



Mutual Assistance in Criminal Matters (Greece) Regulations 2004

Statutory Rules 2004 No. 375¹

I, PHILIP MICHAEL JEFFERY, 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 16 December 2004

P. M. JEFFERY
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 (Greece) Regulations 2004*.

2 Commencement

These Regulations commence on 16 January 2005.

3 Definition

In these Regulations:

Greece means the Hellenic Republic.

4 Application of Act

The *Mutual Assistance in Criminal Matters Act 1987* applies to Greece subject to the Treaty between Australia and the Hellenic Republic on Mutual Assistance in Criminal Matters done at Athens on 4 July 2002, a copy of the English text of which is set out in Schedule 1.

Schedule 1 **Treaty on Mutual Assistance in Criminal Matters**

(regulation 4)

TREATY BETWEEN AUSTRALIA AND THE HELLENIC REPUBLIC ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS

(Athens, 4 July 2002)

Australia and the Hellenic Republic,

DESIRING to extend to each other the widest measure of co-operation to combat crime,

HAVE AGREED as follows:

ARTICLE 1

GENERAL PROVISIONS

1. The Contracting Parties undertake to afford to each other, in accordance with the provisions of this Treaty, the widest measure of assistance in connection with investigations or proceedings brought in respect of offences the punishment of which at the time of the request for assistance falls within the jurisdiction of the Requesting State, including the supply of evidence for the proceedings.
2. "Offences" includes offences against a law relating to taxation, customs duties, foreign exchange control and other revenue matters.
3. This Treaty does not apply to arrests or the enforcement of verdicts.
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 Parties whether pursuant to other treaties or arrangements or otherwise nor prevent the Contracting Parties providing assistance to each other pursuant to other treaties or arrangements or otherwise.

ARTICLE 3

CENTRAL OFFICE

1. The Contracting Parties shall each appoint a Central Office 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 Office of the Hellenic Republic shall be the Ministry of Justice, Athens. Either State shall notify the other of any change of its Central Office.
2. Requests for assistance shall be made through the Central Offices which shall arrange for the prompt carrying out of such requests.

ARTICLE 4

LETTERS ROGATORY

The requested State shall execute in the manner provided for by its law any letters rogatory relating to a criminal matter and addressed to it by the competent judicial authorities of the Requesting State for the purpose of procuring or transmitting articles to be produced in evidence, records or documents.

ARTICLE 5

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
 - (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 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 law of the Requested State permits refusal on jurisdictional grounds;

- (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.

ARTICLE 6

CONTENTS OF REQUESTS

1. Requests for assistance shall be made in writing and shall include the following:
- (a) the authority on whose behalf the request is transmitted;
 - (b) the purpose of the request and details of the assistance sought;
 - (c) where possible the identity, nationality and location of the person who is the subject of, or who may have information relevant to, the investigation or proceeding;
 - (d) where appropriate, the name and address of the person to be served;

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- (e) a description of the acts, omissions or matters alleged to constitute the offence, except in the case of a request for service of documents;
 - (f) details of any procedural or other requirements of the Requesting State;
 - (g) where confidentiality is sought the reasons therefor;
 - (h) specification of any time limit within which compliance with the request is desired; and
 - (i) any court order sought to be enforced and a statement that it is a final order.

2. 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.

3. 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 7

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.

ARTICLE 8

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 for the relevant investigation or proceeding.

ARTICLE 9

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 the request without the prior consent of the Requested State.

ARTICLE 10

SERVICE OF DOCUMENTS

1. The Requested State shall, insofar as possible, 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 by which the appearance of a person is required shall be made to the Requested State not less than 65 days before the date on which the appearance is required. In very urgent cases, the Requested State may waive this requirement.

3. The Requested State shall, upon request, effect service of any document in the manner required by the Requesting State, provided this 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 11

TAKING OF EVIDENCE

1. A request for the taking of evidence shall be executed in accordance with the requirements of the Requesting State to the extent permitted by the law of the Requested State.

2. If the Requesting State requests the assistance of the Requested State in obtaining in the territory of the Requested State the evidence of witnesses or experts, the Requested State shall, subject to its laws, arrange for the evidence of that witness or expert to be obtained.

3. The Requested State may transmit certified copies or certified photocopies of the documents requested unless the Requesting State expressly requests the transmission of originals in which case the Requested State shall endeavour to comply with the request.

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

5. 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 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.
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

If the Requesting State considers the personal appearance of a witness or expert before its judicial or investigative authorities especially necessary it shall so mention in its request. The Requested State shall, if satisfied that satisfactory arrangements for that person's security will be made by the Requesting State, invite the witness or expert to appear.

ARTICLE 14

IMMUNITY OF WITNESSES AND EXPERTS

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

- (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 to the public.
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

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 3 of Article 6, 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 17

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 Requested State shall return the property referred to in paragraph 3, or the value of that property, to the Requesting 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.

ARTICLE 18

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, 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 19

SUBSIDIARY ARRANGEMENTS

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

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 10, 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 Parties 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.

ARTICLE 22

ENTRY INTO FORCE AND TERMINATION

1. This Treaty shall enter into force thirty days after the date on which the Contracting Parties have notified each other in writing that their respective 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 by notice in writing at any time and it shall cease to be in force on the one hundred and eightieth day after the day in which notice is given.

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

DONE at Athens on the fourth day of July Two Thousand and two, in two originals in the English and Greek languages, both texts being equally authentic.

FOR AUSTRALIA

FOR THE HELLENIC REPUBLIC

H.E. STUART HAMILTON
RAWDON HUME

MR FILIPPOS PETSALNIKOS

Note

1. Notified in the *Commonwealth of Australia Gazette* on 23 December 2004.