



# ST CHRISTOPHER AND NEVIS

## CHAPTER 4.19

# MUTUAL ASSISTANCE IN CRIMINAL MATTERS ACT

and Subsidiary Legislation

**Revised Edition**

showing the law as at 31 December 2002

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Law Revision Act, No. 9 of 1986

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**Mutual Assistance in Criminal Matters Act**

**Act 7 of 1993 in force 27<sup>th</sup> September, 2001**

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**Mutual Assistance (Treaty between the Government of Saint Christopher and Nevis and the Government of the United States of America on Mutual Legal Assistance in Criminal Matters) (Application) Regulations – Section 36 – SRO 32 of 2001**

**Designation of Central Authority Order – Section 4 – SRO 24 of 2002**



## CHAPTER 4.19

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## CHAPTER 4.19

### MUTUAL ASSISTANCE IN CRIMINAL MATTERS ACT

**AN ACT to make provision with respect to the Scheme relating to Mutual Assistance in Criminal Matters within the Commonwealth and to facilitate its operation in Saint Christopher and Nevis; and to make provision concerning Mutual Assistance in Criminal Matters between Saint Christopher and Nevis and other countries other than Commonwealth countries.**

#### PART I – PRELIMINARY

1. **Short title.**

This Act may be cited as the Mutual Assistance in Criminal Matters Act.

2. **Interpretation.**

(1) In this Act, unless the context otherwise requires,

“article” includes document;

“central authority” means,

- (a) in relation to Saint Christopher and Nevis, the person or authority designated pursuant to section 3;
- (b) in relation to any Commonwealth country, the person or authority designated by that country for the purpose of transmitting and receiving a request under the Scheme;

“Commonwealth country” means

- (a) a Sovereign and independent country within the Commonwealth; and
- (b) every independent country within the Commonwealth;

“confiscation order” means such order made under the Proceeds of Crime Act, Cap. 4.28;

“criminal matter” means,

- (a) in Part II,
  - (i) an investigation certified by the central authority of Saint Christopher and Nevis to have commenced; or
  - (ii) proceedings so certified to be criminal proceedings which have been instituted;

in Saint Christopher and Nevis in respect to an offence committed, or suspected on reasonable grounds to have been committed, against the law of Saint Christopher and Nevis; or

- (b) in Part III, in relation to a Commonwealth country,
  - (i) an investigation certified by the central authority for that country to have commenced; or
  - (ii) proceedings so certified to be criminal proceedings which have been instituted,in the Commonwealth country in respect of an offence committed, or suspected on reasonable grounds to have been committed, against the law of that country; and in any case includes forfeiture proceedings, proceedings to restrain dealing with property, proceedings for or suspected on reasonable grounds to have been committed, against the law of that country; and in any case includes forfeiture proceedings, proceedings to restrain dealings with property, proceedings for the imposition of pecuniary penalties calculated by reference to the value of property, arising out of criminal proceedings whether such proceedings be characterized as criminal or civil proceedings;

“document” includes

- (a) anything on which there is writing;
- (b) a map, drawing or photograph;
- (c) a thing from which sounds or visual images are capable, with or without the aid of a device, being reproduced;
- (d) a copy, reproduction or duplicate of a document as so defined; and
- (e) a part of a document as so defined;

“judicial records” mean judgments, orders and decisions of courts, and other records held by judicial authorities;

“Minister” means the Minister responsible for Legal Affairs;

“official records” means documents held by government departments or agencies or prosecution authorities;

“property” includes money and all other property, real or personal, immovable or movable, including things in action and other intangible or incorporeal property, whether situated in Saint Christopher and Nevis or elsewhere, and includes any interest in any such property;

“regulations” means regulations made under section 36;

“relevant proceedings” means proceedings under or pursuant to this or any other Act arising directly or indirectly from a request for assistance under this Act by a Commonwealth country;

“restraining order” means such an order made under the Proceeds of Crime Act, Cap. 4.28;

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“Scheme” means Scheme relating to Mutual Assistance in Criminal Matters within the Commonwealth;

“serious offence” means,

- (a) in relation to Saint Christopher and Nevis, an offence against the law of Saint Christopher and Nevis
  - (i) for which a sentence of death, or imprisonment for a maximum or minimum term of not less than three years, may be, or is required to be, imposed;
  - (ii) the value of the property derived or obtained from the commission of which is or is likely to be not less than twenty-five thousand dollars or such greater amount as may be prescribed;
- (b) in relation to a Commonwealth country, an offence against the law of the country
  - (i) for which a sentence such as is specified in paragraph (a)(i) may be, or is required to be imposed; or
  - (ii) the value of the property derived or obtained from the commission of which is certified by the central authority for the country to be, or to be likely to be, not less than such amount as prescribed by or under the law of the country;

“transmitted”, in relation to a request, means,

- (a) in Part II, transmitted by the central authority for Saint Christopher and Nevis to the central authority for the Commonwealth country from which assistance is requested;
- (b) in Part III, transmitted by the central authority for the Commonwealth country making a request for assistance, to the central authority for Saint Christopher and Nevis.

(2) A reference in this Act to the law of a Commonwealth country, includes a reference to the law of a part of or the law in force in a part of, that country.

(3) For the purposes of this Act, a ship or aircraft of, or registered in, Saint Christopher and Nevis or a Commonwealth country shall be deemed to be part of Saint Christopher and Nevis or, as the case may be, the Commonwealth country.

(4) For the purposes of this Act, a person shall be deemed to have been charged with a serious offence in Saint Christopher and Nevis or, as the case may be, in a Commonwealth country, if any information or indictment has been laid or filed against the person for the offence, whether or not

- (a) a summons to require the attendance of the person to answer to the information or indictment;
- (b) a warrant for the apprehension of the person,

has been issued.

- (5)    Where, in Saint Christopher and Nevis or a Commonwealth country,
- (a)    a person is convicted by a court of a serious offence; and
  - (b)    with his or her consent another serious offence, of which he or she has not been found guilty, is taken into account by the court in passing sentence for the offence referred to in paragraph (a);

the person shall, for the purposes of this Act, be deemed to have been convicted by the court of the offence so taken into account, on the date on which the sentence was so passed.

(6)    A reference in this Act to property derived or obtained from the commission of an offence shall be deemed to include a reference to property used in, or in connection with, the commission of the offence.

**3.      Central authority for Saint Christopher and Nevis.**

The Attorney General may, by Order published in the *Gazette*, designate any person or authority as the central authority for Saint Christopher and Nevis.

**4.      Application of Act.**

(1)    Subject to subsection (2), this Act, other than Part IV, shall apply in relation to all Commonwealth Countries.

(2)    The Attorney-General may, by Order published in the *Gazette*, direct that the application of this Act in relation to a particular Commonwealth country shall be subject to such conditions, exceptions or qualifications as are specified in the Order and in that event this Act shall apply accordingly.

(3)    The Attorney General may, by Order published in the *Gazette*, amend or revoke an order made under this section.

**5.      Restrictions with respect to application of Act.**

(1)    Nothing in this Act derogates from existing forms or prevents the development of other forms of co-operation (whether formal or informal) in respect of criminal matters between Saint Christopher and Nevis and any Commonwealth country, or between Saint Christopher and Nevis, or any enforcement agencies or prosecuting authorities in Saint Christopher and Nevis, and the International Criminal Police Organization or any such agencies or authorities outside Saint Christopher and Nevis.

(2)    Nothing in this Act authorizes the extradition, or the arrest or detention with a view to extradition, of any person.



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## **PART II – REQUEST BY SAINT CHRISTOPHER AND NEVIS TO COMMONWEALTH COUNTRIES FOR ASSISTANCE**

### **Division 1. – General Assistance**

#### **6. Assistance in obtaining evidence etc.**

Where there are reasonable grounds to believe that evidence or information relevant to any criminal matter may be obtained if, in a Commonwealth country,

- (a) evidence is taken from any person;
- (b) information is provided;
- (c) any
  - (i) person;
  - (ii) sample, specimen or other item from, or provided by, a person; or
  - (iii) remains which are, or may be, human, is or are subjected to any examination or test;
- (d) judicial records or official records are produced, copied or examined;
- (e) any record or article is produced, copied or examined;
- (f) samples of any matter or thing are taken, examined or tested; or
- (g) any building, place or thing is viewed or photographed;

a request may be transmitted requesting that assistance be given by the country in so obtaining the evidence or information.

#### **7. Assistance in locating or identifying a person.**

Where there are reasonable grounds to believe that a person who

- (a) is or might be concerned in or affected by; or
- (b) could give or provide evidence or assistance relevant to;

any criminal matter, is in a Commonwealth country, a request may be transmitted requesting that assistance be given by the country in locating that person or, if his or her identity is unknown, in identifying and locating him or her.

#### **8. Assistance in obtaining article or thing by search and seizure if necessary.**

Where there are reasonable grounds to believe that an article or thing is in a Commonwealth country and would, if produced, be relevant to any criminal matter, a request may be transmitted requesting that assistance be given by the country in obtaining, by search and seizure if necessary, the article or thing.

#### **9. Assistance in arranging attendance of person.**

Where there are reasonable grounds to believe that a person in a Commonwealth country could give or provide evidence or assistance relevant to any criminal matter, a request may be transmitted requesting that assistance be given by the country in arranging

the attendance of the person in Saint Christopher and Nevis to give or provide that evidence, or, as the case may be, assistance.

**10. Assistance by transferring prisoner.**

(1) Where there are reasonable grounds to believe that a person who is a prisoner in a Commonwealth country could give or provide evidence or assistance relevant to any criminal matter, a request may be transmitted requesting the country to transfer the prisoner to Saint Christopher and Nevis to give or provide that evidence, or as the case may be, assistance.

(2) Where, pursuant to a request under subsection (1), a prisoner is transferred to Saint Christopher and Nevis from a Commonwealth country subject to conditions with respect to any other matter, the central authority for Saint Christopher and Nevis shall, unless and to the extent that the Commonwealth country waives their observance, take the necessary steps to ensure that the conditions are observed.

(3) Where any condition such as is referred to in subsection (2) requires that a prisoner be kept in custody while in Saint Christopher and Nevis, the prisoner shall, while in Saint Christopher and Nevis or travelling to or from Saint Christopher and Nevis pursuant to the request, be kept in such custody as the Minister directs in writing.

(4) Nothing in this section shall be construed as conferring rights on a prisoner.

(5) In this section, “prisoner”, in relation to a Commonwealth country, means a person who is being held in custody pending trial for, or sentence for, or is under a sentence of imprisonment for, an offence against the law of that country, or is subject to any limitation on his or her personal liberty pursuant to that law.

**11. Assistance in serving documents.**

Where, for the purposes of, or in connection with, any criminal matter, it is necessary or desirable to serve any document on a person or an authority in a Commonwealth country, a request may be transmitted requesting that assistance be given by the country in effecting the service.

**12. Restriction on use of evidence, etc.**

Any

- (a) evidence or information obtained or, as the case may be, given or provided, by any person pursuant to a request such as referred to in section 6, 9 or 10; or
- (b) article, record or thing obtained to a request such as is referred to in section 6 or 8,

shall be used, by or on behalf of Saint Christopher and Nevis, only for the purpose of criminal proceedings to which the request related or, as the case may be, any criminal proceedings consequent on the investigation to which the request related, unless the Commonwealth country to which the request was made consents to the evidence or information being so used for the purposes of any other criminal proceedings.

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**13. Immunities and privileges.**

(1) Subject to subsection (2), a person in Saint Christopher and Nevis pursuant to a request such as is referred to in section 9 or 10

- (a) is not liable to be detained, prosecuted or punished in Saint Christopher and Nevis for any offence that is alleged to have been committed, or that was committed, before the person's departure, pursuant to the request, from the Commonwealth country to which the request was made;
- (b) may refuse to answer any questions or to produce any article, record or thing if the refusal is based on the law of Saint Christopher and Nevis; and
- (c) shall not be compelled to give or provide evidence, information or assistance for the purposes of, or in connection with, any criminal matter other than that to which the request related.

(2) Subsection (1)(a) or (c) does not apply in relation to a person

- (a) if he or she leaves Saint Christopher and Nevis and then returns otherwise than pursuant to the same or another request; or
- (b) who has been notified by the central authority for Saint Christopher and Nevis that his or her presence is no longer required for the purposes of the request and who then remains in Saint Christopher and Nevis for more than fifteen days after the first date on which he or she had a reasonable opportunity to leave Saint Christopher and Nevis.

(3) For the purposes of subsection (1)(a), an offence shall be treated as having been committed only on the date when the conduct constituting the offence was complete, notwithstanding that the offence concerned may be a continuing offence.

**Division 2. – Assistance in connection with serious offences**

**14. Assistance in tracing property, etc.**

Where

- (a) in Saint Christopher and Nevis, a person
  - (i) has been charged with, or convicted of, a serious offence;
  - (ii) is suspected, on reasonable grounds, of having committed such an offence; and
- (b) property derived or obtained, directly or indirectly, from the commission of that offence is suspected, on reasonable grounds, to be in a Commonwealth country;

a request may be transmitted requesting that assistance be given by the Commonwealth country in accordance with the law of that country in identifying, locating or assessing the value or amount of any such property.

**15. Assistance in relation to certain orders.**

- (1) Where
- (a) in Saint Christopher and Nevis,
    - (i) a restraining order has been made restraining dealings with identified property which is, or is suspected on reasonable grounds of being, property derived or obtained, directly or indirectly from the commission of a serious offence;
    - (ii) a confiscation order has been made confiscating property derived or obtained, directly or indirectly from the commission of a serious offence; and
  - (b) property to which the restraining order would apply or, as the case may be, which is available for the satisfaction of the confiscation order, is suspected on reasonable grounds, to be in a Commonwealth country,

then, subject to subsection (3), a request may be transmitted requesting that the order concerned be enforced in accordance with the law of the Commonwealth country and that, to that end, the country give appropriate assistance.

(2) In any case where a request to a Commonwealth country under this section has been accepted, the central authority for Saint Christopher and Nevis shall inform the central authority for that country if the confiscation order or the restraining order concerned is thereafter varied or ceases to have effect.

(3) A request shall not be made under this section for the enforcement of a confiscation order if the amount specified in the order or the total value of the property required to satisfy the order of the pecuniary penalty under the order would be less than twenty-five thousand dollars, or such other amount as may be prescribed.

**16. Assistance in obtaining order in nature of restraining order.**

- Where
- (a) in Saint Christopher and Nevis,
    - (i) a person has been, or is likely to be, charged with or has been convicted of a serious offence; and
    - (ii) a confiscation order has been, or is likely to be, made confiscating property derived or obtained, directly or indirectly, from the commission of the serious offence; and
  - (b) property so derived or obtained is suspected, on reasonable grounds, to be in a Commonwealth country;

a request may be transmitted requesting that an order be made, in accordance with the law of the Commonwealth country, restraining dealings with identified property and that, to that end, the country give appropriate assistance.

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### **PART III – REQUESTS BY COMMONWEALTH COUNTRIES TO SAINT CHRISTOPHER AND NEVIS FOR ASSISTANCE**

#### **Division 1 – Form and acceptance or refusal of requests**

##### **17. Form of requests.**

(1) Subject to subsection (2), the First Schedule applies in relation to a request for assistance under this Act made by a Commonwealth country.

(2) Subsection (1) does not apply in relation to an informal request for assistance under this Act which is transmitted orally, but in the event that such a request is accepted

- (a) it is required to be implemented only to the extent that the central authority for Saint Christopher and Nevis considers reasonable; and
- (b) it shall be deemed to have been withdrawn if a request in accordance with subsection (1) for the assistance concerned is not transmitted within such period as the central authority for Saint Christopher and Nevis considers reasonable.

(3) Where a Commonwealth country making a request for assistance under this Act wishes the request or any part of it, to be kept confidential it shall so state, giving reasons, in the request, or in a document accompanying, but not forming part of, the request.

##### **18. Acceptance or refusal of requests, etc.**

(1) Subject to this section, a request for assistance under this Act duly made by a Commonwealth country shall be accepted.

(2) A request for assistance under this Act made by a Commonwealth country shall be refused if, in the opinion of the central authority for Saint Christopher and Nevis,

- (a) the request relates to the prosecution or punishment of a person for an offence that is, or is by reason of the circumstances in which it is alleged to have been committed or was committed, an offence of a political character;
- (b) there are substantial grounds for believing that the request has been made with a view to prosecuting or punishing a person for an offence of a political character;
- (c) there are substantial grounds for believing that the request was made for the purpose of prosecuting, punishing or otherwise causing prejudice to a person on account of the person's race, sex, religion, nationality, place of origin or political opinion;
- (d) the request relates to the prosecution or punishment of a person in respect of conduct that, if it had occurred in Saint Christopher and Nevis, would not have constituted an offence under the criminal law of Saint Christopher and Nevis;

- (e) the granting of the request would be contrary to the Constitution of Saint Christopher and Nevis, or would prejudice the security, international relations or any substantial interest related to national security or other essential public policy of Saint Christopher and Nevis;
- (f) the request relates to conduct by a person which constitutes an offence in respect of which the person has already been convicted or acquitted by a court or tribunal in Saint Christopher and Nevis;
- (g) the prisoner is not prepared to give his or her consent to the transfer in the case of a request such as is referred to in section 23 (1);
- (h) the request is for assistance of a kind which cannot be given under this Act, or would require steps to be taken for its implementation that could not be lawfully taken; or
- (i) the implementation of the request would require an individual to act, or refrain from acting, in a certain way and the individual is not willing to do so and cannot be lawfully compelled to do so.

(3) A request for assistance under this Act made by a Commonwealth country may be refused if, in the opinion of the central authority for Saint Christopher and Nevis,

- (a) the request relates to the prosecution or punishment of a person in respect of conduct that occurred, or is alleged to have occurred, outside the country making the request and similar conduct occurring outside Saint Christopher in similar circumstances would not have constituted an offence against the law of Saint Christopher and Nevis;
- (b) the request relates to the prosecution or punishment of a person in respect of conduct where, if it had occurred in Saint Christopher and Nevis at the same time and had constituted an offence against the law of Saint Christopher and Nevis the person responsible could no longer be prosecuted by reason of lapse of time or for any other reason;
- (c) the provision of the assistance would impose an excessive burden on the resources of Saint Christopher and Nevis;
- (d) the conditions, exceptions or qualifications imposed pursuant to section 4(2) in relation to the country prevent the request being accepted;
- (e) the request, not being one such as is referred to in section 17(2), does not meet the requirements of the Schedule;
- (f) there are reasonable grounds for doing so in the case of a request such as is referred to in section 23(1); or
- (g) the request cannot be accommodated within relevant legal practices and procedures in Saint Christopher and Nevis.

(4) If, in the opinion of the central authority for Saint Christopher and Nevis, the expense involved in complying with a request for assistance under this Act made by a Commonwealth country, and accepted, would be of an extraordinary nature, the central authority for Saint Christopher and Nevis shall consult with the central authority for the

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country as to the terms and conditions under which compliance with the request may continue and, in the absence of agreement in that regard, the central authority for Saint Christopher and Nevis may refuse to continue further with the request.

(5) Where any of the grounds referred to in subsection (2) or (3) apply in relation to some, but not all, of the matters in respect of which a request for assistance under this Act is made, nothing in this section operates to prevent the request being accepted to the extent that no such ground applies.

(6) If a request for assistance under this Act made by a Commonwealth country, other than an informal one made pursuant to section 17(2), is refused, the fact of and, subject to subsection (7), the grounds for, the refusal shall be given by the central authority for Saint Christopher and Nevis to the central authority for that country.

(7) In the case of a refusal of a request such as is referred to in section 23(1), the central authority for Saint Christopher and Nevis is not required to give grounds for the refusal.

(8) After giving preliminary consideration to a request for assistance under this Act made by a Commonwealth country, the central authority for Saint Christopher and Nevis may require the central authority for that country to furnish information relative to the request, and if that information is not furnished within such period as the central authority for Saint Christopher and Nevis considers reasonable the request shall be deemed to have been withdrawn.

(9) For the purposes of this section, an offence is not an offence of a political character if it is an offence within the scope of any international convention to which both Saint Christopher and Nevis and the Commonwealth country making the request are parties and which imposes on the parties thereto an obligation to afford mutual assistance in criminal matters relating to the offence.

## **Division 2 – General Assistance**

### **19. Assistance to country in obtaining evidence, etc.**

(1) This section applies where a request is transmitted requesting assistance by Saint Christopher and Nevis in obtaining, by any means stated in section 6, evidence or information relevant to any criminal matter in relation to the Commonwealth country making the request, and the request is accepted.

(2) Subject to this section, the regulations may prescribe practices and procedures for obtaining evidence or information pursuant to a request for assistance under this section by a Commonwealth country.

(3) A person from whom evidence is taken in Saint Christopher and Nevis pursuant to a request for assistance under this section by a Commonwealth country

- (a) may refuse to answer any question if
  - (i) the refusal is based on the law of Saint Christopher and Nevis;
  - (ii) to require the person to answer the question would constitute a breach of a privilege recognized by the law of the Commonwealth country;

- (iii) to answer the question would constitute the commission by the person of an offence against the law of the Commonwealth country;
- (b) shall not be compelled to give or provide evidence or information for the purposes of, or in connection with, any criminal matter other than that to which the request relates.

(4) Where the request for assistance under this section is to the effect that evidence or information be obtained by the means stated in section 6(d), copies of records not publicly available may be produced, copied or examined only to the extent that they could be produced to, or examined by, enforcement agencies or prosecuting or judicial authorities in Saint Christopher and Nevis.

**20. Assistance to country in locating or identifying person.**

(1) This section applies where a request is transmitted requesting assistance by Saint Christopher and Nevis in locating, or identifying and locating, a person believed to be in Saint Christopher and Nevis, who

- (a) is or might be concerned in or affected by; or
- (b) could give or provide evidence or assistance relevant to;

any criminal matter in relation to the Commonwealth country making the request and the request is accepted.

(2) Where this section applies, the central authority for Saint Christopher and Nevis shall use its best endeavours to have the person located or, as the case may be, identified and located, and shall inform the central authority for the Commonwealth country making the request as to the outcome of those endeavours.

**21. Assistance to country in obtaining article or thing, by search and seizure if necessary.**

(1) This section applies where a request is transmitted requesting assistance by Saint Christopher and Nevis in obtaining, by search and seizure if necessary, an article or thing in Saint Christopher and Nevis for the purposes of, or in connection with, any criminal matter in relation to the Commonwealth country making the request, and the request is accepted.

(2) Where this section applies, the Attorney General shall, unless the article or thing concerned is otherwise lawfully obtained, authorise in writing a Police Officer to apply to a Magistrate for a search warrant in respect of the article or thing.

(3) A Police Officer authorised under subsection (2) may apply for the issue of a search warrant to a Magistrate having jurisdiction in the area where the article or thing is believed to be located.

- (4) The laws of Saint Christopher and Nevis with respect to the procedure for
  - (a) the making and disposal of an application for a search warrant;
  - (b) the execution of a search warrant;



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apply, so far as they are capable of applying, to an application under subsection (3) and to the execution of any warrant issued pursuant to any such application.

(5) The central authority for Saint Christopher and Nevis shall provide such certification as may be required by the central authority for the Commonwealth country making the request concerning the result of any search, the place and circumstances of any seizure, and the subsequent custody of any property seized.

(6) Where this section applies, the Attorney General may give authority in writing to enable any article or the thing obtained pursuant to a request to be removed to the Commonwealth country that made the request.

## **22. Assistance to country in arranging attendance of person.**

(1) This section applies where a request is transmitted requesting that assistance be given by Saint Christopher and Nevis in arranging the attendance in the Commonwealth country making request, of a person in Saint Christopher and Nevis to give or provide evidence or assistance relevant to any criminal matter in relation to that Commonwealth country, and the request is accepted.

(2) Where this section applies, the central authority for Saint Christopher and Nevis shall

- (a) inquire whether or not the person concerned is willing to attend as requested;
- (b) inform the central authority for the Commonwealth country making the request as to the outcome of the inquiry;
- (c) if the person is willing to attend as requested, make appropriate arrangements to facilitate that attendance.

## **23. Assistance to country by transferring prisoner.**

(1) This section applies where a request is transmitted requesting Saint Christopher and Nevis to transfer a prisoner in Saint Christopher and Nevis to the Commonwealth country making the request to give or provide evidence or assistance relevant to any criminal matter in relation to that Commonwealth country, and the request is accepted.

(2) Where this section applies, the Attorney General shall cause a prisoner to be transferred to the Commonwealth country making the request for the purpose of giving effect to the request.

(3) The central authority for Saint Christopher and Nevis may state and inform the central authority for the Commonwealth country making the request as to, conditions subject to which a prisoner is to be transferred, including conditions with respect to the custody, release or return of the prisoner.

(4) Any period during which a prisoner is in custody in a Commonwealth country, pursuant to a request, shall be deemed, for all purposes, to be time served in custody in Saint Christopher and Nevis.

(5) In this section, “prisoner” means a person who is being held in custody pending trial for, or sentence for, or is under imprisonment for, an offence, or is subject to any limitation on his or her personal liberty pursuant to any law.

**24. Assistance to country in serving documents.**

(1) This section applies where a request is transmitted requesting assistance by Saint Christopher and Nevis in effecting the service of a document on a person or on an authority in Saint Christopher and Nevis for the purposes of, or in connection with, any criminal matter in relation to the Commonwealth country making the request, and the request is accepted.

(2) Where this section applies, the central authority for Saint Christopher and Nevis shall

- (a) use its best endeavours to have the document served
  - (i) in accordance with procedures proposed, in the request; or
  - (ii) if those procedures would be unlawful or inappropriate, or no procedures are so proposed, in accordance with the law of Saint Christopher and Nevis; and
- (b) if the document
  - (i) is served, transmit to the central authority for the Commonwealth country making the request a certificate as to service; or
  - (ii) as the case may be, is not served, transmit to the central authority a statement of the reasons which prevented the service.

(3) In this section, “document” does not include

- (a) a subpoena;
- (b) any process
  - (i) requiring the attendance of a person before a court or tribunal in the Commonwealth country making the request; or
  - (ii) which attracts a criminal penalty or sanction for non-compliance with its requirements.

**Division 3 – Assistance in connection with serious offences in Commonwealth countries**

**25. Assistance to country in tracing property, etc.**

(1) This section applies where

- (a) the central authority for a Commonwealth country transmits to the central authority for Saint Christopher and Nevis a certificate given, for the purposes of a request for assistance under this section, by a person legally qualified in the Commonwealth country, to the effect that in the country a named person

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- (i) has been charged with, or convicted of a specified serious offence; or
    - (ii) is suspected, on reasonable grounds, of having committed such a specified offence;
  - (b) property derived or obtained, directly or indirectly, from the commission of that offence is suspected, on reasonable grounds, to be in Saint Christopher and Nevis;
  - (c) a request is transmitted requesting assistance by Saint Christopher and Nevis in identifying, locating or assessing the value or amount of that property; and
  - (d) the request is accepted.
- (2) Where this section applies, the central authority for Saint Christopher and Nevis
  - (a) shall use its best endeavours to give the assistance requested and, doing so, shall invoke such powers and procedures as are available for that purpose; and
  - (b) shall inform the central authority for the Commonwealth country making the request as to the outcome of those endeavours.

**26. Assistance to country in relation to certain orders.**

- (1) This section applies where
  - (a) an order is made in a Commonwealth country
    - (i) confiscating property derived or obtained, directly or indirectly, from the commission of a specified serious offence;
    - (ii) imposing on the person against whom the order is made pecuniary penalty calculated by reference to the value of property so derived or obtained; or
    - (iii) restraining dealings with property which is, or is suspected on reasonable grounds of being, property so derived or obtained;
  - (b) property available for the satisfaction of the order or the pecuniary penalty under the order, or to which the order would apply, as the case may be, is suspected, on reasonable grounds, to be in Saint Christopher and Nevis;
  - (c) a request is transmitted requesting that the order concerned be enforced in accordance with the law of Saint Christopher and Nevis and that, to that end, Saint Christopher and Nevis give appropriate assistance; and
  - (d) the request is accepted.
- (2) Where this section applies, the Attorney General shall cause an application to be made to the High Court in accordance with the rules of the Supreme Court for the registration of the order concerned.

(3) On application made pursuant to subsection (2) the High Court shall register the order if it is satisfied

- (a) that at the time of registration the order is in force; and
- (b) in the case of an order such as is referred to in subsection (1) (a)(ii),
  - (i) that the person against whom the order was made appeared in the proceedings or, if he or she did not do so, that he or she received notice of the proceedings in sufficient time to enable him or her to defend them, or that he or she had died or absconded before such notice could be given to him or her; and
  - (ii) that the order is not subject to appeal.

(4) Where an order is registered in accordance with this section, a copy of any amendments made to the order (whether before or after registration) may be registered in the same way as the order and the amendments do not, for the purpose of this Act, have effect until they are registered.

(5) An order or an amendment of an order shall be registered by the registration, in accordance with the Rules of the Supreme Court, of

- (a) a copy of the order or amendment sealed by the court or other authority making the order or amendment; or
- (b) a copy of the order or amendment duly authenticated in accordance with section 31 (2)(a).

(6) The High Court shall, after appropriate notice has been given to the central authority for Saint Christopher and Nevis cancel the registration of an order in accordance with this section if it appears to the court to have ceased to have effect in the Commonwealth country that made the request for assistance.

(7) The regulations may make provision for and with respect to the enforcement in Saint Christopher and Nevis of an order registered in accordance with this section and may, for that purpose, direct that any Act shall apply in relation to any such order, subject to such limitations, exceptions or restrictions (if any) as may be prescribed and the Act shall apply accordingly.

(8) In this section, “appeal” includes any proceedings by way of discharging or setting aside a judgment or an application for a new trial or stay of execution.

## **27. Assistance to country in obtaining a restraining order.**

(1) This section applies where

- (a) the central authority for the Commonwealth country transmits to the central authority for Saint Christopher and Nevis a certificate given, for the purposes of a request for assistance under this section, by a person legally qualified in the Commonwealth country, to the effect that in the country
  - (i) a named person has been, or is likely to be, charged with, or has been convicted of, a specified serious offence; and

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- (ii) an order has been, or is likely to be, made that has or, as the case may be, will have, the effect under the law of the country of confiscating property derived or obtained, directly or indirectly, from the commission of the serious offence, or of imposing on that named person a pecuniary penalty calculated by reference to the property so derived or obtained;
  - (b) property so derived or obtained, or which would be available to satisfy a pecuniary penalty under the confiscation order or, as the case may be, under such an order if made, is suspected, on reasonable grounds, to be in Saint Christopher and Nevis;
  - (c) a request is transmitted requesting that an order be made, in accordance with the laws of Saint Christopher and Nevis, restraining dealings with property and that, to that end, Saint Christopher and Nevis give appropriate assistance; and
  - (d) the request is accepted.
- (2) Where this section applies, the Attorney General shall cause such application to be made as he or she deems necessary to secure the making of an order of the kind requested.
- (3) The regulations may make provisions for and with respect to the implementation of a request under this section, and may, for the purpose, direct that any such request, subject to such limitations, exceptions and restrictions (if any) as may be prescribed, and the Act shall apply accordingly.

#### **PART IV – APPLICATION OF ACT TO COUNTRIES OTHER THAN COMMONWEALTH COUNTRIES**

##### **28. Definition for purposes of Part IV.**

In this Part,

“country” means a country other than one included in the definition of “Commonwealth country” in section 2(1);

“Treaty” includes a convention, protocol, agreement or arrangement.

##### **29. Implementation of treaty.**

(1) The regulations may make provision to give effect to a treaty, set out in the regulations, for bilateral mutual assistance in criminal matters between Saint Christopher and Nevis and a country specified in the regulations.

(2) For that purpose, the regulations may, in particular,

- (a) direct that this Act shall apply in relation to the country so specified as if it were a Commonwealth country, subject to such limitations, conditions, exceptions or qualifications (if any) as may be prescribed; or

- (b) extend, as provided in section 35(2), the application of any other Act, in relation to the country so specified;

and this Act or, as the case may be, the other Act shall apply accordingly.

## **PART V – MISCELLANEOUS**

### **30. Certificates given by the Attorney General.**

(1) Where the Attorney General is satisfied that it is the case, the Attorney General may give a certificate in such form as he or she determines, certifying all or any of the following facts, namely, that

- (a) a request for assistance under this Act has been made by a Commonwealth country;
- (b) the request meets the requirements of this Act;
- (c) the acceptance of the request was duly made under and in accordance with this Act.

(2) In any relevant proceedings a certificate purporting to have been given under subsection (1) shall be received as conclusive proof.

### **31. Proof.**

(1) In any relevant proceedings a document that is duly authenticated is admissible in evidence.

(2) A document is duly authenticated for the purpose of subsection (1) if it purports to be

- (a) signed or certified by a Judge or Magistrate of a Commonwealth country making a request;
- (b) authenticated by the oath of a witness, or a public officer of a Commonwealth country making a request; or
- (c) sealed with an official or public seal of a Minister of State, or of a department or public office of the Government, of such a country.

(3) In any relevant proceedings, a certificate purporting to have been given

- (a) by the central authority of a Commonwealth country certifying the matters referred to in
  - (i) paragraph (b)(i) or (ii) of the definition of “criminal matter” in section 2(1); or
  - (ii) paragraph (b)(ii) of the definition of “serious offence” in section 2(1); or
- (b) by a legally qualified person for the purposes of a request for assistance under section 25 or 27,

shall be received as evidence of the matter duly certified by the certificate.

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(4) Nothing in this section operates to prevent the proof of any matter, or the admission of any document, in accordance with the regulations or any other law.

**32. Transit.**

(1) Where a person is to be transported in custody from a Commonwealth country through Saint Christopher and Nevis to another Commonwealth country pursuant to a request for assistance, of the kind referred to in the Scheme, by the other Commonwealth country, the person

- (a) may be transported through Saint Christopher and Nevis in the custody of another person; and
- (b) if an aircraft or ship by which the person is being transported lands or calls at a place in Saint Christopher and Nevis shall be kept in such custody as the Attorney General directs in writing until the person's transportation is continued.

(2) Where a person is being held in custody pursuant to a direction under subsection (1)(b) and the person's transportation is not, in the opinion of the Attorney General, continued within a reasonable time, the Attorney General may direct that the person be transported in custody to the Commonwealth country from which the person was first transported.

**33. Escaping.**

Any person who escapes from lawful custody while in Saint Christopher and Nevis pursuant to a request under section 10, or while being kept in custody pursuant to a direction under section 32(1)(b), is guilty of an offence and liable on summary conviction to imprisonment for two years.

**34. Arrest of person who has escaped from custody.**

(1) Any member of the Police Force may, without warrant, arrest a person, if the member of the Police Force has reasonable grounds to believe that the person

- (a) has been brought to Saint Christopher and Nevis pursuant to a request under section 10, or was being kept in custody pursuant to a direction under section 32(1)(b); and
- (b) has escaped from lawful custody while in Saint Christopher and Nevis pursuant to the request, or while being so kept in custody.

(2) A person who has been arrested pursuant to subsection (1) shall be returned to custody in accordance with this Act.

**35. Regulations.**

(1) The Attorney General may make regulations prescribing any matter for carrying out or giving effect to this Act and, in particular,

- (a) making provisions as to evidence or proof of any matter for purposes of this Act;

- (b) prescribing expenses and allowances payable to any person in Saint Christopher and Nevis pursuant to a request;
- (c) prescribing conditions to be imposed for the protection of any interest in any property to be sent to a requesting country pursuant to a request; or
- (d) prescribing conditions for the protection of any property sent to or by a Commonwealth country pursuant to a request, and making provisions for the return of property in Saint Christopher and Nevis pursuant to a request.

(2) The regulations may, with such limitations, conditions, exceptions or qualifications (if any) as may be prescribed, extend the application of any Act so as to enable any request by a Commonwealth country for assistance under this Act to be implemented or any assistance so requested to be given, and the Act shall apply accordingly.

(3) Regulations made for the purposes of section 19(2) may include procedures for, and the powers in relation to, the taking of evidence in Saint Christopher and Nevis by commissioners from, or nominated by, the Commonwealth country concerned.



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## FIRST SCHEDULE

(Section 17(1))

### REQUEST FOR ASSISTANCE BY COMMONWEALTH COUNTRIES

1. A request for assistance under this Act made by a Commonwealth country shall
  - (a) specify the assistance requested;
  - (b) identify the person, agency or authority that initiated the request;
  - (c) state any period within which the country wishes the request to be complied with;
  - (d) if the request would involve travel by any person from Saint Christopher and Nevis to the country, give details of allowances and accommodation to which the person would be entitled; and
  - (e) contain such information as is available to the central authority for the country as will facilitate compliance with the request.
2. (1) Where the assistance requested by a Commonwealth country is for the purposes of an investigation, the request
  - (a) shall be accompanied by the certificate, in relation to the investigation, that is referred to in paragraph (b)(i) of the definition of “criminal matter” in section 2(1); and
  - (b) shall state when the investigation commenced and the nature of the investigation.
- (2) Where the assistance requested by a Commonwealth country is for the purposes of proceedings, the request
  - (a) shall be accompanied by the certificate, in relation to the proceedings, that is referred to in paragraph (b)(i) of the definition of “criminal matter” in section 2(1); and
  - (b) shall
    - (i) give details of the proceedings and the offence concerned, including a summary of the known facts;
    - (ii) give the identity, if known, of the person to whom the proceedings relate or would relate; and
    - (iii) state when the proceedings were instituted, the stage reached in the proceedings and, where applicable, identify the court exercising jurisdiction.
3. Where a request such as is referred to in section 19 is made by a Commonwealth country, the request shall
  - (a) give details of the proceedings that the country wishes to be followed in giving effect to the request, including details of the manner and form in which any evidence or information is to be supplied to that country;

- (b) where relevant, indicate whether any person from whom evidence is to be taken is to be examined
  - (i) orally or in writing;
  - (ii) under oath;
  - (iii) in the presence of his or her legal representative; or
  - (iv) in the presence of the person to whom any relevant proceedings in that country relate;
- (c) where evidence is to be taken from a person, specify the questions to be put to the person or the subject-matter about which the person is to be examined;
- (d) where evidence is to be taken from a person, give details of any special requirements of the country as to the manner of taking evidence relevant to its admissibility in the country; and
- (e) give details of any privileges or exceptions under the law of the country in relation to obtaining evidence or information by the means proposed in the request.

4. Where a request such as is referred to in section 21 is made by a Commonwealth country, the request shall identify the article or thing which is to be obtained and, so far as is reasonably practicable, shall contain all information available to the central authority for the country which may be required to be adduced in an application under the law of Saint Christopher and Nevis for any necessary warrant or authorisation to effect a seizure of that article or thing.

5. Where a request such as is referred to in section 23 is made by a Commonwealth country, the request shall identify the subject on which evidence or information is to be provided and state the reasons for requiring the personal appearance of the prisoner.

6. Where a request such as is referred to in section 24 is made by a Commonwealth country, the request shall

- (a) be accompanied by the document to be served; and
- (b) where that document relates to the attendance of any person in the country, give such notice as that country is able to provide of outstanding warrants or other judicial orders in criminal matters against that person.

7. Where a request such as is referred to in section 25 is made by the Commonwealth country, the request shall

- (a) give details of the specified serious offence; and
- (b) state the grounds for suspecting that the relevant property is in Saint Christopher and Nevis and give information in the possession;

of that country which will assist in identifying or locating that property.

8. Where a request such as is referred to in section 26, is made by a Commonwealth country, the request shall

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- (a) be accompanied by a copy of the relevant order made in the country
    - (i) sealed by the court that made the order; and
    - (ii) duly authenticated;and identify the law under which the order was made;
  - (b) give details of the specified serious offence;
  - (c) state the grounds for suspecting that the relevant property is in Saint Christopher and Nevis and give any information in the possession of the country which will assist in identifying or locating the property;
  - (d) give particulars of any amount paid or recovered under the relevant order.
9. Where a request such as is referred to in section 27 is made by a Commonwealth country, the request shall
- (a) if relevant, be accompanied by a copy of the order made in the country
    - (i) sealed by the court that made the order; or
    - (ii) duly authenticated;and identify the law under which the order was made;
  - (b) if relevant, state the grounds for believing that an order is likely to be made;
  - (c) give details of the serious offence in respect of which the order was or, as the case may be, is likely to be made;
  - (d) state the grounds for suspecting that the relevant property is in Saint Christopher and Nevis and give any information in the possession of the country which will assist in identifying or locating the property.

## SECOND SCHEDULE

(Section 35)

### MUTUAL ASSISTANCE (TREATY BETWEEN THE GOVERNMENT OF SAINT CHRISTOPHER AND NEVIS AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS) (APPLICATION) REGULATIONS

#### 1. **Short title.**

These Regulations may be cited as the Mutual Assistance (Treaty between the Government of Saint Christopher and Nevis and the Government of the United States of America on Mutual Legal Assistance in Criminal Matters) (Application) Regulations.

#### 2. **Interpretation.**

In this Act, "Treaty" means the Treaty between the Government of Saint Christopher and Nevis and the Government of the United States of America on Mutual Legal Assistance in Criminal Matters set out in the Schedule to these Regulations.

3. **Application.**

The Mutual Assistance in Criminal Matters Act shall apply to the Treaty, the text of which is set out in the Schedule to these Regulations, for the purpose of bilateral mutual assistance in criminal matters between Saint Christopher and Nevis and the United States of America, as if the United States of America were a Commonwealth country.

**SCHEDULE TO THE REGULATIONS**

(Regulation 3)

**TREATY BETWEEN THE GOVERNMENT OF SAINT KITTS AND NEVIS AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS**

The Government of Saint Christopher and Nevis and the Government of the United States of America

Desiring to improve the effectiveness of the law enforcement authorities of both countries in the investigation, prosecution, and prevention of crime through cooperation and mutual legal assistance in criminal matters.

Have agreed as follows:

**Article 1**

**Scope of Assistance**

1. The Contracting Parties shall provide mutual assistance, in accordance with the provisions of this Treaty, in connection with the investigation, prosecution, and prevention of criminal offences, and in proceedings related to criminal matters.
2. Assistance shall include:
  - (a) taking the testimony or statement of persons;
  - (b) providing documents, records, and articles of evidence;
  - (c) locating or identifying persons;
  - (d) serving documents;
  - (e) transferring persons in custody for testimony or other purposes;
  - (f) executing requests for searches and seizures;
  - (g) assisting in proceedings related to immobilization and forfeiture of assets;
  - (h) any other form of assistance not prohibited by the laws of the Requested State.
3. Except as otherwise provided in this Treaty, assistance shall be provided without regard to whether the conduct which is the subject of the investigation, prosecution, or proceeding in the Requesting State would constitute an offense under the laws of the Requested State.

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4. This Treaty is intended solely for mutual legal assistance in criminal matters between the Parties as set forth in paragraph (1) above. The provisions of this Treaty shall not give rise to a right on the part of any private person to obtain, suppress, or exclude any evidence, or to impede the execution of a request.

## **Article 2**

### **Central Authorities**

1. Each Contracting Party shall designate a Central Authority to make and receive requests pursuant to this Party.

2. For the United States of America, the Central Authority shall be the Attorney General or a person designated by the Attorney General. For the Government of Saint Christopher and Nevis, the Central Authority shall be the Attorney General or a person designated by the Attorney General.

3. The Central Authorities shall communicate directly with one another for the purposes of this Treaty.

## **Article 3**

### **Limitations on Assistance**

1. The Central Authority of the Requested State may deny assistance if:
  - (a) the request relates to an offense under military law which would not be an offense under ordinary criminal law;
  - (b) the execution of the request would prejudice the security or other essential public interests of the Requested State;
  - (c) the request is not made in conformity with the Treaty;
  - (d) the request relates to a political offense;
  - (e) the request is made pursuant to Article 14 or 16 of this Treaty and relates to conduct which if committed in the Requested State would not be an offense in that State; or
  - (f) the execution of the request would be contrary to the Constitution of the Requested State.

2. Before denying assistance pursuant to this Article, the Central Authority of the Requested State shall consult with the Central Authority of the Requested State to consider whether assistance can be given subject to such conditions as it deem necessary. If the Requesting State accepts assistance subject to these conditions, it shall comply with the conditions.

3. If the Central Authority of the Requested State denies assistance, it shall inform the Central Authority of the Requesting State of the basis for the denial.

## Article 4

### Form and Contents of Requests

1. A request for assistance shall be in writing except that the Central Authority of the Requested State may accept a request in another form in emergency situations. If the request is not in writing, the request shall be confirmed in writing within ten days thereafter unless the Central Authority of the Requested State agrees otherwise.
2. The request shall include the following:
  - (a) the name of the authority conducting the investigation, prosecution, or proceeding to which the request relates;
  - (b) a description of the subject matter and nature of the investigation, prosecution, or proceeding, including the specific criminal offenses which relate to the matter;
  - (c) a description of the evidence, information, or other assistance sought; and
  - (d) a statement of the purpose for which the evidence, information, or other assistance is sought.
3. To the extent necessary and possible, a request shall also include:
  - (a) information on the identity and location of any person from whom evidence is sought;
  - (b) information on the identity and location of a person to be served, that person's relationship to the proceedings, and the manner in which service is to be made;
  - (c) information on the identity and whereabouts of a person to be located;
  - (d) a precise description of the place or person to be searched and of the articles to be seized;
  - (e) a description of the manner in which any testimony or statement is to be taken and recorded;
  - (f) a list of questions to be asked of a witness;
  - (g) a description of any particular procedure to be followed in executing the request;
  - (h) information as to the allowances and expenses to which a person asked to appear in the Requesting State will be entitled; and
  - (i) any other information which may be brought to the attention of the Requested State to facilitate its execution of the request.

## Article 5

### Execution of Requests

1. The Central Authority of the Requested State shall promptly execute the request or, when appropriate, shall transmit it to the authority having jurisdiction to do so.

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The competent authorities of the Requested State shall do everything in their power to execute the request. The competent judicial or other authorities of the Requested State shall have power to issue subpoenas, search warrants, or other orders necessary to execute the request.

2. The Central Authority of the Requested State shall make all necessary arrangement for and meet the costs of the representation in the Requested State or the Requesting State in any proceedings arising out of a request for assistance.

3. Requests shall be executed according to the internal laws and procedures of the Requested State except to the extent, that this Treaty provides otherwise. Procedures specified in the request shall be followed in the Requested State. Where neither the Treaty nor the request specifies a particular procedure, the request shall be executed in accordance with the appropriate procedure under the laws applicable for investigations or proceedings in the Requested State.

4. If the Central Authority of the Requested State determines that execution of a request would interfere with an ongoing criminal investigation, prosecution, or proceeding in that State, it may postpone execution, or make execution subject to conditions determined to be necessary after consultations with the Central Authority of the Requesting State. If the Requesting State accepts the assistance subject to the conditions, it shall comply with the conditions.

5. The Requested State shall use its best efforts to keep confidential a request and its contents, if such confidentiality is requested by the Central Authority of the Requesting State. If the request cannot be executed without breaching such confidentiality, the Central Authority of the Requested State shall so inform the Central Authority of the Requesting State, which shall then determine whether the request should nevertheless be executed.

6. The Central Authority of the Requested State shall respond to reasonable inquiries by the Central Authority of the Requesting State concerning progress toward execution of the request.

7. The Central Authority of the Requested State shall promptly inform the Central Authority of the Requesting State of the outcome of the execution of the request. If the request is denied, the Central Authority of the Requested State shall inform the Central Authority of the Requesting State of the basis for the denial.

## **Article 6**

### **Costs**

The Requested State shall pay all costs relating to the execution of the request, except for the fees of expert witnesses, the costs of translation, interpretation, and transcription, and the allowances and expenses related to travel of persons pursuant to Articles 10 and 11, which costs, fees, allowances, and expenses shall be paid by the Requesting State.

## **Article 7**

### **Limitations on Use**

1. The Requesting State shall not use any information or evidence obtained under this Treaty for any purposes other than for the investigation, prosecution or suppression in the territory of the Requesting State of those criminal offenses stated in the request without the prior consent of the Requested State.

2. The Central Authority of the Requested State may request that information or evidence furnished under this Treaty be kept confidential or be used only subject to terms and conditions it may specify. If the Requesting State accepts the information or evidence subject to such conditions, the Requesting State shall use its best efforts to comply with the conditions.

3. Nothing in this Article shall preclude the use or disclosure of information to the extent that there is an obligation to do so under the Constitution of the Requesting State in a criminal prosecution. The Requesting State shall notify the Requested State in advance of any such proposed disclosure and the provision of the Constitution under which such disclosure is required.

4. Information or evidence which has been made public in the Requesting State in accordance with paragraphs 1 or 2 may thereafter be used for any purpose.

## **Article 8**

### **Testimony or Evidence in the Requested State**

1. A person in the Requested State from whom testimony or evidence is requested shall be compelled, if necessary, to appear and testify or produce items, including documents, records, and articles of evidence.

2. Upon request, the Central Authority of the Requested State shall furnish information in advance about the date and place of the taking of the testimony or evidence pursuant to this Article.

3. The Requested State shall permit the presence of such persons as specified in the request during the execution of the request, and shall allow such persons to question the person giving the testimony or evidence.

4. If the person referred to in paragraph 1 asserts a claim of immunity, incapacity, or privilege under the laws of the Requesting State, the testimony or evidence shall nonetheless be taken and the claim made known to the Central Authority of the Requesting State for resolution by the authorities of that State.

5. Evidence produced in the Requested State pursuant to this Article or which is the subject of testimony taken under this Article may be authenticated by an attestation, including, in the case of business records, authentication in the manner indicated in Form A appended to this Treaty. Documents authenticated by Form A shall be admissible in evidence in the Requesting State.



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## **Article 9**

### **Records of Government Agencies**

1. The Requested State shall provide the Requesting State with copies of publicly available records, including documents or information in any form, in the possession of government departments and agencies in the Requested State.

2. The Requested State may provide copies of any records, including documents or information in any form, which are in the possession of a government department or agency in that State, but which are not publicly available, to the same extent and under the same conditions as such copies would be available to its own law enforcement or judicial authorities. The Requested State may in its discretion deny a request pursuant to this paragraph entirely or in part.

3. Official records produced pursuant to this Article may be authenticated by the official in charge of maintaining them through the use of Form B appended to this Treaty. No further authentication shall be necessary. Documents authenticated under this paragraph shall be admissible in evidence in the Requesting State.

## **Article 10**

### **Testimony in Requesting State**

1. When the Requesting State requests the appearance of a person in that State, the Requested State shall invite the person to appear before the appropriate authority in the Requesting State. The Requesting State shall indicate the extent to which the expenses will be paid. The Central Authority of the Requested State shall promptly inform the Central Authority of the Requesting State of the response of the person.

2. The Central Authority of the Requesting State shall inform the Central Authority of the Requested State whether a decision has been made by the competent authorities of the Requesting State that a person appearing in the Requesting State pursuant to this Article shall not be subject to service of process, or be detained or subjected to any restriction of personal liberty, by reason of any acts or convictions which preceded his or her departure from the Requested State.

3. The safe conduct provided for by this Article shall cease seven days after the Central Authority of the Requesting State has notified the Central Authority of the Requested State that the person's presence is no longer required, or when the person, having left the Requesting State, voluntarily returns. The competent authorities of the Requesting State may, in their discretion, extend this period for up to fifteen days if they determine that there is good cause to do so.

## **Article 11**

### **Transfer of Persons in Custody**

1. A person in the custody of the Requested State whose presence in the Requesting State is sought for purposes of assistance under this Treaty shall be transferred from the Requested State to the Requesting State for that purpose if the person consents and if the Central Authorities of both States agree.

2. A person in the custody of the Requesting State whose presence in the Requested State is sought for purposes of assistance under this Treaty may be transferred from the Requesting State to the Requested State for that purpose if the person consents and if the Central Authorities of both States agree.

3. For purposes of this Article:

- (a) the receiving State shall have the authority and the obligation to keep the person transferred in custody unless otherwise authorised by the sending State;
- (b) the receiving State shall return the person transferred to the custody of the sending State as soon as circumstances permit or as otherwise agreed by both Central Authorities;
- (c) the receiving State shall not require the sending State to initiate extradition proceedings for the return of the person transferred; and
- (d) the person transferred shall receive credit for service of the sentence imposed in the sending State for time served in the custody of the receiving State.

## **Article 12**

### **Location or Identification of Persons or Items**

The Requested State shall use its best efforts to ascertain the location or identity of persons or items specified in the request.

## **Article 13**

### **Service of Documents**

1. The Requested State shall use its best efforts to effect service of any document relating, in whole or in part, to any request for assistance made by the Requesting State under the provisions of this Treaty.

2. The Requesting State shall transmit any request for the service of a document requiring the appearance of a person before an authority in the Requesting State a reasonable time before the scheduled appearance.

3. The Requested State shall return a proof of service in the manner specified in the Request.

## **Article 14**

### **Search and Seizure**

1. The Requested State shall execute a request for the search, seizure, and delivery of any item to the Requesting State if the request includes the information justifying such action under the laws of the Requested State.

2. Upon request, every official who has custody of a seized item shall certify, through the use of Form C appended to this Treaty, the continuity of custody, the identity

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of the item, and the integrity of its condition. No further certification shall be required. The certificate shall be admissible in evidence in the Requesting State.

3. The Central Authority of the Requested State may require that the Requesting State agree to the items and conditions deemed to be necessary to protect third party interests in the item to be transferred.

## **Article 15**

### **Return of Items**

The Central Authority of the Requested State may require that the Central Authority of the Requesting State return any items, including documents, records, or articles of evidence furnished to it in execution of a request under this Treaty as soon as possible.

## **Article 16**

### **Assistance in Forfeiture Proceedings**

1. If the Central Authority of one Contracting Party becomes aware of proceeds or instrumentalities of offenses which are located in the territory of the other Party and may be forfeitable or otherwise subject to seizure under the laws of that Party, it may so inform the Central Authority of the other Party. If the Party receiving such information has jurisdiction in this regard, it may present this information to its authorities for a termination whether any action is appropriate. These authorities shall issue their decision in accordance with the laws of their country. The Central Authority of the Party that received the information shall inform the Central Authority of the Party that provided the information of the action taken.

2. The Contracting Parties shall assist each other to the extent permitted by their respective laws in proceedings relating to the forfeiture of the proceeds and instrumentalities of offenses, restitution to the victims of crime, and the collection of fines imposed as sentences in criminal prosecutions. This may include action to temporarily immobilize the proceeds or instrumentalities pending further proceedings.

3. The Party that has custody over proceeds or instrumentalities of offenses shall dispose of them in accordance with its laws. Either Party may transfer all or part of such assets, or the proceeds of their sale, to the other Party, to the extent permitted by the transferring Party's laws and upon such terms as it deems appropriate.

4. To the extent permitted under the law of the Requested State, a conviction in the Requesting State may serve as a basis for forfeiture in the Requested State.

## **Article 17**

### **Compatibility with Other Arrangements**

Assistance and procedures set forth in this Treaty shall not prevent either Contracting Party from granting assistance to the other Party through the provisions of other applicable international agreements, or through the provisions of its national laws. The Parties may also provide assistance pursuant to any bilateral arrangement, agreement or practice which may be applicable.

**Article 18**

**Consultation**

The Central Authorities of the Contracting Parties shall consult, at times mutually agreed to by them, to promote the most effective use of this Treaty. The Central Authorities may also agree on such practical measure, including training and technical assistance, as may be necessary to facilitate the implementation of this Treaty.

**Article 19**

**Ratification, Entry into Force, and Termination**

1. This Treaty shall be subject to ratification, and the instruments of ratification shall be exchanged at Washington as soon as possible.
2. This Treaty shall enter into force upon exchange of instruments of ratification.
3. This Treaty shall apply to any request presented after the date of its entry into force whether the relevant acts or omissions occurred prior to or after that date.
4. Either Party may terminate this Treaty by means of written notice to the other Party. Termination shall take effect six months following the date of receipt of the notification.

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

DONE at BASSETERRE, in duplicate, this 18<sup>th</sup> day of September 1997.

**FOR THE GOVERNMENT OF SAINT CHRISTOPHER AND NEVIS**

**FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA**

Form A

**CERTIFICATE OF AUTHENTICITY OF BUSINESS RECORDS**

I.(name) ..... attest on penalty of criminal punishment for false statement or attestation that I am employed by..... (name of business from which documents are sought and that my official title is.....(official title)..... I further state each of the records attached hereto is the original or a duplicate of the original record in the custody of ..... (name of business from which documents are sought).....

I further state that:

- (a) such records were made, at or near the time of the occurrence of the matters set forth, by (or from information transmitted by) a person with knowledge of those matters;

Revision Date: 31 Dec 2002

- (b) such records were kept in the course of a regularly conducted business activity;
- (c) the business activity made such records as a regular practice; and
- (d) if any such record is not the original, it is duplicate of the original.

(Signature)

(date)

Sworn to or affirmed before me, .....name) .....  
a judicial officer, this..... day of ..... 20.....

Form B

ATTESTATION OF AUTHENTICITY OF FOREIGN PUBLIC DOCUMENTS

I,..... (name)....., attest on penalty of criminal punishment for false statement or attestation that my position with the Government of.....country.....is (official title).....and that in that position I am authorized by the law of.....(country) to attest that the documents attached and described below are true and accurate copies of original official which are recorded or filed in.....(name of office or agency).....which is a government office or agency of.....(country).....

Description of Documents:

(Signature)

\_\_\_\_\_

(Title)

\_\_\_\_\_

(Date)

\_\_\_\_\_

Form C

ATTESTATION WITH RESPECT TO SEIZED ARTICLES

I,.....(name)....., attest on penalty of criminal punishment for false statement or attestation that my position with the government of..... (country).....is (official title) received custody of the articles listed below from (name of person) on..... (date).....at (place).....in the same condition as when I received them (or, if different, as noted below).

Description of titles:

Changes in condition while in my custody:

(Signature)

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(Title)

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Official Seal

(Place)

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(Date)

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### **THIRD SCHEDULE**

(Section 4)

#### **DESIGNATION OF CENTRAL AUTHORITY ORDER**

1.    **Citation.**

This Order may be cited as the Designation of Central Authority Order

2.    **Designation of Central Authority.**

The Attorney General is hereby designated as the Central Authority for the purposes of the Mutual Assistance in Criminal Matters Act, Cap. 4.19.