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Statutory Rules 1997 No. 1

59/

Mutual Assistance in Criminal Matters (Republic of Hungary) 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 1 1997.

19 March/

1 WILLIAM DEANE/
Governor-General

By His Excellency's Command,

1 DARYL WILLIAMS/
Attorney-General and Minister for Justice

Citation

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

Commencement

2. These Regulations commence on 25 April 1997.

Definition

3. In these Regulations:

“**Mutual Assistance Treaty**” means the Treaty on Mutual Assistance in Criminal Matters between Australia and the Republic of Hungary (a copy of which is set out in the Schedule).

Application of Act

4. The *Mutual Assistance in Criminal Matters Act 1987* applies to the Republic of Hungary subject to the Mutual Assistance Treaty.

SCHEDULE

Regulation 3

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

Australia and the Republic of Hungary

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 States shall, in accordance with this Treaty, grant to each other assistance in investigations or proceedings in respect of criminal matters.

SCHEDULE—continued

2. Criminal matter also includes matters connected with offences against a law relating to taxation, customs duties, foreign exchange control and other revenue matters.
3. Such assistance shall 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) measures to locate, restrain and forfeit the proceeds of crime;
 - (f) 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;
 - (g) service of documents; and
 - (h) 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; and
 - (c) the transfer of persons in custody to serve sentences.

ARTICLE 2

OTHER ASSISTANCE

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

SCHEDULE—continued

ARTICLE 3

CENTRAL OFFICE

1. The Contracting States shall each appoint Central Offices to transmit and receive requests for the purpose of this Treaty. The Central Office of Australia shall be the Attorney-General's Department, Canberra and the Central Offices of Hungary shall be the Ministry of Justice and the Chief Public Prosecutor's Office. Either State shall notify the other of any change of its Central Office(s).

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 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

SCHEDULE—continued

- (d) the Requested State is of the opinion that the request, if granted, would prejudice its sovereignty, security, national interest, *ordre public* 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 the prosecution or punishment of a person for an offence in respect of which the death penalty may be imposed or executed.
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.

SCHEDULE—continued

ARTICLE 5

FORM AND CONTENTS OF REQUESTS

1. A request for assistance shall be in writing except that the Central Office of the Requested State may accept a request in another form in urgent situations. In any such situation, the request shall be confirmed in writing within ten days thereafter unless the Central Office of the Requested State agrees otherwise.
2. 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;
 - (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.
3. 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;

SCHEDULE—continued

- (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 fees, allowances and expenses to which a person appearing in the Requesting State will be entitled.

4. 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.

5. 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 6

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. 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 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 DOCUMENTS AND MATERIALS TO
REQUESTED STATE**

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

ARTICLE 8

**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 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.

SCHEDULE—continued

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 60 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 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 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

SCHEDULE—continued

- (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 Office of that State shall, upon request, provide a certificate to the Central Office 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 11**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 12**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.

SCHEDULE—continued

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 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 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.

ARTICLE 14

SAFE CONDUCT

1. Subject to paragraph 2, where a person is in the Requesting State pursuant to a request made under Articles 12 or 13:

SCHEDULE—continued

- (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 thirty days after that person has been officially notified that that person's presence is no longer required or, having left, has returned.

3. A person appearing in the Requesting State pursuant to a request made under Articles 12 or 13 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 12 or 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 or in any document accompanying the request.

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.

SCHEDULE—continued

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 or the forfeiture of proceeds of crime shall be authenticated in accordance with paragraph 2. 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 Judge or Magistrate or other officer in or of the State sending the document; and
- (b) they purport to be sealed with an official or public 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.

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 5 of Article 5, 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.

SCHEDULE—continued

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**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 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. The Contracting States shall mutually determine whether the property referred to in paragraph 3, or the value of that property, should in a particular case be returned to the Requesting State, or be retained by the Requested State.

6. In this Article “proceeds of crime” means any property suspected, or found by a court, to be property derived or realized, directly or indirectly, as a result of the commission of an offence or to represent the value of property and other benefits derived from the commission of an offence.

SCHEDULE—continued

ARTICLE 19

SUBSIDIARY ARRANGEMENTS

The Central Offices of the Contracting States may enter into subsidiary arrangements consistent with the purposes of this Treaty and with the laws of both Contracting States.

ARTICLE 20

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 a request for assistance and shall otherwise represent the interests of the Requesting State.
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, 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.

ARTICLE 21

CONSULTATION

The Contracting 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.

SCHEDULE—continued

ARTICLE 22

ENTRY INTO FORCE AND TERMINATION

1. This Treaty 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 Treaty have been complied with.
2. This Treaty shall apply to requests whether or not the relevant acts or omissions occurred prior to this Treaty entering into force.
3. Either Contracting State may terminate this Treaty at any time by giving six months' notice in writing to the other through the diplomatic channel.

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

DONE in duplicate at Budapest, on the twenty-fifth day of October One thousand nine hundred and ninety five in English and Hungarian both texts being equally authentic.

FOR AUSTRALIA:

FOR THE REPUBLIC
OF HUNGARY:

Donald Kingsmill

Vastagh Pál

NOTE

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

/ 1997. 26 March /