

Mutual Assistance in Criminal Matters (Money-Laundering Convention) Amendment Regulations 1999 (No. 1) 1999 No. 10

EXPLANATORY STATEMENT

STATUTORY RULES 1999 No. 10

Issued by the Authority of the Minister for Justice and Customs

Mutual Assistance in Criminal Matters Act 1987

Mutual Assistance in Criminal Matters (Money-Laundering Convention) Amendment Regulations 1999 (No. 1)

Section 44 of the *Mutual Assistance in Criminal Matters Act 1987* ("the Act") provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to the Act. Paragraph 7 (2) (b) of the Act provides that regulations may provide that the Act applies to a foreign country subject to any multilateral mutual assistance treaty (being a treaty to which that country is a party) that is referred to in the regulations.

The Act enables Australia to grant or request the following kinds of international mutual assistance in criminal matters: taking of evidence, search and seizure, arrangements for witnesses to give evidence or assist in investigations, and the restraint, forfeiture and confiscation of proceeds of crime.

The Regulations insert the names of Germany, Portugal and Latvia in Schedule 3 to the *Mutual Assistance in Criminal Matters (Money-Laundering Convention) Regulations 1997* (Statutory Rules 1997 No. 248, as amended) ("the existing Regulations").

The existing Regulations give effect in Australian domestic law to the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, done at Strasbourg on 8 November 1990 ("the Convention"), in so far as it relates to mutual assistance in criminal matters. To achieve broad international co-operation in search, seizure and confiscation the Convention requires Parties to give effect to other Parties' confiscation orders and to assist in identifying and tracing property and freezing or seizing property to prevent its disposal. For this purpose the existing Regulations provide that, where a country is a Party to the Convention, the Act applies to that country subject to the Convention. Germany became a Party to the Convention on 1 January 1999, Portugal did so on 1 February 1999 and Latvia will become a Party on 1 April 1999.

Schedule 3 to the existing Regulations specifies the Parties to the Convention for the purposes of subsection 43A (1) of the Act, as provided by regulation 5. Subsection 43A (1) provides that, in a proceeding arising from a request by a foreign country for international assistance in a criminal matter, a document is admissible in evidence if the Attorney-General provides a certificate stating that the document was provided by a specified Party to the Convention in connection with a request for assistance of the type covered by the Convention. This gives effect to Australia's obligation under Article 26 of the Convention to exempt documents transmitted in application of the mutual assistance provisions of the Convention from legalisation formalities. Subsection 43 A (2) provides that the regulations may specify the Parties to the Convention for the purposes of subsection 43A (1).

Details of the Regulations are as follows:

Regulation 1 names the Regulations.

Regulation 2 provides that the Regulations and Schedule 1 commence on gazettal and that Schedule 2 commences on 1 April 1999.

Regulation 3 provides that Schedules 1 and 2 amend the *Mutual Assistance in Criminal Matters (Money-Laundering, Convention) Regulations 1997* ("the existing Regulations").

Schedule 1 amends Schedule 3 to the existing Regulations by inserting the names of Germany and Portugal in the list of Parties.

Schedule 2 amends Schedule 3 to the existing Regulations by inserting the name of Latvia in the list of Parties.