

SAMOA

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2007, No. 3

**AN ACT to facilitate the provision and obtaining of
international assistance in Criminal Matters.**

[30th January 2007]

BE IT ENACTED by the Legislative Assembly of Samoa in
Parliamentary assembled as follows.

**PART I
PRELIMINARY**

1. Short title and commencement-(1) This Act may be
cited as the Mutual Assistance in Criminal Matters Act 2007.

(2) This Act shall come into force or any part or section
thereof upon the day or days nominated by the Minister

(3) Notice of commencement of this Act or any part or
section thereof shall be published in Samoan and English in the
Savali and one other newspaper circulating in Samoa.

2. Interpretation-(1) In this Act, unless the context
otherwise requires:

“authorised officer” for a provision of this Act, means a
person, or a person in a class of persons, designated in
writing by the Attorney-General as an authorised officer
for the provision;

“Competent Authority”, in relation to any foreign State,
means the person or authority for the time being
designated by that foreign State for the purposes of
transmitting or receiving requests made under or
pursuant to this Act;

“confiscation order” means a forfeiture order or a pecuniary penalty order;

“criminal investigation” means:

- (a) an investigation commenced in Samoa in respect of an offence committed, or suspected on reasonable grounds to have been committed or to be likely to be committed, against the law of Samoa; or
- (b) in relation to a foreign State, an investigation commenced in the foreign State in respect of an offence committed, or suspected on reasonable grounds to have been committed or to be likely to be committed, against the law of that foreign State;

“criminal matter” means criminal investigations and criminal proceedings and includes a matter (whether arising under the laws of Samoa or another foreign State) relating to:

- (a) the forfeiture or confiscation of property for an offence; or
- (b) the restraining of dealings in property that may be forfeited or confiscated for an offence;

“criminal proceedings” means:

- (a) proceedings instituted in respect of an offence committed, or suspected on reasonable grounds to have been committed, against the law of Samoa, and includes the trial of a person for the offence and any proceedings to determine whether or not a person should be tried for the offence; or
- (b) in relation to a foreign State, proceedings instituted in respect of an offence committed, or suspected on reasonable grounds to have been committed, against the law of that foreign State, and includes the trial of a person for the offence and any proceedings to determine whether or not a person should be tried for the offence;

“data” means representations, in any form, of information or concepts;

“document” means any record of information, and includes:

- (a) anything on which there is writing; and
- (b) anything on which there are marks, figures, symbols, or perforations having a meaning for persons qualified to interpret them; and
- (c) anything from which sounds, images or writings can be produced, with or without the aid of anything else; and
- (d) a map, plan, drawing, photograph or similar thing; and
- (e) an electronic document;

“facsimile copy” means a copy obtained or sent by facsimile transmission;

“foreign confiscation order” means a foreign forfeiture order or a foreign pecuniary penalty order;

“foreign forfeiture order” means an order, made under the law of a foreign State by any court or other judicial authority, for the purposes of the confiscation or forfeiture of property in connection with or the recovery of the proceeds of, a serious offence;

“foreign law immunity certificate” means a certificate or a declaration given or made by a foreign State or under a law of a foreign State stating that, under the law of the foreign State, persons generally or a specified person could or could not, either generally or in specified proceedings and either generally or in specified circumstances, be required:

- (a) to answer a specified question; or
- (b) to produce a specified document;

“foreign prisoner” means a person who is being held in legal custody in a foreign State pending trial or sentence for, or is under a sentence of imprisonment for, an offence against the law of that foreign State, but does not include a person who is at large after having escaped from lawful custody;

“Minister” means the Minister of Finance;

“prisoner” means a person who is being held in custody pending trial or sentence, or is under a sentence of imprisonment, for an offence against a law of Samoa,

but does not include a person who is at large, having escaped from lawful custody;

“Proceeds of Crime Act” means the Proceeds of Crime Act 2007;

“process” means any summons, warrant, order or other document issued out of any court or by any Judge or Registrar;

“requesting State” in relation to a request for assistance made under Part III means the foreign State that made the request;

“trial” for an offence in a foreign State, includes a proceeding to determine whether a person should be convicted of the offence;

“video or internet link” means a system, including an internet connection that allows persons assembled in one place to see, hear and talk to persons assembled in another place.

(2) Except so far as the contrary intention appears, an expression that is used in this Act and is defined in the Proceeds of Crime Act has in this Act the same meaning as in the Proceeds of Crime Act.

(3) A reference in this Act to the law of Samoa or any foreign State includes reference to a written or unwritten law of, or in force in, any part of Samoa or that foreign State, as the case may be.

(4) Where:

(a) any foreign State consists of a federation of states, or has more than one system of law, or has anyone or more autonomous territorial organizations; and

(b) more than one Competent Authority is appointed for that foreign State,

a reference in this Act to the Competent Authority of that foreign State, in relation to a request for assistance made pursuant to this Act, means the Competent Authority for that foreign State that, in the circumstances of the particular case, is the appropriate Competent Authority to transmit or, as the case may be, receive the request.

(5) A reference in this Act to the law of a foreign State includes a reference to the law of a part of, or the law in force in part of, the foreign State.

3. Object of Act - The object of this Act is to enable Samoa to provide and obtain international assistance in criminal matters, including but not limited to:

- (a) identifying and locating a person; and
- (b) obtaining evidence, documents or any other article;
and
- (c) producing documents or other articles; and
- (d) arranging for persons to give evidence or assisting investigations; and
- (e) serving documents; and
- (f) executing requests for search and seizure; and
- (g) forfeiting or confiscating proceeds of crime; and
- (h) recovering pecuniary penalties in respect of offences;
and
- (i) restraining dealings in property or the freezing of assets, that may be forfeited or confiscated, or that may be needed to satisfy pecuniary penalties imposed, in respect of serious offences; and
- (j) locating property that may be forfeited, or that may be needed to satisfy pecuniary penalties imposed, in respect of serious offences.

4. Act not to limit other provision of assistance - Nothing in this Act shall be taken to limit:

- (a) the power of the Attorney-General, apart from this Act, to make requests to foreign States or act on requests from foreign States for assistance in investigations or proceedings in a criminal matter; or
- (b) the power of any other person or court, apart from this Act, to make requests to foreign States or act on requests from foreign States for forms of international assistance; or

- (c) the nature or extent of assistance in criminal matters which Samoa may lawfully give to or receive from foreign States; or
- (d) the existing forms of co-operation (whether formal or informal) in respect of criminal matters between Samoa and any other foreign State or the development of other forms of such co-operation.

5. Act not authority for extradition of any person

– Nothing in this Act authorises:

- (a) the extradition or rendering of any person; or
- (b) the arrest or detention, with a view to extradition or rendering, of any person.

**PART II
REQUEST TO FOREIGN STATE**

6. Application of this Part – A request for assistance under this Part may be made to any foreign State in relation to a serious offence.

7. Requests to be made by Attorney-General – A request by Samoa for assistance under this Part shall be made by or through the Attorney-General.

8. Assistance in locating or identifying persons – Where the Attorney-General is satisfied that there are reasonable grounds for believing that there is, in any foreign State, a person who:

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

the Attorney-General may request a foreign State to assist in locating that person or if the person's identity is unknown, in identifying and locating that person.

9. Assistance in obtaining evidence-(1) Where the Attorney-General is satisfied that there are reasonable grounds for believing any evidence or document or other article would be relevant to any criminal matter in Samoa, the Attorney-General may request a foreign State to arrange for:

- (a) such evidence to be taken in the foreign State; and/or
- (b) the production of such document or other article to be sent to the Attorney-General.

(2) Any document (other than a deposition) received from a foreign State pursuant to a request made under subsection (1) may, subject to the rules of law relating to the admission of evidence, be admissible as evidence at the hearing of the criminal proceedings to which the request relates.

(3) Judicial notice shall be taken of any seal or signature impressed, affixed, appended or subscribed on or to any deposition (by whatever name called) tendered in evidence under this section or under Part V.

10. Opportunity to examine or cross-examine person giving evidence or producing document - When making a request under section 9, the Attorney-General may also request that an opportunity be given for the person giving the evidence or producing the document or other article, to be examined or cross examined, through a video or internet link or any other means, from Samoa by:

- (a) a party to the proceeding; or
- (b) a person being investigated.

11. Assistance in arranging attendance of person-(1) Where the Attorney-General is satisfied that there are reasonable grounds for believing that a person in a foreign State could give or provide evidence or assistance relevant to any criminal matter in Samoa, the Attorney-General may request that foreign State to assist in arranging the attendance of that person in Samoa to give or provide that evidence or assistance, as the case may be.

(2) Where the Attorney-General is satisfied that a person in respect of whom a request is made to a foreign State under subsection (1), consents to travel to Samoa to give or provide

evidence or assistance pursuant to that request, the Attorney-General may make arrangements with that foreign State for the purposes of:

- (a) transporting the person to Samoa; and
- (b) in the case of a foreign prisoner, holding the person in custody while in Samoa; and
- (c) returning the person to the foreign State; and
- (d) other incidental matters relating to the request.

12. Penalty not to be imposed for refusal to consent – Where, under section 11 of this Act, the Attorney-General requests the assistance of a foreign State in arranging the attendance of any person in Samoa, the person to whom the request relates shall not be subject to any penalty or liability or otherwise prejudiced in law by reason only of that person’s refusal or failure to consent to attend as requested.

13. Custody of foreign prisoners-(1) Where a person who is to be brought to Samoa from a foreign State pursuant to a request made under subsection 11(1) is a foreign prisoner, and that foreign State requests that the person be kept in custody while the person is in Samoa, that person shall, while that person is in Samoa or is traveling to or from Samoa pursuant to the request, be kept in such custody as the Attorney-General directs in writing.

(2) Where a request is made under subsection (1), the Attorney-General may make arrangements with that foreign State for the purposes of:

- (a) transporting the person to Samoa; and
- (b) the holding in custody of the person while in Samoa; and
- (c) returning the person to the foreign State; and
- (d) other incidental matters relating to the request.

14. Immunities and privileges-(1) Subject to subsection (3), a person who is in Samoa pursuant to a request made under section 11 of this Act, shall not:

- (a) be detained, prosecuted or punished in Samoa for any offence that is alleged to have been committed, or that was committed, before the person's departure from the foreign State pursuant to the request; or
 - (b) be subjected to any civil proceedings in Samoa in respect of any act or omission that is alleged to have occurred, or that occurred, before the person's departure from the foreign State pursuant to the request, being civil proceedings to which the person could not be subjected to if the person were not in Samoa; or
 - (c) be required to give or provide evidence or assistance in relation to any criminal matter in Samoa other than the criminal matter to which the request relates; or
 - (d) be required, in the proceedings or investigation to which the request relates, to answer any question that the person would not be required to answer if those proceedings or that investigation were taking place in the foreign State; or
 - (e) be required, in the proceedings or investigation to which the request relates, to produce any document or article that the person would not be required to produce if those proceedings or that investigation were taking place in the foreign State.
- (2) For the purposes of subsection (1), a duly authenticated foreign law immunity certificate is admissible in proceedings as prima facie evidence of the matters stated in the certificate.
- (3) Subsection (1) shall not apply in relation to a person where:
- (a) the person has left Samoa and then returns otherwise than pursuant to the same or another request; or
 - (b) the person has had the opportunity to leave Samoa and has remained in Samoa otherwise than for:
 - (i) the purpose to which the request relates; or

(ii) the purpose of giving evidence in any criminal proceedings in Samoa certified by the Attorney-General, in writing, to be proceedings in which it is desirable that the person give evidence; or

(iii) the purpose of giving assistance in relation to an investigation in Samoa certified by the Attorney-General, in writing, to be an investigation in relation to which it is desirable that the person give assistance.

(4) A certificate given by the Attorney-General for the purposes of subparagraph (3)(b)(ii) or 3(b)(iii) has effect from the day specified in the certificate and may have retrospective effect.

15. Limitation on use of evidence – Where a person is in Samoa, pursuant to a request made under section 11, and gives evidence in any criminal proceedings:

(a) to which the request relates or any criminal proceedings consequent on the investigation to which the request relates; or

(b) certified by the Attorney-General pursuant to subparagraph 14(3)(b)(ii) in relation to that person,

that evidence shall not be admitted or otherwise used in any prosecution of the person for any offence against the law of Samoa, other than perjury in respect of the giving of that evidence.

16. Assistance in serving documents – Where the Attorney-General is satisfied that it is necessary or desirable to serve any proceedings on a person in a foreign State relating to a criminal matter in Samoa, the Attorney-General may request that foreign State to assist in effecting service of the proceedings.

17. Assistance in obtaining articles or things-(1) Where the Attorney-General is satisfied that there are reasonable grounds for believing that an article or thing in a foreign State is

relevant to any criminal matter in Samoa, the Attorney-General may request that foreign State to assist in obtaining that article or thing.

(2) Notwithstanding subsection (1), a request shall not be made under this section where the request involves the obtaining of the article or thing by search or seizure, unless the criminal matter is in respect of a serious offence.

18. Request for enforcement of orders made under Proceeds of Crime Act – The Attorney-General may request a foreign State to make arrangements for the enforcement and/or satisfaction of a forfeiture order, pecuniary penalty order or restraining order made under the Proceeds of Crime Act, where the Attorney-General is reasonably satisfied that property, in respect of which an order for the enforcement of a forfeiture order, a pecuniary penalty order or a restraining order is made, is located in a foreign State.

19. Request for issue of warrants or orders in foreign State – The Attorney-General may, in relation to a serious offence, request assistance from a foreign State in obtaining a warrant, order or other instrument similar in nature to any of the following warrants or orders under the Proceeds of Crime Act:

- (a) a restraining order; or
- (b) a search warrant for proceeds of crime; or a production order; or
- (c) a monitoring order.

20. Restriction on use of evidence – Any evidence, information, document or article that is obtained pursuant to a request made under this Part, shall be used only for the purposes of, or in connection with, the criminal matter to which the request relates, unless:

- (a) the foreign State to which the request was made; and
- (b) the person, in the case of any evidence, information, document or article obtained from a person while the person is in Samoa pursuant to a request made under section 11, consents to the use of the evidence, information, document or article for any other purpose.

PART III
REQUEST BY FOREIGN STATE

21. Application of this Part – A request for assistance pursuant to this Part may be made by any foreign State.

22. Requests to be made to Attorney-General-(1) Every request by a foreign State for assistance in a criminal matter pursuant to this Part shall be made:

- (a) to the Attorney-General; or
- (b) to a person authorised by the Attorney-General to receive requests by foreign States under this Part.

(2) Where a request by a foreign State is made to a person authorised under paragraph (1)(b), the request shall be taken, for the purposes of this Act, to have been made to the Attorney-General.

23. Form of request-(1) A request for assistance shall:

- (a) give the name of the authority conducting the investigation or proceeding to which the request relates; and
- (b) give a description of the nature of the criminal matter and a statement setting out a summary of the relevant facts and laws; and
- (c) give a description of the purpose of the request and of the nature of the assistance being sought; and
- (d) in the case of a request to restrain or forfeit assets believed on reasonable grounds to be located in Samoa, give details of the offence in question, particulars of any investigation or proceeding commenced in respect of the offence, and be accompanied by a copy of any relevant restraining or forfeiture order; and
- (e) give details of any procedure that the requesting State wishes to be followed by Samoa in giving effect to the request, including details of the manner and form in which any information, document or thing is to be supplied to the foreign State pursuant to the request; and

- (f) include a statement setting out any wishes of the requesting State concerning any confidentiality relating to the request and the reasons for those wishes; and
 - (g) give details of the period within which the requesting State wishes the request to be complied with; and
 - (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 Samoa; 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 notwithstanding that the request does not comply with subsection (1).

24. Refusal of assistance – A request by a foreign State for assistance under this Act may be:

- (a) refused in whole or in part if, in the opinion the Attorney-General, the request would be likely to prejudice the sovereignty, security or other essential public interest of Samoa or would be against the interest of justice; and/or
- (b) postponed in whole or in part, if, after consulting with the Competent Authority of the foreign State, the Attorney-General is of the opinion that granting the request immediately would be likely to prejudice the conduct of an investigation or proceeding in Samoa.

25. Notification of refusal – If a request by a foreign State for assistance under this Part is refused in whole or in part, notice of the refusal shall be given by the Attorney-General to the Competent Authority of the requesting foreign State together with the reasons for the refusal.

26. Assistance may be provided subject to conditions – Assistance under this Part to a requesting foreign State may be subject to such conditions as the Attorney-General determines in any particular case or class of cases.

27. Assistance in locating or identifying persons-(1) A foreign State may request the Attorney-General to assist in locating, or identifying and locating, a person who is believed to be in Samoa.

(2) The Attorney-General may authorise assistance in accordance with this section where the Attorney-General is satisfied:

- (a) that the request relates to a criminal matter in respect of a foreign serious offence in the foreign State; and
- (b) that there are reasonable grounds for believing that the person to whom the request relates -
 - (i) is or might be concerned in, or could give or provide evidence or assistance relevant to, the criminal matter; and
 - (ii) is in Samoa.

(3) Where the Attorney-General authorises assistance in accordance with this section, the Attorney-General shall forward the request to the appropriate authority in Samoa, and that authority shall use its best endeavours to locate or, as the case may be, identify and locate the person to whom the request relates, and shall advise the Attorney-General of the outcome of those endeavours.

(4) On receipt of such advice, the Attorney-General shall inform the requesting foreign State of the result of the inquiries made pursuant to the request.

28. Assistance in obtaining evidence in Samoa-(1) A foreign State may request the Attorney-General to assist in arranging the taking of evidence in Samoa or the production of documents or other articles in Samoa.

(2) Where the Attorney-General is satisfied:

- (a) that the request relates to a serious offence in the foreign State; and
- (b) that there are reasonable grounds for believing that the evidence can be taken or the document or article can be produced in Samoa,

the Attorney-General may authorise assistance in accordance with this section.

(3) Where the Attorney-General authorises the taking of evidence under this section, a Judge may, subject to sections 29 and 30 of this Act and to any regulations made under this Act, take the evidence on oath of each witness appearing before the Judge, and shall:

- (a) cause the evidence to be put in writing and certify that the evidence was taken by the Judge; and
- (b) cause the writing and certificate to be sent to the Attorney-General.

(4) Where the Attorney-General authorises the production of documents or other articles, a Judge may, subject to sections 29 and 30 and to any regulations made under this Act, require the production of the documents or other articles, and unless the Judge otherwise orders, shall send the documents or copies of the documents (certified by the Judge to be true copies) or the other articles to the Attorney-General.

29. Further provisions relating to obtaining evidence – Subject to section 30 of this Act, the laws of Samoa with respect to the compelling of persons to attend before a Judge, and to give evidence, answer questions and produce documents or other articles, upon the hearing of a charge against a person for an offence against the law of Samoa shall apply, so far as they are capable of application and with all necessary modifications, with respect to the compelling of persons to attend before a Judge, and to give evidence, answer questions and produce documents or other articles, for the purposes of section 28 of this Act.

30. Protection of witnesses-(1) For the purposes of section 28 of this Act, the person to whom the criminal proceedings in the foreign State relate is competent but not compellable to give evidence.

(2) No person who is required, pursuant to section 28 of this Act, to give evidence, or to produce documents or other articles, for the purposes of any proceedings in a foreign State shall be required to give any evidence, or to produce any document or article, that the person could not be compelled to give or produce in the proceedings in the foreign State.

(3) A duly authenticated foreign law immunity certificate is admissible, for the purposes of subsection (2) as prima facie evidence of the matters stated in the certificate.

(4) Every person who is required, pursuant to section 28, to give evidence or produce documents or other articles, for the purposes of any proceedings in a foreign State, shall have the same privileges in relation to the answering of questions and the production of documents and things, as if the proceedings were pending in a Samoan court.

31. Conduct of proceedings-(1) A person to whom the proceedings under subsection 28(3) or (4) relate and any other person giving evidence or producing documents or other articles at the hearing and the Competent Authority of the foreign State, may appear and may be represented by counsel.

(2) The certificate by the Judge under paragraph 28(3)(a) shall state whether or not any of the persons listed in subsection (1) were present at the hearing and, if so, whether or not they were legally represented.

(3) If the requesting foreign state has so requested, the Judge may permit examination or cross examination through a video or internet link from that foreign State, of any person giving evidence or producing a document or other article at the hearing by:

- (a) any person to whom the proceeding in the requesting foreign State relates or that person's legal representative; or
- (b) the legal representative of the Competent Authority of that foreign State.

32. Powers of Judge may be exercised by Registrar-(1)

Any Judge may authorise the Registrar of the Supreme Court to exercise the powers of a Judge under section 28 in respect of any particular case.

(2) An authorisation given under subsection (1) may be revoked at any time by any Judge.

(3) Where any matter, in respect of which the Registrar has jurisdiction under any authorisation given under subsection (1), appears to the Registrar to be one of special difficulty, the Registrar may refer the matter to a Judge who may dispose of the matter or refer the matter back to the Registrar with such directions as the Judge thinks fit.

(4) Nothing in this section shall prevent the exercise, by any Judge, of any jurisdiction or powers conferred on the Registrar under this section.

33. Assistance in arranging attendance of person to give evidence in foreign State-(1)

A foreign State may request the Attorney-General to assist in arranging the attendance, in that foreign State, of a person in Samoa (not being a person to whom section 34 applies) for the purposes of giving or providing evidence or assistance in relation to a criminal matter in the foreign State.

(2) The Attorney-General may, if satisfied:

- (a) that the request relates to a criminal matter in respect of a foreign serious offence in the foreign State; and
- (b) that there are reasonable grounds for believing that the person concerned could give or provide evidence or assistance relevant to that criminal matter; and
- (c) that the person concerned has freely consented to attend as requested; and
- (d) that the foreign State has given adequate undertakings in respect of the matters specified in paragraphs 35(a), (b), (c), and (e),

authorise assistance in accordance with this section and may assist in the making of arrangements to facilitate that attendance.

34. Assistance in arranging attendance of prisoner-(1) A foreign State may request the Attorney-General to assist in arranging the attendance, in that foreign State, of a person in Samoa who is a prisoner (whether or not in custody) for the purposes of giving or providing evidence or assistance in relation to any criminal matter in respect of a foreign serious offence in that foreign State.

(2) Where the Attorney-General is satisfied that:

- (a) the request relates to the attendance of the person concerned at a hearing in connection with any criminal matter in respect of a foreign serious offence in the foreign State; and
 - (b) there are reasonable grounds for believing that the person is capable of giving evidence relevant to the proceedings; and
 - (c) the person has freely consented to give evidence in the foreign State; and
 - (d) the foreign State has given adequate undertakings in respect of the matters specified in section 35,
- the Attorney-General may authorise assistance in accordance with this section.

(3) Where assistance is authorised in accordance with subsection (2), the Attorney-General may:

- (a) in the case of a prisoner who is being held in custody, direct that the prisoner be released from the penal institution in which that person is detained for the purpose of traveling to the foreign State to give evidence at the hearing, and may make arrangements for the prisoner to travel to the foreign State in the custody of a police or prison officer appointed by the Attorney-General for the purpose; and
- (b) in the case of any other person who has been released from custody on parole or other order of licence to be at large:
 - (i) approve and arrange the travel of the person to the foreign State to give evidence at the hearing; and

(ii) obtain such approvals, authorities and permissions as are required for the purpose, including the variation, discharge or suspension of the conditions of the person's release, or the variation, cancellation or suspension of the person's sentence or of the conditions of the person's sentence.

(4) A direction given pursuant to paragraph (3)(a) by the Attorney-General in respect of a prisoner shall be sufficient authority for the release of the prisoner from the penal institution in which the person is detained, for the purposes of the direction.

35. Undertakings required from foreign State – The Attorney-General shall, before authorising assistance in accordance with sections 33 or 34, obtain undertakings from the foreign State in relation to the following matters:

(a) that the person to whom the request relates shall not:

(i) be detained, prosecuted or punished for any offence against the law of the foreign State that is alleged to have been committed, or that was committed, before the person's departure from Samoa; or

(ii) be subjected to any civil proceedings in respect of any act or omission of the person that is alleged to have occurred, or that occurred, before the person's departure from Samoa, being civil proceedings to which that person could not be subjected if the person were not in the foreign State; or

(iii) be required to give or provide evidence or assistance in respect of any criminal matter in the foreign State other than the matter to which the request relates,

unless the person has left the foreign State, or has had the opportunity of leaving the foreign State and has remained in that foreign State otherwise than for the purpose of giving or providing evidence or assistance in respect of the matter to which the request relates; and

- (b) that any evidence given by the person in the criminal proceedings to which the request relates shall be inadmissible or otherwise disqualified from use in the prosecution of the person for an offence against a law of the foreign State other than the offence of perjury in relation to the giving of that evidence; and
- (c) that the person will be returned to Samoa in accordance with arrangements agreed by the Attorney-General as soon as practicable after giving the evidence; and
- (d) in a case where the request relates to a person who is a prisoner in Samoa and the Attorney-General requests the foreign State to make arrangements for the keeping of the person in custody while the person is in the foreign State; and
 - (i) that appropriate arrangements will be made for that purpose; and
 - (ii) that the person will not be released from custody in the foreign State without the prior approval of the Attorney-General; and
 - (iii) if the person is released in the foreign State, at the request of the Attorney-General, before the completion of the proceedings to which the request relates, that the person's accommodation and expenses will be met by the foreign State; and
- (e) such other matters as the Attorney-General thinks appropriate.

36. Penalty not to be imposed for refusal to consent

– The person, to whom the request pursuant to sections 33 or 34 relates, shall not be subject to any penalty or liability nor otherwise prejudiced in law by reason only of that person's refusal or failure to consent to attend as requested.

37. Effect of removal to foreign State on prisoner's term of imprisonment – Where a prisoner who is serving a term of imprisonment for an offence against the law of Samoa is released pursuant to a request by a foreign State under section 34, the prisoner shall, while in custody in connection with the request (including custody outside Samoa), be deemed to be continuing to serve that term of imprisonment.

38. Custody of persons in transit-(1) If a person is to be transported in custody from a foreign State through Samoa to another foreign State for the purposes of giving evidence in a criminal matter in the other foreign State:

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

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

39. Assistance in obtaining article or thing by search-(1) A foreign State may request the Attorney-General to assist in obtaining an article or thing by search and seizure.

(2) Where the Attorney-General is satisfied that:

- (a) the request relates to a criminal matter in respect of a foreign serious offence; and
- (b) there are reasonable grounds for believing that an article or thing relevant to the proceedings is located in Samoa,

the Attorney-General may direct an authorised officer to apply to a Judge or the Registrar of the Court for a search warrant in accordance with section 40.

40. Search warrants – A Judge or Registrar of the Court may issue a search warrant in respect of a thing where the Judge or Registrar, as the case may be, is satisfied that there are reasonable grounds for believing that there is in or on any premises or thing:

- (a) any thing upon or in respect of which a foreign serious offence has been, or is suspected of having been, committed; or
- (b) any thing which there are reasonable grounds for believing will be evidence as to the commission of any such offence; or
- (c) any thing which there are reasonable grounds for believing is intended to be used for the purpose of committing any such offence.

41. Form and content of search warrant – Every warrant issued under section 40 shall contain the following particulars:

- (a) the premises or thing that may be searched pursuant to the warrant; and
- (b) the offence or offences in respect of which the warrant is issued; and
- (c) a description of the articles or things that are authorised to be seized; and
- (d) the period during which the warrant may be executed; and
- (e) such other conditions or particulars, as specified by the Judge or Registrar.

42. Powers conferred by warrant-(1) Subject to any conditions specified in the warrant pursuant to section 41, every warrant issued under section 40 shall authorise the authorised officer executing the warrant:

- (a) to enter and search the premises specified in the warrant at any time by day or night during the currency of the warrant; and
- (b) to use such assistance as may be reasonable in the circumstances for the purpose of the entry and search; and
- (c) to use such force as is reasonable in the circumstances for the purposes of effecting entry, and for breaking open anything in or on the place or premises being searched; and
- (d) to search for and seize any thing referred to in the warrant.

(2) Every person called upon to assist any authorised officer executing a warrant issued under section 40 shall have the powers described in paragraphs (1)(c) and (d).

43. Seizing other things – If, in the course of a search under a warrant issued under section 40, for a thing of a kind specified in the warrant, an authorised officer finds another thing, the warrant is deemed to authorise the officer to seize the other thing if there are reasonable grounds for believing that:

- (a) the other thing to be relevant to the criminal matter in respect of a foreign serious offence in the foreign State; or to provide evidence about the commission of a criminal offence in Samoa; or
- (b) it is necessary to seize the thing to prevent it being concealed, lost or destroyed, or used to commit, continue or repeat the offence or another offence.

44. Custody and disposal of things seized-(1) Where an authorised officer seizes any thing pursuant to a warrant issued under section 40, the officer shall deliver the thing into the custody of the Commissioner of Police.

(2) Where a thing is delivered into the custody of the Commissioner of Police under subsection (1), the Commissioner of Police shall arrange for the thing to be kept for a period not exceeding one month from the day on which the thing was seized, pending a direction from the Attorney-General

as to the manner in which the thing is to be dealt with (which may include a direction that the thing be sent to a Competent Authority of a foreign State).

(3) Where, before the expiry of the period referred to in subsection (2), the Attorney-General gives a direction in respect of the thing, the thing shall be dealt with in accordance with the direction.

(4) If no direction is given by the Attorney-General before the expiry of the period referred to in subsection (2), the Commissioner of Police shall arrange for the thing to be returned to the person from whose possession it was seized as soon as practicable after that period has expired.

45. Attorney-General to provide certificate as to search and seizure – Where, pursuant to a request made under section 39 by a foreign State, a search warrant is issued under section 40, the Attorney-General shall, at the request of the Competent Authority of that foreign State, provide such certification as that Competent Authority may require concerning the result of any search conducted pursuant to the warrant, the place and circumstances of the seizure of any thing pursuant to the warrant, and the custody of any thing so seized.

46. Assistance in arranging service-(1) A foreign State may request the Attorney-General to assist in effecting the service of process on a person in Samoa.

(2) Where the Attorney-General is satisfied:

- (a) that the request relates to a criminal matter in respect of a foreign serious offence in the foreign State; and
- (b) that there are reasonable grounds for believing that the person to be served is in Samoa; and
- (c) where the request relates to the service of a summons to appear as a witness in the foreign State, that the foreign State has given an adequate undertaking in respect of the matters specified in section 47,

the Attorney-General may authorise assistance in accordance with this section.

(3) Where service is authorised under subsection (2), the Attorney-General shall direct the appropriate authority to arrange service, and in such a case the authority shall:

- (a) use its best endeavours to have the process served:
 - (i) in accordance with procedures proposed in the request; or
 - (ii) if those procedures would be unlawful or inappropriate in Samoa, or if no procedures are so proposed, in accordance with the law of Samoa; and
- (b) if the document:
 - (i) is served, transmit to the Attorney-General for transmission to the foreign State making the request, a certificate as to service; or
 - (ii) is not served, transmit to the Attorney-General for transmission to the foreign State, a statement of the reasons which prevented the service.

47. Undertaking required from foreign State – The Attorney-General shall, before authorising assistance in effecting the service on any person, of a summons to appear as a witness in a foreign State in accordance with section 46, obtain an undertaking from the foreign State that the person to whom the request relates will not be subject to any penalty or liability, or otherwise prejudiced in law by reason only of that person's refusal or failure to comply with the summons, notwithstanding any contrary statement in the summons.

48. Penalty not to be imposed for failure to comply with summons – Where, pursuant to section 46, a foreign State requests the assistance of the Attorney-General in effecting the service, on any person, of a summons to appear as a witness in that foreign State, the person to whom the request relates, shall not be subject to any penalty or liability or otherwise prejudiced in law by reason only of that person's refusal or failure to comply with the summons, notwithstanding any contrary statement in the summons.

49. Request for enforcement of foreign confiscation orders-

(1) A foreign State may request the Attorney-General to assist with the enforcement of:

- (a) a foreign forfeiture order, made in respect of a foreign serious offence, against property that is reasonably believed to be located in Samoa; or
 - (b) a foreign pecuniary penalty order, made in respect of a foreign serious offence, where some or all of the property available to satisfy the order is reasonably believed to be located in Samoa.
- (2) Where the Attorney-General is satisfied that:
- (a) a person has been convicted of the offence in respect of which the foreign order was made; and
 - (b) the conviction and the order are not subject to further appeal in the foreign State,

the Attorney-General may apply to the Court for the registration of the foreign forfeiture order or the foreign pecuniary penalty order.

50. Request for enforcement of foreign restraining order-

(1) A foreign State may request the Attorney-General to assist with the enforcement of a foreign restraining order in respect of property that is believed to be located in Samoa.

- (2) Where the Attorney-General is satisfied that:
- (a) the request relates to a criminal matter in respect of a foreign serious offence; and
 - (b) there are reasonable grounds for believing that some or all of the property to which the order relates is located in Samoa,

the Attorney-General may apply to the Court for the registration of the foreign restraining order.

51. Method of registration of foreign orders-

(1) Where the Attorney-General applies to the Court for the registration of a foreign order under sections 49 or 50, the Court shall, if it is satisfied that the order is in force, register the order accordingly.

(2) An order, or an amendment of an order, shall be registered in the Court by the registration of:

- (a) a copy of the appropriate order or amendment sealed by the court or other authority making that order or amendment; or
- (b) a copy of that order or amendment duly authenticated in accordance with section 69 of this Act.

(3) Where an order is registered in the Court in accordance with this section, any amendments made to the order (whether before or after registration) may be registered in the same way as the order, but the amendments do not, for the purposes of this Act and of the Proceeds of Crime Act, have effect until they are so registered.

(4) A facsimile copy of a sealed or authenticated copy of an order or an amendment of an order shall be regarded for the purposes of this Act as the same as the sealed or authenticated copy, but registration effected by means of the facsimile copy shall cease to have effect on the expiry of the period of 21 days commencing on the date of registration unless, before the expiry of that period, the sealed or authenticated copy is registered.

52. Effect of registration of foreign orders-(1) A foreign forfeiture order registered in accordance with section 51 has effect, and may be enforced, as if it were a forfeiture order made by the Court under the Proceeds of Crime Act and entered on the date of registration.

(2) A foreign pecuniary penalty order registered in accordance with section 51 has effect, and may be enforced, as if it were a pecuniary penalty order made by the Court under the Proceeds of Crime Act and entered on the date of registration.

(3) A foreign restraining order registered in accordance with section 51 has effect, and may be enforced, as if it were a restraining order made by the Court under the Proceeds of Crime Act and entered on the date of registration.

53. Cancellation of registration of foreign orders-(1) The Attorney-General may apply to the Court for cancellation of the registration of a foreign forfeiture order, a foreign pecuniary

penalty order or a foreign restraining order that has been registered in accordance with section 51, if the Attorney-General is satisfied that:

- (a) the order has, since its registration in Samoa, ceased to have effect in the foreign State in which the order was made; or
- (b) cancellation of the order is appropriate having regard to the arrangements entered into between Samoa and the foreign State in relation to the enforcement of orders of that kind; or
- (c) the order was registered in contravention of section 51.

(2) Where the Attorney-General applies to the Court for cancellation of the registration of an order, the Court shall cancel the registration accordingly.

(3) Where, pursuant to the Proceeds of Crime Act, a foreign forfeiture order, a foreign pecuniary penalty order or a foreign restraining order registered in accordance with section 51, is discharged (in whole or in part) or is revoked, that discharge or revocation may be a ground for an application for cancellation of the order under this section.

54. Request for search warrant in respect of tainted property-(1) A foreign State may request the Attorney-General to obtain the issue of a search warrant in respect of tainted property believed to be located in Samoa.

(2) Where the Attorney-General is satisfied that:

- (a) the request relates to a criminal matter in respect of a foreign serious offence; and
- (b) there are reasonable grounds for believing that tainted property in respect of the offence is in Samoa,

the Attorney-General may direct an authorised officer to make an application under the Proceeds of Crime Act for the search warrant requested under subsection (1).

55. Request for restraining order-(1) A foreign State may request the Attorney-General to obtain the issue of a restraining order in respect of property that is believed to be located in Samoa.

(2) Where the Attorney-General is satisfied that:

(a) criminal proceedings have been commenced or are about to be commenced in the foreign State in respect of a foreign serious offence; and

(b) there are reasonable grounds for believing that property that may be made, or is, the subject of a foreign restraining order is located in Samoa,

the Attorney-General may make an application under the Proceeds of Crime Act for the order requested under subsection (1).

56. Request for production order-(1) A foreign State may request the Attorney-General to obtain the issue of a production order in respect of a property-tracking document.

(2) Where the Attorney-General is satisfied that:

(a) the request relates to a criminal matter in the foreign State in respect of a foreign serious offence; and

(b) there are reasonable grounds for believing that any property-tracking document in relation to the offence is located in Samoa,

the Attorney-General may direct an authorised officer to make an application under the Proceeds of Crime Act for the order requested under subsection (1).

57. Request for monitoring order-(1) A foreign State may request the Attorney-General to obtain the issue of a monitoring order.

(2) Where the Attorney-General is satisfied that:

(a) the request relates to a criminal matter in the foreign State in respect of a foreign serious offence; and

(b) there are reasonable grounds for believing that information about transactions conducted through an account held by a particular person with a financial institution in Samoa is relevant to the matter,

the Attorney-General may direct an authorised officer to make an application under the Proceeds of Crime Act for the order requested under subsection (1).

PART IV
REQUESTS BY OR ON BEHALF OF A DEFENDANT

58. Request by Attorney-General on behalf of a defendant-(1) Where a defendant in a criminal proceeding (original proceeding), relating to a serious offence in Samoa, believes that it is necessary for the purposes of the proceeding that:

- (a) evidence should be taken in a foreign State; or
- (b) a document in a foreign State should be produced; or
- (c) a thing or other article located in a foreign State should be produced and if necessary, seized; or
- (d) arrangements should be made for a person, who is in a foreign State, to come to Samoa to give evidence relevant to the proceeding,

the defendant may apply to the Court for a certificate that it would be in the interests of justice for the Attorney-General to make any appropriate request to the foreign State under Part II, so that:

- (e) the evidence may be taken; or
- (f) the document may be produced; or
- (g) the thing or article may be produced or seized; or
- (h) the arrangements may be made with the foreign State.

(2) Before making a decision on the application, the Court shall give an opportunity to:

- (a) all parties to the original proceeding; and
- (b) the Attorney-General,

to appear before the Court and be heard on the merits of the application.

(3) In deciding whether to issue a certificate, the Court shall have regard to the following matters:

- (a) whether the foreign State is likely to grant such a request made by the Attorney-General on behalf of the defendant; and

- (b) the extent to which the material (whether it is evidence, a document, an article or a thing) that the defendant seeks to obtain from the foreign State would not otherwise be available; and
 - (c) whether the court hearing the original proceeding would be likely to admit the material into evidence in the proceeding; and
 - (d) the likely probative value of the material, if it were admitted into evidence in the proceeding, with respect to any issue likely to be determined in the proceeding; and
 - (e) whether the defendant would be unfairly prejudiced if the material were not available to the court.
- (4) Subsection (3) does not prevent the Court from having regard to any other matter that it considers relevant.
- (5) If the Court issues a certificate:
- (a) the Court shall send a copy of the certificate to the Attorney-General; and
 - (b) the Attorney-General shall, in accordance with the certificate, make a request on behalf of the defendant to the foreign State for assistance under Part II.
- (6) If a foreign State refuses a request made under subsection (5), the Attorney-General shall give a certificate in writing to that effect.
- (7) A certificate under subsection (6) is prima facie evidence of the facts stated in it.

PART V

ADMISSIBILITY OF FOREIGN EVIDENCE

59. Definitions for Part V – In this Part:

“civil proceeding” means a proceeding other than a criminal proceeding;

“criminal proceeding” includes:

- (a) a prosecution for an offence; and
 - (b) a proceeding for the committal of a person for trial for an offence; and
 - (c) a proceeding for the sentencing of a person convicted of an offence;
- “foreign law” means a law (whether written or unwritten) of, or in force in, a foreign State;
- “foreign material” means:
- (a) the testimony of a person that:
 - (i) was obtained as a result of a request of a kind mentioned in section 61; and
 - (ii) complies with section 63; and
 - (b) any exhibit annexed to the testimony; and
 - (c) any part of the testimony or exhibit;
- “related civil proceedings” for a criminal proceeding, means civil proceedings arising from the same subject matter from which the criminal proceeding arose;
- “Samoan Court” means:
- (a) the Supreme Court of Samoa; or
 - (b) a judge or arbitrator acting under Samoan law; or
 - (c) a person or body authorised by Samoan law, or by consent of parties, to hear, receive and examine evidence;
- “Samoan law” means a law (whether written or unwritten) of, or in force in, Samoa.

60. Proceedings to which this Part applies – This Part applies to a proceeding, before a Samoan court, that is a criminal proceeding for an offence against Samoan law or a related civil proceeding.

61. Requests for foreign material – This Part applies to a testimony obtained as a result of a request made by or for the Attorney-General to a foreign State for the testimony of a person and any exhibit annexed to the testimony.

62. Requirements for testimony-(1) The testimony must be taken before a superior court of record in the foreign State concerned on oath or affirmation or under such caution or admonition as would be accepted by courts in the foreign State concerned, for giving testimony in proceedings before those courts.

(2) The testimony may be taken in closed court.

63. Form of testimony-(1) The testimony may be recorded in writing, on audio tape, or on video tape.

(2) The testimony need not be in the form of an affidavit or constitute a transcript of a proceeding in a foreign court.

(3) The testimony must be endorsed with, or be accompanied by, a certificate to the effect that it is an accurate record of the evidence given and it was taken in the manner required by section 62.

(4) The certificate under subsection (3) must:

(a) purport to be signed or certified by a judge, magistrate or court officer of the foreign State to which the request was made; and

(b) purport to bear an official or public seal of:

(i) the foreign State; or

(ii) an authority of the foreign State responsible for matters relating to justice (that is, a Minister of State, a Ministry or Department of Government, or an officer of the Government).

64. Foreign material may be adduced as evidence – Foreign material may be adduced as evidence in a proceeding to which this Part applies unless:

(a) at the hearing of the proceeding, it appears to the Samoan Court's satisfaction that the person who gave the testimony concerned is present in Samoa and is able to testify at the hearing; or

(b) the evidence would not have been admissible if it had been given by the person at the hearing; or

- (c) in the proceeding, the Samoan Court directs, under section 65, that the foreign material must not be adduced as evidence.

65. Direction to prevent foreign material being adduced-(1) The Samoan Court may direct that foreign material not be adduced as evidence if it appears to the Samoan Court's satisfaction that the interests of justice would be better served if the foreign material were not adduced as evidence.

(2) Without limiting the matters that the Samoan Court may take into account in deciding whether to give such a direction, it shall take into account:

- (a) the extent to which the foreign material provides evidence that would not otherwise be available; and
- (b) the probative value of the foreign material for any issue that is likely to be determined in the proceedings; and
- (c) the extent to which statements contained in the foreign material could, at the time they were made, be challenged by questioning the persons who made them; and
- (d) whether exclusion of the foreign material would cause undue expense or delay; and
- (e) whether exclusion of the foreign material would prejudice:
 - (i) the defence in criminal proceedings;
 - or
 - (ii) a party to related civil proceedings.

66. Certificates relating to foreign material-(1) The Attorney-General may certify that specified foreign material was obtained as a result of a request made to a foreign State by or for the Attorney-General.

(2) It is presumed (unless evidence to the contrary is adduced sufficient to raise reasonable doubt) that the foreign material specified in the certificate was obtained as a result of that request.

67. Effect of Part V on right to examine witnesses-(1) Nothing in this Part limits a right of the defendant in criminal proceedings to which this Part applies to examine in person or by the defendant's legal representative, a witness whose testimony is admitted in evidence in those proceedings.

(2) If the defendant requests that the person who gave the testimony be present at the hearing in Samoa to be cross-examined, the Court shall warn the defendant that the defendant may be ordered to pay any expenses incurred by the State in making the person available before the Court.

(3) The Court may order the defendant to pay any expenses incurred by the State in obtaining the attendance of a person as a witness if:

- (a) as a result of the request, the person appears before the Court as a witness; and
- (b) it appears to the Court that the cross-examination of the person was unnecessary, trivial or irrelevant to the matters in issue in the proceedings.

(4) A certificate signed by the Attorney-General is evidence of the expenses incurred by the State for subsection (3).

(5) An amount payable by a person to the State under an order under subsection (3) is a civil debt due by the person to the State.

(6) An order against a person under subsection (3) may be enforced as if it were an order made in civil proceedings instituted by the State against the person to recover a debt due by the person to the State and the debt arising from the order is taken to be a judgment debt.

68. Operation of other laws – This Part does not limit the ways in which a matter may be proved, or evidence may be adduced, under any other law.

PART VI MISCELLANEOUS

69. Authentication of documents-(1) Subject to section 20 and Part V and to the rules of law relating to the admission of evidence, any document that is obtained, provided, or produced

pursuant to a request made under this Act and that is duly authenticated is admissible in evidence in any criminal proceedings.

(2) A document is duly authenticated for the purposes of subsection (1) if:

(a) it purports to be signed or certified by a Judge, Magistrate or official in or of a foreign State; and

(b) either:

(i) it is verified by the oath of a witness or of an official of the Government of a foreign State; or

(ii) it purports to be sealed with an official or public seal of the foreign State or of a Minister of State or of a Department or official of the Government of a foreign State.

(3) Nothing in this section prevents the proof of any matter, or the admission in evidence of any document, in accordance with any other law of Samoa.

70. Privilege for foreign documents-(1) Subject to subsection (2), a document sent to the Attorney-General by a foreign State in accordance with a request by Samoa, 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 State 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; or

- (c) the fact that such a request has been granted or refused.
- (4) Any person who contravenes subsections (1) or (3) commits an offence and shall be liable upon conviction:
 - (a) in the case of a natural person – to a fine of 500 penalty units or imprisonment for five years, or both; or
 - (b) in the case of a body corporate – to a fine of 2,500 penalty units.

71. Sharing confiscated property with foreign States

– The Attorney-General may enter into an arrangement with the Competent Authority of a foreign State for the reciprocal sharing with that State of such part of any property realized:

- (a) in the foreign State as a result of action taken by the Attorney-General pursuant to section 18; or
 - (b) in Samoa as a result of action taken in Samoa pursuant to section 49,
- as the Attorney-General thinks fit.

72. Confiscated proceeds to be credited to Confiscated Assets Fund – Any proceeds derived from tainted property which have been:

- (a) confiscated in a foreign State pursuant to a request by Samoa under section 18; or
 - (b) confiscated in Samoa pursuant to a request by a foreign State under section 49,
- to the extent available under any sharing of confiscated property arrangement, or otherwise, shall be credited to the Confiscated Assets Fund.

73. Regulations-(1) The Head of State acting on the advice of Cabinet may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting the generality of subsection (1), regulations may be made for the purposes of:

- (a) prescribing the forms of applications, notices, certificates, and other documents for the purposes of this Act; or
- (b) prescribing the procedure to be followed in dealing with requests made under this Act and providing for notification of the results of action taken pursuant to any such request; or
- (c) prescribing the procedures for obtaining evidence or producing documents or pursuant to section 28; or
- (d) providing for the payment of fees, finalised allowances and expenses to any person in Samoa who gives or provides evidence or assistance pursuant to a request made under this Act; or
- (e) creating offences and penalties for breaches of those offences up to a maximum of 100 penalty units.

75. Transitional – A request for assistance or an order that was made under Part V of the Money Laundering Prevention Act 2000 and has not been finalised at the commencement of this Act shall be deemed to be a request or order made under this Act and shall be completed or otherwise determined in accordance with the provisions of this Act.

**The Mutual Assistance in Criminal Matters Act 2007 is
administered by the Central Bank of Samoa**