

# **Mutual Assistance in Criminal Matters Act 2002 [32 MIRC Ch 4]**

32 MIRC Ch 4

## **MARSHALL ISLANDS REVISED CODE 2004**

### **TITLE 32. - CRIMINAL PROCEDURES**

#### **CHAPTER 4.**

#### **MUTUAL ASSISTANCE IN CRIMINAL MATTERS**

##### **ARRANGEMENT OF SECTIONS**

##### **Section**

##### **PART I- PRELIMINARY**

§401. Short Title. or restraining orders.

§402. Commencement.

§403. Purpose of crime.

§404. Application.

§405. Interpretations.

##### **PART II- MUTUAL ASSISTANCE**

§406. Authority of the RMI to make requests.

§407. Mutual Legal Assistance requests by the RMI.

§408. Authority of the RMI.

§409. Contents of requests by foreign countries.

§410. Consideration of Request.

§411. Foreign Request for evidence gathering.

§412. Request fro transfer of detained person.

§413. Detention of persons transferred to RMI.

§414. Safe Conduct Guarantee.

§415. Foreign Request for RMI restraining Orders.

§416. Request for Enforcement of Foreign confiscation

§417. Foreign Requests for the location of the Proceeds

§418. Sharing confiscated property with foreign Countries.

§419. Privilege for foreign document.

##### **PART III- MISCELLANEOUS**

§419. Privilege for foreign document.

§420. Restriction on use of evidence and material obtained by mutual assistance.

§421. Repeal and savings provision.

§422. Regulations.

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An Act to regulate international cooperation in investigations and prosecutions of serious offenses,  
and for related purposes.

**[Section numbering style modified to conform to Code format (Rev.2003)]**

Commencement: November 11, 2002

Source P.L. 2002-67

## **Part I - PRELIMINARY**

### **§401. Short title.**

This Act may be cited as the 'Mutual Assistance in Criminal Matters Act, 2002.' [P.L. 2002-67, §1.]

### **§402. Commencement.**

This Act shall take effect on the date of certification in accordance with Article IV, 20 section 21 of the Constitution. [P.L. 2002-67, §2.]

### **§403. Purpose.**

The purpose of this Act is to enable the Republic of the Marshall Islands to cooperate with foreign countries in criminal investigations and proceedings. [P.L. 2002-67, §3.]

### **§404. Application.**

This Act applies to the Republic of the Marshall Islands and to any foreign State that has an arrangement with or enters into a reciprocal agreement on assistance in criminal matters with the RMI. [P.L. 2002-67, §4.]

### **§405. Interpretations.**

Unless the subject or context otherwise requires, in this Act:

- (a) 'appeal' includes proceedings by way of discharging or setting aside a judgment, and an application for a new trial or for a stay of execution;
- (b) 'Attorney-General' means the Attorney-General of the RMI and includes the Deputy Attorney General or Assistant Attorney-General to whom the Attorney-General may delegate authority to carry out specific duties and responsibilities of the Attorney-General established by the Act.
- (c) 'data' means representations, in any form, of information or concepts;
- (d) 'document' means any record of information and any material on which data is recorded or marked and which is capable of being read or understood by a person, computer system or other device, and includes:

- (i) anything on which there is writing;
- (ii) anything on which there are marks, figures, symbols, or perforations having meaning for persons qualified to interpret them;
- (iii) anything from which sounds, images or writings can be produced, with or without the aid of anything else; or
- (iv) a map, plan, drawing, photograph or similar thing;

(e) 'foreign confiscation order' means an order, made by a court in a foreign country, for the purposes of the:

- (i) confiscation or forfeiture of property in connection with; or
- (ii) recovery of the proceeds of a serious offense;

(f) 'foreign restraining order' means an order made in respect of a serious offense by a court in a foreign country for the purpose of restraining a particular person or all persons from dealing with property;

(g) 'foreign country' means:

- (i) any country other than the Republic of the Marshall Islands; and
- (ii) every constituent part of such country, including a territory, dependency or protectorate, or political subdivision which administers its own laws relating to international cooperation;

(h) 'High Court' means the High Court of the RMI.

(i) 'interest,' in relation to property, means a:

- (i) legal or equitable estate or interest in the property; or
- (ii) right, power or privilege in connection with the property, whether present or future and whether vested or contingent;

(j) 'person' means any natural or legal person;

(k) 'place' includes any land (whether vacant, enclosed or built upon, or not), and any premises;

(l) 'premises' includes the whole or any part of a structure, building, aircraft, or vessel;

(m) 'proceedings' means any procedure conducted by or under the supervision of a judge, magistrate or judicial officer however described in relation to any alleged or proven offense, or property derived from such offense, and includes an inquiry, investigation, or preliminary or final determination of facts;

(n) 'proceeds of crime' means fruits of a crime, or any property derived or realized directly or indirectly from a serious offense and includes, on a proportional basis, property into which any property derived or realized directly from the offense was later successively converted, transformed or intermingled, as well as income, capital or other economic gains derived or realized from such property at any time since the offense;

(o) 'property' means real or personal property of every description, whether situated in the RMI or elsewhere and whether tangible or intangible, and includes an interest in any such real or personal property;

(p) 'RMI' means the Republic of the Marshall Islands;

(q) 'serious offense' means an offense against a provision of:

(i) any law of the RMI, which is a criminal offense punishable by imprisonment for a term of more than one year;

(ii) a law of a foreign country, in relation to acts or omissions, which had they occurred in the RMI, would have constituted a criminal offense punishable by imprisonment for a term of more than one year;

(2) A reference in this Act to the law of:

(a) the RMI; or,

(b) any foreign country, includes a reference to a written or unwritten law of, or in force in, any part of the RMI or that foreign country, as the case may be. [P.L. 2002-67, §5.]

## **PART II- MUTUAL ASSISTANCE**

### **§406. Authority of the RMI to make requests for mutual legal assistance.**

A request for international assistance in a criminal matter that is authorized to be made by the RMI shall be made by the Attorney General.[P.L. 2002-67, §6.]

### **§407. Mutual legal assistance requests by the RMI.**

The Attorney-General may pursuant to the authorization granted under section 406, request the appropriate authority of a foreign country to:

(1) have evidence taken, or documents or other articles produced in evidence in the foreign country;

(2) obtain and execute search warrants or other lawful instruments authorizing a search for things believed to be located in that foreign country, which may be relevant to investigations or proceedings in the RMI, and if found, seize them;

- (3) locate or restrain any property believed to be the proceeds of crime located in the foreign country;
- (4) confiscate any property believed to be located in the foreign country, which is the subject of a confiscation order made under any law in place in the RMI for the purpose of preventing money laundering or realizing proceeds of crime.
- (5) transmit to the RMI any such confiscated property or any proceeds realized therefrom, or any such evidence, documents, articles or things;
- (6) transfer in custody to the RMI a person detained in the foreign country who consents to assist the RMI in the relevant investigation or proceedings;
- (7) provide any other form of assistance in any investigation commenced or proceeding instituted in the RMI that involves or is likely to involve the exercise of a coercive power over a person or property believed to be in the foreign country; or
- (8) permit the presence of nominated persons during the execution of any request made under this Act. [P.L. 2002-67, §7.]

#### **§408. Authority of the RMI to grant requests for mutual legal assistance.**

- (1) A request to the RMI by a foreign country for international assistance shall be made in writing to the Attorney -General or a person authorized by the Attorney-General to receive requests by foreign countries.
- (2) If a foreign country or administrative authority of a country makes a request that is authorized by this Act, to any person or authority in the RMI other than the Attorney -General;
  - (a) such person or authority in the RMI must refer the request to the Attorney-General; and
  - (b) the request is then taken on for the purposes of this Act to have been made to the Attorney -General. [P.L. 2002-67, §8.]

#### **§409. Contents of requests by foreign Countries for mutual legal Assistance**

- (1) A request for mutual assistance shall:
  - (a) state the name of the authority conducting the investigation or proceeding to which the request relates;
  - (b) give a description of the nature of the criminal matter and a statement setting out a summary of the relevant facts and laws together with a copy of the laws being referenced;
  - (c) give a description of the purpose of the request and of the nature of the assistance being sought;
  - (d) in the case of a request to restrain or forfeit assets believed on reasonable grounds to be located in the foreign country, give details of the offense in question, particulars of any investigation or proceeding commenced in respect of the offense, and be

accompanied by a copy of any relevant restraining or forfeiture order;

(e) give details of any procedure that the requesting country wishes to be followed by the RMI in giving effect to the request, particularly in the case of a request to take evidence;

(f) include a statement setting-out any wishes of the requesting country concerning any confidentiality relating to the request and the reasons for those wishes;

(g) give details of the period within which the requesting country wishes the request to be complied with;

(h) where applicable, give details of the property to be traced, restrained, seized or confiscated, and of the grounds for believing that the property is believed to be in the RMI; and

(i) give any other information that may assist in giving effect to the request.

(2) A request for mutual assistance from a foreign State may be granted, if necessary after consultation, notwithstanding that the request, as originally made, does not comply with subsection (1). [P.L. 2002-67, §9.]

#### **§410. Considerations for grant of request for mutual legal assistance.**

(1) The Attorney-General may, in respect of any request from a foreign State for international assistance in any investigation commenced or proceeding instituted in that State relating to a serious offense:

(a) grant the request, in whole or in part, on such terms and conditions as the Attorney-General thinks fit;

(b) refuse the request, in whole or in part, on the ground that, in the opinion of the Attorney-General, to grant the request would be likely to prejudice the sovereignty, security or other essential or public interest of the RMI or would result in manifest unfairness or a denial of human rights, or it is otherwise appropriate in all circumstances of the case, that the assistance requested should not be granted, in whole or in part; or

(c) after consulting with the competent authority of the foreign State, postpone the request, in whole or in part, on the ground that granting the request immediately would be likely to prejudice the conduct of an investigation or proceeding in the RMI. [P.L. 2002-67, §10.]

#### **§411. Foreign requests for evidence gathering order or a search warrant.**

(1) Notwithstanding anything contained in any other law, where the Attorney-General grants a request by a foreign State to obtain evidence in the RMI, an authorized person may apply to the High Court for:

(a) a search warrant; or

(b) evidence-gathering order.

(2) The High Court, upon application made under subsection (1) of this section, may issue an evidence gathering order or a search warrant under this subsection, where it is satisfied that there is probable cause to believe that:

(a) a serious offense has been or may have been committed against the laws of the foreign State;

(b) evidence relating to that offense may:

(i) be found in a building, receptacle or place in the RMI; or

(ii) Be able to be given a by a person believed to be in the RMI;

(c) in the case of an application for a search warrant, it would not, in all the circumstances, be more appropriate to grant an evidence-gathering order.

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

(4) An evidence-gathering order:

(a) shall provide for the manner in which the evidence is to be obtained in order to give proper effect to the foreign request, unless such manner is prohibited under the law of the RMI, and in particular, may require any person named therein to:

(i) make a record from data or make a copy of a record;

(ii) attend court to give evidence on oath or otherwise until excused;

(iii) produce to the High Court or to any person designated by the Court, any thing, including any document, or copy thereof, or

(b) may include such terms and conditions, as the High Court considers desirable, including those relating to the interests of the person named therein or of third parties.

(5) A person named in an evidence-gathering order may refuse to answer a question or to produce a document or thing where the refusal is based on:

(a) a law currently in force in the RMI;

(b) a privilege recognized by a law in force in the foreign country that made the request; or

(c) a law currently in force in the foreign country that would render the answering of that question or the production of that document or thing by that person in the person's

own jurisdiction an offense.

(6) Where a person refuses to answer a question or to produce a document or thing pursuant to subsection (5)(b) or(c), the High Court shall report the matter to the Attorney-General who shall notify the foreign country and request the foreign country to provide a written statement on whether the person's refusal was well-founded under the law of the foreign country.

(7) Any written statement received by the Attorney-General from the foreign country in response to a request under subsection (6) shall be admissible in the evidence- gathering proceedings, and for the purposes of this section be determinative of whether the persons refusal is well-founded under foreign law.

(8) A person who, without reasonable excuse, refuses to comply with a lawful order of the High Court made under this section, or who having refused pursuant to subsection (5), continues to refuse notwithstanding the admission into evidence of a statement under subsection (7) to the effect that the refusal not well-founded, commits a contempt of court and may be punished accordingly.

(9) A search warrant shall be in the usual form in which a search warrant is issued in the RMI, varied to the extent necessary to suit the case.

(10) No document or thing seized and ordered to be sent to a foreign State shall be sent until the Attorney-General is satisfied that the foreign State has agreed to comply with any terms or conditions imposed in respect of the sending abroad of the document or thing.

(11) The High Court shall be authorized to adopt, recognize and enforce foreign court orders certified under seal, which orders shall be presumed to be valid in the absence of any evidence to the contrary. [P.L. 2002-67, §11.]

#### **§412. Foreign requests for consensual transfer of detained persons.**

(1) Where the Attorney-General approves a request of a foreign State to have a person, who is detained in custody in the RMI by virtue of a sentence or order of a court, transferred to a foreign State to give evidence or assist in investigation or proceeding in that State relating to a serious offense, an authorized person may apply to the High Court for a transfer order.

(2) The High Court upon application made under subsection (1) may make a transfer order under this subsection where it is satisfied, having considered any documents filed or information given in support of the application, that the detained person consents to the transfer.

(3) A transfer order made under subsection (2):

(a) shall set out the name of the detained person and the person's current place of confinement;

(b) shall order the person who has custody of the detained person to deliver the detained person into the custody of a person who is designated in the order or who is a member of the class of persons so designated;

(c) shall order the person who is to take custody of the detained person, to take the detained person to the foreign country and, on return of the detained person to the RMI, to return that person to a place of confinement in the RMI specified in the order,

or to such other place of confinement as the Attorney-General may subsequently notify the foreign country;

(d) shall state the reasons for the transfer; and

(e) shall fix the period of time at or before The expiration of which the detained person must be returned, unless varied for the purposes of the request by the Attorney-General.

(4) The time spent in custody by a person pursuant to a transfer order shall count toward any sentence required to be served by that person, so long as the person remains in such custody and is of good behavior. [P.L. 2002-67, §12.]

#### **§413. Detention of persons transferred to the RMI.**

(1) The Attorney -General may by written notice authorize:

(a) the temporary detention in the RMI of a person in detention in a foreign country who is to be transferred from that State to the RMI pursuant to a request under section 407(6), for such period as may be specified in the notice; and

(c) the return of the person to the custody of the foreign country when his or her presence is no longer required.

(2) A person in respect of whom a notice is issued under subsection (1) shall so long as the notice is in force:

(a) be permitted to enter and remain in the RMI for the purposes of the request, and be required to leave the RMI when no longer required for those purposes, notwithstanding any RMI law to the contrary; and

(b) while in custody in the RMI for the purposes of the request, be deemed to be in lawful custody.

(3) The Attorney -General may at any time vary a notice issued under subsection (1), and where the foreign country requests the release of the person from custody, either immediately or on a specified date, the Attorney-General shall direct that the person be released from custody accordingly; provided, however, that the Attorney-General may require the immediate departure of that person from the RMI if such departure is determined to be in the best interest of the nation.

(4) Any person who escapes from lawful custody while in the RMI pursuant to a request under section 407(6) may be arrested without warrant by any authorized person and returned to the custody authorized under subsection (1)(a) of this section.

(5) Where a foreign country has requested that a person be detained in the RMI in the course of transit between the foreign country and a third country and the Attorney- General grants the request, the provisions of this section shall apply with necessary changes in points of detail in relation to that person.

(6) No court in the RMI has jurisdiction to entertain any application by or on behalf of any person in the RMI pursuant to a request under section 407(6) relating to release from custody or continued

presence in the RMI after his or her presence is no longer required for the purpose of the request. [P.L. 2002-67, §13.]

#### **§414. Safe conduct guarantee.**

(1) Where a person, whether or not a detained person, is in the RMI in response to a request by the Attorney- General to a foreign country under this Act for such person to give evidence in a proceeding or to assist in an investigation, prosecution or related proceeding, the person shall not, while in the RMI, be:

(a) detained, prosecuted or punished; or

(b) subjected to civil process,

in respect of any act or omission that occurred before the person's departure from the foreign country pursuant to the request. Provided however that this section shall not preclude the person by voluntary agreement and consent, from entering into a stipulated settlement or resolution of any criminal charges pending in the RMI, or of any civil or criminal matter.

(2) Subsection (1) ceases to apply to the person when the person leaves the RMI, or has had the opportunity to leave, but remains in the RMI for 10 days after the Attorney-General has notified the person that he or she is no longer required for the purposes of the request. [P.L. 2002-67, §14.]

#### **§415. Foreign requests for RMI restraining orders.**

(1) Where a foreign country requests the Attorney- General to obtain the issuance of a restraining order against property some or all of which is believed to be located in the RMI; criminal proceedings have begun in the foreign country in respect of a serious Offense; and there is probable cause to believe that the property relating to the offense or belonging to the defendant or the defendant's coconspirators is located in the RMI, the Attorney -General may apply to the High Court for a restraining order under subsection (2).

(2) Where the Attorney- General makes application to the High Court under subsection (1), the Court may make a restraining order in respect of the property, as requested by the Attorney General, in relation to the application and to any restraining order issued as a result, as if the serious offense that is the subject of the order had been committed in the RMI. [P.L. 2002-67, §15.]

#### **§416. Requests for enforcement of foreign confiscation or restraining orders.**

(1) Where a foreign country requests the Attorney-General to make arrangements for the enforcement of a:

(a) foreign restraining order; or

(b) foreign confiscation order,

the Attorney-General may apply to the High Court of the RMI for entry and enforcement of the order under this Act or under any law in place in the RMI for the purpose of preventing money laundering or realizing proceeds of crime.

(2) The High Court shall, on application by the Attorney- General, enter and enforce a foreign restraining order, if the Court is satisfied that at the time of entry and registration, the order is in force in the foreign country.

(3) The High Court shall, on application by the Attorney- General, enter and enforce a foreign confiscation order, which is legally capable of enforcement in the RMI if the Court is satisfied that:

(a) at the time of entry and enforcement, the order is in force in the foreign country and is not subject to appeal, and

(b) where the person the subject of the order did not appear in the confiscation proceedings in the foreign country, that:

(i) the person was given notice of the proceedings in sufficient time to enable him or her to defend them; or

(ii) the person had absconded or had died before such notice could be given, and if the person died, the decedent's estate was given fair notice of the proceedings.

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

(a) the foreign restraining order is in force in the foreign country;

(b) the foreign confiscation order is in force in the foreign country and is not subject to appeal; or

(c) the person the subject of the foreign confiscation order was given notice of the proceedings in sufficient time to enable him or her to defend them or that the person had absconded or died before such notice could be given and if the person died, the decedent's estate was given fair notice of the proceedings, is prima facie evidence of those facts, without proof of the signature or official character of the person appearing to have signed the foreign request.

(5) Where a foreign restraining order or foreign confiscation order is entered for enforcement in accordance with this section, a copy of any amendments made to the order in the foreign country (whether before or after entry and enforcement), may be entered and enforced in the same way as the order, but shall not have effect for the purposes of the Banking Amendment Act 2002, until they are so entered and enforced.

(6) The High Court shall, on application by the Attorney -General rescind entry of:

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

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

(7) Subject to subsection (9), where the foreign restraining order or foreign confiscation order

comprises a facsimile copy of a duly authenticated foreign order, or amendment made to such an order, the facsimile shall be regarded for the purposes of this Act as the same as the duly authenticated foreign order.

(8) Entry and registration effected by means of a facsimile ceases to have effect at the end of the period of twenty-one (21) days commencing on the date of entry and registration, unless a duly authenticated original of the order has been entered and registered by that time.

(9) Where a foreign restraining order or a foreign confiscation order has been entered pursuant to this section, the order shall be deemed to apply in relation to the order as if the serious offense that is the subject of the order had been committed in the RMI, and the order had been made pursuant to the laws of the RMI. [P.L. 2002-67, §16.]

#### **§417. Foreign requests for the location of proceeds of crime.**

Where a foreign country requests the Attorney-General to assist in locating property believed to be the proceeds of a serious crime committed in that country, the Attorney-General may authorize the making of any application to the High Court, for the purpose of acquiring the information sought by the foreign country. [P.L. 2002-67, §17.]

#### **§418. Sharing confiscated property with foreign Countries.**

The Attorney-General may enter into an arrangement with the competent authorities of a foreign country, in respect of money laundering and proceeds of crime, for the reciprocal sharing with that country of such part of any property realized:

(a) in the foreign country, as a result of action taken by the Attorney-General pursuant to section 407(4); or

(b) in the RMI, as a result of action taken in the RMI pursuant to section 416 (1), as the Attorney-General thinks fit. [P.L. 2002-67, §18.]

### **PART III - MISCELLANEOUS**

#### **§419. Privilege for foreign documents.**

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

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

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

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

(4) Violation of subsection (3) is a felony offense, punishable by imprisonment for a maximum of five years or a maximum fine of \$50,000, or both, provided, however, in the case of a corporation, company, commercial enterprise, commercial entity or other legal person, the maximum fine shall be increased to \$250,000. [P.L. 2002-67, §19.]

**§420. Restriction on use of evidence and materials obtained by mutual assistance.**

No information, document, article or other thing obtained from a foreign country pursuant to a request made under this Act shall be used in any investigation or proceeding other than the investigation or proceeding disclosed in the request, unless the Attorney-General consents after consulting with the foreign country. [P.L. 2002-67, §20.]

**§421. Repeal and savings provision.**

(1) Nothing in this Act shall be taken to limit:

- (a) the power of the RMI, to make requests to foreign countries or act on requests from foreign countries for assistance in investigations or proceedings in criminal matters;
- (b) the power of the court, to make requests to foreign countries for forms of international assistance other than those specified in section 407; or
- (c) the nature or extent of assistance in investigations or proceedings in criminal matters which the RMI may lawfully give to or receive from foreign countries.

(2) Subject to subsection (1), any existing Act, rules or regulations, or provision of any Act, rules or regulations on international cooperation, information sharing, criminal investigations and proceedings in the RMI which contravene the provisions of this Act, are hereby repealed and declared null and void to the extent of its inconsistencies. [P.L. 2002-67, §21.]

**§422. Regulations.**

(1) The Minister of Justice may by regulations provide that this Act applies to a foreign country subject to:

- (a) any mutual assistance treaty between that country and the RMI; and
- (b) any multilateral mutual assistance treaty to which the RMI is a party.

(2) If the regulations provide, in accordance with subsection (1) that this Act applies to a foreign country subject to a mutual assistance treaty, then:

- (a) if the treaty relates wholly to the provision of assistance in criminal matters, this Act applies, subject to the limitations, conditions, exceptions or qualifications that are necessary to give effect to the treaty in relation to that country; or

(b) if the treaty relates in part to the provision of assistance in criminal matters, this Act applies subject to the limitations, conditions, exceptions, or qualifications that are necessary to give effect, in relation to that country, to that part of the treaty that relates to the provision of assistance in criminal matters. [**P.L. 2002-67, §22.**]

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