

No. 2 of 1993. *The Mutual Assistance in Criminal
Matters Act, 1993.*

ANTIGUA
AND
BARBUDA

L.S.

I Assent,

Wilfred Jacobs,
Governor-General.

17th February, 1993.

ANTIGUA AND BARBUDA
2002

ANTIGUA AND BARBUDA

No. 2 of 1993

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 Antigua and Barbuda and to make provision concerning Mutual Assistance in Criminal Matters between Antigua and Barbuda and other countries other than Commonwealth Countries.

[18th February, 1993]

ENACTED by the Parliament of Antigua and Barbuda as follows —

§

Part I

Preliminary

1. This Act may be cited as the Mutual Assistance in Criminal Matters Act, 1993. Short title.

2. This Act commences on the day appointed by the Minister by notice published in the *Gazette*. commencement.

<p>ANTIGUA AND BARBUDA</p> <p>Interpretation.</p>	<p>2</p>	<p><i>The Mutual Assistance in Criminal Matters Act, 1993.</i></p>	<p>No. 2 of 1993.</p>
<p>3. (1) In this Act, unless the context otherwise requires —</p>			
<p style="padding-left: 40px;">"articles" includes document;</p>			
<p style="padding-left: 40px;">"central authority" means —</p>			
<p style="padding-left: 80px;">(a) in relation to Antigua and Barbuda the person or authority designated pursuant to section 4;</p>			
<p style="padding-left: 80px;">(b) in relation to any Commonwealth country, the person or authority designated by that country for the purpose of transmitting and receiving requests under the Scheme;</p>			
<p style="padding-left: 40px;">"Commonwealth country" means —</p>			
<p style="padding-left: 80px;">(a) a Sovereign and independent country within the Commonwealth; and</p>			
<p style="padding-left: 80px;">(b) every independent country within the Commonwealth;</p>			
<p style="padding-left: 40px;">"confiscation order" means such order made under the Proceeds of Crime Act 1993;</p>			
<p style="padding-left: 40px;">"criminal matter" means —</p>			
<p style="padding-left: 80px;">(a) in Part II —</p>			
<p style="padding-left: 120px;">(i) an investigation certified by the central authority of Antigua and Barbuda to have commenced; or</p>			
<p style="padding-left: 120px;">(ii) proceedings so certified to be criminal proceedings which have been instituted,</p>			
<p style="padding-left: 40px;">in Antigua and Barbuda in respect to an offence committed, or suspected on reasonable grounds to have been committed, against the law of Antigua and Barbuda or</p>			
<p style="padding-left: 80px;">(b) in Part III in relation to a Commonwealth country —</p>			

- (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" means judgments, orders and decisions of courts, and other records held by judicial authorities;

"Minister" means the Minister for the time being assigned responsibility for legal affairs;

"official records" means documents held by govern-

ment 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 Antigua and Barbuda 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 1993;

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

"Serious offence" means —

(a) in relation to Antigua and Barbuda an offence against the law of Antigua and Barbuda —

(i) for which a sentence of death, or imprisonment for a maximum or minimum term of not less than 3 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 \$25,000.00 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 Antigua and Barbuda 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 Antigua and Barbuda.

(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, Antigua and Barbuda or a Commonwealth country shall be deemed to be part of Antigua and Barbuda 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 Antigua and Barbuda 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 Antigua and Barbuda or a Commonwealth country —

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

ANTIGUA
AND
BARBUDA

6 *The Mutual Assistance in Criminal Matters Act, 1993.* No. 2 of 1993.

(b) with his consent another serious offence, of which he 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.

Central authority
for Antigua and
Barbuda.

4. The Minister may, by order published in the *Gazette* designate any person or authority as the central authority for Antigua and Barbuda.

Application of Act.

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

(2) The Minister 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 Minister may by order published in the *Gazette*, amend or revoke an order made under this section.

Restrictions with
respect to
operation of Act.

6. (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 Antigua and Barbuda and any Commonwealth country, or between Antigua and Barbuda, or any enforcement agencies or prosecuting authorities in Antigua and Barbuda, and the International Criminal Police Organization or any such agencies or authorities outside Antigua and Barbuda.

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

ANTIGUA
AND
BARBUDA

8 The *Mutual Assistance in Criminal Matters Act, 1993.* No. 2 of 1993.

(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 identity is unknown, in identifying and locating him.

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

9. 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.

Assistance in
arranging
attendance of
person.

10. 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 Antigua and Barbuda to give or provide that evidence, or, as the case may be, assistance.

Assistance by
transferring
prisoner.

11. (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 Antigua and Barbuda 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 Antigua and Barbuda from a Commonwealth country subject to conditions with respect to any other matter, the central authority for Antigua and Barbuda 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 Antigua and Barbuda, the prisoner shall, while in Antigua and Barbuda or travelling to or from Antigua and Barbuda pursuant to the request, be kept in such custody as the Minister directs in writing.

MINISTRY 2000

(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 personal liberty pursuant to that law.

12. 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.

Assistance in serving documents.

13. Any —

Restriction on use of evidence, etc.

- (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 7, 10 or 11; or
- (b) article, record or thing obtained pursuant to a request such as is referred to in section 7 or 9,

shall be used, by or on behalf of Antigua and Barbuda, 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.

14. (1) Subject to subsection (2), a person in Antigua and Barbuda pursuant to a request such as is referred to in section 10 or 11 —

Immunities and privileges.

- (a) is not liable to be detained, prosecuted or punished in Antigua and Barbuda 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 Antigua and Barbuda; and

ANTIGUA
AND
BARBUDA

10 *The Mutual Assistance in Criminal Matters Act, 1993.* No. 2 of 1993.

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

(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

Assistance in tracing property, etc.

15. Where —

- (a) in Antigua and Barbuda a person —
 - (i) has been charged with, or convicted of, a serious offence;
 - (ii) is suspected, on reasonable ground, 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.

16. (1) Where —

Assistance in
relation to certain
orders.

(a) in Antigua and Barbuda --

(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 Antigua and Barbuda 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 \$25,000.00, or such other amount as may be prescribed.

17. Where —

Assistance in
obtaining order in
nature of
restraining order.

(a) in Antigua and Barbuda —

(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.

PART III — REQUESTS BY COMMONWEALTH COUNTRIES TO ANTIGUA AND BARBUDA FOR ASSISTANCE

Division 1 — Form and acceptance or refusal of requests

Form of requests.
Schedule.

18. (1) Subject to subsection (2), the 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 Antigua and Barbuda 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 Antigua and Barbuda 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.

19. (1) Subject to this section, a request for assistance under this Act duly made by a Commonwealth country shall be accepted. **Acceptance or refusal of requests, etc.**

(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 Antigua and Barbuda —**

- (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) the request relates to the prosecution or punishment of a person in respect of conduct that, if it had occurred in Antigua and Barbuda, would not have constituted an offence under the criminal law of Antigua and Barbuda;
- (e) the granting of the request would be contrary to the Constitution of Antigua and Barbuda, or would prejudice the security, international relations or any substantial interest related to national security or other essential public policy of Antigua and Barbuda;
- (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 Antigua and Barbuda;

- (g) the prisoner is not prepared to give his consent to the transfer in the case of a request such as is referred to in section 24 (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 Antigua and Barbuda —

- (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 Antigua and Barbuda in similar circumstances would not have constituted an offence against the law of Antigua and Barbuda,
- (b) the request relates to the prosecution or punishment of a person in respect of conduct where, if it had occurred in Antigua and Barbuda at the same time and had constituted an offence against the law of Antigua and Barbuda 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 Antigua and Barbuda;
- (d) the conditions, exceptions or qualifications imposed pursuant to section 5 (2) in relation to the country prevent the request being accepted;
- (e) the request, not being one such as is referred to in section 18 (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 24 (1); or
- (g) the request cannot be accommodated within relevant legal practices and **procedures** in **Antigua and Barbuda**.

(4) If, in the opinion of the central authority for Antigua and Barbuda, 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 Antigua and Barbuda shall consult with the central authority for the 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 Antigua and **Barbuda** 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 18 (2), is refused, the fact of and, subject to subsection (7), the grounds for, the refusal shall be given by the central authority for Antigua and Barbuda to the central authority for that country.

(7) In the case of a refusal of a request such as is referred to in section 24 (1), the central authority for Antigua and Barbuda 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 Antigua and Barbuda 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 Antigua and Barbuda 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 Antigua and Barbuda 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

Assistance to
country in
obtaining
evidence, etc.

20. (1) This section applies where a request is transmitted requesting assistance by Antigua and Barbuda in obtaining, by any of the means stated in section 7, 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 Antigua and Barbuda 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 Antigua and Barbuda,

(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 7 (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 Antigua and Barbuda.

21. (1) This section applies where a request is transmitted requesting assistance by Antigua and Barbuda in locating, or identifying and locating, a person believed to be in Antigua and Barbuda, who —

Assistance to country in locating or identifying person.

- (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 Antigua and Barbuda 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.

22. (1) This section applies where a request is transmitted requesting assistance by Antigua and Barbuda in obtaining, by search and seizure if necessary, an article or thing in Antigua and Barbuda 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.

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

(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 Antigua and Barbuda 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,

Binding 200

ANTIGUA
AND
BARBUDA

18 *The Mutual Assistance in Criminal Matters Act, 1993.* No. 2 of 1993.

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 Antigua and Barbuda 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.

Assistance to
country in
arranging
attendance of
person.

23. (1) This section applies where a request is transmitted requesting that assistance be given by Antigua and Barbuda in arranging the attendance in the Commonwealth country making the request, of a person in Antigua and Barbuda 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 Antigua and Barbuda 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.

Assistance to
country by
transferring
prisoner.

24. (1) This section applies where a request is transmitted requesting Antigua and Barbuda to transfer a prisoner in Antigua and Barbuda 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 Minister 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 Antigua and Barbuda 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 Antigua and Barbuda.

(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 personal liberty pursuant to any law.

25. (1) This section applies where a request is transmitted requesting assistance by Antigua and Barbuda in effecting the service of a document on a person or on an authority in Antigua and Barbuda 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.

Assistance to
country in serving
documents.

(2) Where this section applies, the central authority for Antigua and Barbuda 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 Antigua and Barbuda; 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

ANTIGUA 20 *The Mutual Assistance in Criminal* No. 2 of 1993.
AND
BARBUDA *Matters Act, 1993.*

(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

Assistance to country in tracing property, etc.

26. (1) This section applies where —

(a) the central authority for a Commonwealth country transmits to the central authority for Antigua and Barbuda 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 —

(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 Antigua and Barbuda,

(c) a request is transmitted requesting assistance by Antigua and Barbuda 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 Antigua and Barbuda —

- (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.

27. (1) This section applies where —

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

- (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 Antigua and Barbuda,
- (c) a request is transmitted requesting that the order concerned be enforced in accordance with the law of Antigua and Barbuda and that, to that end, Antigua and Barbuda 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 did not do so, 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) 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 32 (2) (a).

(6) The High Court shall, after appropriate notice has been given to the central authority for Antigua and Barbuda 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 Antigua and Barbuda 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.

28. (1) This section applies where —

Assistance to
country in
obtaining
restraining order.

(a) the central authority for the Commonwealth country transmits to the central authority for Antigua and Barbuda 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

(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 property derived or obtained, directly or indirectly, from the commission of the serious offence; or

(B) 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 Antigua and Barbuda;

(c) a request is transmitted requesting that an **order** be made, in accordance with the law of Antigua and Barbuda, restraining dealings with property and that, to that end, Antigua and Barbuda 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 deems necessary to secure the making of an order of the kind requested.

(3) The regulations may make provision 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

Definition for
purposes of Part
IV.

29. In this Part —

"country" means a country other than one included in the definition of "Commonwealth country" in section 3(1);

"Treaty" includes a convention, protocol, agreement or arrangement.

Implementation of
treaty.

30. (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 Antigua and Barbuda 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 36(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

Certificates given
by the Attorney
General.

31. (1) Where he is satisfied that it is the case, the Attorney General may give a certificate in such forms as he 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.

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

(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 3 (1); or
 - (ii) paragraph (b)(ii) of the definition of "Serious offence" in section 3 (1); or
- (b) by a legally qualified person for the purposes of a request for assistance under section 26 or 28,

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

(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.

Transit.

33. (1) Where a person is to be transported in custody from a Commonwealth country through Antigua and Barbuda 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 Antigua and Barbuda 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 Antigua and Barbuda shall be kept in such custody as the Minister 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 Minister, continued within a reasonable time, the Minister may direct that the person be transported in custody to the Commonwealth country from which the person was first transported.

Escaping.

34. Any person who escapes from lawful custody while in Antigua and Barbuda pursuant to a request under section 11, or while being kept in custody pursuant to a direction under section 33 (1) (b), is guilty of an offence and liable on summary conviction to imprisonment **for** two years.

Arrest of person who has escaped from custody.

35. (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 Antigua and Barbuda pursuant to a request under section 11, or was being kept in custody pursuant to a **direction** under section 33 (1) (b); **and**
- (b) has escaped **from** lawful custody while in Antigua and Barbuda pursuant to the request, or while being so kept in custody.

BARBUDA

- (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 Antigua and Barbuda 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 3 (i); 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 3 (i); 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 20 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 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 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 22 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 Antigua and Barbuda 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 24 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 25 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.

ANTIGUA 30 *The Mutual Assistance in Criminal* No. 2 of 1993.
AND *Matters Act, 1993.*
BARBUDA

7. Where a request such as is referred to in section 26 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 Antigua and Barbuda 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 27, is made by a Commonwealth country, the request shall —

- (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 Antigua and Barbuda 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 28 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;

