

**HKSAR/ITALY AGREEMENT CONCERNING
MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS**
["the Agreement"]

**ARTICLE BY ARTICLE COMPARISON
WITH MODEL AGREEMENT**

The following are the main differences between the Agreement and the model agreement. Unless otherwise stated, the numbering of the Articles refers to that of the Agreement. Articles of the Agreement that have not been referred to in this document either follow the model agreement exactly or are subject to amendments which are not substantive.

Article I - Scope of Assistance

Paragraph (2)(k) is added to the Agreement to permit greater flexibility in providing assistance. Article I(2)(k) of the Agreement with France is the same.

Paragraph (4) is added to avoid any doubt as to the scope of the Agreement. Article I(4) of the Agreement with Australia is substantially the same.

Article III of the Model Agreement - Other Assistance

This Article has been deleted as being unnecessary in the light of Article I(2)(k).

Article III - Limitations on Compliance

This Article corresponds to Article IV of the model agreement.

Paragraph (1)(f) and paragraph (1)(g) correspond to paragraph (1)(e) of the model agreement.

Paragraph (1)(i) - This paragraph limits the application of the double criminality rule to assistance involving compulsory measures. We have accepted the same amendment in the Agreement with France.

Paragraph (1)(j) - This paragraph has been added in order to enable assistance to be refused in the following circumstance. That is when the requested assistance would not be available under the Requested Party's law had the offence been committed in the Requested Party. It is however made clear that the capacity to provide assistance at the investigation stage is retained irrespective of the requirements of domestic law. The MLA Ordinance permits such assistance to be provided at the investigation stage.

Paragraph (1)(k) - This paragraph replaces Article IV(3) of the model agreement. The Italian Constitutional Court has ruled that it would be unconstitutional for the Italian authorities to rely on assurances such as that referred to in Article IV(3).

Article IV(2) of the model agreement has been deleted. The deletion will not preclude the Parties from taking into account the safety of any person or excessive burden on resources in the consideration of "essential interests" in Article III(1)(b).

Article V - Execution of Requests

Paragraphs (3) and (4) merely provide additional detail in relation to the manner of executing requests.

Article VIII - Obtaining of Evidence, Articles or Document

Paragraph (5) - This paragraph replaces Article IX(5) of the model agreement. The revised paragraph is substantially the same as Article 10(5) of the HK/France Agreement. The reason for the variation is that it is more practical for the Requesting Party to rule on questions that arise pursuant to its law.

Article X - Service of Documents

Paragraphs (2) and (3) largely reflect Article XII(2) of the model agreement. Paragraph (2), on the one hand, deals with service of a

document pertaining to a response and paragraph (3), on the other hand, deals with the service of a document pertaining to an appearance in the Requesting Party. Similar provisions can be found in Article XI(2) and (3) of the HKSAR/France Agreement.

Article XIII - Transfer of Persons in Custody

Paragraph (3) - This paragraph has been added to protect persons in custody who do not consent to be transferred pursuant to a request. It is to the same effect as Article XVII(5) of the model agreement.

Article XIV - Transfer of Other Persons

The three paragraphs in this Article are consistent with the model agreement; they contain more detailed provisions relating to the processing of a request, allowances for witnesses and experts and their protection when they decline to appear as requested. Note that paragraph (3) corresponds to Article XVII(5) of the model agreement.

Article XV - Immunity

This Article corresponds to Article XVII of the model agreement entitled "Safe Conduct". Note that paragraphs equivalent to paragraph (5) of the model agreement are included in Article XIII and XIV of the Agreement.

Article XVI - Search and Seizure

Paragraph (1) has been amended to reflect the restrictions under Hong Kong law in relation to the execution of requests for search and seizure.

Article XVII - Proceeds of Crime

Paragraph (5) - This paragraph has been added to ensure that the necessary information and documentation is supplied to facilitate action to be taken by the Requested Party.

**HKSAR/KOREA AGREEMENT CONCERNING
MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS**
["the Agreement"]

**ARTICLE BY ARTICLE COMPARISON
WITH MODEL AGREEMENT**

The following are the main differences between the Agreement and the model agreement. Unless otherwise stated, the numbering of the Articles of the Agreement corresponds to the same numbering used in the model agreement. Articles of the Agreement that have not been referred to in this document either follow the model agreement exactly or are subject to amendments which are not substantive.

Article 1 - Scope of Assistance

Paragraph 2

- The reference to “execution of letters rogatory” in sub-paragraph (c) is deleted as the term is unknown to Korean law. The deletion does not alter the substance of this sub-paragraph.
- The latter part of item (i) is expanded to avoid referring to “exhibits” which is a term unknown to Korean law.
- Item (j) is added to permit greater flexibility in providing assistance.

Paragraph 4

This paragraph is added to avoid any doubt as to the scope of the Agreement. Article 1(4) of the HKSAR/Australia Agreement is substantially the same.

Article 4 - Limitations on Compliance

Paragraph 1

Substantially the same as Article IV of the model agreement.

Article 5 - Requests

This Article is expanded in line with the HKSAR's other Agreements to provide more detail with regard to the supporting documents to be submitted by the Requesting Party.

Article 7 - Limitations of Use

Paragraph 4

This paragraph is added to allow information which has been made public to be used for any purpose thereafter. A similar provision appears as Article 7(4) of the HKSAR/US Agreement.

Article 8 - Protection of Confidentiality

In effect an expanded version of Article 5(3) of the model agreement

Article 10 - Service of Documents

Paragraph 2

A time limit of not less than 30 days is imposed for transmission of a request for the service of a document pertaining to a response or appearance in the Requesting Party. There is no need to retain Paragraph 3 of Article 12 of the model agreement which is deleted. It was also deleted in the UK Agreement.

Article 11 - Return of Material to the Requested Party

This Article, which has no counterpart in the model agreement, deals with return of material to the Requested Party. A similar provision can be found in the UN model agreement.

Article 13 - Availability of Persons in Custody to Give Evidence or Assist Investigations

Paragraph 3

This new paragraph gives credit for the period served by a person while in custody in the Requesting Party.

Article 15 - Safe Conduct

Paragraph 3

A reference to “contempt of court” is added. There have been the same additions in other signed agreements [e.g. Article XVII(3) of Australia].

Article 16 - Search and Seizure

Paragraph 3

The latter part of this paragraph is expanded so as to expressly recognize third party interests in seized material.

**MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS
HONG KONG/SWITZERLAND**

**ARTICLE BY ARTICLE COMPARISON
WITH MODEL AGREEMENT**

The text is substantially the same as the model agreement. Many of the changes have been made to more accurately reflect the requirements of Swiss law and practice under the European Convention on Mutual Legal Assistance in Criminal Matters. In particular it should be noted that the text follows the form of the European Convention in that a chapter format is used. In Switzerland all requests for assistance are transmitted to the judicial authorities for processing. The chapter format would be familiar to the Swiss judicial authorities and would facilitate the processing of requests.

CHAPTER 1 - GENERAL PROVISIONS

Article 1 [Obligation to provide mutual assistance]

Paragraphs (1) and (2) are similar to Article I of the model agreement with changes being of a drafting rather than a substantive nature.

Article I(3) of the model agreement is omitted in the light of Article 3(1)(d).

Article I(4) of the model agreement is effected through Article 26(3) of the Switzerland Agreement.

Article 2 [Exclusion]

Paragraphs (a) and (b) are in substance the same as Article I(4) of the Australian agreement.

Paragraph (c) reflects Article IV(1)(c) of the model agreement.

Article 3 [Grounds for Refusal or Postponement]

All of the grounds in the model are retained with a modification to the dual criminality requirement [Article 3(1)(g)] to the effect that where assistance does not involve the use of compulsory measures [e.g. taking evidence, executing requests for search and seizure, confiscating the proceeds of crime] assistance can nevertheless be granted. In practical terms this means that the only assistance which does not require dual criminality is 'informal assistance' such as the provision of information regarding a person's whereabouts. This assistance in any event is normally provided through INTERPOL; the variation is accordingly of little practical significance. A similar approach was agreed with France.

The provision in relation to fiscal offences [Article 3(1)(d)] reflects the requirements of the Swiss Federal Act on International Mutual Assistance in Criminal Matters, Article 3(3) of which reads,

“A request shall not be granted if the subject of the proceeding is an offence which appears to be aimed at reducing fiscal duties or taxes or which violates regulations concerning currency, trade or economic policy. However, a request for judicial assistance under part 3 of this act may be granted if the subject of the proceeding is a duty or tax fraud.”

Section 5(2) of Cap. 525 corresponds.

Article 4 [Applicable Law]

No equivalent in model; provision considered reasonable.

Article 5 [Compulsory Measures]

The Swiss were anxious that if they requested the use of compulsory measures there should be an obligation to use such measures. They have apparently had problems with other jurisdictions where witnesses etc. have not been served with subpoenas and have not attended proceedings in the Requested Party for the taking of evidence. Cap. 525 of the Laws of Hong Kong permits the use of all necessary compulsory measures.

CHAPTER II - OBTAINING EVIDENCE

Article 6 - [General Principles]

This Article is substantively the same as paragraphs (1) and (2) of Article IX of the model agreement.

Article 7 - [Limitation of Use]

This Article is the same as Article VIII(2) of the model agreement. Article VIII(1) of the model agreement was not included as being unnecessary in the light of Article 3(2)(b).

Article 8 - [Search and Seizure]

Substantively the same as Article XVIII of the model agreement.

Article 9 - [Presence of Persons]

This Article has to be read with Article 1(2)(h) which imposes an obligation to facilitate the appearance of persons to provide evidence or other assistance. Article 18 deals with the Requested Party inviting persons to appear. Article 9 itself simply deals with notification of the date when the request is to be executed and the right of persons to be present. This latter right equates to Article IX(4) of the model agreement but is not limited to requests to take evidence since persons may need to be present when, for instance, a request for search and seizure is executed.

Article 10 [Depositions of Witnesses]

This Article is substantively the same as Article IX(3)(5) and (6) of the model agreement.

Article 11 [Transmission of Objects, Documents Records and Evidence]

This Article balances the rights of third parties [by requiring the return of objects etc.] with the need to provide the assistance requested. The Article is consistent with section 10(14) and section 12(11) of Cap. 525.

Article 12 [Restitution of Property and Money]

This Article is included to ensure that property is restored to the rightful owner subject to any rights of third parties.

Article 13 [Publicly available and official documents]

Article 14 [Judicial records]

Substantively the same as Article XIII of the model agreement.

Article 15 [Exchange of information from Criminal Records]

This Article obliges the parties to provide information concerning nationals of the other who have been sentenced to imprisonment with their jurisdiction. The intention is to enable consular assistance to be afforded. A similar Article is included in the French Agreement.

Article 16 [Submitting information in connection with proceedings]

This Article is based on Article 21 of the European Convention. It deals with a party passing on information concerning the commission of an offence in its own area which it does not choose to prosecute. It will enable a Party to consider exercising extra-territorial jurisdiction [if it has the capacity to do so].

CHAPTER III - SERVICE OF DOCUMENTS : APPEARANCE OF PERSONS

Article 17 [Service of Documents]

Paragraph (1) is consistent with Article XII(1) of the model agreement.

Paragraph (2) is similar to Article XII(4) of the Australian text.

Paragraph (3) is a more detailed version of Article XII(4) of the model agreement.

Paragraph (4) is consistent with Article XII(2) of the model agreement.

[Note that Article XII(5) of the model agreement is dealt with in Article 20.]

Article 18 [Appearance of witnesses and experts in the Requesting Party]

This Article deals with the obligation in Article I(2)(h). It is a more detailed version of Article XVI of the model agreement and deals with witness expenses.

Article 19 [Transfer of Persons in custody]

Basically the same as Article XV of the model agreement.

Article 20 [Failure to appear]

Similar to Article XII(5) of the model agreement.

Article 21 [Safe Conduct]

This Article is similar to Article XVII of the model agreement. Paragraph (4) is an additional provision. If an accused person is summoned he needs not of course respond [if he does not, surrender would be considered]. If however he does respond he may only be dealt with for matters specified in the Summons.

CHAPTER IV - PROCEEDS OF CRIME

Article 22 [Tracing]

Substantially the same as Article XIX(1) of the model agreement.

Article 23 [Provisional Measures]

Substantially the same as Article XIX(2) of the model agreement.

Article 24 [Confiscation]

Substantially the same as Article XIX(3) and (4) of the model agreement.

Article 25 [Spontaneous Information]

This Article was included at Swiss request to reflect recent European practice in relation to the proceeds of crime. It is a worthwhile provision which can result in a Party being informed of the existence of proceeds of which it would otherwise be unaware.

CHAPTER V - PROCEDURE

Article 26 [Central Authority]

In substance the same as Article II of the model agreement.

Article 27 [Contents of Requests]

A more detailed version of Article V of the model agreement. Note that in particular that -

- requests cannot be made orally. Urgent cases of requests can be made by fax.
- confidentiality [see Article V(3) of model agreement] is dealt with in Article 29.
- Translation [see Article V(4) of model agreement] is dealt with in Article 32.

Article 28 [Execution of Requests]

Paragraphs (1), (4) and (5) equate to Article VI (1), (2) and (3) of the model agreement.

Article VI(4) of the model agreement is dealt with in Article 30.

Paragraphs (2), (3) and (6) are new. They are all worthwhile and acceptable.

Article 29 [Confidentiality]

Substantially the same as Article V(3) of the model agreement.

Article 30 [Obligation to inform in cases of refusal]

Substantially the same as Article VI(4) of the model agreement.

Article 31 [Formality Requirements]

Equates to Article XIV of the model agreement. Note that paragraph (3) excludes diplomatic or consular certification or authentication since neither Hong Kong nor Swiss law requires this.

Article 32 [Language]

Consistent with Article V(4) of the model agreement.

Article 33 [Representation and Expenses]

Substantially the same as Article VII of the model agreement.

CHAPTER VI - OTHER ASSISTANCE

Article 34 [Police Cooperation]

No equivalent in the model agreement. Provision is acceptable as it reflects existing cooperation through INTERPOL.

Article 35 [Other Bases for Assistance]

Substantially the same as Article III of the model agreement.

CHAPTER VII - FINAL PROVISIONS

Article 36 [Consultations]

No equivalent, but again provision is acceptable as it reflects typical practice in the area of mutual legal assistance.

Article 37 [Settlement of Disputes]

Same as Article XX of the model agreement.

Article 38 [Entry into Force and Termination]

Same as Article XXI of the model agreement.

ANNEX A

EUROPEAN CONVENTION ON
MUTUAL ASSISTANCE IN CRIMINAL MATTERS

PREAMBLE

The Governments signatory hereto, being Members of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve greater unity among its Members;

Believing that the adoption of common rules in the field of mutual assistance in criminal matters will contribute to the attainment of this aim;

Considering that such mutual assistance is related to the question of extradition, which has already formed the subject of a Convention signed on 13th December 1957.

Have agreed as follows:

CHAPTER I

GENERAL PROVISIONS

ARTICLE I

1. The Contracting Parties undertake to afford each other, in accordance with the provisions of this Convention, the widest measure of mutual assistance in proceedings in respect of offences the punishment of which, at the time of the request for assistance, falls within the jurisdiction of the judicial authorities of the requesting Party.

2. This Convention does not apply to arrests, the enforcement of verdicts or offences under military law which are not offences under ordinary criminal law.

ARTICLE 2

Assistance may be refused:

(a) if the request concerns an offence which the requested Party considers a political offence, an offence connected with a political offence, or a fiscal offence;

(b) if the requested Party considers that execution of the request is likely to prejudice the sovereignty, security, ordre public or other essential interests of its country.

CHAPTER II

LETTERS ROGATORY

ARTICLE 3

1. The requested Party shall execute in the manner provided for by its law any letters rogatory relating to a criminal matter and addressed to it

by the judicial authorities of the requesting Party for the purpose of procuring evidence or transmitting articles to be produced in evidence, records or documents.

2. If the requesting Party desires witnesses or experts to give evidence on oath, it shall expressly so request, and the requested Party shall comply with the request if the law of its country does not prohibit it.

3. The requested Party may transmit certified copies or certified photostat copies of records or documents requested, unless the requesting Party expressly requests the transmission of originals, in which case the requested Party shall make every effort to comply with the request.

ARTICLE 4

On the express request of the requesting Party the requested Party shall state the date and place of execution of the letters rogatory. Officials and interested persons may be present if the requested Party consents.

ARTICLE 5

1. Any Contracting Party may, by a declaration addressed to the Secretary-General of the Council of Europe, when signing this Convention or depositing its instrument of ratification or accession, reserve the right to make the execution of letters rogatory for search or seizure of property dependent on one or more of the following conditions:

(a) that the offence motivating the letters rogatory is punishable under both the law of the requesting Party and the law of the requested Party;

(b) that the offence motivating the letters rogatory is an extraditable offence in the requested country;

(c) that execution of the letters rogatory is consistent with the law of the requested Party.

2. Where a Contracting Party makes a declaration in accordance with paragraph 1 of this Article, any other Party may apply reciprocity.

ARTICLE 6

1. The requested Party may delay the handing over of any property, records or documents requested, if it requires the said property, records or documents in connection with pending criminal proceedings.

2. Any property, as well as original records or documents, handed over in execution of letters rogatory shall be returned by the requesting Party to the requested Party as soon as possible unless the latter Party waives the return thereof.

CHAPTER III

SERVICE OF WRITS AND RECORDS OF JUDICIAL VERDICTS - APPEARANCE OF WITNESSES, EXPERTS AND PROSECUTED PERSONS

ARTICLE 7

1. The requested Party shall effect service of writs and records of judicial verdicts which are transmitted to it for this purpose by the requesting Party.

Service may be effected by simple transmission of the writ or record to the person to be served. If the requesting Party expressly so requests, service shall be effected by the requested Party in the manner provided for the service of analogous documents under its own law or in a special manner consistent with such law.

2. Proof of service shall be given by means of a receipt dated and signed by the person served or by means of a declaration made by the requested Party that service has been effected and stating the form and date of such service. One or other of these documents shall be sent immediately to the requesting Party. The requested Party shall, if the requesting Party so requests, state whether service has been effected in accordance with the law of the requested Party. If service cannot be effected, the reasons shall be communicated immediately by the requested Party to the requesting Party.

3. Any Contracting Party may, by a declaration addressed to the Secretary-General of the Council of Europe, when signing this Convention or depositing its instrument of ratification or accession, request that service of a summons on an accused person who is in its territory be transmitted to its authorities by a certain time before the date set for appearance. This time shall be specified in the aforesaid declaration and shall not exceed 50 days.

This time shall be taken into account when the date of appearance is being fixed and when the summons is being transmitted.

ARTICLE 8

A witness or expert who has failed to answer a summons to appear, service of which has been requested, shall not, even if the summons contains a notice of penalty, be subjected to any punishment or measure of restraint, unless subsequently he voluntarily enters the territory of the requesting Party and is there again duly summoned.

ARTICLE 9

The allowances, including subsistence, to be paid and the travelling expenses to be refunded to a witness or expert by the requesting Party shall be calculated as from his place of residence and shall be at rates at least equal to those provided for in the scales and rules in force in the country where the hearing is intended to take place.

ARTICLE 10

1. If the requesting Party considers the personal appearance of a witness or expert before its judicial authorities especially necessary, it shall so mention in its request for service of the summons and the requested Party shall invite the witness or expert to appear.

The requested Party shall inform the requesting Party of the reply of the witness or expert.

2. In the case provided for under paragraph 1 of this Article the request or the summons shall indicate the approximate allowances payable and the travelling and subsistence expenses refundable.

3. If a specific request is made, the requested Party may grant the witness or expert an advance. The amount of the advance shall be endorsed on the summons and shall be refunded by the requesting Party.

ARTICLE 11

1. A person in custody whose personal appearance as a witness or for purposes of confrontation is applied for by the requesting Party, shall be temporarily transferred to the territory where the hearing is intended to take place, provided that he shall be sent back within the period stipulated by the requested Party and subject to provisions of Article 12 in so far as these are applicable.

Transfer may be refused:

- (a) if the person in custody does not consent,
- (b) if his presence is necessary at criminal proceedings pending in the territory of the requested Party,
- (c) if transfer is liable to prolong his detention, or
- (d) if there are other overriding grounds for not transferring him to the territory of the requesting Party.

2. Subject to the provisions of Article 2, in a case coming within the immediately preceding paragraph, transit of the person in custody through the territory of a third State, Party to this Convention, shall be granted on application, accompanied by all necessary documents, addressed by the Ministry of Justice of the requesting Party to the Ministry of Justice of the Party through whose territory transit is requested.

A Contracting Party may refuse to grant transit to its own nationals.

3. The transferred person shall remain in custody in the territory of the requesting Party and, where applicable, in the territory of the Party through which transit is requested, unless the Party from whom transfer is requested applies for his release.

ARTICLE 12

1. A witness or expert, whatever his nationality, appearing on a summons before the judicial authorities of the requesting Party shall not be prosecuted or detained or subjected to any other restriction of his

personal liberty in the territory of that Party in respect of acts or convictions anterior to his departure from the territory of the requested Party.

2. A person, whatever his nationality, summoned before the judicial authorities of the requesting Party to answer for acts forming the subject of proceedings against him, shall not be prosecuted or detained or subjected to any other restriction of his personal liberty for acts or convictions anterior to his departure from the territory of the requested Party and not specified in the summons.

3. The immunity provided for in his article shall cease when the witness or expert or prosecuted person, having had for a period of fifteen consecutive days from the date when his presence is no longer required by the judicial authorities an opportunity of leaving, has nevertheless remained in the territory, or having left it, has returned.

CHAPTER IV

JUDICIAL RECORDS

ARTICLE 13

1. A requested Party shall communicate extracts from and information relating to judicial records, requested from it by the judicial authorities of a Contracting Party and needed in a criminal matter, to the same extent that these may be made available to its own judicial authorities in like case.

2. In any case other than that provided for, in paragraph 1 of this Article the request shall be complied with in accordance with the conditions provided for by the law, regulations or practice of the requested Party.

CHAPTER V

PROCEDURE

ARTICLE 14

1. Requests for mutual assistance shall indicate as follows:

- (a) the authority making the request,
- (b) the object of and the reason for the request,
- (c) where possible, the identify and the nationality of the person concerned, and
- (d) where necessary, the name and address of the person to be served.

2. Letters rogatory referred to in Articles 3, 4 and 5 shall, in addition, state the offence and contain a summary of the facts.

ARTICLE 15

1. Letters rogatory referred to in Articles 3, 4 and 5 as well as the applications referred to in Article 11 shall be addressed by the Ministry

of Justice of the requesting Party to the Ministry of Justice of the requesting Party shall be returned through the same channels.

2. In case of urgency, letters rogatory may be addressed directly by the judicial authorities of the requesting Party to the judicial authorities of the requested Party. They shall be returned together with the relevant documents through the channels stipulated in paragraph 1 of this article.

3. Requests provided for in paragraph 1 of Article 13 may be addressed directly by the judicial authorities concerned to the appropriate authorities of the requested Party, and the replies may be returned directly by those authorities. Requests provided for in paragraph 2 of Article 13 shall be addressed by the Ministry of Justice of the requesting Party to the Ministry of Justice of the requested Party.

4. Requests for mutual assistance, other than those provided for in paragraphs 1 and 3 of this article and in, particular, requests for investigation preliminary to prosecution, may be communicated directly between the judicial authorities.

5. In cases where direct transmission is permitted under this Convention, it may take place through the International Criminal Police Organisation (Interpol).

6. A Contracting Party may, when signing the Convention or depositing its instrument of ratification or accession, by a declaration addressed to the Secretary-General of the Council of Europe, give notice that some or all requests for assistance shall be sent to it through channels other than those provided for in this article, or require that, in a case provided for in paragraph 2 of this article, a copy of the letters rogatory shall be transmitted at the same time to its Ministry of Justice.

7. The provisions of this article are without prejudice to those of bilateral agreements or arrangements in force between Contracting Parties which provide for the direct transmission of requests for assistance between their respective authorities.

ARTICLE 16

1. Subject to paragraph 2 of this article, translations of requests and annexed documents shall not be required.

2. Each Contracting Party may, when signing or depositing its instrument of ratification or accession, by means of a declaration addressed to the Secretary-General of the Council of Europe, reserve the right to stipulate that requests and annexed documents shall be addressed to it accompanied by a translation into its own language or into either of the official languages of the Council of Europe or into one of the latter languages, specified by it. The other Contracting Parties may apply reciprocity.

3. This article is without prejudice to the provisions concerning the translation of requests or annexed documents contained in the agreements or arrangements in force or to be made, between two or more Contracting Parties.

ARTICLE 17

Evidence or documents transmitted pursuant to this Convention shall not require any form of authentication.

ARTICLE 18

Where the authority which receives a request for mutual assistance has no jurisdiction to comply therewith, it shall, ex officio, transmit the request to the competent authority of its country and shall so inform the requesting Party through the direct channels, if the request has been addressed through such channels.

ARTICLE 19

Reasons shall be given for any refusal of mutual assistance.

ARTICLE 20

Subject to the provisions of Article 9, execution of request for mutual assistance shall not entail refunding of expenses except those incurred by the attendance of experts in the territory of the requested Party or the transfer of a person in custody carried out under Article 11.

CHAPTER VI

LAYING OF INFORMATION IN CONNECTION WITH PROCEEDINGS

ARTICLE 21

1. Information laid by one Contracting Party with a view to proceedings in the courts of another Party shall be transmitted between the Ministries of Justice concerned unless a Contracting Party avails itself of the option provided for in paragraph 6 of Article 15.
2. The requested Party shall notify the requesting Party of any action taken on such information and shall forward a copy of the record of any verdict pronounced.
3. The provisions of Article 16 shall apply to information laid under paragraph 1 of this article.

CHAPTER VII

EXCHANGE OF INFORMATION FROM JUDICIAL RECORDS

ARTICLE 22

Each Contracting Party shall inform any other Party of all criminal convictions and subsequent measures in respect of nationals of the latter Party, entered in the judicial records. Ministries of Justice shall communicate such information to one another at least once a year. Where the person concerned is considered a national of two or more other Contracting Parties, the information shall be given to each of these Parties, unless the person is a national of the Party in the territory of which he was convicted.

CHAPTER VIII

FINAL PROVISIONS

ARTICLE 23

1. Any Contracting Party may, when signing the Convention or when depositing its instrument of ratification or accession, make a reservation in respect of any provision or provisions of the Convention.
2. Any Contracting Party which has made a reservation shall withdraw it as soon as circumstances permit. Such withdrawal shall be made by notification to the Secretary-General of the Council of Europe.
3. A Contracting Party which has made a reservation in respect of a provision of the Convention may not claim application of the said provision by another Party save in so far as it has itself accepted the provision.

ARTICLE 24

A Contracting Party may, when signing the Convention or depositing its instrument of ratification or accession, by a declaration addressed to the Secretary-General of the Council of Europe, define what authorities it will, for the purpose of the Convention, deem judicial authorities.

ARTICLE 25

1. This Convention shall apply to the metropolitan territories of the Contracting Parties.
2. In respect of France, it shall also apply to Algeria and to the overseas Departments, and, in respect of Italy, it shall also apply to the territory of Somaliland under Italian administration.
3. The Federal Republic of Germany may extend the application of this Convention to the land of Berlin by notice addressed to the Secretary-General of the Council of Europe.
4. In respect of the Kingdom of the Netherlands, the Convention shall apply to its European territory. The Netherlands may extend the application of this Convention to the Netherlands Antilles, Surinam and Netherlands New Guinea by notice addressed to the Secretary-General of the Council of Europe.
5. By direct arrangement between two or more Contracting Parties and subject to the conditions laid down in this arrangement, the application of this Convention may be extended to any territory, other than the territories mentioned in paragraphs 1, 2, 3 and 4 of this article, of one of these Parties, for the international relations of which any such Party is responsible.

ARTICLE 26

1. Subject to the provisions of Article 15, paragraph 7, and Article 16, paragraph 3, this Convention shall, in respect of those countries to which it applies, supersede the provisions of any treaties, conventions or bilateral agreements governing mutual assistance in criminal matters between any two Contracting Parties.

2. This Convention shall not affect obligations incurred under the terms of any other bilateral or multilateral international convention which contains or may contain clauses governing specific aspects of mutual assistance in a given field.

3. The Contracting Parties may conclude between themselves bilateral or multilateral agreements on mutual assistance in criminal matters only in order to supplement the provisions of this Convention or to facilitate the application of the principles contained therein.

4. Where, as between two or more Contracting Parties, mutual assistance in criminal matters is practised on the basis of uniform legislation or of a special system providing for the reciprocal application in their respective territories of measures of mutual assistance, these Parties shall, notwithstanding the provisions of this Convention, be free to regulate their mutual relations in this field exclusively in accordance with such legislation or system. Contracting Parties which, in accordance with this paragraph, exclude as between themselves the application of this Convention shall notify the Secretary-General of the Council of Europe accordingly.

ARTICLE 27

1. This Convention shall be open to signature by the Members of the Council of Europe. It shall be ratified. The instruments of ratification shall be deposited with the Secretary-General of the Council.

2. The Convention shall come into force 90 days after the date of deposit of the third instrument of ratification.

3. As regards any signatory ratifying subsequently the Convention shall come into force 90 days after the date of the deposit of its instrument of ratification.

ARTICLE 28

1. The Committee of Ministers of the Council of Europe may invite any State not a Member of the Council to accede to this Convention, provided that the resolution containing such invitation obtains the unanimous agreement of the Members of the Council who have ratified the Convention.

2. Accession shall be by deposit with the Secretary-General of the Council of an instrument of accession which shall take effect 90 days after the date of its deposit.

ARTICLE 29

Any Contracting Party may denounce this Convention in so far as it is concerned by giving notice to the Secretary-General of the Council of Europe. Denunciation shall take effect six months after the date when the Secretary-General of the Council received such notification.

ARTICLE 30

The Secretary-General of the Council of Europe shall notify the Members of the Council and the Government of any State which has acceded to this Convention of:

(a) the names of the Signatories and the deposit of any instrument of ratification or accession;

- (b) the date of entry into force of this Convention;
- (c) any notification received in accordance with the provisions of Article 5 - paragraph 1, Article 7 - paragraph 3, Article 15 - paragraph 6, Article 16 - paragraph 2, Article 24, Article 25 - paragraphs 3 and 4, or Article 26 - paragraph 4;
- (d) any reservation made in accordance with Article 23, paragraph 1;
- (e) the withdrawal of any reservation in accordance with Article 23, paragraph 2;
- (f) any notification of denunciation received in accordance with the provisions of Article 29 and the date on which such denunciation will take effect.

ANNEX B

SCHEME RELATING TO MUTUAL
ASSISTANCE IN CRIMINAL MATTERS WITHIN THE COMMONWEALTH

PURPOSE AND SCOPE

- (1) The purpose of this Scheme is to increase the level and scope of assistance rendered between Commonwealth Governments in criminal matters. It augments, and in no way derogates from existing forms of cooperation, both formal and informal; nor does it preclude the development of enhanced arrangements in other fora.
- (2) This Scheme provides for the giving of assistance by the competent authorities of one country (the requested country) in respect of criminal matters arising in another country (the requesting country).
- (3) Assistance in criminal matters under this Scheme includes assistance in
 - (a) identifying and locating Persons;
 - (b) serving documents;
 - (c) examining witnesses;
 - (d) search and seizure;
 - (e) obtaining evidence;
 - (f) facilitating the personal appearance of witnesses;
 - (g) affecting a temporary transfer of persons in custody to appear as a witness;
 - (h) obtaining production of judicial or official records; and
 - (i) tracing, seizure and forfeiting the proceeds of criminal activities.

MEANING OF COUNTRY

- 2 For the purposes of this Scheme, each of the following is a separate country, that is to say
 - (a) each sovereign and independent country within the Commonwealth together with any dependent territories which that country designates; and
 - (b) each country within the Commonwealth which, though not sovereign and independent, is not designated for the purposes of the preceding sub-paragraph.

CRIMINAL MATTER

- 3 (1) For the purposes of this Scheme, a criminal matter arises in a country if the Central Authority of that country certifies that criminal proceedings have been instituted in a court exercising jurisdiction in that country or that there is reasonable cause to believe that an offence in respect of which such proceedings could be instituted has been committed.
- (2) "Offence", in the case of a federal country or a country having more than one legal system, includes an offence under the law of the country or any part thereof.

CENTRAL AUTHORITIES

- 4 Each country shall designate a Central Authority to transmit and to receive requests for assistance under this Scheme.

ACTION IN REQUESTING COUNTRY

- 5 (1) A request for assistance under this Scheme may be initiated by any law enforcement agency or public prosecution or judicial authority competent under the law of the requesting country.
- (2) The Central Authority of the requesting country shall, if it is satisfied that the request can properly be made under this Scheme, transmit the request to the Central Authority of the requested country and shall ensure that the request contains all the information required by the provisions of this Scheme.
- (3) The Central Authority of the requesting country shall provide as far as practicable additional information sought by the Central Authority of the requested country.

ACTION IN THE REQUESTED COUNTRY

- 6 (1) Subject to the provisions of this Scheme, the requested country shall grant the assistance requested as expeditiously as practicable.
- (2) The Central Authority of the requested country shall, subject to the following provisions of this paragraph, take the necessary steps to ensure that the competent authorities of that country comply with the request.
- (3) If the Central Authority of the requested country considers
- (a) that the request does not comply with the provisions of this Scheme, or
 - (b) that in accordance with the provisions of this Scheme the request for assistance is to be refused in whole or in part, or
 - (c) that the request cannot be complied with, in whole or in part, or
 - (d) that there are circumstances which are likely to cause a significant delay in complying with the request,

it shall promptly inform the Central Authority of the requesting country, giving reasons.

REFUSAL OF ASSISTANCE

- 7 (1) The requested country may refuse to comply in whole or in part with a request for assistance under this Scheme if the criminal matter appears to the Central Authority of that country to concern
- (a) conduct which would not constitute an offence under the law of that country; or
 - (b) an offence or proceedings of a political character; or
 - (c) conduct which in the requesting country is an offence only under military law or a law relating to military obligations; or
 - (d) conduct in relation to which the person accused or suspected of having committed an offence has been acquitted or convicted by a court in the requested country.
- (2) The requested country may refuse to comply in whole or in part with a request for assistance under this Scheme
- (a) to the extent that it appears to the Central Authority of that country that compliance would be contrary to the Constitution of that country, or would prejudice the security, international relations or other essential public interests of that country; or
 - (b) where there are substantial grounds leading the Central Authority of that country to believe that compliance would facilitate the prosecution or punishment of any person on account of his race, religion, nationality or political opinions or would cause prejudice for any of these reasons to any person affected by the request.
- (3) The requested country may refuse to comply in whole or in part with a request for assistance to the extent that the steps required to be taken in order to comply with the request cannot under the law of that country be taken in respect of criminal matters arising in that country.
- (4) An offence shall not be an offence of a political character for the purposes of this paragraph if it is an offence within the scope of any international convention to which both the requesting and requested countries are parties and which imposes on the parties thereto an obligation either to extradite or prosecute a person accused of the commission of the offence.

MEASURES OF COMPULSION

- 8 (1) The competent authorities of the requested country shall in complying with a request under this Scheme use only such measures of compulsion as are available under the law of that country in respect of criminal matters arising in that country

- (2) Where under the law of the requested country measures of compulsion cannot be applied to any person to take the steps necessary to secure compliance with a request under this Scheme but the person concerned is willing to act voluntarily in compliance with the terms of the request, the competent authorities of the requested country shall make available the necessary facilities.

SCHEME NOT TO COVER ARREST OR EXTRADITION

- 9 Nothing in this Scheme is to be construed as authorising the extradition, or the arrest or detention with a view to extradition, of any person.

CONFIDENTIALITY

- 10 (1) The Central Authorities and the competent authorities of the requesting and requested countries shall use their best efforts to keep confidential a request and its contents and the information and materials supplied in compliance with a request except for disclosure in criminal proceedings and where otherwise authorised by the Central Authority of the other country.

LIMITATION OF USE OF INFORMATION OR EVIDENCE

- 11 The requesting country shall not use any information or evidence obtained in response to a request for assistance under this Scheme in connection with any matter other than the criminal matter specified in the request without the prior consent of the Central Authority of the requested country.

EXPENSES OF COMPLIANCE

- 12 (1) Except as provided in the following provisions of this paragraph, compliance with a request under this Scheme shall not give rise to any claim against the requesting country for expenses incurred by the Central Authority or other competent authorities of the requested country.
- (2) The requesting country shall be responsible for the travel and incidental expenses of witnesses travelling to the requesting country, including those of accompanying officials, for fees of experts, and for the costs of any translation required by the requesting country.
- (3) If in the opinion of the requested country the expenses required in order to comply with the request are of an extraordinary nature, the Central Authority of the requested country shall consult with the Central Authority of the requesting country as to the terms and conditions under which compliance with the request may continue, and in the absence of agreement the requested country may refuse to comply further with the request.

CONTENTS OF REQUEST FOR ASSISTANCE

- 13 (1) A request under the Scheme shall
- (a) specify the nature of the assistance requested;

(b) contain the information appropriate to the assistance sought as specified in the following provisions of this scheme;

(c) indicate any time-limit within which compliance with the request is desired, stating reasons;

(d) contain the following information:

(1) the identity of the agency or authority initiating the request;

(ii) the nature of the criminal matter; and

(iii) whether or not criminal proceedings have been instituted;

(e) where criminal proceedings have been instituted, contain the following information:

(i) the court exercising jurisdiction in the proceedings;

(ii) the identity of the accused person;

(iii) the offences of which he stands accused, and a summary of the facts;

(iv) the stage reached in the proceedings; and

(v) any date fixed for further stages in the proceedings;

(f) where criminal proceedings have not been instituted, state the offence which the central authority of the requesting country has reasonable cause to believe to have been committed, with a summary of the known facts.

(2) A request shall normally be in writing, and if made orally in case of urgency shall be confirmed in writing forthwith.

IDENTIFYING AND LOCATING PERSONS

14 (1) A request under this scheme may seek assistance in identifying or locating persons believed to be within the requested country.

(2) The request shall indicate the purpose for which the information is requested and shall contain such information as is available to the central authority of the requesting country as to the whereabouts of the person concerned and such other information as it possesses as may facilitate the identification of that person.

SERVICE OF DOCUMENTS

15 (1) A request under this scheme may seek assistance in the service of documents relevant to a criminal matter arising in the requesting country.

- (2) The request shall be accompanied by the documents to be served and, where those documents relate to attendance in the requesting country, such notice as the Central Authority of that country is reasonably able to provide of outstanding warrants or other judicial orders in criminal matters against the person to be served.
- (3) The Central Authority of the requested country shall endeavour to have the documents served
 - (a) by any particular method stated in the request, unless such method is incompatible with the law of that country; or
 - (b) by any method prescribed by the law of that country for the service of documents in criminal proceedings.
- (4) The requested country shall transmit to the Central Authority of the requesting country a certificate as to the service of the documents or, if they have not been served, as to the reasons which have prevented service.

EXAMINATION OF WITNESSES

- 16
- (1) A request under this Scheme may seek assistance in the examination of witnesses in the requested country.
 - (2) The request shall specify, as appropriate and so far as the circumstances of the case permits:
 - (a) the names and addresses or the official designations of the witnesses to be examined;
 - (b) the questions to be put to the witnesses or the subject-matter about which they are to be examined;
 - (c) whether it is desired that the witnesses be examined orally or in writing;
 - (d) whether it is desired that the oath be administered to the witnesses (or, as the law of the requested country allows, that they be required to make their solemn affirmation);
 - (e) any provisions of the law of the requesting country as to privilege or exemption from giving evidence which appear especially relevant to the request; and
 - (f) any special requirements of the law of the requesting country as to the manner of taking evidence relevant to its admissibility in that country.
 - (3) The request may ask that, so far as the law of the requested country permits, the accused person or his legal representative may attend the examination of the witness and ask questions of the witness.

SEARCH AND SEIZURE

- 17
- (1) A request under this Scheme may seek assistance in the search for and seizure of property in the requested country.

- (2) The request shall specify the property to be searched for and seized and shall contain, so far as reasonably practicable, all information available to the Central Authority of the requesting country which may be required to be adduced in an application under the law of the requested country for any necessary warrant or authorisation to effect the search and seizure.
- (3) The requested country shall provide such certification as may be required by the requesting country concerning the result of any search, the place and circumstances of seizure, and the subsequent custody of the property seized.

OTHER ASSISTANCE IN OBTAINING EVIDENCE

- 18 (1) A request under this Scheme may seek other assistance in obtaining evidence.
- (2) The request shall specify, as appropriate and so far as the circumstances of the case permit:
- (a) the documents, records or property to be inspected, preserved, photographed, copied or transmitted;
 - (b) the samples of any property to be taken, examined or transmitted; and
 - (c) the site to be viewed or photographed.

PRIVILEGE

- 19 (1) No person shall be compelled in response to a request under this Scheme to give any evidence in the requested country which he could not be compelled to give
- (a) in criminal proceedings in that country; or
 - (b) in criminal proceedings in the requesting country.
- (2) For the purposes of this paragraph any reference to giving evidence includes references to answering any question and to producing any document.

PRODUCTION OF JUDICIAL OR OFFICIAL RECORDS

- 20 (1) A request under this Scheme may seek the production of judicial or official records relevant to a criminal matter arising in the requesting country.
- (2) For the purposes of this paragraph "judicial records" means judgments, orders and decisions of courts and other documents held by judicial authorities and "official records" means documents held by government departments or agencies or prosecution authorities.
- (3) The requested country shall provide copies of judicial or official records which are publicly available.

- (4) The requested country may provide copies of judicial or official records not publicly available, to the same extent and under the same conditions as apply to the provision of such records to its own law enforcement agencies or prosecution or judicial authorities.

TRANSMISSION AND RETURN OF MATERIAL

- 21 (1) Where compliance with a request under this Scheme would involve the transmission to the requesting country of any document, record or property, the requested country
- (a) may postpone the transmission of the material if it is required in connection with proceedings in that country, and in such a case shall provide certified copies of a document or record pending transmission of the original;
- (b) may require the requesting country to agree to terms and conditions to protect third party interests in the material to be transmitted and may refuse to effect such transmission pending such agreement.
- (2) Where any document, record or property is transmitted to the requesting country in compliance with a request under this Scheme, it shall be returned to the requested country when it is no longer required in connection with the criminal matter specified in the request unless that country has indicated that its return is not desired.

AUTHENTICATION

- 22 (1) The requested country shall authenticate material that is to be transmitted by that country.
- (2) Authentication shall be by a stamp or seal of a Minister, ministry, government department or Central Authority of the requested country.

PERSONAL APPEARANCE OF WITNESSES IN THE REQUESTING COUNTRY

- 23 (1) A request under this Scheme may seek assistance in facilitating the personal appearance of witnesses before a court exercising jurisdiction in the requesting country.
- (2) The request shall specify
- (a) the subject matter upon which it is desired to examine the witnesses;
- (b) the reasons for which the personal appearance of the witnesses is required; and
- (c) details of the travelling, subsistence and other expenses payable by the requesting country in respect of the personal appearance of the witnesses.
- (3) The competent authorities of the requested country shall invite persons whose appearance as witnesses in the requesting country is desired; and

- (a) ask whether they agree to appear;
- (b) inform the Central Authority of the requesting country of their answer; and
- (c) if they are willing to appear, make appropriate arrangements to facilitate the personal appearance of the witnesses.

PERSONAL APPEARANCE OF PERSONS IN CUSTODY

- 24 (1) A request under this Scheme may seek the temporary transfer of persons in custody in the requested country to appear as witnesses before a court exercising jurisdiction in the requesting country.
- (2) The request shall specify
- (a) the subject matter upon which it is desired to examine the witnesses;
 - (b) the reasons for which the personal appearance of the witnesses is required;
- (3) The requested country shall refuse to comply with a request for the transfer of persons in custody if the persons concerned do not consent to the transfer.
- (4) The requested country may refuse to comply with a request for the transfer of persons in custody and shall be under no obligation to inform the requesting country of the reasons for such refusal.
- (5) Where persons in custody are transferred, the requested country shall notify the requesting country of
- (a) the dates upon which the persons are due under the law of the requested country to be released from custody and
 - (b) the dates by which the requested country requires the return of the persons
- and shall notify any variations in such dates.
- (6) The requesting country shall keep the persons transferred in custody, and shall return the persons to the requested country when their presence as witnesses in the requesting country is no longer required, and in any case by the earlier of the dates notified under sub paragraph (5).
- (7) The obligation to return the persons transferred shall subsist notwithstanding the fact that they are nationals of the requesting country.
- (8) The period during which the persons transferred are in custody in the requesting country shall be deemed to be service in the requested country of an equivalent period of custody in that country for all purposes.

- (9) Nothing in this paragraph shall preclude the release in the requesting country without return to the requested country of any person transferred where the two countries and the person concerned agreed.

IMMUNITY OF PERSONS APPEARING

- 25 (1) Subject to the provisions of paragraph 24, witnesses appearing in the requesting country in response to a request under paragraph 23 or persons transferred to that country in response to a request under paragraph 24 shall be immune in that country from prosecution, detention or any other restriction of personal liberty in respect of criminal acts, omissions or convictions before the time of their departure from the requested country.
- (2) The immunity provided for in that paragraph shall cease
- (a) in the case of witnesses appearing in response to a request under paragraph 23, when the witnesses having had, for a period of 15 consecutive days from the dates when they were notified by the competent authority of the requesting country that their presence was no longer required by the court exercising jurisdiction in the criminal matter, an opportunity of leaving have nevertheless remained in the requesting country, or having left that country have returned to it;
- (b) in the case of persons transferred in response to a request under paragraph 24 and remaining in custody when they have been returned to the requested country.

TRACING THE PROCEEDS OF CRIMINAL ACTIVITIES

- 26 (1) A request under this Scheme may seek assistance in identifying, locating and assessing the value of property believed to be the proceeds of criminal activities and to be within the requested country.
- (2) The request shall contain such information as is available to the Central Authority of the requesting country as to the nature and location of the property and as to any person in whose possession or control the property is believed to be.

SEIZURE AND FORFEITURE OF THE PROCEEDS OF CRIMINAL ACTIVITIES

- 27 (1) A request under this Scheme may seek assistance in the seizure and forfeiture of the proceeds of criminal activities in the requested country.
- (2) The request shall contain, so far as is reasonably practicable, all information available to the Central Authority of the requesting country which may be required to support an application under the law of the requested country for any necessary order, warrant or authorisation to effect the seizure or forfeiture.
- (3) "Seizure" in this paragraph includes the taking of measures to prevent any dealing in, transfer or disposal of, or the creation

of any charge over, property pending the determination of proceedings for the forfeiture of the proceeds of criminal activities.

- (4) The law of the requested country shall apply to determine the disposal of any proceeds of criminal activities forfeited as a result of a request under this paragraph.

CONFIRMATION AND ENFORCEMENT OF ORDERS FOR FORFEITURE OF THE PROCEEDS OF CRIMINAL ACTIVITIES

- 28 (1) A request under this Scheme may seek assistance in invoking procedures in the requested country leading to the recognition or review and confirmation and the enforcement of an order for the forfeiture of the proceeds of criminal activities made by a court or other authority in the requesting country.
- (2) The request shall be accompanied by a certified copy of the order and shall contain, so far as reasonably practicable, all information available to the Central Authority of the requesting country which may be required in connection with the procedures to be followed in the requested country.
- (3) The law of the requested country shall apply to determine the circumstances and manner in which an order may be recognised, confirmed or enforced.

MEANING OF "THE PROCEEDS OF CRIMINAL ACTIVITIES"

- 29 In this Scheme, "the proceeds of criminal activities" refers to any property derived or realised, directly or indirectly, by a person convicted of an offence in the requesting country or against whom criminal proceedings have been instituted in that country, as a result:
 - (a) of the commission of the offence, or
 - (b) of any part of a course of conduct by the person convicted or charged, alone or in association with other persons, having as its purpose the carrying out or furtherance of criminal activities, and of which the commission of the offence is shown to be part.

CONSULTATION

- 30 The Central Authorities of the requested and requesting countries shall consult promptly, at the request of either, concerning matters arising under this Scheme.

OTHER ASSISTANCE

- 31 After consultation between the requesting and the requested countries assistance not within the scope of this Scheme may be given in respect of a criminal matter on such terms and conditions as may be agreed by those countries.

NOTIFICATION OF DESIGNATIONS

32. Designations of dependent territories under paragraph 2 and of Central Authorities under paragraph 4 shall be notified to the Commonwealth Secretary-General.

MUTUAL ASSISTANCE IN CRIMINAL MATTERS - CURRENT UK LEGISLATION

Current legislative provision is limited to section 5 of the Extradition Act 1873, section 5 of the Evidence (Proceedings in Other Jurisdictions) Act 1975 and powers of restraint and confiscation under the Drug Trafficking Offences Act 1986 and the Criminal Justice (Scotland) Act 1987.

Section 5 of the Extradition Act 1873

2. The Home Secretary signs about 25 orders a year under section 5 of this Act. The section provides that a Secretary of State may order a police magistrate or justice of the peace to take evidence for the purpose of any criminal matter "pending" in a foreign court or tribunal, in the same way as if the witness were appearing in connection with a charge on indictment.

3. This power is useful, but the wording of the statute gives rise to problems. Its practical application to Scotland is unclear as it is based on procedures which are peculiarly English, and it does not extend to the obtaining of evidence on behalf of Commonwealth countries. Moreover, the terms used in the section have proved extremely difficult to interpret in modern circumstances and in the context of the varying judicial systems of foreign countries. Doubts about whether the provisions of the section apply to a particular judicial system or state of proceedings under that system cause quite serious tensions in our relations with other countries, and can also cause serious difficulties for our own prosecutors owing to the reluctance of other countries to give the United Kingdom assistance where it cannot supply comparable assistance reciprocally.

Section 5 of the Evidence (Proceedings in Other Jurisdictions) Act 1975

4. The 1873 Act power to obtain evidence is generally useful only in relatively straightforward cases. More complicated cases are dealt with by the High Court or, in Scotland, the Court of Session, under section 5 of the 1975 Act. This Act provides for application to be made for an order authorising the examination of witnesses following a request from a court or tribunal outside the United Kingdom for evidence for use in criminal proceedings "instituted" in that country. In England and Wales the requesting state may appoint its own lawyers or, exceptionally, the Treasury Solicitor may act on their behalf. In Scotland, the Crown Office would arrange representation. Although the 1975 Act is more clearly drafted than the 1873 Act and extends to proceedings in Commonwealth countries, it is still limited to cases where proceedings have been instituted at particular stages of criminal procedures abroad and this can seriously limit our capacity to assist in executing a request for assistance. In turn, because of other countries' requirements of reciprocity, this can have the effect of denying our own prosecutors the opportunity of obtaining important evidence abroad.

The Drug Trafficking Offences Act and Criminal Justice (Scotland) Act

5. Under section 26 of the Drug Trafficking Offences Act 1986, the powers of the High Court to make restraint orders against the property of suspected drug traffickers, and to enforce confiscation orders, may be

exercised on behalf of other countries designated by Order-in Council. The intention is to designate countries with whom satisfactory reciprocal arrangements have been agreed. In addition, the powers in section 27 and 28 of the Act to compel by court order the production of information relevant to a drug trafficking investigation and to authorise search and seizure are exercisable on behalf of countries whose laws prohibiting drug trafficking correspond to our own. The Criminal Justice (Scotland) Act 1987 contains provisions of comparable effect in relation to restraint and enforcement on behalf of designated countries (section 30) and the use of investigate powers (sections 38 and 39), including search and seizure.