

# **Mutual Assistance in Criminal Matters (Hong Kong) Regulations 1999 1999 No. 33**

## EXPLANATORY STATEMENT

### STATUTORY RULES 1999 No. 33

Issued by the Authority of the Minister for Justice and Customs

*Mutual Assistance in Criminal Matters Act 1987*

Mutual Assistance in Criminal Matters (Hong Kong) Regulations 1999

Section 44 of the *Mutual Assistance in Criminal Matters Act 1987* ("the Act") provides that the Governor-General may make regulations prescribing all 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) (a) of the Act provides that regulations may provide that the Act applies to a specified foreign country subject to any mutual assistance treaty between that country and Australia that is referred to in the regulations. Subsections 3 (2) and (3) of the Act provide that a territory for the international relations of which a foreign country is responsible shall, unless the contrary intention appears, be deemed to be part of that foreign country but that this rule does not apply to a territory that is itself a foreign country to which the Act applies.

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 give effect in Australian domestic law to the Agreement between the Government of Australia and the Government of Hong Kong concerning Mutual Legal Assistance in Criminal Matters, signed at Sydney on 23 September 1996 ("the Agreement"). The Agreement, once in force, will bind the Governments of Australia and Hong Kong in international law to provide each other with the kinds of assistance listed above, and in addition to provide documents and other records, locate and identify persons, serve documents and provide other similar assistance not inconsistent with the law of the requested party.

In accordance with the Government's policy of greater parliamentary involvement in Australia's treaty-making processes, the Agreement was tabled in Parliament together with a National Interest Analysis (NIA), on 11 February 1997. The period of fifteen sitting days following tabling elapsed on 25 March 1997, allowing the Government to take binding treaty action in relation to the Agreement.

By a diplomatic note dated 11 January 1999 the Government of Hong Kong notified Australia, in accordance with Article XXI of the Agreement, that its domestic requirements for the Agreement's entry into force had been complied with. Australia's requirement for the Agreement's entry into force is the making of the Regulations. The Agreement enters into force 30 days after the date on which the Parties have notified each other that they have complied with their respective requirements for the entry into force of the Agreement. The Government of Hong Kong will be notified on 7 October 1999 that Australia's requirements for the Agreement's entry into force have been complied with. Thirty days after that date, that is on 6 November 1999, the Agreement will enter into force. Accordingly, 6 November 1999 is also the commencement date of the Regulations.

The Agreement was negotiated and signed before Hong Kong's reversion to Chinese sovereignty on 1 July 1997 but with that reversion in mind. Clause 71 of the 1984 Sino-British Joint Declaration on the Question of Hong Kong, an international agreement of treaty status, provides

that "The Central People's Government shall assist or authorise the Hong Kong Special Administrative Region Government to make appropriate arrangements for reciprocal juridical assistance with foreign States". Article 96 of the Basic Law of the Hong Kong Special Administrative Region makes similar provision for the purposes of China's domestic law. The Chinese Government consented to the negotiation and conclusion of the Agreement by Hong Kong. By a diplomatic note of 12 June 1997 the Chinese Government confirmed to the Australian Government that the Agreement would be regarded from 1 July 1997 as an agreement the Hong Kong Special Administrative Region had been authorised by the People's Republic of China to have signed with the Government of Australia.

As in all of Australia's mutual assistance in criminal matters treaties, the obligation to provide assistance is qualified by certain internationally accepted exceptions, chief amongst which are that assistance shall not be granted in relation to political or military offences or where a request is made for the purpose of prosecuting or punishing a person on account of his or her race, sex, religion, nationality or political opinions. Assistance shall also be refused where a request impairs the sovereignty, security or public order of the requested party (or, in Hong Kong's case, of the state responsible for its foreign affairs). In addition, assistance may be refused where a request relates to an offence which carries the death penalty under the law of the requesting party unless satisfactory guarantees are given that the death penalty will not be imposed or, if imposed, will not be carried out.

Details of the Regulations are as follows:

**Regulation 1** specifies the name of the Regulations.

**Regulation 2** provides for the Regulations to commence on 6 November 1999, which is the date on which it is planned the Agreement will come into force.

**Regulation 3** is a definition provision. It confirms that "Hong Kong" means the Hong Kong Special Administrative Region of the People's Republic of China and explains that the reference in the scheduled Agreement to the Attorney General of Hong Kong (a colonial title abolished on the transfer of sovereignty) is to be taken as a reference to the Secretary for Justice.

**Regulation 4** provides that the *Mutual Assistance in Criminal Matters Act 1987* applies to Hong Kong subject to the scheduled Agreement.

The **Schedule** to the Regulations contains the text of the Agreement between the Government of Australia and the Government of Hong Kong concerning Mutual Legal Assistance in Criminal Matters, done at Sydney on 23 September 1996.