



Mutual Assistance in Criminal Matters (Monaco) Regulations 2001

Statutory Rules 2001 No. 1¹

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I, WILLIAM PATRICK DEANE, 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 13 JUN 2001 2001

WILLIAM DEANE
Governor-General

By His Excellency's Command

CHRISTOPHER MARTIN ELLISON
Minister for Justice and Customs

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1 Name of Regulations

These Regulations are the *Mutual Assistance in Criminal Matters (Monaco) Regulations 2001*.

2 Commencement

These Regulations commence on 4 October 2001.

3 Application of Act

The *Mutual Assistance in Criminal Matters Act 1987* applies to Monaco subject to the Treaty between the Government of Australia and the Government of His Serene Highness the Prince of Monaco on Mutual Assistance in Criminal Matters, done at Paris on 13 September 1999, a copy of the English text of which is set out in Schedule 1.

Schedule 1 Treaty on Mutual Assistance in Criminal Matters

(regulation 3)

TREATY BETWEEN THE GOVERNMENT OF AUSTRALIA AND
THE GOVERNMENT OF HIS SERENE HIGHNESS THE PRINCE OF
MONACO ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS

THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT
OF HIS SERENE HIGHNESS THE PRINCE OF MONACO,

DESIRING to make more effective the co-operation of the two States in
the suppression of crime by concluding a treaty on mutual assistance in
criminal matters,

HAVE AGREED as follows:

Article 1 Scope of application

1. The Contracting Parties shall, in accordance with this Treaty,
grant to each other mutual assistance in criminal matters.
2. Such assistance shall consist of any assistance consistent with the
objects of this Treaty which is not inconsistent with the law of the
Requested State.
3. Assistance shall not include:
 - (a) the extradition of any person;
 - (b) the execution in the Requested State of criminal judgements
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.

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Article 2
Other assistance

This Treaty shall not derogate from agreements or arrangements in effect between the Contracting Parties, nor prevent the Contracting Parties providing assistance to each other pursuant to other agreements or arrangements.

Article 3
Central Office

1. Each Contracting Party hereby appoints a Central Office to transmit and receive requests for the purpose of this Treaty. The Central Office of Australia is the Attorney-General's Department, Canberra and the Central Office of the Principality of Monaco is the Direction des Services Judiciaires. Either State shall notify the other of any change of its Central Office.

2. Requests for assistance shall be transmitted through the diplomatic channel and shall be addressed to the Central Office of the Requested State which shall arrange for the prompt carrying out of such requests.

3. In case of urgency, requests for assistance may be transmitted directly by the Central Office of the Requesting State to the Central Office of the Requested State. Such transmission may be effected through the International Criminal Police Organisation (INTERPOL).

4. Responses to requests for assistance, together with the relevant documents, shall be transmitted through the diplomatic channel.

Article 4
Refusal of assistance

1. Assistance shall be refused if:
 - (a) the request relates to the prosecution 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 person has been finally acquitted or pardoned in the Requested or Requesting State or has served the sentence imposed in either State;
 - (c) there are substantial grounds for believing that:
 - (i) 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
 - (ii) that person's position may be prejudiced for any of the abovementioned 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 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 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 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.

Article 5 Contents of requests

1. Requests for assistance shall include the following information:
 - (a) the authority on whose behalf the request is made;
 - (b) the objects of, and reasons for, the request;
 - (c) except in cases of a request for service of documents:
 - (i) a description of the acts or omissions or matters alleged to constitute the offence;

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- (ii) a copy of the provisions of the relevant enactments or, where this is not possible, a statement of the relevant law creating the offence; and
 - (d) the court order, if any, sought to be enforced and a statement to the effect that it is a final order;
 - (e) details of any particular procedure or requirement that the Requesting State wishes to be followed.
 2. Requests for assistance, to the extent necessary and insofar as possible, shall also include:
 - (a) the identity, nationality and location of the relevant person or persons;
 - (b) a description of the evidence to be produced; and
 - (c) relevant details 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 shall be accompanied by a translation into the language of the Requested State.
 4. If the Requested State considers that the information contained in a request is not sufficient to enable the request to be dealt with in accordance with this Treaty, 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 inform the Requesting State as soon as possible 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 7

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.

Article 8

Protecting confidentiality

1. If so requested, each Contracting Party shall, to the extent permitted by its law, keep confidential requests for assistance and responses thereto.

2. The Requesting State shall not use documents or material obtained 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.

2. A request to effect service of a document requiring the appearance of a person shall be received by the Central Office of 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 10
Taking of evidence

1. The Requested State shall, on request, take the evidence of witnesses and experts.

2. On express request, the Requesting State shall be informed in good time by the Requested State of the date, time and place of the execution of a request made pursuant to this Article, so that the interested parties may be present.

3. 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) the law of the Requesting State permits that witness to decline to give evidence in such proceedings in the Requesting State.

4. 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

Availability of persons in custody to give evidence

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 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 is stipulated by the Requested State.
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.

Article 12

Availability of other persons to give evidence

If the Requesting State considers the personal appearance of a witness or expert before its judicial authorities especially necessary, it shall so mention in its request for service of the summons and the Requested State shall invite the witness or expert to appear. The Requested State shall inform the Requesting State of the reply of the witness or expert.

Article 13

Safe conduct

1. Subject to paragraph 3, where a person is in the Requesting State pursuant to a request made under Articles 11 or 12:
 - (a) that person shall not be prosecuted, detained, nor subjected to any other restriction of personal liberty in the territory of the Requesting State, for any offence or conviction 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 other than the proceeding to which the request relates.

2. Where the Requesting State seeks the presence of a person pursuant to Articles 11 or 12, it shall advise the Requested State of any civil suit against the person of which it is aware unless the law of the Requesting State protects the person from such suits.

3. 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 necessary or, having left, has returned.

4. A witness or expert who has failed to answer a summons to appear, service of which has been requested pursuant to this Treaty, shall not, even if the summons contains a notice of penalty, be subjected to any punishment or measure of restraint, unless subsequently he or she voluntarily enters the territory of the Requesting State and is there again duly summoned.

Article 14

Provision of publicly available and official documents

1. The Requested State shall provide copies of documents that are available to the public.
2. The Requested State may provide copies of any official document in the same manner and under the same conditions as such document may be provided to its own judicial or other authorities.

Article 15

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 4 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.

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 16 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 its request, the Requesting State shall set out the basis of its belief that such proceeds may be located in the jurisdiction of the Requested State.

2. Where, pursuant to paragraph 1, suspected proceeds of crime are found, the Requested State shall, on request of the judicial authorities of the Requesting State, 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, on request and to the extent permitted by its law, give effect to a final order made by a court of the Requesting State confiscating the proceeds of crime restrained pursuant to paragraph 2.

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 Requested State shall return the property referred to in paragraph 3, or the value of that property, to the Requesting State unless the offence which resulted in the confiscation order referred to in paragraph 3 was within the jurisdiction of the Requested State.

Article 17
Certification and authentication

1. Documents or materials supporting a request for assistance involving the use of compulsory measures including search and seizure or the confiscation of proceeds of crime shall be authenticated in accordance with paragraph 2 of this Article. If requested by the Requesting State, documents or materials furnished by the Requested State shall be similarly authenticated.
2. Documents and materials are authenticated for the purposes of this Treaty if:
 - (a) they purport to be signed or certified by a judge, magistrate or other officer in or of the State sending the document; and
 - (b) they purport to be sealed with an official 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 18
Representation and expenses

1. 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 travelling expenses of a person to or from the territory of the Requested State, and any allowances or expenses payable to that person whilst in the Requesting State;
 - (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 19
Criminal records

1. The Requested State shall communicate extracts from and information relating to judicial records requested from it by the judicial authorities of the Requesting State and needed in a criminal matter, to the same extent that these may be made available to its own judicial authorities in like case.

2. In any case other than that provided for in paragraph 1 of this Article the request shall be complied with in accordance with the conditions provided for by the law, regulations or practice of the Requested State.

Article 20
Notification of sentences

As far as possible, each Contracting Party shall notify the other of penalties of imprisonment imposed on the nationals of the other Party.

Article 21
Entry into force and termination

1. This Treaty shall enter into force thirty days after each Contracting Party has notified the other in writing that the 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 Party may terminate this Treaty at any time by forwarding through the diplomatic channel written notice of termination and this Treaty shall cease to be in force on the one hundred and eightieth day after the day on which notice is given.

IN WITNESS WHEREOF, the undersigned, being duly authorised thereto, have signed this Treaty.

DONE at Paris on the 13th day of September, One thousand, nine hundred and ninety-nine in English and French, both texts being equally authentic.

FOR THE GOVERNMENT OF
AUSTRALIA:

FOR THE GOVERNMENT OF
HIS SERENE HIGHNESS
THE PRINCE OF MONACO:

John Spender

Christian Orsetti

Note

1. Notified in the *Commonwealth of Australia Gazette* on / 2001. 20 June