- (e) executing requests for search and seizure;
 - (f) locating, restraining and forfeiting the instruments and proceeds of crime;
 - (g) seeking the consent of persons to be available to give evidence or to assist in investigations in the Requesting State, and where such persons are in custody arranging for their temporary transfer to that State;
 - (h) serving documents; and
 - (i) other assistance consistent with the objects of this Treaty which is not inconsistent with the law of the Requested State.
4. 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 except to the extent permitted by the law of the Requested State and this Treaty regarding the instruments and proceeds of crime; and
 - (c) the transfer of sentenced persons.

ARTICLE 2 CENTRAL AUTHORITY

1. The States shall each appoint a Central Authority to transmit and receive requests for the purpose of this Treaty. The Central Authority of Australia shall be the Attorney-General's Department, Canberra and the Central Authority of The State of the United Arab Emirates shall be the Ministry of Justice. Either State shall notify the other of any change of its Central Authority.

2. Requests for assistance should be made through diplomatic channels to the Central Authority. In cases of urgency, requests may be transmitted directly between the Central Authorities. In such cases, copies of such requests shall also be sent through diplomatic channels as soon as practicable thereafter. The Central Authorities shall arrange for the prompt carrying out of such requests.

ARTICLE 3
REFUSAL OF ASSISTANCE

1. Assistance shall 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 of a person for an offence in respect of which the offender has been finally acquitted or pardoned or has served the sentence imposed;
 - (c) there are substantial grounds for believing that the request for assistance has been made for the purpose of prosecuting or punishing 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 prejudice its sovereignty, security, national interest or other essential interests.
2. Assistance may be refused if:
 - (a) 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 within the jurisdiction of the Requested State, have constituted an offence;
 - (b) 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;

- (c) 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;
 - (d) provision of the assistance sought could prejudice an investigation or proceeding in the Requested State, prejudice the safety of any person or impose an excessive burden on the resources of that State; or
 - (e) the request relates to provision of assistance that may result in the death penalty being imposed or executed, unless having regard to the interests of international criminal cooperation, the special circumstances of the case and to the extent permitted by the law of the Requested State, the Requested State considers that the assistance requested should be granted.
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 conditions, it shall comply with those conditions.

ARTICLE 4

CONTENTS OF REQUESTS

1. Requests for assistance shall include:
- (a) the purpose of the request and a description of the assistance sought;
 - (b) the name of the competent authority conducting the investigation or proceedings to which the request relates;
 - (c) a description of the nature of the criminal matter including a statement of the relevant laws;
 - (d) except in cases of request for service of documents, a description of the acts or omissions or matters alleged to constitute the offence;
 - (e) the court order, if any, sought to be enforced and a statement to the effect that it is a final order;

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- (f) details of any particular procedure or requirement that the Requesting State wishes to be followed, including a statement as to whether sworn or affirmed evidence or statements are required;
- (g) the requirements, if any, of confidentiality and the reasons therefore; and
- (h) 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;
- (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
- (d) information as to the allowances and expenses to which a person appearing in the Requesting State will be entitled.
3. Requests, supporting documents and other communications made pursuant to this Treaty shall be in the language of the Requesting State and accompanied by a translation into the language of the Requested State.
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, it may request additional information.

ARTICLE 5 EXECUTION OF REQUESTS

1. Requests for assistance shall be carried out 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. Where this material includes documents, and subject to Article 14, the Requested State shall, upon request, provide certified copies of those 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.

ARTICLE 6

RETURN OF MATERIAL TO REQUESTED STATE

Where required by the Requested State, the Requesting State shall return the material provided under this Treaty when no longer needed for the relevant investigation or proceeding.

ARTICLE 7

PROTECTING CONFIDENTIALITY AND RESTRICTING USE OF EVIDENCE AND INFORMATION

1. The Requested State, if so requested, shall keep the application for assistance, the contents of a request and its 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 whether the request should nevertheless be executed.
2. The Requesting State, if so requested, shall keep confidential information and evidence 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 information or evidence obtained, nor anything derived from either, for purposes other than those stated in a request without the prior consent of the Requested State.

ARTICLE 8
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.
3. The Requested State may effect service of any document by mail or, if the Requesting State so requests, in any other manner required by the law of the Requesting State which is not inconsistent with the law of the Requested State.
4. The Requested State shall forward to the Requesting State proof of service of the documents. If service cannot be effected, the Requesting State shall be so informed and advised of the reasons.

ARTICLE 9
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 the evidence of witnesses for transmission to the Requesting State.
2. For the purposes of this Treaty, the giving or taking of evidence shall include the production of documents, records or other material.
3. For the purposes of requests under this Article the Requesting State shall specify the subject matter about which persons are to be examined, including any questions to be put.
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.

5. A person who is required to give evidence in the Requested State under this Article may decline to give evidence where either:

- (a) the law of the Requested State permits that witness to decline to give evidence in similar circumstances in proceedings originating in the Requested State; or
- (b) where the law of the Requesting State permits that witness to decline to give evidence in such proceedings in the Requesting State.

6. If any person claims that there is a right to decline to give evidence under the law of the Requesting State, the Central Authority of that State shall, upon request, provide a certificate to the Central Authority of the Requested State as to the existence of that right. In the absence of evidence to the contrary, the certificate shall provide sufficient evidence as to the existence of that right.

ARTICLE 10 OBTAINING OF STATEMENTS OF PERSONS

1. The Requested State shall, upon request, endeavour to obtain statements of persons for the purpose of an investigation or proceeding in relation to a criminal matter in the Requesting State.
2. For the purposes of requests under this Article the Requesting State shall specify the subject matter about which it seeks statements from persons including any questions which it seeks to be put to the person.

ARTICLE 11 AVAILABILITY OF PERSONS IN CUSTODY TO GIVE EVIDENCE OR TO ASSIST INVESTIGATIONS

1. A person in custody in the Requested State may, at the request of the Requesting State, be temporarily transferred to the Requesting State to assist investigations or to give evidence.
2. The Requested State shall not transfer a person in custody to the Requesting State unless the person consents to that transfer.

3. While the person transferred is required to be held in custody under the law of the Requested State, the Requesting State shall hold that person in custody and shall return that person in custody to the Requested State at the conclusion of the matter in relation to which transfer was sought under paragraph 1 of this Article or at such earlier time as the person's presence is no longer required.

4. 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 referred to in Article 12.

5. Nothing in this Article shall prevent the use of live video or live television links or other appropriate communication facilities in accordance with the laws and procedures of the Requested State if it is expedient and in the interests of justice to do so.

ARTICLE 12

AVAILABILITY OF OTHER PERSONS TO GIVE EVIDENCE OR ASSIST INVESTIGATIONS

1. The Requesting State may request the assistance of the Requested State in obtaining a person's consent to:

- (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, request the person to consent to appear as a witness in proceedings or to assist in the investigations.

3. Nothing in this Article shall prevent the use of live video or live television links or other appropriate communication facilities in accordance with the laws and procedures of the Requested State if it is expedient and in the interests of justice to do so.

ARTICLE 13
SAFE CONDUCT

1. Subject to paragraph 2 of this Article, where a person is in the Requesting State pursuant to a request made under Articles 11 or 12:
 - (a) that person shall not be detained, prosecuted or punished in the Requesting State, for any offence, nor 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 the person's departure from the Requested State; and
 - (b) that person shall not, without that person's consent, be required to give evidence in any proceeding or to assist any investigation other than the proceeding or investigation to which the request relates.
2. 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 30 days after that person has been officially notified that that person's presence is no longer required or, having left, has returned. The period of the 30 day immunity may be extended to take account of circumstances beyond the control of that person which do not include the commission of a criminal offence.
3. A person appearing in the Requesting State pursuant to a request made under Articles 11 or 12 shall be subject to the law of that State relating to contempt, perjury and the making of false declarations.
4. A person who does not consent to a request pursuant to Articles 11 or 12 shall not, by reason thereof, be liable to any penalty or be subjected to any coercive measure notwithstanding any contrary statement in the request or in any document accompanying the request.

ARTICLE 14
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 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. The Requested State may, in its discretion, deny a request pursuant to this paragraph entirely or in part.

ARTICLE 15 CERTIFICATION AND AUTHENTICATION

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

2. Documents and materials are authenticated for the purposes of this Treaty if:

- (a) they purport to be signed or certified by a judicial official or other officer in or of the State sending the document; and
- (b) they purport to be sealed with an official seal of the competent authority of the State sending the document.

ARTICLE 16 SEARCH AND SEIZURE

1. The Requested State shall, to the extent permitted by its law, 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 4 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 attached by the Requested State in relation to any seized material which is delivered to the Requesting State.

ARTICLE 17
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. 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. Where 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 prevent any dealing in, transfer or disposal of, those suspected proceeds of crime, pending a final determination in respect of those proceeds by a Court of the Requesting State.
3. The Requested State shall, to the extent permitted by its law, give effect to a final order forfeiting or confiscating the proceeds of crime made by a court of the Requesting State.
4. In the application of this Article, the rights of bona fide third parties shall be respected under the law of the Requested State.
5. Where proceeds of crime have been forfeited or confiscated under paragraph 3, the Requested State shall dispose of them in accordance with its laws. The Requested State may transfer the proceeds to the Requesting State to the extent permitted by its laws, or share the proceeds with the Requesting State.
6. In this Article “proceeds of crime” means any assets derived or realised, directly or indirectly, by any person as a result of criminal conduct, or the value of any such assets.
7. In this Article “assets” includes money and all kinds of moveable or immoveable and tangible or intangible property.

ARTICLE 18
INSTRUMENTS OF CRIME

1. Each State shall assist the other to the extent permitted by the law of the Requested State in proceedings relating to the restraint, forfeiture or confiscation of instruments of crime.

2. The Requested State may transfer the instruments of crime to the Requesting State, if the Requesting State agrees to the terms and conditions of such transfer as suggested by the Requested State.

3. In this Article “instruments of crime” means any property that has been, is being or is intended to be used in or in connection with the commission of an offence.

ARTICLE 19

RETURN OF EMBEZZLED PUBLIC FUNDS

1. When the Requested State seizes, confiscates or causes the forfeiture of assets that constitute public funds, whether or not these have been laundered, and which have been embezzled from the Requesting State, the Requested State shall, to the extent permitted by its law, return the seized, confiscated or forfeited assets, less any reasonable costs of realisation, to the Requesting State.

2. The return shall occur once a final judgment has been given in the Requesting State.

ARTICLE 20

SUBSIDIARY ARRANGEMENTS

The Central Authorities may enter into subsidiary arrangements to facilitate the functioning of this Treaty. Such arrangements shall be consistent with the purposes of this Treaty and with the laws of the States.

ARTICLE 21

REPRESENTATION AND EXPENSES

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

2. The Requested State shall meet the ordinary costs 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, 11 or 12;

- (b) the expenses associated with conveying custodial or escorting officers;
- (c) the costs of establishing and operating video conferencing or television links, and the interpretation of such proceedings;
- (d) other expenses related to the service of documents imposed in accordance with the law of the Requested State; and
- (e) exceptional expenses in fulfilling the request, following consultation between the States.

ARTICLE 22 CONSULTATION

The States 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 23 OTHER ASSISTANCE

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

ARTICLE 24 ENTRY INTO FORCE AND TERMINATION

1. This Treaty shall be subject to ratification and the instruments of ratification shall be exchanged. This Treaty shall enter into force on the thirtieth day after the date of exchange of the instruments of ratification.
2. This Treaty shall apply to requests presented after the date of its entry into force whether the relevant acts or omissions constituting the offence or offences to which the request relates occurred before or after that date.
3. Either State may terminate this Treaty by notice in writing through diplomatic channels at any time. Termination shall take effect 6 months after the date from which the notice is given. However, any request received up to the date of receipt of the notice to terminate shall continue to be governed by this Treaty until the request is concluded.

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

DONE at Hobart on the twenty-sixth day of July two thousand and seven in the English and Arabic languages, both texts being equally authentic.

For the Government of Australia 	For the State of the United Arab Emirates
Hon. David Johnston Minister for Justice and Customs	HE Mohammed Nekhaira Al Dhaheri Minister of Justice

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See <http://www.frli.gov.au>.