

THE OFFICIAL GAZETTE 9TH JUNE, 2010
LEGAL SUPPLEMENT — A



ACT No. 38 of 2009

MUTUAL ASSISTANCE IN CRIMINAL MATTERS ACT 2009

Iansen
[Signature]
Bharat Pandey
President
June 9th 2010

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SCHEDULE Request for Assistance Made by Commonwealth Countries

AN ACT —

- (a) to give effect to the scheme relating to Mutual Assistance in Criminal Matters within the Commonwealth; and
- (b) to provide for mutual assistance in criminal matters between Guyana and countries that have a treaty with Guyana concerning such assistance.

A.D. 2009

Enacted by the Parliament of Guyana:-

PART I
PRELIMINARY

Short title.

1. This Act may be cited as the Mutual Assistance in Criminal Matters Act 2009.

Interpretation.

2. (1) In this Act -

“accept”, in relation to a request, means to decide to grant the request;

“central authority” —

- (a) in relation to Guyana, means the person specified in or (as the case may be) designated under section 3;
- (b) in relation to any other country, means the person designated by that country for the purpose of transmitting and receiving requests for mutual international assistance in criminal matters;

“Commonwealth country” means —

- (a) any country specified in Article 47 (3) of the Constitution; and
- (b) every constituent part of such a country, including a colony, territory, dependency, or protectorate, which administers its own laws relating to international cooperation;

“criminal matter” —

- (a) in Part 2 means —
 - (i) an investigation certified by the central authority for Guyana to have commenced; or

- (ii) proceedings certified by the central authority for Guyana to be criminal proceedings which have been instituted,
in Guyana in respect of an offence committed, or suspected on reasonable grounds to have been committed, against the law of Guyana;
- (b) in Part 3, in relation to a Commonwealth country, means –
 - (i) an investigation certified by the central authority for that country to have commenced; or
 - (ii) proceedings certified by the central authority for that country to be criminal proceedings which have been instituted,
in that country in respect of an offence committed, or suspected on reasonable grounds to have been committed, against the law of that country; and
- (c) in each of Parts 2 and 3 includes –
 - (i) forfeiture proceedings;
 - (ii) proceedings to restrain dealings with property;
 - (iii) proceedings for the confiscation of property; and
 - (iv) proceedings for the imposition of pecuniary penalties, calculated by reference to the value of property, arising out of criminal proceedings, whether such proceedings be characterised as criminal or civil proceedings;

“dealings”, in relation to any property, includes –

- (a) receiving or acquiring the property;
- (b) concealing or disguising the property;
- (c) converting or disposing of the property;
- (d) moving the property;
- (e) using the property to borrow money or as security of any kind;
- (f) where a debt is owed to the person holding the property, making a payment to any person in reduction of the debt;

“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, of being reproduced;
- (d) a copy, reproduction, or duplicate of a document described in any of paragraphs (a) to (c); and
- (e) any part of a document described in any of paragraphs (a) to (d);

“interest”, in relation to any property, means –

- (a) legal or equitable estate or interest in the property; or
- (b) a right, power, or privilege in connection with the property,

whether present, future, vested, or contingent;

“investigation” includes any inquiry;

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

“Minister” means the Minister responsible for Home Affairs;

“offence of a political character”, in relation to a request transmitted to the central authority for Guyana, -

- (a) means an offence committed in the course of and incidental to an uprising or other violent political disturbance; but
- (b) excludes any offence within the scope of a treaty –
 - (i) to which both the requesting country and Guyana is a party; and
 - (ii) that imposes on the parties to it an obligation to extradite or prosecute a person accused of the commission of the offence, or to afford mutual assistance in criminal matters relating to the offence;

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

“proceeds”, in relation to an offence, -

- (a) means any property derived or obtained directly or indirectly from the commission of that offence;
- (b) includes on a proportional basis, property into which any property derived or obtained directly or indirectly from the commission of that offence was converted, transformed, or intermingled; and
- (c) includes income, capital, and other economic gains derived or realised from the proceeds described in paragraph (a) or (b) at any time since the commission of that offence;

“proceedings” -

- (a) 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; and
- (b) includes a preliminary or final determination of facts;

“property” -

- (a) means movable or immovable property of every description, whether situated in Guyana or elsewhere, and whether tangible or intangible;
- (b) includes any interest in such property; and
- (c) for the avoidance of doubt, includes money and choses in action;

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

“requesting country”, in relation to a request, means the country that made the request;

“restraining order” means an order restraining dealings with identified property;

“scheme relating to Mutual Assistance in Criminal Matters within the Commonwealth” means the scheme of that name adopted by Commonwealth Law Ministers at their meeting in Harare in July to

August, 1986 and endorsed by the Commonwealth Heads of Government at their meeting in Vancouver in October, 1987;

“serious offence”, in relation to a request for assistance made by any country, means an offence against the law of that country —

- (a) punishable by death;
- (b) punishable by a sentence of imprisonment of twelve months or more;
- (c) the proceeds of which are, or are likely to be, worth not less than the equivalent of \$1,000,000 or such other amount as may be prescribed; or
- (d) relating to taxation;

“thing”, for the avoidance of doubt, includes any document, liquid, substance, or matter;

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

- (a) in Part 2, transmitted by the central authority for Guyana to the central authority for the country from which assistance is requested; and
- (b) in Part 3, transmitted by the central authority for a Commonwealth country to the central authority for Guyana;

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

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

(3) For the purposes of this Act, a ship or aircraft of or registered in any country is deemed to be part of that country.

(4) For the purposes of this Act, a person is deemed to have been charged with a serious offence in any country, if an information or indictment has been laid or filed in that country against the person for the offence, whether or not either of the following has been issued -

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

(5) Where, in any country, -

- (a) a person is convicted by a court of a serious offence; and

- (b) with the person's consent another serious offence, of which that person has not been found guilty is taken into account by the court in passing sentence for the offence referred to in paragraph (a),

that 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.

Central authority for Guyana.

3. (1) Subject to subsection (2), the Minister is the central authority for Guyana.

(2) The Minister may by order designate any person as the central authority for Guyana.

Application of Act to Commonwealth countries.

4. (1) The Minister may by order direct that the application of this Act in relation to a particular Commonwealth country shall be subject to such limitations, conditions, exceptions, or qualifications as are specified in the order and in that event this Act shall apply accordingly.

(2) The Minister may by order amend or revoke an order made under this section.

Relationship with extradition.

5. Nothing in this Act authorises the extradition, or the arrest or detention with a view to extradition, of any person.

Non-derogation from other forms of co-operation.

6. Nothing in this Act derogates from existing forms, or prevents the development of other forms, of cooperation (whether formal or informal) in respect of criminal matters between Guyana or any enforcement agency or prosecuting authority in Guyana, on the one hand, and the International Criminal Police Organisation (INTERPOL) or any other country or any enforcement agency or prosecuting authority outside Guyana, on the other hand.

PART 2

REQUESTS BY GUYANA TO COMMONWEALTH COUNTRIES FOR ASSISTANCE

Assistance in obtaining evidence.

7. (1) This section applies where there are reasonable grounds to believe that evidence or information relevant to a criminal matter may be obtained if, in a Commonwealth country –

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

(2) Where this section applies, a request may be transmitted requesting the Commonwealth country to assist in obtaining that evidence or information.

Assistance in locating or identifying persons.

8. (1) This section applies where there are reasonable grounds to believe that a person is in a Commonwealth country and —

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

(2) Where this section applies, a request may be transmitted requesting the Commonwealth country to assist —

- (a) in locating that person; or
- (b) if that person's identity is unknown, in identifying and locating that person.

Assistance in locating or identifying things.

9. Where there are reasonable grounds to believe that a thing is in a Commonwealth country and would, if produced, be relevant to any criminal matter, a request may be transmitted requesting the country to assist in locating and identifying that thing.

Assistance in obtaining thing by search and seizure if necessary.

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

Assistance in arranging attendance of person.

11. Where there are reasonable grounds to believe that a person in a Commonwealth country could give evidence or assistance relevant to a criminal matter, a request may be transmitted requesting the country to assist in arranging the attendance of the person in Guyana to give that evidence or assistance.

Assistance by
transferring
prisoner.

12. (1) Where there are reasonable grounds to believe that a person who is a prisoner in a Commonwealth country could give evidence or assistance relevant to a criminal matter, a request may be transmitted requesting the country to transfer the prisoner to Guyana to give that evidence or assistance.

(2) If a prisoner is transferred to Guyana from a Commonwealth country in connection with a request under subsection (1) subject to a condition with respect to the prisoner's custody, release, or return, or any other matter, the central authority for Guyana shall take the necessary steps to ensure that the condition is observed, except to the extent that the Commonwealth country waives its observance.

(3) Where any condition requires that a prisoner be kept in custody while in Guyana, -

- (a) the prisoner shall, while in Guyana or travelling to or from Guyana following that request, be kept in custody; and
- (b) the custody shall be deemed lawful.

(4) Nothing in this section shall be construed to give rights to a prisoner.

(5) In this section, "prisoner" in relation to a Commonwealth country, means a person who -

- (a) is being held in custody pending trial for or sentence for an offence against the law of that country;
- (b) is under sentence of imprisonment for an offence against the law of that country; or
- (c) is subject to any limitation on that person's personal liberty according to the law of that country.

Assistance in
serving
documents.

13. Where, for the purposes of or in connection with a 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 the country to effect the service.

Assistance in
tracing
property.

14. (1) This section applies where -

- (a) in Guyana a person -
 - (i) has been charged with or convicted of a serious offence; or
 - (ii) is suspected on reasonable grounds of having committed such an offence; and
- (b) proceeds of that offence are suspected on reasonable grounds to be in a Commonwealth country.

(2) Where this section applies, a request may be transmitted requesting the Commonwealth country to assist in identifying, locating, or assessing the value or amount of, the property constituting those proceeds.

Assistance in relation to other orders.

15. (1) This section applies where –

- (a) in Guyana –
 - (i) an order has been made restraining dealings with identified property which is, or is suspected on reasonable grounds of being, proceeds of a serious offence;
 - (ii) an order has been made confiscating or forfeiting proceeds of a serious offence; or
 - (iii) an order has been made imposing on a person a pecuniary penalty calculated by reference to the value of proceeds of a serious offence; and
- (b) property to which the order described in paragraph (a) (i) would apply, or which is available for the satisfaction of the order described in paragraph (a) (ii) or (iii), is suspected on reasonable grounds to be in a Commonwealth country.

(2) Where this section applies, a request may, subject to subsection (4), be transmitted requesting the Commonwealth country –

- (a) to enforce the order concerned; and
- (b) to provide appropriate assistance to this end.

(3) Where a request under this section has been accepted, the central authority for Guyana shall inform the central authority for the Commonwealth country concerned if, subsequently, the order concerned is varied or ceases to have effect.

(4) No request may be made under this section if the amount specified in the order, or the total value of property required to satisfy the order, is less than \$1,000,000 or such other amount as may be prescribed.

Assistance in obtaining order in nature of restraining order.

16. (1) This section applies where –

- (a) in Guyana –
 - (i) a person has been or is likely to be charged with, or has been convicted of, a serious offence; and
 - (ii) an order has been or is likely to be made confiscating or forfeiting proceeds of the serious offence; and
- (b) any of the proceeds referred to in paragraph (a) (ii) are suspected on reasonable grounds to be in a Commonwealth country.

(2) Where this section applies, a request may be transmitted requesting that the Commonwealth country –

- (a) obtain an order restraining dealings with identified property believed to constitute those proceeds; and
- (b) provide appropriate assistance to this end.

Requests to be kept confidential.

17. (1) Except for the purpose of or in connection with furthering a request, no person shall, without the prior written consent of the central authority, disclose –

- (a) the fact that a request has been transmitted; or
- (b) the contents of the request.

(2) Every person who contravenes or fails to comply with subsection (1) commits an offence and is liable on summary conviction –

- (a) in the case of an individual, to a fine of \$1,000,000 and imprisonment for a term of 2 years; and
- (b) in the case of a person other than an individual, to a fine of \$10,000,000.

Restriction on use of evidence.

18. (1) No evidence or information obtained, given, or provided by any person, and no record or other thing obtained, as a result of any request under **this Part** may be used, by or on behalf of Guyana, except for a purpose specified in **subsection (2)**.

(2) – **Subsection (1)** refers to the following purposes –

- (a) the purpose of the criminal proceedings to which the request relates;
- (b) the purpose of any criminal proceedings arising from the investigation to which the request relates;
- (c) any other purpose for which the Commonwealth country carrying out the request has given consent.

Confidentiality and privilege for foreign documents.

19. (1) No person shall disclose to anyone a foreign document, its purport, or any part of its contents, except –

- (a) for –
 - (i) the purpose of the investigation or the criminal proceedings to which the request giving rise to the document relates; or
 - (ii) any other purpose for which the Commonwealth country carrying out the request has given consent; or
- (b) after the document is made public for a purpose referred to in **paragraph (a)**.

(2) No person may be compelled in connection with any legal proceedings –

- (a) to produce a foreign document or a copy of it; or (b) to give evidence relating to any information that is contained in a foreign document.

(3) Every person who contravenes or fails to comply with subsection (1) commits an offence and is liable on summary conviction –

- (a) in the case of an individual, to a fine of \$1,000,000 and imprisonment for a term of 2 years; and
- (b) in the case of a person other than an individual, to a fine of \$10,000,000.

(4) In this section, “foreign document” means a document sent to the central authority for Guyana by a Commonwealth country as a result of a request under this Part.

Immunities and
privileges.

20. (1) Subject to subsection (2), a person who is in Guyana as a result of any request under section 11 or 12 –

- (a) is not liable to be detained, prosecuted, or punished in Guyana for any offence that is alleged to have been committed, or that was committed, before that person’s departure from the Commonwealth country concerned as a result of the request;
- (b) is not liable to any civil process or proceedings in respect of any act or omission that is alleged to have occurred, or that occurred, before that person’s departure from the Commonwealth country concerned as a result of the request;
- (c) may refuse to answer any questions or to produce any record or other thing if the refusal is based on the law of Guyana; and
- (d) shall not be compelled to give evidence, information, or assistance for the purposes of, or in connection with, any matter other than the criminal matter to which the request relates.

(2) Subsection (1) does not apply to a person –

- (a) if the person leaves Guyana and then returns otherwise than pursuant to the same or another request; or
- (b) where that person has been notified by the central authority for Guyana that his presence is no longer required for the purposes of the request, and that person remains in Guyana for longer than 15 days after the first date on which he had a reasonable opportunity to leave Guyana.

(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.

PART 3
REQUESTS BY COMMONWEALTH COUNTRIES TO GUYANA FOR ASSISTANCE

Interpretation
of this Part.

21. In this Part, -

“informal request” means a request transmitted orally in urgent circumstances;

“request” means a request for assistance in criminal matters transmitted by the central authority for a Commonwealth country to the central authority for Guyana.

Form of
requests.
Schedule

22. (1) The requirements in the Schedule apply to every request except an informal request.

(2) Where an informal request is made -

- (a) the central authority for Guyana shall acknowledge receipt of the request within 15 days of receiving it; and
- (b) the request shall be deemed to have been withdrawn unless a request in accordance with the Schedule is transmitted within 7 days or such other period as the central authority for Guyana specifies to the central authority for the requesting country.

Acceptance,
refusal, or
postponement
of requests.

23. (1) Subject to **this section** and section 24, the central authority for Guyana shall as soon as practicable accept and carry out a request made in accordance with this Act.

(2) A request shall be refused if the central authority for Guyana believes that -

- (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 opinions;
 - (d) carrying out the request would be contrary to the Constitution of Guyana or would require steps to be taken that cannot lawfully be taken;
 - (e) carrying out 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 lawfully be compelled to do so;
 - (f) carrying out the request would prejudice the security, international relations, or any substantial interest related to national security or other essential public policy of Guyana;
 - (g) carrying out the request would unduly prejudice the safety of any person;
 - (h) 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 Guyana;
 - (i) in the case of a request of the kind specified in section 31 (1) (a), the prisoner does not consent to the transfer; or
 - (j) the request is for assistance of a kind that cannot be given under this Act.
- (3) A request may be refused if the central authority for Guyana believes that —
- (a) the request relates to the prosecution or punishment of a person in respect of conduct that, if it had occurred in Guyana, would not have constituted an offence against the law of Guyana;
 - (b) 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 requesting country and similar conduct occurring outside Guyana in similar circumstances would not have constituted an offence against the law of Guyana;
 - (c) the request relates to the prosecution or punishment of a person in respect of conduct where, if it had occurred in Guyana at the same time and had constituted an offence against the law of Guyana, the person responsible could no longer be prosecuted by reason of lapse of time or for any other reason;

- (d) the request relates to an offence against the military law of the requesting country that does not constitute an offence against the ordinary criminal law of that country;
- (e) carrying out the request would interfere with an ongoing investigation or prosecution in Guyana;
- (f) section 24 (1) (b) applies;
- (g) any confidentiality requested by the central authority for Guyana in relation to information or evidence provided by Guyana would not be protected by the requesting country;
- (h) the limitations, conditions, exceptions, or qualifications imposed by order under this Act in relation to the requesting country prevent the request being accepted;
- (i) the request, not being an informal request, does not meet the requirements of the Schedule;
- (j) the request cannot be accommodated within relevant legal practices and procedures in Guyana; or
- (k) there are other reasonable grounds for doing so.

(4) After giving preliminary consideration to a request, the central authority for Guyana may require the central authority for the requesting country to furnish information relating to the request, and if that information is not furnished within a period that the central authority for Guyana considers reasonable, the request shall be deemed to have been withdrawn.

(5) Before refusing a request or postponing its implementation, the central authority for Guyana shall –

- (a) consider whether the request can be carried out subject to certain conditions;
- (b) if so, propose those conditions to the central authority for the requesting country; and
- (c) if the central authority for the requesting country agrees to those conditions, carry out that request subject to those conditions.

(6) Where a ground referred to in subsection (2) or (3) applies to some, but not all, of the matters in respect of which a request is made, nothing in this section prevents the request being accepted to the extent that no such ground applies.

Expenses of
carrying out
request.

24. (1) If the central authority for Guyana believes that extraordinary expenses will be incurred in carrying out a request, it –

- (a) shall consult with the central authority for the requesting country as to the conditions under which compliance with the request may continue; and

- (b) in the absence of agreement on such conditions, may refuse to continue further with the request.

(2) Where under any treaty or under section 38 (2), the expenses involved in Guyana providing the assistance requested are to be borne by the requesting country, any assistance provided shall be subject to the condition that the requesting country pays those expenses.

Notification of refusal or implementation of request.

25. (1) If a request other than an informal request is refused, the central authority for Guyana shall notify the central authority for the requesting country of this refusal and, subject to subsection (2), the grounds for it.

(2) The central authority for Guyana is not required to provide grounds for refusing a request of the kind specified in section 31 (1) (a).

(3) If a request is carried out, the central authority for Guyana shall, if so requested, notify the central authority for the requesting country of the date and place on and at which the request, or a specified part of the request, is carried out.

Assistance to country in obtaining evidence.

26. (1) This section applies where –

- (a) a request is transmitted requesting assistance from Guyana in obtaining evidence or information relevant to a criminal matter in relation to the requesting country by any means specified in section 7 (1); and
- (b) the request is accepted.

(2) Where this section applies, the central authority for Guyana shall –

- (a) use its best endeavours to obtain the evidence or information requested; and
- (b) shall inform the central authority for the requesting country of the outcome of those endeavours.

(3) On the application of the central authority for Guyana, any Court may issue a summons or subpoena in accordance with any applicable rules of court to compel a person to give evidence in the Court for the purposes of this section.

(4) The central authority for Guyana shall notify the requesting country of the date and place of any proceedings arising as a result of the request.

(5) The magistrate, judge, or other presiding officer at any such proceedings shall allow –

- (a) the defendant (or accused) in the criminal matter and his legal representative;
- (b) the legal representative of the central authority for Guyana;
- (c) the legal representative of the requesting country; and
- (d) any other person specified in the request,

to be present at the proceedings and to question the person whose evidence is sought.

- (6) A person from whom evidence is taken in Guyana following a request –
 - (a) may refuse to answer a question if –
 - (i) the refusal is based on the law of Guyana;
 - (ii) to require the person to answer the question would be a breach of privilege recognised by the law of the requesting country; or
 - (iii) to answer the questions would constitute an offence by the person against the law of the requesting country; and
 - (b) shall not be compelled to give evidence or information for the purposes of, or in connection with, a criminal matter other than that to which the request relates.

(7) Where the request is to the effect that evidence or information be obtained by the means specified in section 7 (1) (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 Guyana.

(8) The central authority may make regulations to prescribe practices and procedures for obtaining evidence or information for the purposes of this section.

Assistance to
country in
locating or
identifying
person.

27. (1) This section applies where a request is transmitted requesting assistance from Guyana in locating, or identifying and locating, a person believed to be in Guyana, who –

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

a criminal matter in relation to the requesting country, and the request is accepted.

- (2) Where this section applies, the central authority for Guyana shall –
 - (a) use its best endeavours to locate or identify the person concerned; and
 - (b) inform the central authority for the requesting country of the outcome of those endeavours.

Assistance to
country in
locating or
identifying
thing.

28. (1) This section applies where –
- (a) a request is transmitted requesting assistance from Guyana in locating or identifying a thing in Guyana for the purposes of, or in connection with, a criminal matter in relation to the requesting country; and
 - (b) the request is accepted.
- (2) Where this section applies, the central authority for Guyana shall –
- (a) use its best endeavours to have the thing located, or identified and located; and
 - (b) inform the central authority for the requesting country of the outcome of those endeavours.

Assistance to
country in
obtaining thing
by search and
seizure if
necessary.

29. (1) This section applies where –
- (a) a request is transmitted requesting assistance from Guyana in obtaining, by search and seizure if necessary, a thing in Guyana for the purposes of, or in connection with, a criminal matter in relation to the Commonwealth country making the request; and
 - (b) the request is accepted.

(2) Where this section applies, the central authority shall give the Commissioner of Police written authorisation to apply to a magistrate for a search warrant in respect of the thing, unless that thing is otherwise lawfully obtained.

(3) Upon the authorisation being issued under subsection (2), the Commissioner of Police or any police constable may apply for the issue of a warrant to search and seize the thing concerned to a magistrate having jurisdiction in the area where that thing is believed to be located.

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

apply with all necessary modifications to an application under subsection (3) and to the execution of any warrant issued as a result of the application.

(5) The central authority for Guyana shall provide such certification as may be requested by the central authority for the requesting country concerning the result of a search, the place and circumstances of any seizure, and the subsequent custody of any thing seized.

(6) The central authority may give written authorisation to enable any thing obtained under a request to be removed to the requesting country subject to any conditions –

- (a) prescribed by regulations; or
- (b) that the central authority considers necessary for the protection of third party interests in the thing concerned,

and removal in accordance with such an authorisation shall be deemed lawful.

Assistance to country in arranging attendance of person.

30. (1) This section applies where –

- (a) a request is transmitted requesting assistance from Guyana in arranging the attendance in the requesting country, of a person in Guyana, to give evidence or assistance relevant to any criminal matter in relation to that requesting country; and
- (b) the request is accepted.

(2) Where this section applies, the central authority for Guyana shall –

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

Assistance to country in transferring prisoner.

31. (1) This section applies where –

- (a) a request is transmitted requesting Guyana to transfer a prisoner in Guyana to the requesting country to give evidence or assistance relevant to a criminal matter in relation to that requesting country; and
- (b) the request is accepted.

(2) Where this section applies, the central authority for Guyana shall, after consulting the Attorney-General (unless the central authority is the Attorney-General), cause the prisoner to be transferred to the requesting country subject to any conditions considered appropriate by that central authority, including conditions with respect to the custody, release, or return of the prisoner.

(3) A period during which a prisoner is in custody in a requesting country, arising from a request, shall be deemed for all purposes to be time served in custody in Guyana.

- (4) In this section, "prisoner" means a person who –
- (a) is being held in custody pending trial for or sentence for an offence;
 - (b) is under imprisonment for an offence; or
 - (c) is subject to any limitation on the person's personal liberty under any law.

Assistance to
country in
serving
documents.

32. (1) This section applies where –
- (a) a request is transmitted requesting assistance from Guyana in effecting the service of a document on a person in Guyana for the purposes of, or in connection with, a criminal matter in relation to the requesting country; and
 - (b) the request is accepted.
- (2) Where this section applies, the central authority for Guyana 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 if no procedures are proposed in the request, in accordance with the law of Guyana; and
 - (b) if the document –
 - (i) is served, transmit to the central authority for the requesting country a certificate as to service, or
 - (ii) is not served, transmit to the central authority for the requesting country a statement of the reasons preventing the service.
- (3) In this section, "document" does not include –
- (a) a subpoena or summons; or
 - (b) a process –
 - (i) requiring the attendance of a person before a court or tribunal in the requesting country; or
 - (ii) which attracts a criminal penalty or sanction for non-compliance with its requirements.

Assistance to
country in
tracing
property.

33. (1) This section applies where –
- (a) the central authority for a requesting country transmits to the central authority for Guyana a certificate given by a qualified legal practitioner in the requesting country to the effect that in the requesting country a named person –
 - (i) has been charged with or convicted of a specified serious offence; or

- (ii) is suspected on reasonable grounds of having committed a specified serious offence;
 - (b) proceeds of that offence are suspected on reasonable grounds to be in Guyana;
 - (c) a request is transmitted requesting assistance from Guyana in identifying, locating, or assessing the value or amount of the property constituting those proceeds; and
 - (d) the request is accepted.
- (2) Where this section applies, the central authority for Guyana shall –
- (a) use its best endeavours to give the assistance requested and, in doing so, shall invoke any powers and procedures available for that purpose; and
 - (b) inform the central authority for the requesting country of the outcome of those endeavours.

Assistance to
country in
relation to
certain orders.

34. (1) This section applies where –
- (a) an order is made in a Commonwealth country –
 - (i) confiscating or forfeiting proceeds of a specified serious offence;
 - (ii) imposing on the person against whom the order is made a pecuniary penalty calculated by reference to the value of proceeds of a specified serious offence; or
 - (iii) restraining dealings with property which is, or is suspected on reasonable grounds of being proceeds of a specified serious offence;
 - (b) proceeds of the serious offence, or any property –
 - (i) available for the satisfaction of the order;
 - (ii) as the case may be, available for the satisfaction of the pecuniary penalty; or
 - (iii) to which the order would apply,
are or is suspected on reasonable grounds to be in Guyana;
 - (c) a request is transmitted requesting that the order concerned be enforced in accordance with the law of Guyana and, that to that end, Guyana give appropriate assistance; and
 - (d) the request is accepted.
- (2) Where this section applies, the central authority shall cause an application to be made to the High Court, in accordance with any applicable rules of court, for the registration of the order concerned.

(3) On application made under subsection (2), the High Court shall register the order in accordance with subsection (4) if it is satisfied —

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

(4) An order shall be registered by the registration, in accordance with the rules of the High Court, of —

- (a) a copy of the order sealed by the court or other authority making the order; or
- (b) a copy of the order duly authenticated in accordance with section 40 (2) (a).

(5) Where an order is registered in accordance with **this section**, a copy of an amendment made to the order (whether before or after registration of the order) may be registered in the same way as the order, and the amendment does not have effect for the purposes of this Act until it is so registered.

(6) The High Court shall, after giving appropriate notice to the central authority for Guyana, cancel the registration of an order made in accordance with this section if it appears to the court to have ceased to have effect in the requesting country.

(7) The central authority may make regulations —

- (a) to provide for the enforcement in Guyana of an order registered under this section; and
- (b) to apply any Act in relation to the order, subject to any limitations, conditions, exceptions, or qualifications prescribed in the regulations,

and the Act shall apply accordingly.

(8) All property confiscated or forfeited under subsection (7) –
(a) shall be distributed between the Consolidated Fund and the requesting country; and
(b) may be donated to any person or organisation,
as agreed between the central authority for Guyana and the central authority for the requesting country.

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

Assistance to
country in
obtaining
restraining
order.

35. (1) This section applies where –
(a) the central authority for a Commonwealth country transmits to the central authority for Guyana a certificate given by a qualified legal practitioner in that country, to the effect that in that Commonwealth country –
(i) a named person has been or is likely to be charged with or has been convicted of a specified serious offence; and
(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 –
(A) of confiscating or forfeiting proceeds of the serious offence; or
(B) of imposing on that named person a pecuniary penalty calculated by reference to the value of proceeds of the serious offence;
(b) proceeds of the serious offence, or any property –
(i) available for the satisfaction of the order;
(ii) as the case may be, available for the satisfaction of the pecuniary penalty; or
(iii) to which the order would apply,
is suspected on reasonable grounds to be in Guyana;
(c) a request is transmitted requesting that an order be made, in accordance with the law of Guyana, restraining dealings with the property believed to constitute the proceeds referred to in paragraph (b), or (as the case may be) with the property referred to in that paragraph, and that, to that end, Guyana give appropriate assistance; and
(d) the request is accepted.

(2) Where this section applies, the central authority shall cause an application to be made to the High Court, in accordance with any applicable rules of court, for an order of the kind requested.

(3) The central authority may make regulations —

- (a) to provide for the implementation in Guyana of a request under this section; and
- (b) to apply any Act in relation to any such request, subject to any limitations, conditions, exceptions, or qualifications prescribed in the regulations,

and the Act shall apply accordingly.

Requests to be kept confidential.

36. (1) Except to the extent required under this Act to carry out a request by a Commonwealth country, or as authorised or required by this Act or any other written law, no person shall, without the prior written consent of the central authority, disclose —

- (a) the fact that the central authority for Guyana has received a request; or
- (b) the contents of the request.

(2) Every person who contravenes or fails to comply with subsection (1) commits an offence and is liable on summary conviction —

- (a) in the case of an individual, to a fine of \$1,000,000 and imprisonment for a term of 2 years; and
- (b) in the case of a person other than an individual, to a fine of \$10,000,000.

PART 4

APPLICATION OF ACT TO COUNTRIES OTHER THAN COMMONWEALTH COUNTRIES

Interpretation of this Part.

37. In this Part, “country” means a country other than a Commonwealth country.

Mutual assistance between Guyana and non-Commonwealth countries

38. (1) This Act applies with all necessary modifications to —

- (a) any country that has a bilateral or multilateral treaty with Guyana in respect of mutual assistance in criminal matters; and
- (b) any country that is a party to the *United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988*,

as if the country were a Commonwealth country.

(2) Unless the central authority otherwise directs, all expenses incurred in respect of any request made by a country referred to in subsection (1) (b) shall be paid by that country.

(3) Any co-operation requested by a country referred to in subsection (1) (b) shall be rendered on the basis of reciprocity.

(4) The central authority may by order prescribe any limitation, condition, exception, or qualification to the application of this Act to any country referred to in subsection (1).

PART 5

MISCELLANEOUS

Certificates
given by
central
authority.

39. (1) Where satisfied that it is the case, the central authority may give a certificate certifying all or any of the following facts —

- (a) that a Commonwealth country made a request for assistance under this Act;
- (b) that the request meets the requirements of this Act,
- (c) that the request was duly accepted 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 of the matters certified by the certificate.

Authentication.

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

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

- (a) signed or certified by a judge or magistrate of the Commonwealth country making the request from which those proceedings arose;
- (b) authenticated by the oath of a witness, or of a public officer, of the requesting country; or
- (c) sealed with an official or public seal of a Minister, department, or public office, of the Government of the requesting country.

(3) In any relevant proceedings, a certificate shall be received as evidence of the matters certified in it, if it purports to have been given —

- (a) by the central authority for the Commonwealth country making the request (from which those proceedings arose) certifying any matter referred to in –
 - (i) paragraph (b) (i) or (ii) or paragraph (c) of the definition of “criminal matter” in section 2 (1); or
 - (ii) paragraph (c) of the definition of “serious offence” in section 2 (1); or
- (b) by a qualified legal practitioner for the purposes of a request for assistance under section 33 or 35.

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

Transit.

41. (1) Where a person is to be transported in custody from a Commonwealth country through Guyana to another Commonwealth country following a request for assistance by the other Commonwealth country, the person –

- (a) may be transported through Guyana 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 Guyana, shall be kept in such custody as the central authority directs in writing until the person’s transportation is continued.

(2) Where a person is being held in custody in accordance with a direction under subsection (1) (b) and the person’s transportation is not, in the opinion of the central authority, continued within a reasonable time, the central authority may direct that the person be transported in custody to the Commonwealth country from which the person was originally transported.

Escaping.

42. Every person commits an offence and is liable on summary conviction to imprisonment for 2 years who escapes from lawful custody –

- (a) while in Guyana as a result of a request under section 12; or
- (b) while being kept or transported in custody under a direction made under section 41.

Arrest of persons who has escaped custody.

43. (1) A police officer may without warrant arrest a person if the officer believes on reasonable grounds that the person –

- (a) has been brought to Guyana as a result of a request under section 12, or was being kept or transported in custody under a direction made under section 41; and
- (b) has escaped from lawful custody while in Guyana.

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

Regulations.

44. (1) The Minister may make regulations —

- (a) making provisions as to evidence or proof of any matter for the purposes of this Act;
- (b) prescribing expenses and allowances payable to a person in Guyana as a result of a request;
- (c) prescribing conditions to be imposed for the protection of an interest in any property to be sent to a requesting country as a result of a request;
- (d) prescribing conditions for the protection of any property sent to or by a Commonwealth country as a result of a request, and providing for the return of property in Guyana as a result of a request;
- (e) creating a summary offence of contravening or failing to comply with a regulation made under this Act, and prescribing penalties for the offence not exceeding —
 - (i) in the case of an individual, a fine of \$1,000,000 and imprisonment for a term of 2 years; and
 - (ii) in the case of a person other than an individual, a fine of \$10,000,000;
- (f) prescribing anything authorised or required by this Act to be prescribed;
- (g) providing for such other matters as necessary for giving full effect to the provisions of this Act and for the due administration of it.

(2) Regulations may, with such limitations, conditions, exceptions, or qualifications 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 26 (8) may include procedures for, and powers in relation to, the taking of evidence in Guyana by persons from, or nominated by, the Commonwealth country making the request concerned.

(4) All regulation made under this Act shall be subject to negative resolution of the National Assembly.

SCHEDULE

REQUEST FOR ASSISTANCE MADE BY COMMONWEALTH COUNTRIES

Section 22 (1)

1. Every request for assistance under this Act made by a Commonwealth country shall –
 - (a) be in English;
 - (b) where documents in a language other than English are included, include an English translation of those documents;
 - (c) specify the purpose of the request and the assistance requested;
 - (d) identify the person, agency, or authority that initiated the request;
 - (e) include a copy of the text of relevant laws of the country;
 - (f) where the request relates to a person, provide the name, nationality, and address of that person, if available;
 - (g) state any period within which the country wishes the request to be complied with;
 - (h) if the request would involve travel by any person from Guyana to the country, give details of allowances and accommodation to which the person would be entitled; and
 - (i) contain any other information available to the central authority for the country that may assist in carrying out the request.

2. (1) Every request for the purposes of an investigation shall –
 - (a) 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) state when the investigation commenced and the nature of the investigation.

- (2) Every request for the purposes of proceedings shall –
 - (a) be accompanied by the certificate, in relation to the proceedings, that is referred to in paragraph (b) (ii) of the definition of “criminal matter” in section 2 (1); and
 - (b) specify –
 - (i) details of the proceedings and the offence concerned, including a summary of the known facts;
 - (ii) the identity, if known, of the person to whom the proceedings relate or would relate;
 - (iii) when the proceedings were instituted and the stage reached in the proceedings; and
 - (iv) the court, tribunal, or other competent authority conducting or supervising the proceedings.

3. Every request of the kind specified in section 26 (1) (a) shall –
 - (a) give reasons for and details of the procedure that the requesting country wishes to be followed in carrying out the request, including –
 - (i) details of the manner and form in which any evidence or information is to be supplied to that country; and
 - (ii) whether sworn or affirmed evidence or statements are required;

- (b) where evidence is to be taken from a person, specify –
- (i) whether the person is to be examined –
 - (A) orally or in writing;
 - (B) under oath;
 - (C) in the presence of his legal representative; or
 - (D) in the presence of the person to whom any relevant proceedings in that country relate;
 - (ii) the questions to be put to the person or the subject matter about which the person is to be examined; and
 - (iii) any special requirements of the country as to the manner of taking evidence relevant to its admissibility in the country; and
- (c) give details of any privileges or exemptions under the law of the country in relation to obtaining evidence or information by the means proposed in the request.
4. Every request of the kind specified in section 28 (1) (a) shall provide all information available to the requesting country that could facilitate the identification and location of the thing that is to be located or identified.
5. Every request of the kind specified in section 29 (1) (a) shall –
- (a) identify the thing which is to be obtained;
 - (b) if the thing is sought to be removed to the requesting country, specify the person or description of persons who will have custody of that thing, the place to which that thing is to be removed, any test to be conducted, and the date by which that country expects to return that thing; and
 - (c) so far as is reasonably practicable, contain all information available to that country which may be required to be adduced in an application under the law of Guyana for any necessary warrant or authorisation to effect a seizure of that thing.
6. Every request of the kind specified in section 31 (1) (a) shall –
- (a) identify the subject on which evidence or information is to be provided;
 - (b) specify the person or description of persons who will have custody during the transfer of the prisoner;
 - (c) specify the place to which the prisoner is to be transferred;
 - (d) specify the date of the prisoner's expected return; and
 - (e) state the reasons for requiring the personal appearance of the prisoner.
7. Every request of the kind specified in section 32 (1) (a) shall –
- (a) be accompanied by the document to be served; and
 - (b) where that document relates to the attendance of a 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.

8. Every request of the kind specified in **section 33 (1) (e)** shall –
- (a) give details of the specified serious offence;
 - (b) give any information in the possession of the country which will assist in identifying or locating the relevant property; and
 - (c) state the grounds for suspecting that the property is in Guyana.
9. Every request of the kind specified in **section 34 (1) (e)** shall –
- (a) be accompanied by a copy of the relevant order made in the requesting country –
 - (i) sealed by the court that made the order; or
 - (ii) duly authenticated;
 - (b) identify the law under which the order was made;
 - (c) give details of the specified serious offence and of any proceedings commenced in respect of that offence;
 - (d) state the grounds for suspecting that the relevant property is in Guyana;
 - (e) give any information in the possession of the country that will assist in identifying or locating the property; and
 - (f) give particulars of any amount paid or recovered under the relevant order.
10. Every request of the kind specified in **section 35 (1) (e)** shall –
- (a) where an order has been made in the requesting country, –
 - (i) be accompanied by a copy of the relevant order sealed by the court that made the order or duly authenticated;
 - (ii) identify the law under which the order was made;
 - (iii) state the grounds on which the order was made;
 - (b) where an order has not been made in the requesting country, state the grounds for believing that an order is likely to be made;
 - (c) give details of the specified serious offence in respect of which the order was or is likely to be made;
 - (d) state the grounds for suspecting that the relevant property is in Guyana; and
 - (e) give any information in the possession of the country that will assist in identifying the property.

Passed by the National Assembly on 3rd December, 2009.

S.E. Isaacs,
Clerk of the National Assembly.

(Bill No. 46/2009)