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## Mutual Assistance in Criminal Matters Act 2002

### SOLOMON ISLANDS

### THE MUTUAL ASSISTANCE IN CRIMINAL MATTERS ACT 2002 (NO. 4 OF 2002)

Passed by the National Parliament this third day of December 2002.

Assented to in Her Majesty's name and on Her Majesty's behalf this tenth day of March 2003.

Date of Commencement: See Section 1.

### ARRANGEMENT OF SECTIONS

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## **No. 4 of 2002**

**AN ACT TO** Make provision for Mutual Assistance in Criminal Matters.

**ENACTED** by the National Parliament of Solomon Islands.

### **PART I PRELIMINARY**

#### **Short title and commencement**

**1.** This Act may be cited as the Mutual Assistance in Criminal Matters Act 2002, and shall come into force on such date as the Minister may appoint by notice published in the Gazette.

#### **Applicability of the Act**

**2.** This Act shall apply in relation to mutual assistance in criminal matters between Solomon Islands and any foreign State, subject to any condition, variation or modification in any existing or future agreement with that State, whether in relation to a particular case or more generally.

#### **Interpretation**

**3.** In this Act, unless the context otherwise requires -

"appeal" includes proceedings by way of discharging or setting aside a judgment, and an application for a new trial or for a stay of execution;

"data" means representations, in any form, of information or

concepts;

"document" means any material on which data are recorded or marked and which is capable of being read or understood by a person, computer system or other device;

"foreign confiscation order" means an order, made by a court in a foreign State, for the purpose of -

(i) the confiscation or forfeiture of property in connection with; or

(ii) recovery of the proceeds of, a serious offence;

"foreign restraining order" means an order made in respect of a serious offence by a court in a foreign State for the purpose of restraining a particular person or all persons from dealing with property;

"foreign State" means -

(i) any country other than Solomon Islands; and

(ii) every constituent part of such country, including a territory, dependency or protectorate, which administers its own laws relating to international co-operation;

"interest", in relation to property, means

(i) a legal or equitable estate or interest in the property; or

(ii) a right, power or privilege in connection with the property, whether present or future and whether vested or contingent;

"place" includes any land (whether vacant, enclosed or built upon, or not), and any premises;

"premises" includes the whole or any part of a structure, building, aircraft, or vessel;

"proceedings" means any procedure conducted by or under the supervision of a judge, magistrate or judicial officer however described in relation to any alleged or proven offence, or property derived from such offence, and includes an inquiry, investigation, or preliminary or final determination of facts;

"property" means real or personal property of every description, whether situated in Solomon Islands or elsewhere and whether tangible or intangible, and includes an interest in any such real or personal property;

"proceeds of crime" means any property derived or realised directly or indirectly from a serious offence and includes, on a proportional basis, property into which derived or realised directly from the offence was later successively converted, transformed or intermingled, as well as income, capital and other economic gains derived or realised from such property at any time since the commission of the offence;

"serious offence" means an offence against a provision of -

(i) any law of Solomon Islands for which the maximum penalty is imprisonment or

other deprivation of liberty for a period of not less than twelve months, or more severe penalty including an offence against a law relating to taxation; and

(ii) a law of a foreign State, in relation to acts or omissions, which had they occurred in Solomon Islands, would have constituted an offence for which the maximum penalty is imprisonment or other deprivation of liberty for a period of not less than twelve months, or more severe penalty including an offence of a purely fiscal character.

## **PART II MUTUAL ASSISTANCE**

### **Authority to make and act on mutual assistance**

**4.** (1) The Attorney-General may make requests on behalf of Solomon Islands to the appropriate authority of a foreign State for mutual legal assistance in any investigation commenced or proceedings instituted in Solomon Islands relating to any serious offence.

(2) The Attorney-General may, in respect of any request from a foreign State for mutual assistance in any investigation commenced or proceeding instituted in that State relating to a serious offence -

(a) grant the request, in whole or in part, on such terms and conditions as he thinks fit;

(b) refuse the request, in whole or in part, on the ground that to grant the request would be likely to prejudice the

sovereignty, security or other essential public interest of Solomon Islands; or

(c) after consulting with the competent authority of the foreign state, postpone the request, in whole or in part, on the ground that granting the request immediately would be likely to prejudice the conduct of an investigation or proceeding in Solomon Islands".

## **Saving provision for other requests for assistance in criminal matters**

**5.** Nothing in this Act shall be taken to limit -

(a) the power of the Attorney-General apart from this Act, to make requests to foreign States or act on requests from foreign States for assistance in investigations or proceedings in criminal matters;

(b) the power of any other person or court, apart from this Act, to make requests to foreign States for forms of international assistance other than those specified in section 6; or

(c) the nature or extent of assistance in investigations or proceedings in criminal matters which Solomon Islands may lawfully give to or receive from foreign States.

## **Mutual legal assistance requests by Solomon Islands**

**6.** The request which the Attorney-General is authorised to make under section 4 are that the foreign State -

(a) have evidence taken, or documents or other articles

produced in evidence in the foreign State;

(b) obtain and execute search warrants or other lawful instruments authorising a search for things believed to be located in that foreign State, which may be relevant to investigations or proceedings in Solomon Islands, and if found, seize them;

(c) locate or restrain any property believed to be the proceeds of crime located in the foreign State;

(d) confiscate any property believed to be located in the foreign State, which is the subject of a confiscation order made under the Money Laundering and Proceeds of Crime Act 2002;

(e) transmit to Solomon Islands any such confiscated property or any proceeds realised therefrom or any such evidence, documents, articles or things;

(f) transfer in custody to Solomon Islands a person detained in the foreign State who consents to assist Solomon Islands in the relevant investigation or proceedings;

(g) provide any other form of assistance in any investigation commenced or proceeding instituted in Solomon Islands, that involves or is likely to involve the exercise of a coercive power over a person or property believed to be in the foreign State; or

(h) permit the presence of nominated persons during the execution of any request made under this Act.

## **Contents of requests for assistance**



7. (1) A request for mutual assistance shall -

- (a) give the name of the authority conducting the investigation or proceeding to which the request relates;
- (b) give a description of the nature of the criminal matter and a statement setting out a summary of the relevant facts and laws;
- (c) give a description of the purpose of the request and of the nature of the assistance being sought;
- (d) in the case of a request to restrain or forfeit assets believed on reasonable grounds to be located in the requested State, give details of the offence in question, particulars of any investigation or proceeding commenced in respect of the offence, and be accompanied by a copy of any relevant restraint or forfeiture order;
- (e) give details of any procedure that the requesting State wishes to be followed by the requested State in giving effect to the request, particularly in the case of a request to take evidence;
- (f) include a statement setting out any wishes of the requesting State concerning any confidentiality relating to the request and the reasons for those wishes;
- (g) give details of the period within which the requesting State wishes the request to be complied with;
- (h) where applicable, give details of the property to be traced, restrained, seized or confiscated, and of the grounds for believing that the property is believed to be in the requested

State; and

(i) give any other information that may assist in giving effect to the request.

(2) A request for mutual assistance from a foreign State may be granted, if necessary after consultation, notwithstanding that the request, as originally made, does not comply with subsection (1).

### **Foreign requests for an evidence-gathering order or search warrant.**

**8.** (1) Notwithstanding anything contained in any law for the time being in force, where the Attorney -General grants a request by a foreign State to obtain evidence in Solomon Islands, an authorised person may apply to the High Court for -

(a) a search warrant; or

(b) an evidence-gathering order.

(2) The High Court to which an application is made under subsection (1) shall issue an evidence-gathering order or a search warrant under this subsection, where it is satisfied that there are reasonable grounds to believe that -

(a) a serious offence has been or may have been committed against the law of the foreign State;

(b) evidence relating to that offence may -

(i) be found in a building, receptacle or place in Solomon Islands; or

(ii) be able to be given by a person believed to be in Solomon Islands;

(c) in the case of an application for a search warrant, it would not, in all the circumstances, be more appropriate to grant an evidence-gathering order.

(3) For the purposes of subsection (2)(a), a statement contained in the foreign request to the effect that a serious offence has been or may have been committed against the law of the foreign State is prima facie evidence of that fact.

(4) Notwithstanding the provisions of the [Criminal Procedure Code](#) or any other law, the High Court may where it thinks appropriate, issue an evidence-gathering order in lieu of a search warrant and the provisions of subsections (5), (6), (7), (8) and (9) shall apply in respect of such evidence-gathering order.

(Cap. 7.)

(5) An evidence-gathering order -

(a) shall provide for the manner in which the evidence is to be obtained in order to give proper effect to the foreign request, and in particular, may require any person named therein to -

(i) make a record from data or make a copy of a record;

(ii) attend court to give evidence on oath or otherwise until excused;

(iii) produce to the High Court or to any

person designated by the Court, any thing,  
including any document, or copy thereof,  
or

(b) may include such terms and conditions as the High Court considers desirable, including those relating to the interests of the person named therein or of third parties.

(6) A person named in an evidence-gathering order may refuse to answer a question or to produce a document or thing where the refusal is based on -

(a) a privilege recognised by a law in force in the foreign State that made the request; or

(b) a law currently in force in the foreign State that would render the answering of that question or the production of that document or thing by that person in its own jurisdiction an offence.

(7) Where a person refuses to answer a question or to produce a document or thing pursuant to subsection (6)(a) or (b), the High Court shall report the matter to the Attorney-General who shall notify the foreign State and request the foreign State to provide a written statement on whether the person's refusal was well-founded under the law of the foreign State.

(8) Any written statement received by the Attorney-General from the foreign State in response to a request under subsection (7) shall be admissible in the evidence-gathering proceedings, and for the purposes of this section whether the person's refusal is well-founded under the foreign law.

(9) A person who, without reasonable comply with a lawful order of the High Court made under this section or who having refused pursuant to

subsection (6), continues to refuse notwithstanding the admission into evidence of statement under subsection (8) to the effect that the refusal is not well founded, commits a contempt of court and is punishable accordingly.

(10) A search warrant shall be in the usual form in which a search warrant is issued in Solomon Islands, varied to the extent necessary to suit the case.

(11) No document or thing seized and ordered to be sent to a foreign State shall be sent until the Attorney-General is satisfied that the foreign State has agreed to comply with any terms or conditions imposed in respect of the sending abroad of the document or thing.

### **Foreign requests for consensual transfer of detained persons**

9. (1) Where the Attorney-General approves a request of a foreign State to have a person, who is detained in custody in Solomon Islands by virtue of a sentence or order of court, transferred to a foreign State to give evidence or assist in an investigation or proceeding in that State relating to a serious offence, an authorised person may apply to the High Court for a transfer order.

(2) The High Court to which an application is made under subsection (1) may make a transfer order under this subsection where it is satisfied, having considered any documents filed or information given in support of the application, that the detain person consents to the transfer.

(3) A transfer order made under subsection (2) shall -

(a) set out the name of the detained person and his current place of confinement;

(b) order the person who has custody of the detained person to deliver him into the custody of a person who is designated in

the order or who is a member of the class of persons so designated.

(c) order the person receiving him into custody to take him to the foreign State and, on return of the detained person to Solomon Islands, to return that person to a place of confinement in Solomon Islands specified in the order, or to such other place of confinement as the Attorney-General may subsequently notify to the foreign State;

(d) state the reasons for the transfer; and

(e) fix the period of time at or before the expiration of which the detained person must be returned, unless varied for the purposes of the request by the Attorney-General.

(4) The time spent in custody by a person pursuant to a transfer order shall be taken into consideration in determining any sentence required to be served by that person, so long as the person remains in such custody and is of good behaviour.

### **Person in Solomon Islands in response to a request**

**10.** (1) The Attorney-General may by written notice authorise -

(a) the temporary detention in Solomon Islands of a person in detention in a foreign State who is to be transferred from the State to Solomon Islands pursuant to a request under section 6(f), for such period as may be specified in the notice; and

(b) the return in custody of the person to the foreign State when his presence is no longer required.

- (2) A person in respect of whom a notice is issued under subsection (1) shall so long as the notice is in force -
- (a) be permitted to enter Solomon Islands and remain in Solomon Islands for the purposes of the request, and be required to leave Solomon Islands when no longer required for those purposes, notwithstanding any Solomon Islands law to the contrary; and
  - (b) while in custody in Solomon Islands for the purposes of the request, be deemed to be in lawful custody.
- (3) The Attorney-General may at any time vary a notice issued under subsection (1), and where the foreign state requests the release of the person from custody, either immediately or on a specified date, the Attorney-General shall direct that the person be released from custody accordingly.
- (4) Any person who escapes from lawful custody while in Solomon Islands pursuant to a request under section 6(f) may be arrested without warrant by any authorised person and returned to the custody authorised under subsection (1)(a).
- (5) Where a foreign State has requested that a person be detained in Solomon Islands in the course of transit between the foreign State and a third country and the Attorney-General grants the request, the provisions of this section shall apply mutatis mutandis in relation to the person.
- (6) No court in Solomon Islands has jurisdiction to entertain any application by or on behalf of any person in Solomon Islands pursuant to a request under section (6)(f), relating to release from custody or continued presence in Solomon Islands after his presence is no longer required for the purpose of the request.

## **Safe conduct guarantee**

**11.** (1) Where a person, whether or not a detained person, is in Solomon Islands in response to a request by the Attorney-General under this Act to give evidence in a proceeding or to assist in an investigation, prosecution or related proceeding, the person shall, while in Solomon Islands, be -

(a) detained, prosecuted or punished; or

(b) subjected to civil process,

in respect of any act or omission that occurred before the person's departure from the foreign State pursuant to the request.

(2) Subsection (1) ceases to apply to the person when the person leaves Solomon Islands or has had the opportunity to leave, but remains in Solomon Islands for ten days after the Attorney-General has notified the person that he is no longer required for the purposes of the request.

## **Foreign requests for Solomon Islands Restraining Orders**

**12.** (1) Where a foreign State pursuant to criminal proceedings commenced in that State in respect of a serious offence, requests the Attorney-General to obtain the issue of a restraining order against property some or all of which is believed to be located in Solomon Islands, and there are reasonable grounds to believe that the property is located in Solomon Islands, the Attorney-General may apply to the High Court for a restraining order under subsection (2).

(2) Where the Attorney-General makes an application to the High Court under subsection (1), the Court may make a restraining order in respect of the property, and the Money Laundering and Proceeds of Crime Act 2002, and this Act shall apply in relation to the application and to any restraining



order made as a result, as if the serious offence which is the subject of the order had been committed in Solomon Islands.

### **Requests enforcement of foreign confiscation or restraining order**

**13.** (1) Where a foreign State requests the Attorney-General to make arrangements for the enforcement of -

- (a) a foreign restraining order; or
- (b) a foreign confiscation order,

the Attorney-General may apply to the High Court for registration of the order.

(2) The High Court shall, on application by the Attorney-General, register a foreign restraining order if the Court is satisfied that at the time of registration, the order is in force in the foreign State.

(3) The High Court shall, on application by the Attorney-General, register a foreign confiscation order if the Court is satisfied that -

- (a) at the time of registration, the order is in force in the foreign State and is not subject to appeal; and
- (b) where the person who is the subject of the order did not appear in the confiscation proceedings in the foreign State -
  - (i) the person was given notice of the proceedings in sufficient time to enable him to defend them; or
  - (ii) the person has absconded or died before such notice could be given.

(4) For the purposes of subsections (2) and (3), a statement contained in the foreign request to the effect that-

- (a) the foreign restraining order is in force in the foreign State;
- (b) the foreign forfeiture order is in force in the foreign state and is not subject to appeal; or
- (c) the person who is the subject of the foreign forfeiture order was given notice of the proceedings in sufficient time to enable him to defend them, or that person had absconded or died before such notice could be given,

is prima facie evidence of those facts, without proof of the signature or official character of the person appearing to have signed the foreign request.

(5) Where a foreign restraining order or foreign confiscation order is registered in accordance with this section, a copy of any amendments made to the order in the foreign State, (whether before or after the registration), may be registered in the same way as the order, but shall not have effect for the purposes of the [Money Laundering and Proceeds of Crime Act 2002](#) until they are so registered.

(6) The High Court shall, on application by the Attorney-General cancel the registration of -

- (a) a foreign restraining order, if it appears to the Court that the order has ceased to have effect;
- (b) a foreign confiscation order, if it appears to the Court that the order has been satisfied or has ceased to have effect.

(7) Where a foreign restraining order against property is registered under this section, the Court may, upon application by a person claiming an interest in the property, make an order as to the giving or carrying out of an undertaking by the Attorney-General on behalf of Solomon Islands, with respect of the payment of damages or costs in relation to the registration or operation of the order

(8) Subject to subsection (9), where the foreign restraining order or foreign confiscation order comprises a facsimile copy of a duly authenticated foreign order, or amendment made to such an order, the facsimile shall be regarded for the purposes of this Act as the same as the duly authenticated foreign order.

(9) Registration effected by means of a facsimile ceases to have effect at the end of the period of fourteen days commencing on the date of registration, unless a duly authenticated original of the order has been registered by that time.

(10) Where a foreign restraining order or a foreign confiscation order that has been registered pursuant to this section, the [Money Laundering and Proceeds of Crime Act 2002](#) shall be deemed to apply in relation to the order as if the serious offence which is the subject of the order had been committed in Solomon Islands, and the order had been made pursuant to that Act.

### **Foreign requests for the location of proceeds of crime.**

14. Where a foreign State requests the Attorney-General to assist in locating property believed to be the proceeds of a serious crime committed in that State, the Attorney-General may authorise the making of any application under section 70, 75 or 77 of the [Money Laundering and Proceeds of Crime Act 2002](#), for the purpose of acquiring the information sought by the foreign State.

## **Sharing confiscated property with foreign State.**

**15.** The Attorney-General may enter into an arrangement with the competent authorities of a foreign State for reciprocal sharing with that State of such part of any property realised -

(a) in the foreign State, as a result of action taken by the Attorney-General pursuant to section 6(d); or

(b) in Solomon Islands as a result of action taken in Solomon Islands pursuant to section 13(1), as the Attorney-General thinks fit.

## **PART III** **MISCELLANEOUS**

### **Privilege for foreign documents**

**16.** (1) Subject to subsection (2), a document sent to the Attorney-General by a foreign State in accordance with a Solomon Islands request is privileged and no person shall disclose to anyone the document, or its purport, or the contents of the document or any part thereof, before the document, in compliance with the conditions on which it was so sent, is made public or disclosed for the purpose of any proceedings.

(2) No person in possession of a document referred to in subsection (1), or a copy thereof, or who has knowledge of any information contained in the document, shall be required, in connection with any legal proceedings to produce the document or copy or to give evidence relating to any information that is contained therein.

(3) Except to the extent required under a request by a foreign State for mutual assistance in criminal matters, no person shall disclose -

(a) the fact that the request has been received; or

(b) the contents of the request.

(4) A person who contravenes any of the provisions of this section shall be guilty of an offence and on conviction liable -

(a) in the case of an individual, to a fine not exceeding five thousand dollars or to imprisonment for a period not exceeding three months or to both such fine and imprisonment; or

(b) in the case of a corporation, to a fine not exceeding twenty-five thousand dollars.

### **Restriction on use of evidence and materials obtained by mutual assistance**

**17.** No information, document, article or other thing obtained from a foreign State pursuant to a request made under this Act shall be used in any investigation or proceeding other than the investigation or proceeding disclosed in the request, unless the Attorney-General consents after consulting with the foreign State.

### **Confiscated proceeds of drug crime to be used for rehabilitation of victims of drug abuse**

**18.** Any proceeds of drug-related crime which have been -

(a) confiscated in a foreign State pursuant to a request by Solomon Islands under section 6(d);

(b) confiscated in Solomon Islands pursuant to a request by a foreign State under section 13(1),

to the extent available under any sharing of confiscated property arrangement referred to in section 15, or otherwise, shall be used for the purpose of rehabilitating victims of drug abuse.

## Regulations

**19.** The Minister may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

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