

V. LAW ENFORCEMENT AND MUTUAL ASSISTANCE

Introduction

This Section focuses on law enforcement aspects of money laundering. Owing to the unique features and techniques used in combating money laundering and the financing of terrorism, it is essential that law enforcement activities in this area be strengthened considerably to equip government officials (the police, prosecutors, judges and lawyers) in investigating and prosecuting money laundering.

Thus, this Section includes information and guidance on the establishment and operation of specialized financial intelligence units (FIUs) to strengthen governments' efforts in combating money laundering and the financing of terrorism. Furthermore, in view of the transnational features of money laundering and the financing of terrorism, mainly the movement of money across national boundaries, international mutual assistance and cooperation in combating these financial crimes is critically important. To this end, this Section includes some examples of mutual assistance arrangements, including model mutual assistance and foreign evidence bills, that could be considered. The texts of the documents were prepared by the Egmont Group and the United Nations and are taken from their websites and reproduced here with their consent.

The Egmont Group of Financial Intelligence Units: Statement of Purpose

STATEMENT OF PURPOSE of the Egmont Group of Financial Intelligence Units

The Hague, 13 June 2001

Recognising the international nature of money laundering;

Realising that in order to counter money laundering an increasing number of governments around the world have both imposed disclosure obligations on financial institutions and designated financial intelligence units, or "FIUs," to receive; analyse, and disseminate to competent authorities such disclosures of financial information;

Mindful of both the sensitive nature of disclosures of financial information and the value of the FIUs established to protect their confidentiality, analyse them, and refer them, as appropriate, to the competent authorities for investigation, prosecution, or trial;

Convinced that co-operation between and among FIUs across national borders both increases the effectiveness of individual FIUs and contributes to the success of the global fight against money laundering;

Understanding that effective international co-operation between and among FIUs must be based on a foundation of mutual trust;

Acknowledging the important role of international organisations and the various traditional national government agencies - such as Finance and Justice ministries, the police, and financial institution supervisory agencies - as allies in the fight against money laundering;

Having periodically convened plenary gatherings - known as Egmont Group Meetings¹ - to discuss issues common to FIUs and to foster such international co-operation among established FIUs, to assist and advise FIUs under development, and to co-operate with representatives of other government agencies and international organisations interested in the international fight against money laundering;

Having also agreed upon a definition of "Financial Intelligence Unit," completed a survey on the possibilities and modalities of information exchange, prepared a model Memorandum of Understanding for the exchange of information, created a secure Internet Web-site to facilitate information exchanges, and embarked upon several specific initiatives to develop the expertise and skills of the FIUs' staffs and to contribute to the successful investigation of matters within the FIUs' jurisdiction;

¹ Named after the Egmont-Arenberg palace in Brussels where the first such meeting was held on 9 June 1995.

Aware that obstacles continue to limit information exchange and effective co-operation between some FIUs, and that those obstacles may include legal restrictions and/or the very nature of the FIUs themselves (- as administrative, judicial, or police); and

Convinced that there exists both significant potential for broad-based international co-operation among the FIUs and a critical need to enhance such co-operation,

The FIUs participating in the Egmont Group hereby resolve to encourage the development of FIUs and co-operation among and between them in the interest of combating money laundering.

To that end, we reaffirm our accession to the definition of Financial Intelligence Unit adopted at the plenary meeting of the Egmont Group in Rome in November 1996:

"A central, national agency responsible for receiving (and, as permitted, requesting), analysing and disseminating to the competent authorities, disclosures of financial information

- (i) concerning suspected proceeds of crime, or
- (ii) required by national legislation or regulation, in order to counter money laundering."

We also adopt the findings of the legal working group concerning the identification of those agencies that meet the FIU definition at the present time.

Henceforth, we agree that Egmont Group plenary meetings shall be convened by and for FIUs and other invited persons or agencies who are in a position to contribute to the goals of the Egmont Group. Egmont Group Participants shall include FIUs and other agencies representing governments that do not presently have FIUs. All other invited persons, agencies or international organisations shall be considered "Observers."

We believe it is crucial to develop a network of information exchange on the basis of the "Principles of Information Exchange Between Financial Intelligence Units for Money Laundering Cases" as set forth in the Annex and incorporated herein by this reference.

We recognise the right of every FIU to subject co-operation to additional conditions as required by its national legislation.

We further agree to pursue as a priority, through the appropriate working groups and otherwise:

Determination of appropriate consequences that attend to an Egmont Group Participant's status with respect to the definition of FIU adopted in Rome;

Development of FIUs in governments around the world;
Further stimulation of information exchange on the basis of reciprocity or mutual agreement;

Access to the Egmont Secure Web-site for all FIUs;

Continued development of training opportunities, regional/operational workshops, and personnel exchanges;

Consideration of a formal structure to maintain continuity in the administration of the Egmont Group, as well as consideration of a regular frequency and location for plenary meetings;

Articulation of more formal procedures by which decisions as to particular agencies' status vis-a-vis the FIU definition are to be taken;

Designation of additional working groups, as necessary;

Development of appropriate modalities for the exchange of information;

Creation of Egmont Group sanctioned materials for use in presentations and communication to public audiences and the press about Egmont Group matters.

As originally approved in Madrid on 24 June 1997 and amended at The Hague on 13 June 2001.

A. Introduction

1. The Egmont Group works to foster the development of Financial Intelligence Units ("FIUs")¹ and information exchange.
2. The Egmont Group agreed in its Statement of Purpose, adopted in Madrid on 24 June 1997, to pursue among its priorities the stimulation of information exchange and to overcome the obstacles preventing cross-border information sharing.
3. Information-sharing arrangements should have the aim of fostering the widest possible co-operation between FIUs.
4. The following principles for information exchange among FIUs are meant to outline generally-shared concepts, while allowing countries necessary flexibility.

B. General Framework

5. International co-operation between FIUs in cases involving money laundering should be encouraged and based upon a foundation of mutual trust.
6. FIUs should take steps to seek information that may be used by other, identified, domestic law enforcement or financial supervisory agencies engaged in enforcement and related regulatory activities related to money laundering.

¹ See definition in the Egmont Group "Statement of Purpose".

7. FIUs should work to encourage that national legal standards and privacy laws are not conceived so as to inhibit the exchange of information, in accordance with these principles, between or among FIUs.
8. Information-sharing arrangements must recognize and allow room for case-by-case solutions to specific problems.

C. Conditions for the Exchange of Information

9. FIUs should be able to exchange information freely with other FIUs on the basis of reciprocity or mutual agreement and consistent with procedures understood by the requested and requesting party. Such exchange, either upon request or spontaneously, should produce any available information that may be relevant to an analysis or investigation of financial transactions and other relevant information related to money laundering and the persons or companies involved.
10. An FIU requesting information should disclose, to the FIU that will process the request, at a minimum the reason for the request, the purpose for which the information will be used and enough information to enable the receiving FIU to determine whether the request complies with its domestic law.

D. Permitted Uses of Information

11. Information exchanged between FIUs may be used only for the specific purpose for which the information was sought or provided.
12. The requesting FIU may not transfer information shared by a disclosing FIU to a third party, nor make use of the information in an administrative, investigative, prosecutorial, or judicial purpose without the prior consent of the FIU that disclosed the information.

E. Confidentiality - Protection of Privacy

13. All information exchanged by FIUs must be subjected to strict controls and safeguards to ensure that the information is used only in an authorized manner, consistent with national provisions on privacy and data protection. At a minimum, exchanged information must be treated as protected by the same confidentiality provisions as apply to similar information from domestic sources obtained by the receiving FIU.

The Egmont Group of Financial Intelligence Units: Information Paper

***INFORMATION PAPER* On Financial Intelligence Units And the Egmont Group**

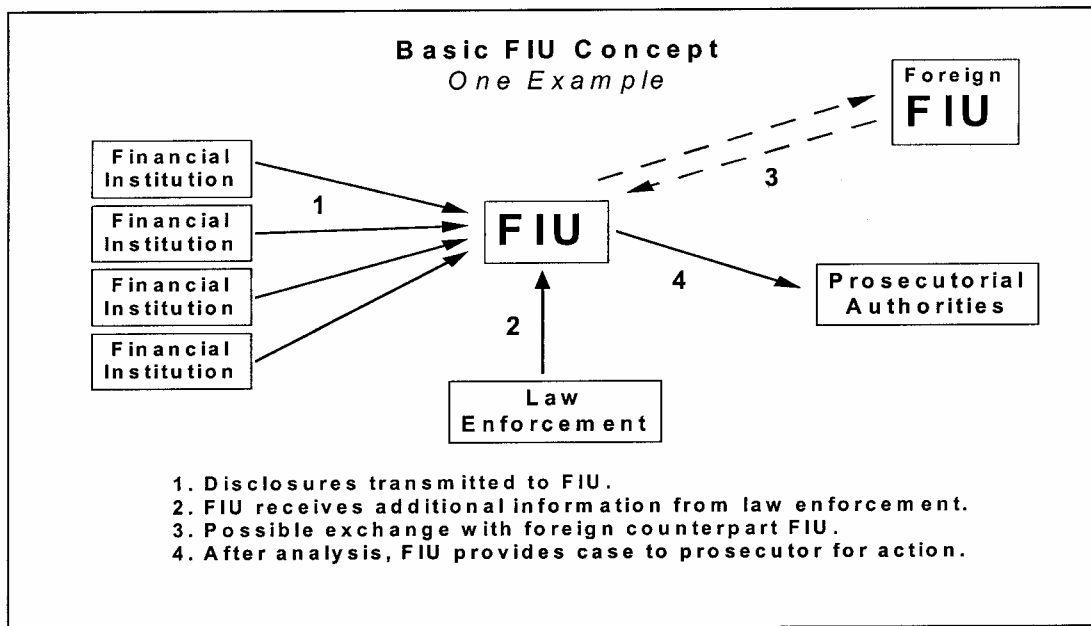
Background

For nearly ten years now, the fight against money laundering has been an essential part of the overall struggle to combat illegal narcotics trafficking and the activities of organised crime. During that time, the key issue involved in the anti-money laundering effort has been ensuring that the critical piece or pieces of information make it to the right people - the investigators and prosecutors charged with putting criminals behind bars and taking their illegally obtained wealth away - in a timely and useful manner.

The information needed to support anti-money laundering investigations often involves a wide range of human activity beyond that based purely on criminal motivation. Countering money laundering effectively requires not only knowledge of laws and regulations, investigation, and analysis, but also of banking, finance, accounting and other related economic activities. Money laundering is after all an economic phenomenon; launderers rely to a certain extent on already existing financial and business practices (and the lack of understanding of these by the law enforcement community) as a way of hiding illegally obtained funds.

Anti-money laundering investigations conceivably touch a number of law enforcement agencies within a particular jurisdiction. This along with the fact of ever-present resource limitations means that a completely effective, multi-disciplined approach for combating money laundering is often beyond the reach of any single law enforcement or prosecutorial authority. In many cases, there is also a reluctance on the part of financial institutions to provide to government authorities information that might be related to but is not obviously indicative of a crime. One may add to these restrictions on information exchange in certain instances, the unwillingness or inability to share such information among relevant government agencies and the seemingly insurmountable obstacles to rapid exchanges of information with foreign counterparts.

All of these barriers to information exchange directly affect the outcome of anti-money laundering investigations. The crime of money laundering may not become completely obvious until many or all of the pieces are put together. Since money may transfer hands in a matter of seconds or be relocated to the other side of the world at the speed of an electronic wire transfer, law enforcement and prosecutorial agencies that investigate money laundering must be able to count on a virtually immediate exchange of information. This information exchange must also be at an early point after possible detection of a crime - the so-called "pre-investigative" or intelligence stage. At the same time, the information on innocent individuals and businesses must be protected from potential misuse by government authorities.



The FIU Concept

Over the past years, a number of specialised governmental agencies have been created as countries develop systems to deal with the problem of money laundering. These entities are commonly referred to as "financial intelligence units" or "FIUs". These units have attracted increasing attention with their ever more important role in anti-money laundering programmes, that is, they seem to provide the possibility of rapidly exchanging information (between financial institutions and law enforcement / prosecutorial authorities, as well as between jurisdictions), while protecting the interests of the innocent individuals contained in their data.

The creation of FIUs has been shaped by two major influences:

- **Law Enforcement:** Most countries have implemented anti-money laundering measures alongside already existing law enforcement systems. Certain countries, due to their size and perhaps the inherent difficulty in investigating money laundering, felt the need to provide a "clearinghouse" for financial information. Agencies created under this impetus were designed, first and foremost, to support the efforts of multiple law enforcement or judicial authorities with concurrent or sometimes competing jurisdictional authority to investigate money laundering.
- **Detection:** Through the Financial Action Task Force 40 Recommendations and other regional initiatives (European Union and the Council of Europe in Europe; CFATF and OAS/CICAD in the Western Hemisphere), the concept of suspicious transaction disclosures has become a standard part of money laundering detection efforts. In creating transaction disclosure systems, some countries saw the logic in centralising this effort in a single office for receiving, assessing and processing these reports. FIUs established in this way often also play the role of a "buffer" between the private financial sector and law enforcement and judicial/prosecutorial authorities. With the FIU serving as the honest broker between the

private and government sectors, this arrangement has, in many cases, fostered a greater amount of trust in the anti-money laundering system as a whole.

Over time, FIUs in the first category have tended to add the disclosure receiving function to their list of attributions. Regulatory or oversight authority (with regard to anti-money laundering matters) has also increasingly become a function of a number of FIUs. Since disclosing requirements necessitate that the receiving agency deal with the disclosing institution, it is only logical that some FIUs then become a primary force in working with the private sector to find ways to perfect anti-money laundering systems.

Beginning of the Egmont Group

Despite the fact that FIUs were created in several jurisdictions throughout the world during the first years of the 1990s, their creation was still at first seen as isolated phenomena related to the specific needs of those jurisdictions establishing them. Since 1995, a number of FIUs began working together in an informal organisation known as the Egmont Group (named for the location of the first meeting at the Egmont-Arenberg Palace in Brussels). The goal of the Group is to provide a forum for FIUs to improve support to their respective national anti-money laundering programmes. This support includes expanding and systematising the exchange of financial intelligence information, improving expertise and capabilities of personnel of such organisations, and fostering better communication among FIUs through application of technology.

Egmont Meetings at a Glance

The first meeting of the Egmont Group was the culmination of several years of intensive national and international anti-money laundering effort. A number of documents - the United Nations "Vienna Convention"¹, the Group of Ten "Basle Statement of Principles"², and most notably the Financial Action Task Force on money laundering (FATF) "Forty Recommendations" - had spurred more international co-operation in this area. As FIUs were created during the past seven years, they have become more visible in representing their respective nations at international anti-money laundering conferences and seminars. It was through informal contacts made between FIU representatives at various FATF functions that an interest was established for a meeting of such organisations.

Although differing in size, structure, and individual responsibilities, all FIUs share a common purpose in the fight against money laundering. The goal of Egmont, therefore, has been to seek ways to develop among participants a more effective and practical co-operation, especially in the areas of information exchange and sharing of expertise. Examination of these and other issues was carried forward to the second Egmont Group meeting in Paris (30 November 1995) and then to the third meeting in San Francisco (22-23 April 1996) by working groups established at the close of the original conference in Brussels. These working groups are focused on three major areas: legal matters, technology, and training.

¹ United Nations Convention Against Illicit Traffic in Narcotic and Psychotropic Substances.

² Statement of Principles of the Basle Committee on Banking Regulations and Supervisory Practices on the prevention of criminal case of the banking system for the purpose of money-laundering.

The fourth meeting of the Egmont Group took place on 21-22 November 1996 in Rome. With over thirty countries in attendance, along with four international organisations, the Egmont Group moved one step closer to becoming the primary framework for co-operation among FIUs. The Egmont Group examined the functions of the various FIUs and like-agencies so as to determine those missions and functions that are carried out in common. The conference came to an agreement on the definition of an FIU, a definition that will likely facilitate the establishment of new units by setting a minimum standard for such a unit.

According to this definition, a financial intelligence unit is "*a central, national agency responsible for receiving (and, as permitted, requesting), analysing and disseminating to the competent authorities, disclosures of financial information: (i) concerning suspected proceeds of crime, or (ii) required by national legislation or regulation, in order to counter money laundering.*"

One of the purposes for defining the FIU was to distinguish it from other components of an anti-money laundering programme. The definition also helped create a specific identity for the Egmont Group as distinct from FATF or other international bodies concerned with money laundering. The definition was meant to be specific enough to distinguish these agencies from other types of government authorities, yet it had to be generic enough to include the many variations of these units. In creating the definition, the Egmont Group attempted to avoid emphasising any particular type of structure (i.e., police, judicial, administrative, or regulatory). Since the Egmont Group adopted this definition, it has increasingly become the standard against which newly forming units are measured.

The fifth meeting of the Egmont Group took place on 23-24 June 1997 in Madrid, Spain. There were 35 countries and 5 international organisations present at this meeting. The Egmont Group took significant steps forward in several areas. Perhaps the most important of these was the adoption by the Group of its *Statement of Purpose*, a document that describes the work accomplished so far, as well as its current goals within the framework of national and international anti-money laundering efforts. The FIU definition adopted in Rome was applied to all participating agencies - 28 of them were found to meet it - and this definition was incorporated into the *Statement of Purpose*. A comprehensive Egmont Group training programme for FIU personnel began to take shape over the course of the conference and through several sidebar meetings. Finally, the Egmont Group decided to study ways to continue enhancing information exchange among FIUs and ultimately create a more formalised structure for the Group itself.

The sixth plenary meeting of the Egmont Group was held 30 June -1 July 1998 in Buenos Aires, Argentina. On the margins of this meeting, the first ever "summit" of FIU heads took place. This group accepted ten candidate FIUs as satisfying the Egmont FIU definition. During the plenary meeting, the Egmont Group agreed to form a fourth working group ("Outreach) which will focus on the early stages of FIU development. The issues of creating an Egmont executive secretariat and establishing standard rules for exchange of financial information among FIUs were also discussed and sent to the appropriate working groups for further study.

The seventh and most recent plenary meeting of the Egmont Group was held 26-28 May 1999 in Bratislava, Slovakia. During the second Heads of FIU meeting ten candidate FIUs were accepted in the Egmont Group. It was recognised that the technical issues relating to the Egmont Secure Web were no longer as time consuming as in previous years, therefore, it was decided that the Technology Working Group be absorbed into the Training Working Group and renamed the "Training/Communications" Working Group. The Heads of FIUs also agreed to create a rotating Permanent Administrative Support (in lieu of a secretariat), this after a period of over four years of voluntary administrative assistance by FinCEN. For a two year period, the Administrator will be housed at the Dutch MOT. In the year 2001, the Permanent Administrative Support will be transferred to TRACFIN in France. Workshops were conducted on various issues concerning money laundering and international cooperation in the fight against money laundering and proved to be very successful.

"Financial Intelligence Units" and Other Anti-Money Laundering Agencies

The FIU concept has developed rapidly during the past two to three years. In spite of the specialised nature such units, there has still often been some confusion between "financial intelligence units" and other official entities with seemingly similar responsibilities. Police units established for the purpose of investigating financial and white-collar crime - to include money laundering - have often been dubbed "financial *investigative* units" with the acronym "RU". These units certainly play an important and useful role in their countries' overall anti-money laundering effort; however, the simple designation "FIU" does not necessarily mean that the unit provides a function as defined by the Egmont Group.

A number of countries have resolved this confusion by continuing to call the purely police unit an "FIU" ("financial investigative unit"), while terming the intelligence unit an "FAU" ("financial analysis unit"). Making this distinction then allows some countries to avoid the word "intelligence" (which has a somewhat negative connotation in certain areas) by focusing on the function of the unit rather than the material with which it works.

An FIU, quite simply, is a central office that obtains financial disclosure information, processes it in some way and then provides it to an appropriate government authority in support of a its national anti-money laundering effort. Although the definition states that the activities performed by an FIU include "receiving, analysing, and disseminating" information, it does not exclude other activities that may be performed on the basis of this material. Therefore, an FIU could conceivably perform the activities mentioned in the definition *and* investigate and / or prosecute violations indicated by the disclosures.

Procedure for Being Recognised as an FIU by the Egmont Group

The Statement of Purpose adopted at the Madrid plenary meeting of the Egmont Group called for a more formal articulation of the process by which an agency may be recognised as meeting the Egmont definition of a financial intelligence unit. In response to this tasking, the Egmont Legal Working Group developed the following procedure:

When a member of the Legal Working Group becomes aware of an operational anti-money laundering agency that might meet the Egmont FIU definition, he or she obtains adequate identifying information (i.e., name and address of the agency and a point of contact [usually the head of the unit]). The Chairman of the Legal Working Group then sends a letter to the potential FIU asking whether the unit would be interested in the Egmont Group and pointing out the possible benefits of participation as an FIU. The letter contains copies of the *Statement of Purpose*, a short background paper on the Group and a questionnaire. The Chairman asks the unit head to state whether or not he or she believes that the unit meets the Egmont FIU definition. In the case of a positive answer, the unit head is asked to submit a filled in questionnaire and any supporting documentation to the Egmont Legal Working Group. The questionnaire used for this procedure is the same as that used for collecting current information on the already recognised FIUs. Copies of these questionnaires are maintained on the Egmont Secure Web.

The Legal Working Group designates a "sponsor" for the candidate FIU from among the members of the working group. This is usually the FIU that originally brought the candidate to the attention of the working group. The responsibility of the "sponsor" is to provide some additional guidance to the candidate in submitting paperwork and to speak on behalf of the candidate during working group meetings. Once all paperwork has been received by the Legal Working Group, the Chairman will include the candidacy in discussions at the next working group meeting.

If the Legal Working Group agrees that the candidate does indeed meet the Egmont FIU definition, based on the paperwork received and the advocacy of the sponsoring working group sponsor, it will then recommend approval of the candidate FIU to the Egmont FIU heads. Information on the candidate is circulated to the FIUs of the Egmont Group (the current 48 units) for their consideration prior to the plenary meeting the next plenary meeting of the Egmont Group will tentatively take place in May 2000. At the plenary meeting, the Egmont FIU heads make the final determination whether the candidates meet the Egmont FIU definition based on the recommendation of the Legal Working Group.

FIUs are officially recognised as meeting the Egmont FIU definition only once a year at the Egmont Group plenary meeting. Potential units may be designated as "candidate FIUs" at other times depending on the ability of the Legal Working Group to meet and make a recommendation.

This procedure was first developed in the year after the Madrid Plenary Meeting. As stated earlier, the procedure was fully endorsed by the heads of the Egmont FIUs when they met during the Buenos Aires Plenary Meeting.

March 2000

United Nations: Model Decree on The Financial Intelligence Unit

MODEL DECREE ON THE FINANCIAL INTELLIGENCE UNIT, ISSUED FOR PURPOSES OF APPLICATION OF ARTICLE 3.1.1 OF THE LAW

Organization

Article 1

A financial intelligence unit having legal personality shall be established under the authority of [*variant 1*: the prime minister] [*variant 2*: the minister of justice] [*variant 3*: the minister of justice and the minister of finance] [*variant 4*: the minister of ...]. It shall be subject to external supervision by [*variant 1*: the prime minister] [*variant 2*: the minister of justice] [*variant 3*: the minister of justice and the minister of finance] [*variant 4*: the minister of ...].

[*Option*: This intelligence unit shall have financial and budgetary autonomy and independent decision-making authority on matters coming within its sphere of responsibility.]

Article 2

The financial intelligence unit shall be headed by ... [a member of the judiciary, a senior official of the ministry of finance, etc.] appointed by [*variant 1*: the prime minister] [*variant 2*: the minister of justice] [*variant 3*: the minister of justice and the minister of finance] [*variant 4*: the minister of ...]. It shall be composed of experts specially empowered by [*variant 1*: the minister of ...] [*variant 2*: the minister of justice and the minister of finance] in consideration of their expertise, particularly in the fields of finance, banking, law, informatics, customs or police investigations [*variant*: and made available by the State administrations]. It shall also comprise liaison officers responsible for cooperation with the other administrations. The intelligence unit shall be supported by a secretariat.

Article 3

The experts, liaison officers and other members of the secretariat shall be required to keep confidential any information obtained within the scope of their duties, even after the cessation of those duties within the intelligence unit. Such information may not be used for any purposes other than those provided for by the law of (*date*) on money-laundering, confiscation and international cooperation in relation to the proceeds of crime.

Article 4

The experts may not concurrently perform duties in any of the organizations referred to in article 2.1.1 of the law of (*date*) on money-laundering, confiscation and international cooperation in relation to the proceeds of crime or hold or pursue any elective office, assignment or activity which might affect the independence of their position. Agents of the State appointed to posts in the financial intelligence unit shall cease to exercise any investigatory powers held by them in their former employment.

Operation

Article 5

The intelligence unit shall receive the reports transmitted by the persons referred to in article 3.1.4 of the aforementioned law. It shall analyse them on the basis of the information at its disposal and it shall gather, in particular from organizations and administrations involved in combating organized crime, any additional information that may help to establish the origin of the funds or the nature of the transactions forming the subject of the reports.

Article 6

The reports required of the persons referred to in article 3.1.4 of the law shall be sent to the intelligence unit by any rapid means of communication. They shall, where applicable, be confirmed in writing. They shall contain the identity and address of the reporting party, of the customer or the principal and, where applicable, of the beneficiary of the transaction; the type of account and particulars of the account holder; the nature, amount and type of the operation scheduled; and the period within which the operation is to be carried out or the reason why its execution cannot be deferred.

Article 7

The intelligence unit shall, in conformity with the laws and regulations on the protection of privacy and on computerized databases, operate a database containing all relevant information concerning reports of suspicions as provided for under the present law, the transactions carried out and the persons undertaking the operations, whether directly or through intermediaries. That information shall be updated and organized with a view to maximum effectiveness of the investigations to confirm or invalidate suspicions.

Article 8

An annual report shall be drawn up by the intelligence unit and submitted to the minister of justice, the ministry of finance and the judicial authorities. The report shall provide an overall analysis and evaluation of the reports received and of laundering trends.

Operating budget

Article 9

Each year, the intelligence unit shall establish its budget for the ensuing year, subject to the limits fixed by [*variant 1*: the prime minister] [*variant 2*: the minister of justice] [*variant 3*: the minister of justice and the minister of finance] [*variant 4*: the minister of ...].

[*Option*: The costs of operating the intelligence unit shall be met out of a fixed contribution from [*option*: financial and banking] institutions subject to the money-laundering legislation.]

**United Nations International Drug Control Programme
(UNDCP)
MODEL MUTUAL ASSISTANCE IN CRIMINAL
MATTERS BILL
1998**

Bill No of 1998

To be presented by the Minister of Justice

MEMORANDUM OF OBJECTS AND REASONS

The object of this bill is to enable [name of State] to cooperate with foreign States in criminal investigations and proceedings.

(ATTORNEY-GENERAL)

An Act to enable the widest range of international cooperation to be given and received by [name of State] in investigations, prosecutions and related proceedings concerning serious offences against the laws of [name of State] or of foreign States.

ENACTED by the President and Parliament of [name of State]

**PART I
PRELIMINARY**

1. Short title, Extent and Commencement

- (1) This Act may be called the "Mutual Assistance in Criminal Matters Act 1998."
- (2) It shall extend throughout [name of State].
- (3) It shall come into force at once.

2. Applicability of the Act

- (1) This Act shall apply in relation to mutual assistance in criminal matters between [name of State] and any foreign State, subject to any condition, variation or modification in any existing or future agreement with that State, whether in relation to a particular case or more generally.

3. Definitions

- (1) Unless the subject or context otherwise requires, in this Act:

- (a) "appeal" includes proceedings by way of discharging or setting aside a judgement, and an application for a new trial or for a stay of execution;
- (b) "data" means representations, in any form, of information or concepts;
- (c) "document" means any material on which data are recorded or marked and which is capable of being read or understood by a person, computer system or other device;
- (d) "foreign confiscation order" means an order, made by a court in a foreign State, for the purposes of the:
 - (i) confiscation or forfeiture of property in connection with; or
 - (ii) recovery of the proceeds of, a serious offence;
- (e) "foreign restraining order" means an order made in respect of a serious offence by a court in a foreign State for the purpose of restraining a particular person or all persons from dealing with property;
- (f) "foreign State" means:
 - (i) any country other than **[name of State]**; and
 - (ii) every constituent part of such country, including a territory, dependency or protectorate, which administers its own laws relating to international cooperation;
- (g) "interest," in relation to property, means a:
 - (i) legal or equitable estate or interest in the property; or
 - (ii) right, power or privilege in connection with the property, whether present or future and whether vested or contingent;
- (h) "person" means any natural or legal person;
- (i) "place" includes any land (whether vacant enclosed or built upon, or not), and any premises;
- (j) "premises" includes the whole or any part of a structure, building, aircraft, or vessel;
- (k) "proceedings" means any procedure conducted by or under the supervision of a judge, magistrate or judicial officer however described in relation to any alleged or proven offence, or property derived from such offence, and includes an inquiry, investigation, or preliminary or final determination of facts;

- (l) "property" means real or personal property of every description, whether situated in **[name of State]** or elsewhere and whether tangible or intangible, and includes an interest in any such real or personal property;
- (m) "proceeds of crime" means any property derived or realised directly or indirectly from a serious offence and includes, on a proportional basis, property into which any property derived or realised directly from the offence was later successively converted, transformed or intermingled, as well as income, capital or other economic gains derived or realized from such property at any time since the offence;
- (n) "serious offence" means an offence against a provision of:
- (i) any law of **[name of State]**, for which the maximum penalty is imprisonment or other deprivation of liberty for a period of not less than **[12 months]** **[except/including an offence against a law relating to taxation]**, or more severe penalty;
- (ii) a law of a foreign State, in relation to acts or omissions, which had they occurred in **[name of State]**, would have constituted an offence for which the maximum penalty is imprisonment or other deprivation of liberty for a period of not less than **[12 months]**, or more severe penalty **[,except/ including an offence of a purely fiscal character]**;
- (2) A reference in this Act to the law of:
- (a) **[name of State]**;
- (b) any foreign State,
- includes a reference to a written or unwritten law of, or in force in, any part of **[name of State]** or that foreign State, as the case may be.

PART - II MUTUAL ASSISTANCE

4. Authority to make and act on mutual legal assistance requests

- (1) The **[Attorney-General]** may make requests on behalf of **[name of State]** to the appropriate authority of a foreign State for mutual legal assistance in any investigation commenced or proceeding instituted in **[name of State]**, relating to any serious offence.
- (2) The **[Attorney-General]** may, in respect of any request from a foreign State for mutual assistance in any investigation commenced or proceeding instituted in that State relating to a serious offence:
- (a) grant the request, in whole or in part, on such terms and conditions as he or she thinks fit;

(b) refuse the request, in whole or in part, on the ground that to grant the request would be likely to prejudice the sovereignty, security or other essential public interest of **[name of State]**; or

(c) after consulting with the competent authority of the foreign State, postpone the request, in whole or in part, on the ground that granting the request immediately would be likely to prejudice the conduct of an investigation or proceeding in **[name of State]**.

(3) Requests on behalf of **[name of State]** to the appropriate authorities of foreign States for assistance of the kind referred to in **section 6** shall be made only by or with the authority of the **[Attorney-General]**.

5. Saving provision for other requests or assistance in criminal matters

Nothing in this Act shall be taken to limit:

(a) the power of **the [Attorney-General]**, apart from this Act, to make requests to foreign States or act on requests from foreign States for assistance in investigations or proceedings in criminal matters;

(b) the power of any other person or court, apart from this Act, to make requests to foreign States or act on requests from foreign States for forms of international assistance other than those specified in **section 6**; or

(c) the nature or extent of assistance in investigations or proceedings in criminal matters which **[name of State]** may lawfully give to or receive from foreign States.

6. Mutual legal assistance requests by [name of State]

The requests which the **[Attorney-General]** is authorized to make under **section 4** are that the foreign State:

(a) have evidence taken, or documents or other articles produced in evidence in the foreign State;

(b) obtain and execute search warrants or other lawful instruments authorizing a search for things believed to be located in that foreign State, which may be relevant to investigations or proceedings in **[name of State]**, and if found, seize them;

(c) locate or restrain any property believed to be the proceeds of crime located in the foreign State;

(d) confiscate any property believed to be located in the foreign State, which is the subject of a confiscation order made under the **[Money Laundering and Proceeds of Crime Act, 1998]**;

- (e) transmit to **[name of State]** any such confiscated property or any proceeds realized therefrom, or any such evidence, documents, articles or things;
- (f) transfer in custody to **[name of State]** a person detained in the foreign State who consents to assist **[name of State]** in the relevant investigation or proceedings;
- (g) provide any other form of assistance in any investigation commenced or proceeding instituted in **[name of State]**, that involves or is likely to involve the exercise of a coercive power over a person or property believed to be in the foreign State; or
- (h) permit the presence of nominated persons during the execution of any request made under this Act.

7. Contents of requests for assistance

- (1) A request for mutual assistance shall:
 - (a) give the name of the authority conducting the investigation or proceeding to which the request relates;
 - (b) give a description of the nature of the criminal matter and a statement setting-out a summary of the relevant facts and laws;
 - (c) give a description of the purpose of the request and of the nature of the assistance being sought;
 - (d) in the case of a request to restrain or forfeit assets believed on reasonable grounds to be located in the requested State, give details of the offence in question, particulars of any investigation or proceeding commenced in respect of the offence, and be accompanied by a copy of any relevant restraint or forfeiture order;
 - (e) give details of any procedure that the requesting State wishes to be followed by requested State in giving effect to the request, particularly in the case of a request to take evidence;
 - (f) include a statement setting-out any wishes of the requesting State concerning any confidentiality relating to the request and the reasons for those wishes;
 - (g) give details of the period within which the requesting State wishes the request to be complied with;
 - (h) where applicable, give details of the property to be traced, restrained, seized or confiscated, and of the grounds for believing that the property is believed to be in the requested State; and
 - (i) give any other information that may assist in giving effect to the request.

(2) A request for mutual assistance from a foreign State may be granted, if necessary after consultation, notwithstanding that the request, as originally made, does not comply with **subsection (1)**.

8. Foreign requests for an evidence-gathering order or a search warrant

(1) Notwithstanding anything contained in any law for the time being in force, where the **[Attorney-General]** grants a request by a foreign State to obtain evidence in **[name of State]**, an authorized person may apply to the **[name of Court]** for:

- (a) a search warrant; or
- (b) an evidence-gathering order.

(2) The **[name of Court]** to which an application is made under **subsection (1)** shall issue an evidence-gathering order or a search warrant under this subsection, where it is satisfied that there are reasonable grounds to believe that:

- (a) **[a serious offence]** has been or may have been committed against the law of the foreign State;
- (b) evidence relating to that offence may:
 - (i) be found in a building, receptacle or place in **[name of State]**; or
 - (ii) be able to be given by a person believed to be in **[name of State]**;
- (c) in the case of an application for a search warrant, it would not, in all the circumstances, be more appropriate to grant an evidence-gathering order.

(3) For the purposes of **subsection (2) (a)**, a statement contained in the foreign request to the effect that **[a serious offence]** has been or may have been committed against the law of the foreign State is *prima facie* evidence of that fact.

(4) An evidence-gathering order:

- (a) shall provide for the manner in which the evidence is to be obtained in order to give proper effect to the foreign request, unless such manner is prohibited under the law of **[name of State]**, and in particular, may require any person named therein to:
 - (i) make a record from data or make a copy of a record;
 - (ii) attend court to give evidence on oath or otherwise until excused;
 - (iii) produce to the **[name of Court]** or to any person designated by **the Court**, any thing, including any document, or copy thereof; or

- (b) may include such terms and conditions as the **[name of Court]** considers desirable, including those relating to the interests of the person named therein or of third parties.
- (5) A person named in an evidence-gathering order may refuse to answer a question or to produce a document or thing where the refusal is based on:
- (a) a law currently in force in **[name of State]**;
 - (b) a privilege recognized by a law in force in the foreign State that made the request; or
 - (c) a law currently in force in the foreign State that would render the answering of that question or the production of that document or thing by that person in its own jurisdiction an offence.
- (6) Where a person refuses to answer a question or to produce a document or thing pursuant to **subsection (5)(b) or(c)**, the **[name of Court]** shall report the matter to the **[Attorney-General]** who shall notify the foreign State and request the foreign State to provide a written statement on whether the person's refusal was well-founded under the law of the foreign State.
- (7) Any written statement received by the **[Attorney-General]** from the foreign State in response to a request under **subsection (6)** shall be admissible in the evidence-gathering proceedings, and for the purposes of **this section** be **determinative** of whether the person's refusal is well-founded under the foreign law.
- (8) A person who, without reasonable excuse, refuses to comply with a lawful order of the **[name of Court]** made under this section, or who having refused pursuant to **subsection (5)**, continues to refuse notwithstanding the admission into evidence of a statement under **subsection (7)** to the effect that the refusal is not well-founded, commits a contempt of court and is punishable accordingly.
- (9) A search warrant shall be in the usual form in which a search warrant is issued in **[name of State]**, varied to the extent necessary to suit the case.
- (10) No document or thing seized and ordered to be sent to a foreign State shall be sent until the **[Attorney-General]** is satisfied that the foreign State has agreed to comply with any terms or conditions imposed in respect of the sending abroad of the document or thing.

9. Foreign requests for consensual transfer of detained persons

- (1) Where the **[Attorney-General]** approves a request of a foreign State to have a person, who is detained in custody in **[name of State]** by virtue of a sentence or order of a court, transferred to a foreign State to give evidence or assist in an investigation or proceeding in that State relating to **[a serious offence]**, an authorized person may apply to the **[name of Court]** for a transfer order.
- (2) The **[name of Court]** to which an application is made under **subsection (1)** may make a transfer order under this subsection where it is satisfied, having considered any documents filed

or information given in support of the application, that the detained person consents to the transfer.

- (3) A transfer order made under **subsection (2)**:
- (a) shall set out the name of the detained person and his current place of confinement;
 - (b) shall order the person who has custody of the detained person to deliver him into the custody of a person who is designated in the order or who is a member of the class of persons so designated;
 - (c) shall order the person receiving him into custody to take him to the foreign State and, on return of the detained person to **[name of State]**, to return that person to a place of confinement in **[name of State]** specified in the order, or to such other place of confinement as the **[Attorney-General]** may subsequently notify to the foreign State;
 - (d) shall state the reasons for the transfer; and
 - (e) shall fix the period of time at or before the expiration of which the detained person must be returned, unless varied for the purposes of the request by the **[Attorney-General]**.
- (4) The time spent in custody by a person pursuant to a transfer order shall count toward any sentence required to be served by that person, so long as the person remains in such custody and is of good behaviour.

10. Persons in [name of State] in response to a request

- (1) The **[Attorney-General]** **[name of Court]** may by written notice authorize:
- (a) the temporary detention in **[name of State]** of a person in detention in a foreign State who is to be transferred from that State to **[name of State]** pursuant to a request under **section 6(f)**, for such period as may be specified in the notice; and
 - (b) the return in custody of the person to the foreign State when his or her presence is no longer required.
- (2) A person in respect of whom a notice is issued under **subsection (1)** shall so long as the notice is in force:
- (a) be permitted to enter **[name of State]** and remain in **[name of State]** for the purposes of the request, and be required to leave **[name of State]** when no longer required for those purposes, notwithstanding any **[name of State]** law to the contrary; and
 - (b) while in custody in **[name of State]** for the purposes of the request, be deemed to be in lawful custody.

(3) The **[Attorney-General]** may at any time vary a notice issued under **subsection (1)**, and where the foreign State requests the release of the person from custody, either immediately or on a specified date, the **[Attorney-General]** shall direct that the person be released from custody accordingly.

(4) Any person who escapes from lawful custody while in **[name of State]** pursuant to a request under **section 6(f)** may be arrested without warrant by any authorized person and returned to the custody authorized under **subsection (1)(a)**.

(5) Where a foreign country has requested that a person be detained in **[name of State]** in the course of transit between the foreign country and a third country and the **[Attorney-General]** grants the request, the provisions of this section shall apply *mutatis mutandis* in relation to that person.

(6) No court in **[name of State]** has jurisdiction to entertain any application by or on behalf of any person in **[name of State]** pursuant to a request under **section 6(f)**, relating to release from custody or continued presence in **[name of State]** after his or her presence is no longer required for the purpose of the request.

11. Safe conduct guarantee

(1) Where a person, whether or not a detained person, is in **[name of State]** in response to a request by the **[Attorney-General]** under this Act to give evidence in a proceeding or to assist in an investigation, prosecution or related proceeding, the person shall not, while in **[name of State]**, be:

- (a) detained, prosecuted or punished; or
- (b) subjected to civil process,

in respect of any act or omission that occurred before the person's departure from the foreign State pursuant to the request.

(2) **Subsection (1)** ceases to apply to the person when the person leaves **[name of State]**, or has had the opportunity to leave, but remains in **[name of State]** for **[10 days]** after the **[Attorney-General]** has notified the person that he or she is no longer required for the purposes of the request.

12. Foreign requests for [name of State] restraining orders

(1) Where a foreign State requests the **[Attorney-General]** to obtain the issue of a restraining order against property some or all of which is believed to be located in **[name of State]**, criminal proceedings have begun in the foreign State in respect of a serious offence, and there are reasonable grounds to believe that the property is located in **[name of State]**, the **[Attorney-General]** may apply to the **[name of Court]** for a restraining order under **subsection (2)**.

(2) Where the **[Attorney-General]** makes application to the **[name of Court]** under **subsection (1)**, **the Court** may make a restraining order in respect of the property, and the **[Money Laundering and Proceeds of Crime Act, 1998]** this Act shall apply in relation to the application and to any restraining order made as a result, as if the serious offence the subject of the order had been committed in **[name of State]**.

13. Requests for enforcement of foreign confiscation or restraining orders

(1) Where a foreign State requests the **[Attorney-General]** to make arrangements for the enforcement of a:

- (a) foreign restraining order; or
- (b) foreign confiscation order,

the **[Attorney-General]** may apply to the **[name of Court]** for registration of the order.

(2) The **[name of Court]** shall, on application by the **[Attorney-General]**, register a foreign restraining order if **the Court** is satisfied that at the time of registration, the order is in force in the foreign State.

(3) The **[name of Court]** shall, on application by the **[Attorney-General]**, register a foreign confiscation order if **the Court** is satisfied that:

- (a) at the time of registration, the order is in force in the foreign State and is not subject to appeal; and
- (b) where the person the subject of the order did not appear in the confiscation proceedings in the foreign State, that:
 - (i) the person was given notice of the proceedings in sufficient time to enable him or her to defend them; or
 - (ii) the person had absconded or died before such notice could be given.

(4) For the purposes of **subsections (2) and (3)**, a statement contained in the foreign request to the effect that:

- (a) the foreign restraining order is in force in the foreign State;
- (b) the foreign forfeiture order is in force in the foreign State and is not subject to appeal; or
- (c) the person the subject of the foreign forfeiture order was given notice of the proceedings in sufficient time to enable him or her to defend them, or that the person had absconded or died before such notice could be given,

is *prima facie* evidence of those facts, without proof of the signature or official character of the person appearing to have signed the foreign request.

(5) Where a foreign restraining order or foreign confiscation order is registered in accordance with **this section**, a copy of any amendments made to the order in the foreign State (whether before or after registration), may be registered in the same way as the order, but shall not have effect for the purposes of the **[Money Laundering and Proceeds of Crime Act, 1998]** until they are so registered.

(6) The **[name of Court]** shall, on application by the **[Attorney-General]** cancel the registration of:

(a) a foreign restraining order, if it appears to **the Court** that the order has ceased to have effect.

(b) a foreign confiscation order, if it appears to **the Court** that the order has been satisfied or has ceased to have effect.

(7) Where a foreign restraining order against property is registered under **this section**, **the Court** may, upon application by a person claiming an interest in the property, make an order as to the giving or carrying out of an undertaking by the **[Attorney-General]**, on behalf of **[name of State]**, with respect of the payment of damages or costs in relation to the registration or operation of the order.

(8) Subject to subsection (9), where the foreign restraining order or foreign confiscation order comprises a facsimile copy of a duly authenticated foreign order, or amendment made to such an order, the facsimile shall be regarded for the purposes of this Act as the same as the duly authenticated foreign order.

(9) Registration effected by means of a facsimile ceases to have effect at the end of the period of **[14 days]** commencing on the date of registration, unless a duly authenticated original of the order has been registered by that time.

(10) Where a foreign restraining order or a foreign confiscation order has been registered pursuant to **this section**, the **[Money Laundering and Proceeds of Crime Act, 1998]** shall be deemed to apply in relation to the order as if the serious offence the subject of the order had been committed in **[name of State]**, and the order had been made pursuant to **[that Act]**.

14. Foreign requests for the location of proceeds of crime

Where a foreign State requests the **[Attorney-General]** to assist in locating property believed to be the proceeds of a serious crime committed in that State, the **[Attorney-General]** may authorise the making of any application under **sections 71, 76 or 78** of the **[Money Laundering and the Proceeds of Crime Act, 1998]**, for the purpose of acquiring the information sought by the foreign State.

15. Sharing confiscated property with foreign States

The **[Attorney-General]** may enter into an arrangement with the competent authorities of a foreign State for the reciprocal sharing with that State of such part of any property realized:

(a) in the foreign State, as a result of action taken by the **[Attorney-General]** pursuant to **section 6(d)**; or

(b) in **[name of State]**, as a result of action taken in **[name of State]** pursuant to **section 13(1)**,

as the **[Attorney-General]** thinks fit.

PART - III MISCELLANEOUS

16. Privilege for foreign documents

(1) Subject to **subsection (2)**, a document sent to the **[Attorney-General]** by a foreign State in accordance with a **[name of State]** request is privileged and no person shall disclose to anyone the document, or its purport, or the contents of the document or any part thereof, before the document, in compliance with the conditions on which it was so sent, is made public or disclosed in the course of and for the purpose of any proceedings.

(2) No person in possession of a document referred to in **subsection (1)**, or a copy thereof, or who has knowledge of any information contained in the document, shall be required, in connection with any legal proceedings to produce the document or copy or to give evidence relating to any information that is contained therein;

(3) Except to the extent required under this Act to execute a request by a foreign State for mutual assistance in criminal matters, no person shall disclose:

(a) the fact that the request has been received; or

(b) the contents of the request.

Penalty: in the case of a natural person, imprisonment not exceeding **[P...]** **standard imprisonment units**, fine not exceeding **[F...]** **standard fine units**, or both, and in the case of a corporation, fine not exceeding **[five]** times that maximum:

17. Restriction on use of evidence and materials obtained by mutual assistance

No information, document, article or other thing obtained from a foreign State pursuant to a request made under this Act shall be used in any investigation or proceeding other than the investigation or proceeding disclosed in the request, unless the **[Attorney-General]** consents after consulting with the foreign State.

18. Confiscated proceeds of drug crime to be credited to Fund for Drug Abuse Prevention and Control

Any proceeds of drug-related crime which have been:

(a) confiscated in a foreign State pursuant to a request by **[name of State]** under **section 6(d)**;

(b) confiscated in **[name of State]** pursuant to a request by a foreign State under **section 13 (1)**,

to the extent available under any sharing of confiscated property arrangement referred to in **section 15**, or otherwise, shall be credited to the **[Fund for Drug Abuse Prevention and Control]**, established under the **[Drug Abuse Act, 1998]**.

**United Nations International Drug Control Programme
(UNDCP)
MODEL FOREIGN EVIDENCE BILL
1998**

Bill No of 1998

To be presented by the Minister of Justice

MEMORANDUM OF OBJECTS AND REASONS

The object of this bill is to provide for the admissibility in [name of State] of evidence obtained from a foreign State.

(ATTORNEY-GENERAL)

An Act to provide for the manner and form in which evidence obtained from outside [name of State] may be admissible in proceedings in [name of State], and for related purposes.

ENACTED by the President and Parliament of [name of State]

1. Short title, Extent and Commencement

- (1) This Act may be called the "Foreign Evidence Act, 1998".
- (2) It shall extend throughout [name of State].
- (3) It shall come into force [at once].

2. Interpretation

In this Act, unless the context otherwise requires:

- (a) "authorized officer" means:
 - (i) the [Attorney-General]; or
 - (ii) a person appointed by the [Attorney-General], by notice published in [the Gazette], as an authorized officer for the purposes of this Act;
- (b) "civil proceeding" means a proceeding other than a criminal proceeding;
- (c) "criminal proceeding" includes:
 - (i) a prosecution for an offence;

- (ii) a proceeding for the sentencing of a person convicted of an offence;
- (d) "foreign law" means a law (whether written or unwritten) of, or in force in a foreign State;
- (e) "foreign material" means:
 - (i) the testimony of a person that:
 - (A) was obtained as a result of a request of a kind referred to in **section 4 of the [Mutual Assistance in Criminal Matters Act, 1998]**;
 - (B) complies with the requirements of **section 4** of this Act;
 - (ii) any exhibit annexed to any such testimony;
 - (iii) any part of any such testimony or exhibit;
 - (iv) "foreign State" means:
 - (A) any country other than **[name of State]**; and
 - (B) every constituent part of such country, including a territory, dependency or protectorate, which administers its own laws relating to evidence;
- (f) "related civil proceedings", in relation to a criminal proceeding, means any civil proceedings arising from the same subject matter from which the criminal proceeding arose;
- (g) "**[name of State]** court" means:
 - (a) the **[Court of Appeal]**;
 - (b) the **[High Court]**;
 - (c) a magistrates court; or
 - (d) a person or body authorized by a **[name of State]** law, or by consent of parties, to hear, receive and examine evidence;
- (h) "**[name of State]** law" means a law (whether written or unwritten) of or in force in **[name of State]**.

3. Application of this Act

This Act applies to:

- (a) a proceeding before a **[name of State]** court that is:

- (i) a criminal proceeding in relation to **[name of State]** law of;
or
 - (ii) a related civil proceeding;
- (b) testimony obtained as a result of a request made by or on behalf of the **[Attorney-General]** to a foreign State for the testimony of a person pursuant to the **[Mutual Assistance in Criminal Matters Act, 1998]**; and
- (c) any exhibit annexed to any such testimony.

4. Requirements for testimony

- (1) The testimony must be taken before a court:
- (a) on oath or affirmation; or
 - (b) under such caution or admonition as would be accepted by courts in the foreign State concerned, for the purposes of giving testimony in proceedings before those courts.
- (2) The testimony may be taken *in camera*.

5. Form of testimony

- (1) The testimony may be recorded:
- (a) in writing;
 - (b) on audio tape;
 - (c) on video tape; or
 - (d) by any other electronic or mechanical means.
- (2) The writing need not:
- (a) be in the form of an affidavit; or
 - (b) constitute a transcript of a proceeding in a foreign court.
- (3) The testimony must be endorsed with, or accompanied by, a certificate to the effect that;
- (a) it is an accurate record of the evidence given; and
 - (b) it was taken in a manner specified in **section 4**.
- (4) The certificate must purport to:
- (a) be signed or certified by a judge, magistrate or court officer of the foreign State to which the request was made; and
 - (b) bear an official or public seal of;
 - (i) the foreign State; or

- (ii) an authority of the foreign State responsible for matters relating to justice, being a Minister of State, a Ministry or Department of Government, or an officer in or of the Government.

6. Foreign material may be adduced as evidence

- (1) Subject to **subsection (2)**, foreign material may be adduced as evidence in a proceeding to which this Act applies.
- (2) The foreign material will be excluded from evidence if:
 - (a) it appears to the court's satisfaction, at the hearing of the proceeding, that the person who gave the testimony concerned is present in **[name of State]** and is able to testify at the hearing;
 - (b) the evidence would not have been admissible had it been adduced from the person at the hearing; or
 - (c) it appears to the court that the interests of justice would not be served by admitting the evidence.
- (3) In reaching a decision pursuant to **subsection (2) (c)**, the court shall take into account:
 - (a) the extent to which the foreign material provides evidence that would not otherwise be available;
 - (b) the probative value of the foreign material with respect to any issue that is likely to be determined in the proceeding;
 - (c) the extent to which statements contained in the material could, at the time they were made, be challenged by questioning the persons who made them;
 - (d) whether exclusion of the material would cause undue expense or delay; and
 - (e) whether exclusion of the foreign evidence would prejudice:
 - (i) the defence in criminal proceeding; or
 - (ii) any party to related civil proceedings.

7. Proof of service of documents abroad

The service of documents in a foreign State may be proved by affidavit of the person who served it.

8. Certificates relating to foreign material

- (1) An authorized officer may certify that specified foreign material was obtained as a result of a request made to a foreign State by or on behalf of the Minister.

(2) It is presumed (unless evidence sufficient to raise reasonable doubt is adduced to the contrary) that the foreign material specified in the certificate was obtained as a result of that request.

9. Operation of other laws

This Act does not limit the ways in which a matter may be proved, or evidence may be adduced under any other **[name of State]** law.